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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. )  
) Docket No. 100139 MC  
HEARING ON FITNESS TO HOLD A )  
COMMERCIAL VEHICLE RELOCATOR'S )  
LICENSE PURSUANT TO SECTION )  
401 OF THE ILLINOIS COMMERCIAL  
RELOCATION OF TRESPASSING  
VEHICLES LAW, 625 ILCS  
5/18A-401.

Chicago, Illinois  
February 1st, 2017

Met, pursuant to notice, at 3:00 p.m.

BEFORE:

MS. LATRICE KIRKLAND-MONTAQUE, Administrative Law  
Judge

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

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APPEARANCES:

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

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

1           JUDGE KIRKLAND-MONTAQUE: By the power vested  
2 in me by the State of Illinois and the Illinois  
3 Commerce Commission, I now call Docket  
4 No. 92 RTV-R Sub 17 for a status hearing. This is in  
5 the matter of Protective Parking Service Corporation  
6 doing business as Lincoln Towing Service; and the  
7 status hearing is on the hearing on fitness to hold a  
8 Commercial Vehicle Relocator's License.

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

11           MR. BARR: Good afternoon, your Honor. My name  
12 is Benjamin Barr. I'm appear on behalf of Staff of  
13 the Illinois Commerce Commission. My address and  
14 office is located at 160 North LaSalle Street, Suite  
15 C-800, Chicago, Illinois 60601. And my phone number  
16 is (312) 814-2859.

17           MR. PERL: Good afternoon, your Honor. My name  
18 is Allen Perl, P-e-r-l, from Perl & Goodsnyder on  
19 behalf of Lincoln Towing. My address is 14 North  
20 Peoria Street, Suite 2-C, Chicago, Illinois 60607.  
21 My telephone number is (312) 243-4500.

22           MR. CHIRICA: Good afternoon, your Honor. My

1 name is Vlad Chirica. I also represent Protective  
2 Parking Service Corporation doing business as Lincoln  
3 Towing Service. Our office is 14 North Peoria  
4 Street, Suite 2-C, Chicago, Illinois 60607. Our  
5 phone number is (312) 243-4500.

6 JUDGE KIRKLAND-MONTAQUE: Thank you. So let's  
7 start with the fitness hearing and get an update on  
8 where we are in terms of discovery.

9 MR. BARR: Yes, your Honor. Counsel and I  
10 spoke yesterday on the phone regarding Staff's  
11 witness list that we plan to use in the evidentiary  
12 hearing. Our last discovery Answers that we turned  
13 over will be our final witness list; and we're not  
14 going to expand on that any more.

15 So I think that closes out most of the  
16 discovery issues except for the scope of the time  
17 frame that we're looking at here for the actual  
18 fitness hearing.

19 MR. PERL: To clarify, Judge, I think that  
20 Staff has now agreed that they will not be calling  
21 any independent witnesses at the hearing. So there  
22 will be no testimony from anyone other than the

1 people listed on their prior discovery, which are the  
2 officers, and maybe Staff counsel, and whoever else.

3                   So the issue that we have regarding 27  
4 hearings and them putting people on, I think we'll  
5 resolve. And I think that we've come to an agreement  
6 that we're going to be presenting to the Court a  
7 number of petitions that we had, what they were, and  
8 maybe what the outcome was, even though they're going  
9 to be subject to a settlement agreement; and then  
10 that's it.

11                   No, we're not going to lay any  
12 foundations for them. We won't give you a factual  
13 basis for them other than that Staff thinks that they  
14 can prevail or Lincoln thinks that they would  
15 prevail; and defend them. And I think that's about  
16 it.

17                   MR. BARR: Yes, your Honor. That's correct.  
18 We're not going to call individual motorists for the  
19 fitness hearing. Our goal is to expedite this  
20 process and get to an evidentiary hearing and then  
21 get this to the Commission for a vote -- or a  
22 proposed order by your Honor, and then to the

1 Commission.

2 With that being said, your Honor --

3 MR. PERL: But, Ben, just to clarify, they're  
4 also not going to call the officers to testify as to  
5 any individual tickets. So they're not going to put  
6 any officers on saying, "You issued this ticket on  
7 this day, It was for this," and lay a foundation  
8 because then we'd have to have a hearing again.

9 So they're going to call the officers  
10 for other reasons, but not for the purpose of  
11 discussing any individual tickets.

12 MR. BARR: We're not going to discuss, your  
13 Honor, individual tickets; but we're going to discuss  
14 tickets as a grouping as it relates maybe to a  
15 signage issue or to an authorized tow.

