

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

In re the matter of: :  
: :  
Protective Parking Service Corporation d/b/a :  
Lincoln Towing Service, : 92 RTV-R Sub 17  
Respondent. : 100139 MC  
: :  
Hearing on fitness to hold a Commercial Vehicle : Honorable Latrice Kirkland-Montaque  
Relocator's License pursuant to Section 401 of :  
the Illinois Commercial Relocation of :  
Trespassing Vehicles Law, 625 ILCS 5/18a-401. :

**NOTICE OF FILING**

To: See attached service list.

**PLEASE TAKE NOTICE** that on the **18<sup>th</sup> day of May, 2018**, the Respondent, **Protective Parking Service Corporation d/b/a Lincoln Towing Service**, by and through its attorneys, PERL & GOODSNYDER, LTD., filed its **EMERGENCY MOTION TO STRIKE BRIEF OF STAFF, TO REMOVE BRIEF FROM ILLINOIS COMMERCE COMMISSION'S PUBLIC WEBSITE, AND POST RETRACTION**, with the Office of the Processing and Information Section by mailing a copy to 527 East Capitol Avenue, Springfield, Illinois 62701 pursuant to 83 Ill. Adm. Code 200.70.

  
\_\_\_\_\_  
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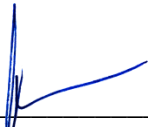
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**NOTICE OF EMERGENCY MOTION**

To: See attached service list.

**PLEASE TAKE NOTICE** that on **May 21, 2018 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the Honorable Latrice Kirkland-Montaque or any Administrative Law Judge sitting in her stead, in **Room N – 801** located on the Eighth Floor of the State of Illinois Building, 160 North LaSalle Street, Chicago, Illinois 60601, and then and there present Respondent's **EMERGENCY MOTION TO STRIKE BRIEF OF STAFF, TO REMOVE BRIEF FROM ILLINOIS COMMERCE COMMISSION'S PUBLIC WEBSITE, AND POST RETRACTION**, a true and accurate copy of which is attached hereto and hereby served upon all counsel of record as set forth in the Certificate of Service which Follows.

  
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

TO: See attached Service List.

I, an attorney under oath, hereby certify under penalties as provided by law pursuant to §1-109 of the Illinois Code of Civil Procedure, that I caused the following documents of the Defendant, **PROTECTIVE PARKING SERVICE CORPORATION, an Illinois Corporation d/b/a LINCOLN TOWING SERVICE:**

- (1) **Notice of Filing**
- (2) **Notice of Emergency Motion**
- (3) **Certificate of Service**
- (4) **Service List**
- (5) **Emergency Motion to Strike Brief of Staff, to Remove Brief from Illinois Commerce Commission's Public Website, and Post Retraction**

to be served upon each attorney to whom directed at their respective addresses via:

  X   **Via Electronic Mail**, by transmitting a copy in PDF format to the email addresses listed herein with consent of the recipient where permissible under 83 Ill. Adm. Code 200.1050, before 11:59 P.M. on the **18<sup>th</sup> day of May, 2018.**

Respectfully submitted,



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PERL & GOODSNYDER, LTD.

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## **SERVICE LIST**

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### **ADMINISTRATIVE LAW JUDGE**

**Honorable Judge Latrice Kirkland-Montaque**

Chief Administrative Law Judge

Review & Examination Program

Illinois Commerce Commission

160 N. LaSalle Street

Chicago, IL 60601

*lmontaqu@icc.illinois.gov*

### **CLERK OF THE ILLINOIS COMMERCE COMMISSION**

**Illinois Commerce Commission**

Processing and Information Section

527 East Capitol Avenue

Springfield, Illinois 62701

*via U.S. MAIL ONLY*

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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**EMERGENCY MOTION TO STRIKE BRIEF OF STAFF, TO REMOVE BRIEF FROM  
ILLINOIS COMMERCE COMMISSION’S PUBLIC WEBSITE, AND POST RETRACTION**

NOW COMES the Respondent, PROTECTIVE PARKING SERVICE CORPORATION d/b/a LINCOLN TOWING SERVICE (hereinafter referred to as “Respondent”) by and through its attorneys, PERL & GOODSNYDER, LTD., and pursuant the Illinois Commerce Commission (hereinafter referred to as the “Commission”) Rules of Practice (hereinafter referred to as the “Rules”), 83 Ill. Adm. Code 200.10 *et seq.*, respectfully requests that the Administrative Law Judge expeditiously strike **Staff’s Post-Hearing Brief** (hereinafter referred to as “Staff’s Brief” and/or “Closing Argument”) filed by attorneys for the Staff of the Illinois Commerce Commission (hereinafter referred to as the “Staff”). In support of this Motion, Respondent states as follows:

## **NATURE OF THE EMERGENCY**

In an unprecedented action, Staff and/or the Commission published Staff's Brief and Closing Argument to its website, on a page advertised prominently on its home page, where no motion or pleading in this proceeding had ever been published.<sup>1</sup> Further, to date, no pleadings, motions, or documents filed by Respondent have ever been posted on the website. As further set forth herein, Staff's Brief and Closing Argument also contains inaccuracies which intentionally and willfully mislead both the public and the press, causing serious harm to both Respondent and Respondent's Counsel. The brief included knowingly false statements, such as "Instead, the evidence before the Commission is that over the course of eight months Lincoln committed eight-hundred thirty-one violations of the law enacted to protect the safety and welfare of the public," which was set forth on Page 26 of Staff's Brief and Closing Argument. These knowingly false statements which have been disseminated to the public and the press have provoked an atmosphere of public outcry, which not only makes a fair hearing nearly impossible, but regardless of the result, has already directly caused the Respondent's business interests to be harmed<sup>2</sup>, with such harm certain to continue well after the hearing is concluded. In order to preserve the legitimacy of the tribunal as the fitness hearings proceed, Respondent seeks that immediate emergency action is taken to attempt to clarify the misinformation and improper posting of Staff's Brief and Closing Argument on the Commission's website and the record in this matter.

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<sup>1</sup> <https://www.icc.illinois.gov/docket/92-RTV-RSub17-100139MC/>

<sup>2</sup> Respondent has already received numerous Notices of Cancellation of Relocation Contracts from its customers that believe Respondent has lost its license, and has had its own operators threaten to quit as a result of the public belief that Respondent has already lost its license.

**PATTERN OF PRACTICE BY STAFF OF UNCONSTITUTIONAL AND  
HARASSING LITIGATION TACTICS INTENDED TO DEPRIVE  
RESPONDENT OF DUE PROCESS OF LAW**

Respondent is entitled to due process, prior to any revocation of its license. The government cannot deprive a person of life, liberty, or property without due process of law.” *AFSCME*, 2015 IL App (1st) 133454, ¶ 13 (citing U.S. Const., amend. XIV, and Ill. Const. 1970, art. I, § 2). “Procedural due process requires that when a constitutional right is at stake, the person whose right is at issue is entitled to notice and a meaningful opportunity to be heard.” *Id.* Illinois courts have long held that a commercial relocation towing license constitutes a property right that cannot be deprived without due process of law. *Pioneer Towing, Inc. v. Illinois Commerce Comm’n*, 99 Ill. App. 3d 403, 404 (1st Dist. 1981). Despite constitutional due process requirements, Staff continues to engage in a pervasive and ongoing pattern and practice of conducting improper, unconstitutional, and harassing litigation tactics intended to deprive respondent of due process under the law.

On July 8, 2015, the Commission entered an order in which it found that “The evidence shows that [Lincoln Towing] is fit, willing, and able to provide relocation towing services, in accordance with Chapter 625 of Illinois Compiled Statutes, Section 5/18a-400 through 5/18a-501.” See Commission Order dated July 8, 2015, a true and accurate copy of which is attached hereto as Exhibit 1. On or about February 24, 2016, only six (6) months later, the Commission entered an order initiating an investigation, ordering “A fitness hearing should be held to inquire into Lincoln’s relocation towing operations to determine whether it is fit, willing, and able properly to perform the service of a commercial vehicle relocater and to conform to the provisions of the ICRTVL and the Commission’s Administrative Rules, 92 Ill. Adm. Code 1710.10 *et seq.*” See Commission Order dated February 24, 2016, a true and accurate copy of which is attached hereto as Exhibit 2.

The Rules of the Commission mandate that to initiate a proceeding, a Formal Complaint be filed. The Rules command as follows:

A formal complaint shall be in writing and verified, and an original complaint shall be filed with the Commission, together with as many additional copies as there are parties complained against, and shall set forth the following:

- a) The name, address, telephone number, and, unless the complainant has no facsimile number or e-mail address either directly or through its attorney, facsimile number and e-mail address of each complainant and the complainant's attorney, if any. A complainant, in the complaint, shall state whether it agrees to accept service by electronic means as provided for in Section 200.1050. A complainant later may agree, or may revoke its agreement, to accept electronic service, provided that the complainant shall file and serve a notice of the later agreement or revocation.
- b) The name and address of each respondent.
- c) A plain and concise statement of the nature of each complainant's interest and the acts or things done or omitted to be done in violation, or claimed to be in violation, of any statute, or of any order or rule of the Commission.
- d) If the complainant alleges a violation of 83 Ill. Adm. Code 280 or 735, the complaint shall contain a Statement of Compliance with 83 Ill. Adm. Code 280.170 or 83 Ill. Adm. Code 735.200, whichever is applicable.
- e) The particular relief desired.

