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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2019-001490

Thomas J. Torrence, ... Respondent,

v.

South Carolina Department of Corrections Petitioner.

PETITION FOR WRIT OF CERTIORARI
BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

APPENDIX
VOLUME 2 OF 4

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2016-000285
Trial Court Case No. 2012ALJ040143AP

Thomas J. Torrence, #094651, ... Respondent,

v.

South Carolina Department of Corrections, ... Appellant.

RECORD ON APPEAL

VOLUME 2 OF 3

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2001 WL 1005574 (S.C.Admin.Law.Judge.Div.)

Administrative Law Judge Division

State of South Carolina

BENNIE WICKER, APPELLANT

vs.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, RESPONDENT

Docket No. 00-ALJ-04-00781-AP

Grievance No. Ker-0353-00

August 13, 2001

FINAL ORDER AND DECISION

I. Introduction

*1 Bennie Wicker (Wicker) filed a grievance with DOC challenging the rate of pay for 320 hours of work he performed for prison industries. Wicker argues he was wrongfully paid \$.25 for the first 160 hours and \$.75 for the next 160 hours. He asserts that he was entitled to pay at \$5.25 per hour, the "prevailing wage for work of similar nature in the private sector." S.C. Code Ann. § 24-3-430(D).

DOC raises two positions. First, DOC argues that Wicker's complaint is non-grievable. Second, if grievable, DOC disagrees with Wicker's position on the merits. DOC argues that Wicker voluntarily accepted the "training pay" of \$.25 for the first 160 hours and \$.75 for the next 160 hours. According to DOC, Wicker was entitled to \$5.25 per hour only after the first 320 hours.

After considering the arguments, Wicker's claim is grievable and DOC's decision is reversed. Wicker is entitled to pay at the rate of \$5.25 per hour for the first 320 hours of work.

II. Issues For Decision

Two issues are presented. First, is Wicker's complaint grievable? Second, is he entitled to \$5.25 per hour for the first 320 hours of work performed in the prison industries program?

III. Analysis

A. Grievable Matter

Generally, DOC's grievance system allows an inmate to submit a formal complaint regarding matters affecting the complaining inmate and for which DOC has the authority to remedy. DOC policy at GA-01.12(OP), Definitions, paragraph 1. However, DOC policy specifically excludes certain matters from the grievance system by characterizing them as "non-grievable." DOC policy at GA-01.12(OP), Specific Procedures, paragraph 8.

DOC argues that Wicker's wage dispute is a "non-grievable" challenge to an institutional job assignment.¹ I disagree with DOC's position; Wicker does not challenge a job assignment. Indeed, in this case, DOC did not impose a job assignment on Wicker since Wicker volunteered for the position in the prison industries program. Moreover, nothing in the Record on Appeal suggests Wicker challenges a job assignment and nothing indicates he seeks to change an assignment. Rather, he seeks only to

be paid the wages required under the prison industries program. Accordingly, Wicker's wage dispute is not a "non-grievable" challenge to an institutional job assignment.

Moreover, Wicker's wage dispute falls under the listed issues considered "grievable" under DOC policy at GA-01.12(OP), Specific Procedures, paragraph 7; the first issue listed is "Department policies/procedures, directives, or conditions which directly affect an inmate." Wicker is directly affected by DOC's arrangement with private industry to pay inmates less than the "prevailing wage for work of similar nature in the private sector" for the first 320 hours of work. Therefore, Wicker's wage dispute is grievable under the agency's grievance system.

B. Compensation

*2 The merits issue is whether Wicker is entitled to \$5.25 per hour for the first 320 hours of work performed as a part of the prison industries program created under S.C. Code Ann. § 24-3-310 *et. seq.* I conclude he is so entitled.

Wicker participated in a state sponsored prison industry program in which he had no control over wages and for which an imperative existed that "[n]o inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector." S.C. Code Ann. § 24-3-430(D).² The duty to accomplish the imperative fell to DOC since Wicker had virtually no ability to police the payment of his wages. Rather, since the "earnings of an inmate... must be paid directly to [DOC]," DOC controlled the wages earned by Wicker. *See* S.C. Code Ann. § 24-3-430(H). In addition, Wicker had no authority to contract for his wages since DOC was required to contract with private parties for the inmate labor. *See* S.C. Code Ann. § 24-3-430(B) (DOC was authorized to "enter into contracts necessary to implement this program.").

The record reflects that after the initial 320 hours of work, Wicker was paid at the rate of \$5.25 per hour. (DOC Staff Memorandum dated May 4, 2000). Thus, the prevailing wage for work of a similar nature in the private sector is \$5.25 per hour.³ Therefore, payment per hour of \$.25 and \$.75 for the first 320 hours of work was improper.

The conclusion that Wicker was improperly paid less than the prevailing wage is supported by the expressed intent of the General Assembly. The General Assembly's intent to benefit the inmates was plainly stated when the prison industries program was created.⁴ Indeed, the statutory language explicitly states that (among others) the "intent of this article [is] to... (4) provide prison industry projects designed to place inmates in a realistic working and training environment in which they are able to acquire marketable skills and to make financial payments for restitution to their victims, for support of their families, and for the support of themselves in the institution." S.C. Code Ann. § 24-3-310(4). Thus, at least one stated intent of the program is to allow inmates to receive compensation to support their families and support themselves while in prison. That legislative intent is fulfilled by requiring that inmates be paid the "prevailing wage for work of similar nature in the private sector."

DOC argues that Wicker was required to complete training at a pay rate of \$.25 for the first 160 hours and \$.75 for the next 160 hours. However, no legal authority is cited by DOC which purports to authorize such a deviation from the plain requirement of section 24-3-430(D). Indeed, DOC's practice effectively (and improperly) seeks to limit the operation of section 24-3-430(D) to those hours which are worked after the first 320 hours. This type of limitation has been repeatedly denounced by the courts of this State. *See, e.g., Mitchell v. Holler*, 311 S.C. 406, 429 S.E.2d 793 (1993) (Words of a statute should be given their plain and ordinary meaning *without resorting to a subtle or forced construction in order to limit or expand the statute's operation.*) (emphasis added); *TNS Mills, Inc., v. South Carolina Department of Revenue, et al.* 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.).

*3 It is not the court's place to change the meaning of a clear and unambiguous statute. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.*, quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992).

The plain language of section 24-3-430(D) requires the prevailing wage for work of a similar nature in the private sector to be paid to inmates participating in the prison industries program. The record shows that Wicker participated in the prison industries program from February 18, 1999 to October 8, 1999, for which section 24-3-430(D) requires that he be paid the prevailing wage of \$5.25 per hour.

IV. Conclusion

DOC's decision is reversed. Further, DOC shall pay Wicker back wages in an amount that will compensate Wicker at the rate of \$5.25 per hour for Wicker's first 320 hours of labor in the prison industries program.

AND IT IS SO ORDERED.

No Author
Administrative Law Judge

Footnotes

- 1 DOC policy GA-01.12(OP), Specific Procedures, paragraph 8, Non-Grievable Issues, states that no grievable issue arises when an inmate challenges "an institutional job assignment."
- 2 South Carolina's "prevailing wages" statute is similar to language found in the Ashurst-Sumners Act, 18 U.S.C. §§ 1761-1762. That act prevents the shipment of prisoner-made goods in interstate commerce since it seeks to avoid the unfair competition that is likely to result from the use of cheap labor provided by inmates. However, one exception allows the interstate shipment of inmate-made goods: the goods must be produced as part of a designated pilot project in which inmate workers are paid prevailing wages. § 1761(b)-(c).
- 3 The federal minimum wage is currently \$5.15 per hour, *see* 29 U.S.C.A. § 206; thus, the prevailing wage in the private sector would have to be at least \$5.15 per hour. Additionally, no argument has been made and nothing is in the record before me to suggest that the "prevailing wage for work of similar nature in the private sector" should be the amount authorized under a special certificate of learners. *See* 29 C.F.R. § 520.408.
- 4 Certainly, in the absence of an express intent to the contrary, prisoners are not automatically due compensation for their labor. Indeed, prisoners are obligated to work as part of their sentences and compensation exists only by the "grace of the state." *McMaster v. State of Minn.*, 819 F.Supp. 1429, 1438 *McMaster v. State of Minn.* (D.Minn.1993). The issue in the instant case is not whether an inmate should be paid for his labor; instead, the issue is whether Wicker has been paid all of the wages which the "grace of the state" provides.

2001 WL 1005574 (S.C.Admin.Law.Judge.Div.)

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GENERAL COUNSEL

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Henry Williams, #187203,	)	Docket No. 06-ALJ-04-00622-AP
	)	
Appellant,	)	
	)	
vs.	)	
	)	ORDER OF DISMISSAL
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	
	)	

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC).

The primary assertion by Inmate in both his Step 1 and Step 2 Grievances is that he was not paid the prevailing wage for part of the time he worked in the SCDC Prison Industry Program.

Respondent SCDC, in response to Inmate's Step 2 Grievances, responded that Inmate had failed to file his Grievance within the time allowed under SCDC Policy Number GA-01.12, Paragraph 13.1, (which is 15 days from the event grieved) or the exceptions set forth in Paragraph 13.9. Inmate failed to respond to this ground for denial asserted by Respondent by including it as a ground for appeal in his Notice of Appeal to the Administrative Law Court. Instead, inmate merely refers to the Wicker and Adkins cases as his grounds for appeal.

Since Inmate did not appeal the ruling by SCDC that the grievance was not timely filed, that became the law of the case and an un-appealed ruling becomes the law of the case and the appellate court must assume that the ruling was correct. See Unisun Ins. v. Hawkins, 342 S.C. 537, 537 S.E.2d 559 (Cr. App. 2000).

Since the "law of the case" is that Appellant did not meet the procedural requirements to file his grievance the issues set forth in the Notice of Appeal are not properly before this Court.

Indeed, even if Inmate had appealed on the ground that he should not be bound by

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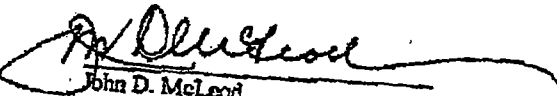
SC ADMIN. LAW COURT

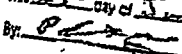
the 15 day deadline imposed by SCDC Policy Number GA-01.12, Paragraph 13.1, he would not prevail thereon as this Court views as jurisdictional the filing of the grievance within the time required by the very Policy that allows the grievance in the first place. The inmate is required to present his grievance within 15 days of the time that the event complained of occurred. He was not entitled to wait until Wicker v. South Carolina Dep't of Corr., 360 S.C. 421, 602 S.E.2d 56 (2004), was decided. The grievance existed when it occurred.

IT IS THEREFORE ORDERED that for all of the foregoing reasons this appeal is **DISMISSED WITH PREJUDICE.**

AND IT IS SO ORDERED.

June 23, 2006
Columbia, South Carolina


John D. McLeod
Administrative Law Judge

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy thereof in the United States mail postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 23rd day of June, 2006
By: 
Judith A. Clark

0364

2006 WL 1430140 (S.C.Admin.Law.Judge.Div.)

Administrative Law Court

State of South Carolina

JAMES WRIGHT, #200123, APPELLANT

vs.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, RESPONDENT

Docket No. 06-ALJ-04-00114-AP

April 28, 2006

APPEARANCES:

*1 n/a

Order

STATEMENT OF CASE

This matter is before the Administrative Law Court (ALC) pursuant to the appeal of James Wright, an inmate incarcerated with the Department of Corrections (Department). Appellant claims that 1) he received less than "prevailing wages" while working in the private sector industry and subsequently less than "prevailing wages" when officially hired by the private sector business; 2) the Department failed to pay him overtime while he worked in the private sector industry program; and 3) the Department failed to place him on notice of his right to "prevailing wages."

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter was originally derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Supreme Court limited the ALC's jurisdiction in inmate appeals to state created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id. Later, the Court in Wicker v. South Carolina Dept. of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004), held that where "the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law" and therefore, the Department's failure to pay wages in accordance with the statutes is reviewable by the ALC. Id. at 57.

When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Id. at 756. Consequently, the review in these inmate grievance cases is limited to the Record presented. An Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1‑23‑380(A)(6) (Supp. 2005). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole Record, arbitrary or affected by an error of law. See Section 1-23-380(A)(6); See also Marietta Garage, Inc. v. South Carolina Dept. of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999); South Carolina Dept. of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (Ct. App. 1998). "'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." Lark v. Bi‑Lo, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Accordingly,

the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. South Carolina Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995).

*2 Additionally, in *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 456, 105 S.Ct. 2768 (1985), the U.S. Supreme Court held that "the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." In making that determination, the Court is not required to examine the entire record, independently assess the credibility of witnesses, or weigh the evidence. *Id.* Moreover, in *Al-Shabazz*, the Court underscored that since prison officials are in the best position to decide inmate disciplinary matters, the Courts adhere to a "hands off" approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA. *Al-Shabazz* at 757; See also *Pruitt v. State*, 274 S.C. 565, 266 S.E.2d 779 (1980) (stating the traditional "hands off" approach of South Carolina courts regarding internal prison discipline and policy).

DISCUSSION

Timeliness of Wage Claim

Appellant claims that the Department failed to pay him "prevailing wages" while working in the private sector industry and subsequently he was paid less than "prevailing wages" when officially hired by the private sector business. S.C. Code Ann. § 24-3-430 (D) (Supp. 2005) provides that "[n]o inmate participating in the [private industry] program may earn less than the prevailing wage for work of similar nature in the private sector." In *Wicker v. South Carolina Dept. of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004), the South Carolina Supreme Court held that the Department cannot deny the payment of a prevailing wage without affording due process of law.

The Department contends that Appellant's claim for "prevailing wages" is barred by the two-year statute of limitations in S.C. Code Ann. § 15-78-100. Section 15-78-100 provides that except as to persons under disability, claims for damages under the South Carolina Tort Claims Act must be filed "within two years after the loss was or should have been discovered." However, cases brought before the ALC for failure to pay wages in accordance with S.C. Code Ann. § 24-3-430 (Supp. 2005) are not brought pursuant to the Tort Claims Act. In fact, in *Adkins v. South Carolina Dept. of Corrections*, 360 S.C. 413, 602 S.E.2d 51 (2004), the Supreme Court specifically held that the Department's "failure to pay a certain wage simply does not constitute a tort so as to be cognizable under the Tort Claims Act. *Id.* at 54. Therefore, the statute of limitations set forth in Section 15-78-100 does not apply.

Nevertheless, in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000), the Supreme Court held that an inmate may seek review of the Department's final decision before the ALC in administrative matters under the APA. The Court further noted in making its determination that the Department's grievance procedures are in compliance with the Civil Rights of Institutionalized Persons Act, 42 U.S.C.A. §§ 1997-1997j (1994 & Supp.1999); see also 28 C.F.R. §§ 40.1 to 40.22 (1998) (standards for inmate grievance procedures). The Department's Inmate Grievance System Policy/Procedure GA-01.12 § 13.1 provides that if an informal resolution of a grievable matter is not possible, the grievant must submit a Form 10-5, Step 1 to an employee designated by the Warden within 15 days of the alleged incident. The only exceptions to that requirement are grievances concerning policies/procedures and "incident grievances, provided that the inmate can show reasonable cause, i.e., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc." GA-01.12 § 13.10. This case does not involve an appeal challenging the Department's policies or procedures.

*3 Furthermore, the Appellant has not set forth reasonable cause as to why his claim could not have been presented within the time frame required by the Department's policy. Therefore, Appellant was required to file a grievance within 15 days of the Department's failure to pay him the wages owed.

In this case, the record reflects that Appellant is seeking prevailing wages for 480 hours worked beginning in April 1994. There is no indication or argument, whatsoever, that he filed a grievance within 15 days of the alleged underpayment with the Department of Corrections or that the Department's Policy granted wider latitude to file a grievance in 1994. The Appellant

failed to file a grievance as provided by GA-01.12, and this court has no authority to expand the time in which the request for a hearing must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

Moreover, Appellant's claim is barred under the principle of laches. "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). Appellant filed a grievance approximately 11 years after the disputed wages were paid to him. The delay in filing his claims is unreasonable and obviously prejudices the Department. See Brown v. Butler, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001).

Notice

Appellant also asserts that the Department failed to place him on notice of the decisions of Adkins, supra. and Wicker supra. In Adkins and Wicker the Court simply held that Section 24-3-430 required that inmates be paid "prevailing wages" and that that the Department cannot deny those wages without affording due process of law.¹ Prisoners, like other citizens, are presumed to know the requirements of the law and act in conformity with them. Goodwine v. Dorchester Dept. of Social Services, 336 S.C. 413, 519 S.E.2d 116 (S.C. App. 1999). Therefore, Appellant was charged with the knowledge of the provisions in Section 24-3-430. It was not the Department's duty to notify him of the provisions of that law or any cases interpreting that law.

ORDER

IT IS THEREFORE ORDERED that the appeal of the Appellant is **DISMISSED** and the Final Decision of the Department is **AFFIRMED**.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Administrative Law Judge

Footnotes

- 1 It is noteworthy that Section 24-3-430 does not require that the inmate receive all of the earned wages. In fact, S.C. Code Ann. § 24-3-40 (2005) provides for the disposition of money earned by a prisoner who is allowed to work at paid employment.

2006 WL 1430140 (S.C.Admin.Law.Judge.Div.)

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SCDC's Petition for Writ of Certiorari

LAW OFFICES

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

NOV 16 2012

MALONE THOMPSON
SUMMERS & OTT, LLC

Thomas J. Torrence, #94651	)	Docket No. 12-ALJ-04-0143-AP
	)	Grievance No. ECI-0980-10
Appellant	)	
	)	Honorable Deborah Brooks Durden
vs.	)	
	)	
South Carolina Department of	)	
Corrections,	)	APPELLANT'S REPLY BRIEF
	)	IN SUPPORT OF A TIMELY
Respondent.	)	FILED GRIEVANCE
	)	

I. STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed on March 12, 2012 by Thomas J. Torrence ("Appellant"), an inmate incarcerated in the South Carolina Department of Corrections ("DOC" or "Respondent"). Appellant asserts that the DOC removed portions of his wages earned in a private sector industries program without statutory authority, the DOC refuses to allow Appellant access to his long-term savings funds in escrow, and the DOC distributes a substandard interest on those funds.

II. JURISDICTION

This Court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court decision in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Supreme Court limited the ALC's jurisdiction in inmate appeals to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials erroneously calculated his sentence or sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rules violation. Id. Later, the Court clarified that the ALC

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must provide minimal due process for state-created liberty or property interests in cases involving prevailing wage claims, Wicker v. S.C. Dep't of Corrections, 360 S.c. 421, 602 S.E.2d 56 (2004).

III. PROCEDURAL HISTORY

Appellant filed a Step One agency Grievance on May 21, 2007 at Broad River Correctional Institution and served a copy, via U.S. Mail, on the Grievance Coordinator at Evans Correctional Institution. The DOC did not respond until December 1, 2011, following Appellant's petition for a writ of mandamus to our Supreme Court. The DOC, through outside counsel appearing here [Lake E. Summers, Esq.] denied Step One in its entirety.

Appellant timely filed a Step Two with Appendices A-L in support thereof on December 5, 2011. The DOC denied Step Two in its entirety on February 9, 2012, which was received by Appellant on February 15, 2012. The Notice of Appeal in this matter was filed March 12, 2012.

Appellant timely filed his Original Brief on May 23, 2012. On June 5, 2012, Respondents filed a Motion to Address Only One (1) Issue in Its Brief. On July 9, 2012, Respondent filed its Principal Brief, as ordered by this Court. In an Order dated July 25, 2012, this Court ordered, inter alia, that Appellant's Reply Brief would be due no later than November 15, 2012.

IV. FACTUAL BACKGROUND

Appellant was hired in the Private Sector Prison Industries (Prison Industries Enhancement Certification Program ("PIE")) (Insilco Global Technologies/Esco) at Evans Correctional Institution in June 1997. Appellant was required to work a "Training Period" where he preformed labor side-by-side with non-inmate individuals employed from

the local community (earning between \$8.00 - \$14.00 per hour) by Escod at a rate of .25¢ per hour for 160 hours, and .75¢ per hour for the following 160 hours. Many of these hours were overtime labor. Upon completion of the 320 hour Training Period Appellant was informed the Federal Minimum Wage was \$5.15 per hour and [he] would be paid \$5.25 per hour. Appellant continued to labor side-by-side with private sector employees as a Quality Control Inspector and Section Lead Person; and following a corporate buy-out, assumed many of the functions of the non-inmate employees (Maintenance Supervisor, Document Control, Training coordinator and Quality Control Supervisor). Appellant labored in these positions from June 1997 - November 2004. Throughout this period Escod paid Appellant \$7.17 per each regular hour of [his] labor and \$10.99 per each overtime hour, which was remitted to DOC pursuant to §24-3-40.

When the South Carolina Legislature amended S.C. Code §§ 24-3-40 and 24-3-430 by 1999 Act No. 68, §2, Appellant and other prisoners complained to DOC Division of Industries personnel. In 2000, Appellant and Inmate William Ray Ward petitioned the DOC to change the wage payment practice then in effect. The petition went unanswered.

Appellant, Ward and Inmate Henry Hubbard filed suit in 2001 in the Richland County Court of Common Pleas (2001-CP-40-3409). Appellant obtained counsel who amended the declaratory judgment action and added Susan Smith as representative of the beneficiary class and Kimberly DuRose as representative of the victim class.

In November 2002 the DOC filed a motion for summary judgment, which was subsequently denied by the Honorable D. Garrison Hill.

On August 23, 2004, our Supreme Court decided Wicker v. S.C. Dept. of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) and

held that an inmate is entitled to file a grievance when not being paid the prevailing wage, and that this Court had jurisdiction to review such claims.

Appellant was transferred to a different institution on November 14, 2004. The DOC again filed for summary judgment, based solely on the Supreme Court's holding in Wicker, creating a right to file a grievance for failure to pay the prevailing wage, and Judge Hill issued an order granting summary judgment dated May 31, 2005. Appellant's motion for reconsideration was denied by Judge Hill on July 8, 2005. Appellant filed a timely Notice of Appeal in the S.C. Court of Appeals. The S.C. Supreme Court assumed jurisdiction of the case.

In an order dated May 7, 2007, and received by Appellant on May 21, 2007, via correspondence from counsel dated May 17, 2007, the Supreme Court held that Appellant and others must file a grievance, (Thomas J. Torrence et al. v. S.C. Dept. of Corrections, 373 S.C. 586, 646 S.E.2d 866 (2007)).

Appellant filed Step One Grievance (No. ECI-980-10) on May 21, 2007 (See Record on Appeal submitted by Respondent and Appendix H attached to Appellant's Step Two) within five (5) days of receipt of the Court's decision, after which Respondent's filed a petition for rehearing based solely on footnote 4 of Torrence. Respondents did not answer Step One until December 5, 2011, after Appellant petitioned the Supreme Court to obtain a writ of mandamus to order DOC to answer the grievance. DOC answered Step Two on February 9, 2012. This appeal follows.

V. APPELLANT'S REPLY TO
RESPONDENT'S BRIEF § III - RELEVANT PROCEDURAL HISTORY

Appellant herein rebuts portions of Respondent's Brief ("Resp.Br.") pgs. 1 - 36.

In Section III, A. 1. n. 3, Resp.Br. @3, Respondent places the wrong context on Appellant's Step One language that "I 'must' file a grievance." It is without contention and Respondent attempts to overlook that in Torrence, our Supreme Court unequivocally stated "Clearly, Torrence and Ward can present this claim via the inmate grievance procedure. See Wicker, supra." Appellant asserts that this use of the word "can" is most frequently interchangeable with the word "may" in the sense of denoting possibility of one's doing something and is relatively rare in a negative construction. "Can" implies being permitted, or being logically or axiologically able to; thus, the Court implied this option [grievance] was open and Appellant construed such language to mean if he wished to continue pursuing his rights, he [Appellant] "must file a grievance."

Respondent related the Warden's Step One response, Resp.Br. @5 that Appellant did not file a grievance until "nearly 10 years after" beginning participation. Appellant contends the contract he signed in 1997 specified "minimum wage", not "prevailing wage," and referenced other deductions from the rates earned. Appellant was unaware of when any claim existed based on agents of Respondent misleading Appellant upon every information inquiry. In addition, these violations recurred and were continuous each pay period and are not looked into the first incorrect payment of wages.

Respondent reiterated that the Warden's Step One response relied upon Wright, #206123 v. S.C. Dep't of Corr., 2006 WL 1430140, Resp.Br. @5 & n. 7. Appellant would contend that Wright worked in the P.I. program prior (1994) to the enactment of the "prevailing wage" language of §24-3-430(n) (1995) and that case was also dismissed on the

theory of laches. Appellant's diligence is without question in this matter.

Also rebutting Resp.Br. ¶5 & n. 7, readding Wright, supra, Respondent places an emphasis on Judge Anderson's recitation of DOC Policy GA-01.12 §13.1 ("...within 15 days of the alleged incident.") No court has specifically determined how the 15 day time period is to be applied in the context of a continuous conduct such as incorrect payment of wages. In several cases since Wright, Judge Anderson has held the only time to file a prevailing wage grievance is upon receipt of the first incorrect pay wage. However, in an April 20, 2007 Order of Remand by Judge John D. Geathers, to determine if the Grievant filed within the 15 day limit of GA 01.12 §13.1, in Earl K. Will, #237037 v. S.C. Dep't of Corrections, No. 05-ALJ-04-01159-AP, Judge Geathers ordered Respondents to:

"determine if Appellant filed his grievance in the instant matter while he was employed under the prison industries program relating to the instant matter, or, if Appellant filed his grievance within fifteen days of the time he completed, terminated, or ceased employment under the prison industries program." (emphasis added).

In Section III, A. 2 and n. 9, Respondent references counsel's correspondence to Appellant regarding preparation of grievances. Appellant contends this substantiates Torrence was still pending, thus tolled, yet Appellant initiated the grievance process indicated by the Court.

**VI. APPELLANT'S REPLY TO RESPONDENT'S BRIEF § IV
(NEITHER Adkins NOR Wicker CREATED ANY NEW RIGHTS OR REMEDIES)**

Appellant contends that it is without question, regardless of how Respondents frame our Supreme Court's language in Wicker, the Court, with specific emphasis, stated in this "very limited circumstance", that this Court [ALC] may review the final agency decision on prevailing wage

claims from the DOC. Our Supreme Court, again, specifically held in Wicker, "we find no reason such procedures should not apply when an inmate challenges the wages he or she is being paid..." and "... he properly filed a grievance..." The purpose of this exact language will be addressed *infra*, but in rebuttal to Respondent's Resp.Br. § IV, quite simply and unequivocally, Respondent's position was Wicker could not file a grievance.

In Resp.Br. § IV, n. 17, pg. 11, Respondents relied upon holdings of cases recently decided by the Honorable Ralph King Anderson, III. Those cases were all improperly filed under the S.C. Tort Claims Act, and more importantly, worked in prison industries projects NOT certified under the prevailing wage statutes. Judge Anderson found that those inmates should have filed a grievance upon the first instance of being incorrectly paid. Those inmates never had a claim upon which to file under S.C. Code §§ 24-3-315 or 430.

Appellant suggests, as Judge Anderson held in Ackerman, #265922 et al, v. DOC, 07-ALJ-04-00444, et seq., that "this is not the final word" [an ALC case] on [issues not yet ruled upon by our Supreme Court]. In analyzing this position, this Court must consider Appellant can only act on Respondent's legal position and then current case law to determine the availability of a remedy. Appellant could not and did not sit on his rights but filed in a court of competent jurisdiction. Grievance as a remedy for prevailing wage claims was not solidified until August 23, 2004 in Wicker.

Appellant does not waive or agree with the facts but will respectfully rebut the whole and substance of Resp.Br. § IV, infra.

VII. ARGUMENT

Appellant was never notified by DOC he was entitled to the "prevailing wage" for his work when hired in June 1997 (see Original Inmate Agreement); or that it was illegal to pay Appellant a "training wage" for 320 hours. As evidenced by the Agreement referenced above, there was no "notice" wages paid were pursuant to §§24-4-315 or 24-3-430(D). Appellant had no knowledge that there may be a discrepancy.

Upon inquiry, following the 1999 amendment to §24-3-430, DOC on-site Business Manager Eugene Baker denied the meaning of "prevailing wage" being different from the federal minimum wage.

Appellant learned that Escod paid \$7.17 per regular hour for his labor, as "prevailing wage" and DOC without statutory authority withheld a portion as the "SCDC Surplus Fund."

In 2000, Appellant was in continuous contact with the United States Department of Justice (DOJ) Bureau of Justice Assistance (BJA) concerning whether DOC was certified to operate a private sector prison industries and what the guidelines entailed. It was not until documents received by the DOJ BJA indicated that DOC was operating outside compliance guidelines that Appellant and Inmate William Ward submitted an administrative petition to DOC regarding wages and benefits. In the interim, when confronted with these complaints, Eugene Baker and DOC Industries Director Tony Ellis assured Appellant that changes were forthcoming to correct wage and escrow account deficiencies.

Appellant, Ward and Inmate Henry Hubbard relied upon those assertions until filing Torrence. In 2000, Appellant met with representatives of the DOJ BJA during a DOJ audit of the Evans/Escod

operation and Appellant was informed the wage and benefit scales utilized were incorrect.

VIII. APPELLANT TIMELY FILED HIS STEP 1 GRIEVANCE

A. No administrative remedy existed at time of Appellant's initial employment.

Prior to April 1, 2000, DOC's Grievance Policy (GA-01.12 §10.2) did not allow claims for monetary damages other than "for the value of" property lost or destroyed. In 2001, the ALC precedent was that claims for money damages fell under the South Carolina Tort Claims Act. See, Rosemond v. SCDC, 00-ALJ-04-1026-AP, and Richard Stearnsmiller v. SCDC, 00-ALJ-04-00021-AP. Thus, at the time Appellant filed Torrence in the Richland County Court of Common Pleas, this Court did not have jurisdiction to hear DOC agency decisions seeking money damages and Appellant was without a remedy.

B. Appellant was not required to exhaust a futile administrative remedy.

Respondents argue, four (4) years after Torrence was pending in a court of competent jurisdiction, that Appellant was then entitled to utilize the grievance procedure for a prevailing wage complaint. This is contrary to their [DOC] assertions pre-August 23, 2004.

Appellant had no constitutional right to file a grievance and logically elected to file in a circuit court. The Fourth Circuit Court of Appeals held "as other circuits have recognized, there is no constitutional right to participate in grievance proceedings. See Adams v. Rice, 40 F.3d 72, 75 (4th Cir. 1994) citing Flick v. Alba, 932 F.2d 23, 729 (8th Cir. 1991). There is no South Carolina precedent regarding the constitutional right of prisoners to the grievance procedure.

Appellant asserts that the ALC cases of Stearnsmliller, supra, and

Rosemond, supra; and Respondent's reliance on McNeil v. S.C. Dep't of Corrections, 00-ALJ-04-00336-AP (Sept. 5, 2001), and arguing against prevailing wage as a grievable action, constituted conduct that implied Appellant had no available remedy.

Not only do inmates not have a constitutionally protected right to a grievance procedure, Brown v. Dodson, 862 F.Supp. 284 (W.D.Va. 1994), the existence of a grievance procedure does not confer any substantive right upon inmates, Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993).

Appellant could not exhaust a remedy that did not exist. Our Supreme Court has held "while we have, where the question was involved, rather consistently applied the doctrine of exhaustion of administrative remedies to avoid interference with the orderly performance of administrative functions, we have recognized that it is not an invariable rule. Pullman Co. v. Public Serv. Comm'n, 234 S.C. 365, 109 S.E.2d 571. The adoption of the view that the rule is discretionary in nature is a recognition that situations can exist where failure to exhaust administrative remedies may be excused. Appellant suggests that view may be applicable here in these circumstances.

In Lav v. S.C. Dep't of Corrections, 368 S.C. 424, 520 S.E.2d 642 (2006) our Supreme Court held a general exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that a pursuit of them would be a vain and futile act, see, e.g., Moore v. Sumter County Council, 300 S.C. 270, 273-74, 397 S.E.2d 455, 459 (1990). Futility, however, must be demonstrated by a showing comparable to the administrative agency taking a hard and fast position that makes an adverse ruling a certainty. See, Thetford Properties IV Ltd. P'Shp.

v. U.S. Dep't of Hous. and Urban Dev., 907 F.2d 445, 450 (4th Cir. 1990).

Appellant suggests the conduct of DOC's agents Baker and Ellis, in their official capacity; DOC's grievance policy at the time regarding claims for monetary damages; this Court's precedent regarding the same; and the likelihood of DOC making an adverse ruling a certainty [see, Wicker grievance Step 1 and Step 2] clearly demonstrates Appellant's pursuit of an agency grievance prior to our Supreme Court's decision in Wicker would have been a vain and futile effort, (Moore, 300 S.C. at 273-74, 387 S.E.2d at 458), at the time.

C. The state court action [Torrence] was properly commenced for the purpose of jurisdiction at the time.

The records clearly show that Torrence was properly "commenced" within the meaning of the South Carolina statutory law and Rules of Civil Procedure upon which the statutes of limitations attach.

In Burnett v. New York Cent. R. Co., 380 U.S. 424, 85 S.Ct. 1050 (1965) the Court held that a state court action was properly "commenced" within [FEIA] statute of limitations where state court had jurisdiction of action and Respondent was properly served with process, although action was subject to dismissal for improper venue.

Prior to Burnett, the Court held in Herb v. Pitcairn, 325 U.S. 77, 79: "when process has been adequate to bring in the parties and to start the case on a course of judicial handling which may lead to final judgment without issuance of new initial process, it is enough to commence the action within the [federal] statute."

Nonetheless, applying the principles underlying the Supreme Court's decision in Herb v. Pitcairn lead to the conclusion Appellant's state court action tolled the administrative agency [DOC] limitation provision and therefore the agency grievance action here is timely.

The novel factor that distinguishes this matter is that Torrence did not consist of just the prisoner class of Appellant and other prisoners, but included NON-prisoner co-plaintiffs [Smith and DuBose] (Torrence, 373 S.C. at 589), who were themselves class representatives, and also had no administrative remedy with the DOC. Indeed, it was the order of the Court in footnote 4 of Torrence that substantiate the necessity of this action being filed in the Court of Common Pleas.

D. DOC's reliance on Al-Shabazz is in error.

Respondent relies upon Al-Shabazz to support the proposition Appellant was able to appeal an agency grievance to this Court since 2000.

Appellant asserts that Al-Shabazz is inapplicable where (1) Respondents continuously sought to carve out exceptions to the jurisdiction conferred by Al-Shabazz [McNeil, supra and Sullivan, supra]; and (2) Respondents talismanically argued throughout the entire procedural history of Wicker that the ALC did not have jurisdiction to hear a prevailing wage claim starting from the original grievance, on appeal to the ALC [then ALJ], on appeal to the Greenwood County Court of Common Pleas, and on appeal to the South Carolina Court of Appeals. The Supreme Court's Wicker decision clearly indicates that DOC argued against ALC jurisdiction to hear prevailing wage claims. It was not until Wicker that the prevailing wage claims were an approved exception to the McNeil and Sullivan holdings placing limits on the ALC jurisdiction created by the Al-Shabazz Court.

Appellant submits that DOC may not argue against one position until the Supreme Court issues a dispositive ruling against that position; then change positions on an appeal of the same issue in a

separate case that relied upon the DOC's procedural position in the first case for selection of venue. This is the same principle that a party may not seek and receive a particular result at trial and then challenge it on appeal. See, e.g., Bowman v. Bowman, 357 S.C. 146, 160, 591 S.E.2d 654, 661 (Ct.App. 2004).

E. DOC's position that prevailing wage claims were grievable prior to Wicker is incorrect.

In the case before the ALJ, DOC contended that prevailing wage claims were "non-grievable." See, Wicker v. S.C. Dep't of Corrections, 00-ALJ-04-00791, 2001 WL 1005574 (S.C. Admin. Law Ct., Aug. 13, 2001) at * 1. Thus, until that point, the circuit court review of the ALJ decision; and on appeal to the Supreme Court and its 2004 decision, the DOC considered prevailing wage claims as "non-grievable," Wicker, 602 S.E.2d at 57.

Indeed, analyzing the Court's "very limited circumstance" language and accompanying footnote 1, Id., at 59, our Supreme Court then, and only then, expanded the ALC jurisdiction to hear prevailing wage claims, then making prevailing wage claims a grievable issue.

Appellant asserts it would be as procedurally illogical to file his prevailing wage claims as an agency grievance prior to the 2004 Wicker decision as it would be to file any claim in the incorrect venue; for example, filing a professional license appeal in the Family Court. This would have been a vain and futile act which would have barred Appellant's claims and wasted resources of the parties and courts. Respondent's argument (Resp.Br. 214) relying on the Court's language that Wicker "properly filed a grievance" only substantiates the Court then authorizing the prevailing wage exception and dismissing Respondent's five (5) year long argument in every court of procedure that prevailing wage claims were not grievable.

It should not go without notice by this Court that the question of jurisdiction of prevailing wage claims was the nexus of Respondent's position in Wicker. The question was properly before the Court(s) at all times, in every stage of Wicker, up to 2004, and Respondents were diametrically opposed at all times.

Suggesting Appellant pursue a timely circuit court action to preserve his claims within the then jurisdictional statute of limitations, while simultaneously filing an administrative action would have placed [him] in an awkward position of arguing inconsistent positions in two courts.

F. DOC waived the statute of limitations defense when it did not raise it as a sustaining ground in Torrence.

Appellant argues the DOC waived the statute of limitations defense when it did not raise it as a sustaining ground at any time in the circuit court action of Torrence.

In Respondent's first Motion to Dismiss for Failure to State a Claim under Rule 12(b)(6), SCRPC, counsel did not raise a statute of limitations defense or argue that Appellant failed to file a grievance simply because those were nonexistent options at that time. Respondent's Answer to the Second Amended Complaint (2002 WL 34453532) failed to raise either argument. Respondent's Renewed Motion to Dismiss (2005 WL 6233065), based on the Wicker decision, also failed to raise the statute of limitations or failure to file a grievance, only that Appellant was then required to file a grievance. Nor did the Trial Order (2005 WL 6138189) make such a distinction or bar further action. Quite simply, Respondent's waived the defense by failing to raise it at any time, where the parties, counsel, and claims were the same.

A party can waive a statute of limitations defense, but the waiver

must be shown by words or conduct, including an express agreement, failure to claim the defense, or any action or inaction inconsistent with an intention to use the statute of limitations defense. See, e.g., Anonymous Taxpayer v. Dept. of Revenue, 377 S.C. 425, 439-40 (2008).

Appellant asserts that waiver may be express or implied, Lyles v. BML, Inc., 292 S.C. 153, 159, 355 S.E.2d 292, 295 (Ct.App. 1997). Acts that are inconsistent with the continuous assertion of a right may give rise to a waiver.

DOC did not assert the statute of limitations until Appellant returned to the administrative procedure suggested by the 2005 Trial Order and the 2007 Torrence decision, again, which DOC previously argued in Wicker, was not available.

Although the circuit court in Torrence erred by not ordering that administrative remedies could be exhausted, the Supreme Court clearly inferred that Appellant and Ward "can" use the internal grievance procedure, Torrence, 373 S.C. at 595.

G. Respondents did not consider prevailing wage claims "grievable" and no remedy existed pre-August 23, 2004.

Appellant asserts that Respondent can produce no case law or argument in which DOC did not argue against or oppose prevailing wage claims as "grievable issues" prior to August 2004. Appellant suggests that until our Supreme Court held Wicker "properly filed a grievance," on August 23, 2004, Respondents did not provide an administrative remedy for prevailing wage claims. Thus, Respondents should be barred from asserting a retroactive application of common-law of a 15 day statute of limitations; and, where Torrence was properly filed in a court of competent jurisdiction where no other remedy existed at the time, the time to file a grievance must be tolled.

-15-

Respondents argued that Appellant should have filed a grievance within 15 days of the first instance of incorrect pay.

There is a lack of controlling precedent on that proposition. Appellant submits that NO South Carolina case discusses whether an agency grievance in the context of a prevailing wage claim must be filed at that moment or anytime during employment in a continuing action of wage misappropriation. See, Farl K. Will, supra.

Further, no South Carolina case discusses whether an administrative action is tolled during the pendency of a then properly filed action in the court of common pleas.

No South Carolina cases discusses whether an agency which argues against the availability of an administrative procedure or remedy, and the state supreme court subsequently declares the availability of the procedure in one action; and the agency then changes positions in a related [legal status of parties] action with the same parties and claims, which extinguishes the claim before the plaintiff can file.

H. Appellant was diligent in pursuing his prevailing wage claims.

Appellant submits he diligently pursued his rights based on available information, Respondent's conduct, and available alternatives.

Respondents misled Appellant as to what wages he was entitled and the private sector paid for [his] labor.

Respondent's conduct was continuous and not isolated to the beginning of employment, and in fact continues today in denial of escrowed wages and interest.

Eugene Baker and Tony Ellis, as agents of DOC, maintained that wages would be corrected and "lifers" [Torrence and Ward] would receive their escrowed wages.

-16-

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Appellant sought administrative resolution in 1999 and has diligently pursued these claims since that time.

Appellant pursued escrowed wages as recently as February 2012 (See Step 2 Appendices before DOC). Appellant notes the Torrence Court specifically instructed Appellant may file a grievance, indicating permission to do so.

I. Torrence, as a "defective action" tolled the time to pursue an administrative grievance.

Appellant suggests a defective action, filed within the statute of limitations, maintained in a court of competent jurisdiction (Court of Common Pleas) tolled the time to file an agency grievance. The administrative remedy for prevailing wage claims was not settled in South Carolina until Wicker in 2004. Equitable tolling exists for extraordinary circumstances and this case presents such exceptional facts.

First, the duration of employment (June 1997 - November 2004) may be considered a "reliance period" upon which a party has initiated an action where the complained of deprivations continued past the period of employment.

The Trial Court Order in Torrence (2005 WL 5138198) SPECIFICALLY held "pursuant to [Wicker], these members could pursue their claims via [SCDC's] inmate grievance procedure." Id. @ 2.

Appellant asserts that counsel for Respondents relied on this very application of Wicker to the instant case in their June 5, 2007 Petition for Rehearing @ 4.

Nowhere did Respondent ever plead that Appellant should be barred.

The trial court order stated Appellant "could pursue" a grievance. The matter was then on appeal and tolled until the appeal was final.

Courts have held equitable tolling has been deemed available where "the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period, see Am.Jur.2d Limitation of Actions §174 (2007); Irwin v. Dep't of Veteran Affairs, 498 U.S. 89, 95 (1990).

J. Appellant maintaining an action in a court of competent jurisdiction equitably tolled the statute of limitations.

Appellant asserts the initiation of Torrence (C/A No. 2001-CP-40 -3409) in a court of competent jurisdiction (at time of filing), within or before an administrative remedy ordered by the Court in Wicker equitably tolled the statute of limitations.

This matter is factually distinguishable from all the cases Respondent relies upon due to the unavailability of a remedy at the time; the statute of limitations for filing in a court of competent jurisdiction; and Appellant's diligence in pursuing his rights. The distinction from all other cases [(1) non-prisoner co-plaintiffs; (2) cases from same P.I. project [Evans-Escod] were filed on employment terminated prior to 1995 or several years after termination; and (3) unavailability of monetary relief via administrative or AIC at the time]; may qualify this as a case of first impression.

The equitable tolling doctrine should be read into every statute of limitations, and the decision whether the doctrine should be applied lies within the sole discretion of the court. See, e.g., Holmberg v. Ambrecht, 327 U.S. 392, 397 (1945).

Tolling is called for by the facts of the instant case where Respondents reasonably relied on the unavailability of monetary relief for a prevailing wage claim, via the grievance process in their legal posture up to our Supreme Court's August 21, 2004 decision in Wicker.

-18-

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The equitable power of this Court is not bound by cast-iron rules, but exists to do fairness and is flexible and adaptable to the particular exigencies shown here so that relief will be granted when, in view of all the circumstances, to deny it would permit Appellant to suffer a gross wrong at the hands of the other; thus, equitable tolling may be applied where justified under the circumstances.

Appellant submits that had he waited for a position change by Respondents, and the Supreme Court reversed the Circuit Court; or the Circuit Court reversed the ALC; Appellant would have been barred by the statute of limitations from filing in a court of competent jurisdiction. Because tolling is consistent with South Carolina law and called for by the facts of this case, the doctrine of equitable tolling should apply.

Appellant never neglected his rights. The limitations period is intended to run against those who are neglectful of their rights and who fail to exercise reasonable diligence in enforcing their rights; however, it is not the policy of the law to unjustly deprive an injured person of a remedy. See, e.g., Moriarity v. Garden Sanctuary Church of God, 534 S.E.2d 672 (2000).

Appellant submits that under all the circumstances, it would be inequitable for DOC to be allowed to benefit from its conduct [removing portions of Appellant's statutory wages earned for his labor] by obtaining a complete dismissal of his claims. Thus, where applicable, the equitable tolling doctrine suspends or extends the statutory period to ensure fundamental practicality and fairness. See, Hooper v. Ebenezer Senior Services, 386 S.C. 108, 687 S.E.2d 29, 54 CJS Limitation of Actions § 115 (2005).

Respondent asserts Appellant could have maintained a grievance.

Even if so, under the doctrine of equitable tolling, where Appellant had more than one legal remedy available, the statute of limitations is tolled while he pursued one of those remedies. See Irby v. Fairbanks Gold Mining, Inc., 203 P.3d 1139, 1143 (Alaska 2009).

Equitable tolling may be used in the interests of justice where Appellant's right to assert a meritorious claim [nonstatutory removal of portion of prisoner's statutory wages] when equitable circumstances [action maintained in another court prior to this Court having jurisdiction and trial court granting permission to file] have prevented a timely filing. Appellant asserts there is no prejudice to Respondent where (1) the wages are Appellant's rightful, statutory property that pose no hardship to return; and (2) reversing the DOC final decision here would not open the door to a flood of grievances. The explained delay here in bringing the agency grievance bespeaks extraordinary diligence and requires tolling the statute of limitations.

Appellant suggests that, based on the unavailability of a remedy at the time; the state court action being in competent jurisdiction; Respondent's position concerning prevailing wages being non-grievable prior to Wicker; the Court's Wicker decision while Torrence was pending; the trial court in Torrence granting permission to file a grievance; the matter pending before our Supreme Court until May 7, 2007; and Appellant filing [his] grievance within 15 days of receipt of that decision; this matter should be equitably tolled to serve the ends of justice where the technical forfeiture would unjustifiably prevent a trial on the merits of claims diligently pursued.

**IX. RESPONDENT IS EQUITABLY ESTOPPED FROM ASSERTING
THE STATUTE OF LIMITATIONS**

Appellant asserts Respondents are estopped from a statute of

limitations defense where [they] acted in such a way as to induce or cause Appellant to not file administrative remedies and Appellant relied on that conduct.

The essential elements of equitable estoppel are divided between the estopped party and the party being estopped. Strickland v. Strickland, 375 S.C. 76, 94, 650 S.E.2d 465, 470 S.E.2d (2007).

The elements of equitable estoppel as related to the party being estopped [here, DOC] are:

- (1) conduct which amounts to false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party (DOC) subsequently attempts to assert;
- (2) the intention that such conduct shall be acted upon by the other party (Appellant); and
- (3) actual and constructive knowledge of the real facts. Id.

Appellant submits the conduct of DOC satisfies all three prongs of the Strickland test for estoppel.

- (1) DOC agents Baker and Ellis misrepresented that (a) a Training Wage was legal because no wage was earned from Escod during that period; (b) that "prevailing wage" meant the "federal minimum wage"; and (c) that DOC was going to allow lifers access to their escrowed funds.
- (2) Appellant believed and waited approximately nine (9) months for such promises to take fruition. DOC failed to answer Appellant's initial petition in 1999; and
- (3) DOC at all times had actual and constructive knowledge of the difference between the wages and intentionally subtracted a portion of wages without statutory authority (See Step 2 Appendices A & D).

Appellant also submits a prima facie showing that:

- (1) there was a lack of knowledge of the truth of the facts regarding the substance of the claims;

(2) Appellant relied upon DOC's conduct, specifically the refusal to answer the administrative petition; failure to alter the wage structure and escrowed wage access; and taking a position [in Wicker] that prevailing wage claims were not grievable issues; and

(3) Appellant made a prejudicial change in position in reliance on the conduct of DOC, which was not pursuing administrative remedies where DOC's conduct [refusing to correct wage defects, failure to answer administrative petition, and position regarding the prevailing wage was not grievable.

Under South Carolina law, a party may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute was induced by the party's conduct. Kleckley v. Nw. Nat. Cas. Co., 338 S.C. 131, 136, 526 S.E.2d 219, 220 (2000).

Even though our Supreme Court described "inducement" in Kleckley, Appellant here suggests that DOC's conduct in arguing against Wicker filing a grievance in a prevailing wage claim up to three (3) years after Torrence was pending and failing to assert the defense in either its first or renewed motions to dismiss in the lower court, constitutes conduct that induced Appellant to continue in the circuit court and not return to the administrative venue. DOC thus engaged in conduct which was "calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which DOC subsequently [here] attempts to assert." See, Strickland, 375 S.C. at 84, 650 S.E.2d at 470.

Appellant asserts it is unfair to allow DOC to change positions after Appellant was a party with DOC, on the same claims, in, at the time, a court of competent jurisdiction; on a timely, but later rendered

defective [by the holding in Wicker] suit; to avoid liability for statutory wage withholding violations. A party should not be able to avoid the consequences of responsibility for a fiduciary duty simply by changing procedural positions after the time for the procedural filing may have lapsed.

X. CONCLUSION

Based on the foregoing facts and argument, Appellant respectfully requests this Honorable Court to apply the equitable tolling doctrine and order full briefing on the remaining issues raised in the notice of appeal.

Respectfully submitted,



dated November 12, 2012

Thomas J. Torrence
#094551 SA-43
Lieber Correctional Inst.
P.O. Box 205
Ridgeville, Sc 29472

APPELLANT, pro se

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, #94651
Appellant

vs.

South Carolina Department of
Corrections,
Respondent.

Docket No. 12-AIJ-04-0143-AP
Grievance No. ECI-0980-10

CERTIFICATE OF SERVICE

The undersigned pro se Appellant hereby certifies that he has served a true and correct copy of APPELLANT'S REPLY BRIEF on counsel for Respondents, Lake E. Summers, Esq., by depositing a copy of same in the U.S. Mail, first-class postage affixed thereto, this 13th day of November, 2012, addressed as follows:

Lake E. Summers, Esq.
MALONE, THOMPSON, SUMMERS & OTT, LLC
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APPELLANT, pro se

LAW OFFICES

NOV 16 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, #094651,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-00143-AP
Grievance No. ECI 0980-10

ORDER **RECEIVED**

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GENERAL COUNCIL

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Thomas J. Torrence (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (DOC or Department). Appellant filed a grievance with the Department objecting to the Department's alleged failure to pay the prevailing wage for Appellant's work while participating in the prison industry program. Appellant also asserted that the Department removed portions of his private sector prison industry wages without statutory authority. Appellant received the Department's final decision on or about February 15, 2012. On March 7, 2012, the Appellant filed this appeal with the Court.

BACKGROUND

The Appellant participated in the Private Sector Prison Industry Program (Program), in which Insilco Global Technologies/ESCOD (ESCOD) participated as the private industry sponsor at Evans Correctional Institute from June 1997 until November 2004. During the first 320 hours of his employment, Appellant was paid a "training wage" of \$0.25-\$0.75 per hour. Upon completion of the 320 "training hours," Appellant was paid \$5.25 per hour. Throughout Appellant's participation in the Program, ESCOD remitted Appellant's wages to the Department pursuant to S.C. Code Ann. § 24-3-40. The Department distributed Appellant's wages to his Prison Industry Account.

In 2001, Appellant and two other inmates filed a class action law suit in the Richland County Court of Common Pleas. Appellant alleged, among other things, that the Department violated S.C. Code Ann. §§ 24-3-310 through -430 (2007) in failing to pay inmates a prevailing wage for work

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performed.¹ The class action also alleged that the Department improperly diverted a portion of the inmates' wages to the Department Surplus Fund. The Department filed a motion to dismiss pursuant to Rule 12, SCRCF in November 2002, however, that motion was denied. In 2004, the South Carolina Supreme Court issued its opinions in two cases dealing with similar issues of inmate wages, Adkins v. S.C. Dept. of Corrections, 360 S.C. 413, 602 S.E.2d 51 (2004) and Wicker v. S.C. Dept. of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004). The Department renewed its motion for summary judgment based upon those decisions. The motion was granted, and the Appellant appealed. The South Carolina Supreme Court heard the appeal.

In Torrence v. South Carolina Department of Corrections, 373 S.C. 586, 646 S.E.2d 866 (2007), the South Carolina Supreme Court held that the plaintiffs did not hold a private right of action against the Department. However, the court held that all members of the class action could file an internal grievance with the Department to seek any monies owed. Upon the issuance of the Supreme Court decision, Appellant filed a Step 1 grievance with the Department on May 21, 2007. The Department notified Appellant that his Step 1 grievance would not be answered until the Supreme Court decided on the Department's petition for rehearing. In December 2011, the petition for rehearing was denied by the court. At that time, the Department answered Appellant's Step 1 grievance, indicating the Step 1 grievance was denied because the grievance was untimely filed with the Department. Appellant filed his Step 2 grievance on December 5, 2011, appealing the denial of his Step 1 grievance. The Department denied the Step 2 grievance and this appeal followed.²

ISSUES ON APPEAL

1. Did the South Carolina Supreme Court decisions in the Adkins and Wicker cases create new substantive or grievance rights?
2. Did Appellant timely file his Step 1 grievance alleging a prevailing wage issue with the Department?

¹ In the class action, Appellant and the other Plaintiff were representatives of all prisoners who participated in the Program at Evans Correctional Institute. The suit also included a "Victim Beneficiary Subclass" which represented all crime victims awarded funds from the South Carolina Victims Compensation Fund and all victims receiving restitution paid by prisoners working in the Program. The suit included a "Dependent Beneficiary Subclass" which represented all dependents of prisoners entitled to support payments from funds received through the Program.

² In his appeal to this Court, the Appellant raised multiple issues related to the payment of wages. However, by an order dated June 7, 2012, the only issue addressed in this order is the timeliness of Appellant's Step 1 grievance.

3. Was the time to file an inmate grievance with the Department equitably tolled when the Appellant filed a claim in the Richland County Court of Common Pleas?

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Administrative Law Court's jurisdiction in inmate appeals is limited to state created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 756. Consequently, the review in these inmate grievance cases is limited to the record presented. An Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(A)(6) (Supp. 2013). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary or affected by an error of law. See S.C. Code Ann. § 1-23-380(A)(6); See also Marietta Garage, Inc. v. South Carolina Dept. of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (1999); South Carolina Dept. of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (1998).

