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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
RENDERED SERVICES, INC.,)
an Illinois corporation,)
) Docket No.
Respondent,) 74 RTV-R Sub 15
)
)
HEARING ON FITNESS TO HOLD A)
COMMERCIAL VEHICLE RELOCATOR'S)
LICENSE PURSUANT TO SECTION)
401 OF THE ILLINOIS COMMERCIAL)
RELOCATION OF TRESPASSING)
VEHICLES LAW, 625 ILCS)
5/18A-401.

Chicago, Illinois
April 25, 2017

Met, pursuant to notice, at 3:00 p.m.

BEFORE:

MS. LATRICE KIRKLAND-MONTAQUE, Administrative Law
Judge

SULLIVAN REPORTING COMPANY, by
Devan J. Moore, CSR
License No. 084-004589

1 APPEARANCES:

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8 -and-
9 MS. GABRIELLE PARKER-OKOJIE
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13 (312) 814-1934

14 on behalf of ICC Staff;

15 THE LAW OFFICE OF
16 DONALD S. ROTHSCHILD, by,
17 MR. DONALD S. ROTHSCHILD
18 835 McClintock Drive
19 Burr Ridge, Illinois 60527
20 on behalf of Rendered Services, Inc.

21

22

1 JUDGE KIRKLAND-MONTAQUE: By the power vested
2 in me by the State of Illinois and the Illinois
3 Commerce Commission, I now call for a status hearing
4 Docket No. 74 RTV-R Sub 15. This is in the matter of
5 Rendered Services, Inc. And this is regarding a
6 Hearing on Fitness to Hold a Commercial Vehicle
7 Relocator's License.

8 May I have the appearances, please?
9 Let's start with Rendered.

10 MR. ROTHSCHILD: Good afternoon, your Honor.
11 My name is Donald S. Rothschild. My business address
12 is, 835 McClintock Drive, Burr Ridge, Illinois 60527.
13 I'm an attorney licensed by the Supreme Court, and I
14 represent the Applicant/Respondent, Rendered
15 Services, Inc.

16 JUDGE KIRKLAND-MONTAQUE: Okay. Staff?

17 MR. BARR: Good afternoon, your Honor. My name
18 is Benjamin Barr. I appear on behalf of the Staff of
19 the Illinois Commerce Commission. My office is
20 located at 160 North LaSalle Street, Suite 800,
21 Chicago, Illinois 60601. My telephone phone number
22 is, (312) 814-2859.

1 MS. PARKER-OKOJIE: Good afternoon, your Honor.
2 My name is Gabrielle Parker-Okojie, and I also
3 represent the Staff of the Illinois Commerce
4 Commission. My office is also located at 160 North
5 LaSalle Street, Suite 800, 60601. My telephone
6 number is, (312) 814-1934.

7 JUDGE KIRKLAND-MONTAQUE: Thank you. Okay. As
8 I mentioned, this is a status hearing. So...

9 MR. ROTHSCHILD: Well, your Honor, I did send
10 in -- and I want to make sure that you received
11 them -- applications for subpoenas that were faxed in
12 to you yesterday afternoon.

13 JUDGE KIRKLAND-MONTAQUE: I haven't seen a fax.

14 MR. ROTHSCHILD: Okay. We faxed them, and
15 mailed, them to (312) 814-1818.

16 JUDGE KIRKLAND-MONTAQUE: Yeah, they may be
17 over there. No one has -- I haven't...

18 MR. ROTHSCHILD: Picked them up? Well, let me
19 just fill you in.

20 Basically, you got an overshadowing of
21 some of the issues that we've had over a number of
22 months about discovery. We've had a number of 201(k)

1 conferences. I think we've made some progress, at
2 least from our perspective, to either eliminate some
3 of the work that we are engaged in, or plan to engage
4 in, by reformulating our thought process on how we're
5 going to deal with the case. But at this juncture
6 there's a couple of outstanding requests that I have
7 to Mr. Barr.

8 But, basically, I intend to take the
9 depositions of the Illinois Commerce Commission
10 police officers who are listed as witnesses in
11 Staff's witness list. There were also seven
12 witnesses listed in Staff's witness list of citizens
13 witnesses, and we are only interested in taking the
14 depositions of three of them.

15 And I filed yesterday -- which will
16 hold up and --

17 Did you receive it, Mr. Barr?

18 MR. BARR: I haven't received anything.

19 MR. ROTHSCHILD: Okay. I know that they were
20 sent because I told my assistant.

21 JUDGE KIRKLAND-MONTAQUE: Well, it's very
22 likely that they were sent.

1 MR. ROTHSCHILD: So these are just three of the
2 people that were disclosed and are coming in to talk
3 about Rendered and whatever happened with them.

4 There's four other people that are
5 coming in that we're not going to seek to depose.
6 And then we have the police officer witnesses. We
7 have some outstanding documents. We have a
8 deposition noticed for May 10th of a -- it's called a
9 30 --

10 MR. BARR: I think 30 is federal.

11 MR. ROTHSCHILD: -- a 206(a)(1) witness, which
12 is somebody that can speak to the main issues so that
13 we can limit what I'm going to ask every single
14 police officer.

15 So I hope to be able to efficiently do
16 all of this remaining discovery and move the case
17 towards the hearing.

18 JUDGE KIRKLAND-MONTAQUE: Do you have dates for
19 depositions?

20 MR. ROTHSCHILD: Well, the drill is to file the
21 thing. They get set. You can't even enter a
22 subpoena order, according to the rules of practice,

1 for 7 days while they -- because we mailed them out
2 to these individuals, also. You can look at it.