83 Ill. Adm. Code 200.170 – Formal Complaints (emphasis added).

Once a Formal Complaint is filed with the commission, an Administrative Law Judge determines if the complaint provides a clear statement on the subject matter, scope of complaint, and a valid basis thereof. Thereafter, the Respondent must answer as required by the Rules:

- a) Whenever the Hearing Examiner issues a ruling that a complaint provides a clear statement on the subject matter, scope of complaint, and basis thereof, answers to formal complaints shall be filed with the Commission within 21 days after the date on which the Commission serves notice of the Hearing Examiner's ruling upon the respondent, unless otherwise ordered. If any respondent fails to file an answer, when required under this Section, allegations of fact as to the respondent will be considered admitted. If respondent does not file an answer when no filing requirement exists, issue as to the respondent will be considered joined. Answers shall contain an explicit admission or denial of each allegation of the pleading to which they relate and a concise statement of the nature of any defense.



b) Answers to formal applications and petitions shall be filed with the Commission within 21 days after the date on which the applications or petitions are served upon the respondent, unless otherwise ordered. If any respondent fails to file an answer, issues as to the respondent will be considered joined. Answers shall contain an explicit admission or denial of each allegation of the pleading to which they relate and a concise statement of the nature of the defense.

c) The original of an answer to a verified pleading shall be verified.

d) Answers to petitions for intervention and to amended or supplemental pleadings need not be made unless the party so elects; and, in case answers are not made, the issue will be considered joined. Such answers, if made, shall conform to the requirements of subsections (b) and (c) of this Section, however, such answers shall be filed within 14 days, unless otherwise prescribed by the Hearing Examiner.

83 Ill. Adm. Code 200.180 – Answers (emphasis added).

However, in the case at bar, no such Formal Complaint was ever filed by Staff or anyone else at the Commission. No written document was ever given to Respondent ever alleging that Respondent ever violated any part of the Commission rules, state statute, or any other applicable rule, despite Respondent's numerous requests. For example, at the first status on March 23, 2016, Respondent's Counsel inquired as to the reason behind the hearing, and received no response. The transcript reads as follows:

6

22 MR. PERL: I would add, your Honor, that, you

7

1 know, we did have a hearing July 20- -- at the end  
2 of -- mid to end of July of 2015 for the fitness  
3 purpose already, which we did present our case and we  
4 were granted a license.

5 So I would think in this instance,  
6 where we're midstream and the Commerce Commission is  
7 now coming to us saying we need another fitness  
8 hearing, I think it would be more appropriate for  
9 them to tell us why they believe that we're all of a  
10 sudden not fit when we were less than a year ago when  
11 they determined we were fit to hold a license.

12 I think it would be my client's --  
13 probably due process would be better served if they  
14 told us why now they feel we aren't so we can then  
15 actually address the issues that they have as opposed  
16 to us just giving them the information we gave them  
17 in July, which they then granted us a license.

In Re Protective Parking (March 23, 2016), (Page 6:22 to  
7:17)

Thereafter, at the second status date in this hearing, Respondent's counsel renewed the request for notice of what allegations are being made against Respondent. The transcript reads as follows:

39

3 In regard to what we did receive,  
4 basically I received almost nothing. So I sent out a  
5 FOIA; I got nothing. I sent out voluminous  
6 discovery; I literally got two pages of a hearing  
7 that they decided to have the hearing for this, and  
8 maybe another 50 or 60 pages of invoices from Lincoln  
9 Towing and that's it.  
10 So I think the last time we were here  
11 I stated that I need to know the basis for why we're  
12 having this hearing since we were approved in July of  
13 2015, and I requested a lot of documentation. And  
14 I'm sure that Ms. Anderson and I will be able to work  
15 through a lot of what was in my letter, but I do  
16 understand when they say it's duplicative. We asked  
17 for the same things in the FOIA, but I got nothing  
18 from the FOIA either.

19 So I have nothing from the FOIA; I  
20 have nothing from them. And I don't really know how  
21 to proceed other than to state that I need all this  
22 documentation, the written discovery, depositions, in

40

1 order to proceed and determine that I can fully have  
2 a hearing on the merits of the case.

In Re Protective Parking (May 20, 2016), (Page 39:3 to  
40:2)

At no time throughout the entire proceeding was Respondent ever presented with any constitutionally mandated notice of any allegations of wrongdoing nor was Respondent afforded a meaningful opportunity to respond to any such allegations, by way of admitting or denying the allegations. As such, this proceeding should never have been allowed to proceed.

On or about April 6, 2016, Respondent propounded discovery requests to Staff pursuant to the Rules. Specifically, the Rules state that “It is the policy of the Commission to obtain full disclosure of all relevant and material facts to a proceeding. Further, it is the policy of the Commission to encourage voluntary exchange by the parties and staff witnesses of all relevant and material facts to a proceeding through the use of requests for documents and information.” Ill. Admin. Code 200.340. However, Staff objected to each and every request as “unduly burdensome.” Staff’s continued refusal to turn over documents ultimately became the subject of Respondent’s Motion to Compel.<sup>3</sup> No formal complaint was ever filed and as a result, Respondent had not been informed as to any violations of any Commission rules, state statute, or any other applicable rule. Respondent specifically asked that Staff “Identify why the Commission is conducting this hearing on Fitness to hold Commercial Vehicle Relocator’s License against Lincoln Towing at this time.” Staff provided no answer to the request, and merely restated the entire statutory text of 625 ILCS 5/18a-401 and 92 Ill. Adm. Code 1710.22, without any explanation or description. Such a persistent pattern and practice of conducting improper, unconstitutional, and harassing litigation tactics intended to deprive respondent of due process under the law, harms the legitimacy of the Commerce Commission and its ability to hold fair and impartial hearings, and warrants severe sanctions, including, but not limited to, (1) ordering Staff to immediately post a retraction disclaimer on the Illinois Commerce

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<sup>3</sup> No Motion to Compel was ever propounded on Respondent as Respondent thoroughly answered all requests on its first response. To date, Staff has filed eight (8) supplemental answers, including at the order of the Administrative Law Judge in response to Respondent’s Motion to Compel.

Commission's public website; (2) ordering Staff to remove Staff's Brief and Closing Argument from the Illinois Commerce Commission's public website; (3) striking the entirety of Staff's brief; (4) entering a directed verdict in favor of Respondent; or in the alternative, (5) striking Staff's Brief and Closing Argument and directing Staff to file a revised closing argument, consistent with the testimony adduced at trial; allowing Respondent thirty (30) days thereafter to file its Closing Argument; and re-setting the oral argument to a date and time thereafter.

As previously discussed, this matter was initiated as a mere investigation by way of a Commission Order dated February 24, 2016. See Exhibit 2. After several rounds of discovery, discovery was ultimately closed on February 1, 2017, and on February 16, 2017, this matter was set for hearing on May 11, 2017 and May 12, 2017, with one final status on April 25, 2017. Despite the disclosure deadline and the scheduling of a formal two (2) day hearing, no allegations in writing were brought against Respondent.

Unexpectedly, at the final status on April 25, 2017, Staff, for the first time, produced several hundred additional documents that had never before been disclosed to Respondent, separated into six (6) "exhibits," under the guise that they were produced in response to Respondent's initial discovery request propounded on April 6, 2016. The unmarked documents did not disclose (1) what they were; (2) what they represented; (3) what they purported to prove; (4) who created them; (5) why they were created; or (6) what Commission representative had knowledge of the veracity of the documents such that Respondent could cross-examine the evidence presented against it prior to the deprivation of its property rights. Over Respondent's objections, a Motion *in Limine* to exclude the documents (which was denied), and subsequently a Motion to Stay Hearing in order to conduct additional discovery as to the documents (which was also denied), the newly produced documents were allowed by the Administrative Law Judge to

be introduced at the hearing. The only relief Respondent was granted was an opportunity to take a second deposition of Sergeant Sulikowski, the only witness disclosed by Staff who would be testifying to Staff's newly propounded documents. However, at his deposition, Sergeant Sulikowski testified that he would not be testifying as to the documents at trial, that he did not know who printed the documents, and he did not know if they were accurate. Specifically, Sergeant Sulikowski was asked the following questions, and answered with the following answers under oath:

159

18           **Q. Are you planning on using the**  
19           **documents contained in Exhibit 3 when you**  
20           **testify at the hearing for fitness on Lincoln**  
21           **Towing?**

22           A. I personally am not presenting these  
23           documents.

In Re Protective Parking (Sulikowski - Part 2), (Page  
159:18 to 159:23)

Throughout his deposition, Sergeant Sulikowski answered consistent with the above testimony, and when he was asked the following questions, he answered with the following answers under oath:

202

4           **Q. As far as you know was this document**  
5           **in existence at the time of your first**  
6           **deposition on March 15, 2017?**

7           A. The exhibit or the information?

8           **Q. The exhibit.**

9           A. No.

10           **Q. Are you planning on using this**  
11           **document when you testify at the hearing for**  
12           **Lincoln Towing's relocation fitness?**

13           A. No.

In Re Protective Parking (Sulikowski - Part 2), (Page  
202:4 to 202:13)

In addition to claiming that he had no intention of testifying regarding these documents, Sergeant Sulikowski was unable to provide answers regarding the subject of any testimony that would be offered at the fitness hearing. Accordingly, Respondent was unable to cross examine Sergeant Sulikowski as to any purportedly unintended and supposedly unplanned testimony regarding the documents.