DISCUSSION

Creation of Substantive Rights or Remedies by Adkins and Wicker

The Appellant contends that the Supreme Court's decisions in Adkins and Wicker created new substantive and grievance rights for inmates alleging the Department failed to pay a prevailing wage. Specifically, Appellant asserts that "a remedy for prevailing wage claims was not solidified until August 23, 2004 in Wicker." The Department argues, however, that the Supreme Court did not create a new substantive right, but simply clarified that inmates had a pre-existing right to pursue prevailing wage claims through the inmate grievance system.

A substantive right can be created by statute or by judicial decision. See, e.g., Lawson v. S.C. Dept. of Corrections, 340 S.C. 346, 350, 532 S.E.2d 259, 261 (2000) (holding that the whistleblower

statute created new substantive rights); McCaskey v. Shaw, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988) (holding that a prior Supreme Court decision “created a new substantive right”). A statute presumptively creates substantive rights. A court creates a new substantive right when it recognizes a new cause of action that did not previously exist. Toth v. Square D Co., 377 S.E.2d 584 (S.C. 1989).

In Adkins, our Supreme Court held that Section 24-3-430 and accompanying prison industries statutes did not provide inmates with the right to bring a private cause of action against DOC. Adkins, 360 S.C. at 419, 602 S.E.2d at 55. More relevant to the case at hand, the court further held that:

[N]otwithstanding our holding that inmates have no private civil cause of action, they are not without remedy. In accordance with the companion case of Wicker v. South Carolina Dept. of Corrections, 360 S.C. 421, 602 S.E.2d 56, 2004 WL 1877947 (2004), we hold inmates may file an inmate grievance to protest DOC’s failure to pay wages in accordance with the mandatory statutory provisions.

Id.

In Wicker, the Supreme Court fleshed out this latter holding. It explained that “where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law.” Wicker, 360 S.C. at 424, 602 S.E.2d at 57. The court thus held that inmates’ prevailing wage claims were grievable through DOC’s internal grievance processes and that DOC’s denial of those claims could be appealed to the ALC. *Id.* at 25, 602 S.E.2d at 57-58.

Adkins and Wicker did not create new substantive rights. The substantive right at issue in Adkins and Wicker—i.e., the right to a prevailing wage—was granted to inmates in 1995 pursuant to S.C. Code Ann. § 24-3-430(D). Adkins and Wicker simply addressed the appropriate procedure for seeking redress for a denial of that existing right. More precisely, these decisions acknowledged Policy Number GA-01.12 as the proper procedural mechanism by which inmates may challenge the rate at which the Department paid for labor provided.

Adkins and Wicker also did not create new grievance rights. Paragraph 7 of DOC Policy Number GA-01.12, which has existed in some form since May 1, 1996, sets forth the issues that are

considered grievable by the Department.³ Among other grievable issues, it includes the following: "Department policies/procedures, directives, or conditions which directly affect an inmate." DOC Policy Number GA-01.12, ¶ 7.1. Unquestionably, inmates are "directly affect[ed]" by DOC policies that cause them to be paid less than required by law. Thus, this provision, which is very broad in scope, encompasses prevailing wage claims.

The ALC reached that same conclusion in a 2001 decision that gave rise to, and was ultimately affirmed by, the Supreme Court's opinion in Wicker. See Wicker v. S.C. Dept. of Corrections, 00-ALJ-04-00781-AP, 2001 WL 1005574 (S.C. Admin. Law Ct. Aug. 13, 2001). In the case before the ALC, the Department contended that prevailing wage claims were "non-grievable." See *id.* at *1. Upon reviewing the Department's grievance policies, the ALC disagreed, holding:

Wicker's wage dispute falls under the listed issues considered "grievable" under DOC policy at GA-01.12(OP), Specific Procedures, paragraph 7; the first issue listed is "Department policies/procedures, directives, or conditions which directly affect an inmate." Wicker is directly affected by DOC's arrangement with private industry to pay inmates less than the "prevailing wage for work of similar nature in the private sector" for the first 320 hours of work. Therefore, Wicker's wage dispute is grievable under the agency's grievance system.

Id. at *1.

Furthermore, in affirming the ALC's decision in Wicker, the Supreme Court did not suggest that it was granting inmates new grievance rights. There was no indication by the court that the Department's grievance procedures were inadequate or that they should be enlarged. The court ruled that "[t]here are numerous issues relating to inmates which, although not giving rise to private, civil cause of action, are nonetheless grievable through DOC's internal grievance processes." Wicker, 360 S.C. at 423-24, 602 S.E.2d at 57.

Accordingly, I conclude that Adkins and Wicker did not create new substantive or grievance rights, but merely confirmed that prevailing wage claims were grievable under the Department's existing policies.

³ The existence of the Department's grievances policies was specifically recognized by the Supreme Court in its 2000 decision Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), where the court held that the Department's grievance procedures were consistent with the standard delineated by the U.S. Supreme Court in Wolff v. McDonnell, 418 U.S. 539 (1974). See Al-Shabazz, 338 S.C. at 371-373, 527 S.E.2d 751-52.

Timeliness of Filing Grievance

The Department denied Appellant's grievance as untimely because it was not brought within 15 days of the date the Department began paying Appellant for his labor. The Department argues that the Inmate Grievance policy has been the proper procedure for filing an internal grievance regarding a prevailing wage since its inception in May 1996, predating the decision issued by the Supreme Court in Wicker. The Department alleges that since the Appellant had a "pre-existing constitutionally protected property interest" in his prison industry pay, policy guidelines required that Appellant file a grievance within 15 days of the date the Department began paying Appellant for his labor.

Appellant points out that prior to the Wicker decision no such grievance was recognized by the Department, so any attempt to file an internal grievance would have been futile. Appellant also argues that, at that time, he had no judicially recognized constitutional right to file a grievance, so he "logically elected" to file a claim in Circuit Court. Appellant states that he timely filed his grievance with the Department within 15 days after the Supreme Court issued a final ruling which stated: "[c]learly, [Appellant] can present this claim via the inmate grievance procedure." Torrence v. S.C. Dept. of Corrections, 373 S.C. 586, 595, 646 S.E.2d 866, 870 (2007).

Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed "within 15 days of the alleged incident." DOC Policy Number GA-01.12, ¶ 13.1. However, Paragraph 13.9 of GA-01.12 provides that "[e]xceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures." DOC Policy Number GA-01.12, ¶ 13.9. In the present case, Appellant contends that his grievance concerns "policies/procedures" and, therefore the 15 day time limit requirement does not apply to the filing of his grievance. I agree.

The courts have long held that "[w]hen interpreting a regulation, we look for the plain and ordinary meaning of the words of the regulation, without resort to subtle or forced construction to limit or expand [its] operation." Murphy v. S.C. Dept. of Health and Envtl. Control, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012). While the policy at issue is not a regulation, the Court finds the rules of statutory and regulatory interpretation instructive. The Inmate Grievance System Policy fails to define either "incident" or "policies/procedures." The dictionary defines "Incident" as "an occurrence of an action or situation that is a separate unit of experience;" "policy" is defined as "a

definite course of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions.” Meriam-Webster Dictionary, available at <http://www.meriam-webster.com>. Based on the “plain and ordinary meaning” of both of these words, it is clear that an incident would be a one-time, specific event, and a policy would be continuous course of action. In the present case, it was not a one-time event, in which Appellant was not paid a prevailing wage. The Department continuously failed to pay Appellant a prevailing wage. Therefore, the grievance involved is related to a policy or procedure.

In the absence of an express time limit for grievance of a policy or procedure this Court must determine a reasonable time limitation that gives effect to the statutory or regulatory scheme. McCummings v. S.C. Dept. of Corrections, 319 S.C. 440, 462 S.E.2d 271 (1995). The fact that other grievances must be filed within 15 days indicates a policy requiring the utmost promptness in raising a grievance. In the case of a challenge to the agency’s policies and practices, such as the one raised here, it seems reasonable to require the grievance be raised within 15 days of the time some action has been taken under the policy relevant to the grievance.

Prior to the Wicker opinion issued by the Supreme Court, the Department maintained that wage issues were not grievable under the internal grievance system. In its brief in the current matter the Department acknowledges that in its appeal of Wicker before the ALC, the Department argued that “Wicker’s complaint is non-grievable.” In its decision, the ALC disagreed with the Department and found that Wicker’s prison industries pay claim was grievable under ¶ 7 because Wicker’s pay represented “conditions which directly affect an inmate.” Wicker, 2001 WL 1005574, *1. Clearly, the Department did not recognize a wage claim as grievable until the Supreme Court upheld the ALC’s decision in August 2004. Thus, any attempt by Appellant to file a grievance prior to August 22, 2004 would have been futile. By that time, Appellant’s lawsuit initiated as a class action in Circuit Court was pending before the courts, representing ongoing litigation between these same parties over the same issue. Appellant filed his grievance within fifteen days of the date the Supreme Court issued its decision in his case stating, “[c]learly, [Appellant] can present this claim via the inmate grievance procedure.” Torrence v. S.C. Dept. of Corrections, 373 S.C. 586, 595, 646 S.E.2d 866, 870 (2007).

Equitable Tolling

Appellant maintains that by filing his class action lawsuit in the Court of Common Pleas, he effectively tolled the filing requirement of his internal grievance. Appellant argues that a defective action, filed within the statute of limitations, maintained in a court of competent jurisdiction tolled the time to file an agency grievance. The Department maintains that the Appellant did not toll the time to file a grievance by filing a claim in the Court of Common Pleas.

Where a statute sets forth a limitation period for commencement of an action, courts have invoked the doctrine of equitable tolling to suspend the statutory period “to ensure fundamental practicality and fairness.” Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009) (quoting Rodriguez v. Superior Court, 98 Cal. Rptr. 3d 728, 736 (Cal. Ct. App. 2009)). Equitable tolling is a judicially created doctrine, and it stems from the judiciary’s inherent power to formulate rules of procedure “where justice demands it.” Hooper, 386 S.C. at 115, 687 S.E.2d at 32. The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. *Id.*

Equitable tolling is reserved for extraordinary circumstances, and it is rarely applied in South Carolina. American Legion Post 15 v. Horry County, 381 S.C. 576, 582, 674 S.E.2d 181, 184 (Ct. App. 2009). The threshold necessary to trigger equitable tolling is very high, lest the exception swallow the rule. Ex parte Ward, 47 So. 3d 888, 897 (Ala. 2007). The S.C. Court of Appeals has explained:

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation.

Pelzer v. State, 378 S.C. 516, 522, 662 S.E.2d 618, 621 (Ct. App. 2008) (quoting Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir. 2000)).

Typically, equitable tolling applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control. Hooper, 386 S.C. at 116, 687 S.E.2d at 32; see also 54 C.J.S. Limitations of Actions § 133 (2013). However, as the South Carolina Supreme Court has noted, courts have flexibility in applying equitable remedies such as tolling:

The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other. Equitable tolling may be applied where it is justified under all the circumstances. We agree, however, that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.

Hooper, 386 S.C. at 116-17, 687 S.E.2d at 33 (citations omitted).

"Under the doctrine of equitable tolling, when a party has more than one legal remedy available, the statute of limitations is tolled while the party pursues one of the possible remedies." Abbott v. State, 979 P.2d 994, 998 (Alaska 1999).

In this case, Appellant did not have more than one legal remedy available, but no statute, regulation, or precedent established the proper procedure for bringing his claim. Because the Department refused to consider the issue under the grievance procedures, Appellant was effectively prevented from utilizing the procedure that the Supreme Court ultimately determined to be the appropriate method to raise prison industry pay claims. Appellant's case, originally filed as a class action in the Court of Common Pleas, was pending before the courts on August 23, 2004 when the Wicker and Adkins decisions were issued. This case presents the type of extraordinary circumstances in which fairness demands that the doctrine of equitable tolling be applied. Appellant's existing lawsuit, filed prior to the time the Department recognized grievances regarding pay claims, equitably tolled the time for filing a grievance during the period that lawsuit was pending. Appellant filed his Step 1 grievance within days of receiving the Supreme Court's final order and decision in that matter holding that he could present his claim via the inmate grievance procedure.

Given all of the above factors, the Appellant's grievance was timely filed.

Motions to Expand Record/Provide Full Record

On May 1, 2012, Appellant filed a Motion for an Order to Provide a Full Record and a Motion to Expand Record (Record Motions). In light of the decision in this order, it is appropriate to address those motions. Respondent has not filed a response related to the merits of the Record Motions, seeking instead to defer the issue until the timeliness of the grievance could be addressed.

Therefore, Respondent shall have thirty days to file any response to the Record Motions. Appellant shall then have thirty days to reply.

ORDER

IT IS THEREFORE ORDERED that in light of the determination, above, that Appellant's grievance was timely filed, this Court will address the merits of the issues presented in this appeal.

IT IS ALSO ORDERED that the Department of Corrections may file a response to the Record Motions by March 31, 2014. If such a response is filed, Appellant may file a reply, if any, by April 30, 2014.

IT IS FURTHER ORDERED that if no opposition to the Record Motions is filed, the Department of Corrections shall file an addendum to the Record on Appeal, including the items requested in the Record Motions and all relevant matter in the record not previously presented in the Abbreviated Record filed May 7, 2012. The Addendum to the Record on Appeal shall be filed with the Court by March 31, 2014, if no opposition to the Record Motions is timely filed.

IT IS FURTHER ORDERED that Appellant's brief shall be filed within sixty days of the date the Record is filed.

IT IS FURTHER ORDERED that the Respondent shall have sixty days from the date Appellant's Brief is filed to submit a brief. Any reply brief must be filed within twenty days from the date Respondent's brief is filed.

AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
Administrative Law Court

January 30, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 30th day of January, 2014
By: R. E. C.
Judicial Law Clerk

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Thomas J. Torrence, # 094651,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECL0980-10
Appellant,	)	
	)	Honorable Deborah Brooks Durden
vs.	)	
	)	APPELLANT'S MOTION TO
South Carolina Department of Corrections,	)	CONTINUE THIS COURT'S
	)	JULY 25, 2012 ORDER TO EXCEED
Respondent.	)	PAGE LIMIT OF ALC RULE 60(A)
_____	)	

~~This matter is before the Administrative Law Court (ALC or Court) pursuant to the~~
Appellant's Notice of Appeal of a final agency decision of the South Carolina Department of Corrections (DOC or Department). Appellant's appeal concern's the Department's failure to pay the prevailing wage for Appellant's work while participating in the private sector prison industry program; the Department's removal of a portion of Appellant's wages without statutory authority; Appellant's access to his long term savings account; and the interest paid on the monies alleged as improperly removed or denied access thereto. By order of this Honorable Court, dated January 30, 2014, this Court will address the merits of the issues presented in the appeal.

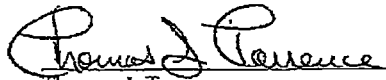
By Order of this Court dated July 25, 2012; both Respondent and Appellant were granted permission to exceed the page limitation for briefs found in ALC Rule 60(A). In light of the complexity of the case and the number of issues involved, the parties were allowed to file briefs up to forty (40) pages.

LAW OFFICES
FEB 20 2014
MALONE, THOMPSON
SUMMERS & OTT, LLC

Appellant respectfully moves this Honorable Court for an Order to continue the July 25, 2012 Order to allow the parties to exceed the page limitation of briefs in ALC Rule 60(A) up to and including forty (40) pages.

WHEREFORE, based on the foregoing, Appellant respectfully moves this Honorable Court to continue the July 25, 2012 Order of this Court to exceed the page limitation of ALC Rule 60(A).

Respectfully submitted;



Thomas J. Torrence

#094651

Lieber Corr. Inst. SA-43

P.O. Box 205

Ridgeville, SC 29472

APPELLANT, Pro se

February 10, 2014

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Thomas J. Torrence, # 094651,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECI 0980-10
Appellant,	)	
	)	Honorable Deborah Brooks Durden
vs.	)	
	)	APPELLANT'S MOTION TO
South Carolina Department of Corrections,	)	CONTINUE THIS COURT'S
	)	JULY 25, 2012 ORDER GRANTING
Respondent.	)	ACCESS TO THE COURT
_____	)	

----- This matter is before the Administrative Law Court (ALC of Court) pursuant to the Appellant's Notice of Appeal of a final agency decision of the South Carolina Department of Corrections (DOC or Department). Appellant's appeal concerns the Department's failure to pay the prevailing wage for Appellant's work while participating in the private sector prison industry program; the Department's removal of a portion of Appellant's wages without statutory authority; Appellant's access to his long term savings account; and the interest paid on the monies alleged as improperly removed or denied access thereto. By order of this Honorable Court, dated January 30, 2014, this Court will address the merits of the issues presented in the appeal.

By Order of this Court dated July 25, 2012, where Appellant was unable to research ALC cases cited in Respondent's pleadings, Respondents were ordered to provide hard copies of those cases cited to the Appellant.

LAW OFFICES

FEB 20 2014

**MALONE, THOMPSON
SUMMERS & OTT, LLC**

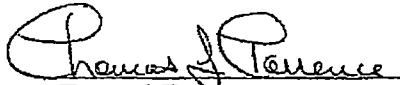
Appellant respectfully moves this Honorable Court for an Order to continue the July 25, 2012 Order of Access to apply to any and all pleadings of Respondent that cite cases from this Court (Administrative Law Court), that those cases cited should accompany the pleadings in hard copy. In an effort to mitigate the burden, where the DOC [at Lieber Corr. Inst] does have three (3) computer terminals with West Law (to serve a population of 1,200 inmates, if Respondents are able to provide a West Law (WL) cite to the case in a pleading, Appellant may access the case on one of the law library terminals.

In addition, based upon the gravity and complexity of this matter, Appellant respectfully requests this Court to include in the Order of Access that Appellant shall have access to the institutional law library for the sixty (60) day period following the Respondent filing the Record, which Appellant is given by this Court's January 30, 2014 order to file his Brief.

WHEREFORE, based on the foregoing, Appellant respectfully moves this Honorable Court to continue the July 25, 2012 Order of this Court granting access to the court, with the requested modifications.

February 10, 2014

Respectfully submitted,



Thomas J. Torrence

#094651

Lieber Corr. Inst. SA-43

P.O. Box 205

Ridgeville, SC 29472

APPELLANT, Pro se

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Thomas J. Torrence, # 094651,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECI 0980-10
Appellant,	)	
	)	Honorable Deborah Brooks Durden
vs.	)	
	)	APPELLANT'S MOTION TO
South Carolina Department of Corrections,	)	PROVIDE/CORRECT A DEFINED
	)	AND ACCURATE RECORD
Respondent.	)	
	)	

--- --- This matter is before the Administrative Law Court (ALC or Court) pursuant to the ---
Appellant's Notice of Appeal of a final agency decision of the South Carolina Department of
Corrections (DOC or Department). Appellant's appeal concerns the Department's failure to pay
the prevailing wage for Appellant's work while participating in the private sector prison industry
program; the Department's removal of a portion of Appellant's wages without statutory
authority; Appellant's access to his long term savings account; and the interest paid on the
monies alleged as improperly removed or denied access thereto. By order of this Honorable
Court, dated January 30, 2014, this Court will address the merits of the issues presented in the
appeal.

Respondents submitted an Abbreviated Record On Appeal, ("Abbreviated ROA"), dated
July 29, 2012. Appellant submits that the Abbreviated ROA, specifically pages 47 - 75, contains
information regarding Appellant's wages and interest earned, that is inaccurate and misleading
and misconstrues the issues that are currently before this Court regarding Appellant's Regular

LAW OFFICES

FEB 20 2014

**MALONE, THOMPSON
SUMMERS & OTT, LLC**

Hour Wages, Over-Time Hour Wages, Interest thereon, and as a result of the Abbreviated Record, an issue now arises as to what rate and how deductions were made from Appellants wages. Respondents have provided a record that attempts to supply **"*RATE IS CALUCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE,"** (See *Private Sector Account Transactions*, Abbreviated ROA, Note for Rate* at top of pages 47 - 75).

The specific issues in this appeal require the pay structure distinction between regular and overtime hours regarding the "Training Hours" (June - August 1997) and non Training Hours (August 1997 - November 2004), as the rate of "prisoner's wages" paid to the Respondents (pursuant to S.C. Code §24-3-40). As provided, the Abbreviated ROA, pages 47 - 75, do not show this Court and the Appellant the true rate of pay Respondents paid Appellant and confuse the issues before this Court.

Appellant submits an example of the problem using page Abbreviated ROA, page 47, DP on 7/1/04:

Hours	*Rate	Gross

89.50	5.25	469.87

Appellant suggests the average creates the misinformation and issue thus for the same date and pay:

	Hours	*Rate	Gross
Reg.	80.00	5.25	420.00
OT	9.50	7.87	<u>74.76</u>
			494.76 a difference of \$24.89 in pay

Appellant submits that this differentiation is through the entire report submitted in pages 47 - 75 of the Abbreviated ROA.

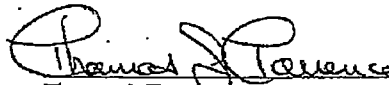
Although pages 47 - 75 are derived from Private Sector Account Transactions, Appellant requires, for the issues before this Court, and as a result of this evidence, a report of the wages

Insilco/ESCOD paid for Appellant's labor for the "Training Hours" between June 1997 and August 14, 1997.

Appellant respectfully moves this Honorable Court for an Order for Respondents to provide a corrected record that 1) accurately distinguishes and depicts the regular and overtime rates of pay as were distinguished on Appellant's pay sheets, and 2) a report of the wages paid by Insilco/ESCOD to the Department for Appellant's labor, pursuant to §24-3-40; during the period of Appellant's "Training Hours." Appellant submits that this Motion does not and is not a burden on Respondents and is required for the equitable determination of the issues before this Court.

WHEREFORE, based on the foregoing, Appellant respectfully moves this Honorable Court to Order Respondents provide a corrected Record.

Respectfully submitted,



Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, Pro se

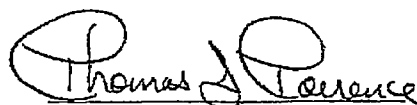
February 12, 2014

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Thomas J. Torrence, # 094651,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. EC1 0980-10
Appellant,	)	
	)	Honorable Deborah Brooks Durden
vs.	)	
	)	CERTIFICATE OF SERVICE
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	
_____	)	

The undersigned *pro se* Appellant hereby certifies that he has sent a true and correct copy of Appellant's Motion to Continue Court's Order Granting Access to the Court; Motion to Exceed Page Limit of ALC Rule 60(A); and Motion to Provide/Correct a Defined and Accurate Record to counsel for Respondents by placing a copy in the U.S. Mail, first-class postage affixed thereto, this 12th day of February, 2014, addressed as follows:

Lake E. Summers, Esq.
MALONE, THOMPSON, SUMMERS & OTT, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201



Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, Pro se

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Thomas J. Torrence, # 94561,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECI-0980-10
	)	
Appellant,	)	
	)	THE DEPARTMENT'S MOTION
vs.	)	TO HOLD IN ABEYANCE OR
	)	OTHERWISE STAY FURTHER
South Carolina Department of Corrections,	)	PROCEEDINGS IN THE
	)	INSTANT MATTER
	)	
Respondent.	)	

The Respondent in the above-captioned matter, the South Carolina Department of Corrections ["the Department"], by and through its undersigned outside counsel, respectfully moves this Court to hold in abeyance or otherwise stay further proceedings in the instant matter.

I. THE ORDER ISSUED BY THE COURT ON JANUARY 30, 2014

A. SUBSTANTIVE RULINGS BY THE COURT

This Court issued an order in this matter on January 30, 2014. Within its January 30, 2014 order, this Court considered three (3) issues associated with the Appellant's appeal of the final agency decision rendered by the Department concerning an administrative grievance filed by the Appellant under the provisions of the Department's Inmate Grievance System Policy, designated as Policy Number GA-01.12.

By his appeal of the Department's denial of his administrative grievance to this Court, the Appellant challenged the Department's denial of the claims he raised concerning the wages paid to him by the Department for labor he voluntarily provided to a prison industries project operated by the Department at Evans Correction Institution ["Evans"]. The Appellant, by his appeal to

FILED

MAR 03 2014

Page 1 of 5

SC ADMIN. LAW COURT

0411

this Court, also challenged the Department's determination that he did not timely file his administrative grievance under the provisions of Policy Number GA-01.12.

As stated in its January 30, 2014 order,¹ this Court considered the following issues:

1. Did the South Carolina Supreme Court decisions in *Adkins* and *Wicker* cases create new substantive or grievance rights?
2. Did Appellant timely file his Step 1 grievance alleging a prevailing wage issue with the Department?
3. Was the time to file an inmate grievance with the Department equitably tolled when the Appellant filed a claim in the Richland County Court of Common Pleas?

By its order, the Court first ruled that neither *Adkins* nor *Wicker* created "new substantive or grievance rights, but merely confirmed that prevailing wage claims were grievable under the Department's existing policies."²

However, the Court next ruled that the Appellant had timely filed his Step 1 administrative grievance.³ The Court also ruled that, under the doctrine of equitable estoppel, the Appellant had timely filed his Step 1 administrative grievance.⁴

Thus, by the final two (2) rulings from its January 30, 2014 order, this Court reversed the Department's decisions regarding the Appellant's Step 1 and Step 2 administrative grievances, namely that the Appellant had failed to timely file his Step 1 grievance.

¹ See this Court's January 30, 2014 Order, pp. 2 – 3.

² *Id.*, p. 5.

³ *Id.*, p. 7.

⁴ *Id.*, p. 9.

B. FURTHER PROCEEDINGS CONTEMPLATED BY THE COURT IN THE INSTANT MATTER

After it ruled that the Appellant timely filed his Step 1 administrative grievance, the Court then announced that it “will address the merits of the issues presented in this appeal.”⁵

Toward that end, the Court presented a briefing schedule by which the parties would address the Appellant’s claims that the Department alleged failure to pay the so-called “prevailing wage” to the Appellant for the labor he voluntarily provided to the prison industries project operated by the Department at Evans and that the Department removed portions of the pay it remitted to the Appellant for the labor he voluntarily provided to the prison industries project operated by the Department at Evans without statutory authority.⁶

II. RELEVANT PROCDURAL HISTORY

By its June 7, 2012 order, this Court granted the Department’s motion, filed June 5, 2012, for it to first consider whether the Appellant timely filed his Step 1 administrative grievance before it considered the merits and viability of the Appellant’s prison industries pay claims.

Ultimately, the Court agreed “that the interests of judicial economy would be served by considering the timeliness of the filing as a preliminary matter,”⁷ and, accordingly, it directed the parties to file initial briefs addressing only the timeliness issue.

⁵ *Id.*, p. 10.

⁶ *Id.*

⁷ *See* the Court’s June 7, 2012 Order.

III. ARGUMENT

For the interests of judicial economy, the Department now moves the Court to hold in abeyance or otherwise stay all further proceedings in this matter.⁸

The Department so moves in light of the reality that the decision issued by Chief Judge Anderson in *Ackerman*, #266928, *et al.*, v. S.C. Dep't of Corr., Docket Nos. 07-ALJ-04-00444-AP, *et seq.*, is currently under review by our Court of Appeals.⁹

As in the instant matter, the issue of whether the Appellant timely filed his Step 1 administrative grievance is identical to the central issue associated in *Ackerman*. In *Ackerman*, Chief Judge Anderson considered a myriad of arguments articulated by counsel for the nearly 200 appellants concerning whether the appellants had timely filed Step 1 administrative grievances in which they presented claims concerning the rate at which the Department paid them for the labor they voluntarily provided to the prison industries project operated by the Department at Lieber Correctional Institution. The arguments concerning timeliness articulated by the Appellant in the instant matter were identical or at least very similar to some of the arguments concerning timeliness articulated by counsel for the appellants in *Ackerman*.¹⁰

⁸ Should it grant the Department's instant motion for the reasons articulated below, the Department respectfully submits that proceedings associated with the following three (3) motions recently filed by the Appellant would be held in abeyance or otherwise stayed: (1) a "Motion to Continue this Court's July 25, 2012 Order to Exceed Page Limit of ALC Rule 60(A);" (2) a "Motion to Continue this Court's July 25, 2012 Order Granting Access to the Court;" and (3) a "Motion to Provide/Correct a Defined and Accurate Record." The Appellant dated each of his three (3) motions on February 10, 2014, and the Department's undersigned counsel received each of the Appellants' three (3) motions on February 20, 2014. Should it deny the Department's instant motion, the Department respectfully moves the Court to allow it 10 days from the date of any order issued by the Court in response to the Department's instant motion to respond to the three (3) of the Appellants' aforementioned motions.

⁹ The appeal in *Ackerman* is designated by the Court of Appeals as appellate case number 2012-210588.

¹⁰ The undersigned counsel for the Department respectfully advises the Court that, out of an abundance of caution, he is appealing the Court's January 30, 2014 order to the Court of Appeals. A copy of the Department's Notice of Appeal, which will be filed the same day as the Department's instant motion, will be filed with the Administrative Law Court's Clerk Office.

However, Chief Judge Anderson, by the order he issued July 26, 2012, ruled in the Department's favor on the timeliness issue in *Ackerman*, and, accordingly, he affirmed the Department's ruling that all but one (1) of the appellants had not timely filed their Step 1 administrative grievances. Counsel for the appellants in *Ackerman* appealed Chief Judge Anderson's decision to our Court of Appeals, and, as stated above, the matter is still pending.

Obviously, the Court of Appeals will consider whether the appellants in *Ackerman* timely filed their Step 1 administrative grievances, and any decision issued the Court of Appeals in *Ackerman* will undoubtedly directly impact the parties' further litigation of the instant matter. If, for example, the Court of Appeals affirms the rulings articulated in *Ackerman*, then any further proceedings undertaken by the parties in the instant matter would turn out to represent an exercise in futility.

IV. CONCLUSION

Thus, in light of the above-provided analysis and argument, the Department respectfully urges this Court to hold in abeyance or otherwise stay further proceedings in this matter.

RESPECTFULLY SUBMITTED,



Lake E. Summers
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339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300
Fax: (803) 254-0309
E-mail: summers@mtsollawfirm.com

Outside Counsel for the Department

Columbia, South Carolina
March 3, 2014

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, # 94561,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECI-0980-10
Appellant,	)	
vs.	)	THE DEPARTMENT'S MOTION
	)	TO HOLD IN ABEYANCE OR
South Carolina Department of Corrections,	)	OTHERWISE STAY FURTHER
	)	PROCEEDINGS IN THE
	)	INSTANT MATTER
Respondent.	)	<u>CERTIFICATE OF SERVICE</u>

This is to certify that I have, on this date, caused to be served a copy of the Department's above-styled motion upon the *pro se* Appellant, via the United States Mail, to the following address:

Thomas J. Torrence, # 94651
Lieber Correctional Institution [SA-43]
Post Office Box 205
Ridgeville, South Carolina 29472-0205

BY:


Lake E. Summers
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300

Counsel for the Department

Columbia, South Carolina
March 3, 2014

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SC ADMIN. LAW COURT

0416

Thomas J. Torrence, # 094651,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECI 0980-10
Appellant,	)	
	)	Honorable Deborah Brooks Durden
vs.	)	
	)	APPELLANT'S MOTION TO
South Carolina Department of Corrections,	)	DENY RESPONDENT'S MOTION TO
	)	HOLD IN ABEYANCE OR
Respondent.	)	OTHERWISE STAY FURTHER
	)	PROCEEDINGS IN THIS MATTER

I. PROCEDURAL POSTURE OF THIS MATTER

The DOC issued a final agency decision denying Appellant's Step 2 Grievance on February 15, 2012. Respondents addressed every claim raised by Appellant as well as the defense of timeliness in the final agency decision "[T]herefore, for all of the above reasons, I concur with the entirety of the warden's response to your Step 1, and accordingly I deny your Step 2 in its entirety."³ Appellant filed the Notice of Appeal to this Court, dated March 2, 2012,

¹ AROA at 33 (Original emphasis)

raising six (6) issues regarding prevailing wages, *inter alia*, the timeliness of the grievance where Respondent raised the statute of limitations as a defense in Steps 1 and 2 Grievance replies.

Appellant filed an "Original Brief" dated March 23, 2012. On June 5, 2012, counsel for Respondent filed a Motion to Address Only One Issue In Its Brief. In that motion counsel specifically presented to this Court:

"On the other hand, if the Court determined that the Appellant ultimately filed his Step 1 within the 15-day filing deadline established by the applicable paragraphs of the Department's Inmate Grievance System Policy, or that this deadline did not apply to the Appellant's grievance or claims, then the Court could direct the Department to submit a supplemental brief on any remaining issues animated by the Appellant's claims."⁴

Respondent's counsel also stated "counsel respectfully submits that the Court could modify... ..as follows: (4) The parties shall submit additional briefs to the Court only when directed to do so."⁵

On June 7, 2012 this Court issued an Order granting Respondent's motion where the interests of judicial economy would be served by considering the timeliness of the filing as a preliminary matter..." (Emphasis supplied).

On July 9, 2012 Respondents filed The Department's Brief In Support of Its Argument That This Court should Affirm The Department's Denial Of The Appellant's Administrative Grievance. The introduction to the July 9th Brief specifically stated "[A]s directed by the Court's June 7, 2012 Order, the Department's instant brief addresses only one (1) issue associated with the Appellant's appeal..." page 1, paragraph 2.

On January 30, 2014 this Court issued an Order finding Appellant's grievance was timely filed, that this Court will *address the merits of the issues presented in this appeal, and establishing a briefing schedule.*⁶

⁴ Respondent's June 5, 2012 Motion To Address Only One (1) Issue In Its Brief, pg. 4

⁵ *Id.* at 4 - 5

⁶ January 30, 2014 Order ("Order") (Emphasis supplied)

On February 10, 2014 the Appellant filed Motions to (a) Continue this Court's July 25, 2012 Order to Exceed the Page Limit of ALC Rule 60(A); (b) Continue this Court's July 25, 2012 Order Granting Access to the Court; and (c) to Provide/Correct a Defined and Accurate Record. These motions remain outstanding.

On March 3, 2014 Respondent's filed the Abeyance Motion at issue.

II. RESPONDENT'S POSITION IS UNTENABLE

A. RESPONDENT'S ARTICULATION OF THE CASE

Respondent concedes, or, the fact is uncontested that "Appellant challenged the Department's denial of the claims he raised concerning wages paid to him," Abeyance Motion at 1. Respondent further argued Appellant "also challenged the Department's determination that he did not timely file his administrative grievance," *Id.* Appellant submits that timeliness was but one of the six (6) issues included in the Notice of Appeal. Respondent further attempts to articulate or imply that this Court's January 30, 2014 Order on two of the three issues addressed pursuant to this Court's June 7, 2012 Order render the Order at issue a "final order," when in fact it was Respondent's own June 5, 2012 Motion that requested the June 7, 2012 Order to determine timeliness as a "preliminary matter." Respondent concedes this point specifically in the Abeyance Motion, § II, pg. 3.

Respondent paraphrased this Court's Order as its intent to determine the merits and establishing a briefing schedule, Abeyance Motion, § I. B., pg. 3. Respondent's argument⁷ is based *solely* on the case of *Frances Ackerman*, #266928, *et al. v. S.C. Dep't of Corr.*, which is currently pending before the Court of Appeals.⁸

Appellant submits that the *Ackerman* appellants raised eight (8) varying claims referencing DOC Policy GA-01.12 and that no other merits exist to that appeal, thus, the July 26,

⁷ *Id.*, § III, pg. 4

⁸ No. 07-ALJ-04-00444-AP, *et seq.* (decided July 26, 2012), Appellate Case No. 2012-210588

2012 Order in *Ackerman* was a “final judgment” for all intents and purposes. Appellant also suggests that there exist distinctions between *Ackerman* and the instant case. Appellant is entitled to judicial review of his appeal and should not wait while Respondent hopes to win another case that may or may not affect Appellant here.

Appellant suggests that the timeliness matter in the instant case was a “preliminary matter” that Appellant survived and is now entitled to a determination of the claims raised on appeal.

B. RESPONDENT’S LEGAL SUPPORT OF DEPARTMENT’S ABEYANCE MOTION

Appellant submits that Respondent has completely failed to articulate the January 30, 2014 Order as a final judgment or intermediate appealable order upon which to warrant holding this matter in abeyance and from the interest of justice.

Appellant is at this time filing a Motion to Dismiss the Appeal filed by Respondents for lack of Appealability.⁹

Appellant further submits that counsel in the Abeyance Motion has failed to supply or rely upon any legal rule or precedent to support or warrant granting the motion to hold this matter in abeyance or from proceeding with a determination of the merits.

III. APPELLANT’S ARGUMENT IN OPPOSITION TO ABEYANCE MOTION

Appellant’s position is quite simply that the January 30, 2014 Order does not determine the merits of this case; is not a final judgment; does not fit within one of the statutory exceptions; does not affect a substantial right of Respondent; is not an intermediate order that necessarily affects the judgment before the time for appeal; and thus, does not warrant holding this matter in abeyance.

⁹ A copy of which is provided as part of this Court’s record.

The general statutory provision concerning appellate jurisdiction provide explicitly for immediate appeals from interlocutory decisions in certain circumstances.¹⁰ Nevertheless, our Supreme Court and the Court of Appeals have repeatedly maintained that, as a general rule, only final judgments are appealable.¹¹ Thus, is an interlocutory decision does not fit neatly within one of the statutory exceptions to the final judgment rule; a party may not take an immediate appeal from that decision.¹²

In order to be “final,” a judgment must result in a binding adjudication of the rights of the parties, *Keels v. Powell*, 213 S.C. 570, 50 S.E.2d 704 (1948). See also *Mid-State Distribs. v. Century Importers*, 310 S.C. 330, 426 S.E.2d 777 (1993) (if there is some further act which must be done by the court prior to determination of the rights of the parties, the order is interlocutory; if a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment).

Appellant suggests that the final judgment rule receives a more specialized treatment under the Administrative Procedures Act (APA) or in matters before the ALC and not the general rule established in §14-3-330 (1976).

In *Bone v. U.S. Food Service*,¹³ our Supreme Court followed the rule that Court settled in *Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control*¹⁴ that where there is a specialized statute, §14-3-330 does not govern the right of review. South Carolina Code Ann. § 1-23-610(A) (1) (Supp. 2009) provides that judicial review may only be sought from a *final* decision of the ALC. Therefore, although § 14-3-330 permits appeals from interlocutory orders which involve the merits, that section is inapplicable in

¹⁰ S.C. Code Ann. § 14-3-330 (Supp. 1991)

¹¹ *Bolding v. Bolding*, 283 S.C. 501, 323 S.E.2d 535 (Ct. App. 1984)

¹² *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456 (1988)

¹³ 404 S.C. 67, 744 S.E.2d 552 (2013)

¹⁴ Order, April 10, 2010

cases where a party seeks review of a decision of the ALC because the more specific statute, § 1-23-610, limits review to final decisions of the ALC. Here, as in *Charlotte-Mecklenburg*, the order is not a final order where some further act must be done by the court prior to determination of the rights of the parties. The Supreme Court found the order of the ALC in that case was interlocutory and was not a final decision which is not immediately appealable under § 1-23-610.

Finally, when an order is interlocutory and not immediately appealable, the service of the filing of a notice of intent to appeal, as here, does not transfer jurisdiction to the appellate court, nor does it stay further proceedings in the lower court, *see South Carolina Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 340 S.E.2d 535 (1986).

CONCLUSION

WHEREFORE, based upon the foregoing facts and argument, the Appellant respectfully moves this Honorable Court to deny Respondent's Motion To Hold In Abeyance or Otherwise Stay Further Proceedings In The Instant Matter and order the parties to proceed as so ordered in this Court's January 30, 2014 Order.

March 10, 2014

Respectfully submitted,



Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. Box 205
Ridgeville, SC 29472

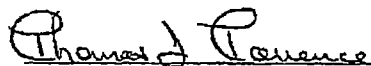
APPELLANT, Pro se

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Thomas J. Torrence, # 094651,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECI 0980-10
Appellant,	)	
	)	Honorable Deborah Brooks Durden
vs.	)	
	)	CERTIFICATE OF SERVICE
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	
_____	)	

The undersigned *pro se* Appellant hereby certifies that he has sent a true and correct copy of Appellant's Motion to Deny Respondent/Department's Motion to Hold in Abeyance or Otherwise Stay further Proceedings In The Instant Matter by placing a copy in the U.S. Mail, first-class postage affixed thereto, this 11th day of March, 2014, addressed as follows:

Lake E. Summers, Esq.
MALONE, THOMPSON, SUMMERS & OTT, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201



Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, Pro se

LAW OFFICES

MAR 21 2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

MALONE, THOMPSON
SUMMERS & OTT, LLC

Thomas J. Torrence, #094651,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-00143-AP'

Grievance No. ECI 0980-10

ORDER

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Thomas J. Torrence (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (DOC or Department). Appellant filed a grievance with the Department objecting to the Department's alleged failure to pay the prevailing wage for Appellant's work while participating in the prison industry program. Appellant also asserted that the Department removed portions of his private sector prison industry wages without statutory authority. Upon motion of the Department, the issues in the case were bifurcated by an Order dated June 7, 2012. On January 30, 2014, an Order was issued ruling that Appellant's grievance was timely filed and setting forth a schedule for responses to a pending motion, for filing of the Record, and briefing on the merits of the case.

Motion to Stay Proceedings

On March 3, 2014, DOC filed a Motion to Stay further proceedings in this matter pending a ruling by the South Carolina Court of Appeals in Ackerman v. S.C. Dept. of Corrections, Docket No. 07-ALJ-04-0444-AP. The Department argues that a ruling by the Court of Appeals could impact the proceedings in this matter. I have closely read the ALC's Order in Ackerman and considered the possible effects of rulings in that appeal on this matter. Because the decision in this case rests on the doctrine of equitable tolling, which requires an analysis of the individual facts of the case, it is uncertain, or even unlikely, that a decision in that case will directly control the outcome of this matter with finality. Therefore, Respondent's Motion to Stay the proceedings in this case is denied.

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SC ADMIN. LAW COURT

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Motions to Expand Record/Provide Full Record

On May 1, 2012, Appellant filed a Motion for an Order to Provide a Full Record and a Motion to Expand Record (Record Motions). On February 14, 2014 Appellant filed a Motion to Provide/Correct a Defined and Accurate Record. In its Motion for Stay Respondent requested an additional ten days to respond to these motions in the event the Motion for Stay was denied. Therefore, Respondent shall have thirty days to file any response to Appellant's pending motions concerning the Record. Appellant shall then have thirty days to reply.

Motions Concerning Brief Page Limits and Access to Caselaw

On February 14, 2014 Appellant filed a Motion to Continue this Court's July 25, 2012 Order Granting Access to the Court and a Motion to Continue this Court's July 25, 2012 Order to Exceed Page Limit of ALC Rule 60(A). In its Motion for Stay Respondent requested an additional ten days to respond to these motions in the event the Motion for Stay was denied. Therefore, Respondent shall have fifteen days to file any response to Appellants' two pending motions concerning court access and briefs. Appellant shall then have thirty days to reply.

ORDER

IT IS THEREFORE ORDERED that the Department of Corrections may file a response to the Record Motions by April 21, 2014. If such a response is filed, Appellant may file a reply, if any, by May 21, 2014.

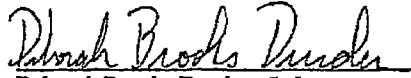
IT IS FURTHER ORDERED that if no opposition to the Record Motions is filed, the Department of Corrections shall file an addendum to the Record on Appeal, including the items requested in the Record Motions and all relevant matter in the record not previously presented in the Abbreviated Record filed May 7, 2012. The Addendum to the Record on Appeal shall be filed with the Court by April 30, 2014, if no opposition to the Record Motions is timely filed.

IT IS FURTHER ORDERED that the Department of Corrections may file a response to Appellant's motions concerning brief page limits and access to caselaw by April 4, 2014.

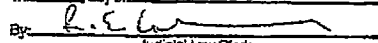
IT IS FURTHER ORDERED that Appellant's brief shall be filed within sixty days of the date the Record is filed.

IT IS FURTHER ORDERED that the Respondent shall have sixty days from the date Appellant's Brief is filed to submit a brief. Any reply brief must be filed within twenty days from the date Respondent's brief is filed.

AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
Administrative Law Court

March 20, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date
served this order in the above entitled action upon all
parties to this cause by depositing a copy hereto,
in the United States mail, postage paid, or in the Interagency
Mail Service addressed to the party(ies) or their attorney(s).
This 20th day of March 2014
By: 
Judicial Law Clerk

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 04 2014

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT **SC Court of Appeals**

Deborah Brooks Durden, Administrative Law Judge

Administrative Law Court Docket No. 12-ALJ-04-00143-AP
Appellate Case No. 2014-000409

Thomas J. Torrence, #094651 Respondent,

v.

South Carolina Department of Corrections, ... Appellant.

**APPELLANT'S RETURN TO THE RESPONDENT'S
MOTION TO DISMISS THE INSTANT APPEAL**

By his submission dated March 10, 2013, the Respondent moved to dismiss the instant appeal filed by the Appellant, the South Carolina Department of Corrections, in the above-captioned matter.

For the reasons stated below, the Appellant, by and through its undersigned counsel, respectfully urges this Court to deny the Respondent's motion.

I. BACKGROUND

**A. OVERVIEW OF RESPONDENT'S ARGUMENT IN FAVOR OF
DISMISSAL**

The Respondent asserted the following argument in his motion:¹

The January 30, 2014 of [the Administrative Law Court] is neither a final order on the merits, nor an order immediately appealable at this time. Thus, Appellant's appeal lacks appealability of a matter and must be dismissed. [The Administrative Law Court's] Order is quite clear that [its]

¹ See the Respondent's Motion, p. 2.

intent is to address the merits of the issues presented in Respondent's March 2, 2012 appeal.

The Respondent further argued as follows:²

South Carolina Code Ann. § 1-23-610(A)(1) (Supp. 2009) provides that judicial review may only be sought from a *final* decision of the ALC. Therefore, although § 14-3-330 permits appeals from interlocutory orders which involve the merits, that section is inapplicable in cases where a party seeks review of a decision of the ALC because the more specific statute, § 1-23-610, limits review to final decisions of the ALC. [emphasis supplied by Respondent].

B. THE ALC'S JANUARY 30, 2014 ORDER

Within its January 30, 2014 order, the Administrative Law Court ["ALC"] considered three (3) issues associated with the Respondent's appeal of the final agency decision rendered by the Appellant concerning an administrative grievance filed by the Respondent under the provisions of the Appellant's Inmate Grievance System Policy, designated as Policy Number GA-01.12.

By his appeal of the Appellant's denial of his administrative grievance to the ALC, the Respondent challenged the Appellant's denial of the claims he raised concerning the wages paid to him by the Appellant for labor he voluntarily provided to a prison industries project operated by the Appellant at Evans Correction Institution. The Respondent, by his appeal to this ALC, also challenged the Appellant's determination that he did not timely file his administrative grievance under the provisions of Policy Number GA-01.12.

As stated in its January 30, 2014 order,³ the ALC considered the following issues:

1. Did the South Carolina Supreme Court decisions in the [*Adkins v. S.C. Dep't of Corr.*, 602 S.E.2d 51 (S.C. 2004)] and [*Wicker v. S.C. Dep't of Corr.*, 602 S.E.2d 56 (S.C. 2004)] cases create new substantive or grievance rights?

² *Id.*, p. 3.

³ See the ALC's January 30, 2014 Order, pp. 2 – 3.

2. Did [the Respondent] timely file his Step 1 grievance alleging a prevailing wage issue with the [Appellant]?
3. Was the time to file an inmate grievance with the [Appellant] equitably tolled when the [Respondent] filed a claim in the Richland County Court of Common Pleas?

By its January 30, 2104 order, the ALC first ruled that neither *Adkins* nor *Wicker* created "new substantive or grievance rights, but merely confirmed that prevailing wage claims were grievable under the [Appellant's] existing policies."⁴

However, the ALC next ruled that the Respondent had timely filed his Step 1 administrative grievance.⁵ It also ruled that, under the doctrine of equitable estoppel, the Respondent had timely filed his Step 1 administrative grievance.⁶

II. ARGUMENT IN OPPOSITION TO THE RESPONDENT'S MOTION

A. UNDER THE APPLICABLE ALC RULES OF PROCEDURE, THE ALC'S JANUARY 30, 2014 WRITTEN ORDER CONSTITUTES "A FINAL DECISION" REGARDING THE TIMELINESS OF THE RESPONDENT'S STEP 1 ADMINISTRATIVE GRIEVANCE

In its denials of both the Respondent's Step 1 and Step 2 administrative grievances, the Appellant determined that the Respondent did not timely file his Step 1 administrative grievance. Thus, the final two (2) rulings from the ALC's January 30, 2014 order, by which the ALC reversed the Appellant's determinations that the Respondent did not timely file his Step 1 administrative grievance, constitute the ALC's final decision concerning the merits of the Appellant's determinations that the Respondent did not timely file his Step 1 administrative grievance.

⁴ *Id.*, p. 5.

⁵ *Id.*, p. 7.

⁶ *Id.*, p. 9.

Section V of the ALC's Rules of Procedure is entitled "Special Appeals," and the first rule which appears in Section V is ALC Rule of Procedure 51. Rule 51, which is entitled "Applicability," reads as follows:

The Rules in this section shall apply exclusively in matters heard on appeal from final decisions pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

As our Supreme Court anchored its decision in *Wicker*, 602 S.E.2d at 57 – 58, in large part upon its earlier decision in *Al-Shabazz*, the Respondent's appeal of the Appellant's denial of his administrative grievances to the ALC animates the application of Section V of the ALC's Rules of Procedure as contemplated under Rule 51.

Section V also includes ALC Rule of Procedure 65, and, in its entirety, Rule 65 provides as follows:

The Administrative Law Judge shall render a decision in a written order which shall be served on all parties and filed with the clerk of the Court. The Administrative Law Judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit. The decision of the Administrative Law Judge is a final decision and motions for reconsideration will not be considered. Judicial review of any decision of the Court shall be as provided in S.C. Code Ann. § 1-23-610 (2005) (as amended). [emphasis supplied].

In its January 30, 2014 decision, the ALC recognized the following:⁷

In his appeal to this Court, the [Respondent] raised multiple issues related to the payment of wages. However, by an order dated June 7, 2012, the only issue addressed in this order is the timeliness of [Respondent's] Step 1 grievance.

Thus, as defined under Rule 65, the January 30, 2014 decision issued by the ALC clearly constituted "a written order" which the ALC "served on all parties and filed with the Clerk of Court." Most importantly, the ALC's January 30, 2014 written order constituted, as clearly

⁷ *Id.*, p. 2, n. 2.

defined under Rule 65, "a final decision" concerning the timeliness of the Respondent's Step 1 administrative grievance for which "motions for reconsideration will not be considered."

B. THE FINAL DECISION REPRESENTED BY THE ALC'S JANUARY 30, 2014 WRITTEN ORDER CONSTITUTES "THE LAW OF THE CASE" AS TO WHETHER THE RESPONDENT TIMELY FILED HIS STEP 1 GRIEVANCE, AND, AS SUCH, IT PREVENTS THE APPELLANT FROM RAISING TIMELINESS AS A DEFENSE IN ANY FURTHER PROCEEDINGS ASSOCIATED WITH THE RESPONDENT'S APPEAL BEFORE THE ALC

The Respondent argued in his motion to dismiss the instant appeal that that ALC's January 30, 2014 written order did not constitute "an ultimate decision on the merits under South Carolina Code § 1-23-390.⁸" The Respondent also argued that the ALC's January 30, 2014 written order "was interlocutory and was not a final decision which is not immediately appealable under § 1-23-610.⁹"

As demonstrated in the section of the Appellant's instant argument immediately above, the Respondent clearly failed to consider the provisions of Section V of the ALC Rules of Procedure in his analysis. By his analysis and argument, the Respondent likened the ALC's January 30, 2014 written order to a denial of a motion for summary judgment.

In *Ballenger v. Bowen*, 443 S.E.2d 379 (S.C. 1994), our Supreme Court considered an appeal taken from a circuit court's order denying a party's motion summary judgment. In its initial assessment of the case, our Supreme Court, 443 S.E.2d at 379 – 80, observed as follows:

This is an appeal of an order denying summary judgment. Respondent moves to dismiss the appeal, arguing the order is not appealable. Appellants, relying on the second footnote in *Ex parte South Carolina Farm Bureau Mutual Insurance Co.*, 314 S.C. 487, 431 S.E.2d 252 (1993), assert the order is immediately appealable because statements made in the order have the effect of striking their defense of *res judicata* /collateral estoppel.

⁸ See the Respondent's Motion, p. 3.

⁹ *Id.*

In its analysis, the *Ballenger* Court, 443 S.E.2d at 380, reasoned as follows:

A denial of a motion for summary judgment decides nothing about the merits of the case, but simply decides the case should proceed to trial. *Parker Oil Co. v. Smith*, 34 N.C.App. 324, 237 S.E.2d 882 (1977); cf. *Geiger v. Carolina Pool Equipment Distributors, Inc.*, *supra*. The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment motion or by a motion for a directed verdict. *Johnston v. Bowen*, 313 S.C. 61, 437 S.E.2d 45 (1993) (motion to reconsider); *Weil v. Weil*, 299 S.C. 84, 382 S.E.2d 471 (Ct.App.1989) (statement made while denying summary judgment is not the law of the case); *PPG Industries v. Orangeburg Paint & Decorating Center, Inc.*, 297 S.C. 176, 375 S.E.2d 331 (Ct.App.1988) (motion to reconsider);¹⁰ 21 C.J.S. *Courts*, § 149, p. 183 (1990).

In short, the denial of summary judgment does not *finally* determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings. Therefore, an order denying a motion for summary judgment is not appealable. *Good v. Hartford Accident & Indemnity Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942) (an order which has not resulted in any binding adjudication of the rights of the parties is not appealable).

However, contrary to the dynamic that unfolded in *Ballenger*, the ALC's January 30, 2014 written order determined with finality that the Appellant's defense of timeliness, which it invoked when it denied the Respondent's Step 1 and Step 2 administrative grievances, was not applicable. Under ALC Rule of Procedure 65, the ALC's January 30, 2014 written order clearly constitutes the "final decision" concerning the Appellant's timeliness defense, and the Appellant simply will not be able to raise the defense again as the ALC considers the various other grounds associated with the Respondent's appeal.

¹⁰ In *PPG Industries*, this Court considered whether a trial court could entertain motions for reconsideration after an initial denial of summary judgment. In *PPG Industries*, this Court, 375 S.E.2d at 335, declared as follows: "We have no authority in this state regarding this exact issue; however, it is the rule in our neighboring state of Georgia that it is within the discretion of the trial judge to consider a renewed motion for summary judgment. (citation omitted). The federal rule is that reconsideration of a motion for summary judgment is a matter for the trial court's discretion. (citations omitted)." However, as illustrated above, the ALC, under ALC Rule of Procedure 65, could not have and would not have entertained a motion for reconsideration filed by the Appellant concerning its January 30, 2014 written order.

