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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
PROTECTIVE PARKING SERVICE)
CORPORATION d/b/a LINCOLN)
TOWING SERVICE,)
) Docket No.
Respondent.) 92 RTV-R Sub 17
)
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
June 27th, 2018

Met, pursuant to notice, at 10:00 a.m.

BEFORE:
MS. LATRICE KIRKLAND-MONTAQUE, Administrative Law
Judge

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

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APPEARANCES:

ILLINOIS COMMERCE COMMISSION, by
MR. MARTIN BURZAWA
MS. AZEEMA AKRAM
160 North LaSalle Street
Suite C-800
Chicago, IL 60601
(312) 814-2859
on behalf of ICC Staff;

PERL & GOODSYNDER, by
MR. ALLEN R. PERL
MR. VLAD V. CHIRICA
14 North Peoria Street
Chicago, IL 60607
(312) 243-4500
for Protective Parking.

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 Docket No. 92 RTV-R
4 Sub 17. This is in the matter of Protective Parking
5 Service Corporation, doing business as Lincoln Towing
6 Service, Respondent. And this has been the hearing
7 on Fitness to Hold a Commercial Vehicle Relocator's
8 License pursuant to Section 401 of the Illinois
9 Commercial Relocation of Trespassing Vehicles Law.

10 Today we are here for closing arg- --
11 oral arguments the by the parties, and we're going to
12 start with Mr. Burzawa -- well, before I do that,
13 we'll do appearances.

14 Mr. Burzawa, you can start with your
15 appearances.

16 MR. BURZAWA: Martin Burzawa for the Staff of
17 the Illinois Commerce Commission. My address is 160
18 North LaSalle Street, 8th Floor, Chicago, Illinois
19 60601. My phone is (312) 814-1934.

20 JUDGE KIRKLAND-MONTAQUE: Thank you.

21 MS. AKRAM: Good morning, your Honor. My name
22 is Azeema Akram. I'm here on behalf of Staff of the

1 Illinois Commerce Commission. I have the same
2 address as Mr. Burzawa. My phone number is
3 (312) 814-2859.

4 JUDGE KIRKLAND-MONTAQUE: Mr. Perl?

5 MR. PERL: Good morning, your Honor. For the
6 record, my name is Allen Perl, P-E-R-L, on behalf of
7 Protective Parking Service Corporation doing business
8 as Lincoln Towing Service. My address is 14 North
9 Peoria Street, Suite 2-C, Chicago, Illinois 60607.
10 My telephone number is (312) 243-4500.

11 MR. CHIRICA: Good morning, your Honor. Vlad
12 Chirica. I'm here on behalf of Protective Parking
13 Service Corporation doing business as Lincoln Towing
14 Service. My address is 14 North Peoria Street,
15 Suite 2-C, Chicago, Illinois 60607. My phone number
16 is (312) 243-4500.

17 JUDGE KIRKLAND-MONTAQUE: All right. I'll give
18 you the floor, Mr. Burzawa.

19 CLOSING ARGUMENT

20 BY

21 MR. BURZAWA:

22 Thank you, Judge. I'm going to be

1 pretty brief in my opening remarks just because all
2 of the argument has really already been presented in
3 the post-hearing brief. I just want to kind of give
4 a quick overview.

5 The evidence in the record -- or each
6 of the addresses, as noted in Staff's brief, are in
7 the record. The evidence reveals facts from
8 Lincoln's own records and from MCIS, the Motor
9 Carrier Information System, that, in relation to each
10 other, show that a violation more than likely
11 occurred.

12 And I'm going to use one of these
13 addresses as an example. Using 225 North Columbus --
14 we can turn to Lincoln's tow reports, which are
15 contained in Staff's Exhibit J, and the reference to
16 225 North Columbus is at Page 220, which shows that
17 Lincoln towed one vehicle from 225 North Columbus, on
18 January 29th, 2016.

19 We can then turn to the Motor Carrier
20 Information System, which is contained in Staff's
21 Exhibit B, which is on Page 2, shows Lincoln's
22 contract for 225 North Columbus was cancelled on

1 January 25th, 2016 and replaced by another
2 relocater's contract on January 26th, 2016. Based on
3 these facts in evidence Staff argues that, in that
4 instance, Lincoln violated 92 Illinois Administrative
5 Code 1710.41 by towing a vehicle without property
6 owner or agent authorization, on January 29th, 2016,
7 from 225 North Columbus.

8 Now, for each of these underlying
9 facts we are dealing with a preponderance of the
10 evidence standard, Is it more likely than not that
11 that fact occurred? Presumably, Lincoln does not
12 dispute its own records; so I think we can safely
13 assume, or say, that Lincoln, more than likely, towed
14 a vehicle, on January 29th, 2016, from 225 North
15 Columbus.

16 Now, with this standard in mind, the
17 preponderance of the evidence standard, and relying
18 on information in MCIS, Lincoln's contract for 225
19 North Columbus was more than likely cancelled on
20 January 25th, 2016, meaning that Lincoln did not have
21 a contract for 225 North Columbus on January 29th,
22 2016 at the time of the tow.

1 With both of these premises more
2 likely true, it is more likely true than not that
3 Lincoln violated 1710.41 and towed the vehicle
4 without authorization; and this same analysis applies
5 to each of the addresses and the operators listed in
6 Staff's brief, leading to the conclusion that Lincoln
7 violated the Illinois Commercial of Relocation
8 Trespassing Vehicles Law and Commission Rules 831
9 times during the relevant time period.

10 As such, Staff would request that you
11 find Lincoln unfit to hold a relocater's license and
12 that its license be revoked. And I'm going to
13 reserve the remainder of my time for rebuttal.

14 CLOSING ARGUMENT

15 BY

16 MR. PERL:

17 Good morning, your Honor, counsel. Your
18 Honor, I will attempt to be brief this morning in my
19 closing argument.

20 The hearings, the transcripts, and the
21 pleadings in this matter were rather extensive. I
22 know that your Honor was present throughout the

1 entire hearing and has read everything up to date
2 that's been filed; and I'm also assuming that your
3 Honor has either had the time and opportunity to read
4 all of the closing arguments, or you will prior to
5 making your recommendation.

6 First, I want to thank you personally
7 for all of your time and attention to this matter. I
8 know that there were many issues involved. At times
9 the matter was very contentious, and it took up a lot
10 of your time and attention and careful consideration.
11 And on behalf of myself, my firm, and my client we
12 truly want to thank you for your time and efforts.

13 After hearing all of the evidence
14 adduced at trial, your Honor, it's clear that the
15 evidence showed that my client, the respondent,
16 Protective Parking Service Corporation doing business
17 as Lincoln Towing Service, is fit to hold a
18 Commercial Vehicle Relocator's License.

19 In addition, as set forth and lined
20 throughout the record of the proceeding, the
21 respondent's license cannot be revoked without due
22 process of law, which was not afforded to respondent

1 in this case. First, your Honor, very briefly
2 addressing the due process standard, Staff's failure
3 to formally put respondent on notice in writing about
4 any allegations they may have against respondent or
5 what relief was sought directly violates the
6 constitutional due process requirements mandated by
7 the United States Constitution, the Illinois
8 Constitution, and hundreds of years of case law.
9 Even the Commerce Commission's own rules mandate that
10 a respondent must be put on notice of what charges
11 are brought against it. Clearly, the evidence
12 adduced at trial showed that they did not do that in
13 this case.