At the deposition, and subsequently at the hearing, Sergeant Sulikowski was unable to identify any single inconsistency in the documents, and claimed to know nothing about the accuracy of the documents. Sergeant Sulikowski was unable to identify even the subject of what his testimony at the Fitness Hearing would be. Accordingly, it became impossible for Respondent to examine evidence brought against it and to cross-examine the only witness that Staff proffered, in order to challenge his testimony with other evidence or documents. Specifically, Sergeant Sulikowski was asked the following questions, and answered with the following answers under oath:

218

22           Q.    Let's further visit that right now.  
23   Without the tow sheets in front of you, which  
24   you don't have today, can you tell me if you

219

1   found any inconsistencies and what they are in  
2   Exhibit 4 and the 24-hour tow sheets?

3           A.    No.

4           Q.    You need the documents to do that,  
5   don't you?

6           A.    Yes.

7           Q.    So the only way you're going to be  
8   able to testify that there are any  
9   inconsistencies or consistencies as  
10   Interrogatory Answer No. 20 states is if you  
11   look at the 24-hour tow sheets, correct?

12          A.    Yes.

13          Q.    But you didn't bring those here

14 today, did you?

15 A. No.

In Re Protective Parking (Sulikowski - Part 2), (Pages 218:22 to 219:15)

Sergeant Sulikowski continued to claim that he was unable to identify any violations during his deposition, and was unable to identify the subject of his testimony at the Fitness Hearing. Specifically, pertaining to the 24-hour tow sheets, Sergeant Sulikowski was asked the following questions, and answered with the following answers under oath:

222

1 Q. And you've already seen those  
2 documents. Did you take any notes on those  
3 documents?

4 A. No.

5 Q. As you sit here today you don't know  
6 what violations exist, do you?

7 A. Specifically, no.

8 Q. And for the relevant time period you  
9 don't know, do you?

10 A. No.

In Re Protective Parking (Sulikowski - Part 2), (Pages 222:1 to 222:10)

Throughout his deposition, Sergeant Sulikowski perpetuated the resounding testimony that he was unable to identify any violations. He was asked the following questions, and answered with the following answers under oath:

251

6 Q. Do you recall specifically what you  
7 saw, what dates, what lots, any information on  
8 the violations?

9 A. Only generalities I can give you.

In Re Protective Parking (Sulikowski - Part 2), (Pages 251:6 to 251:9)

In fact, Sergeant Sulikowski clarified that no violations were actually written by him. He was asked the following questions, and answered with the following answers under oath:

251

22           **Q. Did you write any violations as a**  
23 **result?**

24           A. This was not a violation writing  
252

1 session.

2           **Q. I didn't ask that. I'm asking if you**  
3 **wrote any violations?**

4           A. No.

In Re Protective Parking (Sulikowski - Part 2), (Pages  
251:22 to 252:4)

After additional questioning, it was then revealed that Sergeant Sulikowski never actually identified any single violation, which was the reason he could not identify any of them. Accordingly, it was clearly impossible to cross-examine Sergeant Sulikowski on the alleged inconsistencies, as they were unknown, unidentified, and seemingly compiled by an unknown individual. Sergeant Sulikowski was asked the following questions, and answered with the following answers under oath:

257

24           **Q. How did you know what 24-hour tow**

258

1 **sheets to look at? There was thousands of**  
2 **them.**

3           A. And they were all gone through.

4           **Q. You looked through 1000 invoices on**  
5 **Friday, you, yourself?**

6           A. The team did.

7           **Q. I'm not asking about the team.**

8           A. I did not.

9           **Q. You didn't, did you?**

10          A. No, I did not.

11          **Q. Someone else did, didn't they, and**



12 then they pointed them out to you, didn't they?  
13 A. Yes, they did.  
14 Q. So you actually didn't go through the  
15 tow sheets yourself to find inconsistencies,  
16 did you?  
17 A. No, I did not.

In Re Protective Parking (Sulikowski - Part 2), (Pages  
257:24 to 258:17)

Not only did Sergeant Sulikowski not identify the inconsistencies in the first place, and not only was he unable to identify them in his deposition, Sergeant Sulikowski had no record of any inconsistencies such that Respondent was unable to even ascertain what alleged violations Staff would be attempting to claim at the Fitness Hearing. Specifically, Sergeant Sulikowski was asked the following questions, and answered with the following answers under oath:

260  
24 Q. But you know what I'm saying. That's  
261  
1 why I'm clarifying when you say through my  
2 staff, I think you're referring to the other  
3 investigators or officers. You're actually  
4 referring to the attorneys, correct?  
5 A. Yes.  
6 Q. And they actually pointed out to you  
7 what they believe were inconsistencies,  
8 correct?  
9 A. Yes.  
10 Q. And then you took that and looked at  
11 some screen, correct?  
12 A. Yes.  
13 Q. Did you write anything down?  
14 A. No.

In Re Protective Parking (Sulikowski - Part 2), (Pages  
260:24 to 261:14)

It became clear that Respondent had no possible way of knowing what the alleged inconsistencies were as Sergeant Sulikowski was unable to testify at his deposition about them. He was asked the following questions, and answered with the following answers under oath:

267

5           **Q.    Is there any way for you as you sit**  
6           **here today to prove to me what screens you**  
7           **looked at on Friday?**  
8           A.    No.  
9           **Q.    You didn't make copies of them and**  
10          **save them, did you?**  
11          A.    No.

In Re Protective Parking (Sulikowski - Part 2), (Page 267:5 to 267:11)

Even if Sergeant Sulikowski would have been able to identify any alleged inconsistency, Sergeant Sulikowski was unable to confirm the accuracy of any of the documents. Sergeant Sulikowski was asked the following questions, and answered with the following answers under oath:

204

4           **Q.    Did you ever actually compare it with**  
5           **the actual operator permits?**  
6           A.    No.  
7           **Q.    And you didn't speak to anybody at**  
8           **the Commerce Commission to see whether it's**  
9           **accurate, did you?**  
10          A.    No.

In Re Protective Parking (Sulikowski - Part 2), (Page 204:4 to 204:10)

Notwithstanding the aforementioned failure of Staff and its witness to produce documents pursuant to a Deposition Notice, in violation of the applicable rules of procedure, Sergeant Sulikowski's deposition made it clear that he did not create any of the documents that

had been tendered to Respondent on April 25, 2017. More specifically, Sergeant Sulikowski testified that he did not identify any inconsistencies himself. Consequently, Respondent was unable to examine the evidence offered against it, and was not afforded a reasonable opportunity to cross-examine the evidence. Staff's failure to present for cross examination a witness to testify to the accuracy of the documents tendered on April 25, 2017 was a direct violation of the Administrative Law Judge's April 25, 2017 order, directing them to do so. However, the documents were still allowed to be introduced at the hearing, over Respondent's counsel's repeated objections, and in blatant disregard for Respondent's constitutional due process rights.

On or about June 1, 2017, Staff called Sergeant Sulikowski to the witness stand to testify regarding the 24-tow sheets and the recently disclosed reports from MCIS. For the first time since February 24, 2016, Staff identified new alleged inconsistencies to Respondent through Sergeant Sulikowski's live testimony in open court, with no opportunity for Respondent to review the inconsistencies prior to June 1, 2017, and no opportunity to subpoena knowledgeable parties, obtain records, or otherwise conduct discovery to refute the claims.

Throughout the pendency of this case, Respondent has had no access to the transcripts, motions, pleadings, or filed documents, except by way of a Freedom of Information Act request (hereinafter referred to as "FOIA"). Despite making claims throughout the hearing that the Commission documents are "public records," Respondent was told that cases pending before the Transportation Division of the Commission are not available on eDocket<sup>4</sup> despite its use at the

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<sup>4</sup> e-Docket is the electronic docket system of the Illinois Commerce Commission. e-Docket was developed to process and manage public information about the Illinois Commerce Commission's official cases and rule-making proceedings, referred to herein as cases or dockets. e-Docket has a variety of practical uses. Anyone interested in case proceedings conducted by the Illinois Commerce Commission may visit the e-Docket web site at <http://www.icc.illinois.gov/e-docket> and view information about opened and closed cases initiated on or after January 3, 2000. Users with e-Docket accounts may submit filings of applications, petitions, motions, and so forth, directly to the Illinois Commerce Commission over the Internet. Authorized Illinois Commerce Commission personnel use the same web site to review and process filings and manage docket information. All documents that are not confidential are available electronically to case participants and to the public.

