THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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.

RECORD ON APPEAL
(Vol. 1 pp.1-500)

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 20, 2018

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RBJ (16145)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, vs. South Carolina Department of Public Safety, Respondent.	)	Docket No.: 16-ALJ-30-0410-CC **ORDER FOR PREHEARING STATEMENTS**

The Parties have informed the Court that pursuant to their agreement, the suspension shall be stayed through January 31, 2017, subject to further extension by mutual agreement or unless otherwise ordered by the Court, and under conditions agreed to by the parties. Therefore, the Petitioner's request for a Temporary Restraining Order need not be decided at this time.

IT IS HEREBY ORDERED that each party who intends to appear at the hearing must file with this office a Prehearing Statement stating the following:

1. The nature of this proceeding;

2. Statutory provision(s) conferring subject matter jurisdiction on the Court and other applicable statutes and regulations;

3. The issues to be presented for determination, including any claims or defenses expected to be raised;

4. The action requested of the Court and a detailed statement of the law, including statutory and/or case citations, that support the action requested;

5. A brief summary of the facts to be presented at the hearing;

6. A summary of any motions expected to be raised at the hearing and the appropriate authority for the motion;

7. A list of proposed witnesses and exhibits;

8. Whether discovery is necessary and, if so, a proposed schedule;

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9. The estimated length of the hearing;

10. Any dates in the next 120 days when you will **not** be available for a hearing; and

11. An email address where you can be reached.

IT IS FURTHERMORE ORDERED that the Prehearing Statement must be filed with this office and served on all parties within thirty (30) days of the date of this Order, falling on January 18, 2017. The parties have a continuing obligation to update the information during the course of the proceedings.

AND IT IS SO ORDERED.

H. W. Funderburk, Jr.
Administrative Law Judge

December 19, 2016
Columbia, South Carolina

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SC ADMIN. LAW COURT

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, vs. South Carolina Department of Public Safety, Respondent.	)	Docket No.: 16-ALJ-30-0410-CC **ORDER GRANTING MOTION FOR EXTENSION AND ORDER EXTENDING STAY**

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the South Carolina Department of Public Safety's ("SCDPS" or "Respondent") Motion for Extension. SCDPS is requesting an additional fifteen days to file its Prehearing Statement. This Court will grant the Parties until February 2, 2017, to file their Prehearing Statements.

Additionally, the ALC will stay the 120-day suspension of Wayne's Automotive Center, Inc. ("Wayne's") from the South Carolina Highway Patrol Rotation List through the pendency of the litigation in this Court.[1] It is therefore,

ORDERED that Respondent's Motion for Extension is **GRANTED**. The Parties shall have until February 2, 2017, to file their Prehearing Statements.

AND IT IS FURTHER ORDERED that Wayne's 120-day suspension from the South Carolina Highway Patrol Rotation List is **STAYED** through the pendency of the ligation in the ALC.

AND IT IS SO ORDERED.

H. W. Funderburk, Jr.
Administrative Law Judge

January 18, 2017
Columbia, South Carolina

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SC ADMIN. LAW COURT

[1] Previously, the Parties have informed the Court that they agreed to Stay the suspension through January 31, 2017.

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(16145) RBlg

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, vs. South Carolina Department of Public Safety, Respondent.	Docket No.: 16-ALJ-30-0410-CC **ORDER DENYING PETITIONER'S MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT**

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to Wayne's Automotive Center, Inc. ("Wayne's") Motion to Dismiss and Amended Motion for Writ of Mandamus and/or Summary Judgment and/or Stay and/or TRO and Injunctive Relief ("Amended Motion").

Wayne's, in its Motion to Dismiss, argues that the South Carolina Department of Public Safety ("DPS") failed to respond to Wayne's Amended Motion, and because DPS failed to respond, the Court should resolve the contested case adversely to DPS. Wayne's cites to SCALC Rule 23(B), which reads:

> Upon motion of any party, or on its own motion, the Court may dismiss a contested case or resolve the contested case adversely to the offending party *for failure to comply with any of the rules of procedure for contested cases*, including the failure to comply with any of the time limits provided in these rules or by order of the Court. (emphasis added).

However, DPS is not required to file a response to Wayne's Amended Motion. *See* SCALC Rule 19(A) ("Any party *may* file a written response to the motion within ten (10) days of the filing of the motion unless the time is extended or shortened by the administrative law judge.") (emphasis added). Therefore, DPS did not fail to comply with the SCALC Rules of Procedure.

DPS, in its Return to Petitioner's Motion to Dismiss, argues that Wayne's did not timely file its Petition for Contested Case Hearing. The Court disagrees. While Wayne's erroneously attempted to file a Notice of Appeal with the South Carolina Court of Appeals, Wayne's did timely file its Petition for Contested Case Hearing. Additionally, this case is properly before this Court as a Contested Case pursuant to S.C. Code Ann. §§ 1-23-600 (Supp. 2016) and 1-23-505 (Supp. 2016).

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As to Wayne's Amended Motion, this Court notes that, in its January 18, 2017, Order, the ALC stayed the 120-day suspension of Wayne's from the South Carolina Highway Patrol Rotation List through the pendency of the litigation in this Court.

This Court denies Wayne's Motion for Summary Judgment. "[S]ummary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005). "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Gadson v. Hembree*, 364 S.C. 316, 320, 613 S.E.2d 533, 535 (2005). Wayne's has not established the absence of a genuine issue of material fact.

Wayne's additionally requests in its Amended Motion a Motion for Writ of Mandamus and TRO and Injunctive Relief. Insofar as these raise issues not within the scope of Wayne's Summary Judgment motion, this Court concludes that the arguments raised by Wayne's in its Amended Motion are merely conclusory statements which are insufficient to present issues for this Court to review. *See Colleton Cty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cty.*, 371 S.C. 224, 241, 638 S.E.2d 685, 694 (2006). Further, this Court resolved Wayne's Amended Motion when it issued its Order Granting Motion for Extension and Order Extending Stay. It is therefore,

ORDERED that Wayne's Motion to Dismiss is **DENIED**.

AND IT IS FURTHER ORDERED that Wayne's Motion for Summary Judgment is **DENIED**. The Parties shall have until February 2, 2017, to file their Prehearing Statements.

AND IT IS SO ORDERED.

H. W. Funderburk, Jr.
Administrative Law Judge

January 27, 2017
Columbia, South Carolina

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SC ADMIN. LAW COURT

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, vs. South Carolina Department of Public Safety, Respondent.	Docket No.: 16-ALJ-30-0410-CC **ORDER GRANTING, IN PART, AND DENYING, IN PART PETITIONER'S MOTION TO EXPAND DISCOVERY**

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to Wayne's Automotive Center, Inc. ("Wayne's") Motion to Expand Number of Depositions and Discovery Completion Deadline and Provide Related Relief.

Discovery in a contested case before the ALC is guided by SCALC Rule 21(A), which reads:

> Discovery shall be available as provided in S.C. Code Ann. §1-23-320 (2005) (as amended), and as provided under these rules. Discovery shall be conducted according to the procedures in Rules 26-37, SCRCP, except that only the standard interrogatories provided by SCRCP 33(b), as applicable to the pending contested case, are permitted; there shall be no more than three (3) depositions per party under Rule 30, SCRCP; and no more than ten (10) requests to admit per party, including subparts under Rule 36, SCRCP. All discovery shall be completed within 90 days of the date of the Notice of Assignment. Upon motion for good cause shown or upon his own motion, discovery may be expanded or curtailed by the administrative law judge.

Petitioner is seeking to extend discovery to May 15, 2017, expand the number of depositions to six, and to authorize that depositions be conducted with waivers of witness fees and mileage charges.

This case was assigned on December 16, 2016, therefore, pursuant to SCALC Rule 21(A), discovery should have been completed by the day of this order, March 16, 2017. However, the Court recognizes the importance of discovery in contested cases and will extend the discovery deadline to May 15, 2017. The Court cautions the parties that no further extension of discovery will be granted.

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Petitioner additionally requests that the Court expands the number of depositions to six. This Court denies Petitioner's request. Pursuant to SCALC Rule 21(A), the number of depositions per party is limited to three absent a showing of good cause.

Lastly, Petitioner requests that the Court "authorize the taking of the depositions of the deponents listed above with waiver of witness fees and mileage charges[.]" "Discovery shall be conducted according to the procedures in Rules 26-37, SCRCP[.]" SCALC Rule 21(A). Rule 30, SCRCP, establishing the amount for witness fees and mileage. Therefore, this Court denies Petitioner's request for waiver of witness fees and mileage charges.[1]

It is therefore,

ORDERED that Wayne's Motion to Extend Discovery is **GRANTED**. The parties shall have to May 15, 2017, to complete discovery.

AND IT IS FURTHER ORDERED that Wayne's Motion to expand the number of depositions to six is **DENIED**.

AND IT IS FURTHER ORDERED that Wayne's Motion to waive witness fees and mileage for depositions is **DENIED**.

AND IT IS SO ORDERED.

H. W. Funderburk, Jr.
Administrative Law Judge

March 16, 2017
Columbia, South Carolina

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[1] However, 1 S.C. Code Ann. Regs. 19-712.01(F)(2) (2011) and 1 S.C. Code Ann. Regs. 19-712.01(F)(3)(b) (2011) place limitations on what state employees are entitled to.

Recd 9/20/17
(16145) REJ

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, vs. South Carolina Department of Public Safety, Respondent.	)	Docket No. 16-ALJ-30-0410-CC **FINAL ORDER**

This case comes before the Administrative Law Court ("ALC" or "Court") on the appeal of Wayne's Automotive Center, Inc., ("Petitioner") for a contested case hearing to challenge a violation found and a penalty imposed by the South Carolina Department of Public Safety ("Respondent" or "Department"). *See* S.C. Code Ann. § 1-23-600 (Supp. 2016) and § 1-23-505 (Supp. 2016). Respondent determined that the recovery charges invoiced by Petitioner for a specific incident were unreasonable and suspended Petitioner from its rotation call list for one hundred and twenty (120) days.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and passed upon their credibility, taking into consideration each party's burden of proof, the Court makes the following findings of fact by a preponderance of the evidence.

Petitioner applied to be included on the 2016 Wrecker Rotation Schedule. Petitioner was approved and recommended for the rotation list. The 2016 Wrecker Rotation Fee Schedule does not set a fee for special operations in Class C tows. These are described in 2 S.C. Code Ann. Regs. 38-600 (E)(3) (2011) as heavy duty tows for vehicles in excess of seventeen thousand (17,000) pounds. The Fee Schedule also notes that "a wrecker service may recover the actual cost of rented/subcontracted equipment or labor necessary to accomplish the job." Proof of these costs must be provided by including an itemized invoice or receipt from the provider with the towing bill. A standard Class C tow is approved for $436.00 per hour. Special operations for a Class B

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tow sets an hourly rate of $174.00.[1] The schedule also allows a separate invoice if additional services are performed, such as hazardous waste cleanup or transportation of vehicle, cargo, or occupants.

On February 9, 2016, the South Carolina Highway Patrol placed a routine rotation call to Petitioner's Aiken location for a Class C wrecker to tow an overturned tractor-trailer on the I-20 bridge over the Savannah River near the South Carolina/Georgia border.[2] The tractor-trailer belonged to J.H.O.C., Inc., d/b/a Premier Transportation ("Premier") and contained a customer's shipment of dogfood. Between 2:00 A.M. and 4:30 A.M. Petitioner sent individuals to the scene and began to dispatch trucks and equipment including apparatus for traffic control such as digital signs and cones. Between noon and 2:00 P.M., the interstate and the bridge were reopened to traffic. The cargo recovery and removal continued into the evening. Petitioner's records show that its vehicles finished at the scene around 11:38 P.M. Petitioner's operations manager disputed the accuracy of this record and contended that vehicles and workers remained engaged until a later time. In any event, the Court has no basis to reject Petitioner's claim that some vehicles and workers were involved in the recovery for approximately twenty-one (21) hours.

On February 19, 2016, Lieutenant King, the wrecker coordinator for Troop 7 (Aiken County), received a complaint about Petitioner's tow bill for the accident. He obtained copies of the tow bill from Robert Watson, President of Recovery Resolution Specialists, and from Jeff Corbett, Petitioner's owner. After reviewing the bill, King spoke with Corbett and explained the problems he found with the bill. On March 4, 2016, he reported to Captain Grice, his troop commander, identifying charges on the bill he thought were unreasonable and recommended that Petitioner be permanently removed from the wrecker rotation list.

King's report identified three individuals whose labor was billed at $175.00 an hour, three whose labor was billed at $150.00 an hour, and one whose labor was billed at $85.00 an hour. A

[1] What that rate is supposed to cover or supply is not specified.

[2] S.C. Code Ann. Regs. 38-600 (F)(2)(a)(1) (2011) defines a "standard tow ... as responding to the scene, hooking up the vehicle, performing a general clean up if the call involves responding to a collision scene...." Section (F)(2)(a)(2) defines "special operations" as "involving the process of uprighting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle and/or the recovery of a load which has spilled, or the off-loading and reloading of a load from an overturned vehicle performed to right the vehicle."

reasonable rate, in his opinion, would have been $50.00 an hour for the first six and $35.00 an hour for the seventh. He identified another worker billed at $90.00 and six others billed at $50.00 an hour. He stated that $25.00 an hour would have been reasonable for all. Three other workers were paid $1,000.00 to transfer and repack cargo but should have been paid a total of $75.00. King thought another item for repacking and reloading was duplicative and should have been removed. Finally, he stated that he directed Petitioner to release the cargo. The cargo was not picked up until the final bill was paid (by check received March 7, 2016). Respondent did not see or consider until much later the invoice eventually paid.[3] King is not an expert in towing rates.

Petitioner's operations manager, Sherry Corbett, is the majority owner of Spill Containment Incident Management ("SCIM") that provided communication equipment and a truck with cleanup supplies used at the accident scene.[4] In addition, labor was obtained from Vern's Wrecker and Recovery ("Vern's"). Equipment and labor from SCIM and Vern's was "marked up" from its actual cost allegedly to cover Petitioner's liability, taxes, and insurance expenses. Equipment invoices included an operator for the equipment. These operators were also included in labor charged for recovery technicians.

Petitioner issued a number of invoices to Premier for its services: one consisting of four separate invoices totaling $67,912.69; a single invoice for $69,017.19; another single invoice for $64,783.19; and a last invoice for $48,633.19, that Premier paid by check received March 7, 2016. Petitioner explained that the invoices were adjusted as it learned that some items were not needed, that air bags damaged in lifting the trailer could be repaired, and that other items should be deducted. Even after these adjustments, the invoice, as paid, contained labor charges that were duplicated as operators included in equipment charges, and additions to the actual charges billed by subcontractors who provided labor and equipment. These "third party" charges were not supported by bills or receipts attached to the invoice.

On a number of occasions, Petitioner was asked to release the cargo. These requests were made by Robert Watson, who was retained by Sentry Insurance, the insurer of Premier's rig. Mr. Watson

[3] According to the Notice of Disciplinary Action Decision, Respondent received this invoice on July 1, 2016. The Department reviewed this invoice but concluded that it did "not cure the impropriety of the charges" first invoiced.
[4] SCIM is owned by Sherry Corbett (51%) and Jeff Corbett (49%).

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began his involvement in the case on February 14, 2016. He reviewed the invoice and asked for the cargo's return by telephone and email. Travelers Insurance insured the cargo, and its agent contacted Petitioner on February 18, 2016, and authorized Petitioner to deal with Mr. Watson. The cargo was picked up on March 7, 2016.

CONCLUSIONS OF LAW

Petitioner asserts that the accident occurred in Georgia and is subject to Georgia law or is preempted by Federal law. This case arises within a South Carolina regulatory scheme in which a South Carolina business participating in that regulatory scheme was summoned by the South Carolina Highway Patrol to perform services subject to the administration of that regulatory scheme. Under these circumstances, South Carolina jurisdiction is proper.

Petitioner also contends that by paying the final invoice, Premier has settled any complaints it might have about the items included in the bill and the recovery of the cargo. Petitioner also argues that Mr. Watson had no authority to make the allegations that triggered the Respondent's involvement and the resulting disciplinary action. The Court disagrees.

The regulation provides for complaints and disciplinary procedures: "Complaints from or about wrecker services regarding an incident involving the Highway Patrol or its operation of the wrecker lists must be received within thirty days of the alleged incident." 2 S.C. Code Ann. Regs. 38-600(D)(1) (2011). The regulation sets up two classes of complaints "from or about wrecker services." A complaint from a wrecker service must deal with the Highway Patrol's operation of the wrecker lists. A complaint "about wrecker services" would involve problems arising from wrecker services furnished to individuals or businesses or invoices for such services. Once the complaint is lodged, Respondent must perform its investigatory duties until the complaint is resolved.[5]

To be on the rotation list, a wrecker service must meet the qualifications set forth in 2 S.C. Code Ann. Regs. 38-600(B) and (C) (2011). In addition, Section 38-600 (F) requires that each application must include proposed fees for each wrecker class and, for each class, fees for standard

[5] Resolution depends on the nature of the complaint. A complaint about a bill could be resolved by a revised bill.

towing, special operations, and storage. The Troop commander for each wrecker zone reviews the fees for validity and reasonableness before approving a service for the rotation list.

Charges for services furnished through Respondent's wrecker rotation list are subject to the regulations:

> Fees charged for rotation list calls shall be reasonable and not in excess of those rates charged for similar services provided in response to requests initiated by any other public agency or private person.

2 S.C. Code Ann. Regs. 38-600(F)(2) (2011).

This subsection creates a correlation between the fees set by the annual Wrecker Rotation Fee Schedule and the overall charges for services performed. The schedule, to which Petitioner is subject, sets an hourly amount for a Class C Standard Tow at $436.00 an hour. No fee is set for Special Operations. However, the following explanation is included in the Fee Schedule:

> 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 part providing such equipment or labor must accompany the tow bill.

Respondent, therefore, has the authority to investigate complaints and to determine whether a tow bill is proper and reasonable. However, special operations may require additional labor and equipment that could be provided without obtaining them from third parties. Reasonable costs might be added that could be in excess of the $174.00 an hour allowed for Class B tows.

Petitioner contends that Robert Watson is not authorized to dispute or complain about services provided. The truck's owner, its insurer, and the cargo's insurer authorized Petitioner to deal with Mr. Watson. Therefore, Petitioner's argument has no merit.

Petitioner also complains about the Department's failure to refer the case to an Advisory Committee. S.C. Code Ann. Regs. 38-600(D)(5) mandates the creation of an Advisory Committee. "to review ... complaints specific to the terms and conditions of this regulation." Petitioner complains that Respondent violated the regulation by not creating this Advisory Committee. However, the review referenced could only occur "upon request by the Department." Furthermore, its review would be limited to "specific issues raised in a complaint or appeal," and its

"recommendations regarding the validity of the complaint as well as a fair and reasonable resolution" cannot "supercede [sic] Department of Public Safety policy." Hence, while the Department may have erred in failing to create an Advisory Committee, it is not obligated to use the committee or to follow its recommendations. In any event, the contested case hearing and its *de novo* review has cured any procedural or due process violations. *Unisys Corp. v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263 (2001). Therefore, this error, if it is an error, is harmless.

Petitioner contends that, because the Fee Schedule sets no fees for Class C Special Operations and S.C. Code Ann. Regs. 38-600(C)(15) requires submission of a single bill, its combined invoice (as revised) complies with the Fee Schedule and the regulations. The Court disagrees.

One bill is required to be submitted to the owner or operator. The Fee Schedule allows the towing company to include in its bill and recover the actual cost of rented or subcontracted equipment or labor. However, these costs must be substantiated by including with the single towing bill an itemized invoice or receipt from the third party that furnished such equipment or labor.

Petitioner contends that its revised charges itemized on the final bill, which Premier paid, were reasonable. Respondent evaluated and imposed a suspension based on Petitioner's initial bill. Petitioner complied with many of the concerns identified by Lt. King. Although Petitioner rejected Lt. King's evaluation of its initial bill, Petitioner submitted a final, revised bill to Premier on the same day King made his formal report.

Respondent points out that there were at least four invoices submitted. The focus of its investigation was the second invoice submitted for the amount of $69,017.19. Respondent contends that this Invoice to Premier was unreasonable. Respondent relies on S.C. Code Ann. Regs. 38-600(F)(2), which states as follows:

> Fees charged for rotation list calls shall be reasonable and not in excess of those rates charged for similar services provided in response to requests initiated by any other public agency or private persons.

Since King advised Petitioner to revise its bill to correct the issues he identified, Petitioner could reasonably believe revision was required and would be acceptable. In continuing its investigation,

Respondent must take revision into account and evaluate the final bill. As this lengthy process concluded, Premier ultimately paid $48,622.19, the amount specified in the final bill.

Petitioner prepared and submitted revised bills as directed; therefore, it cannot be held responsible for alleged violations that it subsequently corrected.[6] If Petitioner has disregarded the Wrecker Rotation Fee Schedule or the Wrecker Rotation Regulation, the violations must be based on specific abuses that remain in this final invoice.

Respondent disputes that the tow/recovery required twenty-one (21) hours. The testimony and evidence supports the conclusion that Petitioner had equipment and workers either on the scene or relocating cargo for storage between 2:00 A.M. and 11:38 P.M. on February 9, 2016. The final invoice shows one large wrecker (to rotate to an upright position the tractor and trailer and to remove the trailer), communication equipment (owned by SCIM), and four workers billed for twenty-one hours. One of these workers should not have been billed separately from the wrecker. The invoice detail supports the use of this wrecker from 2:00 A.M. to 11:00 P.M. or twenty-one hours. Another heavy-duty truck (Class C) used for winching both tractor and trailer and to remove the tractor was billed for twelve (12) hours. The worker assigned to this unit was also billed for eight (8) hours of labor.

The Response Unit, which transported cleaning supplies and equipment to the accident scene was billed for twenty (20) hours. This unit was identified as the property of SCIM. Traffic control devices and equipment including digital signs and arrows, a high intensity sign used on both east and west lanes, and 48 traffic cones were used for twenty (20) hours. Some of these items were owned by Petitioner, some were contracted from a third party. Labor obtained from a third party (Vern's Wrecker & Recovery) was billed at $1,000.00. No invoices were attached supporting the cost of equipment and labor obtained from other businesses.

[6] Can one be punished for saying that he will not correct an error when he ultimately does correct it before he is aware that he has been punished? *Cf. Matthew* 21:28-31.

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The invoice that was the subject of the investigation also included a cost to replace airbags (used to help raise overturned vehicles or trailers). The final invoice did not include the cost of airbags.[7] In addition, the initial invoice included labor charges which Respondent (through Lieutenant King) objected to as unreasonable. The final invoice reduced labor charges from $18,665.00 to $14,815.00 by reducing some labor rates and eliminating one duplication and two workers.[8]

Respondent also objected to charges for the communications equipment and the Response Unit supplied by SCIM. Respondent's analysis of these charges suggests that they are unreasonable based on the acquisition costs of the items. This analysis also applied to the traffic cones. The Court finds the analysis to be flawed. The communications units, three of which were on the scene for twenty-one hours, were billed at approximately $28.00 an hour. While this rate may be high, it is not so high as to be unreasonable. The Response Unit used a truck purchased for $4,516.00. There was no evidence presented to establish any cost for refurbishing it and stocking it with equipment and supplies for containing and cleaning up hazardous waste (fuel and lubricants from the wrecked tractor). Assuming that the hourly rate ($175.00) includes an operator and accounts for consumable supplies, the billed cost is not unreasonable.[9] Finally, the traffic cones were billed at $700.00 (reduced from $1,000.00). To account for this sum, forty-eight (48) cones were used for twenty (20) hours at $0.75 per cone per hour. There is no evidence that fewer cones should have been used or that seventy-five (75) cents is an unreasonable hourly rate for a traffic cone at an accident site.

Finally, we come to a knotty and contentious issue. Respondent argues that Petitioner did not comply with state law when it did not release the cargo. S.C. Code Ann. § 56-5-5635(F) provides as follows:

> 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

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[7] The testimony showed that Petitioner discovered that the airbags could be repaired and removed all costs associated with the airbags from the final invoice.

[8] The labor charges include $1,000.00 for the labor supplied by Vern's for which Respondent introduced an exhibit showing $720.00 as the actual cost.

[9] Allowed costs for Special Operations in a Class B tow, as indicated above, are $174.00 an hour; it is reasonable to assume that a Class C operation would be more expensive.

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repair shop must release any personal property that does not belong to the owner of the vehicle to the owner of the personal property.

Personal property, as used in this subsection, refers to "personal items such as medicines, medical equipment, keys, clothing, and tools of the trade, child restraint systems and perishable items" that belong to the owner of the vehicle. S.C. Code Ann. Regs. 38-600(C)(6). The statute also requires that "personal property that does not belong to the owner of the vehicle" must be released to the owner of the personal property. Petitioner contends that this subsection must be read to apply only to personal items as illustrated in the regulation and not to cargo or commercial property. The Court disagrees with Petitioner's classification.

Personal property is "all property that is not real property." *Colonial Life and Acc. Ins. Co. v. South Carolina Tax Comm'n*, 233 S.C. 129, 250, 103 S.E.2d 908, 918 (1958). Therefore, Petitioner's attempt to carve out a separate category for cargo as distinct from real or personal property fails. On the other hand, the statutory requirement that personal property must be released to its owner does not eliminate Petitioner's problem. Who owns the in-transit dog food: the supplier who has sold the product, but not delivered it; the buyer who has not taken possession; the company who insures Premier's truck; the company who insures the cargo itself?

Given this complexity, Petitioner is justified in holding the cargo until its owner, the owner's designee, or the owner's insurer is prepared to take possession. In this case, Premier, as the transporter, furnished a trailer, paid its bill, and arranged to complete delivery of the cargo. Although the process took longer than it should have, Respondent's directive to release the cargo without resolving the ownership issue left Petitioner in a legal limbo. The closing sentence of S.C. Code Ann. Regs. 38-600(C)(6) refers to alternatives if the owner is not available to sign a release. By paying the tow and recovery invoice, Premier stepped back into its status prior to the accident. It recovered the cargo and reassumed its obligation to deliver it.

While several of the issues are resolved in Petitioner's favor, there remain regulatory violations that are common to the invoice Respondent investigated and the final invoice for which Petitioner is held responsible.

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Although Petitioner addressed some of the labor cost issues, the final bill retains "double billing" for individuals whose labor should have been included in the hourly rate for the heavy-duty wreckers (the Rotator and the Class C Heavy Duty Truck). In addition, Petitioner admitted "marking up" rental/subcontracted equipment and labor. A wrecker service may recover only the actual cost of such equipment or labor and must prove these actual costs by attaching an itemized invoice or receipt from the provider(s) to the invoice presented. Petitioner, by increasing these costs on its invoice and by failing to attach proof of the costs, violated the Wrecker Rotation Fee Schedule.

Other than these specific violations, the Court concludes that Petitioner's general rates conformed to the Schedule, that it performed Special Operations, including off-loading and reloading of a load, as defined in the Schedule and in S.C. Code Ann. Regs. 38-600(F)(2)(a)(2) for the time specified in its invoice, and that it secured the cargo until it could be picked up for delivery.

Petitioner violated its obligations under S.C. Code Ann. Regs. 38-600 and the Schedule by double billing for labor, overcharging for rented/subcontracted equipment and labor, and failing to prove the actual cost of rented/subcontracted equipment and labor by not attaching itemized invoices or receipts to its tow bill. These violations warrant a suspension and removal of Petitioner from the Wrecker Rotation list for a period of sixty (60) days. These days must be days during which Petitioner would be otherwise qualified for and approved to be on the Wrecker Rotation List.

Based upon the Findings of Fact and Conclusions of Law above, it is hereby
ORDERED that Petitioner is Suspended and Removed from the Wrecker Rotation List for a period of sixty (60) days and that these days must be days during which Petitioner would be otherwise qualified for and approved to be on the Wrecker Rotation List.
AND IT IS SO ORDERED.

September 19, 2017
Columbia, South Carolina

H.W. Funderburk, Jr.
Administrative Law Judge

FILED
SEP 19 2017
SC ADMIN. LAW COURT

000022

Rec'd 11/01/17
(16145) REJ

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, vs. South Carolina Department of Public Safety, Respondent.	Docket No.: 16-ALJ-30-0410-CC **ORDER DENYING MOTIONS FOR RECONSIDERATION**

This matter is before the Administrative Law Court ("Court") pursuant to the motion filed September 29, 2017, by Wayne's Automotive Center, Inc. ("Petitioner") seeking reconsideration of the Court's Final Order that was filed on September 19, 2017, and the reconsideration motion of the South Carolina Department of Public Safety ("Respondent") filed October 2, 2017. Petitioner and Respondent filed responses in opposition to the other party's motion on October 11, 2017. The arguments in both Petitioner's and Respondent's motion and reply reiterate the arguments made during the hearing, held July 31, 2017. These arguments, along with the evidence and testimony presented, have been carefully considered and ruled upon by this Court. As far as the motions and/or replies raise new issues and arguments, the Court will not consider improperly raised arguments that should have been brought before this Court prior to the issuance of the Final Order. The motions and replies do not seek to present newly discovered evidence, and the Court perceives no manifest errors of law or fact in its Final Order.

Therefore, **IT IS HEREBY ORDERED** that both Petitioner's Motion to Reconsider and Respondent's Motion to Reconsider are **DENIED.**

AND IT IS SO ORDERED.

H. W. Funderburk, Jr.
Administrative Law Judge

October 31, 2017
Columbia, South Carolina

FILED
OCT 31 2017
SC ADMIN. LAW COURT

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Rec'd 12/11/17
KBG
16/45

The South Carolina Court of Appeals

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

v.

South Carolina Department of Public Safety,
Respondent-Appellant.

Appellate Case No. 2017-002455

ORDER

Wayne's Automotive Center, Inc. (Wayne's Automotive) has filed a motion requesting this court to issue a supersedeas to stay matters decided in the Administrative Law Court's orders. This court temporarily grants the stay for twenty days from the date of this order for the purpose of allowing Wayne's Automotive to petition for relief with the Administrative Law Court. *See* Rule 241(d)(1), SCACR ("Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal."). The Administrative Law Court has jurisdiction to consider this petition for supersedes pursuant to Rule 241 while this appeal is pending. Nothing in this order prevents the parties from filing a request for this court to continue the stay upon the expiration of twenty days if the Administrative Law Court has not yet ruled on the petition.

James E. Lockemy

FOR THE COURT

Columbia, South Carolina

FILED

Dec. 8, 2017

000024

The South Carolina Court of Appeals

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

v.

South Carolina Department of Public Safety,
Respondent-Appellant.

Appellate Case No. 2017-002455

The Honorable Harold W. Funderburk, Jr.
Trial Court Case No. 2016ALJ300410CC

ORDER

The time for serving and filing the correspondence ordering the transcript is hereby extended until January 8, 2018.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:
Raymon E. Lark, Jr., Esquire
Andrew F. Lindemann, Esquire
Marcus Keith Gore, Esquire

FILED
December 11, 2017

000025

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, vs. South Carolina Department of Public Safety, Respondent.	Docket No.: 16-ALJ-30-0410-CC **ORDER GRANTING PETITION FOR SUPERSEDEAS**

RECEIVED
DEC 29 2017
SC Court of Appeals

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to a Petition for Supersedeas filed December 13, 2017, by Wayne's Automotive Center, Inc., ("Petitioner").[1] Respondent conditions its agreement to the Petition for Supersedeas on Petitioner's compliance with 2 S.C. Code Regs R. 38-600 (2011). However, such noncompliance could only be determined by events outside of this case.

The Court grants the Petition for Supersedeas without imposing the conditions requested by Respondent. Any violations of Regulation R. 38-600 would have to occur in conjunction with subsequent provisions of service, hence would be outside the scope of this appeal.

Therefore, **IT IS HEREBY ORDERED** that Petitioner's Petition for Supersedeas is **GRANTED. AND IT IS SO ORDERED.**

December 28, 2017
Columbia, South Carolina

H. W. Funderburk, Jr.
Administrative Law Judge

FILED
DEC 28 2017
SC ADMIN. LAW COURT

[1] The Court's Order in this case has been appealed by Petitioner and cross-appealed by Respondent to the Court of Appeals. The Court of Appeals, in response to Petitioner's request for a stay, granted a temporary stay to allow the Petitioner the opportunity to seek a supersedeas from the ALC.

Rec'd by mail
03/19/18
RBY
(16 of 45)

The South Carolina Court of Appeals

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

v.

South Carolina Department of Public Safety,
Respondent-Appellant.

Appellate Case No. 2017-002455

The Honorable Harold W. Funderburk, Jr.
Trial Court Case No. 2016ALJ300410CC

ORDER

The time for delivering the transcript is hereby extended until March 28, 2018.

FOR THE COURT

BY V. Allie Allen, Deputy
CLERK

Columbia, South Carolina

FILED
March 19, 2018

cc:
Raymon E. Lark, Jr., Esquire
Andrew F. Lindemann, Esquire
Marcus Keith Gore, Esquire
Jana E. Shealy

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc.,	)	Docket No. 16-ALJ-30-0410-CC
	)	
Petitioner,	)	
	)	**PETITION FOR CONTESTED CASE HEARING AND MOTION FOR TRO AND INJUNCTIVE RELIEF WITH MEMORANDUM OF LAW**
v.	)	
	)	
South Carolina Department of Public Safety,	)	
	)	
Respondent.	)	
	)	

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

Petitioner hereby submits its Request For Contested Case Hearing And Motion For Temporary Restraining Order (TRO) and Injunctive Relief with Memorandum of Law. Petitioner is being irreparably harmed through imposition of a 120-day suspension from Respondent's Wrecker Rotation List (Rotation List), scheduled to begin on Monday, December 12th, resulting from issuance of Respondent's "final agency action" order, received December 7th. **Exhibits A and B.**[1]

Petitioner is a South Carolina corporation, which--through its Registered Agent, Walter Jeffry

[1] Petitioner's composite **Exhibit C** is a copy of the set of legal issues and authorities proffered to Colonel Oliver in support of its positions before Respondent and in support of its request for a contested case proceeding, TRO, and injunctive relief herein.

Exhibit D is a copy of the SC Court Of Appeals Order, as signed by Judge Geathers and entered December 12, 2016, dismissing the appeal of Petitioner (as Appellant therein) and not considering its Petition For Writ of Superseadeas, filed and served December 9th after Respondent would not consent to a stay of imposition of the suspension. Petitioner will continue to suffer irreparable harm if its suspension is imposed, beginning December 12th, and continued during this proceeding. Proper circumstances exist for the Court to issue a TRO and Temporary Injunction with nominal security required, as discussed herein.

While Petitioner as Appellant before the Court of Appeals was mindful of the facial-as applied challenge distinction and it perceived the appeal as a *facial challenge* to the constitutionality of a regulation and statute at least in part, Judge Geathers for the Court of Appeals by his Order has disagreed and considered it an as-applied challenge. *See Travelscope LLC v. South Carolina Department Of Revenue*, 391 S.C. 89, 705 S.E. 2d 28, 38-39 (2011). Therefore, Petitioner is pursuing the instant course of action without waiving any rights or interests.

FILED
DEC 14 2016
000028 SC ADMIN LAW COURT

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). Petitioner 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.

In support of this Petition for a contested case hearing and administrative review, Petitioner would respectfully show:

1. On February 9, 2016, Petitioner'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). Petitioner did so and issued an initial invoice to Premier (**Exhibit B (2)**) that was lowered and paid in full by Premier to Petitioner in early March (***Id.* (B) (3)** and **Exhibit C (Enclosure 2)**).

2. 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 solely on a complaint emailed to Highway Patrol Division staff (Lt. King and Captain Hughes) and others—but excluding Petitioner or its staff--by Robert (Bob) Watson, received February 19, 2016, which Petitioner 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

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adjustor 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 Petitioner 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.**

3. 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 shown in:

(a) reliance to discipline Petitioner 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);[2]

(b) failure to provide Petitioner 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;

(d) issuance of a defective Notice of Proposed Disciplinary Action, Disciplinary Decision, and denial of Petitioner'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 Petitioner 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);

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[2] *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.

(f) raising through its attorneys a new disciplinary matter (Herron) not known to Petitioner or its undersigned attorney, involving an alleged unnecessary winching tow and overcharge by Petitioner 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 Petitioner has, as shown herein and in attached **Exhibits A through C**.

4. Petitioner 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[3] that Respondent has improperly developed and applied its Rotation List and the rates thereunder; and Reg. 38-600 and/or such List and Reg. have been improperly applied or are otherwise invalid, deficient, or unconstitutional. Respondent's violation of provisions of its own regulation also constitute negligence *per se* and gross negligence against Petitioner in accordance with the common law and South Carolina Tort Claims Act, §15-78-10 *et seq.*[4]

5. 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

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[3] Petitioner is not necessarily stating this Court can provide for recovery of damages or render a declaratory judgment herein. However, Petitioner is including this in order to preserve its rights to pursue such recovery and judgment.

[4] 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).

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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 (APA) 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).

6. Petitioner, therefore, also seeks the Court to determine and declare the actions and inactions of Respondent in failing to provide Petitioner with the Watson email complaint, notify and allow Petitioner to be present and heard violate the above Due Process Clauses of the South Carolina Constitution, in that they deprived Petitioner of property without affording Petitioner the procedural and substantive due process rights, as provided by such constitutional provisions as well as their own representations to Petitioner and further to determine and provide Petitioner 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 Petitioner's rights to Due Process, since the General Assembly cannot lawfully do this.[5] Provision by this Court of the TRO and injunctive relief sought herein is necessary and appropriate to achieve justice in this situation.

7. Petitioner moves and this Court should also provide injunctive relief to enjoin Respondent from arbitrarily imposing and continuing to impose from December 12th a 120-day suspension from its Rotation List. The standards for granting a temporary restraining order or temporary injunction are well established and are as follows: (1) irreparable harm if the injunction is not granted; (2) the relative harm to the plaintiff of the injunction is not granted as compared to the relative harm to the defendant if the injunction is granted; (3) plaintiff's likelihood of success on the merits; and (4) the

[5] *See* n. 3, *supra.*

public interest. Professor James F. Flanagan, *South Carolina Civil Procedure, Second Edition, at 508 (1996).*

8. Irreparable harm means that an injunction is reasonably necessary to protect the plaintiff's rights pending the litigation. *Johnson v. Phillips, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993) rev'd on other grounds, 318 S.C. 453, 458 S.E.2d 427 (1995).* Irreparable injury implies that there exists no adequate remedy at law. *Van Robinson Ins. Agency v. Harleyville Mut. Ins. Co., 272 S.C. 127, 249 S.E.2d 744 (1978).*

9. As to its showing of irreparable harm, Petitioner provides this Petition with Verification and Affidavit of its registered agent and operator, Walter Jeffry Corbett, concerning the facts and matters hereinabove. Furthermore, such showing is even more compelling, if this Court determines that the APA does not provide for the assessment of civil penalties against an agency found to be in violation of its provisions. *See, Marietta Garage, Inc. v. South Carolina Department Of Public Safety*, 352 S.C. 95, 572 S.E. 2d 306 (Ct. App. 2002).

10. The harm to Respondent is nonexistent, based upon its Orders herein. **Exhibits A and B.**

11. Petitioner is likely to prevail on the merits. Respondent through its actions and inaction described above has acted outside its scope of authority, which it cannot do, and injured Petitioner. *Triska v. Department of Health and Environmental Control,* 292 S.C. 190. 355 S.E. 2d 531 (1987) and *Stono River Environmental Protection Association v. South Carolina Department of Health and Environmental Control,* 305 S.C. 90, 406 S.E. 2d 340 (1991). "(A) public entity cannot materially alter or add to law in any fashion which circumvents legislation." *Armstrong v. School District Five of Lexington and Richland Counties*, 26 F. Supp. 2d 789 (D.S.C. 1998), *citing S.C. Tax Commission v. S.C. Tax Board of Review,* 278 S.C. 556, 299 S.E.2d 489 (1983). *Accord, Bethel Methodist Episcopal Church v. City Of Greenville,* 211 S.C. 442, 45 S.E. 2d 841, 844-45 (1947), applying the abuse of power rule against a municipality. Respondent has thereby further violated Petitioner's

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rights of procedural and substantive Due Process. As to procedural Due Process violations, *see, e.g., Daniels v. Williams,* 474 U.S. 327 (1986). As to substantive Due Process violations, *see, e.g., Worsley Co., Inc. v. Town of Mount Pleasant*, 339 S.C. 51, 528 S.E.2d 657, 660 (2000), *and Daniels, supra.*

12. Under the circumstances, the Court should require only a nominal bond of $250, consistent with Rule 65, SCRCP.

WHEREFORE, Petitioner requests that the Administrative Law Court conduct a contested case evidentiary hearing after granting its Motion For TRO at the outset and injunctive relief during the pendency of this proceeding and, thereafter, issue its order reversing the decisions of Respondent to suspend Petitioner from the Highway Patrol Wrecker Rotation List and providing all other available relief to Petitioner.

AUSTIN & ROGERS, P.A.

By: Raymon E. Lark Jr.

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Attorneys for Petitioner

December 14, 2016

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Blythewood, SC 29016

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	Docket No. 16-ALJ-_____ **PETITION FOR CONTESTED CASE HEARING AND MOTION FOR TRO AND INJUNCTIVE RELIEF WITH MEMORANDUM OF LAW**

VERIFICATION AND AFFIDAVIT

Sworn to before me, Walter Jeffry Corbett, who says and deposes that the affiant knows the facts in the foregoing Petition For Contested Case Hearing and Motion For TRO and Injunctive Relief with Memorandum of Law to the South Carolina Administrative Law Court, as 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 Jeffry Corbett

SWORN to and subscribed before me
this 14 day of December 2016.

Notary Public for South Carolina
My Commission Expires: 9/1/2025

Rec'd 12/07/16
Reply (16145)

South Carolina Department of Public Safety
S.C. Highway Patrol

EXHIBIT
tabbies
A

December 1, 2016

Raymon E. Lark, Jr., Esq.
Austin & Rogers, P.A.
508 Hampton Street, 3rd Floor
Columbia, South Carolina 29201

RE: Wayne's Automotive Center, Inc.

Dear Mr. Lark:

I am in receipt of your letter dated October 21, 2016 in which you have asked the South Carolina Department of Public Safety ("SCDPS") to reconsider a suspension which was previously imposed on Wayne's Automotive Center, Inc. ("Wayne's") for violations of Section 38-600 of the South Carolina Code of State Regulations.

After having carefully considered the grounds raised in your appeal, I concur with the findings and conclusions made by Captain C. B. Hughes and affirm his decision to suspend and remove Wayne's from the South Carolina Highway Patrol Rotation List ("Rotation List") for a period of one hundred twenty (120) days. The first part of the suspension shall begin on December 12, 2016, and run through December 31, 2016. Additionally, if Wayne's applies for and obtains approval for placement on the 2017 Rotation List, the suspension will extend until April 11, 2017. If Wayne's does not apply or receive approval for placement on the 2017 Rotation List, the suspension will extend into any subsequent calendar year in which Wayne's applies for and is approved to be on the Rotation List until all days of the suspension period are served.

Insofar as this suspension applies to all South Carolina locations operated by Wayne's, it will not receive any Rotation List calls in any county during this period. Per SCDPS policy, this disciplinary measure may be used to support subsequent disciplinary action and shall become a part of the permanent SCDPS file on Wayne's.

This is the final agency action for purposes of administrative review. Should you wish to pursue an appeal of this matter, you may seek judicial review in a court of competent jurisdiction.

Colonel Michael R. Oliver
South Carolina Highway Patrol

POST OFFICE BOX 1993, 10311 WILSON BLVD., BLYTHEWOOD, SOUTH CAROLINA 29016

Rec'd 09/29/16
REG (16145

South Carolina Department of Public Safety
S.C. Highway Patrol

EXHIBIT
B

September 26, 2016

VIA CERTIFIED MAIL

Raymon E. Lark, Jr., Esq.
Austin & Rogers, P.A.
508 Hampton Street, 3rd Floor
Columbia, SC 29201

RE: Notice of Disciplinary Action Decision – Wayne's Automotive Center, Inc.

Dear Mr. Lark:

By letter dated April 25, 2016, the South Carolina Highway Patrol ("SCHP") notified Wayne's Automotive Center, Inc. ("Wayne's") of proposed disciplinary action arising out of a tow performed by Wayne's on February 9, 2016. A hearing on the matter was held at the South Carolina Department of Public Safety ("SCDPS" or "Department") on August 8, 2016. The Department's decision in this matter is set forth below.

FINDINGS OF FACT

1. On November 25, 2015, Pamela Belton signed the SCHP Wrecker Rotation Fee Schedule on behalf of Wayne's establishing the Troop Seven wrecker rotation fees for 2016 and containing other provisions governing Rotation List tows (set forth more fully in the Conclusions of Law herein). This document is attached hereto as Exhibit "1."

2. On February 9, 2016, Wayne's received a routine rotation call from SCHP requesting a Class "C" wrecker to tow a tractor-trailer belonging to J.H.O.C., Inc. d/b/a Premier Transportation ("Premier") that had overturned on I-20 near the South Carolina/Georgia border.

3. On February 10, 2016, Wayne's issued an invoice to Premier for the tow and clean-up totaling $69,017.19 ("First Invoice"). The First Invoice reflected that Wayne's utilized a heavy duty wrecker for 21 hours at a rate of $436.00 per hour, a rotator for 21 hours at a rate of $436.00 per hour, and a heavy duty tractor-trailer for 13 hours at the rate of $436.00 per hour. The First Invoice also contained numerous other labor and equipment charges reflecting various rates and hours expended. This document is attached hereto as Exhibit "2."

4. Robert Watson of Recovery Resolution Specialists, Inc. ("RRS"), subsequently contacted SCHP to express concerns about the amounts shown on the First Invoice and the difficulty he was having obtaining a release of the cargo.

5. SCHP Lieutenant N. W. King reviewed the First Invoice and contacted W. Jeffery Corbett, the owner of Wayne's, on February 17, 2016, to discuss the fees on the First Invoice and release of the cargo.

6. Mr. Corbett advised Lt. King during their conversation that some of the equipment and labor used to complete the tow and clean-up was furnished by two companies other than Wayne's, one of which was owned by his wife, Sherry Corbett.

7. Lt. King then advised Mr. Corbett that labor and equipment provided by a third party needed to be billed on a separate invoice. Mr. Corbett agreed to issue a revised invoice showing only those services performed by Wayne's and to separately invoice subcontracted labor and equipment provided by third parties. Lt. King also explained that Wayne's was obligated to release the cargo to its owner pursuant to S.C. Code § 56-5-5635,[1] and Mr. Corbett agreed to do so.

8. Despite Mr. Corbett's assurances to Lt. King, Wayne's did not issue a corrected invoice, provide separate invoices for third-party services, or release the cargo. Shortly thereafter, Mr. Watson submitted a written complaint with SCHP on February 19, 2016 ("Complaint"). The Complaint is attached hereto as Exhibit "3."

9. Lt. King called Mr. Corbett to discuss why Wayne's had not followed through on the foregoing matters discussed during the previous February 2016 conversation. Mr. Corbett informed Lt. King that Wayne's would not in fact be taking the referenced actions and that Wayne's would accept whatever consequences might result.

10. By check dated March 4, 2016, Premier paid a total of $48,633.19 to Wayne's, which apparently accepted this amount as payment in full for services provided. A copy of this check is attached hereto as Exhibit "4."

11. On April 25, 2016, a Notice of Proposed Disciplinary Action ("Notice") signed by SCHP Cpt. A. K. Grice was sent to Wayne's notifying it that SCHP had concluded an investigation arising out of the February 9, 2016 tow and determined that the violations identified therein had been substantiated by the Department. Among other things, the Notice provided that (1) the cargo in Premier's tractor-trailer was owned by Tractor Supply Company; (2) pursuant to the Fee Schedule executed by Wayne's in November 2015, Wayne's was permitted to charge $436.00 per hour for a Class "C" tow; (3) the First Invoice reflected that Wayne's utilized a heavy duty wrecker for 21 hours at a rate of $436.00 per hour to complete the tow; and (4) Wayne's billed for a rotator (21 hours) and a heavy duty tractor-trailer (13 hours) at the rate of $436.00 per hour in addition to the aforementioned heavy duty wrecker. A copy of the Notice is attached hereto as Exhibit "5."

12. On May 13, 2016, Mr. Corbett delivered a letter to the Department requesting a hearing.

13. On July 1, 2016, Wayne's provided the Department a document that appeared to be a revised invoice containing charges totaling $48,633.19 ("Second Invoice"), which was the sum paid by Premier in March 2016. The Second Invoice reduced the First Invoice's charge for

[1] See S.C. Code Ann. § 56-5-5635(F) (governing tows performed at the direction of law enforcement and providing that "[t]he proprietor, owner, or operator of [a] 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").

heavy duty wrecker time to 12 hours (at $436/hour), but it left the $436/hour charges for rotator and tractor trailer times (21 hours and 13 hours, respectively) unchanged from the First Invoice. The Second Invoice also contained numerous other labor and equipment charges reflecting various rates and hours expended. This document is attached hereto as Exhibit "6."

14. A hearing at the Department's Blythewood, South Carolina headquarters occurred on August 8, 2016.

15. At the hearing, Wayne's raised a number of legal arguments and referred to certain documents that it had provided previously to SCDPS via e-mail. Wayne's maintained chiefly that (1) Mr. Watson lacked standing to submit the Complaint; (2) Wayne's was denied due process; (3) the issue giving rise to the Complaint was rendered moot; and (4) the Department did not comply with South Carolina Code of State Regulations § 38-600 ("Regulation" or "Reg."), the South Carolina Constitution, or the Administrative Procedures Act ("APA").

16. Counsel for Wayne's submitted e-mails before and after the hearing[2] in which legal challenges were made on several grounds to the disciplinary action contemplated by the Notice and to the Department's processes associated with Rotation List disciplinary action in general. Counsel for Wayne's also submitted requests under the South Carolina Freedom of Information Act seeking the Complaint and other records associated with the February 2016 tow, and such records were furnished to Wayne's before the hearing.

17. At no time did Wayne's provide SCDPS with (1) an invoice showing only the work performed by Wayne's in this matter or (2) separate invoices reflecting labor or equipment being provided by any other company in connection with the tow, despite Mr. Corbett's representation to Lt. King that two other companies were involved.

18. Wayne's previously received a 60-day suspension from the Rotation List in 2015 for failing to abide by the Regulation in several particulars. A copy of the Department's July 30, 2015 decision (issued by Cpt. C. T. Stephens) imposing the suspension is attached hereto as Exhibit "7," and SCHP Colonel M. R. Oliver's September 22, 2015 denial of the subsequent appeal is attached as Exhibit "8."

CONCLUSIONS OF LAW

19. The law governing wrecker services utilized by SCDPS is found in Section 38-600 of the Regulation. In particular, Regulation 38-600(F)(2) mandates that all fees charged by wrecker services for Rotation List calls "shall be reasonable and not in excess of those rates charged for similar services . . . ." Additionally, Regulation 38-600(F)(2)(b) states that the "Troop commander will determine the reasonableness of the fees . . . ." Furthermore, "[f]ailure of any wrecker service to comply" with the Regulation "will result in disciplinary action in accordance with the South Carolina Department of Public Safety Wrecker Rotation Disciplinary Policy." Reg. § 38-600(D)(3).

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[2] E-mails were received by the Department on July 1 and 15, 2016, and August 5 and 12, 2016. The August 12th e-mail to the Department was after the August 8, 2016 hearing, but it was considered along with the others because the record was kept open for an additional five days following the hearing.

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20. The maximum fees recoverable by wrecker services on the SCHP Rotation List for standard tows in each wrecker class are set annually, and each wrecker service must execute a corresponding fee schedule ("Fee Schedule") governing such fees for the upcoming calendar year. Fees for Rotation List tows cannot exceed the amounts shown on the Fee Schedule, and charging additional fees other than those shown on the Fee Schedule is prohibited.

21. Pursuant to the Fee Schedule executed by Wayne's in November 2015, Wayne's was permitted to charge $436.00 per hour for a Class "C" tow. The First Invoice reflected that Wayne's utilized a heavy duty wrecker for 21 hours at a rate of $436.00 per hour to complete the tow. However, Wayne's also billed for a rotator (21 hours) and a heavy duty tractor-trailer (13 hours) at the rate of $436.00 per hour. The Second Invoice reduced the charge for heavy duty wrecker time to 12 hours (at $436/hour), but it left the $436/hour charges for rotator and tractor trailer times (21 hours and 13 hours, respectively) unchanged. The hourly Class "C" rate set by the Fee Schedule is the maximum *total* hourly amount that may be charged for a wrecker service's performance of the tow/recovery itself—not a rate that can be charged for each vehicle or piece of equipment on the scene, as permitting charges to be stacked in such a manner would effectively negate the purpose of the Fee Schedule's "catch-all" rate.[3] Therefore, the charges for the rotator and heavy duty tractor-trailer on both the First Invoice and Second Invoice were improper.

22. The Fee Schedule does not set a separate Special Operations fee for a Class "C" tow, but it does allow a wrecker service to "recover the actual cost of rented/subcontracted equipment or labor necessary to accomplish the job." It goes on to add that "[p]roof 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**." (Emphasis added.)

23. Both the First Invoice and the Second Invoice contained numerous other itemized fees that Wayne's was not permitted by the Fee Schedule to charge. To the extent that some or all of the other itemized fees were purportedly for subcontracted labor or equipment, the Department has no record of them ever being separately invoiced by Wayne's as required. Hence, such charges were improper.

24. Wayne's has never disputed that the cargo was owned by an entity other than Premier, nor has it denied initially agreeing to release the cargo when first contacted by Lt. King. Wayne's later reneged on its commitment to release the cargo, and its behavior in this regard was manifestly unprofessional. Reg. 38-600(B)(8) (mandating that wrecker operators on the Rotation List "display professional behavior").

25. Wayne's argued that the Complaint should be disregarded because Mr. Watson allegedly (1) sought to use it as leverage in negotiating a reduction of the original amount Wayne's invoiced for the tow and (2) receives a commission based on how much of a reduction in tow bills he obtains on behalf of his clients. This argument is misplaced, as the Department's authority is limited to determining if a wrecker service has complied with applicable Rotation List requirements and, if not, imposing appropriate discipline. Therefore,

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[3] The Department is exploring changes to the Fee Schedule to allow wrecker services performing Class "C" tows to bill for additional labor/equipment, but the present matter is governed by the Fee Schedule executed by Wayne's in November 2015.

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whatever factors may or may not have motivated Mr. Watson to submit the Complaint have no bearing on whether Wayne's engaged in conduct for which it could be disciplined.

26. Wayne's asserted that it should not have been subject to the proposed discipline set forth in the April 2016 Notice because the dispute in this matter was settled by payment of Premier's check for $48,633.19 in early March 2016, thereby rendering the Complaint moot. The Department disagrees. First, the subsequent acceptance of a reduced sum by Wayne's as payment in full for the tow does not cure the impropriety of the charges at the time they were first invoiced. The fact that a party may later correct violations brought to its attention does not deprive a government entity of the ability to take administrative action for such violations. See, e.g., Garris v. Gov'ing Bd. of the S.C. Reins. Facility, 319 S.C. 388, 391, 461 S.E.2d 819, 821 (1995) (rejecting argument that a statute affording a party an opportunity to "show compliance" prior to "the institution of agency proceedings" meant the party first had to be "provid[ed] an opportunity to correct deficiencies," and concluding that "showing compliance mean[t] showing that *at the time of the alleged violation* [the party] was in full compliance with the law") (emphasis added). Moreover, the First Invoice's deficiencies cannot be accurately said to have been "corrected" by the Second Invoice, as the latter contained (1) improper charges for the rotator and heavy duty tractor-trailer, (2) itemized fees not specifically authorized by the Fee Schedule, and (3) charges for labor or equipment that were required to be shown by separate invoice(s). To the extent that Wayne's still has not demonstrated that it can adhere to proper billing practices associated with Rotation List tows, its conduct in this regard could continue unless the Department addresses it accordingly. Byrd v. Irmo High School, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) (observing that an otherwise moot issue may be considered if "the issue raised is capable of repetition but evading review"). Thus, the Department's ability to administer disciplinary action in this matter was not rendered moot by Premier's March 2016 payment.

27. Wayne's contended that Mr. Watson's absence from the hearing constituted a denial of due process. The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. art. 1, § 22. However, "[d]ue process does not require a trial-type hearing in every conceivable case of government impairment of a private interest." Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). "Rather, due process is flexible and calls for such procedural protections as the particular situation demands." Kurschner, 376 S.C. at 172, 656 S.E.2d at 350. To the extent that Wayne's (1) availed itself of the opportunity to be heard on the merits pre-hearing (through submission of correspondence and other documents) and at the hearing following due notice thereof; (2) did not establish that it was substantially hindered in its ability to respond to the Notice as a result of Mr. Watson not being present; and (3) retains the right to seek judicial review in a court of competent jurisdiction once the Department's final disciplinary action is administered, Mr. Watson's absence from the hearing did not deny due process to Wayne's.

28. Furthermore, Wayne's offered no argument in support of how it maintained Mr. Watson could have been subpoenaed or otherwise compelled to travel to South Carolina to appear at the hearing. Information in the Department's records reflects that Mr. Watson does business at a North Carolina address, as acknowledged by Wayne's at the hearing. Moreover, public records available online from the North Carolina Secretary of State's Office (1) confirm that RRS is a North Carolina corporation; (2) identify Mr. Watson as the corporation's

president; and (3) list a North Carolina address for Mr. Watson individually.[4] Even if the Department's administrative hearing process for wrecker disciplinary matters purportedly authorized issuance of subpoenas, any such subpoena would not have been enforceable as to Mr. Watson. Vaught v. Nationwide Mut. Ins. Co., 250 S.C. 65, 74, 156 S.E.2d 627, 632 (1967) (recognizing that "a subpoena issued to an out of state witness would have been legally ineffective to compel the attendance of such witness at a trial in this State").

29. Wayne's contended that Mr. Watson lacked standing to initiate the Complaint and cited Youngblood v. S.C. Dep't of Soc. Servs., 402 S.C. 311, 741 S.E.2d 515 (2013), in support of its position. Standing is commonly understood as "a fundamental prerequisite to **instituting an action**" or a status that "confers a right **to sue** on a party." Youngblood, 402 S.C. at 317, 741 S.E.2d at 518 (emphasis added). In other words, standing requires a party *to a lawsuit* to show that it has a legally-recognized right to pursue *litigation*—not, as in this situation, to notify a state agency of a possible regulatory violation by a third party. Taken to its logical end, Wayne's seems to suggest that it can act with impunity so long as the person or entity reporting Wayne's for a possible regulatory violation would not have standing to initiate a lawsuit against it—even if, as in this matter, regulatory violations are uncovered by the Department as a result of the information received. Adopting the interpretation of standing put forth by Wayne's would lead to an absurd result, and the Department rejects it accordingly.

30. Wayne's maintained that Mr. Watson or "an owner of the property in question" was required to give it a copy of the Complaint under § 38-600(C)(6) of the Regulation. Section 38-600(C)(6) provides that if there is "a dispute between the vehicle owner or the vehicle owner's designee and the wrecker service regarding any *storage* fees or charges, the vehicle owner or the vehicle owner's designee must provide the wrecker service written notification of the dispute." (Emphasis added.) On its face, the cited provision is rather limited in scope—as confirmed by the wrecker service's obligation to "cease any *storage* charges that would otherwise accrue from the time the wrecker service receives written notification of the dispute until the dispute is settled." Reg. 38-600(C)(6) (emphasis added). Conversely, initiation of complaints and imposition of discipline are matters governed principally by another section of the Regulation. See Reg. 38-600(D) ("Complaints/Disciplinary Procedures"). Storage charges were not mentioned specifically in either the Complaint or the Notice. In any event, whether notice of a storage charge dispute was given by someone other than SCDPS does not prevent the Department from investigating and disciplining Wayne's for the regulatory violations identified herein.

31. Wayne's averred that the Department violated the South Carolina Constitution by serving as both the prosecutor and adjudicator in this matter. S.C. Const. art. 1, § 22 (prohibiting a person from being "finally bound by a judicial or quasi-judicial decision of an administrative agency" if "subject to the same person for both prosecution and adjudication"). However, the respective functions of the agency employees involved were not concentrated in any one person: Lt. King conducted the investigation, Cpt. Grice issued the Notice, and the undersigned issued the decision herein setting forth the discipline imposed. Additionally, a different SCDPS official—Col. M. R. Oliver—would rule on any appeal of this decision that Wayne's may wish to pursue, and his ruling would constitute the final agency action for purposes of administrative review. Thus, no constitutional concern is presented. See Baldwin

[4] See https://www.sosnc.gov/Search/profcorp/9894121.

v. S.C. Dep't of Hwys. and Pub. Transp., 297 S.C. 232, 234, 376 S.E.2d 259, 260 (1989) (acknowledging that due process does not prohibit an agency from both prosecuting and adjudicating when the adjudicatory role is performed by "other persons within the same agency who did not participate in investigation or prosecutorial capacities").

32. The Department's July 30, 2015 decision notifying Wayne's of its 60-day suspension from the Rotation List provided that "this disciplinary measure may be used to support subsequent disciplinary action." It follows that Wayne's was on notice based on its prior suspension that future regulatory violations could result in disciplinary action and that its disciplinary history could be considered by SCDPS in determining the discipline to be imposed in such matters.

DECISION

Having considered the arguments made by Wayne's and the entire record, I conclude the following disciplinary measure is warranted in accordance with Regulation 38-600 and SCDPS policy: Suspension and removal of Wayne's from the SCHP Wrecker Rotation List for a period of one hundred twenty (120) calendar days. In reaching this decision, the Department took into account that Wayne's was disciplined previously for its noncompliance with the Regulation in 2015.

The first part of the suspension shall begin on October 10, 2016 and run through December 31, 2016. Additionally, if Wayne's applies for and obtains approval for placement on the 2017 Rotation List, the suspension will extend until February 7, 2017. If Wayne's does not apply or receive approval for placement on the 2017 Rotation List, the suspension will extend into any subsequent calendar year in which Wayne's applies for and is approved to be on the Rotation List until all days of the suspension period are served.

Insofar as this suspension applies to all South Carolina locations operated by Wayne's, it will not receive any SCHP Rotation List calls in any county during this period. Per SCDPS policy, this disciplinary measure may be used to support subsequent disciplinary action and shall become a part of the permanent SCDPS file on Wayne's.

If you wish to appeal this decision, the Department must receive a written request containing the grounds for such an appeal no later than the tenth calendar day following your receipt of this letter. Such a request must be addressed to: Col. M. R. Oliver, South Carolina Highway Patrol, P.O. Box 1993, Blythewood, South Carolina 29016.

Capt. C. B. Hughes
Commander, SCHP Troop Ten
Administrative & Regulatory Compliance Unit

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South Carolina Department of Public Safety

S.C. Highway Patrol

South Carolina Highway Patrol
2016 Wrecker Rotation Fee Schedule

In accordance with Section 38-600 of the South Carolina Code of State Regulations, the Department of Public Safety publishes a yearly Fee Schedule outlining the maximum allowable fees for each class of wrecker on the SCHP Wrecker Rotation List. The reasonableness of fees on the Fee Schedule is determined by the Highway Patrol on a comparative basis. The fees permitted for calendar year 2016 are listed below:

2016 MAXIMUM ALLOWABLE FEES FOR ROTATION LIST CALLS

CLASS	STANDARD TOW	SPECIAL OPERATIONS	STORAGE
A	$204.00 flat rate	$118.00 per hour	$30.00 per day
B	$279.00 flat rate	$174.00 per hour	$39.00 per day
C	$436.00 per hour	* no fee will be set	$53.00 per day

Standard Tow: A standard tow is defined as responding to the scene, hooking up the vehicle, performing a general clean up if the call involves responding to a collision scene and providing responsible assistance to the vehicle occupants. In the absence of special operations as defined below, the maximum fee for a Class A or B tow is the flat rate listed above. Fees for Class C tows are billed at an hourly rate.

Special Operations: Special operations are operations involving the process of uprighting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle and/or the recovery of a load which has spilled, or the off-loading and reloading of a load from an overturned vehicle performed to right the vehicle. A wrecker service must receive confirmation on-scene at the time of the tow from the investigating Trooper or an SCHP supervisor that special operations are required to perform the tow in order to recover such fees.

* 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.

If services beyond those for which the wrecker was dispatched are performed (e.g., hazardous waste cleanup; transportation of vehicle, cargo, or occupants(s) to an agreed upon location other than the one required by the Regulation), those services must be billed on a separate invoice.

Storage: Fees begin 12 hours after a vehicle is secured on the wrecker service premises and terminate when the vehicle owner or owner's designee offers to pick up the vehicle and pay the legitimate accrued charges.

A COPY OF THIS FEE SCHEDULE SHALL BE KEPT IN EACH WRECKER AT ALL TIMES AND MUST BE PRESENTED UPON REQUEST TO ANY PERSON FOR WHOM TOW SERVICES ARE PROVIDED, HIS OR HER AGENT, OR ANY DEPARTMENT OF PUBLIC SAFETY EMPLOYEE. ANY COMPLAINTS MUST BE IN WRITING AND FORWARDED TO THE SCHP TROOP COMMANDER.

NOTE: This fee schedule lists the maximum fee that may be charged for each class of wrecker. A lesser fee may be charged at any time in the wrecker service's discretion.

Courtesy - Efficiency - Service

POST OFFICE BOX 1993, 10311 WILSON BLVD., BLYTHEWOOD, SOUTH CAROLINA 29016

EXHIBIT
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South Carolina Highway Patrol

Wrecker Rotation Inspection

Approved Fees:

Class	Standard Towing	Special Operations	Storage (per day)
[X] A	$ 204.00	$ 118.00	$ 50.00
[X] B	$ 279.00	$ 174.00	$ 77.00
[X] C	$ 436.00	$ None / No Fee SCT	$ 53.00

Inspector's Comments:

After my inspection, I find this service to be:

[X] **Approved** – Business is in compliance with Wrecker Regulations and is being **recommended** for the rotation list.

[ ] **Not Approved** – Business is not in compliance with Wrecker Regulations and is **NOT recommended** for the rotation list. Service was notified in writing as to what deficiencies were identified.

Inspector's Signature: _____ Date: 11/25/15

Wrecker Owner's Acknowledgment of Receipt and Compliance if approved:

I do hereby affirm that I have a copy of South Carolina Code of Regulations 38-600 governing rotation list wreckers. I am familiar with its contents and do hereby agree to fully comply with it in order to remain on the rotation list. I understand that any violation of the Wrecker Regulations may result in disciplinary action pursuant to S.C. Code of Regulations 38-600(D) and SCDPS Policy 200.19 Wrecker Rotation Disciplinary Policy. I further agree that if I relocate or change equipment, insurance carriers, telephone numbers or employees, or for any reason become unavailable for service for an extended period of time, I will notify the appropriate Troop Commander in writing. The information I have furnished is true and correct to the best of my knowledge. My business has been inspected and approved this 25th day of NOVEMBER, 20 15.

Print Name Pamela Beltran Signature: Pamela Beltran

Key to Inspection Codes:

C = Compliant **NC = Not in Compliance** **NA = Not Applicable**

Form SCHP-A-007 revised July 2014

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South Carolina Department of Public Safety

S.C. Highway Patrol

On behalf of the wrecker service named below, I acknowledge that I have received and agree to be bound by the South Carolina Highway Patrol 2016 Wrecker Rotation Fee Schedule and the Department of Public Safety's Wrecker Rotation Disciplinary Policy. Further, I certify that I am authorized to bind the wrecker service named below to the terms of this Fee Schedule and the Department of Public Safety's Wrecker Rotation Disciplinary Policy.

Ronald L Beltra — Ronald L Beltra — 11/25/15

Owner/Representative Name (Printed) | Owner/Representative Signature | Date

Wagner Automotive Center Inc

Name of Wrecker Service

Wayne's Automotive and Towing Center

SCIM
Spill Containment Incident Management
1997 Richland Avenue East
Aiken, SC 29801

Invoice

Date	Invoice #
2/10/2016	504462

Bill To

J. H. O. C., INC.
Premier Transportation
323 CASH MEMORIAL BOULEVARD
FOREST PARK GA 30297
282577

P.O. No.	Terms	Project
	Due Upon Receipt	

Description	Qty	Rate	Amount
Repacking Fee and Reloading from Loading Dock onto Trailer 2nd Load	1	750.00	750.00
Backhoe 420D and Transport and Heavy Operator	11.5	350.00	4,025.00
Skid Steer Track Loader and Transport	1	600.00	600.00
Back Deck Blower used for cleaning highway on bridge	1	275.00	275.00
Restocking and Reload Cargo	1	500.00	500.00
OSHA Certified Incident Communication Equipment	1	1,795.00	1,795.00
Emergency Digital Signage I-20 W Message Board exit 6 Detour Traffic with Cones	20	75.00	1,500.00
Emergency Digital Signage I-20 E Digital Arrow Board	20	75.00	1,500.00
Light Tower	8	75.00	600.00
Traffic Control High Intensity Sign 36x36 used a total of 4 on both East and West lanes	20	50.00	1,000.00
26 In. Traffic Cones total of 48	20	50.00	1,000.00
Pallats for Restocking	3	22.95	68.85
PIG MAT240	25	7.50	187.50
Containment Booms used for containment preventing release into Savannah River below site	1	85.00	85.00
Containment Liner	1	175.00	175.00
Storage Per Unit as of 02/15/2016	1	210.84	210.84
Storage Per Unit as of 02/15/2016	6	50.00	300.00
	6	50.00	300.00

5% Interest Accrual for non payment in 5 days.

Total	$69,017.19
Payments/Credits	$0.00
Balance Due	$69,017.19

Phone #	E-mail
803-226-0025	sherry@waynesautomotivecenter.com

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Wayne's Automotive and Towing Center

SCIM
Spill Containment Incident Management
1997 Richland Avenue East
Aiken. SC 29801

Invoice

Date	Invoice #
2/10/2016	504462

Bill To
J. H. O. C., INC. Premier Transportation 323 CASH MEMORIAL BOULEVARD FOREST PARK GA 30297 282577

P.O. No.	Terms	Project
	Due Upon Receipt	

Description	Qty	Rate	Amount
60 Ton Rotator HD4 used for upright winching both tractor and trailer	21	436.00	9,156.00
Class C Heavy Duty Truck HD5 used for upright winching both tractor and trailer	21	436.00	9,156.00
Class C Heavy Duty Tractor with Trailer used for Transfering Cargo and storing HD3/RECOVERY TRAILER	13	436.00	5,668.00
Recovery Supervisor JC	21	175.00	3,675.00
Recovery Technician BH	21	175.00	3,675.00
Recovery Technician KJ	21	150.00	3,150.00
Recovery Technician JH	13	150.00	1,950.00
Recovery Technician BR	8	85.00	680.00
Recovery Technician WB	10	150.00	1,500.00
Response Unit used for transporting supplies, snatch blocks, oil dry, absorbents, booms, back deck blower, brooms, shovels, etc.	20	175.00	3,500.00
Air Cushion Recovery	2	4,000.00	8,000.00
Transfer Cargo from scene to loading dock Containment Unit (this includes reloading an offsite facility)	1	750.00	750.00
Labor Hours for transferring from the scene and repackaging WB	9	90.00	810.00
Labor Hours for transferring from the scene and repackaging JH	7	50.00	350.00
Labor Hours for transferring from the scene and repackaging WRH	1.5	50.00	75.00
Labor Hours for transferring from the scene and repackaging JS	7	50.00	350.00
Labor Hours for transferring from the scene and repackaging PW	3.5	50.00	175.00
Labor Hours for transferring from the scene and repackaging MR	7	50.00	350.00
Labor Hours for transferring from the scene and repackaging KS	3.5	50.00	175.00
Labor Sublet from Verns (3 Guys used for transferring and repacking)	1	1,000.00	1,000.00

5% Interest Accrual for non payment in 5 days.	**Total**
	Payments/Credits
	Balance Due

Phone #	E-mail
803-226-0025	sherry@waynesautomotivecenter.com

000049

EXHIBIT
tabbies 2

King, Nicklous W.

From: Bob Watson [towinsurance@gmail.com]
Sent: Friday, February 19, 2016 11:33 AM
To: King, Nicklous W.; Karen Coppolino; Lucas Sentry; Haz Mat; Hughes, Clifton B.
Subject: Official complaint on Waynes towing Claim 61a169404 Premier Transporation

Officer King, I have called the tow company for 2 days and the owner (Jeff is the only one that is to talk with me) has not called me back.
I cannot get an answer on the cargo trying to get it pickup today.

After reviewing the tow bill I have several problems.

1. The tractor trailer recovery 21 hours. After the units where up righted it appears the HD recovery trucks just sat. Why where the units not towed to the yard. Waynes won't answer the question but states 21 hours.
2. I was told a lot of the equipment was sub contracted so they can charge extra money. Need a list of sub contracted equipment.
3. Air bags for $8,000.00. The tow company did not know how to use air bags, straps, angle iron to protect the corners which tore the trailer into 3 pieces. I have done over 150 air bag recoveries and was a trainer in CA and I have NEVER destroyed a trailer. I sent to other tow companies and they all agree with my assessment of the recovery. The tow company destroyed the trailer and wasted a lot of time.
4. Labor rates $150.00 per hour is about double the going rate. Then they lower the rate to $50.00 which is about correct.
5. Transfer cargo $750.00. They are already charging labor. What the $750.00 for? Then on page 2 there is another $750.00 charge.
6. Need a copy of the sublet bill for $1,000.00 additional labor 7. Tract hoe can be rented for about $350.00 a day.
8. Why did the tow co bring all the signs and cones out. Doesn't DOT or the state police cover this?
9. Cones $50.00 each. They cost between $13.00 and $19.00.
10. OSHA Certifies radio equipment. $1795.00 11. Called yesterday and today to get the cargo and I have to talk with Jeff only. No return call.

I have transportation spill solution working with me on the haz mat portion of the bill with I have concerns with. .

--
Robert Watson
President, Recovery Resolution Specialists

704-807-1733 www.recoveryresolutionspecialists.com

This email is confidential. If you are not the intended recipient, you must not disclose or use the information contained in it. If you have received this email in error, please reply immediately and inform the sender that you have received it in error. Recovery Resolution Specialists disclaims any and all liability for unauthorized used of this email or the information contained herein. Recovery Resolution Specialists recommends you scan all attachments with antivirus software, as we accept no responsibiity for damages caused by viruses or malware that may be transmitted with this email.

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EXHIBIT 3

South Carolina Department of Public Safety
S.C. Highway Patrol

April 25, 2016

Mr. Walter Jeffery Corbett
Wayne's Automotive Center, Inc.
1997 Richland Avenue East
Aiken, South Carolina 29801

RE: Notice of Proposed Disciplinary Action

Dear Mr. Corbett:

The South Carolina Highway Patrol ("SCHP") has concluded an investigation of Wayne's Automotive Center, Inc. ("Wayne's") arising out of a tow performed by Wayne's on February 9, 2016. As a result of this investigation, it has been determined that Wayne's violated the applicable South Carolina Department of Public Safety ("SCDPS" or "Department") wrecker regulations as outlined below.

On February 9, 2016, Wayne's received a routine rotation call from SCHP requesting a Class "C" wrecker to tow a tractor trailer belonging to Premier Transportation ("Premier") that had overturned on I-20 near the South Carolina/Georgia border.

On February 10, 2016, Wayne's issued an invoice to Premier for the tow and clean-up totaling $69,017.19. Premier subsequently asked Robert Watson of Recovery Resolution Specialists to assist with payment of the appropriate charges and release of the cargo on behalf of the cargo's owner, Tractor Supply Company ("Tractor Supply"). When Mr. Watson encountered difficulty securing a reduction in the charges and the release of the cargo from Wayne's, he contacted SCHP to seek assistance.

SCHP Lieutenant N. W. King reviewed the invoice and contacted you on February 17, 2016, to discuss the fees and release of the cargo. You advised in response to questioning about the labor and equipment used to complete the tow and clean-up that some of the equipment and labor was furnished by two companies other than Wayne's, one of which was owned by your wife. Lieutenant King then advised you that labor and equipment provided by a third party needed to be billed on a separate invoice. You agreed to issue a revised invoice showing only those services performed by Wayne's and to submit the separate invoice(s) for subcontracted labor and equipment provided by third parties. Lieutenant King also explained that Wayne's was obligated to release the cargo pursuant to S.C. Code § 56-5-5635, and you agreed to release the cargo to Tractor Supply.

EXHIBIT 5

After Wayne's subsequently failed to issue an amended invoice or release the cargo, Mr. Watson filed a written complaint with SCHP on February 19, 2016. Lieutenant King then called you to discuss why Wayne's was refusing to take the actions that had been discussed during the February 17th conversation. You confirmed to Lieutenant King that Wayne's would not issue an amended invoice or release the cargo and advised that Wayne's would accept whatever consequences might result from such refusal.

The law governing wrecker services utilized by SCDPS is found in Section 38-600 of the South Carolina Code of State Regulations ("Regulation"). In particular, Regulation 38-600(F)(2) mandates that all fees charged by wrecker services for rotation list calls "shall be reasonable and not in excess of those rates charged for similar services . . . ." Additionally, Regulation 38-600(F)(2)(b) states that the "Troop commander will determine the reasonableness of the fees . . . ." As part of the rotation list qualification criteria, Regulation 38-600(B)(8) mandates that wrecker operators "display professional behavior when conducting business at the request of the South Carolina Department of Public Safety."

The maximum fees recoverable by wrecker services on the SCHP Rotation List for standard tows in each wrecker class are set annually, and each wrecker service must execute a corresponding fee schedule ("Fee Schedule") governing such fees for the upcoming calendar year. On November 25, 2015, Pamela Belton signed the SCHP Wrecker Rotation Fee Schedule on behalf of Wayne's establishing the Troop Six wrecker rotation fees for 2016. Fees for rotation list tows cannot exceed the amounts shown on the Fee Schedule, and charging additional fees other than those shown on the Fee Schedule is prohibited.

Pursuant to the Fee Schedule, Wayne's was permitted to charge $436.00 per hour for a standard Class "C" tow. The invoice reflects that Wayne's utilized a heavy duty wrecker for 21 hours at a rate of $436.00 per hour to complete the tow. However, Wayne's also billed for a rotator (21 hours) and a heavy duty tractor-trailer (13 hours) at the rate of $436.00 per hour. The hourly Class "C" rate set by the Fee Schedule is the maximum total hourly amount that may be charged for a wrecker service's performance of the tow/recovery itself. Therefore, the charges for the rotator and heavy duty tractor-trailer were not permitted by the Fee Schedule.