3 They have 7 days before you can do
4 anything, if they want to hire a lawyer or do
5 whatever. And then they'll set them up, hopefully,
6 at a mutually agreeable time for them. I put a date
7 in the subpoena; but I'll, obviously, reschedule it.
8 And then after those are done I'll take the
9 depositions of the police officers and get the other
10 documents that are outstanding and, hopefully, we'll
11 be ready.

12 JUDGE KIRKLAND-MONTAQUE: Do you have any
13 outstanding depositions?

14 MR. BARR: We will. We haven't decided who
15 exactly. We did get a witness list turned over that
16 has more of the scope of what the witnesses will
17 testify. Some of our officers are named on the
18 witness list -- not including that there are about 15
19 individuals.

20 We do plan on taking some depositions.
21 I don't expect that we'll take 15 depositions. I
22 think we just got that last week, I believe. We just

1 need to narrow that down to exactly who we want to
2 depose. I think we can work with Counsel to
3 actually, you know, set up the deposition dates and
4 everything.

5 As you know, your Honor, May is going
6 to be quite busy for Staff and yourself. So we would
7 just be shooting for probably doing the depositions
8 sometime in June.

9 JUDGE KIRKLAND-MONTAQUE: Okay.

10 MR. ROTHSCHILD: I would also hope -- and I'm
11 sure Counsel agrees -- that we could do multiple ones
12 in a day. I mean, under the Illinois Supreme Court
13 Rules -- or at least the local rules -- we have 3
14 hours. I don't think any of these -- maybe the
15 longest I would take would be the full 3 hours, but
16 many of these would be a lot shorter.

17 I think that that would be true, too,
18 on your end?

19 MR. BARR: I think without having evaluated
20 what questions we're going to ask, I think there is
21 some reasonableness to that.

22 For purposes of the record, Officer

1 Strand is going to be out starting the beginning of
2 June. So maybe we will try for the end of May for
3 his deposition.

4 MS. PARKER-OKOJIE: And, also, your Honor, the
5 206(a)(1) deposition that was noticed up, Staff is
6 objecting to that only because I don't think we can
7 produce anyone within the scope of that; essentially,
8 someone who would speak to the Agency's position on
9 things that bear on Rendered's fitness and why they
10 were set for a fitness hearing. I think that's the
11 way that the inquiry was phrased.

12 And, from our perspective, the
13 Commissioners would be the only people that can
14 really speak to that. And, as you know, they are the
15 ultimate triers of fact in this case; so we cannot
16 produce them in response to Counsel's request. So
17 that's probably, I think, an issue that we need to
18 discuss.

19 MR. ROTHSCHILD: In response to that, I would
20 call your attention to something that you haven't
21 seen, your Honor. We had a 201(k) conference.
22 Without getting into the nitty-gritty of it, I

1 withdrew some of the written discovery, and I
2 presented counsel with a 206(a)(1) Notice of
3 Deposition, which basically allows you to take the
4 deposition of, like, the knowledgeable person having
5 the information; and they can determine who it is.

6 And I received a letter in return
7 saying, "You don't have the right to take the
8 Commissioners. You don't have the right to take the
9 Chairman." I never thought for 5 seconds that we
10 would take a Commissioner's deposition or the
11 Chairman's deposition. I would anticipate that we
12 would take some type of managerial person who has
13 some knowledge of the enforcement process as well as
14 the relocation towing program.

15 I'm willing to try to work with you to
16 describe and narrow that request, but I don't think
17 that's before you right now. If there was an
18 objection that --

19 JUDGE KIRKLAND-MONTAQUE: So do you mean
20 someone from the Transportation Division?

21 MR. ROTHSCHILD: Yeah, like Steve Matrisch or
22 somebody. I don't think the new police chief -- he's

1 only been there a number of months -- that he would
2 have any history or knowledge.

3 JUDGE KIRKLAND-MONTAQUE: Or maybe the deputy?

4 MR. ROTHSCHILD: There's a Sergeant -- Interim
5 Sergeant Sulikowski.

6 MR. BARR: Sergeant Sulikowski, who is named on
7 our witness list, is the Assistant Chief of Police,
8 but he started just about the same time as the Chief
9 of Police.

10 In regards to Steve Mastrisch,
11 obviously, he is also in the Office of Transportation
12 Counsel who provides an advisory role on this case.

13 JUDGE KIRKLAND-MONTAQUE: Okay. We're not
14 trying to -- I'm just trying to get an idea. I mean,
15 I think you're talking about someone with knowledge
16 about the proceedings, the process, of all towing
17 companies in general.

18 MR. ROTHSCHILD: All towing companies --
19 Rendered, in particular -- why there's been a
20 decision made, at least from the Staff's perspective,
21 or the enforcement's perspective, to deny their
22 license.

1 JUDGE KIRKLAND-MONTAQUE: What if that person
2 is counsel, or what if those decisions are made by
3 OTC?

4 MR. BARR: The ultimate decision to set this
5 for a fitness hearing would have been made by -- not
6 by myself; obviously, I wasn't here at the time --
7 but former counsel, the Office of Transportation
8 counsel, as well as the Director of the Office of
9 Transportation counsel.

10 MR. ROTHSCHILD: Well, there's issues about
11 that. I mean, we could work out an agreement as to
12 the areas that I wouldn't get into that would invade
13 the attorney-client privilege. But somebody, I
14 suppose, that would --

15 When you ordered the production of
16 that document, that was the recommendation document
17 that was an in camera that you reviewed --

18 JUDGE KIRKLAND-MONTAQUE: The memo?

19 MR. ROTHSCHILD: -- you know, that disclosed
20 kind of to us how the decision may have come forward.
21 And I wasn't, again, interested in taking depositions
22 of the Commissioners; but that document talks in

1 terms of the number of tickets that were --
2 administrative citations that were issued over a
3 period of time, and the data. So there has to be
4 somebody that can speak to that, and maybe Sergeant
5 Sulikowski is the person.

