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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

MAY 1 8 2013

**SC COURT OF APPEALS**

68409

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Marvin H. Dukes, III Special Circuit Court Judge for Beaufort County

Case No. 2012-213239

Town of Hilton Head Island, ..... Respondent

v.

Kigre, Inc.....Appellant

**RESPONDENT'S MOTION TO SUPPLEMENT THE RECORD ON APPEAL**


The Respondent hereby requests leave to supplement the Record on Appeal to include portions of several citations included in Respondent's Amended Initial Brief, but omitted from Respondent's Designation of Matter to be Included in the Record on Appeal. Such request is made pursuant to Rule 212(b), SCACR. In addition, such relief would result in no prejudice to Appellant, as such portions of the trial record and post-trial correspondence were cited in Respondent's Amended Initial Brief, and Appellant is on notice of Respondent's intent to rely on such portions of the trial record and post-trial correspondence.

Specifically, Respondent desires to add the following documents, copies of which are attached hereto, to the Record on Appeal:

1. January 30, 2012 letter from counsel for Appellant to counsel for Respondent cited as "See January 30, 2012 letter." on page 14 of Respondent's Amended Initial Brief; and
2. Pages 46-9 of the Deposition of Jeffrey Myers, portions of which deposition are already a part of the Record on Appeal, and cited as "the deposition of Jeffrey Meyers (p. 46 l. 4-25, p. 47 l. 1-25, p. 48 l. 1-25, p. 49 l. 1-8)" on Page 9 of Respondent's Amended Initial Brief.

Respondent's counsel has consulted with counsel for Appellant prior to the filing of this Motion, and Appellant does not consent to the relief requested herein.

Respectfully submitted this 13<sup>th</sup> day of May, 2013

  
\_\_\_\_\_  
Gregory M. Alford  
Alford Law Firm, LLC  
Post Office Drawer 8008  
Hilton Head Island, SC 29938  
(843) 842-5500  
Attorney for Respondent

1 ALFORD - MYERS (DIRECT EXAMINATION)

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2 Q All right. We're back on the record,  
3 sir, after a short break.

4 Sir, does your company obtain any  
5 services from the Town of Hilton Head Island  
6 that you're aware of?

7 A No.

8 Q If a fire broke out at your facility  
9 who's fire department would respond?

10 A I'd assume the Town of Hilton Head's.

11 Q Okay. You live within the Town of  
12 Hilton Head, sir?

13 A Yes.

14 Q If you had to call an ambulance to your  
15 house, do you know who's ambulance would come to  
16 your house?

17 A No.

18 Q Do you believe it would be in the Town  
19 of Hilton Head fire department?

20 A I don't know.

21 Q Are you aware of any other ambulance  
22 services operating on the island other than the  
23 Town of Hilton Head Island?

24 A I never investigated.

25 Q Okay. The services, that if someone

1 ALFORD - MYERS (DIRECT EXAMINATION)

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2 were to break into your business or do something  
3 like that and you had to call the police, are  
4 you aware of any funding that the Town of Hilton  
5 Head Island provides to the Beaufort County  
6 Sheriff's Department?

7 A I'm aware that the town didn't contract  
8 through the county fire -- Beaufort County  
9 Sheriff's office or the law enforcement  
10 coverage. (Phonetic)

11 Q Okay. And do you feel that you're  
12 beneficiary of that -- your company?

13 A Yes.

14 Q Okay. Do you have a bicycle?

15 A No.

16 Q Does anybody at your company have a  
17 bicycle?

18 A I wouldn't know.

19 Q Does anybody in your family have a  
20 bicycle?

21 A I wouldn't know.

22 Q Okay. You ever go to the beach?

23 A Yes.

24 Q Where do you go to the beach?

25 A Where do I go to the beach?

1 ALFORD - MYERS (DIRECT EXAMINATION)

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2 Q Uh-huh.

3 A At the beach.

4 Q Which access do you get on at?

5 A Most of the time I go in my boat.

6 Q Okay. Where do you keep your boat?

7 A Hilton Head Boathouse.

8 Q Do you live on the north end, sir?

9 A Please be more specific.

10 Q Did you live on the north end of Hilton  
11 Head Island?

12 A Yes.

13 Q When you drive, you ever go through the  
14 traffic circles?

15 A Yes.

16 Q You ever walk on the back path?

17 A I'm sure I must have once.

18 Q Ever been to the St. Patrick's Day  
19 parade?

20 A Yes.

21 Q Have you ever been to the Honey Horn  
22 museum grounds, festivals and stuff like that?

23 A Yes.

24 Q Do you have any kids?

25 A No.

1 ALFORD - MYERS (DIRECT EXAMINATION)

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2 Q Do any of your employees have any kids  
3 that you know of?

4 A Yes.

5 Q Any of them play in any of the rec  
6 league sports or island rec center or anything  
7 like that that you know of?

8 A I wouldn't know.

9 Q Okay. Sir, it seems like that sort of  
10 this dispute about business licenses kind of  
11 flared up in 2004, is that consistent with your  
12 memory, your duty with the Town of Hilton Head  
13 Island?

14 A I don't recall the exact year.

15 Q All right, sir. I want to mark this  
16 here and show it to you, ask if you can tell me  
17 what it is.

18 (Whereupon, Plaintiff's Exhibit

19 Number 9 was marked for

20 identification.)