14 As a matter of law, a Commercial
15 Vehicle Relocation Towing License constitutes a
16 property right that cannot be deprived without due
17 process of law. As discussed ad nauseam on the first
18 day of this hearing, back in May of 2017, the burden
19 was clearly placed on Staff to show that the
20 respondent was not fit. This is not a renewal
21 proceeding where the burden would be on the
22 respondent to prove that it is fit. However, Staff

1 has not established a prima facie case for any
2 particular allegations. And I'll refer you to the
3 transcript at Page 185 and 186 where Staff conceded
4 that this is not a suspension; and also the
5 transcript at Page 211 ordering the Staff to proceed
6 first.

7 It was adduced at the hearing in this
8 matter that, on July 8th, 2015, this very Illinois
9 Commerce Commission entered an order in which it
10 found as follows: The evidence showed that Lincoln
11 Towing is fit, willing, and able to provide
12 relocation towing services in accordance with Chapter
13 625 of the Illinois compliant statutes Section 518(a)
14 400 to 518(a) 501. For that, you can see the
15 Commission order dated July 8th, 2015, which your
16 Honor took judicial notice of and allowed into the
17 record.

18 The testimony adduced at the trial
19 showed that respondent continued to maintain each of
20 the required criteria in the fitness test enumerated
21 in the rules, 92 Ill. Admin Code 1710.10. In fact,
22 this is stipulated by the fact -- the Staff has

1 stipulated in writing, and the record was taken and
2 formally noticed by your Honor. These stipulations
3 were put into the record. The evidence also showed
4 that, on February 24th, 2016, at a board meeting,
5 Commissioner Miguel de Valle cited specifically to
6 166 pending investigations and 28 citations during
7 the relevant time period as a basis for this
8 investigation. No other basis was given to
9 investigate this matter. The February 24th, 2016
10 order also contemplates the exact numbers depicted
11 above.

12 Now, remember, Judge, these are the
13 Commerce Commission's numbers not Lincoln Towing's.
14 The 166 investigations, the 20 citations are numbers
15 directly taken from the Commerce Commission itself
16 and into this record. The relevant time period we
17 used was based upon the fact that Lincoln had been
18 deemed to be fit in July of 2015. So the only thing
19 that your Honor was to look at was whether or not
20 Lincoln was fit between July 24th, 2015 and March
21 23rd, 2016; and that's what we've referred to as the
22 relevant time period.

1 The evidence further showed, through
2 the admission of Lincoln Towing's 24-hour tow logs --
3 now, interestingly enough, it was Staff that really
4 wanted those tow logs introduced; and they were.

5 The exact number of tows during the
6 relevant time period was 9470 tows. That's clear.
7 That's in evidence in this case. Therefore, based
8 upon the number of investigations that the ICC
9 claimed are opened, the math is as follows: 166
10 violations out of 9470 tows, equals 1.75 percent of
11 the tows, led to an investigation only not a
12 conviction, not a citation, just an investigation.

13 Furthermore, of the 166 investigations
14 only 28 of them out of 9470 tows, or 2.9/10ths of 1
15 percent, led to a citation. That would be --
16 literally, Judge, if you took 1 percent, it would be
17 94 tows. This is 3/10ths of 1 percent. This means
18 that 99.7 percent of the tows during the relevant
19 time were good tows. 99.7 percent of the tows were
20 good tows, no citations written.

21 The number of investigations of
22 citations, again, written during this period of time

1 are generated by the Commerce Commission, in your
2 records. These are not our numbers. These are the
3 Commerce Commission's numbers. This is why they said
4 they'll open up an investigation, because 3/10ths of
5 1 percent of our tows had complaints written. That's
6 why.

7 And, by the way, Judge, that doesn't
8 mean we were found guilty of those citations, just
9 that they had citations written. And if you'll
10 recall, Judge, this is only 6 months after we had
11 been deemed, through a hearing -- this is from the
12 record, your Honor.

13 Typically, every 2 years you have to
14 come in and get your license renewed, and there is no
15 hearing. It's almost a rubber stamp. You just put
16 forth your documentation, and they give you your
17 license. We actually had a hearing in May of 2015
18 that I was in, and we were deemed to be fit in that
19 hearing.

20 As Staff has attempted to make
21 perfectly clear, the Commission has the authority to
22 conduct and inquiry into respondent's affairs

1 pursuant to 625 ILCS 5/18 9401. However, once the
2 inquiry was completed the evidence adduced at the
3 hearing clearly established Staff never filed a
4 single formal complaint against respondent, as
5 required by 83 Illinois Administrative Code 200.170
6 or as required by 625 ILCS 5/18 9401. Instead, the
7 evidence adduced shows that once Staff completed its
8 inquiry into respondent's business practices the
9 proceeding was set for a hearing without any formal
10 charges or allegations ever being filed.

11 Despite respondent's persistent
12 continuous demands through June of 2018 through
13 today, this hearing was allowed to proceed without
14 any formal notice to respondent of any specific
15 wrongdoing. As I sit here today, we still don't know
16 exactly what Staff is claiming out of the specific
17 wrongdoings that occurred. Another issue raised
18 before the hearing -- I won't take much time on
19 this -- is the matter of allowing certain documents
20 and exhibits into evidence after discovery was closed
21 and without the proper foundation laid even though
22 they were, quote, unquote, "public records".

1 Although it remains respondent's
2 position that the documents should not have been
3 admitted, they were. They were admitted. However,
4 that doesn't mean that they're accurate, and
5 truthful, and reliable, just that they are into
6 evidence. Staff continually confuses -- or tries to
7 confuse this Court and tribunal that because a
8 document is admitted into evidence it must be
9 reliable and trustworthy, which isn't the case -- we
10 know that -- in any case. It just means it's in
11 evidence.

12 The evidence adduced at trial shows
13 that not one witness is able to lay a foundation for
14 these documents to show that they were credible.
15 Really they were admitted; and the witness clearly
16 only read off the documents to show what the
17 inconsistencies were and nothing else. This is also
18 clearly a violation of the respondent's due process
19 rights.

20 Moving now, Judge, into what the
21 evidence was adduced at trial, you didn't hear very
22 much from counsel because they didn't have anything.

1 In their opening statement, which was about 3
2 minutes, was the 831 violations. Well, let's see
3 what the actual evidence adduced at trial showed.

4 Staff only presented four witnesses in
5 their case-in-chief. Officer Brian Strand (phonetic)
6 was called by the Illinois Commerce Commission in its
7 case-in-chief. Now, Officer Strand is a trained
8 police officer and an attorney whose function is to
9 investigate each and every complaint or allegation
10 regarding Lincoln Towing and any other relocater and
11 decide when to write a citation on it. And I mention
12 that he's an attorney because it's very important.
13 He's a licensed practicing attorney in the state of
14 Illinois, so he knows what the rules and the
15 guidelines are, and he knows the laws of the Commerce
16 Commission.

