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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
PROTECTIVE PARKING SERVICE)
CORPORATION d/b/a)
LINCOLN TOWING SERVICE,)
)
Respondent.)

) No. 92 RTV-R
) Sub 17

Hearing on fitness to hold a)
Commercial Vehicle Relocator's)
license pursuant to Section 401)
of the Illinois Commercial)
Relocation of Trespassing)
Vehicles Law, 625 ILCS 5/18a-401.)

Chicago, Illinois
December 1, 2016

Met pursuant to notice at 1:30 p.m.

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

1 APPEARANCES:

2 MR. BENJAMIN BARR
3 160 North LaSalle Street
4 Chicago, Illinois 60601
5 312.814.1934

6 Appearing on behalf of the Staff of the
7 Illinois Commerce Commission;

8 MR. ALLEN PERL and
9 MR. VLAD CHIRICA
10 14 North Peoria Street, Suite 2C
11 Chicago, Illinois 60607
12 312.243.4500

13 Appearing on behalf of Protective Parking doing
14 business as Lincoln Towing.

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18 SULLIVAN REPORTING COMPANY, by
19 Christa Yan, CSR

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
None.					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
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1 JUDGE KIRKLAND-MONTAQUE: By the power vested
2 in me by the State of Illinois and the Illinois
3 Commerce Commission, I now call Docket No. 92 RTV-R
4 Sub 17 for hearing.

5 This is a status hearing in the matter
6 of Protective Parking Service Corporation doing
7 business as Lincoln Towing Service.

8 And may I have appearances, please --
9 I'm sorry, before we get the appearances, let me back
10 up. This is the hearing on fitness to hold a
11 Commercial Vehicle Relocator's license.

12 So now I'll go to appearances. Let's
13 start with Staff.

14 MR. BARR: Good afternoon, your Honor. My name
15 is Benjamin Barr. I appear on behalf of the Staff of
16 the Illinois Commerce Commission, 160 North LaSalle
17 Street, Suite 800, Chicago, Illinois 60601. My
18 telephone number is 312-814-2859.

19 JUDGE KIRKLAND-MONTAQUE: Okay.

20 MR. PERL: Good afternoon, your Honor. For the
21 record, my name is Allen Perl, P-e-r-l, on behalf of
22 Protective Parking Service doing business as Lincoln

1 Towing. My address is 14 North Peoria Street,
2 Suite 2C, Chicago, Illinois 60607. Telephone is
3 312-243-4500.

4 MR. CHIRICA: Good morning, your Honor. My
5 name is Vlad Chirica. I'm also representing
6 Protective Parking Service Corporation doing business
7 as Lincoln Towing Service. Our address is 14 North
8 Peoria Street, Suite 2C, Chicago, Illinois 60607.
9 Our phone number is 312-243-4500.

10 JUDGE KIRKLAND-MONTAQUE: Thank you.

11 All right. Since the last time we
12 met, I issued my rulings on the motion to compel
13 discovery filed by Lincoln Towing. And the purpose
14 of today's hearing is a status to see where we are in
15 terms of discovery and what things are looking like.

16 So whomever would like to start.

17 MR. BARR: Your Honor, I have reviewed your
18 ruling, and I have begun working on some of the
19 discovery and getting ready to produce those. I
20 believe, Staff, we are to produce those by the 19th
21 as you suggested in your ruling.

22 As far as that goes, I believe that's

1 the only three issues that Staff is going to produce,
2 is the Data Request 1, Data Request 16, and Data
3 Request 20. Those should all be, as I said,
4 completed by the 19th.

5 JUDGE KIRKLAND-MONTAQUE: Okay. Mr. Perl?

6 MR. PERL: Thank you, your Honor.

7 So -- and I'm not certain how far you
8 want to proceed -- there are certainly the ones that
9 1, 16, and 20 that were granted, we have no objection
10 to. And there are others here that I also don't have
11 any objection to at all, although it is your order.
12 I'm not sure how you want to proceed.

13 If you want to proceed where we -- I
14 tell you what our thoughts are and our concerns with
15 not getting those documents at a hearing or if you
16 want to do it now, or if you want to do it, you know.
17 The order is what it is.

18 So I know you said you had set it down
19 for a hearing if we didn't agree. So I don't know
20 how the Court would like to proceed.

21 JUDGE KIRKLAND-MONTAQUE: How much is it?

22 MR. PERL: I don't have an -- I have some

1 funnel disagreements on some of them, not all of
2 them. So let's say if you wanted me to tell you
3 briefly 1, 16, and 20, of course I have no
4 disagreement with because we're getting the
5 documents.

6 14 and 16, I think I can live with.
7 Because if I really want the documentation, I can
8 FOIA it anyway. The same thing goes, I think, for
9 16 -- I'm sorry, not 16. Number 17, if I really to
10 want to get, you know, stuff, I can get it through
11 FOIA.

12 Numbers 4 and 5 and 9, I felt it
13 should have been responded to. Because what we've
14 been trying to figure out all along is not how in
15 general does Staff decide to hold a fitness hearing.
16 We know that. I can look at the statute and see how
17 they do it.

