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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
April 25th, 2017

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

1 APPEARANCES:

2 ILLINOIS COMMERCE COMMISSION, by
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8 -and-
9 MS. GABRIELLE PARKER-OKOJIE
10 160 North LaSalle Street
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12 Chicago, IL 60601
13 (312) 814-1934
14 on behalf of ICC Staff;

15 PERL & GOODSYNDER, by
16 MR. ALLEN R. PERL
17 MR. VLAD CHIRCA
18 14 North Peoria Street
19 Chicago, IL 60607
20 (312) 243-4500
21 for Protective Parking.
22

1 JUDGE KIRKLAND-MONTAQUE: By the power vested
2 in me by the State of Illinois and the Illinois
3 Commerce Commission, I now call for a status hearing
4 Docket No. 92 RTV-R Sub 15 for a status hearing, as I
5 mentioned. This is in the matter of Protective
6 Parking Service Corporation doing business as Lincoln
7 Towing Service. And this is the Application for
8 Renewal of Commercial Relocater's License.

9 May I have appearances, please? Let's
10 start with Lincoln Towing.

11 MR. PERL: Thank you, your Honor. For the
12 record, my name is Allen Perl, P-e-r-l, from Perl &
13 Goodsnyder. My address is 14 North Peoria Street
14 Suite 2C, Chicago, Illinois 60607. My telephone is,
15 (312) 243-4500.

16 JUDGE KIRKLAND-MONTAQUE: Thank you.

17 Staff?

18 MR. BARR: Good morning, your Honor. My name
19 is Benjamin Barr. I appear on behalf of Staff of the
20 Illinois Commerce Commission. My office is located
21 at 160 North LaSalle Street, Suite 800, Chicago,
22 Illinois 60601. And my phone number is

1 (312) 814-2859.

2 MS. GABRIELLE PARKER-OKOJIE: Good morning,
3 your Honor. Gabrielle Parker-Okojie, also on behalf
4 of the Staff of the Illinois Commerce Commission. My
5 office is also located at 160 North LaSalle, Suite
6 800, Chicago, Illinois 60601. My phone number is
7 (312) 814-1934.

8 MR. PERL: And, for the record, my associate
9 Vlad Chirca is also just appearing, and his
10 information is the same as mine.

11 JUDGE KIRKLAND-MONTAQUE: Okay. Thank you very
12 much.

13 All right. So, as I said, this is a
14 status before trial. So let's give me an update,
15 whoever would like to start.

16 MR. PERL: So I have one preliminary matter to
17 address, your Honor. And I did address this, oh,
18 maybe a month, or 6, or 2 months ago regarding the
19 hearing date. And I had mentioned something about my
20 daughter coming home from school and not knowing
21 when. It turns out I'm supposed to pick her up on
22 May 11th. So her finals are done at night. She has

1 a 9:00 o'clock final on the 10th; and I have to pick
2 her up from school on the 11th, which is supposed to
3 be the first day of our hearing.

4 And realize that it's an issue; but I
5 did kind of bring it up at one point in time. I
6 said, "I don't know when her finals are going to be.
7 She doesn't know. But it is going to be right around
8 then. So we can schedule it, but I'm not sure."

9 And we have to drive to pick her up.
10 It's not a flight. So we have to drive to pick her
11 up, pack up her room, and then drive back in the same
12 day. So I don't need a long continuance. I mean, a
13 week would be fine for me. It just would be
14 difficult for me to now either try to go there at
15 midnight -- which wouldn't work -- or send my wife
16 alone, which really doesn't work for me either,
17 driving back and forth in the same day with my
18 daughter. So it would be -- for me, I'm requesting a
19 continuance.

20 I have the FOIA records -- not that it
21 matters. But there is a transcript of me saying that
22 this might happen because I wasn't aware of what

1 dates she'd be coming. I knew it was going to be
2 right around there, but I didn't know. It's her
3 first year there. So I'm asking for a continuance --
4 short. I don't need a lot. Even just to the next
5 week is fine.

6 And I'll also note -- not that this
7 matters -- the other hearing for Rendered isn't even
8 scheduled yet. So I understand that Staff wants to
9 get things going; and the reason that we pushed this
10 is to get it done. I FOIA'd the documentation.
11 Rendered's still in discovery. They're no where near
12 getting a hearing date.

13 So, again, I don't need to be parallel
14 with them on their hearing dates, but I don't think
15 it's going to hurt Staff or anybody if we continue
16 this thing for a week or two so I can pick my
17 daughter up at school.

18 JUDGE KIRKLAND-MONTAQUE: Staff?

19 MR. BARR: Staff would, obviously, object to
20 moving the date, you know, pushing it back even
21 further. Staff did check our calendars prior to this
22 hearing. I think one option would be to move this to

1 May 10th and May 12th and just have that date that
2 Counsel's going to be out of town.

3 MR. PERL: I'm going on the 10th to pick her
4 up. I mean, what he's saying is I have to -- I'm
5 leaving on the 10th to drive there -- I'm sorry. I'm
6 leaving on the -- well, we're either leaving on the
7 10th or the 9th, depending on what happens on the
8 11th in the morning. But that would literally mean
9 me doing this in between driving to Champaign for 12
10 hours. I mean, I'm going to be on the road all day
11 long and then coming back and doing a hearing. I
12 don't think that makes much sense. It's not fair to
13 me.

14 Could I do it? I guess. I mean, I
15 guess I could say, "Why don't you guys run a marathon
16 and then come in and have a hearing?", but that
17 wouldn't be fair. Yeah, I could do that; but I don't
18 understand -- again, I raised this issue back then
19 because I knew this was going to be a potential
20 problem. So for me to start a hearing on the 10th,
21 go that night and the whole rest of the day on the
22 11th -- and I'm not preparing for anything because

1 I'd have to be driving and working my butt off
2 dismantling a room -- and then come back on the 12th
3 and have a hearing. That's great, but it's not
4 really fair. I mean, I don't know what would happen
5 to the world if we continued this for a week or two,
6 but I don't think anything terrible.

7 JUDGE KIRKLAND-MONTAQUE: All right. Let's go
8 off the record.

9 (Whereupon, brief recess was
10 taken.)

11 JUDGE KIRKLAND-MONTAQUE: All right. I'm
12 willing to move it up, but I'm not willing to move it
13 back. I can move that 11th day up to 10th, or the
14 9th, or the 8th, and then keep the 12th.

15 MR. PERL: That doesn't really help me because,
16 if we're going to go to hearing on the 12th anyway,
17 then I'm going to be gone all day long traveling,
18 picking my daughter up from school with no prep time
19 on that day and getting home late at night. That's
20 won't help me.

21 I mean, I understand, Judge; but we
22 raised these issues before. How about the 16th, or

1 the 17th, or the 18th? It's just the next week. I'm
2 not doing this to delay the hearing. It's a couple
3 of days later. It's not going to change anything.

4 JUDGE KIRKLAND-MONTAQUE: Let's go off the
5 record for a second.

6 (Whereupon, a discussion was had
7 off the record.)

8 JUDGE KIRKLAND-MONTAQUE: Okay. So the issue
9 on the table is -- what I'm trying to determine is
10 how long do we estimate the hearing will take. And
11 there was a separate issue raised by Staff
12 regarding --

13 Go ahead and mention it, Mr. Barr.

14 MR. BARR: Thank you, your Honor. We did ask
15 to depose Mr. Dennis, Christopher Dennis. There was
16 a date set for Wednesday, the 12th, I believe, of
17 April. The Saturday before that date we were
18 notified by Counsel that he is unavailable -- that
19 Counsel is unavailable for that date but that the
20 deposition the following day could proceed.

21 We did take the deposition, on
22 Thursday, of Robert Munyon. At that deposition

1 Counsel informed us that the first available date for
2 him would be May 2nd, which would be 10 days prior to
3 the fitness hearing to do a discovery deposition;
4 which, based off of the information that we learned
5 from Mr. Munyon's deposition, did lead us to not new
6 information, but relevant information.

7 You know, Staff would need time to
8 review the transcript and also kind of dig into
9 Mr. Dennis's testimony, which is why anything really
10 at this point is unacceptable to do a deposition and
11 have a transcript back to be able to adequately
12 prepare for hearing.

13 JUDGE KIRKLAND-MONTAQUE: Therefore...?

14 MR. BARR: And, therefore, we'd be seeking to
15 exclude Mr. Dennis from testifying at the fitness
16 hearing.

17 MR. PERL: Well, Judge, obviously, it's
18 improper. There's nothing in writing on file. First
19 you have to file a motion to compel, first; then you
20 ask for sanctions, second. They did neither of
21 those. They didn't have a 201(k) conference either.
22 So I'm not sure why Counsel is sitting here saying

1 that he wants to bar him.

2 JUDGE KIRKLAND-MONTAQUE: All right. Is it
3 possible to expedite Mr. Dennis's testimony?

4 MR. PERL: Well, this is what I told Counsel
5 then. We ended up scheduling it on Passover. I
6 couldn't be there. I told him on Saturday, "I can't
7 be there". But I proposed for dates for his
8 deposition at that point in time; one of them being,
9 like, May 1st, May 2nd, plenty of time in real life
10 to take a deposition.

11 And it doesn't take a week to get a
12 transcript back. It literally takes 2 days if you
13 want it back in that time period. I can do it. I'll
14 have my court reporter come, if that's the case.
15 That's easily done.

16 The second thing is if, in fact, they
17 believe they have some new information, I would think
18 they would want to postpone the hearing, take
19 Mr. Dennis's deposition, take an extra week or so to
20 get yourself organized. Nothing is going to change.
21 I gave him the dates. If they took his dep on May
22 1st or 2nd, they would have 10 days, if we didn't

1 change the hearing date, to prepare. It's not that
2 difficult.

3 This is exactly, by the way, what I
4 talked about when we were scheduling this thing. So
5 I don't see how it will harm or prejudice anyone,
6 including the Commission, if we continue the hearing
7 for a week or two. I'll give them a definite date
8 for Mr. Dennis's dep right now. They'll take his
9 dep. It seems to take them longer to get a
10 transcript than I get, so maybe it'll take them a
11 week or two to get a transcript; and then we'll have
12 a hearing. I don't understand how it could prejudice
13 anyone.

14 And, by the way, just so we're clear,
15 you've got to follow the rules. They need a motion
16 to compel if they're going to do anything.

17 JUDGE KIRKLAND-MONTAQUE: When is the
18 soonest -- what's the soonest date you can get for
19 Mr. Dennis?

20 MR. PERL: So I think I had said to them May.
21 May 3rd is the perfect day for me. That would work
22 great. I could do make May 2nd, in the afternoon. I

1 could do May 3rd. I could do May 4th.

2 JUDGE KIRKLAND-MONTAQUE: Can you do the 2nd?

3 MR. BARR: Your Honor, Staff can't do the 2nd.

4 We have hearings from 9:30 to noon, and then 2:00 to
5 4:00.

6 MR. PERL: I have the 3rd all day long.

7 JUDGE KIRKLAND-MONTAQUE: With Mr. Duggan?

8 MR. BARR: With Judge Duggan, yeah.

9 MR. PERL: I can do the 3rd all day long.

10 MR. BARR: The issue with the 3rd, though, your
11 Honor, is that even if we do the 3rd, Staff is still
12 opposed to moving the actual date of this hearing
13 back. Even if there are 10 days, that doesn't give
14 Staff any time to get the transcript back, look into
15 any evidence -- or testimony that Mr. Dennis would --

16 JUDGE KIRKLAND-MONTAQUE: I've got to say,
17 Mr. Barr, given this issue, you could have filed a
18 motion before today to let me know this. Now we're,
19 like, 2 weeks away and you want to --

20 I mean, I'm willing to work to
21 expedite that discovery. I'm willing to work with
22 you to make that -- to give that to you. But to come

1 in today without any motion prior to today letting me
2 know that this was an issue, and then to object to
3 changing the date -- I mean, pick one. Do you want
4 to do the deposition or not? If you want to do it,
5 we'll do it. You know, I'll schedule it or make sure
6 that it happens before the hearing date.

7 And regarding changing the hearing
8 date, I'm not going 1 or 2 weeks out. I might go a
9 day or two, but I'm not moving it.

10 MR. PERL: Well, all it is for me really -- if
11 you're talking about business days because of the
12 weekend --

13 JUDGE KIRKLAND-MONTAQUE: Sure.

14 MR. PERL: -- it's only a couple of days, then.

15 JUDGE KIRKLAND-MONTAQUE: Right. I'm just
16 saying let's just...

17 MR. PERL: I'm not doing it to delay. I'm just
18 doing it so I can get myself back in town.

19 JUDGE KIRKLAND-MONTAQUE: I hear what you're
20 saying. And I'm reluctant to even do that, but I'd
21 rather --

22 MR. PERL: Should I give you dates that I'm

1 available right after that?

2 JUDGE KIRKLAND-MONTAQUE: Right after what?

3 MR. PERL: Right after the 10th or the 12th.

4 JUDGE KIRKLAND-MONTAQUE: You just said the
5 16th; right?

6 MR. BARR: I could do the 16th. I could do the
7 17th. I could do -- well, the 18th we have --

8 JUDGE KIRKLAND-MONTAQUE: What about the 15th?

9 MR. PERL: On the 15th I am in federal court on
10 a case that I got appointed on, so I'm stuck in this
11 case. There's not much I can do. It's a criminal
12 case, so I'm probably --

13 JUDGE KIRKLAND-MONTAQUE: You're not available?

14 MR. PERL: No. I was up until 2 days ago.

15 JUDGE KIRKLAND-MONTAQUE: Oh, I gotcha.

16 MR. PERL: And I'm not thrilled about it. But
17 if you get appointed, there's nothing you can do. So
18 I can do the 16th, the 17th.

19 Now, the 18th is an option because we
20 have the evidentiary hearings. We could --

21 JUDGE KIRKLAND-MONTAQUE: Switch the dates?

22 MR. PERL: -- switch those and just do the

1 hearing on that date, too.

2 MR. BARR: The only issue with that -- I mean,
3 not that anyone's been coming to the --

4 JUDGE KIRKLAND-MONTAQUE: The other one?

5 MR. BARR: -- we still have to give them the
6 opportunity to appear.

7 MR. PERL: Well, there's only five separate
8 files set for that day anyway.

9 MR. BARR: But it's every citation.

10 JUDGE KIRKLAND-MONTAQUE: Not just yours. It's
11 the entire...

12 MR. PERL: Well, the other ones are for status,
13 not for hearing. There's only five set for hearing.

14 JUDGE KIRKLAND-MONTAQUE: No. But I'm
15 talking -- it's the entire -- it's our monthly...

16 MR. PERL: Oh, not just Lincoln Towing?

17 JUDGE KIRKLAND-MONTAQUE: Not just Lincoln
18 Towing.

19 MR. PERL: Oh, okay. Well, how are we going to
20 do our hearing that day, then? We've got 9:00 to
21 12:00 roped off for our hearing.

22 JUDGE KIRKLAND-MONTAQUE: Well, it's very

1 likely that you will be the only one. And if that
2 were the case, if anyone were to show up, I'd just
3 continue it out; so that's not an issue.

4 MR. PERL: I mean, we can do the 17th and the
5 18th.

6 MR. BARR: The only thing with the 18th,
7 though, your Honor, with that moving date, is that we
8 did contact witnesses to appear on that day.