6 MR. BARR: I mean, there's two issues with
7 that. One, your Honor, that information would have
8 come directly from the Office of Transportation. I
9 mean, I don't think Sergeant Sulikowski is in a
10 position to make policy determinations for the
11 Commission. I think the only people that are in that
12 position are the Chairman and the four subsequent
13 Commissioners.

14 MR. ROTHSCHILD: I don't want policy. I want
15 facts.

16 JUDGE KIRKLAND-MONTAQUE: I think what you're
17 getting at -- and maybe you don't know how the
18 Commission operates. I think OTC kind of makes
19 recommendations, one way or the other, and then the
20 Commission goes from there.

21 I mean, I think you might be looking
22 at the people -- although, they weren't here at the

1 time -- who actually kind of make that determination.
2 I'm just giving you my perspective of how it
3 operates.

4 MR. ROTHSCHILD: Well, I have seen a few cases
5 get decided here through the years, so I have a sense
6 of it; but I'm not sure the way that this one came
7 about is necessarily in conformance with how things
8 generally happen with enforcement cases.

9 So I'm willing to negotiate a plan so
10 that we don't get into a major battle about this. I
11 want to take depositions and get as much information,
12 factual information, as I can from the police.

13 And, in terms of my right as a
14 litigant -- an attorney for a litigant -- to get a
15 representative that has knowledge of this case, there
16 may have to be several people called in for that
17 purpose. And, again, we have to set up the barrier
18 so that it isn't necessarily a privileged
19 communication.

20 I haven't really outlined what I'm
21 going to ask yet, but I know what the Rule says. And
22 the Rule gives us the right, even involving an

1 enforcement action by an agency, to look at things
2 like that -- how the decision is made, what the
3 comparatives are, and what the standards are, and
4 what the information is that may or may not be
5 pertinent to the proof in this case.

6 So we have to work that out. And if
7 we can't work it out, I suppose we'll come, before
8 that event takes place, to have you referee it,
9 unless you want to take it right here.

10 MS. PARKER-OKOJIE: Your Honor, I think that
11 that tool that Counsel is mentioning here, the
12 206(a)(1) Rule, is intended when there is a
13 corporation, or even a government agency, that's
14 doing the investigating. So if EEOC is investigating
15 a company and says, "Include the person that can talk
16 about hiring decisions and how they're made", I think
17 it's tailored to that.

18 But, in this sense, in a fitness
19 hearing, as you've already kind of laid out, if OTC
20 is providing that information to the Commissioners in
21 an advisory capacity, as you said, OTC is the person
22 that's making that decision, and the Commissioners

1 are deciding to evaluate that.

2 So I think a fitness hearing is kind
3 of a unique situation where this rule may not exactly
4 be applicable, or even possible, for us to comply
5 with, because the burden would be on you to produce
6 someone who can answer Counsel's question. And if we
7 produce a police officer that can't or doesn't make
8 policy decisions and can't say that this is a policy
9 of the ICC, then that would come back on us as
10 prejudicial that, "You should have produced someone
11 that knew".

12 So I just don't know that, even if we
13 put this off, if we can comply because I don't know
14 that that persons exists or, even if you cobbled
15 together the testimony of several people, that it
16 wouldn't violate some sort of privilege. Because
17 even if you think, inherently, in the way that the
18 ICC works -- specifically, with how fitness hearings
19 are set -- I don't know that this tool would work
20 here.

21 I certainly think that Counsel's
22 entitled to ask questions, generally, in depositions;

1 but I think the unique thing about 206(a)(1) is it
2 does bind the Commission on the testimony of that
3 witness. And so producing a police officer, or even
4 an acting sergeant, I don't think that person can
5 speak for the Commission -- you know, capital C.

6 So I think that's the difficulty that
7 we run into. Even if we do decide to kind of kick
8 the can, so to speak, and can talk about it later, I
9 think now is kind of when we need to decide if this
10 can even work.

11 JUDGE KIRKLAND-MONTAQUE: Okay. So did you say
12 you presented this already to Staff?

13 MR. ROTHSCHILD: I sent them a Notice of
14 Deposition. I don't know if I have this here. I
15 sent them a Notice of Deposition setting forth the
16 basics of what we want under that rule; and they
17 said, "You can't take the depositions of the
18 Commissioners". And I don't want them.

19 The other thing is what Counsel stated
20 is, basically, true. In this case the Commission may
21 be wearing several hats. Again, I don't want the
22 policy-maker or whatever type of witness. I want the

1 investigator.

2 So they did do -- like you say, the
3 EEOC -- an investigation. The police officers did
4 the hands-on field investigation; but somebody else
5 may have been supervising, or advising, them. In
6 fact, some of the evidence that I'm not going to
7 speak to right now called in to question a particular
8 circumstance of the investigation that we are
9 concerned about and want to challenge. I believe
10 there are a number of people that know about it.

11 So it's a little hard to script right
12 now what we're going to do. I will be willing to
13 propose something, if that would help, so that you
14 can maybe lay down the rules. But I think absolutely
15 they can't just say, "Well, we're counsel, and we're
16 policy-makers, and we're immune from having our
17 depositions taken". They're not.