The Fee Schedule does not set a Specials Operations fee for a Class "C" tow but does allow a wrecker service to "recover the actual cost of rental or subcontract equipment or labor, or an out-of-pocket incidental expense that is necessary to accomplish the job." It goes on to add that "[p]roof of these actual costs in the form of an invoice or receipt must accompany the tow bill."

In your February 17th conversation with Lieutenant King, you represented that at least some of the equipment and labor involved in the tow and clean-up were subcontracted from one or more separate companies. However, Wayne's has refused to provide invoices showing which charges from the invoice constituted rented/subcontracted equipment or labor. Based on that refusal, SCHP has no record of the labor and equipment used in the February 9th tow/recovery belonging to any company other than Wayne's. Insofar as these charges have never been properly substantiated, they are improper.

South Carolina Code § 56-5-5635 governs tows performed on behalf of law enforcement. In particular, subsection (F) provides that "[t]he proprietor, owner, or operator of [a] 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." S.C. Code § 56-5-5635(F) (emphasis added). Here, it is clear that the cargo belonged to Tractor Supply. Insofar as the cargo was not owned by Premier, Wayne's was obligated to release the cargo on demand. The refusal by Wayne's to release the cargo constitutes a statutory violation and is manifestly unprofessional.

DECISION

Having reviewed the entire record and determined that Wayne's committed the foregoing regulatory violations, I conclude the following disciplinary measure is warranted in accordance with Regulation 38-600 and SCDPS policy: Definite suspension of Wayne's from the SCHP Wrecker Rotation List for one hundred and twenty (120) days.

Should a suspension be imposed, Wayne's will not receive any rotation calls during the applicable period for any county. In considering the suspension to be imposed in this matter, the Department has taken into account the fact that Wayne's received a 60-day suspension in 2015 for prior regulatory violations.

Wayne's has ten calendar days from the receipt of this notice to (1) submit a written reply and show cause why this disciplinary action should not be taken or (2) make a written request for a hearing. You may forward your reply or request for a hearing to my attention at SCHP Troop Seven Headquarters, 139 Middleton Street, Orangeburg, SC 29115.

The Department must receive your reply or hearing request within ten days of your receipt of this letter or you will be deemed to have waived your right to challenge the proposed disciplinary action. If a hearing is timely requested, you will be provided written notice of the date, time, and location that the hearing will be held. A written decision will be issued to you regardless of whether you submit a reply or request a hearing.

Sincerely,

A. K. Grice

Captain A. K. Grice
South Carolina Highway Patrol

Wayne's Automotive and Towing Center

SCIM
Spill Containment Incident Management
1997 Richland Avenue East
Aiken, SC 29801

Invoice

Date	Invoice #
2/10/2016	504462

Bill To
J. H. O. C., INC. Premier Transportation 323 CASH MEMORIAL BOULEVARD FOREST PARK GA 30297 282577

P.O. No.	Terms	Project
	Due Upon Receipt	

Description	Qty	Rate	Amount
Recovery			
60 Ton Rotator HD4 used for upright winching both tractor during first part of recovery and trailer last part of recovery and towing damaged trailer to storage yard 2:00 am-23:00 Per GPS Tracking Report	21	436.00	9,156.00
Class C Heavy Duty Truck HD5 used for upright winching both tractor and trailer and towing of the tractor to the yard for storage	12	436.00	5,232.00
Labor and Equipment			
Tractor Trailer 53ft used for transferring the cargo [redacted]	13	436.00	5,668.00
Recovery Supervisor JC	21	175.00	3,675.00
Recovery Technician BH	21	150.00	3,150.00
Recovery Technician KJ	21	85.00	1,785.00
Recovery Technician JH	21	85.00	1,785.00
Recovery Technician BR	8	85.00	680.00
Recovery Technician WB	19	85.00	1,615.00
Response Unit used for transporting supplies, snatch blocks, oil dry, absorbents, booms, back deck blower, brooms, shovels, etc.	20	175.00	3,500.00
Labor Hours for WRH	1.5	50.00	75.00
Labor Hours JS	7	50.00	350.00
Labor Hours PW	3.5	50.00	175.00
Labor Hours MR	7	50.00	350.00
Labor Hours KS	3.5	50.00	175.00
Labor Sublet from Verns Towing	1	1,000.00	1,000.00
Loading Dock Rental	1	750.00	750.00
Backhoe 420D and Transport and Heavy Operator	1	600.00	600.00
Skid Steer Track Loader and Transport	1	600.00	600.00

All QTY is per hours of usage.

Total	
Payments/Credits	
Balance Due	

Phone #	E-mail
803-226-0025	sherry@waynesautomotivecenter.com

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EXHIBIT 6

Wayne's Automotive and Towing Center

SCIM
Spill Containment Incident Management
1997 Richland Avenue East
Aiken, SC 29801

Invoice

Date	Invoice #
2/10/2016	504462

Bill To

J. H. O. C., INC.
Premier Transportation
323 CASH MEMORIAL BOULEVARD
FOREST PARK GA 30297
282577

P.O. No.	Terms	Project
	Due Upon Receipt	

Description	Qty	Rate	Amount
2 trips to the loading dock with cargo	2	250.00	500.00
OSHA Certified Incident Communication Equipment charge hourly	21	85.00	1,785.00
Emergency Digital Signage I-20 W Message Board exit 6 Detour Traffic with Cones	20	75.00	1,500.00
Emergency Digital Signage I-20 E Digital Arrow Board	20	75.00	1,500.00
Light Tower	8	75.00	600.00
Traffic Control High Intensity Sign 36x36 used a total of 4 on both East and West lanes for recovery and cargo and recovery	20	50.00	1,000.00
26 In. Traffic Cones total of 48 cones for recovery and cargo and recovery per hour	20	35.00	700.00
Pallets for Restocking the cargo	3	22.95	68.85
PIG MAT240 used to clean waste of fluids on the bridge	25	7.50	187.50
Containment Booms used for containment preventing release of chemicals and fluids into Savannah River below site	1	85.00	85.00
Containment Liner for storage of waste oil dry	1	175.00	175.00
Cargo Wrap	1	210.84	210.84

This price is with A lot of Item used NOT Not Charged Out For and This price is only IF we Agree To Settlement

All QTY is per hours of usage.
OR I will Give the Total price Of all Equipment, Manpower, Ect. For The Insurance Company To Review

Total	$48,633.19
Payments/Credits	$0.00
Balance Due	$48,633.19

Phone #	E-mail
803-226-0025	sherry@waynesautomotivecenter.com

000055

South Carolina Department of Public Safety
S.C. Highway Patrol

July 30, 2015

Mr. Walter Jeffery Corbett
Wayne's Automotive Center, Inc.
1997 Richland Avenue East
Aiken, South Carolina 29801

RE: Notice of Disciplinary Action Decision

Dear Mr. Corbett:

By letter dated June 1, 2015, the South Carolina Highway Patrol ("SCHP") notified Wayne's Automotive Center, Inc. ("Wayne's") of proposed disciplinary action stemming from an investigation into Wayne's failure to maintain its wrecker business in accordance with the applicable South Carolina Department of Public Safety ("SCDPS" or "Department") wrecker regulations. The Department's decision in this matter is set forth below.

FINDINGS OF FACT

1. In October 2014, Captain C. B. Hughes observed that Wayne's Lexington location did not appear to be open during normal business hours. Specifically, Captain Hughes noted that Wayne's was closed on October 9, October 14, and October 16. Additionally, Captain Hughes saw that the fence surrounding Wayne's storage yard was pushed down. Captain Hughes shared his concerns with the Troop 1 command staff, and an investigation was undertaken.

2. On October 16, 2014, Sergeant G. D. Rothell went to Wayne's to assess the concerns observed by Captain Hughes. He found the gate to Wayne's locked and the location unmanned. Sergeant Rothell then called the phone number posted on Wayne's fence. His call was answered by an employee at Wayne's Aiken location who advised him that the employee working at Wayne's Lexington location must have been at lunch. Sergeant Rothell was then transferred to someone named "Wendy" who advised that the Lexington employee was out making a bank deposit. While at the location, Sergeant Rothell confirmed that approximately 72 feet of the fence surrounding the storage yard was pushed over and that some portions of the fence were only four feet high.

3. On October 20, 2014, Lieutenant W. L. Herrington contacted you to discuss the lack of an employee at Wayne's Lexington location during normal business hours and the downed fence. You conceded during the conversation that the lone employee assigned to the Lexington location left the business every day to go to lunch, thereby leaving the location unmanned. You advised that you would ensure that an employee was present during business hours in the future and that you would address the issues with the damaged fence.

EXHIBIT
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4. Captain Hughes continued to periodically monitor the situation at Wayne's Lexington location. On November 19, 2014, he observed that the gate was closed and locked. Cpt. Hughes further noted on November 25, 2014, that Wayne's had no vehicles and very little equipment at the Lexington location. On November 26, 2014, he again saw the gates to Wayne's closed and locked. Despite the fact that Wayne's Lexington location apparently was not operational during this time period, Wayne's continued to accept SCHP rotation calls for Lexington County.

5. On December 5, 2014, Lt. Herrington again contacted you to discuss the status of the Lexington location. You admitted to him that you were closing the location and intended to vacate the premises by the end of 2014.

6. On June 4, 2015, a Notice of Proposed Disciplinary Action ("Notice") was delivered to you (1) outlining the violations substantiated by the Department and advising that SCHP was contemplating suspending Wayne's from the rotation list for a period of sixty (60) days as a result; and (2) informing you that Wayne's had ten calendar days from receipt thereof to show cause why the proposed disciplinary action should not be taken, either by submitting a written reply or making a written request for a hearing.

7. No written reply or written request for a hearing was received by the Department within the specified time frame. Consequently, Wayne's waived its right to challenge the proposed disciplinary action.

CONCLUSIONS OF LAW

8. The law governing wrecker services utilized by SCDPS is found in Section 38-600 of the South Carolina Code of State Regulations ("Regulation"). Regulation 38-600(C)(1) provides that SCHP "will establish zones for towing" and requires wrecker services on a particular zone's rotation list to "physically have a business within that zone."

9. Regulation 38-600(C)(6) states that a wrecker service "shall have an agent present during business hours," which is defined by subsection (C)(1) as running "at least from 8:30 a.m. to 5:00 p.m., Monday through Friday."

10. Regulation 38-600(C)(14)(a) requires an outside storage facility to be sufficiently fenced for the protection of vehicles and property, and Regulation 38-600(C)(14)(b) requires such fencing to be not less than six feet in height.

11. Regulation 38-600(C)(1) obligates a wrecker service to immediately notify the Highway Patrol upon a change of address.

12. SCHP personnel repeatedly observed Wayne's Lexington location closed in October 2014, and Captain Hughes' observations indicated that Wayne's ceased operating a fully-functioning business by the end of November 2014. Wayne's never advised SCHP that it had effectively closed the Lexington location around this time. This closure left Wayne's without a physical location or agent in Lexington County, and it is undisputed that Wayne's fencing around the storage yard had been inadequate for an extended period of time.

DECISION

Having reviewed the entire record and determined that Wayne's committed the foregoing regulatory violations, I conclude the following disciplinary measure is warranted in accordance with Regulation 38-600 and SCDPS policy: Definite suspension of Wayne's Automotive Center, Inc., from the SCHP Wrecker Rotation List for sixty (60) days.

The suspension shall begin on Sunday, August 23, 2015 and run through October 21, 2015. Insofar as this suspension applies to all South Carolina locations operated by Wayne's, it will not receive any SCHP Rotation List calls in any county during this period. Per SCDPS policy, this disciplinary measure may be used to support subsequent disciplinary action and shall become a part of the permanent SCDPS file on Wayne's Automotive Center, Inc.

You have ten (10) days from the date you receive this decision to appeal to the SCHP commander by sending a written request containing the grounds for such appeal to: Col. Michael R. Oliver, South Carolina Highway Patrol, P. O. Box 1993, Blythewood, South Carolina 29016.

Sincerely,

Captain C. T. Stephens
South Carolina Highway Patrol

South Carolina Department of Public Safety
S.C. Highway Patrol

September 22, 2015

Mr. Walter Jeffery Corbett
Wayne's Automotive Center, Inc.
1997 Richland Avenue East
Aiken, South Carolina 29801

RE: Notice of Disciplinary Action Decision

Dear Mr. Corbett:

I have reviewed your appeal of Captain Stephens' July 30, 2015 Disciplinary Action Decision that you submitted on behalf of Wayne's Automotive Center, Inc. ("Wayne's") by letter dated August 3, 2015. After having carefully considered the grounds raised in your appeal, I concur with the findings and conclusions made by Captain Stephens and affirm his decision to suspend and remove Wayne's from the South Carolina Highway Patrol's Wrecker Rotation List for a 60-day period, which shall begin on October 4, 2015, and run through December 3, 2015. During this period, Wayne's will not receive any Rotation List calls in any county.

Your appeal also "request[s] a hearing of the advisory committee." The advisory committee referenced in Section 38-600(D)(5) of the South Carolina Code of State Regulations reviews issues raised in a complaint or appeal only "upon [a] request by the Department [of Public Safety]." The Department of Public Safety declines to convene such a committee in connection with your appeal.

This is the final agency action for purposes of administrative review. Should you wish to pursue an appeal of this matter, you may seek judicial review in a court of competent jurisdiction.

Michael R. Oliver

Colonel Michael R. Oliver
South Carolina Highway Patrol

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EXHIBIT 8

Austin & Rogers, P.A.
ATTORNEYS AND COUNSELORS AT LA

WILLIAM FREDERICK AUSTIN
(1930-2016)

TIMOTHY F. ROGERS
RAYMON E. LARK, JR.
RICHARD L. WHITT
EDWARD L. EUBANKS
W. MICHAEL DUNCAN*

* ALSO ADMITTED IN N.C.

COLUMBIA OFFICE
CONGAREE BUILDING
508 HAMPTON STREET, SUITE 300
POST OFFICE BOX 11716 (29211)
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 256-4000
FACSIMILE: (803) 252-3679
WWW.AUSTINROGERSPA.COM

OF COUNSEL:
JON D. GRIFFITH, III

EXHIBIT
tabbies
C

recd 10/21/16
by Monishia L. Davis, Paralegal, Office of General Counsel.

October 21, 2016

VIA HAND DELIVERY
Colonel M.R. Oliver
South Carolina Highway Patrol
P.O. Box 1993
Blythewood, SC 29016

Re: Notice Of Appeal Of Disciplinary Action Decision-Wayne's Automotive Center, Inc., Our File No. 16145

Dear Colonel Oliver:

Please be advised this letter constitutes the appeal by Wayne's Automotive Center, Inc. of the above Decision, received by certified mail by me for Wayne's and Jeff Corbett on September 29, 2016, following the hearing on this matter on August 8th. SCDPS counsel kindly extended the deadline for appeal for 10 days until October 21th upon my request due to my workload and extenuating circumstances. Our grounds for this appeal follow, and we would be glad to meet with you to assist further in just and fair resolution of this matter with no suspension imposed rather than having to pursue it further.

Near the conclusion of the hearing on August 8th we provided the written complaint by Robert Watson after we received it in responses to our FOIA Requests. As mentioned during the hearing, we had not received it earlier. Aside from having no standing to file a complaint, since he was not the owner of any property damaged or lost, the failure of Mr. Watson—or anyone an owner of the property in question—to provide Wayne's Automotive/Jeff Corbett with a copy of any complaint (legitimate or otherwise) violated S.C. Reg. 38-600 (C) (6). **In support of our position, we had provided to SCDPS counsel via email on July 1st, the attached message and attachments, wherein we pointed out:**

> **First**, the written complaint has been brought by Robert E. Watson (*Notice* @ 1). We have sought documentation for the Notice, including this written complaint, as expressly referenced in my email message to Ms. Schmidt re our 3d FOIA Request, dated June 24th, with copy to you. **Mr. Watson is not a real party in interest; therefore, he has no standing to bring such complaint. *See* attached West Virginia PSC Letter and Staff Legal Memo**, regarding him and his status there. As you can further see by viewing **Case No. 13-0431-MC-FC** and the link **http://www.psc.state.wv.us/Orders/default.htm**

online, Staff expressed its opinion, Sentry Insurance Co. became the Complainant, Watson's motion was granted eliminating him as the Complainant; and the case was ultimately settled at mediation.

Second, whereas in the West Virginia matter, the transportation carrier and insurance carrier, Sentry, had a material controversy against the Defendant tow company, in the current matter, there is no underlying transportation carrier or insurance carrier with any issue to step in. ***See* attached full settlement payment from Premier to Wayne's Automotive for $48,633.19, made in early March 2016**—over a month before the SCHP/SCDPS issued its *Notice* on April 25, 2016. Unfortunately, it appears the parties stopped conversing among each other following Mr. Watson's written complaint, filed February 19 2016, according to the *Notice* @ 2.

Third, SCDPS/SCHP should withdraw/dismiss the current matter following your review and consideration of the facts herein, because it is moot and there are no exceptions warranting its continuation. ***See, e.g.*, attached Youngblood v. S.C. Dep't of Soc. Serv., 402 SC 311, 741 S.E. 2d 515 (2013), Curtis v. State, 549 S.E.2d 591, 345 S.C. 557 (2001), and S.C. Pub. Interest Found. v. S.C. Dep't of Transp. 412 S.C. 18, 770 S.E.2d 399 (Ct. App. 2015).**[1]

Next, by email on July 15th to SCDPS/HP counsel, we addressed noncompliance with evidentiary standards in the disciplinary hearing process utilized whereby the SCDPS/HP is improperly functioning as both prosecutor and adjudicator and violating our clients' rights to Due Process herein in violation of S.C. Const. Art. I, §22,. And in further violation of §22, SCDPS/HP has shifted the burden of proof to our clients to prove their innocence rather than there being any legitimate complaint or complainant to carry that burden of proof to show their guilt.

Then on July 20th via email we sought withdrawal/dismissal as to the Notice and in support advised SCDPS/HP counsel and staff:

---

[1] As parts of this Appeal, we are attaching the (a) West Virginia PSC determination that Watson had no standing in bringing his complaint there, since he had no required, underlying property interest and the (b) *Youngblood* decision in which the South Carolina Supreme Court held standing to bring an action requires having an underlying property interest. *Accord*, the full settlement check paid by the property owner, Premier, which filed no complaint herein, in **Exhibit** 4 to the Decision, and the *Youngblood* case principles. **Applying the West Virginia authority or the *Youngblood* principles ied to the instant case, Watson has no standing herein due to no property interest rendering the complaint against Wayne's Automotive improper. You should not, therefore, even reach the mootness question or whether this case mat constitute an exception to application of the mootness doctrine, as the Decision improperly does not even reach the hearing defect issues raised in our July 20th email and at the hearing**. The discussion as to "storage fees or charges" in Conclusion Of Law ¶ 30 disregards the reference in Watson's complaint (**Exhibit 3**) that he "cannot get an answer on the cargo trying to get it pickup (sic) today." We also invite you, Colonel Oliver, to go to the West Virginia PSC website link above as we did Captain Grice, Captain Hughes, and SCDPS counsel previously in further support of our position in this appeal.

The hearing process utilized by SCDPS/SCHP is defective in several respects, including but not necessarily limited to the following:

(a) it is inconsistent with Reg. 38-600, S.C. Code Ann. §23-6-20 (B), which is the statutory basis for that regulation as well as provisions of the SC Administrative Procedures Act cited therein as well as evidentiary standards with the result being utilization by the SCDPS/SCHP of an unlawful binding norm;

(b) it is inconsistent with substantive and procedural due process provisions in SC Const. Art. I, § 3; and

(c) it is inconsistent with SC Const Art. I, §§22 and 23, which state:

SECTION 22. Procedure before administrative agencies; judicial review.

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review. (1970 (56) 2684; 1971 (57) 315.)

SECTION 23. Provisions of Constitution mandatory.

The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissory by its own terms. (1970 (56) 2684; 1971 (57) 315.)

At the hearing on August 8th, we handed up the written emailed complaint by Watson, who was not at the hearing. It is attached as **Exhibit 3** to the Decision.

Thereafter, following the August 8th hearing on 12th via email, we provided supplemental information within the 5-day period allowed to seek withdrawal/dismissal of the instant Notice, based on the following developments:

SCDPS/HP raised a new matter in connection with the pending Notice regarding another alleged violation subject to disciplinary action, concerning a winch tow dispute between Wanda Herron and Wayne's Automotive in May of this year in an improper attempt to extract agreement by Wayne's to settle the pending and this other matter by global consent order without admitting guilt. Moreover, as shown by the attached email from Ms. Herron to Lt. King and copied to Jeff Corbett, dated August 9th, 2016, there is no pending complaint from her (i.e. complainant) upon which to base another notice of proposed disciplinary action and she--not Mr. Herron--is shown as the owner of the vehicle in the information in the second attachment. Therefore, she is the person with standing to complain.

Regardless, however, such action and attempted enforcement is also improper, based on the first 2 additional points above. That is, SCDPS/HP has no right to threaten to issue or issue a notice as to it, there is another violation of S.C. Reg. 38-600 (C) (6), and SCDPS/HP cannot function as both prosecutor and adjudicator, again violating our clients' rights to Due Process and impermissibly shifting the burden of proof to our clients to prove their innocence rather than there being any legitimate complaint or complainant to carry that burden of proof to show their guilt under S.C. Const. Art. I, §22;

Furthermore, as to the attached email from Ms. Herron to Lt. King, she has represented she was the complainant—not Mr. Herron--as stated in the August 9th Notice. Mr. Corbett reduced the amount owed and initially paid by $148 as a gesture of goodwill—not because he overcharged her. The total amount initially charged and paid was proper. The vehicle was locked, in the middle of the road, could not be put into neutral, and was without a front wheel and hub, as shown in the attached notes by Wayne's tow driver, John Herring, dispatch and log entries, and photo of the vehicle in the storage yard. Contrary to the Notice of Proposed Disciplinary Action, dated August 9th and received today by Wayne's Automotive, the attached notes and related entries confirm (a) Wanda Herron is the owner of the vehicle, (b) it had to be winched to be towed, and (c) the trooper on the scene authorized the winching, thereby justifying at least the additional $118 winching fee to get it on the bed of the tow truck and it also had to be winched to get it off the bed. Any videotape referenced obviously does not show the vehicle being in the actual condition it was in the middle of the road. Lt. King misunderstood what Mr. Corbett advised him about "winching was not required", as John Herring's notes also indicate. In addition, as to the Wayne's representative, referenced on p. 1 of the new Notice in 3, it was unreasonable for pickup on Sunday morning. The refunded amount nevertheless included both $118 for the winching and $30 dollars for overnight storage, totaling $148.00. NOTE: Mr. Corbett for Wayne's Automotive Center, Inc. through undersigned counsel hereby submits this email transmission with attachments as the written request for a consolidated or separate hearing, concerning this new matter, absent withdrawal/dismissal of it, as hereby requested, or, alternatively, as suggested below.

Finally, in light of the previous points raised and documentation provided, including the redacted full settlement payment with detailed invoice to Wayne's Automotive by Premier Transportation, the owner of the property at issue, dated March 4, 2016, we respectfully renew our request that you please (a) withdraw/dismiss the Notice regarding this matter and (b) retract the Notice as to the Herron matter, based on the above and on denial by Jeff Corbett and Wayne's Automotive of the allegations in that new Notice. Otherwise, alternatively, please reverse the ruling on the instant Decision, consolidate this Notice it with the August 9th Notice, allow a reasonable time for any additional FOIA Requests to be propounded, and extend the current 5-day period to allow additional time to keep the record open to allow submission of additional documents and information in it for further consideration in a consolidated hearing and supplemental hearing concerning both Notices.

After a review of the decision herein, we respectfully re-allege the above points and disagree with all of the Conclusions Of Law.[2] Conclusions Of Law ¶s 19-30 basically endeavor to address the improper complaint-related issues and ¶s 31-32 endeavor, respectively, to address the Constitutional dual prosecutor-adjudicator Due Process prohibitions and to justify a 120-day suspension, based on a prior 60-day suspension.

The Decision ignores the patent violation of the Regulation, as asserted, by no copy of the complaint having been provided to Wayne's Automotive, Inc., as required. When there is no viable complaint for consideration, no disciplinary action is appropriate. After my clients and I were shown the door, SCDPS counsel advised me outside of it of the Herron matter and I subsequently shared that information with my clients after counsel returned to the hearing room to confer *ex parte* with the SCDPS/HP personnel in attendance, which included Lieutenant King, Captain Grice, and Captain Hughes. Reliance on the *Baldwin* case cited is misplaced. The Due Process violations alleged are supported by the facts and rationale in *Garris v. Governing Board of the SC Reinsurance Facility*, 333 S.C. 432, 441-448, 511 S.E. 2d 48 (1998), wherein the Court concluded:

> In sum, we conclude Facility is an administrative agency, the same persons served as both prosecutors and adjudicators in violation of Article I, Section 22, and the process was so inherently flawed that it is not subject to harmless error analysis.

Id. at 333 S.C. 448. We are also attaching (c) a copy of *Garris, supra,* for your convenience.

---

[2] Even assuming the Findings Of Fact are accurate, they do not support the Conclusions Of Law reached in the Decision herein. From our perspective, however, the following Findings Of Fact are incorrect:

(2) the call received was not a "routine rotation call";

(3) through (17) fail to reference the context that concerned storage fees for the cargo and internal work on invoice revisions that were halted upon Watson's written complaint (sic) not sent to Mr. Corbett or Wayne's Automotive and subsequent direct communications between Mr. Corbett and the owner of Premier—the party with underlying property interests—that had led to resolution of the matter by March 4th through payment in full, as shown in **Exhibits 4** and **6** to the Decision, as provided by Wayne's Automotive in advance of the hearing. This matter, therefore, was resolved almost a month and a half prior to SCPDS's issuance of its Notice of Proposed Disciplinary Action, dated April 25, 2016, in **Exhibit 5** to the Decision; and

(18) the prior 60-day suspension of Wayne's Automotive and unsuccessful appeal in 2015 in **Exhibits 7** and **8** to the Decision related to a closed location in Lexington and were not included as bases for issuance of the Notice in **Exhibit 5** herein.

As to Finding of Fact (18), therefore, the reference in Conclusion Of Law ¶ 32 to that "this disciplinary measure may be used to support subsequent disciplinary action" is misplaced and is an additional improper basis for any disciplinary action, concerning the case now before the Department.

Thanks in advance, Colonel Oliver, for your review, reconsideration, and reversal of the 120-day suspension from the SCHP Wrecker Rotation currently to be imposed in the Decision and dismissal of the matter.

Sincerely,

AUSTIN & ROGERS, P.A.

Raymon E. Lark, Jr.

Enclosures
cc: Warren Ganjehsani (w/Enclosures)
Marc Gore (w/Enclosures)

000065

Ray Lark — **Enclosures With Appeal By Wayne's Automotive Of SCDPS Decision**

From: Ray Lark
Sent: Friday, August 05, 2016 5:17 PM
To: 'AnthonyGrice@SCDPS.GOV'; 'CliftonHughes@SCDPS.GOV'
Cc: Warren V. Ganjehsani; Marc Gore; Meg K. Duncan
Subject: FW: Requests For Review Of This Message & Attachments & Withdrawal/Dismissal Of Notice Of Proposed Disciplinary Action Against Wayne's Automotive Center, Inc./Walter Jeffrey Corbett (Notice)--Important
Attachments: WVA PSC Legal Staff R. Watson no standing dck20130624162841.pdf; Settlement In Full Payment ($48,633.19) (AC#redacted) .pdf; Youngblood v. S.C. Dep't of Soc. Serv., 402 SC 311, 741 SE 2d 515 (2013) no standing.docx; Curtis v. State, 549 S.E.2d 591, 345 S.C. 557 (S.C., 2001).docx; S.C. Pub. Interest Found. v. S.C. Dep't of Transp. 412 S.C. 18, 770 S.E.2d 399 (Ct. App., 2015) no standing & moot.docx
Importance: High

Tracking:

Recipient	Delivery	Read
'AnthonyGrice@SCDPS.GOV'		
'CliftonHughes@SCDPS.GOV'		
Warren V. Ganjehsani		
Marc Gore		
Meg K. Duncan	Delivered: 8/5/2016 5:17 PM	Read: 8/9/2016 11:02 AM

Captain Grice and Captain Hughes,

Warren has provided me with your email addresses so I could forward 2 emails with an Internet link and attachments for your review and consideration prior to the hearing in the above matter scheduled for this coming Monday at 10 am at the Blythewood office. Thanks in advance for reviewing the messages, link, and attachments prior to the hearing.

Below is the first email previously sent to them on July 1st. I did not realize until today counsel had not already forwarded them to you, since we have requested the hearing and notice be withdrawn or dismissed, since Robert Watson has no standing to bring it and/or since the matter was resolved by Premier's payment to Wayne's in early March—well before the April 25th notice was sent.

IN PARTICULAR, PLEASE NOTE: The link below is to the West Virginia PSC in a towing case in which PSC staff took the position Robert Watson, who filed a complaint, had no standing to bring the case, since he had no personal interest in the underlying property damages at issue. Subsequently, Sentry Insurance Company was named Complainant and Watson's motion was granted to delete him.

Regards. Raymon Lark for Austin & Rogers, P.A.

Attorneys for Wayne's Automotive and Jeff Corbett

Raymon E. Lark, Jr.
Shareholder & Vice President
Austin & Rogers, P.A.
508 Hampton Street, 3rd Floor
Columbia, SC 29201
803/256-4000
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From: Ray Lark
Sent: Friday, July 01, 2016 3:29 PM
To: Warren V. Ganjehsani; Marc Gore
Cc: Meg K. Duncan
Subject: Requests For Review Of This Message & Attachments & Withdrawal/Dismissal Of Notice Of Proposed Disciplinary Action Against Wayne's Automotive Center, Inc./Walter Jeffrey Corbett (Notice)--Important
Importance: High

Good afternoon, Warren and Marc. As I indicated yesterday when I spoke with Marc, we would reach out today to you to request the above matter be withdrawn and/or dismissed and the hearing cancelled, based on several factors.

First, the written complaint has been brought by Robert E. Watson (*Notice* @ 1). We have sought documentation for the Notice, including this written complaint, as expressly referenced in my email message to Ms. Schmidt re our 3d FOIA Request, dated June 24th, with copy to you. Mr. Watson is not a real party in interest; therefore, he has no standing to bring such complaint. ***See* attached West Virginia PSC Letter and Staff Legal Memo**, regarding him and his status there. As you can further see by viewing **Case No. 13-0431-MC-FC** and the link **http://www.psc.state.wv.us/Orders/default.htm** online, Staff expressed its opinion, Sentry Insurance Co. became the Complainant, Watson's motion was granted eliminating him as the Complainant; and the case was ultimately settled at mediation.

Second, whereas in the West Virginia matter, the transportation carrier and insurance carrier, Sentry, had a material controversy against the Defendant tow company, in the current matter, there is no underlying transportation carrier or insurance carrier with any issue to step in. ***See* attached full settlement payment from Premier to Wayne's Automotive for $48,633.19, made in early March 2016**—over a month before the SCHP/SCDPS issued its *Notice* on April 25, 2016. Unfortunately, it appears the parties stopped conversing among each other following Mr. Watson's written complaint, filed February 19 2016, according to the *Notice* @ 2.

Third, SCDPS/SCHP should withdraw/dismiss the current matter following your review and consideration of the facts herein, because it is moot and there are no exceptions warranting its continuation. ***See, e.g.*, attached Youngblood v. S.C. Dep't of Soc. Serv., 402 SC 311, 741 S.E. 2d 515 (2013), Curtis v. State, 549 S.E.2d 591, 345 S.C. 557 (2001), and S.C. Pub. Interest Found. v. S.C. Dep't of Transp. 412 S.C. 18, 770 S.E.2d 399 (Ct. App. 2015).**

Under these circumstances, we respectfully request your review and consideration and withdrawal/dismissal of the Notice; however, we would still like Responses to our 3d FOIA Requests in order to proceed to work together regarding potential wrecker rotation list modifications and advisory committee development and implementation over the next several months.

Thanks and have a happy Fourth of July weekend!

Ray

Raymon E. Lark, Jr.
Shareholder & Vice President
Austin & Rogers, P.A.
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Columbia, SC 29201
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Public Service Commission
Of West Virginia

201 Brooks Street, P. O. Box 812
Charleston, WV 25323

Phone: (304) 340-0300
FAX: (304) 340-0325

June 24, 2013

Robert E. Watson
Recovery Resolution Specialists, Inc.
PO Box 969
Cornelius, NC 28031

Scott H. Kaminski, Esq.
Counsel, Sentry Select Insurance Company
Balgo & Kaminski, L. C.
PO Box 3548
Charleston, WV 25335-3548

Jerry Adkins
JB's Towing Service
344 Sherwood Drive
Huntington, WV 25704

RE: Case No. 13-0431-MC-FC
Robert E. Watson
v.
Jerry Adkins, dba JB's Towing Service

Gentlemen:

Pursuant to Rule 2 of the Commission's Rules of Practice and Procedure, we are enclosing a copy of the Staff memorandum in this matter. If you wish to respond to the enclosed Staff memorandum, you may do so in writing, **within ten days**, unless directed otherwise, of this date.

Your failure to respond in writing to the utility's answer, Staff's recommendations, or other documents may result in a decision in your case based on your original filing and the other documents in the case file, without further hearing or notice.

If you have provided an email address you will automatically receive notifications as documents are filed in this proceeding. The email notifications allow recipients to view a document within an hour from the time the filing is processed. If you have not provided your email address, please send an email to caseinfo@psc.state.wv.us and state the case number in the email subject field.

Sincerely,

Sandra Squire, Director
Executive Secretary Division

SS/jn
Enclosure: Memo

FINAL JOINT STAFF MEMORANDUM

TO: SANDRA SQUIRE
Executive Secretary

DATE: June 24, 2013

FROM: LINDA S. BOUVETTE
Staff Attorney

RE: CASE NO. 13-0431-MC-FC
ROBERT E. WATSON
v.
JB'S TOWING

03:53 PM JUN 24 2013 PSC EXEC SEC DIV

On March 26, 2013, Robert E. Watson (Complainant) filed a verified formal complaint against JB's Towing (Defendant) alleging an overcharge for removing a trailer wedged in an underpass at the 20th Street Viaduct, Huntington, West Virginia. JB's removed the trailer, unloaded the material, reloaded it into another trailer and delivered it to the customer's warehouse.

On April 3, 2013, JBs' Towing (Defendant) filed its unverified response to the formal complaint. The Defendant took the position that the tow was not a third party tow since it spoke with the driver, the owner of the truck, the owner of the material loaded on the truck and the insurance company and advised them of the cost to do the work. According to the Defendant the parties agreed to pay the bill.

The Defendant acknowledged that some overbilling occurred in the labor charges but revised billing for each invoice was submitted that corresponds to JB's PSC-approved tariff. JB's claims it is owed $1,799.00 for storage on the trailer, which amount increases each day.

Utilities Division Final Recommendation

In the attached Staff Final Memorandum received by the Legal Division on June 24, 2013, Jennifer Moore, Utilities Analyst with the Commission's Utilities Division, stated she was unable to ascertain what costs were associated with the original tow, the request to cover and protect the cargo and the reloading of the cargo for delivery to the customer. In addition Ms. Moore noted that several pieces of equipment used during the tow and subsequent activities were not registered with the Commission and labor charges could not be verified. Based on the lack of documentation and uncertainty of information provided by both parties, Ms. Moore recommended this matter be set for hearing.

Legal Division Final Recommendation

Legal Staff has reviewed Utilities Division Final Staff Memorandum and agrees that neither Complainant nor Defendant have been forthcoming with the necessary information to adequately investigate the allegations contained in the complaint and therefore a hearing is needed to determine the facts. Legal Staff remains concerned that the real party in interest is not a party to this action and that the Complainant, Robert Watson, has no standing to pursue this claim since he did not pay the money to the Defendant for which he is seeking reimbursement nor is he responsible for the money claimed owed by the Defendant.

LSB/cs
Attachment

CWS
H:\LBouvette\CASES\2013\13-0431-MC-FC Final Joint Staff Memo.doc

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
UTILITIES DIVISION, STAFF FINAL MEMORANDUM

FROM: Jennifer Moore, Utilities Analyst I
Utilities Division

DATE: June 24, 2013

SUBJECT: CASE NO. 13-0431-MC-FC
Robert E. Watson
v
Jerry Adkins, dba JB's Towing Service

On March 26, 2013, Robert E. Watson (Complainant) filed a Formal Complaint before the Public Service Commission of West Virginia (PSC) against Jerry Adkins, dba JB's Towing Service (JB's - Defendant). The Complainant stated that JB's is overcharging him on rates, hours, equipment and laborers associated with a vehicle being towed on February 17, 2013. Complainant asked that invoices be reviewed and that any amount overcharged be returned to him. He estimated the amount to be at least $10,000.00

On Sunday February 17, 2013 at approximately 7:15 pm a tractor-trailer owned and operated by Miguel Moreno was involved in a single vehicle accident at the 20th Street Viaduct in Huntington, West Virginia. The tractor-trailer became wedged in the viaduct and the cargo (Carbon) had to be unloaded and transferred to another trailer before the removal of the tractor-trailer could begin. Per JB's representative, this process took approximately twelve (12) hours.

On the second day, February 18, 2013, which was also President's Day, a request was made for JB's to tarp the load to insure that it did not come into contact with any sunlight or moisture. This was done and pictures were sent as proof. Later that day, at the owner's request, JB's was asked to deliver the load. This would include placing freight back on pallets, and loading it into a trailer. The freight was delivered on February 20, 2013 and an additional 10 hours of labor and equipment was incurred.

In reviewing invoices and information submitted by the Defendant, Utility Staff has not been able to determine what costs are associated with the original Sunday night tow, the request to tarp the load and the reloading for delivery. Also several pieces of equipment that were used are not registered with PSC and the labor charges could not be verified. Defendant stated that the equipment and the labor were supplied from friends and family and that they were paid in cash after the cargo was redelivered.

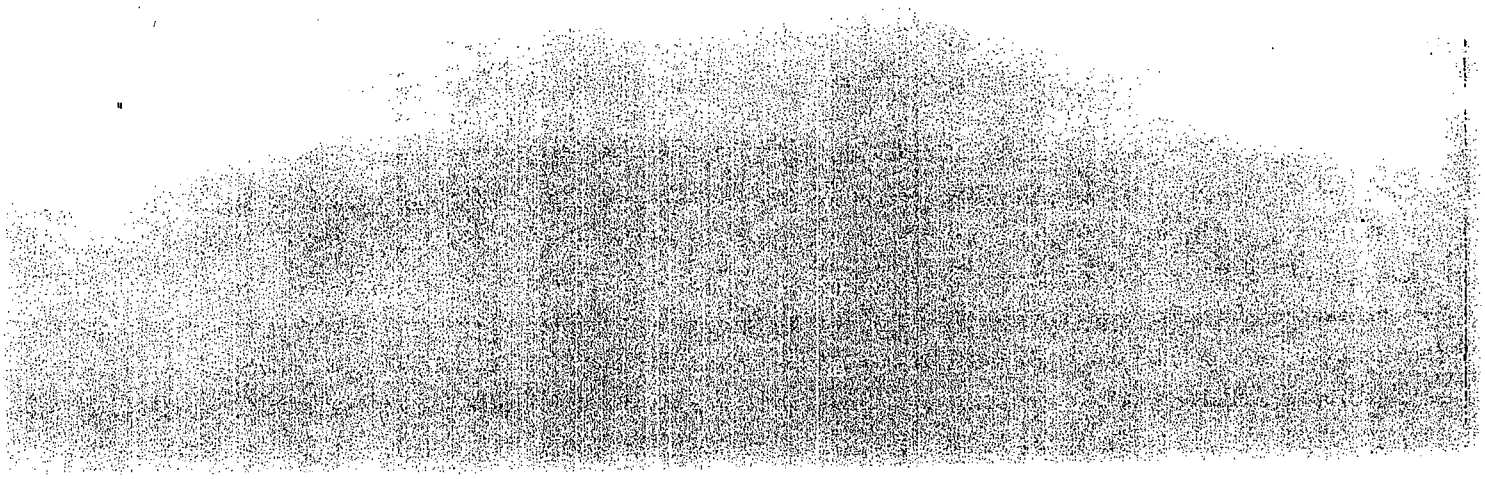
Based on the lack of supporting documentation and the uncertainty of information provided by both parties, Staff recommends that this matter be scheduled for a hearing.

SL

J.H.D.C., INC.
D/B/A PREMIER TRANSPORTATION

5224302

504462 03/04/16 Invoice 504462 48633.19



J.H.D.C., INC. D/B/A
PREMIER TRANSPORTATION
P.O. BOX 905
FOREST PARK, GA 30296

BB&T
BRANCH 17118

5224302
52243012

DATE 03/04/16

AMOUNT 48,633.19

PAY Forty-Eight Thousand Six Hundred Thirty-Three and 19/100

TO THE ORDER OF
Wayne's Automotive Towing Etc
1997 Richland Avenue East
Aiken, SC 29801

AUTHORIZED SIGNATURE

⑈5224302⑈

000073

Wayne's Automotive and Towing Center

SCIM
Spill Containment Incident Management
1997 Richland Avenue East
Aiken, SC 29801

Invoice

Date	Invoice #
2/10/2016	S04462

Bill To
J. H. O. C., INC. Premier Transportation 323 CASH MEMORIAL BOULEVARD FOREST PARK GA 30297 282577

P.O. No.	Terms	Project
	Due Upon Receipt	

Description	Qty	Rate	Amount
Recovery 60 Ton Rotator HD4 used for upright winching both tractor during first part of recovery and trailer last part of recovery and towing damaged trailer to storage yard 2:00 am-23:00 Per GPS Tracking Report	21	436.00	9,156.00
Class C Heavy Duty Truck HD5 used for upright winching both tractor and trailer and towing of the tractor to the yard for storage	12	436.00	5,232.00
Labor and Equipment Tractor Trailer 53ft used for transferring the cargo [redacted]	13	436.00	5,668.00
Recovery Supervisor JC	21	175.00	3,675.00
Recovery Technician BH	21	150.00	3,150.00
Recovery Technician KJ	21	85.00	1,785.00
Recovery Technician JH	21	85.00	1,785.00
Recovery Technician BR	8	85.00	680.00
Recovery Technician WR	19	85.00	1,615.00
Response Unit used for transporting supplies, snatch blocks, oil dry, absorbents, booms, back dock blower, brooms, shovels, etc.	20	175.00	3,500.00
Labor Hours for WRH	1.5	50.00	75.00
Labor Hours JS	7	50.00	350.00
Labor Hours PW	3.5	50.00	175.00
Labor Hours MR	7	50.00	350.00
Labor Hours KS	3.5	50.00	175.00
Labor Sublet from Verns Towing	1	1,000.00	1,000.00
Loading Dock Rental	1	750.00	750.00
Backhoe 420D and Transport and Heavy Operator	1	600.00	600.00
Skid Steer Track Loader and Transport	1	600.00	600.00

All QTY is per hours of usage.

Total	
Payments/Credits	
Balance Due	

Phone #	E-mail
803-226-0025	sherry@waynesautomotivecenter.com

000074

Wayne's Automotive and Towing Center

SCIM
Spill Containment Incident Management
1997 Richland Avenue East
Aiken, SC 29801

Invoice

Date	Invoice #
2/10/2016	504462

Bill To

I. I. Q. C. INC
Premier Transportation
323 CASH MEMORIAL BOULEVARD
FOREST PARK GA 30297
283577

P.O. No.	Terms	Project
	Due Upon Receipt	

Description	Qty	Rate	Amount
2 trips to the loading dock with cargo	2	250.00	500.00
OSHA Certified Incident Communication Equipment charge hourly	21	85.00	1,785.00
Emergency Digital Signage I-20 W Message Board exit 6 Detour Traffic with Cones	20	75.00	1,500.00
Emergency Digital Signage I-20 E Digital Arrow Board	20	75.00	1,500.00
Light Tower	8	75.00	600.00
Traffic Control High Intensity Sign 36x36 used a total of 4 on both East and West lanes for recovery and cargo and recovery	20	50.00	1,000.00
26 In. Traffic Cones total of 48 cones for recovery and cargo and recovery per hour	20	35.00	700.00
Pallets for Restocking the cargo	3	22.95	68.85
PIG MAT240 used to clean waste oil fluids on the bridge	25	7.50	187.50
Containment Booms used for containment preventing release of chemicals and fluids into Savannah River below site	1	85.00	85.00
Containment Liner for storage of waste oil dry	1	175.00	175.00
Cargo Wrap	1	210.84	210.84

This price is with A lot of Item used Not Charged Out For And This Price Is only IF we Agree To Settlement

All QTY is per hours of usage
OR I will Give The Total price Of All Equipment, Manpower, Ect. For The Insurance Company To Review

Total	$48,633.19
Payments/Credits	$0.00
Balance Due	$48,633.19

Phone #	E-mail
803-226-0023	sherry@waynesautomotivecenter.com

James and Diane Youngblood, Respondents,
v.
South Carolina Department of Social Services, Defendant,
v.
Jane and John Doe, Intervenors, of whom, Jane and John Doe are the Petitioners.

Appellate Case No. 2012-212047
Opinion No. 27232

STATE OF SOUTH CAROLINA In The Supreme Court

Heard January 8, 2013
Filed March 8, 2013

Summaries:

Source: Justia

The issue before the Supreme Court in this case was whether former foster parents had standing to petition to adopt a child placed for adoption by the Department of Social Services (DSS) with a different family. Upon review of the trial court record in this case, the Supreme Court concluded that the former foster parents possessed neither statutory or constitutional standing, and therefore vacated the order that granted the parents' petition, and remanded custody of the child to DSS for adoptive placement. "[R]ecognizing that children develop rapidly, and that stability and attachment are important components in their growth and development, [the Court directed] DSS to consider [the] child's present best interests in placing her for adoption."

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Pickens County
W. Marsh Robertson, Family Court Judge

REVERSED

Vanessa H. Kormylo, of Greenville, for Petitioners.
Sarah G. Drawdy, of The Drawdy Law Firm, LLC, of Anderson, for Respondents.

Page 2

JUSTICE HEARN: In this case we must decide whether former foster parents have standing to petition to adopt a child placed for adoption by the Department of Social Services (DSS) with a different family. We hold the former foster parents possess neither statutory nor constitutional standing, and reverse.

FACTUAL/PROCEDURAL BACKGROUND

Child was born in 2006 and is the youngest of five siblings. On August 28, 2007, the children were removed from their biological parents by DSS. Thereafter, on October 12, 2007, Child was placed for foster care with the Youngbloods and Child's siblings were placed with other foster care providers.[1] Child remained with the Youngbloods continuously, although with regular sibling visitation, until June 24, 2009.

DSS informed the Youngbloods by mail on April 27, 2008, that adoption was Child's permanent care plan and advised them as to what actions they needed to take in order to be considered as adoptive parents for Child. The letter went on to state that "if the child in your home has a sibling or siblings placed in a different foster home, it will be the first priority of this agency to reunite and place these siblings together for the purpose of adoption." The Youngbloods applied to adopt Child and completed the required home study, but they did not apply to adopt her siblings.

On March 17, 2009, DSS informed the Youngbloods that they had not been selected as Child's adoptive parents and she had been

fastcase

placed with another family.[2] Specifically, the letter stated:

> Your adoptive home study has been received and approved. Please note that you had applied originally for the placement of [Child]. However, this sibling group of five has been placed together. Given these circumstances, your approved home study will be placed in our

Page 3

> state office files for consideration when a child with the characteristics in which you are interested in parenting become available for adoption.

The adoptive family selected by DSS was the Does. Subsequently, DSS gave the Youngbloods the requisite ten days' written notice of Child's removal from their foster care. From this point on, four separate, overlapping actions were filed: DSS's termination of parental rights suit, the Youngbloods' administrative appeal of Child's removal, the Youngbloods' adoption action, and the Does' adoption action.

First, on January 30, 2009, DSS filed an action seeking to terminate the parental rights of Child's parents. On May 8, 2009, the Youngbloods filed an administrative appeal with DSS's Fair Hearing Committee concerning the impending removal of Child from their home. Child was removed from the Youngbloods' home on June 24, 2009, and placed, along with her siblings, with the Does. Then, on July 6, 2009, the Youngbloods filed the instant adoption action in family court for the adoption of Child, naming DSS as defendant. On July 29, 2009, the Does filed an action petitioning the family court to permit them to adopt Child and her four siblings.

On July 30, 2009, the Fair Hearing Committee issued a final administrative order denying the Youngbloods' administrative appeal. The Committee stated the issues before it were whether DSS followed the requisite procedure in removing Child and whether DSS afforded the Youngbloods due process. The Committee found DSS followed the required procedure by giving the Youngbloods ten days' notice of the removal and afforded them procedural and substantive due process because it provided notice and a rational explanation—placement with her siblings—for the removal. The Youngbloods did not appeal the Committee's decision.

In the Youngblood's adoption action, the family court entered an expedited temporary order on August 4, 2009, granting them custody of Child. The court also granted a motion to intervene by the Does, found that visitation between Child and her siblings would be in her best interests, and directed the parties, Child's therapist, and the guardian *ad litem* to formulate a visitation schedule.

On August 24, 2009, the family court entered a final order in DSS's termination of parental rights action granting the requested termination. Additionally, the order provided: "Custody of the Defendant children shall be

Page 4

granted to the South Carolina Department of Social Services, with all rights of Guardian ad Litemship, placement, care and supervision, including the sole authority to consent to any adoption . . . ."

On May 4, 2010, the family court entered a final adoption order for Child's four siblings declaring the Does to be the legal parents of those four children. However, the family court took no action regarding Child due to the Youngbloods' pending adoption action.

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In the Youngbloods' adoption action, both the Does and DSS moved to dismiss on the grounds the Youngbloods lacked standing and were statutorily barred from adopting Child because DSS had not consented to the adoption. The family court found the Youngbloods had standing pursuant to Section 63-9-60 of the South Carolina Code (2012). The court distinguished *Michael P. v. Greenville County Department of Social Services*, 385 S.C. 407, 684 S.E.2d 211 (Ct. App. 2009), in which the court of appeals held that former foster parents did not have standing to seek adoption of a child in DSS's custody, on the basis that here, the Youngbloods informed DSS of their desire to adopt Child, obtained DSS's approval to serve as adoptive parents prior to removal of Child,3 and timely pursued an administrative appeal of the removal of Child. The family court then considered Child's best interests and granted the Youngbloods' petition to adopt Child, subject to sibling visitation.

The Does and the Youngbloods filed cross-appeals with the court of appeals. Relevant to our writ of certiorari, the Does asserted that the family court erred in finding the Youngbloods had standing to adopt, granting the Youngbloods' adoption petition without the consent of DSS, and finding adoption of Child by the Youngbloods was in Child's best interests. 4 *Youngblood v. DSS*, Op. No. 2012-UP-172 (S.C. Ct. App. filed March 8, 2012).

In a per curiam, unpublished opinion, the court of appeals ruled against the Does on all grounds. The court acknowledged the holding in *Michael P.* that former foster parents do not have standing under section 63-9-60 to seek adoption of a child placed in an adoptive home by DSS, and noted that the Youngbloods'

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"broad window to petition the family court under section 63-9-60(A)(1) had closed." However, the court of appeals, apparently sua sponte, held that Section 63-9-310(D) of the South Carolina Code (2010) provided standing to the Youngbloods. According to that section, when DSS denies consent to adopt to a person eligible under section 63-9-60, it has "an affirmative duty to inform the person who is denied consent of all of his rights for judicial review of the denial." S.C. Code Ann. § 63-9-310(D). Based on that provision, the court of appeals held:

> any person who is initially eligible to adopt under section 63-9-60 and who is aggrieved by a child-placing agency's decision to deny them consent to adopt a specific child may petition the family court to review the child-placing agency's decision in order to determine whether it was in the child's best interests.

Finally, the court affirmed the family court's finding that placement with the Youngbloods was in Child's best interests, holding the Does failed to present sufficient evidence to meet their burden on this issue.

ISSUES

I. Did the court of appeals err in holding the Youngbloods had standing to petition to adopt Child?

II. Did the court of appeals err in affirming the family court's grant of the Youngbloods' petition to adopt despite the lack of consent by DSS?

LAW/ANALYSIS

I. STANDING

Standing, a fundamental prerequisite to instituting an action, may exist by statute, through the principles of constitutional standing, or through the public importance

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exception. *Freemantle v. Preston*, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012). Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation. *See id.* at 194-95, 728 S.E.2d at 44-45; *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 97 n.2 (1998) (stating the issue of statutory standing as "whether this plaintiff has a cause of action under the statute"). When no statute confers standing, the elements of constitutional standing

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must be met.[5] To possess constitutional standing, first, a party must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. *ATC South, Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Second, a causal connection must exist between the injury and the challenged conduct. *Id.* Finally, it must be likely that a favorable decision will redress the injury. *Id.*

First, while the family court found statutory standing pursuant to section 63-9-60, we hold that statute does not give the Youngbloods standing; instead, it specifically deprives them of standing. Section 63-9-60 provides:

> (A)(1) Any South Carolina resident may petition the court to adopt a child.
> ....
> (B) This section does not apply to a child placed by the State Department of Social Services or any agency under contract with the department for purposes of placing that child for adoption.

Thus, while section 63-9-60(A) broadly grants standing to "any South Carolina resident," section 63-9-60(B) makes that grant of standing inapplicable to a child placed for adoption by DSS. *See Michael P.*, 385 S.C. at 415, 684 S.E.2d at 215 (holding former foster parents did not have standing to adopt under section 63-9-60 because the child had been placed by DSS for adoption).

The court of appeals dealt with the interplay of 63-9-60(A) and (B) in *Michael P.*, where a child was removed from his mother by DSS and placed in foster care. *Id.* at 410, 684 S.E.2d at 212. When DSS approached the foster parents about adopting the child, they declined. *Id.* DSS then removed the child from the foster home and placed him for adoption. *Id.* Unhappy with the placement, the former foster parents petitioned to adopt the child. *Id.* The prospective adoptive parent selected by DSS intervened and moved to dismiss the action on the ground the foster parents lacked standing. *Id.* at 411, 684 S.E.2d at 213. The foster parents asserted they had standing both under section 63-9-60 and because they were foster parents. *Id.* at 412, 684 S.E.2d at 213. The family court granted the motion to dismiss, and the foster parents appealed. *Id.* at 412-13, 684

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S.E.2d at 213-14. The court of appeals first dismissed the foster parents' argument that subsection (B) does not apply to section 63-9-60 in its entirety. *Id.* at 415, 684 S.E.2d at 215. Relying on subsection (B), the court of appeals held that "not just any 'South Carolina resident' can petition to adopt a child when the child has been placed by DSS in another home for the purposes of adoption," and therefore, concluded the foster parents did not have standing under section 63-9-60(A) because the child had been placed by DSS in another home for adoption. *Id.*

Here, the family court distinguished the *Michael P.* decision, finding that under the

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facts of this case, section 63-9-60 created standing because the Youngbloods informed DSS of their desire to adopt Child, received DSS's approval to adopt prior to the placement of Child, had their foster care contract terminated, and pursued an administrative challenge to Child's removal. It is important to note that while the Youngbloods received DSS's approval to serve as adoptive parents generally, they did not receive approval to adopt Child. While both couples were approved for adoption, only the Does had DSS's consent to adopt Child. Because the statute does not permit any exceptions and plainly states that the section 63-9-60(A) grant of standing does not apply to children placed by DSS, the family court erred in grounding standing on section 63-9-60.

The court of appeals, as an alternative to section 63-9-60, held, based on DSS's denial of consent for the Youngbloods to adopt Child, that section 63-9-310(D) created standing. In short, the court of appeals held that under section 63-9-310, a person denied consent to adopt by DSS has a statutory right to petition the family court for judicial review of that denial. We disagree.

Section 63-9-310 provides:

> (B) Consent or relinquishment for the purpose of adoption is required of the legal guardian, child placing agency, or legal custodian of the child if authority to execute a consent or relinquishment has been vested legally in the agency or person and:
>
> > (1) both the parents of the child are deceased; or (2) the parental rights of both the parents have been judicially terminated.
>
> ....
>
> Page 8
>
> (D) If the consent of a child placing agency required by this subsection is not provided to any person eligible under Section 63-9-60, the agency has an affirmative duty to inform the person who is denied consent of all of his rights for judicial review of the denial.

S.C. Code Ann. § 63-9-310. The statute defines consent as: "the informed and voluntary release in writing of all custodial or guardianship rights, or both, with respect to a child by the child placing agency . . . ." S.C. Code Ann. § 63-9-30(6) (2010).[6]

First, section 63-9-310(D) does not apply to the Youngbloods because they were not persons eligible under section 63-9-60. They were denied consent to adopt Child in DSS's March 17, 2009 letter, and Child had already been placed with the Youngbloods as of that date. Therefore, under section 63-9-60(B), the Youngbloods were not persons eligible to adopt Child when they were denied consent.

Furthermore, section 63-9-310(D) does not provide a right to judicial review. While it does direct DSS to inform a person denied consent of "all of his rights to judicial review," a statutory directive to inform persons of their rights does not in itself create rights. Although it is curious that the General Assembly would direct DSS to inform persons of their rights to judicial review if no such rights exist, where the plain language of a statute is unambiguous we are charged with implementing it. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Here, the statute unambiguously does nothing more

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than direct DSS to inform persons of any rights they may have.

Therefore, we must look elsewhere to determine whether a right to judicial review and standing exist. The parties did not direct us to a statute providing a right to judicial review and reviewing the entirety of the South Carolina Children's Code as well as the applicable regulations, we found no mention of judicial review for the denial of consent to adopt, other than section 63-9-310(D). To the contrary, DSS's regulations provide:

> A. Application to Become Adoptive Parent - Right to Appeal

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> (1) A person is entitled to appeal the Department's decision to deny or terminate its approval of that person to become an adoptive parent. (2) A person is not entitled to appeal the Department's decision to deny its consent or refuse approval of the applicant for adoption of a specific child . . . .

10 S.C. Code Ann. Regs. § 114-150 (2012).

Lacking a statutory right to judicial review, we must determine whether the denial of consent implicates a legal interest held by the Youngbloods, and thus whether due process requires judicial review and they possess constitutional standing. *See ATC South*, 380 S.C. at 195, 669 S.E.2d at 339 (constitutional standing requires an injury to a legally protected interest); *Sullivan v. S.C. Dept. of Corr.*, 355 S.C. 437, 444-45, 586 S.E.2d 124, 127-28 (2003) (a prisoner was not entitled to judicial review of the denial of his application to participate in a treatment program because he did not have a protected interest in participation in the program); *Al-Shabazz v. State*, 338 S.C. 354, 368-72, 527 S.E.2d 742, 749-52 (1999) (holding that because a prisoner's good-time credits are a protected liberty interest under the Fourteenth Amendment, procedural due process requires judicial review when they are taken as punishment).

First, the court of appeals' holding that any person denied consent to adopt has standing to seek review of the agency's decision is erroneous because there is no general legal interest in the adoption of any child. Rather, any protected interest a person may have in a child must arise from some legally recognized connection between the child and the adult. *See Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 841-47 (1977) (indicating that only some relationships between an adult and a child are legally protected).

However, the Youngbloods were not just any persons—they were Child's foster parents. While the foster care relationship undoubtedly often results in emotional attachments between the foster parent and foster child, the relationship is only a temporary, contractual relationship created by the State. *See Smith*, 431 U.S. at 845-46 (recognizing the foster care relationship as derived from state law and contractual arrangements); *Michael P.*, 385 S.C. at 416, 684 S.E.2d at 216 (same); 10 S.C. Code Regs. 114-550(A)(1) (2012) (defining foster care as "a temporary living arrangement within the structure and atmosphere of a private family home, [which] is utilized while permanent placement plans are being formulated for the involved children"). Accordingly, the foster parent relationship,

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absent statutory law to the contrary, is insufficient to create a legally protected interest in a child and therefore, does not create standing to petition to adopt.

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While these conclusions necessarily flow from the South Carolina Children's Code and our standing and due process jurisprudence, they are also supported by the policy behind the Children's Code. The General Assembly has entrusted DSS with the care and placement of children removed from their homes. *See* S.C. Code Ann. § 63-7-660 (2010) (DSS may remove a child from his or her home and has legal custody of the child thereafter if there is probable cause to believe abuse or neglect has occurred); § 63-9-310(B) (DSS must consent to the adoption of any child in DSS's custody); § 63-9-1810 (2010) (DSS has authority to promulgate regulations governing the adoption of children); § 63-11-60 (2010) (DSS may place children in foster homes and remove them when it believes a child's welfare so requires). Furthermore, the Child Protection and Permanency Chapter of the Children's Code, Section 63-7-10, *et seq.*, under which the termination of parental rights provisions are found, states that its purpose is to "ensure permanency on a timely basis for children when removal from their homes is necessary." S.C. Code Ann. § 63-7-10-(B)(3) (2010). Permitting any person, or even just foster parents, to petition to adopt a child placed elsewhere for adoption by DSS directly contradicts the power and discretion given to DSS and undermines the goal of rapidity in permanently resolving children's placement issues.

The Youngbloods argue that denying them standing to petition to adopt will result in Child's best interest never being considered and give DSS unfettered power to make decisions affecting the welfare of children. However, those fears are unfounded. In administering its adoption program, DSS is statutorily charged with serving the best interests of the child. S.C. Code Ann. § 63-9-1310 (2010) ("It is the purpose of this article to achieve the objective of the best interests of the child, as the primary client. Adoption programs must be structured so that all questions of interpretation are resolved with that objective in mind."). Additionally, the Children's Code requires that at the adoption hearing, the family court must consider whether "the best interests of the adoptee are served by the adoption," before deciding to grant or deny DSS's proposed adoption. S.C. Code Ann. § 63-9-750(B)(6) (2010). Furthermore, in every adoption proceeding the child must have a guardian *ad litem* and also, if necessary, an attorney, representing his or her best interests. *See* S.C. Code Ann. § 63-7-2560(B) (2010). Therefore, while DSS may make the initial adoption placement decision for a child in its custody, DSS's decision is subject to judicial review and will be denied if not in the child's best interests.

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II. CONSENT

Because the Youngbloods' lack of standing is dispositive, we need not reach the issue of DSS's consent. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address the remaining issues where a prior issue was dispositive).

CONCLUSION

In order to ensure that our State resolves the permanent placement of children in its custody promptly, the General Assembly has entrusted DSS with discretion in making the initial decision as to the adoption of such children, and the rights of others to petition to adopt have been limited. If any person could petition to adopt a child in DSS's custody despite DSS having placed the child with another, the placement of such children would become protracted contests, like the instant case, in which the vital interests of stability, permanency, and attachment would be irretrievably lost to the passage of time. Nonetheless, we are deeply troubled by the notion of again uprooting and moving Child.

Accordingly, we vacate the order granting the Youngbloods' petition to adopt Child, and

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we remand the custody of Child to DSS for adoptive placement. However, recognizing that children develop rapidly, and that stability and attachment are important components in their growth and development, we direct DSS to consider Child's present best interests in placing her for adoption.

TOAL, C.J., PLEICONES, BEATTY, and KITTREDGE, JJ., concur.

Notes:

1. Initially, one of Child's brothers was placed with the Youngbloods as well, but due to his behavioral problems, he was moved to a different placement after only a few weeks.

2. Rather than its ordinary meaning connoting a change in physical location, the verb "place" is used by the statutory language and DSS to mean the selection of an adoptive family. While Child had been placed with another family as of March 17, 2009, she physically remained in the care of the Youngbloods at that time.

3. Presumably, this refers to the approval of the Youngbloods' home study and thus, to their approval to adopt a child. The Youngbloods never received DSS approval to adopt Child.

4. The Does did not seek certiorari on the issue of Child's best interests, and the Youngbloods did not seek certiorari on any of the issues presented in their appeal.

5. While the public importance exception may provide standing where the elements of constitutional standing are not met, the exception was not raised in this action.

6. Additionally, the South Carolina Children's Code requires that a consent be a sworn document containing specific information. S.C. Code Ann. § 63-9-330 (2010).

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D. Carroll GARRIS, Respondent/Appellant,
v.
The GOVERNING BOARD OF the SOUTH CAROLINA REINSURANCE FACILITY and the South Carolina Reinsurance Facility, Appellants/Respondents.

No. 24871.

Supreme Court of South Carolina.

Heard November 4, 1998.

Decided December 29, 1998.

Rehearing Denied March 5, 1999.

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Thomas C. Salane of Turner, Padget, Graham & Laney, P.A., Columbia, for Appellants/Respondents.

Thornwell F. Sowell of Sowell, Todd, Laffitte, Beard & Watson, L.L.C., Columbia; and Jeffrey A. Jacobs of Nelson Mullins Riley & Scarborough, L.L.P., Columbia, for Respondent/Appellant.

WALLER, Justice:

This appeal follows the circuit court's reversal of the decision of the Board of Governors (the Governing Board) of the South Carolina Reinsurance Facility (Facility) to revoke D. Carroll Garris's (Garris) status as a designated agent. We affirm in part, reverse in part, and remand for further proceedings.

FACTS

Garris, a licensed insurance agent, is a designated agent of

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Facility.[1] Prompted by an audit performed by one of Facility's servicing carriers, Facility began investigating allegations of underwriting irregularities at Garris's agency in mid-1993. Facility issued a notice of hearing and rule to show cause seeking to revoke Garris's status as a designated agent in December 1993. Facility alleged Garris had improperly classified private risks as commercial risks (which have lower premiums that are not subject to recoupment fees), insured "phantom" vehicles, wrote duplicate coverages, endorsed policies to insure additional vehicles after a policy had been canceled, and violated trust accounting procedures.

The Governing Board voted in November 1994 to revoke Garris's status as a designated agent. Garris petitioned the circuit court for review. The circuit court, following additional discovery, reversed the Governing Board's decision in November 1997. Both parties now appeal the circuit court's decision.

ISSUES

1. Did the circuit court err in ruling that Governing Board members who voted to revoke Garris's status as a designated agent acted as prosecutor and adjudicator in violation of Article I, Section 22 of the state constitution?

2. Did the circuit court err in ruling that the doctrine of res judicata bars Garris's argument about the composition of the Governing Board?

3. If res judicata does not bar Garris's argument, did the circuit court err in ruling that the composition of the

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Governing Board violates Article III, Section 1 of the state constitution?

4. Did the circuit court err in ruling that proxies were properly exercised and a quorum was present at Garris's hearing before the Governing Board?

1. ARTICLE I, SECTION 22

The circuit court reversed the Governing Board's decision to revoke Garris's status as a designated agent, finding the procedure followed by Facility unconstitutional. Under the state constitution, a person shall not "be subject to the same person for both prosecution and adjudication." S.C. Const. art. I, § 22.[2] Facility now argues the circuit court erred for three reasons.

A. FACILITY IS AN ADMINISTRATIVE AGENCY

Facility contends it is a private organization that merely acts as a statutory agent for the automobile insurance industry. Facility argues it receives no state funding, has no rule-making authority, and is subject to regulation by a state agency, the South Carolina Department of Insurance. Consequently, Facility argues it is not an "administrative agency" for purposes of Article I, Section 22 under the statute creating it or the Administrative Procedure Act (APA), S.C.Code Ann. §§ 1-23-10 to -660 (1986 & Supp.1997). We disagree.

An agency "means each state board, commission, department, executive department or officer, other than the legislature or the courts, authorized by law to make regulations or to determine contested cases." S.C.Code Ann. § 1-23-10(1) (1986) (emphasis added); *accord* S.C.Code Ann. § 1-23-310(1) (Supp.1997) (agency "means each state board, commission, department or officer, other than the legislature or the courts,

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but to include the Administrative Law Judge Division, authorized by law to determine contested cases"). It is true that Facility, a statutory creature, "is subject to regulations and orders promulgated by the director [of the Department of Insurance] or his designee." S.C.Code Ann. §§ 38-1-20(16) and XX-XX-XXX (Supp.1997).

Facility clearly possesses rule-making authority in the area of automobile insurance, a subject that touches the life of most South Carolinians. *See* S.C.Code Ann. § 38-77-520 (Supp. 1997) (every automobile insurer in South Carolina is bound by Facility's plan of operation as approved by the director of the Department of Insurance and by rules lawfully prescribed by Facility's Governing Board); S.C.Code Ann. § 38-77-596 to -610 (Supp.1997) (Facility must calculate and file recoupment fees that are assessed on all automobile insurance policies in South Carolina, and changes in rates are subject to public hearing pursuant to APA). *See also Garris v. Governing Board of South Carolina Reinsurance Facility*, 319 S.C. 388, 461 S.E.2d 819 (1995) (applying APA to remand case for failure to exhaust administrative remedies); *Moore v. South Carolina Reinsurance Facility*, 297 S.C. 276, 376 S.E.2d 510 (1989) (applying APA in deciding whether Facility properly refused to certify each of designated agent's existing locations); *Grain Dealers Mut. Ins. Co. v. Lindsay*, 279 S.C. 355, 306 S.E.2d 860 (1983) (upholding Facility's power to enact rules regarding the distribution of Facility losses); *Mungo v. Smith*, 289 S.C. 560, 347 S.E.2d 514 (Ct.App.1986) (applying APA to decide that designated agent's status may not be revoked arbitrarily, but must be based upon substantial evidence); S.C.Code Ann. § 38-77-

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510 (Supp.1997) (designating Facility as a "using agency," which is defined as "any governmental body of the State which utilizes any supplies, services, or construction purchased" under state Procurement Code).

Facility has the authority to assign the status of designated agent to an individual, as well as the authority to revoke that designation. S.C.Code Ann. §§ 38-77-590 to -595 (Supp. 1997). Facility argues it does not decide "contested cases" as such cases are defined in the APA. *See* S.C.Code Ann. § 1-23-310(2) (Supp.1997) (contested case "means a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a

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party are required by law to be determined by an agency after an opportunity for hearing"). Nevertheless, Facility assured Garris during the course of its investigation that "a full contested type hearing will be offered to you at which time your response can be as full and complete as you deem appropriate." Facility concedes in its brief that, while it does not believe it is an administrative agency, it "has no objection to following due process standards applicable under the APA in all hearings before the Board."

We have interpreted Section 1-23-310(2) to mean that a "contested case" is one in which an agency is required by law to determine a party's rights after an opportunity for a hearing. *League of Women Voters of Georgetown County v. Litchfield-by-the-Sea*, 305 S.C. 424, 426, 409 S.E.2d 378, 380 (1991); *Triska v. Dep't of Health and Envtl. Control*, 292 S.C. 190, 196, 355 S.E.2d 531, 534 (1987). No statute explicitly requires Facility to hold a hearing before revoking an agent's status as a designated agent; therefore, Garris's case is not a "contested case" as defined in the APA.

However, we also have held that Article I, Section 22 requires an administrative agency to give procedural due process to parties that come before it even though a matter may not be a "contested case" as defined in the APA. *See League of Women Voters of Georgetown County, supra* (finding that certification process as outlined in then prevailing statutes and regulations was not a "contested case" as defined in APA, which meant League was not entitled to a hearing under APA; but concluding League was entitled to notice, a hearing, and judicial review under Article I, Section 22); *Stono River Envtl. Protection Ass'n v. South Carolina Dep't of Health and Envtl. Control*, 305 S.C. 90, 93, 406 S.E.2d 340, 342 (1991) (stating same principle).

We affirm the circuit court's ruling and hold that Facility is an administrative agency because it meets the rule-making component of the APA definition. *See Mungo v. Smith, supra* (where a statute contains two clauses which prescribe its applicability and the clauses are connected by the disjunctive "or," application of the statute is not limited to cases falling within both clauses, but applies to cases falling within either). Accordingly, Facility must comply with the procedural due

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process protections established in Article I, Section 22 even though Garris's case is not a "contested case" as defined in the APA.

B. SAME PERSONS AS PROSECUTOR AND ADJUDCATOR

Facility argues the "same persons" were not engaged in both the prosecution and adjudication of Garris's case. We disagree.

The Governing Board oversees Facility operations by considering matters in various committees, which make recommendations to other committees and the Governing Board. Governing Board member James Lingle was present as a member at an Audit Committee

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meeting October 20, 1993. Governing Board members Jim Thompson, Clark Hobbie, Thomas Kepley, C.M. Dinwiddie, and Frank Lee were present as observers at the meeting. Larry Griner, who is not a Governing Board member but ultimately exercised another member's proxy and voted on the Garris matter, also was present as an observer. Garris was not present or represented at the meeting.

At that meeting, a Facility auditor who had examined Garris's records and practices reported her findings in detail. The Audit Committee, following a "lengthy discussion," unanimously voted to refer the matter the Designated Agent Committee, the Operating Committee, and the state Department of Insurance.

Governing Board members Jim Thompson, Robert Herlong, Phillip Love, Thomas Reichard, and Arthur Ivey were present as members at an Operating Committee meeting October 29, 1993. Governing Board members Steve Dennis, Hobbie, Randall Thompson, and Lee were present as observers at the meeting. Non-member Griner again was present as an observer. Garris was not present or represented at the meeting.

At that meeting, a Facility official discussed the auditor's report on Garris, called members' attention to the auditor's written report that was attached as an exhibit to the agenda, and described the Audit Committee's earlier motion. Committee members discussed the Garris matter in executive session.

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Governing Board members Hobbie, Kepley, and Lee were present as members at a Designated Agent Committee meeting December 13, 1993. Non-member Griner again was present as an observer. Garris appeared and answered the committee's questions.

At that meeting, the committee discussed the matter in executive session, then had a "lengthy discussion" about it in open session. The committee voted unanimously to recommend that the Governing Board revoke Garris's status as a designated agent. The committee further recommended that the Governing Board hold a special meeting to consider the matter. Facility served a notice and rule to show cause upon Garris on December 20, 1993, requiring him to appear before the Governing Board.

Of the members named above, Dennis, Jim Thompson, Herlong, Hobbie, and Love attended the three-day hearing on the Garris matter in August 1994. All voted in favor of revoking Garris's status as a designated agent on November 21, 1994. Non-member Griner also attended the hearing as the holder of Randall Thompson's proxy. Griner exercised the proxy to vote in favor of revoking Garris's status. The Governing Board voted 8-2 to revoke Garris's status.

Reichard and Lee also attended the entire hearing. Reichard did not vote because Garris was a designated agent of his company. *See* S.C.Code Ann. § 38-77-585 (Supp.1997) (prohibiting member from voting on any issue materially affecting the member's employer). Lee recused himself because he had considered the matter in committee. Lee also was chairman of the Designated Agent Committee at the time, and had referred the Garris matter for investigation as early as May 1993 after hearing reports of underwriting irregularities at Garris's agency. Lee testified the purpose of the Designated Agent Committee meeting was to gather information about Garris's case.

Kepley did not attend the hearing but gave his proxy to Love, instructing him before the hearing to vote to revoke Garris's status.

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Love refused to accept the proxy in that fashion, so Kepley gave him an unconditional proxy.[3]

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The bottom line is that five Governing board members and one non-member attended, as a member or observer, one or more committee meetings at which the Garris matter was discussed extensively in open and executive sessions. All six voted to revoke Garris's status as a designated agent. Of those six, four (Jim Thompson, Herlong, Hobbie, and Love) were members of the committees which considered the Garris matter. In addition, two other Governing Board members attended one or more committee meetings and the entire hearing, but did not vote.

Facility now contends the circuit court erred in finding the procedure unconstitutional because none of the committee *members* —except Hobbie—voted or participated in the hearing. The Governing Board would have revoked Garris's status even without Hobbie's vote, Facility argues. Facility addresses only the Audit and Designated Agent Committee meetings in its brief. At oral argument, Facility dismissed the Operating Committee meeting as irrelevant because no vote was taken.

The court may reverse or modify the decision of an administrative agency when an appellant's substantial rights have been prejudiced because the agency's findings, inferences, conclusions, or decisions are, among other things, in violation of constitutional or statutory provisions, or made upon unlawful procedure. S.C.Code Ann. § 1-23-380(A)(6) (Supp.1997).

"[A] fair trial in a fair tribunal is a basic requirement of due process, [and] [t]his applies to administrative agencies which adjudicate as well as to courts." *Withrow v. Larkin*, 421 U.S. 35, 46, 95 S.Ct. 1456, 1464, 43 L.Ed.2d 712, 723 (1975) (upholding process in which state medical board suspended physician's license after investigating and hearing the case). The fact that investigative, prosecutorial, and adjudicative functions are performed within the same agency, or even performed by the same persons within an agency, does not, without more, constitute a violation of due process. "That is not to say that there is nothing to the argument that those

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who have investigated should not then adjudicate," and a court facing special facts and circumstances in a particular case may determine that dual roles are impermissible. *Id.* at 51-58, 95 S.Ct. at 1466-70, 43 L.Ed.2d at 726-29. Agency officials or members who adjudicate a matter are presumed to be honest, fair, and unbiased. A party challenging the combination of investigative and adjudicative functions must convince the court that, under a realistic appraisal of psychological tendencies and human weakness, conferring both functions on the same individuals poses such a risk that it is likely to violate due process. *Id.* at 47, 95 S.Ct. at 1464, 43 L.Ed.2d at 724.

While *Withrow v. Larkin* established the parameters of due process safeguards in administrative proceedings under the federal constitution, Article I, Section 22 of our constitution explicitly addresses procedural due process in such proceedings. Section 22 provides for notice, an opportunity to be heard, an impartial adjudicator, and judicial review. We have recognized that Section 22 is an additional guarantee of important due process rights, enacted in 1970 as legislators and judges noticed the increasing prevalence and influence of administrative agencies in daily life. *See Ross v. Medical Univ. of South Carolina*, 328 S.C. 51, 492 S.E.2d 62 (1997).

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In *Ross*, we found the purpose of Section 22 "is to ensure adjudications are conducted by impartial administrative bodies. Partiality exists where, among others, an adjudicator has *ex parte* information as a result of prior investigation or has developed, by prior involvement in the case, a `will to win.'" *Id.* at 69, 492 S.E.2d at 72. We did not find a violation of Section 22 where the university's president investigated a tenured professor's conduct, terminated the professor, and then testified against him at a committee hearing. The president did not later participate as an adjudicator, and he did not improperly consider *ex parte* information. *Id.* However, we did find a violation of Section 22 where a university vice-president investigated the professor's case, testified as an adverse witness at a committee hearing, and sat as the intermediate judge in a three-step disciplinary procedure. *Id.* at 70, 492 S.E.2d at 72.