17 Officer Strand admitted at the hearing
18 that even issuing a citation does not mean guilt,
19 that that citation must still be brought to a
20 hearing. He further recalled hearings that we had
21 here where Lincoln was found not liable. What does
22 that mean to your Honor? That means that telling you

1 this there was a citation, even telling you that that
2 might be something that's a violation, doesn't mean
3 anything to you, because until you actually have a
4 hearing and determine that there was a violation you
5 don't have anything. Officer Strand remembered
6 hearings where we were found not liable. Certainly
7 you couldn't hold that against us, your Honor, if I'm
8 found not liable; that wouldn't be due process.

9 It's also important to remember that
10 this as individual, Officer Strand, that is not only
11 a trained sworn Illinois Commerce Police Officer but
12 also an attorney who testified by and on behalf of
13 the Staff, Staff called him. We didn't call him. He
14 was actually certified by us as an expert. So if you
15 recall, during the hearing, your Honor -- and I don't
16 think I've ever seen this happen in my 33 years of
17 practicing law -- I certified their witness as my
18 expert. It doesn't happen -- and over their
19 objections as well, as you recall. But he was
20 certified as an expert, oddly enough. And after he
21 was certified as an expert I asked him the following
22 questions -- and I'm quoting from the record. This

1 is Page 891 of the transcript, at Paragraph 1 through
2 4. And I quote: Question, from Mr .Perl -- this is
3 to Officer Strand after being certifying as an expert
4 in relocation towing:

5 "Do you believe Lincoln Towing, based
6 upon what we went over, is fit to hold a license
7 during the relevant time period?

8 "Answer: Yes."

9 I guess I could stop right here and
10 just be done, but there's so much more. How is it
11 possible Staff's own police officer who's charged
12 with writing the tickets says to you that we are fit
13 to hold a license, the person who is charged with
14 writing the citations, bringing them to your
15 attention? Because if no citations are written,
16 there can be no hearings. This is the underlying
17 boots on the ground.

18 He says, "I'm here. I watch over
19 towing. They are fit." That's what he told you.

20 Interestingly, enough Staff had a
21 chance to cross-examine him -- or redirect him on
22 this issue. They didn't. So Staff never

1 cross-examined Officer Strand -- actually redirect,
2 because they were his witness (sic) -- on this issue.
3 His answer stood then, and it stands today in
4 evidence uncontested, uncontroverted by any other
5 testimony elicited by Staff ever in this case.

6 This same police officer that was
7 hired by the Commission who was taught the rules, how
8 to enforce them, this attorney who understands
9 constitutional due process requirements as well as
10 the burden of proof in this Commission, claims that
11 Lincoln is fit to hold a license. This is a witness
12 that Staff presented to you to bolster their case
13 against Lincoln Towing, and somehow he ended up
14 testifying on behalf of Lincoln Towing in our favor.

15 In addition, Officer Strand also
16 testified, if you recall, that there were certain
17 citations that he had written regarding tickets that
18 he knows aren't actually citations for dispatcher
19 licenses, your Honor. So all of these so-called
20 citations, we clearly know now that you don't need to
21 have a dispatcher's license in order to release a
22 vehicle, and those citations would have never been

1 written; and he admitted that.

2 Another one of Staff's four witnesses
3 was Investigator Scott Casel (phonetic). Now,
4 interestingly enough about Investigator Casel is he's
5 the longest working relocation investigator in the
6 ICC today. I think he's been here over 20 years.
7 Now, you would also think that he would be presented
8 to help Staff's case. Why would Staff bring
9 witnesses that would hurt their case? They would
10 want to bring witnesses that would help bolster their
11 case, I don't know, to show something about the
12 violations.

13 So let's see what he actually
14 testified to. He had no opinion as to whether or not
15 Lincoln Towing was fit, during the relevant time
16 period, to hold a license. So you'd think that this
17 individual, if he was brought here and had these
18 horrible things going on with Lincoln Towing,
19 certainly he would say, "Lincoln Towing is not fit to
20 hold a license, No way". But he doesn't say that.
21 He holds no opinion. In fact, he admits that the
22 number of investigations and complaints that Lincoln

1 received during the time period, relevant time
2 period, was very small. He says he admits that
3 himself.

4 He further testified that there were
5 some citations he wrote and those actually weren't
6 violations as well. A logical argument can be made
7 that, if Investigator Casel believed Lincoln Towing
8 was not fit, he would have testified to that; but he
9 didn't. In fact, Judge, none of Staff's four
10 witnesses testified that Lincoln wasn't fit during
11 the relevant time period, as you're well-aware.

12 Next we heard from Officer Geisbush
13 (phonetic). He, too, is an Illinois Commerce
14 Commission Police Officer much like Officer Strand;
15 and before this he was a Chicago Police Officer, so
16 he has a lot of experience and knowledge, being a
17 police officer in the state of Illinois. You would
18 think he would be presented to help Staff's case.
19 But what does he actually testify to? Also no
20 opinion as to whether or not Lincoln Towing was fit
21 during the relevant time period.

22 When you're listening to evidence

1 adduced at a trial and you're looking at witnesses,
2 most of the time you bring in a witness that's going
3 to help your case. You don't typically bring a
4 witness that you think is not going to help your
5 case. So you would think clearly that I would have
6 to cross-examine, strenuously, these officers in
7 order to get them to say what I wanted them to say or
8 undo what they said; but I didn't have to because
9 they didn't hold an opinion about it. They didn't
10 think that Lincoln Towing was unfit. They didn't
11 tell you that Lincoln Towing was unfit.

12 They didn't tell you that and neither
13 did Officer Geisbush. He also thought that during
14 the relevant time period the number of
15 investigations, complaints, was relatively small in
16 relation to the number of tows, the 9470 tows that we
17 actually had during that time period.

18 These were the three witnesses that
19 actually covered in Staff's closing argument. They
20 don't even talk about them. They only talk about the
21 831 alleged violations. That was addressed solely by
22 Sergeant Sulikowski (phonetic). Not one of these

1 other three witnesses discussed those 831 violations,
2 ever, in this case.

3 So let's talk about Sergeant Tim
4 Sulikowski, their only witnesses regarding the
5 exhibits that we had sought -- as your Honor knows,
6 ad nauseam, we filed motions to deny the admittance
7 of the documents. We said that they were late; there
8 was no foundation. They were let in. However, we
9 did have to take his deposition because he's the one
10 testifying to it. He's the only one testifying to
11 it.

12 If you read, I guess, the Staff's
13 closing argument just this morning, you would be left
14 with the impression that Sergeant Sulikowski actually
15 testified that all, some, or any of the alleged
16 violations were actually violations, but you would be
17 wrong. He didn't testify to that at all. As we know
18 from attending the hearings, that's not what he said.
19 So let's take a look and see what Sergeant Sulikowski
20 actually testified to on these very hearings.