18 Our concern was since we had just
19 recently been determined to be fit, what was the
20 reason behind having the hearing now? Why would you
21 six months later say, We want to have another
22 hearing. When we had just had a hearing in July

1 of 2015.

2 And all the response was, Here's how
3 we decide to do it. And that's what the statute
4 says, and I agree that's what it says. There's
5 information that we have been looking for -- we have
6 no emails at all from them, none. No correspondence,
7 nothing. And I think that's relevant in this case.
8 And I think that just because, you know, we do a lot
9 of --

10 JUDGE KIRKLAND-MONTAQUE: Emails between --

11 MR. PERL: We asked for a lot of documentation.
12 We've got nothing. I understand Staff's response,
13 which is, Hey, that's a lot of stuff. But in the
14 Ford Motor case or the Pinto case, where a car blows
15 up, and Ford says, Hey, do you have any idea how many
16 emails we have to look through to find something? We
17 can't do that.

18 If the Court said, Okay, don't worry
19 about it, we'd never know what really happened.
20 Because it's that one little email where the guy
21 says, It will be, you know, \$1.27 per pinto to fix
22 the gas tank and that will end up costing us \$17

1 million, if everybody sues us and they get killed, --
2 let just not fix it. If you don't find that email,
3 you never know about it.

4 I'm not saying there's analogy of that
5 here, but we're trying to figure out what's going on
6 here. And without knowing, and -- all I wanted is
7 the emails where my client is mentioned about to talk
8 about this stuff. I'm not saying give me every
9 single email you ever sent, but the ones that are
10 germane to my client is all I want, and the reason
11 Staff's arguing that they can't do it is not because
12 they don't want to give us those emails it's because
13 it would be too difficult to find those emails.

14 So we limited down, you know,
15 Mr. Chirica -- he's more of an IT guy -- we limited
16 down the terms. Use just Lincoln Towing, use just
17 key words, buzz words to limit it down. Even then
18 they say, We still can't give you the documents.

19 I don't think in litigation it's a
20 proper -- it's proper objection to say, you know,
21 it's too cumbersome. That's when you're asking for
22 things that are overly broad and unduly burdensome.

1 If I ask you for a document that I need to make my
2 case, just because it's going to take you a long time
3 to find it, doesn't make it overly broad and unduly
4 burdensome. That's your issue.

5 If I'm asking -- otherwise, you know,
6 every time I litigate a case, my clients can just
7 say, It's going to take us a long time, I can't do
8 it. That's not what the overly broad documentation
9 is for. So I would like them to produce for us if
10 there's information, and I believe that there is,
11 somebody somewhere along the way a judge said, I
12 think it's time to have Lincoln -- have another
13 fitness hearing even though we just had one six
14 months ago.

15 I've been doing this for years. We
16 have the same amount of tickets basically all the
17 time. Nothing's changed. I can't see what happened
18 between July 2015 and January, February 2016 at all.
19 So I'm trying to determine how to best posit my
20 defense or proving that we're actually fit because I
21 can't see -- I want them to tell me why is it you
22 believe we're not fit so I can then say, I don't

1 agree with that or actually I could solve it.

2 Why don't we sit down, tell me what it
3 is that you think that we're doing wrong, and we'll
4 fix it. So if you think that the tow trucks should
5 be green and not red, we'll paint them all green.
6 We'll do it differently. The ICC doesn't want to do
7 that, and I understand that. They don't have to do
8 that.

9 Because of that, I'm trying to figure
10 out what it is they're saying we're doing wrong. And
11 from what they've given me, I can't determine at all
12 why they believe they need a fitness hearing.

13 MR. BARR: In regards to the emails, we did
14 attempt to narrow down the number of emails. And we
15 still -- IT still uncovered 20,000 emails using the
16 generic terms that were suggested and the narrowed
17 down key words that were also suggested by counsel.

18 Given those 20,000 records, it would
19 take Staff -- and as we outlined or replied to their
20 motion, you know, we would have to review every
21 single one of those, redact any personal information,
22 and then, you know, produce them obviously to do

1 that -- to do 20,000 emails. To review all of those
2 would take what we estimated if the entire Office of
3 Transportation Counsel worked on those emails, you
4 know, estimated takes about seven minutes per email
5 to review, redact, and save it and format it, all
6 that stuff. It would be about four months total.

7 That's working every single hour, 37
8 and a half hour workweek to produce those documents,
9 which we believe is a burden -- you know, the idea
10 that there's some type of smoking gun in these emails
11 I don't think counsel has any evidence to base the
12 smoking gun.

13 There's going to be some email that
14 says we just decided to hold a hearing on Protective
15 Parking. And based on the fact that most of those
16 emails -- if there was an email talking about -- I'm
17 not sure that there is talking about, you know,
18 whether there's a set of particular relocator for
19 hearing is going to be protected by attorney-client
20 privilege because it's going to be all internal
21 communication.

