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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.
) 92 RTV-R Sub 17
Respondent.)
)
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
February 16th, 2017

Met, pursuant to notice, at 11:00 p.m.

BEFORE:

MS. LATRICE KIRKLAND-MONTAQUE, Administrative Law
Judge

SULLIVAN REPORTING COMPANY, by
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APPEARANCES:

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

ILLINOIS COMMERCE COMMISSION, by
MR. BENJAMIN BARR
160 North LaSalle Street
Suite C-800
Chicago, IL 60601
(312) 814-2859
for ICC Staff.

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
4 No. 92 RTV-R Sub 17 for hearing. This is in the
5 matter of Protective Parking Service Corporation
6 doing business as Lincoln Towing Service, and this is
7 regarding the Application For Renewal of a Commercial
8 Relocator -- I'm sorry. That's not the correct
9 docket. This is on the Fitness to Hold a Commercial
10 Vehicle Relocator's License.

11 May I have appearances, please. Let's
12 start with Staff.

13 MR. BARR: Good morning, your Honor. My name
14 is Benjamin Barr. I appear on behalf of the Staff of
15 the Illinois Commerce Commission. My office is
16 located at 160 North LaSalle, Suite 800, Chicago,
17 Illinois 60616. My telephone number is
18 (312) 814-2859.

19 MR. PERL: Good morning, your Honor. For the
20 record, my name is Allen Perl on behalf of Protective
21 Parking Services, doing business as Lincoln Towing.
22 My address is 14 North Peoria Street, Suite 2C,

1 Chicago, Illinois 60607. My telephone number is
2 (312) 243-4500. Also appearing on behalf of my
3 client is Attorney Vlad Chirica, the same
4 information.

5 JUDGE KIRKLAND-MONTAQUE: Okay. Thank you.

6 Last time we met, Staff had just
7 tendered to Protective additional citation
8 information -- additional files. And you were going
9 to -- you said that you needed a week or 2 to look at
10 those files and get back to us, in terms of what your
11 plans were for depositions, if that was necessary.

12 MR. PERL: So we did receive -- I think it was
13 the 6th -- a response. And the witness list has been
14 narrowed down to just the officers.

15 However, the problem is -- and I think
16 Mr. Chirica can address this with you -- the
17 documents that we received aren't searchable. So
18 even though I think Ben might have thought they were,
19 they're not. And there's something like 1200 pages
20 of documents regarding all of the -- I'll let Vlad
21 explain to you what the issue is with that.

22 MR. CHIRICA: So the document is one PDF file,

1 which is 1200-some photographs of pages, but they're
2 in photograph form. So if you search, nothing comes
3 up. So if you search, for instance, Officer
4 Geisbush, you get zero results. So you have to thumb
5 through each of them and figure out where it says
6 "Geisbush" on each page.

7 And then after we figure out which
8 page has -- you have to figure out which citation or
9 ticket it pertains to because they're not marked as
10 pertaining to a particular one. You have to print
11 out all of them and then figure out where one ends
12 and where one starts.

13 There's no cover page for each one.
14 Even though there are page numbers, generally, for
15 the whole thing, from 1 to 1200-something, there's no
16 listing of maybe from 1 to 500 is for Officer
17 Geisbush's tickets that he's going to testify to, or
18 from 501 to 753 there's going to be this officer. So
19 it's very difficult to figure out which pages and
20 which documents any particular officer is going to
21 testify to.

22 MR. BARR: Your Honor, every investigation

1 file -- it is one document. That's true. It's about
2 1200 pages. But every investigation starts with a
3 cover sheet and ends when the next investigation file
4 cover sheet starts. I mean, a cover sheet has --
5 they're all the same. They all have the same
6 information on it by the officer.

7 So, I mean, while it may or may not be
8 searchable on their system, it's as simple as going
9 through and saying, "Geisbush wrote citations for
10 this investigation number and that investigation
11 number". I don't know how else -- you know, we're
12 kind of fighting over technology now.

13 JUDGE KIRKLAND-MONTAQUE: Do you have a list,
14 though?

15 MR. BARR: Yeah. It's in our -- it would be
16 our sixth response of all of the investigation files.

17 JUDGE KIRKLAND-MONTAQUE: A list.

18 MR. BARR: Not by officer. A list of the
19 files.

20 MR. PERL: So here's what we can do:

21 You know, we've been discussing a lot
22 about technology with you and how one of the ICC's

1 biggest complaints is that going through this stuff
2 would take us a year and 5 months with three people
3 working whatever it is. And I have always argued, So
4 what? Then go do it.

5 Well, we do have a smaller office than
6 the Illinois Commerce Commission and a smaller budget
7 than they do, I think. And we would have to go
8 through 1200 pages. Now, we can do it, and we will
9 do. It's going to take us longer to do it, and to
10 organize, and to prep for the deps.

11 I just thought since we have
12 technology -- and I think they have it here --
13 wouldn't it just be easier for them to organize all
14 of Geisbush's tickets, all of Strand's tickets, all
15 of -- I think it's 4 or 5 officers' tickets, so we
16 don't have to go searching for them. Because we can,
17 but it'll take us a couple of weeks to do it, looking
18 through 1200 pages, and Vlad doing nothing but that.

19 So it's no different than them making
20 the claim that there's 20,000 documents. They
21 literally postponed it, like, over a year to look
22 through the documents for us. And we have the same

1 problem, then. So we've got to go through this thing
2 and look through it as opposed to them just giving us
3 a searchable document, which everyone gives these
4 days.

5 JUDGE KIRKLAND-MONTAQUE: Who prepared the...?

6 MR. BARR: I prepared the PDF. I mean, it's
7 searchable, based on our system. I don't know what
8 it's called. It runs the search and kind of images
9 the words, and you can make it searchable. I'm not
10 that tech savvy when it comes to that stuff.