9 MR. PERL: They only have four police that all
10 work for them. That's all they have.

11 MR. BARR: Well, some of the motorists, those
12 are witnesses that would have been during that
13 period.

14 JUDGE KIRKLAND-MONTAQUE: You've got motorist
15 witnesses?

16 MR. BARR: Yeah, for both dates we're going to
17 have motorist witnesses.

18 MR. PERL: For the citations, not for the...

19 JUDGE KIRKLAND-MONTAQUE: Oh, all right.

20 MR. PERL: Like I said, Judge, there's
21 literally only five of them, at the most. And it's
22 May 18th; that's a month a way from now. It's not,

1 like, a week from now. I'm talking about the May
2 18th date.

3 JUDGE KIRKLAND-MONTAQUE: For you guys?

4 MR. PERL: For them, for the motorists.

5 They only have five tickets that are
6 going on May 18th -- five citations. That's it. At
7 most, they could have five motorists coming. If they
8 notified them today of a new date or not to come, it
9 really wouldn't be that horrible.

10 JUDGE KIRKLAND-MONTAQUE: And you say that you
11 can do the 16th and the 17th?

12 MR. PERL: I could.

13 JUDGE KIRKLAND-MONTAQUE: And we have hearings.
14 I could rearrange those 17th hearings.

15 MR. BARR: Yeah, hopefully, the one won't end
16 up happening.

17 JUDGE KIRKLAND-MONTAQUE: Oh, that's the one we
18 set yesterday. Okay. So I'm willing to rearrange my
19 calendar to do the 16th and the 17th.

20 MR. PERL: And then if we could schedule
21 Mr. Dennis's dep right now on the record, that's fine
22 unless counsel wants to take a look --

1 MS. PARKER-OKOJIE: Your Honor, I still don't
2 think that scheduling Mr. Dennis, even now, would
3 give us enough time. I mean, it just wouldn't. We
4 would literally, if we took it on the 3rd -- I mean,
5 we're really compressing this. And we're assuming,
6 also, that Staff has nothing else to do other than
7 work on Lincoln Towing's fitness hearing. There are
8 other issues at play.

9 And I really believe that, at this
10 point, Mr. Dennis's unavailability for that week that
11 we tried to schedule him, and for that week after,
12 Counsel didn't even let us know that he was out of
13 the country until the day of Mr. Munyon's deposition.
14 So in terms of best efforts on both sides, you know,
15 Staff tried to make an effort to schedule Mr. Dennis
16 even by phone because Counsel implied that he may be
17 available by phone even though he was out of the
18 country.

19 And so we asked Counsel to let us
20 know, at Mr. Munyon's deposition, on April 13th, if
21 any time during that following week would work. We
22 did not hear from Counsel. So we really did make an

1 effort, your Honor, to try to schedule this; but
2 Counsel never contacted us. We were objecting to the
3 first week in May because that would not give us
4 time. Counsel did propose those dates; but, at that
5 point, with a May 10th hearing date, we can't depose
6 someone on May 1st. It's just not feasible.

7 MR. PERL: On April 8th I sent them an e-mail
8 apologizing because we had scheduled the deposition
9 on Passover, literally. The following Monday or
10 Tuesday I proposed dates to them. That was way back
11 then. I told them that he was out of the country and
12 not available. They could easily have picked a date.

13 And I actually said to them,
14 literally, "Don't wait till the 20th to do this". I
15 warned them. I said, "Don't wait till we get there.
16 Let's set dates now so we don't come in on the 25th".
17 And they did exactly -- they said, "No, we don't want
18 to do that. We don't want to do that." I said,
19 "Schedule the dep, guys".

20 JUDGE KIRKLAND-MONTAQUE: What dates did you
21 offer?

22 MR. PERL: May 1st, 2nd, 3rd, that whole week.

1 I told them.

2 MS. PARKER-OKOJIE: Your Honor, no.

3 MR. PERL: The 2nd or 3rd for sure. I'm
4 positive I did.

5 MS. PARKER-OKOJIE: Your Honor --

6 MR. PERL: Well, I spoke to Mr. Barr anyway --
7 not Counsel -- and I gave him the dates.

8 MR. BARR: We did not get those dates, your
9 Honor.

10 MR. PERL: I didn't tell you May 2nd?

11 MR. BARR: On Saturday, your Honor, we did get
12 notification before the deposition that Counsel would
13 not be available for that Wednesday. He said that he
14 would follow up on Monday.

15 When we did not hear anything on
16 Monday, Staff took upon themselves to follow up with
17 Counsel and asked him to propose new dates.

18 JUDGE KIRKLAND-MONTAQUE: Do you mean Monday
19 after the...?

20 MR. BARR: The Monday before the deposition; so
21 Monday, the 10th.

22 MR. PERL: Is Counsel saying that I never

1 proposed dates to him?

2 MR. BARR: Counsel proposed one date to us at
3 the actual deposition of Robert Munyon.

4 JUDGE KIRKLAND-MONTAQUE: That was April 13th?

5 MR. BARR: Correct. And we actually had to
6 follow up with him on Tuesday to see what was going
7 on and whether he had new dates for us.

8 MR. PERL: I gave them five dates over the
9 phone. I said, "The following dates work: May 2nd,
10 3rd". They're still available, most of them.

11 MR. BARR: We never spoke on the phone, your
12 Honor.

13 MR. PERL: I gave him the dates. He just said
14 he called me the next day.

15 MR. BARR: We e-mailed you on Tuesday, Counsel,
16 to ask you what was going on. And your response --
17 and I can get the e-mail if you want -- basically
18 was, "We'll talk about it at the deposition on
19 Thursday."

20 MR. PERL: And we had a telephone conversation
21 where I said to him, "Pick a date now." If you don't
22 remember the call, I'll get my phone records for you

1 if you want. It was at least a 15-minute phone
2 conversation where I said, "Ben, schedule the dep
3 with me right now." "Nope, I'm not going to do it."
4 "But we're just going to come to the hearing on the
5 25th for a status and tell the Judge then. Do it now
6 so we have a backup". I said, "At least use it as a
7 backup." He goes, "Well, then you're going to tell
8 the Judge we already have a dep date, and I don't
9 want to do that." I said, "But, yeah, at least we'll
10 have a date."

11 So if Counsel is saying we never
12 spoke, I will pull my phone records. We had at least
13 a 10-minute phone conversation where I gave him the
14 dates.

15 MR. BARR: Your Honor, that phone call never --
16 we never had a phone conversation.

17 MR. PERL: Okay. Great. I'm going to pull my
18 records for you because this is on the record right
19 now.

20 MS. PARKER-OKOJIE: That's fine. Mr. Perl, the
21 conversation that you're referring to took place at
22 the deposition. After Mr. Munyon's deposition we had

1 exactly that conversation, but it was in person.

2 MR. PERL: Okay. So the fact that I told this
3 to them in person makes it worse than it was on the
4 phone. I'm pretty sure that it was on the phone; but
5 that's even worse because that means that it was even
6 earlier. It was April 13th that I said to them,
7 "Pick a date right now as a backup date"; and they
8 wouldn't do it. That was April 13th. That was 12
9 days ago, and they wouldn't do it.

10 JUDGE KIRKLAND-MONTAQUE: So, Staff, then,
11 you're requesting what?

12 MS. PARKER-OKOJIE: We're requesting that
13 Mr. Dennis be excluded as a witness, your Honor.

14 JUDGE KIRKLAND-MONTAQUE: Were you planning on
15 presenting him?

16 MR. PERL: Of course. He's my main witness,
17 him and Mr. Munyon. I only have two witnesses. They
18 know who he is.

19 JUDGE KIRKLAND-MONTAQUE: All right. All
20 right. No, I'm not going to --

21 MS. PARKER-OKOJIE: Mr. Perl just said, your
22 Honor, and represented to you that Mr. Dennis's

1 information was limited and that it was only to the
2 financials. He just said that on the record.

3 MR. PERL: Well, that's a pretty big thing; the
4 number of tickets they get, the number of financials
5 they have. Mr. Dennis came to our last -- they
6 should know this. He was the only witness I had at
7 my 2015 hearing.

8 MR. BARR: The 2015 hearing, your Honor --

9 MR. PERL: I have two witnesses, period -- no
10 more. That's it; two. They have four. They want to
11 limit my witnesses to one?

12 JUDGE KIRKLAND-MONTAQUE: All right. I don't
13 want to -- this sounds -- I'm sorry.

14 What I'm saying is I don't want this
15 to turn into something bigger than it needs to be.
16 If it's an issue -- first of all, if it's an issue, I
17 would like -- I mean, I think you should have filed a
18 motion or something and let me know before today so
19 that, if there were a motion to compel or anything --
20 I mean...

21 MS. PARKER-OKOJIE: But we don't want to compel
22 Mr. Dennis's testimony. It is not as if Mr. Dennis

1 did not show up at the deposition. Counsel cancelled
2 it. So we're not trying to compel Mr. Dennis's
3 testimony. We're saying that, at this point, he
4 should be excluded because he was not presented
5 within the time frame provided.

6 MR. PERL: Well, there was no time frame
7 provided on the record. There's nothing in the
8 record saying when the dep would be done by. And
9 that would be called a motion to bar. It still has
10 to be in writing.

11 MR. BARR: Your Honor, just to give a little
12 historical, you know, kind of how things played out,
13 we did ask Counsel for dates for depositions back on
14 March 13th. We were replied to 10 days later, on
15 March 23rd, and given a 25th date -- that's all
16 within the same week -- which were fine with Staff.
17 And we scheduled, then, 3 weeks ahead of time for
18 those dates; and then 3 days, 4 days before the
19 deposition was to be scheduled it was suddenly called
20 off by Counsel.

21 So it's not like this whole idea of a
22 deposition just came up out of nowhere. And that's

1 why everything is so tight. That was the date that
2 Counsel picked. He selected those dates and gave
3 them to us, and we picked from the dates that he said
4 he was available.

5 MR. PERL: Well, still, Judge, they'd have to
6 show you some kind of prejudice there could be to
7 their case; and there's no prejudice at all in taking
8 Mr. Dennis's dep and continuing the hearing. We know
9 that. Nothing bad could possibly happen.

10 And, still, if you want to bar
11 somebody, it's called a motion to bar. This is the
12 way we practice law. We don't just walk in and say,
13 "We want to exclude somebody". That's not even
14 proper.

15 JUDGE KIRKLAND-MONTAQUE: All right. My
16 initial decision is to set a date for the deposition
17 and expedite it.

18 Mr. Perl, would you be willing to --
19 because I think the issue with our court reporting
20 firm --

21 MR. PERL: I'll have my court reporter there,
22 and I'll have her do it within 3 days.

1 MS. PARKER-OKOJIE: Your Honor, there is an
2 issue with Mr. Perl's court reporter. It's not her
3 fault, but her father was diagnosed with brain
4 cancer, which is very unfortunate. But that has
5 delayed, actually, Staff's receipt of the deposition
6 transcripts for the officers, which were taken back
7 in March.

8 So I don't know that -- I think she's
9 still working on those, actually. So I don't know
10 that she's necessarily in the best position, unless
11 there's someone else.

12 JUDGE KIRKLAND-MONTAQUE: Is there another one?

13 MR. PERL: There's about 50 other ones that I
14 can get.

15 And, by the way, I'm the one being
16 harmed by that because I need those transcripts, not
17 them. So, anyway, I'll get the transcript done
18 within 3 days. It's going to be an hour or 2 dep.
19 How long could it possibly take to do a transcript?

20 MR. BARR: I mean, your Honor, the rules do
21 give us 3 hours. And, you know, it is a discovery
22 deposition that allows us to -- you know, that's why

1 a relevancy objection in a discovery dep is improper
2 because it allows us to seek any information that
3 would lead to relevant information.

4 MR. PERL: I was saying I'm going to limit
5 them. I was just saying that I don't think the
6 content of the deposition --

7 Take 3 hours if you want to. I was
8 just saying I didn't think it was going to last that
9 long. I'm not trying to limit you.

10 JUDGE KIRKLAND-MONTAQUE: Take the deposition.
11 Mr. Perl if you can expedite the transcript...

12 MR. PERL: Will do.

13 JUDGE KIRKLAND-MONTAQUE: And we're going to
14 keep our date. I'm not going to --

15 So I can change the date to -- what
16 was that? May 16th, 17th -- absolutely no change.

17 MR. PERL: 9:00 o'clock?

18 JUDGE KIRKLAND-MONTAQUE: 9:00 o'clock.

19 MR. PERL: And if they want to right now, on
20 the record, do Mr. Dennis's dep, that's fine; or we
21 can talk off the record.

22 JUDGE KIRKLAND-MONTAQUE: No. I want it on the

1 record. I need a time.

2 MR. PERL: Does May 3rd work?

3 MR. BARR: We can do the morning on May 3rd.

4 MR. PERL: Okay. What time? Can we do

5 10:00 o'clock?

6 MR. BARR: That's fine.

7 JUDGE KIRKLAND-MONTAQUE: So that we are all on

8 the same page, the deposition --

9 Do you have his schedule, by the way?

10 MR. PERL: I'm sorry?

11 JUDGE KIRKLAND-MONTAQUE: Mr. Dennis's

12 schedule.

13 MR. PERL: No. We already talked about it.

14 JUDGE KIRKLAND-MONTAQUE: Oh, you've got it?

15 MR. PERL: Yes.

16 JUDGE KIRKLAND-MONTAQUE: Okay. So May 3rd is

17 set. Hopefully, by May --

18 By Friday you think you can get the

19 transcript?

20 MR. PERL: Well, if we do it on May 3rd,

21 there's a possibility that they can have it on the

22 5th. Even if they go 3 hours, it's one deposition.

1 JUDGE KIRKLAND-MONTAQUE: Okay. I'm just
2 hoping that they'll have that dep.

3 MR. PERL: And if Staff wants me to provide the
4 reporter for that date, I will. I'll let you know
5 who it is so you make sure you're okay with it. And
6 then I'll also confirm that that reporter that day
7 can get a transcript within 2 to 3 business days.

8 MS. PARKER-OKOJIE: So that's not something
9 that you know right now?

10 MR. PERL: No, I'll make sure. I will find
11 somebody.

12 MS. PARKER-OKOJIE: This is confirmed, so I
13 just want to be sure that the person we pick is
14 somebody that --

15 MR. PERL: I'm going to still call Cindy
16 Stickler (phonetic), who is my person; and she will
17 find somebody for me if she can't do it. For the
18 last 25 years I've been using her. So if she can't
19 do it, she'll find one of her people to do it. And
20 they'll come in, and we'll get it within 2 or 3 days.
21 And I'll make that guarantee right now.

22 JUDGE KIRKLAND-MONTAQUE: Okay.

1 MS. PARKER-OKOJIE: Now, maybe this is just a
2 logistical question. But, in terms of expediting it
3 at that rate, that increases the cost.

4 MR. PERL: I'll pay the cost of the expedite.
5 I want you guys to pay what the regular would be
6 because you'd have to do that anyway; and whatever
7 the additional costs will be I will pay for it.

8 JUDGE KIRKLAND-MONTAQUE: That sounds fair.

9 MR. BARR: And, just for the record, Staff
10 would like to depose Mr. Dennis here at the
11 Commission.

12 JUDGE KIRKLAND-MONTAQUE: Will you make him
13 available here?

14 MR. PERL: Sure.

15 JUDGE KIRKLAND-MONTAQUE: Okay.

16 MR. PERL: Didn't we do Mr. Munyon here?

17 MR. BARR: Yeah. Just for the record, so it's
18 all on the record.

19 JUDGE KIRKLAND-MONTAQUE: So we're all on the
20 same page.

21 MR. PERL: No, I was planning on coming here.

22 MS. PARKER-OKOJIE: And since we're on the

1 topic of transcripts, I just wanted to ask you,
2 Counsel, do you know the dates for -- and we can
3 check with Cindy also. But I just wanted to know if
4 you had any insight as to when those transcripts
5 would be available?