22 JUDGE KIRKLAND-MONTAQUE: What are the limits?

1 Did you limit it by date?

2 MR. PERL: We limited the parameters -- so what
3 happened was because, unfortunately, Lincoln is a
4 common name. We live in the land of Lincoln, there's
5 a lot of things that are called Lincoln, and the
6 Commerce Commission, when they do their search for
7 Lincoln, a lot came up.

8 I think we limited it to like -- and
9 Vlad might have it here. Lincoln with "relocation"
10 in the same email, you know, the parameters. So we
11 narrowed it down, and to tell you the truth, I do
12 believe that I have enough evidence to show that
13 there might be a smoking gun because I've been asking
14 the Commission to look into another relocater for six
15 and seven years and given them literally the smoking
16 guns, and they've done nothing.

17 So when I see that happening, and then
18 Lincoln Towing is in the news with the City of
19 Chicago for one incident, and the aldermen are
20 friendly with some of the people potentially on the
21 board, and I see what's going on, I mean, I don't
22 have to -- two plus two is easy to be four.

1 Sometimes it's got to be one plus one plus one. It's
2 not so easy all the time. I could be way off base
3 here, but that's what discovery is all about.

4 So what I'm saying -- by the way, I
5 just literally for Judge Carr [phonetic] and the
6 Circuit Court of Cook County, I just gave him 950
7 emails off of my computer. I'm in the middle of a
8 case where he said in determining whether or not my
9 client is an expert or it's discoverable.

10 I argued he's an expert, the other
11 side it's discoverable. The judge said, Give me your
12 emails. And I said, Judge, I got 1,000 emails. He
13 said I don't care, give me all your emails.

14 I got literally -- Vlad and I went
15 through them. It took us an hour, not four months,
16 and there's only two of us. Vlad narrowed it down in
17 the computer, he literally went in there -- it would
18 probably have taken me four months to be honest. He
19 went in there, took the thousand emails out of my
20 emails, put it into another file -- I don't even now
21 know what you call it. Incoming and outgoing, and I
22 went through each one.

1 And I didn't take seven minutes per
2 email because there's no reason to. It goes really
3 quickly. I'll maybe say in total an hour and a half.
4 And if i'm stretching, it's two hours. But that was
5 it for 950 emails. And I put them on -- what do you
6 call that thing?

7 MR. CHIRICA: Flash drive.

8 MR. PERL: And flash drive.

9 And I gave it to the judge because
10 he's looking at it in camera. If you don't want to
11 do anything to limit it, we'll do the protective
12 order. Give me the emails, and I know you don't want
13 to read them, probably is a lot of them. We'll agree
14 to a protective order, I won't use them for anything
15 other than this, and we can go through it.

16 And we'll do anything they want to do.
17 I also am a little bit still confused about this
18 litigation privileged attorney-client privilege that
19 the attorneys and that when they do the
20 investigation, they become -- there's Staff and then
21 they become the attorneys, and it's little bit --
22 when Ben talks to the board members, that's

1 privileged.

2 Even though they're attorneys for the
3 ICC, somehow it ends up being an attorney-client
4 privilege, and it changes from when the case is filed
5 and not filed. I'm not sure that I agree with all of
6 that. Even if it is the case, certainly the emails
7 that reference this litigation might not be
8 privileged anyway.

9 I'm not even looking necessarily for
10 those. The third party emails, when they're talking
11 about, let's say, there's an email that says you know
12 what, I don't really like Lincoln Towing, let's get
13 rid of them. Let's say that email is in there. That
14 would be something I'd want to know about.

15 I don't know what's in there. The
16 problem is I'm entitled to find out. That's what
17 discovery is for. And if this -- let's just say this
18 ends up in the Circuit Court, I'm going to get it.

19 It doesn't take four months to do
20 this, Judge. We said that we wanted the emails
21 from -- identify all communications between
22 petitioner and third parties regarding petitioner's

1 allegations from the year prior to the alleged
2 incident until present. So would it be the year
3 prior to the instituting --

4 JUDGE KIRKLAND-MONTAQUE: Right. Order date?

5 MR. PERL: Yeah, I think it was January or
6 February of 2016.

7 JUDGE KIRKLAND-MONTAQUE: Why not limit it to
8 the time from the renewal?

9 MR. PERL: I'm going to tell you why. Because
10 they're actually saying prior to renewal we did stuff
11 wrong. If they said -- if the ICC said we're only
12 looking at activities from then on, it might be okay.
13 But in their own documents, they're saying that they
14 have -- it's an interesting thing. I did the renewal
15 hearing. I think you didn't do this. I think we
16 did -- were you there? We had the video for
17 Springfield. I think Judge Dugan did it, and we got
18 renewed in July of 2015.

19 In their documentation now, they're
20 saying they're coming up with some reports from prior
21 to that that they want to introduce in this case
22 showing there's some issues. That's why we need to

1 go before that. If they limited everything to
2 July 2014 forward, I'm going to have to. But they're
3 not. They're actually using documentation from
4 before that against me. But they're saying you can
5 only look at stuff from July 2015 forward. It
6 doesn't make any sense.