21 Since the evidence adduced and showed
22 that Sergeant Sulikowski didn't author, print,

1 compile any of the documents that he was testifying
2 to, nor did he know who did or when they did -- he
3 didn't even know if these were copies or copies of
4 copies, or whether they were complete or not or even
5 accurate or not. He wasn't allowed to testify that
6 they were accurate and truthful, only that they
7 showed inconsistencies with Lincoln's 24-hour tow
8 sheet. That was it. So what you have was a document
9 with some words on it, which was the Staff documents.
10 Staff says those are MCIS records. We don't really
11 know what they are because no one really testified to
12 what they are really. All he said was -- this is
13 Sergeant Sulikowski -- is, This is what this document
14 actually says, and I'm comparing it to what the
15 Lincoln Towing document says, and I found an
16 inconsistency; no violation, nothing else, not even
17 that they're accurate or truthful.

18 And, by the way, we'll talk about it
19 later, but the only inconsistency, the problems, were
20 found with Staff's documents, because probably 15
21 times, if you believe the MCIS records, Lincoln
22 Towing had Mr. Munyion (phonetic) had his employees

1 certified, and they got their licenses in the year
2 1899. Now, we know that's not possible. The
3 interesting thing is even in Staff's reply brief they
4 won't give it up that that's wrong. They say that
5 might not be true. Well, I don't really think
6 anybody at Lincoln Towing got their licenses in 1899.
7 Staff can't even admit that. They can't even say, Of
8 course that's a mistake. It couldn't have happened.

9 He further was not allowed to give an
10 opinion as to what the document showed. So contrary
11 to what Mr. Burzawa told you about these 831
12 violations, Mr. Sulikowski wasn't even allowed to
13 give that opinion. You limited him to saying, The
14 only thing you can say, Sergeant Sulikowski, is this
15 is an inconsistency of what the document shows, not
16 that it's a violation. He didn't even render an
17 opinion on it.

18 Here comes the good part, though, your
19 Honor. You may recall that I told you Sergeant
20 Sulikowski didn't testify as to these being
21 violations, these 831 alleged violations. So let's
22 see what he actually testified to on

1 cross-examination. And we can look at Pages 1341,
2 1342, and 1343 of the trial transcript. The
3 cross-examination of Sergeant Sulikowski went
4 something like this -- I asked Sergeant Sulikowski a
5 question.

6 "We're still looking at Exhibit C.
7 You stated earlier on cross-examination for me that
8 you wouldn't write a citation before doing an
9 investigation; correct?

10 "Answer: Correct:

11 "Question: So just looking at the
12 documentation on Exhibit C, you have no idea whether
13 Lincoln violated any ICC rules, would you?

14 "Answer: No.

15 "Question: You would have to do an
16 investigation; correct?

17 "Answer: Yes.

18 "Question: You would have to look --
19 at -- maybe look at the actual license because the
20 paperwork -- that paperwork comes to the ICC.

21 "Answer: It does.

22 "And you could do that; correct?

1 "Correct.

2 "And you didn't do that in this case,
3 did you?

4 "I didn't write any citations in this
5 case.

6 "You didn't do it?

7 "Answer: No.

8 "So you don't have an opinion as to
9 whether or not this document shows any violations on
10 the part of Lincoln Towing during the relevant time
11 period, do you?

12 "I do not have an opinion."

13 I'll stop there for a second. I'm not
14 sure how much stronger you can get than that. Their
15 own witness says that they don't have an opinion.
16 All along I argued to you that this is trial by
17 ambush and that the attorneys are trying to testify.
18 I could show you case law, if you want, that
19 attorneys are not allowed to -- I brought it with me
20 today -- attorneys are not allowed to testify. You
21 can look up the Yamaguchi (phonetic) case. I'll give
22 it you if you want. Attorneys do not testify in

1 cases. All they have done is testify. Again, this
2 morning Mr. Burzawa was testifying. He's telling you
3 that these are 831 violations, but not based upon the
4 evidence, just because he wants to say it. And
5 that's all there is.

6 Their own expert -- I'm sorry -- their
7 own witness says he doesn't have an opinion. If
8 their own sergeant -- and, by the way, he supervises
9 all of the investigators -- says that he doesn't have
10 an opinion, how can they say that these are
11 violations? Actually, they can't.

12 Next question: "Because you didn't do
13 an investigation?" -- this is Page 1343.

14 "I don't have an opinion.

15 "If you did an investigation, then you
16 could formulate an opinion; correct?

17 "Yes.

18 "But you didn't do it?

19 "Correct.

20 "So for all of the times that you
21 testified on direct examination a couple of months
22 ago, all of that testimony was just you saying this

1 is what the document shows. Do you recall that?

2 "Yes.

3 "And I believe that's in the record.

4 It was just me reading what the document says.

5 "And no opinion of whether or not
6 these were violations?

7 "Correct."

8 When asked about whether each
9 inconsistency was a violation, Sergeant Sulikowski
10 testified that it was not a violation. Further
11 questioning, at Page 1428:

12 "So you looked at the report. And
13 we'll pull out that exhibit, which it was -- and it's
14 accurate to state that just looking at the report you
15 can't garner anything; correct?

16 "It was only reading the report.

17 "Question: Right. But if I showed
18 you a document from Exhibit A and didn't show you a
19 24-hour tow sheet when a tow occurred, you wouldn't
20 know anything. You would know if there was a
21 violation, an inconsistency. You wouldn't know about
22 an inconsistency?

1 "Correct.

2 "Because you only testified to the
3 inconsistencies; correct?

4 "Correct.

5 "Not violations or anything else?

6 "Correct.

7 "So you wouldn't know that there was
8 an inconsistency from anything in Exhibits A, B, C,
9 D, E or F without looking at something else?

10 "Yes."

11 Your Honor, this is Staff's main
12 witness, and it clearly states he has no opinion as
13 to whether or not any of the alleged 831 violations
14 from Staff's closing argument are in fact violations;
15 but somehow with no investigation, no citations, and
16 no hearings Staff makes what they want to call a
17 syllogism -- which you seldom see in a closing
18 argument, because you need facts and evidence -- but
19 a syllogism to make their case. At best, it's an
20 impermissible argument. At worst, it's sanctionable.

21 And I find it very difficult to
22 believe that Staff would still make that argument

1 this morning again, that the 831 violations, when
2 went over this ad nauseam, and he knows very well
3 what the testimony was at the trial -- he knows
4 clearly that no one testified that these were
5 violations; and to make the stretch right now --

6 I know it's closing argument, but it's
7 still got to be based upon the evidence adduced at
8 trial. When you walk into a trial room, Judge, just
9 like this wall here is bare, that's what you'll find.
10 That's what you take this case as, nothing, your
11 Honor. We put up for you -- we walk up to it. We
12 write stuff on the board. We show you the evidence.
13 All you can look at is what you see here, nothing
14 else, period. There's nothing in this record that
15 they put on that board for you to show that these
16 were violations. Actually, the opposite.

17 Sergeant Sulikowski testified
18 consistently throughout the hearing over the span of
19 multiple days that he had no idea if the records that
20 the ICC had were even accurate. Take a look at the
21 transcript of Page 1301 to Page 1525. He didn't even
22 know, clearly -- actually, he admitted that some of

1 the things weren't accurate, and he tried to kind of
2 get to it -- well, I'm not sure about the rest of
3 this, but he admitted things weren't accurate, and he
4 also doesn't know if they're accurate. Sergeant
5 Sulikowski could not independently determine any
6 inconsistencies in the respondent's tow sheets.