11 The best I can do is I can give
12 them -- instead of putting it in one PDF I'll I just
13 combined the PDFs. I can send them individual PDFs
14 of every --

15 JUDGE KIRKLAND-MONTAQUE: Officer?

16 MR. BARR: Well, not so much of every
17 officer -- broken down by officer; but every
18 investigation. But, I mean, it's really not going to
19 be any different.

20 MR. PERL: Well, then we have 1200 -- however
21 many. Let's say there's 500.

22 MR. BARR: There's probably a hundred or so.

1 MR. PERL: I'm not sure.

2 JUDGE KIRKLAND-MONTAQUE: Can you break them
3 down by officer? A PDF for Geisbush, a PDF for...?

4 Would that be more helpful?

5 MR. PERL: It would be.

6 MR. BARR: But the same thing that they don't
7 want to do they would be putting the burden back on
8 us to do. I would have to go through each one of
9 those individuals, find out who's who, break it down,
10 move it, put it in a different PDF. It's the same
11 thing that they want, but they don't want to take the
12 time to do it.

13 MR. PERL: Counsel wants to tell you that he
14 can do it; but he really can't, either because it's
15 not searchable even for him. Because if it was
16 searchable for him, it would take him 5 minutes to do
17 it; but it's not.

18 MR. BARR: What I would do would be the same
19 thing that they would have to do; open up each
20 individual investigation file, make a note that
21 Investigation 140001 or whatnot is Officer Geisbush,
22 move that into a separate folder.

1 MR. PERL: But if it was searchable, Judge, you
2 wouldn't have to do that. You would type in the word
3 "Geisbush", and it would just come up.

4 Let's say you gave us -- let's say
5 someone gave us those documents and they said, "We're
6 going to pay you to organize them". Vlad, who is an
7 IT expert, would take them. He would organize them
8 such that if you type in the word "Geisbush", all of
9 the tickets for Geisbush would come up right there.
10 If you type in "Strand", they'll all come up for
11 Strand.

12 I don't think they have them organized
13 that way. Even though Ben might have said that they
14 do it in his system, I don't think even his system
15 has it because, if they did, he could do it in 5
16 minutes.

17 MR. BARR: I could search Geisbush, but it's
18 going to come up -- every time that Geisbush is
19 referenced -- and I don't know if it's going to come
20 up based on his handwriting. It's going to come up
21 based on the typed Geisbush, not if he signed his
22 name "Officer Geisbush".

1 JUDGE KIRKLAND-MONTAQUE: Is that your point,
2 that it would be in the cover letter, the typed
3 "Geisbush"?

4 MR. BARR: Yeah. Because the officer would
5 sign it. And then usually they make, like, an
6 investigation note file where they write down what
7 they investigated, if they came into contact with the
8 motorist, or the complainant. And then I think they
9 usually type their name, and then they sign it; but I
10 can't recall.

11 MR. PERL: And, again, Judge, you know, I know
12 that we've been talking about this kind of stuff for
13 a long time, and a lot of what we've been doing is
14 trying to organize our discovery. And we are not
15 looking to delay anything.

16 And if your decision is that we've got
17 what we've got, then it's going to be extra time to
18 do what I've got to do -- and that's okay -- so my
19 client won't bear the burden of doing it. It'll take
20 a little bit extra time for us to do it. It'll cost
21 us more money. It is what it is.

22 JUDGE KIRKLAND-MONTAQUE: I want to try to

1 figure out a way to get it done faster.

2 MR. BARR: Your Honor, these files have been
3 turned over, except for the 12 or 14 that I turned
4 over when we were here last time on the 1st, I
5 believe, since September. Since the end of September
6 they've had copies of all of these; and now we're
7 just hearing about them now. At some point we need
8 to set the fitness hearing and get this to an
9 evidentiary hearing so that it can go before the
10 Commission.

11 MR. PERL: That's not exactly accurate because
12 we just struck out I don't know how many files, and
13 we're not using those. So had I done this before --
14 we just struck out how many from last time because
15 we're using different dates now? So it's been a
16 moving ball, and I don't know what to do. Now I know
17 which files we're talking about. And, again, that's
18 okay. We'll do it.

19 But I can recite for you how long they
20 were going to take for what they were going to do:
21 over a year for 20,000 documents. We have 1200
22 documents, so it's not going to take 3 days. And, by

1 the way, it's not the only case that we have pending.
2 We have less resources than the Illinois Commerce
3 Commission does. So we need some time to do that,
4 which we will do, and then we'll go to the hearing.
5 We'll do the depositions, and then we'll go to a
6 hearing. There's nothing else I can do.

7 I mean, I'm hearing that even the ICC
8 can't organize the files.

9 MR. BARR: I mean, the files are organized into
10 one PDF. Like I said, I can give him individual PDFs
11 of each investigation file. And then we would open
12 up the first PDF and say, "This is Officer Geisbush.
13 Okay. I'll move this over here".

14 JUDGE KIRKLAND-MONTAQUE: My idea of
15 Geisbush -- I mean, organizing them by officer, is
16 that possible?

17 MR. PERL: That's what we want.

18 MR. BARR: Yeah, but it would just be basically
19 doing the same thing that they could do.

20 JUDGE KIRKLAND-MONTAQUE: You're both saying
21 the same thing.

22 MR. BARR: We're both saying the same thing;

1 but they want to pass the ball on to me to do it
2 rather than charge their client.