7 JUDGE KIRKLAND-MONTAQUE: Go ahead.

8 MR. BARR: Even with the limited time frame, it
9 still produces 20,000 emails. And I know counsel and
10 I are at odds about how long it would take, but there
11 is sensitive motorist information that's contained
12 within it.

13 Additionally, they should be aware of
14 the reason -- I mean, that they are set for fitness
15 hearing because they have internal memo from -- that
16 was sent from the Office of Transportation to the
17 Commission that was somehow released to the press and
18 we eventually either -- we turned it over and they've
19 already received it, I believe, from the Chicago
20 Tribune that outlines the reasons why Staff feels
21 that a fitness hearing is necessary. So they have
22 all that information.

1 Additionally, the commissioners would
2 not come to Staff and say, We would like Lincoln
3 Towing or another relocator set for hearing. The
4 decision would be made between the police, the chief
5 of police at the time and any sergeants, and the
6 Office of Transportation, that's where the
7 attorney-client comes in.

8 MR. PERL: In regards to the memo, which was
9 given -- somehow this was given to the Tribune
10 reporter. And I got it from the Tribune reporter. I
11 didn't even know it existed. And then all of a
12 sudden he comes up with this memo, this internal memo
13 to the Commission from Jennifer Anderson February 19,
14 2016.

15 What it says, it details how many
16 tickets we have pending at the current time. So 92
17 pending administrative tickets, how many were for
18 different things. It actually was a great list for
19 me because I always hear that there's 2,000 pending
20 citations, Lincoln Towing is always in the news.

21 I said to the guy, Read it yourself.
22 There was 92 pending cases of which 15 had been

1 closed due to no jurisdiction, 32 finding of no
2 violation, 28 resulted in administrative citations --
3 if you're really look at this thing, this is just
4 what -- our percentage is lower than everyone else.

5 So when I read this internal memo,
6 there's nothing in here that says, This is why we
7 need to investigate them. All it does is lay out the
8 investigation. And it doesn't even say there's more
9 now than there was the year before.

10 All it says is that we're allowed to
11 do a hearing. So that's what it says in here.
12 There's nothing in here saying we're doing a fitness
13 hearing because things have changed at Lincoln,
14 things have gotten worse at Lincoln. That's because
15 that didn't happen.

16 And in regard to the internal memo,
17 the memo itself says, Additionally, Commission police
18 investigation Number 15088 -- which I don't know what
19 it is -- alleges during the time period October 15,
20 2014, through October 23, 2014, Lincoln committed 54
21 violations.

22 So they're using some information from

1 October 2014 in their hearing. They're planning on
2 using that. So I, of course, I need the information
3 from back then because they're using it themselves.

4 JUDGE KIRKLAND-MONTAQUE: Let me ask Mr. Barr
5 in your response -- and I don't know if it was you or
6 Ms. Anderson -- you did reply that, you know, that
7 this investigation really begins after the renewal.

8 MR. BARR: Obviously --

9 JUDGE KIRKLAND-MONTAQUE: This case was really
10 related to anything that happened, that was the
11 response that you gave it in certain instances. Are
12 you willing to stipulate that this hearing, this
13 fitness proceeding, should only look at --

14 MR. BARR: I mean, it's something I can look
15 into -- the thing with that investigation that
16 counsel is that information wasn't available to the
17 Office of Transportation council until after the memo
18 had been produced. Not the memo we were referring
19 to, but the memo for the prior fitness hearing, was
20 already sent to the commissioners for approval.

21 The order was already entered renewing
22 Protective Parking's relocater license.

1 JUDGE KIRKLAND-MONTAQUE: It seems like a catch
2 22, I mean, we renewed, it, and then I mean,
3 obviously, there's always ongoing business. So if
4 there was something that was coming up, then I don't
5 know if we should delay -- I don't know. What's done
6 is done.

7 MR. PERL: My problem is this, Judge. I know
8 this is a little bit different than federal court and
9 state court where I'm often litigating, and I
10 understand that. This is a whole different scenario
11 for a lot of different reasons. You still can't take
12 away the fact that if you're going to take away
13 someone's license -- if this was about fining us some
14 money, I'd make my case, it is what it is.

15 But when you're saying, I'm going to
16 take away a license that you've had for 50 years,
17 Lincoln, to relocate for 50 years, my client's owned
18 it since '93. So saying to somebody, without me even
19 talking to you, never once even said, Let's have a
20 meeting, let's talk about what's going wrong, maybe
21 you can solve it. I get it.

22 Not one meeting, not one phone call to

1 my office, and you know that I'm here, I don't shy
2 away from anything. We have hearings. So I couldn't
3 believe that no one picked up the phone and called me
4 and said, Hey, something's changed. There is more
5 tickets, there's different types of tickets, there's
6 something going on.