7 Further questioning went like this --
8 from myself at Page 1316: "Is it all accurate?"

9 "Answer: We know it's not" -- I mean,
10 he's talking about the Staff's documents, not Lincoln
11 Towing's documents.

12 "We know it's not, don't we?" --
13 Question.

14 "Well -- Answer -- just because 1899
15 appears."

16 I said, "We'll get to that. About 15
17 different times we see on these documents later that
18 either a dispatcher or a relocater started towing in
19 1899."

20 He says, "Correct."

21 "And you already told me at your dep
22 that that can't be correct; correct?"

1 "Correct.

2 "So the information on these documents
3 isn't accurate, is it?

4 "Not all of it."

5 Throughout his testimony Sergeant
6 Sulikowski continued to testify profusely that the
7 MCIS records were inaccurate as follows, at Page
8 1494:

9 "Not to beat it to death, but we saw
10 where the ICC was incorrect on some other dates, on
11 the 1899; correct?

12 "Answer: Yes.

13 "Question: It's also possible that
14 they could be incorrect about the dates missed in
15 Mr. Negromo's (phonetic) license; correct?

16 "Yes."

17 Now, I'll stop there for a moment.
18 Why it's important -- Staff is claiming through these
19 MCIS -- if they are the records, which I don't
20 believe they are -- but whatever they are, show that
21 some of the Lincoln Towing relocators didn't have
22 licenses on certain dates. However, this is Sergeant

1 Sulikowski stating that he doesn't know that to be
2 the case. And this was asked, the question:

3 "Is it possible that they could be
4 incorrect about the dates missed in Negromo's
5 license? Correct?

6 "Yes.

7 "Question: So for all of the testimony
8 regarding Jose R. Negromo (phonetic) that you gave
9 prior to today, you didn't know whether or not he
10 actually had a license on those dates at the time in
11 question, did you?

12 "Correct.

13 "And you have no opinion as to whether
14 or not any of those amount to a citation from Lincoln
15 Towing, do you?

16 "Correct.

17 "And, in fact, no citation was ever
18 written, was it?

19 "Not to my knowledge.

20 "And, in fact, no investigation was
21 even started?

22 "Correct."

1 So how do you get from there, your
2 Honor, to Staff's argument that these are violations?
3 How do you possibly take the leap? And even in an
4 illogical syllogism somehow they tell you, in his
5 opening, It's clear, Judge, these are violations.

6 A little bit more on that case though.
7 Sergeant Sulikowski testified that the
8 inconsistencies were caused by the Commission itself,
9 not respondent. They didn't find inconsistencies in
10 Lincoln's documents. They found them in their own
11 documents.

12 "When you talk about -- question, at
13 Page 1499. "So when you talk about an inconsistency,
14 these for sure are inconsistencies as result of
15 something that the Commerce Commission did, not
16 Lincoln towing; correct?

17 "Answer: Yes."

18 So somehow they want to told an
19 inconsistency against us that it was caused by them.
20 I don't know how they could do that. Each and every
21 one of Staff's claimed violations were just
22 inconsistencies. As your Honor stated in the record

1 yourself -- these are quotes from your Honor from the
2 record. And I quote: "I mean, I know how things
3 work. I'm not saying that predisposes me to make any
4 type of decision, but I know that having a screen
5 shot is entirely different from presenting a citation
6 and having a hearing on a citation." That's in the
7 transcript at Page 774, Paragraphs 20 to 24.

8 Your Honor further stated later --
9 your Honor later determined conclusively that, quote,
10 "Because something is admitted doesn't mean it's
11 accurate."

12 This is the problem. Because Staff
13 had their documents admitted they want you to assume
14 that it's accurate. We know that it's not. They
15 actually admitted it as well. We went through that
16 ad nauseam at the hearing. It's just admitted. It
17 doesn't mean it's accurate.

18 You further stated, "That's the whole
19 purpose of the trial." That's the transcript at Page
20 1284, Paragraphs 3 to 5. Your Honor even asked -- a
21 quote from your Honor -- "How can you say they're
22 illegal if there's no citation, no hearing, no

1 findings?"

2 Transcript Page 799, also your Honor
3 stated, "How do you know it's true? How do you know
4 it's accurate, noting that they don't issue a
5 citation?" Transcript Page 799, Paragraphs 6 or 7
6 and 8 through 16.

7 However, despite your Honor's ruling,
8 Staff proceeds to argue that these should be
9 considered violations throughout his closing argument
10 even here today, and they want Lincoln Towing to lose
11 its license because of that. Because, as you heard,
12 that's all they've got. I've read their pleadings,
13 and I heard their closing argument today. Without
14 that, there's nothing. They haven't even argued
15 anything else.

16 Following up with Sergeant Sulikowski,
17 I asked him specifically if 166 investigations were a
18 lot based upon the number of tows, and he said that
19 was small. Sergeant Sulikowski confirmed that the
20 order-initiating proceeding that Lincoln Towing got
21 renewed, which showed only 28 citations, and he
22 felt -- well, I asked him directly, "Is this a

1 relatively small amount?" He said, yes.

2 Your Honor, this case has gone on for
3 almost 2-and-a-half years. Staff had all of the time
4 in the world to present evidence and witnesses to
5 make their claim. I'm not certain exactly what their
6 claim is as I sit here today; but let's assume for
7 the moment that they feel that we're not fit to hold
8 their license because we have these violations. I'm
9 just going to assume that. If that were the case,
10 you would assume Staff might have at least one
11 witness that could or would make that claim. You
12 would think that there would have been one person
13 from the Illinois Commerce Commission, other than
14 themselves, who can't testify to say, Lincoln had all
15 of these violations, Lincoln Towing is not fit, They
16 shouldn't have a license -- anything, any one.

17 They didn't bring one witness to say
18 that to you. How is that even possible? How can you
19 put on a trial where the only officers that you're
20 claiming are supporting your claim go against you and
21 say they're fit and "I have no opinion"? How are we
22 even here based upon that?

1 I moved for a directed verdict. It
2 easily should have been granted because they have
3 nothing. There's nothing here to show you anything,
4 but we are here. The only one with the opinion that
5 they presented again was of the opinion that Lincoln
6 Towing actually was fit, which is kind of ironic.

7 What do you get? Syllogisms. Their
8 whole closing argument, their whole case, is based on
9 a syllogism. I would agree with you that, if today
10 was Thursday, then it might be something; but today
11 is Wednesday, so your syllogism isn't truthful. It
12 isn't accurate. It isn't even a syllogism anymore.
13 It's just made-up nonsense that these attorneys know
14 better than.

15 Now, I will tell you this: When Staff
16 argued in their reply -- and I'm assuming that it was
17 Counsel who wasn't here for most of the hearing --
18 that you should hold against us the fact that we
19 didn't bring in the contracts for those 831 lots --
20 that's what they said. I think Counsel wasn't here
21 for the part where we filed a motion to reopen
22 discovery, and we asked you to do that, and you

1 denied it. So when they write their reply, again,
2 it's a bit disingenuously to say that you should hold
3 it against us because they should know that we
4 actually tried to do that.