6 MR. PERL: I'm actually glad that you brought
7 that up because I need to check on it because those
8 are transcripts that I really need for the hearing as
9 well. So I'll check with Cindy today. I'm not sure
10 if her father passed away because I haven't heard
11 from her in a couple of days.

12 MS. PARKER-OKOJIE: Okay. We'll check as well.
13 Thank you.

14 MR. BARR: Your Honor, while we're on the
15 subject of dates, can we also set the exhibit
16 deadline date?

17 MR. PERL: That's a good idea.

18 JUDGE KIRKLAND-MONTAQUE: So we've got the 16th
19 and the 17th. Normally we do the week prior; right?

20 MR. PERL: Yes. So could we say the 12th or
21 before?

22 JUDGE KIRKLAND-MONTAQUE: The 9th.

1 MR. PERL: The 9th? Okay. That's fine.

2 Judge, do you want -- how do you want
3 us to deal with exhibits? So sometimes we'll prepare
4 a book with the exhibits so that we can exchange with
5 counsel ahead of time and then give you a copy so you
6 have a book for yourself. And then we can kind of
7 stipulate to our exhibits prior to the hearing.
8 That's a little easier sometimes.

9 JUDGE KIRKLAND-MONTAQUE: Oh, yeah. That's my
10 preference. I mean, what other way...?

11 MR. PERL: Well, sometimes you just get a list
12 and you don't actually present a book with them. I
13 would prefer to give, actually, a book with the
14 exhibits in them. And then you can receive from
15 Staff, as well, a book.

16 JUDGE KIRKLAND-MONTAQUE: That's easier for
17 everybody.

18 MR. BARR: Yeah, we're going to prefile our
19 exhibits. That's what I was referring.

20 MR. PERL: Right. Great.

21 JUDGE KIRKLAND-MONTAQUE: That's fine.

22 MR. CHIRICA: Prefile?

1 JUDGE KIRKLAND-MONTAQUE: Do you mean on
2 record?

3 MR. BARR: Yeah. We always prefile our
4 exhibits.

5 JUDGE KIRKLAND-MONTAQUE: I forget what it says
6 in terms of -- I don't know if they have to be filed
7 or just, like, exchanged prior to the hearing. I
8 mean, that's just a courtesy.

9 MR. PERL: My preference would be just to
10 exchange them on the 9th and give you a copy on the
11 9th.

12 JUDGE KIRKLAND-MONTAQUE: Sure. That's fine.
13 You've just got send me a copy over with them.

14 Okay. So that week is pretty much
15 set -- no changes -- the 16th and 17th. And we'll
16 schedule the hearing from 9:00 to 5:00.

17 MR. PERL: I mean, there is a chance we'll get
18 done in one day -- there is. I'm not saying we will.
19 But, based upon the deps that I took, there's a
20 chance.

21 JUDGE KIRKLAND-MONTAQUE: Okay. Well, we'll
22 see how it goes. I'll just block out 9:00 to 5:00.

1 And if we get done early, we get done early on both
2 days.

3 Okay. Is there anything else?

4 MR. BARR: Two other things. One, your Honor,
5 we did, after taking Mr. Munyon's deposition, find
6 very relevant information. It's not new information
7 that we'll be turning over to Counsel today; it's
8 just information that they would have provided -- for
9 the most part, would have provided and even entered
10 into our system. So we're just turning that over in
11 response to their Question 21 of any documents --

12 JUDGE KIRKLAND-MONTAQUE: You're supplementing
13 an answer?

14 MR. BARR: Correct, we are.

15 MR. PERL: This probably would have been a good
16 thing to do at the beginning of this discussion
17 because now I have to see what they're supplementing,
18 and I don't even know what it is, if I'm going to
19 have to do further discovery or --

20 MR. BARR: It's not new information. We
21 supplemented -- we added Ms. Parker-Okojie into the
22 people who will prepare it. We also supplemented

1 Question No. 21, I believe, with a couple of
2 exhibits.

3 MR. PERL: Well, okay. I don't know how this
4 is going to affect what I'm doing. I know you said
5 that there's no further continuances, but it's a
6 little disingenuous for them to argue like crazy to
7 not continue a hearing and then spring it on us at
8 the end of it saying, "Oh, by the way, here's
9 supplemental discovery", which discovery should be --
10 the written should be closing by now. I don't even
11 know what it is.

12 JUDGE KIRKLAND-MONTAQUE: What is it that
13 you're providing Mr. Barr?

14 MR. BARR: Based on the tow logs that they
15 provided to us during discovery and that Mr. Munyon
16 clarified information on during his deposition, we
17 did uncover a number of addresses, based on that tow
18 log, that do not have current contracts. So there's
19 different issues with them.

20 So there are less than, I would say, a
21 hundred pages of exhibits; but most of those
22 exhibits --

1 JUDGE KIRKLAND-MONTAQUE: Is that new? A
2 hundred new pages?

3 MR. BARR: A hundred new pages of exhibits.
4 They're not actually new. It's all information that
5 would have been provided by Lincoln Towing through
6 e-relocater online, and that gets filed into MCIS.
7 So we just printed out the MCIS printout of
8 information that they would have provided or not
9 provided.

10 MR. PERL: Judge, there's no way that this is
11 proper because here's what they're going to do:
12 They're going to need someone to testify as to these
13 documents; correct? Because documents can't come in
14 on their own. They need a witness. So one of their
15 witnesses, they said it shouldn't take longer than
16 the other. So they're going to have them testify to
17 these documents. I have never deposed them on these
18 documents. I've never seen these documents.

19 How can I go to a hearing where
20 they're going to have Sergeant Sulikowski or somebody
21 testify as to these new documents that I'm getting
22 today? I need to redpose him.

1 MS. PARKER-OKOJIE: Your Honor, these are not
2 new documents. The format of the document is from
3 our database. So, in that sense, it's a new format;
4 but the information is information that was provided
5 to the Commission.

6 JUDGE KIRKLAND-MONTAQUE: Where?

7 MS. PARKER-OKOJIE: On the tow logs. Lincoln
8 Towing turned over their 24-hour tow records. There
9 were a thousand pages of tow records. When we
10 deposed Mr. Munyon, he was able to confirm some
11 things, because the tow records have numbers and
12 symbols on them that we don't know. They're
13 Lincoln's business records. So we had to clarify
14 exactly what the record is, what these fields mean.

15 And all we simply did was go back to
16 MCIS, which is the ICC's database, and it spit out
17 the information. It's in a different format, but
18 this is information that Lincoln Towing has.

19 MR. PERL: No, it is not. These are not my
20 documents.

21 JUDGE KIRKLAND-MONTAQUE: Wait a minute. Wait
22 a minute. So let me just follow along. So on the

1 tow logs there may have been information that you
2 weren't clear about, and he made it clear in his
3 deposition?

4 MS. PARKER-OKOJIE: Sure.

5 JUDGE KIRKLAND-MONTAQUE: So then you go back
6 to MCIS and put in the information that you received
7 from Mr. Munyon?

8 MS. PARKER-OKOJIE: Sure.

9 JUDGE KIRKLAND-MONTAQUE: And it produces these
10 new documents -- or these documents in a different
11 format. So now they've got to go through each and
12 every one of these to verify it, because maybe
13 there's a mistake. I don't know. Maybe there's
14 something in there that -- I mean, I'm not
15 challenging your veracity. I'm just saying that they
16 should have the opportunity to review this and
17 double-check to make sure that it is what you say it
18 is.

19 And there's a hundred new pages of
20 that information, or different information, in a
21 different format?

22 MS. PARKER-OKOJIE: Your Honor, some of the

1 pages maybe have one line on them. So while there is
2 a volume of pages, the pages may have one line just
3 with an address.

4 Secondly, we are under a duty to
5 supplement. Question 21 that Lincoln Towing proposed
6 asked for information that our witnesses might rely
7 on. If after a discovery deposition we check our
8 records and, by interpreting the information from the
9 deposition -- interpreting their records -- we are
10 able to go into our records and produce information,
11 then --

12 MR. PERL: Which is exactly -- excuse me. One
13 second. This is exactly why I said in a normal court
14 of law, for 32 years, you finish written first and
15 then you set the oral, and then you've got a hearing
16 date. We did them all at the same time. I said this
17 was going to be a problem because we don't normally
18 do that. Normally you take the written first, as we
19 all know, then you do the oral, then you set the
20 hearing dates when you're done -- because we're not
21 really done.

22 There's a hundred new pages. And, by

1 the way, Judge, that doesn't look like one line to
2 me. What they want to do now is they want to have
3 one of their witnesses testify as to these documents.
4 I never saw these documents before. I never
5 cross-examined them. Every one of their witnesses
6 told me the same thing; they have no opinion as to
7 Lincoln Towing or how many tows they've done. I'm
8 not sure if they're going to testify for fitness, but
9 none of them know it.

10 So now they're going to want to take
11 these documents, and they're going to question a
12 witness. And I never had these for the deposition.
13 I need to know who is going to testify as to these,
14 which one of their witnesses.

15 You heard them earlier say that one of
16 them could be longer than the other one. My guess
17 is -- and I didn't know what he meant then. My guess
18 is they're going to give that witness these documents
19 and have him testify. I never deposed him on these
20 documents. I never saw these documents. So I need
21 to redpose their witness with these documents
22 present.

1 JUDGE KIRKLAND-MONTAQUE: Okay. All I'm saying
2 is this new or different information is a lot of
3 information that they should have the opportunity to
4 review.

5 MR. BARR: It would be no different, your
6 Honor, than when we take Mr. Dennis's deposition and
7 don't get the transcript back until 10 days before
8 the deposition date -- or I'm sorry -- the hearing
9 date, and uncovering new information.

10 As co-counsel suggested, we are under
11 a duty to supplement. And, as I suggested earlier on
12 the record, these were the dates that Counsel picked
13 for the deposition. The whole point of the
14 deposition was to lead to relevant evidence, and we
15 uncovered relevant evidence.

16 MR. PERL: So I guess the day of trial they can
17 just bring the new relevant evidence in and ambush me
18 with it. This is nothing but an ambush. And the
19 analogy is flawed because they're going to take
20 Mr. Dennis's dep. I'm not going to then bring in new
21 documents after his dep and say, "Oh, by the way, you
22 didn't depose Mr. Dennis on these documents, but I'm

1 going to use these with Mr. Dennis anyway"; that
2 would be what they're doing here.

3 If I had seen these documents before
4 the dep, no problem. I would review the documents.
5 I would show each one of these to them. "Have you
6 ever seen this before?" "What do think about it?" I
7 can't do that now. So for Counsel to say that they
8 have a duty to supplement, you do. And they should
9 have supplemented this a month or two ago.

10 By the way, this is their seventh
11 answer -- seventh -- because they can't get it right
12 each time. Seven different times they've had to
13 respond to me because they don't get it right the
14 first, second, or sixth time. This should have been
15 done. And, by the way, this information isn't new to
16 them. They listed every single one of them. I'm not
17 sure for purpose, now.

18 By the way, I have no idea what
19 they're going to use this for -- no clue. And I
20 could have deposed their witnesses. They listed
21 every single one of drivers here. I'm not sure
22 why -- all of our dispatchers, all of our drivers,

1 this is information that they've had for 10 years.

2 JUDGE KIRKLAND-MONTAQUE: Okay. Let me ask you
3 something. Why didn't you produce this, based on the
4 information that you had, before now?

5 MS. PARKER-OKOJIE: Because, your Honor, we had
6 to take Mr. Munyon's deposition. This information is
7 based on Lincoln's business records. We are not
8 Lincoln Towing. We don't know how Lincoln Towing
9 keeps its records. So the deposition that we had of
10 Mr. Munyon, on April 13th, we had to then go through
11 the thousand pages, or plus, of tow records that
12 Lincoln produced to us in order to verify what was in
13 their own records.

14 JUDGE KIRKLAND-MONTAQUE: So what's the purpose
15 of this?

16 MS. PARKER-OKOJIE: This is the information
17 from the -- we can't produce the database, your
18 Honor; so we have to present it in documentary form.
19 These are reports from the database that the law
20 enforcement, or the ICC police, rely upon. We didn't
21 have that information before we went through
22 Lincoln's --

1 MR. PERL: I'm not even sure how they're going
2 to get this into evidence because they only have four
3 witnesses.

4 MS. PARKER-OKOJIEL: I can't speak while
5 Mr. Perl is speaking.

6 JUDGE KIRKLAND-MONTAQUE: I'm sorry. I'm just
7 trying to understand. Okay. So you had tow records?

8 MS. PARKER-OKOJIE: Right.

9 JUDGE KIRKLAND-MONTAQUE: You weren't a hundred
10 percent sure based on how they write or whatever?

11 MS. PARKER-OKOJIE: Right.

12 JUDGE KIRKLAND-MONTAQUE: You got clarity?

13 MS. PARKER-OKOJIE: Sure.

14 JUDGE KIRKLAND-MONTAQUE: And then you went
15 into MCIS and, I don't know, put in an address?

16 MS. PARKER-OKOJIE: We had to talk with the
17 police, too. You know, as the attorneys, we use MCIS
18 for our own purposes; but we had to talk to the ICC
19 Police to ask them how they use it and then to
20 coordinate between what Lincoln's records say and
21 what the database says.

22 JUDGE KIRKLAND-MONTAQUE: So give me an

1 example. So the tow record says "X", and then this
2 says what (gesturing)?

3 MS. PARKER-OKOJIE: Sure. The tow record says
4 that Operator X towed X car from X address. So then
5 if we go into MCIS, we have to verify who that
6 operator is, if they had a valid permit during that
7 time, what the address was, and what the status of
8 the contract on that address was.

9 So that was a thousand pages each
10 with, I think, 10 or more addresses on each page that
11 had to be gone through. So, I mean, it's a miracle
12 that we got it done in this time frame, your Honor,
13 quite frankly, between the police and us; but we had
14 to go through and verify these things. And without
15 having that information from Lincoln we couldn't do
16 that because we would be just guessing at what those
17 things meant on their tow records.

18 MR. PERL: Judge, just to let you know, we gave
19 them those thousand pages, just so you know, 6/7/16.
20 They've had these records for almost a year, these
21 thousand pages. They didn't get them last week. So
22 the fact that she could say, "It's amazing we got

1 them" -- that was a year ago we gave them these
2 records, and there's nothing new on there.

3 Here's what they say: the lot address,
4 which they know, because we have every lot with them;
5 the operator number, which they know, because they
6 give them the number. The ICC is the one who gives
7 them the number. There's nothing new that they
8 learned in Munyon's deposition at all. There's a
9 couple of little things. Like, they would say goofy
10 little things about interoffice stuff for Lincoln,
11 but nothing involving the Commerce Commission.

12 The 24-hour tow sheets is what they're
13 talking about. I think your Honor is familiar with
14 those, the ones that we submit to the police
15 department. We gave them thousand of pages a year
16 ago. They've had them for 11 months. On there it
17 tells you the day that we towed the car, what lot we
18 towed it from, who towed the vehicle. The operator
19 number -- Operator 679 -- they know who that is.
20 They don't need Lincoln to tell them. They gave the
21 guy the number from the Commission.