We hold that Facility violated Article I, Section 22 because the same persons served as prosecutor and adjudicator. We

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disagree with Facility's effort to ignore the Operating Committee meeting, which obviously was part of the investigative and prosecutorial processes because the Garris matter was referred to it. When all three committee meetings are considered, it is clear that five Governing Board members and one non-member attended, as a member or observer, one or more committee meetings at which the Garris matter was discussed extensively in open and executive sessions. At only one of those committee meetings was Garris given a chance to respond. All five members and the one non-member later sat as adjudicators and voted to revoke Garris's status as a designated agent.

We also disagree with Facility's effort to describe the process as one in which Governing Board members were "merely exposed" to the charges and facts of the case. Kepley's attempt to give a fellow board member his proxy to vote in favor of revoking Garris's status plainly shows that at least one member had formed an opinion before the hearing. But Kepley's action, while relevant and revealing, is not primarily what leads us to conclude that Garris did not receive procedural due process because members or officials of an agency who adjudicate a matter are presumed to be honest, fair, and unbiased. *See Withrow v. Larkin, supra; City of Alma v. United States*, 744 F.Supp. 1546, 1561 (S.D.Ga.1990) (an agency official is not deemed unfit to perform her statutory duty merely because she previously has taken a position on issues related to the case before her, even if she expressed her opinion publicly).

Instead, what leads us to conclude that Garris did not receive procedural due process is the inherently flawed structure of the investigative and prosecutorial processes that placed future adjudicators in situations where they had the opportunity to form such premature opinions. Although Hobbie may have been the only committee member who actually *voted* both for the investigation to continue *and* to revoke Garris's status as a designated agent, the other five members heard and engaged in extensive debate about Garris's case in committee meetings before the hearing. We agree with the circuit court that Governing Board members were intimately involved in the investigative and prosecutorial processes as committee members.

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We further agree with the circuit court's decision to reject as incredible the testimony of Governing Board members who insisted they either could not remember committee discussions or based their decision solely on evidence presented at the hearing. Allowing

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an agency official or board member to sidestep Article I, Section 22 merely by stating, in rote fashion, that he or she based a decision only on evidence presented at the hearing would render the constitutional prohibition a nullity.

In short, under a realistic appraisal of psychological tendencies and human weakness, we conclude that Governing Board members who participate in the investigation or prosecution of a designated agent as a member or observer at a committee meeting may not participate as adjudicators of that agent's case at a subsequent hearing. Members who participate in the investigation or prosecution of a case must distance themselves from the adjudicatory process, and should refrain from even discussing that case with future adjudicators. *See Withrow v. Larkin, supra.* Such a rule will reduce or eliminate adjudicators' exposure to *ex parte* information, as well as the inevitable human tendency to develop a will to win. *See Ross v. Medical Univ. of South Carolina, supra.*

Our view is consistent with the approach taken by most courts today. Courts generally discourage agency staff and members from simultaneously acting as investigator, prosecutor, and judge.[4] "It is proper to have some blend of judicial and prosecutorial functions in an administrative proceeding, provided that the person performing the quasi-prosecutorial function is not a member of the decision-making body." *Waste Mgt. v. Pollution Control Bd.*, 175 Ill.App.3d 1023, 125 Ill.Dec. 524, 530 N.E.2d 682, 694 (1988). *Accord Babcock Center, Inc. v. Office of Audits*, 286 S.C. 398, 334 S.E.2d 112 (1985) (holding that administrative agency may adjudicate appeals by panels composed of other persons within the same

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agency who did not participate in investigative or prosecutorial capacities); 4 Stein, Mitchell, and Mezines, *Administrative Law*, § 33.02[1] to [4] (1998) (discussing separation of functions and stating that such conflicts can easily be avoided by isolating agency personnel or board members into investigatory, prosecution, and adjudicatory positions).[5]

C. HARMLESS ERROR

Facility contends any error in the handling of Garris's case, including bias by persons not serving as adjudicators and exposure by adjudicators to committee activities, is harmless error and provides no basis for reversing the board's decision. We disagree.

In *Ross v. Medical Univ. of South Carolina, supra*, we found the vice-president's participation as an investigator, witness, and intermediate judge to be harmless error because the university's board independently reviewed the record of the committee hearing, heard oral arguments from the parties, and conducted its own deliberations. *Id.*, 328 S.C. at 70, 492 S.E.2d at 72.

In this case, the Governing Board acted as the final adjudicator in Garris's case. Five members and one non-member participated as members or observers in prior committee meetings where Garris's case was extensively discussed. Those six persons sat in judgment of Garris at the hearing and cast six of the eight votes to revoke his status as a designated agent. We conclude the structure of the proceeding in this case was so inherently flawed that it is not subject to harmless

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error analysis. *Cf. Arizona v. Fulminante*, 499 U.S. 279, 307-09, 111 S.Ct. 1246, 1263-64, 113 L.Ed.2d 302, 329-31 (1991) (dividing constitutional errors into "trial errors" and "structural defects," with the latter defying analysis by harmless error standards because

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they affect the framework within which a trial proceeds, rather than simply an error in the trial process itself); *State v. Byrd*, 318 S.C. 247, 456 S.E.2d 922 (Ct.App. 1995) (same).

In sum, we conclude Facility is an administrative agency; the same persons served as both prosecutors and adjudicators in violation of Article I, Section 22; and the process was so inherently flawed that it is not subject to harmless error analysis.

2. RES JUDICATA

Garris, in a declaratory judgment action brought after Facility filed the notice and rule to show cause, sought to enjoin Facility from proceeding against him. Garris filed a notice of appeal and a petition for supersedeas after the circuit court denied relief. We declined to stay the proceeding before the Governing Board, but stayed review of any disciplinary action which adversely affected Garris's status as a designated agent pending judicial review of the Governing Board's decision. We ultimately affirmed the circuit court, holding that Garris must first exhaust his administrative remedies. We also addressed Garris's argument, holding that the APA does not require Facility to give him time to correct any deficiencies, but only requires Facility to give him an opportunity to show he had complied with the law. *Garris v. Governing Board of South Carolina Reinsurance Facility*, 319 S.C. 388, 461 S.E.2d 819 (1995) *(Garris I)*.

In his petition to the circuit court following the Governing Board's decision to revoke his status as a designated agent, Garris argued the composition of the board is unconstitutional under Article III, Section 1 of the state constitution.[9] The

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circuit court ruled the argument was barred by the doctrine of res judicata. Garris contends the circuit court erred because res judicata does not bar his argument. We agree.

"Res judicata bars a subsequent suit by the same parties on the same issues. Res judicata is shown if (1) the identities of the parties is the same as a prior litigation; (2) the subject matter is the same as the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." *Johnson v. Greenwood Mills, Inc.*, 317 S.C. 248, 250, 452 S.E.2d 832, 833 (1994) (citations omitted). "A litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Hilton Head Center of South Carolina, Inc. v. Pub. Service Comm'n of South Carolina*, 294 S.C. 9, 11, 362 S.E.2d 176, 177, (1987); *see also* James F. Flanagan, *South Carolina Civil Procedure* 649-55 (1996) (explaining three basic tests used in res judicata analyses). The primary purposes of the doctrine, commonly known today as claim preclusion, are to bring an end to litigation and prevent a defendant from being forced to defend the same action repeatedly. *See* 50 C.J.S. *Judgment* §§ 697, 702 (1997).

Res judicata or claim preclusion, however, is not always an ironclad bar to a later lawsuit.

> A valid and final personal judgment for the defendant, which rests on the prematurity of the action or on the plaintiff's failure to satisfy a precondition to suit, does not bar another action by the plaintiff instituted after the claim has matured, or after the precondition has been satisfied, unless a second action is precluded by operation of the substantive law.

Restatement (Second) of Judgments § 20(2) (1982). *Accord Allen v. Southern Ry. Co.*, 218 S.C. 291, 62 S.E.2d 507 (1950)

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(plaintiffs voluntary dismissal of first action leaves situation as though no suit had ever been brought; subsequent, nearly identical action is not barred by res judicata even though plaintiff appealed first action to Supreme Court; which held that voluntary dismissal was inappropriate and premature); *Gault v. Spoon*, 168 S.C. 160, 167 S.E. 229 (1932) (where first action did not proceed to a conclusion because it was dismissed for failure to execute a proper bond, res judicata did not bar

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subsequent action on same transaction). *See also Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396, 110 S.Ct. 2447, 2456, 110 L.Ed.2d 359, 376 (1990) (a dismissal without prejudice is not an adjudication upon the merits and does not have res judicata effect); *McEachern v. Black*, 329 S.C. 642, 496 S.E.2d 659 (Ct.App.1998) (same).

Furthermore, dismissal of a prior lawsuit without prejudice, on the ground that a party failed to exhaust administrative remedies, does not mandate dismissal of an identical cause of action in a subsequent suit. *Bowden v. United States*, 106 F.3d 433, 441 (D.C.Cir.1997); Wright, Miller, & Cooper, *Federal Practice and Procedure*, § 4437 (1981). "When applying res judicata to causes of action that were not before the court in the prior action, due process of law and the interest of justice require cautious restraint. Restraint is particularly warranted when the prior action was dismissed on procedural grounds." *Kearns v. General Motors Corp.*, 94 F.3d 1553, 1556 (Fed.Cir.1996) (concluding res judicata did not bar patent infringement claims that were not before court in earlier case dismissed by court).

The doctrine of res judicata does not bar Garris's argument raising Article III, Section 1 because he could not properly have raised it or any other arguments before exhausting his administrative remedies. The fact the Court chose to address one of his arguments in a premature appeal does not mean he now should be penalized for not raising every purely legal challenge in that premature appeal. The purposes of res judicata—bringing an end to litigation and preventing a defendant from being forced to defend the same action repeatedly— are not met by applying the rule in this case. We remanded the matter in *Garris I*, which meant the proceedings against Garris continued and Facility had to continue its involvement in the matter. Accordingly, we reverse the circuit court's ruling on this issue.

3. ARTICLE III, SECTION 1

The circuit court, in the interest of finality, ruled on the merits of Garris's argument and found that the statute establishing the composition of the Governing Board unconstitutionally delegates legislative appointment power to private

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organizations. Facility contends the circuit court erred. We disagree.

The director of the Department of Insurance must appoint six of the insurance industry representatives on the Governing Board from lists of nominees prepared by and drawn from the American Insurance Association (two members), the American Mutual Insurance Alliance (two members), and the National Association of Independent Insurers (two members). *See* S.C.Code Ann. § 38-77-580 (Supp.1997).

We affirm the circuit court's ruling and hold that the delegation in Section 38-77-580 of the Legislature's appointive powers to private organizations violates Article III, Section 1. *See Toussaint v. State Bd. of Medical Examiners*, 285 S.C. 266, 329 S.E.2d 433 (1985) (striking down statute which required Governor to select board members from list of nominees submitted by private

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association, where those nominees by statute had to belong to the private association); *Gold v. South Carolina Bd. of Chiropractic Examiners*, 271 S.C. 74, 245 S.E.2d 117 (1978) (same); *see also Hartzell v. State Bd. of Examiners in Psychology*, 274 S.C. 502, 265 S.E.2d 265 (1980) (upholding a statute which required Governor to select board members from a list of nominees submitted by private association, where statute did *not* require those nominees to belong to the private association).

Facility, attempting to distinguish *Toussaint* and *Gold*, argues the *entire* Governing Board is not drawn from the membership of private associations that include only a portion of a particular type of professionals. It is true that Governing Board includes other members, including four consumer representatives, two insurer representatives who are not association members, four producer representatives, and two designated agent representatives. However, that does not change the fact that, in establishing a method to choose six of the insurer representatives, the Legislature unconstitutionally delegated its appointive powers to private organizations.

4. EXERCISE OF PROXIES

Facility's plan of operation requires that a quorum of eleven members be present for a vote, and an action is binding when approved by the majority of those present. The director

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of the Department of Insurance may provide for voting by proxy at meetings. S.C.Code Ann. § 38-77-580 (Supp.1997). Governing Board Chairman John Richards initially counted proxies in determining whether a quorum was present at the Garris hearing. Richards ruled that only those members and proxy holders who had been physically present for the entire three-day hearing could vote on the matter. He later applied that same rule in determining whether a quorum was present.

Nine board members[7] and two proxy holders[8] were eligible to vote under the rule, i.e., they were present in person during the entire hearing. In addition, two other nonvoting board members[9] were present during the entire hearing. Five other board members were present only by proxy.[10]

The circuit court ruled that a quorum was present either in person or by proxy during the entire hearing, the nonvoting members could be counted for purposes of a quorum, and the proxies held by Larry Griner and Nancy Coombs were properly exercised.

Garris contends the circuit court erred because allowing proxy holders Griner and Coombs, who were not board members, to vote violated Garris's due process rights and was inherently unfair. While proxy holders may vote at "routine" meetings, the Court should not allow them to vote in important cases such as this one which have constitutional implications, he argues. Under that reasoning, every member could have given his or her proxy to a file clerk, who could then have decided his case, Garris argues. Furthermore, because Griner and Coombs could not vote, they also could not be counted for purposes of a quorum, Garris asserts. That means there was no quorum of eleven, he contends. We disagree.

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The persons legally responsible for an administrative agency's decision must be informed and unbiased, must hear the case, and must in fact make the decision. *Flav-O-Rich, Inc. v. NLRB*, 531 F.2d 358, 362 (6th Cir.1976); *KFC Nat'l Mgt. Corp. v. NLRB*, 497 F.2d 298, 304 (2d Cir.1974). Due process requires an administrative board, when acting in a quasi-judicial capacity, to consider all the

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evidence before deciding a particular question. This does not mean, however, that the administrative board must itself hear the evidence. Staff or assistants may prepare and present the evidence, which the administrative board must consider when rendering its decision. *Pettiford v. South Carolina State Board of Educ.*, 218 S.C. 322, 346, 62 S.E.2d 780, 791 (1950) (approving procedure in which two board members heard testimony and reported it to full board, which decided the matter). It is important, of course, that decision makers attend the hearing if possible. *See McCoy v. Easley Cotton Mills*, 218 S.C. 350, 357, 62 S.E.2d 772, 775 (1950) (stating in workers' compensation case that "[o]rdinarily oral argument is of much aid to any judicial or quasi-judicial body in reaching a proper conclusion, [and] [o]nly circumstances of the most urgent nature are sufficient to excuse a member's absence").

In the absence of any statutory or other controlling provision, the common-law rule that a majority of a whole board is necessary to constitute a quorum applies, and the board may do no valid act in the absence of a quorum. *Prosser v. Seaboard Air Line R. Co.*, 216 S.C. 33, 44, 56 S.E.2d 591, 595 (1949); *Gaskin v. Jones*, 198 S.C. 508, 513, 18 S.E.2d 454, 456 (1942). A member who recuses himself or is disqualified to participate in a matter due to a conflict of interest, bias, or other good cause may not be counted for purposes of a quorum at the meeting where the board acts upon the matter. *Talbot v. James*, 259 S.C. 73, 82, 190 S.E.2d 759, 764 (1972); *King v. New Jersey Racing Comm'n*, 103 N.J. 412, 511 A.2d 615, 618 (N.J.1986).

We affirm the circuit court's ruling and hold that proxy holders Griner and Coombs appropriately participated in the Garris matter. Griner was employed by same insurer who employed Randall Thompson, the board member whose proxy he held. Coombs, a staff attorney at the Department of

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Consumer Affairs, held the proxy of Consumer Advocate Philip Porter. Due process does not require that only Governing Board members hear a designated agent's case. *See Pettiford, supra.*[11]

Garris's reliance upon *Flav-O-Rich, supra,* and *KFC National Management, supra,* is misplaced because those cases are easily distinguished on the facts. In *Flav-O-Rich,* the court held the National Labor Relations Board could not delegate its authority to decide motions to the board's chief counsel. In *KFC National Management,* the court held that allowing one board member and two attorney assistants, who held the general proxies of the other two board members, to decide petitions for review violated the National Labor Relations Act and administrative due process. Drawing upon those cases, Garris presents a hypothetical about all Governing Board members handing over their proxy to a clerk. While his hypothetical might present due process problems, that is not what happened in this case.

We further conclude the circuit court correctly ruled that a quorum was present. The record shows that eleven members, including Griner and Coombs, were present in person for the entire hearing. Enough members were present in person to form a quorum without even considering the five other board members who had given their proxy to fellow board members.

CONCLUSION

We affirm the circuit court's ruling on Issue 1 that the procedure employed by Facility in this case violated Article I, Section 22 of the state constitution. We reverse the circuit court's ruling on Issue 2 that the doctrine of res judicata barred Garris's argument about the composition of the Governing Board. We affirm the circuit

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court's ruling on Issue 3 that the statute establishing the composition of the Governing Board violates Article III, Section 1 of the state constitution. We affirm the circuit court's ruling on Issue 4 that proxies

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were properly exercised and a quorum was present at Garris's hearing before the Governing Board.

We remand this case to Facility for further proceedings consistent with this opinion. Our disposition of the issues renders it unnecessary to address Garris's remaining arguments.

FINNEY, C.J., TOAL, MOORE and BURNETT, JJ., concur.

Notes:

1. Facility is an unincorporated, nonprofit entity created by statute in 1974 to provide high-risk drivers with automobile insurance not available through the voluntary market. Facility imposes recoupment charges, based upon a person's driving record, upon all drivers to recover its losses. In addition to high-risk drivers ceded to Facility by voluntary insurers, Facility authorizes designated agents such as Garris to sell policies offered by servicing carriers to high-risk drivers.

Facility will cease to operate in its present form by 2006 under the new system of automobile insurance the Legislature enacted in 1997. *See* S.C.Code Ann. §§ 38-77-510 to -630 (1989 & Supp.1997). Facility on March 1, 1999, will stop accepting new policies written by designated agents. Designated agents may continue to earn commissions on renewals of existing policies until 2002. S.C.Code Ann. §§ 38-77-590 to -595 (Supp.1997).

2. Section 22 states, in full:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

3. Kepley's proxy was not exercised because Governing Board Chairman John Richards did not allow any board member to exercise the proxy of another member who was not present for the entire hearing. Richards did allow non-board members (Griner and Nancy Coombs) to exercise their proxies in the vote because they represented their respective board members and were present for the entire hearing.

4. The United States Supreme Court in *Withrow v. Larkin* and other courts have noted that the federal Administrative Procedures Act prohibits agency staff from serving in dual roles, but specifically exempts agency board members from that prohibition. *E.g., Blinder, Robinson and Co. v. SEC*, 837 F.2d 1099, 1104-07 (D.C.Cir.1988) (citing 5 U.S.C.A. § 554(d) (1996)). Article I, Section 22, of our constitution contains no such distinction between agency staff and board members.

5. *See also Pope v. Mississippi Real Estate Comm'n*, 695 F.Supp. 253, 285 (N.D.Miss.1988) (finding no due process violation where staff investigated a real estate agent, a commissioner from outside the agent's district decided whether the case should go forward, and the commissioners who heard and decided the case did not participate in the investigation), *aff'd*, 872 F.2d 127 (5th Cir.1989); *Ridgewood*

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Properties, Inc. v. Dep't of Community Affairs, 562 So.2d 322 (Fla.1990) (finding violation of state and federal due process where department head testified in an administrative hearing and later reviewed the hearing officer's order); *Manka v. Tipton*, 805 P.2d 1203, 1206 (Colo. Ct.App.1991) (upholding decision in tax case decided by deputy director in administrative hearing where taxpayer presented no evidence that director investigated the case); 73A C.J.S. *Public Administrative Law and Procedure* § 138(c) (1983); 2 *Administrative Law* § 313 (1994); West's Digests, *Administrative Law*, Key No 445

6. Article III, Section 1, states:

The legislative power of this state shall be vested in two distinct branches, the one to be styled the "Senate" and the other the "House of Representatives," and both together the "General Assembly of South Carolina."

7. Steve Dennis, Jim Thompson, Robert Herlong, Clark Hobbie, Phillip Love, Gerry Huckaby, Chairman John Richards, David Rowell, and W.R. Braddy.

8. Larry Griner, who exercised the proxy of board member Randall Thompson; and Nancy Coombs, who exercised the proxy of board member Philip Porter.

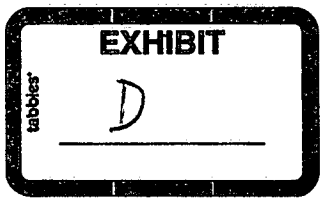
9. Thomas Reichard and Frank Lee.

10. Thomas Kepley, C.M. Dinwiddie, James Lingle, Arthur Ivey, and Bob Taylor.

11. Griner's participation as a proxy holder was appropriate. His participation as an observer at the three committee meetings and as an adjudicator at the hearing was not appropriate, as explained in Issue 1. Neither Coombs nor Porter attended the committee meetings.

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The South Carolina Court of Appeals

Wayne's Automotive Center, Inc., Appellant,

v.

South Carolina Department of Public Safety,
Respondent.

Appellate Case No. 2016-002460

ORDER

Appellant has served and filed a notice of appeal from two orders of the Department of Public Safety, which suspend and remove Appellant from the South Carolina Highway Patrol Rotation List. Appellant has also filed a petition for supersedeas, asking this court to stay the suspension. Because the administrative law court has not issued a final decision in this matter, this court lacks jurisdiction to consider the appeal. *See* S.C. Code Ann. § 1-23-600 (Supp. 2016) (setting forth the jurisdiction of the administrative law court); S.C. Code Ann. § 1-23-610 (Supp. 2016) ("For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules."). Accordingly, this court declines to consider the petition for supersedeas, and this appeal is dismissed. The remittitur will be sent as provided in Rule 221, SCACR.

FOR THE COURT

Columbia, South Carolina

FILED

December 12, 2016

cc:
Raymon E. Lark, Jr., Esquire
Warren V. Ganjehsani, Esquire
Marcus Keith Gore, Esquire

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc.,	)	Docket No. 16-ALJ-30-0410-CC
	)	
Petitioner,	)	
	)	**AMENDED MOTION FOR WRIT OF**
v.	)	**MANDAMUS AND/OR SUMMARY**
	)	**JUDGMENT AND/OR STAY AND/OR**
South Carolina Department of Public	)	**TRO AND INJUNCTIVE RELIEF**
Safety,	)	**WITH MEMORANDUM OF LAW**
Respondent.	)	
	)	

In conjunction with its Petition For Contested Hearing Petitioner moved for a Temporary Restraining Order (TRO) (Motion) along with injunctive relief and prayed for "all other available relief". Petitioner's initial Motion has not been heard in light of the stipulations entered by the parties to stay suspension of Petitioner from the Rotation Wrecker Schedule through January 31, 2017, as noted in the Court's Order For Prehearing Statements due January 18th (filed December 19 2016).

Upon due consideration of that pending Motion in conjunction with this Court's Order, Petitioner is, therefore, respectfully hereby amending its Motion in the interests of judicial efficiency and justice so as not to be considered to have waived any right and providing as additional parts of this Amended Motion:

--Exhibits E and F;[1]

--its attached, proposed Order as its supporting Memorandum Of Law providing relief, consistent with SCALC Rules 16 and 19, Rules 65 and 56, SCRCP, the circumstances, S.C. Code. Ann. §1-23-630, and other applicable law; and

[1] Petitioner's prior **Exhibits A through D** and Verification and Affidavit of Walter Jeffry Corbett have previously been filed with the Court with its Petition and Motion and are also incorporated herein, as well as **Exhibit E**, which is Petitioner's 2017 Wrecker Rotation Fee Schedule, and **Exhibit F**, which was Petitioner's 2015 Wrecker Rotation Fee Schedule.

FILED
DEC 29 2016
SC ADMIN LAW COURT

--the Supplemental Verification and Affidavit of Walter Jeffry Corbett, the Registered Agent and operator of Wayne's Automotive Center, Inc.

WHEREFORE, Petitioner respectively moves the Court to hear and rule upon this Amended Motion effectively reversing Respondent's unlawful suspension order at its earliest convenience so as to avoid the need for prehearing statements, discovery, and a contested case evidentiary hearing. Otherwise, Petitioner requests the Court issue its Order extending the stay currently in effect or granting a TRO and temporary injunctive relief during the pendency of this proceeding and, thereafter, issue its order reversing the decisions of Respondent to suspend Petitioner from the Highway Patrol Wrecker Rotation List and providing all other available relief to Petitioner.

AUSTIN & ROGERS, P.A.

By: _____

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	)	Docket No. 16-ALJ-30-0410-CC
	)	**ORDER GRANTING RELIEF**

In conjunction with its Petition For Contested Hearing, Petitioner moved for a Temporary Restraining Order (TRO) (Motion) along with injunctive relief and prayed for "all other available relief". Petitioner's initial Motion has not been heard in light of the stipulations entered by the parties to stay suspension of Petitioner from the Rotation Wrecker Schedule through January 31, 2017, as noted in the Court's Order For Prehearing Statements due January 18th (filed December 19, 2016).

Upon due consideration of that pending Motion in conjunction with this Court's Order, Petitioner amended its Motion in the interests of judicial efficiency and justice, seeking a writ of mandamus and/or summary judgment and/or stay and/or TRO-injunctive relief. Petitioner has so moved now so as not to be considered to have waived any right. In support Petitioner has also provided:

--Exhibits E and F;[1]

--its proposed Order as its supporting Memorandum Of Law providing relief, consistent with SCALC Rules 16 and 19, Rules 65 and 56, SCRCP, the circumstances, S.C. Code. Ann. §1-23-630, and other applicable law; and

[1] Petitioner's prior **Exhibits A through D** and Verification and Affidavit of Walter Jeffry Corbett were previously been filed with the Court with its Petition and Motion and also incorporated in its Amended Motion, as well as **Exhibit E**, Petitioner's 2017 Wrecker Rotation Fee Schedule, and **Exhibit F**, Petitioner's 2015 Wrecker Rotation Fee Schedule.

--the Supplemental Verification and Affidavit of Walter Jeffry Corbett, the Registered Agent and operator of Wayne's Automotive Center, Inc.

For the reasons set forth below, the Court is granting Petitioner's request by issuing this Order providing it relief by writ of mandamus to reverse and dismiss Respondent's disciplinary decision by Captain Hughes and denial of its request for reconsideration by Colonel Oliver.[2]

Petitioner is a South Carolina corporation, which--through its Registered Agent, Walter Jeffry 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). Petitioner 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, according to S.C. Code §23-6-20 (A), 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, Petitioner'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). Petitioner did so and issued an initial invoice to Premier (**Exhibit B (2)**) that was lowered and paid in full by Premier to Petitioner in early March (***Id.*** **(B) (3)** and **Exhibit C (Enclosure 2)**).

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[2] Alternatively, the Court reverses Respondent's decisions and provides relief requested to Petitioner, based as of summary judgment, since there are not material facts at issue; stay, consistent with S.C. Code §1-23-630; and/or TRO/injunctive relief, consistent with Rules 16 and 19, SCALC. *Note:* provision of TRO/injunctive relief would require a supplemental hearing.

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 solely on a complaint emailed to Highway Patrol Division staff (Lt. King and Captain Hughes) and others—but excluding Petitioner or its staff--by Robert (Bob) Watson, received February 19, 2016, which Petitioner 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 adjustor for Sentry Insurance Company, which was Premier's carrier, and had no underlying property interests concerning the matters. Despite this fact, Respondent pursued this matter and imposed a 120-day suspension of Petitioner from the Rotation List that commenced December 12, 2016, following issuance by the South Carolina Court Of Appeals that day dismissing the Notice of Appeal of Petitioner as Appellant.

WRIT OF MANDAMUS

This Amended Motion with Supplemental Verification and Affidavit and **Exhibits A through F**, Rule 65, SCRCP, and pertinent case law support issuance of a writ of mandamus herein, requiring Respondent to withdraw its disciplinary orders against Petitioner and dismiss the matter.

As stated by the Supreme Court in *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106, 109 (1999), a writ of mandamus is "not a cause of action but a form of remedy or relief" as a coercive writ that orders a public official to perform a ministerial duty. In *Sanford v. South Carolina State Ethics Commission,* 385 S.C. 483, 685 S.E. 2d 600, 605, 607 (2009), the Court more recently reiterated:

> The writ of mandamus is 'the highest judicial writ known to the law.' *Willimon v. City of Greenville,* 243 S.C. 82, 86, 132 S.E.2d 169, 170 (1963); *accord Edwards v. State,* 383 S.C. 82, 678 S.E.2d 412 (2009); *City of Rock Hill v. Thompson,* 349 S.C. 197, 563 S.E.2d 101 (2002); *Ex parte Littlefield,* 343 S.C. 212, 540 S.E.2d 81 (2000). 'The "principal function" of mandamus "is to command and execute, and not to inquire and adjudicate; therefore, it is not

the purpose of the writ to establish a legal right, but to enforce one which has already been established.'" *Willimon,* 132 S.E.2d at 171; *see also Porter v. Jedziniak,* 334 S.C. 16, 18, 512 S.E.2d 497, 497 (1999) ('The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law.'); *Redmond v. Lexington County Sch. Dist. No. 4,* 314 S.C. 431, 445 S.E.2d 441 (1994) (a writ of mandamus is not appropriate for a discretionary authority).

To obtain a writ of mandamus requiring the performance of an act, the petitioner must show: (1) a duty to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy. *E.g., Wilson v. Preston,* 378 S.C. 348, 662 S.E.2d 580 (2008); *Porter v. Jedziniak, supra; Willimon, supra.* Mandamus is based on the theory that an officer charged with a purely ministerial duty can be compelled to perform that duty in case of refusal. *Wilson v. Preston, supra.*

* * *

A waiver is a voluntary and intentional abandonment or relinquishment of a known right. *E.g., Eason v. Eason,* 384 S.C. 473, 682 S.E.2d 804 (2009). Waiver requires a party to have known of a right and known that right was being abandoned. Id. The determination of whether one's actions constitute waiver is a question of fact. *Laser Supply and Servs., Inc. v. Orchard Park Assocs.,* 382 S.C. 326, 676 S.E.2d 139 (Ct.App.2009).

Furthermore, in *Bethel Methodist Episcopal Church v. City Of Greenville,* 211 S.C. 442, 45 S.E. 2d 841, 844-45 (1947), the Court stated and applied the "abuse of power" rule as follows in ruling against the City of Greenville:

In dealing with the question of the exercise of discretion in closing streets, the general rule is that courts will not interfere with the exercise of these discretionary powers by a municipal body except in cases of fraud or clear abuse of power. *Grady v. City of Greenville,* 129 S.C. 89, 123 S.E. 494.

* * *

A municipal corporation *holding and controlling its streets in trust for the use and benefit of the general public, without power of converting them to any other use*, it follows necessarily, that the right to vacate a street is to be exercised only when the municipal authorities, in the exercise of a sound official discretion, determine that the street is no longer required for the public use or convenience. But no such reasons were assigned for the closing of Bethel Street. There is nothing to show that the public interests would be subserved by closing this arterial highway leading to plaintiff's property.

On the face of the record, with no evidence to the contrary, we are constrained to hold that the action of the City of Greenville constituted a clear abuse of power, however unintentional, which seriously affected fundamental property rights of the plaintiff, resulting in special and irreparable injury.

(*Emphasis added.*)

Applying these requirements and authorities to the instant case, Respondent has ongoing duties to apply and enforce its Rotation schedule and Wrecker Rotation Fee Schedule in strict accordance with its Regulation 38-600. Its express duties requiring "written notification" to a tower like Petitioner of a dispute by the "vehicle owner or the vehicle owner's designee" in (C) (6) to be provided and "(o)nly one bill...submitted to the owner or operator for the work performed" in (C) (15) are mandatory and ministerial in nature. Respondent has, therefore, abused its power in derogation of such express, regulatory requirements by relying on an emailed complaint by an unauthorized third party without any underlying property interests and standing after a corrected invoice, as contemplated, by Petitioner had resolved the entire matter.[3]

SUMMARY JUDGMENT

Consistent with SCALC Rules 16 and 19, Rule 56, SCRCP, the circumstances, S.C. Code. Ann. §1-23-630, and other applicable law, the Court, alternatively, grants Petitioner summary judgment, thereby reversing Respondent's disciplinary decisions against Petitioner. There are no material issues of fact in light of the Findings of Fact and Conclusions of Law included in the disciplinary decision and reconsideration order. Therefore, summary judgment for Petitioner is, alternatively, granted for it. *See, e.g., Thomas v. Waters*, 315 S.C. 524, 445 S.E. 2d 659, 661 (Ct. App. 1994).

STAY

Consistent with SCALC Rules 16 and 19, Rule 65, SCRCP, the circumstances, S.C. Code. Ann. §1-23-630, and other applicable law, the Court, alternatively, stays imposition of Respondent's

[3] *See also*, the discussion below and, in particular, authorities cited as to limitations on exercise of discretion by governmental entities in the TRO/Injunctive Relief section.

disciplinary decisions on Petitioner going forward from conclusion of the stay in effect through January 31, 2017, beginning February 1, 2017.

TRO/INJUNCTIVE RELIEF

The standards for granting a temporary restraining order or temporary injunction are well established and are as follows: (1) irreparable harm if the injunction is not granted; (2) the relative harm to the plaintiff of the injunction is not granted as compared to the relative harm to the defendant if the injunction is granted; (3) plaintiff's likelihood of success on the merits; and (4) the public interest. Professor James F. Flanagan, *South Carolina Civil Procedure, Second Edition, at 508 (1996).*

Irreparable harm means that an injunction is reasonably necessary to protect the plaintiff's rights pending the litigation. *Johnson v. Phillips, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993) rev'd on other grounds, 318 S.C. 453, 458 S.E.2d 427 (1995).* Irreparable injury implies that there exists no adequate remedy at law. *Van Robinson Ins. Agency v. Harleyville Mut. Ins. Co., 272 S.C. 127, 249 S.E.2d 744 (1978).*

As to its showing of irreparable harm, Petitioner's showing supports extension of the stay, as well as issuance of a TRO and injunctive relief, including permanent injunctive relief. In the absence of such extension, Petitioner's suspension would preclude it being called on a very short list for the Aiken County area by the Highway Patrol to provide Class C towing and recovery assistance, when it would otherwise be called to assist.[4] Moreover, without such extension the Highway Patrol/SCDPS would improperly be able count its suspension in the instant disciplinary Orders herein against regarding any future suspension against it. Finally, support for such extension is even more compelling, in light of the fact that the APA does not provide for the assessment of civil penalties

[4] While Aiken County is among several counties in Troop Seven, there are only 3 wrecker services on the Class C 2016 Rotation List provided by SCDPS in response to one of Petitioner's FOIA requests.

against Respondent found to be in violation of its provisions. *See, Marietta Garage, Inc. v. South Carolina Department Of Public Safety*, 352 S.C. 95, 572 S.E. 2d 306 (Ct. App. 2002).

The harm to Respondent on the other hand, is nonexistent, based upon its Orders herein. *See* **Exhibits A and B** to Petition and Motion.

Petitioner is likely to prevail on the merits. Respondent through its actions and inaction described above has acted outside its scope of authority, which it cannot do, and injured Petitioner. *Triska v. Department of Health and Environmental Control,* 292 S.C. 190. 355 S.E. 2d 531 (1987) and *Stono River Environmental Protection Association v. South Carolina Department of Health and Environmental Control,* 305 S.C. 90, 406 S.E. 2d 340 (1991). "(A) public entity cannot materially alter or add to law in any fashion which circumvents legislation." *Armstrong v. School District Five of Lexington and Richland Counties*, 26 F. Supp. 2d 789 (D.S.C. 1998), *citing S.C. Tax Commission v. S.C. Tax Board of Review,* 278 S.C. 556, 299 S.E.2d 489 (1983). *Accord, Bethel Methodist Episcopal Church v. City Of Greenville,* 211 S.C. 442, 45 S.E. 2d 841, 844-45 (1947), applying the abuse of power rule against a municipality. Respondent thereby further appears to have violated Petitioner's rights of procedural and substantive Due Process. As to procedural Due Process violations, *see, e.g., Daniels v. Williams,* 474 U.S. 327 (1986). As to substantive Due Process violations, *see, e.g., Worsley Co., Inc. v. Town of Mount Pleasant*, 339 S.C. 51, 528 S.E.2d 657, 660 (2000), *and Daniels, supra.*[5]

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[5] For example, in addition to relying on a complaint by Bob Watson with no standing and by issuance of its Disciplinary Notice after the entire underlying matter had been resolved, as set forth more fully in ¶3 of Petitioner's Petition And Motion and above in violation of its Reg. 38-600 (C) (8), Respondent violated (C) (15), which states:

> A wrecker service may secure assistance from another wrecker service when necessary to complete the recovery; however, this does not supersede paragraph 3 (requiring a qualified wrecker with suitable equipment) of this section nor does it permit wrecker services to accept a rotation call and dispatch the call to secondary wrecker services. *Only one bill is to be submitted to the owner or operator for the work performed.*

Under the circumstances and by application of the law, the Court is hereby issuing this Order providing Petitioner relief through this writ of mandamus and requiring Respondent to reverse and dismiss its disciplinary decision and denial of reconsideration against Petitioner. By this Order, therefore, this matter is concluded, and this Docket is closed.

IT IS SO ORDERED.

The Honorable H.W. Funderburk, Jr.
Presiding Judge

January ___, 2017

On the other hand, both the 2016 Rotation Fee Schedule (**Exhibit B (1)**) and 2017 Rotation Fee Schedule, attached as **Exhibit E**, state as part of the *Special Operations* section applicable to Class C towing and recovery operations as herein:

> If services beyond those for which the wrecker was dispatched are performed (*e.g.* hazardous waste cleanup; transportation of vehicle, cargo, or occupant(s) to an agreed upon location other than the one required by the Regulation), *those services must be billed on a separate invoice.*

Contra, 2015 Rotation Fee Schedule (**Exhibit F**), which contains no such requirement. Despite such discrepancy, the Disciplinary Decision, as expressly stated in its Findings of Fact Nos. 7 and 8, Lt. King for Respondent endeavored to require Petitioner to provide *separate* invoices. Furthermore, contrary to Finding of Fact No. 8, Petitioner did issue a corrected invoice in early March 2016 that Premier paid in full to resolve the matter. **Exhibit C (Third Enclosures)**. Thereafter Captain Grice, who presided over the SCDPS August 8th hearing (sic), nevertheless issued the Notice of Proposed Disciplinary Action, dated April 25, 2016. Such patent violations constitute a *prima facie* case of Respondent's unlawful use of binding norms instead of its Reg. 38-600 supporting reversal of Respondent's Orders herein, since they are arbitrary, capricious, and constitute abuses of discretion, and can have no force or effect. *See Home Health Serv. Inc. v. S.C. Tax Comm'n*, 312 S.C. 324, 440 S.E.2d 375, 378 (1994), *citing Ryder Truck Lines, Inc. v. U.S.,* 716 F.2d 1369 (11th Cir. 1983).

EXHIBIT
E

South Carolina Department of Public Safety
S.C. Highway Patrol

2017 Wrecker Rotation Fee Schedule

In accordance with Section 38-600 of the South Carolina Code of State Regulations, the Department of Public Safety publishes a yearly Fee Schedule outlining the maximum allowable fees for each class of wrecker on the SCHP Wrecker Rotation List. The reasonableness of fees on the Fee Schedule is determined by the Highway Patrol on a comparative basis. The fees permitted for calendar year 2017 are listed below:

2017 MAXIMUM ALLOWABLE FEES FOR ROTATION LIST CALLS

Rates / Fees		
Class A Wrecker		
Standard Towing Charge	***Special Operations**	**Storage**
$ 214.00 Flat Fee	$ 126.00 Per Hour	$ 32.00 Per Day
**Special Operations are billed at a per hour rate in ½ hour increments.*		
Class B Wrecker		
Standard Towing Charge	***Special Operations**	**Storage**
$ 313.00 Flat Fee	$ 200.00 Per Hour	$ 41.00 Per Day
**Special Operations are billed at a per hour rate in ½ hour increments.*		
Class C Wrecker		
***Standard Towing Charge**	**Special Operations**	**Storage**
$ 474.00 Per Hour	****See below**	$ 56.00 Per Day
**Standard Towing is billed at a per hour rate in ½ hour increments.*		
***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 each third party providing such equipment or labor must accompany the tow bill.*		

Class C services only.		
Description of Service, Labor or Equipment	**Rate / Fee**	
Additional Wrecker	$ 464.00	Per hour
Dump Truck, Dump Trailer or Drop Dumpster	$ 223.00	Per hour
Rotator/Crane or equivalent	$ 662.00	Per hour
Truck Tractor with Box Trailer or equivalent	$ 260.00	Per hour
Truck Tractor with Flat Trailer or equivalent	$ 267.00	Per hour
Truck Tractor with Landoll/Lowboy/Tilt Trailer or equivalent	$ 300.00	Per hour
Skid Steer or equivalent	$ 212.00	Per hour
Forklift or equivalent	$ 209.00	Per hour
Backhoe or equivalent	$ 241.00	Per hour
Service Truck (includes all tools and equipment on board)	$ 175.00	Per hour
Tower Light System	$ 148.00	Per hour
Complete Air Bag Unit	$ 712.00	Per hour
Additional Labor (General)	$ 79.00	Per person/per hour
Additional Labor (Specialized)	$ 109.00	Per person/per hour

NOTICE:
Rates for all equipment usage should include the cost of an operator, operating expenses, and the cost to transport the equipment to and from the scene.

Standard Tow: A standard tow is defined as responding to the scene, hooking up the vehicle, performing a general clean up if the call involves responding to a collision scene and providing responsible assistance to the vehicle occupants. In the absence of special operations as defined below, the maximum fee for a Class A or B tow is the flat rate listed above. Fees for Class C tows are billed at an hourly rate.

Special Operations: Special operations are operations involving the process of uprighting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle and/or the recovery of a load which has spilled, or the off-loading and reloading of a load from an overturned vehicle performed to right the vehicle. A wrecker service must receive confirmation on-scene at the time of the tow from the investigating Trooper or an SCHP supervisor that special operations are required to perform the tow in order to recover such fees.

* 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.

If services beyond those for which the wrecker was dispatched are performed (e.g., hazardous waste cleanup; transportation of vehicle, cargo, or occupants(s) to an agreed upon location other than the one required by the Regulation), those services must be billed on a separate invoice.

Storage: Fees begin 12 hours after a vehicle is secured on the wrecker service premises and terminate when the vehicle owner or owner's designee offers to pick up the vehicle and pay the legitimate accrued charges.

A COPY OF THIS FEE SCHEDULE SHALL BE KEPT IN EACH WRECKER AT ALL TIMES AND MUST BE PRESENTED UPON REQUEST TO ANY PERSON FOR WHOM TOW SERVICES ARE PROVIDED, HIS OR HER AGENT, OR ANY DEPARTMENT OF PUBLIC SAFETY EMPLOYEE. ANY COMPLAINTS MUST BE IN WRITING AND FORWARDED TO THE SCHP TROOP COMMANDER.

NOTE: This fee schedule lists the maximum fee that may be charged for each class of wrecker. A lesser fee may be charged at any time in the wrecker service's discretion.

On behalf of the wrecker service named below, I acknowledge that I have received and agree to be bound by the South Carolina Highway Patrol 2017 Wrecker Rotation Fee Schedule and the Department of Public Safety's Wrecker Rotation Disciplinary Policy. Further, I certify that I am authorized to bind the wrecker service named below to the terms of this Fee Schedule and the Department of Public Safety's Wrecker Rotation Disciplinary Policy.

Sherry Corbett — Owner/Representative Name (Printed)

Owner/Representative Signature

11-30-2016 — Date

Wayne's Automotive Center — Name of Wrecker Service

South Carolina Highway Patrol

Wrecker Rotation Inspection

Inspector's Comments:

After my inspection, I find this service to be:

☒ **Approved** – Business is in compliance with Wrecker Regulations and is being recommended for the rotation list.

☐ **Not Approved** – Business is not in compliance with Wrecker Regulations and is NOT recommended for the rotation list. Service was notified in writing as to what deficiencies were identified.

Inspector's Signature: SGT. A.A. Barlow Date: 11-30-2016

Wrecker Owner's Acknowledgement of Receipt and Compliance if approved:

I do hereby affirm that I have a copy of South Carolina Code of Regulations 38-600 governing rotation list wreckers. I am familiar with its contents and do hereby agree to fully comply with it in order to remain on the rotation list. I understand that any violation of the Wrecker Regulations may result in disciplinary action pursuant to S.C. Code of Regulations 38-600(D) and SCDPS Policy 200.19 Wrecker Rotation Disciplinary Policy. I further agree that if I relocate or change equipment, insurance carriers, telephone numbers or employees, or for any reason become unavailable for service for an extended period of time, I will notify the appropriate Troop Commander in writing. The information I have furnished is true and correct to the best of my knowledge. My business has been inspected and approved this 30 day of November, 20 16.

Print Name: Sherry Corbett Signature: [signature]

Key to Inspection Codes:

C = Compliant NC = Not in Compliance NA = Not Applicable

Form SCHP-A-007 revised September 2016

EXHIBIT
F

South Carolina Department of Public Safety
S.C. Highway Patrol

South Carolina Highway Patrol
2015 Wrecker Rotation Fee Schedule

In accordance with Section 38-600 of the South Carolina Code of State Regulations, the Department of Public Safety publishes a yearly Fee Schedule outlining the maximum allowable fees for each class of wrecker on the SCHP Wrecker Rotation List. The reasonableness of fees on the Fee Schedule is determined by the Highway Patrol on a comparative basis. The fees permitted for calendar year 2015 are listed below:

2015 MAXIMUM ALLOWABLE FEES FOR ROTATION LIST CALLS

CLASS	STANDARD TOW	SPECIAL OPERATIONS	STORAGE
A	$200.00 flat rate	$105.00 per hour	$29.00 per day
B	$262.00 flat rate	$164.00 per hour	$36.00 per day
C	$412.00 per hour	* no fee will be set	$49.00 per day

Standard Tow: Includes all associated costs such as responding to the scene, hooking up the vehicle, performing general clean up at the collision site, and providing responsible assistance to the vehicle occupants to get to a safe location. In the absence of special operations as defined below, the maximum fee for a Class A or B tow is the flat rate listed above. Fees for Class C tows are billed at an hourly rate.

Special Operations: Include up-righting an overturned vehicle or returning a vehicle to a normal position on the roadway when the use of auxiliary equipment is needed due to the vehicle's size and/or location, or where the recovery of or off-loading and reloading of cargo is required in order to right the vehicle. All Special Operations fees must be approved on-scene at the time of the tow by the investigating Trooper or an SCHP Supervisor.

* Although no Special Operations fee is set for Class C tows, a wrecker service may recover the actual cost of rental or subcontract equipment or labor, or an out-of-pocket incidental expense, that is necessary to accomplish the job. Proof of these actual costs in the form of an invoice or receipt must accompany the tow bill.

Storage: Fees begin 12 hours after a vehicle is secured on the wrecker service premises and terminate when the vehicle owner or owner's designee offers to pick up the vehicle and pay the legitimate accrued charges.

A COPY OF THIS FEE SCHEDULE SHALL BE KEPT IN EACH WRECKER AT ALL TIMES AND MUST BE PRESENTED UPON REQUEST TO ANY PERSON FOR WHOM TOW SERVICES ARE PROVIDED, THEIR AGENT, OR ANY DEPARTMENT OF PUBLIC SAFETY EMPLOYEE. ANY COMPLAINTS MUST BE IN WRITING AND FORWARDED TO THE SCHP TROOP COMMANDER.

NOTE: This fee schedule lists the maximum fee that may be charged for each class of wrecker. A lesser fee may be charged at any time in the wrecker service's discretion.

I have received and agree to the South Carolina Highway Patrol Fee Schedule for the year 2015:

Sherry Corbett — Print Owner/Representative Name
[signature] — Owner/Representative Signature
1-28-2015 — Date
Wayne's Towing — (Name of Wrecker Service)

Courtesy - Efficiency - Service

POST OFFICE BOX 1993, 10311 WILSON BLVD., BLYTHEWOOD, SOUTH CAROLINA 29016

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	Docket No. 16-ALJ-30-0410-CC AMENDED MOTION FOR WRIT OF MANDAMUS AND/OR SUMMARY JUDGMENT AND/OR STAY AND/OR TRO AND INJUNCTIVE RELIEF WITH MEMORANDUM OF LAW

SUPPLEMENTAL VERIFICATION AND AFFIDAVIT

Sworn to before me, Walter Jeffry Corbett, who says and deposes that the affiant knows the facts in the Petition For Contested Case Hearing previously filed and served herein, as well as the foregoing Amended Motion For Writ of Mandamus and/or Summary Judgment and /or Stay and/or TRO/Injunctive Relief with Exhibits B and F with a proposed order as the supporting Memorandum of Law to the South Carolina Administrative Law Court, as 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 Jeffry Corbett

SWORN to and subscribed before me
this 29 day of December 2016.
Notary Public for South Carolina
My Commission Expires: 9/1/25.

FILED
DEC 29 2016
SC ADMIN LAW COURT

(as revised)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	)	Docket No. 16-ALJ-30-0410-CC **PETITIONER'S PREHEARING STATEMENT**

Petitioner Wayne's Automotive Center, Inc. (Petitioner or Wayne's) respectfully submits its Prehearing Statement in response to the Order of the Honorable H. W. Funderburk, Jr., filed December 19, 2016.

1. **The nature of this proceeding:**

This contested case concerns issues set forth herein below and as developed at the hearing. They relate to a decision by the South Carolina Department of Public Safety (Respondent or SCDPS) to discipline Petitioner by suspending it for 120 days from its Wrecker Rotation List for all classes of tows for allegedly overbilling the carrier/owner Premier Transportation whose tractor and trailer with cargo were overturned in an accident on Interstate 20 near the South Carolina-Georgia border on February 9, 2016.

Petitioner's name came to the top of the Wrecker Rotation List and the Highway Patrol in SCDPS summoned Petitioner to assist in this Class C tow and recovery operation, which it did. Petitioner thereafter issued an initial invoice to Premier (**Exhibit (2)**) that it soon thereafter revised to Premier's satisfaction, and the parties settled the

matter in full in early March (**Id. (B) (3)** and **Exhibit C** (**Enclosure 2**)).[1] SCDPS mischaracterized the accident as relating to a "*standard tow*" rather than a "*special operations*" tow, both of which terms are defined in Reg. 38-600 (F) (2) (a) (1) and (2), respectively, as follows:

> F. RATES
>
> 1. Only wrecker services on the South Carolina Department of Public Safety wrecker rotation list shall be subject to these regulations governing fees.
>
> 2. Fees charged for rotation list calls shall be reasonable and not in excess of those rates charged for similar services provided in response to requests initiated by any other public agency or private person. The reasonableness of the fees charged will be determined in the following manner:
>
> a. A wrecker service shall submit proposed fees along with its annual application. Separate fee schedules shall be submitted for each class of wrecker, and, for each class, the fee for standard towing, heavy-duty towing, storage, and special operations.
>
> (1) A *standard tow* is defined as responding to the scene, hooking up the vehicle, performing a general clean up if the call involves responding to a collision scene and providing responsible assistance to the owner to get to a safe location.
>
> (2) *Special operations* are operations involving the process of uprighting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle and/or the recovery of a load which has spilled, or the off-loading and reloading of a load from an overturned vehicle performed to right the vehicle.

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[1] Petitioner has previously filed and served It Petition For Contested Case Hearing And Motion For TRO/Injunctive Relief with **Exhibits A through D** on December 14, 2016 (Petition and Motion), its Amended Motion For Writ Of Mandamus, Summary Judgment, Stay, and/or TRO/Injunctive Relief with Proposed Order and **Exhibits E and F** on December 29, 2016 (Amended Motion), and its Motion To Dismiss With Prejudice To Respondent Or Provide Other Such Relief And Memorandum with composite **Exhibit** on January 11, 2017. Such Petition and Motion, Amended Motion, and third Motion and all such Exhibits are incorporated by reference herein. The Court has now addressed these Motions/Amended Motion in filed Orders herein.

(Emphases added) Cf. definitions of **Standard Tow** and **Special Operations** in the 2016 Wrecker Rotation Fee Schedule in **Exhibit B (1)**. Moreover, as photographs of the accident scene Petitioner will provide from responses to an FOIA Request to SCDPS taken by the Premier adjustor onsite as well as photos taken by Petitioner's staff and also timely provided to SCDPS, the accident did not involve a *standard tow*, since both the tractor and trailer were overturned. In addition, as clearly set forth in the 2016 Wrecker Rotation Fee Schedule, "no fee will be set" for Special Operations (**Exhibit B (1)**).

Therefore, by early March 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 solely on a complaint emailed to Highway Patrol Division staff (Lt. King and Captain Hughes) and others—but excluding Petitioner or its staff--by Robert (Bob) Watson, received February 19, 2016, which Petitioner received only after making a FOIA request for it. **Exhibit B (3)** on July 19th. As it shows, Mr. Watson represented himself as President of Recovery Resolution Specialists--not an insurance adjustor for Sentry Insurance Company, which was Premier's carrier, or Premier's designee--and had no underlying property interests concerning the matters.

Despite these facts, Respondent violated the South Carolina Constitution, its own Regulation, and related statutory provisions by pursuing this matter and imposing a 120-day suspension of Petitioner from the Rotation List to commence December 12, 2016,[2]

[2] As noted by the Court in its Order For Prehearing Statements, filed December 19, 2016, by agreement of the parties, Petitioner's initial TRO Motion has not been heard, and the suspension imposed on December 12th was lifted as to all classes of tows and stayed

absent this Court having granting the relief requested herein to halt such suspension during appeal(s). **Exhibits B and A**.

2. **The statutory provision(s) conferring subject matter jurisdiction on the Court and other applicable statutes and regulations:**

Jurisdiction is conferred by provisions of the: Administrative Procedures Act, S.C. Code Ann. §1-23-310 et seq., as amended; 38 S.C. Code Ann. Regs. 600 (SCDPS Reg. 38-600); SCDPS Wrecker Rotation Disciplinary Policy 200.19; South Carolina Administrative Law Court Rules (SCALC Rules); and South Carolina Rules of Civil Procedure (SCRCP).

3. **The issues to be presented for determination, including any claims or defenses expected to be raised:**

The issues include the initial matters raised above in ¶ 1.

In addition, SCDPS and staff should have dismissed the instant matter, as requested by Petitioner at the hearing, held on August 8, 2016, or otherwise not have imposed any disciplinary action on Petitioner for several more reasons, including by not limited to:

(a) reliance to discipline Petitioner 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);[3]

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through January 31, 2017, absent further agreement or an order of the Court. By its Order Granting Motion For Extension And Order Extending Stay, filed January 18, 2017, the Court extended the filing deadline for Prehearing Statements for the 15-day period requested by Respondent and also extended the stay of suspension of Petitioner through the pendency of the litigation before the ALC.

[3] *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

(b) failure to provide Petitioner 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;

(d) issuance of a defective Notice of Proposed Disciplinary Action, Disciplinary Decision, and denial of Petitioner'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 Petitioner 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);[4]

---

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.

[4] The SCDPS Regulation and SCDPS Wrecker Disciplinary Policy 200.19 (composite **Attachment)**, 2016 Wrecker Rotation Fee Schedule, evidence from SCDPS files about this incident, and disciplinary decision(s) herein are not compatible, and SCDPS inconsistently applies them herein. Specific examples of Respondent's use of unlawful binding norms include, but are not limited to: specifying additional invoices in the Schedule, when the Regulation only allows for a single invoice, subject to its possible revision, as occurred herein covering all respects, consistent with S.C. Code Ann. §56-5-5635 (F); the Regulation in (C) (6) expressly requiring the vehicle "owner or owner's designee"--SCDPS acknowledges to be Premier--to dispute a bill/complain about billing and not an unauthorized third party, such as Bob Watson; disregarding indisputable photographs taken by Premier's insurance adjustor on the scene that the accident was not a Standard Class C tow but was a Special Operations tow for which fees are not established in the Schedule; imposing a 120-day suspension on Petitioner, despite express reference in its Policy §V (D) (re Suspension for Cause) to a maximum "not to exceed ninety calendar days", as well as not automatically staying a request for a contested case to this Court for an alleged violation not safety-related, as inferred from the express statement in Policy § V (C) (re Immediate Suspension) that:

(f) raising through its attorneys a new disciplinary matter (Herron) not known to Petitioner or its undersigned attorney, involving an alleged unnecessary winching tow and overcharge by Petitioner 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 Petitioner has, as developed as issues for determination after discovery and at the hearing.

4. **The action requested of the Court and a detailed statement of the law which supports the requested action, including statutory and/or case citations:**

Case law supporting dismissal or reversal of the SCDPS decision includes the cases with citations, as set forth in Petitioner's Petition And Motion, filed December 14, 2016, its Amended Motion, filed December 29, 2016, and its third Motion, filed January 11, 2017. Additional **law and authorities cited therein** supporting reversal or dismissal of the SCDPS decision include: ***Dan's City Used Cars, Inc. v. Robert Pelkey*, 133 S. Ct 1769 (2013*); City of Columbus v. Ours Garage and Wrecker Service, Inc.*, 536 U.S. 424 (2002); *Modzelewski's Towing and Recovery, Inc. v. Commissioner of Motor Vehicles*, 322 Conn. 20, 139 A. 3d 594 (2016) (re preemption of state laws related to a price, route, or service of any motor carrier, including towing and recovery vehicles, with respect to the transportation—i.e. movement of property, such as pretowing/recovery, towing, and temporary storage of an item in transit to its final destination regulation); and 49 USC §14501(c) (2015)** and further in *Order of Dismissal & Remand in Oncology & Hematology Associates of South Carolina, LLC vs. SCHDEC & Bon Secours-St.Francis Health System, Inc.,St.Francis Hospital,Inc.,* SCALC Docket No.05-ALJ-07-0158-CC

A wrecker service may appeal the decision of the troop commander imposing an immediate suspension to the patrol commander, however, *in the interest of public safety a suspension for noncompliance with safety or qualifications criteria shall remain in effect during an appeal, unless and until the wrecker service demonstrates compliance with all safety and qualifications criteria to the satisfaction of the troop commander or higher authority.*
(*Emphasis added*)

(by Judge Geathers, June 28, 2005); *SC Oncology & Hematology Associates of S.C., et al, v. SCHDEC, et al*, 387 S.C. 380, 692 S.E. 2d 920 (2010), *MRI at Belfair, LLC v. SCHDEC*, 379 S.C. 1, 664 S.E.2d 471 (2008), *Marlboro Park Hospital v. SCHDEC,* 358 S.C. 573, 595 S.E. 2d 851 (Ct. App. 2004), *Brown v. SCHDEC,* 348 S.C. 507, 560 S.E. 2d 410 (2002), and *Dorman v. SCHDEC*, 350 S.C. 159, 565 S.E. 2d 119, 126 (Ct. App. 2002) (The *ALJ is the fact finder* in this matter for purposes of administrative and judicial review and does not sit in an appellate capacity); *Anonymous (M-156-90) v. State Board of Medical Examiners,* 329 S.C. 371, 496 S.E. 2d 17 (1998) (In weighing the evidence and deciding a contested case on the merits, the ALJ must make findings of fact and conclusions of law by a *preponderance of the evidence*, (which rests upon **Respondent herein under Rule 29 (B), SCALC, due to its imposition of a sanction on Petitioner**); *State v, Grooms*, 343 S.C. 248, 540 S.E. 2d 99 (2000) (Preponderance of the evidence is defined as "the *greater weight of the evidence*"); *Coleman v. Palmetto State Life Ins. Co.*, 241 S.C. 384, 128 S.E. 2d 699 (1962) ("*Evidence of allegations must be sufficient and probative* of the matter to be proven."); *Florence County Dep't of Social Serv. v. Ward*, 310 S.C. 69, 425 S.E. 2d 61 (1992) ("As trier of fact, the *ALJ is not compelled to accept an expert's testimony, but may give it the weight and credibility as the Judge determines it deserves.*"); *Triska v. SCHDEC*, 292 S.C.190, 355 S.E. 2d 531(1987), superseded by statute as to the definition of a "contested case," and *Captain's Quarters Motor Inn, Inc. v. South Carolina Coastal Council*, 306 S.C. 488, 413 S.E. 2d 13 (1991) (As a state administrative agency, *SCDPS "can only exercise those powers conferred upon it by the General Assembly.*"); and *Paschal v. State Election Commission,* 317 S.C. 434, 454 S.E. 2d 890 (1995) *("When the language of a statute or regulation is clear and unambiguous, a court in its application of*

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the law to the facts is to impose the meaning therein without employing the rules of statutory interpretation.").

5. **A brief summary of the facts to be presented at the hearing:**

Petitioner is a South Carolina corporation, which--through its Registered Agent, Walter Jeffry 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 a second term as President of the Towing And Recovery Association Of South Carolina (TRASC). Petitioner 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. SCDPS conducted a faulty investigation and erred in disciplining Petitioner, concerning the incident at issue.[5]

---

[5] Specific facts include:

(a) according to the SCDPS Traffic Collision Report of the accident, it occurred at approximately 1:05 am on February 9, 2016 and resulted both the Premier tractor and trailer being overturned and totaled;

(b) the driver was charged with "traveling too fast for conditions";

(c) Premier is the owner/carrier of the tractor/trailer;

(d) the cargo was over 40,000 lbs. of dog food in different sized bags, which Wayne's saved and removed from the scene in its trailer on the scene;

(e) within a few hours from the time of the accident, Premier's insurance adjustor from Sentry Insurance Co. was onsite during the darkness documenting the severity of the accident and providing SCDPS with 69 photographs relating to it, which Petitioner received on July 19th as parts of its Responses to a FOIA Request;

(f) Jeff Corbett and other staff were also onsite for Wayne's beginning special recovery and towing and clean-up operations;

(g) neither Col. Oliver, Captain Grice, Captain Hughes, Lieutenant King, nor Robert (Bob) Watson was ever on the scene of the accident during such operations;

(h) Wayne's generated and issued an initial invoice on Feb. 10th in good faith for $69,017.19 that included an $8,000 entry for Air Cushions, which it thought had been lost due to having been punctured, and Wayne's also provided Watson a copy at his request and representation he was the authorized designee for Premier Transportation/Sentry Insurance Co.;

(i) after additional recovery were completed Wayne's revised its initial invoice

downward several times in good faith;

(j) Wayne's owner Jeff Corbett and Premier President Tim Pilato negotiated a complete, mutually agreeable settlement by final invoice, dated Feb. 10th and transmitted on March 4th ;

(k) on or about March 8th, Wayne's received payment in full in the amount of $48,633.19;

(l) despite such complete settlement, SCDPS nevertheless issued its Notice of Proposed Disciplinary Action by letter, dated April 25, 2016, which Wayne's timely challenged;

(m) according to Lt. King's memo to Captain Grice, dated March 4th, on Feb. 16th Lt. King received an email from the Captain directing him to make contact with Bob Watson about the accident, which he did; Watson sent him a copy of the initial invoice and called the Lieutenant on February 19th ; and King recommended Wayne's be permanently removed from the Wrecker Rotation List;

(n) Watson then emailed a complaint about the billing to the Lieutenant as President of Recovery Resolution Specialists in North Carolina;

(o) by memo, dated March10th, Captain Grice thereafter advised Captain Hughes he recommended Wayne's be removed from the Wrecker Rotation List;

(p) by letter, dated April 25th, SCDPS notified Wayne's of proposed disciplinary action and scheduled a hearing for August 8th at its Blythewood office at which Captain Grice presided and Lt. King, Captain Hughes, SCDPS General Counsel Ganjehsani and Assistant General Counsel Gore; and Sgt. Borcowski attended for SCDPS and Jeff and Sherry Corbett, Doug Busbee, and undersigned counsel attended for Wayne's;

(q) in advance of the hearing Wayne's through undersigned counsel had submitted legal memoranda identifying issues, defects, and supporting authorities and also submitted additional supporting documentation within 5 days of the close of the hearing, as permitted by SCDPS;

(r) thereafter SCDPS issued its decision, dated September 26th, imposing a suspension of Wayne's for 120 days, beginning December 12th, and continuing through a point in time in the future when Wayne's had SCDPS approval of its 2017 Wrecker Rotation List Application (Application);

(s) SCDPS approved Wayne's Application on November 30, 2016;

(t) SCDPS began its suspension of Wayne's from all classes of tows on December 12th and it continued until the afternoon of December 16th at which time SCDPS and Wayne's counsel had mutually agreed the suspension would be stayed through January 31, 2017, as approved by the Court;

(u) on January 17th, SCDPS and Wayne's through their counsel advised the Court they had agreed to a 15-day extension until Feb. 2nd to serve and file their respective Prehearing Statements and an extension through February 2017 to stay the suspension without waiver of any rights, as approved by the Court.

6. **A summary of any motions expected to be raised at the hearing and the appropriate authority for the motion:**

Other than its pending Motions, Petitioner currently does not anticipate filing any particular motion for the Court's consideration, unless it requires a separate motion to exceed taking only 3 depositions in accordance with SCALC Rule 21 (A) and Rule 30, SCRCP. Petitioner otherwise so moves to be allowed to be authorized to take these 4 depositions, consistent with SCALC Rule 21 (A), and also reserves the right to filing other motions, consistent with the Court's Rules and guidance.

7. **A list of proposed witnesses and exhibits:**

Note: Petitioner's proposed witnesses are not necessarily listed in their order of appearance.

Witnesses:	**Exhibits:**
Jeffry Corbett	attachments to filed documents in Exhibits to date, as well as portions of records submitted to SCDPS by Petitioner and received from SCDPS in FOIA Responses
Sherry Corbett	generally same as above currently
Doug Busbee	Wrecker Rotation Fee Schedules
Bill Rawl, CPA, Lexington, SC	expense/cost recovery—same as above currently
Gaynell Rochester, expert, re towing and regulatory affairs and applied rates INA Towing 6801 Power Line Drive Florence, KY 41042	generally same as above currently
John C. Herring (**update**)	statement by him in SCDPS record re Herron winch and tow job by him for Wayne's
Possibly any or all of the following SCDPS staff:	
Colonel Oliver Captain Grice Captain Hughes Lieutenant King	

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One or more additional experts, depending on additional discovery undertaken.

8. **Whether discovery is necessary and, if so, a proposed schedule:**

Petitioner anticipates propounding at least one set of interrogatories and requests for production, as well as requests for admissions. It also anticipates needing to request and take depositions of at least the 4 above members of the SCDPS Staff involved in this matter, as referenced above, with the Court's permission. Petitioner's counsel will confer with Respondent's counsel and develop a proposed schedule--such as concluding written discovery and the taking of depositions by the end of March or April--or as otherwise deemed appropriate by the Court.

9. **The estimated length of the hearing:**

Petitioner currently estimates the hearing will take approximately 2-3 days.

10. **Any dates in the next 120 days when you will not be available for a hearing:**

Petitioner's counsel and/or witnesses have known conflicts between now and June, as follows: generally through April 15th for Bill Rawl, CPA; rate/regulatory expert Gaynell Rochester on February 21st – 27th , April 16th-25th , May 3rd-14th, and June 15th-30th.[6] Counsel for the parties will discuss specific conflicts further in conjunction with proposing a Scheduling Order or as the Court deems appropriate.

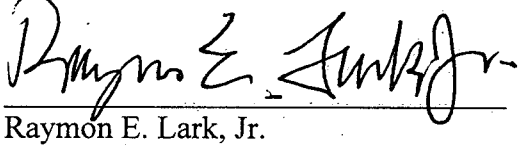
11. **An email address where you can be reached:**

Counsel for Petitioner can be reached at relark@austinrogerspa.com.

[6] Additional known conflicts through September now include: June 12th – 21st ; June 28th – July 1st ; July 4th ; July 12th-14th; August 11th -14th; August 16th-20th ; September 4th; and September 11th – 24th.

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Respectfully submitted,



Raymon E. Lark, Jr.
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Attorneys For Petitioner

February 2, 2017

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OF COUNSEL:
JEFFERSON D. GRIFFITH, III

July 28, 2017

VIA HAND DELIVERY
The Honorable Jana Shealy, Clerk
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Petitioner's Contested Case Exhibit List As Supplement To Prehearing Statement & Proof Of Service In *Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department Of Public Safety,* Respondent, Docket No.: 16-ALJ-30-0410-CC, Our File No. 16145

Dear Ms. Shealy:

Enclosed for filing, please find the original set of the above, as well as an extra set to be stamped and returned to our courier.

Thank you for your assistance. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

AUSTIN & ROGERS, P.A.

Raymon E. Lark, Jr.

Attorneys for Petitioner

Enclosures
cc: Andrew F. Lindemann, Esquire **(W/ENCLOSURES VIA HAND DELIVERY & EMAIL)**
Marcus Gore, General Counsel (Interim), Esquire **(W/ENCLOSURES VIA EMAIL)**

FILED
JUL 28 2017
000125 SC ADMIN LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	Docket No. 16-ALJ-30-0410-CC **PETITIONER'S CONTESTED CASE HEARING EXHIBITS**

AUSTIN & ROGERS, P.A.

By: _____

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July 31, 2017

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Attorneys for Respondent

FILED
JUL 28 2017
SC ADMIN LAW COURT

1. Petitioner's Petition For Contested Case Hearing and Motion For TRO/ Injunctive Relief With Memorandum Of Law, **Exhibits A through D**, And Verification and Affidavit of Jeffry Corbett, and Acceptance of Service (filed Dec. 14, 2016);

2. **Exhibits E and F** attached to Petitioner's Amended Motion For Writ Of Mandamus and/or Summary Judgment and/or TRO/Injunctive Relief and Proposed Order As Memorandum Of Law with Supplemental Verification and Affidavit of Jeffry Corbett (filed December 29, 2016);

3. Order Granting Motion For Extension and Order Extending Stay (filed January 18, 2017);

4. Respondent's Responses To Petitioner's Requests For Admission (dated March 27, 2017);

5. **Depositions Exhibit 6**, DPS FOIA Responses to Wayne's Request # 1607053 re proposed disciplinary action-Premier Transportation (dated July 19, 2016) (70 pages);

6. **Depositions Exhibit 10**, which includes additional emails, involving DPS, Bob Watson, and others (without the 35 pages of photos at accident scene by Premier insurance adjustor, which are included in **Exhibit 5** above);

7. **Depositions Exhibit 12** (DPS Policy 300.06 re Audio/Video Recordings, effective 2/17/16);

8. **Depositions Exhibit 13** (DPS Audio/Video Monitor Report Form. Revised 3/2016);

9. Cargo Confirmation Re Premier Shipment Of Dog Food Via Missouri to Gaston, SC to Macon, GA **(406)**;

10. SCDPS HP FAQs, Certificates of Achievement (S. Corbett/J. Corbett), CV of G. Rochester and Resume of B. Rawl **(381-399)**;

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11. Richmond County GA Media Updates Re Accident (**429-431**);

12. Georgia/South Carolina Interstate 20 State Line Bridge Maintenance Agreements (in response to GA Open Record Request and SC FOIA Request) (**412-428**);

13. Accident Photos by Wayne's (February 9, 2016) (**564-606**) (in chronological order);

14. Wayne's Premier Accident Timeline, related emails, and initial versions of split invoices (**132-165**);

15. Georgia/South Carolina Boundary Maps (**432-433**);

16. Georgia DPS Wrecker Qualifications/Rotation Lists (Policy No. 7.05, Revised 8/10/15) (**434-442**);

17. Wayne's Georgia Rotation Wrecker Service Registration Information (2015 for 2016) (**619-621**);

18. GDOT Work Summaries On I-20 Bridge From Premier Accident (in response to GA Open Record Request) (**611-618**)

19. GA/SC Proposed I-20 Expansion Conceptual Drawings (**408-411**);

20. Excerpts of *SCDPS Operations Manual* (Revised September 25, 2013) (**443, 444, 453, 458, 459, 462, 463, 465, 469, 470, 481, 490, 497, 498, 499, and 500**);

21. American Towing Alliance (Bob Watson, Founding Partner)-Wayne's Automotive documentation of bad debts of Alliance To Wayne's (**300-315**);

22. Amended Notice Of Hearing (filed July 6, 2017); and

23. Affidavit of Service, Subpoena/Acceptance of Service Re Colonel Michael Oliver to testify subject to call (served July 13, 2017, and filed July 14, 2017).

Austin & Rogers, P.A.

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OF COUNSEL:
JEFFERSON D. GRIFFITH, III

file

July 31, 2017

VIA HAND DELIVERY
The Honorable Jana Shealy, Clerk
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Petitioner's Update To Contested Case Exhibit List As Supplement To Prehearing Statement
In *Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department Of Public Safety,* Respondent, Docket No.: 16-ALJ-30-0410-CC, Our File No. 16145

Dear Ms. Shealy:

Please note that page 2 of Petitioner's Contested Case Hearing List to be distributed prior to the hearing today includes reference to Petitioner's Exhibit 24, described as:

366-380: prior 2015 Watson-Busbee encounter documentation, D. Busbee letter to M. Gore (2/29/16) with attachments, letter to D. Busbee from W. Ganjehsani in reply (3/1/16), D. Busbee presentation to TRASC members (5/2016), TRASC brochure.

Also being added is Petitioner's Exhibit 25 on page 3, described as:

Supplemental supporting information re Herron matter still pending before DPS provided by Wayne's on August 12, 2016 (9 pages). *

Thank you for stamping the 3 copies of this letter for your file and DPS counsel below.

Sincerely,

AUSTIN & ROGERS, P.A.

Raymon E. Lark, Jr.

Attorneys for Petitioner

FILED
JUL 31 2017
SC ADMIN LAW COURT

* Also, Petitioner's Ex. 26, G. Rochester's Summary of Opinion.

cc: Andrew F. Lindemann, Esquire **(VIA HAND DELIVERY)**
Marcus Gore, General Counsel (Interim), Esquire **(VIA HAND DELIVERY)**

Attachment
16-AW-30-0410-CC
02/02/17

SCDPS Reg. 38-600, as amended

SOUTH CAROLINA STATE REGISTER

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STEPHEN T. DRAFFIN, DIRECTOR
LYNN P. BARTLETT, EDITOR

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Published April 23, 2004
Volume 28 Issue No. 4
This issue contains notices, proposed regulations, emergency regulations, final form regulations, and other documents filed in the Office of the Legislative Council, pursuant to Article 1, Chapter 23, Title 1, Code of Laws of South Carolina, 1976.

000130

Resubmitted: February 24, 2004

Document No. 2821
DEPARTMENT OF PUBLIC SAFETY
CHAPTER 38
Statutory Authority: 1976 Code Sections 23-6-20 and 23-6-400 et seq

Article 7 Highway Patrol, Subarticle 1 Wrecker Regulations

Synopsis:

The changes will update existing regulations to enhance the administration of the Department's Wrecker Rotation List by clarifying the duties and responsibilities of wreckers on the rotation list and revising the system for handling complaints regarding wrecker rotation calls under the Department's Wrecker Rotation List.

Regulation 38-600 Addresses the application process for wreckers that wish to be added to the Department's Wrecker Rotation List, responsibilities of wrecker's that are placed on the list and the complaint procedure for handling complaints related to rotation calls under the Department's Wrecker Rotation List.

Instructions: Replace with language of new regulation 38-600.

Text:

38-600. REGULATION OF WRECKER SERVICES:

The following regulations shall be followed by all wrecker services utilized by the South Carolina Department of Public Safety.

A. GENERAL

1. No commissioned South Carolina Department of Public Safety employee will hold any financial interest of any form in any wrecker service.

2. No commissioned South Carolina Department of Public Safety employee will recommend any wrecker service to the owner or driver of a wrecked or disabled vehicle during the performance of their duties.

B. QUALIFICATION CRITERIA

1. All wreckers shall have appropriate safety equipment, fire extinguishers, warning devices, flash lights and all other equipment necessary to protect the motoring public and be equipped with amber flashing lights visible in all directions for a distance of 500 feet in normal sunlight. Such equipment shall be maintained in good working order. All authorized amber flashing lights shall be activated and wrecker operators shall wear reflective traffic safety vests while performing recovery operations or when circumstances are such that the vehicle(s) being transported create a potentially hazardous condition for other motorists.

2. Each wrecker service on the rotation list must place a sign on the driver and front passenger door of each of its wreckers indicating the company name, address, and telephone number of the zone to which it is assigned. This sign shall be painted on the doors of the wrecker or otherwise permanently affixed to the doors. The letters of the sign must be no less than two inches high. If the wrecker is registered in a name other than that of the wrecker service, the owner's name must also appear on the doors in letters no less than one inch high. All lettering on wreckers shall be plainly visible and shall be in a color that contrasts to that of the wrecker.

3. Each wrecker service on the rotation list must place a sign on the exterior of its business location clearly visible indication the company name, telephone number, and business hours.

4. Each wrecker service on the rotation list shall carry liability insurance on its wreckers and its premises in an amount not less than Three Hundred Thousand and no/100 ($300,000.00) Dollars for a class A wrecker, Five Hundred Thousand and no/100 ($500,000.00) Dollars for a class B wrecker and Seven Hundred Fifty Thousand and no/100 ($750,000.00) Dollars for a class C wrecker.

5. Each wrecker service on the rotation list shall carry insurance that covers vehicles, cargo, and other property in or on the vehicle during transit in an amount of not less than Seventy Five Thousand and no/100 ($75,000.00) for a class A wrecker, One Hundred and Fifty Thousand and no/100 ($150,000.00) for a class B wrecker and Two Hundred Fifty Thousand and no/100 ($250,000) for a class C wrecker.

6. Each wrecker service on the rotation list shall carry garage keeper's liability insurance covering customer's vehicles in an amount not less than One Hundred Thousand and no/100 ($100,000.00) for a class A wrecker, Two Hundred Thousand and no/100 ($200,000.00) for a class B wrecker and Two Hundred Thousand and no/100 ($200,000.00) for a class C wrecker.

7. Each wrecker owned by any wrecker service on a rotation list shall be equipped with a towing log. The towing log shall be maintained by the wrecker service and shall accurately reflect all towing done by the wrecker service at the request of the South Carolina Department of Public Safety. The South Carolina Department of Public Safety shall design the wrecker log format. Each wrecker service owner shall be responsible for producing this towing log upon request by a Department of Public Safety Inspector.

8. Wrecker operators must display professional behavior when conducting business at the request of the South Carolina Department of Public Safety.