Commission for all other types of cases since January 3, 2000, and may be obtained exclusively by FOIA request.

In order to refute Staff's allegations of these alleged inconsistencies, on June 9, 2017, Respondent submitted a FOIA request, seeking "public records" to rebut the testimony offered against Respondent. On or about June 19, 2017, the Commission demanded an additional 5 business days to respond to requests 2 and 6, and claimed that the remaining requests were "voluminous," consisting of approximately 1,921 pages of responsive documents. Thereafter, on or about June 26, 2017, the Commission sent additional correspondence, claiming that requests 2 and 6 were also "voluminous," consisting of approximately 1,064 emails, of single or multiple pages each, and potentially with attachments, as well as were "approximately 38 additional pages of documents" responsive to paragraph 2. Although in compliance with the statute, Respondent agreed to pay the statutory fees for voluminous data requests, the Illinois Commerce Commission ultimately denied the request in its entirety and produced no responsive documents whatsoever in response to Respondent's requests. As a result, Respondent had no choice but to file a lawsuit in the Chancery Division of the Circuit Court of Cook County in order to compel the Commission to provide documents requested to defend itself in this hearing, captioned *Protective Parking Service Corporation d/b/a Lincoln Towing Service v. Illinois Commerce Commission, et al.*, 2017-CH-10152.

The Commission continues to defend the lawsuit and willfully continues to withhold documents, and in fact, to date, have provided none of the documents requested in the FOIA request. Clearly, each of these actions are a part of a pervasive and ongoing pattern and practice of conducting improper, unconstitutional, and harassing litigation tactics intended to deprive respondent of due process of law.

## STAFF'S IMPROPER POST-HEARING BRIEF

Staff's Brief and Closing Argument, and the posting of Staff's Brief and Closing Argument on the Commission's public website, are collectively an unlawful attempt to substantially harm Respondent's business reputation and practice by slandering its operations through its false statements, inaccuracies, and mischaracterizations of the evidence adduced at the hearing, in addition to improper "syllogisms," not substantiated by any facts adduced, nor admitted into evidence in this hearing. A statement in closing argument regarding facts not in evidence is improper and constitutes reversible error if so prejudicial as to deprive a party of a fair trial. *Watkins v. Am. Serv. Ins. Co.*, 260 Ill. App. 3d 1054, 1067 (1st Dist. 1994)(Emphasis added). It is reversible error for counsel to comment on inadmissible or excluded evidence. *Hunter v. Chicago & N. W. Transp. Co.*, 200 Ill. App. 3d 458, 470 (1st Dist. 1990). A trial properly conducted is a dignified procedure. *Regan v. Vizza*, 65 Ill. App. 3d 50, 53 (1st Dist. 1978). Counsel in the case are officers of the court and owe a duty to the court, to opposing counsel, to the cause of justice and to themselves. *Id.* An attorney in his final argument is permitted only to make reasonable comments upon evidence. *Id.* It is not improper for an attorney to question either the credibility or judgment of a witness upon any legitimate ground, but an attorney has no right to indulge in violent or inflammatory language for the purpose of arousing the prejudice and passions of the jury nor to insult or abuse a witness without cause. *Id.*

On May 2, 2018, Staff filed their written closing argument, purporting to comport with Section 200.800 of the Rules. However, in violation of the Rules, the 32 page brief lacked appendices, a table of contents, and a summary of the position of the party filing, despite the strict requirements of Section 200.800. See 83 Ill. Adm. Code 200.800(b). Notwithstanding the procedural omissions, Staff's Brief and Closing Argument is riddled with inaccuracies and improper conclusory allegations, which are not only wholly unsupported by anything in the

record, but which are also directly contradicted by the evidence contained in the record and the hearing testimony.

Early in Staff's Brief and Closing Argument, Staff acknowledges that "the Commission has the authority to weigh the evidence adduced at a fitness hearing and make a determination whether the evidence establishes violations of the ICRTVL and the Commission's Administrative Rules." See Staff's Brief and Closing Argument, p. 5. However, despite acknowledging that the Commission may only take into account evidence "adduced at a fitness hearing," Staff relies upon the "logical syllogism [which] leads to the inevitable conclusion that a violation of the ICRTVL and Administrative Rules occurred in each instance." However, logical syllogisms are not evidence. Furthermore, the actual evidence adduced at trial did not show that these violations occurred. The allegations were mere inconsistencies disclosed for the first time at trial, for which Respondent had no opportunity to conduct any discovery as to the veracity of the inconsistencies, and ones which Staff's own witnesses admitted under oath were not accurate records of the Commission. The allegations contained in Staff's Brief and Closing Argument were actually proven to not be violations at the hearing. Despite the sworn testimony that no citations were written, no hearings were held, no due process lead to a finding of violations, Staff improperly referred to each alleged inconsistency as a violation all throughout its Brief. The only witness that Staff presented at the hearing regarding the alleged 831 "violations" identified in Staff's Brief and Closing Argument was Sergeant Sulikowski. However, contrary to the contentions in Staff's Brief and Closing Argument, Sergeant Sulikowski testified under oath that none of the 831 alleged "inconsistencies" were actually a violation of either the ICRTVL or Commission regulations. Even the Administrative Law Judge ruled that Staff cannot claim there was a violation until there is a hearing on a citation for that alleged inaccuracy, which to date has

never occurred. More to the point, on the first day of the hearing, the Administrative Law Judge sustained Respondent's counsel's objection, and held that "No one has adjudicated whether or not this is a violation." See Hearing Transcript, p. 200, lines 3-4. The Administrative Law Judge continued to say that making any claims that there were violations would require a hearing, saying, "But that would require me to evaluate whether or not the proposed violations are actually violations, which is an administrative citation hearing. There's been no administrative citation issues(sic)." See Hearing Transcript, p. 201, lines 8-12. Despite the aforementioned rulings, and the continued sustained objection to Staff's reference throughout the entire hearing of "violations," Staff plagued its closing argument with the term, "violation," without even so much as specifying that any such claims are mere allegations for which no investigations were ever conducted, no citations were ever written, no hearings were ever held, and no adjudications were ever made by a tribunal having jurisdiction over the matter.

For instance, on page 8 of Staff's Brief and Closing Argument, Staff has a table, with the bold print column headers, "**Violations | Property Address,**" which is followed up with a list of 176 purported "violations," for each one claiming that Respondent towed vehicles "in violation of" a statute or regulation. However, no such statements are supported by the facts contained in the record. For example, the first entry in the table claims the following:

111 S. Halsted: Lincoln towed a total of ten vehicles on July 24, 2015; August 28, 2015; November 14-15, 2015; and November 20 - 21, 2015. *Staff's Ex. J, pgs. 2, 4, 135, 136, 137, 144, 145, 146.*

Lincoln's contract for 111 S. Halsted was not filed with the Commission until April 3, 2016. *Staff's Ex. B, pg. 1.*

Lincoln towed the ten vehicles prior to filing the contract; therefore, without an effective authorization or contract to tow in violation of 92 Ill. Admin. Code 1710.91 (f)(1).

Staff's Brief and Closing Argument, p. 8.

However, this directly contradicts Sergeant Sulikowski's testimony at the hearing.

Sergeant Sulikowski, the only witness to testify about these exhibits, testified as follows:

1432

21 Q. And from that I believe you stated  
22 you saw there was an inconsistency, correct?

1433

1 A. Yes.

2 Q. Now, you don't know whether or not  
3 Lincoln Towing actually had a contract on  
4 July 24th, 2015 for 111 South Halsted, do you?

5 A. No.

6 Q. And you didn't check anywhere to make  
7 that determination, did you?

8 A. No.

9 Q. You didn't contact the lot owner,  
10 Teddy Baric, B-a-r-i-c-, did you?

11 A. No.

12 Q. And that's who it says on Exhibit B  
13 is the owner of the lot at 111 South Halsted,  
14 correct?

15 A. Yes.

16 Q. And, actually, there's even a phone  
17 number for the owner, correct?

18 A. Yes.

19 Q. So you didn't do any investigation to  
20 determine whether or not Lincoln Towing had a  
21 contract for that lot at 111 South Halsted,  
22 correct?

1434

1 A. Yes.

In Re Protective Parking (January 31, 2018), (Page  
1432:21 to 1434:1)



Specifically concluding as to whether there was a violation for this lot, Sergeant Sulikowski testified under oath at the hearing as follows:

1435

2 Q. You have no opinion as to whether or  
3 not Lincoln Towing violated any ICC rules as a  
4 result, do you?

5 A. No.

6 Q. Because prior to today -- I think  
7 yesterday you testified under oath, before you  
8 could do that, you need to do an investigation,  
9 correct?