22 So I'm not sure what new information

1 they got from Mr. Munyon at all because they got
2 nothing from him new, and they've had this stuff for
3 a year.

4 JUDGE KIRKLAND-MONTAQUE: Why couldn't you
5 start this process before? And I'm certain that out
6 of the thousand not 900 of them had problems. I
7 mean, the ones that may have been difficult to
8 decipher, why not just present those?

9 MS. PARKER-OKOJIE: Your Honor, because we only
10 took the deposition of Mr. Munyon on April 13th.
11 We're not Lincoln Towing. And, quite honestly, from
12 the responses that they gave to us, we don't know
13 what the fields mean. They can be labeled one thing,
14 but we have to confirm that from their testimony.

15 JUDGE KIRKLAND-MONTAQUE: So just try to help
16 me understand how is this a benefit if you've had
17 this information? Even after talking to Mr. Munyon,
18 what does this information add or help if you've had
19 it all along?

20 MS. PARKER-OKOJIE: Well, we've had the tow
21 sheets all along, but we haven't had the benefit of
22 Mr. Munyon explaining what each field means. And

1 although Counsel derides them as "goofy little
2 things", those are things that we need to understand.

3 JUDGE KIRKLAND-MONTAQUE: So how does this
4 help?

5 MS. PARKER-OKOJIE: It provides a fuller
6 picture and bears on the fitness of Lincoln Towing.

7 JUDGE KIRKLAND-MONTAQUE: A fuller picture of
8 what? I need more specifics. Because I
9 understand --

10 MS. PARKER-OKOJIE: Sure. Absolutely.

11 JUDGE KIRKLAND-MONTAQUE: After 10 years or so
12 I kind of understand what goes on in these
13 businesses, so you can speak to me with a little more
14 specificity. So what is this giving us that you
15 didn't have before that it is adding to the process?

16 MS. PARKER-OKOJIE: It's adding a fuller
17 picture of Lincoln Towing's fitness. It bears on
18 Lincoln's fitness to have a relocater's license; how
19 they keep their records, the veracity of the
20 information in their records, the validity of
21 operator permits, the validity of contract addresses.
22 All of those things are important to --

1 JUDGE KIRKLAND-MONTAQUE: I'm sorry. Just for
2 example -- and I guess what I think --

3 I'm sensing that you're not trying to
4 give away one of your arguments or something.

5 MR. PERL: Although, you're supposed to because
6 that's what the interrogatories asked for, and it's
7 not trial by ambush. It's almost like a Trump -- a
8 Donald Trump hearing here. You say nothing over and
9 over again.

10 JUDGE KIRKLAND-MONTAQUE: Okay. I'm trying to
11 understand. Are you saying that there might be
12 something in there that contradicts a towing invoice?

13 MS. PARKER-OKOJIE: Yes, there can be things
14 that contradict towing invoices, that contradict --
15 there are inconsistencies between the ICC's records
16 and Lincoln Towing's records.

17 JUDGE KIRKLAND-MONTAQUE: Could you not have
18 highlighted -- is this, like, everything? Are you
19 throwing in a big bundle of everything, or could you
20 have highlighted the things that are different from
21 what's been presented before?

22 MS. PARKER-OKOJIE: I mean, I think we went

1 through, and the police went through; and we found
2 the inconsistencies, and that's what we've presented.
3 We have not presented the whole universe --

4 JUDGE KIRKLAND-MONTAQUE: Are they
5 inconsistencies or just everything?

6 MS. PARKER-OKOJIE: I mean, it's a combination.
7 And, again, we're not trying to hide the ball; but
8 we're also not trying to have the hearing right now.

9 JUDGE KIRKLAND-MONTAQUE: I know. I don't want
10 you to. I'm just trying to understand the necessity,
11 or the relevance, of this.

12 MS. PARKER-OKOJIE: Sure.

13 MR. PERL: Judge, can I read Interrogatory
14 No. 20 to you that they didn't supplement? Here's
15 No. 20: "Identify all witnesses the petitioner
16 intends to present on its behalf in regards to the
17 fitness hearing. Please identify the name of each
18 witness, the witness's relationship, and the
19 substance of the witness's testimony". Okay? "The
20 substance". That's my Interrogatory No. 20.

21 If they're going to have -- and I
22 don't know what they did for ever single one of them.

1 "Will testify as to the review of Protective
2 Parking's corporate responses -- responses to Staff
3 data request" -- nothing specific at all. So now
4 what they're going to do is, they're going to --
5 maybe they should Supplement No. 20 and tell me what
6 they're using these for.

7 This is the part that I'm perplexed
8 by. Staff somehow seems to think that it's trial by
9 ambush. Every time I'm in here I have to beg for
10 stuff to get the fuller picture. In litigation --
11 and we do this every day in litigation as a lawyer
12 for 32 years. I've never been on a case where
13 someone says to me, "I get to hide the ball all the
14 way through. You'll find out what I'm going to say."

15 I still don't know why we're having
16 this hearing, to be honest with you; but that's okay.
17 If there's information in here that they can use, I'm
18 supposed to know about it before trial, aren't I? I
19 don't need to know their theories, but the
20 interrogatories are done for that specific purpose so
21 there is no trial by ambush.

22 So No. 20 is improper. So I guess I

1 should come in on a move to strike all of their
2 witnesses because none of their witnesses they say
3 what they're really going to say. I overlooked that.
4 I was fine. I took their depositions instead. I
5 didn't depose them on anything here. And my guess is
6 that counsel is saying that there's something in
7 here, in these hundred pages, that they're going to
8 try to use to show that we're not fit. What? I'm
9 entitled to know because my interrogatories asked for
10 that. So you've got to tell me what it is.

11 So maybe they've got to do is not just
12 redo No. 21, which is a copy of the documents, but
13 you also have to tell me what they're going to
14 testify to because that's the answer to Interrogatory
15 No. 20. So they should redo No. 20. I will then
16 redepose whoever it is that they're going to use for
17 these documents, and then we'll have a hearing.
18 Because right now if we go to hearing and they use
19 these documents, my client would be prejudiced and
20 never deposed --

21 And, by the way, I would like to know
22 what witness they're going to use because they only

1 have four. So maybe we could streamline this thing;
2 but, at this point in time, Judge, I'm asking for a
3 continuance for the hearing because there's no way
4 that I can review these documents. I have to depose
5 whoever they use. And then they need to supplement
6 Interrogatory No. 20 to identify the individual who's
7 going to be testifying as to these documents, and
8 then I'll depose them again. And that's the way it
9 should be. Otherwise, I'm going to a hearing --

10 As your Honor pointed out, when
11 Counsel says stuff like "a fuller picture", that's a
12 politician's answer. What does that mean? You're
13 not even answering the question. So the question is,
14 what are you using these for? I have to go figure it
15 out now. And, to be honest with you, Judge, 24-hour
16 tow sheets are very, very clear. We didn't make
17 them. They've been around for 30 years.

18 Here's what they says: date, location,
19 VIN number, license plate, operator number. How much
20 clearer could it be? All of the information that
21 they've have one year. Everything they've needed
22 from here they've had for one year. The address of

1 the lot, the control number, everything they've had
2 for one year. And I think if you saw the transcript
3 of Mr. Munyon's dep, he didn't give any clarity on
4 any of that stuff. They know it.

5 Here's what we have on here: the
6 address of the lot, contract type (indicating). They
7 have that already. When we file our contracts with
8 them, they know that.

9 JUDGE KIRKLAND-MONTAQUE: Go ahead.

10 MR. BARR: I was going to say, your Honor,
11 also, as Counsel pointed out, this is the information
12 that they provided to us. So it's not like -- as we
13 said before, they're not getting new information.
14 They're just getting the same information that they
15 provided to us back at them in a different format.

16 JUDGE KIRKLAND-MONTAQUE: But Ms. Parker-Okojie
17 said that there might be inconsistencies. My point
18 is, if there are inconsistencies, I think it would be
19 fair to point them out so that you don't look --

20 I mean, what's the point of giving
21 them what they gave you, first of all?

22 MR. PERL: I didn't give them this (gesturing).

1 JUDGE KIRKLAND-MONTAQUE: I understand. But if
2 the information is all the same, what's the point?
3 Why go through this process of presenting them with
4 what they've presented to you? That's a
5 time-consuming effort for what reason? The reason
6 must be that -- and I would think that the purpose of
7 it is to present things that are different.

8 And if they're different, why not
9 highlight them so that they can easily identify them;
10 and then, as Mr. Allen (sic) said, then they can
11 prepare for it? But to say, "Here's some information
12 based on his deposition", is just too broad. It's
13 just too broad to bring however many hundreds of
14 pages of information you've got right now.

15 MR. BARR: Those hundred pages, your Honor,
16 it's not like we just printed out a bunch of
17 documents and just kind of put in the ones where we
18 found the inconsistencies. Those are the
19 inconsistencies.

20 JUDGE KIRKLAND-MONTAQUE: These are all
21 inconsistencies?

22 MS. PARKER-OKOJIE: Yeah.

1 MR. PERL: Okay. That's even more so -- now
2 I've got a hundred pages of inconsistencies. And, by
3 the way, just so we're clear, I don't know who made
4 this. So they have to disclose to me who made this.
5 They don't have anyone. They have four witnesses,
6 but I'm sure none of them made it. They can't even
7 get this into evidence right now because they don't
8 have a person to substantiate it.

9 MS. PARKER-OKOJIE: Your Honor, I think we're
10 confusing a couple of things here. I think we're
11 confusing admissibility, in terms of if these were
12 exhibits, and our answer that supplements Question
13 21. This is supplementing Question 21, which is,
14 "What information did your witnesses or would they
15 have relied on in making certain conclusions?"

16 If after Mr. Munyon's deposition we
17 were able to go and confirm certain inconsistencies
18 with the ICC Police, this is information that their
19 testimony would be based on. We don't have to prove
20 the tenets of admissibility in turning this over.
21 This is turning it over and saying, "This is
22 supplementing your request to us."

1 We're doing that. We're fulfilling
2 our duty to supplement it. In doing that, we don't
3 need to provide a tabbed list. If we're using
4 something as an exhibit then, yes, we need to provide
5 the foundation for, we need to provide all of the
6 tenets of admissibility; but we don't need to do that
7 when turning something over in response to a data
8 request.

9 MR. PERL: And, actually, that's not true
10 because the interrogatory asks for it. So you're
11 right. If my interrogatories didn't ask for it, they
12 don't. But my Interrogatory No. 20 specifically asks
13 for that information, and they didn't give it to me.

14 JUDGE KIRKLAND-MONTAQUE: What is your response
15 to No. 20?

16 MS. PARKER-OKOJIEL: No. 20 is a list of
17 witnesses and what they will be testifying to.
18 Counsel had an opportunity to depose those witnesses.

19 MR. PERL: Without this document?

20 MS. PARKER-OKOJIEL: Our point is that Counsel
21 had an opportunity to conduct a deposition and ask
22 any questions that he wanted of all four witnesses,

1 and he did so. Providing this information -- again,
2 the contents are not different. Counsel could have
3 asked about the content. And he did ask about the
4 contents of those documents in terms of addresses,
5 tow invoices, process and procedure. All of that was
6 explored.

7 So it's not as if we're saying, "Here
8 are 100 new investigation files. Here are 100 new
9 administrative citations." We're not doing that.
10 We're simply saying here's what the MCIS --

11 We can't produce our whole database,
12 you know. We can't produce that. But we're saying
13 here's what we found that is inconsistent with what
14 you provided to us based our Mr. Munyon's deposition
15 and based on our conversation with the police who
16 will be testifying.

17 MR. PERL: So what they should have done in
18 No. 20 is said, "Officer So-and-So will testify as to
19 the inconsistencies of each of these documents", and
20 I could have deposed him on it. Counsel has just
21 admitted to you that I didn't have these documents at
22 his depositions. How would I know what to depose him

1 on if I didn't have these documents?

2 Now Counsel's saying to you that every
3 single one of these documents shows an inconsistency.
4 So I'm going to show these documents to the guy at
5 the deposition and say, "Show me the inconsistencies.
6 What are they?", and he's going to have to tell me.

7 I'm not going to wait till trial to do
8 it because what I'm going to be doing is filing
9 motions to bar once I do that because I don't think
10 that they're the right people to do it. And that's
11 okay.

12 And Counsel is correct. Today isn't
13 the day for that. But I should be allowed the
14 opportunity to depose whoever they're going to have
15 with these documents so I can find out, one, if he
16 can lay a proper foundation for them and , two,
17 whatever he's going to say. Aren't I allowed to know
18 what he's going to say before trial? That's the
19 purpose of discovery.

20 JUDGE KIRKLAND-MONTAQUE: Okay. Let's just,
21 hypothetically, say you redpose Mr. Dennis, and then
22 you now find, you know, that there's something in

1 there that triggers something else for you; and then,
2 at that point, you want to present something else.

3 I mean, at what point do we -- I mean,
4 you've got to identify what're doing. We're just too
5 close to hearing. And I know that the hearing would
6 have to flush out all of the facts and everything.

7 MR. PERL: Let me read you something from
8 Mr. Sulikowski's deposition. And I'm not sure who
9 they're using for this, but I'm guessing it's
10 Sergeant Sulikowski. Here's what I asked him --

11 MS. PARKER-OKOJIE: I don't know if it's
12 appropriate --

13 JUDGE KIRKLAND-MONTAQUE: Hold on. Go ahead.

14 MR. BARR: "Are there any documents that you
15 are planning on using at the hearing in May?

16 "Answer: I am not."

17 JUDGE KIRKLAND-MONTAQUE: Okay.

18 MR. PERL: So now he's going to use these
19 documents, but he told me at his deposition that he's
20 not going to use any documents. I asked each one of
21 them the same question.

22 JUDGE KIRKLAND-MONTAQUE: Okay. Well, maybe

1 that's not the case.

2 MR. PERL: So which witness is using this,
3 then?

4 JUDGE KIRKLAND-MONTAQUE: I'm sorry. Go ahead.

5 MS. PARKER-OKOJIE: Your Honor, I don't know
6 the context or the purpose of reading excerpts from
7 the deposition now. I think we should stay focused
8 on us turning over these documents to supplement
9 Question 21. I think that we've fulfilled our duty
10 to supplement. I think that withholding them would
11 be inappropriate.

12 JUDGE KIRKLAND-MONTAQUE: At what point is your
13 duty to supplement -- is there not a cut-off? You
14 can supplement up to what point?

15 MR. PERL: I think an hour before trial, is
16 what they're saying, if it's a I trial.

17 MS. PARKER-OKOJIE: Your Honor, I'm trying to
18 remain serious here because I do believe this is a
19 serious issue, and I don't make light of it.

20 We just deposed Mr. Dennis on April
21 13th --

22 JUDGE KIRKLAND-MONTAQUE: You Mr. Munyon.

1 MR. PARKER-OKOJIE: Mr. Munyon. I'm sorry. We
2 just deposed him. So this is not Staff's attempt to
3 ambush Lincoln Towing. Again, thousands of pages had
4 to be gone through and reconciled with the police.

5 JUDGE KIRKLAND-MONTAQUE: I'm just trying to
6 understand.

7 MR. PERL: You've had these documents for a
8 year. I'm not sure how long it takes you to go
9 through a thousand documents.

10 MR. BARR: We wouldn't have been able to
11 confirm -- I think what co-counsel said is that we
12 are not Lincoln Towing. We don't understand their
13 records. We don't know their records. Someone has
14 to be able to explain their records to us.