7 I didn't get a phone call. We
8 literally just found out about this when we got the
9 documentation saying you're having a fitness hearing,
10 which took me by surprise because six months earlier,
11 we had been renewed and we had a hearing and nothing
12 had changed in those six months, literally nothing
13 that I could see.

14 And when I read this memo that Ben's
15 referring to, all it does is cite to the statute
16 again. It doesn't say here's why we're doing it.
17 And I'm trying to figure out what happened. And then
18 when you look at all the other stuff, and now this
19 investigation -- which by the way, interestingly
20 enough, the 54 violation they're talking about all
21 have basically mainly to do with incomplete and
22 inaccurate invoices.

1 Now, I'm not saying that's not a
2 violation, but I think 51 of them -- it's almost
3 impossible not to make a mistake on an invoice a
4 little bit. So those violations in this particular
5 investigation that was being 150088, by their own
6 admission says they committed 54 violations of
7 issuing incomplete or inaccurate relocation towing
8 invoices.

9 Only 3 violations were regarding
10 relocating vehicles using non owned trucks and 19
11 using a dispatcher with an expired permit. And they
12 knew about -- there was literally a dispatcher that I
13 think this is the one where they were getting their
14 license, but it hadn't gotten it yet and they delayed
15 in getting it.

16 That's literally what this whole
17 investigation was from that period of time. There's
18 not even like you're towing cars fraudulently --
19 moving cars around. The bad things that some people
20 do aren't even on there. Even if that's the case, I
21 don't understand why they didn't have it -- this is
22 from October of 2014. We didn't have our hearing

1 until July of '15. That was eight months later. The
2 fact that they didn't have it at the time -- you had
3 a hearing, you didn't use it, I think you waived it.
4 But if you don't waive it, I should be able to do
5 discovery. You can't say I'm using it against you.

6 And I understand Ben's issue and
7 there's a lot of emails. Literally, that's not my
8 problem. My problem is my client's license. And
9 that's near and dear to him. I understand there's
10 20,000 emails. I'll make it easier for them. Give
11 me all of them, we'll do a protective order and a
12 privilege log. We'll take the time because it
13 doesn't take four months to do it.

14 I'm only going to use the ones that I
15 need for the hearing. The other ones don't interest
16 me at all. So my office can go through all of those
17 and I have to hire somebody to help us, I will at our
18 expense and we'll go through them all. Give me all
19 20,000 of them. I just did 950 in two hours.

20 So it won't take me four months. If
21 you give me the 20,000 emails, in a week I'll be
22 done. I think if you're going to look at taking away

1 my client's license to do business, which they've had
2 for like I said, probably Lincoln's had 50 years my
3 client since '93 for sure. He spent so much money at
4 Lincoln Towing safeguarding his license, litigating
5 issues, doing what they can to do the right thing.
6 It's a very difficult industry and everyone in this
7 room knows that you can't please everybody because
8 when you tow somebody's vehicle, they're not happy
9 with you.

10 And I think if you looked at the
11 amount of vehicles we tow, we tow 13-15,000 cars a
12 year. And if all we have is 92 or 100 complaints out
13 of 15,000, it's a better track record than the ARDC
14 probably. So to say that we have a lot of tickets
15 might be true, but you have to look at how many cars
16 towed.

17 The 166 investigations was a number
18 that we got in this letter because it says the
19 Commission opened 166 investigations in the past ten
20 months. That's where I got the number from because
21 everybody kept saying it's 2,000. It's not. So if
22 you look at just those bare numbers, how many times

1 we were actually found liable, there were literally
2 like 28 times out of 13,000 we were found liable.

3 If that seems like a lot to everybody
4 in this room, a reason to come after our license, I'm
5 a little bit shocked. I think there's something else
6 going on. And I could be wrong.

7 MR. BARR: We look at it as a whole based on
8 the number of tickets. It doesn't matter how many
9 cars -- we look at the investigations that are
10 initiated during a specific time frame and then
11 decide whether we believe that this relocater should
12 be set for a fitness hearing.

13 There doesn't have to be a threshold
14 amount for a company to be set for hearing.

15 JUDGE KIRKLAND-MONTAQUE: Would you be willing
16 to consider limiting the -- this hearing to after the
17 renewal?

18 MR. BARR: I'd be open to considering it. It's
19 not a decision I want to make just ...

20 JUDGE KIRKLAND-MONTAQUE: Sure. Yeah. But it
21 sounds to me like we have -- it would be better for
22 everyone if we were dealing with specific time

1 frames. It would seem logical that we wouldn't look
2 at matters that happened before the renewal because
3 you know, as Mr. Perl has said, that kind of opens
4 the door to be a bit broader.

5 We want to move toward a hearing on
6 this, and that might limit the amount of information
7 that Staff has. Now, in addition, did you say you
8 provided information?

9 MR. PERL: We asked them to give us copies of
10 all the tickets and ben provided us with a
11 spreadsheet. We're okay with that. It does
12 detail -- it wasn't perfect in all the information,
13 but to be quite frank with you, I have copies of most
14 tickets because I do get them.