Thus, the Respondent's entire analysis and argument are fundamentally defective, and this Court should deny his motion to dismiss the instant appeal filed by the Appellants.

C. THIS COURT IS CURRENTLY CONSIDERING ANOTHER APPEAL IN WHICH THE IDENTICAL OR NEARLY IDENTICAL ISSUES CONCERNING TIMELINESS ARE IN CONTROVERSY

The Appellant also respectfully urges this Court to deny the Respondent's motion to dismiss in light of the reality that another decision issued by the ALC involving identical or nearly identical issues, i.e. *Ackerman*, #266928, *et al.*, v. *S.C. Dep't of Corr.*, Docket Nos. 07-ALJ-04-00444-AP, *et seq.*, is currently under review by this Court.¹¹

As in the instant matter, the issue of whether the Respondent timely filed his Step 1 administrative grievance is identical to the issue currently under review in *Ackerman*. In *Ackerman*, the ALC considered a myriad of arguments articulated by counsel for nearly 200 current and former inmates concerning whether they had timely filed Step 1 administrative grievances in which they presented claims concerning the rate at which the Appellant paid them for the labor they voluntarily provided to the prison industries project operated by the Appellant at Lieber Correctional Institution.

Critically, as reflected by the table attached as the sole exhibit to the Appellant's instant return, the issues concerning timeliness considered by the ALC in its January 30, 2014 written order in the instant matter were identical or nearly identical to some of the issues concerning timeliness considered by the ALC in its July 26, 2012 written order in *Ackerman*.¹²

¹¹ The appeal in *Ackerman* is designated by the Court of Appeals as appellate case number 2012-210588.

¹² The Appellant respectfully submits that the ruling(s) rendered by this Court in *Ackerman* will undoubtedly impact the rulings rendered by the ALC in the January 20, 2014 final decision in the instant matter.

However, the ALC, by the 29-page order it issued July 26, 2012, ruled in the Appellant's favor on the timeliness issue in *Ackerman*, and, accordingly, it affirmed the Appellant's determination that all but one (1) of the 200 current and former inmates had not timely filed their Step I administrative grievances.

Like the ALC's January 30, 2014 written order in the instant matter, the ALC's January 26, 2012 written order in *Ackerman* constituted, under ALC Rule of Procedure 65, the "final decision" regarding the timeliness issue. As Rule 65 prohibited the Appellant from filing a motion for reconsideration with the ALC concerning the ALC's January 30, 2014 final decision regarding timeliness in the instant matter, Rule 65 also prohibited counsel for the current and former inmates in *Ackerman* from filing a motion for reconsideration with the ALC's July 26, 2012 final decision regarding timeliness in that case.

Accordingly, counsel for the current and former inmates in *Ackerman* properly appealed the ALC's July 26, 2012 final decision concerning timeliness in *Ackerman* to this Court, and, as their appeal is still under review, this Court accepted jurisdiction over the appeal filed by the current and former inmates in that case. Likewise, the Appellant's undersigned counsel properly appealed the ALC's January 30, 2014 final decision concerning timeliness in the instant matter to this Court, and this Court should deny the Respondent's motion to dismiss.

III. CONCLUSION

For the foregoing reasons, the Appellant respectfully urges this Court to deny the Respondent's motion to dismiss its instant appeal of the ALC's January 30, 2014 final decision.

RESPECTFULLY SUBMITTED:



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Attorney for Appellant South Carolina
Department of Corrections

April 4, 2014

Pro Se Respondent:

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Page 9 of 9

0435

Thomas J. Torrence, # 094651, Respondent, v. S.C. Dep't of Corr., Appellant

Administrative Law Court Docket No. 12-ALJ-04-00143-AP
Appellate Case No. 2014-000409

Issue considered by the ALC in its January 30, 2014 Final Decision	Ruling by the ALC in its January 30, 2014 Final Decision	Issue considered by the ALC in its July 26, 2012 Final Decision in <i>Ackerman</i>	Ruling by the ALC in its July 26, 2012 Final Decision in <i>Ackerman</i>
<u>Issue # 1</u> "Did the South Carolina Supreme Court decisions in <u>Adkins</u> and <u>Wicker</u> cases create new substantive or grievance rights? (p. 2).	"Accordingly, I conclude that <u>Adkins</u> and <u>Wicker</u> did not create new substantive or grievance rights, but merely confirmed that prevailing wage claims were grievable under the [Appellant's] existing policies." (p. 5).	"Pursuant to an April 14, 2010 order, this court, in the interests of judicial economy, instructed the parties that it would consider the issues relevant to the Appellants' appeals in three levels. In the first level of review, which was set for in an order dated March 10, 2011, the court addressed the following two issues (1) did [<u>Adkins</u>] and [<u>Wicker</u>] create new substantive rights and/or new remedies? and (2) do Adkins and Wicker apply prospectively or retrospectively?" (pp. 2 – 3).	"As discussed in the March 10, 2011 order, the court found that <u>Adkins</u> and <u>Wicker</u> created neither new substantive rights nor new remedies and that both decisions applied retrospectively." (p. 3).

Appellant's Return to Respondent's Motion to Dismiss – Exhibit 1

Page 1 of 4
April 4, 2014

0436

Issue considered by the ALC in its January 30, 2014 Final Decision	Ruling by the ALC in its January 30, 2014 Final Decision	Issue considered by the ALC in its July 26, 2012 Final Decision in <i>Ackerman</i>	Ruling by the ALC in its July 26, 2012 Final Decision in <i>Ackerman</i>
<u>Issue # 2</u> "Did [the Respondent] timely file his Step 1 grievance alleging a prevailing wage issue with the [Appellant]?" (p. 2).	"In the present case, it was not a one-time event, in which [the Respondent] was not paid a prevailing wage. The Department continuously failed to pay Appellant a prevailing wage. Therefore, the grievance involved is related to a policy or procedure." (p. 7).	"The court now turns to the second level of review, which involves the timeliness of the filing of the Appellants' grievances under GA-01.12. The Appellants make the following arguments: (1) the Appellants' grievances are not time-barred under the fifteen-day limit for filing grievances set forth in Paragraph 13.1 of GA-01.12 because they concern policies/procedures and thus fall under Paragraph 13.9. ..." (p. 2).	"For the foregoing reasons, I conclude that prevailing wage claims do not constitute grievances concerning 'policies/procedures' under Paragraph 13.9 of GA-01.12. Rather, I find that prevailing wage claims are 'incident' grievances and thus must be filed within the fifteen day timeframe set forth in Paragraph 13.1." (p. 10).

Issue considered by the ALC in its January 30, 2014 Final Decision	Ruling by the ALC in its January 30, 2014 Final Decision	Issue considered by the ALC in its July 26, 2012 Final Decision in <i>Ackerman</i>	Ruling by the ALC in its July 26, 2012 Final Decision in <i>Ackerman</i>
<u>Issue # 2 (continued)</u> "Did [the Respondent] timely file his Step 1 grievance alleging a prevailing wage issue with the [Appellant]?" (p. 2).	"Clearly, the [Appellant] did not recognize a wage claim as grievable until the Supreme Court upheld the ALC's decision [in <i>Wicker</i>] in August 2004. Thus, any attempt by [Respondent] to file a grievance prior to August 22, 2004 would have been futile. By that time, [Respondent's] lawsuit initiated as a class action in Circuit Court was pending before the courts, representing ongoing litigation between these same parties over the same issue. [Respondent] filed his grievance within fifteen days of the date the Supreme Court issue its decision in his case, '[c]learly, [Appellant] can present this claim via the inmate grievance procedure.' <i>Torrence v. S.C. Dept. of Corrections</i>, 373 S.C. 586, 595, 646 S.E.2d 866, 870 (2007)." (p. 7).	"The Appellants next argue that, if this court determines that their Step 1 grievances constituted 'incident' grievances and, therefore, were subject to Paragraph 13.1's fifteen-day filing deadline, they had 'reasonable cause' under Paragraph 13.9 not to file their Step 1s before the South Carolina Supreme Court issued its opinions in <i>Adkins</i> and <i>Wicker</i>. Specifically, the Appellants contend that the Department's 'practice of denying grievability' for prevailing wage claims, as well as the ALC's en banc order in <i>McNeil v. South Carolina Department of Corrections</i>, 00-ALJ-04-00336-AP (S.C. Admin. Law Ct. Sept. 5, 2001), 'effectively barred' them from exercising their grievance and appeal rights prior to the issuance of <i>Adkins</i> and <i>Wicker</i>. I disagree." (pp. 10 – 11).	"For these reasons, I find that the Appellants' contention that they were 'effectively barred' from filing their Step 1s before the issuance of <i>Adkins</i> and <i>Wicker</i> is without merit." (p. 12).

Issue considered by the ALC in its January 30, 2014 Final Decision	Ruling by the ALC in its January 30, 2014 Final Decision	Issue considered by the ALC in its July 26, 2012 Final Decision in <i>Ackerman</i>	Ruling by the ALC in its July 26, 2012 Final Decision in <i>Ackerman</i>
Issue #3 "Was the time to file an inmate grievance with the [Appellant] equitably tolled when the [Respondent] filed a claim in the Richland County Court of Common Pleas?" (p. 3).	"[Respondent's] case, originally filed as a class action in the Court of Common Pleas, was pending before the courts on August 23, 2004 when the <u>Wicker</u> and <u>Adkins</u> decisions were issued. This case presents the type of extraordinary circumstances in which fairness demands that the doctrine of equitable tolling be applied. [Respondent's] existing lawsuit, filed prior to the time the [Appellant] recognized grievances regarding pay claims, equitably tolled the time for filing a grievance during the period that lawsuit was pending. Appellant filed his Step 1 grievance within days of receiving the Supreme Court's final order and decision in that matter holding that he could present his claim via the inmate grievance procedure." (p. 10).	"Next, the Appellants argue that the fifteen-day filing deadline in Paragraph 13.1 was tolled when they filed their class action in <u>Williams</u> on January 29, 2002. I disagree." (p. 23).	"The record shows that numerous Appellants began participating in the prison industries project at Lieber several months, and in some cases years, before the class action was filed. As discussed in more detail below, under Paragraph 13.1, these Appellants were required to file a grievance within fifteen days after being informed of the Department's decision to pay them less than the prevailing wage. Thus, by the time the 2002 class action was filed, Paragraph 13.1's fifteen-day filing deadline had already passed with regard to their prevailing wage claims. Accordingly, even if the running of the fifteen-day filing deadline were suspended by the filing of the class action, these Appellants still failed to timely file their grievances." (p. 24).

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 04 2014

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

SC Court of Appeals

Deborah Brooks Durden, Administrative Law Judge

Administrative Law Court Docket No. 12-ALJ-04-00143-AP
Appellate Case No. 2014-000409

Thomas J. Torrence, #094651 Respondent,

v.

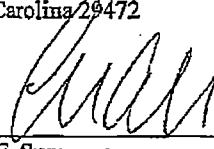
South Carolina Department of Corrections, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Return to the Respondent's Motion to Dismiss the Instant Appeal upon the above-named *pro se* Respondent by depositing a copy of it in the United States Mail, First Class Postage Pre-Paid, to the Respondent addressed as follows:

Thomas J. Torrence, #094651
Lieber Correctional Institution
SA-43
Post Office Box 205
Ridgeville, South Carolina 29472

April 4, 2014


Lake E. Summers
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Counsel for Appellant South Carolina
Department of Corrections

Page 1 of 1

0440

The South Carolina Court of Appeals

Thomas J. Torrence, Respondent,

v.

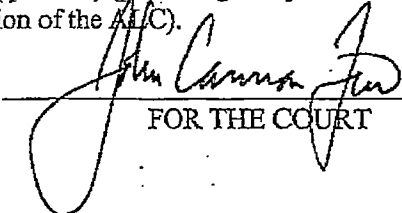
South Carolina Department of Corrections, Appellant.

Appellate Case No. 2014-000409

ORDER

Appellant, the South Carolina Department of Corrections, has appealed from the Administrative Law Court's order finding Respondent Thomas J. Torrence's grievance was timely filed, providing that the merits of the action would proceed, and establishing a briefing schedule. Respondent has filed a motion to dismiss this appeal, arguing the underlying order is not immediately appealable. Respondent filed a return.

Because the ALC's order is not a final decision, this appeal is dismissed. *See* S.C. Code Ann. § 1-23-610(A)(1) (Supp. 2013) (providing that judicial review may only be sought from a final decision of the ALC).


FOR THE COURT

C.J.

Columbia, South Carolina

FILED

4/17/14 EAC

cc:

Lake Eric Summers, Esquire
Thomas J. Torrence, 00094651

LAW OFFICES

APR 18 2014

MALONE, THOMPSON
SUMMERS & OTT, LLC

0441



LAW OFFICES

APR 18 2014

MALONE, THOMPSON
SUMMERS & OTT, LLC

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

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April 17, 2014

Mr. Lake Eric Summers, Esquire
339 Heyward St.
Ste. 200
Columbia SC 29201

Re: Thomas Torrence v. SCDC (2)
Appellate Case No. 2014-000409

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Thomas J. Torrence, 00094651

0442

B. THE APPELLANT'S MAY 2012 MOTIONS

1. APPELLANT'S "MOTION FOR AN ORDER TO PROVIDE A FULL RECORD"

In his May 1, 2012 submission entitled "Motion for an Order to Provide a Full Record," the Appellant moved the Court,³ pursuant to Administrative Law Court ["ALC"] Rule of Procedure 63, to issue an order compelling the Department to provide "a complete and full record of documents considered in the disposition of both Step 1 and Step 2 of the above referenced agency grievance, to include *all* Appendices (A-L) submitted by Appellant on Step 2, as the Record before this Court, pursuant [ALC Rules of Procedure] 58 and 59(c)]." [italicized emphasis supplied by the Appellant].

2. APPELLANT'S "MOTION TO EXPAND THE RECORD"

In his May 1, 2012 submission entitled "Motion to Expand the Record," the Appellant moved the Court,⁴ again pursuant to ALC Rule of Procedure 63, to issue an order by which the Record in this matter would be expanded to include four (4) sets of items, the last three (3) of which constituted copies of materials generated by our General Assembly and associated with versions of S.C. Code Ann. § 24-3-40, copies of various prison industries statutes, and a decision issued by our Supreme Court.

C. THE APPELLANT'S FEBRUARY 2014 "MOTION TO PROVIDE/CORRECT A DEFINED AND ACCURATE RECORD"

In his February 2014 submission entitled "Motion to Provide/Correct a Defined and Accurate Record," the Appellant asserted as follows:⁵

³ See the Appellant's "Motion for an Order to Provide a Full Record" dated and filed May 1, 2012, pp. 1 – 2.

⁴ See the Appellant's "Motion to Expand the Record" dated and filed May 1, 2012, pp. 1 – 3.

⁵ See the Appellant's Motion dated February 12, 2014, pp. 1 – 2.

[The Department] submitted an Abbreviated Record on Appeal, ("Abbreviated ROA"), dated [July 9, 2012].⁶ Appellant submits that the Abbreviated ROA, specifically pages 47 – 75, contains information regarding Appellant's wages and interest earned, that is inaccurate and misleading and misconstrues the issues that are currently before this Court regarding Appellant's Regular Hour Wages, Over-Time Hour Wages, Interest thereon, and as a result of the Abbreviated Record an issue now arises as to what rate and how deductions were made from [Appellant's] wages.

The Appellant continued as follows:⁷

The specific issues in this appeal require the pay structure distinction between regular and overtime hours regarding the "Training Hours" (June – August 1997) and non Training Hours (August 1997 – November 2004), as the rate of "prisoner's wages" paid to [the Department] (pursuant to S.C. Code § 24-3-40). As provided, the Abbreviated ROA, pages 47 – 75, do not show this Court and the Appellant the true rate of pay [the Department] paid Appellant and confuse the issues before this Court.

After providing a supposed example of the problem associated with the data reflected by the relevant portions of the Abbreviated Record, the Appellant then asserted as follows:⁸

Although pages 47 – 75 are derived from Private Sector Account Transactions, Appellant requires, for the issues before this Court, and as a result of this evidence, a report of the wages Insilco/ESCOD paid for Appellant's labor for the "Training Hours" between June 1997 and August 14, 1997.

The Appellant concluded his February 2014 motion by demanding the following relief:⁹

Appellant respectfully moves this Honorable Court for an Order for [the Department] to provide a corrected record that 1) accurately distinguishes and depicts the regular and overtime rates of pay as were distinguished on Appellant's pay sheets, and 2) a report of the wages paid by Insilco to the Department for Appellant's labor, pursuant to §24-3-40; during the period of Appellant's "Training Hours."

⁶ In his February 2014 Motion, the Appellant stated that the Department filed the Abbreviated Record on Appeal on July 29, 2012.

⁷ See the Appellant's Motion dated February 12, 2014, p. 2.

⁸ *Id.*, pp. 2 – 3.

⁹ *Id.*, p. 3.

D. THE APPELLANT'S MARCH 2012 NOTICE OF APPEAL

In the Notice of Appeal he filed with this Court,¹⁰ the Appeal presented the following grounds for consideration:

[The Department's] final agency decision is in violation of constitutional and statutory provisions; was in excess of the statutory authority of [the Department]; was made upon unlawful procedure; was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and was arbitrary and capricious in a clearly unwarranted abuse of discretion in that:

- (1) [the Department] withheld prevailing wages for 320 hours of labor;
- (2) [the Department] removed a portion of prevailing wages for labor from Nov. 1997 – Nov. 2004, without statutory authority;
- (3) [the Appellant] is entitled to interest on unlawfully withheld wages;
- (4) [the Department] denies access to wages held in escrow for his benefit under § 24-3-40(A)(5) and (B)(2);
- (5) [the Department] pays a substandard interest rate on escrowed monies held under § 24-3-40(A)(5); and
- (6) Time to file grievance equitably tolled by [pendency] of this action in *Torrence v. SCDC*, 373 S.C. 586, 640 S.E.2d 866 (2007).

Obviously, this Court, by the order it issued January 30, 2014, addressed the sixth issue identified by the Appellant in his March 2012 Notice of Appeal.

E. THE APPELLANT'S MAY 2012 "ORIGINAL BRIEF"

As the six (6) issues on appeal identified by the Appellant in his "Original Brief" dated May 23, 2012 correspond rather precisely to the six (6) issues he articulated in his March 2012 Notice of Appeal,¹¹ it appears that the Appellant's February 2014 "Motion to Provide/Correct a Defined and Accurate Record" impacts only the first two (2) issues he addressed his "Original Brief."

¹⁰ The Appellant's Notice of Appeal is dated March 2, 2012, and the Certificate of Service which appears at the bottom of the Appellant's Notice of Appeal reflects that he served it upon the Department's Office of General Counsel on March 7, 2012.

¹¹ See the Appellant's "Original Brief" dated May 23, 2012, pp. i and iii.

In the argument he articulated in support of his first issue on appeal, the Appellant asserted as follows:¹²

Appellant performed labor in PIE, many of which were overtime hours, in a [Department] created mechanism, unauthorized by statute, to divert prisoner wages, in a "Training Period" of 320 hours. The first 160 hours were at [\$0.25] per hour, the following 160 hours were at [\$0.75] per hour. Appellant asserts he is entitled to the prevailing wage for that 320-hour training period that [the Department] diverted away from Appellant.

Appellant is entitled to the prevailing wage [ESCOD] paid for his labor, and diverted without statutory authority by [the Department], for the 320 hours between June 1997 – August 1997 "training period."

In the argument he articulated in support of his second issue on appeal, the Appellant asserted as follows:¹³

Appellant performed labor in the Evans PIE project, many of which were overtime hours, side-by-side with private sector employees, from August 1997 – November 2004.

Appellant received \$5.25 per regular hour and \$7.86 per overtime hour for that labor. Appellant was never informed that [ESCOD] actually paid \$7.17 per regular hour and \$10.75 per overtime hour. Appellant asserts he had a state-created property interest, under §§ 24-3-40, 24-3-315 and 24-3-430(D) in the \$1.92 per regular hour and \$2.79 per overtime hour difference [ESCOD] paid for his labor and that [the Department] diverted without statutory authority.

Appellant asserts that he is entitled to the wage paid by [ESCOD] for his labor; however, Appellant submits that the prevailing wage for that labor is established by Gr.App. F, pp. 4 and Exhibit 1 (pp. 18 & 30); Exhibit 2 (pp. 33-34, 36-38, 39-43); Exhibit 3; Exhibit 4 (pp. 46-47, 53, 56-57, 88) and Exhibits 5, 6 and 9 (Deposition of Rebecca Eleazor, S.C. Employment Security Commission) and this Court must determine what the prevailing wage, pursuant to §§ 24-3-315 and 24-3-430(D) for such labor actually was during that period. [emphasis supplied].

¹² *Id.*, p. 3.

¹³ *Id.*, pp. 4–5.

II. ARGUMENT IN OPPOSITION TO THE APPELLANT'S "RECORD MOTIONS"

A. THIS COURT SHOULD NOT ORDER THE DEPARTMENT TO FILE ANY ADDENDUM TO THE ABBREVIATED RECORD ON APPEAL IT FILED ON JULY 9, 2012

The Department respectfully submits that this Court should not order it to file an addendum or other additional materials to supplement the Abbreviated Record on Appeal it filed on July 9, 2012.

As illustrated in Section I(B)(1) above, the Appellant, in his "Motion for an Order to Provide a Full Record," asked the Court to compel the Department to supplement the Record by including all of the documents he submitted to the Department in support of his Step 1 and Step 2 administrative grievances. As illustrated in Section I(B)(2) above, the Appellant, in his "Motion to Expand the Record" asked the Court to compel the Department to add into the Record a series of items, which, for the most part, constituted copies of legislative enactments and reported appellate decisions.

The materials identified by the Appellant in these (2) motions appear to bear more directly on the third, fourth, and fifth issues identified by the Appellant in his Notice of Appeal and addressed in his "Original Brief." Contrary to the assertions articulated by the Appellant in his two (2) May 2012 motions, the Department respectfully submits that the Abbreviated Record on Appeal it filed on July 9, 2012 possesses sufficient information and data by which this Court may consider and adjudicate these three (3) issues.

Moreover, the Department filed materials with the Court on August 15, 2012. By doing so, the Department satisfied the order issued by the Court on July 25, 2012 which granted the Appellant's "Renewed Motion for Access to the Court."¹⁴ The Department respectfully submits

¹⁴ Obviously, both the Court's July 25, 2012 order and the Department's August 15, 2012 filing in satisfaction of the Court's July 25, 2012 order occurred after the Appellant filed his two (2) motions in May 2012.

that the Appellant's desire to secure the materials he identified in his two (2) motions from May 2012 may best be addressed by either a new motion for "Access to the Court" or by a declaration by this Court that, while the materials are not appropriate for inclusion in the Record on Appeal, the Appellant is entitled to receive copies of at least some of the materials he identified in his two (2) motions by a filing from the Department similar to its August 15, 2012 filing.

B. THE ABBREVIATED RECORD ON APPEAL FILED BY THE RESPONDENT ON JULY 9, 2014 PROVIDES SUFFICIENT DATA BY WHICH THIS COURT MAY CONSIDER THE FIRST TWO (2) ISSUES THE APPELLANT IDENTIFIED IN HIS NOTICE OF APPEAL AND ADDRESSED IN HIS "ORIGINAL BRIEF"

As illustrated in Section I(C) above, the Appellant demanded in his February 2014 "Motion to Provide/Correct a Defined and Accurate Record" that this Court compel the Department "to provide a corrected record that 1) accurately distinguishes and depicts the regular and overtime rates of pay as were distinguished on Appellant's pay sheets, and 2) a report of the wages paid by Insilco to the Department for Appellant's labor, pursuant to §24-3-40, during the period of Appellant's 'Training Hours.'"

As persuasively demonstrated in Section I(E) above, the Appellant's February 2014 motion primarily impacts only the first two (2) issues he identified in his Notice of Appeal and addressed in his "Original Brief."

However, the Department respectfully submits that the sole inquiry this Court must conduct to adjudicate the first two (2) issues identified by the Appellant in his Notice of Appeal and addressed in his "Original Brief" is whether the Department paid the Appellant the proper hourly rate for the labor he voluntarily provided to the prison industries project in question.

Based upon the argument he articulated within his "Original Brief" in support of his second issue on appeal,¹⁵ it appears that the Appellant agrees with the Department's assessment.

Toward that end, the data which appears in the portion of the Abbreviated Record identified by the Appellant in his February 2014 motion provides this Court sufficient information by which it may determine whether the Department paid the Appellant the proper hourly rate for the labor he voluntarily provided to the prison industries project in question. Specifically, the portion of the Abbreviated Record identified by the Appellant reflects that the Department paid him at an hourly rate of not less than \$5.25 for his labor between August 1997 and November 2004.

From June 1997 to August 1997, the Department acknowledges that it paid the Appellant an hourly rate less than the hourly rate of \$5.25 it began paying him in August 1997. Nonetheless, the Department respectfully submits that the amount of back pay, if any, owed to the Appellant for the "training wages" it paid to him between June 1997 to August 1997 is also contingent upon the Court's determination of the correct hourly rate associated with the Appellant's pay in August 1997 when the Department stopped paying the Appellant at the "training wage" rate.

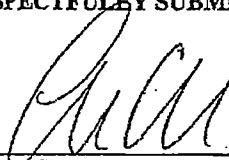
The Department, as it will develop in its future briefs and filings, respectfully submits that, beginning in August 1997, the hourly rate it paid the Appellant for his labor, as reflected by the data which appears in the materials constituting the Abbreviated Record on Appeal, conformed to the provisions of S.C. Code Ann. § 24-3-40, 24-3-315, § 24-3-410, § 24-3-420, § 24-3-430 and § 24-3-430(D), as well as all of the other applicable prison industries statutes.

¹⁵ See note 13 above.

III. CONCLUSION

Thus, in light of the above-provided analysis and argument, the Department respectfully urges this Court to deny the relief sought by the Appellant in his "Record Motions."

RESPECTFULLY SUBMITTED,



Lake E. Summers

Malone, Thompson, Summers & Ott LLC

339 Heyward Street, Suite 200

Columbia, South Carolina 29201

Office: (803) 254-3300

Fax: (803) 254-0309

E-mail: summers@mtsolvfirm.com

Outside Counsel for the Department

Columbia, South Carolina
April 21, 2014

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, # 94561,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-00143-AP

Grievance No. ECI-0980-10

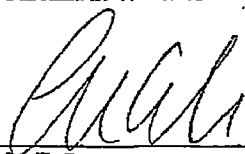
THE DEPARTMENT'S RESPONSE IN
OPPOSITION TO THE APPELLANT'S
"RECORD MOTIONS"

CERTIFICATE OF SERVICE

This is to certify that I have, on this date, caused to be served a copy of the Department's above-styled Response upon the *pro se* Appellant, via the United States Mail, to the following address:

Thomas J. Torrence, # 94651
Lieber Correctional Institution [SA-43]
Post Office Box 205
Ridgeville, South Carolina 29472-0205

BY:


Lake E. Summers
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300

Outside Counsel for the Department

Columbia, South Carolina
April 21, 2014

FILED

APR 21 2014

SC ADMIN. LAW COURT

0452

Thomas J. Torrence, # 094651,	)	Docket No. 12-ALJ-04-00143-AP.
	)	Grievance No. ECI 0980-10
Appellant,	)	
	)	Honorable Deborah Brooks Durden
vs.	)	
	)	APPELLANT'S REPLY TO
South Carolina Department of Corrections,	)	DEPARTMENT'S RESPONSE IN
	)	OPPOSITION TO APPELLANT'S
Respondent.	)	"RECORD MOTIONS"
	)	

I. BACKGROUND

II. APPELLANT'S ORIGINAL BRIEF²

LAW OFFICES

MAY 02 2014

² Dated / filed May 23, 2012

0453

Appellant's Original Brief was filed May 23, 2012; prior to Respondent's June 5, 2012 Motion to Address Only One (1) Issue In Its Brief and this Court's June 7, 2012 Order granting Respondent's Motion. In fact, it was Respondent who urged this Court that Appellant confine his reply brief to the timeliness issue in their June 5, 2012 Motion.³ Quite simply, the Appellant asserts he is not confined to the arguments presented in the May 23, 2012 brief,⁴ as Respondent implies, and reserves the right to argue the law as applied to the facts of this case in Appellant's Brief to be filed within (60) days following the filing of the Record in this matter.⁵

III. REPLY TO RESPONDENT'S OPPOSITION⁶

ADDENDUM TO ABBREVIATED RECORD

Respondent asserts that the Record Motions "appear to bear more directly on the third, fourth, and fifth issues identified by the Appellant in his Notice of Appeal..."⁷

Appellant submits that Respondent's articulation of the application of the contents of the Record Motions to specific issues has no bearing in that the matter requested in the motions has relevance to at least one (1) issue in the appeal. Appellant is unaware of any rule that specific evidence must apply to *every* issue raised. The Abbreviated Record ("AbROA") filed July 9, 2012 is insufficient to make determinations necessary in this matter, *infra*.

In relation to Appellant's Step 2 Appendices (A thru L), Respondent is required by Administrative Law Court Rules of Procedure ("ALCRP"), Rule 59(B) & (D) to provide:

³ Respondent's Motion To Address Only One (1) Issue (June 5, 2012): ("Appellant, even though he has already filed his brief in this matter, would then have an opportunity to file a brief specifically rebutting the Department's argument...") p. 3; and ("2) The Appellant's reply brief, again focusing *only* on the timeliness issue...") p. 4 (Emphasis added)

⁴ Response, p. 5

⁵ Order (March 20, 2014)

⁶ Response § I. (A) & (B), pp. 6 - 8

⁷ *Id.*, p. 6

"Where applicable, the record of the contested case shall consist of...(B) *All evidence received or considered...*" and "... (D) All proffers of proof of excluded evidence..." (Emphasis added).

In Respondent's Step 2 Appeal Reply counsel asserted:

"I have reviewed your Step 2 grievance appeal dated December 5, 2011, the affidavit you submitted in support of your Step 2⁸ also dated December 5, 2011, *as well as all of the 12 appendices, labeled "A" - "L," you submitted in support of your Step 2.*"⁹

Regarding the Step 2 Appendices counsel asserted further:

"I observed that the number of pages you submitted in support of your Step 2 far exceeds the number of pages allowed under the relevant provision(s) of SCDC's Inmate Grievance System Policy Number GA-01.12. *However, given the unique circumstances and chronology associated with your grievance, the responsible agency officials authorized a rare exception to the relevant provision(s) of Policy Number GA-01.12 and accepted the entirety of your Step 2.*"¹⁰

Counsel made a final assertion regarding the Appendices:

"Again, after carefully considering all of the arguments you presented in your Step 2, as well as the affidavit and 12 appendices you submitted in support of your Step 2, I deny your Step 2."¹¹

Appellant submits that, pursuant to Rules 58(B), (D) and 61, ALCRP, Appendices A thru L, considered by Respondents as part of the Step 2 record, must be included.

Counsel may not pick and choose which Appendices to utilize. Appellant submits that Respondents incorporated selected Appendices [H, I, J and L]¹² into the AbROA. Respondents are thus bound to incorporate all the Appendices from Step 2 in the Record before this Court. Further, Respondent prepared the AbROA *solely* to determine the issue of timeliness, *infra*, § VI. & note 19.

⁸ AbROA, pp. 24 - 25

⁹ *Id.*, p. 26 (Emphasis added)

¹⁰ *Id.* (Emphasis added)

¹¹ *Id.*, p. 27 (Original emphasis)

¹² *Id.*, pp. 34 - 43

Appellant suggests the AbROA is devoid of the materials requisite to substantiate the claims raised in Issues 1 thru 5 of the March 12, 2012 notice of appeal.

IV. APPELLANT'S EXPANSION MOTION

Appellant submits that materials requested in the Motion to Expand the Record are necessary for three primary purposes: (1) For Appellant to develop an argument on the plain language of the statute¹³ in regards to Appellant's access to his escrowed wages and the correct interest thereon; (2) For Appellant to utilize the South Carolina 113th Session House and Senate Bills considered in 1999 Act No. 68, §2 to demonstrate the wrongful practice of Respondent's denying access to escrowed wages of prisoners sentenced to life by requiring such prisoners to "have his escrowed wages included in his estate *upon death*"¹⁴ was *not* the intent of the South Carolina Legislature in passing Act No. 68 § 2; and (3) To allow this Court to make a fair determination as to whether the DOC acted in violation of statutory and constitutional authority. Appellant submits that Respondents will not be prejudiced by the inclusion of this matter in the supplemental record for a fair analysis under the appropriate standards.

V. RESPONDENT'S RESPONSE TO APPELLANT'S FEBRUARY 14, 2014 MOTION TO CONTINUE THE JULY 5, 2012 ORDER GRANTING ACCESS TO THE COURT IS OUT OF TIME.

This Court's March 20, 2014 Order specifically set forth a briefing schedule of fifteen days (April 4, 2014) in which Respondent was allowed to file any response to Appellant's pending motion.¹⁵

In an effort to mitigate any burden on Respondent, Appellant's motion suggested that counsel providing the West Law ("WL") cite for ALC cases Respondent intends to cite will

¹³ S.C. Code of Laws §§ 24-3-40(A)(5) and (B)(2) (Supp. 2007)

¹⁴ 113th Session House Bill H.3216 proposing to amend §24-3-40 (Emphasis added)

¹⁵ Order (March 20, 2014), p. 2

allow Appellant electronic research access. However, any ALC cases without a WL cite or any case or secondary material cited from outside South Carolina, the District Court of South Carolina, the Fourth Circuit Court of Appeals, or the United States Supreme Court would have to be provided in print format so Appellant would not suffer any prejudice. Appellant submits a WL cite is not an unreasonable request, mitigates any hardship imposed in providing a hardcopy, and is cost effective.

VI. THE ABBREVIATED RECORD IS NOT SUFFICIENT

Appellant asserts that the AbROA, pp. 47-75, are incorrect determinations of hours for Appellant's labor.

Appellant has attached¹⁶ a correct breakdown of the hour and wage structure for the work period of December 2, 1998 thru December 16, 1998 - pay date January 1, 1999, which may be contrasted with that same pay date on AbROA p. 69, which establishes a difference in the actual type of hours Appellant worked and was paid, and the hours Respondent combines and then averages the wage. Appellant respectfully requests a corrected and more definite record where, if Appellant prevails, the hourly information will determine regular and overtime hours and the difference between the rates paid and the rates required to be paid as "prevailing wages."

Respondent asserts that the AbROA is sufficient to determine the matters at hand, specifically, the rates of pay.¹⁷ However, Appellant submits that the wage rate(s) paid to Appellant had portions intentionally diverted without statutory authority and which has never been the "prevailing wage," which is mandatory pursuant to state and federal law; and if this Court orders relief and Respondent must determine the number of hours worked (regular and

¹⁶ Exhibit 1

¹⁷ Response, pp. 6-8

overtime), the hours as presented in the AbROA, pp. 47-75 are incorrect. Respondents avoid the question thus far that a portion of the wages diverted without statutory authority are not specifically parallel to the prevailing wage question, but are an additional question of statutory compliance that may be settled by the content of the Appendices.

Indeed, it is the remaining Appendices (A thru G) that are portions of depositions in *Torrence*¹⁸ from different parties (all of which counsel for Respondents attended), i.e., Tony Ellis, DOC Director of Prison Industries (former), declaring DOC acted intentionally without statutory authority; Bruce Barnett, Director, Thomas McQueen and Suzanne Reich, DOC Financial Accounting Branch, on the financial process involved in the receipt and diverting of the portion of Appellant's wages; and Rebecca Eleazor, South Carolina Employment Security Commission, which established the prevailing wage for the Job Code Appellant performed, as well as Exhibits containing correspondence with Appellant and Respondents regarding the prevailing wage.

In fact, in regards to the sufficiency of the AbROA to the remaining issues on appeal, counsel for Respondent asserted in his own words "... the Department also respectfully files an abbreviated Record on Appeal in the instant matter *which reflects materials relevant only to the timeliness of the Appellant's administrative grievance.*"¹⁹

Appellant submits he seeks a determination of the merits on the remaining five issues animated in the March 12, 2012 Notice of Appeal, which are not confined to a prevailing wage determination at different levels, but also determine the application of the statute in regards to

¹⁸ *Thomas J. Torrence et al. v. S.C. Dep't of Corrections* (2001-CP-40-3409)

¹⁹ Department's Brief In Support Of Its Argument That This Court Should Affirm The Department's Denial Of The Appellant's Administrative Grievance (July 9, 2012), p. 1 (Emphasis added)

nonstatutory deductions, escrowed wages, and the interest thereon and on any monies owed the Appellant.

Respondents avoid the issue of interest where Appellant received only .26¢ cents interest as an annual payment on principal of \$ 5,997.44 in 2010; and .27¢ cents in 2011. Appellant recently received a response to Electronic Inmate Request # 14-022642 (April 22, 2014) that informed "You earned .09¢ cents in 2013 for interest."

Respondent has avoided all queries regarding this practice, to include unanswered March 29, 2011 correspondence (Exhibit 2 - attached); and unanswered Electronic Inmate Request # 14-0333-09, dated April 12, 2014 (Exhibit 3 - transcription attached).

Appellant respectfully requests to keep open the Expansion of the Record up to the time of Appellant's Reply Brief as any information regarding the Long Term Savings Account become available. Appellant requests counsel for Respondents encourage DOC to respond to Exhibit 3 prior to filing any Supplemental Record.

Regardless of this Court's ruling for either party, Appellant anticipates the decision will be appealed. Pursuant to Rule 210(h), SCACR, the Court of Appeals will not consider any fact which does not appear in the Record on Appeal.

CONCLUSION

Appellant respectfully prays this Honorable Court grant the relief requested in the 1) February 14, 2014 Renewed Motions for Access to the Court and to Exceed the Page Limit of Rule 60, ALCRP, where Respondents failed to enter a reply; and 2) grant the Record Motions of May 1, 2012 and February 14, 2014.

Respectfully submitted,

April 29, 2014



Thomas J. Torrence
#094651
Lieber Correctional Institution SA-43
Post Office Box 205
Ridgeville, South Carolina 29472-0205

APPELLANT, *Pro se*

Page 8 of 8

0460

**THE STATE OF SOUTH CAROLINA
In The Administrative Law Court**

**APPEAL FROM FINAL AGENCY DECISION
South Carolina Department of Corrections**

**Case No. 12-ALJ-04-0143-AP
Grievance No. ECI-980-10**

Honorable Deborah Brooks Durden, Administrative Law Judge

Thomas J. Torrence, #094651 APPELLANT

v.

S.C. Department of Corrections RESPONDENTS

**Appellant's Reply to Department's Response in Opposition to Appellant's
"Record Motions"**

EXHIBIT 1

EXHIBIT 1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 12/22/98
STATEMENT OF INMATE GROSS EARNINGS 98
PAY PERIOD: 12/02/98 TO 12/16/98 PAY DATE: 01/01/99
EMPLOYEE STATUS: ACTIVE
OVER PAYMENT INSTALLMENT: .00
BACK PAY DUE: .00
REGULAR HOURS WORKED: 88.50
REGULAR HOURS: 2 5.25/HOUR = 464.62
OVERTIME: 19.75
PREM RATE HOURS: 7 7.85/HOUR = 155.43
TOTAL OVERTIME COMPENSATION: 620.05
GROSS PAYMENT: 620.05

ONE TIME PAY NOTICE
TORRENCE, THOMAS J.
INMATES
ELECT WIRE HARNESS ASSEMBLY

Thomas J. Torrence v. S.C. Department of Corrections
Docket No. 12-ALJ-04-00143-AP

**THE STATE OF SOUTH CAROLINA
In The Administrative Law Court**

**APPEAL FROM FINAL AGENCY DECISION
South Carolina Department of Corrections**

**Case No. 12-ALJ-04-0143-AP
Grievance No. ECI-980-10**

Honorable Deborah Brooks Durden, Administrative Law Judge

Thomas J. Torrence, #094651 APPELLANT

v.

S.C. Department of Corrections RESPONDENTS

Appellant's Reply to Department's Response in Opposition to Appellant's
"Record Motions"

EXHIBIT 2

EXHIBIT 2

Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. Box 205
Ridgeville, SC 29472

March 29, 2011

Bruce Burnett, Chief
Financial Accounting Branch
S.C. Department of Corrections
PO Box 21787
Columbia, SC 2911-1787

Re: Inmate to Staff Request

Dear Mr. Burnett:

On February 8, 2011, I sent the attached Inmate Request to your Department for information on account interest, specifically on my Long-Term Savings Account.

Ms. Link's 2/11/11 response was less than adequate, left me questioning what interest is earned and paid, and whether, by law, I am entitled to be informed; by report, of my monies that your Branch manages for me. Therefore, I am making the following specific requests of your office:

On my Long-Term Savings Account:

- 1) The rate of interest earned for years 2005, 2006, 2007, 2008, 2009 and 2010;
- 2) The interest paid for years 2005, 2006, 2007, 2008, 2009 and 2010;
- 3) What specific type or category of financial account is the Long-Term Savings Account?
- 4) What financial institution or broker manages the investment of the Long-Term Savings Account?
- 5) What is the interest paid on this type of account by comparable institutions or brokerage firms?
- 6) Is your Department not required to report interest paid to my Long-Term Savings Account to the Internal

Thomas J. Torrence v. S.C. Department of Corrections
Docket No. 12-ALJ-04-00143-AP

0464

EXHIBIT 2

Revenue Service? In addition, based upon that report, should I be issued a 1099-INT?

Your personal attention to this matter will be greatly appreciated and settle many questions. Thanking you in advance.

Sincerely,


Thomas J. Torrence

Cc: file

Thomas J. Torrence v. S.C. Department of Corrections
Docket No. 12-ALJ-04-00143-AP

**THE STATE OF SOUTH CAROLINA
In The Administrative Law Court**

**APPEAL FROM FINAL AGENCY DECISION
South Carolina Department of Corrections**

**Case No. 12-ALJ-04-0143-AP
Grievance No. ECI-980-10**

Honorable Deborah Brooks Durden, Administrative Law Judge

Thomas J. Torrence, #094651 APPELLANT

v.

S.C. Department of Corrections RESPONDENTS

**Appellant's Reply to Department's Response in Opposition to Appellant's
"Record Motions"**

EXHIBIT 3

EXHIBIT 3

Electronic Inmate Request to Staff

Request # 14-033309 Sent: April 12, 2014
From: Thomas J. Torrence SCDC# 094651
To: Inmate Financial

Content of Request

I am requesting the following information in regards to the "Long Term Savings Account" for my escrowed wages from my private sector prison industries employment, pursuant to S.C. Code 23-4-40(A)(5):

- 1) The name and "type" of the account, as defined under S.C. Code of Laws Title 34, or other applicable State and/or Federal law;
- 2) If the account is not managed by the Department of Corrections ("DOC"); the name and address of the entity, firm or financial institution managing that account;
- 3) If managed by an outside entity, firm or financial institution: the name, and specific type of account or investment;
- 4) Where the interest rate for this specific account is ascertained;
- 5) What percentage of the interest earned does the DOC take or receive?
- 6) Under what law or regulation does the DOC take that percentage of interest earned from my principal (escrowed wages)?

Thomas J. Torrence v. S.C. Department of Corrections
Docket No. 12-ALJ-04-00143-AP

LAW OFFICES

MAY 02 2014

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

MALONE, THOMPSON
SUMMERS & OTT, LLC

Thomas J. Torrence, # 094651,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-00143-AP

Grievance No. EC1 0980-10

Honorable Deborah Brooks Durden

CERTIFICATE OF SERVICE ..

The undersigned *pro se* Appellant hereby certifies that he has sent a true and correct copy of *APPELLANT'S REPLY TO DEPARTMENT'S RESPONSE IN OPPOSITION TO APPELLANT'S "RECORD MOTIONS"* to counsel for Respondent by placing a copy in the U.S. Mail, first-class postage affixed thereto, this 29th day of April, 2014, addressed as follows:

Lake E. Summers, Esq.
MALONE, THOMPSON, SUMMERS & OTT, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201



Thomas J. Torrence

#094651

Lieber Corr. Inst. SA-43

P.O. Box 205

Ridgeville, SC 29472

APPELLANT, *Pro se*

0468

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, #094651,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

LAW OFFICES

JUL 11 2014

MALONE, THOMPSON
SUMMERS & OTT, LLC

Docket No. 12-ALJ-04-00143-AP
Grievance No. ECI 0980-10

LAW OFFICES

ORDER

JUL 11 2014

MALONE, THOMPSON
SUMMERS & OTT, LLC

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Thomas J. Torrence (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (DOC or Department). Appellant filed a grievance with the Department objecting to the Department's alleged failure to pay the prevailing wage for Appellant's work while participating in the prison industry program. Appellant also asserted that the Department removed portions of his private sector prison industry wages without statutory authority. On February 14, 2014, the Appellant filed three motions with the Court which are addressed in this order: Motion to Provide/Correct a Defined and Accurate Record; Motion to Continue This Court's July 25, 2012 Order to Exceed Page Limit of ALC Rule 60(A); and motion to Continue this Court's July 25, 2012 Order Granting Access to the Court.

PROCEDURAL BACKGROUND

By an Order dated June 7, 2012, this Court granted the Department's motion to bifurcate the issues presented in this appeal and allowed the Department to submit an abbreviated record dealing solely with the preliminary issue -- whether the Appellant timely filed his Step 1 grievance. On January 30, 2014, an Order was issued ruling that Appellant's grievance was timely filed and setting forth a schedule for briefing issues raised in pending motions filed by Appellant.

RECORD ON APPEAL

Appellant makes two motions with respect to the record on appeal. First, he moves that SCDC be required to file a full and complete record of documents considered and those submitted by Appellant in the grievance proceedings before the agency pursuant to ALC Rule 58. The Department

1

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JUL 10 2014

SC ADMIN. LAW COURT

0469

argues that the abbreviated record (containing only documents relevant to the issue of timely filing) “possesses sufficient information and data by which this Court may consider and adjudicate” the issues raised by Appellant on appeal. Respondent offers no legal support for the proposition that a full and complete record of the evidence submitted by Appellant in the proceedings below may properly be excluded from the record over Appellant’s objection. The fundamentals of appellate review require that a full record of relevant evidence received and considered by the hearing tribunal be included in the record. ALC Rules 36, 58 and 61 require that SCDC file a record that consists of:

1. all documents filed;
2. all evidence received or considered;
3. copies of specific policies relied upon by the agency;
4. a statement of any matters judicially noticed by the hearing officer;
5. all proffers of proof of excluded evidence; and
6. the final decision which is the subject of the appeal.

ALC Rule 58. Therefore, Respondent must file a record including all of the documents submitted by Appellant in support of his Step 1 and Step 2 administrative grievances. Appellant’s Motion for a Complete Record is granted.

Appellant’s second motion with respect to the record seeks to expand the record beyond those items enumerated in ALC Rule 58 to include copies of various versions of bills filed in the General Assembly, copies of South Carolina Statutes, and copies of the Supreme Court decision in Torrence v. S.C. Dept. of Corrections, 373 S.C. 586, 646 S.E.2d 866 (2007). These items are publications of legal authority relevant to this case and need not be included in the record to be considered by this Court. Therefore, these requests are more properly considered in the context of Appellant’s Motion for Access to the Court, discussed below.

INMATE ACCESS TO LEGAL MATERIALS

Appellant has requested that Respondent provide him with access to several specific legal materials relevant to the issues presented in this appeal for use in preparing his brief to this Court. Respondent acknowledges that “Appellant is entitled to receive copies of at least some of the materials he identified in his two motions,” but suggests that Appellant be required to file another motion to obtain a ruling on the issue. I find that Appellant laid out his request for these materials

with specificity in his motion filed May 1, 2012 and renewed his request in a second motion filed on February 14, 2014. This Court's order of March 20, 2014 directed Respondent to file any response to the pending motion concerning court access within fifteen days of that order. I therefore decline to require any additional motions filings from Appellant before ruling on the issue he has clearly, succinctly, and repeatedly raised in previous motions.

The United States Supreme Court has recognized that,

the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.

Bounds v. Smith, 430 U.S. 817, 828, 97 S. Ct. 1491, 1498, 52 L. Ed. 2d 72 (1977).

When any inmate... shows that an actionable claim...which he desired to bring has been lost or rejected, or that the presentation of such a claim is currently being prevented, ...he demonstrates that the State has failed to furnish adequate law libraries or adequate assistance from persons trained in the law.

Lewis v. Casey, 518 U.S. 343, 356, 116 S. Ct. 2174, 2182, 135 L. Ed. 2d 606 (1996) (internal citations omitted). A prison must provide those materials that an inmate needs in order to attack his sentence, directly or collaterally, and to challenge the conditions of his confinement. *Id.* Here, Appellant is challenging whether Respondent has paid him according to statute for his participation in the prison industries program. That is a condition of his confinement which the South Carolina Supreme Court has held involves a cognizable, state-created interest. Torrence v. South Carolina Dept. of Corrections, 373 S.C. 586, 593, 646 S.E.2d 866 (2007).

Appellant has requested copies of specific items including:

1. 1999 House and Senate bills and amended versions of those bills dealing with the issue of prison industries pay;
2. Copies of specific versions of the South Carolina statutes related to the issue of prison industries pay: S.C. Code Ann. § 24-3-40 (1999); § 24-3-315 (1999) and § 24-3-430 (1999);
3. ALC cases cited in Respondent's briefs or a Westlaw citation to those cases;
4. Materials cited in Respondent's briefs from outside South Carolina, the Fourth Circuit Court of Appeals, or the United States Supreme Court.

These requests for copies of legal precedent to be cited in Respondent's brief and/or not available in the prison law libraries is eminently reasonable and necessary for Appellant to prepare a reply brief. Therefore, Appellant's Motion for Access is granted. Respondent shall provide the materials enumerated above to Appellant along with the service of its brief.

LENGTH OF BRIEFS

Appellant has asked leave to submit a brief in excess of the limits allowed under the ALC Rules. Respondent has not objected to this request. As acknowledged in this Court's July 25, 2012 Order, the complexity and importance of the issue raised in this case justify the parties exceeding the page limitations found in ALC Rule 60(A) for briefs. Each party may file a brief that does not exceed 40 pages.

ORDER

IT IS THEREFORE ORDERED that Respondent shall file an addendum to the abbreviated record previously filed. The addendum must contain all materials required by ALC Rules 58 and 61, as discussed on page two of this Order, no later than August 15, 2014.

IT IS ALSO ORDERED that Appellant shall then file a brief addressing all remaining issues no later than September 30, 2014.

IT IS FURTHER ORDERED that Respondent's brief shall be due November 15, 2014. Respondent shall provide the materials enumerated on page three of this Order to Appellant along with the service of its brief.

IT IS FURTHER ORDERED that any reply brief must be filed by January 30, 2015.

AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
Administrative Law Court

July 10, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy herof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).
This 10th day of July 2014
By: B. S. [Signature]
Judicial Law Clerk

4

0472

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, # 94561,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECL-0980-10
	)	
Appellant,	)	
	)	
vs.	)	THE RESPONDENT'S MOTION
	)	FOR AN EXTENSION OF TIME
	)	BY WHICH IT MAY SATISFY
South Carolina Department of Corrections,	)	THE PROVISIONS OF THE
	)	ORDER ISSUED BY THE COURT
	)	ON JULY 10, 2014
Respondent.	)	

The Respondent in the above-captioned matter, the South Carolina Department of Corrections, by and through its undersigned outside counsel, respectfully moves the Court for a 30-day extension of time by which it may satisfy the provisions of the order issued by the Court on July 10, 2014.

By its aforementioned July 10, 2014 order, which the Respondent's undersigned counsel received on July 11, 2014, this Court addressed three (3) motion which the Appellant filed on February 14, 2014: (1) a Motion to Provide/Correct a Defined and Accurate Record; (2) a Motion to Continue this Court's July 25, 2012 Order to Exceed Page Limit of ALC Rule 60(A); and (3) a Motion to Continue this Court's July 25, 2012 Order Granting Access to the Court.

On the final page of its four-page July 10, 2014 order, this Court directed the Respondent to "file an addendum to the abbreviated record previously filed," and this Court declared that "[t]he addendum must contain all materials required by ALC Rules 58 and 61, as discussed on page two of this Order, no later than August 15, 2014."

However, in light of their continuing obligations in several matters currently pending in federal court, the Respondent's undersigned counsel now respectfully moves this Court for a 30-

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AUG 15 2014

Page 1 of 4

SC ADMIN. LAW COURT

0473

day extension of time in which to comply with the above-quoted provisions of this Court's July 10, 2014 order.

Specifically, the Respondent's undersigned counsel has, since the Court issued its July 10, 2014 order, found himself deeply involved in the litigation of a matter pending in federal court and styled as *Ashley Reeves as the Personal Representative for the Estate of Reeves v. Town of Cottageville, Cottageville Police Department & Randall Price*; Civil Action No. 2:12-2765-DCN (United States District Court – Charleston Division).

Specifically, the Respondent's undersigned counsel participated in jury selection for *Reeves* on July 9, 2014, and, subsequent to jury selection, the Respondent's undersigned counsel began preparing for the trial of *Reeves*, which was scheduled to commence on Monday, August 11, 2014. Accordingly, the Respondent's undersigned counsel conducted and/or participated in depositions in *Reeves* on July 10, 2014, July 11, 2014, and July 15, 2014.

On July 11, 2014, the presiding judge in *Reeves* issued an order by which he directed the parties to participate in a second mediation session no later than August 1, 2014. While the presiding judge ultimately excused the parties from participating in such a mediation session, he did not do so until July 29, 2014.

The Respondent's undersigned counsel faced a July 30, 2014 deadline by which to file all of his client's pre-trial motions in *Reeves*. Consequentially, the Respondent's undersigned counsel prepared and filed the following items in *Reeves* since this Court issued its July 10, 2014 order: (1) a motion to compel the Plaintiff's counsel to produce certain items on July 25, 2014; (2) a reply to the Plaintiff's opposition to defense's motion to exclude expert witness testimony on July 28, 2014; (3) a motion to disqualify the Plaintiff's counsel and his law firm on July 29, 2014; and (4) two (2) motions in limine on July 30, 2014.

Somewhat unexpectedly, the presiding judge in *Reeves* issued orders on August 1, 2014 by which, in light of the motion to disqualify the Plaintiff's counsel and his law firm filed by the Respondent's undersigned counsel on behalf of his client, he postponed the trial scheduled to begin on August 15, 2014. The presiding judge in *Reeves* then scheduled a hearing for August 20, 2014 by which he will consider the motion to disqualify Plaintiff's counsel and his law firm. The presiding judge in *Reeves*, by an order he issued August 5, 2014, directed the defendants' counsel, including the Respondent's undersigned counsel, to submit additional materials in support of their motion to disqualify the Plaintiff's counsel by Monday, August 18, 2014.