9. Wrecker services and operators shall be familiar with and shall comply with the laws regarding solicitation from the highway. (Section 56-5-3180 of the South Carolina Code of Laws)

10. A new rotation list will be created each calendar year. A wrecker service desiring to be on the rotation list in the next year must apply in writing by October 1st and be inspected and qualified prior to December 31st. On December 31st of each year the Department of Public Safety will publish the wrecker rotation list to be effective January 1st of the following year.

11. A wrecker service not currently on the South Carolina Department of Public Safety wrecker rotation list and desiring to be added may apply in writing at any time but must first be inspected and qualified.

12. A wrecker service that fails to pass inspection and qualification as prescribed by regulation will be notified of the deficiencies. When the wrecker service corrects the deficiencies, it may request a new inspection.

C. WRECKER SERVICE ROTATION LIST/RESPONSIBILITIES

1. Each Highway Patrol Troop will establish zones for towing, and a wrecker rotation list will be prepared for each zone. A wrecker service requesting to be on the rotation list for a particular zone must physically have a business within that zone. The wrecker to be used for that zone must be housed at that location during normal business hours. . "Normal business hours" or "business hours" as used in this regulation means at least from 8:30 a.m. to 5:00 p.m., Monday through Friday and additional hours designated and posted by the company. The vehicle towed must be towed to the same business location where the wrecker is housed during normal business hours, unless the vehicle owner or operator requests that the vehicle be towed to another location. Normal business hours must be clearly posted. Storage lots are not considered as a separate business. A wrecker service or owner can only be on the list one time in any zone. There will only be one telephone number for one wrecker

service at any one address on rotation. Pagers and cellular phones are not acceptable. A wrecker service must immediately notify the Highway Patrol upon change of address or telephone number.

2. Separate rotation lists will be maintained for each category of wreckers. When the services of a categorized wrecker are needed and when the owner or driver of the vehicle to be towed has no preference as to which wrecker service he/she desires, a wrecker will be called from the appropriate wrecker rotation list. The investigating officer will use his/her discretionary authority to deny request for specific wrecker service whenever the request will delay the timely restoration of safe traffic movement.

3. The wrecker service must have a wrecker of sufficient size and strength to handle the job. The South Carolina Department of Public Safety will have the right not to call a wrecker service that, in its opinion, fails to meet this qualification for a specific job. Under these conditions, the wrecker service not called will remain on the top of the rotation list.

4. Wreckers shall respond only upon the request of the Department of Public Safety.

5. Wrecker services will be called from the rotation lists in the order in which they appear on the lists. If a particular wrecker service is unavailable when called, it will be passed over and the next wrecker service on the list will be called to the scene.

6. Wrecker services shall be located within the established wrecker zone available to the South Carolina Department of Public Safety to respond to rotation calls as well as request by the Department for the immediate release of personal property on a twenty-four hour, seven day a week basis. The wrecker service location shall have an agent present during business hours and at the request of the owner of the towed vehicle or his designee, the wrecker service must immediately release personal items such as medicines, medical equipment, keys, clothing, and tools of the trade, child restraint systems and perishable items. The wrecker service shall also be available for the release of the towed vehicle to the vehicle owner or vehicle owner's designee on a reasonable after-hours basis, including weekends. Should there be a dispute between the vehicle owner or the vehicle owner's designee and the wrecker service regarding any storage fees or charges, the vehicle owner or the vehicle owner's designee must provide the wrecker service written notification of the dispute. If the dispute is settled in favor of the wrecker service then the owner of the towed vehicle is liable for all charges which accrued pending the resolution. The wrecker service must cease any storage charges that would otherwise accrue from the time the wrecker service receives written notification of the dispute until the dispute is settled. Upon release of the vehicle, the wrecker service shall provide an itemized statement of all charges. If the vehicle owner is not available to sign a release, the wrecker service must release the vehicle to the owner's insurer or to the owner's designee.

7. The wrecker service must be willing to accept collect calls from the South Carolina Department of Public Safety. If a call is refused or unanswered, the wrecker service will lose that rotation call.

8. When a wrecker service or wrecker driver is unable to answer a call, the Patrol shall be promptly notified of the reason for the unavailability. A wrecker service or driver cannot refuse a call without prior notification of unavailability or without just cause.

9. Unless the owner or driver of a vehicle is incapacitated or unavailable, the investigating officer at the scene will make a determination of the owner or driver's preference of a wrecker service. The investigating officer will use his/her discretionary authority to deny request for a specific wrecker service whenever the request will impair the timely restoration of safe traffic movement. In the event the owner or driver of the vehicle does not have a preference or preference cannot be determined, the investigating officer will utilize a wrecker from the rotation list. The wrecker service responding to such call shall provide the vehicle operator with a card containing the wrecker service name, address, telephone number and business hours.

10. A wrecker service shall respond, under normal conditions, in a timely manner not to exceed 45 minutes. Failure to respond in a timely manner may result in a second rotation wrecker being requested. If the second

wrecker is requested before the arrival of the first rotation wrecker, the initially requested wrecker will forfeit the call and will immediately leave the collision/incident scene.

11. A wrecker service may respond with a wrecker of a higher class than requested. However, wrecker service is limited to the rates of the requested classification.

12. It shall be the responsibility of the wrecker service to perform a general clean-up of the accident area before leaving the scene of any accident. This responsibility requires the wrecker service to remove all debris such as broken glass, liquids, and materials from an accident area by sweeping up such debris and removing this material from the scene in a garbage can-type container on each wrecker. All wreckers shall be equipped with brooms, shovels, commercial absorbent and all other equipment necessary to fulfill this responsibility.

13. Each wrecker service shall be responsible for securing personal property in a vehicle at an accident scene. The wrecker service shall be responsible for preserving personal property in a vehicle towed from an accident scene.

14. The wrecker service shall maintain the towed vehicle in a safe storage area in a manner that would prohibit further damage and ensure protection of personal property. This may be a locked building or a secured fenced-in area where the stored vehicles and other property will not be accessible to the public. Wrecker services may charge a daily storage fee, commencing 12 hours after the vehicle is towed to the storage area and terminating when the vehicle owner or vehicle owner's designee offers or attempts to pick up the vehicle and offers to pay the wrecker service's legitimate accrued charges.

a. Outside storage facilities must be sufficiently lighted, fenced, and locked for protection of vehicles and property.

b. Fencing around storage facilities must be of adequate size to discourage theft of vehicles and property stored within, and may not be less than six feet in height.

c. Inside storage, covers, tarpaulins, or other devices must be available for protection of vehicles or personal property.

15. A wrecker service may secure assistance from another wrecker service when necessary to complete the recovery; however, this does not supersede paragraph 3 of this section nor does it permit wrecker services to accept a rotation call and dispatch the call to secondary wrecker services. Only one bill is to be submitted to the owner or operator for the work performed.

16. Motorist utilizing the South Carolina Department of Public Safety Wrecker Rotation List will have the option of paying by major credit card. The wrecker service may request, prior to dispatching, if the motorist intends to pay by major credit card. If the wrecker service does not accept major credit cards, the next wrecker or towing service that does accept credit cards will be utilized. Any wrecker or towing service called that does not accept credit cards will remain on the top of the rotation list.

D. COMPLAINTS/DISCIPLINARY PROCEDURES

1. Complaints from or about wrecker services regarding an incident involving the Highway Patrol or its operation of the wrecker lists must be received within thirty days of the alleged incident. Complaints should be directed to the Captain of the Troop where the incident occurred. Complaints will be forwarded along with a report to the Colonel, or his designee, at Patrol headquarters. An appeal from the decision of the Troop commander should be made to the Colonel of the Highway Patrol.

2. The Department will enact a Wrecker Rotation Disciplinary Policy setting out the procedures for enforcing this regulation.

3. Failure of any wrecker service to comply with this regulation will result in disciplinary action in accordance with the South Carolina Department of Public Safety Wrecker Rotation Disciplinary Policy.

4. If the Department has reason to believe that a wrecker service has failed to remain in compliance with qualification criteria set out in Section B, that the non-compliance continues, and that the non-compliance will be detrimental to the public, the Department may initiate immediate suspension procedures in accordance with the South Carolina Administrative Procedures Act.

5. An advisory committee, consisting of experts in the towing and towing related industries, will be created to review, upon request by the Department, complaints specific to the terms and conditions of this regulation. The advisory committee will be limited to reviewing specific issues raised in a complaint or appeal and making recommendations regarding the validity of the complaint as well as a fair and reasonable resolution. Advisory committee recommendations will not supercede Department of Public Safety policy nor will the committee make recommendations regarding disciplinary action for Department of Public Safety employees.

6. The advisory committee will be comprised of the following members:

a. A Highway Patrol Major who will act as chairman.

b. A Captain or higher-ranking member of the South Carolina State Transport Police (STP) appointed by the STP Colonel.

c. A member of the South Carolina Trucking Association appointed by the association.

d. A member of the South Carolina Towing and Recovery Association appointed by the association.

e. Insurance.

f. A representative from the SCDPS Office of General Counsel will act as a non-voting advisor.

7. All members of the advisory committee will serve for a period of one year beginning January 1st and ending December 31st. Members may serve consecutive terms. A quorum will be a majority of the voting members present.

E. WRECKER CLASSIFICATION

1. Class A: Light Duty Wrecker

Class A Wreckers, for towing vehicles weighing seven thousand (7,000) pounds or less, (passenger cars, pickup trucks, motorcycles, small trailers, and similar vehicles) shall meet the following minimum requirements:

a. Conventional Wrecker

1) Minimum gross vehicle weight rating (GVWR) of not less than ten thousand (10,000) pounds.

2) Individual boom capacity of not less than eight thousand (8,000) pounds as rated by the manufacturer.

3) Individual PTO or hydraulic power winch capacity of not less than eight thousand (8,000) pounds as rated by the manufacturer with at least one hundred (100) feet of three-eighths (3/8) inch cable drum.

4) A manufactured wheel-lift with a retracting lifting capacity of not less than three thousand five hundred (3,500) pounds as rated by the manufacturer, with safety chains.

5) Come-A-Longs, chains, or other similar devices shall not be used as substitutes for winch and cable.

6) Dual rear wheels.

7) Additional safety equipment as specified by the regulations.

b. Rollback Wrecker

1) Minimum gross vehicle weight rating (GVWR) of not less than eleven thousand (11,000) pounds.

2) Must have at least an eight thousand (8,000) pound winch as rated by the manufacturer with at least fifty (50) feet of three-eighths (3/8) inch cable or larger.

3) Come-A-Longs, chains, or other similar devices shall not be used as substitutes for winch and cable.

4) Additional safety equipment as specified by the regulations.

2. Class B: Medium Duty Wrecker

Class B Wreckers, for towing vehicles weighing between seven thousand one (7,001) and seventeen thousand (17,000) pounds or multiple vehicles weighing seven (7,000) pounds respectively (medium-sized trucks, road tractors/trailers and similar vehicles), shall meet the following requirements:

a. The tow truck chassis shall have a minimum gross vehicle weight rating (GVWR) of not less than twenty two thousand (22,000) pounds.

b. Must have at least a twelve-ton boom assembly as rated by the manufacturer.

c. Two winches, each of ten thousand pound capacity or more as rated by the manufacturer.

d. A manufactured wheel-lift with a retracting lifting capacity of not less than six thousand five hundred pounds as rated by the manufacturer, with safety chains.

e. Come-A-Longs, chains, or other similar devices shall not be used as substitutes for winch and cable.

f. Additional safety equipment as specified by the regulations.

3. Class C: Heavy Duty Wrecker

Class C Wreckers, for towing vehicles in excess of seventeen thousand pounds (large trucks, road tractor/trailers and similar vehicles), shall meet the following minimum requirements:

a. Truck chassis having a minimum gross vehicle weight rating (GVWR) of not less than forty six thousand pounds.

b. Tandem axles or cab to axle length of not less than one hundred two inches.

c. A single or double boom with a capacity of not less than fifty thousand pounds as rated by the manufacturer.

d. A single winch with a capacity of fifty thousand pounds as rated by the manufacturer or an individual power winch capacity of not less than twenty-five thousand pounds as rated by the manufacturer and a total rating with both winches of fifty thousand pounds.

e. A manufactured wheel-lift with a retracting lifting capacity of not less than twelve thousand pounds as rated by the manufacturer, with safety chains.

f. One hundred fifty feet of five-eighths inch cable or larger, plus fifty feet of five-eighths inch drop cable.

g. Airbrakes constructed so as to lock wheels automatically upon failure.

h. Light and air brake hookups.

i. Come-A-Longs, chains, or other similar devices shall not be used as substitutes for winch and cable.

j. Additional safety equipment as specified by the regulations.

F. RATES

1. Only wrecker services on the South Carolina Department of Public Safety wrecker rotation list shall be subject to these regulations governing fees.

2. Fees charged for rotation list calls shall be reasonable and not in excess of those rates charged for similar services provided in response to requests initiated by any other public agency or private person. The reasonableness of the fees charged will be determined in the following manner:

a. A wrecker service shall submit proposed fees along with its annual application. Separate fee schedules shall be submitted for each class of wrecker, and, for each class, the fee for standard towing, heavy-duty towing, storage, and special operations.

(1) A standard tow is defined as responding to the scene, hooking up the vehicle, performing a general clean up if the call involves responding to a collision scene and providing responsible assistance to the owner to get to a safe location.

(2) Special operations are operations involving the process of uprighting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle and/or the recovery of a load which has spilled, or the off-loading and reloading of a load from an overturned vehicle performed to right the vehicle.

b. The Troop commander will determine the reasonableness of the fees based upon the average of the proposed fees submitted and a comparison of that Highway Patrol Troop's industry standards, by wrecker zone, for similar operations.

c. A copy of the approved fees will be kept in the wrecker at all times. It will be presented upon request to the person for whom the tow services were provided, their agent, any Department of public Safety officer at the scene, or any Department of Public Safety supervisor who is inspecting the wrecker or wrecker service.

d. A wrecker service shall submit proposed fees with the annual application.

e. Failure to submit proposed fees with the annual application will result in utilizing the last proposed fees submitted.

f. Wrecker services that submit fees that are determined to be excessive or unreasonable will be notified and allowed to resubmit fees within five business days of notification. A wrecker service will be allowed to resubmit fees once. Failure to resubmit reasonable fees will disqualify the wrecker service from the Highway Patrol rotation list until January 1st of the following year.

3. The Troop commander will complete a review of the fees for Highway Patrol rotation wrecker services for the Troop during inspection and qualification to determine its validity and reasonableness.

Validity will be based upon telephone quotes, posted rates, charges to retail customers, etc. Reasonableness will be determined as compared to other rates.

4. Wrecker services may lower rates at any time and may raise rates for non-Department of Public Safety calls at any time.

Preliminary Fiscal Impact: The Department anticipates no fiscal impact as a result of these regulations.

Statement of Rationale:. The Department consulted with industry members on changes that were necessary to update the regulations.

South Carolina Department of Public Safety

Office of the Director
10311 Wilson Blvd. Blythewood, SC Post Office Box 1993 Blythewood SC 29016

POLICY	200.19
EFFECTIVE DATE	SEPTEMBER 14, 2004
ISSUE DATE	SEPTEMBER 14, 2004
SUBJECT	WRECKER ROTATION DISCIPLINARY POLICY
APPLICABLE STATUTES	§23-6-20; R 38-600
APPLICABLE STANDARDS	
DISTRUBTION	TO ALL EMPLOYEES

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

I. PURPOSE

In addition to establishing a Wrecker Rotation Disciplinary Policy as required by Regulation 38-600, South Carolina Code of Regulations, the purpose of this directive is to establish a method of delivery of quality wrecker services to the motoring public, when necessary, at reasonable costs; establish a fair, equitable and impartial system of rotating department calls for wrecker services among competing independent contractors; and establish a fair and equitable disciplinary and appeals system in connection with department regulation of wrecker services, including procedures for resolving disputes arising from department calls for or regulation of wrecker services or from the department's operation of the rotation lists, so as to ensure that the rights of all parties are protected.

II. POLICY

The officers and troopers of the Highway Patrol Division of the Department of Public Safety must frequently call upon a wrecker service to tow or remove abandoned, damaged, disabled, or wrecked motor vehicles from the highways of the state and accident scenes. Accordingly, to ensure a fair, equitable and impartial rotation among competing wrecker services, it is the policy of the department that each Highway Patrol Troop within the Highway Patrol Division must establish a zone or zones for towing certain damaged, disabled, or wrecked motor vehicles from the highways and accident scenes, and must prepare,

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maintain and use wrecker rotation lists for each towing zone in accordance with applicable law. Further, to ensure the delivery of quality and courteous wrecker services to the motoring public at reasonable costs, it is the policy of the department to enforce the law, regulations, and standards relating to wrecker services by means of fair and equitable disciplinary procedures and, when necessary for enforcement purposes or to protect the public, by administering appropriate disciplinary measures.

III. DEFINITIONS

For purposes of this directive:

Advisory Committee - The advisory committee established by Regulation 38-600 to review complaints specific to the terms and conditions of Regulation 38-600, relating to regulation of wrecker services utilized by the Department of Public Safety, and comprised of the following members: a Highway Patrol major, who is the chairman; a captain or higher-ranking member of the South Carolina State Transport Police appointed by the colonel of the State Transport Police; a member of the South Carolina Trucking Association appointed by the association; a member of the South Carolina Towing and Recovery Association appointed by the association; a representative from the insurance industry appointed by the South Carolina Department of Insurance; and a representative from the South Carolina Department of Public Safety Office of General Counsel who is a non-voting advisor.

Quorum - A majority of the voting members present.

IV. DISCIPLINARY PROCEDURES

A. Complaints

A complaint from or about a wrecker service arising out of an incident involving the Highway Patrol, or regarding the Highway Patrol's operation of the rotating wrecker lists, must be received within thirty days of the alleged incident. The complaint should be directed to the captain of the troop where the incident occurred.

B. Investigation of Complaints

Upon initial receipt of a complaint, the troop commander, or his designee, must investigate the matter complained of and determine whether the complaint is founded or unfounded; whether a violation of a law, regulation or department policy relating to the regulation of wrecker services, or to the operation of rotating wrecker lists, has occurred. In the absence of facts or circumstances requiring a criminal investigation, the troop commander will normally complete the investigation within thirty business days after receipt of the complaint.

C. Troop Commander's Decision and Disposition

If a complaint is founded, the troop commander may order an appropriate redress of the matter complained of, impose an appropriate disciplinary sanction upon an offending party, or both. If the complaint is unfounded, or if no cognizable violation of a law, regulation or policy has occurred, the troop commander shall dismiss the complaint.

Before imposing any disciplinary action the wrecker service must be informed that, as a result of an investigation into the matter giving rise to the disciplinary proceeding, the troop commander is considering imposing a specified level of discipline.

The notice to the wrecker service must contain:

1. a statement of charges in sufficient detail to enable the wrecker service to understand the conduct, infraction, violation, offense or cause, for which the wrecker service is being disciplined, together with a statement of previous offenses, if any, considered in arriving at a decision to impose the proposed level of discipline;
2. that the wrecker service has a right to file a statement, setting forth its position concerning the matter giving rise to the proposed level of discipline;
3. the wrecker service has ten calendar days to respond;
4. the consequences of the proposed level of discipline; and
5. any right of appeal of the decision and where and how that appeal may be made.

The troop commander must forward the complaint, his written report of findings and his decision to the patrol commander, at Patrol headquarters, within thirty business days after receipt of the complaint. Also, the troop commander shall notify all parties involved in the complaint of the results of the investigation and his decision, in writing, within the same thirty business day period.

D. Appeal of Troop Commander's Decision

Within ten calendar days after receipt of the troop commander's decision in writing, a party aggrieved by a troop commander's decision may submit a written appeal, setting forth the grounds therefore, to the colonel of the Highway Patrol.

E. Patrol Commander's Action On Appeal

When an appeal from a troop commander's decision is received, the patrol commander may summarily concur, modify, reverse, or order another disposition of the complaint consistent with the facts substantiated in the record, department policy, and applicable law. The patrol commander

shall request that the advisory committee review the appeal and make recommendations before making a final decision.

F. Advisory Committee Recommendations

In appeals where recommendations of an advisory committee are sought, the patrol commander will forward a request for advisory committee review to the committee chairman. The chairman must then schedule a date, time and location for the committee to convene. The committee must convene within thirty days from the date the request is received, unless the chairman states in writing that he has made a good faith effort but has been unable to assemble a quorum within the thirty-day period. In that event, the committee will convene as soon as feasible.

When convened, the advisory committee is limited to reviewing specific issues raised in a complaint or appeal and making recommendations regarding the validity of the complaint as well as a fair and reasonable resolution. Advisory committee recommendations may not supersede Department of Public Safety policy nor will the committee make recommendations regarding disciplinary action for Department of Public Safety employees.

The recommendations of the advisory committee must be forwarded to the patrol commander, in writing, within seven calendar days of the review. The patrol commander may use the recommendations of the advisory committee as a basis for his decision.

G. Patrol Commander's Final Decision

The patrol commander will issue a written decision on the appeal, and parties will be notified in writing of the final decision of the patrol commander within thirty business days of the date of the appeal or the date the advisory committee's recommendation is received, whichever is later.

For purposes of the Administrative Procedures Act, the patrol commander's final decision on an appeal relating to regulation or discipline of a wrecker service or the operation of wrecker service rotation lists is the final decision of the Department of Public Safety.

V. DISCIPLINARY LEVELS

A. **Oral Reprimand** – An oral reprimand is imposed for a minor offense or infraction not requiring a permanent written record for future disciplinary purposes. An informal written record of the reprimand will be maintained in the wrecker service file for one year, unless further discipline is imposed. The wrecker service has the right to review the file.

B. **Written Reprimand** - A written reprimand is imposed for an offense or infraction not requiring suspension or termination which is of such a

nature as to require a permanent written record, and for an offense or infraction for which a permanent written record is or may be needed for future disciplinary purpose. A formal written record of the reprimand will be placed and maintained in its wrecker service file. The wrecker service has a right to review the file. The written reprimand may be used to support subsequent disciplinary action against the wrecker service and becomes a part of the permanent file of the wrecker service.

C. **Immediate Suspension** – Immediate suspension is imposed when it is determined that a wrecker service is not in compliance with the safety or qualifications criteria prescribed by law or regulation for wrecker services utilized by the Department of Public Safety, and that the noncompliance of the wrecker service is detrimental to the public. A wrecker service may appeal the decision of the troop commander imposing an immediate suspension to the patrol commander, however, in the interest of public safety a suspension for noncompliance with safety or qualifications criteria shall remain in effect during an appeal, unless and until the wrecker service demonstrates compliance with all safety and qualifications criteria to the satisfaction of the troop commander or higher authority. The suspension remains a part of the permanent file of the wrecker service.

D. **Suspension for Cause** – A suspension for cause is imposed for an infraction, violation, or offense, or for cause other than noncompliance with safety or qualifications criteria and shall not exceed ninety calendar days. A record of the suspension will become a permanent part of the wrecker service's file. The wrecker service will be restored to the wrecker rotation list when the suspension has ended, unless another disciplinary action is taken.

E. **Removal** – Removal from the rotation list is imposed upon recommendation by the troop commander to the patrol commander. When an offense or infraction is of such a nature as to require removal, or when a wrecker service has exhibited a continuing pattern of infractions, violations, offenses or misconduct when responding to department calls for wrecker services, a troop commander or higher authority may impose disciplinary action upon a wrecker service in the form of a written reprimand or suspension while simultaneously forwarding a recommendation to the patrol commander that a wrecker service be removed from the wrecker rotation list. The patrol commander's decision to remove the wrecker service from the department's wrecker rotation lists is the final agency decision for purposes of the Administrative Procedures Act.

VI. BILLING DISPUTES

The troop commander or designee shall resolve all disputes between wrecker service and vehicle owners or their designees regarding fees charged.

VII. INFORMAL COUNSELING

Nothing contained in this policy directive prohibits the informal counseling of a wrecker service by a troop commander, or his designee, regarding minor infractions of policy that do not require or result in disciplinary action being taken.

By Order of the Director
Date: September 14, 2004

James K. Schweitzer

Director
S C Department of Public Safety

The Original Signed Copy of this Policy is on File in the Office of the General Counsel

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(as revised)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	Docket No. 16-ALJ-30-0410-CC **RESPONDENT'S PRE-HEARING STATEMENT**

The Respondent South Carolina Department of Public Safety (SCDPS) submits the following Pre-Hearing Statement:

1. The nature of this proceeding.

The Petitioner has commenced this action as a Contested Case proceeding. The Respondent SCDPS contends that this matter should have been brought as an appeal from a contested case and final agency decision of SCDPS.

2. Statutory provision(s) conferring subject matter jurisdiction on the Court and applicable statutes and regulations.

The Respondent SCDPS contends that this Court lacks subject matter jurisdiction to hear the Petition for Contested Case Hearing. The record reflects that the Petitioner initially filed a Notice of Appeal with the South Carolina Court of Appeals on December 9, 2016. That appeal was dismissed by Order of the Court of Appeals filed December 12, 2016. That Order stated as follows: "The remittitur will be sent as provided in Rule 221, SCACR." *See*, Court of Appeals Order filed December 12, 2016. The Remittitur was not issued until January 6, 2017. *See*, Remittitur. Therefore, at the time that the Petitioner filed its Petition for Contested Case Hearing on December 14, 2016, this Court did not even have subject matter jurisdiction over this matter. *See*, *Lancaster v. Georgia-Pacific Corp.*, 403 S.C. 136, 742 S.E.2d 867, 868 (2013) ("appellate court retains jurisdiction until the remittitur is sent to the lower court"); *Bunkum v. Manor Properties*, 321 S.C. 95, 467 S.E.2d 758, 760 (Ct. App. 1996) ("[t]he appellate court retained jurisdiction of the case until the remittitur was issued and the proceedings were returned to the circuit court"). Moreover, since January 6, 2017, when the Court of Appeals was divested of its

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appellate jurisdiction, the Petitioner has not filed a timely Petition for Contested Case Hearing nor a Notice of Appeal per Rule 33, SCALCR, in order to vest this Court with jurisdiction. Any prior filings were filed when this Court lacked subject matter jurisdiction are null and void. *See*, *Limehouse v. Hulsey*, 404 S.C. 93, 744 S.E.2d 566 (2013).

The Petitioner erroneously takes the position that this Court had subject matter jurisdiction on December 14, 2016, when the Petition for Contested Case Hearing was filed, because the Court of Appeals determined that it did not possess appellate jurisdiction over this matter. However, that does not mean that jurisdiction was not vested in the Court of Appeals – and that Court alone – on December 14, 2016. It is well settled that that "[a] court always has jurisdiction to determine its own jurisdiction." *Bailey v. Owen Electric Steel Company of South Carolina, Inc.*, 301 S.C. 399, 392 S.E.2d 186, 187 (1990). Thus, the Court of Appeals had jurisdiction over this matter up to and until the Remittitur was issued on January 6, 2017.

3. The issues to be presented for determination, including any claims or defenses expected to be raised.

The Respondent SCDPS anticipates raising two threshold issues: (1) whether this Court has subject matter jurisdiction based upon the position and supporting authorities cited above, and (2) whether this matter should have been brought as an appeal from a contested case and final agency decision of SCDPS.

SCDPS contends that this matter should have been filed as an appeal under S.C. Code Ann. § 1-23-600(D). Based thereon, "[r]eview by an administrative law judge of a final decision in a contested case, heard in the appellate jurisdiction of the Administrative Law Court, must be in the same manner as prescribed in Section 1-23-380 for judicial review of final agency decisions with the presiding administrative law judge exercising the same authority as the court of appeals." S.C. Code Ann. § 1-23-600(E). SCDPS contends that the final agency decision suspending the Petitioner from the SCHP Wrecker Rotation List is fully supported by the substantial evidence presented in the hearing below and should be affirmed. SCDPS further submits that the Petitioner received all of the process that was due during the August 8, 2016 hearing and any claims for a violation of due process are without merit.[1]

4. The action requested of the Court and a detailed statement of the law, including statutory and/or case citations, that support the action requested.

The Respondent SCDPS respectfully requests that the Court dismiss this matter for lack of subject matter jurisdiction based upon the position and supporting authorities cited above. In the alternative, if the Court concludes that subject matter jurisdiction exists, SCDPS requests that the

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[1] The Petitioner raises due process challenges to August 8, 2016 hearing that it received before SCDPS. However, the Petitioner then commenced this action as a contested case proceeding which allows for a *de novo* hearing. The Petitioner's due process claims are only material in an appellate proceeding. If the Petitioner is entitled to proceed in this matter as a contested case, the process that was received before the agency is moot because this proceeding is *de novo* and will provide the Petitioner with full due process rights.

Court affirm the final agency decision of SCDPS which suspended the Petitioner from the SCHP Wrecker Rotation List for a period of 120 days for violations of Regulation 38-600.

The Petitioner has raised several issues with respect to the conduct of the agency hearing, the "standing" of Bob Watson to lodge a complaint, and an assertion that the matter is moot because the Petitioner "resolved" the billing issue. The law governing those issues are addressed in the Conclusions of Law as set forth in the Notice of Disciplinary Action Decision dated September 26, 2016.

The Petitioner also includes generalized allegations of constitutional violations. However, it is well settled that the Administrative Law Court is an agency of the executive branch of government and that "ALJs have no authority to pass upon the constitutionality of a statute or regulation." *Video Gaming Consultants, Inc. v. South Carolina Department of Revenue*, 342 S.C. 34, 535 S.E.2d 642, 644 (2000). Thus, where there is a facial challenge to a statute or regulation, the ALC has no jurisdiction.

5. A brief summary of the facts to be presented at the hearing.

The Court is referred to the Findings of Fact as set forth in the Notice of Disciplinary Action Decision dated September 26, 2016.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority for the motion.

The Respondent SCDPS anticipates raising two threshold issues by motion: (1) whether this Court has subject matter jurisdiction, and (2) whether this matter should have been brought as an appeal from a contested case and final agency decision of SCDPS. The supporting authorities for those motions are discussed above.

7. A list of proposed witnesses and exhibits.

Witnesses:[2]

Lieutenant N.W. King
South Carolina Highway Patrol

Captain A.K. Grice
South Carolina Highway Patrol

Sgt. D.A. Deering
South Carolina Highway Patrol

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[2] As indicated, SCDPS believes that this matter should have been brought as an appeal from a contested case and final agency decision of SCDPS. In that event, no witnesses should be called.

Trooper T.J. Brindley
South Carolina Highway Patrol

Exhibits:

(a) Letter from Colonel Michael R. Oliver dated December 1, 2016

(b) Findings of Fact and Conclusions of Law of SCDPS, dated September 26, 2016

(c) Record from the August 8, 2016 SCDPS Hearing, including the following eight exhibits attached to the Findings of Fact and Conclusions of Law of SCDPS, dated September 26, 2016

(1) South Carolina Highway Patrol 2016 Wrecker Rotation Fee Schedule signed by Pamela Beltran for Petitioner

(2) Wayne's Automotive and Towing Center Invoice #504462 with total of $69,017.19

(3) Email from Bob Watson to Lieutenant N.W. King, dated February 19, 2016

(4) Check from Premier Transportation

(5) Notice of Proposed Disciplinary Action dated April 25, 2016

(6) Wayne's Automotive and Towing Center Invoice #504462 with total of $48,633.19

(7) Notice of Disciplinary Action Decision dated July 30, 2015

(8) Notice of Disciplinary Action Decision dated September 22, 2015

8. Whether discovery is necessary and, if so, a proposed schedule.

The Respondent SCDPS does not believe that any discovery is necessary. Moreover, because SCDPS believes that this matter should have been brought as an appeal from a contested case and final agency decision of SCDPS, no discovery should be permitted.

9. The estimated length of the hearing.

3-4 hours

10. Any dates within the next 120 days when you will not be available for a hearing.

Counsel for the Respondent SCDPS are not available the following dates:

Andrew F. Lindemann:
February 9-10, 13-16, 23-24 and 28
March 1-2, 7-8, 21-22 and 28
April 11
May 21-24

Warren V. Ganjehsani:
February 6, 7, 21, 28
March 1, 2, 7, 14, 16
April 18
May 2, 4, 9, 11, 18, 28-31

11. An e-mail address at which the Court may reach you.

The undersigned counsel for the Respondent SCDPS may be reached by way of email at alindemann@dml-law.com and WarrenGanjehsani@scdps.gov.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: _____

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-and-

WARREN V. GANJEHSANI
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South Carolina Department of Public Safety
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Counsel for Respondent
South Carolina Department of Public Safety

Columbia, South Carolina

February 2, 2017

000149

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	)	Docket No. 16-ALJ-30-0410-CC **RESPONDENT'S SUPPLEMENTAL PRE-HEARING STATEMENT**

The Respondent South Carolina Department of Public Safety (SCDPS) supplements its Pre-Hearing Statement as follows:

7. A list of proposed witnesses and exhibits.

Witnesses:[1]

Lieutenant N.W. King
South Carolina Highway Patrol

Captain A.K. Grice
South Carolina Highway Patrol

Sgt. D.A. Deering
South Carolina Highway Patrol

Trooper T.J. Brindley
South Carolina Highway Patrol

Captain C.B. Hughes
South Carolina Highway Patrol

[1] As indicated previously, SCDPS believes that this matter should have been brought as an appeal from a contested case and final agency decision of SCDPS. In that event, no witnesses should be called.

000150

Robert Watson
Recovery Resolution Specialists
1967 West Catawba Avenue
Cornelius, North Carolina 28031

The Respondent reserves the right to call any witnesses identified by the Petitioner, including Jeffrey Corbett and Sherry Corbett of the Petitioner.

Exhibits:

(a) Letter from Colonel Michael R. Oliver dated December 1, 2016

(b) Findings of Fact and Conclusions of Law of SCDPS, dated September 26, 2016

(c) Record from the August 8, 2016 SCDPS Hearing, including the following eight exhibits attached to the Findings of Fact and Conclusions of Law of SCDPS, dated September 26, 2016

(1) South Carolina Highway Patrol 2016 Wrecker Rotation Fee Schedule signed by Pamela Beltran for Petitioner

(2) Wayne's Automotive and Towing Center Invoice #504462 with total of $69,017.19

(3) Email from Bob Watson to Lieutenant N.W. King, dated February 19, 2016

(4) Check from Premier Transportation

(5) Notice of Proposed Disciplinary Action dated April 25, 2016

(6) Wayne's Automotive and Towing Center Invoice #504462 with total of $48,633.19

(7) Notice of Disciplinary Action Decision dated July 30, 2015

(8) Notice of Disciplinary Action Decision dated September 22, 2015

(d) Email dated February 15, 2016 from Robert Watson to Captain C.B. Hughes, with attachments

(e) Reply Email dated February 15, 2016 from Captain C.B. Hughes to Robert Watson

(f) Reply Email dated February 15, 2016 from Robert Watson to Captain C.B. Hughes

(g) Email dated February 16, 2016 from Captain A.K. Grice to Lieutenant A.K. King, with complete email chain including emails between Bob Watson and Sherry Corbett

(h) Three emails dated February 17, 2016 from Robert Watson to Lieutenant N.W. King, with attachments

(i) Two emails dated February 19, 2016 from Robert Watson to Lieutenant N.W. King

(j) Email dated February 24, 2016 from Robert Watson to Lieutenant N.W. King

(k) Two emails dated February 26, 2016 from Robert Watson to Lieutenant N.W. King, with attachments

(l) Email dated March 7, 2016 from Robert Watson to Lieutenant N.W. King

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: _____

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Counsel for Respondent
South Carolina Department of Public Safety

Columbia, South Carolina

May 10, 2017

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

FILED
MAR 03 2017
SC ADMIN LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	Docket No. 16-ALJ-30-0410-CC **PETITIONER'S MOTION TO EXPAND NUMBER OF DEPOSITIONS AND DISCOVERY COMPLETION DEADLINE AND PROVIDE RELATED RELIEF**

Consistent with SCALC Rule 21 (A), related provisions, and the Prehearing Statements filed herein, Petitioner gives notice and moves for the Court to (1) expand the number of depositions authorized for it to take to six (6) employees of Respondent, which are listed in the Prehearing Statements of the Parties and who were involved in the matters before the Court for Respondent, (2) expand the discovery completion deadline through May 15th,[1] and (3) provide related relief, as follows.

1. Based on Respondent's Prehearing Statement, submitted February 2, 2017, Petitioner learned of Respondent's opposition to any discovery and ongoing jurisdictional argument the Court had already addressed in its prior Order Denying Petitioner's Motion To Dismiss And Motion For Summary Judgment, filed January 27th, herein and, therefore, anticipated a motion for preliminary relief from Respondent soon thereafter, However, none has been received. On February 24th, Petitioner then served its Interrogatories, Requests For Production, Requests For Admission, and Notice Of Depositions on attorneys for Respondent via email and U.S. Mail, as shown in the Proof Of Service filed with the Court. A copy of Petitioner's Interrogatories, Requests For Production, Requests For Admission, and Notice Of Depositions not previously filed is a collective **Attachment** to this Motion. That Notice provides flexibility for alternate sets of proposed dates, based on available dates indicated in

[1] By Petitioner's calculation, the current deadline for completion of discovery is April 4th, provided the Court's Order Granting Motion For Extension And Order Extending Stay, filed January 18th, is construed to have extended the March 20th deadline by 15 days.

Prehearing Statements, in an effort to cooperate in development of a discovery scheduling plan as contemplated by the SCALC Rules and the Court's Order For Prehearing Statements, filed December 19th. At this juncture, Petitioner requests assistance from the Court and seeks the expansions requested and depositions of these witnesses to be conducted during the month of April at a mutually agreed upon time by the Parties, as contemplated by Petitioner's Notice, so that if any documents beyond those already provided through FOIA requests are requested at the depositions they can be provided and depositions resumed as to them before May 15th. Background attempts to move forward cooperatively in discovery without the need for the Court's assistance follow.

2. In its email message transmitted to Respondent's attorneys on **February 24th**, undersigned attorney for Petitioner stated:

> Also please note that since there are 6 folks for DPS listed in our Prehearing Statements, we are noticing each of them for deposition. Please advise if you consent to this increase in number of depositions and no fees/mileage costs required or if we need to file another motion to do so.

3. After not hearing back from Respondent's attorneys, on **February 27th**, undersigned attorney for Petitioner emailed Respondent's attorneys and stated:

> Andrew/Warren, following up with you as to preferred dates for depositions per Notice sent out last Friday.
>
> Either set of dates works; however, better from my perspective to begin sooner than later. Trying to mesh schedule with your dates set out in our Prehearing Statements. I am hoping we can get all of them done in a 2-day period but am not sure, so beginning March 9-10 makes sense to me. We could schedule them to begin either as follows or as we further agree:
>
> Day 1 (or until completed)
>
> Oliver 9:30-10:15 **(signed denial of request for reconsideration by DPS, dated December 1st, but did not attend hearing and presided over May 2016 meeting at DPS re the Premier accident) (not recorded) (listed as witness in Petitioner's Prehearing Statement)**
>
> Grice 10:30-12:00 **(presided at August 8th hearing, participated in investigation, issued internal memos re Premier accident, including one, dated March 10th with email**

complaint from Bob Watson, to Captain Hughes, and signed DPS Notice of Proposed Disciplinary Decision, dated April 25th) (listed as witness in Petitioner's and Respondent's Prehearing Statements)

(order and have lunch brought in at noon)

Hughes 12:30-2:00 **(signed disciplinary decision and attended August 8th hearing) (listed as witness in Petitioner's Prehearing Statement)**

King 2:00-4:00 **(participated in investigation, exchanged emails with Captain Grice on February 16th wherein Grice told King to make contact with Bob Watson, as set forth in King's March 4th internal memo to Grice) (listed as witness in Petitioner's and Respondent's Prehearing Statements)**

Deering 4:00-5:00 **(wrote up Premier accident Traffic Collision Report) (listed as witness in Respondent's Prehearing Statement)**

Brindley 5:00-6:00 (involved with Herron winch and tow incident brought up by DPS at August 8th hearing re Premier accident) **(listed as witness in Respondent's Prehearing Statement)**[2]

Please review and advise as to the above and my prior message below so I can finalize arrangements with the court reporter.

4. On **February 28th** after no word back, undersigned attorney emailed:

Andrew, I just called to follow-up regarding my email message from yesterday, as set forth again below. I was sent to Ms. Baker instead and asked her in my voice message to forward it to you to confirm if the proposed schedule is okay and to indicate the first interrogatories and requests for production, as well as requests for admission were deliberately included with the Notice Of Depositions to enable SCDPS to provide responses by March 9th as feasible and to allow a specific witness to have documentation in support of his testimony at the depositions.

As you can appreciate, I need to finalize the schedule to coordinate with the court reporter, etc.

Otherwise, I will need to request probably a 30-day extension of time for completion of discovery by this Friday.

Andrew responded he was in a mediation and "will need to get back with you."

5. On **March 2nd**, after no word back, undersigned attorney emailed again, with the request "please advise today re my discovery-related messages." Still no word back.

[2] Note: The descriptions of involvement by each witness in bold font in parentheses were not included in the email itself.

6. On **March 3rd**, still no word back, although at least SCDPS General Counsel read the last message on **March 2nd**.

7. Under these circumstances, Petitioner, therefore, respectively moves the Court to approve the relief requested in order to ensure cooperation so that orderly discovery may proceed herein to timely completion.

WHEREFORE, Petitioner respectively moves the Court to (1) expand the discovery completion deadline through May 15, 2017, (2) expand to six (6) the number of depositions Petitioner may take as previously noticed during the month of April at a mutually convenient time established through the Order of the Court to instill cooperation of the Parties and their attorneys, and (3) authorize the taking of the depositions of the deponents listed above with waiver of witness fees and mileage charges, and provide other appropriate relief.

AUSTIN & ROGERS, P.A.

By: 

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March 3, 2017

Attorneys for Petitioner

Other Counsel of Record:

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WGanjehsani@scdps.gov
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AHnchmnt

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	Docket No. 16-ALJ-30-0410-CC **PETITIONER'S FIRST INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSION**

TO: ANDREW F. LINDEMANN AND WARREN V. GANJEHSANI, ATTORNEYS FOR RESPONDENT

Pursuant to the provisions of SCALC Rule 21 and Rules 33, 34, and 36 of the *South Carolina Rules of Civil Procedure*, Petitioner propounds and serves the following written Interrogatories, Requests For Production, and Requests For Admission, respectively, to Respondent to be answered within thirty (30) days from the date of service. These Interrogatories and Requests For Production shall be deemed to continue from the time of service until the time of the contested case hearing of this case for Respondent to supplement its responses as additional information becomes available. Petitioner requests Respondent (1) *if not previously provided* to produce the documents identified below for inspection and copying at the offices of Austin & Rogers, P.A., 508 Hampton Street, 3rd Floor, Columbia, South Carolina, 29201, or at such other convenient place as counsel agree, and (2) serve a written response to each Interrogatory, Request For Production, and Request For Admission upon Petitioner's counsel at Post Office Box 11716, Columbia, South Carolina, 29211, in accordance with these *Rules*.

For the Interrogatories below, as well as the Requests For Production and Requests For Admission, the following definitions apply. "Person" as used herein means any natural person, corporation, partnership, association, organization, group of persons, proprietorship or other entity. "Document" as used herein means all forms of information or data compilations, communications, or storage and all drafts and non-identical copies thereof, in your possession, custody or control or in the possession, custody or control of your attorneys, including but not limited to papers, letters, correspondence, telex or telecopier messages, cables, telegrams, memoranda, notes, reports, notebooks, internal or interoffice communications, records or logs of telephone conversations, interviews or investigations, minutes, appointment books, desk calendars, diaries, time records, annual or other periodic reports, financial records or statements, journals, balance sheets, checkbook or checking accounts, canceled checks, books of original entry, stock records, ledgers, portfolios, receipts, invoices, bills, expense reports, work sheets, calculations, tabulations, projections, analyzes, schedules, lists, charts, graphs, evaluations, summaries, data sheets, personnel records, prospectuses, computer printouts, computer programs,

contracts, agreements, commitments, instruments of indebtedness, guarantees, powers of attorney, affidavits, depositions, judicial filings, pleadings, exhibits, discovery responses, statements, transcripts, filings with governmental entities, licenses, opinions of reports of experts or consultants, media articles, press releases, advertisements, circulars, notices, pamphlets, periodicals, photographs, tapes, microfilm, discs, data processing storage units, electronic or magnetic storage media or devices (with all attachments as sent, received, saved, or deleted), development proposals, development plans, and any materials or things underlying, supporting or used in the preparation of any document.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of Respondent or counsel that relate to the claims or the defenses in the case.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the matter and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

4. List the names and addresses of any expert witnesses whom Respondent proposes to use as a witness at the trial of the case.

5. Provide an explanation for denial for any Request For Admission below that is denied.

6 Identify each person responsible for providing responses to each of these Interrogatories, Requests For Production, and Request For Admission separately below.

REQUESTS FOR PRODUCTION

1. Please provide any and all statements, whether written, recorded, or otherwise, having any bearing upon the present litigation, *if not previously provided.*

2. Please documents, emails, photographs, reports, records, slides, videotape, motion pictures, film, data, compilations, plats, sketches, diagrams, and reports by police or of any other public or private inspections, investigations, etc., associated with this matter, if not previously provided.

3. Please provide copies of any and all documents identified or utilized in responding to these First Interrogatories, if not previously provided.

4. With regard to each expert witness identified in responses to Interrogatories, please provide:

a. all documents prepared by the expert;
b. all documents sent to the expert by Respondent;
c. all documents relied upon by the expert;
d. all documents used or consulted, or reviewed by the expert;
e. all documents setting forth any compensation agreement between Respondent and the expert;
f. all documents used, relied upon, consulted, or reviewed by the expert in answering expert witness Interrogatories;
g. all documents that have been or will be shown to the expert prior to trial testimony; and
h. all documents, including a current Curriculum Vitae, used to establish the expert's qualifications for trial purposes.

5. Please identify and provide copies of any and all insurance policies and other documents related to the matters herein and referenced above.

REQUESTS FOR ADMISSION

1. The accident giving rise to this matter was a Class C "*special operations*" tow, not a "*standard tow*", both of which terms are defined in Reg. 38-600 (F) (2) (a) (1) and (2).

2. Petitioner was called upon by Respondent to respond and provide towing and recovery services at the scene of an accident on Interstate 20 near the South Carolina-Georgia border on February 9, 2016, and Petitioner did so.

3. Premier Transportation was the carrier/owner whose tractor and trailer with cargo were overturned in that accident.

4. Petitioner and Premier Transportation fully resolved payment and related issues between them prior to issuance by Respondent of its proposed disciplinary action notice to Petitioner.

5. Section §V (D) (re Suspension for Cause) of SCDPS Wrecker Disciplinary Policy 200.19 provides a maximum "not to exceed ninety calendar days"; however, Respondent imposed suspension for Petitioner of 120 days.

6. The 2016 Wrecker Rotation Fee Schedule expressly states that "no fee will be set" for tows that involve special operations.

7. Respondent relied upon a complaint by Robert Watson in issuing its notice of proposed disciplinary action concerning Petitioner.

8. Robert Watson had no underlying property interests in that accident.

9. Respondent had no underlying property interests in that accident.

Respectfully submitted,



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Attorneys For Petitioner

February 24, 2017

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v., South Carolina Department of Public Safety, Respondent.	Docket No. 16-ALJ-30-0410-CC **NOTICE OF DEPOSITIONS**

TO: ANDREW F. LINDEMANN AND WARREN V. GANJEHSANI, ATTORNEYS FOR RESPONDENT

Pursuant to the provisions of SCALC Rule 21 and Rule 30 SCRCP, Petitioner hereby requests the taking of the depositions of the following Respondent representatives in the order set forth and as identified in the Prehearing Statement herein, commencing March 9-10 and/or March 15-16 or March 15 and 17, or thereafter upon agreement by counsel and the Court in the office of undersigned counsel, beginning at 9:30 am and continuing daily until 6 pm or as otherwise agreed:

Colonel Oliver
Captain Grice
Captain Hughes
Lieutenant King
Sergeant Deering
Trooper Brindley

Petitioner further requests Respondent to agree not to require or to waive its right, if any, for payment of witness and mileage fees for these witnesses

AUSTIN & ROGERS, P.A.

By: Raymon E. Lark, Jr.

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Attorneys for Petitioner

February 24, 2017

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	)	Docket No. 16-ALJ-30-0410-CC **PETITIONER'S FINAL ARGUMENTS**

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

Petitioner urges Your Honor to reverse Respondent's disciplinary action herein for several reasons.[1]

[1] As the Supreme Court noted in *Unisys Corp. v. S. C. Budget and Control Bd.,* 346 S.C.158, 551 S.E. 2d 263, 272 (2001), "(a)n adequate *de novo* review renders harmless a procedural due process violation based on the sufficiency of the lower administrative body." The parties in the instant matter are before this Honorable Court, consistent with the South Carolina Administrative Procedures Act and decisions concerning its provisions in the context of a contested case proceeding brought by Petitioner as an "as-applied" challenge to them and associated 2016 Wrecker Rotation Fee Schedule, DPS Reg. 38-600, and DPS Wrecker Rotation Disciplinary Policy No. 200.19, consistent with *Travelscope LLC v. South Carolina Department Of Revenue*, 391 S.C. 89, 705 S.E. 2d 28, 38-39 (2011), without waiving any rights or interests.

DPS imposed its 120-day suspension of Petitioner from its Wrecker Rotation list on December 12, 2016 and restored it by agreement with Petitioner on December 16, 2016 through January 31, 2017. On December 19, 2016, the Court issued its Order For Prehearing Statements, pursuant to SCALC Rule 14; and on January 18, 2017, the Court issued its Order Granting Motion For Extension And Order Extending Stay through the pendency of the case before it.

As indicated in S.C. Code Ann. §1-23-380 (5), this Court may reverse or modify the decision "if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;
(b) in excess of the statutory authority of the agency;
(c) made upon unlawful procedure;
(d) affected by other error of law;

FILED
AUG 21 2017
SC ADMIN LAW COURT
000162

I.

PETITIONER AND PREMIER HAVE ALREADY SETTLED THEIR DIFFERENCES.

To discipline Petitioner, DPS improperly relied 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).[2] As shown in the West Virginia case cited in note 2 below, Watson brought

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(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Cf., Clemmons v. Lowe's Home Ctrs, Inc., S. Ct Opinion No. 27708 (Refiled June 28, 2017), as to lack of substantial evidence to support Workers' Compensation Commission's findings of fact.

Furthermore, in South Carolina, every contract includes a covenant of good faith and fair dealing. *Ayres v. Crowley,* 205 S.C. 51, 30 S.E.2d 785, 788 (1944), *Unisys Corp., supra*, and *Commercial Credit Corporation v. Nelson Motors, Inc.*, 247 S.C. 360, 147 S.E. 2d 481, 484 (1966). By utilizing improper binding norms, Respondent also breached the inherent covenant of acting in good faith and dealing fairly with Petitioner and its 2016 Wrecker Rotation Fee Schedule contract with Petitioner. Generally, "courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution." *Simpson v. MSA of Myrtle Beach, Inc.,* 373 S.C. 14, 644 S.E. 2d 663, 671 (2007), and authorities cited therein, and S.C. Constitution Art. I, § 4 as to prohibition of impairment to contract.

[2] DPS acknowledges Premier is the vehicle owner. *Accord*, S.C Code Ann. §56-5-1210 B), which refers to "(t)he 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." *See also*, **Petitioner's Exhibit 1 (C) @ 43-46**, West Virginia PSC Enclosures re Case No. 13-0431-MC-FC, *Robert E. Watson v. Jerry Adkins, dba JB's Towing Service*, wherein its legal staff advised the Commission 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 without Watson as a party. *Cf.*, Findley, S.C Code Ann. §23-6-20, referencing, in part, transfer of SC PSC transportation ratemaking authority as part of creation of SCDPS. The evidence of record shows Wayne's and Premier fully settled this matter, it is moot, and no policy exceptions warrant its continuation. *Youngblood v. S.C. Dep't of Soc. Serv.*, 402 S.C. 311, 741 S.E. 2d 515 (2013), *Curtis v. State*, 345 S.C. 557, 549 S.E. 2d 591 (2001), and *S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 412 S.C. 18, 770 S.E. 2d 399 (Ct. App. 2015).

a complaint against a tower there for alleged overcharges that had not been settled by the parties, the PSC Staff took the position Watson as a third party had no underlying property interest or stake in the matter and, therefore, no standing. Sentry Insurance Company then was the formal complainant and that matter was mediated and settled—as herein—except Premier and Wayne's avoided the additional expense of mediation herein. In fact, Premier's owner and Wayne's settled all issues over a month before DPS issued its Notice of Proposed Disciplinary Action, dated April 25, 2016. **Petitioner's Exhibits 1 (B) (4-6 @ 24-29)**. Watson was an unauthorized third party and did not testify on behalf of Premier or any insurance company involved.

Furthermore, there was no credible evidence offered to suggest Premier's payment of $48,633.19 to Wayne's was anything less than the "final resolution" between them. Moreover, Lt. King's testimony the driver for Premier was convicted *in absentia* for driving too fast for conditions provides additional evidence Premier is not contesting the settlement.

II.

PREMIER IS THE OWNER OF THE MOTOR CARRIER TRACTOR AND TRAILER.

Section (C) (6) of the Regulation expressly requires the vehicle "owner or owner's designee"--DPS acknowledges Premier to be the owner of the vehicle, *i.e.*, tractor and trailer--to dispute a bill/complain about billing and not an unauthorized third party, such as Bob Watson.

III.

DPS VIOLATED ITS REGULATION BY FAILING TO CREATE AND UTILIZE AN ADVISORY COMMITTEE AND FAILING TO PROVIDE ANY GUIDANCE OTHERWISE AS TO WHAT RATES ARE CONSIDERED REASONABLE.

Ever since this Regulation was enacted in 2004, DPS has failed to create an Advisory Committee to function as backstop or filter to provide guidance and clarification as to what charges may not be reasonable or other alleged irregularities for DPS and towers like Petitioner

herein in proposed disciplinary matters prior to implementation of any disciplinary action. Respondent thereby inexcusably provided no guidance to tow/recovery service providers, such as Petitioner, as required in Reg. 38-600 (D) (5-7). Such continuing failures are inexcusable. DPS's approach of blatantly ignoring them is also deplorable and has violated and continues to violate Petitioner's Contract and Due Process rights in S.C. Constitution Article I, §§ 4 and 22, respectively, as made mandatory in§ 23.

IV.

NO FEES ARE SET.

The 2016 Wrecker Service Rotation Fee Schedule expressly states that "no fee will be set" for Class C Special Operations with which Petitioner complied by sending out a single invoice (as subsequently revised) by Wayne's Automotive and SC Incident Management in a combined invoice.

V.

ADDITIONAL INVOICES FOR SUBCONTRACTED ITEMS ARE NOT ALLOWED.

While (C) (15) of the Regulation expressly requires "(o)nly one bill is to be submitted to the owner or operator for the work performed," the 2016 Wrecker Service Rotation Fee Schedule violates or is otherwise inconsistent with the Regulation by requiring additional invoices or receipts for subcontracted equipment/services; and DPS is improperly attempting to utilize its improper Schedule provision to discipline Petitioner herein.

VI.

PETITIONER PRUDENTLY DID NOT RELEASE THE CARGO BEFORE PAYMENT, SINCE DPS DID NOT ESTABLISH WHO HAD TITLE TO IT WHEN THE ACCIDENT OCCURRED.

Respondent's witness Watson acknowledged the cargo Premier was transporting was "commercial" property, and Respondent 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 @ 8-9, Respondent, therefore, has incorrectly cited and applied 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.[3] In

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[3] 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.

its Brief @ 8-9, Respondent 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).

In addition, 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 presented showing who had title to the cargo in question at the time of the accident. *See* S.C. Code Ann. §58-23-10 *et seq*. and, in particular, -30 as to temporary vesting of title to cargo, and -30 and -40 as to certificates and license fees.

Moreover, DPS failed to provide 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. Therefore, Petitioner prudently did not release the cargo until payment by Premier.

VII.

RESPONDENT PROFFERED NO EVIDENCE THE ACCIDENT OCCURRED IN SOUTH CAROLINA, AND ITS LOCATION MATTERS.

Respondent proffered no evidence to support the Premier accident having occurred in South Carolina through direct or other testimony or evidence, while Petitioner through the cargo shipment confirmation (**Petitioner's Exhibit 9**), testimony of Jeff Corbett, and Petitioner's photographs (**Petitioner's Exhibit 13**) provided uncontested evidence the accident occurred on the Savannah River I-20 Bridge. While the transport of dog food by Premier was in interstate commerce rather than in intrastate commerce is not at issue, where the accident occurred is one

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

for which DPS had the burden to prove and failed to do so, thereby rendering inapplicable application by DPS of its intrastate-only 2016 Wrecker Service Rotation Fee Schedule herein. *See, e.g., DPS SC Code Regs. 38-402 (6)* re definitions of Interstate Commerce, *(7)* re Intrastate Commerce, *(8)* re Motor Carrier, and *(9)* re Motor Vehicle, as well *as 49 CFR 375/390.5* re definitions of Interstate commerce and Intrastate commerce, and *Georgia v. South Carolina*, 497 U.S. 376, 383-384, 394-395, 398, 408-410 (1990), re Georgia-South Carolina Savannah River boundaries.[4]

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[4] Consistent with SCALC Rule 11 (D), Petitioner timely submitted its Petition for Contested Case Proceeding, which expressly included ¶ 3 regarding violations of the Rotation List, Reg. 38-600 and related statutory provision and in (g) referenced "such other rights and interests Petitioner has....". Thereafter, Petitioner timely submitted its Prehearing Statement in which it set forth issues in ¶ 3, which expressly included:

> (g) such other rights and interests Petitioner has, as developed as issues for determination after discovery and at the hearing.

Thereafter, Petitioner timely updated its Prehearing Statement, consistent with Rule 14, to identify issues, and diligently supplemented its discovery responses. The responsibility to identify issues and supplement discovery responses did not end on May 15, 2017, as Respondent argues.

Furthermore, Respondent presented no DPS witness who was ever on the scene—including Bob Watson or Lt. King—and, therefore, was incapable of documenting where it occurred. Even the Traffic Collision Report (**Petitioner's Exhibit 5 @ 9-12**) by Corporal Deering, includes a disclaimer that "NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF."

Next, Respondent admits in its Brief @ 4-5 that Petitioner provided towing and recovery operations and services in both South Carolina and Georgia.

Furthermore, Respondent has fatally failed to show this accident occurred in South Carolina, consistent with its burden of proof and *Georgia v. South Carolina, supra.*

Finally, as Respondent argues in its Brief @ 5-7, 49 U.S.C. § 14501(c) does not preempt State regulation of intrastate tow truck operations "performed without the prior consent or authorization of the owner or operator of the motor vehicle." DPS presented no evidence the driver of the Premier tractor was already away from the scene, and no evidence indicates whether the Highway Patrol complied with the Reg. 38-600 (C) (2) requirement that the owner or driver

VIII.

PETITIONER'S PROPOSED AND ACCEPTED CHARGES WERE REASONABLE.

Respondent proffered no witness or evidence showing the proposed charges in its initial invoice or subsequent settlement invoice agreed to by Premier and Petitioner were unreasonable or otherwise improper. DPS has never provided any guidance as to what rates it considers to be reasonable, despite the criteria in Reg. 38-600 (F) (3), which state:

> The Troop commander will complete a review of the fees for the Highway Patrol rotation wrecker services for the Troop during inspection and qualification to determine its (sic) validity and reasonableness.
>
> Validity will be based upon telephone quotes, posted rates, charges to retail customers, etc. Reasonableness will be determined as compared to other rates.

Petitioner proffered expert witness Gaynell Rochester on rates and regulation. Ms. Rochester explained she has a team of experts working day-to-day through the INA Towing Network that undertake under her supervision extensive research in the marketplace nationally to show prevailing rates that enable her to assist in billing resolutions around the country. She also testified that the industry customary standard for all heavy response is from the time of the request for service (3:00 am on 2/9/16) until completion of the call (12:00 midnight on 2/9/16), i.e. 21 hours and that in her opinion Petitioner's proposed charges and settlement charges were reasonable, based on her knowledge and experience concerning towing and recovery rates in the

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of the vehicle "has no preference as to which wrecker service he/she desires, a wrecker will be called from the appropriate wrecker rotation list." In fact, Petitioner showed Chancey's Wrecking Service from Augusta, GA and insurance adjustor for Premier were already onsite prior to Petitioner; and the adjustor assisted by taking photos generally and by helping Jeff Corbett for Wayne's specifically in the towing and recovery process. Premier, therefore, consented or authorized Wayne's to provide its services, which preempts application of the DPS 2016 Wrecker Service Rotation Fee Schedule herein, were the Court to find and conclude this is an intrastate matter.

United States. She further emphasized being ready to serve is part of the costs involved for towers/recovery providers like Petitioner that require significant investments in personnel, resources, and equipment.

Moreover, Respondent's attack on Ms. Rochester during here cross examination was unwarranted and concerned a complaint she had filed with the West Virginia PSC matter contesting a tower's rates as excessive in 2007 in light of the West Virginia PSC's established rates. DPS misunderstood that Commission's regulation of towing rates, as Ms. Rochester made clear.

Furthermore, she explained Petitioner's invoice primarily under review includes charges for traffic control, fuel remediation, special recovery of cargo, and tow of tractor and trailer; whereas that West Virginia complaint did not encompass traffic control or fuel spill remediation.

DPS witness Watson produced or provided no credible quotes for services or equipment and was never onsite. Similarly, DPS witness King testified he conducted the DPS investigation and made rate reasonableness determinations without any knowledge or experience or even being onsite or obtaining quotes or comparing rates for any other Class C/Special Operations approved wrecker service provider of services or equipment. He stated he did the investigation, although his quantification of the allegedly unreasonable charges looked remarkably similar to Watson's unsupported amounts. While King referred to amounts of time in the initial invoice, based on other Troopers' views, they did not testify; and King reduced certain rates without any comparison with "other rates."

Petitioner witness Doug Busbee, however, verified Petitioner's rates were consistent with his approved rates as being reasonable in addition to the opinion of Petitioner's expert witness Rochester.[5] Respondent clearly failed to comply with Reg. 38-600 (F) (3)'s requirement that "(r)easonableness will be determined as compared to other rates."

Finally, Jeff and Sherry Corbett testified the additional time past the re-opening of I-20 was primarily attributable to getting the cargo properly loaded and stored in more than one location for safe-keeping. They should know. They were actually onsite and responsible for getting their job done properly and professionally.

IX.

RESPONDENT EMPLOYED UNLAWFUL BINDING NORMS.

Respondent otherwise is to be characterized as improperly employing binding norms against Petitioner herein, which violate DPS Reg. 38-600, S.C. Constitution Article I, §§ 4, 22,

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[5] Moreover, Petitioner demonstrated through cross examination of Mr. King that application of his specific adjustments to charges would have increased Premier's payment to Petitioner by $6,245.69. This calculation included all of Lt. King's reductions in his internal memo for

Petitioner also offered Bill Rawl, CPA, as an accounting expert witness. He reviewed the 2015 Tax Returns for Petitioner and South Carolina Incident Management (SCIM) and confirmed SCIM had elected to expense rather than depreciate $4,850 in mobile communications equipment and $4,516 for a recovery truck used in the Premier towing/recovery operations that flowed through Petitioner's Returns on K-1s back to the Corbett's Joint Return. Mr. Rawl explained that under 26 U.S.C. §179 expensing such business assets is permissible. Petitioner, however, did not include the entire amounts of such expenses in invoices to Premier, as it could have. This approach demonstrates Petitioner was acting in good faith in billing Premier concerning this accident.

Moreover, Ms. Rochester stated the mobile equipment billed amount was proper and reasonable in her opinion. And Sherry Corbett testified she reviewed the time entries submitted by Wayne's personnel and adjusted some of them. On one hand, Petitioner worked diligently to clear I-20 and take care of the cargo and in good faith endeavored to generate invoices quickly, as urged by third-party Watson, and then diligently followed up. On the other hand, DPS cast a blind eye to such diligence and improperly imposed its sanction on Wayne's.

and 23, and are also arbitrary, capricious, and constitute abuses of discretion under the *SCAPA, supra,* n. 1, and can, thus, have no force or effect. *See Home Health Serv. Inc. v. S.C. Tax Comm'n*, 312 S.C. 324, 440 S.E.2d 375, 378 (1994), *citing Ryder Truck Lines, Inc. v. U.S.,* 716 F.2d 1369 (11th Cir. 1983).[6]

X.

PETITIONER HAS SOUGHT TO PRESERVE ITS RIGHTS AS TO ADDITIONAL RELIEF REQUESTED.

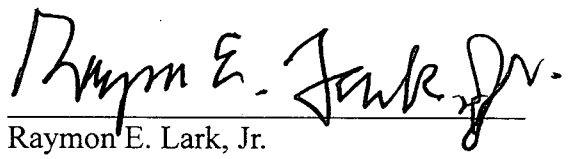
As to additional relief Petitioner references in its Petition For Contested Case, Petitioner is endeavoring to preserve its rights to pursue it without prejudice in a different forum.

WHEREFORE, Petitioner respectfully requests this Court to provide the parties an opportunity to prepare and submit proposed Findings of Fact and Conclusions of Law in proposed orders following receipt of reply final arguments/brief by Respondent within a sufficient time frame in which to consider ordering the transcript of the hearing and thereafter reverse the decisions of Respondent to suspend Petitioner from the 2016 Wrecker Rotation Fee Schedule and providing all other available relief to Petitioner.

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[6] Specific examples of Respondent's use of unlawful binding norms include, but are not limited to: failing to create an Advisory Committee, as required in (D) (5-7) of the Regulation, to review proposed disciplinary action; finding Petitioner overcharged Premier herein for Petitioner's towing and recovery services rendered; specifying additional invoices in the Schedule, when the Regulation only allows for a single invoice, subject to its possible revision, as occurred herein covering all respects, consistent with S.C. Code Ann. §56-5-5635 (F); (C) (6) of the Regulation expressly requiring the vehicle "owner or owner's designee"--DPS acknowledges to be Premier--to dispute a bill/complain about billing and not an unauthorized third party, such as Bob Watson; disregarding indisputable photographs taken by Premier's insurance adjustor on the scene and Wayne's personnel showing that the accident was Class C tow requiring Special Operations tow for which fees are not established and that the accident did not occur in South Carolina but rather between the Savannah River and Augusta Canal in Georgia and for which towing and special operations were undertaken in both South Carolina and Georgia--thereby rendering improper DPS's application of its intrastate 2016 Wrecker Rotation Fee Schedule herein; failing to make a rate comparison to assess the reasonableness of Petitioner's charges, as required in (F) (3) of the Regulation; and imposing a 120-day suspension from the Schedule on Petitioner.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	)	Docket No. 16-ALJ-30-0410-CC **RESPONDENT'S POST-TRIAL BRIEF**

The Respondent South Carolina Department of Public Safety submits the following discussion of the legal issues and issues for disposition before the Court:

I. Due Process Issues are Moot

In its Petition for Contested Case Hearing, the Petitioner raised a number of procedural due process issues related to the hearing provided by the Highway Patrol at the agency level as well as the appeal of the Notice of Disciplinary Action Decision to Colonel Michael Oliver, also at the agency level. *See*, Petition, ¶ 3. Because the Petitioner sought a contested case hearing which provides a full trial *de novo*, the Petitioner's procedural due process challenges are now moot.

In *Byrd v. Irmo High School,* 321 S.C. 426, 468 S.E.2d 861 (1996), the Supreme Court explained that "[a] justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." 468 S.E.2d at 864. "This Court will not pass

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on moot and academic questions or make an adjudication where there remains no actual controversy." *Id.* The Supreme Court further ruled that "[a] case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for the reviewing Court to grant *effectual relief" Id.* (Emphasis added).

This very issue arose in the case of *Unisys Corp. v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263 (2001), which was a procurement case. The Supreme Court explained that "[a]n adequate *de novo* review renders harmless a procedural due process violation based on the sufficiency of the lower administrative body." 551 S.E.2d at 272. *See also*, *Ross v. Medical University of South Carolina*, 328 S.C. 51, 492 S.E.2d 62 (1997) (administrator's lack of impartiality cured by *de novo* review before impartial panel).

Therefore, this contested case hearing, in which the Petitioner received a *de novo* trial before the Administrative Law Court, with the full opportunity to cross-examine the SCDPS witnesses, including the complainant Robert Watson, as well as present its own witnesses including expert testimony, has fully cured any alleged procedural challenges that Petitioner raises with respect to the hearing and review at the agency level. Hence, the procedural due process issues are now moot. There is no effectual relief that this Court can grant in that regard

II. Watson was a Proper Complainant

In its Petition for Contested Case Hearing and again at the hearing itself, the Petitioner argues that Robert Watson with Recovery Resolution Specialists does not have "standing" to make the complaint against the Petitioner that resulted in the investigation and disciplinary

action taken by SCDPS. Watson testified that he was retained to represent the interests of the Premier Transportation, the tractor-trailer owner, and its liability carrier, Sentry Insurance Company. Subsequently, Watson was also retained by Travelers Insurance Company, which insured the cargo. The applicable regulations codified at S.C. Code of Regulations R. 38-600 include a Section (D) entitled "Complaints/Disciplinary Procedures." Regulation 38-600(D)(1) reads in pertinent part as follows: "Complaints from or about wrecker services regarding an incident involving the Highway Patrol or its operation of the wrecker lists must be received within thirty days of the alleged incident." The regulation does not place any limitations or conditions on who is an appropriate complainant. Clearly, Robert Watson, who communicated with the Highway Patrol as the agent for the owner and insurers, was an appropriate complainant, and it was entirely appropriate for SCDPS to have proceeded with its investigation and disciplinary action against the Petitioner.

III. Alleged Resolution of Towing Bill Dispute with Premier Does Not Moot Investigation and Disciplinary Action

The Petitioner has also raised its own mootness defense. The Petitioner contends that by March 4, 2016, it has fully resolved the towing invoice with Premier Transportation, and that should have mooted the disciplinary action. The testimony shows that there is some dispute of fact as to whether the payment of $48,633.19 by Premier Transportation on March 4th was a final resolution of the dispute between the Petitioner and Premier. Watson sent an email on March 7, 2016, saying "Complaint is still on." (Respondent Exhibit #8). But that is not the relevant inquiry. Any resolution of the underlying towing invoice does not make the SCDPS

investigation moot. In essence, it does not negate the conduct by the Petitioner that precipitated the investigation and disciplinary action.

An instructive analogy may be drawn to a typical scenario involving the utterance of a fraudulent check. South Carolina law recognizes that payment of the bad check to the merchant within a fifteen day "grace period" period provided by statute "does not prevent a prosecution for issuing a fraudulent check." *James v. Fast Fare, Inc.*, 685 F.Supp. 565, 567 (D.S.C. 1988). Thus, payment of the fraudulent check does not preclude criminal prosecution. Likewise, where there is misconduct by a towing company, including in this case a refusal to release the cargo and an unreasonable invoice with insufficient documentation, the fact that the Petitioner released the cargo and reduced the bill does not insulate the company from the investigation and disciplinary duties of the Highway Patrol. Thus, a resolution of the towing invoice with Premier, even if that occurred, does not moot the investigation and the ensuing disciplinary action taken by SCDPS.

IV. Where Tractor-Trailer Came to Rest is Irrelevant

During the contested case hearing, the Petitioner attempted to raise a new issue that was not raised in its Petition nor raised until after the discovery deadline.[1] The accident at issue occurred on the I-20 westbound bridge over the Savannah River. The South Carolina-Georgia boundary is located somewhere in the middle of river and is not delineated specifically by signage on the bridge. The Petitioner now takes the position that the towing/recovery operation took place in Georgia, and as a result, the SCDPS does not have the authority to investigate and

[1] On July 19, 2017, the Petitioner's counsel supplemented discovery responses with information received by FOIA from the SCDOT and Georgia agencies as well. The discovery deadline expired on May 15, 2017.

impose discipline for events that occurred in Georgia. In addition to the fact that this issue was not timely raised, there are numerous other bases for finding it to be unsubstantiated and frivolous. First, the evidence presented did not clearly reflect whether the tractor-trailer came to a rest in South Carolina, Georgia or both (i.e., straddling the state line). The evidence did reflect that bridge was closed in South Carolina, the Petitioner had at least some of its equipment and crew on the South Carolina side of the bridge, and the tractor was towed and unloaded on the side of the interstate in South Carolina according to Jeff Corbett's testimony and the photographs entered into evidence. Second, there is no dispute that the Petitioner responded to a South Carolina Highway Patrol Wrecker Rotation List call, which gives SCDPS the requisite "jurisdiction" or authority to review any complaints regarding that incident. Third, Lt. King testified that the accident occurred in South Carolina, that the Premier driver was charged with a violation of South Carolina law, and that the driver was convicted in a South Carolina court. Fourth, as already mentioned, a substantial portion of the towing operation, including the unloading of the trailer, occurred in South Carolina. Moreover, the cargo was stored in South Carolina, and the failure to timely release the cargo occurred in South Carolina and is governed by South Carolina law because that is where the storage occurred. Clearly, the Petitioner's argument that SCDPS had no "jurisdiction" or authority to investigate this towing operation/incident is without merit.

V. Federal Pre-Emption Defense Lacks Merit

As a corollary to the last argument raised by the Petitioner, it also raised a federal pre-emption defense that was almost as late. That pre-emption defense was not raised in the

pleadings and was not inserted into the Pre-Hearing Statement until a revision submitted on June 26, 2017. SCDPS takes the position that a pre-emption defense is an avoidance under Rule 8(c), SCRCP, which must be affirmatively pled or otherwise is waived. The Petitioner never made a motion to supplement its pleadings to assert pre-emption as an affirmative defense. However, even if the Court addresses the issue, the pre-emption defense has no merit.

As part of the Federal Aviation Administration Authorization Act, Congress created a general preemption of state regulatory authority over the price, route, or service of any motor carrier. This general rule was codified as follows:

> Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

49 U.S.C. § 14501(c)(1). Subsection (2) includes exceptions to the general rule. Of note here is subsection (2)(C) which states:

> [The general rule] does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the regulation of tow truck operations performed without the prior consent or authorization of the owner or operator of the motor vehicle.

49 U.S.C. § 14501(c)(2)(C). This exception eliminates the preemptive effect of the general rule when the state acts to regulate non-consensual tows.

In the case at bar, the evidence is undisputed that the Petitioner was responding to a call from the Highway Patrol Wrecker Rotation List. The Premier driver was not on the scene when the Petitioner received the call or was initially on the scene. Premier did not retain the

Petitioner's services, and hence, this was a non-consensual tow, the regulation and review of which is not subject to federal pre-emption under 49 U.S.C. § 14501(c)(1).

VI. Money Damages Claim Should Be Dismissed

In its Petition for Contested Case Hearing, the Petitioner made a claim for money damages. That claim should be dismissed on several grounds. First, the Petitioner failed to present any evidence during the hearing to prove any damages. Second, the Petitioner has not been damaged because the 120-day suspension imposed by SCDPS was stayed during the pendency of this contested case proceeding. Third, it is well settled that "[t]he ALC has no authority to decide civil matters or to award monetary damages in cases." *South Carolina Department of Consumer Affairs v. Foreclosure Specialists, Inc.*, 390 S.C. 182, 700 S.E.2d 468, 470 (Ct. App. 2010). Finally, to the extent that the Respondent may be held liable in tort for money damages, the sole and exclusive remedy is pursuant to the South Carolina Tort Claims Act. *See*, S.C. Code Ann. § 15-78-200. The Petitioner did allege negligence *per se* and gross negligence claims as well as referenced the Tort Claims Act in its Petition for Contested Case Hearing. *See*, Petition, ¶ 4. However, S.C. Code Ann. § 15-78-100(b) provides that the jurisdiction for an action brought under the Tort Claims Act is in the Circuit Court. Thus, this Court necessarily lacks jurisdiction over a damages claim alleged against SCDPS. For each of these reasons, the Petitioner's tort claims and its prayer for monetary relief must be denied and dismissed.

VII. Petitioner Failed to Release Cargo Which Violated Statutory Law

As one of the two principal issues that are before this Court for adjudication, SCDPS contends that the 120-day suspension and removal from the Rotation List is warranted based upon the Petitioner's deliberate refusal to comply with S.C. Code Ann. § 56-5-3635(F), which provides: "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 personal property."

The evidence in the record is clear, undisputed and overwhelming to show that Petitioner was requested on numerous occasions to release the tractor-trailer's cargo, which consisted of 40,000+ pounds of dogfood which was perishable and contained an expiration date. The emails that were admitted into evidence verify that the Petitioner, through Sherry Corbett, knew that the owner of the dogfood sought the immediate release of the cargo and the Petitioner refused to comply with S.C. Code Ann. § 56-5-3635(F) until it had received payment from Premier Transportation, the owner of the tractor-trailer.[2] The accident occurred on February 9, 2016, and the cargo was not released until almost a full month later on March 7, 2016.[3] The requests for the release of the cargo came from numerous persons including Lt. King, Robert Watson, and the Travelers adjuster.

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[2] Specifically, on February 16, 2016, Sherry Corbett emailed Watson at 9:52 a.m. stating that "[t]he cargo, trailer, and tractor will be released when monies are paid for services already rendered as previously stated to the company representative and the insured on site the day of casualty." (Respondent Exhibit #13). It was Watson's understanding that the Petitioner would not release the cargo.

[3] The record reflects that payment of $48,633.19 to the Petitioner was made by check dated March 4, 2016, and as a result, the cargo was available for release on that date. March 4th was a Friday. The cargo was claimed on the following Monday, March 7th.

The Petitioner fully conceded in testimony that it held the cargo until payment was made despite the many requests for its release. As an initial position, the Petitioner pleaded ignorance of the law, which is no excuse and frankly disturbing given the years that the Petitioner has been in the towing business.[4] *See*, *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 the law ").

Later, for the first time at the hearing, the Petitioner argued that the reference to "personal property" in S.C. Code Ann. § 56-5-3635(F) exempted the cargo of dogfood at issue. The Petitioner reasons that dogfood is "commercial property" rather than "personal property." The Petitioner's *post hoc* rationalization is frivolous. While the term "personal property" is not defined in Title 56, the term is defined in other Code sections and has a well recognized and accepted meaning. "Personal property" is defined in Title 15 to include "money, goods, chattels, things in action and evidences of debt." S.C. Code Ann. § 15-1-40. "Personal property" has an identical definition in Title 18. *See*, S.C. Code Ann. § 18-1-20. Likewise, "personal property" is defined in Title 12 to mean "all things, other than real estate, which have any pecuniary value." S.C. Code Ann. § 12-37-10. Moreover, the plain and ordinary meaning of the term is obvious as well. Clearly, the use of the term "personal property" in S.C. Code Ann. § 56-5-3635(F) is intended to means any goods or chattels, and is only to be distinguished from real property.