21 MR. TAYLOR: Do you know what it  
22 is?

23 THE WITNESS: It looks like a  
24 letter addressed to me.

25 BY MR. ALFORD:

COASTAL COURT REPORTING & VIDEO SERVICES  
POST OFFICE BOX 7349 HILTON HEAD, SC 29938  
HILTON HEAD - BEAUFORT - SAVANNAH  
843-785-7739 - 843-525-9600 - 912-232-6161

LAW OFFICE OF  
**THOMAS C. TAYLOR, LLC**

CERTIFIED CIRCUIT  
COURT MEDIATOR

ALSO ADMITTED  
GEORGIA BAR

22 BOW CIRCLE  
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29938

January 30, 2012

**Via U.S. Mail and E-Mail Attachment**

Mr. Gregory M. Alford, Esq.  
Alford & Wilkins, PC  
18 Executive Park Road, Building 1  
Hilton Head Island, SC 29938-8008

**Re: Town Of Hilton Head Island v. Kigre, Inc., 2006-CP-07-796; proposed Order**

Dear Greg:

I have now had the time to fully review the proposed Order Ending Case that you forwarded me, along with the lengthy transcript of the trial. I do not agree with the form of the proposed Order on several important points and ask that you revise them prior to submission to Judge Dukes.

First and foremost, the Order fails to indicate that the Town withdrew all of its claims for damages after presentation of the Town's evidence. Please review the exchange at page 252 et. seq. where Judge Dukes basically granted your motion to conform the pleadings to the evidence, which had proven a waiver by the Town of the \$41,000 claim. You stated "we're not seeking that based on the errors that were made." The representation made to the Court was that if Judge Dukes upheld the validity of the Ordinance, that a new assessment would be made for later years within the applicable Statute of Limitations, and then Kigre would have the opportunity to make its arguments to Town Council on the new assessments. The only issues Judge Dukes had under consideration at the end of the trial were the Town's claims for a Declaratory Judgment as to the enforceability of its ordinance and Kigre's counterclaims. Thus, please delete any reference in the Conclusion to any type of recovery of "amounts due."

I also ask that the following changes be made:

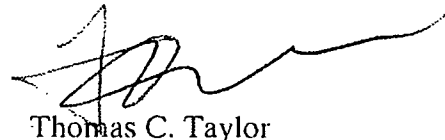
- a. On page 3, you indicate that the SIC is a "commonly used tool" for placing businesses into the proper classification. The testimony shows that the SIC is rarely used today. The Town's position basically was that even though it was outdated and rarely used, the Town had no legal obligation to adopt the current standard.
- b. On page 5, the draft makes it sound as if the Town made a voluntary decision to not hold the appeal hearing, but "rather" to seek a declaratory judgment.

The evidence at trial showed that the Town supposedly mistakenly denied the Hearing, resulting in a waiver of those claims. Please do not try to guise it to sound like the two actions were related.

- c. The proposed language on pages 8 and 9 relating to Kigre's contention that under Brady and its progeny, the Town must properly apportion Kigre's income and revenues is in error. This has always been and remains apparently a point of misunderstanding between Kigre and the Town. We acknowledge the holding of Triplett; we simply contend that you are misreading it. According to the undisputed evidence, Kigre sells at least 99 percent of its products out-of-state. There is clearly "something" to apportion: 99 percent of our sales should be apportioned. The Town should seek its BLF based on that apportioned amount.
- d. In the "Conclusion" paragraph, you have inserted language stating that Kigre "knowingly misrepresented" information on its business license application. I object strongly to that language because it is not supported in the least by the evidence. Kigre stated that the business license fee was not applicable to it because of legal arguments well known. Kigre has always provided the Town with straightforward, accurate financial information, even in the face of the Town's attempts to intimidate Kigre into improperly submitting tax returns, the submission of which has no basis in the ordinance. The use of this type language is unsupported by the evidence and prejudicial to Kigre both in the public eye once an Order is signed, and on appeal. I ask that you revise this language.

Please let me know if you have any questions about our position. If you want me to review a revised proposed Order, I will be glad to do so.

Yours very truly,  
**LAW OFFICE OF THOMAS C. TAYLOR, LLC.**



Thomas C. Taylor

TCT/dpt  
cc: Jeff Myers, Kigre, Inc.

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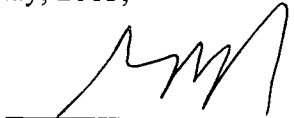
Kigre, Inc. ....Appellant

**PROOF OF SERVICE**

I, Gregory M. Alford, Attorney for Respondent, do hereby certify that on May 13<sup>th</sup>, 2013, I served Respondent's Motion to Supplement the Record on Appeal by depositing a copy of the document in the United States mail, with postage prepaid, at Hilton Head Island, South Carolina, addressed as follows:

Thomas C. Taylor  
Law Office of Thomas C. Taylor, LLC  
P.O. Box 5550  
Hilton Head Island, SC 29938

Respectfully submitted this 13<sup>th</sup> day of May, 2013,

  
\_\_\_\_\_  
Gregory M. Alford  
Alford Law Firm, LLC  
Post Office Drawer 8008  
Hilton Head Island, SC 29938  
(843) 842-5500  
Attorney for Respondent