3 JUDGE KIRKLAND-MONTAQUE: Either way it's going
4 to take time.

5 MR. PERL: So I'm saying that we'll do it, but
6 it's going to take time to do it. I'm not saying
7 that I'm passing the ball on them. I'm saying that
8 even though -- I think with technology they should
9 have done it that way; and they, actually,
10 represented to you last time that they did.

11 We'll do it. It's just going to take
12 us some time to do it.

13 JUDGE KIRKLAND-MONTAQUE: Is there a way that
14 we can do it more expeditiously? I'm not an IT tech
15 person, but is there some way that it can be done?

16 MR. BARR: To speed this up I can probably do
17 it within an hour. I will do it by having to go
18 through what they would have to go through, every
19 individual file, opening it up and saying, "This is
20 Officer Geisbush". But just to speed this up and get
21 this to an evidentiary hearing so we can stop coming
22 in at these fitness hearings and arguing over --

1 JUDGE KIRKLAND-MONTAQUE: I appreciate that
2 because that would move us along.

3 MR. PERL: If Counsel could do that and get it
4 to us where it's searchable, then that would move it
5 along.

6 MR. CHIRICA: And to confirm, you said that
7 your software is able to make it searchable?

8 MR. BARR: I can search it on mine. But what
9 I'm going to do is I'm just going to drag the PDFs
10 and send you the individual PDFs broken down by
11 officer.

12 MR. CHIRICA: Are they still going to be in the
13 photograph, or are they going to be converted to text
14 search?

15 MR. BARR: Just whatever the PDF is.

16 MR. PERL: Well, the PDF isn't searchable.

17 JUDGE KIRKLAND-MONTAQUE: What is it that you
18 would need to search? If it's broken down by
19 officer, what would you need?

20 MR. CHIRICA: Well, Counsel indicated that in
21 his system he's able to search for things. I think
22 that that might be --

1 JUDGE KIRKLAND-MONTAQUE: But I don't think
2 it's by text. I think you can catch the picture of a
3 signature.

4 MR. BARR: It would just catch the word.

5 MR. CHIRICA: The text? Can you convert it to
6 a method where it can read? So can you convert it
7 and send it once it's converted?

8 JUDGE KIRKLAND-MONTAQUE: What's your question?

9 MR. CHIRICA: If he can convert the file into
10 the readable searchable format as opposed to sending
11 it as just a photograph where it's not searchable or
12 readable.

13 JUDGE KIRKLAND-MONTAQUE: Okay. What's the
14 benefit of having it searchable?

15 MR. CHIRICA: Then we can search through the
16 file. Like, if we're looking for the type of
17 violation, we can say, "Violation, this address".
18 We'll type in the address, and we can see everything
19 that has that address on it, every page that has this
20 type of violation. You can go through and search
21 electronically through it.

22 So if the document is just a

1 photograph, the computer can't read it. It just kind
2 of shows it to you.

3 JUDGE KIRKLAND-MONTAQUE: Again, I don't know
4 if he knows. I know that I don't know whether that's
5 possible. But if it's possible to break it down by
6 officer, is that going to be a tremendous help?

7 MR. CHIRICA: Absolutely.

8 MR. BARR: I can break it down by officer. I
9 think it's as simple as if they want to look at every
10 address, all they need to do is open up the
11 investigation file -- because they're going to review
12 them anyways -- and write down...

13 JUDGE KIRKLAND-MONTAQUE: Pull them out?

14 MR. BARR: Yeah, and put them in their own
15 spreadsheet.

16 MR. PERL: So all we're saying is that it just
17 takes time. That's all I'm telling you. Because
18 we're here to talk about how much time it's going to
19 take me to do these things. And I'm not arguing it.
20 I'm not saying that I won't do it. But it's going to
21 take us a little bit of time in these days.

22 The way we streamline things in our

1 office is by not doing that, by making things
2 searchable so you don't have to do that. But we can
3 do that.

4 JUDGE KIRKLAND-MONTAQUE: Well, maybe it's
5 possible. I don't know if we have the capability. I
6 don't know.

7 MR. BARR: I can check into it, but I can't
8 make promises.

9 JUDGE KIRKLAND-MONTAQUE: No, I'm not going to
10 dictate or order that you do that. But if it's
11 possible, it makes it easier; and then we can all
12 move along.

13 MR. PERL: You know, right now, in the click of
14 a key, you can get things that used to take you 20
15 hours to research in a library; but you can still do
16 the research in the library if you want to. So all
17 we're saying is this is such an easy --

18 Taking the 1 hour or 2 to do it, we'll
19 save like 30, or 40, or 50 hours on our time than
20 actually going in manually. And Ben's right, you can
21 do that. It just takes more time.

22 JUDGE KIRKLAND-MONTAQUE: I understand. And

1 time is the issue here. We're trying to go forward.

2 MR. PERL: That's all.

3 JUDGE KIRKLAND-MONTAQUE: Okay. So you're
4 willing to do that. I appreciate that. And you said
5 that it wouldn't take too long. And when you say
6 it's not long, do you mean a day or two?

7 MR. BARR: Yeah. I would have to check with
8 Paul to see -- our IT specialist to see whether what
9 they're asking, in terms of making it searchable, is
10 possible.

11 It might be, you know, that I can
12 break it down by officers; but to make it searchable
13 and make it quicker it might have to be in all one
14 PDF per officer. Officer Geisbush would have a
15 single PDF and try to make it searchable. Rather
16 than opening up every PDF, if it can be made
17 searchable, making it searchable.

18 JUDGE KIRKLAND-MONTAQUE: Well, that's what I
19 thought, that it was going to be grouped by officer
20 and then searchable, like, one big PDF; and hopefully
21 they're searchable.