15 MR. PERL: That's just not accurate. 24-hour
16 tow sheets are easily discernable by me, if I showed
17 them to you, your Honor -- by anybody. They're
18 easily -- we've been using these type of documents
19 for, like, 40 years now. It's the same documents
20 we've turned in over and over.

21 And, by the way, if they couldn't
22 discern them a year when we gave them, why didn't

1 they ask us? Why didn't they say to us, "Hey, we
2 don't understand these documents"? Why did we have
3 to wait until Mr. Munyon's deposition? Within the
4 last year we've done this, and they've never once
5 said to me, "We don't understand these documents",
6 not one time.

7 MR. BARR: And, again, your Honor, we would
8 state that, you know, that Counsel did pick the date
9 for the deposition, which is the whole -- again, the
10 whole point of the discovery deposition is to lead to
11 relevant evidence, which it did.

12 MR. PERL: Which is why we don't set hearing
13 dates until we finish oral discovery, which I told
14 this group 2 months ago. I said, "Don't set a
15 hearing date yet. Let's finish the oral discovery
16 first." Because you get new information at
17 depositions and you need to follow it through, but
18 then you can't have the same hearing date.

19 JUDGE KIRKLAND-MONTAQUE: I'm sorry. Give me a
20 quick break. I just need to look at this real
21 quickly.

22 (Whereupon, a brief recess was

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taken.)

JUDGE KIRKLAND-MONTAQUE: So, Mr. Perl, what I'm doing is looking and seeing -- it looks like this is a printout of each lot and whether it's a call lot, a patrol lot, and who's the owner.

MR. PERL: You know, that's phenomenal; but we could read those and see what they are, Judge. I don't know why they're using it -- what the purpose is. So they need to tell me in the interrogatory what they're using it for and what witness is going to testify to it.

JUDGE KIRKLAND-MONTAQUE: I think broad answers to the interrogatory -- like, we need to show fitness. I think Counsel's right on that one. My point is, there's got to be some purpose in this. And given the close date of where we are, in terms of the hearing --

Now, again, these are just pages of the lot.

MR. PERL: There's a long list of --

JUDGE KIRKLAND-MONTAQUE: All right. I'm going to look.

1 MR. PERL: I don't know what that's for
2 (gesturing).

3 JUDGE KIRKLAND-MONTAQUE: "Dispatcher
4 listing..."

5 MR. BARR: This is all information, too, your
6 Honor, that Lincoln Towing already had. They should
7 know what dispatchers they have and whether they're
8 active.

9 JUDGE KIRKLAND-MONTAQUE: But why would you
10 give them the same thing that they've given you?
11 There's some reason for it. And to make things run
12 smoother and just for the sake of reaching a hearing,
13 you should present the purpose of these documents.

14 MR. BARR: And, your Honor, Counsel did file a
15 motion to compel, and he never asked us further
16 information on what the witnesses want to testify
17 about.

18 MR. PERL: Because what I said was I filed a
19 motion to compel because in any other court room it
20 would be inappropriate. I said, "Okay, I tell you
21 what, I don't want to belabor this any longer. I'll
22 just take their depositions." And that's what I did,

1 believing that I had all of the documents to do that.

2 Giving me these documents now saying,
3 "Hey, don't worry about it. These are your
4 documents", that's what discovery is for. Otherwise,
5 why do discovery at all? Just say, "I'm going to use
6 all of the documents I want to that you already have
7 in your possession", and we'll go to trial.

8 JUDGE KIRKLAND-MONTAQUE: Okay. I've got a
9 solution because I've looked at it now, and it
10 does -- and I've got to say --

11 Okay. So this appears to be a summary
12 of the lot and things of that nature. My point is,
13 it doesn't make sense to me that you would present to
14 them the same thing that they've presented to you. I
15 mean, why would you go through that? You need to
16 supplement No. 20. And if you do that, then I'll
17 allow you to present these documents. Because, as I
18 review them, it doesn't appear to be --

19 I want you to supplemental 20 and
20 identify the purpose -- the reason you supplement.
21 "This is because of, you know," "So-and-So is going
22 to testify regarding this..." Do you know what I'm

1 saying? Does that make it more clear?

2 MS. PARKER-OKOJIE: Your Honor, I think I'm
3 still having a hard time understanding. We are
4 supplementing -- we are providing these documents in
5 answer to Question 21, which is, "What are your
6 witnesses -- essentially, the question is, "What are
7 your witnesses going to rely on to testify?"

8 We can't have our witnesses testify to
9 a database search if we don't provide the information
10 from our database. So that's what we've provided.
11 So I understand your quandary about, "Well, why are
12 you giving them back a list of addresses if they
13 provided you a list of address?" We're not doing
14 that.

15 We're saying we can't present to you
16 our database. You know, we can't provide our
17 database in discovery, but we can provide the
18 relevant portions of our database that our witnesses
19 will testify to. So that's, I think, the purpose of
20 what we've provided, to answer that question.

21 In terms of supplementing Question 20,
22 which says, "What are your witnesses going to testify

1 about?", I mean, the answer remains the same. I
2 think Lincoln's kind of answer, in terms of what
3 their witnesses are going to testify, is equally as
4 broad. So if we are going to be required to
5 supplement our Question 20 and say the specificity of
6 what our witnesses are going to testify to, then we
7 would have Lincoln do the same thing; and then I
8 think it would just be this endless kind of back and
9 forth back down to, "What questions are you going to
10 ask on direct examination so that we can fully
11 prepare for cross-examination?"

12 I mean, that level of specificity is
13 what you get into when you go and back and forth
14 about, "What are they going to say?" That's the
15 whole point of taking a deposition and being allowed
16 that free-reign in a deposition to ask anything that
17 you want. What we've provided is not prejudicial to
18 Lincoln Towing because we've created nothing out of
19 whole cloth. There's nothing new.

20 JUDGE KIRKLAND-MONTAQUE: Well, let me ask you
21 this --

22 MS. PARKER-OKOJIE: Sure.

1 JUDGE KIRKLAND-MONTAQUE: Why couldn't you use
2 the tow logs, or whatever they presented to you, to
3 show your witness to testify about?

4 MS. PARKER-OKOJIEL: What happens is you have
5 to cross-reference the tow log with the ICC database
6 to see that there's an inconsistency. If you have
7 that, "Operator 123 towed this car from that lot",
8 unless you check the database that's the only way
9 that the officers can write their ticket. That's how
10 they write the administrative citations a lot times.
11 They go back to find certain violations. They have
12 to check the MCIS database. A visual inspection of
13 the log alone will not reveal that there is some
14 violation of the law.

15 JUDGE KIRKLAND-MONTAQUE: But wouldn't the
16 citation --

17 Why wouldn't you say, "Well, I checked
18 the -- the officer or whomever -- "I got the tow
19 invoice. I checked MCIS, and then I wrote a
20 citation"? I mean, this is how it goes in the
21 administrative hearings for citations. "I wrote the
22 citation because X, Y and Z".

1 MS. PARKER-OKOJIE: Right.

2 JUDGE KIRKLAND-MONTAQUE: How is that
3 different?

4 MS. PARKER-OKOJIE: Because there are no
5 citations here. I mean, there are no citations
6 written. I mean, we can't show a citation for these
7 dates. So dates where there are citations or where
8 we can talk about those with the officers, we will.
9 They have copies of all of the citations that are
10 written during this relevant time frame.

11 We had an opportunity to ask the
12 officers about why they wrote citations, you know,
13 the circumstances surrounding that. So that's been
14 flushed out. That's not anything that Counsel
15 doesn't know.

16 MR. PERL: Actually, we've already resolved
17 that issue by saying we're not going to go into
18 individual tickets because we've already stipulated
19 how they're going to handle that so we can expedite
20 the hearing. We talked about the fact that we're not
21 having a hearing within a hearing about the tickets.
22 So that's not accurate.

1 And, Judge, I don't understand why the
2 discovery process is so difficult in this setting for
3 them. It is absolutely incredible for me to hear
4 another attorney saying that, "We just give general
5 stuff, and then we have a hearing". That's why we do
6 interrogatories. That's why I have a seventh amended
7 answer, because they're not giving me the answers.
8 And exactly the person who protests so much, that's
9 the person who's violating the rules.

10 They still don't give me this
11 document -- here, Judge. I would ask you, if you
12 were me, "Look at these documents right now and tell
13 me what they're using these for?", you would say, "I
14 don't know". They're just on a piece of paper. I'm
15 supposed to know why they're using them pursuant to
16 the interrogatories and depositions.

17 I never deposed anybody on these
18 documents. Their last witness, Sergeant Sulikowski,
19 said, "I'm not presenting any documents to you." I
20 guarantee that they're going to have to use one of
21 their witnesses. They only have four. They're going
22 to have to show them these documents and try to

1 authenticate them and lay a foundation for them.

2 Which one are you using? I'll depose
3 them. It's very simple. But first what I've got to
4 do is now I've got to take all of these documents,
5 and I've got to pull my contracts for each one of
6 these because I'm not going to take their word for
7 it. I've got to go in and figure out what they're
8 saying first.

9 Then I've got to go into all of my
10 contracts because they're saying that there's some
11 lots we towed from that we don't have a contract for.
12 I've got to go now and check. And this is going to
13 take me hours to do. I'm going to have to go to my
14 client and say, "Take a look at all of these pages
15 here. Go and make sure we have a contract pulled for
16 each one of them."

17 There was never -- if you look at my
18 responses, they never made an issue before this
19 before -- never. In the year and a half that we've
20 been doing this I've never heard this. Do you know
21 what their response is for why they're doing a
22 hearing? "Because we're allowed to" -- which is

1 great. You know I argued ad nauseam about that.
2 They never really specifically said why. That's
3 okay.

4 If this is the reason why -- or one of
5 them -- they didn't put it in here, that's fine. At
6 least No. 20 should tell me who is going to testify.
7 Give me some time to review these documents, and let
8 me redpose that person with these documents. How can
9 I not be allowed to depose this person if the first
10 time I'm going to ask some questions is going to be
11 at the hearing? That's called trial by ambush.
12 That's exactly what they're doing.

13 And their generic answers for
14 everything should be apparent to everybody here today
15 that they want to come to trial by ambush. They want
16 to come to the hearing with these documents which, by
17 the way, I've looked at for a minute. I have no idea
18 what they're going to do with these documents, and
19 I'm supposed to know that.

20 MR. BARR: And, your Honor, it seems to be an
21 issue with time and counsel having time to review
22 these. But, once again, your Honor, we will state

1 that Counsel picked the dates for his deposition. He
2 knew that a discovery deposition could lead to more
3 evidence.

4 JUDGE KIRKLAND-MONTAQUE: Okay. Fair enough.

5 MR. PERL: I knew that?

6 JUDGE KIRKLAND-MONTAQUE: No. I'm --

7 MR. PERL: How do I know that?

8 JUDGE KIRKLAND-MONTAQUE: Here's what I'm
9 thinking -- because I still don't want to change the
10 dates on this evidentiary. I think that, to make it
11 easier for everyone, you need to supplement the
12 previous question to give him more direction on what
13 those questions -- or what this information --

14 MR. PERL: I still have to depose the person,
15 though. I have to take their deposition. I cannot
16 go to this hearing without deposing the person that's
17 going to present these documents. I can't do that.
18 It would be malpractice on my part to do that. I
19 have to have a deposition for this person. How can I
20 know what he's going to say? That's why we take
21 depositions to find out beforehand what they're going
22 to say at the trial. That's why we do them. We

1 don't do them for any other reason in my business.

2 I have to make sure that I depose
3 whoever they're presenting for these documents. Are
4 they saying they're not deposing anybody? Then
5 great. I don't know what they're going to do. I
6 still move to bar these documents as being too late.
7 But they're going to have a witness testify to them.
8 Who? Let me depose them.

9 JUDGE KIRKLAND-MONTAQUE: Can you provide that
10 information?

11 MS. PARKER-OKOJIE: Your Honor, I think the
12 whole -- just walking down the whole path of
13 redeposing witnesses at this point is not warranted.

14 JUDGE KIRKLAND-MONTAQUE: Well, we're doing a
15 deposition next week; so it's okay. We've got one,
16 and we can do two.

17 MS. PARKER-OKOJIE: Well, even the one next
18 week, I think, is too close, quite frankly; but
19 you've ruled on that, so we're not going to go back
20 down that path. But, in terms of redeposing
21 witnesses, this is not new information in the fact
22 that this is a list of addresses, this is a list of

1 what contract has a lot on it and what contract
2 doesn't. I don't really know that we can provide our
3 witnesses to be redeposed under those circumstances.

4 If I were handing over new tickets,
5 new citations, new violations of law, I would say,
6 you know, if an officer wrote a ticket on something,
7 yes, you should have an opportunity to ask them about
8 that even though the underlying facts, as Counsel
9 says, may not be discussed at trial. If you want to
10 have that opportunity, fine.

11 These are not new citations. These
12 are just MCIS -- this is an MCIS database. I don't
13 think it warrants the officers being redeposed on
14 something that --

15 JUDGE KIRKLAND-MONTAQUE: Okay.

16 MR. PERL: If they're going to testify to it,
17 then I get to depose them. If they want to testify
18 to it, that's fine. And, by the way, Judge, this is
19 litigation twilight zone. I've never heard these
20 arguments made ever before. I don't understand how
21 they could --

22 There's a duty to supplement -- that's

1 true -- but not the day before trial or the week
2 before trial. They've had these documents for one
3 year. So what I'd like to do is simply depose him on
4 if they're going to use these documents. I'm not
5 going to go back over the whole case. I don't need
6 to. I'm going to show him each one of these
7 documents and say, "Did you create it?", "Did you
8 help in creating it?", "Do you know what's on here?",
9 "What are you going to testify to at trial?", "What
10 does this mean?", "What does that mean?"

11 That's what I'm supposed to do, isn't
12 it? So to say that we shouldn't be able to redpose
13 him is nonsense. They should have told me about this
14 before. And, by the way, depositions sometimes bring
15 up new information -- that's true -- and then you
16 supplement. But then you don't have a hearing the
17 week later. Then you have your hearing put off, and
18 there's really -- I don't care.

19 We can have the hearing on the 16th
20 and 17th, that's great. In reality what we should be
21 doing now is postponing the hearing, take
22 Mr. Dennis's dep, give me my new interrogatory, let

1 me take that dep, coming back to you telling you
2 whether we're done or not, and setting a hearing
3 date. And that's, typically, how discovery is done.
4 Typically, you don't set a hearing date until you
5 actually finish discovery because this is what
6 happens when you do it the other way.

7 And we backed into a hearing date,
8 which I said all along was not the way to do it. You
9 finish discovery first. You come for a final status
10 after discovery is done, and then the judge sets a
11 hearing date. This is why we're having this problem
12 now.

13 JUDGE KIRKLAND-MONTAQUE: So you presented this
14 information. It's not new. It's just supplemental.
15 They do need to have the opportunity -- they should
16 have the opportunity to review it to make sure it is
17 what you say it is.

18 And then you're saying a deposition is
19 not necessary, a re-deposition. I don't know. He
20 may think otherwise.

21 MR. PERL: How can I not depose somebody on
22 documents that they're going to use at trial? It's

1 trial by ambush. I don't know what he's going to
2 say. I'm supposed to know what he's going to say.