16 But Counsel is correct. I think if  
17 Staff was to call either individual motorists or try  
18 to lay the foundation on individual citations, I  
19 think we'd be here a lot longer than necessary trying  
20 to drag this out more than it needs to be.

21 MR. PERL: But the agreement also is that  
22 they're not calling the officers to do that either

1 because then we'd have to have a hearing as well. So  
2 the officers won't be testifying, just so we're  
3 clear, as to any individual tickets, only as to maybe  
4 the number of tickets and what the tickets were for.

5 In other words, there are 92 tickets;  
6 17 were administrative tickets, 12 were for signs;  
7 that's it, not "Let's talk about this particular  
8 ticket on March 1st, 2014", or something like that.  
9 We're not doing that.

10 MR. BARR: Correct, in the sense that we're not  
11 going to talk about individual tickets. We might  
12 talk about specific properties, though, that have  
13 been issued multiple tickets; but we're not going to  
14 get into the actual --

15 You know, we might say, "Address 123  
16 South Main Street received 45 -- 40 citations or  
17 whatever"; but we're not going to say that, "On April  
18 1st, 2016, one citation was written; Here are the  
19 facts; This is what happened on that date".

20 MR. PERL: So that opens the door for me. What  
21 if it's a case that we settled? What if it's a case  
22 that was dismissed that we were actually found not

1 guilty on? So I'd have to talk to Ben about that.

2 In other words, if they're going to be  
3 introducing evidence that there were 12 citations  
4 written on a particular building and 7 of them we  
5 prevailed on at the hearing, I think that we'd have  
6 to then figure out that ahead of time because then  
7 they're going to be using that evidence in a way that  
8 I don't think it was meant to be used.

9 I think we discussed that we're going  
10 to be resolving tickets and then talking about -- the  
11 ones that we're not guilty on or found not liable,  
12 there is no -- you can't lay a foundation for those.  
13 The ones that we settled and that they gave a refund  
14 on, they can say that they gave a refund, and you can  
15 decide what you want with that. In other words, they  
16 could say, We think we could have laid a foundation  
17 for it, or they can say we agree with defendant.

18 But, again, since this is all coming  
19 in as we speak, if the officers start talking about  
20 the number of tickets at a particular building, then  
21 I will have to start questioning them and getting  
22 into foundations for it and liability because then



1 they'll want you to believe that there are certain  
2 buildings that get tickets for certain reasons -- or  
3 I'm not even sure why because this is the first I've  
4 heard of on that.

5                   And maybe a way around that is now  
6 that we've narrowed the scope of what this is maybe  
7 they can give me a new disclosure on what the  
8 witnesses are going to testify to; or if it's the  
9 same as the old one --

10                   Because I'm going to be deposing these  
11 people. So if it's the old one, then I don't need  
12 it. But if they're going to be doing something  
13 different with these witnesses now, then maybe I need  
14 to see that.

15                   JUDGE KIRKLAND-MONTAQUE: That would just be an  
16 update of what you've already done.

17                   MR. BARR: In a sense, your Honor. But I don't  
18 think that really changes anything as to where we are  
19 now. I mean, in terms of depositions, I mean, Staff  
20 is opposed -- we're obviously opposed to because we  
21 think, you know, nothing is going to come to light in  
22 those depositions that hasn't already been brought to

1 light in the actual discovery phase; and it's only  
2 going to further delay the process down the road.

3           Going back to the actual citations on  
4 addresses, you know, I don't think it's Staff's  
5 intention that says, you know, if a ticket was  
6 dismissed outright, you know, it wasn't for a refund  
7 or something like that -- either by hearing or Staff  
8 just agreed to dismiss it because we didn't feel that  
9 there was a violation -- we're not going to introduce  
10 that that ticket was written at the property.

11           But I think one of our points that  
12 show why Lincoln is not fit to hold a license is that  
13 there's a number of properties throughout the city in  
14 their coverage area that routinely receive  
15 violations. And our point is going to be that, you  
16 know, Lincoln has had an opportunity, being on notice  
17 from the first citation that the police sent them,  
18 whether it's for a sign or whatnot, not having a  
19 contract on file, that they needed to correct the  
20 issue; and then 10 tickets down the road the issue  
21 hasn't been corrected.

22           MR. PERL: And our rebuttal argument would be

1 that -- because this is something new that Counsel  
2 just brought up. I probably asked them 10 times at  
3 least to have a meeting with me to tell me what you  
4 think the problems are so we could solve them, and  
5 they don't want to.