22 MR. BARR: Yeah.

1 JUDGE KIRKLAND-MONTAQUE: So we are all on the
2 same page.

3 MR. PERL: Okay.

4 JUDGE KIRKLAND-MONTAQUE: So let's say --
5 what's today? Wednesday?

6 MR. PERL: Thursday. And Monday is no work.

7 JUDGE KIRKLAND-MONTAQUE: Oh, that's a holiday.
8 Right.

9 MR. BARR: How about Tuesday?

10 JUDGE KIRKLAND-MONTAQUE: Tuesday is fine.

11 Now, assuming that all of that works
12 well --

13 MR. PERL: Yeah, that's by Tuesday. And now
14 it's in a form where Vlad can go in -- because I
15 wouldn't know how to do searchable anyway. So Vlad
16 can go in there and organize everything so that we
17 can get them prepared for these depositions; and then
18 that would make things a lot easier.

19 So, just to clarify, there's one
20 officer that's been on sick leave?

21 MR. BARR: Carlson, yeah.

22 MR. PERL: Is he still on leave?

1 MR. BARR: As far as I'm aware.

2 MR. PERL: Because what I'm trying to --
3 there's a couple of different things. One, I'm
4 trying to avoid preparing for his dep and doing
5 everything if he really isn't going to be at his dep
6 anyway. I'm not sure what position he's going to be
7 objecting to.

8 And we may have to go back in the
9 record in the other cases. Carlson's tickets have
10 all been deemed kicked for months, and months, and
11 months, and months. I want to set his tickets for
12 hearing. And either they go forward -- I don't
13 really know. We talked about this.

14 JUDGE KIRKLAND-MONTAQUE: They're not part of
15 the settlement?

16 MR. PERL: They aren't because we couldn't do
17 anything with his tickets.

18 JUDGE KIRKLAND-MONTAQUE: That's fine. It's
19 fine that they're not -- as long as they're not part
20 of the settlement, I can decide that. We can figure
21 that out. But for purposes of -- and I understand
22 you said that you don't want to prepare for a

1 deposition.

2 MR. BARR: And all I can say is subpoena him.
3 And if we can't produce him, then obviously we're not
4 going to call him -- we can't call him as a witness.
5 They don't really tell me. I mean, I don't have
6 privilege to whether --

7 JUDGE KIRKLAND-MONTAQUE: I understand.

8 MR. PERL: That's what I'm trying to figure
9 out, though. So, in getting prepared for all of
10 this, I want to know -- certainly we're entitled to
11 know whether he's going to be testifying. Right now
12 they say he is. If he is, then I'd need to depose
13 him; and then I've got to prepare for it. So I'm not
14 sure if he's going to sit for a dep or not.

15 JUDGE KIRKLAND-MONTAQUE: Well, if you request
16 it and then he doesn't show, then at that point --

17 MR. PERL: Right. I would move to bar him at
18 that point.

19 JUDGE KIRKLAND-MONTAQUE: So that's the way to
20 proceed.

21 MR. BARR: I mean, they don't tell me when he's
22 coming back.

1 MR. PERL: I know Ben doesn't have any more
2 information on that.

3 JUDGE KIRKLAND-MONTAQUE: Sure. And I don't
4 either.

5 MR. PERL: I'm just trying to figure it out.

6 JUDGE KIRKLAND-MONTAQUE: Yeah, so the way to
7 do that would be to request that he show up. And if
8 he doesn't, then...

9 MR. PERL: Okay. So now I'm going to give you
10 a realistic date for when I think I can complete
11 everything based upon just real life.

12 So I think there's 5 officers.

13 JUDGE KIRKLAND-MONTAQUE: Possibly 4.

14 MR. PERL: Well, I'm going to prepare for all
15 of them because we're not going to know that. I'm
16 going to prepare for all 5. I think it's 5 or 6.
17 Let me double check.

18 MR. BARR: I think it's 5.

19 MR. PERL: It's Strand, Geisbush, Carlson,
20 Sulikowski, and Cossell (phonetic). I think that's
21 the 5.

22 MR. CHIRICA: Maybe it's 20 or 21 (indicating).

1 MR. BARR: You think it's Question 20 or 21?

2 MR. CHIRICA: I think so.

3 MR. BARR: Okay. It's 5, including Carlson.

4 MR. PERL: So there's 5, including Carlson.

5 At this moment's time I don't know or
6 believe that I'm going to be deposing anyone else. I
7 think that they have listed no experts, and no one
8 else is testifying at the hearing live.

9 So the only thing else I could do
10 is while I'm deposing them something could come up.
11 But for the moment we have 5 depositions to schedule.
12 So, assuming I'm getting everything next week...

13 JUDGE KIRKLAND-MONTAQUE: Before you pull that
14 out, would you be willing, Ben, to waive the 14-day
15 notice requirement?

16 MR. BARR: We'd be willing to waive it. I
17 mean, there has to be some flexibility in the
18 officers' schedules because they also have court
19 tickets.

20 JUDGE KIRKLAND-MONTAQUE: Sure. Sure. I know
21 that's part of it.

22 But go ahead, Mr. Perl.

1 MR. PERL: So originally I was going to take 90
2 days for discovery, that portion of it. I don't need
3 90 days now. But a part of that is, because my
4 schedule is what it is, I would say that I would like
5 60 days to look at all of the information, take all
6 of the depositions.

7 Again, it's not like I need 60 days
8 because it takes 60 days to do it. It's just my
9 schedule -- my trial schedule and Spring break is
10 going to be interfering with what I'm doing right
11 now. And, unfortunately, for me I have two Spring
12 breaks to deal with because I have one in college and
13 one out. And my wife and I are trying to figure
14 out -- I'm not saying I'm going away for 2 full
15 weeks, but there's going to be stuff going on. So
16 there's 2 weeks. One week I'm definitely going to be
17 out of town, and the other week I might be. So this
18 is pushing it for me.