3 JUDGE KIRKLAND-MONTAQUE: Okay. All right. I
4 just think to keep things moving, if you want to
5 provide this information, you should, one, update
6 Question 20 to give him more of an outline of who is
7 going to be testifying regarding these documents
8 and --

9 What is Question 20?

10 MS. PARKER-OKOJIE: Your Honor -- oh, that's
11 fine.

12 JUDGE KIRKLAND-MONTAQUE: What is Question 20?

13 MR. PERL: Question 20 says, "Identify all
14 witnesses that petitioner intends to present on its
15 behalf with regard to the fitness hearing. Please
16 identify, 1, the name of each witness, 2, the
17 witness's relationship to the petitioner, and the
18 substance of the witness's testimony", which would
19 mean, if they're going to be testifying as to these
20 documentations (sic), they should say what the
21 substance is about.

22 MR. BARR: If Counsel would go on and read what

1 we actually wrote.

2 MR. PERL: I'll read what they wrote.

3 Although, none of these documents are going to be in
4 there.

5 "Sulikowski - Illinois Commerce
6 Commission Police Sergeant with supervisory
7 responsibilities for day-to-day supervision of the
8 Illinois Commerce Commission Police Staff, the Des
9 Plaines Office" -- well, that doesn't tell me
10 anything yet.

11 "He will testify as to the Staff's
12 review of Protective Parking Service Corporation's
13 response to Staff's data request." That's the most
14 ridiculous, generic -- I have know idea what he's
15 going to testify to. Do you? He said he's going to
16 testify to documents that we show him. I asked him
17 about that. There's nothing.

18 Here's what they said for Geisbush:
19 "He'll testify as to his findings in Investigation
20 150088" -- well, we struck that. 150088 doesn't come
21 out. And he said, "And and all investigations which
22 he investigated".

1 What does that mean? He's going to
2 testify that we're worthy or we're not? "Any and all
3 investigations", that's generic. That's the only
4 thing for him.

5 MR. BARR: The investigation, your Honor, that
6 we did provide and that Counsel made us turn over by
7 officer.

8 MR. PERL: That's not a proper interrogatory
9 response in any courtroom. You have to tell what the
10 substance of the person's testimony is going to be.
11 I could cite the rule. I could cite you cases all
12 day long. The reason I will live with this is -- at
13 that moment, is because I said I'm going to stop
14 arguing because I'm seen as the one who's delaying
15 everything, and I'm going to take the deposition,
16 which I did. And I sufficiently asked things at
17 their depositions.

18 MR. BARR: Your Honor, may I get our discovery
19 binder?

20 JUDGE KIRKLAND-MONTAQUE: Hold on.

21 MR. PERL: The same thing. "Will testify to
22 Staff's review..." There's not one specific thing on

1 here at all. If they're going to be claiming that we
2 had -- we towed from lots where we didn't have a
3 contract, it should say it in here, "He'll testify to
4 the fact that Lincoln Towing towed from lots that
5 they didn't have contracts for, and he'll use the
6 documents to do that". Then I can take his
7 deposition properly and ask him that.

8 So say right now I don't get a
9 deposition, that would mean that I would have to walk
10 into court -- I'm going to tell you right now I don't
11 know what this means (indicating). I have no idea
12 because they haven't told me. I need to depose
13 somebody, and then they can explain to me what the
14 relevance of this document is, because they say it's
15 relevant. I don't know how it's relevant.

16 JUDGE KIRKLAND-MONTAQUE: Okay. Go ahead,
17 Mr. Barr.

18 MR. BARR: May I have a minute to go get our
19 discovery binder so we're all on the same page?

20 JUDGE KIRKLAND-MONTAQUE: Okay. Let's go off
21 the record.

22

1 (Whereupon, a there was a brief
2 recess.)

3 JUDGE KIRKLAND-MONTAQUE: All right. Mr. Barr,
4 what were you saying?

5 MR. BARR: I would say, your Honor, that if
6 we're going to play fair here, I can read you -- I
7 don't know want to get into this path of, you know,
8 this is what they did, this is what he did. But as
9 far as their responses go, in terms of what their
10 witnesses will testify -- and we did still take the
11 deposition of Mr. Munyon -- we did not complain about
12 what the response was and had no intention of
13 complaining about it. But all it lists is, "Robert
14 Munyon, a manager of respondent; Chris Dennis,
15 owner-operator of respondent, may testify as
16 witnesses."

17 Now, then we did follow up with
18 Counsel with a 201(k) letter asking them to specify
19 via Rule 213(f) what their laywitnesses will testify
20 about. And what we got was, "Both Robert Munyon and
21 Chris Dennis will testify consistent with their
22 discovery deposition testimony with regard to the

1 fitness hearing, including but not limited to the
2 fitness of Protective Parking Service Corporation to
3 hold a commercial vehicle relocater's license".

4 So it's hard for Counsel to, you know,
5 make the argument that ours is broad -- even given
6 that he filed a motion to compel and never raised the
7 issue -- but, yet, have outstanding issues with his
8 own interrogatories that we served on him.

9 MR. PERL: So what we did was, since they're
10 trying to determine whether we're fit or not, I don't
11 know what they're going to do; but I gave them all of
12 the documents that I'm going to use.

13 So you can derive from the documents
14 that I gave you what I'm going to do. We're going to
15 testify that we're fit. I gave you the documents.
16 They didn't give me these documents before. If they
17 had given them to me, I wasn't going to argue.

18 By the way, I'm only asking to
19 supplement now because these are specific claims that
20 they're making. Finally, for the first time in a
21 year and a half they've actually had to pony
22 up because you kind of made them. You said, "Well,

1 what are you really using these for?" Because
2 they've always just said, "We have the ability to
3 have a hearing, so we're having a hearing." That's
4 like the computer answer no matter what we say to
5 them. Finally, today, they said, "There's
6 inconsistencies in here." So what I want to know is
7 what they are; and I'm allowed to.

8 As far as Mr. Dennis and Mr. Munyon's
9 dep, I gave them all of the documents. And each one
10 of these four witnesses I said to them, "Do you have
11 any documents with you?" "No, I don't." "Do you
12 plan on using any documents for the hearing?" "No, I
13 don't."

14 So I don't know which one of those
15 witnesses they're using for these because they each
16 said to me that they're not using any documents at
17 the hearing. If you look at the 24-hour tow sheets,
18 I don't even know how anyone who's in this
19 business -- and you've been here 10 years, and I've
20 been doing this for 23 years. I'm not sure how
21 anyone who looks at those 24-hour tow sheets can't
22 get exactly what they need from this information.

1 There's nothing from Mr. Munyon's dep that are on
2 these new documents. Everything was on a 24-hour tow
3 sheet -- the operator number, the I.D. number, the
4 date of the tow. Everything is on there.

5 Literally, there's some -- once in a
6 while, not on all of them -- there's, like, an
7 initial saying, "Oh, maybe that was the guy who rode
8 along with them or there was damage to the vehicle
9 beforehand." No information that could help them
10 with these new documents at all, not one shred of
11 information. And to say now that I don't get to
12 depose the individual, I don't even know how they're
13 using these documents or who's using these documents
14 because each one of them told me that they have no
15 documents.

16 JUDGE KIRKLAND-MONTAQUE: Well, let me ask you
17 a follow-up on that. If that's the case, that these
18 witnesses have said that they're not going to use any
19 documents --

20 MR. PERL: Well, in brief, in their data
21 request --

22 See, I did standard interrogatories.

1 They didn't. They just said, "Identify witnesses
2 that Protective Parking Services intends to present
3 on its behalf and identify the name of each witness."
4 That's all they asked for.

5 MR. BARR: And Rule 213(f)(1), your Honor, does
6 require that for a laywitness, Staff, or the parties
7 to disclose what the subject matter of the --

8 MR. PERL: This is their data request, and I
9 complied with it.

10 JUDGE KIRKLAND-MONTAQUE: Okay. So following
11 up on your issue earlier, let's say that the witness
12 said that, "We're not using -- or, "I don't have any
13 documents to use?", well, what's the purpose of these
14 documents then?

15 MS. PARKER-OKOJIE: I think we've already
16 stated that, your Honor. We can't provide our entire
17 database at trial. We just can't. So if an officer
18 says, "I went through Lincoln Towing's records, and I
19 checked the MCIS database, and this is what the MCIS
20 database shows me," based on their records, we can't
21 produce the database itself. We can produce a
22 printout. So what we've produced are printouts from

1 the MCIS database in response to queries regarding
2 the addresses that are listed.

3 That's not all of Lincoln's, like,
4 "Here, Lincoln", "Here are the universe of your
5 contracts, the universe of your everything
6 (gesturing)". We've provided ones where officers
7 might have done a query, and that's the information
8 that they would have received back from the database.

9 JUDGE KIRKLAND-MONTAQUE: So is the answer
10 still "no" to are you going to use any documentation
11 in your testimony?

12 MS. PARKER-OKOJIE: I mean, they're not using a
13 physical document. They reviewed the database. And
14 so the only way to, I guess, kind of distill the
15 information in that database to a printout is to use
16 a printout.

17 But those depositions were taken
18 before we took Mr. Munyon's deposition. So they
19 answered truthfully, in terms of that. But, in terms
20 of what they're using, it's nothing different than
21 they would have used to write a citation. Mr. Perl
22 knew and asked about the MCIS database when he

1 questioned the officers because the MCIS database is
2 what the officers use. That's how they write these
3 violations if there are violations to be written -- I
4 mean, aside from whatever they observe and the
5 testimony of the witnesses.

6 So the fact that there is an MCIS
7 database and that it produces this information is not
8 foreign to Mr. Perl; and I believe it was explored
9 thoroughly at the deposition, in terms of, "What do
10 you do to get into the database?", "How do you check
11 that?", "How do you look things up?" Those were all
12 things that were asked of the officers, and this is
13 just it being reduced to actual documentary form.

14 JUDGE KIRKLAND-MONTAQUE: But I think that adds
15 a new element because, before, you had a database
16 that's not tangible; and now you have a document that
17 is, which changes the nature of some of the
18 questions. I mean, the fact that you have to
19 supplement with that --

20 MR. PERL: But I asked them -- Judge, I asked,
21 specifically, those questions. I said to them, "Is
22 there any information that you're going to be using

1 at the hearing?" Even verbally I said to them, "Have
2 you reviewed anything?" "No." "Are you planning on
3 testifying at the hearing?" "Yes". "To what?" "I
4 don't know." "Is there any information you're going
5 to prove to the fitness?" They said, "No." Each one
6 of them said -- and I'll show you the transcript.
7 Each one of them said, "I don't know whether they're
8 fit or not. I have nothing to show you." And if you
9 look at a 24-hour tow sheet, which is what this is,
10 it's all on there. I don't know how Counsel could
11 say, "We need this deposition."

12 "Operator Number. "Towed From".
13 "Year/Make/Model of car". "Plate Number". "Serial
14 Number". "Invoice Time". "Driver Number." And
15 "Witness" and the "VIN number" for the vehicle. How
16 much more information do they need for a year to look
17 at it?

18 And the part that really gets to me is
19 now counsel is going to say what's in front of me
20 right here is really not a document; it's just a
21 printout of a computer. Well, that's called a
22 document.

1 JUDGE KIRKLAND-MONTAQUE: So are you,
2 basically, saying that you're not going to use this
3 for the officer's testimony?

4 MS. PARKER-OKOJIE: Your Honor, here's what
5 we're saying: One, the officers were questioned --

6 Because I think what we're really
7 trying to get to is, is this fair?

8 JUDGE KIRKLAND-MONTAQUE: That's the bottom
9 line.

10 MR. PARKER-OKOJIE: That's the bottom line
11 we're trying to figure out.

12 MR. PERL: Or maybe, is it timely as well?

13 JUDGE KIRKLAND-MONTAQUE: Well, I'm dealing
14 with fair right now.

15 MS. PARKER-OKOJIE: Okay. So your question is,
16 Is this fair? You know, Are we springing something
17 on Lincoln Towing? And the answer is, "no"; and
18 here's why:

19 During the officers' depositions they
20 were asked about MCIS. They were asked about that.
21 I don't think the officers could say, yes, I will be
22 using the MCIS database to testify, because they

1 can't bring that database to trial with them. But if
2 there's something that they have to verify, if
3 there's something that they have to look up, Mr. Perl
4 had the ability to question them about that then,
5 because it's the same method that they use when they
6 are writing the citations. That's where they're
7 getting the information from.

8 So when he asked, during the
9 deposition, you know, "How do you verify a contract?
10 How do you do that?", and they said, "I look in
11 MCIS", "I look in MCIS", they would say that. So,
12 obviously, the officers don't need to necessarily
13 print out MCIS if they're just at their computer
14 clicking. The citation ends up being the physical
15 manifestation of what they've seen.

16 But when you try to reduce down what's
17 the most fair way to produce that universe to Lincoln
18 Towing, it's to provide a printout. This is a
19 snapshot. It's not new. The officers didn't go out
20 and then write a bunch of new violations and we're
21 saying, "Oh, we just found this box of violations
22 from the relevant time period, and we'd like to use

1 that now". That's not what's happening.

2 MR. PERL: There were no citations written on
3 these.

4 JUDGE KIRKLAND-MONTAQUE: Okay. Fine. But
5 let's say -- okay. So based on what you're saying,
6 you're saying that it's just a snapshot. But at this
7 point in time he has to verify whether that snapshot
8 reflects the information that he actually produced.

9 MS. PARKER-OKOJIE: I agree with that. At this
10 point in time we still have to depose Mr. Dennis, as
11 you've allowed them to still use him as a witness.
12 So I think we're both in positions that we, you know,
13 are just borne out by the time.

14 If Mr. Munyon's deposition and
15 Mr. Dennis's deposition would have been earlier --
16 you know, we requested early April. They gave us mid
17 April. This is kind of -- you know, the way that
18 it's gone is that I think Lincoln Towing has dictated
19 this path of, "We can push it. We can push it. It's
20 fine. It'll work out. We can push it"; and now
21 we're doing an expedited transcript.

22 If Lincoln is willing to bear the

1 greater cost of that, that's fine. But I think, in
2 terms of -- there has been a pattern in terms of,
3 "Let's just push it, Let's push it"; and this is
4 where we ended up. We took the deposition. We did
5 our best, working with the police, to get through all
6 of these records and perform a full analysis of them
7 and then produce, again, what the officers would have
8 done.

9 The officers would not have printed
10 out MCIS. They don't do that. The officers would
11 have gone in, looked at something, and clicked it,
12 and verified that. I mean, so there's no way -- I
13 mean, we can ask them those foundational questions;
14 but there's no other way to reduce it to what they
15 did other than to provide Lincoln Towing with a
16 printout of that.

17 So, in terms of their testimony,
18 they're going to provide testimony; but there needs
19 to be a physical manifestation, if you will, of what
20 that is.

21 MR. PERL: Judge, I take offense to the fact
22 that Counsel says that there's a pattern on our part.

1 The only pattern here is counsels either are
2 incompetent or they intentionally do these things in
3 discovery. I don't know which one it is. Maybe it's
4 a combination of both. I've tried to get this thing
5 moving along quickly. Actually, if they'd just did
6 what I said, we'd be done already; but they don't
7 want to do it that way.

8 A seventh amended answer, and they're
9 giving it to me now. I can't even believe I'm
10 hearing the words out of an attorney's mouth saying
11 to me that these are documents that are printed out
12 from a computer screen. I asked them specifically.
13 They had no documents. I guarantee you right now if
14 you bring all four of them in, they didn't create
15 this and they never saw these before. So at their
16 deposition they couldn't have told me about it
17 because they didn't do it.