10 A. Yes.

11 Q. And no investigation was done,  
12 correct?

13 A. Correct.

14 Q. And if I went through every single  
15 one of these so-called inconsistencies from  
16 Exhibit B, the 24-hour tow sheet, and I asked  
17 you the following questions: Do you know  
18 whether or not Lincoln Towing actually had a  
19 contract on those days with that lot  
20 specifically?

21 A. The answers would all be the same.

22 Q. Okay. So you don't know, correct?

1436

1 A. Correct.

2 Q. And you didn't do any investigation,  
3 correct?

4 A. Correct.

5 Q. And you don't know whether or not  
6 that implies any violations by Lincoln Towing,  
7 correct?

8 A. Yes.

In Re Protective Parking (January 31, 2018), (Page 1435:2 to 1436:8)

Sergeant Sulikowski's testimony continues to adduce into the record that no violations occurred.

1441

15 Q. Nobody ever complained that Lincoln  
16 Towing was improperly towing a vehicle from  
17 a lot regarding these tows, correct?

18 A. Yes.

19 Q. And, in fact, in not one of these  
20 tows you testified to on direct was -- was there  
21 a citation ever written, was there?

22 A. No.

1442

1 Q. And not one of them was there even an  
2 investigation opened, was there?

3 A. No.

In Re Protective Parking (January 31, 2018), (Page 1441:15 to 1442:3)

Despite Sergeant Sulikowski's sworn testimony adduced under oath at trial, Staff's Brief and Closing Argument boldly makes the following false statements against Respondent, "Cross-referencing the dates and addresses of tows contained in [Respondent's] Tow Reports for the Armitage Lot with the contract activity dates for property addresses in the MCIS Contract Listing by Property Address reveals [Respondent] violated the ICRTVL and the Commission's Administrative Rules one-hundred seventy-six (176) times between July 24, 2015 and March 23, 2016." See Staff's Brief and Closing Argument, ¶ 23. However, this is blatantly false. The testimony adduced at trial conclusively established that no property owner ever complained that Respondent was towing cars without authority, no investigations were ever opened, no citations were ever written, and no violations were adjudicated at any hearings.

Staff writes on page 2 of Staff's Brief and Closing Argument, "A relocater's failure to comply with the ICRTVL, Commission regulations, and orders constitutes a violation of the ICRTVL." Staff's Brief and Closing Argument, p. 2. However, a violation may only be determined by an administrative law judge, after weighing evidence presented and after determining that a relocater failed to comply. Mere allegations do not constitute violations, not to mention that none of the 831 were even alleged to have been violations.

The highlighted false statements discussed herein are merely examples, and are not a comprehensive list of all of Staff's inconsistent statements. Staff's Brief and Closing Argument is replete with inconsistencies. In total, Staff used the word, "violation," approximately 98 times throughout Staff's Brief and Closing Argument, although most, if not all of the alleged violations were never even alleged to have been violations prior to Staff's Brief and Closing Argument, nor were any findings made by any trier of fact, but merely inconsistencies first disclosed and identified at the hearing. In addition, Staff's Brief and Closing Argument contained unnecessary attacks at Respondent and Respondent's counsel, such as for example, when Staff argued "The implication of Lincoln's argument strains logic." Staff's Brief and Closing Argument, p. 29. Such disparaging remarks have no purpose in furthering the position of the Commission, Staff's client, but are direct attacks on Respondent and Respondent's counsel.

As Staff's Brief and Closing Argument is riddled with inflammatory language for the purpose of arousing prejudice and based upon claims unsupported by any evidence adduced at the hearing, Staff's Brief and Closing Argument should be stricken from the record, and Staff be ordered to file a new closing argument brief, in compliance with the Rules and based upon actual facts adduced in evidence at the hearing. Thereafter, Respondent should be granted thirty (30) additional days to respond to Staff's Brief and Closing Argument.

## **UNLAWFUL DISSEMINATION TO THE MEDIA**

As previously discussed, Respondent has had no access to the transcripts, motions, pleadings, or filed documents, except by way of a Freedom of Information Act request (hereinafter referred to as “FOIA”). In fact, even though Respondent would send filings in duplicate, via mail (as required as the only method for filing documents in transportation cases) along with pre-paid return envelopes, Respondent would not receive filed copies of its filed documents back from the Commission. Respondent made an eDocket account to download its own files, and discovered that this case is not available on eDocket, despite eDocket’s use at the Commission for all other types of cases since January 3, 2000. Since the initiation of this proceeding, Respondent’s and the public’s only way to access documents filed in this case has been through FOIA requests.

Although no other pleading or motion in this case had ever been posted to the Illinois Commerce Commission’s website, or otherwise publically disseminated on the internet, somehow Staff’s Brief and Closing Argument was uploaded to the Illinois Commerce Commission’s website, posted directly on a page accessible from the Illinois Commerce Commission’s home page, and was readily disseminated to the general public by the Commission. Upon information and belief, this is unprecedented for Staff’s closing arguments, which are not pleadings pursuant to the Rules, to be publically posted on the website.

Due to the failure of the attorneys for the Staff to clearly represent that the document posted was merely the closing argument of the attorneys and not the opinion, belief, findings, or decision of either the Administrative Law Judge or the Illinois Commerce Commission itself, this created confusion to both the public and the press, in that their unfamiliarity with this type of proceeding caused them to believe that Respondent actually lost its license, when, in fact, that is not the case.

Since Staff's Brief and Closing Argument was disseminated on or about May 2, 2018, a plethora of press articles have appeared in print media, on the internet, on the radio, and on television, each referencing false statements contained in Staff's Brief and Closing Argument. On or about May 9, 2018, the Chicago Tribune ran an article entitled, "Lincoln Towing 'unfit' to hold license, state regulator says," despite the fact that no state regulator has ever declared Lincoln Towing unfit to hold a license. A true and accurate copy of the Chicago Tribune article is attached hereto as Exhibit 3.<sup>5</sup> To date, although Respondent has requested that Staff file a retraction, no such retraction or correction has been made by Staff or the Commission. The article begins with the opening line, "A state regulator has issued a scathing report calling Lincoln Towing Service 'unfit' to hold a license to operate." *Id.* Although Staff knows this not to be accurate or truthful, Staff has made no attempt to correct this misrepresentation. Throughout the article, the Chicago Tribune article falsely refers to Staff's improper, conclusory brief filled with false statements and "syllogisms" as the Commission's official report. In addition, the article published states:

"The implication of Lincoln's argument strains logic," the ICC wrote. "... It is Lincoln's obligation to conduct its business in compliance with the law, not the commission's obligation to remind Lincoln to do so."

The ICC, which regulates utilities but also oversees relocation towing in Cook County, also said that the ease of finding the violations suggest that the North Side company's problems stem from both mismanagement and a more deliberate evasion of the law.

"Given that a fairly simple audit of Lincoln's own business records uncovered the ongoing pattern of violations, the reasonable inference that follows is that Lincoln's incompetence and mismanagement is tantamount to a deliberate ignorance of its obligation to properly manage its business practices," the report said.

Chicago Tribune. (May 9, 2018). Lincoln Towing 'unfit' to hold license, state regulator says

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<sup>5</sup> <http://www.chicagotribune.com/business/ct-biz-lincoln-towing-license-20180508-story.html>

Respondent has made Staff and the Commission aware of these articles and their inaccuracies. As Staff and/or the Commission have refused to contact the Chicago Tribune (or any other media source) with a request for corrections and/or retractions, the Chicago Tribune was left to believe the false notion that the Commission issued a report, and the incorrect notion that Lincoln Towing was found by the Commission to have violated the Commission's Rules and the ICRTVL 831 times throughout eight (8) months. Accordingly, the following day, the Chicago Tribune editorial board ran another article, titled Editorial: Lincoln Towing: 8 months, 831 violations.<sup>6</sup> A true and accurate copy of the second article is attached hereto as Exhibit 4. Had staff notified the Chicago Tribune of the inaccuracies in its first article, the second article would have been avoided. This article opens with the sentence "Lincoln Towing's reputation as a predatory scofflaw has been validated by investigators for the Illinois Commerce Commission, a happy sign that the company's license could soon be yanked." *Id.* However, the investigators did not validate that these violations were made by Lincoln Towing, nor did the Commission. In fact, the only investigator to opine about the exhibits was Sergeant Sulikowski, who testified that they were not deemed to be violations. See *In Re Protective Parking* (January 31, 2018), p. 1436:8.

Staff's Brief and Closing Argument makes "syllogisms" that lead to what it calls "inevitable conclusions" but which were unsubstantiated by the facts presented at the hearing(s) held in this matter. The article continues to cite to Staff's Brief and Closing Argument's syllogisms as fact, when the Chicago Tribune writes that the Commission's "numbers are not exaggerated: The ICC's audit of Lincoln Towing's business records found 831 violations

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<sup>6</sup> <http://www.chicagotribune.com/news/opinion/editorials/ct-edit-lincoln-towing-license-chicago-20180510-story.html>

between July 2015 and March 2016.” *Id.* That number is simply false and is contradictory to the actual statements contained in the record and the evidence adduced at trial.