19 And I have literally -- I'm not sure
20 if the ICC is seeing this, too -- so much contentious
21 litigation going on; but not like this. I mean going
22 to hearings, going to trial, and not settling. So

1 it's just a push for me to guarantee it. And then,
2 of course, that will include coordinating 5 schedules
3 of the officers with my schedule as well to get the
4 deps done. So all of that has to come into play when
5 you're taking the dep.

6 And if it goes quicker because I'm
7 able to get through this stuff quickly and they
8 really get us this searchable stuff and there's no
9 hiccups with it and I can get prepared, I'm not going
10 to try to take 60 days.

11 JUDGE KIRKLAND-MONTAQUE: How about this -- and
12 I understand the life issues. What if we go shorter?
13 And then if you can't get it done, you can request an
14 extension.

15 MR. PERL: I mean, we could do that. The only
16 reason I'm telling you that, Judge, is that there's
17 so much that we're under the gun on right now, in
18 terms of pleadings, and hearings, and trials, that
19 all that's going to do is put a little bit more
20 burden on me and my staff.

21 I mean, I could tell you right now
22 that there's no way that I'm starting prep tomorrow

1 on this stuff. I have stuff that's due the next week
2 and the week after. So that's the difficulty. And I
3 know that it's just my difficulty at the moment.
4 But, you know, a lot of this has come into play
5 because of the timing of it. It just happens to be
6 that we're coming into, you know, a tough time of the
7 year with Spring break and my other trial.

8 And, again, we've taken a lot of time
9 getting through all of this stuff. I don't want to
10 say 15 days is going to change any of our lives. I
11 mean, this is not an emergency motion that the staff
12 has filed by any means. It really isn't. It would
13 be, like --

14 We've participated, as you know, with
15 every single thing. We're here every single time.
16 There's no life or death emergency. It's not going
17 to matter to the Commerce Commission doing it 2 or 3
18 weeks later, yet for my client and for me it will.
19 The burden won't hurt them at all if it goes out an
20 extra 2 weeks.

21 MR. BARR: It's the Commission's position to
22 get this done as quick as possible -- ideally, before

1 April.

2 MR. PERL: But there's no chance that I can get
3 all of this done and set before April. Because once
4 we finish the deps I'm not ready to go to trial the
5 next day.

6 Listen, we've taken a long time to get
7 here. And I would say 85 percent of the delays are
8 on the ICC's part and not ours. I've come in here
9 and begged for things. And we're on the 6th amended
10 answer in the response, and that's not due to what
11 we've done.

12 We've done this like litigation. I
13 rarely get this much push-back on asking for -- and
14 we even gave in on most of it -- asking for simple
15 things from their internet e-mails that we didn't
16 get. I get it in every case when I'm litigating a
17 regular case, every time. I never get a push-back.

18 Okay. So we didn't get any of that.
19 We've fought about it for a long time. I can't be
20 pushed into a hearing. Great. So Staff wants that.
21 I can't have it done by then. There's no chance. I
22 just said that the last 2 weeks of March are my

1 Spring break days. I can't even get the deps done by
2 then let alone go to hearing. And I've got to
3 prepare once I finish the deps. It isn't like you
4 take the final dep and then go to hearing. I might
5 want to hire an expert. I don't know what's going to
6 happen after I finish such a thing. I'm not sure
7 what I'm doing. I would like the ability to finish
8 up discovery before we have a hearing, though.

9 JUDGE KIRKLAND-MONTAQUE: All right. I
10 understand, again, that you have things going on; but
11 I'm looking at a shorter time frame because --

12 MR. PERL: We're already at February 16th. So
13 Staff wants to go to a hearing in just over 30 days.
14 I can't even complete the deps in that time. It's
15 just not fair for Staff all of a sudden to say, "Now
16 we want to go to a hearing." "We've messed around
17 with you for discovery for months. We haven't given
18 you most of things that you want anyway. Now we're
19 going to put you in a hearing."

20 MR. BARR: I would take exception to that, your
21 Honor. We were here last week -- I'm sorry -- 2
22 weeks ago, on the 1st. As soon as after the hearing

1 I sent them the 14 additional files. And I said
2 that, you know, I would do the work and separate the
3 files for them and get them to them by Tuesday.

4 So to say that we're not doing
5 anything and that we're trying to delay this hearing
6 is a little bit disingenuous when I'm saying that I
7 would put this case as a priority and get this to
8 them as soon as possible so we can move this along.

9 MR. PERL: Well, it took them months to do that
10 and me coming in and basically filing motions saying
11 you didn't give me the documents. It's, like, for 6
12 months I've been pushing you. And now when you're
13 ready, you say I've got to go now.

14 Well, that's not the way it goes. You
15 know, I'm not ready yet. Maybe 6 months ago if you
16 gave me the documents at a different time, I would
17 have, but now I'm not. And it's already February
18 16th.

19 JUDGE KIRKLAND-MONTAQUE: March 16th is 30
20 days. April 16th is 60.

21 MR. PERL: Yes.

22 JUDGE KIRKLAND-MONTAQUE: I was shooting for

1 the end of April.

2 MR. BARR: The only issue with the end of
3 April, your Honor, is that Officer Geisbush is going
4 on paternity leave at the beginning of April for 4
5 weeks. So if we can't do it before April, it might
6 have to be the first or second week of May.