Aside from the above-described activity in *Reeves* and, for that matter, a variety of other matters pending before the Administrative Law Court, circuit court, and federal court, the Respondent's undersigned counsel was also obligated to travel out of state on August 7 and 8, 2014 to attend a family court hearing concerning his step-daughter.

Thus, the Respondent's undersigned counsel respectfully moves this Court to, in light of the above-described circumstances, grant his instant motion and allow him a 30-day extension by which to file the addendum described on the fourth and final page of its July 10, 2014 order.

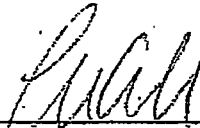
Should the Court grant the instant motion, the aforementioned addendum would be due to the Court no later than September 15, 2014. Moreover, the Respondent's undersigned counsel fully acknowledges that, should it grant his instant motion, the three (3) other deadlines set forth on the fourth and final page of the Court's July 10, 2014 order would also need modification.

Accordingly, the Respondent's undersigned counsel respectfully proposes the following modified schedule relating to all four (4) of the deadlines established by the July 10, 2014 order:

- (1) The Respondent shall file an addendum to the abbreviated record previously filed, which must contain all materials required by ALC Rules 58 and 61 as discussed on page 2 of the Court's July 10, 2014 order, no later than September 15, 2014;

- (2) The Appellant shall then file a brief addressing all remaining issues no later than October 30, 2014;
- (3) The Respondent's brief shall be due December 15, 2014, and the Respondent shall provide materials enumerated on page three of the Court's July 10, 2014 order to the Appellant along with the services of its brief; and
- (4) Any reply brief must be filed by February 28, 2015.

RESPECTFULLY SUBMITTED,



Lake E. Summers
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300
Fax: (803) 254-0309
E-mail: summers@mtsolaawfirm.com

Outside Counsel for the Department

Columbia, South Carolina
August 15, 2014

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Thomas J. Torrence, #094651,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-0143-AP
Grievance No.: ECI 0980-10

**ORDER GRANTING RESPONDENT'S
MOTION TO EXTEND TIME
TO SATISFY PROVISIONS
OF THE JULY 10, 2014 ORDER**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Thomas J. Torrence (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or Respondent). Appellant filed a grievance with the Department objecting to the Department's decision concerning prevailing wages. On March 7, 2012, the Appellant filed this appeal with the Court.

On August 15, 2014 counsel for Respondent filed a Motion for an Extension of Time by Which It May Satisfy the Provisions of the Order Issued by the Court on July 10, 2014 stating that he is obligated in several matters currently pending in federal court. Counsel for Respondent is requesting a 30-day extension in which to comply with the provisions of the July 10, 2014 order. This Court did not receive any opposition to the motion.

IT IS THEREFORE ORDERED that Respondent shall file an addendum to the abbreviated record previously filed. The addendum must contain all materials required by ALC Rules 58 and 61, as discussed on page two of the July 10, 2014 Order, no later than December 15, 2014.

IT IS ALSO ORDERED that Appellant shall then file a brief addressing all remaining issues no later than January 30, 2015.

IT IS FURTHER ORDERED that Respondent's brief shall be due March 15, 2015. Respondent shall provide the materials enumerated on page three of the July 10, 2014 Order to Appellant along with the service of its brief.

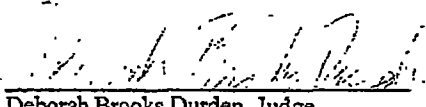
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SC ADMIN. LAW COURT

0478

IT IS FURTHER ORDERED that any reply brief must be filed by May 31, 2015.
AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
Administrative Law Court

September 2, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE
The undersigned, for the undersigned, has caused to be served the within-entitled case by depositing a copy of the same in the United States Mail, postage paid at the undersigned's office, and the same has been deposited in the United States Mail, postage paid at the undersigned's office.
This certificate is filed on September 2, 2014
By [Signature]
JUDGE, etc.

Thomas J. Torrence, # 094651,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECI 0980-10
Appellant,	)	
	)	Honorable Deborah Brooks Durden
vs.	)	
	)	APPELLANT'S MOTION TO
South Carolina Department of Corrections,	)	COMPEL DISCOVERY OF
	)	FINANCIAL RECORDS
Respondent.	)	

LAW OFFICES

MALONE, THOMPSON
SUMMERS & OTT, LLC

In support of this motion to compel, the Appellant will show this Honorable Court the following:

- 1) On February 8, 2011, March 29, 2011, March 29, 2012, and April 12, 2014 Appellant made good faith effort(s) to obtain financial information relevant to the issues in this appeal.
- 2) On July 18, 2014 made specific requests for the same data directly to counsel for Respondents, with a copy to the DOC's General Counsel (attached). This good faith effort went unanswered.
- 3) South Carolina Code §24-1-170 specifies in part that the director [DOC] shall keep, or cause to be kept, correct and accurate accounts of each and every financial transaction...including all receipts, and disbursements of every character. He shall keep full and correct accounts...and with *all* persons having financial transactions with the prison system.
- 4) That the information regarding the interest paid on the wages removed pursuant to §24-3-40(A)(5) is necessary for the litigation of the matter currently before this Court on appeal.
- 5) That Appellant is entitled to the information requested in light of *Wicker*¹ in that Appellant has a property interest in those wages; and Appellant will argue that such property interest extends to the same statutory scheme that mandates the escrowed wages be placed in an "Interest bearing" account.

Appellant requests the following information in regards to the "Long Term Savings Account" ("LTSA") for escrowed wages removed from Appellant's wages pursuant to S.C. Code §24-3-40(A)(5):

- I. The specific name and specific type of account that maintains the LTSA;

¹ *Wicker v. S.C. Dep't of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004)

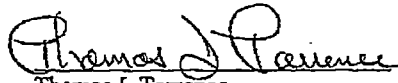
- II. The financial institution (name of firm or financial institution) in which the account is maintained;
- III. The interest rate for the LTSA for the years 2007, 2008, 2009, 2010, 2011, 2012 and 2013;
- IV. The source and name of the specific entity from which the interest rate is derived for the LTSA;
- V. What percentage of the interest earned does the DOC take or receive and for which specific purpose;
- VI. Under what law or state regulation does the DOC take that percentage requested in item V, above;
- VII. What government entity determines and disperses the interest for a LTSA; and
- VIII. Respondent's agency regulation or the governing state law that requires Respondents to report Appellant's interest information upon request.

Appellant submits that the above information should be provided to Appellant by the December 15, 2014 deadline for the addendum to the abbreviated record where Appellant may utilize the information in his Initial Brief, due January 30, 2015.

WHEREFORE, based on the foregoing, Appellant respectfully moves this Honorable Court to issue an order to compel Respondents to provide the requested financial information based on its relevance and necessity to the determination of the issues presented in the appeal, or as this Honorable Court deems prudent.

Respectfully submitted,

November 3, 2014



Thomas J. Torrence

#094651

Lieber Corr. Inst. SA-43

P.O. Box 205

Ridgeville, SC 29472

APPELLANT, *Pro se*

Thomas J. Torrence
#094651
Lieber Correctional Institution SA-43
P.O. Box 205
Ridgeville, SC 29472-0205

July 18, 2014

Lake E. Summers, Esquire
MALONE, THOMPSON, SUMMERS & OTT, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

Re: *Thomas J. Torrence, #094651, v. South Carolina Department of Corrections*
Docket No. 12-ALJ-04-00143-AP

Dear Mr. Summers:

I am in receipt of Judge Durden's July 10, 2014 Order in the above-referenced Administrative Law Court appeal of a final agency decision. In an effort of good faith to avoid later complications, I wanted to make you aware of certain agency mailroom requirements and certain difficulties I am encountering obtaining my financial information from the Department of Corrections ("DOC"). Based on the unique nature of this case and the agency's ability to alleviate these complications, I am forwarding a copy of this correspondence and attachment(s) to Christopher Florian, Interim General Counsel for DOC.

My first concern is the amended record on appeal as addressed in the July 10th order. If you will recall your August 15, 2012 response to the July 25, 2012 order wherein you provided twenty-five (25) ALC cases cited in your July 9, 2012 Brief; those cases were bound along the spine with *heavy plastic ring binding*. When that arrived at the institutional Mail Room I was informed that I was not allowed to have that type binding and Mail Room personnel cut the binding loose and gave me loose pages. That was a total of twenty-five cases averaging four pages in length.

The Amended Record will contain all the appendices (A - L) previously considered in the Step 1 and 2 grievances. I am requesting that you contact Mr. Florian at the Office of General Counsel and see if you are able to receive a dispensation of that particular rule for that specific ROA; or, in the alternative, I am requesting that you confer with Mr. Florian concerning what binding method will be acceptable. Your attention to this matter will be appreciated.

My other concern involves the matter of the interest earned and accrued on my escrowed wages in the Long Term Savings Account. Respondents have literally stonewalled me through either inaction or vague answers when answers are provided. In sum, I have received no information on my requests for information regarding my money, which is at issue in this litigation.

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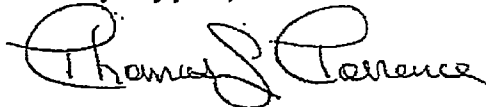
TORRENCE, Thomas J.
July 18, 2014
PAGE TWO

On April 12, 2014 I sent electronic inmate request (RTSM) # 14-033309 to DOC Financial Accounting (enclosed). Financial Accounting did not answer within the 45 days required by the RTSM agreement. I next contacted Mr. Florian via the RTSM. I received an immediate response from Financial Accounting. That response from Ms. Debra Long was extremely vague and ambiguous and provided no specific information requested. I sent an additional RTSM to Ms. Long requesting specific answers to my queries. I recently received a response that stated my request could not be forwarded on the RTSM system and that I should submit a paper request. I have provided you with copies of queries to Financial Accounting from the past three years with these same queries, and each time they are either unanswered or provide a vague response.

I require the specific information in the attached RTSM and other enclosed queries by the time you file the amended ROA. It is my intent to utilize that information to question the DOC's authority in the matter and as support for my argument in the issue regarding my escrowed wages as to "interest bearing escrow account" and "benefit" as intended under South Carolina Code §24-3-40(A)(5) and (B)(2). I therefore require very specific answers to the queries posed. I have a protected liberty interest in that money and any information regarding the administration or handling of those funds. I would appreciate your attention to this matter.

I look forward to hearing from you.

Very truly yours,



Thomas J. Torrence
APPELLANT

ENCLOSURES - as noted

Cc: Christopher Florian, Interim DOC General Counsel
File

0484

Electronic Inmate Request to Staff

Request # 14-033309 Sent: April 12, 2014
From: Thomas J. Torrence SCDC# 094651
To: Inmate Financial

Content of Request

I am requesting the following information in regards to the "Long Term Savings Account" for my escrowed wages from my private sector prison industries employment, pursuant to S.C. Code 23-4-40(A)(5):

- 1) The name and "type" of the account, as defined under S.C. Code of Laws Title 34, or other applicable State and/or Federal law;
- 2) If the account is not managed by the Department of Corrections ("DOC"); the name and address of the entity; firm or financial institution managing that account;
- 3) If managed by an outside entity, firm or financial institution: the name and specific type of account or investment;
- 4) Where the interest rate for this specific account is ascertained;
- 5) What percentage of the interest earned does the DOC take or receive?
- 6) Under what law or regulation does the DOC take that percentage of interest earned from my principal (escrowed wages)?

["Content" above is an identical copy of the Request sent electronically where kiosk users may not print out requests sent or answers received.]

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: <u>~~Financial Accounting Branch~~</u>	TITLE: <u>~~Financial Accounting Branch~~</u>	DATE: <u>Feb. 8, 2011</u>
INMATE'S NAME: <u>Thomas J. Torrence</u>		SCDC#: <u>094651</u>
INSTITUTION: <u>Lieber</u>		LIVING QUARTERS: <u>SA-43</u>
Sir or Madam: I have two specific requests. Please forward the following to me as soon as possible: 1) A 1099-INT for year 2010 interest paid for my tax purposes, [based on EH Gaper and Long Term] 2) A current balance and previous six month transaction of my Long-Term Savings Acct. Thank you for your assistance. <u>Thomas J. Torrence</u>		
DISPOSITION BY STAFF MEMBER: The reason you did not get a 1099 is because your account did not receive more than \$10.00 in interest. Your account received .26 in interest for 2010. Your Account balance is \$5,997.44. We do not give printouts on inmates account.		
DATE: <u>2-11-11</u>	SIGNATURE: <u>Evie Link</u>	

SCDC FORM 19-11 (REV. FEB 2001)

0486

Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. Box 205
Ridgeville, SC 29472

March 29, 2011

Bruce Burnett, Chief
Financial Accounting Branch
S.C. Department of Corrections
PO Box 21787
Columbia, SC 2911-1787

Re: Inmate to Staff Request

Dear Mr. Burnett:

On February 8, 2011, I sent the attached Inmate Request to your Department for information on account interest, specifically on my Long-Term Savings Account.

Ms. Link's 2/11/11 response was less than adequate, left me questioning what interest is earned and paid, and whether, by law, I am entitled to be informed, by report, of my monies that your Branch manages for me. Therefore, I am making the following specific requests of your office:

On my Long-Term Savings Account:

- 1) The rate of interest earned for years 2005, 2006, 2007, 2008, 2009 and 2010;
- 2) The interest paid for years 2005, 2006, 2007, 2008, 2009 and 2010;
- 3) What specific type or category of financial account is the Long-Term Savings Account?
- 4) What financial institution or broker manages the investment of the Long-Term Savings Account?
- 5) What is the interest paid on this type of account by comparable institutions or brokerage firms?
- 6) Is your Department not required to report interest paid to my Long-Term Savings Account to the Internal

Revenue Service? In addition, based upon that report, should I be issued a 1099-INT?

Your personal attention to this matter will be greatly appreciated and settle many questions. Thanking you in advance.

Sincerely,


Thomas J. Torrence

Cc: file

0488

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: Ms. Evie Link	TITLE: Financial Acct.	DATE: March 5, 2012
INMATE'S NAME: Thomas J. Torrence		SCDC #: 094651
INSTITUTION: Lieber		LIVING QUARTERS: SA-43
Ms. Link: I Am in receipt of your February 29, 2012 response to my February 24th Request regarding my Long Term Account balance and Annual interest. I appreciate your timely response. Could you answer the following questions regarding the same matter? 1) Is .27% the amount earned on the principal \$5,997.71 or is that only the amount I receive? 2) Why do I earn only .27 on this amount of money? 3) What is the rate of interest on a comparable type account if I had such an account. Thank you for your assistance. <i>Thomas J. Torrence</i>		
DISPOSITION BY STAFF MEMBER: 1.) Yes, .27 was earned on the principal of \$5,997.71 2.) See next page 3.) See next page		
DATE: 3-9-11	SIGNATURE: Evie Link	

SCDC FORM 19-11 (REV. FEB 2001)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE CORRESPONDENCE

INMATE: Thomas J. Torrence
SCDC# 094651
INSTITUTION: Lieber
FROM: Financial Accounting Branch
SUBJECT: INTEREST PAID ON PRISON INDUSTRIES ACCOUNT
DATE: 3-9-12

I AM IN RECEIPT OF YOUR RECENT LETTER REGARDING THE INTEREST
PAID ON YOUR PRISON INDUSTRIES ACCOUNT.

INTEREST: Interest will be paid to all inmates with monthly average balances of
greater than \$10.00. Upon receipt of an interest deposit from the State Treasurer's
Office, interest will be distributed to individual inmate accounts in accordance with
SC State Law, Section 24-3-40.

The interest rate is comparable to rates paid for similar accounts and services at local
financial institutions.

Inmates are not charged service fees for excessive transactions or penalized for falling
below a certain balance level. The average balance of \$10.00 is much lower than the
\$500 average balance for Wachovia to earn interest. The rate of interest paid varies from
period to period depending upon interest received from State Treasurer's office.

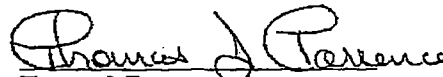
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THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, # 094651,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECI 0980-10
Appellant,	)	
	)	Honorable Deborah Brooks Durden
vs.	)	
	)	
South Carolina Department of Corrections,	)	CERTIFICATE OF MAILING
	)	
Respondent.	)	

The undersigned *pro se* Appellant, Thomas J. Torrence, hereby certifies that he has served a true and correct copy of APPELLANT'S MOTION TO COMPEL DISCOVERY OF FINANCIAL RECORDS on counsel for Respondents, Lake E. Summers, Esquire, by placing a copy of same in the United States Mail, First-Class postage affixed thereto, this 3rd day of November, 2014, addressed as follows:

Lake E. Summers, Esquire
MALONE, THOMPSON, SUMMERS & OTT, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201



Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, *Pro se*

LAW OFFICES

NOV 07 2014

MALONE, THOMPSON
SUMMERS & OTT, LLC

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0491

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, #094651,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-0143-AP
Grievance No.: ECI 0980-10

ORDER GRANTING APPELLANT'S
MOTION TO COMPEL DISCOVERY
OF FINANCIAL RECORDS

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Thomas J. Torrence (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or Respondent). Appellant filed a grievance with the Department objecting to the Department's decision concerning prevailing wages. On March 7, 2012, the Appellant filed this appeal with the Court.

On November 4, 2014 Appellant filed Motion to Compel Discovery of Financial Records requesting that financial information relevant to the issues in this appeal be included in the addendum to the record. This Court did not receive any opposition to the motion.

Specifically, Appellant requests the following information in regards to the "Long Term Savings Account" (LTSA) for escrowed wages removed from Appellant's wages pursuant to S.C. Code § 24-3-40(A)(5).

1. The specific name and specific type of account that maintains the LTSA;
2. The financial institution (name of firm or financial institution) in which the account is maintained;
3. The interest rate for the LTSA for the years 2007, 2008, 2009, 2010, 2011, 2012, and 2013.
4. The source and name of the specific entity from which the interest rate is derived for the LTSA;
5. What percentage of the interest earned does the Department take or receive and for which specific purpose;
6. Under what law or state regulation does the Department take that percentage requested in item 5, above;

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SC ADMIN. LAW COURT

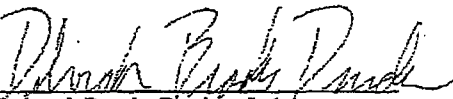
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7. What government entity determines and disperses the interest for a LTSA; and
8. Respondent's agency regulation or the governing state law that requires Respondent to report Appellant's interest information upon request.

IT IS THEREFORE ORDERED that Appellant's Motion to Compel Discovery of Financial Records is **GRANTED**.

IT IS ALSO ORDERED that Respondent shall provide the requested information as part of its addendum to the abbreviated record by December 15, 2014, which was ordered by this Court on September 2, 2014.

AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
Administrative Law Court

December 3, 2014
Columbia, South Carolina

RETURN OF SERVICE
This is to certify that the undersigned has this date
served the order in the above entitled action upon all
parties to the cause by depositing a copy thereof
in the United States Mail, postage paid, or in the emergency
mail service addressed to the parties at their last known
addresses.
This 3rd day of December 2014
by J.S.C.
J.S.C.

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, # 94561,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECI-0980-10
	)	
Appellant,	)	MATERIALS TO BE INCLUDED IN
	)	THE RECORD ON APPEAL IN
	)	ACCORDANCE WITH THE COURT'S
vs.	)	SEPTEMBER 2, 2014 ORDER AND
	)	THE DEPARTMENT'S MOTION FOR
South Carolina Department of Corrections,	)	AN EXTENSION OF TIME TO FILE
	)	THE INFORMATION IDENTIFIED IN
	)	THE ORDER ISSUED BY THE COURT
	)	ON DECEMBER 3, 2014
Respondent.	)	

**I. MATERIALS TO BE INCLUDED IN THE RECORD ON APPEAL IN
ACCORDANCE WITH THE COURT'S SEPTEMBER 2, 2014 ORDER**

By the order it issued on September 2, 2014, the Court ordered the Respondent, the South Carolina Department of Corrections ["the Department"], to file "an addendum to the abbreviated record previously filed" in this matter, and the Court directed that "[t]he addendum must contain all materials required by ALC Rules 58 and 61, as discussed on page two of the [Court's] July 10, 2014 Order, no later than December 15, 2014."

On page 2 of its July 10, 2014 order, the Court directed the Department to "file a file a record including all of the documents submitted by Appellant in support of his Step 1 and Step 2 administrative grievances."

Thus, in accordance with both the Court's July 10, 2014 and September 2, 2014 orders, the Department, by and through its undersigned counsel, respectfully files "all of the documents submitted by [the] Appellant in support of his Step 1 and Step 2 administrative grievances" as an addendum to the abbreviated record in the instant matter.

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SC ADMIN. LAW COURT

Page 1 of 5

0494

The Department's undersigned counsel further serves these materials, along with its instant memorandum, upon the Appellant via United States Mail. For the sake of expediency and to ensure compliance with institutional mail room standards, the Department's undersigned counsel is serving the aforementioned materials upon the Appellant in an unbound format. For the sake of consistency, the Department's undersigned counsel is likewise filing the aforementioned materials in an unbound format.

II. THE DEPARTMENT'S MOTION FOR AN EXTENSION OF TIME TO FILE THE MATERIALS ADDRESSED BY THE ORDER ISSUED BY THE COURT ON DECEMBER 3, 2014

By the order it issued on December 3, 2014, the Court ordered the Department to file, as part of the above-described addendum, information in regards to the "Long Term Savings Account" (LTSA) for escrowed wages removed from the Appellants prison industries pay pursuant to S.C. Code Ann. § 24-3-40(A)(5). The information identified by the Court in its December 3, 2014 order appeared in eight (8) enumerated categories or parts.

However, in light of continuing obligations in several matters pending in federal court, the Department's undersigned counsel respectfully moves the Court for a short extension of time by which to comply with the provisions of the Court's December 3, 2014 order.

Specifically, the Department's undersigned counsel has, since the Court issued its December 3, 2014 order, again found himself involved in the litigation of a matter pending in federal court and styled as *Ashley Reeves as the Personal Representative for the Estate of Reeves v. Town of Cottageville, Cottageville Police Department & Randall Price*; Civil Action No. 2:12-2765-DCN (United States District Court – Charleston Division).

Post-trial motions in *Reeves*, the trial of which began with jury selection on September 30, 2014 and ended with a verdict in the plaintiff's favor on October 15, 2014, will be heard in Charleston tomorrow, December 16, 2014. The defendants filed their post-trial motions on November 7, 2014, and the plaintiff filed her response in opposition to the defendants' post-trial motions on December 4, 2014. The defendants filed their reply to the plaintiff's response yesterday, December 14, 2014.

Aside from the above-described activity in *Reeves*, the Department's undersigned counsel was obligated to prepare and file by December 5, 2014 a reply to the plaintiff's memorandum in opposition to the defendant's summary judgment motion in a matter pending in federal court and styled as *Wendi B. Nance v. University of South Carolina, Civil Action No. 3:13-cv-1803-CMC-JDA* (United States District Court -- Columbia Division).

Additionally, the Department's undersigned counsel was obligated, on behalf of the North Augusta Department of Public Safety, to serve by December 5, 2014 rather sizeable responses to discovery requests in a matter pending before the circuit court in Edgefield County and styled as *Anthony Satterwhite, individually and as Personal Representative of the Estate of Ernest Satterwhite v. Edgefield County, Edgefield County Sheriff's Office, and North Augusta Department of Public Safety*, Civil Action No. 2014-CP-19-0292.

Thus, the Department's undersigned counsel respectfully moves this Court to, in light of the above-described circumstances and the upcoming holiday season, grant his instant motion and allow him until December 31, 2014 by which to file a second addendum to the record in the instant matter which will be comprised of the information identified by the Court in the order it issued on December 3, 2014.

RESPECTFULLY SUBMITTED,



Lake E. Summers

Malone, Thompson, Summers & Ott LLC

339 Heyward Street, Suite 200

Columbia, South Carolina 29201

Office: (803) 254-3300

Fax: (803) 254-0309

E-mail: summers@mtsollawfirm.com

phillips@mtsollawfirm.com

Outside Counsel for the Department

Columbia, South Carolina
December 15, 2014

Page 4 of 5

0497

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

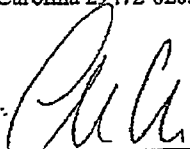
Thomas J. Torrence, # 94561,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECI-0980-10
Appellant,	)	
	)	MATERIALS TO BE INCLUDED IN
	)	THE RECORD ON APPEAL IN
vs.	)	ACCORDANCE WITH THE COURT'S
	)	SEPTEMBER 2, 2014 ORDER AND
South Carolina Department of Corrections,	)	THE DEPARTMENT'S MOTION FOR
	)	AN EXTENSION OF TIME TO FILE
	)	THE INFORMATION IDENTIFIED IN
	)	THE ORDER ISSUED BY THE COURT
	)	ON DECEMBER 3, 2014
Respondent.	)	

CERTIFICATE OF SERVICE

This is to certify that I have, on December 15, 2014, caused to be served a copy of the Department's above-styled materials and motion upon the *pro se* Appellant, via the United States Mail, to the following address:

Thomas J. Torrence, # 94651
Lieber Correctional Institution [SA-43]
Post Office Box 205
Ridgeville, South Carolina 29472-0205

BY:



Lake E. Summers
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300

Outside Counsel for the Department

FILED

DEC 15 2014

SC ADMIN. LAW COURT

Page 5 of 5

0498

Thomas J. Torrence, # 94561,)
)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
)
)
 Respondent.)

Docket No. 12-ALJ-04-00143-AP
Grievance No. ECI-0980-10

SCDC's Petition for Writ of Certiorari

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1**

INMATE NAME: Thomas John Torrence
 SCDC NUMBER: * 054651
 INSTITUTION: Broad River C.I.
 HOUSING UNIT: NO-258
 WORK ASSIGNMENT: Ward Keeper

Office Use Only
 Grievance No. ECI-980-10
 Code: General Violations
 Policy _____
 Disc. Hear. _____
 Class _____
 Date Received _____
 IGC Initial _____

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

I was employed by ESCOD Industries, in the SCDC Private Sector Prison Industries Program at Evans Correctional Institution from June 1997 thru November, 2004. During the course of my employment, I learned that SCDC was withholding certain wages and monies from me in contravention of state law, to which I have a property interest. The S.C. Supreme Court recently ruled in *Thomas Torrence, et al. v. SCDC*, Op. No. 25328 (filed May 7, 2007) (received by Grievant on May 21, 2007), that I must file a grievance under SCDC Policy 0A-01.12. The claim for this unconstitutional deprivation is set forth in the following eight subsections:

(See ADDENDUM)

ACTION REQUESTED:

Payment of wages, withholdings and interests as set forth in subsections 1 thru 8 of the Addendum attached hereto.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

This matter was pending before S.C. courts from 2001 until the recent May 7, 2007 decision. SCDC intends to petition the state supreme court for a rehearing on this matter within 30 days.

P. Torrence Grievant Signature 5-21-07 Date

ACTION TAKEN BY IGC:

Forwarded to Warden

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

Qu. N. Nelson IGC Signature 11-30-11 Date

Qu. N. Nelson Grievant Signature 11-30-11 Date

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 1

0500

WARDEN'S DECISION AND REASON:

SEE ATTACHED
RESPONSE

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

Thomase J. Torrence 12-1-11
 Grievant Signature Date

Warden C. McCracken 12-1-11
 Warden Signature Date

[Signature] 12/1/11
 IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

ROA

Torrence v. S.C. Dept of Corr.
 Docket # 12-AJ-04-00143-AP

Page # 2

0501

Thomas John Torrence
094651

SCDC Grievance - ADDENDUM (Step 1) - May 21, 2007

- 1) Sections 24-3-40, 24-3-315, and 24-3-430(D) created a property interest in the prevailing wage (\$7.17) grievant earned during "regular" hours performed for the period by SCDC as Training Hours and grievant is entitled to said monies.
- 2) Sections 24-3-40, 24-3-315, and 24-3-430(D) created a property interest in the prevailing wage (\$10.75) grievant earned during "overtime" hours performed for the period described by SCDC as Training Hours, in Number 1, above, and grievant is entitled to said monies.
- 3) Grievant has a property interest in the interest earned on the amounts complained of in Numbers 1 and 2, above.
- 4) Sections 24-3-40, 24-3-315, and 24-3-430(D) created a property interest in the \$1.92 difference between the prevailing wage (\$7.17) paid by the private sector employer (Escod Industries) for grievant's "regular" hour labor and the wage (\$5.25) paid grievant by SCDC during the course of grievant's private sector employment [August 1997 thru November 2004], including any change in the rate during his participation and grievant is entitled to said monies.
- 5) Sections 24-3-40, 24-3-315, and 24-3-430(D) created a property interest in the \$2.79 difference between the prevailing wage (\$10.75) paid by the private sector employer (Escod Industries) for grievant's "overtime" hour labor and the wage (\$7.86) paid grievant by SCDC during the course of grievant's private sector employment [August 1997 thru November 2004] including any change in the rate during his participation and grievant is entitled to said monies.
- 6) Grievant has a property interest in the interest earned on the amounts complained of in Numbers 4 and 5, above.
- 7) Sections 24-3-40, 24-3-315, 24-3-430(D), 24-3-430(A)(5) and 24-3-430(B)(2) created a property interest in escrowed wages wherein grievant is entitled to complete and immediate access to the amount of his escrowed wages [\$ 5,358.00 as of November, 2004] to distribute them to persons or entities of his choice at the time said wages were escrowed for grievant's benefit, but grievant is denied his personal benefit because of serving a life sentence.
- 8) Grievant has a property interest in the interest earned on the amount complained of in Number 7, above.

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page #3

0502

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME Grievance Coordinators - BRCT/Evans CI	TITLE	DATE May 21, 2007
INMATES NAME Thomas J. Torrence	SCDC # 094651	
INSTITUTION BRCT	LIVING QUARTERS MU-266	
Please find attached a Step 1 Grievance and Addendum in regards to my Private Sector PI wages for my employment period at Evans C.I., from June 1997 to November 2004. I have a pending case in court on this matter, <u>Torrence, et al. v. SCDOC</u>, Op. No. 26329 (S.C. Sup.Ct., filed May 7, 2007). I received a copy of this opinion on the above date. Although I am informed by counsel that the DOC will file a Petition for Rehearing within 30 days, the Supreme Court held I should file an agency grievance on this matter. This grievance is filed within 15 days of receipt of the Supreme Court's decision on this matter and is equitably tolled by the pendency of the civil action. I believe that where this matter emanates from Evans, that the Grievance must be filed and maintained at Evans. On that belief, and having no time to verify the policy on that question, and in an abundance of caution, I am mailing a copy of the attached Grievance and Addendum via first-class mail to the Evans Grievance Office. Thank you for your assistance in this matter. <i>Thomas J. Torrence</i>		
DEPOSITION BY STAFF MEMBER: <i>Inmate Torrence:</i> Per your letter dated 4/10/07, please be advised your PI grievance has been assigned a #ECI-980-10. Upon review by outside counsel Lade Sumners you will receive a Warden's Step 1 response upon completion of Lade Sumners review.		
DATE 6/10/07	SIGNATURE <i>Mary Polan, I/M Griev Branch Chief</i>	

SCDC FORM 12-11 (REV 5/92 2201)

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 4

0503

Thomas J. Torrence
094651
Lieber Corr. Inst. EB-44
P.O. Box 205
Ridgeville, SC 29472-0205

April 21, 2010

Ms. Ann Hallman
Inmate Grievance Administrator
Inmate Grievance Branch
S.C. Department of Corrections
P.O. Box 21787
Columbia, S.C. 29221-1787

Re: Grievances: Jail Credit
Private Sector P.I. Wages ECI-980-10
Request for Final Agency Decisions

Dear Ms. Hallman:

I am requesting your assistance in obtaining a final disposition on the above-referenced agency grievances (copies attached). The grievances have now been pending for 10 years and 3 years, respectively.

The enclosed documents in re the jail credit issue clearly indicate SCDC has informed the state supreme court that the agency would process the grievance. As you can see from your records, despite my efforts, the issue remains in limbo. (In regards to the P.I. wages, the state Supreme Court ruled in my case Thomas Torrence, et al. v. SCDOC, 373 S.C. 588, 646 SE2d 866, rehearing denied (2007) that I should file an agency grievance. That was done within 15 days of receipt of that decision. That grievance also remains in limbo).

I realize that the agency has no intention of issuing a favorable ruling in either matter. In good faith, I have not asked the Supreme Court for another writ of mandamus and have patiently waited on the agency to act. I am asking for your assistance in either processing the Step 1 grievances or issuing a final agency decision so I may

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 5

0504

obtain the relief I am entitled to via the state judicial system. In honesty, you are the first person in many years that I have seen take an interest in resolving legitimate issues.

Thank you for your attention to these matters.

With kindest regards, I am,

Sincerely,


Thomas John Torrence

ENCLOSURES: As noted

RQA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

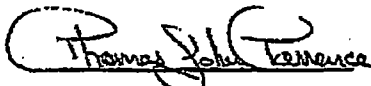
Page # 6

0505

CERTIFICATE OF MAILING

The undersigned, Thomas John Torrence, personally appeared before me and certified that he mailed a Step 1 Grievance (SCDC Form 10-5) and attached addendum, to the Grievance Coordinator at Evans Correctional Institution, by placing a copy in the U.S. Mail, first-class prepaid postage affixed thereto, this 22nd day of May, 2007, addressed as follows:

Grievance Coordinator
Evans Correctional Institution
610 Hwy 9 West
Bennettsville, SC 29512



Thomas John Torrence
094551 MU-255
Broad River Corr. Inst.
4460 Broad River Road
Columbia, SC 29210-4012

SWORN TO AND SUBSCRIBED before me
this 22 day of May, 2007


NOTARY PUBLIC OF SOUTH CAROLINA
My Commission Expires: April 24, 2018
My Commission Expires: _____

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 7

0506

Step 1 Grievance Response
December 1, 2011

Name	SCDC #	Grievance #	Project
Torrence, Thomas L.	694631	ECI-980-10	Evans CUESCOD

I have reviewed your Step 1 grievance bearing your signature and dated May 21, 2007. The responsible SCDC official provided your Step 1 with the following designation: ECI-980-10.

I have also reviewed a second Step 1 bearing your signature and dated August 15, 2011. The responsible SCDC official provided your second Step 1 with the following designation: LCI-1104-11. As one of actions you requested in your Step 1 designated as LCI-1104-11 consisted of the processing your Step 1 designated as ECI-980-10, this response closes out your Step 1 designated as LCI-1104-11.

In your Step 1 designated as ECI-980-10, you stated that you were "employed by ESCOD Industries, in the SCDC Private Sector Prison Industries Program at Evans Correctional Institution from June 1997 thru November, 2004." You also stated that you "learned that SCDC was withholding certain wages and monies from [you] in contravention of state law, to which [you] have a property interest."

You asserted in your grievance that the South Carolina Supreme Court in Torrence, et al., v. S.C. Dep't of Corr., ruled that you "must file a [grievance under] under the provisions of SCDC Inmate Grievance System Policy Number GA-01.12. You stated in your grievance that this lawsuit had been pending before South Carolina courts from 2001 until our state's Supreme Court issued its decision on May 7, 2007, and you also indicated that the agency intended to petition our state's Supreme Court to rehear its May 7, 2007 decision.

In the "addendum" you filed with your Step 1 designated as ECI-980-10, you presented the following eight (8) specific claims of purportedly unconstitutional deprivations committed by the agency against you concerning the prison industries pay remitted to you by the agency from June 1997 through November 2004:

- (1) You claimed that S.C. Code Ann. § 24-3-40, § 24-3-315, and § 24-3-430(D) "created a property interest" in the purported prevailing wage of \$7.17 per hour for the "regular" labor you performed during the period of time SCDC paid you a "training wage" and that you were entitled to the difference between the rate of pay you received when SCDC paid you a "training wage" and the purported prevailing wage of \$7.17 per hour for your "regular" labor.
- (2) You claimed that the same three (3) statutes "created a property interest" in the purported prevailing wage of \$10.75 per hour for the "overtime" labor you performed during the period of time SCDC paid you a "training wage" and that you were entitled to the difference between the rate of pay you received when SCDC paid you a "training wage" and the purported prevailing wage of \$10.75 per hour for your "overtime" labor.
- (3) You claimed that you possessed "a property interest" in "the interest earned on" the monies purportedly owed to you by SCDC as a result of your claims in paragraphs #1 and #2.
- (4) You claimed that the same three (3) statutes you listed in paragraphs #1 and #2 above "created a property interest" in the \$1.92 per hour difference between the purported prevailing

Page 1 of 6

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 8

0507

Step 1 Grievance Response
December 1, 2011

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094551	ECI-980-10	Evans CU/ESCOD

wage of \$7.17 per inmate labor hour paid by ESCOD, the private industry sponsor in the prison industries project operated by SCDC at Evans, and the \$5.25 per "regular" inmate labor hour SCDC paid you during the entire time you voluntarily participated in the prison industries project operated by SCDC at Evans beginning in August 1997 through November 2004.

(5) You claimed that the same three (3) statutes you listed in paragraphs #1 and #2 above "created a property interest" in the \$2.79 per hour difference between the purported prevailing wage of \$10.75 per inmate labor hour paid by ESCOD, the private industry sponsor in the prison industries project operated by SCDC at Evans, and the \$7.86 per "overtime" inmate labor hour SCDC paid you during the entire time you voluntarily participated in the prison industries project operated by SCDC at Evans beginning in August 1997 through November 2004.

(6) You claimed that you possessed "a property interest" in "the interest earned on" the monies purportedly owed to you by SCDC as a result of your claims in paragraphs #4 and #5.

(7) You claimed that S.C. Code Ann. §§ 24-3-40, 24-3-315, 24-3-430(D), 24-3-430(A)(5) and 24-3-430(B)(2) "created a property interest in escrowed wages" by which you were and are entitled to "complete and immediate access to the amount of [your] escrowed wages (\$5,358.00 as of November, 2004) to distribute them to persons or entities of [your] choice," and you claimed that, because you are serving a life sentence in SCDC's custody, you have been denied your "personal benefit" to access and distribute these wages.

(8) You claimed that you possessed "a property interest" in "the interest earned on" the monies purportedly owed to you by SCDC as a result of paragraph # 7.

Your prison industries participation and pay records were reviewed by the responsible officials at SCDC Headquarters in Columbia. These records confirm that you voluntarily participated in the prison industries project operated by SCDC at Evans in which ESCOD participated as the private industry sponsor before SCDC ended its policy of paying inmates a "training wage" for their initial 320 hours of labor. SCDC ended its policy of paying a "training wage" on July 1, 1999. These pay records reflect that SCDC began paying you on or about August 15, 1997 at the rate of at least \$5.25 per hour for the labor you voluntarily provided in the project at Evans, and they reflect that SCDC remitted its final payment to you on or about November 16, 2004.

After carefully considering the arguments you made justifying the action you request, I deny the claims from your above referenced Step 1 grievance.

Two (2) decisions issued by the South Carolina Supreme Court in 2004 apply to the claims you presented in your Step 1 designated as ECI-980-10; *Adkins v. S.C. Dep't of Corr.* and *Wicker v. S.C. Dep't of Corr.* Both of these cases discussed S.C. Code Ann. § 24-3-40, § 24-3-310, *et seq.* and, specifically, § 24-3-430(D). The South Carolina Supreme Court issued these decisions on August 23, 2004. *Adkins* and *Wicker* recognized that inmates possessed a pre-existing right to file administrative grievances concerning their prison industries pay. Under *Wicker*, such

Page 2 of 6

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 8

0508

Step 1 Grievance Response
December 1, 2011

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094651	ECI-980-10	Evans C/ESCOD

grievances must be filed, processed, and determined in accordance with the provisions of the agency's Inmate Grievance System Policy.

In Torrence, the case you mentioned in your Step 1 designated as ECI-980-10 and the case in which you personally participated as the lead plaintiff, the South Carolina Supreme Court issued another decision which applies to your claims. In Torrence, the South Carolina Supreme Court again acknowledged that inmates could file grievances in accordance with the agency's Inmate Grievance System Policy by which they could challenge their prison industries pay.

SCDC has published editions of its Inmate Grievance System Policy for at least 20 years if not far longer. The issue date of the edition of the agency's Inmate Grievance System Policy applicable when you began participating in the project at Evans was May 1, 1996, and the policy consisted of two (2) parts: Policy Number PS-10.01 and Policy Number PS-10.01 (OP). ¶ 14(a) of Policy Number PS-10.01 (OP) required that inmates submit their Step 1 grievance forms "within seven (7) days of the alleged incident." Exceptions to the deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

On October 1, 2007, SCDC issued new editions of Policy Numbers PS-10.01 and PS-10.01 (OP). In the October 1, 2007 edition of Policy Number PS-10.01 (OP), SCDC changed ¶ 14(a) to require that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

On January 30, 1998, SCDC issued a new edition of its Inmate Grievance System Policy, and, just as before, the policy consisted of two (2) parts. However, SCDC re-designated these two (2) parts as Policy Number GA-01.12 and Policy Number GA-01.12 (OP). ¶ 14(a) of Policy Number GA-01.12 (OP) required that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Once again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

The agency consolidated Policy Numbers GA-01.12 and GA-01.12 (OP) into a single policy when it issued a new edition of Policy Number GA-01.12 on April 1, 2000, and the 15-day filing deadline appeared in this edition of the policy as well as every edition issued since April 1, 2000.

I conclude, after reviewing your Step 1 in light of Adkins, Wicker, Torrence, the seven (7) day filing deadline from ¶ 14(a) of the May 1, 1996 edition of Policy Number PS-10.01 (OP), the 15-day filing deadline from ¶ 14(a) of the October 1, 2007 edition of Policy Number PS-10.01 (OP), as well as the exceptions to these deadlines from ¶ 14(g) and ¶ 15 of these editions, that you did not submit your Step 1 grievance within either seven (7) days or even 15 days of the incident upon which you anchored the claims you presented in your Step 1, namely the date upon which SCDC both first began paying you for your prison industries labor and began applying statutorily mandated deductions to your pay.

The grievance filing deadline established in every edition of the agency's Inmate Grievance System Policy applied and continues to apply to nearly every aspect of inmate activity, and no

Page 3 of 6

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 10

0509

Step 1 Grievance Response
December 1, 2011

Name	SCDC #	Grievance #	Project
Terrence, Thomas L.	094651	ECT-98B-10	Evans CUESCOD

special exception applies to prison industries pay disputes. Consequently, the deadline applies to your grievance.

Moreover, you filed your Step 1 nearly 10 years after you began participating in the prison industries project operated by SCDC at Evans in which ESCOD participated as the private industry sponsor and approximately 2 1/4 years after you concluded your participation in this project. For that matter, you filed your Step 1 over 2 1/4 years after the South Carolina Supreme Court issued its decisions in Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under the agency's Inmate Grievance System Policy.

The fact that you first sought relief by participating in a class action lawsuit filed in circuit court instead of filing a grievance by which you challenged the rate at which SCDC both paid you for your prison industries labor and applied statutorily mandated deductions to your pay does not change the deadline(s) from the agency's Inmate Grievance System Policy. As stated above, you were the lead plaintiff in Terrence, and your attorneys filed their amended declaratory judgment complaint on your behalf on November 5, 2001. Obviously, you knew even before your attorneys filed the lawsuit on your behalf that you wanted to challenge the rate at which SCDC had been paying you for your prison industries labor.

In making this determination, I rely on the following decisions from the South Carolina Administrative Law Court ("ALC"): Cramer, #251406, v. S.C. Dep't of Corr., Docket No. 08-ALI-04-00577-AP; Daugherty, #250139, v. S.C. Dep't of Corr., Docket No. 04-ALI-00783-AP; Grant, #81314, v. S.C. Dep't of Corr., Docket No. 05-ALI-04-750-AP; Grimmett, Jr., #102226, v. S.C. Dep't of Corr., Docket No. 05-ALI-04-00757-AP; Larimore, #238126, v. S.C. Dep't of Corr., Docket No. 09-ALI-04-00470-AP; Manigault, #280550, v. S.C. Dep't of Corr., Docket No. 05-ALI-04-00756-AP; McLemore, #127266, v. S.C. Dep't of Corr., Docket No. 09-ALI-04-00023-AP; Pipkin, #283616, v. S.C. Dep't of Corr., Docket No. 05-ALI-04-00733-AP; Pritchett, #260687, v. S.C. Dep't of Corr., Docket No. 07-ALI-04-690-AP; Samp, #218694, v. S.C. Dep't of Corr., Docket No. 05-ALI-04-00732-AP; Sumter, #242379, v. S.C. Dep't of Corr., Docket No. 05-ALI-04-00749-AP; Smiley, #262734, v. S.C. Dep't of Corr., Docket No. 08-ALI-04-00571-AP; Williams, #187203, v. S.C. Dep't of Corr., Docket No. 06-ALI-04-622-AP; and Wright, #200123, v. S.C. Dep't of Corr., 2006 WL 1430140 (ALJD 2006).

Additionally, in light of the chronology associated with filing your Step 1, I find that your claim is barred by the doctrine of laches.

To the extent that you claim in your Step 1 grievance that you were required to file a grievance, I conclude that neither the opinions in Adkins or Wicker nor the decision in Terrence ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1. These opinions simply recognized your pre-existing right to file grievances presenting prison industries pay claims if you desired.

To the extent that you claim in your Step 1 that you worked for or were otherwise "employed" by ESCOD, I conclude that you never "worked" for nor were you ever "employed" by ESCOD.

Page 4 of 6

ROA

Terrence v. S.C. Dep't of Corr.
Docket # 12-ALI-04-00143-AP

Page # 11

0510

Step 1 Grievance Response
December 1, 2011

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094651	ECI-980-10	Evans C/ESCOD

I also conclude that neither Adkins nor Wicker declared that you or inmates in your position were "employed" by SCDC, ESCOD, or, for that matter, any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's decision in Darrell Williams, Class Representative, et al. v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of private industry sponsors like ESCOD.

Therefore, to the extent you use the terms "worked for," "employee," "employed," or "employment" within your Step 1 grievance to describe your participation, I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Evans.

Additionally, I deny your claim that you are entitled to any relief under § 24-3-430(D), the so-called "prevailing wage" provision. Specifically, as the prison industries project in which you participated at Evans was a project for which SCDC received certification under the federal government's Prison Industries Enhancement Certification Program ("PIECP"), I conclude that the provisions of § 24-3-410(B)(7) and not Section 24-3-430(D) applied to the rate of pay SCDC was required to remit to you under Section 24-3-40(A) for the labor you voluntarily provided to this project. In making this conclusion, I rely upon the decision issued by the circuit court in Adkins, which concluded that inmates who participated in an identically certified SCDC prison industries project did not possess a viable claim for back wages or higher wages under the provisions of § 24-3-430(D).

Even if you have a viable claim for relief under § 24-3-430(D), I conclude that SCDC paid you the proper rate of pay for the labor you voluntarily provided to the federally certified prison industries project it operates at Evans. In making this conclusion, I rely upon the guidelines established by the federal government, specifically the United States Department of Justice's Bureau of Justice Administration (known as "BJA"). BJA published the guidelines applicable to the PIECP in the Federal Register, specifically 64 FR 17000. Within these guidelines, BJA declared that the rate at which inmates are paid for the labor they voluntarily provide to PIECP projects, like the project in which you participated at Evans CI, cannot be set below the federal minimum wage. With the exception of the period of time SCDC paid you "training wages," SCDC paid you at least the federal minimum wage for the labor you voluntarily provided to the prison industries project it operates at Evans. Again, I find that you did not timely file your grievance in which you demanded any back pay allegedly owed to you by SCDC including any back pay associated with the period of time SCDC paid you a "training wage."

I also conclude that SCDC does not owe you \$1.92, \$2.79, or any other amount for every labor hour you voluntarily provided to the federally certified prison industries project operated by SCDC at Evans CI. Under the contracts struck between SCDC and ESCOD, SCDC legitimately charges ESCOD an hourly rate for "overhead cost" in addition to the hourly rate SCDC pays inmates in accordance with both state and federal law.

Page 5 of 6

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 12

0511

Step 1 Grievance Response
December 1, 2011

Name	SCDC #	Grievance #	Project
Torrence, Terence L.	094651	ECI-980-10	Evans CUESCOD

The circuit court in Adkins concluded that SCDC's practice of involving a private industry sponsor, like ESCOD, such an hourly "overhead cost" was accepted by BJA, the federal agency responsible for certification of both the prison industries project at issue in Adkins and the prison industries project at issue in the instant case.

SCDC's assessment of this "overhead cost" does not violate any applicable South Carolina statute, because the assessment of this cost allows SCDC to comply with a variety of the applicable prison industries statutes, including § 24-3-400. These statutes, including § 24-3-400, either directly or indirectly compel SCDC to collect an hourly "overhead cost" or "administrative charge" from private industry sponsors, like ESCOD, so that it may cover the expenses it incurs as a consequence of operating the project in which you voluntarily participated at Evans.

Furthermore, I find that your claim of being entitled to complete and immediate access to your escrowed wages pursuant to § 24-3-40(B)(2) is without merit. Section 24-3-40(A)(5) requires SCDC to deduct 10% of an inmate's wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B) directs SCDC to "return a prisoner's wages held in escrow pursuant to [§ 24-3-40(A)]" only when an inmate leaves SCDC's custody. When an inmate is serving a life sentence, § 24-3-40(B)(2) provides the inmate with "the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." This provision directs SCDC to distribute these escrowed monies only upon the inmate's death, and not prior to that event. Nothing in any provision of § 24-3-40(B) authorizes an inmate to have complete and immediate access to any of these monies while still lawfully held in SCDC's custody. Any other interpretation would conflict with the remaining provisions of § 24-3-40(B).

Your claim that SCDC denied you interest on your escrowed wages is also without merit. SCDC complies with § 24-3-40(A)(5) by depositing the interest you have earned on your monies held in escrow into your account every month. Each pay period you receive an account statement showing the amount of interest deposited into your account.

To the extent you claim SCDC has unconstitutionally denied you of your property interest in these wages without due process of law, I deny your claim. Under Wicker, you and other inmates in your position may exercise your due process rights and litigate your pay disputes with SCDC through SCDC's inmate grievance system. Therefore, SCDC has not denied you due process of law and the filing deadline from the editions of the agency's Inmate Grievance System Policy applies to your claim.

Finally, to the extent that you demand "interest" in your grievance, no decision of the South Carolina Supreme Court nor any provision of any edition of the Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, or for that matter, costs or attorneys' fees in connection with SCDC's review and processing of your grievance.

Therefore, for all of the above stated reasons, I deny the claims you articulated your Step 1 grievance designated as ECI-980-10 in their entirety.

Page 6 of 6

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 13

0512

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: <u>Thomas John Torrence</u>	Office Use Only Grievance No. <u>12-5-11</u>
SCDC NUMBER: <u>#094651</u>	Code: General <u>PE</u>
INSTITUTION: <u>Lieber</u>	Policy <u>PE</u>
HOUSING UNIT: <u>SA-43</u>	Disc. Hear. <u>PE</u>
WORK ASSIGNMENT: <u>Education</u>	Class. <u>PE</u>
INMATE GRIEVANCE	Date Received <u>12-8-11</u>
	IGC Initials <u>PE</u>

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

SEE ATTACHED RESPONSE
AND APPENDICES

Thomas J. Torrence 12-5-11
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

[Signature] 2/9/12
Signature Date

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

Thomas J. Torrence 2-15-12 Betty J. Thomas 2-15-12
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 70-5A (Rev. 10-1-10)

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 14

0513

Torrence, Thomas J. #094651
December 5, 2011

Grievance No. ECI-980-10
Step 2

This Step 2 challenge to the Step 1 response in this grievance objects to the findings of the "responsible agency-level official." Although signed by the Warden [Wayne C. McCabe], Grievant notes that outside counsel [Lake E. Summers, Esq.] was retained to respond to this agency grievance. In a letter to the South Carolina Supreme Court, dated November 30, 2011, Mr. Summers assured the Court this Grievant would have an "opportunity to challenge the initial [Step 1] response." Mr. Summers' response ("Warden") is six (6) pages in length and relies on numerous case law and Administrative Law Court ("ALC") authority (14 cases) to which Grievant has no access in print media. This deprives Grievant of a fair opportunity to respond.

In this Step 2 challenge Grievant notes the grievance procedure established is sufficient to give an inmate a method to raise the matter to prison officials and create a reviewable record. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742, 753 (2000). Thus, fair adjudication here requires thorough review of a relevant record. Grievant has supplied a supporting affidavit and Appendices derived of documents directly from and related to the instant case (Appendices A - L). Grievant submits Mr. Summers witnessed and has reviewed most documents contained herein.

Grievant opens this Step 2 by asserting the Warden has relied on no competent evidence to support a finding Grievant is not entitled to the prevailing wage for his labor (to include 320 hours "training"); the difference in the wage paid by the private employer and the wage the Department of Corrections ("DOC") paid Grievant; the interest thereon; access to his Long Term Savings Account and the interest thereon. Restated, DOC improperly deprived Grievant of prevailing wages during a training period and removed \$1.92 each regular hour [\$2.79 per overtime hour] without any statutory authority and interest on those monies.

The Warden's response contradicts South Carolina statutory authority. The South Carolina Legislature specifically authorized inmate labor in private sector prison industry via S.C. Code Ann. § 24-3-430. This statute provides that "[n]o inmate participating in the program may earn less than the prevailing wage for work of a similar nature in private sector." S.C. Code Ann. §24-3-430(D). See also §24-3-315 (for a prison industry project, the DOC must

Page 1 of 8

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 15

0514

Torrence, Thomas J. #094651
December 5, 2011

Grievance No. ECI-980-10
Step 2

determine "that the rates of pay and other conditions of employment are not less than those paid and provided for work of similar nature in the locality in which the work is performed." Further, §24-3-430(H) expressly directs that "[t]he earnings of an inmate authorized to work at paid employment pursuant to this section must be paid directly to the DOC and applied as provided under Section 24-3-40." See Appendix ("App. ___, p. ___") D, Exhibit 3. These interpretations were set forth in Thomas J. Torrence, et al. v. S.C. Dep't of Corrections, 373 S.C. 586, 646 S.E.2d 866 (filed May 7, 2007) rehearing denied. The original Torrence Complaint was filed in early 2001.

Our Court of Appeals has determined the mandatory language of "shall" and "must" in Bradley v. DOC, 374 S.C. 622, 634, 649 S.E.2d 153 (SC App. 2007).

In the interest of brevity, Grievant acknowledges that the restatement of Grievant's May 21, 2007 Step 1 Grievance and Addendum in Warden's Step 1 response, ("Warden, p. ___, ¶ ___") (attached hereto) p. 1, ¶ 3 thru p. 2, ¶ 4 is an accurate statement of the Step 1 Grievance attached hereto.