6 So if we're getting into the factual  
7 basis of why the hearing is, I will tell this Court  
8 that I've told them at least 10 times -- maybe a  
9 dozen -- "Why don't we sit down? Why don't you tell  
10 me what your problems are, and we'll solve them so we  
11 don't need a hearing?" And they don't want to have a  
12 hearing for that. So I'm hearing for the first  
13 time --

14 Do you remember how many times I asked  
15 you why we're here, what's purpose? This is the  
16 first time that I've actually heard that. And I've  
17 begged them, and I've asked them in pleadings saying,  
18 "Why don't you tell me the factual basis for why  
19 we're having a hearing?" And what they say every  
20 time is, "Look at the statute. Here's the statute.  
21 We can have a hearing because we're allowed to have a  
22 hearing pursuant to the statute." And I keep saying

1 to them, "I know. But why are you doing it now?"

2 This is the very first time that I've  
3 heard from Counsel that one of the reasons they're  
4 doing this is because of some building that we  
5 keep getting the same tickets at the same time and we  
6 haven't resolved it. I've never heard that before,  
7 and I don't think you have either.

8 I believe we've been doing this now for  
9 I don't know how many months. This is new to me.  
10 This should have been given to me in discovery months  
11 ago, if that's one of their bases, when I said to  
12 them in the interrogatories, "Why are we having a  
13 hearing?" Now I'm finding out why we're having a  
14 hearing partially.

15 As we piecemeal this thing, every time  
16 we go, more and more comes out. I guess I'm just not  
17 used to this type of litigation. I guess I'm used to  
18 litigation where you issue interrogatories in  
19 discovery and request to produce, and that's what you  
20 live with. It doesn't grow as you go. This seems to  
21 grow every time we go.

22 They want to change the dates now from

1 March of 2016 forward. Now the scope is now -- this  
2 answer that I just got right here should have been in  
3 the Answers to Interrogatories. I don't know why it  
4 wasn't. That's specifically a reason --

5                   And, by the way, whether it's a valid  
6 or not a valid reason, I'm not speaking to. I'm  
7 saying if that's one of the reasons why you're having  
8 a fitness hearing, why didn't we hear about this  
9 before? So now I've got to go back into my world, go  
10 back into it and check each building and how many  
11 tickets they got. Because I'm allowed -- you know,  
12 it's not trial by ambush. I'm allowed to put on my  
13 defense. Now I can do that here.

14                   I guess I could say again to Counsel,  
15 "What are the reasons that we're having this hearing  
16 for?", so I can actually prepare my defense for it.  
17 And whether it's because we're all just thinking on  
18 our feet and we're just talking or whatever, this is  
19 what keeps this case revolving and going round and  
20 round and round, because there's never really an end  
21 to why Staff is having a hearing, because they don't  
22 really want to tell me why.

1           MR. BARR: I disagree. I mean, I don't want to  
2 rehash the same issues that we spent hours hashing  
3 out in previous pretrial conferences. At the same  
4 time, as we evaluate our files and the witnesses,  
5 Staff is developing a trial strategy.

6                   I think, you know, Lincoln Towing here  
7 is at an advantage because they have a copy of a memo  
8 that outlines why exactly this fitness hearing was  
9 set. And I think the only outstanding discovery  
10 dispute is the actual scope of this fitness hearing.

11           JUDGE KIRKLAND-MONTAQUE: So let me ask you --  
12 and I don't know have a copy of all of the  
13 interrogatories. This is why I'm asking.

14                   When you were asked to present a list  
15 of your witnesses and, presumably, what they would be  
16 testifying to in court, is that something you  
17 provided to them?

18           MR. BARR: Correct, your Honor. We provided a  
19 list of the officers and investigators that we intend  
20 to call. And they're obviously going to testify  
21 about -- I think it's pretty obvious what they're  
22 going to testify about is the investigations that

1 they've written, I think.

2                   And then trying to resolve some of the  
3 citations, that's a whole nother issue. I think  
4 we've been very open with counsel about how we're  
5 going to use the officers and investigators as  
6 witnesses.

7           MR. PERL: So this is what they say in their  
8 Answers to Interrogatories, and nothing more:

9                   "John Geisbush will testify as to his  
10 findings in Commission Police Investigation 150888".

11                   Now, I think we said we're not using  
12 that; so that's gone.

13           MR. BARR: Correct.

14           MR. PERL: -- "and any and all investigations  
15 in which he investigated."

16                   You couldn't be more ambiguous if you  
17 tried. "Any and all investigations", I don't know  
18 what that means. I don't know what other  
19 investigations he's doing.

20                   "Brian Strand (phonetic), testify as  
21 to Staff's review of Protective Parking Corporation's  
22 response to Staff's data request and any and all

1 investigations in which he investigated."