18 JUDGE KIRKLAND-MONTAQUE: Well, why don't you
19 present something and make it very tailored to...?

20 MR. ROTHSCHILD: To the circumstances?

21 JUDGE KIRKLAND-MONTAQUE: Yeah. Given what
22 we've already talked about, obviously, you don't want

1 the Commissioners, or whatever. So tailor your
2 language so that, if this person exists, that would
3 help in identifying who that would be.

4 And then, obviously, you can respond.

5 MR. BARR: Yeah, your Honor. And, two, if
6 Counsel is looking for why this was set for hearing,
7 I think the memo specifically outlines it. And all
8 of that stuff that went into the memo would have been
9 outlined by Staff.

10 While the police may always
11 investigate the complaints that come in -- they write
12 the citations -- whether it's something to set for a
13 fitness hearing or whether someone receives a renewal
14 about a fitness hearing is going to be made by Staff.
15 The police aren't going to have any involvement.
16 They're just going to provide the data, and Staff is
17 going to interpret the data.

18 JUDGE KIRKLAND-MONTAQUE: That's what I was
19 trying to get to earlier. I mean, that's my
20 understanding of how it works.

21 MR. ROTHSCHILD: Yeah, I understand what he's
22 saying. But my client applied for a renewal in -- I

1 believe it was July of 2014. And this memo that
2 they're now trying to use as a shield from me to
3 probe, is a page and a half long. And that came out
4 in, I believe, February of 2016; so something went on
5 for a year and 3 quarters.

6 MR. BARR: If I may, your Honor?

7 MR. ROTHSCHILD: Some investigating, some work,
8 went on presumably.

9 MR. BARR: An application cannot go to the
10 Commission until all of the deficiencies are correct.
11 I know that there were some deficiencies that our
12 Processing section, as well as OTC, worked with -- I
13 don't know if it was the Applicant itself or through
14 counsel, in correcting the deficiencies on the
15 application.

16 So even though the memo might have
17 been submitted to the Commission in February -- or I
18 think in February or March, and the application was
19 submitted a year prior --

20 MR. ROTHSCHILD: A year and a half.

21 MR. BARR: -- a year and a half, if what
22 Counsel has represented is correct, it wasn't just

1 because Staff wasn't investigating something. They
2 were working with the Applicant to make sure that the
3 application was complete and to make sure that all of
4 the information was provided.

5 MR. ROTHSCHILD: Well, Rendered's had a license
6 for decades. Every other renewal goes through for
7 Rendered. Every other renewal goes through for other
8 companies. They did develop a very aggravating
9 procedure, from the perspective of the licensee,
10 where they will send the whole thing back if there's
11 some license plate missing or something. So it does
12 take a little bit longer, but it doesn't take a year
13 and a half or a year and 3 quarters to get a license
14 renewed.

15 JUDGE KIRKLAND-MONTAQUE: Okay. So it sounds
16 like I'd like you to kind of tailor your request as
17 specifically as you can. Give Staff an opportunity
18 to respond, see if they can comply -- or if they
19 think they can or cannot comply. And if there is a
20 disagreement, we'll get back together; and I will
21 make a decision.

22 MR. ROTHSCHILD: That sounds fair. Again, I

1 still am anticipating receiving some additional
2 information. Maybe we can have another discovery
3 conference to talk about scheduling, who goes first,
4 and this and that.

5 JUDGE KIRKLAND-MONTAQUE: Did you say that you
6 have outstanding written discovery as well?

7 MR. ROTHSCHILD: Yeah. We discovered -- and I
8 wrote to Ben on April 17th -- that we couldn't find
9 documents that are referenced in Request to Produce
10 4, 5, 6, 7, 10 and 12. I also asked him for
11 information regarding a witness known as Monriell
12 (phonetic) who is on the list, but we don't know
13 what he's going to talk about or what case that's
14 about. So that's, basically, the written.

15 MR. BARR: Two points, your Honor. I think, in
16 terms of the witness, I thought that we handled that
17 through a phone conversation. We did identify the
18 actual investigation number where he is named in.

19 Staff, we have the -- I did receive a
20 letter from Counsel. I do have the exhibits on a CD,
21 and we did produce them. We have a receipt here from
22 when they were produced, but we have no problem

1 turning them over again for Counsel.

2 MR. ROTHSCHILD: Well, I appreciate that. But
3 what happened is you sent me the response on an
4 e-mail that said that they were too voluminous. And
5 you mailed them.

6 We did receive, believe it or not, in
7 the mail, something that did arrive. And I have an
8 assistant for 15 years, and she's smarter than I am,
9 and she said that she looked everywhere, and it
10 wasn't in there. So if it's here, that's great, and
11 I appreciate it.

12 JUDGE KIRKLAND-MONTAQUE: Is that a disc?

13 MR. BARR: No, it's a CD. I think some of them
14 are thousands of pages.

15 JUDGE KIRKLAND-MONTAQUE: Oh, I gotcha.

16 So does that satisfy most of what you
17 are...?

18 MR. ROTHSCHILD: Well, I have to look at this.
19 But, absolutely, yes. I'm not displeased that we
20 have, indeed, made progress.

21 I still want to talk further about
22 this gentleman. And if I can't get information that

1 is meaningful, I'm going to file an application to
2 take his deposition, which I'd like to avoid -- I
3 mean, we can talk later -- basically as to what he's
4 going to say. And if it's something that really
5 incites us, then I'll look to take his deposition.
6 If he's just somebody who says that he didn't like
7 Rendered Services and went to a different vendor to
8 provide his trespass towing, I could probably wait
9 till the hearing.

10 JUDGE KIRKLAND-MONTAQUE: Okay.

11 MR. ROTHSCHILD: So, again, if I may, your
12 Honor, under the Rule, it's 7 days that we have to
13 sit tight and see if they surface or whatever. And
14 then I did attach the subpoena with a lot of blanks
15 in it because I haven't selected the time.