Warden, p. 2, ¶ 5 is incorrect. Grievant began participating in the private sector ESCOD project in June 1997. Between June 1997 thru early August 1997, Grievant received "training" wages at 25 cents per hour for 160 hours and then 75 cents per hour for the next 160 hours. ESCOD paid \$7.17 per hour to DOC for each of those "training" hours. Between August 15, 1997 and November 16, 2004, ESCOD paid Grievant \$5.25 per hour, diverting \$1.92 per regular hour and \$2.79 per overtime hour.

The rates of pay ESCOD remitted for and DOC paid Grievant are established here in App. A, p. 5-6 (Thomas McQueen, DOC Financial Accounting Branch); App. B, p. 5 (Philip Pittman, Insilco VP); App. C, p. 8 (Steven Kuznik, Insilco Plant Manager); and App. D, p. 17, 20, 45 and Exhibit 5 (Tony Ray Ellis, Director of Prison Industries).

The Warden erred in rephrasing the holdings of Adkins v. S.C. Dep't of Corrections, 360 S.C. 413, 602 S.E.2d 51 (2004) and Wicker v. S.C. Dep't of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) to read "inmates possessed a pre-existing right to file grievances concerning their prison industries pay," Warden, p. 2, ¶ 7. This was not the language or holding of the Court in either companion case.

Page 2 of 8

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 16

Torrence, Thomas J. #094651
December 5, 2011

Grievance No. ECI-980-10
Step 2

In fact, in Wicker, the DOC asserted the ALC was without subject matter jurisdiction.

The Court in Wicker was very specific in holding "we find no reason such procedures [agency grievance and ALC review] should not apply when an inmate challenges the wages he or she is being paid." Id. The Court further opened the door to review by the ALC in this "very limited circumstance." Id. Prior to the Wicker holding the agency grievance system could not award monetary damages and the DOC relied upon ALC precedent that claims for money damages fell under the South Carolina Tort Claims Act. See Rosemond v. SCDC, 00-ALJ-04-01026-AP and Richard Stearnsmiller v. SCDC, 00-ALJ-04-00021-AP.

The Warden asserts that Grievant is barred by the statute of limitations established in DOC Policy GA-01.12 by not filing [his] grievance within seven or fifteen days - either the date upon which SCDC both first began paying [Grievant] and applying statutorily mandated deductions. The Warden further asserted the Step 1 grievance was filed 10 years after participation began and 2½ years following the Wicker decision; that the Grievance policy does not provide any exception to prison industries disputes; and that Grievant exceeded a reasonable time with filing the Step 1 Grievance, Warden, p. 3, ¶ 2 thru p. 4, ¶ 2.

Grievant contends the Warden's assertions are moot where the pendency or Torrence, filed four (4) years before the decision in Wicker, tolls the filing of the [Grievant's] agency grievance.

Grievant submits that counsel notified him of the Court's decision in Torrence in correspondence dated May 17, 2007 and received May 21, 2007, App. I. In that correspondence counsel advised Grievant "we are preparing the papers for the grievance process and will circulate for your review once the Supreme Court Order has become final." Id. Counsel recognized and informed Grievant of the tolling. Grievant filed Step 1 immediately, App. H.

In correspondence dated August 27, 2007 counsel advised "proceeding through the grievance process to address your claims and ultimately the ALJ appeal process is the legal requirement," App. I. Torrence was still pending, the DOC's petition for rehearing was subsequently denied.

Page 3 of 8

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 17

0516

Torrence, Thomas J. #094651
December 5, 2011

Grievance No. ECI-980-10
Step 2

The DOC filed a Motion to Dismiss Torrence (2001-CF-40-3409) from Circuit Court, however, that court found the Complaint properly stated a declaratory judgment action which involved novel issues and initially denied that motion in November 2002. The DOC renewed that motion, successfully, only after the decision in Wicker that the procedure to utilize is the grievance system.

Further, in Judge Diane Goodstein's April 21, 2005 Order dismissing Williams et al v. SCDC and Williams Technologies [later Williams v. S.C. Dep't of Corrections, op. No. 26274 (filed Feb. 26, 2007)], Judge Goodstein ordered that a Notice for filing grievances in private sector prisoner wage suits was to be posted. Subsequently that Notice (App. L) was posted on October 20, 2008 only at Lieber, after Grievant had filed his Step 1 grievance. That Notice allowed 45 days - beyond the 7 or 15 days limits of GA-01.12 and established a three year tolling period for the Williams' Plaintiffs. No such opportunity was given to the Torrence Plaintiffs. Where no Notice was provided and Torrence was currently pending, the time to file a grievance was tolled.

Grievant objects to Warden relying on 14 ALC cases to which Grievant has no access, in order to determine Grievant is time barred, Warden, p. 4, ¶ 3. Grievant is deprived of access to the courts where [he] is unfairly impeded from being able to research or challenge the applicability of precedent relied upon.

Warden asserts Grievant's claim is barred by the doctrine of laches, Warden, p. 4, ¶ 4. Grievant submits laches is an equitable doctrine defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence. To do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 311 S.E.2d 525, 527 (1988). Grievant contends that any delay here is not fairly attributable to Grievant where diligence in pursuing these claims through the Circuit and Supreme Courts is a matter of record.

Grievant objects to Warden's mischaracterization of a "pre-existing right" to file grievances, Warden, p. 4, ¶ 5. The Court in Torrence was clear in stating that the procedure to follow was an agency grievance, as established in, and unavailable prior to Wicker.

Page 4 of 8

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 18

0517

Torrence, Thomas J. #094651
December 5, 2011

Grievance No. ECI-980-10
Step 2

Warden asserts that Grievant was not an employee of the State, Warden, p. 4, ¶ 6 thru p. 5, ¶ 2. Grievant agrees he was not a State employee. However, the "label" is not of import here. There is ample evidence (i.e., Comptroller General records; State Treasurer records; DOC records; S.C. statutory law §§24-3-40, 315 & 430; and Federal and South Carolina Income Tax Returns) to establish that some form of labor for remuneration took place. Regardless of whether Grievant is recognized as a member of a paid workforce or not, state and federal statutory law that mandate payment for such labor are the issue at bar.

Warden denied Grievant entitlement to relief under §24-3-430(D) and concluded that §24-3-410(B)(7) and not §24-3-430(D) was applicable to Grievant, Warden, p. 5, ¶ 3. Grievant submits this assertion is incorrect where the South Carolina Supreme Court has previously found that §24-3-430(D) is the applicable law in this case. See Torrence, supra.

Warden incorrectly relied upon Adkins to conclude inmates in an identically federally certified program did not possess a viable claim, Warden, p. 5, ¶ 3. Grievant submits the Supreme Court held in the 2004 Adkins decision that the wage claims were not cognizable under the South Carolina Tort Claims Act, which was the procedural vehicle of Adkins. That theory of recovery was different than in Torrence. Adkins is only similar to the position "inmates may file an inmate grievance to protest DOC's failure to pay wages in accordance with the mandatory statutory provisions."

Warden concluded that even with a viable claim under §24-3-430(D), DOC paid Grievant the proper rate of pay, or that DOC does not owe Grievant "\$1.92, \$2.79, or any other amount for every labor hour," Warden, p. 5, ¶¶ 5 & 6.

To contend Warden's assertion, Grievant submits the following record(s) to establish the rate of pay contracted between ESCOD and DOC, the amounts paid by ESCOD for the Grievant's labor (pursuant to §24-3-40), the difference in these two amounts, and the financial process involved in receiving payment of "prisoner's wages": App. A, p. 5-6, 9-10; App. B, p. 5, 7; App. C, p. 8; App. D, p. 45 and Exhibits 3 and 5; App. E, p. 16, 18, 19, 22, 29-30; and App. F, p. 4 and Exhibit 1, p. 18, 30 and Exhibit 2, p. 33-

Page 5 of 8

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 19

0518

Torrence, Thomas J. #094651
December 5, 2011

Grievance No. ECI-980-10
Step 2

34, 36-38, 39, 43 and Exhibits 3 and 4, p. 46-47, 53, 56-57, 88, and Exhibits 5, 6 & 9.

Warden asserts the federal law applicable was published in the Federal Register, 64 FR 17000, Warden, p. 5, ¶ 4, and that these guidelines declare only that prisoners cannot be paid below the federal minimum wage. Again, Warden piece meals and mischaracterizes. Grievant submits a reading of the applicable federal law, to include that relied upon, will reveal the "prevailing wage" language. The federal minimum wage language was a caveat and wage basement.

Grievant further submits that the South Carolina Legislature specifically enacted §24-3-315 to comply with federal certification requirements and submitted a certified copy of the statute with the PIECP application to the Department of Justice's Bureau of Justice Assistance.

Warden asserted the circuit court in Adkins concluded the DOC's practice of an hourly "overhead cost" was accepted by the BJA, Warden, p. 6, ¶ 1. The circuit court finding in Adkins was not part of the Supreme Court's finding in Adkins in 2004, the precedent of that case. There is no precedent to support "overhead cost." To the contrary, a reading of the original Congressional Record associated with 18 USC §1761(c) and 64 FR 17000 specify that no such money be charged to the inmate. Warden further asserted the "overhead cost" does not violate any applicable South Carolina statute, Warden, p. 6, ¶ 2. This assertion is in contravention to the holding in Torrence that the DOC may only make statutorily authorized deductions. The "overhead cost" ("SCDC Surplus Fund") is not a statutory deduction and thus violates §24-3-40(A).

Grievant submits the following records to support DOC acted without authority, with full knowledge, with intent to deprive prisoner's of a property interest in a portion of [their] wages: App. A, p. 10; App. D, p. 6-7, 20-23 and Exhibit 3, p. 26-28 ("no statutory authority", "we have done it since day one," "we just did it"), 34-35, and 42; App. F, p. 33-37, 53 and 88.

Warden asserts that §24-3-40(B)(2) allows inmates serving a life sentence to receive [their] escrowed wages "only upon the inmate's death," Warden, p. 6, ¶ 3. Grievant contends this is an unconstitutional interpretation of (B)(2). The original Bills in 1999 Act No. 68, §2 were one (1) each from

Page 6 of 8

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 20

0519

Torrence, Thomas J. #094651
December 5, 2011

Grievance No. ECI-980-10
Step 2

the House and Senate. One Bill stated "upon death of the inmate." That Bill did not make second reading. The other Bill, absent the language "upon death of the inmate" was the subject of 1999 Act No. 68. However, DOC chooses to employ an interpretation of legislation that did not become law. This was not the legislative intent concerning §24-3-40(B)(2).

Further, the 10% deducted pursuant to §24-3-40(A)(5) is to be for the "benefit of the prisoner." If the prisoner cannot access the principal or interest, then the prisoner is systematically deprived, via the unconstitutional interpretation, of his property interest therein.

Warden asserted Grievant's claim that he was denied interest on his escrowed wages was without merit and that the DOC complies with §24-3-40(A)(5) by depositing the interest earned into the escrowed account each month, Warden, p. 6, ¶ 4.

Grievant submits as evidence in contravention a February 2011 request for a 1099-INT for 2010 interest, current balance, and account transaction statement. DOC responded Grievant could not receive a statement and only earned 26 cents on five thousand, nine hundred ninety-seven dollars and forty-four cents (\$5,997.44) for 2010. App. K. Follow-up correspondence was ignored.

Warden denied Grievant's claim of denial of property interest without due process of law, Warden, p. 6, ¶ 5. Grievant asserts that DOC diverted a portion of [his] wages between June 1997 and November 2004, and that all available avenues to resolve the matter were taken in good faith prior to filing suit. No due process was provided prior to or during the deprivation. No due process exists now as supported by App. K.

Warden asserts no decision of the State Supreme Court nor any provision of the Inmate Grievance System entitle Grievant to any pre or post-judgment interest, Warden, p. 6, ¶ 6.

Grievant asserts that neither does any provision of Inmate Grievance system entitle Grievant to his wages, (until Wicker) but Warden's talismanic invocation of a "pre-existing right" infers such a right. Where Grievant does not lose his constitutional rights at the gates of the

Page 7 of 8

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-AJ-04-00143-AP

Page # 21

0520

Torrence, Thomas J. #094651
December 5, 2011

Grievance No. ECI-980-10
Step 2

prison, he is entitled to the same due process in civil matters as other litigants. South Carolina statute is clear in the matter of pre and post judgment interest, regardless of venue. In the absence of any South Carolina authority directly on point, this becomes a novel issue for our Supreme Court at a later date. Grievant submits the age-old maxim "interest follows principal" applies here.

Warden denied all claims in Step 1.

Grievant submits Warden has produced no record or any evidence to support the findings herein and renews his Step 1 claims in this Step 2 Grievance.

Page 8 of 8

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 22

0521

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

AFFIDAVIT OF THOMAS J. TORRENCE

The undersigned deponent, Thomas J. Torrence, personally appeared before me, deposes and says the following:

- 1) I am the Grievant in SCDC Grievance No. ECI-980-10.
- 2) I was employed in the Private Sector Prison Industries Project (Insilco Technologies / Escod Industries) from June 1997 through November 2004.
- 3) That in 1999, good faith efforts to resolve this matter informally within the agency were ignored by Eugene Baker, SCDC P.I. Business Manager, Tony Ellis, Director of Prison Industries, and Dodge Frederick, Interim Director of SCDC.
- 4) In 2001 I filed civil matter Thomas J. Torrence et al. v. S.C. Dep't of Corrections, C/A No. 2001-CP-40-3409 in the Richland County Court of Common Pleas.
- 5) C/A No. 2001-CP-40-3409 was appealed to the S.C. Court of Appeals, and subsequently the S.C. Supreme Court took jurisdiction.
- 6) The Supreme Court decision in that matter (373 S.C. 586, 646 S.E.2d 866) was issued on May 7, 2007. This Grievant received notice of that decision from counsel on May 21, 2007, via correspondence dated May 17, 2007.
- 7) Grievant filed the instant grievance on May 21, 2007; within seven (7) days of receipt of his right to file a grievance in this matter.
- 8) That the portions of Depositions submitted in the Appendix in this Step 2 Grievance are true and correct copies.
- 9) That the Request to Staff [2/8/11] and correspondence to DOC Financial Accounting [3/29/11] are true and correct copies.
- 10) That Grievant had no knowledge of discrepancy in pay until the July 1, 1999 change in law, at which time

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page #23

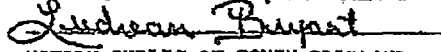
0522

Grievant began diligent research. Grievant discovered in 2000 that DOC was collecting \$7.17 per hour for Grievant's labor and during "training hours."

- 11) DOC Notice dated October 20, 2006, based on Judge Goodstein's 2005 order to advise the Williams Plaintiffs of their right to file a grievance. This notice gave .45 days and applied ONLY to Williams Plaintiffs.
- 12) Torrence Plaintiffs, to include Grievant here, were not afforded this same three years and forty-five-day window in which to file grievances.
- 13) That all other materials submitted in the Appendices are true and correct copies relevant to this matter.


Thomas J. Torrence
#094651
Lieber Corr. Inst.
P.O. Box 205
Ridgville, SC 29472

SWORN TO AND SUBSCRIBED before me
this 05th day of December, 2011


NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: May 26, 2010

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Torrence, Thomas A.	094651	ECI-0980-10	Evans CUESCOD

I have reviewed your Step 2 grievance appeal dated December 5, 2011, the affidavit you submitted in support of your Step 2 also dated December 5, 2011, as well as all of the 12 appendices, labeled "A" - "L," you submitted in support of your Step 2.

The responsible agency officials at Liebert Correctional Institution, the facility at which you are currently confined, received your Step 2 and its supporting items on December 8, 2011. Your Step 2 and supporting materials arrived at SCDC Headquarters on December 14, 2011. I observed that the number of pages you submitted in support of your Step 2 far exceeds the number of pages allowed under the relevant provision(s) of SCDC's Inmate Grievance System Policy Number GA-01.12. However, given the unique circumstances and chronology associated with your grievance, the responsible agency officials authorized a rare exception to the relevant provision(s) of Policy Number GA-01.12 and accepted the entirety of your Step 2.

Along with your Step 2 and all of the items you submitted with your Step 2, I have also reviewed your Step 1 grievance, and the warden's response to your Step 1. By this reply, I concur with the entirety of the warden's response to your Step 1, and I deny your Step 2 in its entirety.

In your Step 2, you reiterated many of the same claims that you originally made in your Step 1. You again claimed that SCDC failed to pay you the prevailing wage for your voluntary participation in the prison industries ("PI") project operated at Evans Correctional Institution ("Evans"). You again claimed that SCDC failed to pay you \$1.92 per hour, \$2.79 per hour, or any other difference between the rate at which the private industry sponsor paid SCDC per inmate labor hour and the hourly rate at which SCDC paid you for your labor. You again claimed that SCDC paid you a training wage for the first 320 hours of labor you performed as a participant in the PI project operated at Evans. You again claimed that SCDC has denied you access to your long term savings account. Finally, you again claimed that you are entitled to interest on all the monies SCDC has purportedly withheld from you.

Additionally, you asserted in your Step 2 that the warden, in his response to your Step 1, incorrectly stated that you began participating in the PI project at Evans on August 15, 1997. Instead, you asserted that you began participating in the project at Evans in June 1997.

You asserted in your Step 2 that the warden "erred in rephrasing the holdings of" *Adkins* and *Wicker*.

You asserted in your Step 2 that the warden's determination that you failed to timely file your Step 1 is moot, because you served as the lead plaintiff in a class action lawsuit filed in circuit court in 2001 in which you and other inmates asserted identical or nearly identical claims regarding your PI pay and your access to your long term savings account. Thus, you argued in your Step 2 that, by having filed a class action lawsuit, any filing deadline applicable to your Step 1 was tolled. The South Carolina Supreme Court affirmed the circuit court's decision to dismiss the class action lawsuit to which you refer and in which you served as the lead plaintiff by its opinion in *Torrence*.

Page 1 of 8

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 25

0524

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094651	EC1-0902-10	Evans C/ESCOD

In your Step 2, you also asserted that no precedent exists to support SCDC's practice of charging the PI sponsor an "overhead cost." Instead, you claimed that "a reading of the original Congressional Record associated with 18 USC § 1761(c) and 64 FR 17000 specify that no money can be charged to the inmate." You also claimed that the *Torrence* Court determined that SCDC may only assess statutorily authorized deductions against an inmate's PI pay, and SCDC's "overhead cost" violates § 24-3-40(A) because it is not a statutory deduction.

In your Step 2, you asserted that the warden, in his response to your Step 1, incorrectly determined that your claim is barred by the doctrine of laches. Instead, you asserted that, by having filed your class action lawsuit in circuit court and prosecuting the lawsuit up to a final decision by our Supreme Court, you diligently pursued your PI pay claims.

In your Step 2, you objected to the warden's reliance on 14 decisions issued by the Administrative Law Court ("ALC"), because you asserted that you did not and do not have access to these decisions. Thus, you asserted that the warden's reliance on these 14 decisions deprives you of a fair opportunity to respond.

You asserted in your Step 2 that the warden's interpretation of § 24-3-40(B)(2) is unconstitutional and that it conflicts with earlier versions of the bill that ultimately amended § 24-3-40(B)(2). Specifically, you asserted that earlier versions of the bill contained the words "upon death of the inmate," and, because the final version of the bill omitted these words, the legislature did not intend for escrowed wages to be held until an inmate's death. You also asserted in your Step 2 that the monies held in escrow by operation of § 24-3-40(A)(5) are held for the "benefit of the prisoner." Thus, you argued that if SCDC denies you access to the principal balance of these monies or the interest generated by these monies, then SCDC is denying you the benefit of all such monies held in escrow on your behalf by operation of § 24-3-40(A)(5). Finally, you asserted that SCDC has not properly assessed interest in the monies it holds on your behalf by operation of § 24-3-40(A)(5). Specifically, you alleged that the monies in your escrow account "only earned 26 cents [of interest] on [\$1,997.44]" for the year 2010.

In your affidavit, you reiterated many of the same claims that you originally made in your Step 1 and Step 2. You also asserted that you filed your Step 1 within seven (7) days after you received the "right to file a grievance in this matter." You further asserted that you had "no knowledge of discrepancy in pay until the July 1, 1999 change in law, at which time [you] began diligent research." Finally, you asserted in your affidavit that you discovered in 2000 that SCDC was "collecting \$7.17 per hour for [your] labor and during 'training hours.'"

Again, after carefully considering all of the arguments you presented in your Step 2, as well as the affidavit and 12 appendices you submitted in support of your Step 2, I deny your Step 2.

As the warden stated in his response to your Step 1, your PI participation and pay records were reviewed by the responsible officials at SCDC Headquarters in Columbia. These records confirm that you voluntarily participated in the PI project operated by SCDC at Evans in which ESCOD participated as the private industry sponsor before SCDC stopped of paying inmates a

Page 2 of 8

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 28

0525

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094631	EC1-0980-10	Evans C/ESCOD

"training wage" for their initial 320 hours of labor. SCDC stopped paying inmates such a "training wage" on July 1, 1999.

As stated by the warden in his response, your PI participation and pay records also reflect that SCDC began paying you at the rate of at least \$5.25 per hour for the labor you voluntarily provided in the project at Evans on or about August 15, 1997. Thus, your assertion that the warden incorrectly stated that you began participating in the project at Evans on August 15, 1997 has no merit. The warden did not conclude that you commenced your voluntary participation in the PI project on August 15, 1997. Instead, the warden simply acknowledged that SCDC began paying you at least \$5.25 per hour for your labor on or about August 15, 1997. As the warden also acknowledged, your participation and pay records also reflect that SCDC made its final payment to you for your labor on or about November 16, 2004.

As the warden correctly stated in his response, two (2) decisions issued by the South Carolina Supreme Court, *Adkins* and *Wicker*, apply to the back pay claims you presented in your Step 1. Both of these cases discussed S.C. Code Ann. § 24-3-40, § 24-3-310, *et seq.*, and, specifically, § 24-3-430(D). Our Supreme Court issued these decisions on August 23, 2004. I agree with the warden that *Adkins* and *Wicker* recognized that inmates, like you, possessed a pre-existing right to file administrative grievances with SCDC concerning their PI pay. *Wicker* specifically recognized that such grievances must be filed, processed, and determined in accordance with the provisions of the agency's Inmate Grievance System Policy. Thus, to the extent that you asserted in your Step 2 that the warden erred in rephrasing the holdings of *Adkins* and *Wicker*, I find that your assertion has no merit. Instead, *Wicker* merely recognized our Supreme Court's prior decision in *Al-Shabazz* which concluded that inmates are entitled to procedural due process when a liberty or property interest is at stake. Accordingly, the *Wicker* Court acknowledged that, pursuant to *Al-Shabazz*, inmates receive procedural due process under SCDC's internal grievance system and the opportunity to have SCDC's decision regarding any such grievance reviewed by the ALC. You even recognized the South Carolina Supreme Court's decision *Al-Shabazz* in your Step 2 grievance.

As recognized by the warden in his response, the *Torrence* decision also applies to the claims from your Step 1. Again, *Torrence* is the case you mentioned in your Step 1 and Step 2 and is the case in which you personally participated as the lead plaintiff. The *Torrence* Court recognized that, under *Wicker*, inmates could file Step 1s by which they could challenge their PI pay under the agency's Inmate Grievance System Policy. Absolutely no part of *Torrence* supports your argument that you or the other inmates in your position could not file a Step 1 challenging your pay before *Adkins* and *Wicker* were issued.

As accurately explained by the warden in his response, SCDC has published editions of its Inmate Grievance System Policy for at least 30 years, if not longer. As he also accurately explained, the edition of the policy that applied when you began participating in the project at Evans was the May 1, 1996 edition of the policy designated as PS-10.01 (OP). Specifically, § 14(a) of Policy Number PS-10.01 (OP) required that inmates submit their Step 1 grievance forms "within seven (7) days of the alleged incident." Exceptions to the deadline appeared in § 14(g) and § 15 of this edition of the policy.

Page 3 of 8

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 27

0526

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	041551	ECI-0580-10	Evans CUESCO

As the warden further explained, SCDC issued new editions of Policy Numbers PS-10.01 and PS-10.01 (OP) on October 1, 1997. The warden indicated in his response that the agency issued new editions of these policies on October 1, 2007, but his reference to "2007" was a typographical error. In the October 1, 1997 edition of Policy Number PS-10.01 (OP), SCDC changed § 14(a) to require that inmates submit their Step 1 forms "within 15 days of the alleged incident." Again, exceptions to this deadline appeared in § 14(g) and § 15 of the policy.

On January 10, 1998, SCDC issued a new edition of the applicable policy, and, just as before, the policy consisted of two (2) parts. However, SCDC re-designated these two (2) parts as Policy Number GA-01.12 and Policy Number GA-01.12 (OP). § 14(a) of Policy Number GA-01.12 (OP) required that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Once again, exceptions to this deadline appeared in § 14(g) and § 15 of the policy.

Again, as accurately explained by the warden, the agency consolidated Policy Numbers GA-01.12 and GA-01.12 (OP) into a single policy when it issued a new edition of Policy Number GA-01.12 on April 1, 2000, and the 15-day filing deadline appeared in this edition as well as every edition issued since April 1, 2000.

Like the warden, I conclude, after reviewing your Step 1 in light of *Adkins*, *Wicker*, *Torrence*, *Al-Shabazz*, and the policy provisions discussed above, that you did not submit your Step 1 within either seven (7) days or even 15 days of the incident upon which you anchored your PI pay claims, namely the date upon which SCDC both first began paying you for your PI labor and first began applying the statutorily mandated deductions to your pay.

I fully concur with the warden's determination that the grievance filing deadline established in every edition of the relevant policy applied and continues to apply to nearly every aspect of inmate activity, and no special exception exists when it comes to PI pay disputes. Consequently, the deadline applied to your Step 1. Moreover, as the warden accurately chronicled in his response, you filed your Step 1 nearly 10 years after you began participating in the PI project at Evans and approximately 2 1/2 years after you concluded your participation in this project. For that matter, you filed your Step 1 over 2 1/2 years after the decisions in *Adkins* and *Wicker* had been issued.

You also filed your Step 1 approximately 6 years after you, as you claimed in your affidavit, that you "discovered" that SCDC was "collecting \$7.17 per hour for [your] labor" and almost 8 years after you, as you claimed in your affidavit, discovered a "discrepancy" in your pay. I fully concur with the warden's determination that you clearly exceeded any reasonable time frame associated with filing a grievance under the relevant policy.

I also fully concur with the warden's determination that the fact that you first sought relief by participating in a class action lawsuit filed in circuit court instead of filing a Step 1 by which you challenged the rate at which SCDC both paid you for your PI labor and applied statutorily mandated deductions to your pay does not change the filing deadline(s) from the relevant agency policy. You served as the lead plaintiff in *Torrence*, and your attorneys filed their amended declaratory judgment complaint on your behalf on November 5, 2001. (Obviously, you know

Page 4 of 8

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-AJ-04-00143-AP

Page # 28

0527

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Torrence, Thomas L.	094651	ECT-0980-10	Evans CUESCOD

before your attorneys filed the complaint that you wanted to challenge the rate at which SCDC had been paying you for your PI labor.

Moreover, the filing of your class action lawsuit in circuit court did not toll the deadline(s) by which you were required to file your Step 1. The appendices you submitted in support of your Step 2 simply do not support your assertion that your participation in the class action lawsuit tolled the deadline by which you were required to file your Step 1. Moreover, these same appendices simply do not establish the date upon which your right to file a grievance in this matter accrued. The appendices you relied upon to support your assertion include correspondence that you received from your own counsel in Torrence, and this correspondence has absolutely no bearing on the filing deadline associated with your Step 1. Furthermore, absolutely no aspect of any order issued by Judge Goodstein in *Williams* tolled or otherwise modified the deadline by which you were required to file your Step 1.

I also concur with the warden's determination that nothing in the "notice flyer" posted throughout SCDC in late 2008 affected the applicable time frame associated with filing a Step 1 regarding any purported failure of SCDC to pay you a particular hourly rate for your PI labor.

Thus, in denying your Step 2, I concur with the warden's reliance on the 14 decisions from the ALC he cited in his response to your Step 1. Additionally, in denying your Step 2, I have considered the decision issued by the South Carolina Court of Appeals in *Patterson v. S.C. Dep't of Corr.*, 2010-UP-292 (S.C. Ct. App. May 27, 2010) ("[SCDC] denied Patterson's grievance based on [§ 13.1], which states an inmate must file a grievance within fifteen days of the alleged incident. ... Patterson should have filed his grievance within fifteen days of December 6, 2004, when he originally discovered that [SCDC] lost his inmate property.").

To the extent that you object to the warden's reliance on the 14 decisions issued by the ALC in his response because you purportedly do not have access to these decisions, I find that your claim has no merit. In your Step 2, you discussed the following two decisions issued by the ALC: *Rosenmund v. S.C. Dep't of Corr.*, Docket No. 00-ALJ-04-01026-AP and *Richard Steamshifter v. S.C. Dep't of Corr.*, Docket No. 00-ALJ-04-00021-AP. Thus, it appears that you have at least some kind of access to decisions issued by the ALC.

Additionally, in light of the chronology associated with your filing of your Step 1, I concur with the warden's determination that your claims are barred by the doctrine of laches. I also find no merit in your assertion that you diligently pursued your PI pay claims, because you filed a class action lawsuit in circuit court and then prosecuted the lawsuit to our Supreme Court. Filing your class action lawsuit in circuit court did not and does not excuse you from diligently pursuing your PI pay claims via SCDC's inmate grievance system policy.

Also, I concur with the warden's denial of your claim for relief under § 24-3-430(D), the so-called "prevailing wage" provision. Specifically, as the PI project in which you participated at Evans was a project for which SCDC received certification under the federal government's Prison Industries Enhancement Certification Program ("PIECP"), I conclude that the provisions of § 24-3-410(B)(7) rather than the provisions of § 24-3-430(D) applied to the rate of pay SCDC

Page 5 of 8

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 28

0528

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Torrence, Thomas L.	092651	ECT-0980-10	Evans CUESCOD

was required to remit to you by operation of § 24-3-40(A). I concur with the warden's reliance upon the decision issued by the circuit court in *Adkins* in making this determination. The circuit court in *Adkins* concluded that inmates who participated in an identically certified PI project did not possess a viable claim for back wages or higher wages under the provisions of § 24-3-430(D). Instead, the circuit court in *Adkins* concluded that the provisions of § 24-3-410(B)(7) applied. To the extent that you claim that the Supreme Court's decision in *Torrence* found that § 24-3-430(D) is applicable to your case, I find your claim is without merit.

Even if you have a viable claim for relief under § 24-3-430(D), I concur with the warden's conclusion that that SCDC remitted to you the proper rate of pay for the labor you voluntarily provided to the federally certified PI project operated at Evans. In making this conclusion, I concur with the warden's reliance upon the guidelines established by the federal government, specifically the United States Department of Justice's Bureau of Justice Administration (known as "BJA"). BJA published the guidelines applicable to the PIECP in the Federal Register, specifically 64 FR 17000. Within these guidelines, BJA declared that the rate at which inmates are paid for the labor they voluntarily provide to PIECP projects, like the project in which you participated at Evans, cannot be set below the federal minimum wage. Except for the period of time it paid you a "training wage," SCDC paid you at least the federal minimum wage for your labor. Again, I concur with the warden's determination that you did not timely file your Step 1 in which you demanded any back pay allegedly owed to you by SCDC including any back pay associated with the period of time SCDC paid you a "training wage."

I concur with the warden's determination that SCDC does not owe you \$1.92, \$2.79, or any other amount for every labor hour you voluntarily provided to the federally certified PI project operated by SCDC at Evans. Again, ESCOD was and remains the private industry sponsor for the PI project operated at Evans. Under the contracts struck between SCDC and ESCOD, SCDC legitimately charges ESCOD an hourly rate for "overhead cost" in addition to the hourly rate SCDC pays inmates in accordance with both state and federal law. None of the appendices you submitted in support of your Step 2 change this reality. As an aside, I observe that some of the materials you referenced as appendices to your Step 2 did not actually appear within the materials you submitted in support of your Step 2. Neither 18 USC § 1761(c), 64 FR 17000, § 24-3-315, nor the decisions in *Adkins* and *Torrence* contradict this reality. The "overhead cost" SCDC charges ESCOD is simply not a part of your inmate pay and it is not deducted from your inmate pay.

Furthermore, as the warden accurately observed in his response, the circuit court in *Adkins* concluded that SCDC's practice of invoicing a private industry sponsor, like ESCOD, such an hourly "overhead cost" was accepted by BJA, the federal agency responsible for certifying both the PI project at issue in *Adkins* and the PI project operated at Evans.

As the warden accurately explained in his response, SCDC's assessment of this "overhead cost" does not violate any applicable South Carolina statute, because the assessment of this cost allows the agency to comply with the various applicable PI statutes, including § 24-3-400. These statutes, including § 24-3-400, either directly or indirectly compel SCDC to collect an hourly

Page 6 of 8

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 30

0529

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Torrence, Thomas L.	094651	EC-0960-10	Evans C/ESCOD

"overhead cost" or "administrative charge" from private industry sponsors so that the agency may cover the expenses it incurs as a consequence of operating these projects.

Regarding your claim of being entitled to complete and immediate access to your escrowed monies pursuant to § 24-3-40(B)(2), I concur with the warden's determination that your claim has no merit. Section 24-3-40(A)(5) requires SCDC to deduct 10% of an inmate's wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B) directs SCDC to "return a prisoner's wages held in escrow pursuant to [§ 24-3-40(A)]" only when an inmate leaves SCDC's custody. When an inmate is serving a life sentence, § 24-3-40(B)(2) provides the inmate with "the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." This provision directs SCDC to distribute these escrowed monies only upon the inmate's death, and not prior to that event. Nothing in any provision of § 24-3-40(B) authorizes an inmate to have complete and immediate access to any of these monies while still lawfully held in SCDC's custody. Any other interpretation would conflict with the remaining provisions of § 24-3-40(B).

You asserted in your Step 2 that the warden's interpretation of § 24-3-40(B) is unconstitutional and that it conflicts with earlier versions of the bill that ultimately amended § 24-3-40(B)(2). Specifically, you asserted that earlier versions of the bill contained the words "upon death of the inmate," and, because the final version of the bill omitted these words, the legislature did not intend for escrowed monies to be held until an inmate's death. I conclude that your assertion has no merit. Specifically, I conclude that the meaning of § 24-3-40(B)(2) would not have changed even if the words "upon death of the inmate" appeared in the final version of the bill that amended § 24-3-40(B)(2) in 1999.

You further asserted in your Step 2 that inmates cannot benefit from their escrowed monies without access to the principal or interest. Again, I conclude that your assertion possesses no merit. You do receive a benefit under the provisions of § 24-3-40(B)(2), namely the option to designate, during your lifetime, persons or entities of your choice who will receive your escrowed monies, and you may do so without the need to prepare and execute a will.

In your Step 1, you specifically demanded immediate access to your escrowed monies so that you could immediately distribute the monies to persons or entities of your choice. However, I conclude that you will not receive any personal benefit by immediately distributing such monies to persons or entities of your choice.

Therefore, I concur with the warden's determination that no provision of § 24-3-40 requires inmates to have complete and immediate access to any of these monies while they are still lawfully held in SCDC's custody.

You asserted in your Step 2 that SCDC denied you interest on your escrowed monies, and I concur with the warden's determination that your assertion has no merit. SCDC complies with § 24-3-40(A)(5) by depositing interest you have earned on your monies held in escrow into your account every month. SCDC receives interest payments from the State Treasurer's Office and

Page 7 of 8

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 31

0530

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094651	ECI-0930-10	Evans C/ESCOD

then SCDC deposits that interest into your escrow account. The amount of interest you receive on such monies is simply not determined by SCDC.

To the extent that you claimed in your Step 2 that SCDC has unconstitutionally denied you of your property interest in these monies without due process of law, I deny your claim. As recognized by our Supreme Court in *Torrence*, *Wicker*, and *Al-Shabazz*, SCDC's inmate grievance system complies with minimum due process requirements. As also recognized in *Wicker*, you and other inmates in your position may exercise your pre-existing due process rights and litigate your PI pay disputes with SCDC through SCDC's Inmate Grievance System Policy. Therefore, SCDC has not denied you due process of law, and the filing deadline from the various editions of the agency's policy applies to the PI pay claims you articulated in your Step 1.

Finally, to the extent that you demanded various types of interest in your Step 2, no decision of the South Carolina Supreme Court nor any provision of any edition of the Inmate Grievance System Policy entitles you or any other inmate to any pre-judgment or post-judgment interest, or for that matter, costs or attorneys' fees in connection with SCDC's processing and consideration of your grievance. Although you asserted that South Carolina statutes entitled you to pre-judgment and post-judgment interest, you failed to identify any statute which purportedly supported your claim. South Carolina law contemplates that interest may be awarded in certain cases, but only after a judgment has been awarded. No judgment has been awarded to you as a consequence of you filing your Step 1 or Step 2.

Therefore, for all of the above stated reasons, I concur with the entirety of the warden's response to your Step 1, and accordingly, I deny your Step 2 in its entirety.

Page 8 of 8

ROA

Torrence v. S.C. Dep't of Cor.
Docket # 12-ALJ-04-00143-AP

Page # 32

0531

Torrence, Thomas J., SCDC #094651
Grievance No. ECI-980-10
Step 2

December 5, 2011

APPENDIX

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 33

0532

INDEX

APPENDIX A

Deposition of Thomas McQueen (portions) taken September 12, 2002 in Thomas J. Torrence, et al. v. S.C. Dep't of Corr., C/A No. 01-CP-40-3409.

APPENDIX B

Deposition of Phillip Pittman (portions) taken October 9, 2002 in Thomas J. Torrence, et al. v. S.C. Dep't of Corr., C/A No. 01-CP-40-3409.

APPENDIX C

Deposition of Steven Kuznik (portions) taken October 9, 2002 in Thomas J. Torrence, et al. v. S.C. Dep't of Corr., C/A No. 01-CP-40-3409.

APPENDIX D

Deposition of Tony Ray Ellis (portions) and Exhibits 3 and 5, taken September 12, 2002 in Thomas J. Torrence, et al. v. S.C. Dep't of Corr., C/A No. 01-CP-40-3409.

APPENDIX E

Deposition of Susanne Reich (portions) taken August 29, 2003 in Thomas J. Torrence, et al. v. S.C. Dep't of Corr., C/A No. 01-CP-40-3409.

APPENDIX F

Deposition of Rebecca W. Elaezer (portions) taken August 10, 2004 in Thomas J. Torrence, et al. v. S.C. Dep't of Corr., C/A No. 01-CP-40-3409.

APPENDIX G

Defendant SCDC's First Response to the Plaintiff's First Request to Admit, dated May 27, 2003 in Thomas J. Torrence, et al. v. S.C. Dep't of Corr., C/A No. 01-CP-40-3409.

i

INDEX - Continued

APPENDIX H

Cover Form [Request to Staff], dated May 21, 2007, originally accompanying the grievance following receipt of the Supreme Court decision in Torrence.

APPENDIX I

Correspondence of counsel, dated May 17, 2007, and received May 21, 2007, advising Grievant of Supreme Court decision in Torrence.

APPENDIX J

Correspondence of counsel dated August 27, 2007, advising Grievant to proceed through the grievance process.

APPENDIX K

February 8, 2011 Request to DOC Financial Accounting requesting 1099-INT for 2010 interest and current balance of Long Term Savings Account [§24-3-40(B)] and March 29, 2011 follow-up requesting specific data.

APPENDIX L

Notice to Lieber [inmates that under Wicker, inmates involved in Williams v. SCDC, as ordered by Judge Goodstein, that those parties had 45 days from date of the Notice [October 20, 2008] to file grievances.

V KIDNEY

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 36

0535

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
C/A No. 01-CP-40-3409

Thomas J. Torrence and
William Ray Ward, on behalf
of themselves and all others
similarly situated; and
Kimberly Dubose, on behalf
of herself and all others
similarly situated,

Plaintiffs,

v.

South Carolina Department
of Corrections and The
State of South Carolina,

Defendants.

COPY

DEPOSITION OF
THOMAS E. MCQUEEN

Thursday, September 12, 2002
1:59 p.m. - 2:21 p.m.

The deposition of THOMAS E. MCQUEEN, taken on behalf of the Plaintiffs at Lewis, Babcock & Hawkins, L.L.P., 1513 Hampton Street, Columbia, South Carolina, on the 12th day of September, 2002, before Andrea R. Taylor, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

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ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 37

0536

THOMAS E. McQUEEN

3

1 THOMAS E. McQUEEN, being duly sworn, deposes and
2 testifies as follows:

3 MR. McQUEEN - EXAMINATION BY MR. LEWIS:

4 Q: I want to show you a budget bill here, exhibit
5 number, what is it?

6 MR. SUMMERS: Seven.

7 Q: Seven.

8 (Plaintiff's Exhibit Number Seven was marked for
9 identification purposes.)

10 Q: What do you do?

11 A: Administrative manager, I handle certain parts
12 of the financial accounting for Prison
13 Industries.

14 Q: Okay. And have you ever looked at a budget
15 bill from the House or Senate or budget bill
16 from the General Assembly?

17 A: I have looked at them before, yeah.

18 Q: Well, can you explain to me looking at Exhibit
19 Number Six --

20 MR. SUMMERS: Seven, sir.

21 Q: -- excuse me, Seven, when it says Evans, it
22 says Total Funds and General Funds; what is the
23 difference?

24 A: Total Funds is funds from all fund sources,
25 whether it be state, federal, or whatever and

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ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 38

0537

1 --

2 Q: Total Funds, would it include Prison Industry

3 Funds?

4 A: That I'm not aware of. I do not know.

5 Q: So you don't know if the Prison Industry

6 Account funds are included in Total Funds or

7 not --

8 A: No, sir.

9 Q: -- is that correct?

10 A: I do not know.

11 Q: Do you know what the Prison Industry Account

12 is?

13 A: What do you mean?

14 Q: Well, the law says that you will establish a

15 Prison Industries Account, and I want to know

16 if you know what it is.

17 A: We have a separate bank account which holds

18 Prison Industries funds.

19 Q: It says that it should be at the State

20 Treasurer. Is it at the State Treasurer?

21 A: Yes, sir.

22 Q: And it's to be kept and maintained as a special

23 revolving account. Is it a special revolving

24 account?

25 A: You would have to ask the chief of financial

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- 1 accounting that.
- 2 Q: Who is he?
- 3 A: Mr. Bruce Burnett.
- 4 Q: And it's a designated Prison Industries
- 5 Account?
- 6 A: Yes, sir, to the best of my knowledge.
- 7 Q: And do you run that account?
- 8 A: No, sir, I do not.
- 9 Q: Do you keep track of that account?
- 10 A: We do keep account of the -- we keep track of
- 11 the balances in that account.
- 12 Q: And that's the only thing you do, is the
- 13 balances in that account?
- 14 A: We make -- we make deposits to that account and
- 15 inquiries to the balances remaining in that
- 16 account.
- 17 Q: Is there some other accounting that's done
- 18 prior to making deposits in that account?
- 19 A: What do you mean?
- 20 Q: Look at Exhibit Number Five. Do you see that?
- 21 Look at page seven.
- 22 A: Okay.
- 23 Q: Do you have page seven?
- 24 A: Okay.
- 25 Q: Now, if an inmate works one hour and he's paid

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1 \$7.17, okay?

2 A: Yes, sir.

3 Q: How much of that \$7.17 is deposited in the

4 Prison Industries Account with the State

5 Treasurer?

6 A: We invoice the contractor and so that entire

7 amount would be going in -- whatever we invoice

8 the contractor would go into our Prison

9 Industries Account.

10 Q: So the whole \$7.17 would go in there?

11 A: Yes.

12 Q: And then the Prison Industries Account would

13 pay \$5.25 to the prisoner?

14 A: No, sir.

15 Q: How much would they pay to the prisoner?

16 A: Well, this being under a PIE one, the gross

17 amount would be for the prisoner, but he would

18 have certain deductions withheld from that.

19 Q: What would be the gross amount for the

20 prisoner, \$7.17?

21 A: No, sir, \$5.25.

22 Q: And then that would be what you would --

23 looking at Exhibit Number Two. You see the

24 state and federal income taxes, Social Security

25 deductions, 20 percent; you see all those?

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- 1 A: Yes, sir.
- 2 Q: These would be taken out of the \$5.25?
- 3 A: Yes, sir.
- 4 Q: And that would all be done by the Prison
- 5 Industries through the Prison Industries
- 6 Account?
- 7 A: It would be done in that account, yes, sir.
- 8 Q: So if I go to the Prison Industries Account,
- 9 there is -- you know what a ledger is, or a
- 10 journal?
- 11 A: Yes, sir.
- 12 Q: There would be some kind of journal entry or
- 13 ledger entry which would be for pro rata Social
- 14 Security withholding payment, is that right?
- 15 A: Again, that is handled by financial accounting
- 16 at headquarters.
- 17 Q: Where is the financial accounting headquarters?
- 18 A: It's at South Carolina Department of
- 19 Corrections headquarters building, financial
- 20 accounting branch.
- 21 Q: It said it should be deposited with the State
- 22 Treasurer, not the Department of Corrections.
- 23 A: The Department of Corrections handles inmate
- 24 pay for Prison Industries.
- 25 Q: Okay. So when the \$7.17 comes in from the

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- 1 contractor, it is not deposited in the Prison
- 2 Industries Account with the State Treasurer; is
- 3 that correct?
- 4 A: It is deposited under the department -- under
- 5 the Prison Industries with the State Treasurer,
- 6 but the records are maintained by financial
- 7 accounting.
- 8 Q: Who writes the checks out for the different
- 9 deductions for the prisoner?
- 10 A: Financial accounting.
- 11 Q: How does financial accounting get the money;
- 12 where's the money?
- 13 A: They're authorized to write checks off the
- 14 Prison Industries Account.
- 15 Q: So they're allowed to write checks off the
- 16 State Treasurer's Prison Industries Account; is
- 17 that correct?
- 18 A: Yes, sir.
- 19 Q: So all of the monies collected from a
- 20 contractor under these agreements, such as
- 21 found in Exhibit Number Five, is deposited in
- 22 the Prison Industries Account at the State
- 23 Treasurer?
- 24 A: To the best of my knowledge, yes.
- 25 Q: And the amount of money that the contractor

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THOMAS E. MCQUEEN

9

1 pays for an employee per hour as wages is on
2 Exhibit Number Five, \$7.17, isn't it?
3 A: That the contractor pays per inmate hour?
4 Q: Yes.
5 A: In this particular contract, yes, sir.
6 Q: And you know that out of -- do they send you
7 some kind of form like a W-2 form or a --
8 MR. ELLIS: 1099. You're talking about a 1099.
9 Q: -- 1099?
10 A: Does who send that to me?
11 Q: The contractor.
12 A: Not to my knowledge. I have not seen one.
13 Q: You've never seen any kind of a form from a
14 contractor when they paid for the services of
15 an inmate?
16 A: No.
17 Q: Do you give the inmate a 1099 or a W-2 form?
18 A: I do not, no, sir.
19 Q: Does the department do it?
20 A: I'm not aware of whether they do or not; that's
21 handled through financial accounting.
22 Q: And who is this person that's in charge of
23 financial accounting?
24 A: Bruce Burnett.
25 Q: If the contractor pays \$7.17 and the employee,

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1 that is, the inmate gets \$5.25 in wages,
2 there's a difference of approximately \$2.02,
3 isn't there?

4 A: Not quite.

5 Q: What?

6 A: No, sir.

7 Q: Well, how much is the difference?

8 A: \$1.92.

9 Q: \$1.92, okay. There's a difference of \$1.92,
10 right?

11 A: Yes, sir.

12 Q: And if the contractor takes the \$1.92 as part
13 of the wages he paid out and the -- excuse me.
14 If the contractor takes off as an expense for
15 labor \$7.17 and you only reflect \$5.25 as being
16 paid to the laborer, there is \$1.92 that isn't
17 taxed for withholding taxes, isn't it?

18 A: I'm not sure how the contractor handles his
19 accounting part of it.

20 Q: Well, I just asked you, if he takes it off as
21 wages --

22 A: I don't know that he would take it off as
23 wages.

24 Q: What does he take it off as?

25 A: That's what I'm saying. I don't know how the

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APPENDIX B

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 48

0545

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF COMMON PLEAS
C/A No. 01-CF-40-3409

Thomas J. Torrence and
William Ray Ward, on behalf
of themselves and all others
similarly situated; and
Kimberly Dubose, on behalf
of herself and all others
similarly situated,

Plaintiffs,

v.

South Carolina Department
of Corrections and The
State of South Carolina,

Defendants.

COPY

DEPOSITION OF
PHILIP PITMAN

Wednesday, October 9, 2002
10:30 a.m. - 10:41 a.m.

The deposition of PHILIP PITMAN, taken on
behalf of the Plaintiffs at Lewis, Babcock & Hawkins,
LLP, 1513 Hampton Street, Columbia, South Carolina,
on the 9th day of October, 2002, before Andrea E.
Taylor, Court Reporter and Notary Public in and for
the State of South Carolina, pursuant to Notice of
Deposition and/or agreement of counsel.

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ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 47

0546

PHILIP PITMAN

3

1 (Plaintiff's Exhibit Number One was marked for
2 identification purposes prior to the deposition.)

3 PHILIP PITMAN, being duly sworn, deposes and
4 testifies as follows:

5 MR. PITMAN - EXAMINATION BY MR. PROTOPAPAS:

6 Q: Please state your name for the record.

7 A: Philip Pitman.

8 Q: Okay, Mr. Pitman, who do you work for, sir?

9 A: I work for Insilco Company.

10 Q: And what is your position with Insilco?

11 A: Vice President and General Manager.

12 Q: Is there a category you're vice president
13 general manager of or is it ...

14 A: It's the Insilco Technologies Group which is
15 the custom assemblies group.

16 Q: What is a custom assembly group?

17 A: We build custom assembly cables for all types
18 of industries like telephone communications
19 industry, medical industry.

20 Q: How long have you been in that position?

21 A: Probably about six years.

22 Q: Were you with the company prior to that?

23 A: Yes.

24 Q: And how long have you been with the company?

25 A: Total of about 17.

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ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 48

0547

PHILIP PITMAN

4

1 Q: I'm going to show you what's been marked as
2 Exhibit Number One to your deposition. Do you
3 recognize that Exhibit, sir?
4 A: No, I do not.
5 Q: Why are you here today?
6 A: Because you sent me a ... you sent us a note to
7 show up.
8 Q: Have you seen that note?
9 A: Have not, it was sent to our North Myrtle Beach
10 facility.
11 Q: I'm going to represent to you that the Notice
12 of Deposition is part of that note that we sent
13 to you. At the bottom of it there are three
14 categories, 1, 2 and 3. The first category is,
15 "The accounting of prisoner wages in the
16 attached March 3rd, 2001, agreement between the
17 South Carolina Department of Corrections and
18 Insilco Technologies as set forth on page 7...
19 A: Uh-huh (affirmative response).
20 Q: ... paragraph 3.3 of the agreement, attached as
21 Exhibit A." Do you see that?
22 A: Yes.
23 Q: Would you like to flip to page 7 of that first
24 attachment for me, the March 2001 agreement.
25 A: (Witness does as instructed.) Okay, I assume

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Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 49

0548

1 this is page 7. It's not very readable, but
 2 ...
 3 Q: Okay. Do you see paragraph 3.3 entitled Mutual
 4 Duties of the Parties?
 5 A: Yes.
 6 Q: Okay. What I want to know is do you have any
 7 knowledge regarding the accounting practices of
 8 Insilco for the numbers reflected in paragraph
 9 3.3 to the agreement?
 10 A: Do not. Do not.
 11 Q: Do you know anything that could answer category
 12 one or inform category one?
 13 A: This one? (indicating)
 14 Q: Yes, sir.
 15 A: Since I don't have close knowledge of the
 16 accounting practices of the company as far as
 17 the technical part, no, I do not.
 18 Q: Do you have knowledge of the non-technical
 19 part?
 20 A: Just the general overview of the wage that
 21 we're paying, and that's the \$7.17 an hour, and
 22 I am familiar with the breakdown, but as to how
 23 it's accounted for within the company ...
 24 Q: What's your understanding of the 7.17 an hour?
 25 A: That is the ... that's the hourly rate that we

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1 pay the prison for the number of hours that
 2 they're billed for the prisoners that we
 3 employ.
 4 Q: Okay. Is there anything else that you know
 5 about the hourly rate that can ... on the non-
 6 technical side that can inform me?
 7 A: No.
 8 Q: Do you know why there are four different
 9 numbers that make up the \$7.17 an hour?
 10 A: Just as in conversing with the prison system as
 11 far as they informed us that 40 percent of it
 12 ... I mean, or 40 cents went to the Social
 13 Security withholding, the 20 percent was a
 14 compensation for the victims, I believe, and
 15 then the ... I'm not sure about the 1.32.
 16 Q: Okay. And just to make sure we're clear, the
 17 20 cents, I think you may have mis-spoke when
 18 you said the victims. Is that the workers'
 19 compensation rather?
 20 A: I'm sorry, yes.
 21 Q: Okay.
 22 A: And I guess the \$1.32 is broken down the other
 23 way. So I'm not sure.
 24 Q: So you don't know what ...
 25 A: No, do not. Don't know how it's broken down.

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- 1 Q: Okay. Let's go to the second category.
- 2 A: Okay.
- 3 Q: What knowledge do you have about the hourly
- 4 rate charged to contract as reflected on page
- 5 7, paragraph 3.3 of the agreement, the
- 6 paragraph we were just looking at.
- 7 A: Yeah.
- 8 Q: Is that the sum total what you've just told me?
- 9 A: That is correct.
- 10 Q: There's a second attachment to the Notice of
- 11 Deposition which is and it's reflected in
- 12 paragraph 3 of the Notice of Deposition. It
- 13 says, "The accounting of inmate pay and minimum
- 14 inmate wage in the July 31st, 1995, contract,
- 15 paragraph 3.3 attached as B." If you could just
- 16 turn to that agreement which is the back half
- 17 of the notice, if you could, to page 6,
- 18 paragraph 3.3
- 19 A: (Witness does as instructed.)
- 20 Q: At the very bottom, do you see where it says,
- 21 "3.3, Mutual Duties of the Parties"?
- 22 A: Uh-huh (affirmative response).
- 23 Q: And underneath that, it has inmate pay, minimum
- 24 inmate wage and so forth.
- 25 A: Right.

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APPENDIX C

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 53

0552

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF COMMON PLEAS
C/A No. 01-CP-40-3409

Thomas J. Torrence and
William Ray Ward, on behalf
of themselves and all others
similarly situated; and
Kimberly Dubose, on behalf
of herself and all others
similarly situated,

Plaintiffs,

v.

South Carolina Department
of Corrections and The
State of South Carolina,

Defendants.

COPY

DEPOSITION OF
STEVEN KUZNIK

Wednesday, October 9, 2002
10:06 a.m. - 10:19 a.m.