2 So it's, basically, the same thing for  
3 everyone.

4 MR. BARR: I mean, once we define the scope, I  
5 mean, Counsel is going to have every investigation  
6 file from that time period; and it's going to have  
7 every officer who wrote that investigation file. So  
8 it's only a matter of sitting down and looking at  
9 those files and saying, "Well, Officer Strand wrote  
10 this citation for this investigation file; Officer  
11 Geisbush wrote this citation for this investigation  
12 file." So they have a list of everything.

13 I think what we need to do now is  
14 define the scope and get moving towards the actual  
15 fitness hearing so we can get depositions out of the  
16 way and get this thing before the Commission.

17 MR. PERL: Well, if that's the case, and all  
18 they're going to testify to is that they wrote  
19 tickets, then what do they need them for?

20 We can stipulate to the fact that  
21 Sulikowski wrote these tickets, Geisbush wrote these  
22 tickets, and Strand wrote these tickets, and Carlson



1 wrote these, and Cosell (phonetic) wrote these. We  
2 know that. Obviously, they're going to be testifying  
3 to more than just that. They're going to probably  
4 trying to proffer opinions and everything else.  
5 They're not really opinion witnesses. They're not  
6 certified as experts. But I'm guessing because --

7                   Otherwise, we'll stipulate right  
8 now -- and we don't have to have any of them come --  
9 that they wrote the tickets. And what you're going  
10 to need from us is a list of what happened with those  
11 tickets, which we're going to give you. Some of them  
12 were dismissed. Some of them we settled. Some of  
13 them we gave refunds. And then I don't know what the  
14 need is for any of these officers unless they really  
15 are going to testify to something that's not in this  
16 interrogatory, which I believe that's the case.

17                   And I do understand -- you know,  
18 Counsel said earlier that he doesn't think we need  
19 depositions; he doesn't think it will help. Well, it  
20 won't help their case, but it might help my case.  
21 And we've already decided that we're doing  
22 depositions in this case. We talked about how much

1 time I might have for the depositions even.

2 So I've got to take these depositions.  
3 I just want the field to be -- you know, usually we  
4 finish written before oral. So you have the written  
5 to do, and then we have the oral.

6 MR. BARR: I think we're there. I think we're  
7 ready. You know, all we need to do is to define the  
8 scope of this investigation. You know, obviously,  
9 Counsel and I are at odds over what the Commissioners  
10 intended.

11 JUDGE KIRKLAND-MONTAQUE: Why wouldn't you be  
12 able to, through the discovery, do the depositions  
13 and find out these questions that you're raising?

14 MR. PERL: You know what? That's a very good  
15 point. I could just go and ask them the questions;  
16 and that's true. However, why do we have  
17 interrogatories to begin with then? Why not just  
18 depose -- why not just go into a case -- and I'm not  
19 being fecious.

20 Why not just going into a case, and  
21 they can give me a list, and I'll just depose them  
22 without knowing ahead of time what they're going to

1 say? The reason we do it is because we prepare for  
2 depositions with the interrogatories. I mean, that's  
3 what I do.

4 So you're right. I can go into a  
5 deposition, and I can just start asking questions.  
6 But to prepare for the deposition I need  
7 interrogatories so I can write my questions down  
8 because I don't know what they're going to say ahead  
9 of time, and I don't know what questions to ask. I  
10 mean, I have an idea.

11 MR. BARR: I don't know if we need to -- you  
12 know, if Staff needs to present our whole testimony  
13 and have our witness list -- or I'm sorry -- our  
14 questions drawn up and presented to Counsel so he can  
15 have those.

16 MR. PERL: No, you don't. But then you can't  
17 go beyond the scope of what you give me, then.

18 MR. BARR: And that's all we need to do is we  
19 need to define the scope of the time frame; and you  
20 would have every investigation file from that time  
21 period.

22 MR. PERL: No, I'm not talking about the time

1 period. I'm talking about the scope of someone's  
2 testimony. So when you give the 213  
3 interrogatories -- if you give me an interrogatory  
4 that says they're only going to testify as to one  
5 thing, then they're done. They can't testify to  
6 anything else because their interrogatories limits  
7 the scope. It's not just defining the scope; it's  
8 also what they're going to testify to.

9 MR. BARR: I think it defines it. It defines  
10 that they're going to testify to the investigations  
11 and Officer Strand is going to testify to Lincoln's  
12 responses to our discovery request.

13 I think we're hashing out issues -- I  
14 think we're on the same page. I just think we're --  
15 you know, we come to these hearings, and we spend  
16 more time hashing out the issues; and we don't get  
17 anywhere closer to the actual fitness hearing, which  
18 is why I'm advocating today that we define the scope  
19 of this investigation and we set a time line for  
20 depositions and schedule the fitness hearing.