5 We filed a motion to reopen. We
6 actually told you on the record that we wanted to
7 bring all of the lot owners, all of the contracts,
8 and we're going to prove to you that there was a
9 contract for each. And you said, No, you're not,
10 We're not going to do that here; because you said,
11 You don't need to, and we weren't allowed to. So to
12 argue in the reply that you should hold that against
13 us disingenuous, your Honor. And I think you
14 might -- I want to make sure you recall that, and we
15 did try to do that.

16 We did present Mr. Munyion to testify,
17 our witness. He's a general manager for Lincoln
18 Towing, over 30 years' experience at Lincoln Towing.
19 He's a keeper of records; and here's what he
20 testified to:

21 "The final -- Question: "The final
22 responsibility for all of these contracts being

1 entered into and entered into the e-filing system is
2 yours, isn't it?

3 "Yes, it is.

4 "And you have direct knowledge of
5 these contracts being e-filed because that's your job
6 and your responsibility; correct?

7 "Answer: Correct.

8 "And when a contract is e-filed, how
9 do you know that the information you put in actually
10 came back -- it comes back to you as being e-filed
11 properly with the Commerce Commission?

12 "Answer: We're issued a control
13 number. They call it a contract number.

14 "For every contract that you file;
15 correct?

16 "Correct.

17 "And to the best of your recollection,
18 is that control number contained on every one of the
19 contracts that you testified earlier were in
20 existence for the relevant time period?

21 "Answer: Yes, it was."

22 This testimony was deemed admissible

1 by your Honor. It came in unconverted and
2 uncontested. However, Staff did take a shot, in
3 trying to see if he really doesn't know anything
4 about the contract. You might recall this. Mr.
5 Burzawa attempted -- I believe it was him -- to see
6 whether he knew about the contracts.

7 "Question -- from Staff -- "Okay. Are
8 you -- and you also testified about your familiarity
9 with the address in Exhibits A and B -- and I think
10 he gave an example of a business at one location.
11 Now, can you tell me what type of business is at 223
12 Kostner Avenue?" -- thinking that would trip him up
13 and he would know.

14 "It's a condominium building. I'm
15 pretty sure.

16 "Question: How about 834 West Inland
17 (phonetic)?

18 "834 West Inland (phonetic) is a
19 parking lot for an apartment building.

20 "Question: How about 2622 North
21 Lincoln?

22 "2622 North Lincoln I'm pretty sure is

1 behind a building that has some retail on the ground
2 and some apartments above."

3 At that point in time Staff realized
4 that they weren't going to trip him up because he
5 knew about the contracts and he was the proper person
6 to testify. Ironically, when we bring someone to
7 testify, they are the person with knowledge and the
8 skill that knows the information. When Staff brings
9 them, they're the wrong person.

10 Your Honor, there's no question that
11 Staff has the burden of establishing that respondent
12 is somehow not fit to hold a license. Contrary to
13 the statute in the ICC rules it was adduced at trial
14 that at no time did Staff ever tender a written
15 complaint about anything where the basis was fitness.

16 Furthermore, based upon the testimony
17 and the evidence adduced at trial, Staff should not
18 have been allowed to use the late-tendered exhibits
19 the screen shots that they did use.

20 In response to Staff's closing
21 argument, at some point in time Staff stated that
22 these 831 violations somehow show a pattern and

1 practice of improper tows. The problem is 99.7
2 percent of our tows are proper. So if you wanted to
3 impute a pattern and practice, that's improper.
4 3/10ths of 1 percent is not a pattern and practice,
5 your Honor, in any book by any standard.

6 Although this entire hearing was
7 unfounded, procedurally, on the law and fundamentally
8 deprived respondent of their constitution due process
9 of law which it's entitled to, it did proceed. As
10 further set forth therein, Staff failed to meet its
11 burden and prove conclusively that respondent is in
12 any way not fit to hold a Commercial Vehicle
13 Relocator's License during the relevant time period.
14 On the contrary, the entirety of the evidence adduced
15 at trial conclusively showed that respondent was fit,
16 willing, and able to hold a Commercial Vehicle
17 Relocator's License through the relevant time period.

18 Accordingly, Judge, we ask that you
19 enter a finding in favor of respondent and against
20 the Staff allowing and showing that the respondent,
21 Lincoln Towing, was fit; willing; and able to provide
22 relocation towing services in accordance with Chapter

1 625 of the Illinois compiled statutes, Section
2 5/18-8400 through 5/18-8501 throughout the relevant
3 time period of July 24th, 2015 through March 23rd,
4 2016.

5 JUDGE KIRKLAND-MONTAQUE: Go ahead,
6 Mr. Burzawa.

7 REBUTTAL ARGUMENT

8 BY

9 MR. BURZAWA:

10 Judge, as to the due process arguments
11 that Lincoln raises, they concede -- Lincoln concedes
12 that they've been raising those same arguments from
13 the beginning of the fitness hearing. Those
14 arguments weren't directed to Staff. Staff is not
15 the trier of fact or law in this situation. Those
16 arguments were directed to you. When Lincoln made
17 arguments to you and you considered them meritorious,
18 you granted them, as you granted their argument that
19 it was Staff's burden in this case and Staff should
20 proceed first. All of these other constitutional
21 arguments, those were rejected either explicitly or
22 impliedly by you. Had they not been, this process

1 would not be ongoing. They were unpersuasive then,
2 and they're unpersuasive now.

3 Lincoln repeatedly says that there
4 that there were no violations because there were no
5 investigations opened, no citations were written, no
6 violations were adjudicated by an Administrative Law
7 Judge, there were no actual citations or even actual
8 violations that have been adjudicated, confusingly,
9 to argue that the Commission, for it to be able to
10 find that Lincoln violated an Illinois Commercial
11 Relocation Trespassing Vehicles Law within the
12 context of the fitness hearing, there must first have
13 been a previous adjudication of the same violation.
14 And this dismisses the authority of the Commission to
15 make an inquiry and a determination within the
16 context of the fitness hearing and dismisses all of
17 the evidence that was garnered during that inquiry.

18 The authority of the Commission during
19 a fitness hearing is not limited to making a decision
20 about prior-decided facts, rather the Commission has
21 the authority to make determinations of a fact and
22 law in the first instance. Second 401 of the ICRTVO

1 (phonetic) provides that the Commission may at any
2 time during the term of the license make inquiry into
3 the management, conduct of business, or otherwise
4 determine that the provisions of the ICRTV0 and the
5 Commission's Administrative Rule 92 Illinois
6 Administrative Code 1710.10 are being observed. This
7 is at 625 ILCS 5/18A-401. The authority to make
8 inquiries or otherwise determine that the provisions
9 of law and rules that are being observed necessarily
10 implicates the authority to actually make that
11 determination. How do you determine something
12 without actually determining it? That was actually
13 the crux of Lincoln's argument when it comes to the
14 authority of the Commission granted by this
15 section -- or this portion of 401.

16 Accordingly, the Commission can waive
17 Staff's argument and the evidence in support of it
18 and determine, in the first instance, whether there
19 was a violation of the ICRTV0 in the Commission's
20 Rules. Lincoln's entire argument, based on the lack
21 of evidence, dismisses all of the evidence actually
22 garnered during the inquiry during the fitness

1 investigation; and that being Staff's exhibits and
2 testimony of the officers and everything else that's
3 in the record.