16 I had this come up years ago with
17 Judge Tate. She didn't know what to do to sign the
18 subpoena. I think they gave her a stamp of some kind
19 like with a seal that she put on the bottom of it.
20 Do you have such an animal?

21 JUDGE KIRKLAND-MONTAQUE: I could inquire with
22 my administrative assistant. She may recall.

1 MR. ROTHSCHILD: Okay.

2 JUDGE KIRKLAND-MONTAQUE: All right.

3 MR. ROTHSCHILD: If you think that the format
4 needs to be revised, I'm happy to do that, too.
5 That's the actual subpoena that we're asking be
6 issued; and this is the application, on top, for it
7 (indicating).

8 MR. BARR: And just for the record, your Honor,
9 those witnesses -- I haven't, obviously, seen those.
10 I think they're for the complaining motorists.
11 They're not under our control. I just wanted to make
12 that clear that we don't represent complaining
13 witnesses.

14 JUDGE KIRKLAND-MONTAQUE: I understand.

15 MR. ROTHSCHILD: Though, I did ask for
16 additional information pertaining to them, and it was
17 not forthcoming, which is part of the reason that I
18 have to take their depositions. The additional
19 information that I asked for was, like, their phone
20 numbers --

21 JUDGE KIRKLAND-MONTAQUE: From Staff?

22 MR. ROTHSCHILD: Yeah.

1 -- their correct address because this
2 lady was the wrong name and a P.O. Box; and I'm
3 supposed to proceed on that basis. It was difficult.

4 So, actually, because of the
5 underlying complaint case, I want to take their
6 deposition, in any event; but I would have thought
7 that we could have avoided maybe one or two of these.

8 JUDGE KIRKLAND-MONTAQUE: So these are
9 witnesses that you're planning to use in your case?

10 MR. BARR: Correct. We just don't represent
11 them. You know, we're not, obviously, their
12 attorneys.

13 JUDGE KIRKLAND-MONTAQUE: I know, but you know
14 how to get in touch with them; right?

15 MR. BARR: We got touch with them; and those
16 are all of the correct addresses, obviously, that
17 they listed in the complaint. We don't have anything
18 other than what they listed in their complaints.

19 JUDGE KIRKLAND-MONTAQUE: Did you ask for that
20 information?

21 MR. ROTHSCHILD: I've asked for that, yeah. I
22 wrote Ben a letter to that effect.

1 JUDGE KIRKLAND-MONTAQUE: Can you give him the
2 phone number? Why can't you give him the phone
3 number?

4 MR. BARR: I mean, Staff doesn't feel that --
5 you know, I think the address is sufficient. It
6 gives them reasonable notice of where to get mail and
7 how to get subpoenas and notices of deposition. We
8 just don't want to get into an issue where we're
9 giving them out. For one, I think it's private
10 information; and we don't feel comfortable giving out
11 the telephone numbers of these witnesses.

12 If think if Counsel wants to depose
13 them, I think -- you know, he has their mailing
14 addresses.

15 MR. ROTHSCHILD: I have to have a process
16 server door-knock them. If they're not home, we'll
17 come at 6:00 at night. If they're not home, we'll
18 come at 3:00 in the morning. It's ridiculous for me
19 to have to do this, but I'm going to do it.

20 JUDGE KIRKLAND-MONTAQUE: I don't understand.
21 It seems kind of -- why wouldn't --

22 I mean, can't you ask them, "Do you

1 mind if I share your phone number"? Have you tried
2 that route?

3 MS. PARKER-OKOJIE: Your Honor, I think we were
4 just complying with the rules of procedure, which
5 only requires the name and address of any witness
6 that you are going to call be disclosed. There's
7 nothing in the Rule that says we have to give phone
8 numbers, e-mail addresses, or any other contact
9 information.

10 MR. ROTHSCHILD: That's not true. I mean, Ben
11 has -- they've taken that position.

12 The Rule says what it says, but
13 discovery is broad. And if it assists the
14 administration of justice to supply information, you
15 could very well be ordered to supply that
16 information. It doesn't mean that you're forbidden
17 from giving the information.

18 MS. PARKER-OKOJIE: But the Rule does say
19 "address" -- the Rule does say "names" and
20 "addresses".

21 MR. ROTHSCHILD: But it doesn't limit it to
22 that.

1 JUDGE KIRKLAND-MONTAQUE: I understand. I
2 understand. But it just seems -- I mean, aren't we
3 all trying to get to a hearing? It just seems like
4 this pretrial is going to take a little longer.

5 MR. BARR: We are trying to get to a hearing.
6 But, your Honor, the Commission's policies have
7 always been to, when we redact investigation files,
8 we leave obviously the name; but we redact out the
9 address and telephone numbers of the complaining
10 witnesses. Even if a ticket has the address of the
11 operator on it, we still redact out the operator's
12 personal address from a ticket. That's always been
13 the policy at the Commission.

14 JUDGE KIRKLAND-MONTAQUE: I understand
15 protecting privacy from the general public. But this
16 is a proceeding of two parties, and it just seems
17 that this is just a causing a delay of when --

18 You can even maybe send a letter
19 saying that, "You've agreed to be a witness and,
20 through discovery, the other party may want to
21 contact you. Do you mind if we give him your phone
22 number?" I mean, it just seems like a small step to

1 take rather than to have to...