15 It's just when we get to a hearing if
16 we ever get to it, I'd like to actually know what
17 they're bringing to the hearing and what they're
18 going to claim and allege so I wanted to see the
19 tickets ahead of time. Some tickets were more
20 egregious.

21 So in my opinion -- and I could be
22 wrong, but those are a little bit different than you

1 towed a vehicle with something to do with the
2 individual being towed. They showed you the keys,
3 and you still towed. Or the person was in the
4 vehicle when you towed it or something like that. I
5 think we might all agree then you towed a vehicle and
6 something was missing from the invoice.

7 If you did something like go to
8 July 24, 2015, that was the day we got our renewal.
9 Well, that should cut it in half. Now you're only
10 talking about documentation from July 24, 2014,
11 through the present. I was asking for all of 2015,
12 so it's probably 10,000 emails at that point in time.
13 Again, I'll renew my offer.

14 If they want to save time and money on
15 this thing, I'll do it. I'll spend the money going
16 through the emails. Trust me when I tell you of the
17 20,000 I look at, I might only find 30 that matter.
18 But I'm willing to do it. Because otherwise if I
19 don't get any of them, I won't get those 50.

20 The Ford Pinto case, there was one
21 memo literally that said in the Ford Pinto case
22 something like, Don't replace the gas cans, it will

1 be less money to pay off the death claims later on.
2 If they never found that, there would have been no
3 case.

4 So in our case there might be one
5 email out of 20,000. Staff will tell you that's not
6 worth it, but for me it is. That might be the one
7 that says we keep our license. And I need that. The
8 other stuff we're looking for was --

9 MR. BARR: I can just respond to the emails?

10 JUDGE KIRKLAND-MONTAQUE: Sure.

11 MR. BARR: I believe that the scan of those
12 20,000 emails includes -- starts at July of 2015. I
13 could be wrong. I can double check on that, but I
14 believe that there's some 20,000 emails, and those
15 emails are going to contain, you know, it's going to
16 encompass all 200 employees and also including the
17 Commission and their Staff emails.

18 And therefore, I believe that's
19 another reason -- a strong reason why those should
20 not you been provided.

21 MR. PERL: If you use the word external in it,
22 it will just be third parties. Again I don't want

1 your emails, Judge. We're just trying to figure out
2 if there's emails going back and forth regarding my
3 client that have to do with having a fitness hearing.

4 In this particular case I'm not saying
5 that's what Staff is doing, but they know that
6 nothing they give me can help them. It can only help
7 me. I'm not saying -- Ben's fairly new to this thing
8 anyway.

9 That's the reason why I want the
10 documentation because I've doing this for quite a
11 long time, practicing law and doing discovery.
12 There's crazy things that you find in discovery. So
13 to say that I can't point to smoking gun, if I knew
14 what it was, I wouldn't be asking for it.

15 That's what discovery gives you. It
16 gives you the smoking gun. I can tell you right now
17 that if you want to look through -- and you probably
18 never seen if before. If you wanted to look through
19 this memo, this internal memo, and you want to read
20 it, and if you can go on from here why it is that
21 they believe that they need to do a fitness hearing.
22 And if you can look at this thing and you can tell

1 me, yeah, things really got worse --

2 MR. BARR: Your Honor, Staff does not need to
3 provide a reason -- I think Staff has provided a
4 reason, but we do not need to provide a reason. The
5 law is very clear in allowing us -- you know, the
6 Commerce Commission to at any time hold a fitness
7 hearing.

8 So the idea that there might be a
9 smoking gun that some motorist on the outside has put
10 a thought in the Office of Transportation -- that
11 they need to be held at a fitness hearing -- the
12 premise of the fitness hearing is not why we're
13 holding the hearing.

14 The premise of the fitness hearing is
15 the active investigations that have been ongoing, the
16 number of citations. It's not the fact that some
17 motorists would have had said, They should have a
18 fitness hearing.

19 MR. PERL: I believe there's something
20 somewhere going on maybe internally, of course.
21 Listen, of the how many million people that live in
22 Chicago, I know Staff says, We don't look at how many

1 vehicles you tow. That troubles me. We don't look
2 at how many vehicles you tow to determine whether
3 you're fit or not, it would be like saying a baseball
4 player has 10 hits, the other has 50 hits, who's
5 better? We don't know --

6 MR. BARR: It's still a violation.

7 MR. PERL: If I have a violation on 15,000
8 cars, why would you want to take my license away?
9 Versus if I have 1,000 violations I only tow 1,200
10 cars.

11 JUDGE KIRKLAND-MONTAQUE: Let me -- I
12 understand your points. And I'm thinking of a couple
13 of things. One is that if there's some way perhaps
14 by stipulation that we can limit the scope of this
15 investigation, I think it would be beneficial in
16 terms of getting to an ultimate hearing. Are we
17 looking at -- does the Commission only look at -- I'm
18 thinking.

19 For example, is the Commission only
20 interested in violations regarding towed cars,
21 whether there are claims of improper towing, improper
22 signage.