Consequently, the cargo of dogfood constitutes "personal property" which the Petitioner had no right to withhold from the owner for almost a month. The undisputed fact that the cargo was withheld is a clear violation of S.C. Code Ann. § 56-5-3635(F), and that statutory violation alone, justifies the 120-day suspension and removal from the Rotation List for that time period.

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[4] Sherry Corbett testified that she did not know that South Carolina law required the cargo be released despite being in the towing and storage business for thirteen years.

VIII. Invoice to Premier Transportation Was Unreasonable in Many Particulars

The other principal issue that is before this Court for adjudication involves the reasonableness of the towing invoices submitted by the Petitioner to Premier Transportation. S.C. Code of Regulations R. 38-600(F)(2) requires as follows: "Fees charged for rotation list calls shall be reasonable and not in excess of those rates charged for similar services provided in response to requests initiated by any other public agency or private persons."

In all, there was testimony of at least four different versions of the invoice. The Petitioner presented testimony that the first version, which was divided into three invoices, was the result of a "rush" request from Premier. That invoice totaled $67,912.19 and was submitted on February 11, 2016. (Respondent Exhibit #20). The primary focus of the testimony in the case as well as the Highway Patrol investigation was the next invoice dated February 10, 2016,[5] and submitted on February 15, 2016, in the amount of $69,017.19. (Respondent Exhibit #6). The next invoice was submitted on or about February 16, 2016, in the amount of $64,783.19. (Respondent Exhibit #25). The final invoice was submitted on February 26, 2016, in the amount of $48,633.19, and it was that invoice that was ultimately paid by Premier on March 4, 2016. (Respondent Exhibit #24).

The following are some of the examples of unreasonable fees and costs charged by the Petitioner that support and justify the disciplinary action imposed by SCDPS:

(a) Length of the Tow/Recovery

Robert Watson disputed that the tow/recovery required 21 hours as was billed. The Petitioner's photographs, which were time-stamped, ranged from 5:29 a.m. to 6:06 p.m. on February 9th. (Petitioner Exhibit #13). Handwritten notes from the Petitioner show that the rotation call was

[5] Unfortunately, all the invoices except the first invoice were dated February 10, 2016. As a result, the different invoices cannot be differentiated by date.

received at approximately 3:00 a.m. (Respondent Exhibit #26). Jeff Corbett testified that the tractor-trailer was cleared by 10:05 a.m. and that the bridge was re-opened to traffic by noon at the latest. Sherry Corbett and their expert, Gaynell Rochester, spoke of GPS records that would reflect accurate times, but none were produced in discovery nor presented into evidence.

(b) Airbags

The Petitioner used two airbags on the job. Both were ruptured. Sherry Corbett priced new airbags on February 9th, the date of the incident, and was given a price of $3,350 for a new air bag. Two news airbags would have cost $6,700. The Petitioner charged $4,000 each for a total of $8,000 on the second invoice. The used airbags were being replaced by new airbags. There was no basis for charging $1300 more than the sales price for the new airbags. Later, the airbags charge was deducted from the final invoice.

(c) Backhoe

The Petitioner owns the backhoe used. It was billed at $350 per hour for 11.5 hours. Watson testified a backhoe could be rented for $350 for a day.

(d) Orange Cones

The Petitioner charged $1,000 for the use of 48 orange cones (26 inch in height). The charge was $50 per hour for 20 hours. The cones are obviously reusable for other jobs, and new cones cost approximately $17 each. The Petitioner charged in excess of the cost of the cones for one day of use.

(e) Double Billing for Labor

The Petitioner agreed that each heavy duty vehicle (wrecker and rotator) which were billed at $436 per hour comes with one operator (called a "recovery technician" on the invoice). KJ

(Kevin Johnson) and BR (Brian Robbins) were tied to the wrecker and rotator, but their labor was double billed for 21 hours (21 x $150 = #3,150) and 8 hours (8 x $85 = $680) respectively.

(f) Equipment Rental/Subcontractors

Jeff Corbett testified about a $600.00 rental for a skid steer track loader from United Rentals. No invoice was produced, and as a result, we do not know whether there was any surcharge added by the Petitioner. There is a $1000 charge for labor from Vern's on the invoice to Premier. The only invoice produced from Vern's is for $720. Sherry Corbett testified that the Vern's invoice was for the labor costs and that the Petitioner charged a $280 surcharge. That would be unreasonable, and pursuant to the 2015 Wrecker Rotation Fee Schedule, the Petitioner agreed to charge only "actual costs" for contracted labor and equipment. Jeff Corbett disagreed with his wife and testified that the $720 invoice from Vern's was actually for emergency digital signage placed in Georgia on I-20 eastbound. That signage was billed to Premier at $75 per hour for 20 hours totaling $1500. If Jeff Corbett's testimony is correct, that sign was billed for $780 more than the rental cost from Vern's. That is unreasonable and a violation of the "actual costs" requirement in the 2015 Wrecker Rotation Fee Schedule.

(g) Labor Costs

The labor costs at hourly rates ranging from $175 per hour for skilled employees to $50 per hour for laborers are excessive.

(h) Communications Equipment

The Petitioner -- more specifically South Carolina Incident Management (SCIM) -- purchased the equipment in 2015 for $4,850. The equipment is reusable on other jobs and is, in fact, utilized on any job with three or more employees on the scene. The invoice to Premier included a lump sum charge of $1,795 for the use of that equipment for a maximum of 21 hours (likely

shorter than that because the bridge was open to traffic by noon). That charge for one day of use is 37% of the sales price. That is unreasonable.

(i) Supply Truck/Response Unit

The Petitioner -- more specifically SCIM -- purchased the Response Unit (which is a supply truck) in 2015 for $4,516. The Response Unit carried supplies to the scene. It was charged to premier at $175.00 per hour for 20 hours for a total of $3,500. For the use of the Response Unit for 20 hours, the Petitioner received 78% of the sales price. That is exorbitant.

There are other examples of excessive costs as well, including the "restocking" and "reloading" fees that appear to duplicate the high labor costs. At any rate, these examples which are well documented in the testimony and exhibits show -- certainly by a preponderance of the evidence -- that the $69,017.19 charged to Premier initially was very unreasonable. Gaynell Rochester's opinions that the entire bill and all items addressed herein were reasonable are simply not credible and should be rejected by the Court. These excessive charges outlined herein, combined with the Petitioner's failure to abide by the "actual costs" requirement for contracted labor and equipment and its failure to provide appropriate back-up documentation despite requests from Lt. King, clearly justify and support the 120-day suspension that was imposed by SCDPS.

CONCLUSION

Based on the foregoing discussion and the evidence and arguments presented at trial, the Respondent South Carolina Department of Public Safety respectfully requests that the Court affirm the discipline imposed on Petitioner at the agency level, specifically the 120-day suspension of the Petitioner and its removal from the Wrecker Rotation List for that period of time applicable to all South Carolina locations operated by the Petitioner.

Respectfully submitted,

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August 11, 2017

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	)	Docket No. 16-ALJ-30-0410-CC **RESPONDENT'S REPLY TO PETITIONER'S FINAL ARGUMENTS**

The Petitioner Wayne's Automotive Center, Inc. has filed its "Final Arguments" to which the Respondent South Carolina Department of Public Safety ("SCDPS") is compelled to reply as set forth below. In replying to those arguments, the Respondent SCDPS continues to rely on the arguments previously made in its Post-Trial Brief and during the hearing.

I. Judicial Review vs. *De Novo* Hearing

During the hearing and in its Post-Trial Brief, the Respondent SCDPS argues that the Petitioner's procedural due process challenges are moot because the Petitioner sought a contested case hearing which provides a full trial *de novo*. The Respondent has shown that the *de novo* hearing has fully cured any alleged procedural challenges that Petitioner raises with respect to the hearing and review at the agency level.

Nonetheless, the Petitioner in footnote one of its "Final Arguments" appears to now argue that this Court is bound by the standard of review under S.C. Code Ann. § 1-23-380. S.C. Code Ann. § 1-23-380 explains that "[a] party who has exhausted all administrative remedies available

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within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1." However, the Petitioner cannot have it both ways -- either the case is presented as an appeal seeking "judicial review" or for a contested case hearing with a *de novo* adjudication. The Petitioner brought the matter as a contested case hearing. In fact, prior to the hearing, SCDPS took the position that the matter should be treated as an appeal rather than as a contested case, which the Petitioner opposed, and this Court has already ruled in the Petitioner's favor on that issue effectively ruling that the proceedings at the agency level do not qualify as a "contested case." In short, the matter was presented and is now before this Court for adjudication as a contested case. Thus, the Petitioner cannot now switch theories and seek judicial review under the standard of review provided by S.C. Code Ann. § 1-23-380.

In addition, because the Petitioner has sought and received a *de novo* hearing, any alleged procedural irregularities at the agency level are moot in accordance with the Supreme Court's decision in *Unisys Corp. v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263 (2001), a point incidentally that the Petitioner does not appear to contest. Therefore, the Petitioner's continued argument that SCDPS failed to create and utilize an advisory committee as part of the appeals process *at the agency level* has no bearing on this *de novo* proceeding.

II. Watson was a Proper Complainant

In its Petition for Contested Case Hearing and again at the hearing itself, the Petitioner argues that Robert Watson with Recovery Resolution Specialists does not have "standing" to make the complaint against the Petitioner that resulted in the investigation and disciplinary action taken by SCDPS. In its "Final Arguments," the Petitioner relies on a "staff memorandum"

prepared by a staff attorney for the West Virginia Public Service Commission to argue that Robert Watson lacks "standing" to make a complaint on behalf of the owner of the tractor-trailer and the insurers. The "staff memorandum" is not even a judicial or quasi-judicial adjudication; it is one lawyer's opinion in West Virginia. The "staff memorandum" is lacking of any persuasive authority in this proceeding.

Under South Carolina law, S.C. Code of Regulations R. 38-600(D)(1) reads in pertinent part as follows: "Complaints from or about wrecker services regarding an incident involving the Highway Patrol or its operation of the wrecker lists must be received within thirty days of the alleged incident." This regulation does not place any limitations or conditions on who is an appropriate complainant. Significantly, the Petitioner does not challenge or refute SCDPS's interpretation of this regulation. Moreover, Watson provided sufficient evidence by testimony and email communications that he was representing the interests of Premier Transportation and its insurers.

III. Requirement of Invoices for Subcontracted Equipment and Labor

The Petitioner argues in a conclusory manner that SCDPS is improperly disciplining the Petitioner for failing to submit, as requested, separate invoices for equipment and labor provided by a third-party contractor. There was evidence that equipment and some labor were provided on the job by another wrecker service named Vern's and perhaps also by South Carolina Incident Management (SCIM), which is a separate company also owned by the Corbetts. The 2016 Wrecker Rotation Fee Schedule provides that "a wrecker service may recover the *actual cost* of rented/subcontracted equipment or labor necessary to accomplish the job. Proof of those 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.*" (Emphasis added). The Petitioner argues that the requirement of "an itemized invoice or receipt from the third party" violates S.C. Code of Regulations R. 38-600(C)(15), which states: "Only one bill is to be submitted to the owner or operator for the work performed." Thus, by requiring the "an itemized invoice or receipt from the third party" to reflect the "actual cost," the Petitioner insists that SCDPS is requiring it to actually violate Regulation 38-600(C)(15).

That is clearly not correct and defies all notions of common sense. As Lt. Niklous King testified, Regulation 38-600(C)(15) is intended only to prevent the consumer from being sent multiple billings directly from multiple vendors. Instead, only one tow bill is to be sent to the consumer. However, that one tow bill should be "accompanied" by "an itemized invoice or receipt" from each third party contractor that provided equipment or labor. Note that the pertinent language in the 2016 Wrecker Rotation Fee Schedule refers to "tow bill" in the singular and thus is entirely consistent with the requirements of Regulation 38-600(C)(15).

In short, SCDPS, through several requests from Lt. King, asked the Petitioner to provide "an itemized invoice or receipt" from each third party contractor that provided equipment or labor. That request and requirement was consistent with both the 2016 Wrecker Rotation Fee Schedule and Regulation 38-600(C)(15). The Petitioner had no right or option to refuse to comply with that requirement and is appropriately subject to disciplinary action for its ultimate and repeated refusal to provide the requested documentation. In fact, even with the fourth and final invoice, which was ultimately paid by Premier Transportation, the Petitioner had still not broken out the equipment and labor costs from third party contractors such as Vern's and SCIM in separate invoices.

IV. Petitioner Failed to Release Cargo Which Violated Statutory Law

SCDPS contends that the 120-day suspension and removal from the Wrecker Rotation List is warranted based upon the Petitioner's deliberate refusal to comply with S.C. Code Ann. § 56-5-3635(F), which provides: "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 personal property."

In its "Final Arguments," the Petitioner offers two arguments in response. First, the Petitioner contends that SCDPS failed to consider and apply the first sentence of S.C. Code Ann. § 56-5-3635(F), which provides: "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." Relying on that provision, the Petitioner insists that it was lawfully entitled and justified to hold the cargo because it was not provided a "certificate of registration" showing "who had title to the cargo in question." This is a ridiculous argument on several levels. First, the Petitioner has certainly not shown nor argued that, when it finally did release the cargo on March 7, 2016, it was provided a "certificate of registration" for the dog food. Instead, it released the cargo only upon receiving payment from Premier Transportation. Second, the first sentence of S.C. Code Ann. § 56-5-3635(F) applies only to the removal of the property of the vehicle owner, not the property of a third party. The second sentence of the statute applies to the release of "any personal property that does not belong to the owner of the vehicle," i.e. the cargo in this instance. Third, the reference in the statute to "certificate of registration" is obviously a reference to the ownership *of the vehicle* and not to the ownership of the cargo. There is no evidence that dog food even carries a "certificate of registration." Thus, the

first sentence of S.C. Code Ann. § 56-5-3635(F) does not justify or excuse what obviously was the Petitioner's actions in unlawfully holding the cargo hostage until its bill was paid.[1] Instead, it is clear that the Petitioner has violated S.C. Code Ann. § 56-5-3635(F), as was determined by SCDPS as a basis for the disciplinary action taken against the Petitioner.

As a second argument, the Petitioner appears to back away to some extent from its position during the hearing that the dog food is "commercial property" which is somehow not "personal property." Now, the Petitioner argues instead that the dog food is not "personal property" because it does not fit the examples of "personal items" described in Regulation 38-600(C)(6), where the regulation refers to "personal items *such as* medicines, medical equipment, keys, clothing, and tools of the trade, child restraint systems and perishable items." (Emphasis added). The use of the term "such as" shows that this was not intended to be an exhaustive list but rather a mere list of examples. *See*, *Southeastern Freight Lines v. City of Hartsville*, 313 S.C. 466, 443 S.E.2d 395, 397 (1994) (use of term "include" suggests that list is not exhaustive). At any rate, the inclusion of the term "perishable items" in the list would cover the dog food in this case. By Sherry Corbett's own admission, the 40,000+ pounds of dog food was perishable and contained an expiration date. (Respondent Exhibit #14).

In sum, the evidence in the record is clear, undisputed and overwhelming to show that Petitioner was requested on numerous occasions to release the tractor-trailer's cargo and refused to do so until payment of the tow bill was made. That is a clear violation of S.C. Code Ann. § 56-5-

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[1] The Petitioner's intentions in holding the cargo are unmistaken. On February 16, 2016, Sherry Corbett emailed Bob Watson at 9:52 a.m. stating that "[t]he cargo, trailer, and tractor will be released when monies are paid for services already rendered as previously stated to the company representative and the insured on site the day of casualty." (Respondent Exhibit #13). There was never a request for a "certificate of registration" for the dog food to be released. That is nothing less than another *post hoc* rationalization offered by the Petitioner that is disingenuous and beyond credulity.

3635(F), and that statutory violation alone, justifies the 120-day suspension and removal from the Rotation List for that time period.

V. Location of the Accident

In its "Final Arguments," the Petitioner, despite the Court's evidentiary rulings on the issue, still insists that the site of the accident on the I-20 westbound bridge over the Savannah River is somehow dispositive. The Petitioner claims that SCDPS failed to prove that accident occurred in South Carolina.[2] This argument requires little additional discussion, but suffice it to say that there is a preponderance of evidence that the accident occurred in South Carolina. More importantly, there is no dispute that the Petitioner accepted the rotation call from the SCDPS, at least a significant portion of the tow and recovery occurred in South Carolina, and the cargo was stored and denied timely release in South Carolina. Thus, there is a sufficient basis for this Court to conclude, as it should, that there is a jurisdictional basis for the SCDPS to apply South Carolina law and regulations so as to pursue disciplinary action against the Petitioner.

VI. Invoice to Premier Transportation Was Unreasonable in Many Particulars

At the hearing and in its Post-Trial Brief, SCDPS has previously raised and discussed many examples of unreasonable fees and costs charged by the Petitioner that support and justify the

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[2] In footnote six of its "Final Arguments," the Petitioner states that "the accident did not occur in South Carolina but rather between the Savannah River and [the] Augusta Canal in Georgia." That is actually false and not supported by the evidence. The photographs clearly show that the tractor-trailer came to a rest on the middle of the Savannah River bridge and clearly over the river. The photographs looking westbound show the Georgia banks of the river and the Augusta Canal in the background and farther to the west of the accident scene. That was also verified by Jeff Corbett in his testimony.

disciplinary action imposed by SCDPS. It is noteworthy that the Petitioner has not attempted to directly refute even one of those many examples in its "Final Arguments." The reason for that is obvious -- the examples given are simply not defensible.

Instead, the Petitioner, in a conclusory manner, suggests that the Court should simply accept the "expert" testimony of Gaynell Rochester that all the invoices were reasonable. Ms. Rochester's testimony, however, was shown to be not credible and unsupported by the types of supporting evidence necessary for her to reach her conclusions. By way of examples, Ms. Rochester admitted that she had not seen any documentation showing the job lasted 21 hours as billed, and she accepted the 21 hours only because that is what "was stated on the bill." She acknowledged that GPS data should show the times that vehicles were on the job, but she had not been provided nor reviewed such GPS data. She admitted that she was never provided invoices from any third party contractors and thus could not testify that the charges for subcontracted equipment and labor were "actual costs." She even disputed what was plainly shown to be duplicative charges for labor for the two heavy equipment operators whose labor time admittedly was included in the charge for each heavy duty vehicle (wrecker and rotator). The evidence clearly showed that each heavy duty vehicle was billed at $436 per hour and that included one operator (called a "recovery technician" on the invoice). KJ (Kevin Johnson) and BR (Brian Robbins) were tied to the wrecker and rotator, but their labor was double billed for 21 hours (21 x $150 = $3,150) and 8 hours (8 x $85 = $680) respectively. Yet, Ms. Rochester testified -- without support and contrary to the evidence -- that Johnson and Robbins could have worked "in both capacities" -- as operators and laborers. She testified to that despite the fact that the entire operation was supposedly 21 hours in duration, which does not explain how Kevin Johnson could have worked 21 hours as an operator and another 21 hours in some other capacity.

In short, Ms. Rochester's testimony was not credible. The fees charged were not reasonable simply because she said they were. This Court is asked to rule that the excessive charges raised by SCDPS in its Post-Trial Brief, combined with the Petitioner's failure to abide by the "actual costs" requirement for contracted labor and equipment and its failure to provide appropriate back-up documentation despite requests from Lt. King, clearly justify and support the 120-day suspension that was imposed by SCDPS.

CONCLUSION

Based on the foregoing discussion and the evidence and arguments presented at trial, the Respondent South Carolina Department of Public Safety respectfully renews its request that the Court affirm the discipline imposed on Petitioner at the agency level, specifically the 120-day suspension of the Petitioner and its removal from the Wrecker Rotation List for that period of time applicable to all South Carolina locations operated by the Petitioner.

Respectfully submitted,

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	Docket No. 16-ALJ-30-0410-CC **PETITIONER'S MOTION FOR RECONSIDERATION OF FINAL ORDER**

Consistent with SCALC Rule 29 (D), SCRCP Rule 59, and related provisions and authorities, Petitioner gives notice and moves for the Court to reconsider its Final Order, filed September 19, 2017, and received by U.S. Mail on September 20, 2017 (Order), modify its 60-day suspension of Petitioner from the Wrecker Rotation List to the 4-day suspension Petitioner has already served and provide other appropriate relief on the following grounds.[1]

1. As indicated in the second full paragraph @ 2 of the Order, Lt. King issued an internal memo to Capt. Grice on or about March 4, 2016; however, Petitioner only became aware of its existence or the specifics in it until after its inclusion as part of an FOIA response by Respondent on July 19, 2016--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.

By its settlement payment without any reservation of rights, examination of the King memo's reference to "civil court action" being underway against Petitioner by

[1] *See, generally*, Petitioner's Final Arguments (filed August 21, 2017), incorporated by reference herein. Petitioner further requests the Court to provide relief for the 4-day suspension previously served by Petitioner to the extent such relief is available.

Sentry Insurance for "the release of cargo and fees"--which had retained Robert Watson per the Order in the last paragraph @ 3--shows Respondent improperly prosecuted Petitioner herein, based on its misapprehension such separate litigation was ongoing against Petitioner.

Next, the Order fails to acknowledge that the 2016 Wrecker Fee Schedule's (or Schedule's) requirement of a separate receipt or invoice for rental/subcontracted work violates Regs. 38-600 (C) (15)'s requirement of "(o)nly one bill is to be submitted to the owner or operator for the work performed." Respondent must seek amendment of its Regulation and approval of it by the General Assembly in order to do so in a Schedule.

Moreover, Respondent failed to make Petitioner aware of the specific, alleged violations until it issued its April 25th Notice—almost 2 months after full settlement—providing it no knowledge or opportunity to understand DPS still wanted Petitioner to make further revisions before any final invoice would be acceptable to it.

Finally, by such unrestricted, full settlement payment and Premier's driver subsequently being convicted of driving too fast for conditions *in absentia*, as Lt. King testified, Premier and/or its insurer by absence of intervention herein concluded the amount paid satisfied its duty to "bear all reasonable costs of removal," as required by S.C. Code Ann. § 56-5-1210 (B), referenced in Petitioner's Final Arguments in n. 2 @ 2.

Therefore, the Order's findings of fact and conclusions of law of remaining Schedule violations by Petitioner at this point are inconsistent with § 56-5-1210 (B), as well as Respondent's statutory duties as to public safety about which satisfaction by Petitioner in this matter Respondent has not complained, and the Court's own Conclusions of Law in its Order @5-7, citing *Unisys Corp* and harmless error. The Court

should modify its Order by concluding Respondent cannot or otherwise should not be able to direct Petitioner after such settlement to revise further any invoice under these particular circumstances, since allowance of retroactive application would also result in impairment of Petitioner's constitutional Contract Rights and violation of its Due Process Rights under S.C. Constitution Art. I, §§ 4 and 22. *Accord, 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 this Court has the jurisdiction and authority to as-applied challenges to the constitutionality of a regulation and statute), cited in Petitioner's Petition For Contested Case Hearing in n . 1 @ 1.

2. The Order makes no Findings of Fact as to the requirement of creation of an Advisory Committee set forth in Regs. 38-600 (D) (5-7); however, Respondent through its attorney in resting its case at the hearing admitted there is no Advisory Committee. While §(D) (5) unequivocally states "An advisory committee... will be created...," the Order @ 5-6 refers not to the Advisory Committee's creation but only to a "review" by it "upon request by the Department" in (D) (5) and concludes:

> ...its review would be limited to 'specific issues raised in a complaint or appeal,' and its 'recommendations regarding the validity of the complaint as well as a fair and reasonable resolution' cannot 'supercede (sic) Department of Public Safety policy.' Hence, while the Department may have erred in failing to create an Advisory Committee, it is not obligated to use the committee or to follow its recommendations. In any event, the contested case hearing and its *de novo* review (have) cured any procedural or due process violations. *Unisys Corp. v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263 (2001). Therefore, this error, if it is an error, is harmless.

As Petitioner pointed out in n. 1 @ 1 of its Final Arguments, the Supreme Court in *Unisys Corp.* expressly required an "adequate *de novo* review" to render such error harmless. 551 S.E.2d at 272.

To assist the Court and parties herein Petitioner attached both Regs. 38-600 and DPS Policy 200.19, the Wrecker Rotation Disciplinary Policy (Policy), referencing S.C. Code § 23-6-20 and Regs. 38-600, effective September 14, 2004, to its Petition For Contested Case Hearing. Regs. 38-600 (D) (2) and (3) state:

* * *

> 2. The Department will enact a Wrecker Rotation Disciplinary Policy setting out the procedures for enforcing this regulation.
>
> 3. Failure of any wrecker service to comply with this regulation *will result in disciplinary action in accordance with the South Carolina Department of Public Safety Wrecker Rotation Disciplinary Policy.*

(*Emphasis added*).

* * *

In addition, in the last paragraph of Notice of Disciplinary Action Decision by Troop Commander Hughes @ 7, herein, dated September 26, 2016, Petitioner was provided information as to how to seek an internal "appeal" within the Department, which was to submit a written request with the grounds for it to Col. Oliver, Patrol Commander, within 10 calendar days following receipt of it, consistent with Section IV (D) of the Policy concerning Disciplinary Procedures, which is entitled "Appeal of Troop Commander's Decision." Petitioner timely submitted its written "appeal" internally herein. Next Section IV (E) of the Policy, entitled "Patrol Commander's Action On Appeal," states:

> When an appeal from a troop commander's decision is received, the patrol commander may summarily concur, modify, reverse, or order another disposition of the complaint consistent with the facts substantiated in the record, department policy, and applicable law. *The patrol commander shall request that the advisory committee review the appeal and make recommendations before making a final decision.*

(Emphasis added). Patrol Commander Oliver made no such request herein and could not do so in light of DPS's failure to have met its duties to create such an Advisory Committee. Remand at this juncture does not appear to be a viable option for the Court to follow.

In this matter Respondent failed to meet its burden of proof that it fulfilled its express statutory, regulatory, and policy duties and related duties in prosecuting its action against Petitioner and failed to proffer either Troop Commander Hughes or Patrol Commander Oliver as witnesses, although their respective signed decisions, dated September 26 and December 1, 2016, are in the record as exhibits. Respondent further violated its own Regs. 38-600 (D) (3) and Disciplinary Policy IV (E) in prosecuting Petitioner herein and would have this Court do so as well by continuing to pursue this action and impose disciplinary action by suspension of Petitioner from the Wrecker Rotation List in a manner not "*in accordance with*" Disciplinary Policy (E), since there is no Advisory Committee in existence to review the appeal and make recommendations before the Patrol Commander made a final decision, consistent with DPS Regs.38-600 (D) (3) and Policy IV (E). Therefore, there has not and cannot be any "adequate *de novo* review" herein to satisfy Respondent's violations of its own Regulation, Policy, and Petitioner's rights regarding Contract Impairment and Due Process as well.[2]

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[2] *See also,* Petitioner's Final Arguments at 10-11 and n.6, *supra*, regarding examples of Respondent's use of unlawful binding norms.

Furthermore, Petitioner fully responded to Respondent's discovery in good faith and provided the Vern's invoice and accident photos among several hundred other pages of discovery responses. The Court's reliance on *Unisys Corp.,* is, therefore, misplaced. However, through its reliance, Petitioner should not otherwise be penalized for providing third-party information to Respondent in discovery in the instant contested case proceeding instead of attaching it to its invoice(s) to Premier, since such inconsistency would be arbitrary, capricious, and an abuse of discretion; and such continued prosecution and any penalty will violate and be inconsistent with the express provisions (D) (2) and (3) of DPS Regs. 38-600, which incorporate by reference in (D) (2) the Wrecker Rotation Disciplinary Policy (200.19).

3. Respondent failed to meet its burden of proving the Premier accident occurred in South Carolina, since the mere fact Petitioner received a rotation call from Respondent, as referenced in the Order in the first full paragraph @ 2 provides an insufficient evidentiary basis without foundation for application of the 2016 Wrecker Fee Schedule herein. In its Post-Trial Brief and Reply Brief, Respondent admits wrecker and recovery services were provided in both Georgia and South Carolina. Consistent with the Order's Conclusion of law @ 4, Petitioner agrees this Court has jurisdiction of this matter; however, in light of Respondent's failure to meet its burden of proof, follow its own Regulation, and follow its own Disciplinary Policy, the Court should modify its Order to conclude Respondent has misapplied the Schedule herein, any suspension was inappropriate, and any further suspension is inappropriate.

4. Respondent further failed meet its burden of proof that Premier did not give its prior consent or other authorization for Petitioner to provide its towing and recovery

services, which otherwise renders Respondent's Schedule inapplicable herein, consistent with Congressional preemption mandate. As stated in Petitioner's Final Arguments in n. 4 @ 7-8:

> Finally, as Respondent argues in its Brief @ 5-7, 49 U.S.C. § 14501(c) does not preempt State regulation of *intrastate tow truck operations* (only) 'performed without the prior consent or authorization of the owner or operator of the motor vehicle.' DPS presented no evidence the driver of the Premier tractor was already away from the scene, and no evidence indicates whether the Highway Patrol complied with the Reg. 38-600 (C) (2) requirement that the owner or driver of the vehicle 'has no preference as to which wrecker service he/she desires, a wrecker will be called from the appropriate wrecker rotation list.' In fact, Petitioner showed Chancey's Wrecking Service from Augusta, GA and insurance adjustor for Premier were already onsite prior to Petitioner; and the adjustor assisted by taking photos generally and by helping Jeff Corbett for Wayne's specifically in the towing and recovery process. Premier, therefore, consented or authorized Wayne's to provide its services, which preempts application of the DPS 2016 Wrecker Service Rotation Fee Schedule herein, were the Court to find and conclude this is an intrastate matter.

(*Emphasis added*).

Respondent, however, has further failed to prove by a preponderance of the evidence that this matter was intrastate in nature. In fact, the evidence shows the accident and wrecker and recovery services were themselves *interstate* in nature, thereby rendering the Schedule inapplicable. *Accord*, as cited in Petitioner's Prehearing Statement @ 6 (updated): *Dan's City Used Cars, Inc. v. Robert Pelkey*, 133 S. Ct 1769 (2013*), City of Columbus v. Ours Garage and Wrecker Service, Inc.*, 536 U.S. 424 (2002), and *Modzelewski's Towing and Recovery, Inc. v. Commissioner of Motor Vehicles*, 322 Conn. 20, 139 A. 3d 594 (2016), and authorities cited therein, such as the Federal Aviation Administration Authorization Act of 1994 (FAAAA) (re preemption of state laws related to a price, route, or service of any motor carrier, including towing and recovery vehicles, with respect to the transportation—i.e., movement of property, such as

pretowing/recovery, towing, and temporary storage of an item in transit to its final destination—as well as current 49 U.S.C. § 14501(c) (2015), except as to intrastate nonconsensual or authorized towing regulation by States.)

5. As to the equipment and labor discussed by the Court in its Order @ 3, as to Vern's Wrecker Service and Petitioner's $280 mark-up in the settlement invoice to $1,000, the Order further fails to take into account that Vern's and its personnel are located in Georgia instead of South Carolina, and they worked in both states as part of their involvement, as did other laborers and equipment operators referenced as to alleged "duplicated" charges.

In addition, contrary to Respondent's contention, the Schedule—even if applicable—does not specify an operator charge is also included in each of the wrecker and rotator vehicle charges. Moreover, Respondent failed to provide prior notice it took the position they do and/or meet its burden of proof they do, while Respondent admits both of these vehicles, their operators, and laborers worked in both Georgia and South Carolina in undertaking towing and recovery services. Therefore, there was no double billing that constitutes any specific abuse or violation of Regs. 38-600 herein.

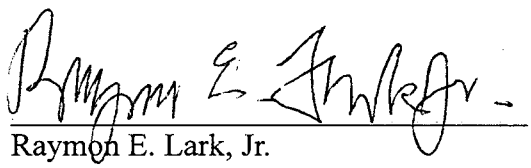
Finally, while Petitioner did not separately charge for creating the several versions of invoices, for example, at the premature insistence of Robert Watson, such costs were definitely incurred. They should be recoverable. Petitioner, therefore, requests the Court to eliminate this violation for this reason as well as those above.

6. Petitioner brings to the Court's attention an error in n. 4 @ 3 of its Order, regarding the respective interests of Sherry and Jeff Corbett in S.C. Incident Management. As Bill Rawl, CPA, for Petitioner testified, the U.S Internal Revenue

Service and S.C. Department of Revenue are treating it as a 50/50 % partnership owned by Sherry and Jeff Corbett, instead of 51/49 %.

WHEREFORE, Petitioner respectively moves the Court to reconsider its Final Order, modify its 60-day suspension of Petitioner from the Wrecker Rotation List to the 4-day suspension Petitioner has already served, provide further relief to eliminate the 4-day suspension, as available, and provide other appropriate relief, including, but not limited to continuing the stay in effect upon any appeal.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	Docket No. 16-ALJ-30-0410-CC **NOTICE OF MOTION AND MOTION FOR RECONSIDERATION**

The Respondent South Carolina Department of Public Safety ("SCDPS"), through its undersigned counsel, hereby moves before the Administrative Law Court in accordance with Rule 59(e), SCRCP, and Rule 29(D), SCALC, for reconsideration of the Final Order filed September 19, 2017. Counsel for the Respondent received written notice of entry of the Final Order on September 22, 2017.

The Respondent's motion is based on the following grounds:

1. In its Final Order, the Court correctly determined there was evidence of at least four different versions of the invoice submitted by the Petitioner to Premier Transportation. The Petitioner presented testimony that the first version, which was divided into three invoices, was the result of a "rush" request from Premier. That invoice totaled $67,912.19 and was submitted on February 11, 2016. (Respondent Exhibit #20). The primary focus of the testimony in the case as well as the Highway Patrol investigation was the next invoice dated February 10, 2016,[1] and

[1] All the invoices except the first invoice were dated February 10, 2016. As a result, the different invoices cannot be differentiated by date.

submitted on February 15, 2016, in the amount of $69,017.19. (Respondent Exhibit #6). The next invoice was submitted on or about February 16, 2016, in the amount of $64,783.19. (Respondent Exhibit #25). The final invoice was submitted on February 26, 2016, in the amount of $48,633.19, and it was that invoice that was ultimately paid by Premier on March 4, 2016. (Respondent Exhibit #24).

In its analysis of the reasonableness of the invoices submitted by the Petitioner, the Court evaluated only the reasonableness of the final invoice in the amount of $48,633.19. The Court reasoned that Lt. King of the Highway Patrol had advised the Petitioner to make corrections to the invoice and that "Respondent must take revision[s] into account and evaluate the final bill." There is no indication in the record that the Petitioner followed any recommended changes made by Lt. King. Yet, it is irrelevant whether the Petitioner did or did not follow Lt. King's directions in mitigation. What is relevant is whether the Petitioner submitted an unreasonable invoice for payment in the first place. The Respondent focused its investigation and ultimately its disciplinary action on the invoice submitted on February 15, 2016, in the amount of $69,017.19. (Respondent Exhibit #6). It was that invoice on which the complaint was initially made by Premier and which triggered the Respondent's investigation.

Without citing any legal authority, the Court determined that only the final bill could be evaluated. The Court reasoned that "Petitioner prepared and submitted revised bills as directed; therefore, it cannot be held responsible for alleged violations that it subsequently corrected." This ruling is in error in two key aspects.

First, the evidence does not support the conclusion that the Petitioner "corrected" the $69,017.19 invoice as directed by Lt. King. The original issues that were identified by Lt. King in his investigation remained in the final invoice.

Second, and most importantly, there is no legal authority for the proposition that attempts to mitigate or correct original wrongdoing after that wrongdoing is raised by an administrative complaint will bar or prevent the continued investigation and/or prosecution of the original wrongdoing. Indeed, the Court's ruling suggests that, had the Petitioner immediately corrected every unreasonable charge in the original invoice sent to Premier after the complaint was first lodged with the Respondent (and assuming there was no other wrongdoing by the Petitioner), there would have not been any basis for the Respondent to have continued its investigation nor any basis for finding that disciplinary action was warranted. Quite frankly, if that is indeed the law, that would have significant and detrimental public policy repercussions. It would effectively allow a wrongdoer to escape culpability as well as disciplinary action by simply correcting its wrongdoing on each occasion that it got caught. And, the wrongdoer could continue to commit the wrongdoing without any fear of retribution -- again because it could avoid negative consequences by simply correcting the wrongdoing whenever it got caught. Clearly, that is not the law nor should it be.

As an illustration of this, the Respondent again calls the Court's attention to the typical scenario involving the utterance of a fraudulent check. South Carolina law recognizes that the utterer of a fraudulent check enjoys a a fifteen day "grace period" as provided by statute to make good on a bad check. However, that does not negate the original wrongdoing such that the utterer escapes all culpability. Indeed, the law recognizes that the payment of the bad check within the "grace period" "does not prevent a prosecution for issuing a fraudulent check." *James v. Fast Fare, Inc.*, 685 F.Supp. 565, 567 (D.S.C. 1988). In effect, the payment of the fraudulent check does not preclude criminal prosecution or the imposition of criminal sanctions.

Likewise, where there is misconduct by a towing company in submitting an unreasonable towing invoice, the fact that the company agrees to reduce its invoice in response to a consumer

complaint does not and should not insulate the company from the investigatory and disciplinary actions taken by the Highway Patrol. The company remains culpable and subject to disciplinary action for its original wrongdoing despite any attempts to mitigate that wrongdoing.

In short, the Respondent was correct in focusing its analysis of the reasonableness of the fees charged by the Petitioner on the invoice that was submitted as part of Premier's complaint. The Petitioner's actions in later reducing that invoice for whatever reason did not negate any original wrongdoing, although like any mitigating evidence, it may be considered in assessing the appropriate sanction. Thus, on reconsideration, the Court is urged to find that the Respondent was correct in evaluating the reasonableness of the charges included in the $69,017.19 invoice rather than the charges included in the final invoice for $48,633.19 that Premier ultimately paid. Moreover, the Court is urged to reconsider and adjust its analysis to evaluate the unreasonable charges included in the $69,017.19 invoice.

2. The Respondent also respectfully asks the Court to reconsider its analysis of the Petitioner's deliberate refusal to comply with S.C. Code Ann. § 56-5-3635(F). The Court found no wrongdoing by the Petitioner in holding the cargo from February 9, 2016 until March 7, 2016, based upon the "complexity" of determining who owned the cargo. The Court explained that "Respondent's directive to release the cargo without resolving the ownership issue left Petitioner in a legal limbo." Yet, the Court also concluded that "Petitioner is justified in holding the cargo until its owner, the owner's designee, or the owner's insurer is prepared to take possession." These rulings give rise to several issues that merit reconsideration.

First and foremost, the Court disregarded the clear evidence that Petitioner held the cargo only until payment was made by Premier and not until there was a determination of ownership of the cargo. The Petitioner's intentions in holding the cargo were unmistaken. Indeed, on February

16, 2016, Sherry Corbett emailed Bob Watson at 9:52 a.m. stating that "[t]he cargo, trailer, and tractor will be released when monies are paid for services already rendered as previously stated to the company representative and the insured on site the day of casualty." (Respondent Exhibit #13). There was never a request for proof of ownership for the dog food to be released. And indeed, the cargo was released without the Petitioner ever making a determination of ownership or that the property was being released to the rightful owner.

Second, the Court suggests that the Respondent had some duty to determine ownership of the cargo. That is not the case. The Respondent did not put the Petitioner in "legal limbo."

Third, with respect to the cargo, it is clear that S.C. Code Ann. § 56-5-3635(F) envisions the release of the cargo (as personal property not attached to the vehicle) when the request is made to the towing company. The cargo may be released to the trucking company that remains under contract and the legal duty to deliver the cargo; that is the party that was in lawful possession of the personal property. It truly makes no difference to the towing company who the "owner" of the cargo is; what is relevant is the party who has lawful possession on behalf of the owner or as the owner's designee. The Court, in fact, recognized this very point in stating that "Petitioner is justified in holding the cargo until its owner, the owner's designee, or the owner's insurer is prepared to take possession." Premier, as the owner's designee, as well as the insurer of the cargo sought its release, i.e., they were prepared to take possession of the cargo long before March 7, 2016; yet, the Petitioner refused to comply to several such requests and only did so after payment was received from Premier. That conduct was in violation of the clear intent and purpose of S.C. Code Ann. § 56-5-3635(F), and the Court should so hold and sanction the Petitioner for that statutory violation.

Respectfully submitted,

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October 2, 2017

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	)	Docket No. 16-ALJ-30-0410-CC **RESPONSE TO PETITIONER'S MOTION FOR RECONSIDERATION**

The Petitioner Wayne's Automotive Center, Inc. has filed a Motion for Reconsideration with respect to the Court's Final Order filed September 19, 2017. The Respondent South Carolina Department of Public Safety (SCDPS) opposes that motion.

The Petitioner engages in a scattershot approach in its Motion for Reconsideration. A vast majority of the points raised appear immaterial and inconsequential, and some even incomprehensible. Moreover, in many instances, the Petitioner uses the Motion for Reconsideration to raise new arguments that have been improperly and untimely raised after the Final Order was issued. For, it is well settled that a Rule 59(e) motion may not be used to present a new argument or new evidence to the court that could have been presented prior to entry of judgment. In *C.A.H. v. L.H.*, 315 S.C. 389, 434 S.E.2d 268 (1993), the Supreme Court held that "a party cannot use a Rule 59(e) motion to present to the court an issue the party could have raised prior to judgment but did not." 434 S.E.2d at 270. Similarly, in *Kiawah Property Owners Group v. Public Service Commission*, 359 S.C. 105, 597 S.E.2d 145 (2004), the Supreme Court reaffirmed that "a party may not raise an issue in a motion to reconsider, alter or amend a judgment that

could have been presented prior to the judgment." 597 S.E.2d at 149. *See also*, *McGee v. Bruce Hospital System*, 321 S.C. 340, 468 S.E.2d 633 (1996); *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990); *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995).

As its initial ground for reconsideration, the Petitioner argues that it did not have possession of Lt. King's March 4, 2016 internal memorandum directed to Captain A.K. Grice until later in the appeals process. The Petitioner then suggests that Lt. King's misstatement in that internal memorandum that there was litigation already commenced between Premier Transportation and the Petitioner in late February somehow precludes SCDPS from conducting its investigation and initiating disciplinary action. The Respondent fails to see the logic of that position. Nonetheless, it is a new argument that was not made during the hearing or in post-hearing submissions.

The Petitioner next argues that the language in the 2016 Wrecker Rotation Fee Schedule requiring "an itemized invoice or receipt from the third party providing such equipment or labor" is an improper "amendment" of S.C. Code of Regulations R. 38-600(C)(15) without the approval of the General Assembly. This is also a new argument that was not made prior to the Final Order being issued. Previously, the Petitioner argued that the language in the 2016 Wrecker Rotation Fee Schedule was in violation of S.C. Code of Regulations R. 38-600(C)(15), but the Court correctly determined that there was no such inconsistency or violation. As this Court ruled:

> One bill is required to be submitted to the owner or operator. The Fee Schedule allows the towing company to include in its bill and recover the actual cost of rented or subcontracted equipment or labor. However, these costs must be substantiated by including with the single towing bill an itemized invoice or receipt from the third party that furnished such equipment or labor.

See, Final Order, p. 6.

The Petitioner then cites to S.C. Code Ann. § 56-5-1210(B) and makes some new argument claiming an "impairment of Petitioner's constitutional Contract Rights and violation of its Due Process Rights." *See*, Petitioner's Motion, p. 3. This is clearly a new issue raised after issuance of the Final Order. The only mention of "due process" in the Petitioner's post-trial filings addressed the lack of an advisory committee. Moreover, the Petitioner's argument is frankly incomprehensible. The Highway Patrol's investigation of a consumer complaint -- even if there was an settlement of the invoice between the consumer and the towing company in the interim -- is not a violation of due process or contract rights. As the Respondent has argued previously, any resolution of the underlying towing invoice does not make the investigation moot. In essence, it does not negate the conduct by the Petitioner that precipitated the investigation and disciplinary action.

As an additional ground, the Petitioner returns to its prior arguments about the absence of an advisory committee. This Court's ruling correctly disposes of that issue. As SCDPS has argued, the Petitioner's procedural due process challenges are moot because the Petitioner sought a contested case hearing which provides a full trial *de novo*. The *de novo* trial has fully cured any alleged procedural challenges that Petitioner raises with respect to the hearing and review at the agency level. Again, the Petitioner brought the matter as a contested case hearing and cannot now treat this matter as an appeal from the agency level rather than the *de novo* proceeding that actually transpired at its request. In fact, prior to the hearing, SCDPS took the position that the matter should be treated as an appeal rather than as a contested case, which the Petitioner opposed, and this Court has already ruled in the Petitioner's favor on that issue effectively ruling that the proceedings at the agency level do not qualify as a "contested case." In short, the matter was presented and has been adjudicated by this Court as a contested case. Thus, the Petitioner

has now received a *de novo* trial, meaning that any alleged procedural irregularities at the agency level are moot in accordance with the Supreme Court's decision in *Unisys Corp. v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263 (2001). That includes the Petitioner's continued argument that SCDPS failed to create and utilize an advisory committee as part of the appeals process *at the agency level* -- an argument that continues to have no bearing on this *de novo* proceeding.

Next, the Petitioner continues to argue that SCDPS failed to prove that the Premier accident occurred in South Carolina rather then in Georgia -- even though the Petitioner now "agrees this Court has jurisdiction of the matter." *See*, Petitioner's Motion, p. 6. However, there is a preponderance of evidence showing that the accident occurred in South Carolina. More importantly, there is no dispute that the Petitioner accepted the rotation call from the SCDPS, at least a significant portion of the tow and recovery occurred in South Carolina, and the cargo was stored in South Carolina. Thus, there is a sufficient basis for this Court to conclude, as it has done, that there is a jurisdictional basis for the SCDPS to apply South Carolina law and regulations so as to pursue disciplinary action against the Petitioner.

Furthermore, with respect to the Petitioner's re-argument of its federal preemption defense, SCDPS relies on its previous discussion of that issue. The evidence is undisputed that the Petitioner was responding to a call from the Highway Patrol Wrecker Rotation List. The Premier driver was not on the scene when the Petitioner received the call or when the Petitioner first arrived on the scene. Premier did not retain the Petitioner's services, and hence, this was a

non-consensual tow, the regulation and review of which is not subject to federal preemption under 49 U.S.C. § 14501(c)(1).[1]

Next, the Petitioner suggests that it is somehow significant that Vern's Wrecker Service is located in Georgia rather than South Carolina. This is a new issue raised for the first time in the Motion for Reconsideration, and frankly it makes a point that is entirely immaterial. In addition, according to Sherry Corbett, the laborers from Vern's were used for transferring and reloading the cargo, which activities occurred in South Carolina.

Further, the Petitioner challenges the Court's conclusion that "the final bill retains 'double billing' for individuals whose labor should have been included in the hourly rate for the heavy-duty wreckers." *See*, Final Order, p. 10. Yet, that was established through the testimony of Sherry Corbett who testified that each heavy duty vehicle (wrecker and rotator) which were billed at $436 per hour comes with one operator (called a "recovery technician" on the invoice). As Ms. Corbett explained, KJ (Kevin Johnson) and BR (Brian Robbins) were tied to the wrecker and rotator. But the evidence also showed that their labor was double billed *on the final invoice* (as well as on earlier invoices) for 21 hours (21 x $150 = $3,150) and 8 hours (8 x $85 = $680) respectively.

Finally, the Petitioner argues that it incurred costs for preparing multiple versions of the invoices and that those costs "should be recoverable." *See*, Petitioner's Motion, p. 8. That is certainly a new issue improperly raised for the first time in the Motion for Reconsideration. Yet frankly, that argument is surprising if not actually shocking. In effect, the Petitioner attempts to justify *post hoc* the unreasonable fees found by this Court by suggesting that it should now be

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[1] SCDPS also reiterates that the federal preemption defense was not raised in the pleadings and was not inserted into the Pre-Hearing Statement until a revision submitted on June 26, 2017. The preemption defense is an avoidance under Rule 8(c), SCRCP, which must be affirmatively pled or otherwise is waived. The Petitioner never made a motion to supplement its pleadings to assert preemption as an affirmative defense.

able to charge for some additional fees never included on the final invoice -- that is, some unspecified administrative fee for the preparation of the invoices. That argument should obviously be rejected.

Based on the foregoing discussion, as well as the previous written arguments submitted by SCDPS, the Court is respectfully requested to deny the Petitioner's Motion for Reconsideration including any requested modification of the suspension rendered by the Court.

Respectfully submitted,

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc.,	)	Docket No. 16-ALJ-30-0410-CC
	)	
Petitioner,	)	
	)	**PETITIONER'S RESPONSE IN**
v.	)	**OPPOSITION TO RESPONDENT'S**
	)	**MOTION FOR RECONSIDERATION**
South Carolina Department of Public Safety,	)	
	)	
Respondent.	)	
	)	

Consistent with SCALC Rule 29 (D), SCRCP Rule 59, and related provisions and authorities, Petitioner submits its response in opposition to Respondent's Motion For Reconsideration (Motion) of this Court's Final Order, as follows.[1]

1. As indicated in the second full paragraph @ 2 of the Order, Lt. King issued an internal memo to Capt. Grice on or about March 4, 2016; however, Petitioner only became aware of its existence or the specifics in it until after its inclusion as part of an FOIA response by Respondent on July 19, 2016, per Petitioner's Exhibit 5--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.[2] In its Motion, however, Respondent totally disregards this fact.

Without support, Respondent in its Motion @ 2-4 contends Petitioner submitted an unreasonable invoice "in the first place", while Respondent itself acknowledges

[1] *See, in general*, Petitioner's Final Arguments (filed August 21, 2017), and its Motion For Reconsideration (filed September 29, 2017), incorporated by reference herein. As to constitutional violations by Respondent raised by Petitioner, *in particular*, *see* Petition For Contested Case Hearing in ¶s 2, 4, and 5 @ 3-5 and Petitioner's Final Arguments re § I , n. 1 @ 2, re § III @ 4, and § IX @ 10-11 and n. 5 and 6.

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

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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 Respondent'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. Respondent's contention Lt. King timely directed otherwise is unsubstantiated in the record.

Contrary to Respondent's contentions, the Court's rationale that Respondent failed to give Petitioner proper notice of its concerns supports its focus on the "final bill", as referenced by Respondent in its Motion @ 2.

Respondent's contentions the 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 briefs (*Id.* @ 3) are woefully misplaced. DPS wants to have its cake and eat it, too—to the detriment of hard-working towers like Petitioner. Respondent miserably 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.

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

Finally, 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] As exemplified in the instant

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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 *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.* 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:

> (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.*

case, rather than endeavoring to meet its burden of proof, Respondent's approach to investigation and regulation of the instant 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. Therefore, in the absence of any testimony or evidence at the hearing from DPS personnel onsite or anyone else or any advance assistance or other timely guidance to Petitioner as to specific billing concerns without investigation on the scene, there is a lack of sufficient, supportive evidence to impose any suspension.

Similarly, Respondent's contentions are inconsistent with S.C. Code Ann. § 56-5-1210 (B),[4] as well as its statutory duties as to public safety. *Accord*, S.C. Constitution

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

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 this Court has the jurisdiction and authority to as-applied challenges to the constitutionality of a regulation and statute), cited in Petitioner's Petition For Contested Case Hearing in n . 1 @ 1.

2. Respondent's additional contention Petitioner violated the one-time cargo retention and release provisions in S.C. Code Ann. § 56-5-3635 (F), contrary to the 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 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 Petitioner in its lack of legal limbo contentions.

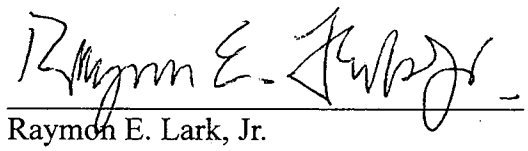
> The vehicle owner and any driver, or the owner's, driver's, or the at-fault party's insurance company, of a vehicle removed under this subsection, or the owner's, driver's, or the at-fault party's insurance company, shall bear all reasonable costs of removal.
>
> Nothing in this section shall bar recovery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

Third, rather than have developed, implemented, and followed a proven and objective, 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..

This Court's fair and objective review and ruling(s) on both parties' motions for reconsideration are important to promote the proper purposes of the transition of SC PSC to SCDPS responsibilities to promote: (1) a fair and objective review process, consistent with responsibilities of DPS, motor vehicles for compensation like Premier, especially when acknowledging responsibility (and not appearing in opposition at a contested case hearing as herein), and Rotation List participants; (2) guidance for participating wrecker service and special operation providers and DPS itself of proper application of reasonable wrecker service charges and fees; and (3) reasonable rate guidance to all to resolve accident consequences properly and avoid such contested case proceedings, as herein. Petitioner thanks the Court for its participation and provision of such guidance herein and going forward.

WHEREFORE, Petitioner respectively requests the Court to deny Respondent's Motion herein, reconsider its Final Order, modify its 60-day suspension of Petitioner from the Wrecker Rotation List to the 4-day suspension Petitioner has already served, provide further relief to eliminate the 4-day suspension, as available, and provide other appropriate relief, including, but not limited to continuing the stay in effect upon any appeal.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge

Case No. 16-ALJ-30-0410-CC

RECEIVED
NOV 29 2017
SC Court of Appeals

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

v.

South Carolina Department of Public Safety.....Respondent.

NOTICE OF APPEAL

Wayne's Automotive Center, Inc, appeals **(A)** the Final Order of the Honorable H.W. Funderburk, Jr., filed September 19, 2017, and received by Appellant by U.S. Mail on September 20, 2017, and **(B)** his Order Denying Motions For Reconsideration as to Petitioner/Appellant's Motion, filed October 31, 2017, and received by Appellant by U.S. Mail on November 1, 2017. Copies of both filed Orders are attached hereto, consistent with this Court's Rules.

AUSTIN & ROGERS, P.A.

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November 29, 2017

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NOV 29 2017
SC ADMIN LAW COURT

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Attorneys for Respondent South Carolina Department Of Public Safety

Recd 9/20/17
(16145) REJ

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, vs. South Carolina Department of Public Safety, Respondent.	Docket No. 16-ALJ-30-0410-CC **FINAL ORDER**

RECEIVED
NOV 29 2017
SC Court of Appeals

This case comes before the Administrative Law Court ("ALC" or "Court") on the appeal of Wayne's Automotive Center, Inc., ("Petitioner") for a contested case hearing to challenge a violation found and a penalty imposed by the South Carolina Department of Public Safety ("Respondent" or "Department"). *See* S.C. Code Ann. § 1-23-600 (Supp. 2016) and § 1-23-505 (Supp. 2016). Respondent determined that the recovery charges invoiced by Petitioner for a specific incident were unreasonable and suspended Petitioner from its rotation call list for one hundred and twenty (120) days.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and passed upon their credibility, taking into consideration each party's burden of proof, the Court makes the following findings of fact by a preponderance of the evidence.

Petitioner applied to be included on the 2016 Wrecker Rotation Schedule. Petitioner was approved and recommended for the rotation list. The 2016 Wrecker Rotation Fee Schedule does not set a fee for special operations in Class C tows. These are described in 2 S.C. Code Ann. Regs. 38-600 (E)(3) (2011) as heavy duty tows for vehicles in excess of seventeen thousand (17,000) pounds. The Fee Schedule also notes that "a wrecker service may recover the actual cost of rented/subcontracted equipment or labor necessary to accomplish the job." Proof of these costs must be provided by including an itemized invoice or receipt from the provider with the towing bill. A standard Class C tow is approved for $436.00 per hour. Special operations for a Class B

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SC ADMIN. LAW COURT

tow sets an hourly rate of $174.00.[1] The schedule also allows a separate invoice if additional services are performed, such as hazardous waste cleanup or transportation of vehicle, cargo, or occupants.

On February 9, 2016, the South Carolina Highway Patrol placed a routine rotation call to Petitioner's Aiken location for a Class C wrecker to tow an overturned tractor-trailer on the I-20 bridge over the Savannah River near the South Carolina/Georgia border.[2] The tractor-trailer belonged to J.H.O.C., Inc., d/b/a Premier Transportation ("Premier") and contained a customer's shipment of dogfood. Between 2:00 A.M. and 4:30 A.M. Petitioner sent individuals to the scene and began to dispatch trucks and equipment including apparatus for traffic control such as digital signs and cones. Between noon and 2:00 P.M., the interstate and the bridge were reopened to traffic. The cargo recovery and removal continued into the evening. Petitioner's records show that its vehicles finished at the scene around 11:38 P.M. Petitioner's operations manager disputed the accuracy of this record and contended that vehicles and workers remained engaged until a later time. In any event, the Court has no basis to reject Petitioner's claim that some vehicles and workers were involved in the recovery for approximately twenty-one (21) hours.

On February 19, 2016, Lieutenant King, the wrecker coordinator for Troop 7 (Aiken County), received a complaint about Petitioner's tow bill for the accident. He obtained copies of the tow bill from Robert Watson, President of Recovery Resolution Specialists, and from Jeff Corbett, Petitioner's owner. After reviewing the bill, King spoke with Corbett and explained the problems he found with the bill. On March 4, 2016, he reported to Captain Grice, his troop commander, identifying charges on the bill he thought were unreasonable and recommended that Petitioner be permanently removed from the wrecker rotation list.

King's report identified three individuals whose labor was billed at $175.00 an hour, three whose labor was billed at $150.00 an hour, and one whose labor was billed at $85.00 an hour. A

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[1] What that rate is supposed to cover or supply is not specified.

[2] S.C. Code Ann. Regs. 38-600 (F)(2)(a)(1) (2011) defines a "standard tow ... as responding to the scene, hooking up the vehicle, performing a general clean up if the call involves responding to a collision scene...." Section (F)(2)(a)(2) defines "special operations" as "involving the process of uprighting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle and/or the recovery of a load which has spilled, or the off-loading and reloading of a load from an overturned vehicle performed to right the vehicle."

reasonable rate, in his opinion, would have been $50.00 an hour for the first six and $35.00 an hour for the seventh. He identified another worker billed at $90.00 and six others billed at $50.00 an hour. He stated that $25.00 an hour would have been reasonable for all. Three other workers were paid $1,000.00 to transfer and repack cargo but should have been paid a total of $75.00. King thought another item for repacking and reloading was duplicative and should have been removed. Finally, he stated that he directed Petitioner to release the cargo. The cargo was not picked up until the final bill was paid (by check received March 7, 2016). Respondent did not see or consider until much later the invoice eventually paid.[3] King is not an expert in towing rates.

Petitioner's operations manager, Sherry Corbett, is the majority owner of Spill Containment Incident Management ("SCIM") that provided communication equipment and a truck with cleanup supplies used at the accident scene.[4] In addition, labor was obtained from Vern's Wrecker and Recovery ("Vern's"). Equipment and labor from SCIM and Vern's was "marked up" from its actual cost allegedly to cover Petitioner's liability, taxes, and insurance expenses. Equipment invoices included an operator for the equipment. These operators were also included in labor charged for recovery technicians.

Petitioner issued a number of invoices to Premier for its services: one consisting of four separate invoices totaling $67,912.69; a single invoice for $69,017.19; another single invoice for $64,783.19; and a last invoice for $48,633.19, that Premier paid by check received March 7, 2016. Petitioner explained that the invoices were adjusted as it learned that some items were not needed, that air bags damaged in lifting the trailer could be repaired, and that other items should be deducted. Even after these adjustments, the invoice, as paid, contained labor charges that were duplicated as operators included in equipment charges, and additions to the actual charges billed by subcontractors who provided labor and equipment. These "third party" charges were not supported by bills or receipts attached to the invoice.

On a number of occasions, Petitioner was asked to release the cargo. These requests were made by Robert Watson, who was retained by Sentry Insurance, the insurer of Premier's rig. Mr. Watson

[3] According to the Notice of Disciplinary Action Decision, Respondent received this invoice on July 1, 2016. The Department reviewed this invoice but concluded that it did "not cure the impropriety of the charges" first invoiced.
[4] SCIM is owned by Sherry Corbett (51%) and Jeff Corbett (49%).

began his involvement in the case on February 14, 2016. He reviewed the invoice and asked for the cargo's return by telephone and email. Travelers Insurance insured the cargo, and its agent contacted Petitioner on February 18, 2016, and authorized Petitioner to deal with Mr. Watson. The cargo was picked up on March 7, 2016.

CONCLUSIONS OF LAW

Petitioner asserts that the accident occurred in Georgia and is subject to Georgia law or is preempted by Federal law. This case arises within a South Carolina regulatory scheme in which a South Carolina business participating in that regulatory scheme was summoned by the South Carolina Highway Patrol to perform services subject to the administration of that regulatory scheme. Under these circumstances, South Carolina jurisdiction is proper.

Petitioner also contends that by paying the final invoice, Premier has settled any complaints it might have about the items included in the bill and the recovery of the cargo. Petitioner also argues that Mr. Watson had no authority to make the allegations that triggered the Respondent's involvement and the resulting disciplinary action. The Court disagrees.

The regulation provides for complaints and disciplinary procedures: "Complaints from or about wrecker services regarding an incident involving the Highway Patrol or its operation of the wrecker lists must be received within thirty days of the alleged incident." 2 S.C. Code Ann. Regs. 38-600(D)(1) (2011). The regulation sets up two classes of complaints "from or about wrecker services." A complaint from a wrecker service must deal with the Highway Patrol's operation of the wrecker lists. A complaint "about wrecker services" would involve problems arising from wrecker services furnished to individuals or businesses or invoices for such services. Once the complaint is lodged, Respondent must perform its investigatory duties until the complaint is resolved.[5]

To be on the rotation list, a wrecker service must meet the qualifications set forth in 2 S.C. Code Ann. Regs. 38-600(B) and (C) (2011). In addition, Section 38-600 (F) requires that each application must include proposed fees for each wrecker class and, for each class, fees for standard

[5] Resolution depends on the nature of the complaint. A complaint about a bill could be resolved by a revised bill.

towing, special operations, and storage. The Troop commander for each wrecker zone reviews the fees for validity and reasonableness before approving a service for the rotation list.

Charges for services furnished through Respondent's wrecker rotation list are subject to the regulations:

> Fees charged for rotation list calls shall be reasonable and not in excess of those rates charged for similar services provided in response to requests initiated by any other public agency or private person.

2 S.C. Code Ann. Regs. 38-600(F)(2) (2011).

This subsection creates a correlation between the fees set by the annual Wrecker Rotation Fee Schedule and the overall charges for services performed. The schedule, to which Petitioner is subject, sets an hourly amount for a Class C Standard Tow at $436.00 an hour. No fee is set for Special Operations. However, the following explanation is included in the Fee Schedule:

> 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 part providing such equipment or labor must accompany the tow bill.

Respondent, therefore, has the authority to investigate complaints and to determine whether a tow bill is proper and reasonable. However, special operations may require additional labor and equipment that could be provided without obtaining them from third parties. Reasonable costs might be added that could be in excess of the $174.00 an hour allowed for Class B tows.

Petitioner contends that Robert Watson is not authorized to dispute or complain about services provided. The truck's owner, its insurer, and the cargo's insurer authorized Petitioner to deal with Mr. Watson. Therefore, Petitioner's argument has no merit.

Petitioner also complains about the Department's failure to refer the case to an Advisory Committee. S.C. Code Ann. Regs. 38-600(D)(5) mandates the creation of an Advisory Committee. "to review ... complaints specific to the terms and conditions of this regulation." Petitioner complains that Respondent violated the regulation by not creating this Advisory Committee. However, the review referenced could only occur "upon request by the Department." Furthermore, its review would be limited to "specific issues raised in a complaint or appeal," and its

"recommendations regarding the validity of the complaint as well as a fair and reasonable resolution" cannot "supercede [sic] Department of Public Safety policy." Hence, while the Department may have erred in failing to create an Advisory Committee, it is not obligated to use the committee or to follow its recommendations. In any event, the contested case hearing and its *de novo* review has cured any procedural or due process violations. *Unisys Corp. v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263 (2001). Therefore, this error, if it is an error, is harmless.

Petitioner contends that, because the Fee Schedule sets no fees for Class C Special Operations and S.C. Code Ann. Regs. 38-600(C)(15) requires submission of a single bill, its combined invoice (as revised) complies with the Fee Schedule and the regulations. The Court disagrees.

One bill is required to be submitted to the owner or operator. The Fee Schedule allows the towing company to include in its bill and recover the actual cost of rented or subcontracted equipment or labor. However, these costs must be substantiated by including with the single towing bill an itemized invoice or receipt from the third party that furnished such equipment or labor.

Petitioner contends that its revised charges itemized on the final bill, which Premier paid, were reasonable. Respondent evaluated and imposed a suspension based on Petitioner's initial bill. Petitioner complied with many of the concerns identified by Lt. King. Although Petitioner rejected Lt. King's evaluation of its initial bill, Petitioner submitted a final, revised bill to Premier on the same day King made his formal report.

Respondent points out that there were at least four invoices submitted. The focus of its investigation was the second invoice submitted for the amount of $69,017.19. Respondent contends that this Invoice to Premier was unreasonable. Respondent relies on S.C. Code Ann. Regs. 38-600(F)(2), which states as follows:

> Fees charged for rotation list calls shall be reasonable and not in excess of those rates charged for similar services provided in response to requests initiated by any other public agency or private persons.

Since King advised Petitioner to revise its bill to correct the issues he identified, Petitioner could reasonably believe revision was required and would be acceptable. In continuing its investigation,

Respondent must take revision into account and evaluate the final bill. As this lengthy process concluded, Premier ultimately paid $48,622.19, the amount specified in the final bill.

Petitioner prepared and submitted revised bills as directed; therefore, it cannot be held responsible for alleged violations that it subsequently corrected.[6] If Petitioner has disregarded the Wrecker Rotation Fee Schedule or the Wrecker Rotation Regulation, the violations must be based on specific abuses that remain in this final invoice.

Respondent disputes that the tow/recovery required twenty-one (21) hours. The testimony and evidence supports the conclusion that Petitioner had equipment and workers either on the scene or relocating cargo for storage between 2:00 A.M. and 11:38 P.M. on February 9, 2016. The final invoice shows one large wrecker (to rotate to an upright position the tractor and trailer and to remove the trailer), communication equipment (owned by SCIM), and four workers billed for twenty-one hours. One of these workers should not have been billed separately from the wrecker. The invoice detail supports the use of this wrecker from 2:00 A.M. to 11:00 P.M. or twenty-one hours. Another heavy-duty truck (Class C) used for winching both tractor and trailer and to remove the tractor was billed for twelve (12) hours. The worker assigned to this unit was also billed for eight (8) hours of labor.

The Response Unit, which transported cleaning supplies and equipment to the accident scene was billed for twenty (20) hours. This unit was identified as the property of SCIM. Traffic control devices and equipment including digital signs and arrows, a high intensity sign used on both east and west lanes, and 48 traffic cones were used for twenty (20) hours. Some of these items were owned by Petitioner, some were contracted from a third party. Labor obtained from a third party (Vern's Wrecker & Recovery) was billed at $1,000.00. No invoices were attached supporting the cost of equipment and labor obtained from other businesses.

[6] Can one be punished for saying that he will not correct an error when he ultimately does correct it before he is aware that he has been punished? *Cf. Matthew* 21:28-31.

The invoice that was the subject of the investigation also included a cost to replace airbags (used to help raise overturned vehicles or trailers). The final invoice did not include the cost of airbags.[7] In addition, the initial invoice included labor charges which Respondent (through Lieutenant King) objected to as unreasonable. The final invoice reduced labor charges from $18,665.00 to $14,815.00 by reducing some labor rates and eliminating one duplication and two workers.[8]

Respondent also objected to charges for the communications equipment and the Response Unit supplied by SCIM. Respondent's analysis of these charges suggests that they are unreasonable based on the acquisition costs of the items. This analysis also applied to the traffic cones. The Court finds the analysis to be flawed. The communications units, three of which were on the scene for twenty-one hours, were billed at approximately $28.00 an hour. While this rate may be high, it is not so high as to be unreasonable. The Response Unit used a truck purchased for $4,516.00. There was no evidence presented to establish any cost for refurbishing it and stocking it with equipment and supplies for containing and cleaning up hazardous waste (fuel and lubricants from the wrecked tractor). Assuming that the hourly rate ($175.00) includes an operator and accounts for consumable supplies, the billed cost is not unreasonable.[9] Finally, the traffic cones were billed at $700.00 (reduced from $1,000.00). To account for this sum, forty-eight (48) cones were used for twenty (20) hours at $0.75 per cone per hour. There is no evidence that fewer cones should have been used or that seventy-five (75) cents is an unreasonable hourly rate for a traffic cone at an accident site.

Finally, we come to a knotty and contentious issue. Respondent argues that Petitioner did not comply with state law when it did not release the cargo. S.C. Code Ann. § 56-5-5635(F) provides as follows:

> 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

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[7] The testimony showed that Petitioner discovered that the airbags could be repaired and removed all costs associated with the airbags from the final invoice.

[8] The labor charges include $1,000.00 for the labor supplied by Vern's for which Respondent introduced an exhibit showing $720.00 as the actual cost.

[9] Allowed costs for Special Operations in a Class B tow, as indicated above, are $174.00 an hour; it is reasonable to assume that a Class C operation would be more expensive.

repair shop must release any personal property that does not belong to the owner of the vehicle to the owner of the personal property.

Personal property, as used in this subsection, refers to "personal items such as medicines, medical equipment, keys, clothing, and tools of the trade, child restraint systems and perishable items" that belong to the owner of the vehicle. S.C. Code Ann. Regs. 38-600(C)(6). The statute also requires that "personal property that does not belong to the owner of the vehicle" must be released to the owner of the personal property. Petitioner contends that this subsection must be read to apply only to personal items as illustrated in the regulation and not to cargo or commercial property. The Court disagrees with Petitioner's classification.

Personal property is "all property that is not real property." *Colonial Life and Acc. Ins. Co. v. South Carolina Tax Comm'n*, 233 S.C. 129, 250, 103 S.E.2d 908, 918 (1958). Therefore, Petitioner's attempt to carve out a separate category for cargo as distinct from real or personal property fails. On the other hand, the statutory requirement that personal property must be released to its owner does not eliminate Petitioner's problem. Who owns the in-transit dog food: the supplier who has sold the product, but not delivered it; the buyer who has not taken possession; the company who insures Premier's truck; the company who insures the cargo itself?

Given this complexity, Petitioner is justified in holding the cargo until its owner, the owner's designee, or the owner's insurer is prepared to take possession. In this case, Premier, as the transporter, furnished a trailer, paid its bill, and arranged to complete delivery of the cargo. Although the process took longer than it should have, Respondent's directive to release the cargo without resolving the ownership issue left Petitioner in a legal limbo. The closing sentence of S.C. Code Ann. Regs. 38-600(C)(6) refers to alternatives if the owner is not available to sign a release. By paying the tow and recovery invoice, Premier stepped back into its status prior to the accident. It recovered the cargo and reassumed its obligation to deliver it.

While several of the issues are resolved in Petitioner's favor, there remain regulatory violations that are common to the invoice Respondent investigated and the final invoice for which Petitioner is held responsible.

Although Petitioner addressed some of the labor cost issues, the final bill retains "double billing" for individuals whose labor should have been included in the hourly rate for the heavy-duty wreckers (the Rotator and the Class C Heavy Duty Truck). In addition, Petitioner admitted "marking up" rental/subcontracted equipment and labor. A wrecker service may recover only the actual cost of such equipment or labor and must prove these actual costs by attaching an itemized invoice or receipt from the provider(s) to the invoice presented. Petitioner, by increasing these costs on its invoice and by failing to attach proof of the costs, violated the Wrecker Rotation Fee Schedule.

Other than these specific violations, the Court concludes that Petitioner's general rates conformed to the Schedule, that it performed Special Operations, including off-loading and reloading of a load, as defined in the Schedule and in S.C. Code Ann. Regs. 38-600(F)(2)(a)(2) for the time specified in its invoice; and that it secured the cargo until it could be picked up for delivery.

Petitioner violated its obligations under S.C. Code Ann. Regs. 38-600 and the Schedule by double billing for labor, overcharging for rented/subcontracted equipment and labor, and failing to prove the actual cost of rented/subcontracted equipment and labor by not attaching itemized invoices or receipts to its tow bill. These violations warrant a suspension and removal of Petitioner from the Wrecker Rotation list for a period of sixty (60) days. These days must be days during which Petitioner would be otherwise qualified for and approved to be on the Wrecker Rotation List.

Based upon the Findings of Fact and Conclusions of Law above, it is hereby
ORDERED that Petitioner is Suspended and Removed from the Wrecker Rotation List for a period of sixty (60) days and that these days must be days during which Petitioner would be otherwise qualified for and approved to be on the Wrecker Rotation List.
AND IT IS SO ORDERED.

September 19, 2017
Columbia, South Carolina

H.W. Funderburk, Jr.
Administrative Law Judge

FILED
SEP 19 2017
SC ADMIN. LAW COURT

Acq 11/01/17
(16175) Rehl.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, vs. South Carolina Department of Public Safety, Respondent.	Docket No.: 16-ALJ-30-0410-CC **ORDER DENYING MOTIONS FOR RECONSIDERATION**

RECEIVED
NOV 29 2017
SC Court of Appeals

This matter is before the Administrative Law Court ("Court") pursuant to the motion filed September 29, 2017, by Wayne's Automotive Center, Inc. ("Petitioner") seeking reconsideration of the Court's Final Order that was filed on September 19, 2017, and the reconsideration motion of the South Carolina Department of Public Safety ("Respondent") filed October 2, 2017. Petitioner and Respondent filed responses in opposition to the other party's motion on October 11, 2017. The arguments in both Petitioner's and Respondent's motion and reply reiterate the arguments made during the hearing, held July 31, 2017. These arguments, along with the evidence and testimony presented, have been carefully considered and ruled upon by this Court. As far as the motions and/or replies raise new issues and arguments, the Court will not consider improperly raised arguments that should have been brought before this Court prior to the issuance of the Final Order. The motions and replies do not seek to present newly discovered evidence, and the Court perceives no manifest errors of law or fact in its Final Order.

Therefore, **IT IS HEREBY ORDERED** that both Petitioner's Motion to Reconsider and Respondent's Motion to Reconsider are **DENIED.**

AND IT IS SO ORDERED.

October 31, 2017
Columbia, South Carolina

H. W. Funderburk, Jr.
Administrative Law Judge

FILED
OCT 31 2017
SC ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge

Case No. 16-ALJ-30-0410-CC

RECEIVED
NOV 29 2017
SC Court of Appeals

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

v.

South Carolina Department of Public Safety.....Respondent.

MOTION TO IMPOSE A SUPERSEDEAS TO STAY MATTERS DECIDED IN SCALC ORDERS

For the following reasons, Appellant hereby submits its Motion To Impose A Supersedeas To Stay Matters Decided Matters Decided in South Carolina Administrative Law Court (SCALC) Orders.

1. Respondent imposed a 120-day suspension of Appellant from its 2016 Wrecker Rotation List, effective December 12, 2016. Judge Funderburk stayed the suspension during the pendency of the matters before that Court by Order Granting Motion For Extension And Order Extending Stay, filed January 17, 2017, following the parties' prior agreement to stay it through January.[1] In his Final Order, Judge Funderburk reduced the suspension to a 60-day suspension. The effect of such stay has been to continue to allow Appellant's name to rotate up to be called for provision of wrecker and towing services in

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[1] Appellant initially appealed the suspension to this Court; however, the Court dismissed it by Order, filed December 12, 2016, in light of the fact the SCALC had not issued a final order. Therefore, the suspension was in effect for a 4-day period.

South Carolina by Respondent in particular matters, such as the instant case requiring heavy duty (Class C) towing and recovery services by Appellant following an accident involving a tractor and trailer owned by Premier Transportation and filled with dog food and occurring on the I-26 Savannah River Bridge into Georgia early in the morning of February 9, 2016.

2. Appellant is a South Carolina corporation, which--through its Registered Agent, Walter Jeffry 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.

3. 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.

4. Appellant as Petitioner below argued and the SCALC agreed Respondent had imposed on Petitioner a sanction; and Respondent, therefore, had the burden of proof by a preponderance of the evidence, consistent with SCALC Rule 29 (B), and related authorities.

5. While the instant appeal from the SCALC falls within the exception in SCACR 241 (b) (11) for an appeal to stay the lower court order automatically, the Court should apply

SCACR 241 (c) (2), since such order is necessary "to prevent a contested issue from becoming moot."

6. This remedy is clearly available under the Court's Rules, and the Orders challenging by Appellant are clearly appealable. 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).

7. Appellant's position is Respondent failed to meet its burden of proof and violated the South Carolina Constitution, its own Regulation, and related statutory and policy provisions by pursuing this matter and imposing a 120-day suspension of Appellant from the Rotation List to commence December 12, 2016, as stayed by Judge Funderburk, absent this Court granting continuation of the stay provided to hold off such suspension during appeal(s).

8. On November 28, 2017, Appellant through its undersigned attorneys advised Respondent through its counsel of record, as listed below, if its intention of filing a Notice of Appeal and this Motion and inquired whether Respondent objected to continuation of the stay in effect through the appellate process. Respondent's attorneys have not yet responded.

WHEREFORE, Appellant respectfully moves this Honorable Court to grant its Motion and provide continuation of the stay during appeal to avoid contested issues from becoming moot.

AUSTIN & ROGERS, P.A.

By: Raymon E. Lark, Jr.

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November 29, 2017

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

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

v.

South Carolina Department of Public Safety, ... Respondent-Appellant.

RETURN IN OPPOSITION TO APPELLANT-RESPONDENT'S MOTION FOR WRIT OF SUPERSEDEAS

RECEIVED
DEC 04 2017
SC Court of Appeals

The Appellant-Respondent Wayne's Automotive Center, Inc. ("Wayne's") has filed a Motion for Writ of Supersedeas with the South Carolina Court of Appeals in conjunction with the filing of its Notice of Appeal appealing the ruling from the Administrative Law Court that imposed upon Wayne's a sixty-day suspension and removal from the Wrecker Rotation List. The Respondent-

Appellant South Carolina Department of Public Safety ("SCDPS") opposes the motion because, in part, Wayne's has not complied with the procedure set forth in Rule 241(d), SCACR.