2 MS. PARKER-OKOJIE: But could Rendered reach
3 out with a letter? I know Mr. Rothschild just said
4 that he elected to use a subpoena as the first
5 method. We don't know if any other informal methods
6 were used to contact them. I mean, we don't have the
7 inside track with them, so to speak. You know, these
8 aren't folks that --

9 JUDGE KIRKLAND-MONTAQUE: I know.

10 MS. PARKER-OKOJIE: -- that we've got in our
11 back pocket. They just filed a complaint.

12 MR. ROTHSCHILD: Well, you have them a lot more
13 in your back pocket than we do. They're your
14 witnesses who you're offering to provide testimony
15 against my client.

16 MR. BARR: And, also, your Honor, their phone
17 numbers, I believe -- at least their addresses, the
18 same addresses that we would have put, would have
19 been on the invoices that they would have filled out.

20 MR. ROTHSCHILD: The P.O. Box is not on there.

21 We have their addresses now. I tried
22 to resolve this in not one, but two, conferences with

1 Ben. If this is what it takes, then we're going to
2 do it this way. I think what you're suggesting is
3 completely reasonable and also more respectful of the
4 rights of these people to say, "Look, you agreed to
5 be a witness, and this does entail the other side
6 having an interest. Would you be willing for me to
7 give their name, or would you call them to see if you
8 can work out a deposition time or maybe just let them
9 interview you over the phone?" I've gotten no offers
10 of that nature. It's, like, "Oh, what have you done
11 to get it?"

12 Well, this is what I've done, and this
13 is what I said I was going to do if you wouldn't
14 assist me in locating people that you've named as
15 your witnesses.

16 MS. PARKER-OKOJIE: But I think that interposes
17 us in the position of counsel, your Honor. I don't
18 think we're comfortable in reaching out to advise
19 them --

20 JUDGE KIRKLAND-MONTAQUE: Not advise. Just
21 say, "Do you mind if I give your number?" It's just
22 a waiver. It's just like signing a waiver, "Can I

1 give these people your number?"

2 If not, then we have to go down the
3 road of -- I mean, it just seems to cause a delay
4 where I think it can be avoided. I don't think that
5 any -- I think it's really a courtesy almost.

6 MR. BARR: It's my understanding, your Honor,
7 and I believe that Counsel represented, that those
8 subpoenas have already been sent out -- or notice has
9 been sent out to those motorists. So giving them the
10 phone number at this point I don't think is going to
11 change anything. They will have Counsel's phone
12 number. If they want to talk to him, they'll call
13 him and talk to him.

14 MR. ROTHSCHILD: That's ridiculous. What can I
15 say? I've asked for it. I've written them about it.
16 We'll take their depositions. They can come to my
17 office and enjoy. I promise to treat them with
18 respect.

19 JUDGE KIRKLAND-MONTAQUE: I understand. I'm
20 just trying to get my -- all right. Let's move on.

21 So you said that you provided the
22 information requested. You're going to tailor your

1 request for this witness.

2 MR. ROTHSCHILD: 206(a)(1). And then we have
3 about a half dozen officer witnesses that we could
4 take -- Officer Strand, in May. Others, we'll work
5 out arrangements. I'm always willing to work out
6 discovery issues with counsel.

7 And one of the things that we spoke
8 about after we had this 201(k) conference, which is
9 the final item on my list, is the issue of burden of
10 proof. And I saw in the Protective Parking case that
11 that issue came up.

12 I think this is kind of a case of
13 first impression. I don't believe that we -- even
14 though I agree that, generally speaking, that an
15 applicant has the burden of proof when seeking a
16 relocater's license, other than the terminology being
17 used, this is very much a can-do-an-enforcement type
18 of proceeding where they're bringing in witnesses to
19 allege wrongdoing and witnesses to allege
20 non-compliance with law.

21 So I think it's proper that the burden
22 be on Staff to prove the allegations, for us to

1 refute them to the best of our ability, and for you
2 to make a decision.

3 MR. BARR: And, your Honor, we're going to go
4 with the -- I mean, the Administrative Rule is clear
5 that the burden for renewals and initial applications
6 are on the relocater to prove by clear and convincing
7 evidence that they're fit to operate.

8 (Whereupon, Ms. Parker-Okojie
9 exited the hearing room.)

10 JUDGE KIRKLAND-MONTAQUE: Should I wait for
11 Ms. Parker-Okojie?

12 MR. BARR: Yeah, she -- I apologize, your
13 Honor. We typically bring our books with us.

14 MR. ROTHSCHILD: Well, I have that. And all I
15 can say about that is, yes, under the Rule the
16 applicant has the burden of proof; but this did not
17 arise in the normal course of business, like an
18 application where you're reviewing one's application.

19 It was all in the nature of this
20 voodoo about not getting any information for month
21 after month, after month, after month about the
22 renewal that we filed. And then all of a sudden we

1 learned from an Illinois Commerce Commission press
2 release that they were setting a fitness hearing.
3 They didn't even say anything.

4 JUDGE KIRKLAND-MONTAQUE: Is this case the --
5 this case is a little different from the other case
6 because...

7 MR. BARR: This is up on renewal.

8 JUDGE KIRKLAND-MONTAQUE: This one is up on
9 renewal.

10 MR. BARR: Correct.

11 JUDGE KIRKLAND-MONTAQUE: This is the
12 application for renewal.

13 MR. BARR: Correct.

14 MR. ROTHSCHILD: They can say that. They can
15 label it that way; but it really isn't.

16 JUDGE KIRKLAND-MONTAQUE: I hear what you're
17 saying, and I've already decided this issue in
18 another case. And the decision in the other case was
19 based on some other non-relocation cases that are
20 similar, I thought, in terms of how we dealt with it.
21 And those were actually collateral recovery cases --
22 a collateral recovery case in which the applicant,

1 the licensee, did maintain the burden of proof in the
2 case. However, Staff did an opening statement kind
3 of.