1 I understand that a lot of citations
2 are written for administrative rule violations, I
3 mean, it seems that all of our resources that the
4 Commission's resources would be better used if we
5 could like narrow this investigation down or this
6 hearing process down.

7 I think we get to a hearing much
8 sooner, and we'd be able to -- whomever the parties
9 can make their case for whether the respondent is fit
10 or not fit. Also as a state agency, I mean, as the
11 ALJ at a state agency I just view this all a matter
12 of enforcing the rules and regulations that the
13 Commission is authorized to enforce, like any other
14 type of hearing that I would sit before.

15 So in that regard, I'm thinking that
16 the statutes, I mean, it happens to be your client
17 that the Commission has decided to open an
18 investigation. It could be -- based on the statute,
19 it could be anyone. Any licensee is subject to the
20 same type of review if the Commission chose to do so.

21 I don't -- I'm not persuaded that the
22 you know, there needs to be some particular reason

1 why the Commission has to have in order to open up
2 this type of investigation.

3 MR. BARR: Staff has provided over 90
4 investigation files to counsel. I believe that's s
5 good enough reason to hold a fitness hearing and
6 should be pretty evident to counsel why the fitness
7 hearing is being held. Whether it's two violations
8 or -- I'm sorry active investigations whether it's
9 two investigations or 36 or 166 investigations that
10 puts counsel on notice that the reason to the fitness
11 hearing is being held is because there's a number of
12 outstanding investigations that the Office of
13 Transportation and the Commission feels that there
14 are too many violations for this -- you know, for
15 this relocater and that, you know, we need to
16 determine whether they're fit to hold a license or
17 not.

18 MR. PERL: First time I heard that.

19 MR. BARR: I mean, it's clearly outlined. We
20 need to move on. We need to proceed with the actual
21 fitness to determine fitness.

22 MR. PERL: That's the first I've heard that we

1 have too many violations. And you know why that
2 helps me? If I can show we had the same number of
3 violations every single year we got renewed, maybe
4 there is another reason because they've never taken
5 the position in here that we have too many.

6 If you look through this whole thing,
7 it doesn't say. It says the nature of the
8 violations, it just says are nothing. That's why I'm
9 perplexed.

10 It is what it is. They told us we did
11 it again. This -- that didn't happen. For example,
12 Janet Jones was number 792, Pete Smith was 342. For
13 some reason in the computer they picked up 792. It
14 accidentally got rolled over and Staff knows that
15 happened. We still got tickets for them. But that's
16 not -- if you really want to get down to it and have
17 the hearing right now, I would love to if that's what
18 they're saying.

19 Most of them are literally --

20 MR. BARR: We can argue whether they're fit or
21 not to hold the license right now, or we can say for
22 the fitness hearing, it's been said and I think we

1 need to move forward towards the actual hearing.

2 MR. PERL: This is the same argument I always
3 hear. They want to get to the hearing right away.
4 They don't want to give me the documents.

5 JUDGE KIRKLAND-MONTAQUE: I think the first
6 thing that I would like to see, and I don't know if
7 it's possible in terms of streamlining the scope of
8 this investigation. If we have you know, certain
9 dates we are looking at, if it's from the date of the
10 renewal to the date of the initiating order --

11 MR. BARR: That's the scope we're looking at.
12 The only thing that's outside the scope is that
13 investigation that I think 150088, which Staff didn't
14 get until after the last renewal.

15 JUDGE KIRKLAND-MONTAQUE: Is Staff using that?

16 MR. BARR: I mean, it's our intent to look at
17 every investigation and use as many investigations
18 that we have. And that's something counsel and I can
19 talk to you about.

20 I'm not saying we can't agree to you
21 know not using that case. I think we communicate
22 well and are able to -- you know, we're not going to

1 agree on every issue. We are able to understand each
2 other's positions and work through it that way.

3 JUDGE KIRKLAND-MONTAQUE: Do you think you can
4 talk through this issue and to see if we can narrow
5 down --

6 MR. PERL: Why don't we try this. Vlad comes
7 from an IT background. He's incredible with it.
8 Maybe we can narrow it down even further for Ben.
9 The problem really is this has nothing to do with too
10 many emails. Don't kid yourself.

11 That's what discovery is. Who knows
12 what you find in discovery.

13 MR. BARR: Staff's objection is one, the number
14 of emails even after narrowing down the scope based
15 on counsel's terms. And also the fact that it's
16 going to include ex parte communications. It's going
17 to be all of their emails, your Honor's emails.

18 And that's the issue. The fact that
19 those emails would also include information regarding
20 a motorist name and address that all would have to be
21 redacted out based on the Commission's privacy
22 policy.

1 MR. PERL: I don't really believe for a moment
2 that a motorist said you should investigate Lincoln
3 Towing. The motorists, I have all their names.
4 Every single complaint that's ever filed, I get their
5 names. So I know who they are. I know where they
6 live. I know exactly who they are, name, address,
7 and phone. We tow them. It's on the invoice.