21 MR. PERL: And just so we're clear, the  
22 February 19th memo that I have, which I got from a

1 newspaper reporter -- and I don't know how he got it,  
2 other than someone at the Commerce Commission gave it  
3 to him -- it doesn't even talk about what Counsel  
4 just stated.

5                   So Counsel says I should know what  
6 they're doing based on the memo, none of that's in  
7 the memo.

8           MR. BARR: As 18(a) states, the Commission at  
9 any time can evaluate the fitness of a relocater; and  
10 that's what we're doing now.

11           MR. PERL: But they're not. They're not doing  
12 it just because. Again, I understand what 18(a)  
13 says, and I understand that they can do whatever they  
14 want. Why do we do discovery? So we could find  
15 things out prior to hearings and depositions.

16                   The February 19th, 2016 memo doesn't  
17 say any of that in here. It just says how many  
18 tickets we have. If you just talk about how many  
19 tickets Lincoln has and you don't compare it to over  
20 the years how many they've had, you don't have an  
21 idea. We've talked about this before --

22           MR. BARR: That's --

1           JUDGE KIRKLAND-MONTAQUE: Hold on. Hold on.  
2 Hold on. All right. All right. Let me just  
3 interject here.

4           Mr. Perl, is there any way that by  
5 updating the current interrogatories, you can address  
6 the issues that you're raising now?

7           MR. PERL: By reupdating them?

8           JUDGE KIRKLAND-MONTAQUE: No. By having...

9           MR. PERL: I guess all I'm really saying,  
10 Judge, is I'm getting the idea now from Ben that the  
11 only live testimony that we're going to receive are  
12 from Tim Sulikowski, John Geisbush, Brian Strand,  
13 James Carlson, and Scott Cosell, and no one else.

14          MR. BARR: Correct.

15          MR. PERL: Okay. So now we've limited the  
16 individuals who are going to be testifying on behalf  
17 of Staff. So the next step would be looking for me  
18 to see what they have said these people are going to  
19 testify to. And they do have statements in there.  
20 They're pretty open-ended.

21                   I mean, I probably could take a  
22 deposition and ask them what they're planning to

1 testi- -- maybe I can get more information -- I agree  
2 with your Honor. At the dep I can probably expound  
3 upon this and ask questions. I'm just saying that  
4 I'm more used to getting interrogatories that are a  
5 little bit less general, saying that they're going to  
6 testify as to everything in the world that they've  
7 investigated versus are they giving opinion. Here it  
8 doesn't say that. And they're not opinion witnesses,  
9 so I don't even know.

10 MR. BARR: But every witness is an opinion  
11 witness.

12 MR. PERL: No, every witness is not an  
13 opinion -- see, this is the problem that I'm having.  
14 Every witness is not an opinion witness. They're  
15 fact witnesses.

16 MR. BARR: Any individual can get on the stand  
17 and testify as to what their opinion is. It doesn't  
18 mean that you have to take their opinion as what it  
19 is.

20 MR. PERL: They actually can't do that.

21 Judge, I've never heard anybody in 32  
22 years say any witness can give an opinion. That's why

1 you give your opinion witnesses. That's why we have  
2 213(f)s, f(3)s, f(1)s, because they can give  
3 opinions.

4 If you stand and you watch a car  
5 accident -- and I do personal injury work, too -- and  
6 I get you to come in to say what color, you can't  
7 say, "And I'm going to give my opinion. I think John  
8 was at fault." You're just a witness who saw the  
9 thing happen.

10 A police officer cannot give his  
11 opinion as to whether or not he thinks somebody's  
12 guilty or not. He says, "This is what I saw." They  
13 don't ask him, "What do you think your opinion is?"  
14 They say, "What did you see?"

15 JUDGE KIRKLAND-MONTAQUE: I've gotcha. Let me  
16 ask you this:

17 What's the difference, then,  
18 between -- I guess to what extent is he required to  
19 lay out his strategy?

20 MR. PERL: Listen, you don't have to give me  
21 your strategy.

22 MR. BARR: Well, I think that's what he's



1 asking.

2 JUDGE KIRKLAND-MONTAQUE: That's what it sounds  
3 like to me.

4 MR. PERL: Listen, if you're going to say to  
5 me -- this is why we give 213(f)s, f(1)s, f(3)s.  
6 Here's why:

7 What if I just did a PI trial and  
8 didn't tell you any of my doctors that are coming in  
9 to testify. They just come in, and they show up, and  
10 they testify --

11 MR. BARR: That's not the issue here. We're  
12 telling them everyone that's going to come in to  
13 testify.

14 MR. PERL: No, no. I'm going to tell you what  
15 the doctor's name is. He's going to testify as to  
16 what his findings are.