In addition, Staff’s Brief and Closing Argument was featured in the Chicago Sun-Times<sup>7</sup>, on WGN News<sup>8</sup>, CBS Chicago<sup>9</sup> (who incorrectly claim that “The Illinois Commerce Commission has requested Lincoln Towing have its license revoked”), WTTW<sup>10</sup>, WLS AM Radio<sup>11</sup> (where they comment on how “the ICC says Lincoln Towing should lose their license”), WFLD Fox 32 Chicago, WBEZ, and WBBM. Although receiving calls all week from the news outlets, Respondent’s counsel declined to comment on the fitness hearing, so as to not try the fitness hearing case in the public by way of the media, which is exactly what Staff and/or the Commission has done by publishing Staff’s Brief and Closing Argument.

Upon learning about the misstatements made by various members of the press due to Staff and the Commission’s unprecedented dissemination of Staff’s Brief and Closing Argument, Respondent’s Counsel sought to discuss the matter with Staff and the Administrative Law Judge, to avoid the need to bring a formal motion. On Wednesday, May 9, 2018, the parties discussed the aforementioned matter telephonically, wherein counsel for Respondent brought to light all of the above referenced news articles written in response to Staff’s closing argument being publically disseminated. Respondent’s counsel requested that Staff’s Brief and Closing Argument be taken offline and a retraction be posted. However, to date, Staff has refused to take any action to clarify that its Brief is merely Staff’s argument and not a finding of the Commission, and furthermore Staff has refused to make corrections to its Brief to reflect the actual testimony and evidence adduced at the hearing: that there were not findings that

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<sup>7</sup> <https://chicago.suntimes.com/autos/lincoln-towing-also-known-as-lincoln-park-pirates-could-have-license-hauled/>

<sup>8</sup> <http://wgntv.com/2018/05/07/lincoln-towing-company-deserves-to-lose-license-icc-says/>

<sup>9</sup> <https://chicago.cbslocal.com/2018/05/08/chicago-towing-company-may-lose-license/>

<sup>10</sup> <https://chicagotonight.wttw.com/2018/05/11/week-review-lightfoot-vying-mayor-emanuel-s-job>

<sup>11</sup> <http://www.wlsam.com/2018/05/08/why-is-the-illinois-police-threatening-to-euthanize-police-dogs/>

Respondent actually violated the Commission's Rules and the ICRTVL, nor any evidence to support such allegations, but merely Staff's "syllogisms" and "conclusions."

These knowingly false statements which have been disseminated to the public and the press have provoked an atmosphere of public outcry, which not only makes a fair hearing nearly impossible, but regardless of the result, has directly caused the Respondent's business interests to be harmed, with such harm certain to continue well after the hearing is concluded. Respondent has already received numerous Notices of Cancellation of Relocation Contract from its customers that believe Respondent has lost its license, and has had its own operators threaten to quit as a result of the public belief that Respondent has lost its license. In order to preserve the legitimacy of the tribunal as the fitness hearings proceed, Respondent seeks that immediate emergency action is taken to attempt to clarify the Commission's website and the record in this matter.

### **REQUEST FOR SANCTIONS**

The unprecedented dissemination of Staff's Brief and Closing Argument, laden with false statements, inaccuracies, and arguments not supported by any facts in the record, is wholly improper, not well grounded in fact, nor warranted by any existing legal basis. As further described heretofore, courts have held that a statement in closing argument regarding facts not in evidence is improper and constitutes reversible error if so prejudicial as to deprive a party of a fair trial. *Watkins v. Am. Serv. Ins. Co.*, 260 Ill. App. 3d 1054, 1067 (1st Dist. 1994). Despite Respondent's Counsel consistently demanding a fair hearing, and demanding notice of what allegations Respondent is supposedly on trial for, demanding the right to confront evidence presented against Respondent, and repeatedly begging for constitutional due process, Staff continues to engage in a pervasive and ongoing pattern and practice of conducting improper, unconstitutional, and harassing litigation tactics intended to deprive respondent of due process of



law. Absent sanctions against Staff, the fairness and legitimacy of the tribunal in the eyes of the public are threatened.

Among the sanctions to be assessed against Staff, the Administrative Law Judge should order Staff to immediately post a disclaimer on the Commission's website, explaining as follows:

On May 2, 2018, the attorneys for the Staff of the Illinois Commerce Commission ("Staff"), who are responsible for presenting Staff's claims in this matter, filed their written closing argument, which was to have comported to Section 200.800 of the Illinois Commerce Commission Rules of Practice. In fact, the document filed on May 2, 2018 merely contains Staff's argument concerning the evidence that it claimed to have presented at the fitness hearing and a request for relief from the Commission based on that evidence it claims was presented. Although no other pleading or motion had ever been posted to the Illinois Commerce Commission's website, or otherwise publically disseminated on the internet, somehow the closing argument of the attorneys for the Staff were uploaded to the Illinois Commerce Commission's website, posted on a page accessible directly from the Illinois Commerce Commission's home page, and readily disseminated to the general public by the Illinois Commerce Commission. Due to the failure of the attorneys for the Staff to clearly represent that the document posted was merely the closing argument of the attorneys and not the opinion, belief, findings, or decision of either the Administrative Law Judge or the Illinois Commerce Commission itself, this created confusion to both the public and the press, in that their unfamiliarity with this type of proceeding caused them to believe that Respondent lost their license, when, in fact, that is not the case.

The Brief does not represent a final decision of the Illinois Commerce Commission, nor does it represent any opinion or finding of the Administrative Law Judge or the Illinois Commerce Commission. Lincoln Towing will next have an opportunity to file a response brief contesting Staff's argument and evidence. Staff will then have an opportunity to file a reply brief. Oral arguments are currently scheduled for June 27, 2018. Also, the parties will file Draft Proposed Orders pursuant to Section 200.810. The Administrative Law Judge will then take under consideration the evidence presented at the fitness hearing conducted in this matter and any properly plead and filed briefs to reach a recommended decision that will be submitted to the Commission for its review. Then and only then, the Illinois Commerce Commission will reach a final decision based upon the evidence adduced at the fitness hearings and the properly plead and filed briefs herein.

In addition, the Administrative Law Judge should direct the Commission to issue a press release to that effect, and direct the Commission to request corrections and/or retractions to be

made by the Chicago Tribune, Chicago Sun-Times, on WGN News, CBS Chicago, WTTW, WLS AM Radio, WFLD Fox 32 Chicago, WBEZ, and WBBM.

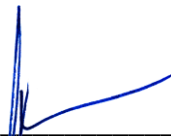
Thereafter, due to the pervasive and ongoing pattern and practice of conducting unconstitutional and harassing litigation tactics intended to deprive respondent of due process of law, and Staff's failure to file a verified complaint, pursuant to 83 Ill. Adm. Code 200.170, alleging under oath a "plain and concise statement of the nature of each complainant's interest and the acts or things done or omitted to be done in violation, or claimed to be in violation, of any statute, or of any order or rule of the Commission," as required by the Rules. 83 Ill. Adm. Code 200.170, the Administrative Law Judge should enter a directed verdict in favor of Respondent.

In the alternative, the Administrative Law Judge should strike from the record Staff's Brief and Closing Argument and direct Staff to file a new brief supported by the evidence presented at the hearing and as a part of the record, not founded upon "syllogisms" and "conclusions." The Administrative Law Judge should also grant Respondent an additional thirty (30) days to respond to Staff's Brief in writing and re-set the Oral Argument in this matter.

Finally, the Administrative Law Judge should award Respondent's Counsel attorneys' fees for having to bring this motion and should assess punitive sanctions against Staff for continuing to engage in a pervasive and ongoing pattern and practice of conducting unconstitutional and harassing litigation tactics intended to deprive respondent of due process of law.

**WHEREFORE**, Respondent respectfully requests that the Administrative Law Judge enter an order granting Respondent's Emergency Motion to Strike Brief of Staff, to Remove Brief From Illinois Commerce Commission's Public Website, and Post Retraction, and (1) order Staff to immediately post a retraction disclaimer on the Illinois Commerce Commission's public website; (2) order Staff to remove Staff's Brief and Closing Argument from the Illinois Commerce Commission public website; (3) strike the entirety of Staff's brief; (4) enter a directed verdict in favor of Respondent; or in the alternative, (5) strike Staff's Brief and Closing Argument and direct Staff to file a revised closing argument, consistent with the testimony adduced at trial, and allow Respondent thirty (30) days thereafter to file its Closing Argument, re-set the oral argument to a date and time thereafter; award Respondent reasonable attorneys' fees incurred in bringing this Motion; and any such other and further relief as the Administrative Law Judge deems just and proper.