7 JUDGE KIRKLAND-MONTAQUE: The first week of
8 May, by May 5th.

9 MR. PERL: Well, so let me see where that gets
10 us.

11 For the hearing you're talking about?

12 JUDGE KIRKLAND-MONTAQUE: The evidentiary.

13 MR. PERL: So that would mean if I took 45
14 days -- and, again, 45 days for me isn't 45 days
15 because two of those are the holiday -- at least one
16 for sure. So it's really not 45 days.

17 MR. BARR: And, your Honor, we can't go into
18 June because Officer Strand is going on paternity
19 leave.

20 JUDGE KIRKLAND-MONTAQUE: We're going to do the
21 week -- go ahead.

22 MR. PERL: So here's the thing: Counsel is now

1 telling you their time constraints because everyone
2 has real life constraints. So I could say, "Well,
3 who cares? Let's just have the hearing done anyway."

4 JUDGE KIRKLAND-MONTAQUE: We have to
5 compromise.

6 MR. PERL: We have to compromise.

7 JUDGE KIRKLAND-MONTAQUE: We have to
8 compromise.

9 MR. PERL: They have to compromise.

10 JUDGE KIRKLAND-MONTAQUE: I understand that.

11 MR. BARR: And I think that May -- the first
12 week of May is more than enough time. It's almost 90
13 days.

14 MR. PERL: And I start a huge trial on a
15 3-year-old case that's going to have -- out of 20, 30
16 witnesses and experts it's going to be really
17 difficult for me to prepare for all of that and this
18 by the 1st week of May. It's an incredible burden.

19 Let's just talk about in the last --
20 they're trying to take my client's license away. And
21 he's had it since he bought the company in 1993.
22 They've had it for 50 years. This is not a hearing

1 on a ticket or something. This my client's license.

2 MR. BARR: We've narrowed the scope down to a
3 substantially less period than what Staff originally
4 wanted to have a fitness hearing on. So it's only a
5 matter of months and not 10 years.

6 MR. PERL: But they're still trying to take my
7 client's license away, and that's the most important
8 thing. It's not a ticket. It's a hearing. We've
9 done those.

10 JUDGE KIRKLAND-MONTAQUE: I understand the
11 importance of it. But at the end of the day we're
12 talking about -- from my view, it's a fitness hearing
13 just as any other fitness hearing.

14 MR. PERL: But it's not. In a regular fitness
15 hearing every 2 years, Judge, I would agree with you.
16 I've been doing this for, unfortunately, almost 32
17 years now. I know that something's going on. It's
18 very clear to me.

19 The fact that they brought this when
20 they brought it, only months after we got it through,
21 means that there's someone behind them pushing for
22 this thing to go forward quickly, and they know what

1 they want to do. I think the die is cast already.

2 So I need to get all my ducks in a row
3 for what I need to do after that. And I think that
4 they're pushing -- and I'm not saying you or even
5 Ben -- I'm not even saying Ben. When I say the
6 Commerce Commission, I don't mean Ben. I mean
7 someone else. There's something else going on here.

8 And I've said it to you many, many
9 times; and I'll say it again. If this were a regular
10 fitness hearing in July, I wouldn't need any kind of
11 continuance. I'd get my paperwork in order like we
12 always do every 2 years for the last 50 years, and
13 we'll have a hearing.

14 MR. BARR: Well, typically, we set a fitness
15 hearing --

16 MR. PERL: Every 2 years.

17 MR. BARR: But the application is every 2
18 years. We only set a fitness hearing --

19 MR. PERL: Exactly. They only set them when
20 they're looking to either take your license away or
21 something else.

22 JUDGE KIRKLAND-MONTAQUE: I understand. Okay.

1 I get it. I understand. But let's look at this.

2 On February 1st, we were targeting
3 that date to end discovery. It didn't happen because
4 you've got too many things. But at that point, just
5 as we're looking forward, you were looking at that
6 point towards 90 days, which is where we are with
7 this.

8 MR. PERL: So if we do that, all I'm saying is
9 I need a little wiggle room to when I'm going to
10 actually have a hearing, though, because there's a
11 difference between ending discovery and then going
12 right into a trial. You know, typically, most cases
13 don't go --

14 MR. BARR: The only documents that have been
15 turned over, really, since September are those 12 --
16 the witness list, the 5 witnesses that we've narrowed
17 down to speed this up, and the 12 or 14 files -- I
18 can't remember the exact number off the top of my
19 head -- that we turned over on the 1st of February.

20 MR. PERL: But my guess is going to be that,
21 during those depositions, just having done this for a
22 few years, information is going to come to light.

1 We're going to be asking for more documents, too.

2 JUDGE KIRKLAND-MONTAQUE: All right. Listen,
3 first I said the first week of May. I'll give you
4 wiggle room of the second week of May, May 12th --
5 May 11th, 12th, end of the week. We'll do that.

6 MR. PERL: Okay.

7 JUDGE KIRKLAND-MONTAQUE: I'll give you that
8 wiggle room. So we'll set the evidentiary -- why
9 don't we set it for, like, 2 days. I don't know if
10 it will take that long.

11 MR. BARR: We only have 5 witnesses, your
12 Honor. I don't know how long it will take.

13 MR. PERL: Well, I think it's going to take
14 more than one day -- and maybe even 2 days. Because,
15 remember, they only have 5 witnesses; but I'm not
16 sure what they're going to elicit from them.

17 And, again, this is bigger than just a
18 regular -- and, actually, I want to talk to Ben maybe
19 even on the record on how they intend to proceed in a
20 typical fitness hearing. We provide for them all of
21 our financial -- there's normal stuff you provide.
22 You know what it is: the annual reports, tax returns,

1 proof of insurance, all of those things. I'm
2 assuming Staff wants all of those things as well in
3 this hearing. Correct?