8 MR. BARR: I'm talking about addresses.

9 MR. PERL: We have them all. We towed them.

10 MR. BARR: We still cannot turn that over. We
11 still --

12 JUDGE KIRKLAND-MONTAQUE: It's your policy.

13 MR. BARR: Correct.

14 MR. PERL: It's called a protective order. We
15 do it every single day. For attorneys' eyes only,
16 and it goes no further. We do it all the time. I'm
17 not certain why we cannot do it here.

18 MR. BARR: It appears counsel's trying to seek
19 why we're -- why the fitness hearing was originally
20 sent. Not what's going to be brought up in terms of
21 the investigation. That is clear.

22 The number of investigations, the open

1 investigations since, you know, the date that we're
2 going to eventually going to narrow down is the
3 subject of the fitness hearing. Why the fitness
4 hearing was set does not matter.

5 MR. PERL: I don't think that the board
6 members' communications are privileged. They're not
7 attorneys. If they're communicating with your
8 nonattorneys in your office, it's not privileged.
9 I'm certainly entitled to see what it is.

10 MR. BARR: Ex parte. If I read their emails
11 I'd be reading their ex parte communications between
12 their assistant and --

13 MR. PERL: Ex parte is between a judge and
14 another party, and nothing else.

15 JUDGE KIRKLAND-MONTAQUE: The commissioners are
16 prevented from speaking to Staff and things of that
17 nature because of ex parte.

18 MR. PERL: So if they do it, then they lose the
19 privilege probably and I'm entitled to see it. If
20 they don't do it, there's no problem. The basic
21 premise behind that is I think that when you say to
22 me, Don't worry what's in these emails, there's

1 nothing there, don't worry about it. I worry about
2 it.

3 So in these -- first you heard from
4 Staff, it's just overly burdensome to do it. It's
5 not burdensome if I do it for them at all. You look
6 at the to and from, to, from. And you look at the
7 body if you have to.

8 If it's to John to Mary, and neither
9 one are attorneys, you don't need to worry. You
10 don't have to read 20,000 of those. There will
11 probably be 500 of those. Trust me, we're spending
12 more time arguing about it and continuing this matter
13 than -- this could have been done a month ago easily
14 if they just gave me access to it with a protective
15 order and a privilege log.

16 I promise you I have never violated a
17 protective order in my career. I won't do it now.
18 I'll looked at them. The ones that aren't relevant,
19 we delete. And it may be none of them are relevant
20 for this thing or maybe 50 or 10 or 20, whatever it
21 is.

22 MR. BARR: It still misses this point the

1 underlying reason. The fitness hearing can be set at
2 any time for any reason.

3 MR. PERL: What if it turns out that my client
4 was a minority, and that's really why they want him
5 out.

6 MR. BARR: It's a fishing expedition --

7 MR. PERL: How? This is called discovery. I
8 don't need relevant information. It can lead to it.
9 That's what discovery is. They're afraid of it.

10 JUDGE KIRKLAND-MONTAQUE: Here's what I need at
11 some point. We're just going back and forth.

12 I'd like to see -- first of all, I'd
13 like you to talk if you can narrow the scope of this
14 investigation down from perhaps the renewal to the
15 entry of the initiating order for this particular
16 hearing.

17 See what comes of that, and maybe
18 we'll do another status for that. And then if that
19 doesn't, you know, bear any fruit, I think I'd like
20 to see briefs like with some legal teeth to it in
21 terms of what's discoverable and what's not and
22 things of that nature.

1 MR. PERL: Okay. That sounds fair.

2 JUDGE KIRKLAND-MONTAQUE: So why don't we keep
3 it on a short leash in terms of you all discussing
4 perhaps narrowing down the scope of this.

5 Okay. What about early January?

6 MR. PERL: I'm back in the office on the 3rd.

7 MR. BARR: That week works for me.

8 MR. PERL: Since I'm back from two weeks out of
9 the office, I might want --

10 JUDGE KIRKLAND-MONTAQUE: You have the
11 opportunity to speak with Mr. Barr before you go?

12 MR. PERL: Sure, absolutely. I'm just saying
13 coming back here, you know.

14 JUDGE KIRKLAND-MONTAQUE: Okay.

15 MR. BARR: What about the week of the 9th?

16 JUDGE KIRKLAND-MONTAQUE: How about January 10?

17 MR. PERL: That's fine. I have a 9:30 hearing.

18 Can we do it at 1:00 o'clock or -- would that be
19 okay?

20 MR. BARR: 1:30 is fine.

21 JUDGE KIRKLAND-MONTAQUE: 1:30 on January 10.

22 And I'll call another status on discovery, on

1 discovery talks. And you mentioned something -- we
2 can go off the record.

3 (Discussion off the record.)

4 JUDGE KIRKLAND-MONTAQUE: This matter is
5 continued to January 10, 2017, 1:30 p.m. Thank you.

6 (Whereupon, the matter was
7 continued to January 10, 2017,
8 at 1:30 p.m.)

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