4 With regard to the testimony of the
5 officers, Lincoln seems to focus in on things that
6 are favorable to it and dismisses testimony that is
7 unfavorable to Lincoln. Sergeant Sulikowski did also
8 testify about comparing Staff's exhibits with
9 Lincoln's tow logs and finding inconsistencies, and
10 those are the inconsistencies that are significant.
11 You actually have to compare two different documents
12 in order to find inconsistencies. So you have to
13 compare Staff's exhibits with Staff's tow reports.

14 When Lincoln makes the argument that
15 Sergeant Sulikowski admitted to not finding an
16 inconsistency by looking at a single document and
17 saying, "If you only look at MCIS, are you able to
18 say that there's some type of violation or
19 inconsistency?", well, obviously, no, because you'll
20 have to compare it to Lincoln's tow report. So that
21 argument is unpersuasive. There's not going to be an
22 inconsistency by looking at one piece of evidence.

1 You have to look at two pieces of evidence in
2 relation to each other.

3 And Lincoln's argument with regard to
4 Officer Strand, I think they're kind of taking a
5 liberal interpretation of what happened during his
6 testimony. Lincoln tried to certify him as an
7 expert. They indicated their intention of doing so,
8 but he was never specifically tendered by them as an
9 expert and they never made a specific ruling about
10 admitting Officer Strand as an expert. Instead you
11 allowed Officer Strand to offer his opinion, because
12 Staff objected to it, but only within the context of
13 being a police officer and only based on what he
14 testified to, the citations that he wrote to Lincoln.

15 When he gave his opinion, he wasn't
16 talking about fitness in a general sense, the type of
17 authority or decision concerning fitness that the
18 Commission is actually able to make. And,
19 regardless, all of the opinion testimony by the
20 officers, one, they were not directed to fitness as a
21 whole. They were directed to opinions concerning the
22 citations that they specifically issued to Lincoln.

1 Those were all improper. Those were objected to by
2 Staff because those are legal opinions which is
3 within the purview of the Commission to make.

4 Would the analysis of the Commission
5 end if one of the officers testified, "Yes, it is my
6 opinion that Lincoln is unfit to hold a license"?
7 Would it be over? Would Lincoln then concede that
8 they're unfit? No. They would make the same
9 objection, that that is a legal conclusion to be
10 derived -- to be made by the Commission. And so all
11 of those opinions weren't directed at the fitness as
12 a whole. They were very limited in scope; and, plus,
13 they were improper legal conclusions, and they don't
14 really carry the data on that issue.

15 And Staff's argument is quite simple,
16 but the fact that it is simple doesn't make it any
17 less compelling, so it continues to be a perplexment
18 that Lincoln seems to not understand, that Staff's
19 argument is based on properly admitted exhibits.
20 It's based on Staff's Exhibits A, and B, and C in
21 relations to Staff's Exhibits J and K.

22 And in its brief Lincoln dismissively

1 states that the records show various inconsistencies
2 and no actual violations. Now, that inconsistency is
3 factually accurate. There is an inconsistency
4 between MCIS and Lincoln's own tow reports; but for
5 Lincoln to suggest that the analysis ends there is
6 wrong. The analysis continues to determine the legal
7 significance of those factual inconsistencies, and
8 that's done by comparing the information in Staff's
9 exhibits, which is the information from MCIS and
10 Lincoln's tow report. As I indicated before, if that
11 comparison, more likely than not, reveals that those
12 two underlying premises are more likely true than
13 not, then the conclusion from those two premises is
14 also more likely true than not, meaning that a
15 violation of that particular rule occurred.

16 And Lincoln doesn't really offer a
17 direct response to that. Instead it argues that the
18 exhibits should never have been admitted or that
19 they're unreliable and inaccurate. The question of
20 admissibility has been resolved; but Lincoln, in
21 order to make that argument, only focuses on
22 irrelevant entries in those -- in MCIS. It provides

1 no evidence that the entries that are at issue with
2 regard to the addresses an operator permits within
3 Staff's argument are somehow wrong or inaccurate.

4 An input of 1899 may indicate that
5 that particular entry is inaccurate; but if the
6 actual information or entry contained data that is
7 what it would be expected to be, there is no outside
8 indication that there's some type of inaccuracy.
9 Now, this is significant because Staff would say that
10 MCIS is generally more reliable than a preponderance
11 standard, but that is actually the standard that
12 we're dealing with here today. Absent evidence
13 calling into question a particular entry where all of
14 the information is what it is expected to be, it is
15 more likely true than not that because MCIS in
16 general is reliable.

17 MR. PERL: I'm going to object to that, your
18 Honor. There's no evidence that MCIS is generally
19 reliable. That's never been in the record.

20 JUDGE KIRKLAND-MONTAQUE: All right. Let's not
21 interrupt each other. I'm going to allow him to
22 continue.

1 MR. BURZAWA: I think it's been established,
2 your Honor, that MCIS is a public record. And public
3 records, despite what Lincoln argued, as cited to in
4 Staff's reply to respondent's post-hearing brief,
5 there is a presumption of reliability of public
6 record. That is precisely the rationale of why
7 public records are admissible through a
8 certification, admissible as an exception to this
9 rule against hearsay without certification.

10 Also, as a matter of fact, on the
11 reliability of MCIS is pretty much resolved. MCIS is
12 utilized by the Commission and its various division
13 on a day-to-day basis. As a matter of public policy,
14 if it were decided that MCIS is somehow generally
15 unreliable, the Commission would be unable to carry
16 out its statutory mandate of regulating
17 transportation companies not only when it comes to
18 enforcement, such as when the police rely on MCIS,
19 but also during the processing of applications for
20 different licenses and permits.

21 And it has to be pointed out, Judge,
22 that you actually took administrative notice of the

1 Commission's records both at the request of Staff and
2 Lincoln, albeit those records are different than
3 MCIS, in format. What makes one Commission record
4 reliable and subject to administrative notice and not
5 another Commission record? Is it only when it is
6 unfavorable to Lincoln?

7 Judge, in the end, it appears that
8 Lincoln disregards all of the evidence that was
9 garnered during the statutorily mandate inquiry --
10 statutorily empowered inquiry that the Commission has
11 to inquire into the management and operating
12 practices of a relocater and to determine whether the
13 law and the rules have been followed; and it focuses
14 only on things that happened before the actual
15 fitness hearing. Based on the evidence that's been
16 garnered during the fitness hearing, the evidence
17 leads to the conclusion that Lincoln is unfit to hold
18 a relocator's license, and I would ask that you
19 revoke Lincoln's relocater license.

20 MR. PERL: Judge, not to interrupt, I do want
21 to move to strike portions. I think it's not
22 appropriate to argue things that are not factually

1 truthful. I move to strike any and all reference to
2 the fact that we didn't certify Officer Strand as an
3 expert. You can clearly see from the transcripts,
4 Page 884 to 887 that we did certify him as an expert.
5 I asked you to certify him. I said he's an expert,
6 and you certified him. So for Staff to say to you
7 that we didn't certify him, I'm moving to strike
8 that, because you can't just say things that didn't
9 happen and aren't true. You can't just say
10 something. It's clearly in the record.