18 What Counsel is saying to you, in
19 general, is they look to see if there's a contract.
20 I understand. I know how the process works. And
21 then they write us a tickets. None of these are
22 tickets. These are all things that they're saying we

1 did wrong but didn't get tickets for, I guess. So
2 they're going to say to us even though we didn't get
3 a ticket --

4 Because, remember, we're only stuck on
5 July of 2015 to March '16. That's the only thing we
6 can talk about. We know that already. That's our
7 world, our sphere. We can't talk about anything
8 before or anything after. I'm not sure if these
9 documents comply with that because I see a lot of
10 stuff here that are old in here that aren't from that
11 time period and maybe stuff that are new.

12 So what I need to do is simply depose
13 one person, whoever they're going to have. And my
14 first question would be, "When is the first time you
15 ever saw these documents?" And they'll probably say,
16 "Today", because these aren't his documents; because,
17 if they were, he would have told me at the
18 deposition, "I've already done that"; and he hadn't.
19 And if he did something after the dep, then that's
20 not proper. I should be able to see what he did
21 because I asked them all that question.

22 JUDGE KIRKLAND-MONTAQUE: Okay. Thank you.

1 So if you thought that it was
2 necessary to have a printout out of MCIS, why wasn't
3 there one done prior to the deposition? And then you
4 say, "Oh, but there's an inconsistency. Let me point
5 out the inconsistency on the one I did before and
6 then the one I did after".

7 MS. PARKER-OKOJIE: The volume, your Honor; the
8 volume that that would require. I think there are --
9 I don't know if there are 17,000. There are
10 thousands of records for Lincoln. I mean, the
11 universe could be huge. I know that we're talking
12 about a time period. But, in terms of what that
13 would take, in terms of scope, in terms of review, in
14 terms of relevance -- I mean, we really narrowed it
15 down to an analysis of what they gave us. And I
16 think this is the most streamlined approach.

17 I mean, because what were we looking
18 for otherwise? We would just print out everything
19 from the database? I mean, that's eventually what we
20 would have had to do to comply. And then our
21 analysis of their records, based on what our database
22 says, was done after Mr. Munyon provided that

1 clarity. To suggest that, you know, I guess we
2 should have printed out our whole database and then
3 gone through each page, I don't know that that would
4 have been efficient.

5 JUDGE KIRKLAND-MONTAQUE: I guess what I'm
6 trying to get to is what were you planning on using
7 prior to the deposition? Was this part of the plan,
8 like, after -- or you just thought, "Oh, there's an
9 inconsistency. Let me go to MCIS and see if there's
10 an inconsistency and print out if there's
11 inconsistencies"?

12 MS. PARKER-OKOJIE: Sure. We reviewed their
13 records, your Honor, the records that they provided
14 to us. So those are records that they're familiar
15 with, that they produced. But without knowing what
16 those records actually meant, I mean, I don't know
17 how we would be able to present those records in
18 absence of anything to compare them to.

19 JUDGE KIRKLAND-MONTAQUE: Why couldn't the
20 officers use the logs that they gave you?

21 MS. PARKER-OKOJIE: The officers could use it,
22 but our point is that the officers would have to go

1 into MCIS and check each thing, as they could do; but
2 that is the result of the officers checking.

3 JUDGE KIRKLAND-MONTAQUE: Did you ask the
4 officers how did they come to that --

5 MR. PERL: Your Honor, this is the difficulty
6 that I've had with them. Mr. Munyon didn't tell them
7 that. They didn't go through each and every one of
8 these. They went through one or two -- one.

9 This is what they asked him about:
10 They go, "What does this mean on the top when it says
11 '24-hour tow sheet'?" "It's a 24-hour tow sheet."
12 "What does it mean when it says, 'Operator number'?"
13 He says, "It means the operator number.

14 So if they are telling you that they
15 only learned that information from Mr. Munyon's dep,
16 the dep would have been 10 days long because there's
17 thousands, and thousands, and thousands of these.
18 They asked him about one or two of them, and that was
19 it. So I don't know what -- this is a 24-hour tow
20 sheet, Judge. Everything you need to know is right
21 here. If you thought that there was a discrepancy,
22 go through each one.

1 And, by the way, Mr. Munyon's dep was
2 April 13th. It's the 25th; right? And they have it
3 done. It only took them 12 days. So it wouldn't
4 have taken hours, and days, and weeks. It took them
5 12 days from when they learned about it to do this.
6 They could have done this anytime. That's it; 12
7 days.

8 JUDGE KIRKLAND-MONTAQUE: Wait a minute. So
9 can you say, "Well, based on Mr. Munyon's deposition,
10 this document --

11 I mean, I'm wondering if you can
12 narrow down, give it some specificity. How is it
13 related to Mr. Munyon's testimony?

14 MS. PARKER-OKOJIE: Mr. Munyon went through the
15 tow sheets with us. And even though Counsel says
16 that they're easy to understand, we have to confirm
17 these things. We can't bring the tow sheets into
18 evidence as being Lincoln's records and lay a
19 foundation and do all of that without knowing those
20 things. So those are things that we had to ask
21 during the deposition to be sure of.

22 JUDGE KIRKLAND-MONTAQUE: But can you tie these

1 documents to his testimony -- not in a broad sense?
2 Like, "On Page 4 of the transcript of the deposition
3 he said 'X', and this is..."? Can you do something
4 like that?

5 MS. PARKER-OKOJIE: Do you mean do it at trial
6 or do it now?

7 MR. PERL: It didn't happen. That's why they
8 can't do it, because they only asked him about one
9 24-hour tow sheet ever.

10 MS. PARKER-OKOJIE: I want to answer your
11 question, your Honor. I do want to answer your
12 question, in terms of tying it to it. I think that
13 the ultimate, how are we going to plead and prove our
14 case, happens at trial. So I think we get off track
15 when we try to do that in this forum because that
16 isn't the point, I think, of a status date.

17 I think what we're really trying to
18 figure out here is, is it fair that we provided this
19 and do we need to supplement Question 20? I just
20 want to keep us focused because I know there's a lot
21 of other issues.

22 JUDGE KIRKLAND-MONTAQUE: All right. Well, in

1 dealing with those, I think you need to supplement
2 20.

3 MS. PARKER-OKOJIE: Supplement 20.

4 JUDGE KIRKLAND-MONTAQUE: Based on this. If
5 you're going to present this, I think you need to
6 supplement 20 to provide a road map, some type of
7 explanation of how this -- you know, who's going to
8 use it and what they're going to testify to.

9 MS. PARKER-OKOJIE: But, your Honor, I think
10 that in our prior answer we never provided any -- we
11 provided Counsel with documents. We never provided
12 any links between those documents and specific
13 witnesses. I mean, because there are tons of
14 investigation files. So, in terms of that --

15 JUDGE KIRKLAND-MONTAQUE: And, at this point, a
16 couple of weeks prior to the hearing, I think we need
17 that, if we want to keep the hearing date. If we
18 want to keep the hearing date, which I definitely
19 want to do, I think it's only fair that if you're
20 going to present --

21 If you're going to present documents
22 that you say they already have -- which doesn't make

1 sense to me -- why would you give them what they
2 already have unless there's something inconsistent or
3 something you're trying to point out? And I think
4 it's fair that you mention what that is or who's
5 going to testify regarding what. Do you know what
6 I'm saying?

7 MR. PERL: And then I'm going to need time to
8 depose the individual that they're going to use. I
9 have to depose them. I can't start the trial the
10 first time and question their witness. That wouldn't
11 be fair.

12 MR. BARR: Your Honor, I think that's
13 unnecessary mostly because if we would have done
14 this -- you know, the deposition of Mr. Munyon and
15 Mr. Dennis -- back at the end of March, April, when
16 we first requested dates, this would be a non-issue.
17 Counsel would have time to go through them.

18 Counsel picked the date in late April.
19 He couldn't come to the one date in April. And now
20 we're at May 2nd. So if he's complaining about the
21 amount of time that he has, that's on his own doing.

22 JUDGE KIRKLAND-MONTAQUE: I thought one of the

1 officers was on paternity leave in April?

2 MR. PERL: First of all, we did the dep on
3 April 13th. I'm not sure how that delayed anything.

4 MR. BARR: Our officers were deposed.

5 MR. PERL: One was on medical leave.

6 JUDGE KIRKLAND-MONTAQUE: Not that one.

7 MR. PERL: Well, one was on paternity leave,
8 too.

9 JUDGE KIRKLAND-MONTAQUE: April was a problem
10 because someone was on paternity leave.

11 MR. BARR: For the hearing.

12 MS. PARKER-OKOJIE: All of the officers were
13 deposed in March.

14 MR. BARR: By the third week of March they were
15 all deposed.

16 JUDGE KIRKLAND-MONTAQUE: What do you have
17 against supplementing 20 so we can move along?

18 MR. BARR: We think our answer is sufficient.

19 JUDGE KIRKLAND-MONTAQUE: It's broad. I don't
20 think it's sufficient. I think it's too broad.

21 MS. PARKER-OKOJIE: Your Honor, if I may, there
22 is a motion to compel in this matter that Mr. Perl

1 filed and that you ruled upon, and the broadness of
2 Question 20 was not raised.

3 JUDGE KIRKLAND-MONTAQUE: Because you didn't
4 present this (indicating).

5 MS. PARKER-OKOJIE: Well, even in absence of
6 that he's saying that just that answer alone, to say
7 that they're going to testify to X investigation
8 files, that that statement is broad.

9 JUDGE KIRKLAND-MONTAQUE: But then he says,
10 "Well, I can depose them and figure it out"; and then
11 he does that. And then you do the same, and then you
12 have this new package of printouts, which you don't
13 call a document, which is actually a document; and
14 you're going to present that 2 weeks prior to the
15 trial -- 2 or 3 weeks, wherever we are.

16 MR. BARR: Your Honor, if I may, too, our
17 response does state that our officers will testify as
18 to the review of what was provided by counsel.

19 MR. PERL: We didn't provide this. I'm not
20 sure how they can possibly say that. Show me in my
21 document production where I gave them these
22 documents. They created these.

1 MR. BARR: That was from the review of your tow
2 invoices that they did provide.

3 MR. PERL: These are not.

4 JUDGE KIRKLAND-MONTAQUE: So we have to take
5 their word for it that this is what they gave you.

6 MR. PERL: I can guarantee you that this is not
7 what the tow invoices say.

8 JUDGE KIRKLAND-MONTAQUE: Okay. Fine. I'm
9 just saying that they're entitled to an opportunity
10 to review this information. And I think -- given the
11 time frame of where we are, I think to just throw it
12 out there with this broad explanation that they're
13 going to testify to, you know, I think that's just
14 too broad.

15 MR. PERL: Judge, I have to depose this person,
16 whoever it is because, otherwise, it doesn't help me
17 at all to know.

18 MR. BARR: Your Honor, if Staff is going to be
19 compelled -- and, obviously, object to having to --

20 MR. PERL: Hold on. Hold on. Actually, as to
21 your ruling on our motion to compel, it says, "Data
22 Request 20, Motion is granted".

1 MR. BARR: As to the witness list.

2 MR. PERL: "And Response should be provided to
3 Respondent by December 19th unless the parties or the
4 Commission agrees to another date". You actually
5 didn't deny that part. You granted that part.

6 But, again, in answering, I don't
7 understand why it's so important, unless they want to
8 play hide the ball, that they're so worried about me
9 deposing this individual. I'll go for the specific
10 purpose of just using these documents, nothing else.
11 We'll do it for a limited purpose. Maybe it'll take
12 an hour or a half an hour. I don't know how they
13 would be harmed. I'm the one that's harmed by it.
14 And I'm saying let's do it quickly. And I'll get the
15 transcript from this one as well.

16 MR. BARR: Your Honor, in the motion to compel
17 Counsel asked us to identify -- all they argued,
18 basically, was that they wanted a witness list that
19 Staff had never turned over.

20 MR. PERL: They wouldn't give me a list at
21 first.

22 MR. BARR: As I was saying before, your Honor,

1 if Staff is going to be compelled to supplement our
2 response, I think it's only fair that Lincoln also
3 supplement their response -- their generic
4 response -- if they're going to testify about their
5 fitness. I think it's pretty broad. I don't think
6 Mr. Munyon or Mr. Dennis -- they can't really
7 determine whether they're fit or not. And to say,
8 "What are they going to talk about?" The burden is
9 on them to prove why they're fit. It's not on Staff
10 to disprove their fitness. They have to prove why
11 they're fit.

12 MR. PERL: Actually, that's true when you have
13 your every 2-year hearing. I don't believe -- it
14 might not be true. I think what they have to do is
15 raise the issue, like you said before, that they're
16 not fit; and then we go. We might go first, but they
17 have to raise the issue. This is not a regular
18 scheduled 2-year hearing.

19 JUDGE KIRKLAND-MONTAQUE: All right. This is
20 being -- we're belaboring --

21 MR. PERL: Whoever the witness is going to be,
22 who's going to testify, that's all I want.

1 JUDGE KIRKLAND-MONTAQUE: I don't understand
2 the difficulty in presenting that information, just
3 who the witness is and what they're going to --

4 MR. BARR: To do the deposition and to ask the
5 same questions. Counsel has already asked all of the
6 officers, "How do you use MCIS?", "How do you do
7 this?", "How do you do that?"

8 JUDGE KIRKLAND-MONTAQUE: But he has to take
9 your word for it that this is MCIS.

10 MR. PERL: Judge, that's a generic question. I
11 need a specific question because I had to ask this
12 person, "How do you write a ticket?", I know how they
13 write tickets. Okay. We're not going to go into the
14 ticket he wrote, just how he writes tickets in
15 general.

16 MR. BARR: Whether he writes a ticket for this
17 or doesn't, it's the same way. If he would have to
18 get the invoices on a complaint from a motorist, he
19 would do the same verification that Counsel has
20 already gone over for him. He's going to ask the
21 same questions.

22 MR. PERL: Like I always say, we're going to

1 spend more time arguing, and we could have finished
2 the deposition by now.

3 JUDGE KIRKLAND-MONTAQUE: Here's what's going
4 to happen: I would like you to supplement 20 just
5 because of the nature of this issue. It's coming up
6 today a couple of weeks before the hearing, just
7 because I definitely don't want to move the hearing
8 date. Supplement 20. Give more specificity as to
9 who's going to testify and regarding what.

10 Mr. Perl, today is the 25th. So,
11 hopefully, by the end of the week you can figure out
12 whether you need to do a deposition of that person.

13 MR. PERL: Well, I will need a dep. I need the
14 dep.

15 JUDGE KIRKLAND-MONTAQUE: Okay. So they've got
16 a dep on the 3rd. You've got up to the 3rd to do a
17 dep.

18 MR. PERL: As long as they give me the
19 supplement first.

20 JUDGE KIRKLAND-MONTAQUE: I want them to do
21 that by the end of the day.

22 MS. PARKER-OKOJIE: Okay.

1 MR. PERL: Okay. So let's pick a date now for
2 my dep now, too, so we don't have a problem.

3 MR. BARR: We can't schedule the officer's dep.
4 I don't know of his availability.

5 MR. PERL: Then I can't be held to the 3rd.

6 JUDGE KIRKLAND-MONTAQUE: Nope.

7 MR. PERL: How am I going to depose him if they
8 don't give him to me?

9 JUDGE KIRKLAND-MONTAQUE: I want this officer
10 in here by the 3rd, whoever it is.

11 MR. BARR: We can guarantee that he'll be in by
12 the 3rd. We can't say he'll be in on the 2nd, at
13 10:00 p.m. -- or 10:00 a.m.