Rule 241(d)(1), SCACR, provides that "[e]xcept where extraordinary circumstances make it impracticable, an application for an order ... for supersedeas must first be made to the lower court ... which entered the order or decision on appeal." Rule 241(d)(1), SCACR. In addition, the petition seeking the writ of supersedeas is *required* to contain the following:

> [A] showing that an application for this relief was made to the lower court or administrative tribunal, and was unjustifiably denied or that the relief granted failed to afford the relief which the petitioner requested. A certified copy of the lower court's or administrative tribunal's ruling must be included. If no application was made to the lower court or administrative tribunal, then *the petition shall state the extraordinary circumstances which made it impracticable to make such an application.*

Rule 241(d)(4)(c), SCACR. (Emphasis added).

In this case, Wayne's has made no application for a supersedeas to the Administrative Law Court which issued the orders on appeal. In addition, in its motion/petition seeking a writ of supersedeas, Wayne's has included no explanation or argument that there even exist extraordinary circumstances that make a petition filed in the Administrative Law Court impracticable. Moreover, no affidavits were filed to demonstrate that any such extraordinary circumstances

exist. In actuality, SCDPS submits that an application for relief made initially to the Administrative Law Court would not have been impracticable or problematic.

In addition, SCDPS has serious concerns about a writ of supersedeas being issued in this case without a number of strict conditions being attached. Specifically, SCDPS will request that any writ of supersedeas be conditioned on Wayne's full and strict compliance with S.C. Code of Regulations R. 38-600 and that Wayne's correct the billing violations identified by the Administrative Law Court with respect to all towing operations initiated from the Wrecker Rotation List that occur during the pendency of the appeal. Moreover, if Wayne's fails to meet those conditions, the writ of supersedeas should be subject to revocation by the Administrative Law Court or by this Court, whichever Court issues the writ of supersedeas.

In addition, Rule 241(d)(3), SCACR, requires that the written petition seeking a writ of supersedeas be *verified* by the client. In this case, there is no compliance with that requirement; the motion includes no verification by a representative of Wayne's. The South Carolina Supreme Court has historically required strict compliance with statutes or court rules that require verification or sworn affidavits. *See e.g., Collins v. Doe*, 352 S.C. 462, 574 S.E.2d 739 (2002) (sworn witness affidavit requirement under Section 38-77-170); *Vines v. Self Memorial Hospital*, 314 S.C. 305, 443 S.E.2d 909 (1994) (verified claim

requirement under Tort Claims Act). Therefore, there is no reason that the verified petition requirement under Rule 241(d)(3), SCACR, should be excused.

In sum, based on the foregoing reasons, SCDPS submits that the Motion for Writ of Supersedeas should be denied.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: _____

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-and-

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South Carolina Department of Public Safety

December 4, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

RECEIVED
DEC 08 2017
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.

REPLY TO RESPONDENT-APPELLANT'S RETURN IN OPPOSITION TO MOTION TO IMPOSE A SUPERSEDEAS TO STAY MATTERS DECIDED IN SCALC ORDERS

Appellant-Respondent (Appellant) hereby submits its Reply To Respondent-Appellant's (Respondent) Return In Opposition To Motion (Petition) To Impose A Supersedeas To Stay Matters Decided in South Carolina Administrative Law Court (SCALC) Orders, consistent with Rule 240 (f), SCACR.

1. In the first paragraph of its Final Order, the lower court properly characterized without opposition by either party that the case was "a contested case hearing to challenge a violation found and a penalty imposed" and cited S.C. Code Ann. §§ 1-23-600 and -505 (Supp. 2016).[1] Without indicating whether the automatic stay provision in S.C. Code Ann.

---

[1] Section 505, subsections 3-6 define pertinent terms, as follows:

> (3) 'Contested case' means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22, Constitution of the State of South Carolina,

§ 1-23-600 applied, it also extended the initial stay through the pendency of the case in the lower court from an end date of January 2017, which the parties had agreed to in conjunction with Appellant's Petition For Contested Case Hearing and Motion for Injunction/Stay, served and filed December 14, 2016.

2. In light of uncertainty of the lower court's rationale, in ¶ 5 of its Motion before the Court, Appellant stated:

> While the instant appeal from the SCALC falls within the exception in SCACR 241 (b) (11) for an appeal to stay the lower court order automatically, the Court should apply SCACR 241 (c) (2), since such order is necessary 'to prevent a contested issue from becoming moot.'

If Appellant is incorrect in this regard, the Court should deny the Motion but confirm the automatic stay in the Rule applies; otherwise, the Court should grant the Motion and confirm the scope of the definition of "licensee" and "license" in §§ 1-23-380 (2) and 1-23-610 (A) (2) include Appellant and Respondent's contractual agreement in the 2016 Wrecker Rotation List Application approval for Appellant, as well as subsequent 2017 and 2018 agreement approvals.

> 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing.
>
> (4) 'License' includes the whole or part of any agency permit, franchise, certificate, approval, registration, charter, or similar form of permission required by law, but does not include a license required solely for revenue purposes.
>
> (5) 'Party' means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
>
> (6) 'Person' means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

3. By citing Rule 241 (b) (11) in its Motion, Appellant primarily was referring to the reference to S.C. Code § 1-23-380 (A) (2) in that section of this Court's Rule. Even though the "A" has been deleted in the current version of § 1-23-380, it is consistent with § 1-23-610, which states:

> **SECTION 1-23-610.** Judicial review of final decision of administrative law judge; stay of enforcement of decision.
>
> (A)(1) For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.
>
> (2) *Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the administrative law judge's decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. Upon motion, the administrative law judge may grant, or the court of appeals may order, a stay upon appropriate terms.*

(*Emphases added*). *Note*: These express references to "suspension," "revocation," and "permit" in these sections support construed in conjunction with § 505 (3) – (6) support the conclusion that the contractual agreement between Appellant and Respondent herein is consistent for inclusion for the automatic stay of any suspension of Appellant from the Rotation Schedule during the pendency of the appellate process, since Appellant's appeal pertains to "provisions for which review is sought" and "...matters...affected by the notice of appeal...." They, otherwise, support granting Appellant's Motion. Appellant acknowledges it is "otherwise qualified for and approved to be on the Wrecker Rotation List", as stated in the Final Order @ 10 and as shown in Appellant's attached Verification

and Affidavit of Walter Jeffry Corbett of Appellant's Motion and this Reply with Appellant's 2016, 2017, and 2018 Wrecker Rotation Applications, as approved by Respondent.

4. In its Return to Appellant's Motion, Respondent could not and has not disputed or refuted Appellant's basic point stated as factual background that its appeal would be mooted, if the stay is not continued. Based on that fact alone, the Court should continue the stay. For this reason, Appellant did not also provide a verification or affidavit in additional support. In addition, prior to serving and filing the Notice of Appeal and Motion, counsel for Appellant conferred with this Court's staff regarding the need to attach any certified copies of lower court orders instead of stamped, filed copies and was advised stamped, filed copies were acceptable herein. Appellant's counsel thereby had served the Notice of Appeal with the two Orders on appeal and then the Motion with separate Proofs of Service, followed by the service of the Notice of Appeal only on the lower court, and then filing with this Court.

5. As to its contention the instant Motion should have been raised to the lower court, Appellant sought feedback from Respondent through its counsel prior to serving and filing it, as referenced in ¶ 8 of it. As indicated, Appellant received no timely response prior to its appeal and associated deadline.

6. Moreover, contrary to Respondent's contention, Appellant sought an extension by the lower court of the stay through the appellate process as part of relief at least three times before appealing and filing its Motion with this Court. They are in:

(a) Petitioner's Response In Opposition To Respondent's Motion For Reconsideration @ 6 referencing continuing the stay in effect upon any appeal (filed October 11, 2017);

(b) Petitioner's Motion For Reconsideration @ 9 referencing continuing the stay in effect upon any appeal (filed September 29, 2017); and

(c) Petitioner's Final Arguments @ 11 referencing providing all available relief (filed August 21, 2017).[2]

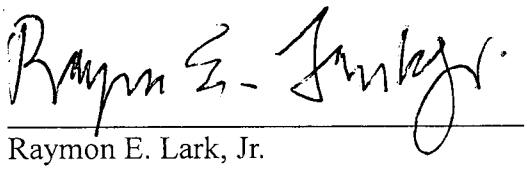
Given the lack of discussion or timely response by counsel for Respondent, the prior rejection by the lower court for an extension, and the imminent deadline to appeal, Appellant reasonably perceived again seeking such relief by it was impracticable.

7. As to the conditions referenced by Respondent, if the Court grants the Motion, one of several issues herein concerns, for example (C) (15) of the DPS Regulation 38-600 (2 SC Code Ann. Regs. (C) (15 (2011) , which applies and which expressly requires "(o)nly one bill is to be submitted to the owner or operator for the work performed," while the 2016 Wrecker Service Rotation Fee Schedule violates or is otherwise inconsistent with the Regulation by requiring additional invoices or receipts for subcontracted equipment/services. Respondent, therefore, is improperly attempting to utilize its improper Schedule provision to discipline Appellant herein, and Appellant objects to such condition or other separate condition, since the Regulation provisions are already in effect.

[2] Appellant will gladly provide the Court with copies of these filings, if needed. At the contested case hearing, the lower court decided to have the parties submit final arguments in writing instead of making oral arguments, consistent with SCALC Rule 29 (A) (7).

WHEREFORE, Appellant respectfully requests this Honorable Court to grant its Motion or otherwise provide for continuation of the stay during appeal to avoid contested issues from becoming moot and providing all available relief.

AUSTIN & ROGERS, P.A.

By: 

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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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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.

VERIFICATION AND AFFIDAVIT OF WALTER JEFFRY CORBETT

Sworn to before me, Walter Jeffry Corbett, who says and deposes that the affiant knows the facts in the Notice of Appeal, Motion To Impose A Supersedeas To Stay Matters Decided In SCALC Orders, and Appellant-Respondent's Reply to Respondent-Appellant's Return to it before the South Carolina Court Of Appeals Court stated to be true of his own knowledge, except as to matters stated on information and belief, and as to any such matters he believes them to be true. In addition, attached are copies of Appellant-Respondent's 2016, 2017, and 2018 calendar-year Wrecker Rotation Fee Schedules, as approved by Respondent-Appellant, and Appellant-Respondent is currently participating on the 2017 Rotation List in effect through December 31st. Finally, he affirms continuation of the stay of suspension in these appeal-cross appeals is necessary in order for them not to be mooted and in the interest of justice.

Walter Jeffry Corbett

SWORN to and subscribed before me
this 8th day of December 2017.
Notary Public for South Carolina
My Commission Expires: November 13, 2025

South Carolina Department of Public Safety

S.C. Highway Patrol

South Carolina Highway Patrol
2016 Wrecker Rotation Fee Schedule

In accordance with Section 38-600 of the South Carolina Code of State Regulations, the Department of Public Safety publishes a yearly Fee Schedule outlining the maximum allowable fees for each class of wrecker on the SCHP Wrecker Rotation List. The reasonableness of fees on the Fee Schedule is determined by the Highway Patrol on a comparative basis. The fees permitted for calendar year 2016 are listed below:

2016 MAXIMUM ALLOWABLE FEES FOR ROTATION LIST CALLS

CLASS	STANDARD TOW	SPECIAL OPERATIONS	STORAGE
A	$204.00 flat rate	$118.00 per hour	$30.00 per day
B	$279.00 flat rate	$174.00 per hour	$39.00 per day
C	$436.00 per hour	* no fee will be set	$53.00 per day

Standard Tow: A standard tow is defined as responding to the scene, hooking up the vehicle, performing a general clean up if the call involves responding to a collision scene and providing responsible assistance to the vehicle occupants. In the absence of special operations as defined below, the maximum fee for a Class A or B tow is the flat rate listed above. Fees for Class C tows are billed at an hourly rate.

Special Operations: Special operations are operations involving the process of uprighting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle and/or the recovery of a load which has spilled, or the off-loading and reloading of a load from an overturned vehicle performed to right the vehicle. A wrecker service must receive confirmation on-scene at the time of the tow from the investigating Trooper or an SCHP supervisor that special operations are required to perform the tow in order to recover such fees.

* 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.

If services beyond those for which the wrecker was dispatched are performed (e.g., hazardous waste cleanup; transportation of vehicle, cargo, or occupants(s) to an agreed upon location other than the one required by the Regulation), those services must be billed on a separate invoice.

Storage: Fees begin 12 hours after a vehicle is secured on the wrecker service premises and terminate when the vehicle owner or owner's designee offers to pick up the vehicle and pay the legitimate accrued charges.

A COPY OF THIS FEE SCHEDULE SHALL BE KEPT IN EACH WRECKER AT ALL TIMES AND MUST BE PRESENTED UPON REQUEST TO ANY PERSON FOR WHOM TOW SERVICES ARE PROVIDED, HIS OR HER AGENT, OR ANY DEPARTMENT OF PUBLIC SAFETY EMPLOYEE. ANY COMPLAINTS MUST BE IN WRITING AND FORWARDED TO THE SCHP TROOP COMMANDER.

NOTE: This fee schedule lists the maximum fee that may be charged for each class of wrecker. A lesser fee may be charged at any time in the wrecker service's discretion.

Courtesy - Efficiency - Service

POST OFFICE BOX 1993, 10311 WILSON BLVD., BLYTHEWOOD, SOUTH CAROLINA 29016

South Carolina Highway Patrol

Wrecker Rotation Inspection

Approved Fees:

Class	Standard Towing	Special Operations	Storage (per day)
[X] A	$ 204.00	$ 118.00	$ 50.00
[X] B	$ 277.00	$ 174.00	$ 77.00
[X] C	$ 436.00	$ NONE / No fee set	$ 53.00

Inspector's Comments:

After my inspection, I find this service to be:

[X] **Approved** – Business is in compliance with Wrecker Regulations and is being **recommended** for the rotation list.

[ ] **Not Approved** – Business is not in compliance with Wrecker Regulations and is **NOT recommended** for the rotation list. Service was notified in writing as to what deficiencies were identified.

Inspector's Signature: _____ Date: 11/25/15

Wrecker Owner's Acknowledgment of Receipt and Compliance if approved:

I do hereby affirm that I have a copy of South Carolina Code of Regulations 38-600 governing rotation list wreckers. I am familiar with its contents and do hereby agree to fully comply with it in order to remain on the rotation list. I understand that any violation of the Wrecker Regulations may result in disciplinary action pursuant to S.C. Code of Regulations 38-600(D) and SCDPS Policy 200.19 Wrecker Rotation Disciplinary Policy. I further agree that if I relocate or change equipment, insurance carriers, telephone numbers or employees, or for any reason become unavailable for service for an extended period of time, I will notify the appropriate Troop Commander in writing. The information I have furnished is true and correct to the best of my knowledge. My business has been inspected and approved this 25th day of November, 20 15.

Print Name: Pamela Beltran Signature: Pamela Beltran

Key to Inspection Codes:

C = Compliant **NC = Not in Compliance** **NA = Not Applicable**

Form SCHP-A-007 revised July 2014

South Carolina Department of Public Safety
S.C. Highway Patrol

On behalf of the wrecker service named below, I acknowledge that I have received and agree to be bound by the South Carolina Highway Patrol 2016 Wrecker Rotation Fee Schedule and the Department of Public Safety's Wrecker Rotation Disciplinary Policy. Further, I certify that I am authorized to bind the wrecker service named below to the terms of this Fee Schedule and the Department of Public Safety's Wrecker Rotation Disciplinary Policy.

Pamela A. Beltran — Pamela A. Beltran — 11/25/15

Owner/Representative Name (Printed) | Owner/Representative Signature | Date

Wages Automotive Center Inc

Name of Wrecker Service

South Carolina Department of Public Safety

S.C. Highway Patrol

2017 Wrecker Rotation Fee Schedule

In accordance with Section 38-600 of the South Carolina Code of State Regulations, the Department of Public Safety publishes a yearly Fee Schedule outlining the maximum allowable fees for each class of wrecker on the SCHP Wrecker Rotation List. The reasonableness of fees on the Fee Schedule is determined by the Highway Patrol on a comparative basis. The fees permitted for calendar year 2017 are listed below:

2017 MAXIMUM ALLOWABLE FEES FOR ROTATION LIST CALLS

Rates / Fees		
Class A Wrecker		
Standard Towing Charge	***Special Operations**	**Storage**
$ 214.00 Flat Fee	$ 126.00 Per Hour	$ 32.00 Per Day
**Special Operations are billed at a per hour rate in ½ hour increments.*		
Class B Wrecker		
Standard Towing Charge	***Special Operations**	**Storage**
$ 313.00 Flat Fee	$ 200.00 Per Hour	$ 41.00 Per Day
**Special Operations are billed at a per hour rate in ½ hour increments.*		
Class C Wrecker		
***Standard Towing Charge**	**Special Operations**	**Storage**
$ 474.00 Per Hour	****See below**	$ 56.00 Per Day
**Standard Towing is billed at a per hour rate in ½ hour increments.*		
***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 each third party providing such equipment or labor must accompany the tow bill.*		

Class C services only.		
Description of Service, Labor or Equipment	**Rate / Fee**	
Additional Wrecker	$ 464.00	Per hour
Dump Truck, Dump Trailer or Drop Dumpster	$ 223.00	Per hour
Rotator/Crane or equivalent	$ 662.00	Per hour
Truck Tractor with Box Trailer or equivalent	$ 260.00	Per hour
Truck Tractor with Flat Trailer or equivalent	$ 267.00	Per hour
Truck Tractor with Landoll/Lowboy/Tilt Trailer or equivalent	$ 300.00	Per hour
Skid Steer or equivalent	$ 212.00	Per hour
Forklift or equivalent	$ 209.00	Per hour
Backhoe or equivalent	$ 241.00	Per hour
Service Truck (includes all tools and equipment on board)	$ 175.00	Per hour
Tower Light System	$ 148.00	Per hour
Complete Air Bag Unit	$ 712.00	Per hour
Additional Labor (General)	$ 79.00	Per person/per hour
Additional Labor (Specialized)	$ 109.00	Per person/per hour

South Carolina Highway Patrol

Wrecker Rotation Inspection

Inspector's Comments:

After my inspection, I find this service to be:

☒ **Approved** – Business is in compliance with Wrecker Regulations and is being **recommended** for the rotation list.

☐ **Not Approved** – Business is not in compliance with Wrecker Regulations and is **NOT recommended** for the rotation list. Service was notified in writing as to what deficiencies were identified.

Inspector's Signature: SGT. M Dowling Date: 11-30-2016

Wrecker Owner's Acknowledgment of Receipt and Compliance if approved:

I do hereby affirm that I have a copy of South Carolina Code of Regulations 38-600 governing rotation list wreckers. I am familiar with its contents and do hereby agree to fully comply with it in order to remain on the rotation list. I understand that any violation of the Wrecker Regulations may result in disciplinary action pursuant to S.C. Code of Regulations 38-600(D) and SCDPS Policy 200.19 Wrecker Rotation Disciplinary Policy. I further agree that if I relocate or change equipment, insurance carriers, telephone numbers or employees, or for any reason become unavailable for service for an extended period of time, I will notify the appropriate Troop Commander in writing. The information I have furnished is true and correct to the best of my knowledge. My business has been inspected and approved this 30 day of November, 20 16.

Print Name: Sherry Corbett Signature:

Key to Inspection Codes:
C = Compliant **NC = Not In Compliance** **NA = Not Applicable**

Form SCHP-A-007 revised September 2016

NOTICE:
Rates for all equipment usage should include the cost of an operator, operating expenses, and the cost to transport the equipment to and from the scene.

Standard Tow: A standard tow is defined as responding to the scene, hooking up the vehicle, performing a general clean up if the call involves responding to a collision scene and providing responsible assistance to the vehicle occupants. In the absence of special operations as defined below, the maximum fee for a Class A or B tow is the flat rate listed above. Fees for Class C tows are billed at an hourly rate.

Special Operations: Special operations are operations involving the process of uprighting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle and/or the recovery of a load which has spilled, or the off-loading and reloading of a load from an overturned vehicle performed to right the vehicle. A wrecker service must receive confirmation on-scene at the time of the tow from the investigating Trooper or an SCHP supervisor that special operations are required to perform the tow in order to recover such fees.

* 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.

If services beyond those for which the wrecker was dispatched are performed (e.g., hazardous waste cleanup; transportation of vehicle, cargo, or occupants(s) to an agreed upon location other than the one required by the Regulation), those services must be billed on a separate invoice.

Storage: Fees begin 12 hours after a vehicle is secured on the wrecker service premises and terminate when the vehicle owner or owner's designee offers to pick up the vehicle and pay the legitimate accrued charges.

A COPY OF THIS FEE SCHEDULE SHALL BE KEPT IN EACH WRECKER AT ALL TIMES AND MUST BE PRESENTED UPON REQUEST TO ANY PERSON FOR WHOM TOW SERVICES ARE PROVIDED, HIS OR HER AGENT, OR ANY DEPARTMENT OF PUBLIC SAFETY EMPLOYEE. ANY COMPLAINTS MUST BE IN WRITING AND FORWARDED TO THE SCHP TROOP COMMANDER.

NOTE: This fee schedule lists the maximum fee that may be charged for each class of wrecker. A lesser fee may be charged at any time in the wrecker service's discretion.

On behalf of the wrecker service named below, I acknowledge that I have received and agree to be bound by the South Carolina Highway Patrol 2017 Wrecker Rotation Fee Schedule and the Department of Public Safety's Wrecker Rotation Disciplinary Policy. Further, I certify that I am authorized to bind the wrecker service named below to the terms of this Fee Schedule and the Department of Public Safety's Wrecker Rotation Disciplinary Policy.

Sherry Corbett — Owner/Representative Name (Printed)

[signature] — Owner/Representative Signature

11-30-2016 — Date

Wayne's Automotive Center — Name of Wrecker Service

South Carolina Department of Public Safety

S.C. Highway Patrol

2018 Wrecker Rotation Fee Schedule

In accordance with S.C. Code Ann. Regs. § 38-600, the South Carolina Department of Public Safety publishes a yearly Wrecker Rotation Fee Schedule ("Fee Schedule") outlining the maximum allowable fees for each class of wrecker on the South Carolina Highway Patrol ("SCHP") Wrecker Rotation List. The reasonableness of fees on the Fee Schedule is determined by the SCHP after a review of submitted fees. The fees permitted for calendar year 2018 are listed below:

2018 MAXIMUM ALLOWABLE FEES FOR ROTATION LIST CALLS

Rates / Fees		
Class A Wrecker		
Standard Towing	***Special Operations**	**Storage**
$ 219.00 Flat Fee	$ 132.00 Per Hour	$ 33.00 Per Day
**Special Operations are billed at a per hour rate in ½ hour increments.*		
Class B Wrecker		
Standard Towing	***Special Operations**	**Storage**
$ 311.00 Flat Fee	$ 199.00 Per Hour	$ 41.00 Per Day
**Special Operations are billed at a per hour rate in ½ hour increments.*		
Class C Wrecker		
***Standard Towing**	**Special Operations**	**Storage**
$ 470.00 Per Hour	****See below**	$ 58.00 Per Day
**Standard Towing is billed at a per hour rate in ½ hour increments.*		
***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 each third party providing such equipment or labor must accompany the tow bill.*		

Class C Services Only		
Description of Service, Labor, or Equipment	**Rates / Fees**	
Additional Wrecker	$ 464.00	Per Hour
Dump Truck, Dump Trailer, or Drop Dumpster	$ 226.00	Per Hour
Rotator/Crane or equivalent	$ 661.00	Per Hour
Truck Tractor with Box Trailer or equivalent	$ 263.00	Per Hour
Truck Tractor with Flat Trailer or equivalent	$ 267.00	Per Hour
Truck Tractor with Landoll/Lowboy/Tilt Trailer or equivalent	$ 292.00	Per Hour
Skid Steer or equivalent	$ 240.00	Per Hour
Forklift or equivalent	$ 235.00	Per Hour
Backhoe or equivalent	$ 271.00	Per Hour
Service Truck (includes all tools and equipment on board)	$ 172.00	Per Hour
Tower Light System	$ 158.00	Per Hour
Complete Air Bag Unit	$ 781.00	Per Hour
Additional Labor (General)	$ 83.00	Per Person/Per Hour
Additional Labor (Specialized)	$ 116.00	Per Person/Per Hour

NOTICE: The hourly rates for equipment usage include the cost of an operator, operating expenses, and the cost to transport the equipment to and from the scene. Expenses above the approved rate may not be charged.

Standard Tow: A standard tow is defined as responding to the scene, hooking up the vehicle, performing a general clean up if the call involves responding to a collision scene, and providing responsible assistance to the vehicle occupants. In the absence of special operations as defined below, the maximum fee for a Class A or B tow is the flat rate listed above. Fees for Class C tows are billed at an hourly rate.

Special Operations: Special operations involve the process of uprighting an overturned vehicle or returning a vehicle to a normal position on the roadway which require the use of auxiliary equipment due to the size or location of the vehicle and/or the recovery of a load which has spilled, or the off-loading and reloading of a load from an overturned vehicle performed to right the vehicle. The investigating trooper or SCHP supervisor must confirm on-scene at the time of the tow that special operations are required to perform the tow in order to recover such fees.

* Although no Special Operations rate 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.

If services beyond those for which the wrecker was dispatched are performed (e.g., hazardous waste cleanup; transportation of vehicle, cargo, or occupants(s) to an agreed upon location other than the one required by the Regulation), those services must be billed on a separate invoice.

Storage: Storage fees begin 12 hours after a vehicle is secured on the wrecker service premises and terminate when the vehicle owner or owner's designee offers to pick up the vehicle and pay the legitimate accrued charges.

A COPY OF THIS FEE SCHEDULE SHALL BE KEPT IN EACH WRECKER AT ALL TIMES AND MUST BE PRESENTED UPON REQUEST TO ANY PERSON FOR WHOM TOW SERVICES ARE PROVIDED, HIS OR HER AGENT, OR ANY SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY EMPLOYEE. ANY COMPLAINTS MUST BE IN WRITING AND FORWARDED TO THE SCHP TROOP COMMANDER WHERE THE INCIDENT OCCURRED.

NOTE: This Fee Schedule lists the maximum fee that may be charged for each class of wrecker. A lesser fee may be charged at any time within the discretion of the wrecker service.

On behalf of the wrecker service named below, I acknowledge that I have received and agree to be bound by the South Carolina Highway Patrol 2018 Wrecker Rotation Fee Schedule and the South Carolina Department of Public Safety Wrecker Rotation Disciplinary Policy. Further, I certify that I am authorized to bind the wrecker service named below to the terms of this Fee Schedule and the South Carolina Department of Public Safety's Wrecker Rotation Disciplinary Policy.

Owner/Representative Name (Printed)	Owner/Representative Signature	Date
SCFF Corbett	Jeff Cutt	11-21-17

Name of Wrecker Service	Address
Waynes Automotive Center	1997 Richland AVE E Aiken S.C.

South Carolina Highway Patrol

Wrecker Rotation Inspection

Inspector's Comments:

After my inspection, I find this service to be:

☑ **Approved** – Business is in compliance with Wrecker Regulations and is being **recommended** for the rotation list.

☐ **Not Approved** – Business is not in compliance with Wrecker Regulations and is **NOT recommended** for the rotation list. Service was notified in writing as to what deficiencies were identified.

Inspector's Signature: SGT D.A. Dewey Date: 11-21-2017

Wrecker Owner's Acknowledgment of Receipt and Compliance if approved:

I do hereby affirm that I have a copy of South Carolina Code of Regulations 38-600 governing rotation list wreckers. I am familiar with its contents and do hereby agree to fully comply with it in order to remain on the rotation list. I understand that any violation of the Wrecker Regulations may result in disciplinary action pursuant to S.C. Code of Regulations 38-600(D) and SCDPS Policy 200.19 Wrecker Rotation Disciplinary Policy. I further agree that if I relocate or change equipment, insurance carriers, telephone numbers or employees, or for any reason become unavailable for service for an extended period of time, I will notify the appropriate Troop Commander in writing. The information I have furnished is true and correct to the best of my knowledge. My business has been inspected and approved this 21 day of November, 2017.

Print Name: Jeff Corbett Signature: Jeff Corbett

Key to Inspection Codes:
C = Compliant **NC = Not in Compliance** **NA = Not Applicable**

Form SCHP-A-007 revised September 2016

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc.,	)	Docket No. 16-ALJ-30-0410-CC
	)	
Petitioner,	)	
	)	**PETITION FOR SUPERSEDEAS OR**
v.	)	**OTHER RULING TO CONTINUE**
	)	**STAY THROUGH APPEAL**
South Carolina Department of Public Safety,	)	**PROCESS**
	)	
Respondent.	)	
	)	

Consistent with the attached Order of the South Carolina Court of Appeals, filed December 8, 2017, Rule 241 (d) (1), SCACR, Rules 29 (E) and 34, SCALC, and related provisions and authorities, Petitioner gives notice and moves by this Petition for the Court to issue its Order continuing the stay in effect through its prior Orders[1] herein during the appeal process as follows.

1. In the first paragraph of its Final Order, the lower court properly characterized without opposition by either party that the case was "a contested case hearing to challenge a violation found and a penalty imposed" and cited S.C. Code Ann. §§ 1-23-600 and -505 (Supp. 2016).[2] Without indicating whether the automatic stay provision in

[1] The Clerk of Court for the SCALC confirmed Petitioner need not attach certified copies of the Court's Final Order and Order Denying Motions For Reconsideration on appeal and previously attached by Petitioner to its Notice of Appeal, served and filed with its Motion (Petition) For Supersedeas...on November 29, 2017. Respondent served and filed its cross-appeal on December 4, 2017.

[2] Section 505, subsections 3-6 define pertinent terms, as follows:

> (3) 'Contested case' means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22, Constitution of the State of South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing.

FILED
DEC 13 2017
SC ADMIN LAW COURT

S.C. Code Ann. § 1-23-600 applied, it also had previously extended the initial stay through the pendency of the case before it by its Order Granting Motion For Extension and Order Extending Stay, filed January 18, 2017, from an end date of January 2017, which the parties had agreed to in conjunction with Petitioner's Petition For Contested Case Hearing and Motion for Injunction/Stay, served and filed December 14, 2016.

2. In light of uncertainty of the Court's rationale in extending the stay and applicability of Rule 34, SCALC, in ¶ 5 of its Motion (Petition) before the Court of Appeals, Petitioner as Appellant-Respondent in the pending appeal/cross-appeal of this Court's Final Order and Order Denying Motions For Reconsideration stated:

> While the instant appeal from the SCALC falls within the exception in SCACR 241 (b) (11) for an appeal to stay the lower court order automatically, the Court should apply SCACR 241 (c) (2), since such order is necessary 'to prevent a contested issue from becoming moot.'

If Petitioner was correct in that regard, this Court should grant the instant Petition to continue its stay in effect through the appellate process "to prevent a contested case issue from becoming moot", as referenced in Rule 241 (c) (2), SCACR. Alternatively, if Petitioner was incorrect in that regard, this Court should clarify Rule 34, SCALC applies, thereby continuing the stay through the appellate process and confirming the scope of the

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> (4) 'License' includes the whole or part of any agency permit, franchise, certificate, approval, registration, charter, or similar form of permission required by law, but does not include a license required solely for revenue purposes.
>
> (5) 'Party' means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
>
> (6) 'Person' means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

definition of "licensee" and "license" in §§ 1-23-380 (2) and 1-23-610 (A) (2) include Appellant and Respondent's contractual agreement in the 2016 Wrecker Rotation List Application and subsequent approvals for 2017 and 2018 for Petitioner by Respondent, consistent with its Final Order.

3. By citing the Exception in Rule 241 (b) (11), Petitioner primarily was referring to the reference to S.C. Code § 1-23-380 (A) (2) in that section. Even though the "A" has been deleted in the current version of § 1-23-380, it is consistent with § 1-23-610, which states:

> **SECTION 1-23-610.** Judicial review of final decision of administrative law judge; stay of enforcement of decision.
>
> (A)(1) For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.
>
> (2) *Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the administrative law judge's decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. Upon motion, the administrative law judge may grant, or the court of appeals may order, a stay upon appropriate terms.*

(*Emphases added*). *Note*: These express references to "suspension," "revocation," and "permit" in these sections support construed in conjunction with § 505 (3) – (6) support the conclusion that the contractual agreements between Petitioner and Respondent herein are consistent for inclusion for the automatic stay in -610 (A) (2) as well as Rule 34, SCALC of any suspension of Petitioner from the Rotation Schedule during the pendency

of the appellate process, since Petitioner's appeal pertains to "provisions for which review is sought" and "...matters...affected by the notice of appeal...." They, otherwise, support granting the instant Petition continuing the stay through the appellate process.

4. As to factual background and grounds for the Petition, referenced in Rule 241 (d) (4) and (5), SCACR, Petitioner's basic point is its appeal would be mooted, if the stay is not continued. Based on that fact alone, this Court should continue the stay. Prejudice to Petitioner will be avoided by granting the instant Petition. *See, e.g. Trotter v. Trane Coil Facility*, 393 S.C. 637, 714 S.E.2d 289, 293 (2011) ("The granting or refusal of a request for a continuance rests in the sound discretion of the [Appellate Panel], whose ruling will not be disturbed unless a clear abuse of discretion is shown. For appellate purposes, an abuse of discretion occurs where the ruling is based on an error of law or, where the ruling is grounded upon factual findings, is without evidentiary support. . . . Where a party is not prejudiced by the denial of a motion for a continuance, reversal is not required. (*Wright v. Hiester Constr. Co.*, 389 S.C. 504, 698 S.E.2d 822 (Ct.App.2010).") Additional grounds include the interests of justice and efficiency of resources, which will also be served.

5. As to additional factual background in support, Petitioner acknowledges in the attached Verification and Affidavit it is "otherwise qualified for and approved to be on the Wrecker Rotation List", as stated in the Final Order @ 10, and has attached its approved 2016, 2017, and 2018 approved Wrecker Rotation Fee Schedules to that Verification and Affidavit, as it has also done before the Court of Appeals, since Petitioner has already been suspended for 4 days in December 2016 and an additional 60-day suspension per this Court's Orders would currently be pursuant to its 2017 and/or

2018 approved Schedules. The Court may also take notice of or review other filings made by the parties herein in consideration of the instant Petition.

6. Prior to serving and filing the request before the Court of Appeals, Petitioner sought feedback from Respondent through its counsel concerning continuation of the stay during appeals; however, Petitioner received no timely response prior to its appeal and associated deadline.

7. Moreover, Petitioner had sought an extension by the lower court of the stay through the appellate process as part of relief requested but not provided, as referenced in Rule 241 (d) (4) (C) at least three times before filing its Notice of Appeal and Petition with the Court of Appeals to no avail, as shown in:

(a) Petitioner's Response In Opposition To Respondent's Motion For Reconsideration @ 6 referencing continuing the stay in effect upon any appeal (filed October 11, 2017);

(b) Petitioner's Motion For Reconsideration @ 9 referencing continuing the stay in effect upon any appeal (filed September 29, 2017); and

(c) Petitioner's Final Arguments @ 11 referencing providing all available relief (filed August 21, 2017).

Given the lack of discussion or timely response by counsel for Respondent, the prior rejection by this Court for an extension, and the imminent deadline to appeal, Petitioner perceived seeking such relief by this Court was impracticable and so advised the Court of Appeals as to these extraordinary circumstances.

8. Petitioner appreciates this Court's consideration of its Petition. The provisions of DPS Regulation 38-600 (2 SC Code Ann. Regs.) will, of course, remain in effect.

9. In light of the 20-day time period in the attached Court of Appeals Order, Petitioner would further request the Court shorten the time for any response to the instant Petition to five (5) days of the filing of it by Respondent so that Petitioner may submit a written reply within five (5) days of its receipt of such response, consistent with Rule 19 (A), SCALC.

WHEREFORE, Petitioner respectfully requests this Honorable Court to grant its Petition or otherwise provide for continuation of the stay during the appellate process to avoid contested issues from becoming moot and providing Petitioner all available relief.

AUSTIN & ROGERS, P.A.

By: Raymon E. Lark, Jr.

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Phone: (803) 256-4000
Fax: (803) 252-3679

Attorneys for Petitioner

December 13, 2017

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South Carolina Department of Public Safety
10311 Wilson Boulevard
P.O. Box 1993
Blythewood, SC 29016

Attorneys for Respondent South Carolina Department Of Public Safety

Rec'd 12/11/17
KBS
16/45

The South Carolina Court of Appeals

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

v.

South Carolina Department of Public Safety,
Respondent-Appellant.

Appellate Case No. 2017-002455

ORDER

Wayne's Automotive Center, Inc. (Wayne's Automotive) has filed a motion requesting this court to issue a supersedeas to stay matters decided in the Administrative Law Court's orders. This court temporarily grants the stay for twenty days from the date of this order for the purpose of allowing Wayne's Automotive to petition for relief with the Administrative Law Court. *See* Rule 241(d)(1), SCACR ("Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal."). The Administrative Law Court has jurisdiction to consider this petition for supersedes pursuant to Rule 241 while this appeal is pending. Nothing in this order prevents the parties from filing a request for this court to continue the stay upon the expiration of twenty days if the Administrative Law Court has not yet ruled on the petition.

James E. Lockemy
FOR THE COURT

Columbia, South Carolina

FILED
Dec. 8, 2017

000269

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc.,	) Docket No. 16-ALJ-30-0410-CC
Petitioner,	)
v.	) **VERIFICATION AND AFFIDAVIT**) **OF WALTER JEFFRY CORBETT**
South Carolina Department of Public Safety,	)
Respondent.	)

Sworn to before me, Walter Jeffry Corbett, who says and deposes that the affiant knows the facts in Petitioner's Notice of Appeal and instant Petition For Supersedeas Or Other Ruling To Continue Stay Through Appeal Process stated to be true of his own knowledge, except as to matters stated on information and belief, and as to any such matters he believes them to be true. In addition, attached are copies of Petitioner's 2016, 2017, and 2018 calendar-year Wrecker Rotation Fee Schedules, as approved by Respondent, and Petitioner is currently participating on the 2017 Rotation List in effect through December 31st, followed by the 2018 Rotation List on January 1 2018. Finally, he affirms continuation of the stay of suspension through the appeal process is necessary in order for the appeals not to be mooted and in the interest of justice.

Walter Jeffry Corbett

SWORN to and subscribed before me
this 13th day of December 2017.

Notary Public for South Carolina
My Commission Expires: 9/1/2025

ASHLEY M. BIGBY NOTARY PUBLIC EXP. 09/01/2025 SOUTH CAROLINA

2

South Carolina Department of Public Safety

S.C. Highway Patrol

South Carolina Highway Patrol
2016 Wrecker Rotation Fee Schedule

In accordance with Section 38-600 of the South Carolina Code of State Regulations, the Department of Public Safety publishes a yearly Fee Schedule outlining the maximum allowable fees for each class of wrecker on the SCHP Wrecker Rotation List. The reasonableness of fees on the Fee Schedule is determined by the Highway Patrol on a comparative basis. The fees permitted for calendar year 2016 are listed below:

2016 MAXIMUM ALLOWABLE FEES FOR ROTATION LIST CALLS

CLASS	STANDARD TOW	SPECIAL OPERATIONS	STORAGE
A	$204.00 flat rate	$118.00 per hour	$30.00 per day
B	$279.00 flat rate	$174.00 per hour	$39.00 per day
C	$436.00 per hour	* no fee will be set	$53.00 per day

Standard Tow: A standard tow is defined as responding to the scene, hooking up the vehicle, performing a general clean up if the call involves responding to a collision scene and providing responsible assistance to the vehicle occupants. In the absence of special operations as defined below, the maximum fee for a Class A or B tow is the flat rate listed above. Fees for Class C tows are billed at an hourly rate.

Special Operations: Special operations are operations involving the process of uprighting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle and/or the recovery of a load which has spilled, or the off-loading and reloading of a load from an overturned vehicle performed to right the vehicle. A wrecker service must receive confirmation on-scene at the time of the tow from the investigating Trooper or an SCHP supervisor that special operations are required to perform the tow in order to recover such fees.

* 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.

If services beyond those for which the wrecker was dispatched are performed (e.g., hazardous waste cleanup; transportation of vehicle, cargo, or occupants(s) to an agreed upon location other than the one required by the Regulation), those services must be billed on a separate invoice.

Storage: Fees begin 12 hours after a vehicle is secured on the wrecker service premises and terminate when the vehicle owner or owner's designee offers to pick up the vehicle and pay the legitimate accrued charges.

A COPY OF THIS FEE SCHEDULE SHALL BE KEPT IN EACH WRECKER AT ALL TIMES AND MUST BE PRESENTED UPON REQUEST TO ANY PERSON FOR WHOM TOW SERVICES ARE PROVIDED, HIS OR HER AGENT, OR ANY DEPARTMENT OF PUBLIC SAFETY EMPLOYEE. ANY COMPLAINTS MUST BE IN WRITING AND FORWARDED TO THE SCHP TROOP COMMANDER.

NOTE: This fee schedule lists the maximum fee that may be charged for each class of wrecker. A lesser fee may be charged at any time in the wrecker service's discretion.

Courtesy - Efficiency - Service

POST OFFICE BOX 1993, 10311 WILSON BLVD., BLYTHEWOOD, SOUTH CAROLINA 29016

000271

South Carolina Highway Patrol

Wrecker Rotation Inspection

Approved Fees:

Class	Standard Towing	Special Operations	Storage (per day)
☒ A	$ 204.00	$ 118.00	$ 30.00
☐ B	$ 279.00	$ 174.00	$ 32.00
☒ C	$ 436.00	$ NONE / No fee set	$ 53.00

Inspector's Comments:

After my inspection, I find this service to be:

☒ **Approved** – Business is in compliance with Wrecker Regulations and is being **recommended** for the rotation list.

☐ **Not Approved** – Business is not in compliance with Wrecker Regulations and is **NOT recommended** for the rotation list. Service was notified in writing as to what deficiencies were identified.

Inspector's Signature: _____ Date: 11/25/15

Wrecker Owner's Acknowledgment of Receipt and Compliance if approved:

I do hereby affirm that I have a copy of South Carolina Code of Regulations 38-600 governing rotation list wreckers. I am familiar with its contents and do hereby agree to fully comply with it in order to remain on the rotation list. I understand that any violation of the Wrecker Regulations may result in disciplinary action pursuant to S.C. Code of Regulations 38-600(D) and SCDPS Policy 200.19 Wrecker Rotation Disciplinary Policy. I further agree that if I relocate or change equipment, insurance carriers, telephone numbers or employees, or for any reason become unavailable for service for an extended period of time, I will notify the appropriate Troop Commander in writing. The information I have furnished is true and correct to the best of my knowledge. My business has been inspected and approved this 25th day of November, 2015.

Print Name Pamela Beltran Signature: Pamela Beltran

Key to Inspection Codes:

C = Compliant **NC = Not in Compliance** **NA = Not Applicable**

Form SCHP-A-007 revised July 2014

000272

South Carolina Department of Public Safety

S.C. Highway Patrol

On behalf of the wrecker service named below, I acknowledge that I have received and agree to be bound by the South Carolina Highway Patrol 2016 Wrecker Rotation Fee Schedule and the Department of Public Safety's Wrecker Rotation Disciplinary Policy. Further, I certify that I am authorized to bind the wrecker service named below to the terms of this Fee Schedule and the Department of Public Safety's Wrecker Rotation Disciplinary Policy.

Owner/Representative Name (Printed) | Owner/Representative Signature | Date

11/25/15

Name of Wrecker Service

South Carolina Department of Public Safety

S.C. Highway Patrol

2017 Wrecker Rotation Fee Schedule

In accordance with Section 38-600 of the South Carolina Code of State Regulations, the Department of Public Safety publishes a yearly Fee Schedule outlining the maximum allowable fees for each class of wrecker on the SCHP Wrecker Rotation List. The reasonableness of fees on the Fee Schedule is determined by the Highway Patrol on a comparative basis. The fees permitted for calendar year 2017 are listed below:

2017 MAXIMUM ALLOWABLE FEES FOR ROTATION LIST CALLS

Rates / Fees		
Class A Wrecker		
Standard Towing Charge	***Special Operations**	**Storage**
$ 214.00 Flat Fee	$ 126.00 Per Hour	$ 32.00 Per Day
**Special Operations are billed at a per hour rate in ½ hour increments.*		
Class B Wrecker		
Standard Towing Charge	***Special Operations**	**Storage**
$ 313.00 Flat Fee	$ 200.00 Per Hour	$ 41.00 Per Day
**Special Operations are billed at a per hour rate in ½ hour increments.*		
Class C Wrecker		
***Standard Towing Charge**	**Special Operations**	**Storage**
$ 474.00 Per Hour	****See below**	$ 56.00 Per Day
**Standard Towing is billed at a per hour rate in ½ hour increments.*		
***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 each third party providing such equipment or labor must accompany the tow bill.*		

Class C services only.		
Description of Service, Labor or Equipment	**Rate / Fee**	
Additional Wrecker	$ 464.00	Per hour
Dump Truck, Dump Trailer or Drop Dumpster	$ 223.00	Per hour
Rotator/Crane or equivalent	$ 662.00	Per hour
Truck Tractor with Box Trailer or equivalent	$ 260.00	Per hour
Truck Tractor with Flat Trailer or equivalent	$ 267.00	Per hour
Truck Tractor with Landoll/Lowboy/Tilt Trailer or equivalent	$ 300.00	Per hour
Skid Steer or equivalent	$ 212.00	Per hour
Forklift or equivalent	$ 209.00	Per hour
Backhoe or equivalent	$ 241.00	Per hour
Service Truck (includes all tools and equipment on board)	$ 175.00	Per hour
Tower Light System	$ 148.00	Per hour
Complete Air Bag Unit	$ 712.00	Per hour
Additional Labor (General)	$ 79.00	Per person/per hour
Additional Labor (Specialized)	$ 109.00	Per person/per hour

South Carolina Highway Patrol

Wrecker Rotation Inspection

Inspector's Comments:

After my inspection, I find this service to be:

☒ **Approved** – Business is in compliance with Wrecker Regulations and is being **recommended** for the rotation list.

☐ **Not Approved** – Business is not in compliance with Wrecker Regulations and is **NOT recommended** for the rotation list. Service was notified in writing as to what deficiencies were identified.

Inspector's Signature: SGT. DA Darling Date: 11-30-2016

Wrecker Owner's Acknowledgment of Receipt and Compliance if approved:

I do hereby affirm that I have a copy of South Carolina Code of Regulations 38-600 governing rotation list wreckers. I am familiar with its contents and do hereby agree to fully comply with it in order to remain on the rotation list. I understand that any violation of the Wrecker Regulations may result in disciplinary action pursuant to S.C. Code of Regulations 38-600(D) and SCDPS Policy 200.19 Wrecker Rotation Disciplinary Policy. I further agree that if I relocate or change equipment, insurance carriers, telephone numbers or employees, or for any reason become unavailable for service for an extended period of time, I will notify the appropriate Troop Commander in writing. The information I have furnished is true and correct to the best of my knowledge. My business has been inspected and approved this 30 day of November, 2016.

Print Name: Sherry Corbett Signature:

Key to Inspection Codes:
C = Compliant **NC = Not in Compliance** **NA = Not Applicable**

Form SCHP-A-007 revised September 2016

NOTICE:
Rates for all equipment usage should include the cost of an operator, operating expenses, and the cost to transport the equipment to and from the scene.

Standard Tow: A standard tow is defined as responding to the scene, hooking up the vehicle, performing a general clean up if the call involves responding to a collision scene and providing responsible assistance to the vehicle occupants. In the absence of special operations as defined below, the maximum fee for a Class A or B tow is the flat rate listed above. Fees for Class C tows are billed at an hourly rate.

Special Operations: Special operations are operations involving the process of uprighting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle and/or the recovery of a load which has spilled, or the off-loading and reloading of a load from an overturned vehicle performed to right the vehicle. A wrecker service must receive confirmation on-scene at the time of the tow from the investigating Trooper or an SCHP supervisor that special operations are required to perform the tow in order to recover such fees.

* 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.

If services beyond those for which the wrecker was dispatched are performed (e.g., hazardous waste cleanup; transportation of vehicle, cargo, or occupants(s) to an agreed upon location other than the one required by the Regulation), those services must be billed on a separate invoice.

Storage: Fees begin 12 hours after a vehicle is secured on the wrecker service premises and terminate when the vehicle owner or owner's designee offers to pick up the vehicle and pay the legitimate accrued charges.

A COPY OF THIS FEE SCHEDULE SHALL BE KEPT IN EACH WRECKER AT ALL TIMES AND MUST BE PRESENTED UPON REQUEST TO ANY PERSON FOR WHOM TOW SERVICES ARE PROVIDED, HIS OR HER AGENT, OR ANY DEPARTMENT OF PUBLIC SAFETY EMPLOYEE. ANY COMPLAINTS MUST BE IN WRITING AND FORWARDED TO THE SCHP TROOP COMMANDER.

NOTE: This fee schedule lists the maximum fee that may be charged for each class of wrecker. A lesser fee may be charged at any time in the wrecker service's discretion.

On behalf of the wrecker service named below, I acknowledge that I have received and agree to be bound by the South Carolina Highway Patrol 2017 Wrecker Rotation Fee Schedule and the Department of Public Safety's Wrecker Rotation Disciplinary Policy. Further, I certify that I am authorized to bind the wrecker service named below to the terms of this Fee Schedule and the Department of Public Safety's Wrecker Rotation Disciplinary Policy.

Sherry Corbett — Owner/Representative Name (Printed)

[signature] — Owner/Representative Signature

11-30-2016 — Date

Wayne's Automotive Center — Name of Wrecker Service

South Carolina Department of Public Safety

S.C. Highway Patrol

2018 Wrecker Rotation Fee Schedule

In accordance with S.C. Code Ann. Regs. § 38-600, the South Carolina Department of Public Safety publishes a yearly Wrecker Rotation Fee Schedule ("Fee Schedule") outlining the maximum allowable fees for each class of wrecker on the South Carolina Highway Patrol ("SCHP") Wrecker Rotation List. The reasonableness of fees on the Fee Schedule is determined by the SCHP after a review of submitted fees. The fees permitted for calendar year 2018 are listed below:

2018 MAXIMUM ALLOWABLE FEES FOR ROTATION LIST CALLS

Rates / Fees

Class A Wrecker

Standard Towing	*Special Operations	Storage
$ 219.00 Flat Fee	$ 132.00 Per Hour	$ 33.00 Per Day

**Special Operations are billed at a per hour rate in ½ hour increments.*

Class B Wrecker

Standard Towing	*Special Operations	Storage
$ 311.00 Flat Fee	$ 199.00 Per Hour	$ 41.00 Per Day

**Special Operations are billed at a per hour rate in ½ hour increments.*

Class C Wrecker

*Standard Towing	Special Operations	Storage
$ 470.00 Per Hour	**See below	$ 58.00 Per Day

**Standard Towing is billed at a per hour rate in ½ hour increments.*

***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 each third party providing such equipment or labor must accompany the tow bill.*

Class C Services Only

Description of Service, Labor, or Equipment	Rates / Fees	
Additional Wrecker	$ 464.00	Per Hour
Dump Truck, Dump Trailer, or Drop Dumpster	$ 226.00	Per Hour
Rotator/Crane or equivalent	$ 661.00	Per Hour
Truck Tractor with Box Trailer or equivalent	$ 263.00	Per Hour
Truck Tractor with Flat Trailer or equivalent	$ 267.00	Per Hour
Truck Tractor with Landoll/Lowboy/Tilt Trailer or equivalent	$ 292.00	Per Hour
Skid Steer or equivalent	$ 240.00	Per Hour
Forklift or equivalent	$ 235.00	Per Hour
Backhoe or equivalent	$ 271.00	Per Hour
Service Truck (includes all tools and equipment on board)	$ 172.00	Per Hour
Tower Light System	$ 158.00	Per Hour
Complete Air Bag Unit	$ 781.00	Per Hour
Additional Labor (General)	$ 83.00	Per Person/Per Hour
Additional Labor (Specialized)	$ 116.00	Per Person/Per Hour

NOTICE: The hourly rates for equipment usage include the cost of an operator, operating expenses, and the cost to transport the equipment to and from the scene. Expenses above the approved rate may not be charged.

Standard Tow: A standard tow is defined as responding to the scene, hooking up the vehicle, performing a general clean up if the call involves responding to a collision scene, and providing responsible assistance to the vehicle occupants. In the absence of special operations as defined below, the maximum fee for a Class A or B tow is the flat rate listed above. Fees for Class C tows are billed at an hourly rate.

Special Operations: Special operations involve the process of uprighting an overturned vehicle or returning a vehicle to a normal position on the roadway which require the use of auxiliary equipment due to the size or location of the vehicle and/or the recovery of a load which has spilled, or the off-loading and reloading of a load from an overturned vehicle performed to right the vehicle. The investigating trooper or SCHP supervisor must confirm on-scene at the time of the tow that special operations are required to perform the tow in order to recover such fees.

* Although no Special Operations rate 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.

If services beyond those for which the wrecker was dispatched are performed (e.g., hazardous waste cleanup; transportation of vehicle, cargo, or occupants(s) to an agreed upon location other than the one required by the Regulation), those services must be billed on a separate invoice.

Storage: Storage fees begin 12 hours after a vehicle is secured on the wrecker service premises and terminate when the vehicle owner or owner's designee offers to pick up the vehicle and pay the legitimate accrued charges.

A COPY OF THIS FEE SCHEDULE SHALL BE KEPT IN EACH WRECKER AT ALL TIMES AND MUST BE PRESENTED UPON REQUEST TO ANY PERSON FOR WHOM TOW SERVICES ARE PROVIDED, HIS OR HER AGENT, OR ANY SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY EMPLOYEE. ANY COMPLAINTS MUST BE IN WRITING AND FORWARDED TO THE SCHP TROOP COMMANDER WHERE THE INCIDENT OCCURRED.

NOTE: This Fee Schedule lists the maximum fee that may be charged for each class of wrecker. A lesser fee may be charged at any time within the discretion of the wrecker service.

On behalf of the wrecker service named below, I acknowledge that I have received and agree to be bound by the South Carolina Highway Patrol 2018 Wrecker Rotation Fee Schedule and the South Carolina Department of Public Safety Wrecker Rotation Disciplinary Policy. Further, I certify that I am authorized to bind the wrecker service named below to the terms of this Fee Schedule and the South Carolina Department of Public Safety's Wrecker Rotation Disciplinary Policy.

JEFF Corbett — Owner/Representative Name (Printed)

Jeff Cutt — Owner/Representative Signature

11-21-17 — Date

Waynes Automotive Center — Name of Wrecker Service

1997 Richland AVE E Aiken S.C. — Address

South Carolina Highway Patrol

Wrecker Rotation Inspection

Inspector's Comments:

After my inspection, I find this service to be:

☑ **Approved** – Business is in compliance with Wrecker Regulations and is being **recommended** for the rotation list.

☐ **Not Approved** – Business is not in compliance with Wrecker Regulations and is **NOT recommended** for the rotation list. Service was notified in writing as to what deficiencies were identified.

Inspector's Signature: SGT DS Bowers Date: 11-21-2017

Wrecker Owner's Acknowledgment of Receipt and Compliance if approved:

I do hereby affirm that I have a copy of South Carolina Code of Regulations 38-600 governing rotation list wreckers. I am familiar with its contents and do hereby agree to fully comply with it in order to remain on the rotation list. I understand that any violation of the Wrecker Regulations may result in disciplinary action pursuant to S.C. Code of Regulations 38-600(D) and SCDPS Policy 200.19 Wrecker Rotation Disciplinary Policy. I further agree that if I relocate or change equipment, insurance carriers, telephone numbers or employees, or for any reason become unavailable for service for an extended period of time, I will notify the appropriate Troop Commander in writing. The information I have furnished is true and correct to the best of my knowledge. My business has been inspected and approved this 21 day of November, 2017.

Print Name: Jeff Corbett Signature: Jeff Corbett

Key to Inspection Codes:

C = Compliant **NC = Not in Compliance** **NA = Not Applicable**

Form SCHP-A-007 revised September 2016

000279

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wayne's Automotive Center, Inc., Petitioner, v. South Carolina Department of Public Safety, Respondent.	)	Docket No. 16-ALJ-30-0410-CC **PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO PETITION FOR SUPERSEDEAS OR OTHER RULING TO CONTINUE STAY THROUGH APPEAL PROCESS**

By its Petition and this Reply, Petitioner seeks the Court to issue its Order continuing the stay in effect through its prior Orders[1] herein during the appeal process as follows.

1. In its Response Respondent does not refute or dispute Petitioner's appeal would become moot absent continuation of the stay in effect thereby supporting the Court's granting of the instant Petition.

2. As Petitioner previously noted in ¶ 8 of its Petitioner, "(t)he provisions of DPS Regulation 38-600 (2 SC Code Ann. Regs.) will, of course, remain in effect", including disciplinary provisions. Consequently, the Court need not condition the continuance of the stay, as requested by Respondent in its Response for the first time. Respondent has not previously sought such conditions in conjunction with the stay currently in effect.

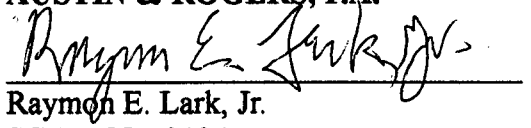
3. Moreover, neither should the Court do so, since Petitioner's compliance and Respondent's construction of its regulation and Wrecker Rotation Schedules as to

[1] Petitioner previously served and filed its Notice of Appeal and Motion (Petition) For Supersedeas...on November 29, 2017. Respondent thereafter served and filed its cross-appeal on December 4, 2017. Petitioner then served and filed its Response to Petitioner's Petition on December 27, 2017.

Petitioner are at issue in its appeal and Respondent's cross-appeal before the Court of Appeals.

WHEREFORE, Petitioner respectfully requests this Honorable Court to grant its Petition or otherwise provide for continuation of the stay during the appellate process to avoid contested issues from becoming moot and providing Petitioner all available relief.

AUSTIN & ROGERS, P.A.

By: 

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
Docket No. 16-ALJ-30-0410-CC

Wayne's Automotive Center, Inc.,

Petitioners,

v.

South Carolina Department of Public Safety,

Respondent.

COPY

ADMINISTRATIVE HEARING

****

Monday, July 31, 2017
10:15 a.m. - 5:33 p.m.
AND
Tuesday, August 1, 2017
1:01 p.m. - 5:47 p.m.

The administrative hearing before the Honorable H.W. Funderburk, Jr. was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 31st day of July and the 1st day of August, 2017 before Nadine A. Garrett, Court Reporter and Notary Public in and for the State of South Carolina.

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Also Present:
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Cliffton Hughes
Nichlous King
Walter Jeffrey Corbett
Sherry Corbett
Carl Douglas Busbee
Martha Gaynell Rochester
William Rawl, Jr.
Robert Watson

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EXHIBITS

(Petitioner's Exhibits 1 through 26 and Respondent's Exhibits 1 through 27 were marked prior to the hearing and admitted as follows:)

Petitioner's Exhibit Number 1 128
(Petition for Contested Case Hearing and Motion)
Petitioner's Exhibit Number 2 - Not Admitted
(2015 and 2017 Wrecker Rotation Fee Schedule, Amended Motion for Writ)
Petitioner's Exhibit Number 3 - Not Admitted
(Order Granting Motion for Extension and Order Extending Stay)
Petitioner's Exhibit Number 4 129
(Responses to Petitioner's Request for Admission)
Petitioner's Exhibit Number 5 129
(DPS FOIA Responses)
Petitioner's Exhibit Number 6 277
(E-mails)
Petitioner's Exhibit Number 7 - Not Admitted
(DPS Audio/Video Recording Policy)
Petitioner's Exhibit Number 8 - Not Admitted
(DPS Audio/Video Monitor Report Form)
Petitioner's Exhibit Number 9 130
(Shipment Confirmation)
Petitioner's Exhibit Number 10 - Not Admitted
(DPS HP FAQs, Certificates, CV of Rochester, Resume of Rawl)
Petitioner's Exhibit Number 11 - Not Admitted
(Media Updates)
Petitioner's Exhibit Number 12 - Not Admitted
(State Line Bride Maintenance Agreements)
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(Wayne's Timeline, E-mails, Invoices)
Petitioner's Exhibit Number 15 - Proffered 333
(Boundary Maps)
Petitioner's Exhibit Number 16 - Not Admitted
(GA Wrecker Qualifications/Rotation Lists)
Petitioner's Exhibit Number 17 - Not Admitted
(GA State Patrol Wrecker Service Application)
Petitioner's Exhibit Number 18 - Not Admitted
(GA Transportation Department Work Order Summary)
Petitioner's Exhibit Number 19 - Not Admitted
(GA/SC Proposed Expansion)

Petitioner's Exhibit Number 20 - Not Admitted
(SC DPS Operations Manual (excerpts))
Petitioner's Exhibit Number 21 - Not Admitted
(Wayne's Bad Debt of Alliance)
Petitioner's Exhibit Number 22 - Not Admitted
(Amended Notice of Hearing)
Petitioner's Exhibit Number 23 - Not Admitted
(Subpoena of Oliver)
Petitioner's Exhibit Number 24 - Not Admitted
(2015 Watson-Busbee Information)
Petitioner's Exhibit Number 25 - Not Admitted
(E-mail From Lark To Grice and Hughes with Attachments - 8/12/16)
Petitioner's Exhibit Number 26 - Not Admitted
(E-mail From Lark To Lark - 7/30/17 - Third Supplemental Response)
Petitioner's Exhibit Number 27. 92
(E-mail From Pilato To Kozelek and Zottneck - 3/7/16)
Petitioner's Exhibit Number 28 - Proffered. . .
(South Carolina Schedules for 2013, 2014, and 2015)
Respondent's Exhibit Number 1. 155
(King March 4th Report)
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(E-mail From Watson To King - 2/19/16)
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(E-mail From Watson To King - 3/7/16)
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(Dispatch Intake Form - 2/9/16)
Respondent's Exhibit Number 10. 226
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(E-mail From Insurance Group To Corbett - 2/16/16)
Respondent's Exhibit Number 12. 43
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(E-mail From Zottneck To Corbett)
Respondent's Exhibit Number 17 - Not Admitted
(Text From Jeff To Pilato)
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(E-mail From Corbett To Lark - 6/23/16)
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Respondent's Exhibit Number 27 198
(Vern's Invoice 2/10/16)
Respondent's Exhibit Number 28 114,119
(E-mail From Watson To Hughes with Attachments 2/15/17)
Respondent's Exhibit Number 29 480,483
(2010 Complaint filed with the West Virginia Public Service Commission by Martha Gaynell Rochester)

(The original exhibits were retained by The Court.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

(Petitioner's Exhibits 1 through 26 and Respondent's Exhibits 1 through 27 were marked prior to the hearing and admitted as follows:)

CALL TO ORDER:

THE COURT: All right. Ladies and gentlemen, we're on the record in case number 16-ALJ-30-0410. It's a contested case involving Wayne's Automotive Center, Incorporated, Petitioner, represented by Ramon E. Lark of Austin and Rogers, and the South Carolina Department of Public Safety represented by Mr. Lindemann.

MR. LINDEMANN: Yes, Your Honor.

THE COURT: And let's see ---

MR. LINDEMANN: Marcus Gore is with us.

THE COURT: Oh, Mr. Gore. Okay. I was looking for somebody else. All right. The issue is the suspension of Wayne's Automotive Center from the wrecker rotation. However, since this is essentially a violation case, we're going to start with the Respondent instead of the Petitioner. So, Mr. Lindemann, you will have -- you will open and followed by Petitioner. And you will have the opportunity to present testimony and evidence to establish the violation and the penalty. And Mr. Lark, you

will have the opportunity to cross examine then re-direct and then Petitioner will have the opportunity to present his testimony and witnesses and subject to also cross examination. Any rebuttal witnesses will follow the regular order. And closing statements at the end. Now, any motions or stipulations before we being?

MR. LINDEMANN: None, Your Honor.

MR. LARK: I just would like to indicate, as we had in our pre-hearing statement, that we would endeavor to enter some stipulations and we endeavored and didn't succeed, so that effort has been made.

THE COURT: Well, we'll proceed with the regular offer ...

MR. LARK: Your Honor, also just as a housekeeping matter, I don't know how you would like to handle this, There are a number of exhibits that have been pre-marked by both sides. I know as far as the Petitioner's exhibits, there's going to be a number of objections to them ---

THE COURT: Okay.

MR. LARK: --- based on lack of authentication,

relevance, various objections. I don't know how you want to take that up, take them up as they're presented?

THE COURT: I would like to do that, take them up as they're presented. It may be that once you've gotten through, you may not have the objection.

MR. LARK: Sure.

THE COURT: But we'll do it that way and, as they come we'll, take care of them.

MR. LARK: Sure.

THE COURT: All right. Anything else?

MR. LARK: No, sir.

THE COURT: Mr. Lindemann?

MOTION BY MR. LINDEMANN:

MR. LINDEMANN: Thank you, Your Honor. May it please the Court. My name's Andrew Lindemann along with Marcus Gore, who's General Counsel with the Department of Public Safety. We represent the Department of Public Safety in this matter.

Your Honor, just to address initially a couple of legal issues and just to protect my record. As Your Honor's aware from our initial pre-hearing statement and as well as The Court's initial rulings in the case, we had

initially raised a couple of jurisdictional arguments that I certainly don't want -- and I understand Your Honor's ruled on those, but I certainly want to make certain the record's clear that we are not waiving our position on those. Number one, we take the position that, during the course of the time that the Petitioner had appealed from the decision of the Department to the South Carolina Court of Appeals, that is while the case was still pending in the Court of Appeals is when the Petition for Contested Case Hearing was actually filed. Ultimately it was never re-filed and it was untimely by the time this Court of Appeals gave up its appellate jurisdiction, so we took the position that the Petition itself was untimely. And we -- obviously that's subject-matter jurisdictional and we would ask that the record be protected on that particular issue.

Also Your Honor, in looking at the Petition itself, it reads such as an appeal from the decision at the Department level. So Your Honor's aware, and you probably are from reviewing the Petition and the exhibits to it,

there was a procedure that took place before the Department of Public Safety where the Petitioner, Wayne's Automotive Center, had a hearing. Ultimately there was also an appeal from the decision of the Hearing Officer to Colonel Michael Oliver and Colonel Oliver affirmed the decision of the Hearing Officer. We took the position in initial pleading before this Court that this would be more appropriately heard as an appeal within this Court's appellate jurisdiction with a substantial evidence standard of review rather than being treated as a contested case.

I would also point out to The Court that, if you look at the Petition itself, there are a number of issues -- in fact, most of the issues that have been raised have nothing to do with the merits of the case. They don't take the position with any type of express or explicit statements in their Petition to suggest that the underlying factual findings were incorrect. What they have attacked in this case, and I'm looking at paragraph three in the Petition, is a laundry list of procedural issues that they have raised with

how the matter was handled through the adjudicative process within the Department itself. That would lend it to be more in lines with an appeal rather than a contested case, I would submit. And again, I understand Your Honor has ruled on that. I know Your Honor can reconsider that decision as well. But the main reason that I bring it up and bring it up in my opening statements is they can't have it both ways. They can't bring this as a contested case and then treat it as an appeal and challenge the way it was procedurally handled at the Department level. And in support of that, I would call The Court's attention to a case of the South Carolina Supreme Court, the Unisys Corporation versus the Budget and Control Board case, which dealt with a procurement matter. And in fact, Your Honor, if you'd like I can hand up a copy of that case. I think I also have one for Mr. Lark.

THE COURT: I'll take a look at it.

MR. LINDEMANN: And if you look at the text that accompanies head note 17, that's where I'm going to quote a couple of lines to Your Honor. There they talk about -- obviously with

procurement, Your Honor, there is a hearing before a Hearing Officer, a CPO, and then ultimately there can be a de novo review before the Procurement Review Panel. And the text that accompanies head note 17, it says under Section 11-35-5 -- excuse me -- 423 -- excuse me 4230, Subsection 6, Unisys may seek a review of the CPO's decision by the Review Panel. This review is the de novo. And then it goes on, this is a key sentence, an adequate de novo review renders harmless a procedural due process violation based on the insufficiency of the lower administrative body. So, the reason I am raising that to Your Honor is it seems to me that, if this case is going forward as a contested case, any issues, such as what is raised in the Petition itself, is moot or irrelevant because it doesn't made a difference how it was procedurally handled and whether or not due process was received at the agency level. Essentially this is a de novo hearing and so, any due process that Wayne's is entitled to, they're going to get through this contested case before this Court. So, I think that actually narrows the issues substantially.

That's one of the reasons why I raised this at the beginning and may eliminate also several witnesses to testify about how this was procedurally handled in the lower court.

To go to the merits of the argument real briefly, Your Honor.

THE COURT: Mr. Lindemann, I'm going to take what you have said so far to be in the nature of a motion.

MR. LINDEMANN: And that's fine, Your Honor.

THE COURT: And I would just allow Mr. Lark to respond briefly to those two particular issues. Primarily of course the due process issue. If this is a de novo hearing I think you would be correct in saying that any missteps, procedural missteps that might have happened would be cured by whatever this Court does.

MR. LINDEMANN: That's exactly correct, Your Honor.

MR. LARK: May I?

THE COURT: Yes. And I didn't mean to take your argument away from you.

REPLY TO MOTION BY MR. LARK:

MR. LARK: No, I agree. Yes, this is a de novo hearing, it's a contested case hearing. And in fact, the one thing that I adopt or reassert

the prior arguments with respect to jurisdictional matters that has been ruled on by Your Honor twice, and that is Appellate Court Rule 205 as to the timeliness or the then appeal to the Court of Appeals pending while this Petition for Contested Case was filed. And the operative sentence, I believe, is nothing in these rules shall prohibit the lower court, commissioner, or tribunal from proceeding with matters not affected by the appeal. And then we've got the Judge Geather's order dismissing.

As to the Unisys Corp case, Your Honor, the point there with respect -- I agree that if they're -- to the extent there were due process issues, that this is the purpose of this as a de novo proceeding. And however, now, I would say that, you know, to the extent that in our Petition for Contested Case we sought declaratory judgment, we're -- I dropped a footnote on a couple of those that are references that says this is not to say that this Court has jurisdiction or will consider those matters. If we end up having a determination by this Court of impropriety by

use of binding norms or other mistakes, and its conceivable in my mind to there being another Circuit Court action, but we're here to give our sole attention to you and not kind of speculate as to that. I would say the reason in our contested case for the reference to appeal, is that that's how the Order signed by Captain Hughes references, if the party desires to appeal, then direct that to Colonel Oliver. And as The Court has noted, we -- that's essential -- in other words, it was a motion for reconsideration to Colonel Oliver who declined and so we are now here before you ready to go.

THE COURT: Okay. All right. Mr. Lindemann, back to you, sir, for the rest of your opening statement.

OPENING STATEMENT BY MR. LINDEMANN:

MR. LINDEMANN: Thank you, Your Honor. So, Your Honor, the way we're approaching this case at this point is, as I indicated, that the procedural irregularities or alleged procedurally irregularities are not at issue. In fact, if these sorts of matters are suppose to come to the ALC as a contested case, there's

probably no reason even to go through an appellate process or a hearing process at the agency level. But that's for a determination at another time.

What was -- what happened in this particular case, I know Your Honor knows background of it, there was an overturned tractor trailer that was owned by Premier Transportation, insured by Sentry Insurance, that was carrying a load of dog food that overturned on the I-20 bridge over the Savannah River. The South Carolina Highway Patrol responded to that particular incident and pursuant to state regulations where they maintained a rotator -- a wrecker rotation list. By the time the Highway Patrol arrived, there was no -- the driver had already been removed from the scene. And so, the trooper summoned the next wrecker service that had appeared on the list and that happened to be the Petitioner, Wayne's Automotive Center, who has offices or locations both in Augusta as well as Aiken. They responded to the call on the morning of February 9, 2016. Ultimately it was a tow and recovery. The vehicle was

righted, it was towed, and ultimately as well the cargo was removed from the trailer and was moved to Wayne's premises.

The Highway Patrol was not involved at all in the billing at that point in time. Ultimately the insurance company and Premier got involved. They retained the services of Bob Watson, who you'll hear from in this hearing here today, who raised certain issues with Wayne's, primarily to obtain the immediate release of the cargo itself. As I indicated, the cargo was dog food, so it was perishable to a certain extent and obviously subject to expiration dates. The state's statute that governs that, Your Honor, the holding of the -- of cargo is Section 56-5-5635, Subsection (F). And if I could read the one line to you, because this is very operative to this case, says 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. In this particular case one of the critical issues was that Wayne's -- and Your Honor will

see this as the evidence is presented, Wayne's held the cargo itself in order to, we would submit, coerce payment from Premier and from its insurer. The cargo itself actually was not released until March 7th, almost one month after the incident in question. Ultimately several bills, several different drafts of bills were rendered.

By February 15th Mr. Watson was having issues, number one, getting the cargo released, number two, issues with the reasonableness of the bill that had been submitted to them, and he got the Highway Patrol involved. He made initially a complaint to the Highway Patrol that was investigating, as Your Honor will hear, by Lieutenant Nichlous King, who was part of Troop 7 and is engaged as part of his duties in dealing with wrecker issues. Ultimately Lieutenant King attempted to mediate a resolution of these issues between Wayne's and between Premier, was unsuccessful in doing so, a Formal Complaint was made, he initiated an investigation. And as a result of that investigation, Your Honor, there was as notice of disciplinary -- a proposed disciplinary

action that was issued by the Department of Public Safety that outlined the details of Lieutenant King's investigation and it included a proposed sanction of suspension and removal from the rotator list -- rotation list for 120 days. That is the disciplinary action that is before Your Honor.

As indicated, it went through a procedural process within the Department itself where ultimately a hearing was held, finding and facts and conclusions of law were issued. And I know those are attached as well to the Petition itself and placed into evidence here before, Your Honor. There was also then an appeal to Colonel Oliver as well where he affirmed that sanction itself. But our position in this case, Your Honor, is that sanction was appropriate for two primary reasons. Number one, the unreasonableness of the charges that we will give The Court very specific information about. And second of all, the failure to release the cargo despite being told repeatedly that they had an obligation under state law to do so. They did not release the cargo until they received payment from

Premier. That's what the evidence will show, Your Honor. And as I indicated, it was almost one month later that the cargo was released. It's on those bases that the Department takes the position that the sanction that was issued, the 120-day suspension and removal from the rotation list, was an appropriate sanction under these circumstances, Your Honor. Thank you.

THE COURT: All right. Mr. Lark.

OPENING STATEMENT BY MR. LARK:

MR. LARK: Thank you, Your Honor. In light of the reference to what Mr. Lindemann said with respect to the overturn of the tractor and the trailer, we -- our position with regard to that is that Respondent errored in denying Petitioner's request for admission regarding that and should change that. The tractor and trailer, as he says, overturned and their accident occurred on the Savannah River. Our position is the schedule is an intrastate schedule and this -- that had occurred in Georgia, the actual -- the accident and the overturning occurred in Georgia. And we will provide testimony to support how we got to that

point. But the -- I think that's -- against interest. The Premier accident then resulting in damages occurred between the Savannah River and the August canal, which is in the State of Georgia. And we have some photos by Wayne's to supplement the Premier Insurance adjuster's black and white photos.

The reference and reliance in recitation of a portion of 56-5-5635(F) suggests that the entire section -- the first sentence that Mr. Lindemann did not read needs to be viewed in construction with that second sentence. And that first sentence, it says, Your Honor, 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. We -- I am not familiar with there having been provision of a certificate of registration or that Mr. Watson has -- was functioning on behalf of Premier. The early communications indicate several people from Premier were

involved before Mr. Watson ever, as a third party with no standing from our standpoint, not a stakeholder, started calling. Mr. Watson is in the business of providing certain assistance and in turn getting what I understand is a portion of any proceeds that are paid by, in this example, Premier. We were not able to depose him, because of the limitation of depositions. We had attempted -- we hadn't actually attempted, because he wasn't named as a witness until the deadline of May 15th. But in any event, he's a third party -- he wasn't representing the owner, the Premier. And ultimately the settlement check, from $69,000 to $48,000, was signed by the owner, Tim Pilato. And that's -- both sides have got that check in the exhibits. And we otherwise do contest and will show that the schedule's just not -- the way they applied it is not applicable, but that otherwise the rates are reasonable. And we'll provide additional testimony with -- in that regard.

The regulation only allows one receipt to be submitted. In the last two, three years the Department in its schedules for Class C

operations, which are the heavyweight, you know, operations, specifically say no fee shall be set. Then they drop an asterisk and say but if you retain or utilize somebody else that provide a receipt or an invoice, you can recover the cost of that. There will be testimony regarding those issues and how that was misapplied here or -- and is otherwise as applied inconsistent with the regulation itself, which has an expressed reference to only one receipt -- I'm sorry, invoice.

Another aspect for your consideration will be that the regulation from our standpoint requires creation of an advisory committee. And then if in this instance -- the Colonel Oliver's ruling as the patrol commander, top patrol guy, when he is considering a, in this instance, a request for reconsideration that we denominate by using the word appeal simply because that's what Captain Hughes' signed Order says, that he shall -- he can do what he wants to do, except he shall -- before affirming or denying, he shall confer with the advisory committee. Your Honor, there is no advisory committee that has ever been created.

I've got some static from two witnesses, maybe all three of the witnesses I deposed, Captain Hughes, Captain Grice, and Lieutenant King, that they weren't really aware about there being any advisory committee. But there's nothing in the record to show such -- by the Colonel occurred and it goes into the reason for that, there is no advisory committee in effect.