Respectfully submitted,



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# **EXHIBIT 1**

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

In the Matter of: : 92 RTV-R  
: Sub 15  
Protective Parking Service Corporation : 100139 MC  
d/b/a Lincoln Towing Service, :  
Applicant. :  
: :  
: :  
Application for Renewal of a Commercial Relocator's License :  
Pursuant to Section 401 of the Illinois Commercial Relocation :  
of Trespassing Vehicles Law, 625 ILCS 5/18a-401. :

**ORDER**

By the Commission:

**PROCEDURAL HISTORY**

On August 29, 2012, Protective Parking Service Corporation d/b/a Lincoln Towing Service ("Applicant") filed with the Illinois Commerce Commission ("Commission") an Application for renewal of its authority to operate as a commercial relocater under the Illinois Commercial Relocation of Trespassing Vehicles Law (the "Law"). 625 ILCS 5/18a-400 *et seq.* Pursuant to Section 401 of the Law, all relocater licenses expire every two years. 625 ILCS 5/18a-401. That section provides that, upon the filing a complete, proper and timely application, the Commission shall renew an authority to operate unless it has information of cause not to renew such license, in which case the Applicant must be notified and a hearing held as provided in Section 400 of the Law.

In this case Commission Staff was informed that Applicant had for a period failed to meet one of the requirements for fitness, in that Applicant did not have Workers' Compensation insurance coverage for 62 days. 92 Ill. Adm. Code 1710.22(a)(2)(A)(v) provides that "[n]o person shall be deemed fit to hold a relocater's license unless the person" . . . [i]s in compliance with Section 4 of the Illinois Workers' Compensation Act [820 ILCS 305/4] Section 4 of the Illinois Workers' Compensation Act provides that "[a]ny employer . . . who shall come within the provisions of Section 3 of this Act . . . shall" either be approved as a self-insurer, furnish an acceptable guarantee of payment of the compensation provided for in the Act, or obtain an insurance policy to cover his entire compensation liability. Section 3 of the Workers' Compensation Act provides that the Act applies to employers engaged in carriage by land and loading and unloading in connection therewith where the employer employs more than 2 employees in the business. ]"

Accordingly, the Commission entered an Order on June 11, 2014, which required that a hearing be held on the Application to address compliance with these requirements and any other facts that may bear on fitness of the Applicant to hold the license.

Pursuant to notice as required by law and the rules and regulations of the Commission, this matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at its offices in Chicago and Springfield, Illinois via video-conference on May 5, 2015. Applicant was represented by counsel. Staff of the Office of Transportation Counsel represented the Commission. At the conclusion of the hearing on that date, the docket was left open for submission of a current lease as a proposed exhibit. The lease is for one of the storage lots used by Applicant. The proposed exhibit was subsequently submitted. The Office of Transportation Counsel filed a statement that it had no objection to admission of the offered exhibits. An Administrative Law Judge ruling was issued by which the lease exhibit was admitted into evidence and the record was marked "Heard and Taken."

### **APPLICANT'S EVIDENCE**

Chris Dennis, President of Applicant testified that Applicant has been a licensed relocater in Chicago for 23 years and he has been President of Applicant for 23 years. Applicant has two locations in Chicago, both of which are leased, and each of which has the proper security and lighting. Both are open and staffed 24 hours a day, 365 days a year. The corporation owns five trucks and leases approximately 15 trucks, all suitable for towing. The Annual Reports show that Applicant operates with a profit of approximately \$100,000 each year.

Mr. Dennis admitted that Applicant did not have insurance for a period of 62 days from March 23, 2013 through and including May 23, 2013. It was noted that the Commission order states the period was in 2013. Commission Staff and Applicant agreed the correct period was in 2014. Mr. Dennis testified that he was not aware his policy had expired. It was discovered when an employee of the Illinois Workers' Compensation Commission contacted Applicant's attorney and informed him of the lapse. The attorney then contacted Mr. Dennis and workers' compensation coverage was obtained the next day. The insurance was terminated due to Applicant's failure to contact the insurer for an audit. Mr. Dennis states that he did not believe he had received the request for an audit. It is clear he was unaware the workers' compensation coverage had expired, as documentation was submitted corroborating that the premium for the insurance was paid throughout the expiration period. He was subsequently notified that he would receive a refund. A Civil Penalty proceeding was also initiated against Applicant based on the failure to have workers' compensation insurance in 2014. That case has been resolved by settlement agreement which was approved by the Commission, and the assessed fine has been paid. Applicant also brought documentation that it had already obtained workers' compensation insurance for the period from May 25, 2015 to May 25, 2016

Another fitness issue raised was the administrative citations issued to Applicant. Staff and Applicant agreed that since Applicant's license was last renewed, on November 16, 2010. Applicant has received approximately 401 administrative citations. Of these 333 were dismissed, fines were assessed and paid in 39 cases, and 29 citations remain pending. Staff and Applicant also agreed that Applicant's Annual Reports for 2010 through 2011, each signed as certified by Mr. Dennis, states that Applicant performed 16,022 tows in 2010, 15,204 tows in 2011, 13,547 tows in 2012,

12,862 tows in 2013. Applicant points out that the tows in 2011, 2012 and 2013 total 41,613. The 39 citations for which a penalty was paid constitutes one citation for every 1,000 tows. When the pending 29 citations are added there is one citation for every 600 tows.

Some of the citations were related to signage being missing or in disrepair. Applicant has a full-time person who patrols lots to see that signage is properly in place and to repair or replace signage as needed.

Mr. Dennis testified that he understands the rules and regulations of the Commission and the need to purchase contract forms from the Commission. He understands all drivers will need operating permits. Applicant will post required information on signage on each property for which it has contracted to provide non-relocation towing services, and will file summaries of all contracts with the Commission.

Neither Applicant nor Mr. Dennis has been convicted of any felony, crime of violence, crime involving deadly weapons, injury to property, theft or honesty; neither has filed bankruptcy, and neither has outstanding debts owed to the State of Illinois.

#### **STAFF'S POSITION**

Staff has no objection to the Commission granting the requested authority.

#### **COMMISSION ANALYSIS AND CONCLUSION**

The evidence shows that Applicant is fit, willing, and able to provide relocation towing services, in accordance with Chapter 625 of Illinois Compiled Statutes, Sections 5/18a-400 through 5/18a-501.

#### **FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record, finds that:

- (1) Applicant has filed a legally sufficient Application for a Commercial Vehicle Relocator's license, in accordance with Section 18a-400 of the Illinois Commercial Relocation of Trespassing Vehicles Law (relocation towing law) (625 ILCS 5/18a-400); Applicant has, in its Application, designated Perl & Goodsnyder, LTD 14 N. Peoria St., Suite 2C, Chicago, IL 60607 as its agent for service of process;
- (2) the Commission has jurisdiction over the Applicant and the subject-matter of this proceeding, in accordance with Section 18a-200(1) of the relocation towing law (625 ILCS 5/18a-200(1));
- (3) Applicant has published notice of its Application in the officially designated State newspaper, as well as in a newspaper of general circulation in Cook County, Illinois, where the Applicant proposes to maintain its principal office and place of business in Illinois, and has filed certificates of

publication of these notices, as required by the relocation towing law and Commission regulations;

- (4) by reason of its available assets, management's prior experience in the towing industry and possession of adequate and properly maintained equipment, Applicant has demonstrated its ability, willingness, and fitness to provide commercial vehicle relocation service;
- (5) the evidence shows that issuance of a license authorizing the Applicant to operate as a commercial vehicle relocater is consistent with the policy declared in Section 18a-101 of the relocation towing law to fairly distribute rights and responsibilities among vehicle owners, private property owners, and commercial vehicle relocater's (625 ILCS 5/18a-101);
- (6) Applicant should be granted authority to engage in the business of removing trespassing vehicles from private property by means of towing and then relocating and storing such vehicles within fifteen air miles of the location from which the vehicle was towed if the vehicle was towed from an unincorporated area or within ten air miles when towed from any other location;
- (7) Applicant shall restrict the secured lot access to its employees only, and Applicant's tow truck drivers shall obtain Employee Operator's Permits from the Commission;
- (8) Applicant shall place signage at each lot for which it has a contract to perform relocation towing, clearly indicating its address and hours of business operation;
- (9) Applicant shall otherwise comply with the Law and all required rules and regulations of the Commission prior to commencing relocation towing operations as allowed pursuant to this Order.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Protective Parking Service Corporation d/b/a Lincoln Towing Service, with principal office and place of business at 4882 N. Clark Street, Chicago, Cook County, Illinois, having been found to be fit, willing, and able to perform a commercial relocation service in intrastate commerce within the State of Illinois, be granted a Commercial Vehicle Relocator's License bearing Identification Number ILL.C.C. 92 RTV-R, 100139 MC under the Illinois Commercial Relocation of Trespassing Vehicles Law (625 ILCS 5/18a-400 *et seq.*) limited by the distance restrictions recited in Finding (6).