14 JUDGE KIRKLAND-MONTAQUE: Okay. Well, we want
15 him by the 3rd. You figure out the details.

16 MR. BARR: Okay.

17 JUDGE KIRKLAND-MONTAQUE: And if Lincoln
18 would --

19 MR. PERL: We're deposing Mr. Dennis on the
20 3rd.

21 JUDGE KIRKLAND-MONTAQUE: Why don't you do it
22 the same day? If you could try to do it the same

1 day, that would kill two birds with one stone.

2 MR. BARR: Ideally, if the court reporter is
3 already going to be here.

4 JUDGE KIRKLAND-MONTAQUE: Right.

5 MR. PERL: Well, I would rather do my
6 deposition in my office, which is where it should
7 take place, because my records are there. And I want
8 to do it at a point in time in my office when I'm
9 prepared. So I'll do it by the 3rd. Maybe we should
10 do it by the 4th because when we finish Mr. Dennis's
11 dep --

12 MR. BARR: It's always the next day, your
13 Honor.

14 MR. PERL: By the 3rd is fine, at my office,
15 where it's supposed to be.

16 JUDGE KIRKLAND-MONTAQUE: Well, can you guys go
17 to his office to do Dennis's deposition? Are you
18 willing to do that?

19 MS. PARKER-OKOJIE: We'll have to see, your
20 Honor, because honestly we would like the benefit of
21 being able to depose Mr. Dennis here. Our files are
22 here.

1 MR. PERL: And my files are in my office.

2 JUDGE KIRKLAND-MONTAQUE: Okay. All right.

3 All right. So it would be convenient. Everyone
4 wants to do the thing that's most convenient. I get
5 it. But if we're going to do two depositions, it
6 seems most convenient to do them both at the same
7 date and the same place; knock it out; get them
8 expedited; and move on.

9 MS. PARKER-OKOJIE: Could we propose one in the
10 morning and one in the afternoon? If the one in the
11 morning, if that's Mr. Dennis, we can do that here;
12 and then we'll join Mr. Perl at his office in the
13 afternoon?

14 MR. PERL: Yeah.

15 JUDGE KIRKLAND-MONTAQUE: Compromise. Thank
16 you very much.

17 MR. PERL: Perfect.

18 JUDGE KIRKLAND-MONTAQUE: Sounds good.

19 MS. PARKER-OKOJIE: So what is the time, then,
20 that we're picking for the afternoon?

21 MR. PERL: Do you want to do 2:00 o'clock,
22 then?

1 MS. PARKER-OKOJIE: Okay.

2 MR. PERL: On the 3rd?

3 MS. PARKER-OKOJIE: Okay.

4 MR. PERL: So 10:00 o'clock for Mr. Dennis on
5 the 3rd, 2:00 o'clock for whoever you're presenting.

6 And just to be clear, whoever they're
7 going to have testify to these documents -- if it's
8 one, two, three, or all four of their witnesses --
9 I'd like to know, and I would depose them all. If
10 they're only going to use one of them, then I'll
11 depose one person. But I don't want to come to a
12 hearing and then the person that I depose isn't the
13 only one testifying as to these documents.

14 JUDGE KIRKLAND-MONTAQUE: Well, that's the
15 purpose of updating 20.

16 MR. PERL: Yes. Okay. So 20 will,
17 specifically, state who's going to be testifying as
18 to these documents and what the substance of their
19 testimony is going to be.

20 JUDGE KIRKLAND-MONTAQUE: Yep.

21 MR. BARR: Your Honor, is it only Staff who has
22 to supplement, or does Lincoln have to supplement

1 their response to what the witnesses will testify?

2 JUDGE KIRKLAND-MONTAQUE: Fair enough.

3 Supplement.

4 MR. PERL: I'm not sure what their basis is for
5 supplementing. They never filed a motion to compel.
6 They didn't even ask me for the testimony. Look at
7 their interrogatories. They said, "Give me a list of
8 witnesses". I did. There's nothing to supplement.

9 MS. PARKER-OKOJIE: Your Honor --

10 MR. PERL: They asked that specific question.
11 That's what they asked for, and I gave it to them.

12 JUDGE KIRKLAND-MONTAQUE: Go ahead.

13 MS. PARKER-OKOJIE: In good faith, we did
14 follow up with a 213(k) letter asking -- I mean, a
15 201(k) letter asking Mr. Perl to supplement; which
16 there was a paragraph that Mr. Barr read earlier
17 which is vague and broad as well.

18 And so if Staff is going to be
19 required to put the witness and the type of -- the
20 documents that they're using, and the point of their
21 testimony, then we would ask that Mr. Perl also
22 supplement with a witness, the point of their

1 testimony, and the documents that they will be using.

2 MR. PERL: If that's the case, then they should
3 supplement for all four of their witnesses, then,
4 because that's what they want me to do. So they can
5 supplement in No. 20 for all four of their witnesses
6 for the whole hearing not just for these documents.
7 They should actually give me a good answer for all of
8 it, because right now we're supplementing for the
9 purpose of figuring this out.

10 JUDGE KIRKLAND-MONTAQUE: That's right. I
11 mean, the document is creating the issue here.

12 MS. PARKER-OKOJIE: But how, your Honor? I
13 mean, they've provided us thousands of pages of
14 discovery.

15 JUDGE KIRKLAND-MONTAQUE: We went over this for
16 hours. If this wasn't presented today, you wouldn't
17 question the vagueness of their answer.

18 MS. PARKER-OKOJIE: Your Honor, I mean, we're
19 objecting, obviously, to what they're even raising
20 because we believe what we've presented is truly
21 nothing new.

22 JUDGE KIRKLAND-MONTAQUE: Well, here's the good

1 news: If there's nothing new and there's no problem,
2 then none of this is going to be an issue, and we
3 probably don't even need the deposition.

4 MS. PARKER-OKOJIE: I agree that we don't need
5 them, your Honor.

6 JUDGE KIRKLAND-MONTAQUE: But we have to give
7 him the opportunity to decide that for himself
8 because this is new.

9 And even though you -- you know, you
10 say it's a printout, but he has to have that
11 opportunity. I think that's kind of a tit-for-tat
12 mentality, to request them to update theirs because
13 he hasn't presented you with a hundred new pages of
14 something. So, no, I'm not going to --

15 Why? Why do you need that?

16 MS. PARKER-OKOJIE: No, your Honor, I don't
17 think we want to do, "tit for tat". But in the
18 interest of fairness, if we are asking -- you're
19 saying it's not fair for us to have a broad
20 statement. We've had a broad. If this statement
21 truly is broad, it was broad all the way up until
22 this point; so that was not seen as unfair.

1 We presented the documents, and we
2 explained to your Honor what we planned to use them
3 for and how they were the representation of the
4 officers checking the database, like they do for
5 everything else in which Counsel has already had an
6 opportunity to question the officers about. So,
7 really, we don't see this as presenting new
8 information, so to speak.

9 Yes, there are pieces of paper in
10 front of you, obviously; but, in terms of will
11 Counsel have to now kind of revamp everything? No.
12 Because these are things that they should have.

13 JUDGE KIRKLAND-MONTAQUE: Okay. We're
14 rehashing.

15 MS. PARKER-OKOJIE: I don't know want to do
16 that, your Honor.

17 JUDGE KIRKLAND-MONTAQUE: We're rehashing.

18 MS. PARKER-OKOJIE: I don't want to do that.

19 MR. PERL: We fully responded to their
20 interrogatory. They asked me to give them a list,
21 and I did. They asked me to comply. I did. I gave
22 them -- what I did was I gave them back exactly what

1 they gave me, basically, and they took them. They
2 didn't say a word. They didn't file a motion to
3 compel. Actually, I filed a motion to compel saying
4 it wasn't adequate. So --

5 JUDGE KIRKLAND-MONTAQUE: I'm sorry. Why do
6 you need that?

7 MS. PARKER-OKOJIE: More specificity from them?

8 JUDGE KIRKLAND-MONTAQUE: You haven't brought
9 it up. It's only being brought up after this has
10 been brought up. So what's the purpose?

11 MS. PARKER-OKOJIE: I think, your Honor, the
12 purpose is compliance and fairness. If Staff is
13 being --

14 Because I think it's hand-holding to
15 the point of saying, "This is the documents we're
16 using with this witness, and this is what they're
17 going to say". That is the trial, your Honor.

18 MR. PERL: That's discovery.

19 MS. PARKER-OKOJIE: I think when you provide --

20 JUDGE KIRKLAND-MONTAQUE: Well, then why didn't
21 you provide more information? If that's discovery,
22 why didn't you to that?

1 MR. PERL: We did. I gave them all of our
2 documents. They deposed Mr. Munyon without question.
3 They deposed him.

4 First of all, they didn't ask me for
5 it, number one. You're supposed to ask for those
6 things. I asked for them. Questions 20 and 21
7 specifically state, "What they're going to testify to
8 and what documents each witness is going to use". I
9 asked them that.

10 So for Counsel to say to you that
11 that's not discovery, that's for trial -- again,
12 that's trial by ambush, yes. But in my 20 and 21 I
13 ask for it, and I'm allowed to get it. They never
14 asked for that information.

15 MR. BARR: Rule 213(a) -- I think it's f(1), I
16 believe, your Honor, reads that, "Upon written
17 interrogatory". It doesn't say that you have to
18 specifically ask for what the scope is.

19 It says that if you ask for the
20 witnesses in your interrogatory, that, for a
21 laywitness, the opposing party has to provide the
22 name of the witness, I believe it's the address of

1 the witness, as well as the scope of the witness's
2 testimony.

3 MR. PERL: Where is that on here, on yours?
4 Where is their address?

5 MR. BARR: They're under our control.

6 MR. PERL: It doesn't matter. Where is their
7 address, and where is the scope of their testimony?

8 MR. BARR: The scope is right below.

9 MR. PERL: They're going to testify as to
10 documents we gave you. That's the scope?

11 MR. BARR: The review of the documents that you
12 gave them.

13 MR. PERL: That's not anywhere close to scope.

14 JUDGE KIRKLAND-MONTAQUE: I don't understand
15 this request. It just sounds retaliatory to me,
16 because you never brought it up.

17 MR. BARR: We just want to be on the same
18 playing field. I mean, if we're going to have to be
19 specific in our response to them, they should also
20 have to.

21 MR. PERL: Let me tell you what I'll do, Judge.
22 Any new documents that I give them between now and

1 the hearing, I will specify with detail who's going
2 to testify to them -- how about that? -- any new
3 documents I give them between today and the hearing.

4 MS. PARKER-OKOJIE: Your Honor, again --

5 MR. PERL: I might get something from them next
6 week. You never now.

7 MS. PARKER-OKOJIE: Again, we took Mr. Munyon's
8 deposition on the 13th. We had the officers comb
9 through these records. If this is the outcome of
10 that, in terms of the timing, you know, again, all of
11 the timing gets pushed because things get pushed
12 back.

13 I think what's been provided is clear.
14 The officers checked the database for any -- the
15 addresses are included. It's not like it's just a
16 list of addresses with no identifying information.
17 Just as the tow sheets are clear -- and Mr. Perl said
18 that the tow sheets say, "Operator Number", it says
19 this, it says that, it says "X, Y, Z" at the top --

20 JUDGE KIRKLAND-MONTAQUE: So what's your point,
21 please?

22 MS. PARKER-OKOJIE: My point is that these

1 documents are also clear, in that they are a printout
2 of the data.

3 JUDGE KIRKLAND-MONTAQUE: We've been through
4 that before. It doesn't specify who's going to
5 testify.

6 MR. PERL: I thought we had all of that
7 resolved here, and Counsel has to relitigate the
8 issue of everything that we just resolved.

9 All we're talking about now is whether
10 or not we should both supplement the interrogatories
11 because none of theirs are specific. I'm just
12 talking about supplementing for this.

13 JUDGE KIRKLAND-MONTAQUE: Okay. All right. So
14 the answer is, you're saying that your request is
15 based on keeping a level playing field, but it's not.
16 It really isn't. Because they're not doing what
17 you're doing. They're not presenting supplemental
18 information based on a deposition.

19 MR. BARR: But they're still under a duty to
20 let us know what their witnesses are going to
21 testify, which they haven't complied with.

22 MR. PERL: Yes, we have. It's just as much as

1 if you look at their answers. My answers are
2 actually better than theirs.

3 MR. BARR: If it's fine with Counsel, then we
4 shouldn't have to supplement them.

5 MR. PERL: They would have been okay had they
6 not now tipped their hand to have these new documents
7 and I know specifically what the witness is going to
8 testify to. All I want is that.

9 JUDGE KIRKLAND-MONTAQUE: My ruling is related
10 solely on this packet of information. Whether it's
11 new, or not new, or whatever, my ruling is based on
12 this packet of information. Because it's new,
13 because at this point in time you've presented it,
14 regardless of where it came from, I would like you to
15 specify who's going to testify regarding that and
16 what, you know --

17 MR. PERL: What they're going to say.

18 JUDGE KIRKLAND-MONTAQUE: -- what they're going
19 to testify regarding. Do you know what I'm saying?
20 Put it in writing.

21 And it's not on the same playing field
22 because they haven't done the same thing. They

1 haven't presented new information at this point. So
2 that's my ruling.

3 MS. PARKER-OKOJIE: Your Honor, the only reason
4 we did present this information is because it came up
5 during the discovery. I think if they had found new
6 information after deposing our witnesses, they should
7 have and would have done the same thing. I don't
8 think we should be penalized because we uncovered
9 relevant information in our discovery.

10 MR. PERL: How is it penalizing them?

11 JUDGE KIRKLAND-MONTAQUE: I don't think it's a
12 penalty.

13 MR. PERL: How does it hurt them, letting me
14 depose their witness?

15 MR. CHIRICA: It's their own document, Judge.
16 They couldn't have discovered their own documents.

17 JUDGE KIRKLAND-MONTAQUE: I understand. I'm
18 saying you're presenting -- my ruling is my ruling.

19 MR. PERL: Okay. Thank you, Judge.

20 JUDGE KIRKLAND-MONTAQUE: Supplement 20. You
21 have until the 3rd. I would like these depositions
22 done.

1 MR. PERL: Supplemental 20 by today?

2 JUDGE KIRKLAND-MONTAQUE: Today, the end of the
3 day.

4 MR. PERL: Which is April 25th.

5 MR. BARR: I just want to avoid, too, coming
6 back here and, you know, Counsel then complaining,
7 "Well, that's not specific". If he wants us to
8 outline specific questions that we're going to ask
9 the officers, I just want to put that on the record
10 that that's not going to happen.

11 JUDGE KIRKLAND-MONTAQUE: We don't want the
12 specific questions. Be more specific. What are you
13 going to use, what those documents are for, and what
14 he's going to testify regarding those. And,
15 hopefully, we will --

16 MR. PERL: We are back here on Thursday just
17 for some hearings. So if anything comes up that we
18 need to discuss, we could do it at that time as well.

19 JUDGE KIRKLAND-MONTAQUE: Let me know ahead of
20 time because we don't typically have a court reporter
21 then.

22 MR. PERL: I'll see by the end of today what

1 they provide us.

2 JUDGE KIRKLAND-MONTAQUE: And I'll request a
3 court reporter.

4 MR. CHIRCA: We already have evidentiary
5 hearings on Thursday.

6 JUDGE KIRKLAND-MONTAQUE: For administrative
7 citations, yeah.

8 MR. PERL: Yeah.

9 JUDGE KIRKLAND-MONTAQUE: Oh, yeah, so we do
10 have those. All right. So we're done. Thank you.

11 SINE DIE...

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