17 MR. BARR: You have every investigation file.

18 MR. PERL: But the investigation file doesn't  
19 talk. It's just words on a piece of paper. It  
20 doesn't mean that we're liable or not liable. It  
21 doesn't mean that we're fit or not fit.

22 And if, in fact, Staff is intending on

1 these officers giving their opinions, I have a strong  
2 objection to it. I don't think you can let them do  
3 it.

4 MR. BARR: Okay. But the questions haven't  
5 been asked. The witnesses are even on the stand.  
6 And they're already objecting to what their testimony  
7 is going to be.

8 JUDGE KIRKLAND-MONTAQUE: Right. Right. I  
9 think what we need to do right now is just to define  
10 the scope, in terms of timing.

11 And, also, it sounds to me, Mr. Perl,  
12 like if you limit it to these witnesses and their  
13 investigations, then, I mean, you have the  
14 information I would think to probe into that.

15 MR. PERL: I have the tickets. I have the  
16 tickets that were written.

17 JUDGE KIRKLAND-MONTAQUE: It sounds like  
18 there's going to be some groupings of some sort.

19 MR. PERL: So here's the other part of it:

20 The reportd on the tickets of the  
21 cases that we settled, I thought we weren't getting  
22 into. So I'm a little bit confused now because we're

1 settling up these 85 cases. So if they're going to  
2 bring Sulikowski in to talk about the report he made  
3 on a case that was settled --

4 MR. BARR: We're not talking about the report.  
5 That's not my point. My point is that you have the  
6 reports and can develop any questions you have based  
7 on their investigation or -- you know, you have their  
8 reports. You have what they said, what they  
9 investigated, what they did for that citation, who  
10 they contacted. You have everything. You have our  
11 whole file on every investigation.

12 JUDGE KIRKLAND-MONTAQUE: So the officers  
13 can't -- I mean, I don't expect them to testify  
14 outside of these reports.

15 MR. BARR: We're not even going to get to the  
16 factual basis.

17 MR. PERL: You know what? I think the  
18 confusing part is that since we're doing a settlement  
19 agreement and we're not really going to be getting  
20 into the reports anyway because the cases that we  
21 settled we're agreeing that we're not going to get  
22 into those, I'm saying let me just take their

1 depositions and see where we're at after that.

2 I'm not even sure what they're going  
3 to testify to anymore because we're not testifying to  
4 the individual tickets themselves. We're only  
5 testifying as to they wrote the tickets. And if they  
6 try to give an opinion, I'll just object to it, and  
7 you can rule on it then; or I'll do a motion in  
8 limine on them giving an opinion, and you can rule on  
9 it ahead of time unless they somehow redo their --  
10 no, discovery is closed; but they haven't listed them  
11 as opinion experts. If you do that, you've got to  
12 get a CV. You would have to go through the whole  
13 thing.

14 JUDGE KIRKLAND-MONTAQUE: Based on the  
15 hypothetical that Mr. Barr presented, which was that  
16 only this particular address had this many  
17 citations --

18 And those are not the ones that have  
19 been settled; is that correct?

20 MR. BARR: That's not necessarily correct. I  
21 mean, based on our settlement agreement, that's the  
22 whole thing that is, I think, hanging things up is

1 that we have not used those groupings --

2 JUDGE KIRKLAND-MONTAQUE: But not as  
3 individuals?

4 MR. PERL: Correct. We're just saying how many  
5 tickets; that's all. We're not talking about the  
6 tickets. We're just saying 92 tickets, 17 for this,  
7 12 for this -- you know, they added up to 92, and we  
8 agree.

9 MR. BARR: We're going to break down the  
10 tickets, but we're not going to go as far as to break  
11 them down into individual citations and try to argue  
12 the facts.

13 JUDGE KIRKLAND-MONTAQUE: A hearing on the  
14 citations.

15 MR. BARR: Correct.

16 MR. PERL: Which is what they did in their memo  
17 that I got, which breaks down literally -- they don't  
18 say what the addresses are, but it gives you these 92  
19 tickets. 23 are for administrative -- invoices are  
20 improper; 18 are for this; 12 are for this; and that  
21 equals 92. And we agree to that; but that doesn't  
22 require the officer to testify to anything other

1 than, "I wrote the tickets".

2 MR. BARR: Your Honor, we're not going to  
3 exclude -- I mean, it seems like Counsel wants us to  
4 exclude the police officers and have no live  
5 testimony and just stipulate to everything.