IT IS FURTHER ORDERED that Applicant's rights are ineffective for operating purposes until such time as it has complied with the applicable rate, tariff, and insurance provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law and implementing Commission regulations.

IT IS FURTHER ORDERED that the Commercial Vehicle Relocator's License authorized by this Order shall expire two years from the date of issuance, and that upon Applicant filing a verified Application in such form and containing such information as

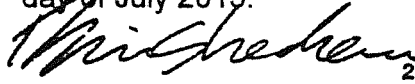


the Commission requires, and accompanied by the required Application fee, the Commission shall renew the Application, unless it has received information of cause not to do so.

IT IS FURTHER ORDERED that the Commission retains jurisdiction over Applicant and the subject-matter of this proceeding for the purpose of issuing such other Orders as it may deem appropriate.

IT IS FURTHER ORDERED that this is a final Order subject to the Administrative Review Law, 735 ILCS 5/3-101 *et seq.*, in accordance with Chapter 625 ILCS 5/18c-2201 through 2206 of the Illinois Commercial Transportation Law.

By Order of the Commission this 8<sup>th</sup> day of July 2015.



BRIEN SHEAHAN  
CHAIRMAN

JUDGE
SECTION CHIEF
ORDERS SUPERVISOR

# **EXHIBIT 2**

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

In re the matter of:	:	
	:	
Protective Parking Service Corporation	:	
d/b/a Lincoln Towing Service,	:	Docket No. 92 RTV-R Sub 17
Respondent.	:	100139 MC
	:	
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.	:	

**ORDER**

By the Commission:

On July 24, 2015, Protective Parking Service Corporation d/b/a Lincoln Towing Service ("Lincoln") was issued a renewal of its authority to operate as a commercial vehicle relocator under the Illinois Commercial Relocation of Trespassing Vehicles Law ("ICRTVL"), 625 ILCS 5/18a-100 *et seq.* Pursuant to Section 401 of the Law, all relocator licenses expire every two years. 625 ILCS 5/18a-401. That Section further provides that the Commission may at any time during the term of the license make inquiry into the management, conduct of business, or otherwise determine that the provisions of the ICRTVL and the Commission's Administrative Rules promulgated thereunder, 92 Ill. Adm. Code 1710.10 *et seq.* are being observed. *Id.*

Commission Staff has reviewed Commission records to ascertain Lincoln's compliance with Commission regulations and statutory requirements. Since the July 24, 2015 renewal of Lincoln's operating authority, the Commission Police Department has opened 166 investigations into Lincoln's relocation towing operations, 28 of which have both been completed and resulted in administrative citations issued against Lincoln. Commission Police Investigation # 15-0088 alleges that during the time period between October 15, 2014 and November 23, 2014, Lincoln committed 54 violations of issuing incomplete or inaccurate tow invoices in violation of 92 Ill. Adm. Code 1710.170(c), 3 violations of using tow trucks to perform relocations without an equipment lease on file with the Commission as required by 625 ILCS 5/18a-300(16), and 19 violations of using a dispatcher with an expired relocation towing employment permit as required by 625 ILCS 5/18a-300(3). Investigation # 15-0088 remains pending. Currently there are 92 pending administrative citations issued to Lincoln alleging similar and other violations of the ICRTVL and its Administrative Rules.

A fitness hearing should be held to inquire into Lincoln's relocation towing operations to determine whether it is fit, willing, and able properly to perform the service

of a commercial vehicle relocater and to conform to the provisions of the ICRTVL and the Commission's Administrative Rules, 92 Ill. Adm. Code 1710.10 *et seq.*

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that License 92 RTV-R be set for hearing pursuant to 625 ILCS 5/18a-401.

By Order of the Commission this 24th day of February 2016.



BRIEN SHEAHAN  
CHAIRMAN

JUDGE
SECTION CHIEF
ORDERS SUPERVISOR

# **EXHIBIT 3**

# Lincoln Towing 'unfit' to hold license, state regulator says

[Samantha Bomkamp](#)



A state regulator has issued a scathing report calling Lincoln Towing Service “unfit” to hold a license to operate.

The Illinois Commerce Commission’s report on Lincoln Towing, released last week, follows a two-year investigation into the company, which has been cited numerous times by the state for allegedly hauling cars illegally.

A public hearing on the case is slated for late June, and an administrative law judge is expected to issue a ruling on the case later this summer. The five ICC commissioners are expected to issue their final ruling after that. Lincoln could challenge that ruling in circuit court.

The ICC report said that Lincoln Towing repeatedly tried to minimize the alleged violations by suggesting that the state didn't tell the relocation towing company about the violations as they happened. "The commission cannot allow one relocater to gain an advantage over other relocaters and profit by flouting the law," the ICC said.

"The implication of Lincoln's argument strains logic," the ICC wrote. "... It is Lincoln's obligation to conduct its business in compliance with the law, not the commission's obligation to remind Lincoln to do so."

The ICC, which regulates utilities but also oversees relocation towing in Cook County, also said that the ease of finding the violations suggest that the North Side company's problems stem from both mismanagement and a more deliberate evasion of the law.

"Given that a fairly simple audit of Lincoln's own business records uncovered the ongoing pattern of violations, the reasonable inference that follows is that Lincoln's incompetence and mismanagement is tantamount to a deliberate ignorance of its obligation to properly manage its business practices," the report said.

Allen Perl, a Chicago attorney representing Lincoln Towing, said that he can't comment on the details of the case since it's still pending, but referring to the report, he said: "This is just their closing argument, and we'll have a chance to do ours."

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Twitter [@SamWillTravel](https://twitter.com/SamWillTravel)

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[\*\*State wraps up case for stripping Lincoln Towing's license, citing\*\*](#)

**['pattern and practice of unauthorized towing' »](#)**

**[Loathed by North Siders for decades, Lincoln Towing could lose license »](#)**

**[Lincoln Towing's license on the line in ICC hearing »](#)**



# **EXHIBIT 4**

# Lincoln Towing: 8 months, 831 violations.

[Editorial Board](#)



Lincoln Towing's reputation as a predatory scofflaw has been validated by investigators for the Illinois Commerce Commission, a happy sign that the company's license could soon be yanked.

This is welcome news to anyone who's paid a ransom to retrieve a car that was hauled away from a legal parking spot, and no, their numbers are not exaggerated: The ICC's audit of Lincoln Towing's business records found 831 violations between July 2015 and March 2016.

Yes, 831 violations *in eight months*.

**That's 462 times when Lincoln** grabbed a car it shouldn't have — because

its contract to tow cars from that particular lot had been canceled, or its contract stipulated that it could tow only at the request of the property owner, or it didn't have a contract on file with the ICC, or the lot had a contract with a different towing company — and 369 times when a vehicle was seized by an operator who didn't have a valid permit.

This is a company that has been hauling away cars for more than half a century, so feel free to extrapolate. Victims have been howling since at least 1972, when Steve Goodman recorded his famous “Lincoln Park Pirates” ditty.

Citing a “pervasive and ongoing pattern of conducting unauthorized relocations in violation of the law,” ICC staff concluded that Lincoln is “incompetent and unworthy to maintain its relocater’s license.” The case goes next to an administrative judge, who will make a recommendation to the five-member commission. It should be an easy call.

In seven years on the job, Ald. [Ameya Pawar](#), 47th, has lost count of the hours he devoted to “this one problem business in my ward,” he says.

During the eight months covered by the audit, Lincoln snatched more than 100 cars from lots where its contract had expired in 2009 or earlier. The report lists several occasions when Lincoln towed a vehicle from a lot that was under contract with a different company, and identifies one lot from which the company towed 78 vehicles despite having no contract on file with the ICC.

At its fitness hearing, Lincoln Towing comically argued that the ICC had not previously pointed out that it wasn't in compliance with the rules. That's bunk, of course (or “deliberate ignorance,” as the ICC report put it). But it is true that Lincoln has rarely been held accountable for its brazen lawlessness.

**Motorists have been complaining** for decades, to little avail. At a City

Council hearing two years ago, aldermen heard from angry constituents who said they got the runaround after their cars were wrongly towed by Lincoln and others. Police and prosecutors don't view unauthorized removal of a car from private property as theft, and City Hall had no mechanism for enforcing city towing ordinances. Frustrated citizens complained that they spent months and years pursuing complaints through the ICC and other agencies, often giving up or settling for a partial reimbursement.

That hearing led to the passage of a Towing Bill of Rights, designed to give consumers some recourse when their vehicles are seized. Under pressure from Pawar and Ald. [Ariel Reboyras](#), 30<sup>th</sup> — not to mention the 3,000 citizens who signed a petition demanding action — the ICC announced that it would conduct a fitness hearing to determine whether Lincoln Towing should keep its license.

Two years later, the staff's unequivocal conclusion is no. The next steps should follow quickly. At long last, Lincoln Towing should get the hook.

## **RELATED**

[Lincoln Towing 'unfit' to hold license, state regulator says »](#)

[State wraps up case for stripping Lincoln Towing's license, citing 'pattern and practice of unauthorized towing' »](#)

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