11 This is me saying, "Whether or not
12 he's the individual at the Commerce Commission that
13 makes the ultimate determination of fitness doesn't
14 matter. He's still an expert, no different than from
15 me bringing an expert or third-party, having them
16 listen to all of the testimony and saying, 'Based
17 upon X, Y or Z, this is an expert in the field.'"

18 You further said -- Counsel objected
19 to it and you said, "I think I'll allow it, but I'll
20 limit it to fitness as it relates to the citations,
21 only from that perspective." He was owned as an
22 expert. You said he's an expert. And the only thing

1 I wanted him for was regarding the citations, nothing
2 else. I didn't certify him as an expert on anything
3 else other than these particular issues that we have
4 here.

5 So I'm moving to strike Staff's
6 improper argument to you that he wasn't certified as
7 an expert because he was, clearly; and you know he
8 was. You certified him yourself. So for Staff to
9 make it on the record (sic) and then for the press to
10 report it now, because he said it, that we never had
11 him certified is improper.

12 And I need for this record to show
13 accurately that Officer Strand was certified as an
14 expert so we don't now have the same problem we had
15 with somebody improperly citing what happened at the
16 hearings in a newspaper article. I think it needs to
17 be clear from your Honor in this case that Officer
18 Strand was certified as an expert. I agree with
19 limited, that he was certified as an expert just for
20 this specific instance. And then he testified that
21 that they're fit, and you allowed it, and it came in.

22 So for Staff to make that argument

1 again is absolutely incorrect, Judge. You can't just
2 argue things that weren't up on the board. You can't
3 just say stuff, especially things that actually are
4 on the board that he's now saying didn't happen. You
5 can't do that because it misinforms the public and
6 misinforms everybody else, and this is how we get to
7 where we are today, and this is why we're here today,
8 from misinformation from Staff.

9 Do you want me to read more of it?

10 JUDGE KIRKLAND-MONTAQUE: No. No. No.

11 MR. PERL: And, by the way, Judge, there is no
12 presumption in Illinois that public records are
13 reliable. I would love for Counsel -- again, I'm
14 moving to strike any and all references to public
15 records being reliable in the state of Illinois. I
16 move to strike. They cited a federal case from 1984
17 in the 4th Circuit that's not even controlling here
18 for that premise. And we all know ad nauseam that
19 they even themselves admitted in this hearing -- and
20 I'll find it for you -- where they said public
21 records aren't reliable. They're just admissible.
22 Now again, trying to misinform the press and whoever

1 else is here that somehow or another public records
2 are reliable, they aren't. You know it, and I know
3 it. I've been doing this long enough to know it.

4 You can't argue things that you didn't
5 adduce at trial. Show me something from the
6 transcript at trial where they put to you that public
7 records are reliable. It's actually the opposite.
8 The problem is when you say it out loud in front of a
9 crowd of people, it's wrong. You can't do it. You
10 can't just say what you want to because you want to.

11 That's not the law in Illinois, and
12 I'm moving to strike it unless Counsel can show me
13 somehow that the law in Illinois says that public
14 records are somehow deemed to be credible. Not to
15 mention I'm moving to strike everything he said about
16 the MCIS as being reliable because there was no
17 testimony that any of that was reliable. I know
18 it's argument, Judge; but this is why we are where we
19 are. You can't keep saying that stuff that's not
20 true.

21 JUDGE KIRKLAND-MONTAQUE: Okay. You've got
22 your objection on the table.

1 MR. BURZAWA: Judge, if I may quote, "Such
2 records referring to public record are seen as
3 inherently trustworthy based on the assumptions that
4 public officers will perform their duties without
5 motive to falsify," end quote. Diesman (phonetic) v
6 the Department of Public Aid, 178 Ill App 3d 993; and
7 that's out of 2nd District here in Illinois.

8 So it is part of Illinois law, Judge.
9 And I'm able to argue the reliability and accuracy of
10 public records because that is a legal argument. And
11 so you can make your ruling on Lincoln's motion to
12 strike if you want to entertain it; but I think for
13 the purposes of this oral argument -- I think it's
14 complete.

15 JUDGE KIRKLAND-MONTAQUE: Okay. I'm going to
16 deny your motions.

17 MR. PERL: Regarding even the expert? I mean,
18 clearly you certified him as an expert. How can you
19 allow the record to show, in a closing argument,
20 something that's actually contrary to the record? I
21 know you recall certifying him.

22 JUDGE KIRKLAND-MONTAQUE: Now I need to know

1 exactly what he said, so let's go off the record.

2 (Whereupon, a discussion was had
3 off the record.)

4 JUDGE KIRKLAND-MONTAQUE: So off the record we
5 had a discussion about the certification of Officer
6 Strand as an expert, and the record does reflect that
7 I did allow Lincoln Towing to tender Officer Strand
8 as an expert regarding this fitness hearing for the
9 fitness of Lincoln Towing. So let that be clear on
10 record.

11 And I believe you were -- were you
12 finishing up Mr. Burzawa?

13 MR. BURZAWA: No, I was done, Judge.

14 JUDGE KIRKLAND-MONTAQUE: Okay. And I guess
15 that's it for today.

16 MR. PERL: Judge, procedurally, I noticed that
17 you talked about us presenting to you orders. Do you
18 not want that, or do you not want that?

19 JUDGE KIRKLAND-MONTAQUE: I don't need them at
20 this point.

21 MR. BURZAWA: So proposed orders are no longer
22 due today?

1 MR. PERL: They were do you Friday, actually.

2 JUDGE KIRKLAND-MONTAQUE: They were due the day
3 of the hearing.

4 MR. PERL: So we're not doing proposed orders?

5 JUDGE KIRKLAND-MONTAQUE: You don't have to.

6 It's optional. I think I did say that it was
7 optional all along.

8 MR. BURZAWA: I don't think so.

9 JUDGE KIRKLAND-MONTAQUE: Okay. My apologies.
10 If you did one, please --

11 MR. PERL: I thought we discussed whether we
12 were going to do them or not --

13 JUDGE KIRKLAND-MONTAQUE: Let's go off the
14 record.

15 (Whereupon, a discussion was had
16 off the record.)

17 JUDGE KIRKLAND-MONTAQUE: Okay. So the oral
18 arguments today are complete. And at this point in
19 time I will use the information presented throughout
20 this proceeding to draft a proposed order which will
21 be served --

22 And let me ask this: Is it okay to

1 serve you electronically?

2 MR. PERL: Yes.

3 MR. BURZAWA: Yes.

4 JUDGE KIRKLAND-MONTAQUE: Okay. So the
5 proposed order will be served electronically and via
6 mail. That's the next step. My proposed order will
7 come out, and there will be instructions on that
8 proposed order regarding filing reply briefs -- or
9 rather briefs on exceptions and reply briefs.

10 So that it is for today. Thank you
11 very much.

12 MR. PERL: Thank you, your Honor.

13 MR. BURZAWA: Thank you, your Honor.

14 SINE DIE...

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