The deposition of STEVEN KUZNIK, taken on behalf of the Plaintiffs at Lewis, Babcock & Hawkins, LLP, 1513 Hampton Street, Columbia, South Carolina, on the 9th day of October, 2002, before Andrea R. Taylor, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

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ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 54

0553

STEVEN KUZNIK

3

1 STEVEN KUZNIK, being duly sworn, deposes and
2 testifies as follows:

3 MR. KUZNIK - EXAMINATION BY MR. PROTOPAPAS:

4 Q: Mr. Kuznik, thank you for coming today. I'm
5 going to show you what I'm going to mark as
6 Exhibit Number One to your deposition. Well,
7 let me start off with the South Carolina
8 Supreme Court has issued rules for the taking
9 of depositions. You're here for a deposition.
10 I'm to instruct you at the beginning of the
11 deposition that if you don't understand my
12 questions, you go ahead and ask me and I'll
13 rephrase them or try to ask them differently.

14 A: Okay.

15 Q: If you need a break, you just tell me. We'll
16 take a break. You want something to drink or
17 anything like that, you just tell me.

18 A: All right.

19 (Plaintiff's Exhibit Number One was marked for
20 identification purposes.)

21 Q: I'm going to show you what's been marked as
22 Exhibit Number One to your deposition, sir.
23 Have you seen that exhibit before?

24 A: Yes.

25 MR. SUMMERS: Is that the Notice of Deposition?

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Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page #55

0554

- 1 Q: It's the Notice of Deposition.
- 2 A: Yes, I have.
- 3 Q: Okay. At the bottom of the Notice of
- 4 Deposition you'll see that there is three
- 5 categories outlined on the bottom. The first
- 6 one is the accounting of prisoner wages.
- 7 A: Uh-huh (affirmative response).
- 8 Q: The second one the hourly rate charged to a
- 9 contract. The third one the accounting of
- 10 inmate pay or minimum inmate wage.
- 11 A: Uh-huh (affirmative response).
- 12 Q: Are you knowledgeable on any of those three
- 13 categories, sir?
- 14 A: I would be vaguely knowledgeable on them.
- 15 Q: Which categories would you ... on all three or
- 16 is there a particular one?
- 17 A: Probably on all three, I'll be vaguely, but I'm
- 18 just going to have to go based on the questions
- 19 you ask me and if I know, I know and if I
- 20 don't, I don't.
- 21 Q: Sure. And the gentleman who has also come
- 22 today, I apologize for not remembering his
- 23 name.
- 24 A: Phil Pitman.
- 25 Q: Mr. Pitman ...

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- 1 A: We're going to be the same. Like he explained,
2 Phil came into this late and so he was involved
3 with the signing of the last contract and then
4 since then I came to this ... to this company,
5 or this division of our company, so.
- 6 Q: Okay. All right, Mr. Kuznik, why don't we just
7 begin, if you could tell me what your position
8 is at Insilco.
- 9 A: I'm the plant manager for the South Carolina
10 operations, so I'm over the North Myrtle Beach
11 facility and the prison facility in
12 Bennettsville.
- 13 Q: And how long have you been in that position
14 with Insilco?
- 15 A: November 13th, 2000.
- 16 Q: Were you with Insilco prior to that date?
- 17 A: I've been with Insilco since '94.
- 18 Q: Okay. What was your position prior to November
19 13th of 2000?
- 20 A: I was the plant manager in the Stewart
21 Connectors Division in York ... or in Glen
22 Rock, Pennsylvania.
- 23 Q: You're not originally from South Carolina?
- 24 A: No, sir.
- 25 Q: I'm going to ask you straight out just to try

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- 1 A: Other than the fact that that 6.04 is what we
2 pay ... well, I wouldn't know anything about
3 this contract because I wasn't in place at the
4 time, so.
- 5 Q: Okay. Would you feel more comfortable looking
6 at the 2001 contract?
- 7 A: I can talk about the 2001 contract, yes.
- 8 Q: Okay. If we were to go to that 2001 contract,
9 there's a page seven, there's also a paragraph
10 3.3.
- 11 A: Uh-huh (affirmative response).
- 12 Q: What do you know about this ... do you feel
13 more comfortable?
- 14 A: Yes, with this.
- 15 Q: What do you know about the numbers reflected in
16 paragraph 3.3?
- 17 A: That 7.17 an hour is what we pay the State for
18 hours provided by the State.
- 19 Q: How is that payment made?
- 20 A: Check.
- 21 Q: If you're not sure, go ahead and say you don't
22 know.
- 23 A: Okay.
- 24 Q: I'm fine with that. Is it fair to say, sir,
25 that you deal more with the day to day

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- 1 about?
- 2 A: All's I can tell you is on this that we are
- 3 basically invoiced by the State.
- 4 Q: Okay.
- 5 A: We reconcile those hours and we pay the State.
- 6 Q: Okay. So your invoice, what form does the
- 7 invoice take from the State?
- 8 A: I couldn't tell you, never seen one.
- 9 Q: Have you reviewed any documents in preparation
- 10 for this deposition?
- 11 A: We quite honestly didn't know what we were
- 12 getting involved with here.
- 13 Q: Okay, fair enough.
- 14 A: Other than getting a call yesterday at 4:30 or
- 15 whatever saying we've got to be here. We had
- 16 no clue.
- 17 Q: Okay. Have you seen an invoice from the South
- 18 Carolina Department of Corrections before?
- 19 A: I have never, no. That goes directly to our
- 20 accounting department.
- 21 Q: And do you keep track of the inmate hours?
- 22 A: (Nods head affirmatively.)
- 23 Q: Okay. How do you do that?
- 24 A: That's tracked by my superintendent at the
- 25 facility and he basically verifies those hours

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1 against the on staff person the State provides
2 and those hours are then, like I said, invoiced
3 to our accounting group.

4 Q: Okay. Is there a punch clock in the facility
5 for the inmates?

6 A: Yes.

7 Q: And that's where you get your total number of
8 inmate hours?

9 A: Yes.

10 Q: Were you involved in the signing of the March
11 3rd, 2001, agreement?

12 A: No, not at all. We've had a lot of changeover
13 in our companies.

14 Q: Generally speaking, are there other people who
15 work on the floor of these facilities for
16 Insilco other than the prisoners?

17 A: I have ... currently right now I have six
18 civilian employees inside the facility.

19 Q: What are their positions in that factory?

20 A: They vary from quality auditors to supervision
21 to superintendent and a document control clerk.

22 Q: Are there any line workers?

23 A: Civilians?

24 Q: Yes, sir.

25 A: No. Only the six I mentioned.

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Q HIGHWAY

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 61

0560

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A No. 01-CP-40-3409

Thomas J. Torrence and
William Ray Ward, on behalf
of themselves and all others
similarly situated; and
Kimberly Dubose, on behalf
of herself and all others
similarly situated,

Plaintiffs,

v.

South Carolina Department
of Corrections and The
State of South Carolina,

Defendants.

COPY

DEPOSITION OF
TONY RAY ELLIS

Thursday, September 12, 2002
12:57 p.m. - 1:56 p.m.

The deposition of TONY RAY ELLIS, taken on
behalf of the Plaintiffs at Lewis, Babcock & Hawkins,
L.L.P., 1513 Hampton Street, Columbia, South
Carolina, on the 12th day of September, 2002, before
Andrea R. Taylor, Court Reporter and Notary Public in
and for the State of South Carolina, pursuant to
Notice of Deposition and/or agreement of counsel.

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ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page #62

0561

TONY RAY ELLIS

4

1 TONY RAY ELLIS, being duly sworn, deposes and
2 testifies as follows:

3 MR. ELLIS - EXAMINATION BY MR. LEWIS:

4 Q: Have you had your deposition taken before?

5 A: Yes.

6 Q: So then you know how it works, right?

7 A: Right.

8 Q: And what do you do?

9 A: I'm director of Prison Industries for the
10 Department of Corrections.

11 Q: Okay. Now, and how long have you been the
12 director?

13 A: Fourteen years.

14 Q: And what is Prison Industries?

15 A: Prison Industries is a division of the
16 Department of Corrections. It is a revenue
17 based organization that is charged with the
18 work component of the agency inside the fence,
19 if you will.

20 Q: All right. Now, is there a program where you
21 contract to use prisoners in industries outside
22 of prison?

23 A: There is a work release program, but it doesn't
24 come under Prison Industries. It is called
25 Work Release.

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ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 63

0562

- 1 Q: We're not here on that.
- 2 A: I understand.
- 3 Q: Okay. Now, what's the next one?
- 4 A: The second one is what we call our service
- 5 component. Service is defined as non-
- 6 production, non-original equipment
- 7 manufacturing, such as packing gloves, such as
- 8 packing Christmas balls, such as repairing
- 9 engines and things like that. The third --
- 10 Q: Are we here on that one?
- 11 A: No, we're getting ready to get to the third
- 12 one.
- 13 Q: Okay, that's what I'm trying to find out.
- 14 A: The third one is the PIE. P-I-E. Prison
- 15 Industries Enhancement. Prison Industries
- 16 Enhancement is a program allowed by the Bureau
- 17 of Justice in Washington that says that if we
- 18 meet certain guidelines and criteria, we can
- 19 contract with a private sector company to take
- 20 raw materials for the first time and produce a
- 21 finished good that is placed in interstate
- 22 commerce. Escod falls in that category.
- 23 Q: Okay. Now, is that set up under a federal law?
- 24 A: That's the PIE program.
- 25 Q: And then there's a federal law, and then

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TONY RAY ELLIS

7

1 there's a state law ...
2 A: That mirrors the federal:
3 Q: -- that mirrors the federal law; is that a fair
4 statement?
5 A: That's a fair statement.
6 Q: And are you familiar enough to know it's 18 USC
7 176 --
8 A: C.
9 Q: -- C, right. And do you know what the State
10 Code section is?
11 A: I don't it's in State Code. I can't give you
12 the cite where it's in State Code.
13 Q: Would it be like 24-3-315 et seq.? You
14 wouldn't have any doubt of that, it's just in
15 the Code?
16 A: Whatever -- it's in the 24 Code. It's under
17 our Corrections Code.
18 Q: All right. And the PIE program is the program
19 where you contract with, for example, Escod?
20 A: Correct.
21 Q: Where would Escod be located?
22 A: Escod is -- Escod itself is located in North
23 Myrtle Beach and it has a parent company that's
24 located in North Carolina, somewhere in North
25 Carolina, called Insilco Corporation.

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ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page #65

0564

- 1 A: Yes.
- 2 Q: They've got the same contract, so if I show you
- 3 a contract or agreement for Escod, it'd be the
- 4 same?
- 5 A: The language is general in nature, yes. It may
- 6 be specific to a particular component that
- 7 we're making, but in general terms, we have a
- 8 similar contract in all areas.
- 9 Q: If I look at the operation for Escod out here
- 10 at Evans, are there any people that work there
- 11 that are not prisoners?
- 12 A: You mean on a production line?
- 13 Q: Yes.
- 14 A: Yes. Escod has some of its employees as
- 15 supervisors in the plant there.
- 16 Q: Are there any employees that are doing the same
- 17 job as inmates?
- 18 A: They're supervising. They're the quality
- 19 control, supervisory, check off of the work
- 20 that's being done there.
- 21 Q: For sake of argument, let's just say one guy,
- 22 he puts a stamp on a harness.
- 23 A: Right.
- 24 Q: Will there ever be a time when the inmate is
- 25 doing the same job as a non-inmate, like

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1 customer model which we employ, and the
2 employer model, and what we operate under is
3 here is the company, you; here is SCDC; and
4 here is the inmate. I contract with you. I
5 turn around and contract with the inmates, if
6 you will. I pay them and you pay me a total
7 fee of whatever I ask for, which is that total
8 inmate wage, and it's broken down as to what
9 those components are. When that money comes to
10 me it's put in our accounting system. Once
11 it's put in our accounting system, then
12 accounting will take the money and
13 appropriately take out the state and federal
14 and Social Security taxes, then they will take
15 the money and send it to victim's comp, that
16 state agency. They will also take the money
17 out and send it to State Treasury for room and
18 board, and then they will give -- accounting
19 will give me \$1.32 overhead and then they will
20 cut a check, if you will, to -- from our
21 payroll to the inmate for their work.

22 Q: Well, let me ask you something, I understand
23 that.

24 A: Okay.

25 Q: Looking at Exhibit Two.

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1 you deduce the income -- do you use the \$3.80
2 to determine the state and federal income tax,
3 or do you determine the \$5.50?

4 A: \$3.80. \$3.80.

5 Q: Okay. And then Escod would be subtracting as
6 inmate wages and taking as an expense \$5.50,
7 wouldn't they?

8 A: I don't know what they would do.

9 Q: Well, don't you think it would be totally
10 illegal to have you say that the wages are
11 \$3.80 and for Escod to say wages are \$5.50?
12 That means there's some money that the federal
13 government doesn't get -- there's no taxes on
14 and it would be money that would change from an
15 expense to a nothing; don't you agree?

16 A: I don't -- I don't have an opinion on that.

17 Q: You don't have an opinion. Well, let's think
18 about it. If Escod says the wage, how do they
19 --

20 A: You'll have to talk to Escod about that. I'm
21 just telling you how -- you asked me a question
22 --

23 Q: I know, but I want to know from you, mister,
24 because I think it's skimming, and I want to
25 know what's the matter with this.

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- 1 MR. SUMMERS: Objection as to the form of the
2 question, but try to answer the question, Mr.
3 Ellis, as best you can.
- 4 Q: You understand that Escod would subtract \$5.50
5 for wages, don't you?
- 6 A: I don't know that they would or not. I'm
7 saying I'm charging them \$5.50 because \$1.32 of
8 it comes to me, it has nothing to do with
9 wages.
- 10 Q: Well, it says minimum inmate wage right there,
11 doesn't it?
- 12 A: It will say that, but I can tell you how we
13 practice it and what we're doing.
- 14 Q: I understand that. But it says inmate wages,
15 doesn't it?
- 16 A: It says that, yes.
- 17 Q: And so Escod is paying \$5.50 as the minimum
18 inmate wage, aren't they?
- 19 A: They're paying \$5.50 as it says right here,
20 minimum inmate wage, that we charge them. And
21 I think that's the key, is what we charge them.
- 22 Q: You think so?
- 23 A: Uh-huh (affirmative response).
- 24 Q: What about --
- 25 A: \$1.32 is my overhead cost to run the program.

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- 1 Q: Just a minute, please. When you have \$3.80 is
2 all you're taking taxes on, what happens -- is
3 there any taxes paid on the difference between
4 \$3.80 and \$5.50?
5 A: By me?
6 Q: By anybody.
7 A: I don't know. You'll have to talk to the
8 accounting guy.
9 Q: All right, I sure will.
10 A: Okay.
11 Q: Now, under the program, where does it allow you
12 to take any money for overhead?
13 A: In the program?
14 Q: Yes.
15 A: We administratively allow that.
16 Q: You just administratively allow that?
17 A: Yes.
18 Q: You'll agree that nowhere in the statute does
19 it say that?
20 A: I can't say that I've seen it anywhere.
21 Q: All right. It also says in the statute that
22 these percentages, that is, the 20 percent
23 contribution to court ordered payments victim's
24 restitution is to come from gross wages;
25 doesn't it say that?

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- 1 A: Where does it say that?
- 2 (Plaintiff's Exhibit Number Three was marked for
- 3 identification purposes.)
- 4 Q: Looking at, this is the Code of Laws; do you
- 5 recognize that, Exhibit Number Three?
- 6 A: Oh, I'm sorry.
- 7 Q: You see Exhibit Number Three?
- 8 A: Yeah, I see Exhibit Number Three.
- 9 Q: You see A there?
- 10 A: A.
- 11 Q: It says, "The Director of the Department of
- 12 Corrections shall deduct the following amounts
- 13 from the gross wages of the prisoner."
- 14 A: Uh-huh (affirmative response).
- 15 Q: Okay?
- 16 A: Uh-huh (affirmative response).
- 17 Q: Do you see that?
- 18 A: Uh-huh (affirmative response).
- 19 Q: Now, if I look -- looking at Exhibit Number Two
- 20 and I see the \$5.50; do you see that?
- 21 A: Uh-huh (affirmative response).
- 22 Q: And that says minimum inmate wage; do you see
- 23 that?
- 24 A: Uh-huh (affirmative response).
- 25 Q: Does the 20 percent that you find on Exhibit

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1 Number Two, is that 20 percent that you collect
2 from the \$5.50 or 20 percent from the \$3.80?
3 A: Twenty percent from the \$3.80.
4 Q: And don't you agree that the \$3.80 is not the
5 gross wages, but under here, the minimum inmate
6 wage is \$5.50?
7 A: The minimum inmate wage is not \$5.50 as far as
8 deductions go, no; that is the total amount
9 that we charge Escod.
10 Q: It says minimum inmate wage.
11 A: I know what it says, but I'm telling you, you
12 just asked me a question and I'm responding
13 that the deductions come off of \$3.80.
14 Q: Well, let me ask you something, you see your
15 Social Security payment of 29 cents?
16 A: Uh-huh (affirmative response).
17 Q: When you get a W-2 form, okay?
18 A: Uh-huh (affirmative response).
19 Q: Your gross wage would include your payment for
20 Social Security, wouldn't it?
21 A: Uh-huh (affirmative response).
22 Q: But you at the Department of Corrections don't
23 do that. You take out Social Security and you
24 call the gross wage a wage minus Social
25 Security, don't you?

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- 1 you see that?
- 2 A: Uh-huh (affirmative response).
- 3 Q: We've now changed the word from minimum inmate
- 4 wage to hourly rate charged to contract. Why
- 5 did you change that word?
- 6 A: Just interpretation. As we grow older in these
- 7 contacts and get a little more expertise, our
- 8 understanding of what we're doing has changed,
- 9 so --
- 10 Q: So it's just a word change?
- 11 A: Uh-huh (affirmative response).
- 12 Q: It's not any different than it was -- you're
- 13 not doing anything different and it's the same
- 14 payment as the minimum inmate wage, you just
- 15 changed the words?
- 16 A: I'm just trying -- I'm trying to get to the
- 17 point of what we're charging the contractor.
- 18 Q: Yes, sir. But it's the same thing -- means the
- 19 same thing as minimum inmate wage as found on
- 20 Exhibits Number One and Exhibit Number Four,
- 21 isn't it? It's the same thing, isn't it?
- 22 A: The same basic concept, yes.
- 23 Q: Now, and so if I look at Exhibit Number -- what
- 24 Exhibit is that, Five?
- 25 A: Yeah, Exhibit Five.

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- 1 Q: If I look at Exhibit Number Five, the
2 multiplication where you would take out the 20
3 percent or the -- would be the \$5.25; is that
4 right?
- 5 A: That's right.
- 6 Q: And what you would pay income tax -- you would
7 take out for income tax on the inmates would be
8 the \$5.25; is that correct?
- 9 A: Yes.
- 10 Q: And it says here you take 35 percent for child
11 support, that would be taken out against the
12 \$5.25, too; is that right?
- 13 A: Yeah, this law passed by the Legislature, I
14 think it was a year or two ago, whatever this
15 right here says, goes against the basic wage
16 (indicating).
- 17 Q: That is Exhibit Number Two and it's --
- 18 A: Exhibit Number Two?
- 19 Q: Yes, this is Exhibit Two.
- 20 A: Oh, I'm sorry, okay.
- 21 Q: And you're saying that the numbers one, two,
22 three, four, five or six, that goes against
23 what is the \$5.25 that's found on Exhibit Five;
24 is that correct?
- 25 A: That's correct.

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- 1 Q: And these percentages come from the law that we
2 showed you on Exhibit Number Three, is that
3 correct?
- 4 A: That's correct.
- 5 Q: And can you look at Exhibit Number Three and
6 tell me where you get to charge an amount of
7 money for an SCDC Surplus Fund Account?
- 8 A: That is an administrative decision made by the
9 agency.
- 10 Q: So you find no authority in there, the law, to
11 do that, you just do it?
- 12 A: We have done it since day one, yes.
- 13 Q: I understand that. I'm just asking you, you
14 just do it? Did some law tell you you could do
15 that, or y'all just did it?
- 16 A: We just did it.
- 17 Q: All right. Now, what is the South Carolina
18 Department of Corrections Surplus Fund Account?
- 19 A: That is the overhead that we use to operate the
20 Prison Industries program. As I told you when
21 we started, we are a revenue based
22 organization, so we have to generate income of
23 some sort in all of our projects, so this is --
24 as far as the PIE program goes, or the third
25 component of our program, the overhead rate is

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1 the rate that we charge to run the program.
2 Q: My question is a simple one. Okay, what monies
3 -- what different programs send money into the
4 Surplus Fund Account?
5 A: What different programs?
6 Q: Yes.
7 A: Each PIE program contractor will contribute
8 \$1.32 of that -- of the amount that we charge
9 to that program, to that amount.
10 Q: Is there any other monies going into that
11 account except from the five programs that you
12 identified?
13 A: Yes. In the traditional program when we make
14 profit, if we sold this desk, if we sell you or
15 an agency this desk here, we make it at a non-
16 PIE program, that's our traditional program, we
17 take our raw material costs and we take a
18 selling price and we factor our profit in and
19 if we make a profit off of that table, that
20 monies goes into the program, too.
21 (Plaintiff's Exhibit Number Six was marked for
22 identification purposes.)
23 Q: And that particular program has an express
24 provision to be allowed to do that under the
25 law, doesn't it, and it's called the Prison

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1 Industries Account?

2 MR. SUMMERS: And again for the record, Exhibit --

3 A: Six.

4 Q: Is that what it is? It should be called the

5 Prison Industries Account.

6 A: I don't have -- I don't have a code book with

7 me. I don't know if there's any other code

8 cites as relates to the Prison Industries.

9 This relates to what you're saying, but this is

10 also relating to the FIE, so I'd have to pull

11 the code book and look. If you've got a code

12 book here and let me look at it.

13 MR. PROTOPAPAS: Let me get you the supplement.

14 A: That's correct. You're correct, 400 -- 23-3-

15 400.

16 Q: Is that what you call the SCDC Surplus Fund

17 Account?

18 A: For this particular program, yes. The \$1.32 is

19 the Surplus Fund Account.

20 Q: It says in here that there will be a Prison

21 Industries Account. Is the Prison Industries

22 Account the same as the SCDC Surplus Fund

23 Account?

24 A: I don't understand your question.

25 Q: Well, it says in here on Exhibit Number Five;

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- 1 generate, revenue that we generate, but we have
2 an account in our accounting system that will
3 reflect that.
- 4 Q: Now, it says in this Exhibit Number Six here,
5 "The Department of Corrections shall contribute
6 an amount of not less than five percent nor
7 more than twenty percent of the gross wages
8 paid to inmate workers participating in any
9 prison industry project." Okay?
- 10 A: Uh-huh (affirmative response).
- 11 Q: Is PIE such a project?
- 12 A: Yes.
- 13 Q: All right. When you contribute five - between
14 five and 20 percent of the gross wages, what
15 number do you use as the gross wages for
16 determining that five to 20 percent?
- 17 A: The base amount, that \$4.25 or whatever it was.
18 In this exhibit, which is Exhibit Five, would
19 be \$5.25.
- 20 Q: And that would go to the State Treasurer for
21 credit to a special account to support victim
22 assistance programs; is that correct?
- 23 A: That's correct.
- 24 Q: And you don't use the number that has been
25 entitled "minimum inmate wage," you use the

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1 much smaller number called the "prevailing
2 wage"; is that correct?

3 A: Correct.

4 Q: And, again, this is something that's just been
5 done since the beginning of the program and it
6 was just done and there's nothing in the law
7 that says you can do this; is that correct?

8 A: Do what?

9 Q: Choose the small number rather than what has
10 been determined to be the minimum inmate wage?
11 You've just taken that percentage of the small
12 number rather than the minimum inmate wage?

13 A: We've taken the smaller number, you're correct.

14 Q: And which that does, that lessens the amount of
15 money for victims?

16 A: Whatever.

17 Q: Isn't that true?

18 A: If you take a smaller number, you're going to
19 get smaller returns.

20 Q: And it gives lesser amounts for child support?

21 A: Absolutely.

22 Q: And for restitution?

23 A: Yes.

24 Q: And for taxes?

25 A: Yes.

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- 1 Q: Do you have any documents out there to tell why
2 you started this procedure of putting the wages
3 down and adding to it the Social Security
4 withholding and the workmens' compensation
5 premium and then the Surplus Fund? Is there
6 anywhere I can find out why this came about and
7 how you decided to do that?
- 8 A: We sat down with staff at the inception of the
9 program when we first started with our
10 accounting staff and our legal staff and we
11 came up and derived this.
- 12 Q: Is there some kind of a document that sets
13 forth how that was arrived and under what
14 authority you did it and so forth?
- 15 A: We set it as an administrative exercise with
16 these three entities: the legal staff, the
17 accounting staff, and me.
- 18 Q: And there's no writing about it, y'all just
19 decided to do it and you did it?
- 20 A: We decided to do it that way, that's correct.
- 21 Q: And I can't find any writings about it or
22 anything that you know of?
- 23 A: Not that I'm aware of.
- 24 Q: Using this, what has been called the Prison
25 Industries Account, you told me I got into that

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1 is that correct?

2 A: That's correct, you just get 35 percent.

3 Q: And that goes for the child support?

4 A: That goes to the child support.

5 Q: So that guy doesn't pay room and board?

6 A: That's correct.

7 Q: And then but if he has a child, then 35 percent

8 -- or excuse me, if he doesn't have a child

9 then 25 percent goes to you for room and board?

10 A: Doesn't go to me. It goes to the State General

11 Fund.

12 Q: To the State General Fund.

13 A: We don't get to keep room and board at our

14 agency. It's turned back into the General

15 Fund.

16 Q: That's what I wanted to know.

17 A: If I could clarify one thing for you. The only

18 thing we keep is \$1.32 per hour per inmate.

19 Everything else goes somewhere else.

20 Q: Okay. So this room and board would go to the

21 General Fund?

22 A: State General Fund, yes.

23 Q: And if the 25 percent for room and board is

24 taken by the small number instead of the big

25 number, the General Fund gets less money, don't

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1 card as an example by which an inmate would
2 swipe his own Cooper Account card.

3 A: For simplicity purposes, Mr. Lewis, the
4 Cooper's Account is every inmate's individual
5 account, and we have a record from day one of
6 any inmate, Mr. Torrence included, that gives
7 a total history of every dime he's earned
8 while he's been incarcerated with SCDC.

9 Q: Looking at Exhibit Number -- the law, I believe
10 it's --

11 A: Three.

12 Q: Yes. It says down there number five, "Ten
13 percent must be held in an interest bearing
14 escrow account for the benefit of the
15 prisoner."

16 A: That's correct.

17 Q: Where is that one? What account is that?

18 A: It's retained at SCDC individually by inmate.

19 Q: Is that the Cooper Account?

20 A: No, sir. Cooper's Account is where he spends
21 his money day in and day out. This ten percent
22 will also be an account held aside in that
23 inmate's name so if the inmate dies, whatever,
24 or gets out, that money is turned over. If
25 you'll read further, a little bit further, it's

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- 1 A: Everybody that's in the divisions salary.
2 Q: The people that made the decision to set up the
3 \$1.32 Surplus Fund Account, were all of those
4 people paid out of the Prison Industries
5 Account?
6 A: That person that made that decision was myself
7 and Dr. Hugh Clements and he's retired. He's
8 been retired for probably 12 years. At the
9 time we sat down and we did analysis when we
10 were doing the program and said what does it
11 take for us to cover our cost of running a
12 project like this in one of our plants. And so
13 I took the operational cost and looked at it
14 and it came out that it was about \$1.32 -- it
15 was \$1.32 -- if you employed 50 inmates in that
16 operation in our plants and charge \$1.32 an
17 hour overhead or additional costs to what we
18 were charging the company, that would -- that
19 would pay for the operation and the salaries of
20 correctional officer, etcetera, to run that
21 plant.
22 Q: I asked you I thought, and I'm sorry if I
23 didn't. Do you get paid out of the --
24 A: I do.
25 Q: -- Prison Industries Account?

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1 or minimum wage, you're going to see the term
2 "wage plan." We worked for almost a year with
3 the Employment Security Commission trying to
4 develop an adequate wage plan that would
5 clearly reflect what the inmates should be paid
6 in our program.
7 Q: Now, if I look at Exhibit Number Five, okay?
8 A: Okay.
9 Q: The company that is Enron --
10 A: Escod.
11 Q: Escod, that's right, the contractor; he's
12 paying \$7.17 an hour for the employee, isn't
13 he?
14 A: He is paying \$7.17 per hour per inmate.
15 Q: To work on his project?
16 A: On his project.
17 Q: When you talk about overhead, is that one and
18 a half times what figure?
19 A: Huh?
20 Q: Overtime. You see the overtime figure down at
21 the bottom?
22 A: Pursuant to federal guidelines?
23 Q: Yes.
24 A: Yes, sir. If an inmate works over 40 hours a
25 week, he gets paid time and a half.

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APPENDIX E

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP.

Page # 85

0584

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A No. 01-CP-40-3409

Thomas J. Terrence and
William Ray Ward, on behalf
of themselves and all others
similarly situated; and
Kimberly Dubose, on behalf
of herself and all others
similarly situated,

Plaintiffs,

v.

South Carolina Department
of Corrections,

Defendant.

COPY

DEPOSITION OF
SUSANNE S. REICH

Friday, August 29, 2003
1:04 p.m. - 2:42 p.m.

The deposition of SUSANNE S. REICH, taken on
behalf of the Plaintiffs at the law offices of Vinton
D. Lide & Associates, LLC, 5179 Sunset Boulevard,
Lexington, South Carolina, on the 29th day of August,
2003, before Andrea R. Taylor, Court Reporter and
Notary Public in and for the State of South Carolina,
pursuant to Notice of Deposition and/or agreement of
counsel.

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RDA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 86

0585

SUSANNE S. REICH

3

(Plaintiff's Exhibit Number One was marked for identification purposes prior to the commencement deposition.)

SUSANNE S. REICH, being duly sworn, deposes and testifies as follows:

MS. REICH - EXAMINATION BY MR. PROTOPAPAS:

Q: Could you please state your name for the record.

A: Susanne S. Reich.

Q: Ms. Reich, my name is Peter Protopapas. I'm a lawyer representing the plaintiffs in a lawsuit. The South Carolina Rules of Civil Procedure require me to instruct you at the beginning of a deposition that the witness, you, is to ask me, the deposing counsel, rather than the witness' own counsel for clarifications, definitions, or explanations of any words, questions, or documents presented during the course of the deposition. So if I ask you something and you don't understand it, please ask me to rephrase it. I'm not trying to ask a loaded question. This is what is classically called an education deposition. I don't know what you do, and I'm just trying to learn what you do.

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ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 87

0586

- 1 A: All right.
- 2 Q: All right. Can you please tell us where you
- 3 work.
- 4 A: I work for the South Carolina Department of
- 5 Corrections.
- 6 Q: And how long have you worked there?
- 7 A: Eighteen years.
- 8 Q: Eighteen years, all right. And what position
- 9 do you have?
- 10 A: I'm currently an accounting manager.
- 11 Q: And what are the duties of an accounting
- 12 manager for the South Carolina Department of
- 13 Corrections?
- 14 A: My particular duties are I supervise the
- 15 accounts payable section and trust fund
- 16 accounting sections, primarily.
- 17 Q: Okay. When you --
- 18 A: And additional duties, but those are the
- 19 primary ones.
- 20 Q: Those are the primary ones, okay. And you said
- 21 you've been there for 18 years?
- 22 A: Yes.
- 23 Q: What did you do before you were in your current
- 24 position?
- 25 A: Actually, I came in as the branch chief, so

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1 account --
2 A: Right.
3 Q: -- or out of a separate account?
4 A: Out of the operating account.
5 Q: Okay. So you issue the payroll out of the
6 operating account?
7 A: Uh-huh (affirmative response).
8 Q: I got you. Would your department walk through
9 the deductions that accompany a prisoner's
10 wage?
11 A: Uh-huh (affirmative response).
12 Q: Okay. And would your department then issue
13 checks to maybe those different groups that are
14 entitled to either a piece of the --
15 A: Absolutely.
16 Q: Okay, good. I'm getting there.
17 A: Okay.
18 Q: I'm getting there, thank you. I just want to
19 -- if I could, I want to ask you about this 24-
20 3-40(A)(5), and we'll go ahead and mark that.
21 (Plaintiff's Exhibit Number Three was marked for
22 identification purposes.)
23 Q: Okay. I'm going to represent to you this is a
24 statute for the State of South Carolina.
25 A: Right.

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1 Q: And at the bottom of the page there's a 5, it
2 says, "Ten percent must be held in an interest
3 bearing escrow account for the benefit of the
4 prisoner."

5 A: Right.

6 Q: Okay. What is that account?

7 A: That's the one I called the PIE account.

8 Q: The PIE account, okay. Would the PIE account
9 receive a distribution check or a check out of
10 the -- well, let me rephrase that. There's an
11 operating account for the Prison Industries
12 Program we talked about.

13 A: Right.

14 Q: And money would be written out of the operating
15 account to pay the prisoners --

16 A: Yeah.

17 Q: -- and to different entities that may be
18 entitled to a portion of their wages. Is this
19 PIE account one of those that would receive a
20 check out of operating account containing some
21 prison wage money?

22 A: Right. Yes. The net pay is deposited into
23 this PIE account.

24 Q: What does the PIE account do; what's it for?

25 A: We -- can I educate you a little bit maybe?

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- 1 Q: Please, please, pretty please.
- 2 A: That may be simplify things here. The State,
3 the Division of Industries determines the
4 payroll. The money is taken out of the
5 operating account. Checks are issued actually
6 by another state agency who really keeps SCDC's
7 monies for operations.
- 8 Q: Would that be the comptroller?
- 9 A: Right, right and actually they, with the -- the
10 State Treasurer's Office is the one that issues
11 checks. The inmates are issued their payroll
12 checks. The gross pay would be computed and
13 then the tax withholdings are done by the
14 Controller General's Office, that's FICA and
15 tax withholdings. So then at that point the
16 net paychecks are issued and those are put into
17 this PIS Trust Fund Account. And then SCDC
18 runs a program that records that net pay
19 deposit. We also keep up with the gross pay
20 that the inmate earned. And then we compute
21 the deductions that he's required that really
22 are specified here in this in the law.
- 23 Q: Sure.
- 24 A: And what's left then in the trust fund account,
25 because essentially everything else is

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1 disbursed back out, and what is left is the ten
2 percent escrow that is required to stay in
3 there till the inmate is released.

4 Q: What kind of account is that ten percent in, is
5 it in an interest bearing account in a bank?
6 Is it sits with the Comptroller or Treasurer?

7 A: It's a Wachovia account. It's under the
8 jurisdiction of the State Treasurer's Office as
9 all banking accounts for the state are. They
10 really handle it. It's their -- ultimately
11 their account; they being the State Treasurer's
12 Office.

13 Q: Okay. And inmates aren't allowed access to that
14 account during their time in jail?

15 A: Access?

16 Q: To --

17 A: They can have information about it, but --

18 Q: To the funds, to the money itself?

19 A: Can they get to the money? No.

20 Q: All right. If you could, help me with the E.W.
21 Cooper Trust Fund.

22 A: All right. E.H., actually.

23 Q: Is it E.H.?

24 A: Yes. Named for a deceased former accounting
25 director. In fact, I was told I was only the

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1 Page.
2 A: Right.
3 Q: "Ten percent must be available to the inmate
4 during his incarceration for the purchase of
5 incidentals."
6 A: Right.
7 Q: Would that be this Cooper Fund?
8 A: Yes.
9 Q: Okay. And in the process of cutting checks out
10 of the operating department, and if I'm using
11 phrases or terminology that's no good, tell me
12 and I'll change it. In the process of cutting
13 checks out of the operating fund, the ten
14 percent, there would be a ten percent check that
15 would then be deposited in the Cooper Fund as
16 number four has here, is that accurate? Go
17 ahead and tell me how that happens.
18 A: In a long about way.
19 Q: Tell me how, because we've got -- we've got --
20 A: We issue the pay -- payroll comes out of the
21 operating, and then the net pay after the taxes
22 goes to the PIE account. And so really the
23 money flows through the PIE account back to the
24 trust -- the Cooper Trust Fund Account.
25 Q: I see. So this is part of the remainder money?

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1 A: Right. Yes.

2 Q: So if we're to start from step one all the way
3 to conclusion with an inmate pay, could you just
4 give me an outline of how that happens.

5 A: Yeah. The Department of Corrections shall
6 deduct the following amount in gross.

7 Q: And I'm not trying -

8 MS. POE: You don't want to do it from the statute.

9 Q: The statute is confusing.

10 A: Well, I would say that six really happens first
11 because the taxes are really coming off the top.

12 Q: Sure.

13 A: To include FICA and state and federal,
14 basically, income tax withholdings. And then
15 that payroll check, which is actually then a net
16 check, goes into the PIE account. Then we run
17 a computer program which knows which inmates
18 have which obligations. If an inmate has a
19 court-ordered restitution, which is the (A)(1)
20 item, then we make a 20 percent deduction and
21 would issue a check, typically, say for
22 instance, to the Lexington County Clerk of Court
23 because they would be the responsible party to
24 collect that money and then, in turn, transmit
25 -- they, in turn, would repay the victim. We

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- 1 within that account, where would you draft --
2 would you draft that check off that account or
3 would it be drafted off another account? What
4 happens to get it to an account you can draft a
5 check on; where does it go?
6 A: Okay. We've been over that.
7 Q: Try me one more time.
8 A: Okay. The payroll checks are issued to an
9 inmate out of the Prison Industries operating
10 account.
11 Q: Okay.
12 A: Okay. Taxes are taken out. There is a net
13 check issued by the State Treasurer's Office
14 that goes to the PIE Account.
15 Q: I've got you now.
16 A: The PIE Trust Fund writes the checks for
17 restitution.
18 Q: And you have nothing to do with that initial
19 inmate check payroll check?
20 A: No.
21 Q: That's done by another group?
22 A: Yes.
23 Q: Payroll check comes in, into the PIE Account it
24 goes and then that whole lineup that we did?
25 A: Right.

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1 It's my understanding that maybe, say for
2 instance, Escod might have someone that they pay
3 directly that may be on site, but I'm not sure
4 of that. It's been a long time since I've
5 really heard anything.

6 Q: Okay. Are each of these accounts or is this PIE
7 -- the PIE account which seems to be the main
8 account that the money comes through for the
9 prisoners.

10 A: Right.

11 Q: How are those records kept? It's all
12 computerized?

13 A: Yes.

14 Q: And the computer has individual notations or
15 identifications for a prisoner and his
16 responsibilities or his deductions?

17 A: Yes.

18 Q: Is that programmed in the minute the prisoner
19 goes to work?

20 A: It sets itself up basically. Once an inmate is
21 set up in the payroll system, then the general
22 programming just processes him just like anybody
23 else.

24 Q: Okay. And do you oversee that process?

25 A: Not of setting the inmate up in the payroll

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1 - system, no.
2 Q: Where would that occur, if you know?
3 A: The plant manager typically would be responsible
4 for seeing that he's added to the payroll
5 system.
6 Q: Okay.
7 A: Because they would be the one hiring him.
8 Q: So he had a link to the computers that set the
9 payroll --
10 A: Right.
11 Q: -- for the inmate?
12 A: Uh-huh (affirmative response).
13 Q: Then the check would be -- is there a wiring
14 that goes on into the PIE Account or is that an
15 actual physical check?
16 A: Both.
17 Q: Both?
18 A: Uh-huh (affirmative response).
19 Q: So the comptroller or the treasurer would --
20 A: We get some direct deposits and some paper
21 checks.
22 Q: How much money goes into the PIE Account a
23 month? How do you keep the record, monthly,
24 weekly, quarterly?
25 A: Semi-monthly. They get paid twice a month.

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- 1 Q: And if I could broaden my question for any
2 federal agency?
3 A: Not in regards to PIE, no.
4 Q: Would it be in regards to anything to do with
5 prisoner money?
6 A: No.
7 Q: Fair enough. And when I mean prisoner money,
8 let me make sure I expand this broad enough, I'm
9 talking about any money remitted by Escod to the
10 South Carolina Department of Corrections.
11 A: I don't know of any federal that I dealt with on
12 anything.
13 Q: That's fine. I don't want to go off track. Do
14 you handle the final release of the category
15 five, ten percent held in interest bearing
16 escrow account for the benefit of the prisoner?
17 A: Yes, I do.
18 Q: When someone is released from prison, do you
19 then cut them a check for the amount that sits
20 in that account; and I'm referring to South
21 Carolina Code 24-3-40(A)(5) PIE savings. Can I
22 call it the PIE Account?
23 A: Yeah.
24 Q: Okay. Prisoners leaving or released into
25 community supervision leaving the jail.

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1 receive \$200 or the escrow balance whichever is
2 less."
3 A: Uh-huh (affirmative response).
4 Q: So would they be getting \$200 upon their release
5 or the whole amount upon their release? I got
6 a little confused about that.
7 A: If an inmate is, for instance, released as a
8 probation, he would be under supervision of the
9 Department of Probation, Parole and Pardon
10 Services. So in his case, if his account
11 balance was, say, \$100, he would get that \$100.
12 If his account balance is \$500, he would get
13 \$200 and the 300 anything above \$200 would then
14 go to Probation.
15 Q: Then they would monitor those funds, they're out
16 of your control?
17 A: Yes..
18 Q: You no longer deal with them?
19 A: Right.
20 Q: Let's talk about number two, "A prisoner serving
21 life in prison or sentenced to death shall be
22 given the option of having his escrowed wages
23 included in his estate or distributed to the
24 persons or entities of his choice." This is a
25 disputed issue in our case, okay? And what I

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1 want to know is how does this currently work?
2 Somebody dies, or how do you get money -- how
3 does a prisoner qualify to get money out of two?
4 A: He would die.
5 Q: He'd have to die, right?
6 A: Yes.
7 Q: And then what would happen?
8 A: Depending on whether he had done a designation
9 or not, we would -- if he had designated, you
10 know, someone that he intended the money to go
11 to then we would just issue the check to them
12 with identification that that's who they were
13 and a copy of, you know, we've got a notarized
14 form that we would have the inmate do. And so
15 we would use that, you know, and try to get some
16 ID that this is really the person that is
17 currently at this address or whatever. And then
18 if not, then we would have to probably -- he
19 would have to go to -- whoever the estate is
20 would have to go to probate and get, you know,
21 an order from us and we would issue it based
22 upon whatever the Probate Court order would be.
23 Q: Okay. Do you have any general idea of how much
24 money's collected and then remitted out of that
25 category, the prisoner serving life in prison or

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- 1 Q: So the Industries operating account will have
2 checks issued from it to pay for materials?
3 A: Yes.
4 Q: And your department has a little overlap in that
5 process to draft checks out of the Industries
6 operating account?
7 A: It's more complicated than that, but yes.
8 Q: Okay.
9 A: We -- the accounts payable section, which I
10 supervise, handles payments of all SCDC which
11 include Industries.
12 Q: You handle all outgoing money?
13 A: Disbursements for Industries operations and
14 other departmental operations, yes.
15 Q: Let me ask you about disbursements from the
16 Industries operating account, private industries
17 operating account.
18 A: All right.
19 Q: All right. There's been a certain amount of
20 money, okay, the \$1.32 in the contract. I know
21 you're not familiar with the contract which is,
22 I think, the second exhibit to your deposition.
23 A: Right.
24 Q: There's \$1.32 or some amount that's withheld to
25 sustain the Prison Industries Program.

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- 1 check to the people --
- 2 A: Right.
- 3 Q: -- to make sure that system --
- 4 A: It's not my job to determine who's going to give
- 5 us the service. It's my job once we decide --
- 6 we've obligated ourselves to somebody to see
- 7 that it gets paid, yes.
- 8 Q: I've got you. Do you know is there any wages
- 9 paid out of the Division of Industries or Prison
- 10 Industries operating account other than to
- 11 prisoners?
- 12 A: There are employee salaries paid.
- 13 Q: Okay. There are employee salaries paid.
- 14 A: Uh-huh (affirmative response).
- 15 Q: Do you know how many employees there are?
- 16 A: No.
- 17 Q: Can you give me -- is it over a 100, under a
- 18 100, under 1000, over 1000?
- 19 A: My guess is -- ballpark, I really am not sure.
- 20 I'd say probably 100 to 500 maybe. I wouldn't
- 21 think it would be more than 1,000 because there
- 22 are only -- there's less than 7,000 employees
- 23 overall the majority really which are security
- 24 staff.
- 25 Q: So there's security staff at the prisons who are

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- 1 paid through the Division of Industries Account?
- 2 A: Right, I believe so.
- 3 Q: That account contains money from private
- 4 industries, Escod, that's paid from Escod?
- 5 A: To include, yeah, money from there.
- 6 Q: And there is money in a different Department of
- 7 Corrections operating account that is funded by
- 8 the Legislature?
- 9 A: Correct.
- 10 Q: So there's two streams of income --
- 11 A: Right.
- 12 Q: -- that we know about?
- 13 A: Uh-huh (affirmative response).
- 14 Q: And I'm sure there's another stream of income
- 15 from the sale of the mattresses.
- 16 A: Right.
- 17 Q: Are you aware of any other stream of income into
- 18 the Department of Corrections?
- 19 A: We have some federal grant monies and state
- 20 monies, but monies coming, say, from Education
- 21 Finance Act, they're coming through the
- 22 Department of Education for educational
- 23 programs. That's the majority.
- 24 Q: And the vast majority of the funding would come
- 25 through the Legislature through the tax?

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Docket # 12-ALJ-04-00143-AP

Page # 104

0603

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
C/A No. 01-CP-40-3409

Thomas J. Torrence and
William Ray Ward, on behalf
of themselves and all others
similarly situated; and
Kimberly Dubose, on behalf
of herself and all others
similarly situated,

Plaintiffs,

v.

South Carolina Department
of Corrections,

Defendant.

COPY

DEPOSITION OF
REBECCA W. ELEAZER

Tuesday, August 10, 2004
10:00 a.m. - 12:38 p.m.

The deposition of REBECCA W. ELEAZER, taken on behalf of the Plaintiffs at the law offices of Lewis, Babcock & Hawkins, LLP, 1513 Hampton Street, Columbia, South Carolina, on the 10th day of August, 2004, before Andrea R. Taylor, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

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Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 105

0604

REBECCA W. ELEAZER

4

1 REBECCA W. ELEAZER, being duly sworn, deposes and
2 testifies as follows:

3 MS. ELEAZER - EXAMINATION BY MR. PROTOPAPAS:

4 Q: Would you please state your name for the
5 record.

6 A: Rebecca W. Eleazer.

7 Q: And if you could, please tell me what you do
8 for a living.

9 A: I work with the South Carolina Employment
10 Security Commission, the Occupation Employment
11 Statistics Program where we survey employers to
12 collect occupation, employment and wage data.

13 Q: Okay. And before I go any further, there's an
14 instruction that I'm supposed to be giving that
15 I give to every single person I depose. It's
16 part of the rules of the state. If I ask you
17 a question and you don't understand the meaning
18 of my question, just ask me to rephrase it or
19 clarify it, however, and I'll be more than
20 happy to do that. If I do ask you a question
21 and you give me an answer, I'm assuming you
22 understood what I asked. So don't hesitate to
23 say I don't know what you're talking about or
24 could you please rephrase that, it's confusing.
25 Also, whenever I ask you a question,

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Torrence v. S.C. Dep't of Corr.
Docket # 12-AJ-04-00143-AP

Page # 106

0605

- 1 Q: Any post-graduate training?
- 2 A: No.
- 3 Q: I'm sure as part of your employment you have
- 4 gone to seminars and things of that nature.
- 5 A: Yes.
- 6 Q: Okay. What types of seminars in the last three
- 7 years have you attended?
- 8 A: We have annual meetings where we go to do, we
- 9 have workshops and just discussions and those
- 10 kinds of things. Networking.
- 11 Q: Okay.
- 12 A: And I also work with the Policy Council where
- 13 we set guidelines for the programs nationally
- 14 and those kinds of things.
- 15 Q: Okay. If you could, give me a description of
- 16 some of your job duties, or give me a
- 17 description of your job duties: Just outline
- 18 to me what are you responsible for and what you
- 19 do.
- 20 A: Okay. As it relates to the surveying, we
- 21 survey employers, about 3,000 over two panels,
- 22 May and November. There's a staff of about six
- 23 people where we ask employers to give us the
- 24 number of employees that they have by job
- 25 titles along with the wage ranges for each of

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1 Q: And what was the sum and substance of that
2 conversation?

3 A: Well, we talked about ... this package that we
4 got, you know, that we were going to get, Mr.
5 Summers came over last week and sort of told us
6 some of the things that we were going to get
7 and what to expect. And just to come in and
8 answer questions as they're asked basically.

9 Q: Great. Let's start with Exhibit Number One to
10 your deposition. Do you recognize that
11 exhibit?

12 A: Yes.

13 Q: And where did it come from?

14 A: From our office.

15 Q: Okay. And is that part of a larger document?

16 A: This was pulled from several different
17 documents.

18 Q: Okay. This is a compilation that y'all did in
19 response to my questions?

20 A: That is correct.

21 Q: I appreciate that. What are the, if you could,
22 the sources of the information that appears on
23 Exhibit Number One?

24 A: We publish data annually. And this came from
25 several years of publications.

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- 1 Q: Okay. When I look at Exhibit Number One, I
2 could recreate Exhibit Number One simply by
3 going to your previous publications, annual
4 publications, and pulling out the information
5 for the different OES codes that are shown
6 there?
- 7 A: That's correct.
- 8 Q: Great. I just need to know just so I can say
9 one day, I got this from. Okay. And this is
10 a true and accurate chart?
- 11 A: As published, yes.
- 12 Q: As published. Okay. And you have no doubt
13 that what was published was accurate, 95
14 percent accurate?
- 15 A: Based on our estimates, yes.
- 16 Q: Okay. If you could, let's look at, this is
17 statewide data?
- 18 A: Correct.
- 19 Q: All right. Is this data then not specific to
20 any region of South Carolina?
- 21 A: No.
- 22 Q: So it's for the entire state?
- 23 A: Right.
- 24 Q: Is there indeed data that would reflect a
25 certain locale?

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1 sample of that statewide data wouldn't alter
2 the error rating for the local area?

3 A: Actually, the sample is pulled by MSAs and
4 balance of state areas.

5 Q: Okay. I just wanted to make sure it's just as
6 accurate as the statewide data..

7 A: It is, yes.

8 Q: And it would have the same statistical ...

9 A: Statistical standards, yes.

10 Q: Okay. When we look at the first entry, it says
11 assemblers and fabricators and OES Code 93956.
12 What is an OES code?

13 A: It is the occupational classification system.
14 Again, like I say, it's a national system that
15 all of the states use to collect occupations.

16 Q: And I have seen in publications the definition
17 for 93956 assemblers and fabricators, but do
18 you know what that definition is generally
19 sitting here today?

20 A: These ...

21 Q: That's okay. It's not a memory game.

22 A: Thank you.

23 Q: If you say you don't recall, you can say you
24 don't recall.

25 A: I don't recall.

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- 1 Q: That's fine. After OES Code 93956, there is an
2 hourly wage ...
- 3 A: Uh-huh (affirmative response).
- 4 Q: ... section -- minimum, average, maximum
5 underneath hourly wage. And I'm referring to
6 Exhibit Number One to your deposition. Can you
7 explain those three numbers to me, those three
8 categories?
- 9 A: Yes. In 1993, South Carolina was doing its own
10 separate survey from the national survey. And
11 these are wage estimates. The way that they
12 published the estimates at that time. But the
13 coding, occupation code, was based on the
14 standard OES codes. This was prior to the
15 national having all of the states involved in
16 collecting wage estimates. So states were
17 pretty much doing their own state survey.
- 18 Q: When did the national folks get involved?
- 19 A: We did our first wage survey, let's see, in
20 1999.
- 21 Q: Okay.
- 22 A: I believe that's when we did our first wage
23 survey.
- 24 Q: And it was at that point that the OES codes
25 were changed to an OCC code?

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Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 111

0610

- 1 Q: If you think of somebody during the course of
2 this deposition, or even after, I'd appreciate
3 it if you could just tell me so if I have any
4 questions about those years, which I probably
5 don't, but if I do, I'd appreciate that.
- 6 A: Okay.
- 7 Q: Thank you. Starting at what point did you get
8 involved? What year did you begin to get
9 involved in these surveys?
- 10 A: The OES wage survey? Around 1999.
- 11 Q: 1999. All right. I just want to ask, I don't
12 know if you know, but in 1997, I see State
13 Estimated Wage.
- 14 A: Uh-huh (affirmative response).
- 15 Q: And it says \$9.04.
- 16 A: Uh-huh (affirmative response).
- 17 Q: Do you know how that was arrived at and what is
18 a state estimated wage?
- 19 A: The estimated is the same as the mean or
20 average wage.
- 21 Q: All right. Starting in 1998, the description of
22 the hourly wage categories changes from
23 minimum, average, maximum to lower level, mean,
24 upper level. And I think you've already
25 answered this, but can you explain to me why

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- 1 A: Yes. I'm sure there is. I have looked at, you
2 know, what I've seen in the Federal Register
3 and in talking to Mr. Ellis, he's given us ...
4 that's my extent of the knowledge of Prison
5 Industries program.
- 6 Q: What is your understanding of ... let me back
7 up. What areas did you discuss with Mr. Ellis
8 regarding the Prison Industries program?
- 9 A: He comes to us and asks for wage information
10 for the occupations that are in the Prison
11 Industries program.
- 12 Q: Does he ask for anything else?
- 13 A: Will these workers displace workers in the
14 general community. I think that's the general
15 request that we get from him.
- 16 Q: Is it fair to say that the two areas you
17 interact with Mr. Ellis and the Prison Industry
18 programs relates to wage information ...
- 19 A: Uh-huh (affirmative response).
- 20 Q: ... and impact on displacing of workers; is
21 that fair? Is there any other areas that
22 you're interacting on? I've got two. Is there
23 a third out there?
- 24 A: That's the only ones that I'm familiar with.
- 25 Q: What is your understanding of the displacement

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1 the local offices.
2 (Plaintiff's Exhibit Number Two was marked for
3 identification purposes.)
4 Q: Okay. I want you to take a quick look at
5 Exhibit Number Two. It's several pages. I
6 want you to just take a moment and look at all
7 the pages. Have you had an opportunity to look
8 at Exhibit Number Two?
9 A: I'm currently looking at it.
10 Q: I apologize. Just tell me when you're ready
11 for a question. I don't want to jump the gun.
12 A: Okay.
13 Q: Are you ready?
14 A: Yes.
15 Q: Have you ever seen Exhibit Number Two to your
16 deposition before, or any portion of it?
17 A: Yes, I believe I have.
18 Q: Okay. Which portions have you seen?
19 A: Probably all of it.
20 Q: Okay. Who is Mr. Ted Gladden?
21 A: He is the former Labor Market Information
22 director.
23 Q: All right. And who has his position currently?
24 A: Mr. Bob ... Robert Branham.
25 Q: Is this the type of request you would receive

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- 1 from the Department of Corrections?
- 2 A: Similar, yes.
- 3 Q: All right. Do you know if you worked on the
- 4 response to this request?
- 5 A: 1989. I probably did. I can't say with
- 6 certainty yes, but I probably did.
- 7 Q: I want you to look at the letter to Mr.
- 8 Gladden. The letter to Mr. Gladden identifies
- 9 categories of workers, and the first category
- 10 is electrical and electronic assemblers. Is
- 11 that a recognized category for the OES codes?
- 12 A: Yes.
- 13 Q: Okay. And he has a wage next to it, \$5.25 per
- 14 hour, and I want to focus in on that. Mr.
- 15 Gladden has asked the South Carolina Employment
- 16 Security Commission to review the inmate wages.
- 17 What was done to review the wages?
- 18 A: Okay. When we get a request and it lists a
- 19 specific occupation, we will go to our most
- 20 current publication and respond with the wage
- 21 for that occupation.
- 22 Q: Okay. Do you do this for any other department
- 23 of the State of South Carolina?
- 24 A: Oh, we get requests for wage from any and
- 25 everybody.