The normal rule of a regulation has the effective law and policy does not arguably is subject to modification or clarification in this instance, because the reg specifically says that there shall be adoption of a formal disciplinary policy in accordance with the reg. Not only that, we'll show that the operating manual that has an oath of office for every trooper indicates that every trooper, and that included Colonel Oliver for example, must obey by laws, rules, and regulations, and policies expressly of the Department. That didn't happen here. Our position, Premier, was transporting dog food. It was transporting in an interstate commerce at the time of an accident. Wayne's performed services in

connection with this Premier accident before The Court in both South Carolina and Georgia. The DPS wrecker schedule for 2016 -- for which by the way the Department did not solicit from the towing industry specific pieces of equipment and suggested prices that they would need for such a Class C special operations list for this 2016 schedule that they're enforcing here. However, as Captain Hughes duly noted in his deposition, that it did for the 2017 schedule because of there was an inconsistency in the understanding between the towers and the Department as to what was meant by the schedule itself. This schedule doesn't apply to interstate matters such as this Wayne's/Premier accident. DPS does not take the position this accident was intrastate in nature. In any event, congress has preempted state authorities like DPS from setting fees for intrastate towing and recovery services, which are consensual or authorized by the owner. That happened here. There was -- the Georgia wrecker service Chancey's was called to the scene somehow before Wayne's got the call. And we have an empty chair or chairs. Nobody's

from Premier that paid -- has gone away without reserving any rights. It paid the check. And if it had a desire to pursue this as a stakeholder, it could have issued a check saying subject to pursuit or reserving our rights, but it didn't do that. It gave the consent by the payment. And so, it otherwise consented or authorized Petition to undertake towing and related recovery operations here. And Premier is a Georgia company. The insurance adjuster was on the scene before Wayne's even, based on the pictures that are overnight -- the dark pictures. And so, with that is at least -- the least it is, is the implied consent by Premier, the owner, for Wayne's to be the tower. And why did Chancey's get turned away? Well, that's a good question. But I think one argument would be, as Mr. Lindemann suggested in his opening statement, is that Wayne's is authorized to perform towing services in both South Carolina and Georgia. It's occurred on the bridge, as according to Mr. Lindemann, he agrees. And only Wayne's and not Chancey's is authorized on Class C list in both states. So, regardless of consent or

authorization by Premier, DPS cannot invoke and apply its intrastate fee schedule on the Petitioner, because it otherwise consented or authorized and this is an interstate matter for which its intrastate schedule cannot apply and does not. Thank you.

THE COURT: Okay. Mr. Lindemann.

REPLY TO OPENING STATEMENT BY MR. LINDEMANN:

MR. LINDEMANN: Thank you, Your Honor. Your Honor, one housekeeping matter I failed to bring to Your Honor's attention before I had even mentioned it to the Clerk earlier, Colonel Michael Oliver, who is recently retired from the Highway Patrol as a patrol commander, he has -- he was subpoenaed by Mr. Lark. I don't need Colonel Oliver to testify, because I think his testimony is purely going to go to these procedural reasons that I don't believe are pertinent to this case, given the fact that it's being treated as a contested case. But his -- he called me this morning. His mother fell yesterday and is in the hospital in Lancaster today. He is, as I understand, the only child. He told me that, quite frankly it would be a great hardship to him to have to

come to Columbia and leave her today, particularly since there are a number of medical decisions that he is anticipating having to be made about her care here today. I did want to bring that to your attention. I told Colonel Oliver that probably during the lunch break I could give him some idea of how Your Honor wants to handle that. Again, one of the considerations, of course, is whether or not that's even -- his testimony will even be relevant because, based upon my understanding of where Mr. Lark wants to go with Colonel Oliver and sort of substantiated by his opening is that he wants to talk about advisory committees. Whether or not there was an advisory committee that was consulted by Colonel Oliver is totally irrelevant to this case. It's a procedural matter. Due process required an advisory committee and that wasn't done, which is their argument. Obviously that's a moot point at this point because all procedural issues are essentially mooted by the fact that the Petitioner will receive whatever due process they're entitled to through this hearing. Your Honor, I did want to call that

to your attention ---

THE COURT: All right. Mr. Lark, you ---

MR. LINDEMANN: I hope we get Colonel Oliver some point later on.

THE COURT: Okay.

REPLY TO OPENING STATEMENT BY MR. LARK:

MR. LARK: Yes, Colonel Oliver was subpoenaed by us because he wasn't included as a witness and we have not been able to depose him. And he indicated the willingness to do that. I'm sorry to hear about his mother and understand that we -- our CPA is recovering from a May quadruple bypass operation. Doing okay, except that he has an appointment this afternoon at 1:45 for his ophthalmologist because he says he's -- his good eye it getting cloudy, so he's concerned about his vision as most CPAs would be if he can't see the numbers.

But the other point I just wanted to raise real quick as a followup is that this is his reference to -- in the cargo matter, that this has not been shown to be personal property since it is commercial property matter. And during the course of the work, Premiere was trying to get Wayne's to go ahead and take the

cargo into the Atlanta area, perhaps to Tractor Supply in Macon. And that was -- he was told that we're still on recovery, we can't do that now. That also shows about authorization of the tow signed over to Wayne.

THE COURT: Well, with respect to these two medical delayed witnesses, if it turns out this afternoon that we need one or both of those witnesses, we'll reconvene tomorrow to take their testimony should that become -- should that be obviously necessary. So, I'll protect both of your witnesses under those circumstances.

MR. LARK: Thank you.

MR. LINDEMANN: Thank you, Your Honor.

FURTHER REPLY TO OPENING STATE BY MR. LINDEMANN:

MR. LINDEMANN: One other point, Your Honor. Again, I'm not presenting this as an argument I just want to give you a heads up. These two issues that were asserted by Mr. Lark, this whole idea that this happened in Georgia and not South Carolina, that is not an issue that was pled in the Petition. It is in fact not anything that was raised prior to the end of discovery in this particular case. There have been a number

of amendments to the prehearing statement that had been filed by the Petitioner in the last few weeks. I think it was raised about two, two and a half weeks ago. And we were presented with a lot of additional evidence dealing with that particular issue for which there are going to be a number of objections because it's simply documents that he obtained from the Georgia Department of Transportation, the South Carolina Department of Transportation. Bottom line is, that issue wasn't pled, so I'm not certain -- we're solely going to object to it being before you.

And then the second issue is the preemption argument. Again, that was never pled as well. Certainly preemption is an affirmative defense and they had the obligation of pleading it. It also was not raised prior to the close of discovery in this case. And, as Your Honor might remember, you extended discovery to May 15th. None of that was raised. I think that was raised by an amendment to the Petition for the pre-hearing statement some time in late June. And I can get those exact dates. There are a number of

them. But I did want to give you that heads up ---

THE COURT: Sure.

MR. LINDEMANN: --- on those issues. Ready to proceed with the testimony?

THE COURT: Yes, sir.

MR. LINDEMANN: All right. The Department would call Robert Watson to the stand.

ROBERT WATSON, having been duly sworn, testifies as follows:

COURT REPORTER: Please state your full name for the record.

THE WITNESS: Robert E. Watson, Eugene. Robert Eugene Watson.

MR. WATSON - DIRECT EXAMINATION BY MR. LINDEMANN:

Q: Good morning, Mr. Watson.

A: Good morning.

Q: Please give me your full name once again.

A: Robert Eugene Watson.

Q: And what is your business address, sir?

A: 18903 Coveside Lane, Cornelius, North Carolina.

Q: By whom are you employed?

A: Called Recovery Resolution Specialists.

Q: And what is Recovery Resolution Specialists?

A: It is a -- we review tow bills, we are expert

witness, we do the hazmat bills. Every time there's a tractor trailer accident, you got a -- it's good to have a hazmat, you got cargo, you go tractor trailer. We work on getting that stuff moved to the appropriate place to save the cargo or control the whole situation, review the tow bills for accuracy, including getting all the state police and getting the times and -- and just a lot of information to review a bill.

Q: And how long have you been in that business?

A: It goes back -- 1966 I was the United States Air Force aircrafts rescue. I was trained in hazmat in the Air Force. And from then forward I've been in the hazmat review and was a hazmat expert in the field when I -- I was in business for 25 years in the towing business myself. I ran about 40 pieces of equipment. I ran rotators. I was an airbag trainer of lifting tractor trailers loaded. I was a trainer for propane industry for recovering loaded propane trucks. I trained a lot of classes. And I sold my business in 2005 I think it was or around 2005 and retired from that. And then I was asked to help on reviewing tow bills back

in roughly 2005.
Q: So, as far as the -- what you're doing presently for Recovery Resolution Specialists, you've been doing that since 2005?
A: No, I didn't do anything until 2010. I got back into the review business since then, yes.
Q: Okay. And typically who are clients that retain your services?
A: I represent about 25 insurance companies, probably another 25 trucking companies, and numerous towing companies I help out.
Q: Essentially how many reviews do you do on a typical -- typically in a year, can you give us some idea?
A: I do 8 to 10 reviews a day, so probably, whatever that is, 2500 a year I would assume. And I do just major truck accidents.
Q: And you do this work for accidents that occur in South Carolina?
A: Yes, I do.
Q: Do you do that in South Carolina for both towing companies as well as for insurers or trucking companies?
A: Yes, I do.
Q: Tell me how you are typically compensated for

your work.

A: We're compensated numerous different ways. We review tow bills and/or hazmat bills. And if the bills are nothing wrong with them, we just say go ahead and pay them and move on. If the bill needs some review on it for overcharging, we're like a -- kind of like a review in a hospital, we charge 20 percent of the savings. So, if we save $1,000, we get $200 bucks. So, I go to court or legal arena, I charge $125 an hour. I charge $750 a day if I'm in court including -- and plus the travel and expenses.

Q: Okay. We're here today, as you are aware, regarding an accident that occurred on I-20 on February 9, 2016. Are you familiar with that incident?

A: Yes, sir.

Q: And who was the owner of the tractor trailer that was involved in the particular incident?

A: It was Premier Transportation. I think it's JKL Premier, but Premier Transportation.

Q: Is that company that you do work for?

A: Yes, it is.

Q: All right. In this particular instance were you retained to perform any services relative

to the tow and recovery that was done for that tractor trailer incident?

A: Yes, I was.

Q: And who actually retained you?

A: Sentry Insurance contacted me. Premier is one of their major trucking companies they insure. And they have a large deductible and hey asked me if I'd take a look at it and help them out.

Q: Have you been compensated in this specific case for the work that you've done for this particular accident?

A: No, I have not.

Q: Tell me what your initial involvement was.

A: I received a tow bill from Sentry Insurance. I reviewed it. I contacted Premier, spoke with them. There's also Travelers, a Robert Gosti, I think was involved in it, had the cargo insurance. And I have -- I contacted him. I contacted the -- there was a 21-hour recovery, which is the first thing that just -- was going like, wow, I never seen one. So, I got a hold of Highway Patrol to try to get a time line. I spoke to the tow company. I tried to contact them, they wouldn't return my call. I think they did a few days later, I can't remember.

Q: And who was the tow company?
A: Wayne's Towing.
Q: Okay. And were you familiar with them from any prior work that you have done?
A: It seems like it, but I won't -- I can't say one way or the other. I deal with some many different tow companies.
Q: And tell me about your attempts to contact Wayne's regarding this particular bill.
A: I think I tried to contact them by phone and then I think I went to e-mail without any success of getting the cargo released, because it was at a time frame that cargo had to be delivered. If it expires, they lose I think what could have been a 30, $40,000 load of dog food and it expires and the product has to be sold for salvage or disposed of. So, and my main thing was to get it released. And I had a -- never got it released. I've found the whole thing -- he brought in an attorney to handle it.
Q: As far as the time frame is concerned, when were you first brought into this? The accident happened on February 9th. When would you have been brought in?

A: I think I got brought in about five days later. I can't remember for sure when they were having trouble getting the cargo released. I got a date I can look up, but can't remember.

Q: And as far as the release of cargo, it was your understanding that Premier had attempted to get the cargo released and were having issues with that?

A: Yes. That's when I got brought in.

Q: Okay. And let's focus on that first of all. So, what did you do in an attempt to get the cargo released?

A: I sent several e-mail demand letters to them saying you got to release the cargo. You cannot hold the cargo in South Carolina. And then it got brought up Georgia. You can't hold the cargo in Georgia either. The cargo was brought back to South Carolina. So, it's -- no matter what state it's in, you can't hold the cargo in either state.

Q: The cargo was being held in South Carolina?

A: Yes, it was.

Q: Okay. And you indicated you were familiar with South Carolina law on that particular issue?

A: Yes.

Q: And is that something that you shared with the individuals that you spoke with at Wayne's?

A: I don't know if I spoke to them on it or -- but I know I sent e-mails. I can't remember exactly. I know I've had a difficult time of getting hold of anybody.

Q: And your primary source of communication was by e-mail; is that correct?

A: Yes, it was.

MR. LINDEMANN: Court's indulgence.

Q: Let me show you what's been marked as Respondent's Exhibit 11 and ask if you're familiar with that document.

A: Yes.

MR. LINDEMANN: Your Honor, I will put an extra copy up on the screen.

Q: Tell me what that document is.

A: It's an e-mail from tow insurance, which is the -- just the e-mail address, that's all that refers to. And it has Premier Transportation on there. Sherry Corbett was on there. And it says on there it was a demand to release the cargo. I said this is my fourth request. Bob Watson.

Q: All right. Who is Sherry Corbett?

A: I think she is the office manager. I'm not sure who she exactly is.
Q: Is that an individual you were communicating with?
A: Yes, she was.
Q: All right. At the bottom of that exhibit, it appears to first be an e-mail from Ms. Corbett to you dated February 15th at 7:05 p.m.; is that correct?
A: Yes.
Q: If you would, would you read the third paragraph of the -- the one sentence in Ms. Corbett's e-mail?
A: Starting with questions?
Q: No, starting with a discount. I'm sorry, I guess that's the fourth one.
A: Okay. It says -- it states a discount was offered for last week only due to the inconsistency of picking the cargo immediately, which is not -- which is now not available.
Q: All right. And what did you understand her to be informing you of?
A: She is not going to release the cargo regardless.
Q: Okay. And your response at the top, you

already mentioned it, you indicated this is my fourth request; is that correct?

A: Yes, it was.

Q: All right. Were there any requests that were done verbally?

A: I can't remember any. There could have been one. I'm not sure.

Q: Okay. Do you recall any conversations with any type of dispatch employee with Wayne's?

A: I don't remember. I called several times and spoke to people on the phone and I think I talked to Sherry, but can't remember for sure, about having somebody contact me back.

Q: All right. Let me show you what's been --

MR. LINDEMANN: Your Honor, I would move that exhibit into evidence. I know we haven't moved exhibits into evidence yet. That would be Respondent's 11.

THE COURT: All right. Mr. Lark ---

MR. LARK: No objection.

THE COURT: No objection? Without objection, Respondent's Exhibit 11 is admitted.

(Respondent's Exhibit Number 11 was admitted into evidence at this time.)

Q: Let me show you Respondent's Exhibit Number 12

that has been pre-marked and ask you if you recognize that document, sir.

A: Yes, I do.

Q: All right. Give me one second to get it up on the screen. And tell me what that document is.

A: It is an e-mail from me to Sherry and it says the cargo needs to be released today.

Q: Is that subsequent to the previous e-mail, which was Exhibit Number 12 (sic)?

A: I think it was.

Q: It was later that same morning?

A: Yes. Yes, it was.

Q: I believe Exhibit 11 was at 7:31 a.m.; is that right?

A: Yes, it was.

Q: And this exhibit -- this e-mail is at what time?

A: 9:57.

Q: Okay. Same day?

A: Yes.

Q: All right. And take me through that e-mail, what are you advising Ms. Corbett?

A: This e-mail had Premier Transportation on there, Patricia Daily, Chris Lucas, all from Sentry, reference airbag recovery, release of

cargo, looking at the airbag I see why one of your bags got ruined due to the improper method of airbags that were used. There are no straps, no angle iron due to the improper installation, ripped the trailer, none was repairable into pieces resulting in being totaled. This effort was a waste of time due to the improper use. Please refer to attached photos illustrating how to do an airbag job that took one hour with no loss to the trailer or cargo and no airbag damage. After the tractor trailer was up-righted, why did the heavy duty stay around for hours, for 21 hours? I have a major problem with all the hours, labor rates, OSHA certified radio equipment, which are not required, and other miscellaneous charges. You charged $50 each for cones which typically costs -- I said $25. I looked it up and they are $17.

Q: Okay. And we're going to talk about more of the specifics of the bill in a few moments. Now, you brought up something interesting about the caption of that particular e-mail. In the subject did it reference an actually claim number for Sentry Insurance?

A: Yes, it did, 61A 169 464.
Q: And it also copied individuals both with Premier as well as with Sentry?
A: Yes, it does.
Q: Did you ever advise Ms. Corbett or anyone with Wayne's that you were acting as a representative for Premier and for Sentry Insurance Company?
A: I'm sure I did. I'm sure if we go through all the e-mails it states it in there. I think that later on that Premier sent an e-mail saying I was a representative. Sentry Insurance said I was a representative. But I don't have it in font of me right now.
Q: Okay. And obviously your e-mails referenced a claim number for Sentry?
A: Yes.
Q: In this you raised an issue with the airbags. Why don't we go ahead and address specifically what the complaint with the airbags was.
A: Like I spoke before, I was a trainer in airbags. I've probably done 100, 150 airbag recoveries in my lifetime. I have never ripped a trailer in two. And I -- I've damaged a few airbags, because you get a sharp object or

whatever in there, but the -- and have been very successful at it. And the -- an airbag job runs -- I've done them in under an hour. And I've got a little demonstration I could show you if you want to see the time frame on it. And so, it's -- when I see a trailer ripped in two -- if you look at the trailer, it's laying on the ground and basically the sides are all intact. You can look at the upper railing and it's fine, your railing is fine, so you lift it. Well, that -- you see a cable that just ripped the trailer right in two. Now you just caused a huge delay in the recover.

Q: Let me -- on the subject of airbags, let me show you what's been --

MR. LINDEMANN: Your Honor, before I proceed, I would move Exhibit 12 into evidence, Your Honor.

THE COURT: Mr. Lark, do you have any objection to Exhibit 12?

MR. LARK: No.

THE COURT: Without objection, it's admitted.

(Respondent's Exhibit Number 12 was admitted into evidence at this time.)

Q: Let me show you what's been pre-marked as Respondent's Exhibit 13. Are you familiar with that group of documents?

A: Yes.

Q: Is that a subsequent e-mail you sent to Ms. Corbett on that same day, February 16th?

A: Yes, it is.

Q: And what was the --

MR. LINDEMANN: I'm not sure how I -- did I just turn this off?

Q: What time of day was this e-mail sent?

A: 3:34.

Q: Again, did it copy an individual at Premier?

A: Yes, it did.

Q: And who is R. Swords at Premier?

A: There was three -- one lady and two gentlemen I was speaking with and the management team as far as accident's concerned.

Q: Okay. What was the purpose of sending this particular e-mail?

A: Going back just a little bit. There's a company out of Massachusetts that is called Big Wheel and/or Billing Unlimited. They train towers all over the United States how to overcharge, how to charge for every piece of

equipment out there, bring every piece of equipment you have to the scene so you can bill more. They get paid for going slow. So, the slower they go -- they get paid by the hour, so the slower they go, the more money they get. And it's a class. And I have the article if somebody would like to see it.

Q: Attached to this exhibit, is that the article you're referring to?

A: Yes, it is.

Q: And so this -- and you actually sent this article and Ms. Corbett is part of this e-mail?

A: Yes, I did.

Q: And explain to The Court what the significance of this particular article is.

A: Well, if you look -- I have a bigger blowup of it if you want it. But if you look where it says towman, all the way to the bottom ...

Q: Am I on the correct page?

A: Yeah. The very -- yeah, go to the -- move it to the -- to my right or ---

Q: Right here?

A: No. Keep going over -- okay. Go the other way then.

Q: Okay.

A: Maybe go up. Well, I'm looking for this one here, it says towman.

Q: Oh, that's the next page.

A: Oh, okay.

Q: All right. How's that?

A: Okay. If you look under towman and go to the very bottom paragraph. And it states -- well, just give me a -- it states -- this is the article right here. The same one there, a little clearer.

Q: All right.

A: States on the very bottom, Big Wheel recovering automobiles with a rotator billing out a minimum of $5,000 for work by one operator that might take under an hour to perform. So, what he is recommending is you bring out -- and it says in this article, bring out the most expensive equipment you have and charge for the most you can charge on these things. And this is a class that they train about 1,000 towers a year for $2,000 per class. And I understand that Wayne has gone to that class.

Q: So, as far as the charging for the airbags themselves --

MR. LINDEMANN: Actually before I get to that, Your

Honor, I would move Exhibit 13 into evidence.

THE COURT: Mr. Lark.

MR. LARK: This doesn't seem right, but I will not -- I will allow it and we'll have the opportunity to discuss rates. And this obviously is not Wayne's towing.

THE COURT: I understand, but you have no objection to it?

MR. LARK: No, Your Honor. We will let it go.

THE COURT: Without objection, it's admitted.

(Respondent's Exhibit Number 13 was admitted into evidence at this time.)

MR. LINDEMANN: And, Your, Honor for what it's worth for The Court's edification, the Bates numbers that appears on this, those are documents that actually came from Wayne's as part of discovery.

Q: Before we move on from Exhibit 13, I do want to call attention to Ms. Corbett's e-mail that's on the center of that page. Do you see that Mr. Watson?

A: Yes.

Q: Is that an e-mail you received from her on February 16th at 9:52 a.m.?

A: Yes, it is.

Q: Okay. Could you read that into the record, please?

A: The cargo trailer and tractor will be released when monies are paid for service already rendered as previously stated to the company representative and the insured on site the date of the casualty.

Q: All right. So, Ms. Corbett, with that e-mail stating that the cargo will only be released when they receive payment?

A: Yes.

Q: And she indicates there that she has provided that information to both the company representative as well as the insured?

A: Yes.

Q: Let me show you what's been marked as Respondent's Exhibit Number 6.

A: Yes.

MR. LINDEMANN: Actually, beg The Court's indulgence.

MR. LARK: May I ask a question of the court reporter, Your Honor?

THE COURT: Yes.

MR. LARK: R-14, is that Exhibit 3? I'm just trying to keep up with him. This is what -- is this Exhibit 3.

MR. LINDEMANN: No, no. That's what we marked.

MR. LARK: I know, but you've been admitting these into evidence. I thought we'd start with number one.

MR. LINDEMANN: I have. And I've been admitting them as they've been numbered.

THE COURT: He's putting -- he's presenting them as -- I guess as the witness is able to corroborate to put the information in, right?

MR. LINDEMANN: That's correct, Your Honor. I didn't understand any of these exhibits were admitted beforehand. I mean, I'm fine ---

THE COURT: That what we decided earlier, that we would do them as they come up.

MR. LARK: Right. I'm just trying to make sure I -- when I see R-14 I've been marking -- like starting with the first exhibit, Exhibit 1 for the Respondent, Exhibit 2, 3.

MR. LINDEMANN: No.

THE COURT: That was -- so far as I can -- correct if I get this wrong. So, we've got Respondent's Exhibit 11, Respondent's Exhibit 12, Respondent's Exhibit 13, and now we're working on Respondent's Exhibit 6.

MR. LINDEMANN: That's correct, Your Honor.

MR. LARK: Thanks.

MR. LINDEMANN: Thank you.

A: May I state something under Exhibit 13?

Q: And what's that?

A: At the very bottom of the corner of it, this corner down here, it's very hard to read, this is the -- this is it blown up, just that one corner. And can I read that?

Q: Sure.

A: It says, the choice of this section will no doubt be controversial to some. Big Wheel Boys have garnered a reputation of being shrewd businessmen. They charge administrative fee, accident clean up, are customary link to tow bills. They know how to turn a non-consent tow into a consent tow. Now, I don't know if that means -- what they try to do is talk the guy into making a consent tow so they can circumvent the Highway Patrol. And to get assets for bringing the most efficient machinery to the job, which usually is the most expensive unit, the rotator. Big Wheel -- I wrote that part of charging $5,000 for one hour tow. And Big Wheel may appear to be operated by masked men. That's what -- they put it in

their own article.
Q: All right. Let me ask you to turn your attention to Respondent's Exhibit 6.
A: Okay.
Q: Can you identify that?
A: It's a tow bill from Wayne's Automotive & Towing Center.
Q: All right. In looking at the first page, is that an e-mail that you sent?
A: The first page is a bill form Wayne's Automotive.
Q: No, the first page of the Exhibit.
A: Oh. Yes, it is.
Q: All right. Who was that -- who did you send that e-mail to?
A: Wayne's Towing to Nichlous King.
Q: Okay. And that's Lieutenant King with the Highway Patrol?
A: Yes, it is.
Q: All right. And we'll get into your contact with the Highway Patrol in a moment. But the main reason I wanted to present this to you is the -- attached to it is one of the initial invoices that was sent by Wayne's, correct?
A: Yes, it is.

Q: How many different invoices do you recall receiving, different versions?

A: Numerous. Maybe eight, 10, 12. There's so many invoices in here that this is why I get hired because insurance companies can't read them. And I have a difficult time reading this one.

Q: In this particular invoice, it begins on the second page that exhibit; is that correct?

A: Yes.

Q: All right. Let me ask you a few questions about this, we were talking about airbags. Can you reference what the charge was for the airbags? And I believe it's on the second page of that invoice.

A: It's $8,000.

Q: Okay. And that's two airbags at $4,000 each?

A: Yes.

Q: All right. And in your experience, I mean, is that a reasonable charge?

A: No, it is not.

Q: Okay. What would be a reasonable charge for airbags?

A: I probably handled a hundred airbag jobs a year and they run between four to $6,000.

Q: Okay. In this particular case the airbags, as I understand it, ruptured. Is that something that can be repaired?

A: Yes. I've ruptured several of them in my lifetime. And they're a low-pressure air system and they can put a patch on them and repair them.

Q: And that's something that's reusable then?

A: I had my airbags six, eight years, I can't remember. And I replaced one in that time that got hit by a tanker.

Q: And so, your concern with the airbags is that they were not handled properly?

A: Correct.

Q: Was your concern also the amount that was being charged for it?

A: Yes.

Q: Let me back track and ask you, when did you actually get the Highway Patrol involved, when did you first contact them?

A: I would say two or three days later because I couldn't get the cargo released. And I've been in prior court hearings, and with the people holding cargo, I know they cannot hold cargo. And so, I asked for help from Caption Hughes.

Q: Okay. And who is Captain Hughes?
A: He is in charge of the rotation for the state of South Carolina, I think.
Q: And ultimately where you referred to Lieutenant King?
A: Yes, I was.
MR. LINDEMANN: Okay. Your Honor, before I move on, I'll move to admit Exhibit 6.
THE COURT: Mr. Lark, do you have any objection to Exhibit 6?
MR. LARK: No, Your Honor. Just a matter of record keeping, I don't think we need to unstaple it and change it. The pages start -- the invoice started on page two and went back to the first page, page one. It's just that it was reversed. But that's all.
THE COURT: Well, with that note, no objection?
MR. LARK: No, sir.
THE COURT: Respondent's Exhibit 6 is admitted.
MR. LINDEMANN: Thank you, Your Honor.
(Respondent's Exhibit Number 6 was admitted into evidence at this time.)
Q: Mr. Watson, I'll hand you Respondent's Exhibit Number 5.
A: Yes.

Q: Are you familiar with that?
A: Yes, I am.
Q: You mentioned Captain Hughes earlier?
A: Yes, I did.
Q: Is that a copy of your e-mail to Captain Hughes?
A: Yes, it is.
Q: I believe your initial e-mail to Captain Hughes is at the bottom of the page; is that correct?
A: Yes.
Q: Okay. And what was the date of that?
A: February 15th.
Q: And read the second line of your e-mail.
A: Where it said the world's gone nuts?
Q: No, the second line, I had called all day.
A: Oh, I have called all day trying to get cargo and they keep saying that they will call me back, but I have not received a return call. And I asked for who the watch commander was in that area.
Q: And why were you asking for the watch commander?
A: Because Captain Hughes was over the watch commander in that area that handled the claims, complaints.

Q: All right. Did Captain Hughes respond to you in that e-mail chain? At the top of it.
A: I have a copy of the -- yes.
Q: I'll direct you to the top of the first page. You know e-mails, they go backwards.
A: Oh, yeah, okay. Yes.
Q: What did Captain Hughes inform you?
A: This is an Aiken County Troop Seven, Captain Grice, I think it is, is Commander. Lieutenant King is the records coordinator for the troop.
Q: All right. And also Lieutenant King that you worked with on this?
A: Yes, it was.
MR. LINDEMANN: Your Honor, I would move for Exhibit 5 into evidence.
MR. LARK: No, objection.
THE COURT: Without objection, Respondent's Exhibit 5 is admitted.
(Respondent's Exhibit Number 5 was admitted into evidence at this time.)
Q: What was your involvement with Lieutenant King?
A: My main involvement with him was getting the cargo released. And I had a real problem with the $70,000 tow bill that I need to review. And it has to go through a review process to

verify the rates and the times on that. But my main thing was to get the cargo released because it had a time sequence on it.

Q: And what do you mean by time sequence?

A: It had to be delivered by a certain time, the cargo did, or it gets destroyed. It gets either sold for salvage, the order gets cancelled and it's replaced, so it's going to cost the trucking company 40 -- 30, $40,000 if this product is not delivered on time.

Q: And this was dog food, correct?

A: Yes, it was.

Q: All right. Where -- to your knowledge was Wayne's aware that it was dog food that had an expiration date?

A: Matter of fact, in one of her e-mails its -- she so that's that. I think in two e-mails so states that there's an expiration date on it and they need to pay it right away or something like that to get it delivered.

Q: Actually, let me -- I'm going to show you that e-mail.

MR. LINDEMANN: Your Honor, while I'm looking for it, I would move that Exhibit Number 5 into evidence.

MR. LARK: I thought you already admitted that.

THE COURT: I think we have that. I think we have that.

MR. LINDEMANN: All right. Great. I apologize.

Q: Is this the e-mail you were referencing?

A: Yes, it was.

Q: Is that Exhibit 14?

A: Yes, it is.

Q: All right. And what were you referencing regarding Wayne's understanding was on the expiration date?

A: This is the one from Robert Gosti, Travelers Insurance who insured the cargo. And they also told them that I would be handling the claim on the cargo. And it says in here in making this a one-stop shop, please take this as notice to deal with Mr. Watson. Mr. Watson will be the contact and confirm to discuss a resolution of the tow bill. Down below it says ---

Q: And just so we're clear, what you just read from is the e-mail from an individual with Traveler's Insurance Company to Ms. Corbett?

A: Yes, it is.

Q: And that was advising that you would be handling the matter on behalf of Travelers?

A: Yes, I am. Yes, I did.
Q: Okay. And I believe going back to my original question about -- you indicated that it was your understanding that Ms. Corbett understood that there was an expiration date. Was at the bottom e-mail on that exhibit that gave you that understanding?
A: Yes, it is.
Q: All right. And if you would, just so we can move this along, if you would read into the record the second to the last sentence. I think that's the one that addresses that.
A: That starts with please advise?
Q: Yes.
A: Okay. Please advise how you would like to proceed -- this is from Sherry Corbett to Travelers to Sentry to Premier. Please advise how you would like to proceed as we will like to -- proceed as we would like to proceed in a professional manner that we normally do and assist your company and get your load and casualty taken care of to ensure your company's profitable, realizing your cargo does have an expiration date. Thank you for your time.
Q: Okay. So, she does say she realizes your cargo

does have an expiration?

A: Yes.

MR. LINDEMANN: Okay. Your Honor, I would move Exhibit 14 into evidence at this point.

THE COURT: Mr. Lark?

MR. LARK: No, sir, no objections.

THE COURT: All right. Without objection, Respondent's Exhibit 14 is admitted.

(Respondent's Exhibit Number 14 was admitted into evidence at this time.)

Q: Well, while we're on the subject of the cargo itself and getting it released, do you know when the cargo was ultimately released?

A: I don't. It was about 30 days later. I don't know the exact date, but it was approximately 30 days.

Q: Okay. At a certain point did you -- were you phased out and someone was phased in to deal with Wayne's on this particular issue?

A: Yes. They brought in an attorney out of Atlanta, Kevin Branch's office, that took over handling the claim because I was not getting anywhere getting the cargo released.

Q: Was the cargo released without payment of any monies?

A: No. There was $48,000 that had to be paid before they would release the cargo.

MR. LINDEMANN: Beg The Court's indulgence.

Q: I'm going to show you Respondent's Exhibit Number 3.

A: Yes.

Q: Is that the check?

A: Yes, it appears to be. Yes.

Q: I would move Exhibit Number 3 into evidence.

THE COURT: Respondent's Exhibit 3 is the check. Which check we talking about? That's the $48,000 check?

MR. LINDEMANN: Forty-eight thousand.

Q: Would you give the Judge the date on the check?

A: It's a little difficult to read, but March 4th, 2016.

Q: All right.

THE COURT: And that's Exhibit 3?

MR. LINDEMANN: That's Exhibit 3, Your Honor.

THE COURT: Without objection ---

MR. LARK: Without objection.

THE COURT: --- that is admitted.

(Respondent's Exhibit Number 3 was admitted into the record at this time.)

A: So, it looks like about 32 days, I think, they

held it.

MR. LINDEMANN: Your Honor, with the Court's indulgence, I think I may have misplaced one of my exhibits. Here it is.

Q: This is Respondent's Exhibit Number 2, has been pre-marked. Will you identify that document?

A: Yes. It's an e-mail dated February 19th, 11:33 to Lieutenant King, Caroline Copeland, Sentry, Hazmat, Captain Hughes. It says, official complaint on Wayne's Towing, Claim 618 169 404 Premier Transportation.

Q: Okay. And what is the date of that e-mail?

A: February 8 -- or 19th.

Q: And what was the purpose of this e-mail?

A: I had to file a complaint -- an official complaint for the Highway Patrol to move forward to review it.

Q: And that's what this e-mail was?

A: Yes.

Q: All right. And in that e-mail it looks like you have about 10 items that are outlined there?

A: Yes, there are.

Q: And what did those -- well, first of all, before I get to that, did you address in the

first paragraph of that e-mail the issues regarding the release of the cargo?

A: It says I have called the tow company for two days. The owner Jeff is the only one that will talk to me, has not called me back. I cannot get an answer on the cargo, trying to get it picked up today.

Q: Okay. So, still by February the 19th obviously you were still trying and unsuccessful in getting the cargo released?

A: Yes.

Q: Did you also then raise various issues with the tow bill?

A: Yes, I did.

Q: All right. If we can just really briefly go through those and your explanation as to why you found each point significant and I believe we talked about the airbags already. But we'll start with number one and go through them real quick.

A: A 21-hour recovery is -- I've been in this business for 25 years doing my own recovery and I do, like I say, 2500 of these a year. I have never seen a 21-hour recovery for a roll over tractor trailer. Rarely I would see a 21-hour.

I can't even remember one. So, my question really came up, why are we out there for 21 hours? You're blocking the highway, you're interrupting flow of traffic. There is a -- secondary collisions are caused from the primary one are about 20 percent of the fatalities for secondary collisions. The Highway Patrol knows all this. And the faster you get out of there, the safer it is for everybody and the least expensive it is for everybody.

Q: You mentioned earlier that you attempted to find out what was the start and finish time on this particular job.

A: Yes, I tried to. Yes.

Q: Did you ever get that information?

A: I don't I ever did.

Q: Okay. So, you didn't see any type of substantiation that it did take 21 hours?

A: A job like this was eight to ten hours. I mean, I never understood why it took 21 hours.

Q: Okay. And in item number two, what is that?

A: I was told a lot of the equipment was subcontracted, so they can charge extra money. And, what they -- what towers will do is they

own their own company and they subcontract to themself and so that subcontractor is not under the state regulations under the tow regulations. It doesn't apply to them. So, what they do is they have a subcontractor and they jack the prices up and then they -- and then Wayne's Towing pays the subcontractor, which is the same company, at a higher rate.

Q: And do you know if that was done in this particular case?

A: From my understanding, yes, it was.

Q: Okay. And so in number two you're asking specifically what was contracted out to be able to judge that separately; is that right?

A: Yes. I asked for copies of the subcontractor bills and it was never supplied.

Q: Okay. Number three deals with the airbags. And I think we've already addressed that.

A: Yes.

Q: What is number four?

A: Labor rates are $150 per hour is about double the going rate. The rates are about $50 an hour. And in other type industry related to a -- I do hazmat stuff in South Carolina. And they run about $50 an hour for personnel. So,

I looked for like businesses that charge, you know -- why can one guy charge a 150 and they're probably paid $15 an hour and the other business that has a rate sheet is $50 an hour.

Q: All right. Let me go back to the invoice itself, which is for the record, Exhibit Number 6, which is already in evidence. Are the labor costs that you're referring to, are they located on that bill?

A: They go up to $150 an hour.

Q: Well, actually recovery supervising or -- recovery technician I see at $175 an hour; is it not?

A: Yes. And the problem I have, if you look at this bill, the labor and drivers, I think there's five drivers, four or five drivers, total personnel on the job was 17 personnel out there. So, to me it appeared that the supervisor is probably the driver of one of the big rigs.

Q: And how many big rigs were required for this particular towing?

A: Two big rigs are sufficient. Not for 21 hours, but ...

Q: Okay. And the big rigs, when you pay for the

big rigs, does that typically include the driver?

A: Yes, it does.

Q: And the hourly rate for the rig?

A: Yes, it is.

Q: And what was the hourly rate for each of those rigs?

A: $436 an hour.

Q: And that's how they charged it?

A: Yes.

Q: And so then you add recovery supervisory, recovery technicians at 175 to 150?

A: Yes.

Q: And apparently one was at $85 an hour. Do you see that?

A: Yes.

Q: And then below that there are other labor costs. What is your understanding of those labor costs?

A: These are labors to unload the product, I assume, to unload the cargo and then trying and load it back into their trailer.

Q: Okay. Do you have any issue, in fact, with the hours that it took to do the loading an unloading?

A: It doesn't seem to be a issue at those hours, no. The hour -- the nine, seven, and hour and a half, no.

Q: Okay. Looking at -- back to Exhibit Number 2 with item number five. Can you explain that one to me?

A: Transfer cargo, $750. Well, if you look at the bill the labor is transferring the cargo. And so, they're just charging an extra $750 for some unknown reason.

Q: All right. Is this item right here where my finger is, is that the 750 you're referring to?

A: Yes, it is.

Q: Okay. And it's described -- what's the description for that $750?

A: It says ---

Q: Can you read that on the bill?

A: Yeah, I can. It says ---

Q: Can you read that on the bill?

A: Yeah, I can. Transferred cargo from scene to loading dock containment units. This includes reloading on offsite facility, the $750. But then you go down below and they're charging all the labor for doing the same reload.

Q: Okay. Let me ask you a question to the last point on that page. It says labor sublet from Vern's. What is your understanding of what that is?

A: They brought in three more people to help them to do the reloading.

Q: And is Vern's a different contractor?

A: It appears to be. I don't know who Vern is.

Q: Okay. Did you ever see any type of subcontract or any type of inventory from Vern's for $1,000?

A: No. There was no subcontract bill ever supplied.

Q: In fact that brings me to number six. I kind of jumped the gun. Is that what you're referencing in Number 6?

A: Yes.

Q: Okay. And again, I'm back to Exhibit Number 2. Tell me what item number seven references.

A: I need a copy of sublet bills for $1,000 additional labor.

Q: That was number six. How about number seven? I think you ---

A: On ---

Q: You say a continuation of that line. I think

you went to number seven, rather than ---
A: Oh, I see. Track hoe -- the one about the track hoe?
Q: Yes.
A: Yeah. The track hoe could be rented for about $350 a day. And I think they charged $350 an hour. Backhoe $350 an hour.
Q: For how many hours?
A: For 11 and a half hours.
Q: So, for a total of $4,025?
A: Yes.
Q: And you said a backhoe can be rented for a day for $350?
A: $350 a day including pick up and delivery from rental companies. And the hazmat people in the area charge $800 a day pick up and delivery.
Q: All right. Going back to Exhibit Number 2, what is number eight?
A: It was a question I had that -- I think the state police has -- brings all the cones and all signs out. A question. And they charged I think was 50 cones -- 20 cones at $50 each and the picture showed one or two cones and they -- like I said, they cost about $17. You can go out and buy them.

Q: Going back to the invoice, do you see the -- the reference to the cones on the page in front of you?
A: Yes, I do.
Q: Okay. And read what it says as far as the description.
A: Twenty-six inch traffic cones, total of 48.
Q: And then it says quantity. Was the quantity that it was out there for 20 hours at $50 an hour?
A: That's what it looks like.
Q: Okay. So they charged $1,000 for 48 cones?
A: Yes. I was even looking at that wrong. Yes, that's what it says.
Q: Okay. That's my reading on it. That there was 48 cones that were put out for 20 hours.
A: Yes.
Q: And they charged $50 an hour?
A: Yes.
Q: Okay. So you found $1,000 just for 48 traffic cones as being unreasonable?
A: Yes. Even reading it correctly, yes, it's unreasonable.
Q: And cones themselves, I think you might have mentioned this earlier in your testimony, I

mean, approximately what is an orange cone such as what they had out there, what's it cost even just to buy the cone?

A: You can buy that cone online for $17 a piece.

Q: So, in essence they were charging more than the cone itself was worth?

A: Yes.

Q: For a one time use?

A: You got five times -- yeah, $700 bucks or something if you bought them.

Q: For a one-time use?

A: Yes.

Q: And they can obviously -- they're obviously reusable?

A: Reusable for a lifetime.

Q: All right. Finally item number ten, that's OSHA certificate radio equipment. Can you explain that one to me?

A: They have -- they said they have to have OSHA certificate radios on site and which I have never found in any case I've ever been in that there's anything applied that they have to have headphones for working out there. I don't mind headphones, we used to use headphones. We didn't charge for them. And they cost

approximately different costs for different sets about $4,000 for six. So, they're about 50 percent of it on one call is what they're using it for.

Q: Let me go back to Exhibit Number 6 to reference the communications equipment. Do you see it on there? Is it right by my finger? If you look at the screen.

A: OSHA certified communication equipment, $1,795.

Q: Okay. That's what you're referring to?

A: Yes.

Q: Okay. And that's equipment that they would have as part of their overhead?

A: To me in any states have regulations, it's not required to have it out there. As part of the overhead, yes.

Q: Okay. Obviously, something that's reusable?

A: Absolutely.

Q: Okay. So you found that charge was unreasonable?

A: Yes.

MR. LINDEMANN: Beg The Court's indulgence.

Q: Mr. Watson, before the attorney from Georgia took over, were you successful at all in negotiating any of these items on this bill?

A: No, I was not.
Q: Were you successful in negotiating the release of the cargo?
A: No, I was not.
MR. LINDEMANN: Beg The Court's indulgence. Your Honor, I would move Respondent's Exhibit Number 2 into evidence.
MR. LARK: No objection.
THE COURT: Without objection, Respondent's Exhibit 2 is admitted.
(Respondent's Exhibit Number 2 was admitted into evidence at this time.)
MR. LINDEMANN: Thank you, Your Honor. I don't have any further questions of this witness. Thank you very much, Mr. Watson.
MR. WATSON - CROSS-EXAMINATION BY MR. LARK:
Q: Good morning, Mr. Watson.
A: Good morning.
Q: Are there any states, such as North Carlina, which you've been barred from providing tow billing disputes?
A: There is no states I've been barred from any tow billing disputes
Q: Are you doing work in that regard in North Carolina?

A: North Carolina included.
Q: How about West Virginia?
A: West Virginia included.
Q: How about Texas?
A: Texas, I have -- I'm not barred in any state; Texas -- I know this has been brought up before. Nobody has any facts on anything. I had one in West Virginia where I had to recuse myself because -- and I brought it back in under the trucking company's name or the insurance company.
Q: That was Sentry Insurance. And you had brought in and it was a tow dispute we've cited in our materials. And the staff for the West Virginia Commission had a concern that you had no standing because you had no property interest; isn't that correct?
A: Yes, it is.
MR. LINDEMANN: Object to the form, Your Honor.
Q: And that ---
MR. LINDEMANN: Hearsay, Your Honor.
MR. LARK: It's among our hearing exhibits.
THE COURT: Lindemann has objected. I think insofar as he's asking questions of the witness, if the witness can answer. I don't know where he's

getting his information from, but he's asking questions of the witness. The witness can certainly answer to his knowledge.

MR. LINDEMANN: I understand. And I would just submit, to me a Court Order -- and I'm not questioning Your Honor's ruling. But if you're citing a Court Order, you need to put the Court Order into evidence as the best evidence ---

THE COURT: You can give him that advice if you want to.

MR. LINDEMANN: I think the best evidence rule is required, but that's fine.

THE COURT: He's just asking questions. So far he's gotten nos for answers.

A: There is no Court Order. As a matter of fact, I have one -- tomorrow I have a conference with West Virginia on another one that we're having trouble with up there. But I've not been banned from any state.

Q: My question has to do with the West Virginia Public Service Commission proceeding that we've cited in our material with our Petition for a Contested Case in which you -- Sentry got in -- a lawyer for Sentry, staff told you Sentry was to get in and so then you got out, right?

A: They brought be in as an expert witness and a backup for the attorney there. I have done several since.

Q: But that case I'm talking about that we cited in our materials, it was mediated successfully?

A: Yes.

Q: Without your participation?

A: No, I was involved in every one of them in West Virginia, numerous ones.

Q: Not as a party of interest.

A: Correct.

Q: Thank you.

THE COURT: Do you want to put that case in as an exhibit?

MR. LARK: It is among our exhibits as a part of a composite exhibit. If I could continue and then returned to that?

THE COURT: Sure.

Q: When were you asked to participate in this matter?

A: Again, about five days after -- I can give you the exact date if you want me to look it up.

Q: Yes.

A: I was asked to look at it February 15, 2016 at 11:28.

Q: By whom?
A: It came in from Sentry Insurance with Premier Transportation involved in it. And then Travelers got involved in it within a day or two later.
Q: Do you agree that the Premier payment to Wayne's settled the entire matter, including any other interests that those two companies may have had?
A: The agreement that Premier put in is a one-sided agreement protecting Premier Transportation, does not protect Wayne's Towing whatsoever.
Q: I'm referring to the settlement check. What are you referring to?
A: There's an agreement in there between Premier written up by Scott Kozelek or that ---
Q: That was never executed, was it?
A: I do not know. They told me they had an agreement on it.
Q: Do you have an understanding how DPS may have used this information that's been admitted regarding your critiquing of the initial invoice?
A: I don't think I understand the question.

Q: Isn't Lieutenant King relying upon what you've told him in his internal memo resulting in this disciplinary order?

A: You'd have to ask Lieutenant King. I filed a complaint to get it resolved to get the cargo released. And how all the rest of it got moving on is -- you'd have to ask ...

Q: And where is your written source of authority that you're representing Premier or is that your testimony?

A: There's numerous e-mails in here. Premier sent a e-mail to Lieutenant Hughes, I think it was, that I am -- that they -- you know, I've been representing them, they're involved in it. Sentry sent it, Travelers sent it.

Q: Why didn't you participate in the disciplinary hearing on August 8th, 2016 with regard to Wayne's?

MR. LINDEMANN: Your Honor, objection. I don't think anything having to do with the disciplinary hearing before the Department is relevant for the reasons I stated earlier, the Unisys case.

THE COURT: Mr. Lark, do you have a response to that objection?

MR. LARK: Yes, sir. The -- some of our exhibits relate to a FOIA, Freedom of Information Act, request that pertain to matters that ended up being included in the Department's decision. We have marked these and we will get them in through other witnesses.

THE COURT: Well, I understand that. The question here is why was he not a witness. Mr. Lindemann's objection is -- what is your objection? What's the basis for that objection?

MR. LINDEMANN: How is that relevant, because ---

THE COURT: Okay.

MR. LINDEMANN: --- it would only be relevant to some of the due process arguments that they have made saying we didn't get to question the complainant. Well, obviously, the complainant's here today for them to question and we've presented that testimony here. So, it goes back to my original argument, they can't treat this as an appeal. It's a contested case. They're getting their de novo review before this Court.

THE COURT: Okay.

MR. LINDEMANN: And they have Mr. Watson ---

THE COURT: I'm going to sustain that objection. That's sustained.

Q: Do you know that DPS general counsel said in response to my question that you weren't present because they couldn't subpoena you?

MR. LINDEMANN: Your Honor, again, same objection. Plus hearsay. He's asking what ---

THE COURT: He's asking -- yeah, Mr. Lark, you're asking him about somebody else's understanding and he can't know.

MR. LARK: Okay.

THE COURT: He shouldn't know. And he shouldn't tell us if he does. So, sustain that objection, as well.

Q: I deposed Captain Hughes on April 11th of this year and asked him did you come and meet with the Department. Do you recall having done so?

A: I met with the Department on a few occasions. I don't remember if I was meeting on this or I did have a meeting with them.

Q: This had to do with your going to his office on or about April of 2016 and discussing the regulation. Do you recall that?

A: I met with him one time discussing regulations in South Carolina. They called me several

times talking about -- I was on the California Highway Patrol Board and I put up regulations out there or state laws that held the tow association, the towing companies operate with the California Highway Patrol, and I gave him that information.

Q: Did you ask questions about how the DPS regulation was being applied?

A: I don't recall asking. I know how it's applied. I don't think I have to ask him.

Q: If you were the representative for Premier, why is it that the owner of Premier signed the settlement check, not you?

A: Be -- I don't sign checks.

Q: In supplemental materials relating to your background work in this matter, I saw a clean up estimate for some money from a Georgia company. Do you recall engaging or contacting the Georgia clean up company to give an estimate for recovery?

A: Yes, I did.

Q: Do you -- was the basis of that an on-site evaluation by that company?

A: I sent them pictures, it's called Transportation Spill Solution, which handles

all the hazmat for Sentry Insurance. And they get involved in these because we have to have all kind of documentation, manifests, disposal fees, disposal receipts, there's quite a bit of pictures and everything else. So, I got -- he's got pictures from the accident, he reviewed it, and that's what he came up with.

Q: Pictures from the Custard Insurance Adjuster?

A: I don't know where they came from. There was ---

Q: Just black and white photos?

A: I think they were color, but I can't remember.

Q: So, they didn't actually go on the scene. They created -- they worked off photos of the -- some photos of the accident is your understanding?

A: Well, they worked off photos. And what I was trying to get -- look at the rate sheets that they charge compared to the rate sheets that Wayne's charges.

Q: And did you or your company pay for that effort?

A: No.

Q: Why would they do that for free?

A: They could bill Sentry Insurance. I do --

Transportation Spill Solution is -- does the same thing I do, but in the hazmat part of it. And they could bill Sentry, I do not know.

Q: Is it your understanding that Travelers had the insurance on the dog food for this?

A: The cargo, yes.

Q: Well, if that's the case, where does Travelers stand or what's happened with respect to Travelers?

A: Ask that again. I don't understand.

Q: What's happened with respect to Travelers' coverage and claim, if there were any, against -- for the dog food?

A: What I think happened is that they have a large deductible because they are self-insured, so they have to have so much deduction before Travelers will step in or Sentry will step in. But they both have to keep track of the losses for the year to see when they get to the deductible part of it. But that's just my understanding of what was going on, so ---

Q: Travelers -- I'm sorry.

A: So, Travelers is probably doing the same, just reviewing it along with Sentry.

Q: Yeah. Did Travelers retain you? Are you

speaking on behalf of Travelers in this matter?
A: There's an e-mail there that said that Travelers -- Robert Gosti, I think his name is, told Wayne's Towing for me to handle the cargo claim.
Q: Okay. Well, then -- so, was it the fact that there was a high deductible and that Premier paid ---
A: That's what I understand, but ---
Q: --- either their insurance company?
A: Yes.
Q: And what is your testimony or evidence to show that you had authority to act on behalf -- to make a demand about the cargo? Is it this ---
A: There's several e-mails in there that -- saying that Robert Watson is handling -- or Bob Watson's handling the cargo. There's e-mails from the Premier, there's e-mails from Travelers, e-mails from Sentry. And so, it's all -- I mean, there's just a lot of e-mails saying release the cargo. And if you look at the e-mails, Premier's on there, Travelers' on there, Sentry's on there, everybody's on there. Nobody said, Bob Watson, don't handle it. I said I'm trying to -- need to get this released

and with everybody on the same e-mail chain trying to get the job handled.

Q: And then in June you're still telling the Department that the complaint is still on, even though you know that the parties with the property interests have already paid and without any reservation of rights, don't you?

A: The Premier is watching this whole case as it goes along, so it could be more to it afterward. But they are very concerned about the high tow bill, how you can have a $70,000 tow bill and reduce it down to 48,000. I mean, it's just -- it's price gouging. And so, I don't know how you could reduce something 30 -- $25,000 and so, oh, it was just a fair bill. It doesn't make sense and Premier's very upset at it. And there's e-mails in there stating they're not happy with the settlement on it.

Q: Those e-mails don't criticize -- show me anything that's criticizing the settlement amount besides you saying you had to pay 48,000 to get the cargo out.

A: That is about double what the bill should be. If you look at the rates from the State and the hours, it says -- okay, here we go. It's not

an exhibit. What do we do now? Want me to read it?

Q: Not particularly. I'd like to see it.

A: Okay.

MR. LARK: May I, Your Honor, approach the witness? May I confer with my group on this? This has not been ---

THE COURT: Mr. Lindemann, have you seen a copy of that?

MR. LINDEMANN: I have not.

MR. LARK: This has not been circulated. I've never seen this before.

MR. LINDEMANN: If you're not going to admit it, I'm going to admit it. I mean, I didn't have it because it's -- obviously he's not my client.

MR. LARK: Is it permissible for me to share it with my clients what it is or to show you what it is?

THE COURT: Mr. Lark, we've been here for a little while. I think it'd be appropriate for us to take about a ten minute bathroom break. Especially some of us older folks might need that break.

MR. LARK: Right.

THE COURT: So, let's take ten minutes. You can

confer with your clients and. Mr. Lark, you may -- if you -- I don't know if our copy machine is fixed. Do you know?

LAW CLERK: I don't think it -- I can make a -- get a copy made.

THE COURT: If you need a copy, we can get one made for you.

MR. LINDEMANN: Just so Your Honor knows, I mean, if Mr. Lark doesn't put it in, I probably will on rebuttal, so -- on reply, so if we could get copies, that might be helpful.

THE COURT: We'll do that and get -- in that case, we'll take 15 minutes, because -- I apologize to you, The Court's copy machine went on a fritz last week. We have now to get parts in, so we have to go to another floor to make the copy. So it'll take a few minutes, but not terribly long. If everyone will be at ease, we'll take that 15 minutes.

(Off the record.)

THE COURT: We're back on the record in case number 16-ALJ-30-0410. Now ---

MR. LARK: Your Honor, we would move this as Petitioner's Exhibit 27 since our last numbered exhibit in the notebook is 26. May I hand a

copy to the Court Reporter or to Your Honor?

THE COURT: Start with the Court Reporter, please. Any objection?

MR. LINDEMANN: No, Your Honor.

THE COURT: Without objection, Petitioner's Exhibit 27 is admitted.

(Petitioner's Exhibit Number 27 was marked and admitted into evidence.)

MR. LARK: Thank you. I have just, I think, a couple more questions about this exhibit.

Q: Mr. Watson, did you indicate earlier that you had not gotten payment for your participation in this case?

A: Correct.

Q: And that payment, would that have been from Sentry normally, if you -- if you were going to get paid?

A: The payment probably would have come from Premier, but I never got that far, so.

Q: Okay. And so, this is the owner of Premier, Tim Pilato's, isn't that -- isn't he the owner of the company?

A: I'm not sure, but I think so.

Q: He paid the -- he wrote the settlement check because you said you don't write settlement

checks, right?
A: I don't -- rarely do it. I don't write any checks.
Q: Do you agree that he wrote the settlement check?
A: I don't agree or disagree. I'd have to see it to -- I don't know who signed the check.
Q: Okay. I think it's already in. This -- he's rounded this payment number to 48,000 and if you had gotten involved and not had any issues with the initial invoice, what would you have been paid?
A: Probably six to $8,000.
Q: Is that based on some sort of -- if you had -- now, this is if you had found no mistakes.
A: I wouldn't have been paid anything.
Q: Okay. But if you had the first invoice and you found mistakes, like you allege here in your testimony, you indicated that you still did not get paid anything, right?
A: Once it -- once it gets into legal or gets out of my hands, I'm done with it.
Q: Okay. In other words, this case went beyond the -- your involvement in it was assigned to counsel for Sentry?

A: Yes, it was.
Q: Thank you.
A: It was assigned to counsel for Premier, not Sentry.
Q: Okay. And -- thank you. Scott ---
A: Zottneck.
Q: --- Zottneck, who was included in this chain? Why is that, do you know? Why is it that your payment entitlement or 20 percent, isn't it, usually?
A: It goes by the hours, could be 20 percent. So, it can go anywhere. But this would have been 20 percent if it had gone through and got it resolved right off the bat.
Q: Are you -- I believe you've alluded to some other litigation. If so, we're not aware of any. Are you aware of some other litigation relating to this matter?
A: No, I had another litigation in here with another tow company related to holding cargo.
Q: I see. Thank you.
A: In South Carolina.
Q: Okay.
A: And Georgia.
Q: You're not offering testimony as to whether --

or where the accident took place, are you, and the damages?

A: On this accident?

Q: Uh-huh (affirmative response).

A: Not any particular reason.

Q: Did you have communications with Lieutenant King following your having sent this -- what's been referenced as the Formal Complaint that's Respondent's Exhibit 2?

A: I can't remember. I would say probably I did, but I don't know if it was e-mail or telephone communication.

Q: Would you have seen any draft, internal memos, or orders such as that addressing the bill that would -- in other words, the disciplinary -- notice of disciplinary action?

A: No, I've not seen anything.

Q: When you met with Captain Hughes at the DPS office, that was in Blythewood, correct, about a year -- April of a year ago?

A: Somewhere around there, don't know.

Q: Okay. Well, did you have any -- do you recall any specific discussion about the regulation and its implementation?

A: The -- at that time, it had been going on for

about a year, I think, about regulations and ideas on how to make the tow agreement -- you know, is it agreement with the tower, they don't have to tow, just an agreement, and how to make it better. Now, I've been asked the question in many, many states. I work in all 49 states. I don't go to Hawaii yet, but one of these days. Anyway, I've worked with a lot of different agencies on how to put tow programs together. So, your question is that I probably did talk to them, but I'm -- I can't remember exactly the whole thing. I did give them a contract for the one I was involved in in California with the California Highway Patrol.

Q: Well, you obviously knew when you met with Captain Hughes that there was a pending discipline -- proposed disciplinary matter or potential one; did you not?

A: I don't remember if that was at that time or not. There would have been a couple of them. So, he could have been talking to him about it, I'm not sure.

Q: Did you have some formal engagement agreement with DPS with regard to this matter?

A: No, I do not.
Q: And the payment that you alluded to, an hourly rate, is that what you're being paid for this testimony?
A: I'm not charging anything for this testimony.
Q: Okay. So, the hourly rate that you were quoting earlier was for what type of work?
A: For this type of work. And like this court case, I charge 750 a day. I charge $125 an hour for preparations. So, I do charge for it. I have not charged the state anything.
Q: I'm just trying to get clarification on that particular point. So, that's your general thing in any court proceeding, but not this court proceeding?
A: Correct.
Q: Okay. When you met with Captain -- sorry, when you met with Captain Hughes at Blythewood, was Captain Grice or Lieutenant King or Colonel Oliver also in attendance?
A: There was three gentleman there when I met with them. I don't know if I remember their exact names, but there was three gentlemen there.
Q: Do you see any of them here today ---
A: Yes.

Q: --- the gentlemen that are ---
A: The gentleman in the suit, Captain Hughes, and I think -- were you there? Anyway, I can't remember. There was one more there.
Q: Okay. Do you know this is Lieutenant King?
A: Yes.
Q: Okay.
A: We -- I don't -- I can't remember if he was there, but ...
Q: Now, do you know -- have you had any communication with the investigating trooper or troopers concerning the Premier matter? Deering, I believe, signed the collision report and Brimley may have had some secondary involvement in this. Do you know?
A: All I remember is originally I was involved in it. And then when the attorneys took over, I basically was out of it. So, I don't remember having any further conversation at a certain period.
Q: Okay. Karen Coppolino, she's the administrator for insurance and claims at Premier, isn't she?
A: As far as I understand, yes.
Q: She's included in some of your e-mail chains that you discussed with Mr. Lindemann. I'm

seeing a reference at DPS 118 where she asked in an e-mail, are you saying that they are not going to release our cargo, correct? My reference really more specifically is she refers to it as my -- as our cargo, Premier's cargo, not Travelers' cargo. So, can you please explain what you mean?

MR. LINDEMANN: Your Honor, I think he's referencing a document that, number one, he just referenced to the Court that's not in evidence. I'm not sure what document he's referring to. And I'm sure the witness could probably utilize seeing that e-mail that he's asking him about.

THE COURT: Mr. Lark, he's -- the objection here, although he's phrased it as an objection to a document we hadn't seen, also seems to be asking him a question about what somebody else thinks or knew. And I don't know how he -- I don't know how he would know that.

MR. LINDEMANN: That's true, Your Honor, as well. I mean, he's asking him to interpret somebody else's e-mail.

THE COURT: Which he ---

MR. LARK: Maybe I ---

THE COURT: Which he might be able to do if he was a

recipient of it, he could say what he thought it meant. But ---

MR. LARK: May I check through that e-mail ---

THE COURT: Sure.

MR. LARK: --- because I believe that he was in that chain. Let me see. May I approach the witness?

Q: DPS 118, it's -- they're Bates stamped numbered. An e-mail from Bob Watson. One is -- there are two of them. One is to Nichlous King. And then the other's lower, June -- also June 14th, 2016, to -- from Watson to King and then Coppolino.

THE COURT: Mr. Lark, just before you do that, Mr. Lindemann, are y'all on the same page here?

MR. LINDEMANN: I now see the e-mail, Your Honor, so I see what he's referring to.

THE COURT: All right.

MR. LARK: They went through the use of chain e-mails, which is maybe a little bit cumbersome, but I've found a place and if I could direct his attention. And we'll represent that Ms. Coppolino, Sentry, hazmat, Captain Hughes, were all in the chain from involving Mr. Watson.

Q: And my -- simply my question, Mr. Watson, is --

-

MR. LINDEMANN: Your Honor, I'm definitely not stipulating Captain Hughes was in that chain. If he shows, Your Honor, how the e-mail ---

THE COURT: Mr. Lark, before ---

MR. LINDEMANN: It does not show who Ms. Coppolino's comments went to.

THE COURT: Okay.

MR. LINDEMANN: In fact, I think it just went to Mr. Watson.

THE COURT: Okay.

MR. LARK: I don't mean to go forward before you want me to, Judge.

THE COURT: Mr. Lark, would you show Mr. Lindemann what you have to make sure?

MR. LARK: He -- they sent it -- they provided it in discovery and they used the Bates stamp number ---

THE COURT: And we're talking about the same page?

MR. LINDEMANN: Yes, we're talking about the same page.

THE COURT: But he's representing that there are people in the chain you don't think are in the chain?

MR. LINDEMANN: That's the case. I mean, if he

shows it, Your Honor, puts it up on the -- I'll be happy to put it up on the screen.

MR. LARK: No, I'll -- it seems to be a cut and paste by someone. The witnesses purportedly sent it, so if I ---

THE COURT: If he said that he could talk about it.

Q: Mr. Watson, my question initially was preceded by if you understood that Karen Coppolino is the insurance adjuster for Premier and you said, that's my understanding. And my -- her next -- her only sentence that's included in this e-mail is, are you saying they are now not going to release our cargo. Do you see where she says that?

A: Yes.

Q: And my question then is, I thought you said Travelers had the insurance interest in the cargo. Why is Karen, Ms. Coppolino, saying it is our cargo?

A: Well ---

MR. LINDEMANN: And objection, Your Honor, based on the fact that he's asking him to interpret somebody else's language, somebody else's words.

THE COURT: I agree with that. So, I would sustain

the objection to that part of the question. Now, again, insofar as Mr. Watson has sent the e-mail, he can tell you what he was thinking.

Q: Mr. Watson, do you have a copy of that in front of you?

A: Yes, it's on the screen.

Q: Do you recall whether this -- there's a cut and paste of more than one e-mail?

A: I don't -- see where it's cut and paste. I see what you're referring to, yes.

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.
Q: Okay. Did you have any other dealings with Ms. Coppolino or any dealings at all for this matter?
A: I would say yes, but, you know, it's been a year or over and, you know, there's been many conversations.
Q: Did you have any conversations with Randy Swords, his name you mentioned in one of your early e-mails, who works for Premier?
A: I had a conference call with Sentry, Premier, all of them on the whole conversation of it. I don't remember all their names.
Q: Did you have involvement with the Premier safety division?
A: I would say yes, but ...
Q: Do you remember the names of people you dealt with?
A: There's so many names of everyone. I go in -- they come into groups and they don't say I'm in charge of this, I'm in charge of that. We have

conference calls and I don't know exactly where each person applies ---

Q: Do you remember sending an e-mail and said let me handle the billing?

A: I could have, yes.

Q: And that there was a slew of draft invoices, you agree? I think you ---

A: Yes. I try to do a one-point system because there's like three or four different people or companies involved and I ---

Q: Exactly.

A: --- tried to have a point -- a pinpoint where I handle the whole thing.

Q: But you didn't handle it all because you would have signed -- or somebody like you would have signed the check and not the owner of Premier to settle the whole dang dispute, right?

A: I do not sign checks. All I do is get involved in it and when it's done, I move -- when the attorneys came in, I moved out.

MR. LARK: One of the exhibits I don't think it's been introduced yet and I'm not -- it's part of our exhibits to be admitted, but it's in connection with some others of mine. This has to do with R1, what you've marked as R1.

Q: My question is with that preface, have you ever seen that March 4th, 2016, memo from Ms. -- Lieutenant King to Captain Grice?
A: I do not remember seeing this. I would say no.
Q: I was going to direct your attention to page two, so if you -- you see those bullets that he's -- I call them bullets, the black dots?
A: Yes.
Q: You see those? And I'm not sure if they go on over to page three or not. Can you -- well, yes, there's some other hourly rate. Did you ever have any follow-up communications with Lieutenant King concerning reasonable -- corrections to the so-called unreasonable charges by Wayne's to certain levels?
A: I would -- the way I do it is I put my complaint in with questions on there. And then the Highway Patrol has their own investigative group and I don't get involved in it. I don't think I've seen that one before.
Q: And your testimony is that you did not, as far as you recall, have follow-up conversations between let's say February 19th and March the 4th, 2016?
A: I had conversation with them. I can't remember

the dates I had -- but I did have conversations with them. I filed the complaint and then I put it into the state. And when the state gets involved in it, they don't get back with me, except for like today. And when the attorney got involved in it, I was completely out of it.

Q: Attorney Mark Gore?

A: No.

Q: What attorney? Warren ---

A: Scott Zottneck.

Q: Oh, the Premier ---

A: Premier's attorney.

Q: Okay. Do you remember when exactly that was?

A: I would say within ten days after I got involved. But I'd have to go look it up, but I'm not sure.

Q: That's all right. You're -- would you agree as a general matter that, when you are writing e-mails back and forth in this, that you are using as your position and one of being president of Recovery Resolutions Specialists?

A: Yes.

Q: That's the North Carolina entity?

A: Yes.

Q: In connection with your testimony today, to

what extent have you relied, if any, on the photos by the Premier Insurance adjuster or Custard Insurance Adjusters?

A: I rely on photos quite a bit. I don't know whether they came from the adjusters, where they are. They were supplied to me. There was numerous ones and I ---

Q: Right.

A: --- couldn't tell you who they came from.

Q: Okay. Well, was it you who forwarded those to the Highway Patrol here?

A: I would say probably, but, again, I don't know what pictures you're looking at, which ones they're looking at, but I did forward them pictures. I think.

Q: Did you have any communication with the insurance adjuster while he was on the scene or was it subsequent?

A: No. I didn't get involved in it I think five days later, so.

Q: How did you learn about the accident having occurred?

A: I got a e-mail from Sentry Insurance and their -- asked me to help out their Premier Transportation, one of their larger customers,

and that it's self-insured and would I get involved and help them out.

Q: Is that an e-mail that you have provided today so far?

A: Do not know. There's so many of them, I don't know.

Q: Would you have that with you to look -- not at this moment, but ---

A: I could. I don't know.

Q: All right. I think -- maybe I didn't -- maybe I didn't ask this question, I'm not quite sure. Did you just -- did you have any communication with the insurance adjuster while he was on the scene? I think you said no.

A: No, I did not.

Q: Okay. Do you know whether the Regulation 38-600 allows for more than one invoice to be submitted for an accident?

A: No, I do not.

Q: Have you previously seen checks signed by Tim Pilato, the owner of Premier, in other matters?

A: No, I have not.

Q: Do you know whether -- if that company intends to pursue an additional claim, that it would qualify the payment with something that might

be considered a reservation of rights letter?

A: Like I said, they're paying a lot of attention to this case because of the exorbitant tow bill and they run hundreds of trucks and they're -- they don't like getting taken advantage of it and so they're paying attention to what's going on with this whole case. So, moving forward, I do not know.

Q: Do you know what the deductible is for Premier in this case?

A: No, usually self-insured a million, two million. I'm not sure what it is.

Q: Okay. But would that mean, if it's a million, for example, and it's self-insured, that the deductible is a million?

A: Correct.

Q: Yeah. But you don't know what it is in this matter?

A: No, I do not.

Q: Did I take back that March 4th? I'm sorry. I should have left it with you just for a little bit longer. May I approach you here? In the third bullet on this -- what is it, Respondent's Number 1, that hasn't been introduced yet, he references, may I quote, Mr.

Corbett's very unreasonable fees for many things listed on his invoice such as. Was that your verbiage, very unreasonable, do you recall?

A: It could have been. I don't know. I mean, I write e-mails and it could have been paraphrasing from something I wrote.

Q: I should ask him what he meant, I guess, huh?

A: Probably.

Q: Do you have an impression, though, at this point in time with his writing this that he was referring to the initial invoice for the 69,000 as opposed to what was paid in settlement, 48?

MR. LINDEMANN: Your Honor, object to him asking what the impression of I guess Lieutenant King is in writing his report.

THE COURT: Mr. Lark, I think he's correct there. You can ask Lieutenant King, you can ask whoever prepared that document.

MR. LARK: Right.

THE COURT: But I think we've already established that Mr. Watson doesn't know, hasn't seen that document.

MR. LARK: Okay. Very good.

THE COURT: So, sustained.

MR. LARK: Okay.

Q: Well, but, Mr. Watson, didn't you make a call to Wayne's and represent that you were working on behalf of somebody and you -- they gave you the initial invoice?

A: I think I got the initial invoice from Sentry Insurance or Premier. I'm not sure if Wayne's gave it to me or not.

Q: Okay. Would you agree that this was a commercial shipment?

A: Yes.

Q: Have you familiarized yourself with either the 2016 or the 2017 South Carolina wrecker rate schedules?

A: Yes, I'm familiar with it.

Q: Okay. Do you know whether they allow for one or more invoices under certain circumstances?

A: I'm not familiar with one or more invoice, whether they can or cannot.

Q: You're here only to discuss matters related to the Premier accident, correct?

A: Yes.

Q: Do you have any other dealings with DPS in pending matters, South Carolina DPS?

A: I think they've all been settled or handled

already.

Q: Did you have any role in the Class C survey that DPS took last fall for creation of the 2017 wrecker schedule?

MR. LINDEMANN: Your Honor, object to anything having to do with the 2017 wrecker schedule as not relevant.

THE COURT: I agree. Sustained.

MR. LINDEMANN: Thank you.

Q: Did you have any role as to the creation of the 2016 wrecker rotation schedule?

A: I'm not sure. I gave them the California Highway Patrol agreement and they might have used some of that on it, but I don't know if it's '15 or '16 or what year it was.

Q: Do you have that with you? Do you have that California agreement with you?

A: No, I do not. You can get it online if you need it. I can get it for you.

Q: Do you know the website?

A: CHP TSA, whatever year you're looking for. Like 2016.

Q: CHP?

A: California Highway Patrol, but CHP ---

Q: TSA.

A: --- TSA ---
Q: Okay.
A: 2016. I was on that committee for four years.
Q: Okay. Very good.
MR. LARK: That's all I have, Your Honor.
MR. LINDEMANN: Real quick on reply, Your Honor?
THE COURT: Yes, sir.
MR. LINDEMANN: If I could get this marked as the next exhibit.
(Respondent's Exhibit Number 28 was marked for identification purposes.)
MR. WATSON - REDIRECT EXAMINATION BY MR. LINDEMANN:
Q: Mr. Watson, you were asked a question about from whom you received initially the first invoice, as well as the photographs from -- that were taken at the scene. Let me hand you what has been marked as Respondent's Exhibit 28 and see if that refreshes your memory.
A: Yes.
Q: Looking at the -- the e-mail at the bottom of the page, is that the e-mail where you received those materials?
A: Yes, it looks like -- yes, looks like the very first item came from Krisann Dailey.
Q: All right. So, this would be actually the

assignment of this matter to you?
A: Yes.
Q: And it came from whom?
A: Krisann Dailey.
Q: And who is she with?
A: She's a file handler for Sentry Insurance that -- for the self-insured trucking companies.
Q: All right. And attached to that exhibit are the photographs that were taken by the independent adjuster that was on the scene?
A: Yes.
Q: All right. There's also -- I see she says the tow invoice came in three chunks, invoices attached. If you would flip over a couple of -- well, I guess one page, and flip through those, is that the initial invoice you received?
A: I would say yes. I received so many invoices on this that I can't really remember all of them, but there was numerous invoices on them.
Q: And the first invoice came in three -- as three different separate invoices?
A: Yes, what it states, yes.
Q: All right. And ultimately, then, Exhibit Number 6 that we looked at was one where it was

all combined and came out to about $69,000, correct?

A: Yes.

Q: I think Mr. Lark also asked a question about whether you provided those photographs to the Highway Patrol.

A: Yes.

Q: Does the e-mail on the top of the first page of that exhibit, does that indicate that you were the source of that information?

A: Yes.

Q: Okay. And on what day did you send that information to Captain Hughes?

A: February 15th, 2016.

Q: Okay. And it shows three different attachments to that e-mail, correct?

A: Correct.

Q: All right. So, that would have included this initial set of invoices plus the photographs that were taken by the Custard adjuster?

A: It appears to be that. I'm not sure if it went in two different groups or whatever. That's a pretty good size for one e-mail.

(Off the Record)

Q: All right. Let me hand you what's already

marked as Respondent's Exhibit Number 8.

A: Yes.

Q: And tell me what that is.

A: Bob Watson to Lieutenant King, Captain Hughes, Wayne's Towing. And it says we were forced to pay $48,000 today to get the cargo out. Complaint is still on.

Q: What's the date of that e-mail?

A: March 7th.

Q: And in addition to mentioning how much was paid, you're telling them the complaint is still on?

A: Yes.

Q: And what did you mean by that?

A: That I'm not withdrawing the complaint for Premier or Sentry.

Q: Okay.

A: The complaint still stands.

MR. LINDEMANN: Your Honor, at this time, I would move Exhibit Number 8 into evidence and 28, as well. I don't think I did that.

THE COURT: Okay. All right. Well, let's start -- go back and do them in order. Respondent's Exhibit 28.

MR. LARK: No problem, except that I would just

request that the APA rule be applied that the pages be numbered continuously, so the 38 -- 1 through 38 -- 35 pages of photos and if the numbering could just be directed to be done or otherwise done by Respondent, so it's not -- it's just a housekeeping thing. Normally it would begin with -- like here it didn't start -- begin with one and would go through ---

THE COURT: So, you want the e-mail and the attachments numbered, is that ---

MR. LARK: Yes. Or if you want -- I mean, I'm okay if -- since the photos are numbered, if just these draft invoices have an associated number for the court records so in case there's a citation to them, we can just ---

THE COURT: Okay. It looks like they are -- they're numbered with a dash one, two, and three; is that correct? I haven't seen them, so.

MR. LINDEMANN: Yeah, I'm going to show them to you. It's an e-mail on the cover, then there are several invoices and then the photographs at the rear of the exhibit.

THE COURT: I beg your pardon then because that's -- -

MR. LINDEMANN: We can number those during the

break, Your Honor.

THE COURT: Okay. All right, subject to that housekeeping requirement, otherwise, no objection?

MR. LARK: That's fine.

THE COURT: They're admitted.

(Respondent's Exhibit Number 28 was admitted into evidence at this time.)

MR. LINDEMANN: And then Exhibit Number 8, which was the March 7th e-mail, we'd move that into evidence, as well, Your Honor.

MR. LARK: No objection.

THE COURT: Without objection, Respondent's Exhibit Number 8 is admitted.

(Respondent's Exhibit Number 8 was admitted into evidence at this time.)

MR. LINDEMANN: I have no further questions for this witness, Your Honor. Even though he's not under subpoena, I would ask if The Court would release him so he can return to North Carolina.

THE COURT: Mr. Lark, are you okay with Mr. Watson taking off and leaving the state?

MR. LARK: I know he'd rather stick around.

THE COURT: Well, we're not going to make him leave, but I just ---

MR. LARK: I want to make him feel somewhat welcome. Do I have a right for a surrebuttal or -- I don't know that I have any particular question, but it's a discretionary matter I think with the Judge.

THE COURT: Well, we've had a couple of things admitted that, since we haven't had that chance to do, if you want to cross-examine him on those two documents.

MR. LARK: Yes, sir. May I, then?

THE COURT: Yeah.

MR. WATSON - RECROSS-EXAMINATION BY MR. LARK:

Q: With respect to Exhibit 8, R8, we were forced to pay 48,000 to get the cargo today, that was Monday, March the 7th, complaint is still on, why is the complaint still on?

A: Well, we're saying we're not -- that I'm not resolving the complaint. I'm not -- you file a complaint and when you're done and you have to send a notice that it's settled, it's done. And this is not done. Premier said it's not done and so that's -- the complaint is still ongoing today.

Q: As you've said earlier then, when you said that since the matter was referred to Sentry of the

Premier counsel, that you didn't get paid anything.

A: I didn't charge anything.

Q: Okay. So, you mean you came into this matter without the potential for any payment?

A: No.

Q: The answer is yes, that's how you came into it?

A: I came in not expecting payment. I could bill Sentry or Premier for services. I have not decided, you know. I really don't like lawsuits and I don't want to get involved in it because that's not what I do for a living. And so, I don't want to sit there because a lawsuit thinking I'm going to charge a lot of money for me being here, so I don't charge.

Q: Don't get me wrong. I'm just trying to get clear. You still may charge Sentry and/or Premier for work in this matter?

A: I could.

Q: Is it your testimony you don't have any intention of doing so or you're just keeping your options open?