6 MR. PERL: No, I don't.

7 JUDGE KIRKLAND-MONTAQUE: I don't know if  
8 there's a real issue right now.

9 MR. PERL: For the sake of moving things along,  
10 I will now depose these individuals. Although, I  
11 will state for the record that I believe that the  
12 interrogatory answers are in sufficient. I do believe  
13 they are; but I will take their depositions. If I  
14 determine that I need to do something after that by  
15 way of a motion or by way of talking, I will. If I  
16 don't, I don't. And maybe it will get resolved.

17 So let's now turn our attention, if we  
18 can, to limit the scope of the time period. I told  
19 you last time it was February. I was wrong. It was  
20 March. Prior to this last time up every scope was  
21 March of 2016. Even in their most recent  
22 interrogatory answers in Septemboer of 2016 they only

1 gave me stuff till March of 2016 because that was the  
2 limited time of scope. They didn't give me April,  
3 May, June, July, August, September because we have  
4 always agreed it was March of 2016 to the ad nauseum  
5 point where we talked about why I wasn't able to get  
6 e-mail information and internet information because  
7 we had limited the scope, if you recall.

8                   So now for the first time in this case  
9 in a year, in their most recent discovery response  
10 they're saying that basically discovery is still open  
11 and tickets are -- every day I'm going to give you  
12 more and more tickets.

13                   And now they're giving us tickets  
14 from -- current tickets, which I say that's not the  
15 case. We agreed, through Staff -- by the way, we  
16 FOIA'd -- we don't have the FOIA back yet, so I can't  
17 give it to you. But we FOIA'd all of the  
18 information, the electronic copies of all of the  
19 hearings.

20                   Because I think I told you that we  
21 have spoken many times about we FOIA'd the  
22 transcripts. I don't have them back yet, because

1 Staff has them; but they're not allowed to give them  
2 to us, which would make things go quicker, but  
3 they're not allowed to give them to us. So I had to  
4 FOIA them. But we FOIA'd them on January 26. So  
5 it's going to take some time to get these back.

6 Absent that, though, I think you might  
7 recall that we have spoken about this many times.  
8 And March 2016 was the time period that we were doing  
9 this. Because had we had our hearing the next month  
10 that would have been it. And it never grew until the  
11 most recent fifth response to our discovery. All of  
12 the other ones used March 25th or March something of  
13 2016 as the time period, every one of them.

14 And then we actually kind of closed  
15 discovery. And the only thing that they were doing  
16 was giving me -- if you recall, the only thing that  
17 discovery remained open for was giving me this new  
18 list of all of the individuals that we're going to  
19 depose -- I mean, that they were going to present;  
20 and then I was going to depose them. And that never  
21 happened because there aren't any. But they did  
22 update the discovery to say, "Now we're giving you



1 these extra tickets through December of 2016".

2 MR. BARR: We evaluated on Friday -- I spent  
3 a couple of hours with the officers looking at every  
4 file and seeing who we wanted to call; and we made a  
5 conscious decision not to call those.

6 So it's not that we're just wasting  
7 time and trying to prolong this any more than it  
8 needs to be. We evaluated what witnesses we are  
9 going to call. So they have a complete witness list.

10 You know, Counsel is right. Some of  
11 the new investigation files were turned over  
12 recently; but they are still a number of  
13 investigation files that are recently turned over  
14 that I did just receive, but are from tows during the  
15 time frame of the scope that Counsel wants.

16 So Staff's position is that the  
17 Commission voted to evaluate Lincoln's fitness from  
18 their last renewal hearing until the close of  
19 discovery --

20 JUDGE KIRKLAND-MONTAQUE: But I thought we  
21 had -- I was under the impression we had established  
22 a time frame. This February 1st date was the date by

1     which you were supposed to, if I recall correctly,  
2     supply them with the witness list.  So that wouldn't  
3     make sense for the date to be open.

4             MR. BARR:  We're not saying that the date  
5     should be open-ended forward.

6             JUDGE KIRKLAND-MONTAQUE:  No.  I mean, even up  
7     to now, because everything you provided to them was  
8     based on a particular time frame.

9             MR. BARR:  But what we're trying to prevent,  
10    your Honor, is come July if this thing is still not  
11    settled, you know, hopefully, we'll have the  
12    evidentiary hearing by then and depositions will be  
13    taken.

14            JUDGE KIRKLAND-MONTAQUE:  He already said he's  
15    stipulated to that period going forward.

16            MR. BARR:  I don't think that that was a good  
17    use of the State's resources, then, to set another  
18    fitness hearing after we just got done and start this  
19    discovery phase back all over again.

20            JUDGE KIRKLAND-MONTAQUE:  But then we'll have  
21    this neverending discovery.  That's the way I see it.