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- 1 Q: Is it sometimes specific to a certain category?
- 2 A: A certain occupation specifically? Yes. Uh-
- 3 huh (affirmative response).
- 4 Q: Okay. And how do you normally respond to that;
- 5 with that range that we've seen in Exhibit
- 6 Number One or do you go more specific behind
- 7 the request?
- 8 A: Well, it depends on what they're asking for.
- 9 We try to respond according to the request.
- 10 Q: What is your understanding that the Department
- 11 of Corrections was asking the Employment
- 12 Security Commission to do?
- 13 A: To provide wage data for the occupations that
- 14 they listed.
- 15 Q: Do you know if there was a use to that
- 16 information? Do you know what their use, what
- 17 they were going to use it for?
- 18 A: My understanding is they were going to use the
- 19 wage information to set up salaries or whatever
- 20 for the prisoners or for the workers that were
- 21 in the Prison Industries program.
- 22 Q: If you look at the last page of Exhibit Number
- 23 Two, is the respond to Mr. Ellis.
- 24 A: Uh-huh (affirmative response).
- 25 Q: Is that a true and accurate copy of the

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- 1 response to Mr. Ellis?
- 2 A: Yes.
- 3 Q: I'm referring to Bates Number 1444 ...
- 4 A: Uh-huh (affirmative response). Uh-huh
- 5 (affirmative response). It looks familiar,
- 6 yes.
- 7 Q: And did you assist in the preparation of that
- 8 letter dated July 1st, 1999, Bates number 14447
- 9 A: Yes, it's normally done in our office. Yes.
- 10 Q: This is an unsigned one I have here, but is
- 11 that a true and accurate copy of what was
- 12 indeed sent on to Mr. Ellis?
- 13 A: I would say yes.
- 14 Q: Okay. Your response has \$8.82 for that first
- 15 category, electric, electronic assemblers.
- 16 A: Uh-huh (affirmative response).
- 17 Q: And Evans Correctional Institution has \$5.25
- 18 per hour listed as the amount they've been
- 19 paying. Do you know if there was any
- 20 conversation after this letter discussing your
- 21 response?
- 22 A: Not to my knowledge.
- 23 Q: Have you ever heard the phrase comparable wage?
- 24 A: I've seen it in the Federal Register, yes.
- 25 Q: What's your understanding of what a comparable

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1 wage is?

2 A: I can tell you what we provide when we get that

3 request.

4 Q: What do you provide?

5 A: Just what we had here, the average wage.

6 Q: The average wage. Okay. And that would be the

7 middle numbers on Exhibit Number One to your

8 deposition?

9 A: Right.

10 Q: Have you ever heard the phrase prevailing wage?

11 A: Yes, I have.

12 Q: All right. What is your understanding of

13 prevailing wage?

14 A: When I'd get issue ... questions on prevailing

15 wage, I would refer them to the area in labor

16 certification because, normally, that's the

17 terminology that they use. But from OES, Labor

18 Market Information, we do not provide or

19 publish a wage that's called prevailing wage.

20 Q: Is the Employment Security Commission capable

21 of providing a prevailing wage for a category

22 of worker?

23 A: We do not have a wage classification called

24 prevailing wage.

25 Q: My question is a little different than that.

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1 A: Okay.
2 Q: And I know you're not trying to dance around
3 me. I just want to know are you capable of
4 doing it. I know that you don't from your
5 previous answer. You don't ... that's not part
6 of what information you provide. But is the
7 Employment Security Commission capable of
8 providing that information ...
9 A: If we ...
10 Q: ... called a prevailing wage?
11 A: Okay. If we had a specific definition for a
12 prevailing wage, exactly what it is that you
13 want when you say prevailing wage.
14 Q: Okay. If I were to ask you what a prevailing
15 wage is, would you be able to ... you know the
16 definition of prevailing I'm sure.
17 A: Uh-huh (affirmative response).
18 Q: That's a yes, right?
19 A: That's a yes.
20 Q: And I'm sure you understand what the word wage
21 means.
22 A: Uh-huh (affirmative response).
23 Q: If I were to put the two words together and
24 just say use your common sense of what
25 prevailing wage is, how would you define it?

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- 1 A: How would I define or what would I provide to
2 you as a prevailing wage?
3 Q: I'm asking how you would define it and then I'm
4 going to ask you what you would provide would
5 be the next question. If you want to lump it
6 all into one answer, that's great.
7 A: Okay. What I would provide to you would be our
8 average wage.
9 Q: Okay. And that's because ...
10 A: Our mean. Whatever it's called here. One or
11 the other.
12 Q: And why would you provide the average wage or
13 mean wage, depending on the year of the number?
14 Why would that be the response?
15 A: Because, basically, that's what's falling in
16 the middle.
17 Q: And that would be the prevailing wage?
18 A: That would be what we would provide.
19 Q: Okay. I know. I'm not trying to play word
20 games with you. I'm just trying to understand
21 whether or not the prevailing wage is, in your
22 opinion, the middle column of numbers to
23 Exhibit Number One to your deposition. Would
24 that be an example of a prevailing wage for
25 those classifications shown on Exhibit Number

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- 1 Exhibit Number Two.
- 2 A: Number Two.
- 3 Q: Which is the latter. The second page of
- 4 Exhibit Number Two is Mr. Ted Gladden, the
- 5 letter to Mr. Ted Gladden. And the last page
- 6 is the response to Mr. Ellis from Mr. Gladden.
- 7 So it's two pieces of correspondence. Bates
- 8 numbers 1442 and Bates numbers 1444. The Evans
- 9 Correctional Institution, electrical and
- 10 electronic Assemblers has a wage of \$5.25 per
- 11 hour; do you see that?
- 12 A: Exhibit Number Two? Okay.
- 13 Q: Okay. And then if you go back to the last page
- 14 of it, Bates number 1444 ...
- 15 A: Uh-huh (affirmative response).
- 16 Q: ... Evans Correctional Institution electric
- 17 assemblers, which is ... it's abbreviated in
- 18 this, is \$8.82 as the wage.
- 19 A: Uh-huh (affirmative response).
- 20 Q: Is the Evans Correctional Institution number
- 21 reflected in 1442, \$5.25 per hour, prevailing
- 22 wage ...
- 23 MR. SUMMERS: Objection as to form. Go ahead and
- 24 answer.
- 25 Q: ... for the year 1999?

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- 1 A: Okay. Are you asking me ... may I?
- 2 Q: Yes, ma'am.
- 3 A: Okay. 1442. This \$5.25 per hour, is that
- 4 prevailing wage?
- 5 Q: For that year, yes, ma'am. Is that the
- 6 prevailing wage for that year?
- 7 A: Now, the only thing that I can testify to is
- 8 what's on 1444 because this is what we sent to
- 9 him.
- 10 Q: Okay. And are those numbers the same?
- 11 A: No, they're not the same.
- 12 Q: Okay. So the number provided by Ted Gladden,
- 13 Assistant Director of Labor Market Information,
- 14 on Bates number 1444, a letter in which you had
- 15 input ...
- 16 A: Correct.
- 17 Q: ... is \$8.82, and it's not the same as the
- 18 number provided to Mr. Gladden by Tony Ellis,
- 19 correct? Those aren't the same numbers. I
- 20 know, roundabout way. Let me see if I can make
- 21 it even simpler. \$5.25 per hour is not the
- 22 same as \$8.82?
- 23 A: Right. And 1444 too, that's the statewide
- 24 average also.
- 25 Q: Okay. Do you know if Mr. Ellis in making his

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1 top. It says -- I want to say -- McClary -
2 Respond Immediately. It's at the top.
3 A: Correct.
4 Q: Do you know whose handwriting that is?
5 A: It appears to be Mr. Gladden.
6 Q: Okay. And then if I could, if you'd look at
7 the very next page, it says Second Request.
8 That's page number 1442.
9 A: Uh-huh (affirmative response).
10 Q: Do you know whose handwriting that is?
11 A: That, no, I do not.
12 Q: All right.
13 (Plaintiff's Exhibit Number Three was marked for
14 identification purposes).
15 Q: I'll hand you what's been marked as Exhibit
16 Number Three. Do you recognize that exhibit?
17 A: I believe I've seen this before.
18 Q: All right. I'm not trying to ... I'm going to
19 hand you the response to it too just so you can
20 see it all in one. I'll let you review them
21 both.
22 (Plaintiff's Exhibit Number Four was marked for
23 identification purposes).
24 Q: All right. I want you to take a look at Three
25 and Four together.

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- 1 A: (Witness does as instructed.)
- 2 Q: Have you had an opportunity to look at Three
- 3 and Tour?
- 4 A: Yes, I have.
- 5 Q: All right. Is Exhibit Number Four the response
- 6 to Exhibit Number Three?
- 7 A: Was that a question to me? I'm sorry ...
- 8 Q: Yes, ma'am.
- 9 A: I missed it. I'm sorry.
- 10 Q: That's okay. Is Exhibit Number Four the
- 11 response to Exhibit Number Three?
- 12 A: It does appear to be.
- 13 Q: Okay. You've seen Exhibit Number Three before,
- 14 correct?
- 15 A: I believe I have, yes,
- 16 Q: And that's a letter from Thomas Torrence to a
- 17 Mr. Funderburk.
- 18 A: Uh-huh (affirmative response).
- 19 Q: Who is Mr. Funderburk?
- 20 A: The agency's attorney.
- 21 Q: Is he still the agency's attorney?
- 22 A: Yes.
- 23 Q: Okay. The regard line says "prevailing wages";
- 24 do you see that?
- 25 A: Yes.

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- 1 Q: Okay. What was your understanding of this
2 request?
- 3 A: Again, whenever we get a request, I will
4 provide, or we will provide the mean wage for
5 that occupation.
- 6 Q: Okay. And I'm not going to go back through our
7 previous discussion of prevailing wage and mean
8 wage. I think we have a clear understanding of
9 that, that you personally make no distinction
10 between prevailing wage and mean wage.
- 11 A: When I get a request for prevailing wage,
12 that's what we provide.
- 13 Q: Okay. Let me try again. I know you have an
14 explanation. But I thought we had agreed that
15 prevailing wage, I thought you had said that
16 prevailing wage, to you personally, has no
17 distinction at all between a prevailing wage
18 and a mean wage.
- 19 A: In terms of our response.
- 20 Q: Forget about the response. I'm just asking you
21 as a person.
- 22 MR. SUMMERS: Objection as to form. Go ahead and
23 answer the question.
- 24 A: Prevailing wage and mean wage.
- 25 Q: Yes, ma'am.

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- 1 A: What is the difference?
- 2 Q: Yes, ma'am.
- 3 A: Is that your question?
- 4 Q: Yes, ma'am.
- 5 A: It's one in the same. That's what we provide
- 6 whenever we get a request as far as this.
- 7 Q: Okay. But how about you as a person, just
- 8 works at the Employment Commission ...
- 9 A: Uh-huh (affirmative response).
- 10 Q: I'm sorry. Works at the Employment Security
- 11 Division.
- 12 A: Uh-huh (affirmative response).
- 13 Q: Do you personally, as just a worker there, a
- 14 person whose been there how many years?
- 15 A: Thirty years.
- 16 Q: Thirty years. Do you have any difference in
- 17 your mind between what a prevailing wage is and
- 18 what the mean wage is?
- 19 MR. SUMMERS: And again, objection as to form, but go
- 20 ahead and answer the question.
- 21 A: Is there a difference between the prevailing
- 22 wage and the mean wage?
- 23 Q: Yes. For you?
- 24 A: For me?
- 25 Q: Yes.

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- 1 A: Since I don't have a prevailing wage, I'll say
2 no, there's no difference.
- 3 Q: Okay. The way you answer begs me to ask
4 follow-up questions. There's no difference in
5 your mind between a prevailing wage and a mean
6 wage; yes or no. And if you can answer it yes
7 or no, please answer it yes or no.
- 8 A: Since I have no prevailing wage, I'll say no,
9 there is no difference.
- 10 Q: Okay. I understand your explanation. Your
11 answer is that since you don't have one, you
12 don't see a difference; is that what you're
13 saying?
- 14 A: That's close enough. Uh-huh (affirmative
15 response).
- 16 Q: Because what I'm saying, part of what I'm
17 trying to say is, you know, is this wood, is
18 this wood. The answer is yeah, wood is wood is
19 wood. I'm just trying to get to the bottom of
20 whether or not a prevailing wage, using your
21 common sense definitions of what a wage is and
22 what prevailing is, is that the same as a mean
23 wage?
- 24 MR. SUMMERS: Again, renew the objection. Go ahead
25 and answer it to the best of your ability.

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- 1 Q: Go ahead and answer.
- 2 A: I don't know of a difference between the two,
3 so I would have to say it's the same.
- 4 Q: Okay. And that's ...
- 5 A: Is that close enough? Is that fair enough?
- 6 Q: That's perfect. I've belabored this point 40
7 questions too long probably. Okay. So in
8 responding to the April 17th, 2000, letter from
9 Mr. Torrence, the Employment Security Division
10 contacted you to provide that response?
- 11 A: Yes.
- 12 Q: Is that correct? Okay. And Exhibit Number
13 Four, the April 24, 2000 letter ...
- 14 A: Uh-huh (affirmative response).
- 15 Q: ... is that response, correct?
- 16 A: Yes, I believe it is.
- 17 Q: If you can look at Bates Number 1440, which is
18 page two of Exhibit Number Four.
- 19 A: Okay.
- 20 Q: Okay. There's some writing on the upper right-
21 hand side. Do you recognize that handwriting?
- 22 A: Yes. It looks like my handwriting.
- 23 Q: Okay. What is 209155?
- 24 A: I'm trying to remember. I know what the SIC
25 and the County is.

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1 responding to Mr. Torrence.
2 A: Uh-huh (affirmative response).
3 Q: And he was your direct supervisor?
4 A: No.
5 Q: Or the supervisor for the entire area?
6 A: Department.
7 Q: Okay. And this worked its way down to you
8 because part of your duties was the wage
9 surveys?
10 A: Correct. Uh-huh (affirmative response).
11 Q: Okay. Now, in the response, and I'm at the end
12 of the second line, the statewide mean hourly
13 wage for assemblers/fabricators, then you have
14 ex., that's example?
15 A: Except.
16 Q: Except. Okay. Machine electronic precision,
17 93956, is \$9.69. Okay. And that's what you
18 were telling me that 93956 was most likely
19 going to be found in SIC 3679?
20 A: It could be across any industry.
21 Q: Okay.
22 A: But that is one of the industry that that
23 occupation would be found in, yes.
24 Q: That's a true and accurate copy of the letter,
25 to the best of your knowledge, a letter Mr.

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- 1 Gladden sent to Mr. Torrence?
- 2 A: To my knowledge, yes. Uh-huh (affirmative
3 response).
- 4 Q: And the information in that letter, Exhibit
5 Number Four, Bates number 1439, was compiled by
6 you for Mr. Gladden, correct?
- 7 A: To the best of my recollection, yes.
- 8 Q: Okay.
- 9 A: Uh-huh (affirmative response).
- 10 Q: Do you know what AS-2 is on the bottom of page
11 one of Exhibit Four? There's a little
12 notation.
- 13 A: Yes.
- 14 Q: What is that?
- 15 A: It's Administrative Services. We have
16 different departments under our deputy director
17 and that's just one of the departments under
18 that director.
- 19 Q: And are you in the AS-2 department?
- 20 A: (Shakes head negatively).
- 21 Q: No? Am I misunderstanding what that means?
- 22 A: Let me see. I thought it was AS-8. It may
23 have changed, but I think it's eight now. It's
24 just one of the departments under a division.
25 And each department has a different

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- 1 sporadically throughout the year.
- 2 A: I think it's probably sporadically. I can't
- 3 say July.
- 4 Q: Okay.
- 5 (Plaintiff's Exhibit Number Five was marked for
- 6 identification purposes).
- 7 Q: I'm going to hand you Exhibit Number Five to
- 8 your deposition. Okay. And let's go ahead and
- 9 get Exhibit Six.
- 10 (Plaintiff's Exhibit Six was marked for
- 11 identification purposes).
- 12 Q: I want you to look at Exhibit Five and Six and
- 13 tell me when you've had an opportunity to look
- 14 at them.
- 15 A: (Witness does as instructed.) Okay.
- 16 Q: Okay. Is Exhibit Number Five, is that the
- 17 letter to Mr. Ted Gladden from Tony Ellis?
- 18 A: Uh-huh (affirmative response).
- 19 Q: Okay. And did you ever see that letter before?
- 20 A: I believe I have.
- 21 Q: And are these the types of requests that's
- 22 similar to what is Exhibit Number Two to your
- 23 deposition?
- 24 A: Correct.
- 25 Q: And so you would have had input in response to

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- 1 this request?
- 2 A: More than likely, yes.
- 3 Q: Okay. If you look at Exhibit Number Six, it
- 4 starts off, "In response to your letter of July
- 5 27th," and that's a letter to Mr. Ellis from
- 6 Ken Gladden.
- 7 A: Uh-huh (affirmative response).
- 8 Q: Is this a response, Exhibit Six is a response
- 9 to Exhibit Number Five, correct?
- 10 A: I would say yes.
- 11 Q: Did you have input in Exhibit Number Six?
- 12 A: I would say yes.
- 13 Q: All right. Now, what is Mr. Ellis requesting
- 14 Mr. Gladden and the Employment Security
- 15 Commission do? What is he requesting from you
- 16 in Exhibit Number Five?
- 17 A: Wage information. Pursuant to Federal
- 18 Department guidelines for PIS we administer, I
- 19 would appreciate your review of the wage for
- 20 the following.
- 21 Q: Okay. So he asks you to review it. And I want
- 22 you to take a look at the entire letter. What
- 23 does he ask you to do while reviewing it?
- 24 A: Okay.
- 25 Q: Okay. What is he asking you to do with these

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- 1 Q: Okay. Is the wages listed on Exhibit Number
2 Five within the range that was provided by the
3 Employment Security Commission on August 4th of
4 2000?
- 5 A: The wages are different.
- 6 Q: Okay. Is it within the range?
- 7 A: It is below the ... below rate from the
8 Employment Security Commission.
- 9 Q: What is the range for elect/electric assemblers
10 on Exhibit Number Six to your deposition?
- 11 A: Our response?
- 12 Q: Yes, ma'am.
- 13 A: Okay.
- 14 Q: What is the range?
- 15 A: For electrical assemblers?
- 16 Q: Yes, ma'am.
- 17 A: The low is \$8.36, mean \$9.92, and the high
18 \$11.49.
- 19 Q: All right. You answered my question, but what
20 I would like is a yes or no and then whatever
21 explanation. What is the range for code 93114
22 elect/electric assemblers found in Exhibit
23 Number Six to your deposition; what's the
24 range?
- 25 A: \$8.36 to \$11.49.

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- 1 displaced workers?
- 2 A: That's correct. Yes.
- 3 Q: Okay. And who is that person as the area
- 4 director signature, do you recognize that?
- 5 A: It looks like Breedan at the Bennettsville
- 6 Workforce Center Office.
- 7 Q: Have you ever interacted with ... is that Mr.
- 8 or Ms. Breedan, if you know?
- 9 A: I'm not sure.
- 10 Q: Okay. So you haven't had any interaction with
- 11 Breedan?
- 12 A: No.
- 13 Q: Okay. Let's go right to Exhibit Number Nine
- 14 then.
- 15 A: Number Nine, okay.
- 16 Q: Exhibit Number Nine, is this the ... all right.
- 17 What is Exhibit Number Nine?
- 18 A: Exhibit Number Nine is the wage response for
- 19 the Pee Dee WIA. And off the top of my head,
- 20 I can't tell you what counties the Pee Dee WIA
- 21 encompasses, but it has the minimum wage up to
- 22 the tenth percentile wage which is labeled
- 23 upper level wage and then the average wage for
- 24 that occupation for the U.S., South Carolina,
- 25 and the Pee Dee area.

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- 1 Q: Okay. So any time prior to that? So July 2002
2 if you were to get a request for occupational
3 wage information ...
4 A: Uh-huh (affirmative response).
5 Q: ... you would most likely be relying upon the
6 2000 survey?
7 A: Correct. And we've changed it where we're
8 doing two panels now. So we have a November
9 panel and a May panel. It continues to change.
10 Q: All right. When did the November/May paneling
11 begin?
12 A: In 2000, I believe it was. 2001. So it
13 wouldn't be reflected in any of this.
14 Q: Okay. So if it began in 2001, then it wouldn't
15 be really in place as an option until late
16 2002?
17 A: Early 2003.
18 Q: Early 2003. Okay.
19 A: So, yeah, that's not reflected in these
20 numbers.
21 Q: Okay. If we could look at Exhibit Number Nine.
22 It has variance \$1.90, \$2.60, \$2.02.
23 A: Uh-huh (affirmative response).
24 Q: What is that reflecting?
25 A: The difference between the minimum wage and the

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1 tenth percentile which is the upper level.
2 Q: Okay. The upper level tenth percentile?
3 A: The upper level category.
4 Q: I gotcha. Which is the ...
5 A: Consists of the tenth percentile wage level.
6 Q: Okay. The last column on Exhibit Number Nine
7 is average wage; do you see that?
8 A: Yes.
9 Q: And that is the same as the mean wage that
10 we've discussed before?
11 A: Yes.
12 Q: Okay. So, if we look at the letter from
13 Exhibit Number Seven to your deposition, the
14 July 19, 2002 letter ...
15 A: Uh-huh (affirmative response).
16 Q: ... then Mr. Ellis may have received the
17 Exhibit Number Nine information in response to
18 his request?
19 A: Yes.
20 Q: Okay. Do you know what Mr. Gladden's fax
21 number is off the top of your head?
22 A: 737-2838. That's when he was in this position.
23 Q: All right.
24 (Plaintiff's Exhibit Number Ten was marked for
25 identification purposes).

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- 1 A: Mr. Ellis ... Mr. Ellis did come in to our
2 office and we sat down and we talked about the
3 wage data, the program itself because I was not
4 really familiar with the program.
- 5 Q: When was that, if you recall?
- 6 A: Probably two, three years ago maybe. I don't
7 know exactly.
- 8 Q: Was that the only meeting you've had with the
9 Department of Corrections' individuals
10 regarding prisoner wages?
- 11 A: I think he may have been in the office more
12 than once.
- 13 Q: Would you have been at all the meetings when he
14 came to the office?
- 15 A: Not all of the meetings, no.
- 16 Q: So probably more than once, less than five
17 times?
- 18 A: That I'm aware of, yes.
- 19 Q: For you as a person?
- 20 A: Oh, less than five, yes. Oh, yeah.
- 21 Q: And what did you all discuss in those meetings,
22 if you recall?
- 23 A: The prison system itself, the prison, what's it
24 called, PIE program. His responsibility,
25 collecting the wage for the program. Working

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- 1 with the employers to set up a program in the
2 prison. How the program worked. Those kinds
3 of things.
- 4 Q: Did he ever talk to you about comparable wages?
- 5 A: Just that they needed wage to provide to them.
6 Not provide to the industries, but he needed a
7 wage what was, I guess you would say fair to
8 pay to the prisoners.
- 9 Q: And did he ever talk to you about prevailing
10 wages?
- 11 A: Only as it was in the request, yes.
- 12 Q: So when he talked with you, he discussed what
13 would be fair wages in this area for this type
14 of work for these prisoners?
- 15 A: Uh-huh (affirmative response).
- 16 Q: And that's when he was asking your help in
17 providing him wage information?
- 18 A: Uh-huh (affirmative response). Well, the
19 program between employment ... the cooperation
20 was already in place between the Employment
21 Security and the Department of Correction. And
22 it started long before I started providing the
23 wage because you may recall we didn't always
24 have the OES wage. It was a South Carolina
25 wage survey that was done. So there was

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- 1 Q: Okay. This is a response from Ted Gladden to
2 Mr. Tony Ellis of the Department of
3 Corrections.
4 A: Uh-huh (affirmative response).
5 Q: And this response, I think before, and I'm not
6 trying to mischaracterize anything you said
7 before though, may have information you
8 provided in this response, correct?
9 A: That's correct. Uh-huh (affirmative response).
10 Q: Are you telling Mr. Ellis that a fair wage for
11 the prisoners is \$8.82 in Evans Correctional
12 Facility?
13 A: This is the average wage for that occupation.
14 Yes.
15 Q: Okay. But is that the same thing as a fair
16 wage? I'm using the phrase fair wage; you're
17 using average wage. I don't know if they mean
18 the same.
19 A: Let's use average wage. That's what we
20 provide.
21 Q: Okay. Do you consider the average wage the
22 fair wage?
23 A: That's what employers are paying. Yes. Based
24 on response that we get from employers.
25 Q: All right. Let's go to Exhibit Number ...

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1 let's go to Exhibit Number Six.
2 A: Exhibit Number Six.
3 Q: On Exhibit Number Six ...
4 A: Okay.
5 Q: ... okay, what would you consider to be a fair
6 wage for the prisoners who were employed in
7 elect assemblers?
8 MR. SUMMERS: Objection as to form.
9 Q: And I'm going to point to Exhibit Number Six,
10 the first line.
11 A: Uh-huh (affirmative response).
12 Q: Okay. What is a fair wage for the prisoners
13 working in Code 93114 as represented in Exhibit
14 Number Six to your deposition?
15 A: Okay. What we provided is the low, \$8.36; the
16 mean, \$9.72; high, \$11.49. Now, what's fair
17 would be determined by Department of Correction
18 or whomever is making that decision.
19 Q: Okay. Then you have no opinion as to what
20 would be fair?
21 A: No. No opinion as to what's fair. I provide
22 our findings.
23 Q: Okay. You kind of threw me off when you
24 mentioned the fairness thing earlier. I'm just
25 trying to cover my bases.

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(803) 253-3445 / (800) 823-0896

Occupational Employment Survey Wage Request
Statewide data
Assemblers and Fabricators
1993-2000

1993	OES Code	Min.	Hourly Wage	Max.
Assemblers and Fabricators	93956	\$9.11	Avg. \$8.53	\$11.38

Source: 1993 South Carolina Wage Survey

1994	OES Code	Min.	Hourly Wage	Max.
Assemblers and Fabricators, except Precision	93958	\$5.81	Avg. \$8.39	\$12.44

Source: 1994 South Carolina Wage Survey

1995	OES Code	Min.	Hourly Wage	Max.
Assemblers and Fabricators, except Precision	93958	\$5.73	Avg. \$8.85	\$11.80

Source: 1995 South Carolina Wage Survey

1996	OES Code	Min.	Hourly Wage	Max.
Assemblers and Fabricators, except Precision	93958	\$6.14	Avg. \$9.28	\$12.08

Source: 1996 South Carolina Wage Survey

1997	OES Code	State Estimated Wage
Assemblers and Fabricators, except Machine, Elec	93958	\$9.04

Source: Occupational Employment Statistics Wage Survey

1998	OCC Code	Lower Level	Mean	Upper Level
Assemblers and Fabricators, except Machine, Elec	93956	\$7.72	\$9.69	\$11.07

Source: South Carolina Wage Survey 2000

1999	OCC Code	Lower Level	Mean	Upper Level
Team Assemblers	51-2092	\$8.94	\$11.68	\$13.24

Source: South Carolina Wage Survey 2001

2000	OCC Code	Entry Hourly Wage	Average Hourly Wage	Experienced Hourly Wage
Team Assemblers	51-2092	\$9.10	\$12.68	\$14.43

Source: Statewide Wage Survey 2002



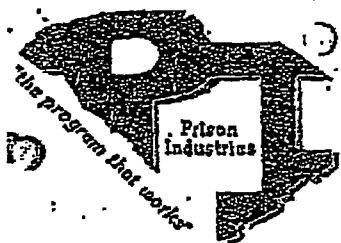
1433

ROA

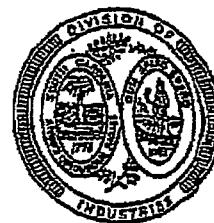
Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 141

0640



*McClary
Respond
Immediately*



**S. C. Department of Corrections
Division of Industries
P. O. Box 21787
Columbia, SC 29221-1787
(803) 896-8516 / (800) 922-8121
FAX: (803) 896-2173**

FAX TRANSMITTAL COVER SHEET

Date: 7/1 Pages Total: 3
To: Ted Gladden
From: Jeff Rivers
FAX#: 737-2838 Phone#: _____

MESSAGE:

*Attached are the wage rates for our PLE programs
for your review. If you somehow did not receive
this the first time, please return to us
as soon as possible. Your assistance is
greatly appreciated. Thank You.*

Jeff Rivers

1111



ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 142

0641

SC ST § 24-3-40
Code 1976 § 24-3-40

CODE OF LAWS OF SOUTH CAROLINA 1976 ANNOTATED
TITLE 24. CORRECTIONS, JAILS, PROBATIONS, PAROLES AND PARDONS
CHAPTER 3. STATE PRISON SYSTEM
ARTICLE 1. PERSONS CONFINED AND USE THEREOF GENERALLY

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Current through End of 2001 Reg. Sess.

§ 24-3-40. Disposition of wages of prisoner allowed to work at paid employment.



(A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-10 to 24-3-30 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections.

The Director of the Department of Corrections shall deduct the following amounts from the gross wages of the prisoner:

(1) If restitution to a particular victim or victims has been ordered by the court, then twenty percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-25-320, the twenty percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has not been specified by the court, the director shall impose a payment schedule of equal monthly payments and use twenty percent to meet the payment schedule so imposed.

(2) If restitution to a particular victim or victims has not been ordered by the court or if court-ordered restitution to a particular victim or victims has been satisfied, then the twenty percent referred to in subsection (1) must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404, if the prisoner is engaged in work at paid employment in the community. If the prisoner is employed in a prison industry program, then the twenty percent referred to in subsection (1) must be directed to the State Office of Victim Assistance for use in training, program development, victim compensation, and general administrative support pursuant to Section 16-3-140.

(3) Thirty-five percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the guardian of the child or children or to appropriate clerks of court, in the case of court ordered child support, for application toward payment of child support obligations, whichever is appropriate. If there are no child support obligations, then twenty-five percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board. Furthermore, if there are no child support obligations, then ten percent must be made available to the inmate during his incarceration for the purchase of incidentals pursuant to subsection (4). This is in addition to the ten percent used for the same purpose in subsection (4).

(4) Ten percent must be available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(5) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

(6) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals pursuant to subsection (4).

(B) The Department of Corrections shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

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1309

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-D4-00143-AP

Page # 143

0642

(1) A prisoner released without community supervision must be given his accrued wages upon his release.

(2) A prisoner serving life in prison or sentenced to death shall be given the option of having his accrued wages included in his estate or distributed to the persons or entities of his choice.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be disbursed to the Department of Probation, Parole and Pardon Services. The prisoner's supervising agent shall apply this balance toward payment of the prisoner's housing and basic needs and disburse any balance to the prisoner at the end of the supervision period.

HISTORY: 1962 Code § 55-321.2; 1966 (54) 2180; 1980 Act No. 431, § 2; 1986 Act No. 462, § 9.

HISTORY: 1993 Act No. 181, § 393, eff. July 1, 1993; 1994 Act No. 500, § 2, eff. August 25, 1994; 1995 Act No. 7, Part II, § 54, eff. July 1, 1995 (became law without the Governor's signature January 12, 1995); 1999 Act No. 68, § 2, eff. June 11, 1999; 2000 Act No. 387, Part II, § 83A, eff. June 30, 2000.

<General Materials (GM) - References, Annotations, or Tables>

FEDERAL ASPECTS-

Provisions of the Victims of Crime Act of 1984, P.L. 98-473, Title II, Chapter XIV, Section 1404, see 42 USCA § 10603.
Public Law 90-351, see 32 USCA 3701 et seq.

EDITOR'S NOTE-

1999 Act No. 68, § 2, provides as follows:

"This act takes effect upon approval by the Governor, and Section 2 [§ 24-1-10] applies to wages earned beginning with the first day of the second month after the signature of the Governor."

EFFECT OF AMENDMENT-

The 1993 amendment substituted "director" for "Commissioner" and "Department" or "director" for "Board" throughout this section.

The 1994 amendment revised this section so as to further provide for those prisoners which qualify and added the last sentence to provide that no prisoner who participates in certain programs is eligible for unemployment compensation benefits.

The 1995 amendment revised this section, inserting "Unless otherwise provided by law," and "or in a prison industry program provided under Article 3 of this chapter."

The 1999 amendment designated the existing text as paragraph (A), deleted the second and subsequent sentences and added the second undesignated paragraph and items (1) through (6) to paragraph (A) and added paragraph (B).

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1310

The 2008 amendment, in subsection (A)(2), at the end of the second sentence substituted "directed to the State Office of Victim Assistance for use in training, program development, victim compensation, and general administrative support pursuant to Section 16-3-1410" for "applied to the South Carolina Victims Compensation Fund".

CROSS REFERENCES-

Workers' compensation coverage for convicted persons under custody or supervision of the Department of Parole and Community Corrections, see § 43-1-505.

Earnings of inmates working in private industry must be paid directly to Department of Corrections and applied as provided under this section, see § 24-3-130.

CASE NOTES

1. In General

Work release prisoner who entered into voluntary contract of employment with private employer and enjoyed same salary and working conditions as other employees is entitled to workmen's compensation benefits when injured on his job because it is prisoner's status visavis employer, not visavis state, which is determinative of whether he is entitled to compensation. *Hamilton v. Daniel Intern. Corp.* (S.C. 1979) 273 S.C. 409, 257 S.E.2d 157.

Code 1976 § 24-3-40

SC ST § 24-3-40

END OF DOCUMENT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

AGREEMENT

THE AGREEMENT is entered into this 3rd day of MARCH, 2001, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent R. Dodge Frederick, Interim Director and Insilco Technologies, ITG Global Division, (hereinafter referred to as "Contractor") by its duly authorize agent Philip Pitman, Vice President, Operations.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and,

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

WHEREAS, the Contractor intends to engage in the business of assembling wire harnesses at the Evans Correctional Institution (hereinafter referred to as "ECI"); and,

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

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

ARTICLE 1 General:

SCDC shall provide a Prison Industries building located at Evans Correctional Institution of approximately 25,000 square feet and will refer necessary inmates to the Contractor for potential employment.

ARTICLE 2 Conditions of Occupancy of the Industry Facility:

2.1 General:

The Contractor shall not have the right to sublease, assign, transfer, or enter into any other agreement regarding the occupancy herein granted without the expressed written consent of SCDC.

00073



ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 146

0645

2.1 The Duties of the Contractor:

1. Maintenance: The Contractor shall keep the occupied area clean, neat and tidy, and shall report any damage to the building structure or material fixtures or unsafe conditions to the appropriate institutional authority. Further, the contractor shall be responsible for the routine maintenance of its equipment and that furnished by SCDC for contractor's production use.

2. Insurance: The contractor shall maintain insurance coverage for its equipment, supplies and material located in the prison industries building against casualty occurrences. Further the contractor shall maintain liability insurance coverage on itself, its agents, servants and employees in an amount no less than \$300,000 per person per claim, \$600,000 aggregate. The Contractor shall also maintain Workers Compensation insurance on its employees in accordance with the laws of the State of South Carolina. The contractor shall deliver to SCDC a duly authenticated certificate evidencing such insurance upon executing this agreement and upon each insurance renewal date.

3. Telephone Service: The Contractor may, with prior approval of SCDC, which will not be unreasonably withheld, install telephones and/or computer lines in the Prison Industries buildings, which must be secured at all times in accordance with SCDC guidelines. The cost of installation and maintenance of such telephones will be at the Contractor's sole expense.

4. Tools, Equipment and Supplies: The Contractor shall be responsible for providing all necessary tools, equipment, and/or supplies which may be necessary for the performance of the work herein contemplated. Such tools and equipment supplied by Contractor may be removed upon termination of the agreement.

5. Building Modification: The Contractor shall not make any alterations or improvements to the Prison Industry building without prior written approval of SCDC which shall not be unreasonably withheld. Any such improvements or equipment permanently installed or affixed shall become the property of SCDC. All equipment provided and installed by the contractor will remain the property of the Contractor and may be removed by the contractor at any time during the terms of this agreement or within ninety (90) days of termination.

00070

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 147

0646

1550 Gadsden Street
P. O. Box 995
Columbia, South Carolina 29202

July 1, 1999

Mr. Tony Ellis, Division Director
Division of Industries
P. O. Box 21787
Columbia, South Carolina 29221-1787

Dear Mr. Ellis:

This is in response to your FAX of July 1, 1999 regarding wage rates for the following correctional institutions and occupations.

Institution	Occupation	Wage
Evans Correctional Bennettsville SC	Elect/Electr Assemblers (93114)	\$8.82
Ridgeland Correctional Ridgeland SC	Woodworking Mach opr/tndr (92314)	7.60
Dutchman Correctional Enoree SC	Woodworking Mach oper (92314)	7.60
Cross Anchor Correct Enoree SC	Woodworking Mach oper (92314)	7.60

These wages represent the statewide mean hourly wage for the various occupations based on our 1997 South Carolina Occupational Employment Statistics Wage Survey.

If you have any questions, please let me know.

Sincerely,

Ted Gladden, Assistant Director
Labor Market Information

1111

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-20143-AP

Page # 148

0647

Second Request

May 11, 1999

Mr. Ted Gladden
Labor Market Information
Employment Security Commission
P.O. Box 995
Columbia, S.C. 29201

Dear Ted:

As you know, we have inmates working for private sector companies within several of our institutions under our Prison Industries Enhancement (PIE) Program. One of our annual program requirements is to have the S.C. Employment Security Commission review our inmate wage rates. Listed below are those rates for you to review:

1. Evans Correctional Institution
Bennettville, S.C.
Electrical and Electronic Assemblers \$5.25/hour
2. Ridgeland Correctional Institution
Ridgeland, S.C.
Woodworking Machine Operators and Tenders \$5.25/hour
\$5.50/hour
3. Dutchman Correctional Institution
Enoree, S.C.
Woodworking Machine Operator \$5.15/hour
4. Cross Anchor Correctional Institution
Enoree, S.C.
Woodworking Machine Operator \$5.15/hour

Attached is documentation of the wage rate paid by Anderson Hardwood Flooring in Clinton, S.C. who manufactures hardwood flooring at our Dutchman and Cross Anchor facilities.

1442

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 149

0648

Mr. Ted Gladden
May 11, 1999

Page Two

Will you please review the wage rates and verify that they are within the range as outlined in your latest wage survey? Thank you for your kind assistance.

Sincerely,



Tony Ellis
Division Director
Division of Industries

cc: Bob Sanders

1443

April 17, 2000

Thomas J. Torrence
#94851 FJA-253
Evans Correctional Institution
P.O. Box 2951202
Bennettsville, SC 29512-5202

209155

ENC 3479
cto 26

H. William Funderburk, Jr., Esq.
General Counsel
S.C. Employment Security Division
1550 Gadsden St.
P.O. Box 995
Columbia, SC 29202

RE: PREVAILING WAGES

Dear Mr. Funderburk:

I want to inquire as to the prevailing wage rate for wire harness assembly here in Marlboro County.

There is no other work of a similar nature in the surrounding community. The employees I am aware of, who work for ESCOD Industries, at the Evans Facility, are paid a minimum of \$8.80 per hour.

I have a verified claim filed with the State Budget and Control Board and desire this information to ensure my complaint is based upon the correct wage rate when I file.

Your assistance in this matter is sincerely appreciated.

With kindest regards,

Sincerely,


Thomas J. Torrence

cc: file



1440

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 151

0650



South Carolina
Employment Security Commission



COMMISSION
J. William McLeod, Chairman
(803) 737-2412
Samuel R. Fodas, Vice-Chairman
(803) 737-2456
Cecilia C. Wells, Commissioner
(803) 737-2455

631 Hampton Street
P.O. Box 995
Columbia, S.C. 29202

EXECUTIVE DIRECTOR
Joel T. Carlsby
(803) 737-2217

April 24, 2000

Mr. Thomas J. Torrence
Evans Corrections Institution
P. O. Box 2951202
Bennettsville, South Carolina 29512-5202

Dear Mr. Torrence:

This is in response to your letter of April 17, 2000 to Attorney H. William Funderburk, Jr. regarding a contract for Evans Correctional Institution in Bennettsville. The statewide mean hourly wage for Assemblers/Fabricators ex. Machine/Electronic/ Precision (93956) is \$9.69. This wage is based on our most recent South Carolina Occupational Employment Statistics Wage Survey.

If you have any questions, please call our Labor Market Information Office at 803-737-2660.

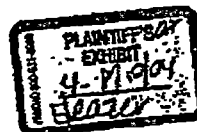
Sincerely,

Kenneth T. Gladden

Kenneth T. Gladden
Director
Labor Market Information

KTG/ka
AS-2

Cc: Mr. J. William Funderburk, Jr.



1439

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 152

0651

April 17, 2000

Thomas J. Torrence
#94651 FIA-253
Evans Correctional Institution
P.O. Box 2951202
Bennettsville, SC 29512-5202

209155

5:30 PM
Ctd 26

H. William Funderburk, Jr., Esq.
General Counsel
S.C. Employment Security Division
1550 Gadsden St.
P.O. Box 995
Columbia, SC 29202

RE: PREVAILING WAGES

Dear Mr. Funderburk:

I want to inquire as to the prevailing wage rate for wire harness assembly here in Marlboro County.

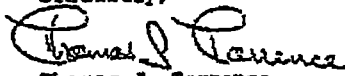
There is no other work of a similar nature in the surrounding community. The employees I am aware of, who work for ESCOD Industries, at the Evans facility, are paid a minimum of \$8.80 per hour.

I have a verified claim filed with the State Budget and Control Board and desire this information to ensure my complaint is based upon the correct wage rate when I file.

Your assistance in this matter is sincerely appreciated.

With kindest regards,

Sincerely,


Thomas J. Torrence

cc: file

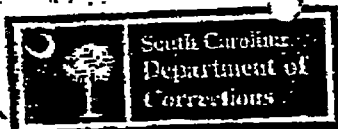
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ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 153

0652



JIM HODGES, Governor
WILLIAM D. CATOE, Director

July 27, 2000

Mr. Ted Gladden
Labor Market Information
Employment Security Commission
Post Office Box 995
Columbia, South Carolina 29202

Dear Ted:

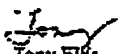
Pursuant to the Federal Justice Department guidelines for PIE programs we administer, I would appreciate your review of the wage rates for the following:

Institution	Occupation	Wage
1. Evans Correctional Bennettsville, SC	Elect/Elect Assemblies (93114)	\$5.25
2. Ridgeland Correctional Ridgeland, SC	Woodworking Mach Oper (92314)	\$5.25
3. Tyger River Correctional Enoree, SC	Woodworking Mach Oper (92314)	\$5.50
4. Tyger River Correctional Enoree, SC	Woodworking Mach Oper (92314)	\$5.15
5. Leath Correctional Greenwood, SC	Sewing Machine Operator Garment (92717)	\$5.15

Additionally, we are required to determine that no currently employed workers in the local area are being displaced due to these programs.

Please advise us that these rates are within the range of your latest survey and that no workers in the local area are being displaced.

Sincerely,


Tony Ellis
Division Director



TE/any

cc: Bob Sanders

P.O. Box 21147 • 4444 Broad River Road • Columbia, SC 29221-1147 • Telephone (803) 624-5555

http://www.state.sc.us/SCDC E-mail: correctionsinfo@state.sc.us

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 154

0653



South Carolina



Employment Security Commission



COMMISSION
Carol's C. Walls, Chairman
(803) 737-2655
McEnley Worthington, Jr., Vice-Chairman
(803) 737-2656
J. William McLeod, Commissioner
(803) 737-2652

631 Hampton Street
Columbia, South Carolina 29201

EXECUTIVE DIRECTOR
C. Michael Munge
(803) 737-2617

August 4, 2000

Mr. Tony Ellis, Division Director
S.C. Department of Corrections
P.O. Box 21787
Columbia, S.C. 29221-1787

Dear Mr. Ellis:

In response to your letter of July 27, 2000, below are hourly wage statistics for the occupations you requested. These data are based on the 1998-1999 Occupational Employment Statistics (OES) Wage Survey that we conduct under the auspices of the U.S. Bureau of Labor Statistics.

Code	Occupation	Low	Mean	High
93114	Elect/Elect Assemblers	\$8.36	\$9.92	\$11.49
92314	Woodworking Machine Oper.	\$6.05	\$7.48	\$ 8.29
92717	Sewing Machine Oper.	\$5.80	\$6.96	\$ 8.10

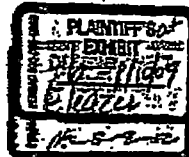
If you have any questions concerning these data, contact Sam McClary at (803) 737-2660.

Sincerely,

Ted Gladden

Kenneth T. Gladden (Ted)
Director, Labor Market Information

KTG/blw
ESC-7



ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page #155

0654

Team Assemblers

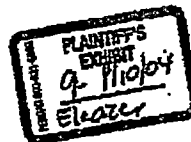
51-2092 Team Assemblers: Work as part of a team having responsibility for an entire product component or a product. Team assemblers can perform all tasks conducted by the team in the assembly process and rotate through all or most of them rather than being assigned to a specific task on a permanent basis. May participate in making management decisions affecting the work. Team leaders who work as part of the team should be included. Exclude assemblers who who continuously perform the same task.

United States	1,308,430	\$6.18	\$1.90	\$5.53	\$5.91	\$6.28	\$6.67	\$7.05	10.32
South Carolina	28,670	\$5.15	\$2.60	\$4.67	\$6.18	\$6.71	\$7.23	\$7.75	10.82
Pas Dec WIA	3770	\$4.15	\$2.02	\$5.55	\$5.98	\$6.36	\$6.77	\$7.17	10.18

Technical Notes:

Wage data released by the South Carolina Employment Security Commission includes wage for the non-institutional population only.

The Upper level wage for each occupation represents the 10% percentile wage resulting from the 2000 Occupational Employment Statistics Wage survey. This means that 10% of the workers in the occupation earn less than the published wage for that occupation.



1437

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 158

0655

APPENDIX

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 157

0656

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Thomas J. Torrence and William Ray
Ward, on behalf of themselves and all
Others similarly situated; Kimberly
Dutose, on behalf of herself and all
Others similarly situated,

Plaintiffs,

-vs.-

South Carolina Department of Corrections
And The State of South Carolina,
Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 01-CP-40-3409

**DEFENDANT SCDC'S
FIRST RESPONSE TO THE
PLAINTIFFS' FIRST REQUEST
TO ADMIT**

TO: THE PLAINTIFFS AND THEIR ATTORNEYS, A. CAMDEN LEWIS, ESQUIRE,
MARY G. LEWIS, ESQUIRE, PETER D. PROTOPAPAS, ESQUIRE, AND HELEN
McFADDEN, ESQUIRE:

The Defendant, the South Carolina Department of Corrections, by and through its
undersigned counsel, pursuant to Rule 36, SCRCP, herein respond to the Plaintiffs' January 20,
2003 First Request To Admit to Defendants in the following manner:

*Request No. 1: Please admit that South Carolina Code Annotated § 24-3-430(d) applies
to the Prison Industries Program.*

RESPONSE: Admit

*Request No. 2: Please admit that South Carolina Code Annotated § 24-3-430 (d) applies
to the Plaintiffs' employment.*

**RESPONSE: Admit that the referenced code section applies to Plaintiffs Torrence and
Ward.**

Page 1 of 2

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 158

0657

Request No. 3: Please admit that Plaintiffs were not paid the prevailing wage for training hours.

RESPONSE: Deny Plaintiffs must be paid the "prevailing" wage for training hours.

VINTON D. LIDE & ASSOCIATES, LLC


Sheally Venus Poe
5179 Sunset Boulevard
Post Office Box 2189
Lexington, South Carolina 29072
(803) 808-1799
facsimile (803) 808-1887
venuspoe@lidelaw.com

Lexington, South Carolina
This 27 day of June, 2003
my

Page 2 of 2

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 159

0658

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ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 160

0659

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

AUG 15 2007

TO: NAME: Grievance Coordinators - BRCT/Evans CT	TITLE:	DATE: May 21, 2007
INMATES NAME: Thomas J. Torrence	SCDC #: 094691	
INSTITUTION: BRCT	LIVING QUARTERS: MU-266	
Please find attached a Step 1 Grievance and Addendum in regards to my Private Sector PI wages for my employment period at Evans C.I., from June 1997 to November 2004. I have a pending case in court on this matter, <u>Torrence, et al. v. SCDOC</u>, Op. No. 26328 (S.C. Sup.Ct., filed May 7, 2007). I received a copy of this opinion on the above date. Although I am informed by counsel that the DOC will file a Petition for Rehearing within 30 days, the Supreme Court held I should file an agency grievance on this matter. This grievance is filed within 15 days of receipt of the Supreme Court's decision on this matter and is equitably tolled by the pendency of the civil action. I believe that where this matter emanates from Evans, that the Grievance must be filed and maintained at Evans. On that belief, and having no time to verify the policy on that question, and in an abundance of caution, I am mailing a copy of the attached Grievance and Addendum via first-class mail to the Evans Grievance Office. Thank you for your assistance in this matter. <i>Thomas J. Torrence</i>		
DISPOSITION BY STAFF MEMBER:		
DATE:	SIGNATURE:	

SCDC FORM 19 (REVISED 2004)

ROA

Torrence v. S.C. Dept of Cor.
Docket # 12-ALJ-04-00143-AP

Page # 161

0660

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ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 162

0661

LAW OFFICES
LEWIS & BABCOCK, L.L.P.
POST OFFICE BOX 11288
COLUMBIA, SOUTH CAROLINA 29211

TELEPHONE: 803 / 771-8000
FAX: 803 / 733-3534
INTERNET: FIRM@LEWISBABCOCK.COM

A. CAMDEN LEWIS
KEITH M. BABCOCK
MARY G. LEWIS
ARIAN L. KING
PETER D. PROTOFAPAS
BRADY L. THOMAS
W. JONATHAN HARLING

STREET ADDRESS:
1511 HAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29201

May 17, 2007

Mr. Thomas J. Torrence
#94651 MU A266
Broad River Correctional Institute
4460 Broad River Road
Columbia, South Carolina 29210-4012

Mr. Henry Hubbard, Jr.
#192701
Tyger River CI, Unit 8-113
200 Prison Rd
Enoree, South Carolina 29335

Mr. William Ray Ward #091566
Q-4 B-308 Parry Correctional Institute
430 Oaklawn Drive
Pelzer, South Carolina 29669

Ms. Susan Smith
1738 Bridgewater Drive
Conway, South Carolina 29526

RE: *Thomas Torrence, et al. v. SCDOC and The State of South Carolina*
Civil Action No. 01-CP-40-3409
Our File No. 01-606

Dear All:

Enclosed please find the Supreme Court Order affirming dismissal of our lawsuit in result. However, after you have had the opportunity to review the document, you will notice that there is good news in it. At footnote four of the Order, the Supreme Court recognized that the Department of Corrections can not remove any of the money remitted by the private industry. Footnote four clearly supports our interpretation of the law and give us an opportunity now to go before the grievance system with the law established. It is my understanding that the Department of Corrections is so distraught with the Order, that they are proceeding to file a Motion to Reconsider. We are preparing the papers for the grievance process and will circulate for your review once the Supreme Court Order has become final.

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-AJJ-04-00143-AP

Page # 163

0662

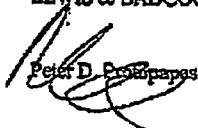
Page 2
May 17, 2007

Once again, I am disappointed that the result was affirmed, however, I am optimistic after considering the reasoning of the Court.

With best regard, I remain

Sincerely,

LEWIS & BABCOCK LLP.


Peter D. Protopapas

PDP:mas

Enclosure

cc: Helen T. McFadden, Esquire

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 164

0663

APPENDIX

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 165

0664

LAW OFFICES
LEWIS & BABCOCK, L.L.P.
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: 803 / 774-3000
FAX: 803 / 733-3534
INTERNET: FIRM@LEWISBABCOCK.COM

A. CAMDEN LEWIS
KEITH M. BABCOCK
MARY C. F. FINE
ABRAHAM E. KING
PETER D. PROTOPAPAS
BRADY N. THOMAS
W. JONATHAN HARRING

STREET ADDRESS:
1614 HANFORD STREET
COLUMBIA, SOUTH CAROLINA 29201

August 27, 2007

Mr. Thomas J. Torrence
#94651 MU A266
Broad River Correctional Institute
4460 Broad River Road
Columbia, South Carolina 29210-4012

Mr. Henry Hubbard, Jr.
#192701
Tyger River CI, Unit 8-113
200 Prison Rd
Enoree, South Carolina, 29335

RE: *Thomas Torrence, et al. v. SCDOC and The State of South Carolina*
Civil Action No. 01-CP-40-3409
Our File No. 01-006

Gentlemen:

I am in receipt of Henry's letter of August 7, 2007. I believe that our lawsuit in Circuit Court will likely not provide the prisoner subclass the relief that you want. Proceeding through the grievance process to address your claims and ultimately the ALJ appeal process is the legal requirement. The Supreme Court clearly stated that something had to be done to allow for due process rights for the prisoners. The grievance procedure is the due process right that is available to you.

As far as how to proceed, you must establish your entitlement to the gross wage paid to the SCDOC. I will advise you of any changes in the Circuit Court action.

With best regards, I remain

Sincerely,

LEWIS & BABCOCK L.L.P.

Peter D. Protopapas

PDP:mas

cc: Helen T. McFadden, Esquire

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 165

0665

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Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 167

0666

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: <u>Financial Accounting Branch</u>	TITLE: <u>Feb. 8, 2011</u>
INMATE'S NAME: <u>Thomas J. Torrence</u>	SCDC#: <u>094651</u>
INSTITUTION: <u>Lieber</u>	LIVING QUARTERS: <u>SA-43</u>

Sir or Madam:

I have two specific requests. Please forward the following to me as soon as possible:

- 1) A 1099-INT for year 2010 interest paid for my tax purposes; [based on EH paper and Long Term]
- 2) A current balance and previous six month transactions of my Long-Term Savings Acct.