A: The option open. And if it's gets -- if it gets involved again where I have to come back in and into a lawsuit, then I would probably be

involved in charging. But at this date, no.
Q: Okay. As to Exhibit 28, collective Exhibit 28, on the top sheet, the world gone nuts, you reference a $76,000 invoice, wasn't it you who insisted on invoices be separated by Wayne's --
-
A: No.
Q: --- into three parts?
A: No.
Q: No? Why do you think they generated separate invoices?
A: I think Premier asked them to separate it because there's two or three different insurance companies on it.
Q: How many hats are you wearing in this matter? You've been saying -- haven't you been testifying that you've been working on behalf of Sentry?
A: I'm working on behalf of Sentry, Premier, Travelers.
Q: And do you have engagement agreements with any of those entities?
A: I do not have a direct engagement agreement. If you read the e-mails, they ask me to handle it. Travelers said handle it through me. I'd

be a single point of contact. So, you could use those as an agreement or not an agreement. It's up to how you want to perceive what it says. But there's plenty of e-mails in there with everybody on it and nobody says do not get involved.

Q: If I have to find the specific e-mail, I will, but if you can agree with this, then I won't have to prolong this. Do you recall early on sending an e-mail to the group saying, let me handle the billing?

A: Yes.

Q: And ultimately Premier handled the billing, did it not, and not you?

A: You're talking apple and oranges. In the very beginning, Premier was handling it. They brought me in through Sentry Insurance and Travelers in to handle it. Okay. I said let's use one point of contact and that's what Travelers said in there. When I could not get the cargo released, it was a critical thing to get done and they brought in Scott Zottneck to get involved in it to get it released. So, I started, stopped, started, and stopped, so ---

Q: Are you offering any testimony as to whether

Scott was effective in doing that or succeeded in doing that?

A: Ask that again for me, will you?

Q: You said they brought Scott in, the lawyer for Premier, to resolve the matter. Are you saying that his involvement is what led to the settlement?

A: I would -- I don't know that. That's involvement -- got the settlement. I don't know if it was Premier or Scott that did it.

MR. LARK: Thank you.

THE COURT: Back to the original question. Are you okay with him leaving the State?

MR. LARK: Oh, yeah. Well ---

THE WITNESS: I like it here. Taxes are cheaper.

THE COURT: Well, we can allow you to move from Cornelius.

MR. LARK: I mean, this is going to be ---

THE COURT: I know the pizza places there kind of keep you attached, but ...

MR. LARK: I can't imagine the weather's going to be any nicer there than it's going to be here today and the next couple of days, but, yeah -- no, we don't have any objection.

THE COURT: All right. Mr. Watson, thank you for

being here and you may depart. And if you wish to leave the state and go back to North Carolina, you may.

THE WITNESS: I like your haircut, too.

THE COURT: I think we have the same person cutting hair, don't we? I shouldn't say that. I cut my own.

THE WITNESS: I cut mine, too. Every Monday morning.

THE COURT: So, we sort of do. All right.

MR. LARK: I'm familiar with the zero setting myself up there.

THE COURT: All right. Mr. Lindemann?

MR. LINDEMANN: Thank you, Your Honor.

THE COURT: What we got next?

MR. LINDEMANN: We've got Lieutenant Nichlous King, Your Honor.

THE COURT: All right. What's the -- what time is it now?

LAW CLERK: 1:00 o'clock.

THE COURT: It's 1:00 o'clock.

MR. LINDEMANN: Wow. 1:00 o'clock already.

THE COURT: Would you rather take a lunch break now and get Lieutenant King an opportunity to prepare himself for the afternoon?

MR. LINDEMANN: We can certainly do that, Your Honor.

THE COURT: All right.

MR. LINDEMANN: I don't envision him being as long as Mr. Watson, but still he's not going to be, you know, 10 or 15 minutes, either.

THE COURT: All right. So, it's approximately -- what is it, not quite 1:00 o'clock, is it?

LAW CLERK: 12:57.

THE COURT: All right. What's the wish of the parties in terms of the lunch period? An hour, hour and 15, hour and a half?

MR. LARK: Whatever's more convenient for you.

MR. LINDEMANN: Hour and 15 will probably be fine.

THE COURT: All right. So, we'll give you the extra couple of minutes here, so I'll bring us back at 2:15.

MR. LINDEMANN: Sounds great. Thank you, Your Honor.

THE COURT: We'll be at ease until then.

(Off the Record)

THE COURT: We're back on the record in case number 16-ALJ-30-0410. Mr. Lindemann, I believe you have a witness for -- to entertain us this afternoon.

MR. LINDEMANN: I do, Your Honor. Actually, Your Honor, one housekeeping matter. Mr. Lark and I talked during the break. To prevent me from duplicating his exhibits, we're going to agree to move into evidence a couple of the Petitioner's exhibits, if that's fine with Your Honor.

THE COURT: That'd be fine.

MR. LINDEMANN: Exhibit Number 1, just so The Court is aware, is a copy of the Petition itself, whereas that's not really evidence, but there were a number of exhibits to the Petition. We're agreeing that all of the attachments -- well, the Petition itself can go into evidence too, but the attachments to that Petition ---

THE COURT: Okay.

MR. LINDEMANN: --- are going into evidence.

THE COURT: Well, that's Petitioner's Exhibit 1?

MR. LINDEMANN: That's right. And that exhibits A through D.

MR. LARK: And the Petition.

MR. LINDEMANN: And Petition.

THE COURT: Okay. Is there anything in that exhibit that's not coming in?

MR. LINDEMANN: Just for clarification, there was

exhibits E and F that were attached to the Amended Motion for Writ of Mandamus. He has that is his second, as Petitioner's Exhibit Number 2. We are objecting to that on the basis of relevance. And we can take that up at the appropriate time.

THE COURT: Okay. So ---

MR. LINDEMANN: So, simply on his list, Number 1, copy of the original Petition for Contested Case Hearing ---

THE COURT: Admitted with the agreement -- on the agreement of the parties?

MR. LINDEMANN: Right.

MR. LARK: Yes.

(Petitioner's Exhibit Number 1 was admitted into evidence at this time.)

MR. LINDEMANN: Petitioner's Number 4 are responses to requests for admissions. He can obviously put those into evidence. I know at the appropriate stage with respect to one of the denials in that, I want to publish an interrogatory. But I'll remember to do that or try to remember to do that before ---

THE COURT: All right. And that's Petitioner's Exhibit 4?

MR. LINDEMANN: That's correct.

THE COURT: Is that right? And, again, by agreement of the parties?

MR. LARK: Yes, sir.

THE COURT: Admitted.

(Petitioner's Exhibit Number 4 was admitted into evidence at this time.)

MR. LINDEMANN: And then Petitioner's Exhibit -- excuse me. Yeah, Exhibit Number 5, which is a FOIA response. Some of that might be duplicative, but I have no problems with Number 6 (sic) going into evidence.

THE COURT: I'm sorry. Five or 6?

MR. LARK: Five.

MR. LINDEMANN: I'm sorry. You're right, 5, 5.

THE COURT: Okay. Again, by agreement -- admitted by the agreement of the parties.

MR. LARK: That's right.

(Petitioner's Exhibit Number 5 was admitted into the record at this time.)

MR. LINDEMANN: And then Number 9, which is the Cargo Confirmation In Re: Premier Shipment of Dog Food.

THE COURT: Yeah, that's Petitioner's Exhibit Number 9, admitted with the agreement of the parties.

MR. LINDEMANN: Yes, Your Honor.

MR. LARK: Yes, Your Honor.

(Petitioner's Exhibit Number 9 was admitted into evidence at this time.)

MR. LINDEMANN: And I think that's it for right now. But Number 1 was key because it's go a lot of pertinent documents.

THE COURT: Okay.

MR. LINDEMANN: We would call Lieutenant Nichlous King, Your Honor.

THE COURT: All right.

NICHLOUS KING, having been duly sworn, testifies as follows:

MR. KING - DIRECT EXAMINATION BY MR. LINDEMANN:

Q: Good afternoon, Lieutenant King. Could you give me your full name, please?

A: Yes. Nichlous Wellington King.

Q: And by whom are you employed?

A: South Carolina Department of Public Safety, South Carolina Highway Patrol.

Q: In what capacity?

A: I'm a Lieutenant in Troop 7.

Q: And how long have you been with the Highway Patrol?

A: Twenty-three years next month.

Q: Can you give an explanation of where Troop 7 is located?

A: The headquarters itself is in Orangeburg, but we consist of Orangeburg County, Aiken County, Calhoun County, Bamberg, Barnwell, Hampton, and Allendale.

Q: Okay. So, that includes Aiken County?

A: Yes.

Q: If you would, just give the Judge a thumbnail sketch of your background before you came to the Highway Patrol. You know, married, children, education, that sort of thing.

A: I'm from Manning, South Carolina. Graduated high -- grew up there, graduated high school there. Went in the military in 1988. I was stationed in Camp Pendleton, California. Got -- went to Desert Storm. Got out in 1992. And was employed shortly as a -- at a grocery store until I applied for the patrol and was hired in 1994. And stationed in Aiken for a short period of time. Transferred to Orangeburg County. And did a stint on the drug team. Went back to my home county. And then came back to Orangeburg County for my first promotion in 2004. And I've been basically in

Orangeburg County ever since then. And married for 25 years this year in September. And I have two boys, 23 and 20.

Q: Thank you, Lieutenant King. Could you just briefly explained -- this is kind of a long question I know, but just briefly explain what the wrecker rotation list is.

A: The wrecker rotation list ---

Q: What its purpose is.

A: The purpose of it is to be fair with local wrecker services within the areas of responsibilities of the county. The Highway Patrol rotation list is -- in a sense is, if there's an accident in that particular county, some counties are large enough to have its own areas where those zones can be split up. And I'll give you an example. In Orangeburg County we have five zone, so there are five different wrecker rotations in Orangeburg County that a wrecker service can be assigned to. And the reason for that is, the bigger the county, the distance of that county from one end to the next, it wouldn't be fair for a citizen or even that wrecker driver service who is, Orangeburg County one end to the next can be over an hour,

for a wrecker service to drive an hour to one end to the next or a citizen to wait for an hour, so we split if up so they can get their quick response time. So, if a citizen gets in an accident or they're broke down and they don't have a wrecker service that they're familiar with in the area and they have no idea who they would like to have come out, then the Highway Patrol has a rotation list. And that rotation list is kept at our dispatch area and they go in order. Whoever is in order at that time, then they're dispatched to come to that scene to handle that call, whatever it may be, a disabled vehicle or a collision.

Q: What is your involvement as far as administering a, yeah, administering is a good word, the wrecker rotation list within Troop 7?

A: My job is to -- wrecker services send -- applications come through me. And then I distribute those applications to the first sergeants that would be in those -- in our areas. Our areas are divided up in posts. Orangeburg is one post. Allendale, Bamberg, Barnwell, and the Hampton areas is one post in itself. And then Aiken is a post. So, we have

three posts. When those applications come in, I would review that application, just make sure everything is on that application that needs to be on there, for that first sergeant in that area to have. And it's his job from that point, him and his sergeant, them to go out and inspect that wrecker service. Once that is completed, everything is good with that wrecker service and it comes back to me, and then I'll approve it from that point on to go and send to dispatch to be put on our rotation list. Also, my job is that if any complaints about a wrecker service from the citizens or a trooper or whoever that case might, any problems that they have with one of the wrecker service, it comes through me. And I try to handle or mediate or handle that complaint that needs me.

Q: Did the public -- the Department of Public safety adopt regulations with respect to the operation, administration of the wrecker rotation list?

A: Repeat that again, please.

Q: Yeah. Are there regulations in place? Regulations that have been adopted by -- through the APA, by the Department of Public

Safety?

A: Yes.

Q: That actually regulate the use of wreckers under the rotation list?

A: Yes, sir.

MR. LINDEMANN: And, Your Honor, I don't know if it would be easier for The Court to make the Regulations an exhibits. I mean, it's not particularly evidence, but it might be handy to Your Honor. I don't how you would like to handle that, but I didn't want to be able to reference them with Lieutenant King.

MR. LARK: I don't have any objection. However, we've already provided those, both the Reg and the Policy as an attachment to our prehearing statement.

THE COURT: That's not evidence. But if what you're going to ask him is questions about the law, then however you want to do it is fine with me, just so -- so the record's clear as to which section of the Reg you're talking about when you ask a question.

MR. LINDEMANN: Well, what I'll do then, Judge, is just -- I'll just reference it. It's South Carolina Code of Regulations 38-600. It's the

Regulation of Wrecker Services, that's the title of those Regulations. And those are the sole ones. So, I'll just reference them then. If I can hand this to the witness.

Q: If you would -- are you familiar with those Regulations?

A: Yes, sir.

Q: If you could turn Section F, which is captioned Rates. It's actually -- if you look at the page number at the top right corner, it's on page nine.

A: Okay.

Q: Wanted you to publish just a couple of provisions. First paragraph 1 under Rate, could you read that into the record for me?

A: Only wrecker services on the South Carolina Department of Public Safety wrecker rotation list shall be subject to these regulations governing fees.

Q: And was Wayne's Automotive and Towing Center, were they on the Department of Public Safety wrecker rotation list in 2016?

A: Yes, sir.

Q: All right. And do these Regulations apply only to calls that wreckers make pursuant to the

rotation list or to other calls as well?
A: To all calls.
Q: Okay. It's -- but all calls that are made by the Highway Patrol?
A: Yes.
Q: That's were I'm getting at.
A: Yes.
Q: If a private citizen calls out a wrecker, they're not governed ...
A: No, sir.
Q: Okay.
A: They don't go through ---
Q: I apologize. That was a bad question. The other paragraph or sentence I'd like you to read, if you would, is under Rates, paragraph two, the first sentence of that provision.
A: Fees charged for rotation list shall be reasonable and not in excess of those rates charged for similar services provided in response to the request initiated by any other public agency or private person. The reasonableness of the fees charged will be determined in the following manner.
Q: Okay. And then it goes through a detailed explanation of how the rates are determined,

correct?

A: That's correct.

Q: All right. But the principle in that first sentence is that the fees must me reasonable; is that correct?

A: Yes, sir.

Q: All right. Is that something you look at when you are evaluating a complaint that a consumer makes?

A: Yes, sir.

Q: When a wrecker service agrees for there company to be placed on the rotation list, do they have to sign off on an agreement?

A: Yes, sir.

Q: Okay. Instead of putting an extra copy of it n, it is part of the Exhibit Number 1. So, let me show you what's already into evidence by agreement. Put that in front of you if you don't mind. And it's page 18 of that particular exhibit.

MR. LINDEMANN: Your Honor, I think I can put a copy of that up.

Q: Tell me what that document is.

A: It is the South Carolina Highway Patrol 2016 Wrecker Rotation Fee Schedule.

Q: All right. And is this for a particular business?
A: It is for the wrecker services that are governed by -- that are on rotation for the South Carolina Highway Patrol.
Q: All right. Is that the form that was actually completed for Wayne's Automotive?
A: Yes, it is.
Q: So, this is the agreement between the Highway Patrol and Wayne's Automotive?
A: Yes, sir.
Q: Let me turn your attention to the specific incident that we're here on. My understanding is it occurred on February 9th, 2016; is that correct?
A: Yes, sir.
Q: And involved the tow and recovery of a tractor trailer owned by Premier Transportation; is that right?
A: Yes, sir.
Q: And were you involved at all in working that accident scene that night?
A: No, sir.
Q: When did your involvement with that particular incident begin?

A: If I recall, my involvement began when I received an e-mail from Captain Grice to look into a complaint that came about from this accident.

Q: Okay. As part of your initial investigation, did you confirm that that assignment to Wayne's Automotive was pursuant to the Highway Patrol wrecker rotation list?

A: Yes.

Q: And why is it that you immediately confirm that?

A: For of all, I have to call dispatch to make sure that -- before I engage in such -- to look into a compliant, I need to make sure that it is one of ours. And what I mean by that, that it was called off the rotation list. So, I called dispatch to confirm that it was called off rotation. And I confirmed it through our dispatch.

Q: Okay. I noticed too that the driver of the Premier truck was charged; is that correct?

A: That's correct.

Q: Did you ever determine what happened to the charges to the ---

A: Yes. He ---

Q: --- to the driver?
A: He was found guilty in his absence.
Q: And was he prosecuted by the Highway Patrol?
A: He was prosecuted by Sergeant Deering, who was a Sergeant in Aiken County employed by the South Carolina Highway Patrol.
Q: All right. Can you -- based upon your investigation, can you give a brief overview of how the accident happened and the positioning of the vehicle, what essentially was presented to Wayne's that early morning on the 9th?
A: From my little understanding is that his vehicle struck the guard face into South Carolina. And as he did, that -- his vehicle then which caused him to overturn. And his vehicle overturned, from my understanding, on the bridge that leads into Georgia from South Carolina onto I-20.
Q: Okay. And ultimately you indicated you got involved because of a complaint?
A: Yes, sir.
Q: All right. And where did that complaint come from?
A: That complaint came from a e-mail from Captain Grice, which referred me to Bob Watson.

Q: Okay. And you ---
A: Or Robert Watson. You know, he referred himself as Robert some days and Bob some days.
Q: Okay. Had you dealt with Mr. Watson before?
A: Yes, I have.
Q: All right. Did you have any communications with Mr. Watson other than by e-mail?
A: Matter fact, I think I called by his cell phone.
Q: Okay. You recall anything about that conversation?
A: I called him because the first thing I wanted to know is have bill. I wanted to see a bill of the things that he alleged that he had issues with. And so, he did, he faxed me or e-mailed -- can't remember which one it was, but he sent me a copy of a bill. And that was my main reason of wanting to contact him, to find out exactly what his issue were and to get a copy of the bill.
Q: Let me look at what's already in evidence. All right. Let me ask you to look at Exhibit Number 6. Can you tell me what that is? And that's Respondent's Exhibit 6.
A: That's one of the bills from the incident.

Q: Okay. Is there an e-mail that's attached to the first page of that exhibit?
A: Yes, it is.
Q: All right. And that e-mail is from who to who?
A: It's from Bob Watson to me.
Q: Okay. And was that the e-mail that provided the invoice that was attached?
A: Yes, sir.
Q: And tell me the date that that e-mail was sent to you.
A: February the 17th.
Q: Okay. Tell me, once you receive that invoice from Mr. Watson, tell me what you would've done next.
A: What I would have done next was contact Mr. Jeff Corbett from Wayne's Towing, in which I did, and advised him that I had a gentlemen, Mr. Watson, that had issues with the bill. And asked them to send me a copy of the bill, of the bill that they had.
Q: All right. Did he do so?
A: Yes, he did.
Q: Okay. And tell me what you did once you got the bills. Did you review the bills at all?
A: I reviewed the bills and took a look at, you

know, what it had on it and the fees and then I gave Mr. Corbett a call back.

Q: And tell me -- take me through that call with Mr. Corbett. But first of all, do you know what day that was that you called him back?

A: I may have called -- I don't recall. It may have been that same day on the 17th or maybe the 18th. I really can't recall exactly what day it was, but we had several conversations back and forth. It may have been that same day.

Q: All right. I may be able to help you with that. Let me hand you what's been marked as Respondent's Exhibit Number 1. Can you identify that document?

A: Yes, sir.

Q: And what is that?

A: This is my investigation letter that I completed to Captain Grice.

Q: And tell me who Captain Grice is.

A: Captain Grice is the Troop Commander of Troop 7, which would be my immediate supervisor.

Q: And he's the person that assigned you to this investigation?

A: Yes, sir.

Q: Okay. Looking at that document, does that refresh your memory as to when that telephone call was placed back to Mr. Corbett?

A: February 19th, it looks like it have on here. February 19th is what I state in here.

Q: Okay. And take me through that telephone conversation, what you and Mr. Corbett discussed.

A: I discussed with Mr. Corbett that the fees that I saw on the bills that were -- on the bill that was given to me for this incident I thought it was very unreasonable for the charges. And I explained to him that what he had put on this bill compared to what the policy said, that some changes needed to be made. And some of those changes such as -- was that the equipment that he was charging, that in order for him to charge that -- for that equipment, the policy states that he can only charge for that equipment if he was contacting that equipment out. But if he owned that equipment, he couldn't charge for that equipment. And that's what he stated to me, he -- that he did contract that equipment out. He had three businesses that he I think did not

Q: Did you explain to him why he needed ---
A: I did not explain to him why. I just explained to him that the cargo did need to be release.
Q: Is there an expectation that experienced wreckers would know the law in South Carolina that's applicable to wrecker services?
MR. LARK: Objection. Calls for a legal conclusion.
MR. LINDEMANN: Just asking for his expectation as far as administering the rotator -- the wrecker rotation list.
THE COURT: All right. So, insofar as your question, asked for an expectation ---
MR. LINDEMANN: Right.
THE COURT: --- and not a legal conclusion, I would allow him to answer it.
MR. LARK: Thank you.
THE COURT: So, overruled.
A: I expect all wrecker services to know the Regulations. That's their job. But certainly a wrecker service at the size of his or any wrecker service at the size of his, that you know the Regulations, yes, sir.
Q: When you raised the issue about releasing the cargo, did he question you at all about it or refuse to do it in any respect?

A: No, sir.
Q: Was it your understanding, based on your conversation, that he would release the cargo?
A: Yes, sir.
Q: Ultimately, did you learn that the cargo was not released at least within proximity of your conversation of the February 19th?
A: I received a call from Bob Watson later on. To be honest with you, I think on this report, February 19th, for a conversation, that that may be incorrect. I think that that should've be around about February 16th I probably had a conversation with him. And the reason I said that, because it was a couple days I may have typed that. I think I -- when I -- it was two reports that I gave to Captain Hughes and I changed it later. And this might be the first one I gave him. Because there was another one submitted to Captain Hughes that I gave later with the correct date of around February 16th I actually talked with him on the phone. But February 19th is when I actually spoke with Bob Watson, who called me and said there's a problem with me getting in touch with them releasing the cargo. He would not return phone

calls.

Q: Let me go back to the issue regarding the invoices for contractors. I believe I understood your testimony that Mr. Corbett had told you that in addition to Wayne's Automotive, there were two other contractors he was using for this particular towing recovery.

A: Yes, sir.

Q: Did he identify who those were?

A: His wife's companies.

Q: His wife's companies?

A: Yes, sir.

Q: All right. And you requested that he include with that invoice that was submitted, the billings of those two separate companies?

A: Yes. Have those submitted, attached to that bill.

Q: Okay. And was that done?

A: No, sir.

Q: Did you ever follow up with Mr. Corbett in order to see why he hadn't followed through with that?

A: Yes, sir. After I received the phone call from Mr. Watson concerning about he was having issues about the cargo, he was getting any

phones and he was having trouble with the cargo being released, I called Mr. Corbett on that same day, on the 19th, and got in touch with him and asked him what was the issues with the cargo being released. And he stated to me that he was not releasing the cargo and he was not submitting anymore bills or anything and that he would just have to accept whenever consequences that came with it.

Q: All right. And is this all outlined in your report which is Respondent's Exhibit Number 1?

A: Yes, sir.

Q: Anything else that you did as far as your investigation?

A: Other than -- no, sir. Just -- you know, just speaking with him. No, sir. That's about it.

Q: All right. Ultimately, did you make some recommendations to Captain Grice?

A: I did. Yes, sir.

Q: And tell me what those recommendations were?

A: My recommendation to Captain Grice was to have -- well, be permanently removed from the wrecker rotation list.

Q: Okay. And id you also make some recommendations -- or make some finding, I

guess. Proposed findings as far as what your conclusions were after reviewing the bills and conducting your investigation?

A: In my conclusions, what the findings were, that my opinion was that the fees were very unreasonable that were proposed on this bill, labor rates.

Q: Yes. Specifically what fees did you focus on?

A: The fees that I focused on were the labor rates for recovery technicians $175 an hour, I thought that was, you know, very unreasonable just for anyone to be charging that amount to be helping, you know, out there doing that. I thought that was very high. Also, I found that by law, that it was -- he was breaking the law by holding the cargo, which I found -- and that was one of the other reasons that I found that he -- in my findings that he was breaking the law. Even after I told him that he needed to release it and that he needed to let the cargo go by law, he was -- he was breaking the law.

Q: Okay. And by that, what law are you referring to, the statute?

A: The ---

MR. LARK: Your Honor, I need to, I'm sorry, object

to the extent he's referring to his conclusions of law again. If he wants to ...

THE COURT: Well, I -- Mr. Lark (sic), you got anything to say to that?

MR. LINDEMANN: The same. And I'm happy to give it. It's 56-5-5635, Subsection F.

THE COURT: I think the questions is asking what he did and why. He's not giving you a legal conclusion so much as he's giving you the basis of what ...

MR. LARK: I took that, his answer, to incident that this is a matter regarding personal property, which it is not about -- Watson's already testified it was a commercial matter, it's commercial property, not personal property. The statute's only specifically deals with personal property, Your Honor. So, that's why I rose it, to the extent he might be offering an opinion about the scope of the section.

THE COURT: Okay. I think that's -- I think that is legal matter that you may address an argument. His -- he's just saying why he thought -- why he told Mr. Corbett about releasing the cargo and the basis for that. Now, he can be wrong. He's not a lawyer. He's not a judge.

MR. LINDEMANN: That's correct. I totally agree with you, Your Honor. And ultimately whether or not the statute applies to the dog food will be ultimately the decision for The Court to make.

THE COURT: And I would be glad to hear argument on that one when the time comes. But to that extent, I'm going to overrule the objection.

MR. LARK: Okay. All right.

Q: I just want to make certain that we were on the same page. You were referring to that particular statute?

A: Yes, sir. I was.

Q: Okay. A couple other points real quick. You also made reference to charges for the equipment itself, the records itself, that there were -- and what I'm looking at is the second bullet point on page two of your report. If you can elaborate on that.

A: He charged 12,000 -- you talking about that right there?

Q: Yes.

A: $12,295 for equipment that he never submitted a separate bill for as instructed that he required to by South Carolina Patrol wrecker

regulation, which a representative from his business signed this fee sheet in 2015. And then this fee schedule, it states, although no special operation fee is set for Class C tows, a wrecker service may recover the actual cost of rented, slash, subcontract equipment or labor if necessary to accomplish a job. And, you know, I -- when I was trying to mediate this thing, that was one thing I was trying to help him out and tell him that he needed to do. And he just -- at the end when he said he was going do it, just told me he wasn't going to do it.

Q: And by the time you closed your investigation, had he ever submitted those invoices from third-party contractors?

A: No, sir.

MR. LINDEMANN: Beg The Court's indulgence. No further questions. Please answer any questions Mr. Lark may have. I need to move into evidence, Your Honor, Respondent's Exhibit Number 1, which is Lieutenant King's report.

THE COURT: Yes, sir, you do. Respondent's Exhibit 1.

MR. LARK: No objection.

THE COURT: Without objection, Respondent's Exhibit 1 is admitted.

(Respondent's Exhibit Number 1 was admitted into evidence at this time.)

MR. LINDEMANN: Thank you, Your Honor.

MR. LARK: Last time I looked up, you were writing or looking down. May I begin, sir?

THE COURT: Yes, sir.

MR. KING - CROSS-EXAMINATION BY MR. LARK:

Q: Lieutenant, with regard to the Exhibit 6, which is the invoice in your testimony concerning other businesses, do you have -- I can just bring it to you. This is a part of the Exhibit 6. I'm not sure if you have a copy of that in front of you, but do you see that at the top of that invoice has the -- both the towing center and the incident management company as being -- as billing this? Do you see that?

A: I see Wayne's Automotive and I see a -- what is it, SCIMs?

Q: S-C-I-M, Spill Containment Incident Management? You see that, correct?

A: Uh-huh (affirmative response).

Q: Okay. Does that indicated to you on a joint invoice? Or have you ever seen that -- notice

it? I'm sorry.

A: No. It was never presented to me.

Q: I mean, this came -- you're not saying you didn't receive it, you're just saying nobody brought that up to your attention?

A: Nobody brought it to my attention and I also received several different invoices. This was not the only one. I received one from Mr. Corbett with a different price. And then I received one from Mr. Watson. And I think this is Mr. Bob Watson's own. But the one I received from Mr. Corbett was different price. And I had two different invoices at the time. I don't know which one in this -- I don't know if it's Mr. Corbett's invoice or the one that Mr. Bob Watson gave.

Q: Okay. Was your first communication concerning this accident a call from Captain Grice to you on February 16th?

A: It was an e-mail.

Q: Okay. Thank you. That's the top -- first sentence of your Exhibit R1. And did you have phone conversations with Bob Watson about this matter?

A: I did.

Q: And were those initiated by you?
A: It was.
Q: And would it be fair to say that your bullets relate -- or that you relied upon Mr. Watson's information for your quantification of alleged overcharges?
A: No. I did not.
Q: Okay. What I would like to do is, we'll look at your -- it's Exhibit R1, if we may. And I'm going to be going through these and see if you have anything different to add. That initial invoice of February 10th, '16 was $69,017.19. You agree with the that?
A: Yes.
Q: And that a settlement invoice amount for the Premier check that's included, $48,633.19?
A: I've never seen it, so I would have to assume that's what it is.
Q: You ---
A: I've never seen the check for $48,000.
Q: I think it's already in with -- through the Respondent's exhibits actually that is otherwise P Number 1. This is part of the Petitioner's Exhibit Number 1, Your Honor. And it is page number 24. And is that amount ---

A: Yes.
Q: Is that consistent with what's up there on the board, 48 ---
A: Yes, sir.
Q: Okay.
A: Yes, sir.
Q: And that is page 24 of the Petitioner's Exhibit 1 and already admitted. So, do you -- I mean, do you want to accept subject to check that my math is correct or do you want to ...
A: I'll stipulate it's correct. I won't try to figure it out.
Q: Okay. So, then -- bullet one, you see -- what I'm doing is looking at your bullets. And bullet one, you're complaining or directing the reader's attention to 21 hours, right? And so, 21 hours is the extent of your disagreement. And on bullet two, the 12295, assuming that those are for air cushions and mobile communications, that those amounts would be considered. Bullet three, do you see where I'm going, looking at your bullets? Bullet three is -- you're talking about three technicians. You give the total of 10,850. And then you -- if you take your deduction of 3,100, then the

total -- revised total becomes $7,750. Do you agree? Right there.

A: Yes. Yes, sir.

Q: Okay. And then the second one with regard to the recovery technicians, that if you take the amount included in your deduction, that the net is $4400?

A: Yes, sir.

Q: Next step. Reducing the recovery technicians to 35 from $85 is a $50 difference?

A: Yes, sir.

Q: Reduction where the labor workers -- labor worker on number four is deducting 962.50 from 1475 is 512.50, accept that subject to check, the difference?

A: Yes, sir.

Q: And five -- the three workers to transfer and re-pack of a thousand, which should be reduce $75.00 to 925. Do you agree with that math?

A: Yes, sir.

Q: And number six, charging for duplicate services. That essentially means you have seven -- you took out the $750 leaving that amount -- only one of those amounts of 750; is that correct?

A: Yes, sir.
Q: So -- thank you. So, from the settlement adjustments of 20,633.19 that we first looked at, your total adjustments equal 14,387.50 or the difference of $20,384. Do you agree with that math, that deduction? Will you accept that calculation subject to check?
A: You're saying that the 14 from that 20 is 25?
Q: Oh, no. That's a different -- that's an error. Good. It got you on your feet. So, if the $6,000 from 245.69 is the corrected number, then the difference made to King -- excuse me one minute. Sorry for that delay. The difference with your adjustments in the settlement, minus from the initial invoice that you're complaining about, take out the $20,633.19, you agree that equals $48,384, subject to check -- further check?
A: To be honest with you, I'm confused about what you got going on.
Q: I am totaling the difference of your adjustments. I think you've already agreed that there are $14,387.50 in adjustment if you -- or you've accepted that subject to check. So, if you take that amount -- so, if you take

that adjustments out of this, the balance -- the difference is 6,245.69, which I put over here. And so, the total of what the bill would have been to pay if they followed -- you follow your adjustments, would have been $48,384 and the settlement invoice was for 48,613.19. So, the difference of your -- using your adjustments from the actual payment is less than $300. Do you ---

A: Excuse me. I'm not a mathematician, but if you took my $14,000 that you said you came up with the deductions that I, you know, said ---

Q: Right.

A: --- from the $69,000 bill, wouldn't it be $54,000, like you have up there? I don't know where the 48,000 come from.

MR. LARK: Did I have it right to begin with? Apologize, Your Honor. I was not a math major.

Q: But my -- so, I will stand by this amount to say -- do you see where -- that Wayne's could have charged under your approach $65,414.69 as opposed to the $48,000 -- I'm sorry. I messed up. Could have charged $54,000 instead of the $48,000?

A: No. He couldn't charge that, but I see what

the math comes out to be, but ...

Q: Why couldn't he have charge that? I mean, that takes care of all your adjustments.

A: Because it was still overpriced. He could only charge 436 an hour and then the subcontracting ---

Q: Oh, you're doing the one truck one, person rule.

A: 1436 and then ---

Q: One person, one truck.

A: It's in whatever his subcontractors -- come out to be. It would have been better off if everything was submitted like he -- like I told them. And it would have been, you know, easier to understand, but it never got to that point like I instructed him to do. The way he had it put out, was submitted in an unreasonable way and not the way that the regulations required him to.

Q: Do you agree there was pressure to -- exerted to get an initial bill out as quickly as possible?

MR. LINDEMANN: Object to the form, Your Honor. I don't know that he has laid a foundation that he would know that.

THE COURT: Right. I'm going to sustain that objection. Try that question a different way.

Q: Is that there -- part of the Department of Public Safety's -- or primary, perhaps, purpose is to enhance the safety of the highways and those traveling on it?

A: Yes, sir.

Q: And as part of the rotation list or any other type of accident, is there a -- do patrolmen have a interest in getting the roadway cleared up as quickly as possible, but to minimize the chance of secondary accidents?

A: That's correct.

Q: And do you agree or do you have an opinion about whether or not institution of what's known as the one truck, one person rule has a tenancy to decrease the safety and lower the -- increase the risk of secondary accidents?

A: I think you bring what you need for the job, but if you agree to a certain contract, then you -- then you're obligated to that contract. But you bring what you need.

Q: Would you say that in response to misunderstanding about -- or apparent misunderstanding about the intention in the

2016 schedule that the Department made changes to the 2017 schedule?

A: Changes was made, but I have now idea that it was because of misunderstandings or whether it was made for the betterment for the wrecker services.

Q: Were you here -- were you at the deposition of Captain Hughes?

A: No, I was not.

Q: Okay. Do you question that the payment by Premier of that check amount that I showed you a minute ago constituted the total settlement ---

MR. LINDEMANN: Object to the form, Your Honor. I don't know that he has that -- a foundation to be able to testify to that.

THE COURT: I think you're asking for him to know the intent of the person who wrote the check. But I don't think he knows that, so I'm going to, again, sustain that objection.

Q: Do you recall stating that you -- that there was separate litigation going on between -- involving Wayne's?

A: Between Wayne's and who?

Q: I don't know. That's what I'm -- part of what

I'm curious about.
A: I stated I tried to have him and Mr. Watson mediate between each other the deal before I got -- really get involved.
Q: I'm reading from your Exhibit R1, second paragraph on page two. As of February 29, 2016 the insurance company that Mr. Watson represents is in Civil Court with Mr. Corbett for the release of cargo and fees. That's not true, is it?
A: That's what was told to me.
Q: Who, by whom?
A: Mr. Watson.
Q: So, you -- did you totally rely on Mr. Watson for the calculation of these numbers that you ---
A: No, sir.
Q: --- have gone through in less than stellar fashion? Okay. Do you recall at your deposition acknowledging you're not a rate expert?
A: I'm not a rate expert.
Q: And that this was the first complaint that has ever gotten to this stage?
A: To get to this stage, yes, sir.

Q: And that typically, I think why you mentioned the term mediation, that it's -- it wasn't that you -- that most matters were settled through mediation or through -- pursued through a process prior to coming to this stage, correct?
A: Correct.
Q: Is it fair to say that the numbers that we went through for the deductions for what you're saying are the very unreasonable fees, they -- he lifted those from the Watson complaint, you accepted those as reasonable rates, as alternative rates?
A: I got them from ---
Q: From Watson's complaint that's already in.
A: I generate those. They came from me, not from Watson.
Q: Based on what?
A: They were just very unreasonable and I just thought to use a little bit of common sense would lead me to think what fees and as workers in these -- in this area would might use and what it would take to pay someone in this -- that type of work.
Q: Do you have any kind of statistical database upon which to rely in doing that, making that

-- those adjustments?

A: No, sir.

Q: So, there was no review as with -- they're suppose to be annually for the fee schedule of any kind of database that you had access to to support your numbers, they're your numbers?

A: I didn't get in depth to that point because I didn't need to because he was only supposed to charge 436 an hour. That was just my opinion, that if he was able to charge labor fees, then that is what I would think someone should have been able to charge. If he could charge in the first place that.

Q: Are you saying that if he had accepted your adjustments in terms of settlement, that you still would have questions about whether it was reasonable to settle for that?

A: Correct.

Q: Even if Premier would end up having paid more than it did, more than the 48,633.19?

A: Correct.

Q: Your rate schedule does not apply to interstate commerce, does it, interstate towing wrecking services?

A: Who -- repeat that again?

Q: Does your rate schedule, the 2016 schedule, apply to interstate towing services, provision of interstate towing services?

MR. LINDEMANN: Your Honor, objection to the extent it asks for a legal conclusion. I mean, I think ultimately that'll be, again, a decision for Your Honor to decide.

MR. LARK: I'll rephrase.

Q: You didn't go to the site, the accident site? I think you already mentioned that.

A: That's correct. I did not go to it.

Q: Did you rely upon the collision report in believing that South Carolina could use the rate schedule?

A: If I'm understanding you correctly, I relied on it because that is what is instructed that what a Class C wrecker service can charge and also speaking with the investigating officer about where the accident occurred, if I'm understanding you correctly.

Q: And that would be Deering.

A: That's correct.

Q: And at the time I think he was a Corporal ---

A: He was a Corporal at the time.

Q: --- and now he's a Sergeant.

A: That's correct.
Q: And I don't think I've seen him here. Is he here today?
A: No, sir.
Q: And there -- but we both agree that there's a disclaimer at the bottom of the collision report, which is now introduced in this material, that this is not to be taken as factual information?
A: I would need to see it. I haven't even ---
Q: Okay.
MR. LARK: Your Honor, we have in our numbered pages for that Exhibit 5. Your version may be better than mine, but I'm looking at page nine of that Exhibit at the bottom.
Q: Lieutenant, this is what I'm looking at. This is the collision -- traffic collision report form for this matter. And you see the -- can read the disclaimer at the bottom?
A: I apologize. I don't have my glasses with me.
Q: I'll be glad to read it ---
A: TR-310 and it's for statistical reporting purposes only and is a reflection of the officer's best knowledge, opinion and belief covering the collision but -- and then I don't

know what that part says. It's clipped out. That's made as to the factual accuracy therefore.

Q: Okay.

A: I don't know -- I guess that's warrant ---

Q: Warrant, yes.

A: --- that's made as to the factual accuracy.

Q: Okay. No warrant is made as to the factual accuracy. But is what you heard or discussed with Mr. Deering consistent with the report, they are consistent?

A: To be honest with you, I have never actually looked at the report itself. I've always just spoken with the investigating officer directly, which would have been Deering. But I never sat down and actually reviewed the report, so I would assume the report would state what he told me.

Q: I mean, the report was prepared by my Deering.

A: Yes.

Q: Okay. So, it's the same person?

A: Same person.

Q: I think it's probably clear, but just in case it isn't, in your -- let's see. In your first bullet, you are relying on your discussion with

Corporal -- then Corporal Deering again and Rucker about the time taken for the cleanup, since you weren't there you relied on what they told you?

A: That's correct.

Q: Okay. Are you aware of any difficulties that Wayne's personnel may have encountered on site in cleanup and recovery operations?

A: No, sir.

Q: Are you aware of any ability of a company like Wayne's to expense the cost of items such as air cushions and mobile communications equipment for their tax -- for tax purposes?

A: The only thing I knew about the -- with the air cushions, they had problems with what was told in the complaint about Wayne's. That's only thing ...

Q: And what was that?

A: I mean, not by Wayne's, but by Mr. Watson. That he had air cushions that were broken, that he broke.

Q: That Wayne's did?

A: Yeah.

Q: Yeah. Okay. So, you relied on Watson or that's your recollection?

A: I rely on anyone that submits a complaint to me. I have to hear their information in order to look into it.
Q: Do you know whether or not a recovery vehicle for Incident Management was used on the scene that actually was a converted fire truck?
A: No, I don't.
Q: Do you know whether those air cushions that were punctured were first thought not to be repairable, do you know anything about that?
A: No, sir.
Q: But that they turned out that they can be -- were able to be repaired?
A: No, sir.
Q: Do you know anything about that?
A: I don't know anything.
Q: Do you have any position as to how to reconcile the reference in the schedule to an additional invoice for Class C tows for which no fee is set with the Regulation? Do you, on a layman's basis, have any ability to reconcile the one invoice express requirement with the -- of the additional invoice opportunity in the schedule?
A: As in this situation?
Q: Yes.

A: Yes. In this situation all he had to do is just get an invoice from -- in this situation, from his two -- the two other companies, I guess would have been his wife. Have their bill and attach that one bill onto the invoice that he would submit and give that -- in this case I would have liked to have seen it and give it to Mr. Watson. And that purpose of that would have been is that -- to keep the company or whoever, the citizen, from getting multiple bills from everybody else. And if that company or citizen would have an issue about having one -- a bill with separate invoices, you know, then I -- that's when I would have been able to step in and say, hey, per our policy, if he's subcontracted out a company that's working with him to help with this particular incident, he's within the Regulations. And, you know, I would have took car of that issue, it wouldn't have been no problem. I would -- as long as he would have been doing what he was doing with the Regulations, if any citizen or company would have had an issue with it, my job would have been to step in and advise him he's well within

Regulation.

Q: Can you understand why a company like Wayne's, who's looking at a Regulation that says only one invoice is to be provided, would be resistant to provide a second or third or whatever under that schedule?

A: No, sir.

Q: Do you agree that the Regulation only specifies one invoice or do you disagree with it stating that?

A: A Regulation, to my understanding, states invoice, one invoice. The meaning is that if you've got two different wrecker services on -- working one job, then, yes, you set one invoice. You don't want to have two invoices coming in with two different companies on one job. That keeps that company from having from having one bill coming in and another bill coming in on another -- at another time. So, you know, it -- that's the reason for it. And our schedule, when it states of having an invoice from a subcontractor, that's meaning that invoice is attached to that one bill. A bill and an invoice in my interpretation is two different things.

Q: I'll just direct your attention to C15, the last sentence of the Regulation 38-600, and see if you agree with the way I'm reading this. Only one bill is to be submitted to the owner or operator for the work performed. Did I read that correctly?

A: A wrecker service may secure assistance from another wrecker service when necessary to complete the recovery; however, this does not supercede paragraph three of this section nor does it permit wrecker service to accept a rotation call and dispatch the call to secondary wrecker service. Only one bill is submitted to the owner or operator for this work performed.

Q: So, I read it correctly and you did too?

A: Yes.

Q: Do you agree that Wayne's salvaged and released the cargo in the accident?

A: Did they release it?

Q: Uh-huh (affirmative response).

A: They ultimately did, yes.

Q: Okay. Now, do you know whether since Department's disciplinary decision with regard to Wayne's on the Premier accident, has there

been any other incidents when Wayne's has not been contacted even though it was next on the rotation list?

A: As far as I know -- I wouldn't know that. I'm not in the position to -- I don't call wrecker services out. That is our dispatcher responsibility.

Q: Okay. Are you aware of any other disciplinary matter regarding Wayne's?

A: Yes.

Q: What is that?

A: Heron's is one other pending.

Q: Is there any others?

A: No, not at this time. Not that I'm aware of from me, put it that way.

Q: And the Heron matter is arguably -- I mean, still before the Department?

A: It is.

Q: Have you been the investigator in that matter or is someone else?

MR. LINDEMANN: Your Honor, I object to any subsequent -- the Haron matter came about after this one. I don't see how has any relevance whatsoever to this particular disciplinary matter.

THE COURT: Okay.

MR. LARK: I will tell you why it got to the point of our having including -- inclusion of that information, Your Honor. And that's because at the conclusion of the August 8th conference Mark Gore and then General Counsel Warren Ganjehsani took me aside and said, we've got this new thing coming in, can we work a deal to combine to these two matters. And I said, I don't know anything about it. And nothing panned out, so that's why it's still pending I guess. But that's why it could be relevant. But I'm glad to let it -- you know, move on.

THE COURT: Okay.

MR. LINDEMANN: My position on that is, number one, he's talking hearsay here. It sounds like settlement negotiations between lawyers and it has to do with the matter before -- you know, the procedures before the Department itself, which are not relevant in the matter.

THE COURT: I agree. I'll sustain that objection.

MR. LINDEMANN: Thank you.

MR. LARK: Okay. Well, that will shorten that cross. Your Honor, can I have just a moment to see if I have anything else?

THE COURT: Yes, sir.

MR. LINDEMANN: Here's my attempt to clarify what the numbers should have stated on that last -- and that is that the difference --

Q: Do you agree subject to check that had your adjustments of the 14 and 387.50 been applied to the initial invoice, that Premier would have paid 54,629.69, almost $6,000 more than the 48 settlement number?

THE COURT: He's doing math again. As I understand it, your position that you're trying to get him to agree to is that had his corrections been taken, Wayne's would have ended up getting about another $5,000?

MR. LARK: Almost 6,000 more than it settled for, yeah.

THE COURT: Okay.

MR. LINDEMANN: Your Honor, I don't know how it has any relevance, but that's ultimately for Your Honor to determine. You know, frankly he was the investigating officer with DPS, he wasn't the final decision maker for DPS either. And Your Honor's going to hear evidence of a lot of other issues that have come up as a result of discovery in this case. So, I don't know that

it has much probative value.

THE COURT: Okay. And on that basis, we'll take those numbers ---

MR. LARK: Yes.

THE COURT: --- as corrected ---

MR. LARK: Yes.

THE COURT: --- for whatever they might be worth as we move forward in deciding this case.

MR. LARK: All right. May I -- and I'd like to reserve, to stick them on one page -- clean page, that as would be labeled an exhibit.

THE COURT: We'll come back to that one. I think we're going to be back here tomorrow.

MR. LINDEMANN: Yes.

THE COURT: We'll come back to you on that.

MR. LARK: I might find a piece of paper ---

THE COURT: You might be able to.

MR. LARK: That's all I have for cross.

MR. LINDEMANN: All right. Real quickly, Your Honor. I just have a couple of points that I need to make.

MR. KING - REDIRECT EXAMINATION BY MR. LINDEMANN:

Q: If I could look over your shoulder. In front of Exhibit Number 1 -- excuse me. In the notice of proposed disciplinary action, which

is page 27 of that particular exhibit, you were just asked a question whether or not you were aware of any other disciplinary action taken against Wayne's. You mentioned one that was -- that's pending that occurred in the future. I would just ask you to take a look at the second paragraph under the decision and see if that refreshes your memory as to an additional disciplinary matter that occurred in the past.

A: You talking about anything that had occurred in the past?

Q: Yeah. Actually, let me just ask you to do this. Can you just published for The Court starting -- that sentence starting at in considering?

MR. LARK: Your Honor, I object to the question to the extent that what I -- question had been was is there any other pending matter than the Heron matter regarding Wayne's before DPS. But I still think -- I mean, otherwise ---

MR. LINDEMANN: And, Your Honor, if it's easiest, it's in evidence, I'll just publish it with your approval. It just says, in considering the suspension to be imposed in this matter, the Department has taken into account the fact

that Wayne's received a 60-day suspension in 2015 for prior regulatory violations. And I --

THE COURT: That's in the exhibit.

MR. LINDEMANN: That's in the Exhibit Number 1 and the -- and actually the disciplinary decision as well as the decision to Colonel Oliver on appeal for that 2015 violation is part of Exhibit Number 1 that's in evidence. So, that was just the point I was going to make. I got just a couple of other things.

Q: Looking back at Exhibit Number 6, the invoice that you were provided. Mr. Lark made mention that the caption may have stated more than one business entity. Do you recall that question?

A: Yes.

Q: Does that invoice at all state or break down for you which entries are being charged by what entity?

A: Not at all.

Q: Not at all. Okay. And that's what you were looking for; is that correct?

A: That's correct.

Q: And did you ever receive it?

A: No, sir.

Q: And lastly, there's been this whole mathematical exercise to indicate that some of the overcharges that you identified, if they had been deducted off of the top, was still less than what ultimately Premier Transportation had to pay; do you understand that? That was where Mr. Lark was going with all that.

A: I understand, yes.

Q: Does the fact that someone ultimately discounts overcharges, does it negate the fact that there were overcharges in the first place?

A: No, sir.

MR. LARK: I object. There's not been established, I think it would be a matter for The Court to determine whether there are overcharges or not. We certainly don't agree that there were overcharges. We don't -- we've already stated and we don't agree that the schedule applies to this particular accident, interstate.

MR. LINDEMANN: Your Honor, he can object to the way I asked him and The Court can take that evidence however it is. Instead of overcharges, I'll say unreasonable amounts.

Q: Basically you found some things that were

unreasonable, correct?

A: That's correct.

Q: All right. Ultimately the fact that they would have discounted some of those points that you found were unreasonable, that doesn't negate the fact that they were attempting to charge that in the first place, correct?

A: That's correct.

MR. LINDEMANN: That's my point, thank you, Your Honor.

MR. LARK: Just one opportunity.

MR. KING - RECROSS-EXAMINATION BY MR. LARK:

Q: Do you agree that once that Wayne's realized that it didn't -- that it could reuse by repair the air cushions, that it took out the total $8,000 amount very quickly; do you agree with that?

A: Say that again now.

Q: You're objecting to the $69,000 bill. It has $8,000 for air cushions in it generated at the point in time initially when the airbags had been punctured. And did you know that they were -- found out that they could be repaired and so they took out $8,000 just because of that, because of the time sequence in which

they were trying to cooperate with the Department in getting an invoice out and the time when they realized that they -- hey, they're not out of pocket after all? Did you know that?

A: I knew nothing because he never got back with me any of the information that I asked him to get back with me about.

Q: Thank you.

THE COURT: Lieutenant King, there's silence. If I were you, I'd escape.

MR. LINDEMANN: No further questions, Your Honor. Thank you. Can the Lieutenant be excused as well, Your Honor?

MR. LARK: No objection.

THE COURT: Without objection, Lieutenant, you may resume your duty wherever you want to resume them.

THE WITNESS: Thank you, Your Honor.

THE COURT: Or wherever they tell you to go, I guess.

MR. LINDEMANN: Your Honor, next we would call Sherry Corbett, please. I don't know if you wanted to take a short break before Ms. Corbett or ...

THE COURT: How are we doing?

MR. LARK: I'm not sure. They reserve the right to call folks, so to the extent that's a reservation, then they -- if the Judge -- if The Court decides they can do that, then okay. But, I mean, it's certainly disruptive of our case, but maybe it'll be better.

MR. LINDEMANN: I think I'm able to call ---

THE COURT: I think he can call ---

MR. LARK: Yeah.

THE COURT: Whoever he's willing to take the risk to call.

MR. LARK: Yeah.

THE COURT: And I'm okay with continuing if that's ...

MR. LARK: Yeah, that's fine.

THE COURT: All right. Ms. Corbett?

SHERRY CORBETT, having been duly sworn, testifies as follows:

COURT REPORTER: Please state your full name for the record.

THE WITNESS: Sherry Corbett.

COURT REPORTER: Thank you. And can you spell your first name?

THE WITNESS: S-H-E-R-R-Y.

MS. CORBETT - DIRECT EXAMINATION BY MR. LINDEMANN:

Q: Good afternoon, Ms. Corbett. Give me your full name once again.

A: Sherry Corbett.

Q: All right. And what is your address?

A: 127 Palmetto Farms Road, Aiken, South Carolina 29805.

Q: And ---

COURT REPORTER: Can you say that again?

A: 127 Palmetto Farms Road, Aiken, South Carolina 29805.

Q: And what do you do for a living?

A: I am the office operations manager at Wayne's Automotive Center.

Q: All right. And do you work for any other entities as well?

A: I also own SCIM, South Carolina Incident Management, yes.

Q: SCIM?

A: Uh-huh (affirmative response).

Q: And what's that -- the name of that business?

A: South Carolina Incident Management, LLC.

Q: And has that LLC ever been formally set up?

A: We found out through this case that it had only ben registered. It does have a Federal ID

Number and has filed taxes, but it's got some paperwork issues.

Q: Okay. So, the South Carolina -- you would agree that the South Carolina Secretary of State doesn't recognize it as a -- as an ongoing business in good standing; is that correct?

A: Correct. They are working on fixing that now.

Q: How long have you owned that business?

A: Maybe two years.

Q: And who are the other members of that business?

A: Walter Corbett?

Q: Your husband?

A: Correct.

Q: All right. And what percentage of the business do you own versus your husband?

A: Fifty-one.

Q: You own 51 percent?

A: And he is 49.

Q: All right. And you said you're the office manager for Wayne's Automotive Center?

A: Correct.

Q: Do you have any ownership interest in that business?

A: No.

Q: Any other businesses that you have ownership interest in?
A: No.
Q: I noticed that the invoice itself makes reference to a Spill Containment Incident Management.
A: Correct. That's how it's advertised, doing business as.
Q: Okay. So, it's South Carolina Incident Management, LLC, doing business as Spill Containment Incident Management?
A: Correct.
Q: Do they operate at the same locations as Wayne's Automotive?
A: Yes.
Q: Is there an overlap of employees?
A: No.
Q: Okay. You have separate employees?
A: No.
Q: Do you have any ---
A: I mean, yes, we have separate employees. We don't have any employees for that business.
Q: You have no employees for that business?
A: Correct. Myself and him.
Q: All right. Does that business own any

property? And by that business, I mean South Carolina Incident Management, LLC.

A: Not at 1997 Richland Avenue East and as far as what it's sectioned out in our accountant. That's something I'd have to ask our accountant, how they have that scheduled.

Q: Okay. So, how about any type of equipment or anything along those lines, does it own any type of property whatsoever? I'm not talking real property, I'm talking personal property.

A: Oh, yes, it does. But, I mean, I don't know which parts of that come out on the schedule for our taxes by heart.

Q: So, you don't know -- you can't sit here and tell me what pieces of equipment are owned by Wayne's versus what pieces of equipment are owned by South Carolina Incident Management?

A: Vaguely, some of it.

Q: All right. Look at Exhibit Number 6 ---

MR. LARK: Excuse me. I hate to -- before you get started on another question, I just would -- felt compelled to advise The Court that we retained a CPA in Lexington. And we offered, pursuant to a confidentiality and non-disclosure agreement, the returns of the S

corp, Wayne's Inc., the Incident Management entity. And we would provide redacted copies upon execution of that. And that was a month and a half -- well, it was in April. And there's been silence and no provision of any of that information. Mr. Rawl will testify as to -- and as those specific tax returns will show for 2015, they got an extension for '16 until the beginning of this month of August. And so, to the extent that he's asking questions that more specifically would be found in those redacted returns had the availed themselves of that opportunity, I think The Court should know that and that Mr. Rawl will be -- I don't know if it'll be tomorrow, will be talking about quantification of those amounts.

THE COURT: Okay.

MR. LINDEMANN: Your Honor, my question of this witness -- she owns the business, I'm asking her what her business owns. I don't know that I need to wait to ask Mr. Rawl that. I believe I can ask this witness if she knows.

THE COURT: And if she doesn't know, she doesn't know.

MR. LINDEMANN: That's correct.

THE COURT: So, I appreciate your explanation.

MR. LINDEMANN: Yeah. Thank you, Your Honor.

Q: Ms. Corbett, just looking at the invoice that is Exhibit Number 6, do you see that in front of you? This one right here. Are you familiar with that document?

A: Yes.

Q: Is that something you put together?

A: Yes. That one is, yes.

Q: Okay. There's a reference to some heavy equipment in this particular invoice; is there not?

A: Correct.

Q: All right. Is there any of the heavy equipment actually owned by South Carolina Incident Management, LLC?

MR. LARK: Can I interject just to ask when you use the word heavy, do -- see if you can specify which ones you mean ---

MR. LINDEMANN: Why don't I just ask this ---

MR. LARK: --- on the first page ---

MR. LINDEMANN: I'll make it easier.

Q: Any equipment whatsoever that's outlined in the description on this invoice owned by South Carolina Incident Management, LLC?

A: Yes.
Q: All right. What is owned by your corp, your LLC?
A: Actually I can't answer that. I need a schedule in order to be -- a schedule of my taxes in order to be accurate on that.
Q: Okay. When I asked you this question, there are initials for a number of different employees listed on this invoice. Do you see that?
A: Yes.
Q: All of those employees work for Wayne's, correct?
A: Correct.
Q: Okay. Because you said ---
A: Except for labor sublet from Vern's.
Q: Except for the labor sublet from Vern's. Okay. And that's the $1,000?
A: Correct.
Q: Is there an invoice from Vern's for that $1,000?
A: It was, yes.
Q: Okay. I have not seen that. Has that been produced?
MR. LARK: You've got it attached as one of your

Exhibit's, Mr. Lindemann.

MR. LINDEMANN: Okay. Well, I guess I'll have to look at that.

Q: Now, there was a invoice from Vern's for digital equipment, the emergency equipment. Is that the invoice you're referring to from Vern's? Here, let me show you Respondent's Exhibit Number 27.

A: Correct.

Q: That's an invoice from Vern's, correct?

A: Correct.

Q: Is that the one you were referring to?

A: It is.

Q: Does that reflect any type of labor costs?

A: No. I was going by the advisement of my husband that was on scene the whole entire 21 hours. But that included labor as well.

Q: Okay. Let me go back to that. So, that included -- that includes labor as well, that invoice which is Exhibit 27?

A: Yes.

Q: Where does it say that?

A: It doesn't.

Q: What's the total of that invoice?

A: 720.

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Q: All right. So, help me understand then. Did you use Vern's also for one of the emergency digital signage boards?

A: I believe we own both of those. This says traffic control, so, I mean, you know, we're definitely trying to clear the traffic up and we're working hard to do it.

Q: So, that is not for one of the emergency boards?

A: I don't believe so, because we own a message board, digital signage, and as well as we own a digital arrow board that normally rolls out.

Q: So, tell me -- I mean, you're the one the one who produced that invoice to me. Tell me why it was produced.

A: To my knowledge, this was produced for the $1,000.

Q: Okay. But it's not for a $1,000, is it?

A: No.

Q: Does it describe the labor of three laborers for moving dog food?

A: No. It says traffic control.

Q: Okay. And it shows a vehicle; does it not? It says trailer.

A: Yeah. They were coming to do traffic control

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for the overturned trailer. That's what we were pulling dog food out of and prepacking and reloading.

Q: Okay. So ---

A: That's what they were using.

Q: --- these employees were doing traffic control or were they doing labor for packaging and reloading the dog food from the wrecked tractor trailer into another trailer?

A: To my knowledge, they came with a sign. I did not charge for it. I charged for our sign. And this was for the labor that I asked them to send me an invoice for so that I could make sure that they got paid for sending their additional guys out.

Q: Okay. So, on your invoice it says labor sublet from Vern's and it has three guys used for transferring and repackaging.

A: Uh-huh.

Q: Right where my finger is, that's what it says, correct?

A: Correct.

Q: And it says quantity one, what does that mean?

A: That means that's this invoice.

Q: So, quantity means one invoice?

A: Correct.
Q: All right. And you charged a $1,000 for that, correct?
A: Correct. I have to pay out to them first before I get paid.
Q: All right. But they didn't charge you a $1,000, they charged you $720, correct?
A: Correct.
Q: So, you charged an additional $280 over and above what Vern's charged?
A: Just because that's generally what we had -- our small markup in it because we pay out first.
Q: And what percentage markup is a small markup?
A: Whatever a 1,000 take away 720 is.
Q: So, that's actually one third markup. Would you agree with me on that?
A: I'm not doing the math. I don't have a calculator.
Q: Do you always mark up everything that you -- when you use contract labor, you mark it up by a third?
A: Generally it's between -- sometimes it just depends on what we're using, how long we have to use it. It can range between 20 and 35

percent.

Q: And what's the basis for that, what -- why are you mark it up? What do you -- what are you doing to justify that expense?

A: Overhead, I have to pay for it, I have to insure it while it's in my property, I have to insure that, they're on my job site, they're on my job scene. I don't purchase insurance from any other rental company. I'm insuring it when it's on my job scene.

Q: Did you provide a copy of that invoice from Vern's to Premier or it's insurer?

A: No.

Q: Did you provide a copy of that invoice to the Highway Patrol?

A: No.

Q: All right. Did you advise your customer that you were marking up the sublet laborer by 33 percent?

A: I never got to speak to the customer.

Q: Okay. Does that -- is that a surcharge or overhead, as you described it, is it reflected on the bill?

A: I never spoke with the customer.

Q: Does it reflect it on the bill, is it reflected

on the invoice?
A: No.
Q: You would agree ---
A: It say laborer sublet.
Q: --- that makes it sound like the sublet -- you call it a sublet, right?
A: Uh-huh (affirmative response).
Q: Looks like the sublet was a $1,000. That's the way it's described on the invoice, correct?
A: Okay.
Q: Do you agree?
A: It says labor sublet.
Q: Okay. And so, that had nothing to do with -- nothing to do with a -- providing a emergency sign?
A: To my knowledge, no.
MR. LINDEMANN: All right. Your Honor, I'd like to move Exhibit 27 into evidence. That was the invoice.
MR. LARK: No objections.
Q: Let me show you what ---
THE COURT: You said Respondent's Exhibit 27?
MR. LINDEMANN: Yes, Your Honor.
THE COURT: All right. Without objection, admitted.
(Respondent's Exhibit Number 27 was admitted into

evidence at this time.)

Q: Let me show you what's been previously marked as Respondent's Exhibit Number 9. Do you recognize that document?

A: Yes.

Q: And tell me what that is.

A: This is a digital printout of the call as it's entered by dispatch into the system.

Q: And let me see if I can find my additional copy -- so, Respondent's Exhibit Number 9. So, describe this document to me again. I'm sorry.

A: It's a digital format printed as the call is entered into the system to be dispatched to our call center.

Q: And the dispatcher is actually an employee of Wayne's?

A: Correct.

Q: Okay. So, this is a document that's generated by your company?

A: Correct.

Q: There at the top right corner it shows -- it says North Augusta division, Wayne's Automotive Center. Do you see that?

A: Correct.

Q: Does that mean it was the North Augusta

location of Wayne's that responded to this incident?

A: It's only broke out that way so that we can track it by sales.

Q: So, the answer to my question is it was the North Augusta location that responded to this incident?

A: No. It was very much the Aiken location because we're not on the HP Rotation List for North Augusta.

Q: Okay. So, it was the Aiken location that responded to it; is that correct?

A: Correct.

Q: And it shows the requestor as the Highway Patrol, correct?

A: Correct.

Q: And it was a rotation call, correct?

A: Correct.

Q: Okay. Now, let me turn your attention now to the lower right corner of that document where it has the time stamps. You see that?

A: Correct.

Q: All right. And it shows the -- next to the word arrived, that would be arrived at the scene?

A: That's incorrect. This is just when it's generated, I mean, and it's used just for us to be able to keep up with the drivers.
Q: All right. Let me ask you, the word arrived means arrived at the scene?
A: It does.
Q: Okay. And it show's when did your crew arrive at the scene according to this document?
A: This is incorrect.
Q: Well, when does it show according to this document?
A: 6:00 a.m.
Q: Okay. And what does the word finished mean?
A: That's when it's closed out of the system.
Q: Okay. So, the ---
A: When she no longer has to track it.
Q: The project is completed at the finish time?
A: No.
Q: It is not?
A: That's when she no longer has to keep up with drivers.
Q: Okay. What does it reflect for the finish time?
A: 11:38 p.m.
Q: Okay. Where does it reflect on here when the

project started and when it ended?
A: It doesn't. This is nothing but a call detail.
Q: All right.
A: It's not an invoice.
Q: Tell me a document that has been produced in this case that would reflect when the work on the incident began versus -- and when it ended. Is there a document that reflects that?
A: I can't locate one except for the numbers at the bottom is 160. And that only gives times of the trucks.
Q: Where do you see 160?
MR. LARK: Is there a page number on that?
Q: Oh, this is a different document? Let me see what you're referring to. And where do you see the times for the trucks on that particular document?
A: On fourth line.
Q: Let me see that. Point out to me where you're looking.
A: Fourth line, it says 2:00 a.m.
Q: And where -- how was this particular thing documented?
A: This was documented according to our GPS route for the trucks.

Q: So, then explain to me then looking back at Exhibit Number 9, the use of the word finished suggests when the project was completed; does it not?

A: No. And if you'll look in the notes, it says also that the dispatcher did type in here that the call come in at 2:12 a.m. as an overturned tractor trailer.

Q: Okay. So, you're saying that the time that's listed on Exhibit Number 9, 4:29 when the call was received, is inaccurate?

A: Correct.

Q: So, why do you have such inaccurate numbers?

A: Because at this time it's not -- when it's more than one driver on scene, there's only one call made. Generally this situation would be used for an individual stranded motorist, not one that has multiple pieces of equipment going to it. This is just for her way to know what's going on on her screen with different employees.

Q: So, are there multiple call numbers for this particular project -- or this particular incident?

A: There were multiple tickets made -- as far as

calls in the system made and invoices were cancelled out.

Q: Okay. Where are the records for all of the other calls?

A: They were cancelled out of the system.

Q: Did you keep records of those?

A: I'm sure I can get them if you needed them.

Q: So, call number 59752, we don't know whether that's the first, last, or in the middle?

MR. LARK: The upper left-hand corner.

A: Correct. I can't tell you if that is or not because it indicates that this notes were made on John Heron and an additional call was made because another driver's going out now because of the fact that Highway Patrol has requested that we bring our traffic control.

Q: Okay. So, just so I'm clear, there are other wreckers that then would reflect different time stamps?

A: Yes, there could be.

Q: There could be, but you don't know?

A: Not without looking in the system.

Q: As part of our discovery request in this case, did you look in the system?

A: There are other calls in the system that were

cancelled out. Whether those system can go back and pull up the dates and times once they're cancelled, I'm not quite aware of.

Q: Did you attempt to get that information?

A: Yes.

Q: And were you able to ---

A: At this point, I mean I used solely on GPS of the trucks.

Q: And where is that GPS information? Has that been -- that was not produced in this case.

A: I would assume it's in the system then, if it wasn't produced.

Q: What other evidence is there to support a claim that there was -- that the response took 21 hours?

A: GPS reports.

Q: That's all you have?

A: And time checking in with personnel that was on the scene, myself.

Q: But none of those records have been produced in this case nor presented to this Court?

A: If you haven't seen them ...

Q: Okay. You were aware that there was challenges to the 21 hours that it took to complete this job, weren't you?

A: Correct.
Q: Okay. So, wouldn't that be something that would be helpful, to be able to show there were indeed 21 hours spent on this project?
A: There was a corresponding e-mail. I remember reading it. I'm not sure what number it was. That after Bob Watson did call me up and interrogate me, I did pull all GPS reports on the heavies to make sure that they were not left on scene too long or that I had my times right, correctly. And one of them was adjusted because it in fact did leave the scene. And that price was adjusted for him.
Q: All right. So, you did have access to the GPS reports at some point?
A: Yes.
Q: Okay. But they haven't been produced in this case?
A: I'm not sure.
Q: Nor do you have them here today?
A: No.
Q: Let me ask you about the airbags. As I understand it, the initial invoice included $8,000 for two airbags, correct?
A: It did.

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Q: Okay. And that's $4,000 for each airbag?
A: It was.
MR. LINDEMANN: Let's see, before I keep going, Your Honor, I would move for Exhibit Number 9 into evidence.
MR. LARK: No objection.
THE COURT: Respondent's Exhibit Number 9 without objection admitted.
MR. LARK: Thank you, Your Honor.
(Respondent's Exhibit Number 9 was admitted into evidence at this time.)
Q: I know the airbags could be repaired, correct?
A: We found out later that they could be, about two weeks later, yes.
Q: Okay. You -- didn't you find out actually on the morning of the incident that they could be repaired?
A: No, we did not.
Q: Didn't you have communications with an individual with the manufacturer of those airbags on the morning of the incident?
A: I did, that stated that the actual retail price of it.
Q: Okay. And what was the actual retail price?
A: I believe it was -- he instructed me to -- that

we would be charged 3350 and for industry standard that I would bill them out at $4,000.

Q: Okay. So, he was giving you a charge, a price that you would have to pay for those airbags at $3,350?

A: Correct.

Q: And that was to replace the airbags?

A: Each -- that did not include shipping or anything like that. He said there would be an additional fee for that.

Q: So, that would be to get you a brand new airbag to replace the used one that had been used on this particular project?

A: Correct.

Q: And you charged $4,000 for that?

A: Correct.

Q: Let me show you Respondent's Exhibit Number 10. Is that the correspondence with ---

A: Correct.

Q: And so, that was an e-mail dated when, ma'am?

A: That morning.

Q: Yeah. Tell me the date and time.

A: February the 10th -- no, I'm sorry. It's the following morning. February 10th at 5:03, 5:03 in the afternoon. I was incorrect.

Q: Okay.
A: It was the following afternoon.
Q: And he makes reference -- and who's the individual you were corresponding with?
A: This is John Sweezy.
Q: And tell me who ---
A: The person that we purchased them from.
Q: And what's his position?
A: He's the CEO of MatJack.
Q: And that's the manufacturer of the airbags?
A: It is.
Q: And he indicated in his e-mail that he actually spoke with you the day before, correct?
A: He did. He actually spoke with me on February 9th at 11:15.
Q: And he priced the bag for you at that time?
A: Yes.
Q: All right. Didn't say anything about any type of handling charges or anything like that, he gave you a price of 3350, correct?
A: Correct.
Q: And there's handwriting on that document about charging $4,000?
A: Correct.
Q: And who's handwriting is that?

A: That is mine.
Q: Okay. So, on the initial invoice that Wayne's issued, you actually used the $4,000 number rather than the actual cost of the airbag?
A: Correct. I went by his advisement.
Q: Let me ask you about traffic cones. You charged on that Exhibit Number 8, the initial invoice, $1,000 for the use of 48 traffic cones, correct?
A: Correct.
Q: Okay. You charged $50 an hour for those traffic cones?
A: Yes.
Q: And they were out there for 20 hours, according to your invoice?
A: Yes.
Q: Do you believe a $1,000 for 48 cones is reasonable?
A: Yes.
Q: And tell me why?
A: Because that's generally what I charge on every invoice. It's already keyed in there.
Q: And the fact that you charged that on every invoice, why does that make it reasonable?
A: Because it's consistent.

Q: That makes it reasonable, that you're charging ---

A: Yes.

Q: --- everybody that?

A: Yes.

Q: All right. Tell me why else that is reasonable.

A: Because that's what we charge.

Q: That's the only explanation for it?

A: Yes.

Q: How much do those cones cost?

A: I'm not quite sure.

Q: Anything special about them?

A: They meet traffic control requirements.

Q: But they're orange cones that we typically see streets, utility people use, Highway Patrol uses them, that's what we're talking about, a traffic cone?

A: Correct.

Q: Twenty-six inch traffic cones is what it says, right?

A: Correct.

Q: Let me ask you about the labor costs.

MR. LARK: What Exhibit are you using, please, sir?

MR. LINDEMANN: Still Respondent's Exhibit Number 8.

Q: As I understand it, you had 17 people on this job?
A: Yes.
Q: And some of them are charged at $175 an hour, some are charged at $150 an hour, one at $85 an hour, one at $90 an hour, and the rest are $50 an hour. Can you tell me how those hourly rates are determined?
A: The $50 an hour and I can almost guess that the $90 an hour people have no certifications, none at all. We haven't sent them to schooling. They are just out there strictly for labor.
Q: And do you know who each of these people are?
A: Yes.
Q: How did you arrive, for instance, at a technician MH, why is he or she at $175 an hour?
A: Who?
Q: I'm sorry, BH?
A: Billy Hicks, because he's certified WreckMaster, recovery.
Q: And how did you arrive at $175 an hour for him?
A: Because that's what we charge. He is -- he was level 6/7.
Q: That is what you charge?

A: That's what I charge.
Q: All right. Well, how did you come up with those charges, those rates?
A: It's generally what we charge.
Q: Did you just pick the number out of the air or did you rely on anybody or any source?
A: We've used past invoicing now for probably about seven, eight years.
Q: Now, you also charged $436 for each piece of equipment, correct?
A: An hour.
Q: An hour. And that comes with an operator; does it not?
A: Yes.
Q: That's part of that cost?
A: Yes.
Q: All right. So, which one of these individuals was tied to which of the heavy-duty trucks?
A: Down at the bottom?
Q: I'm just asking. Okay. Let's look at the first one. Sixty-ton rotator HD 4 used for upright winching both tractor and trailer. Which employee was tied to that vehicle?
A: Brian.
Q: And Brian is what initials?

A: BR.
Q: BR. Okay. Class C heavy-duty truck HD 5, who was tied to that vehicle?
A: Kevin, KJ.
Q: KJ. Okay. Then there was a Class C heavy-duty tractor with trailer used for transferring cargo. Who was tied to that vehicle?
A: There were several different people driving it. One person come out there and drove it and left it on scene so that it could be used to put the loads on and off.
Q: Any of these people that you actually charge labor cost for?
A: No. He's not on here.
Q: And who was that?
A: Craig Corbett.
Q: So, you indicated to me that the rotator was -- what was the individual's name again? The person who was tied to that vehicle?
A: If I'm not mistaken, it was Brian Rollins.
Q: Brian Rollins. Okay. And then you said the heavy duty truck HD 5 was who, KJ?
A: Yeah.
Q: And that was, what's his name again?
A: Kevin Johnson.

Q: Kevin Johnson. So, would you agree with me that charging labor costs for those two individuals was excessive?
A: No.
Q: Well, KJ, you just told me, was tied to the vehicle itself, correct?
A: Correct.
Q: So, his labor costs are tied into the $436 an hour?
A: Correct.
Q: But you also charge him for another 21 hours at $175?
A: KJ? No, I do not.
Q: There's not something on there that says recovery technician, KJ?
A: Yeah. And it does not say 21 hours at $150 -- at $175 like you just said.
Q: So, the 21 hours at $150?
A: Correct.
Q: Okay. So, you did charge his labor time despite the fact that he was already tied to a vehicle?
A: Initially.
Q: Initially. That's what this document shows, correct?

A: Correct.
Q: All right. You also showed -- and I forgot Brian's last name. Brian who?
A: Rollins.
Q: Rollins. You also show his labor time as well, even though he was tied to a vehicle, correct?
A: Correct. Initially, yes, that's how it was billed.
Q: And so, you're saying that was excessive, you're agreeing that was not something that should have been charged?
A: I'm saying that that's how much he was put on the invoice for.
Q: And you're saying that that was incorrect?
A: Initially, yes.
Q: So, you're telling me in a later verison that was taken off?
A: I'm not sure if it was taken off or adjusted to King's suggestions.
Q: Well, you're telling me that those two individuals were tied to vehicles. Shouldn't they have been taken off?
A: If they were tied to a vehicle, they would have been taken off, yes.
Q: Okay. Do you know whether that was done on the

final invoice?
A: No. I do not have that in front of me.
Q: Let me ask you about this $750 for transfer and cargo. It says transfer cargo from scene to holding dock containment. This includes reloading at off-site facility. Do you see that, $750?
A: Yes.
Q: Yet you then also charged for the labor for all the individuals who did the transferring from the scene and repackaging of the dog food, correct?
A: Correct.
Q: So, that's a duplicative charge?
A: No.
Q: The 750 is not duplicative?
A: No. As far as my understanding, that was -- and I could be wrong. I believe that -- I can't answer that properly.
Q: You don't have an answer for that one?
A: No.
Q: Let me ask you about further up that page, the response unit used for transporting supplies; snatch blocks, oil dry, absorbents, brooms, back deck blower, brooms, shovels, et cetera,

what is that?
A: That is our SCIM truck.
Q: So, that's basically a supply truck?
A: Yeah. With an awful lot of supplies on it.
Q: Okay. And you're charging $175 an hour for 20 hours for that truck ---
A: Correct. Because I can't do anymore work while it's tied up on scene with this accident. That truck is -- it can't be used on another job site.
Q: And so -- but all it is is a supply truck?
A: Toting all of the equipment they we're using.
Q: Well, supplies. It's just -- it's equipment like blowers, brooms, absorbents ---
A: Correct. It cannot leave the scene and come back. It cannot go do another job, it's inoperable, it's out of service while it is on scene with this accident.
Q: That's right, but that is ---
A: It's losing revenue if it's not on sites with other scene.
Q: All it is is providing supplies to the scene, correct?
A: Correct.
Q: All right. It was $175 an hour?

A: Correct.
Q: Let me get you to turn to the next page. The backhoe 420D, is that a piece of equipment that is owned by Wayne's Automotive?
A: What is it?
Q: The backhoe.
A: Yes it is.
Q: Okay. And you billed that out at $350 an hour?
A: I did.
Q: How was that price arrived at?
A: Because that's what we generally charge an hour.
Q: Okay. And how much can you actually rent a backhoe for in a particular -- for a day?
A: I'm not sure.
Q: Would you agree with me it's substantially less than $4,025?
A: I wouldn't know. I didn't call.
Q: You've never rented a backhoe?
A: No.
Q: You've never rented a piece of equipment equivalent to a backhoe?
A: No.
Q: For all your years of experience in this business, you have no idea of whether or not

you can rent a similar piece of equipment for less than $4,000?

A: I have never rented a backhoe in 13 years.

Q: All right. There is, right above that, another packing fee, re-packing fee and reloading for loaded dock on the trailer, second load, $750. You see that?

A: I do.

Q: Okay. How is that not duplicative to the regular cost that you're already charging?

A: That's why I said I cannot answer that. I believe Jeff would be able to answer that more better for you.

Q: Okay. It looks like there are two different charges for $750. Is there any difference between the two?

A: I think I just said I cannot answer that.

Q: Okay. Don't know anything about the two $750 charges?

A: No.

Q: Then there's a charge of $500 for restocking and reloading cargo. How is that any different from the other charges?

A: That's a question he can answer as well.

Q: The OSHA certified incident communication