4 MR. BARR: We didn't ask for them in discovery.
5 I mean, it's always on the relocater to prove their
6 fitness and on Staff to prove why they're unfit. You
7 know, we're concentrating on the citations and the
8 investigation files.

9 MR. PERL: Well, that's an interesting comment,
10 that they have to prove that we're unfit. However,
11 they've brought a hearing claiming that we are unfit.

12 MR. BARR: We just brought a hearing. We
13 didn't say you were unfit. We brought a hearing to
14 determine your fitness based on administrative rules.
15 The duty is on the relocater to prove fitness.

16 MR. PERL: But nobody would bring a hearing in
17 the middle of a term, 6 months after we got approved,
18 if they didn't think that we were unfit. I'm
19 assuming that they're bringing a hearing.

20 MR. BARR: The difference is that there's Staff
21 position. There's, obviously, going to be an ALJ
22 position. And then there will be the Commission's

1 overall position, regardless of whether we agree or
2 not on the position.

3 So when a fitness hearing is brought,
4 it's not brought with the determination that someone
5 is unfit. It might be the position of OTC that the
6 relocater is unfit, but's that's not necessarily the
7 position of the Commission, because they haven't
8 heard the evidence. They don't have the facts until
9 we actually present it to them through an evidentiary
10 hearing.

11 MR. PERL: So they're going to present facts to
12 you to try to show that we're unfit. That's what
13 Counsel is saying. The problem is I have -- and I
14 know the ball moves every time we talk about it.

15 On the one hand they're saying to you,
16 "We're not saying you're unfit. You just need to
17 prove you're fit." In the next breath they go,
18 "Well, we're going to present evidence to show you're
19 unfit".

20 MR. BARR: The Commissioners haven't voted on
21 anything. You know, I can have a different position;
22 but I don't need to outline now -- and I think it's

1 been outlined -- what OTC's, the Office of
2 Transportation Counsel, who appears on behalf of the
3 Staff, including the police officers, position is on
4 your client. And that doesn't mean that the
5 Commission is going to agree with me. It doesn't
6 mean that the ALJ is going to, obviously, agree with
7 me. The ball hasn't moved.

8 JUDGE KIRKLAND-MONTAQUE: This is a hearing.
9 They requested a hearing. And you're right, this is
10 an odd ball. We've never had a fitness hearing
11 between the applications.

12 MR. PERL: That's why I'm trying to figure out
13 exactly what we're doing, too, because I've never had
14 one before.

15 JUDGE KIRKLAND-MONTAQUE: Yeah.

16 MR. PERL: In the middle, I mean. By the way,
17 we did have a hearing in July of 2015; so Counsel is
18 incorrect. In July of 2015 we actually had a hearing
19 on our renewal. We didn't just get it renewed. We
20 had a hearing that I attended.

21 JUDGE KIRKLAND-MONTAQUE: Right. It would be
22 before -- you mean the order was in 2015?

1 MR. PERL: Right. The hearing might have been
2 in May. The order was in July of 2015. We had an
3 actual hearing. And it wasn't in front of your
4 Honor. It was done via teleconference in
5 Springfield. I think it was Judge Duggan. And we
6 did get a license, and we were deemed to be fit.

7 And the surprising part was that 6
8 months later they said, "We want to have another
9 hearing". So I'm trying just to figure out and
10 establish if the rules and guidelines are the same as
11 a regular hearing, like every 2 years. Do I need to
12 present to you my annual reports, tax returns, copies
13 of all my insurances?

14 MR. BARR: This is what I brought up before. A
15 relocater, typically, who doesn't have a bunch of
16 citations and active investigation files doesn't get
17 a fitness hearing every 2 years. They get their
18 initial hearing to get their relocater's license the
19 first time.

20 And then, typically, if they're free
21 of -- if the shareholders or however the structure of
22 the business is set up is free of criminal conviction

1 and there's no outstanding violations and there's no
2 issues that the Office of Transportation Counsel has,
3 we wouldn't be having a hearing.

4 JUDGE KIRKLAND-MONTAQUE: But they have to
5 present to you their -- like, the application would
6 include --

7 MR. BARR: Yeah, the application would
8 include -- you know, it would make sure that they
9 have proof of insurance.

10 JUDGE KIRKLAND-MONTAQUE: That's what you're
11 saying; right?

12 MR. PERL: Yes.

13 MR. BARR: The license is still active at this
14 point.

15 JUDGE KIRKLAND-MONTAQUE: I understand. But
16 the question is, does he proceed -- do they proceed
17 as if this is an application for their renewal?

18 MR. BARR: No, because they're not renewing.
19 Their license hasn't expired yet.

20 JUDGE KIRKLAND-MONTAQUE: So you don't need the
21 supporting documentation, like the insurance? That's
22 what he's asking.

1 MR. BARR: We don't need it turned over.
2 Obviously, they're required to have it on file with
3 us at all times.

4 JUDGE KIRKLAND-MONTAQUE: So this fitness
5 hearing is, basically, based totally upon the
6 Commission's -- the information that you've turned
7 over to them?

8 MR. BARR: Correct.

9 JUDGE KIRKLAND-MONTAQUE: So that's the scope.

10 MR. PERL: You know, I was only asking for 7
11 months, or 8 months, why are we having a hearing. So
12 I think they're saying we have a lot of tickets. I
13 think that's the only basis for it.

14 MR. BARR: Your Honor, they have a copy of the
15 memo that we sent to the Commission that was drafted
16 by OTC that was leaked to the Tribune somehow. They
17 know why we're setting this for a fitness. We're not
18 hiding anything.

19 MR. PERL: The memo doesn't tell us why. I've
20 read the memo a hundred times. It doesn't say. It
21 says that, We're doing it because we can.