Thank you for your assistance.

Thomas J. Torrence

DISPOSITION BY STAFF MEMBER:

The reason you did not get a 1099 is because your account did not receive more than \$10.00 in interest. Your account received .26 in interest for 2010. Your Account balance is \$5,997.44. We do not give print outs on inmates account.

DATE: <u>2-11-11</u>	SIGNATURE: <u>Evie Sink</u>

SCDC FORM 19-11 (REV. FEB 2001)

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 168

0667

Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. Box 205
Ridgville, SC 29472

March 29, 2011

Bruce Burnett, Chief
Financial Accounting Branch
S.C. Department of Corrections
PO Box 21787
Columbia, SC 2911-1787

Re: Inmate to Staff Request

Dear Mr. Burnett:

On February 8, 2011, I sent the attached Inmate Request to your Department for information on account interest, specifically on my Long-Term Savings Account.

Ms. Link's 2/11/11 response was less than adequate, left me questioning what interest is earned and paid, and whether, by law, I am entitled to be informed, by report, of my monies that your Branch manages for me. Therefore, I am making the following specific requests of your office:

On my Long-Term Savings Account:

- 1) The rate of interest earned for years 2005, 2006, 2007, 2008, 2009 and 2010;
- 2) The interest paid for years 2005, 2006, 2007, 2008, 2009 and 2010;
- 3) What specific type or category of financial account is the Long-Term Savings Account?
- 4) What financial institution or broker manages the investment of the Long-Term Savings Account?
- 5) What is the interest paid on this type of account by comparable institutions or brokerage firms?
- 6) Is your Department not required to report interest paid to my Long-Term Savings Account to the Internal

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 169

0668

Revenue Service? In addition, based upon that report, should I be issued a 1099-INT?

Your personal attention to this matter will be greatly appreciated and settle many questions. Thanking you in advance.

Sincerely,

Thomas J. Torrence

Cc: file

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 170

0669

APPENDIX

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 171

0670

Summaries of Adkins and Wicker
Opinions issued by SC Supreme Court on August 23, 2004

Adkins, et al., v. SCDC

- Cited as 360 S.C. 413, 602 S.E.2d 51 (2004)
- Adkins and the other inmates participated in PI program at Tyger River CI
- Covers SC Code Sections 24-3-40, 24-3-410, and 24-3-430
- Inmates may not sue SCDC in circuit court for any alleged failure of SCDC to comply with these statutes
- Inmates may not sue SCDC in circuit court for back wages or higher wages under SC Tort Claims Act
- Inmates may not sue SCDC in circuit court for back wages or higher wages under SC Payment of Wages Act
- Inmates may, under Wicker v. SCDC, file Step 1 grievances to protest SCDC's alleged failure to pay wages in accordance with Sections 24-3-40, 24-3-410, and 24-3-430

Wicker v. SCDC

- Cited as 360 S.C. 421, 602 S.E.2d 58 (2004)
- Wicker participated in PI program at Evans CI
- SCDC paid Wicker \$0.25/hour for the 1st 180 hours of his PI labor and \$0.75/hour for the 2nd 180 hours of his PI labor. After he finished the 1st 320 hours of labor, SCDC then paid Wicker \$5.25/hour
- Wicker filed a grievance stating that SCDC violated Section 24-3-430(D) by not paying him \$5.25/hour for the 1st 320 hours of his PI labor
- Section 24-3-430(D) reads as follows: No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector
- SCDC should have paid Wicker \$5.25/hour for the 1st 320 hours of his PI labor
- SCDC must pay Wicker back wages to make up the difference between these wages
- Inmates may appeal to the South Carolina Administrative Law Court SCDC's denial of Step 2 appeals alleging SCDC's failure to pay the "prevailing wage" under Section 24-3-430(D).

POSTED

10-20-07

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 172

0671

NOTICE

TO ALL INMATES WHO CURRENTLY PARTICIPATE OR AT ONE TIME PARTICIPATED IN THE SCDC/WILLIAMS TECHNOLOGIES, INC., PRISON INDUSTRIES PROJECT AT LIEBER CI

- A circuit court judge recently dismissed with prejudice a class action lawsuit filed on behalf of all inmates who currently participate or at one time participated in the SCDC/Williams Technologies, Inc., prison industries project located at Lieber CI.
- This lawsuit was captioned as Darryl Williams, et al., v. SCDC and Williams Technologies, Inc., and Attorney Douglas H. Westbrook represented the inmate in this class action lawsuit.
- The circuit court also dismissed with prejudice the class of inmate plaintiffs it certified in 2004.
- In dismissing both the class action lawsuit and the class of plaintiffs, the circuit court relied on 2 recent SC Supreme Court cases: Adkins, et al., v. SCDC and Wicker v. SCDC. Important points about these cases appear on the reverse side of this notice.
- Inmates who participate or participated in this project may, if they have not already done so, file Step 1 grievances and Step 2 appeals against SCDC by placing them in the grievance box to be picked up by MART BEATTIE, who has been designated by the Warden at this institution to receive such items, for any alleged violation of the prevailing wage statute, Section 24-3-430(D).
- These Step 1s and Step 2s must conform to the procedures, substances and deadlines established in SCDC's Inmate Grievance System Policy Number GA-01.12 (revised July 1, 2008).
- Inmates have 45 days from the date this notice is posted to file these Step 1 grievances. SCDC shall not accept any Step 1 grievance filed after this 45 day period.
- Inmates may appeal any denial of a Step 2 appeal to the SC Administrative Law Court.
- The information and deadline appearing on this notice apply only to inmates who participate or participated in the SCDC/Williams Technologies PI project located at Lieber.

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10-26-08

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-AJ-04-00143-AP

Page # 173

0672

6. Waiver of Subrogation: SCDC shall not be liable for any damages to the contractor's equipment, supplies and material located in the prison industries building caused by casualty occurrence, it being understood that the Contractor shall look to its insurer for reimbursement and shall obtain from its insurer waiver of subrogation rights against SCDC.

7. Loss of Property: All personal property, inventory, equipment, improvements and/or fixtures or other property of any kind or description whatsoever, installed or brought into the area by the Contractor or the Contractor's employees or agents, shall be at the Contractor's sole risk and neither the State of South Carolina, SCDC or any employee or agent thereof, shall be liable for any damage done to or loss of such real or personal property or loss suffered by the business or occupation of the Contractor arising from any acts or occurrences whatsoever except where the damage or loss is due to the malicious destruction of equipment caused by inmates (as reasonably determined by the SCDC). If SCDC is held liable, the loss or damage shall be limited to replacement cost or to the repair cost of damaged or destroyed property whichever is less. Consequential or punitive damages shall not be recoverable.

8. Payment for Occupancy: The Contractor shall pay a fixed monthly amount of One (\$1.00) Dollar for occupancy of the premises herein above described.

9. Condition of Property: Upon termination of this agreement, the Contractor will surrender the buildings, equipment and fixtures belonging to SCDC in the same condition it received it, normal wear and tear and casualty excepted.

10. Hazardous Waste: No hazardous waste shall be generated in the Prison Industries building by the Contractor. Contractor will be responsible for any other waste generated at anytime during this agreement.

2.2 The Duties of SCDC:

1. Premises to be Occupied: SCDC shall provide approximately 25,000 square feet in the industry building at ECI. The occupancy of this area should be consistent with the terms of this agreement regarding work authorized and hours. SCDC will maintain its facility

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and fixtures in good condition throughout term of contract.

2. Utilities: SCDC shall provide water, electricity, natural or propane gas, and trash removal services and pass through actual cost to CONTRACTOR for its proportional use of the building or allow CONTRACTOR to install at its own cost separate meters for calculating payment.

3. Insurance: SCDC will maintain insurance coverage on the building and its property therein as required by the laws of the State of South Carolina

Termination Remedy: If this contract is terminated by SCDC pursuant to Section 4.7 Termination subsections 7b, c, f, g, h, i or k, the Contractor shall be liable to SCDC for cost of inmate wages, civilian supervision and utilities incurred up to termination.

ARTICLE 3 Conditions Related to Employment of Inmates:

3.0 General:

SCDC shall provide referrals and the Contractor shall employ a minimum of 60 inmates full time (i.e., 7.5 hour work day). Provided however, if during the term of this agreement inmate employment falls below 60 inmates for more than thirty (30) consecutive days, SCDC can terminate this agreement.

3.1 Duties of Contractor:

The Contractor shall provide to SCDC job descriptions and personnel procedures. From the pool of pre-screened potential inmate employees, the Contractor shall then select those inmates workers that they wish to hire; provided that at all times herein, the contractor shall adhere to SCDC's nondiscrimination provisions as set forth in the general terms and conditions of this agreement. The Contractor shall have the same authority to hire, fire, promote or suspend as it would in the normal course of business practices except as set forth in the nondiscrimination provisions referenced herein above and within limits established by SCDC.

1. Training of Inmate Employees: The Contractor will assume all cost of its trainers and technical staff. During the course of this agreement, should there be a product change made by the Contractor, the expense of any

CCCS:

additional training required will be borne solely by the Contractor.

2. Scope of Work: Prison Industry inmates under the direct and total supervision of SCDC will assemble wire harnesses according to engineering design and manufacturing specifications developed and provided by the Contractor. It will be the sole responsibility of the Contractor to provide a quality control manual for these operations and to ensure compliance with the terms provided therein. The requirements contained within the quality control manual must be submitted in writing to Prison Industries for review for institutional safety and security prior to beginning of operations.

3. Raw Materials: The Contractor shall provide all raw materials and component parts for assembly. All raw materials, personal property, inventory, machinery, equipment and improvements and/or fixtures or other property of any kind or description whatsoever installed or brought into the prison buildings by the Contractor or its employees or agents, shall be at the sole risk of Contractor and neither the State of South Carolina or SCDC or its employees and agents thereof, shall be liable for any damage or loss suffered except as provided in Section 2.1.7 contained herein above. The Contractor will provide management and production supervision for all phases of the assembly work. SCDC will allow Contractor's trucks, common carrier and others transporting raw materials, equipment and finished products to and from SCI reasonable access during normal business hours subject to the Department's security requirements in Section 3.1.4.

4. Security: The Contractor understands and specifically agrees that its deliveries, shipments and employees are subject to search before entering or leaving the premises of SCDC.

5. Compliance With Rules and Regulations: The Contractor agrees that it and its employees must comply with all policies and procedures of SCDC and all applicable federal, state, and local laws, ordinances, regulations and accreditation standards.

6. Payment for Inmate Services: SCDC will invoice the Contractor on a bimonthly basis for inmate labor. The Contractor will pay all sums due and owing within fifteen days of receipt of invoice. Payments shall be made to

00082

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 176

0675

S.C. Department of Corrections, Division of Industries account.

7. Specifications: The Contractor will assume the responsibility to provide specifications for any modification to the SCI Prison Industries building along with production equipment to be acquired.

8. Training of Contractor's Staff: The Contractor shall make its civilian staff available for training in security concerns by SCDC's training staff.

9. Supervisory Staff: The Contractor shall employ sufficient civilian supervisors to ensure that there is at least one (1) civilian supervisor on each production shift. Contractor's staff shall abide by all SCDC Policies and Procedures. Contractor understands and agrees that SCDC shall have the discretion to remove any agent or employee from the institution in the event of a violation of any of SCDC's policies and procedures with regard to the institution. Upon agreement of both parties the civilian employees of SCDC may be used as supervisory staff and then cost invoiced to the Contractor according to an agreed upon formula.

10. Worker Displacement - Contractor agrees that its non-inmate employees, as well as, other non-inmate workers who perform work of a similar nature in the same locality will not be displaced by the agreement.

3.2 Duties of SCDC:

1. Inmate Laborers: SCDC will provide a stable and available work force of inmates.

2. Screening of Potential Inmate Laborers: SCDC will pre-screen inmates for interview by the Contractor according to the job descriptions submitted.

3. Holidays: The inmates employed in the project will observe holidays as described in Appendix B attached hereto and incorporated herein. If the contractor works on a holiday, the inmate worker will have the option to either work or observe the holiday.

4. Inmate Workers Security: SCDC shall be responsible for the security of the inmate labor force. However, any overtime hours required by the contractor which results in security staff overtime will require that the cost be

00083

ROA

Tonence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 177

0676

charged to the contractor.

5. Training of Contractor's Staff: SCDC shall train the Contractor's civilian staff in security matters.

3.3 Mutual Duties of the Parties:

1. Hourly Rate: Contractor and SCDC agree to an hourly rate determined as follows:

Prevailing Wage (See Appendix D)	\$5.25
+	
Prorata Social Security	
Withholding Payment	.40
+	
Prorata Workers' Compensation Premium	.20
+	
SCDC Surplus Fund Amount	1.32
Hourly Rate charged to Contract	\$7.17

At no time during this agreement will inmates be paid less than the prevailing wage as set forth in Appendix D. The prevailing wage rate for inmate labor is to be established annually by the S. C. Employment Security Commission. Upon receipt of the annual wage rate, SCDC will notify the Contractor in writing and adjust its charge accordingly. In the event the prevailing wage, prorata social security withholding payments, or prorata Workers' Compensation premium increase during the term of this agreement, Contractor agrees to increase the prevailing inmate wage on a dollar for dollar basis, immediately upon the effective date of such increase.

SCDC and the Contractor will negotiate the "SCDC Surplus Fund Amount" annually.

[Contractor agrees to list in Appendix C each production job under this Agreement with the base wage to be paid hereunder.]

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

Pursuant to Federal guidelines, inmates working in excess of forty (40) hours per week shall be paid overtime at one and a half times the rate of the prevailing wage.

CCCS:

The SCDC Surplus Fund amount will not be charged one and a half times on overtime hours.

2. Federal Program Compliance: The Contractor and SCDC agree to follow the requirements the United States Department of Justice's "Private Sector/Prison Industries Enhancements Certificate" program as provided by Sections 609 B(0) and 609 K of the Justice Assistance Act of 1984, Pub. Law 98-173, Title II, Chapter VI, Section 609 B(0) amends Section 819 of the Omnibus Crime Control and Safe Streets Act of 1988, 42 U.S.C. 3701, as amended and Section 609 K amends 18 U.S.C. 178 * as outlined in Appendix D.

3. Compliance with Convict Labor Laws: The Contractor and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law change preventing interstate shipments of goods produced under this agreement, Contract shall terminate without penalty under this contract.

ARTICLE 4 General Terms and Conditions:

4.1 General:

The Contractor, his/her employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. The contractor will not hold himself/herself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

1. Period of Performance: The term of this Agreement shall be for five (5) years commencing on the date of the execution of this Agreement.

2. Hold Harmless: The Contractor agrees to protect, defend and hold harmless the State of South Carolina, SCDC or its employees or agents thereof, from any liability or claim for damage, including injury to the Contractor's employees or agents,

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ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 179

0678

except where such liability claim is due to negligence of the State of South Carolina, SCDC or employees or agents thereof, arising out of the performance of this contract. The contractor further agrees to protect, defend and hold harmless the State of South Carolina, SCDC or any employees or agents thereof, for any product liability claims relating to the products produced or services rendered under this contract. The Contractor expressly understands that SCDC or its employees or agents thereof, is not a guarantor of the work performed by the inmate workers referred by SCDC. Inmates shall not be considered employees of Contractor.

3. Notices: All notices regarding the terms of this contract, including terminations, amendments and disputes shall be sent by certified mail to SCDC as follows:

R. Dodge Fraderick, Interim Director
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21797
Columbia, South Carolina 29221-1797

to the Contractor as follows:

Philip Pitman
Vice President Operations
Insilco Technologies, ITG Global Div.
2801 Slater Road, Suite 120
Morrisville, N.C. 27560-3437

4. Non-Discrimination in Employment: The Contractor shall not discriminate against any employee inmate worker or applicant for employment because of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory mental or physical handicap.

5. Noncompliance with Nondiscrimination Requirements: In the event the Contractor fails to comply with the discrimination laws, the contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts from SCDC. The Contractor shall, however, be given a reasonable time in which to cure the noncompliance.

6. Records, Documents and Reports: The Contractor shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect cost of any nature expended in the performance of this agreement. These records shall be subject at all reasonable times for inspection, review or audit by SCDC personnel or other personnel duly authorized by SCDC, the office of

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ROA

Torrence v. S.C. Dep't of Corr.
Docket# 12-ALJ04-00143-AP

Page # 160

0679

the State Auditor and Federal Officials so authorized by law, rules regulations or contract such audit shall be at the expense of the auditing agency. The Contractor shall retain all books, records, documents and other materials relevant to this agreement for ten (10) years and the authorities described herein above shall have full access to and the right to examine any of said materials during the extended period.

Only the Director of SCDC or his delegate, designee by writing shall have the expressed, implied, or apparent authority to alter, modify or waive any clause or condition in this contract. Furthermore, any alterations, amendment or modification or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Director.

7. Termination: It is understood and agreed that this Agreement shall terminate:

- a. Upon the written, mutual, agreement of the parties;
- b. Upon the material breach or default of any provision of this Agreement by either party, provided thirty (30) days written notice of the breach is given to the breaching party by the non-breaching party and the breaching party fails to cure within the thirty (30) days;
- c. If Contractor fails to reimburse the State for a minimum number of inmates for a period of thirty (30) consecutive days subject of Article 3;
- d. If Section 24-3-310 of the Code of Laws of the State of South Carolina, 1976, as amended, is materially changed, altered, amended, or repealed so as to abrogate this legislation charged with establishing business relationships with private enterprise;
- e. If federal, state, or local laws change to prevent the shipment of goods produced under this Agreement;
- f. If Contractor becomes bankrupt and such is not cured within sixty (60) days, insolvent, or makes an assignment for the benefit of creditors, or becomes subject to the administration of its assets in any kind of voluntary or involuntary creditors proceedings;
- g. If Contractor performs any intentional act which damages the reputation or property of SCDC;
- h. If Contractor loses its corporate charter in its state of incorporation, or loses the authority to transact business in the State of South Carolina pursuant to mandate by the Secretary of State of South Carolina, or if Contractor's corporation is dissolved voluntarily or involuntarily;
- i. Failure of Contractor to pay promptly any inmate wages due hereunder for a period of fifteen (15) days after

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ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 161

0680

- written notice from SCDC to contractor of such default;
- j. At the end of any fiscal year (June 30) after the commencement date of this Contract when sufficient appropriations, revenues, income, grants, or other funding from whatever source are not available to SCDC to carry on the purpose of program of SCDC, this sufficiency of funds to be solely determined by the State Budget and Control Board; and
 - k. Immediately in the event that the safety or security of the institution, its personnel or inmates is jeopardized.
- Upon termination of the contract the Contractor shall have ninety (90) days to vacate the facilities of SCDC.

8. Force Majeure: Neither party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or otherwise for an interruption of service or employment deemed resulting from civil or military authority, from acts of God, riots, war, or any similar or dissimilar cause beyond reasonable control of either part.

9. Governing Law: This contract shall be governed by the laws of the State of South Carolina and venue shall be located in the County of Richland, State of South Carolina.

10. Severability: If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provision of this contract which can be given effect without the invalid provision, and to this end the provisions of this agreement are to be declared to be severable.

11. All Writings Contained Herein: This agreement contain all the terms and conditions agreed upon by the parties, no other understandings oral or other wise, regarding the subject matter of this agreement shall be deemed binding.

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ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 182

0681

IN WITNESS WHEREOF the parties have executed this contract
on the first written herein above.

Witness

Judy J. Dease
Miss Robertson

Witness

Juan A. Carr
B. Booker

R. Dodge Frederick
R. Dodge Frederick,
Interim Director
APPROVED AS TO FORM
South Carolina Department of Corrections
DATE: 1/24/93

Philip Pitman
Philip Pitman
Vice President Operations
Insilco Technologies,
ITG Global Div.

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ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 183

0682

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, #094651,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-0143-AP

Grievance No.: ECI 0980-10

**ORDER GRANTING RESPONDENT'S
MOTION TO EXTEND TIME TO FILE
ITS ABBREVIATED RECORD AND
ITS BRIEF UNTIL JULY 9, 2012**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Thomas J. Torrence (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or Respondent). Appellant filed a grievance with the Department objecting to the Department's decision concerning prevailing wages. On March 7, 2012, the Appellant filed this appeal with the Court.

On December 15, 2014, counsel for Respondent filed a Motion for an Extension of Time to File the Information Identified in the Order Issued by The Court on December 3, 2014. The Respondent requested that it have until December 31, 2014 to file a second addendum to the record.

This Court will grant Respondent until December 31, 2014 to file a second addendum to the record.

IT IS THEREFORE ORDERED that Respondent shall file a second addendum to the record no later than December 31, 2014.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

December 19, 2014
Columbia, South Carolina

LAW OFFICES

DEC 22 2014

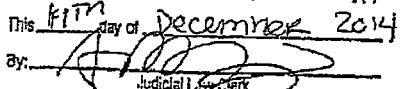
MALONE, THOMPSON
SUMMERS & OTT, LLC

FILED

DEC 19 2014

SC ADMIN. LAW COURT

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 11th day of December 2014.
By: 
Judicial Law Clerk

0683

JAN - 9 2015

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

GENERAL COUNSEL
Thomas L. Tor

Thomas J. Torrence, #094651,

Appellant,

VS.

South Carolina Department of Corrections,

Respondent

Docket No. 12-ALJ-04-0143-AP
Grievance No.: ECI 0980-10

**ORDER GRANTING RESPONDENT'S
MOTION TO EXTEND TIME TO FILE
ITS SECONDADDENDUM TO THE
RECORD UNTIL FEBRUARY 9, 2015**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Thomas J. Torrence (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or Respondent). Appellant filed a grievance with the Department objecting to the Department's decision concerning prevailing wages. On March 7, 2012, the Appellant filed this appeal with the Court.

On December 31, 2014, counsel for Respondent filed a Motion for an Extension of Time to File the Information Identified in the Order Issued by the Court on December 3, 2014. The Respondent requested that it have until January 12, 2015 to file a second addendum to the record. To date, the Court has received no opposition from Appellant.

This Court will grant Respondent until February 9, 2015 to file a second addendum to the record.

IT IS THEREFORE ORDERED that Respondent shall file a second addendum to the record no later than February 8, 2015.

AND IT IS SO ORDERED.

Deborah Brooks Durden
Deborah Brooks Durden, Judge
S.C. Administrative Law Court

January 7, 2015
Columbia, South Carolina

This is to certify that we have received this date served this order in the above captioned action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 7th day of February 2015
by: [Signature]
Notary Law Clerk

11-11-68

JAN 07 2015

SC ADMIN. LAW COURT

0684

LAW OFFICES

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

JAN 15 2015

MALONE, THOMPSON
SUMMERS & OTT, LLC

Thomas J. Torrence, # 094651,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECI 0980-10
Appellant,	)	
	)	Honorable Deborah Brooks Durden
vs.	)	
	)	APPELLANT'S MOTION FOR
South Carolina Department of Corrections,	)	AN EXTENSION OF TIME TO FILE
	)	ORIGINAL BRIEF and TO ADJUST
Respondent.	)	THE BRIEFING SCHEDULE
	)	

This matter is before the Administrative Law Court pursuant to the Appellant's Notice of Appeal of a final agency decision of the South Carolina Department of Corrections (Department). Appellant's appeal concerns the Department's failure to pay the prevailing wage for Appellant's work while participating in the private sector prison industry program; the Department's removal of a portion of Appellant's wages without statutory authority; Appellant's access to his long term savings account; and the interest paid on the monies alleged as improperly removed or denied access thereto. On September 2, 2014, this Honorable Court ordered a briefing schedule in which Appellant would file a brief addressing all remaining issues no later than January 30, 2015.

By Order of this Court, dated December 3, 2014, this Court ordered the Department to file, as part of the Record on Appeal Addendum ("ROAA"), information in regards to the "Long Term Savings Account" ("LTSA") for escrowed wages from the Appellant's prison industries pay pursuant to S.C. Code Ann. § 24-3-40(A)(5) by December 15, 2014.

On December 14, 2014, counsel for the Department requested an extension of time until December 31, 2014 in which to file the second addendum to the ROAA. This motion was

unchallenged by Appellant. This Court issued a December 19, 2014 Order granting Respondents an extension of time until December 31, 2014.

On December 31, 2014, counsel for Respondent requested a second extension of time to allow until January 12, 2015 to file a second addendum to the ROAA containing the LTSA information. This motion was unchallenged by Appellant. In an order dated January 7, 2015, this Court granted Respondents until February 8, 2015 to file the second addendum to the record.

Appellant submits that pursuant to this Court's September 2, 2014 Order, Appellant's Original Brief is due on or before January 30, 2015. Considering the extension of time for Respondents to file the second addendum to the record being extended beyond the date for Appellant to file his brief, and the time it will take for Appellant to research the LTSA information once provided by Respondents and draft the brief, the Appellant would request an extension of time, or more appropriately, that this Honorable Court adjust the briefing schedule for the parties accordingly.

WHEREFORE, based on the foregoing, Appellant respectfully moves this Honorable Court to grant an appropriate extension of time and adjust the briefing schedule accordingly.

Respectfully submitted,

January 12, 2015



Thomas J. Torrence
#094651
Lieber Corr. Inst. WD-186
P.O. Box 205
Ridgeville, SC 29472

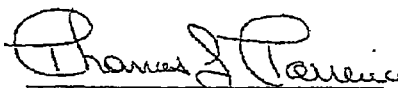
APPELLANT, Pro se

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Thomas J. Torrence, # 094651,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. EC1 0980-10
Appellant,	)	
	)	Honorable Deborah Brooks Durden
vs.	)	
	)	CERTIFICATE OF SERVICE
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	

The undersigned *pro se* Appellant hereby certifies that he has sent a true and correct copy of **APPELLANT'S MOTION FOR EXTENSION OF TIME TO FILE ORIGINAL BRIEF and ADJUST THE BRIEFING SCHEDULE** to counsel for Respondent by placing a copy in the U.S. Mail, first-class postage affixed thereto, this 13th day of January, 2015, addressed as follows:

Lake E. Summers, Esq.
MALONE, THOMPSON, SUMMERS & OTT, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201



Thomas J. Torrence
#094651
Lieber Corr. Inst. WD-186
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, *Pro se*

LAW OFFICES

JAN 15 2015

**MALONE, THOMPSON
SUMMERS & OTT, LLC**

LAW OFFICES

FEB 05 2015

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

MALONE, THOMPSON
SUMMERS & OTT, LLC

Thomas J. Torrence, #094651,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-0143-AP

Grievance No.: ECI 0980-10

**ORDER GRANTING APPELLANT'S
MOTION TO EXTEND TIME
TO FILE ORIGINAL BRIEF AND
ADJUST BRIEFING SCHEDULE**

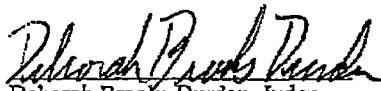
This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Thomas J. Torrence (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or Respondent). Appellant filed a grievance with the Department objecting to the Department's decision concerning prevailing wages. On March 7, 2012, the Appellant filed this appeal with the Court.

On January 13, 2015, the Appellant filed a Motion for an Extension of Time to File Original Brief and to Adjust the Briefing Schedule. This Court did not receive any opposition to the motion.

This Court will grant Appellant until March 30, 2015 to file his original brief and adjust the briefing schedule in this matter.

IT IS THEREFORE ORDERED that Appellant shall file his original brief no later than March 30, 2015. Respondent shall file its brief no later than May 29, 2015. Any reply brief must be filed no later than July 30, 2015.

AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

February 4, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this case served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 4th day of February 2015
25
Judicial Law Clerk

FILED

FEB 04 2015

SC ADMIN. LAW COURT

0688

Thomas J. Torrence, # 94561,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-00143-AP

Grievance No. ECI-0980-10

**INFORMATION TO BE INCLUDED
IN THE RECORD ON APPEAL AND
RESPONSIVE TO THE COURT'S
DECEMBER 3, 2014 ORDER**

SCDC's Petition for Writ of Certiorari

3. The interest rate for the LTSA for the years 2007, 2008, 2009, 2010, 2011, 2012 and 2013;
4. The source and name of the specific entity from which the interest rate is derived for the LTSA;
5. What percentage of the interest earned does the Department take or receive and for what specific purpose;
6. Under what law or state regulation does the Department take that percentage requested in item 5, above;
7. What government entity determines and disperses the interest for [an] LTSA; and
8. [The Department's] agency regulation or the governing state law that requires [the Department] to report [the] Appellant's interest information upon request.

Thus, the Department, by and through its undersigned counsel, respectfully provides the following information responsive to the above-quoted eight (8) enumerated categories or parts from the Court's December 3, 2014 order:

1. **The specific name and specific type of account that maintains the LTSA.**

RESPONSE:

The specific name of the account is "PI Private Sector," and the specific type of account is a commercial checking account.

2. **The financial institution (name of firm or financial institution) in which the account is maintained.**

RESPONSE:

The financial institution at which the account is maintained is Wells Fargo, previously known as Wachovia.

3. **The interest rate for the LTSA for the years 2007, 2008, 2009, 2010, 2011, 2012 and 2013.**

RESPONSE:

Please refer to the materials the Department's undersigned counsel respectfully provides with the instant responses.

The Department's undersigned counsel has compiled the aforementioned materials responsive to this item as an addendum to the Record filed to date in the instant matter.

For the sake of expediency and to ensure compliance with institutional mail room standards, the Department's undersigned counsel is serving the addendum upon the Appellant in an unbound format.

For the sake of consistency, the Department's undersigned counsel is likewise filing the aforementioned materials with the Court in an unbound format.

4. **The source and name of the specific entity from which the interest rate is derived for the LTSA.**

RESPONSE:

The Office of the State Treasurer for South Carolina ["the State Treasurer's Office"] is the entity which derives the interest rate applicable to the LTSA.

5. **What percentage of the interest earned does the Department take or receive and for what specific purpose.**

RESPONSE:

The Department does not take or receive any portion of interest earned by the LTSA.

6. **Under what law or state regulation does the Department take that percentage requested in item 5, above.**

RESPONSE:

In light of the information provided in response to item 5 immediately above, no information is applicable or otherwise responsive to the instant item.

7. **What government entity determines and disperses the interest for [an] LTSA.**

RESPONSE:

The State Treasurer's Office is the governmental entity which determines and disperses the interest associated with the Department's LTSA.

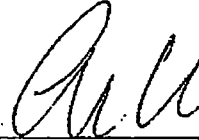
8. **[The Department's] agency regulation or the governing state law that requires [the Department] to report [the] Appellant's interest information upon request.**

RESPONSE:

The Department respectfully submits that the instant item is unclear as to the precise nature of the "interest information" referenced within as well as the individual (or entity) to whom such "interest information" would be reported.

Accordingly, the Department respectfully requests clarification from either the Court or the Appellant concerning the nature of the "interest information" at issue in the instant item.

RESPECTFULLY SUBMITTED,



Lake E. Summers

Malone, Thompson, Summers & Ott LLC

339 Heyward Street, Suite 200

Columbia, South Carolina 29201

Office: (803) 254-3300

Fax: (803) 254-0309

E-mail: summers@mtsollawfirm.com
phillips@mtsollawfirm.com

Outside Counsel for the Department

Columbia, South Carolina
February 9, 2015

Thomas J. Torrence, # 94561,

VS.

Respondent.

Grievance No. ECI-0980-10

0693

PIE INTEREST

FY 07

Account # 9260

Period	Earned	Posting Run Date	Distributed	Difference	JE #
July 06	7,391.26	8/8/2006	7,378.94	12.32	#7011
August 06	8,249.36	9/19/2006	8,234.84	14.52	#7030
September 06	8,356.58	11/1/2006	8,344.18	12.40	#7055
October 06	10,266.03	11/17/2006	10,252.66	13.37	#7063
November 06	9,286.62	12/11/2006	9,272.16	14.46	#7074
December 06	8,942.19	1/16/2007	8,927.22	14.97	#70088
January 07	10,773.27	2/7/2007	10,758.25	15.02	#70112
February 07	9,432.69	03/16/07	9,417.58	15.11	#70145
March 07	9,024.90	4/12/2007	9,011.52	13.38	#070171
April 07	11,861.09	5/14/2007	11,847.57	13.52	#70191
May 07	9,635.18	6/14/2007	9,620.12	15.06	#70220
June 07	8,759.78	7/17/2007	8,745.10	14.68	#80002
Total	111,978.95		111,810.14	168.81	

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 184

0694

PIE INTEREST

FY 08

Account # [REDACTED] 9260

Period	Earned	Posting Run Date	Distributed	Difference	JE #
July 07	6,057.28	8/17/2007	6,043.23	14.05	#80018
August 07	12,578.10	9/18/2007	12,561.99	16.11	#80028
September 07	7,335.39	10/17/2007	7,322.37	13.02	#80051
October 07	9,451.84	11/16/2007	9,438.51	13.33	#80071
November 07	10,258.50	12/14/2007	10,243.13	15.37	#80087
December 07	5,200.70	1/17/2008	5,185.92	14.78	#80104
January 08	10,426.10	2/19/2008	10,410.61	15.49	#80120
February 08	9,076.17	03/17/08	9,061.03	15.14	#80138
March 08	7,202.48	4/17/2008	7,186.53	15.95	#80150
April 08	4,726.46	5/21/2008	4,709.76	16.70	#80163
May 08	2,694.71	6/12/2008	4,711.71	-1,817.00	#80173
June 08	2,388.21	7/14/2008	557.60	1,830.61	#80196
Total	87,595.94		87,432.39	163.55	

Note 1

Note 1 - RIM used the April interest amount of \$4,726.46 in the month of May resulting in an overpositing of interest. An adjustment will be made to the June interest to correct this error. It was determined that to correct this error would be very difficult as some inmates had been released so adj was made to June interest.

95710

PIE INTEREST

FY 09

Account # [REDACTED] 9260

Period	Earned	Posting Run Date	Distributed	Difference	JE #
July 08	1,741.68	8/29/2008	1,727.64	14.04	#9015
August 08	4,526.71	9/29/2008	4,510.04	16.67	#9026
September 08	2,795.95	10/20/2008	2,780.39	15.56	#9035
October 08	3,065.23	11/30/2008	3,050.51	14.72	9060
November 08	1,229.78	12/15/2008	1,215.11	14.67	9061
December 08	1,294.77	1/23/2009	1,280.50	14.27	#9077
January 09	1,254.76	2/17/2009	1,240.99	13.77	#9087
February 09	479.32	03/10/09	464.64	14.68	#90101
March 09	565.94	4/10/2009	551.34	14.60	#90122
April 09	33.89	5/13/2009	0.00	33.89	#90148
May 09	30.78	6/15/2009	0.00	30.78	#90165
June 09	23.98		0.00	23.98	#10007
Total	17,042.79		16,821.16	221.63	

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 186

0696

PIE INTEREST

690009007 N040431010 N040 P101 1011125800 05710

FY10
Account # 9260

Period	Earned	Posting Run Date	Distributed	Difference	JE #
Note #1	917.44				
July 09	40.70				#10017
August 09	17.39				#10038
September 09	20.09	10/22/09	981.75	13.87	#10050
October 09	9.46		0.00	9.46	#10071
November 09	8.56		0.00	8.56	#10077
December 09	10.08		0.00	10.08	#10096
January 10	10.41		0.00	10.41	#10109
February 10	12.47		0.00	12.47	#10123
March 10	15.82		0.00	15.82	#10153
April 10	33.87		0.00	33.87	#10182
May 10	23.12		0.00	23.12	#10182
June 10	7.62		0.00	7.62	#11004
Total	1,127.03		981.75	145.28	

Note #1 - Post undistributed interest as follows:

FY04	99.98
FY05	117.06
FY06	146.41
FY07	168.81
FY08	163.55
FY09	221.63
	<u>917.44</u>

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Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 187

0697

PIE INTEREST

690000007 N040431010 N040 P101 1011125800 05710

FY11

Account # [REDACTED] 9260

Period	Earned	Posting Run Date	Distributed	Difference	JE #
Note #1	145.28				
July 10	35.49	8/19/2010	166.30	14.47	#11015
August 10	17.24		0.00	17.24	#11033
September 10	20.69		0.00	20.69	#11065
October 10	32.57		0.00	32.57	#11086
November 10	21.93		0.00	21.93	#11097
December 10	20.79		0.00	20.79	#11140
January 11	25.48		0.00	25.48	#11138
February 11	5.79		0.00	5.79	#11150
March 11	21.82		0.00	21.82	#11167
April 11	5.16		0.00	5.16	#11211
May 11	6.83		0.00	6.83	#11234
June 11	1.87		0.00	1.87	#11322
Total	360.94		166.30	194.64	

Note #1 Undistributed interest earned from 2010

PIE INTEREST

690000007 N040431010 N040 P101 1011125800 05710

FY12
Account # 3260

Period	Earned	Posting Run Date	Distributed	Difference	JE #
Note #1	194.64				
July 11	2.05	8/19/2011	183.00	13.69	#12073
August 11	4.11		0.00	4.11	#12125
September 11	5.13		0.00	5.13	#12164
October 11	8.06		0.00	8.06	#12174
November 11	6.88		0.00	6.88	#12229
December 11	5.73		0.00	5.73	#12281
January 12	12.16		0.00	12.16	#12309
February 12	14.25		0.00	14.25	#12344
March 12	31.74		0.00	31.74	#12382
April 12	90.65		0.00	90.65	#12438
May 12	47.38		0.00	47.38	#12474
June 12	18.44	6/27/2012	225.24	-206.80	#13000
Total	441.22		408.24	32.98	

Note #1 Undistributed interest earned from 2011

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 189

0699

PIE INTEREST

690000007 N040431010 N040 P101 1011125800 05710

FY13

Account # [REDACTED] 260

Period	Earned	Posting Run Date	Distributed	Difference	JE #
Note #1	32.98				
July 12	26.64	8/21/2012	0.00	26.64	#13044
August 12	31.42	9/14/2012	0.00	31.42	#13057
September 12	43.61	10/23/2012	0.00	43.61	#13106
October 12	52.91	11/7/2012	0.00	52.91	#13126
November 12	47.40	12/20/2012	0.00	47.40	#13205
December 12	37.80	1/17/2013	0.00	37.80	#13234
January 13	41.10	2/11/2013	0.00	41.10	#13278
February 13	6.66	3/29/2013	0.00	6.66	#13375
March 13	No interest			0.00	
April 13	115.06	5/13/2013	0.00	115.06	#13463
May 13	26.45	6/17/2013	0.00	26.45	#13530
June 13	9.16	7/31/2013	0.00	9.16	#14016
				0.00	
Total	471.19		0.00	438.21	

Note #1 Undistributed interest earned from 2012

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 190

0700

PIE INTEREST

690000007 N040431010 N040 P101 1011125800 05710

FY14
Account # 9260

Period	Earned	Posting Run Date	Distributed	Difference	JE #
Note #1	438.21			438.21	
July 13	26.99	9/13/2013	0.00	465.20	14055
August 13	7.26	9/13/2013	0.00	472.46	14056
September 13	7.33	10/10/2013	0.00	479.79	14094
October 13	35.16	12/20/2013	0.00	514.95	
November 13	24.39	12/20/2013	467.22	72.12	
December 13	10.97		0.00	83.09	
January 14	9.02	3/14/2014	0.00	92.11	
February 14	6.47	3/14/2014	0.00	98.58	
March 14	11.08	6/20/2014	0.00	109.66	14460
April 14	11.90	5/22/2014	0.00	121.56	14418
May 14	12.30	6/23/2014	0.00	133.86	
June 14	18.54	7/8/2014	0.00	152.40	15003
Total	619.62		467.22	152.40	

Note #1 Undistributed Interest earned from 2013

THE HONORABLE CURTIS M. LOFTIS, JR.
State Treasurer

MEMORANDUM

TO: Ms. Noel Hebert
SC Department of Corrections

FROM: Pansy Banks
SC State Treasurer's Office

DATE: September 11, 2013

Dear Ms. Hebert:

Wachovia Composite Reservoir Account Numbers listed below earned interest for the month of August and will post in the subsequent month.

9260	\$7.25	PIG
9477	\$1.43	Work Release

If you have any questions, please call me at 734-2662.

Email to Hebert.Noel@doc.sc.gov

7 - 26 +
1 - 43 +
3 - 59 +

(803) 734-2101 Fax (803) 734-2690
www.treasurer.sc.gov

Post Office Box 1178
Columbia, SC 29211

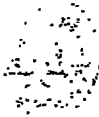
Wade Hampton Building, 1200 Senate Street
Columbia, SC 29201

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 192

0702



THE HONORABLE CURTIS M. LOFTIS, JR.
State Treasurer

MEMORANDUM

TO: Ms. Noel Hebert
SC Department of Corrections

FROM: Pansy Banks
SC State Treasurer's Office

DATE: October 10, 2013

Dear Ms. Hebert:

Wachovia Composite Reservoir Account Numbers listed below earned interest for the month of September and will post in the subsequent month.

[REDACTED] 3260	\$7.33	PIE
[REDACTED] 3477	\$1.46	Work Release

If you have any questions, please call me at 734-2662.

Email to Hebert.Noel@doc.sc.gov

7.53 +
1.46 +
8.99 +

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Columbia, SC 29201

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 193

0703



THE HONORABLE CURTIS M. LOFTIS, JR.
State Treasurer

MEMORANDUM

TO: Ms. Noel Hebert
SC Department of Corrections

FROM: Pansy Banks
SC State Treasurer's Office

DATE: November 8, 2013

Dear Ms. Hebert:

Wachovia Composite Reservoir Account Numbers listed below earned interest for the month of October and will post in the subsequent month.

9260	\$35.16	P/E
9477	\$3.52	WORK RELEASE

If you have any questions, please call me at 734-2662.

Email to Hebert.Noel@doc.sc.gov

(803) 731 2101 Fax (803) 734-2670
www.treasurer.sc.gov

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Columbia, SC 29211

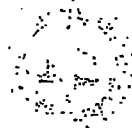
Wade Hampton Building, 1200 Senate Street
Columbia, SC 29201

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-AJ-04-00143-AP

Page # 194

0704



THE HONORABLE CURTIS M. LOFTIS, JR.
State Treasurer

MEMORANDUM

TO: Ms. Noel Hebert
SC Department of Corrections

FROM: Pansy Banks
SC State Treasurer's Office

DATE: December 9, 2013

Dear Ms. Hebert:

Wachovia Composite Reservoir Account Numbers listed below earned interest for the month of November and will post in the subsequent month.

9260	\$24.39 PTE
9477	\$4.93 WORK RELEASE

If you have any questions, please call me at 734-2662.

Email to Hebert.Noel@doc.sc.gov

803-734-2662 Fax 803-734-2690
www.treasurer.sc.gov

Post Office Box 11778
Columbia, SC 29211

Wade Hampton Building, 1200 Senate Street
Columbia, SC 29201

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 195

0705



THE HONORABLE CURTIS M. LOFTIS, JR.,
State Treasurer

MEMORANDUM

TO: Ms. Noel Hebert
SC Department of Corrections

FROM: Pansy Banks
SC State Treasurer's Office

DATE: January 9, 2014

Dear Ms. Hebert:

Wachovia Composite Reservoir Account Numbers listed below earned interest for the month of December and will post in the subsequent month.

9260	\$10.97
9477	\$2.23

If you have any questions, please call me at 734-2662.

Email to Hebert.Noel@doc.sc.gov

(843) 734-2101 Fax (843) 734-2691
www.treasure.sc.gov

Post Office Box 11778
Columbia, SC 29211

Wade Hampton Building, 1200 Senate Street
Columbia, SC 29201

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-AJ-04-00143-AP

Page # 196

0706

THE HONORABLE CURTIS M. LOFTIS, JR.

State Treasurer

MEMORANDUM

TO: Ms. Noel Hebert
SC Department of Corrections

FROM: Pansy Banks
SC State Treasurer's Office

DATE: February 18, 2014

Dear Ms. Hebert:

Wachovia Composite Reservoir Account Numbers listed below earned interest for the month of January and will post in the subsequent month.

██████████ 9260	\$9.02	PIE
██████████ 9477	\$1.80	WACHOVIA RELEASE

If you have any questions, please call me at 734-2662.

Email to Hebert.Noel@doc.sc.gov

Wachovia Bank, N.A.
www.wachovia.com

Post Office Box 11777
Columbia, SC 29211

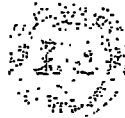
Wade Hampton Building, 1291 Senate Street
Columbia, SC 29201

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 197

0707



THE HONORABLE CURTIS M. LOFTIS, JR.
State Treasurer

MEMORANDUM

TO: Ms. Noel Hebert
SC Department of Corrections

FROM: Pansy Banks
SC State Treasurer's Office

DATE: March 7, 2014

Dear Ms. Hebert:

Wachovia Composite Reservoir Account Numbers listed below earned interest for the month of February and will post in the subsequent month.

9260	\$6.47 P&E
9477	\$1.31 WORK RELEASE

If you have any questions, please call me at 734-2662.

Email to Hebert.Noel@doc.sc.gov

Ms. Noel Hebert
SC State Treasurer's Office

State Office Box 11775
Columbia, SC 29211

Wade Hampton Building, 1201 Senate Street
Columbia, SC 29201

ROA

Torrence v. S.C. Dept of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 198

0708



THE HONORABLE CURTIS M. LOFTIS, JR.
State Treasurer

MEMORANDUM

TO: Ms. Noel Hebert
SC Department of Corrections

FROM: Pansy Banks
SC State Treasurer's Office

DATE: April 7, 2014

Dear Ms. Hebert:

Wachovia Composite Reservoir Account Numbers listed below earned interest for the month of March and will post in the subsequent month.

██████████ 9250	\$11.08	PIG
██████████ 9477	\$2.24	WORK RELEASE

If you have any questions, please call me at 734-2662.

Email to Hebert.Noel@doc.sc.gov

(803) 734-2101 Fax (803) 734-2690
www.treasurer.sc.gov

Post Office Box 11778
Columbia, SC 29211

Wade Hampton Building, 1200 Senate Street
Columbia, SC 29201

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-AJJ-04-00143-AP

Page # 199

0709

THE HONORABLE CURTIS M. LOFTIS, JR.
State Treasurer

MEMORANDUM

TO: Ms. Noel Hebert
SC Department of Corrections

FROM: Pansy Banks
SC State Treasurer's Office

DATE: May 15, 2014

Dear Ms. Hebert:

Wachovia Composite Reservoir Account Numbers listed below earned interest for the month of April and will post in the subsequent month.

9260	\$11.90 ME
9477	\$2.44 Work Release

If you have any questions, please call me at 734-2662.

Email to Hebert.Noel@doc.sc.gov

(803) 734-2100 Fax (803) 734-2664
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Columbia, SC 29211

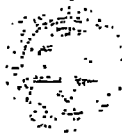
Wade Hampton Building, 1200 Sumner Street
Columbia, SC 29201

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 200

0710



THE HONORABLE CURTIS M. LOFTIS, JR.
State Treasurer

MEMORANDUM

TO: Ms. Noel Hebert
SC Department of Corrections

FROM: Pansy Banks
SC State Treasurer's Office

DATE: June 9, 2014

Dear Ms. Hebert:

Wachovia Composite Reservoir Account Numbers listed below earned interest for the month of May and will post in the subsequent month.

9260	\$12.30
9477	\$2.70

If you have any questions, please call me at 734-2662.

Email to: Hebert.Noel@doc.sc.gov

734-2662 Fax 734-2662
www.treasurer.sc.gov

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Columbia, SC 29201

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 201

0711

THE HONORABLE CURTIS M. LOFTIS, JR.

State Treasurer

MEMORANDUM

TO: Ms. Noel Hebert
SC Department of Corrections

FROM: Pansy Banks
SC State Treasurer's Office

DATE: July 7, 2014

Dear Ms. Hebert:

Wachovia Composite Reservoir Account Numbers listed below earned interest for the month of June and will post in the subsequent month.

9260	\$18.54	Interest
9477	\$3.81	Commission

If you have any questions, please call me at 734-2662.

Email to Hebert.Noel@doc.sc.gov

Phone: 734-2101 Fax: 734-2662
www.treasurer.sc.gov

Post Office Box 11778
Columbia, SC 29211

Wade Hampton Building, 1201 Senate Street
Columbia, SC 29201

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 202

0712

THE HONORABLE CURTIS M. LOFTIS, JR.
State Treasurer

MEMORANDUM

TO: Ms. Noel Hebert
SC Department of Corrections

FROM: Pansy Banks
SC State Treasurer's Office

DATE: August 6, 2013

Dear Ms. Hebert:

Wachovia Composite Reservoir Account Numbers listed below earned interest for the month of July and will post in the subsequent month.

9260	\$26.99	P/E
9477	\$5.28	Work Release

If you have any questions, please call me at 734-2662.

Email to Hebert.Noel@doc.sc.gov

26.99 +
5.28 +
32.27 =

(803) 734-2111 Fax (803) 734-2690
www.treasurer.sc.gov

Post Office Box 11778
Columbia, SC 29211

Wade Hampton Building, 1200 Senate Street
Columbia, SC 29201

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 203

0713

Composite Interest
Repo Rate

Fy 2007

Jul-06	5.25%
Aug-06	5.22%
Sep-06	5.27%
Oct-06	5.26%
Nov-06	5.27%
Dec-06	5.27%
Jan-07	5.22%
Feb-07	5.29%
Mar-07	5.28%
Apr-07	5.17%
May-07	5.24%
Jun-07	5.25%

FY 2008

Jul-07	5.23%
Aug-07	5.32%
Sep-07	4.82%
Oct-07	4.60%
Nov-07	4.63%
Dec-07	4.38%
Jan-08	3.06%
Feb-08	3.16%
Mar-08	2.58%
Apr-08	1.88%
May-08	2.22%
Jun-08	2.22%

FY 2009

Jul-08	2.14%
Aug-08	2.09%
Sep-08	1.08%
Oct-08	0.28%
Nov-08	0.30%
Dec-08	0.05%
Jan-09	0.30%
Feb-09	0.30%
Mar-09	0.22%
Apr-09	0.19%
Mar-09	0.19%
Jun-09	0.18%

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 204

0714

FY 2010

Jul-09	0.18%
Aug-09	0.18%
Sep-09	0.06%
Oct-09	0.09%
Nov-09	0.13%
Dec-09	0.10%
Jan-10	0.13%
Feb-10	0.12%
Mar-10	0.15%
Apr-10	0.16%
May-10	0.19%
Jun-10	0.21%

FY 2011

Jul-10	0.23%
Aug-10	0.18%
Sep-10	0.21%
Oct-10	0.21%
Nov-10	0.19%
Dec-10	0.14%
Jan-11	0.18%
Feb-11	0.11%
Mar-11	0.09%
Apr-11	0.04%
May-11	0.09%
Jun-11	0.04%

Fy 2012

Jul-11	0.15%
Aug-11	0.06%
Sep-11	0.09%
Oct-11	0.08%
Nov-11	0.08%
Dec-11	0.09%
Jan-12	0.14%
Feb-12	0.15%
Mar-12	0.18%
Apr-12	0.16%
May-12	0.18%
Jun-12	0.23%

ROA

Torrence v. S.C. Dep't of Corr.
Docket# 12-ALJ-04-00143-AP

Page # 205

0715

Fy 2013

Jul-12	0.14%
Aug-12	0.18%
Sep-12	0.23%
Oct-12	0.23%
Nov-12	0.18%
Dec-12	0.21%
Jan-13	0.10%
Feb-13	0.14%
Mar-13	0.18%
Apr-13	0.14%
May-13	0.09%
Jun-13	0.07%

ROA

Torrence v. S.C. Dep't of Corr.
Docket # 12-ALJ-04-00143-AP

Page # 206

0716

Respondent.

Docket No. 12-ALJ-04-00143-AP
Grievance No. ECI-0980-10

**INFORMATION TO BE INCLUDED IN
THE RECORD ON APPEAL AND
RESPONSIVE TO THE COURT'S
DECEMBER 3, 2014 ORDER**

CERTIFICATE OF SERVICE

This is to certify that I have, on February 9, 2015, caused to be served a copy of the Department's above-styled materials and motion upon the *pro se* Appellant, via the United States Mail, to the following address:

Thomas J. Torrence, # 94651
Lieber Correctional Institution [SA-43]
Post Office Box 205
Ridgeville, South Carolina 29472-0205

BY:

Lake E. Summers
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300

Outside Counsel for the Department

FILED

FEB 09 2015

Page 5 of 5

SC ADMIN. LAW COURT

0717

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Thomas J. Torrence, # 094651,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECI 0980-10
Appellant,	)	
	)	Honorable Deborah Brooks Durden
vs.	)	
	)	APPELLANT'S CLARIFICATION
South Carolina Department of Corrections,	)	OF FINANCIAL RECORDS
	)	MOTION REQUEST No. 8
Respondent.	)	
	)	

Pursuant to the November 3, 2014 Motion of Appellant for Financial Record Information and the December 3, 2014 Order of this Court to provide same, Respondents submitted a Response titled "INFORMATION TO BE INCLUDED IN THE RECORD ON APPEAL AND RESPONSIVE TO THE COURT'S DECEMBER 3, 2014 ORDER, dated February 9, 2015.

The February 9th Responsive stated "in response to #8 [The Department's] agency regulation or the governing state law that requires [the Department] to report [the] Appellant's interest information upon request." The Respondent asserted that "the Department respectfully submits that the instant item is unclear as to the precise nature of the "interest information" referenced within as well as the individual (or entity) to who such "interest information" would be reported. Accordingly, the Department respectfully requests clarification from either the Court or the Appellant concerning the nature of the "interest information" at issue in the instant item, RESPONSIVE, pages 3 - 4.

For the clarification of Respondents, Appellant submits the nature of item #8 is the Department of Corrections' agency regulation or policy, or the controlling South Carolina statutory law, that requires Respondents to report the interest earned on any monies [E. H. Cooper Trust Fund or Long Term Savings Account] Respondents maintain for Appellant upon Appellant's request or any other time frame.

Respectfully submitted,

February 23, 2015



Thomas J. Torrence
#094651
Lieber Corr. Inst. WD-186
P.O. Box 205
Ridgeville, SC 29472

APPELLANT, *Pro se*

Thomas J. Torrence, # 094651,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECI 0980-10
Appellant,	)	
	)	Honorable Deborah Brooks Durden
vs.	)	
	)	
South Carolina Department of Corrections,	)	CERTIFICATE OF MAILING
	)	
Respondent.	)	
	)	

Lake E. Summers, Esquire
MALONE, THOMPSON, SUMMERS & OTT, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

Thomas J. Torrence
#094651
Lieber Corr. Inst. WD-186
P.O. Box 205
Ridgeville, SC 29472

3

SCDC's Petition for Writ of Certiorari