4 MR. ROTHSCHILD: They went first?

5 JUDGE KIRKLAND-MONTAQUE: They didn't present
6 their evidence first. I mistakenly thought they did.
7 They did, like, an opening argument with the numbers,
8 or the points that they -- the hurdles, I would say,
9 that they thought that applicant needed to overcome.

10 MR. ROTHSCHILD: So were you the -- may I ask,
11 your Honor, were you the sitting judge?

12 JUDGE KIRKLAND-MONTAQUE: Yes.

13 MR. ROTHSCHILD: And what was the ruling that
14 you made there?

15 JUDGE KIRKLAND-MONTAQUE: The ruling --

16 MR. ROTHSCHILD: Is that in the record
17 somewhere?

18 JUDGE KIRKLAND-MONTAQUE: I don't know previous
19 to the hearing. But it was -- and I may have made a
20 ruling. I don't know. I don't know if it's in the
21 record.

22 MR. ROTHSCHILD: Okay.

1 JUDGE KIRKLAND-MONTAQUE: But the decision was
2 that the applicant would maintain the burden of
3 proof. It was slightly different, in that there were
4 opening arguments, so to speak, and that Staff, in
5 its opening arguments, laid out the hurdles for the
6 applicant to address.

7 MR. ROTHSCHILD: Well, maybe that's something
8 that we can speak to because -- all right. If that's
9 your decision, I respect your decision. I'm not sure
10 that I agree with it, but I'll certainly abide by it.
11 But in terms of --

12 The machinations of the process are
13 typically -- as you're well aware, it's two
14 employees, two trucks, insurance, no bankruptcy,
15 blah, blah, blah, the license, and the applicant is
16 fit.

17 Here, there's specific allegations of
18 various and sundry things, apparently. So who goes
19 forward with that? I can't go forward with their
20 evidence. Do you want to sit there for a half a day
21 and listen to our truck maintenance program, and that
22 we change the oil, and that we have safety stickers?

1 Those are not issues.

2 MR. BARR: Your Honor, I think both 18(a) as
3 well as our memo that was provided to Counsel,
4 outline the reasons why we're setting this for
5 hearing. They also agreed that, in previous times,
6 Staff would make the opening argument to outlay not
7 so much its position, but the things that needed to
8 be kind of ticked off, which gave Counsel
9 representation of where to go.

10 And we're not specifically focusing on
11 insurance and whether Rendered has two trucks that
12 are properly registered to Rendered or leased to
13 Rendered or whatnot; but I do think the memo is a
14 clear way to proceed on this as well as what's
15 outlined in 18(a).

16 JUDGE KIRKLAND-MONTAQUE: So are you willing to
17 give an opening? Is that what you're saying? You're
18 willing to give an opening address of what you think
19 needs to be...?

20 MR. BARR: Yeah, we have no problem giving an
21 opening statement, your Honor.

22 MR. ROTHSCHILD: So what do you envision to be

1 the order of proceeding?

2 JUDGE KIRKLAND-MONTAQUE: Well, again, relying
3 back on the other case, Staff gave an opening
4 statement, and applicant made an opening statement;
5 and then applicant presented its evidence that was
6 tied to the statement that Staff made.

7 MR. ROTHSCHILD: But when do they present their
8 evidence?

9 Okay. Let's say that we towed a
10 vehicle with the owner present. So they give their
11 opening. We give our opening. What about towing a
12 vehicle with the owner present? If they don't put a
13 witness on, I don't know what the witness is going to
14 say precisely. When do I deal with that issue?

15 If that's an alleged violation or a
16 partial reason why we shouldn't get renewed, how does
17 that work? I can't go forward and say, "We always
18 give the car back when the owner's present except
19 when they jump on the truck and hang onto the bumper"
20 and, you know, whatever. I don't know how to proceed
21 in that instance.

22 JUDGE KIRKLAND-MONTAQUE: How do you envision

1 it proceeding, Mr. Barr?

2 MR. BARR: I don't know if we've come to a
3 conclusion on who's going to go first. I mean, we
4 definitely think the burden of proof is on the
5 Applicant for the renewal.

6 In terms of the order of proof, I
7 don't think we've come to a clear conclusion of who
8 goes first.

9 MS. PARKER-OKOJIE: And certainly, your Honor,
10 we're not foreclosing the obvious cross-examination
11 of our witnesses that will occur. I think that
12 Rendered would have the opportunity to ask about any
13 information that we put forward that suggested that
14 it bears negatively on their fitness.

15 JUDGE KIRKLAND-MONTAQUE: Would you have a
16 problem with going first, then?

17 MS. PARKER-OKOJIE: I don't think so. Our
18 evidence is our evidence, and Rendered's evidence is
19 Rendered's evidence. I just think that the burden of
20 proof -- usually the movant, or whoever the burden is
21 on, usually goes first. So I just think that we're
22 proceeding in that mindset.

1 But if you have the burden to show
2 your fitness, I don't think it takes two days to show
3 that you have two tow trucks. So nothing is wrong
4 with kind of checking the boxes, so to speak. And
5 there might even be things that we would stipulate to
6 in terms of that.

7 You know, again, we would have to
8 discuss that, in terms of what the -- what tenets we
9 can stipulate to and what we can't, you know, to save
10 time.