22 JUDGE KIRKLAND-MONTAQUE: What do we need to

1 resolve right now?

2 MR. PERL: So we've picked a date.

3 JUDGE KIRKLAND-MONTAQUE: We've picked a date,
4 the 11th and 12th of May.

5 MR. PERL: Maybe we should set a status date
6 between now and then to make sure that discovery is
7 going appropriately, unless you want to --

8 I mean, typically, I would say we pick
9 something before then to kind of come in and say
10 where we're at; or I can always come in on a motion.

11 JUDGE KIRKLAND-MONTAQUE: You could.

12 MR. PERL: Or Staff can come in on a motion.
13 But I think it would make sense to come in between
14 now and then.

15 MR. BARR: I'm not opposed to setting a status
16 date just so there's no issues that pop up on the
17 11th or 12th. But I don't want to come back here,
18 you know, in 45 days and say, "We're almost done. We
19 need more time". I want to make sure that this May
20 11th and 12th date is a hard and fast date.

21 MR. PERL: I just would advise Counsel of one
22 thing. There's no such thing as a date that can't be

1 changed. If on May 11th or 12th four of your
2 officers are in emergency duty, we're not going to
3 have a hearing. It won't happen, and you'll want a
4 continuance. And if on May 11th or 12th something
5 horrible or something big comes up for me, we won't
6 have a hearing.

7 So it's a date we set, and it is a
8 hard date. That's why I said that we should come in
9 a little bit earlier to see where we are. It doesn't
10 mean that just because I set a status date I'm
11 allowed to come in and ask for more time. I still
12 need to have a motion and present something. I'm
13 just saying that typically, so don't waste everyone's
14 time, we come in maybe 3 weeks out or something of a
15 hearing and tell you where we're at.

16 You know what? I'm trying to
17 streamline things, not the other way. I really am.
18 That's what we do in litigation.

19 JUDGE KIRKLAND-MONTAQUE: I understand. And
20 I'm just thinking --

21 MR. PERL: We come in early.

22 JUDGE KIRKLAND-MONTAQUE: We could do it either

1 way. We could do it by motion or...

2 MR. PERL: Which causes the parties to spend
3 more time and money. We could do it by motion, or we
4 could just come in and say -- you could say, "Hey,
5 did you guys finish discovery?" "Yes, we did."
6 "Everything going great?" "Yes, it is."

7 JUDGE KIRKLAND-MONTAQUE: So a final status.
8 We've got our evidentiary date. And then we'll see
9 what happens.

10 MR. BARR: Do we have a time for the 11th and
11 12th?

12 JUDGE KIRKLAND-MONTAQUE: Do want to start at
13 9:00?

14 MR. PERL: I'd rather 10:00 o'clock. We can go
15 to whenever.

16 JUDGE KIRKLAND-MONTAQUE: 10:00 to 4:00 with
17 lunch on both days.

18 MR. PERL: Are we going to be doing this -- do
19 we know? -- in the big room?

20 JUDGE KIRKLAND-MONTAQUE: I'll request -- not
21 the really big room -- N-808 where there's a little
22 more room.

1 MR. PERL: Is there going to be a video
2 hook-up, or is it just going to be us who's there?

3 JUDGE KIRKLAND-MONTAQUE: Just you.

4 MR. PERL: Okay.

5 JUDGE KIRKLAND-MONTAQUE: And how many weeks
6 before that?

7 MR. PERL: I'd say, like, maybe 3 weeks out, to
8 kind of just...

9 MR. BARR: How about the week of the 17th?

10 JUDGE KIRKLAND-MONTAQUE: No can do. We can do
11 the week of the 10th or the 24th.

12 MR. PERL: We can do the week of the 24th, if
13 that's okay.

14 JUDGE KIRKLAND-MONTAQUE: Do you want to do
15 Tuesday, April 25th?

16 MR. PERL: Tuesday, the 25th -- April 25th.
17 That was easy.

18 JUDGE KIRKLAND-MONTAQUE: Relatively.

19 Okay. So this will be continued to a
20 final status hearing on April 25th, at 10:00 a.m.
21 And we are scheduling an evidentiary hearing in this
22 matter for May 11th and 12th from 10:00 to 4:00 p.m.

1 on each day.

2 Okay. Is that it for today? Is there
3 anything else that we need to bring up?

4 (No response.)

5 JUDGE KIRKLAND-MONTAQUE: And Staff will
6 provide Protective Parking with a broken down PDF per
7 officer.

8 MR. PERL: And just so we're clear on the
9 record, I'm sure they will. But if they don't
10 provide those things to us and we don't get them
11 timely, then I would like the Court to recognize and
12 understand that we may have to move these dates.

13 JUDGE KIRKLAND-MONTAQUE: I'm sure that he's
14 going to get them to you.

15 MR. PERL: I just want to make that clear for
16 the record.

17 JUDGE KIRKLAND-MONTAQUE: Okay. If there's a
18 problem, there's a problem; but I don't anticipate
19 that there will be.

20 MR. PERL: I don't either.

21 JUDGE KIRKLAND-MONTAQUE: Okay.

22 MR. PERL: And what can we do about Carlson

1 being on leave?

2 JUDGE KIRKLAND-MONTAQUE: Well, I would suggest
3 that you request that he appear and a date. And if
4 he's not available for that date --

5 MR. BARR: I think they're talking about the
6 citations.

7 MR. PERL: The citations as well. Because
8 here's my issue --

9 JUDGE KIRKLAND-MONTAQUE: Wait. We're done.

10 (Whereupon, a discussion was had
11 off the record.)

12 (Whereupon, the above-entitled
13 matter was continued to April
14 25th, 2017, at 10:00 a.m.)

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