11 JUDGE KIRKLAND-MONTAQUE: Well, if they're
12 going to go first, they at least need to know what
13 evidence you're going to -- I mean, or what issues
14 you have. It's not like a first-time applicant, and
15 he comes in and it's like he says, "I have this much
16 money in the bank". You know, if that were the case,
17 we wouldn't be here right now because with a renewal
18 either they're granted or not. And even though in
19 every renewal case that I've seen the applicant
20 maintains the burden, I'm just thinking logistically,
21 in terms of --

22 I mean, can we bifurcate the idea that

1 you have the burden, and you go first? Would Staff
2 have any problem with going first?

3 MS. PARKER-OKOJIE: I think that's something,
4 again, that the discovery process bears out, in terms
5 of -- you know, just to go back to how, in fairness,
6 does an applicant or relocater prepare for something
7 like this? I think that the discovery process can
8 bear that out.

9 I think we're sitting here in a
10 vacuum; you know, them not having conducted
11 depositions, us not having conducted depositions.
12 And I think it's been -- again, I think it's hard to
13 separate the idea of order of proof from burden of
14 proof.

15 But I think that, again, we can kind
16 of go through the discovery process. I think that
17 that will be enlightening to both sides, probably, to
18 provide a fuller picture of what exactly is on the
19 table here; and I think that then maybe we could
20 revisit the conversation.

21 You know, I don't know. I just think
22 that it goes hand in hand, burden of proof and order

1 of proof. But if something else is suggested by the
2 results of our deposition, then I think we would be
3 willing to revisit it at that time.

4 JUDGE KIRKLAND-MONTAQUE: Okay. Let's do that.

5 So I think we need another status. So
6 where is this? May? And you're saying a deposition
7 could happen in June?

8 MR. ROTHSCHILD: Yeah. And in July I'm out of
9 here.

10 JUDGE KIRKLAND-MONTAQUE: The whole month?

11 MR. ROTHSCHILD: Pretty much. The 5th of July
12 and...

13 JUDGE KIRKLAND-MONTAQUE: Here's the deal --
14 and this is something that's...

15 So if the depositions -- do we need to
16 set another date before we even have an idea of when
17 the depositions are going to occur, the real
18 deposition date?

19 MR. ROTHSCHILD: I don't think so, as long as I
20 get my -- as long as we can move forward with this.
21 Because what I plan to do with counsel is to try to
22 agree on some scheduling of the depositions. I

1 didn't hear, prior to today, that they wanted
2 depositions.

3 JUDGE KIRKLAND-MONTAQUE: Okay. All right.

4 MR. BARR: Just from a Staff perspective, your
5 Honor, I don't see how -- I don't think Staff is
6 going to be available to do depositions in May. So I
7 don't know if, at this point, we need to go into
8 June, other than having to do Officer Strand towards
9 the end of May. Counsels can get him in.

10 JUDGE KIRKLAND-MONTAQUE: Okay. So, Officer
11 Strand, try to work that into May.

12 The first week or second week of June?
13 Do you think by June 14th or the following week of
14 June? Well, we've got to do it because, if you're
15 out in July...

16 MR. ROTHSCHILD: What are we doing then? A
17 status?

18 MR. BARR: A deposition.

19 MR. ROTHSCHILD: What are you looking for a
20 date for?

21 JUDGE KIRKLAND-MONTAQUE: I'm looking for a
22 status date.

1 MR. ROTHSCHILD: A status date? Anytime.

2 JUDGE KIRKLAND-MONTAQUE: But I want to...

3 MR. ROTHSCHILD: Have something done by then?

4 JUDGE KIRKLAND-MONTAQUE: Yeah.

5 MR. ROTHSCHILD: Oh, really?

6 MS. PARKER-OKOJIE: Would the end of June work?

7 I think that gives us a couple more weeks.

8 MR. ROTHSCHILD: Yeah, we'll get more done.

9 We'll certainly have a better -- if they're not going

10 to be available to do depositions until the start of June,

11 then --

12 JUDGE KIRKLAND-MONTAQUE: June 29th?

13 MR. ROTHSCHILD: Hold on one second.

14 MR. BARR: That's fine with Staff, your Honor.

15 MR. ROTHSCHILD: Is 10:00 a.m. okay?

16 JUDGE KIRKLAND-MONTAQUE: Perfect. And,

17 hopefully, by that time the depositions will have

18 been done.

19 MR. ROTHSCHILD: Or at least some of them --

20 hopefully, most of them. I don't know how many they

21 want. I think I've already pretty much said that I

22 want three, maybe four, of the motorist witnesses --

1 hopefully, only three. And then Sulikowski,
2 Geisbush, Strand.

3 And is Carlson still in the game?

4 MR. BARR: He's still named on our witness
5 list. Whether he's available to testify...

6 MR. ROTHSCHILD: You don't know?

7 MR. BARR: Yeah, as of this time, he's really
8 not available.

9 JUDGE KIRKLAND-MONTAQUE: Yeah, and if he's not
10 available on a date that you set for a deposition,
11 you won't be able to use him. So at least we have up
12 until that time to determine whether or not...

13 Okay. So this is going to be
14 continued to Thursday, June 29th, at 10:00 a.m., here
15 in Chicago.

16 MR. ROTHSCHILD: And, your Honor, just for the
17 record, if we are unable to come to terms on this
18 206(a)(1) issue, we will bring it to your attention
19 and come before you.

20 JUDGE KIRKLAND-MONTAQUE: Yes.

21 MR. ROTHSCHILD: Thank you.

22 JUDGE KIRKLAND-MONTAQUE: Is that it?

1 MR. BARR: I think so, your Honor.

2 JUDGE KIRKLAND-MONTAQUE: All right. Thank
3 you.

4 MR. BARR: Thank you.

5 (Whereupon, the above-entitled
6 matter was continued to June
7 29th, 2017, at 10:00 a.m.)

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