22            MR. PERL:  I've never been involved in a case

1 where we set a trial date and discovery wasn't closed  
2 months ahead of time, and then you finish it up, and  
3 then you do the oral as opposed to a couple of days  
4 before trial we're still giving you new tickets that  
5 are coming against you. I've never done that before.

6                   And if you talk about State  
7 resources -- I don't want to get involved in that  
8 conversation. But State resources would mean we  
9 should have gotten this thing resolved a long time  
10 ago, and they could have had a settlement agreement  
11 with me or a settlement hearing; but they don't want  
12 to do that.

13                   So if you want to talk about State  
14 resources, let's have a hearing based upon what they  
15 said, which is through March 2016. If we lose our  
16 license, I guess it won't matter. And then we'll  
17 have use many State resources, except for we're  
18 defending it in Circuit Court.

19                   JUDGE KIRKLAND-MONTAQUE: You're right. I'm  
20 not making a determination of how this is going to  
21 turn out. I'm not saying that. I'm just saying that  
22 we have to end discovery at some point -- I mean, not

1 end it; but the period at which we're investigating  
2 here has to be. I thought we were all under the  
3 impresson that --

4 MR. PERL: Judge, I'm not talking about the  
5 periods of time that wrote tickets. Whatever they  
6 gave me up to that point in time, that's it. It's  
7 closed now. It's done. So now we're going forward  
8 and figuring out how we're going to actually --

9 MR. BARR: I would fundamentally disagree that  
10 it's not from the period from the last renewal, you  
11 know.

12 JUDGE KIRKLAND-MONTAQUE: Till when?

13 MR. BARR: Staff's position is that it's from  
14 the last renewal -- I'm sorry -- 2015, July of 2015,  
15 or last renewal, up until when we defined a date.

16 JUDGE KIRKLAND-MONTAQUE: What do you think the  
17 date should be? Based on everything you've done so  
18 far, what should it be?

19 MR. BARR: The close of discovery.

20 MR. PERL: Discovery's been closed for a long  
21 time.

22 JUDGE KIRKLAND-MONTAQUE: I mean, based on the

1 rules of discovery, you submit your interrogatories,  
2 and you respond, you get 28 days.

3 MR. BARR: Even with that issue, you know,  
4 we're under an obligation to substitute the  
5 information that we do receive. And there are still  
6 files -- maybe 10 -- when I submitted back on  
7 January, I think 19th was the date, that involved  
8 towns from that time period that the Commission --  
9 that Counsel is suggesting.

10 JUDGE KIRKLAND-MONTAQUE: Well, that's fine.  
11 If you're going to update something that falls within  
12 that period, that's fine. I think that's fair.

13 MR. PERL: But the only thing is it's the first  
14 time I'm seeing these tickets. We haven't had an  
15 opportunity to kind of look into them. And I'm not  
16 sure if it's 8 or 9. Obviously, if it's 8 or 9  
17 tickets, I'm not going to complain.

18 MR. BARR: I don't have an exact number, I  
19 don't think, off the top of my head.

20 MR. PERL: One of the issues that I have  
21 is we're not just getting tickets any longer. We're  
22 getting as many tickets as they can possibly write us

1 now because they know we're in a fitness hearing. So  
2 if we lose them --

3 Now all of a sudden we're getting  
4 tickets. This is 2017. We're getting tickets from a  
5 year ago now? It doesn't even make sense. How are  
6 they taking a year to do an investigation and write a  
7 ticket? Because what they're doing is they're going  
8 back on all of the investigations, and now they're  
9 giving us tickets for every single thing they have.  
10 They're finding a way to give us a ticket, and I  
11 don't think that the fair.

12 MR. BARR: We haven't reopened --

13 MR. PERL: If you haven't written a ticket  
14 since -- if these are tickets from before March of  
15 2016, think about it. It must have taken them 9  
16 months to investigate a ticket. That doesn't even  
17 begin to make sense. I mean, normally it doesn't take  
18 that long when you're investigating unless you're  
19 trying to now pad the thing to give us more and more  
20 tickets.

21 MR. BARR: I don't think we need to pad it.  
22 We're not trying to -- you know, we're writing

1 tickets. We only write tickets based on the  
2 complaints that we received. You know, we're not  
3 into an auditing here.

4 I think Counsel and I have both made  
5 our arguments in terms of our respective periods of  
6 time that we think this should go. I think it makes  
7 no sense to keep hashing this out.

8 JUDGE KIRKLAND-MONTAQUE: Yeah, you're right.  
9 You're right.

10 MR. PERL: Judge, here's the problem:

11 Whenever you ask Staff what the end of  
12 the period is, they don't really have an answer  
13 because they don't really know because they know the  
14 answer was March. So now they're trying to somehow  
15 manufacture, like, "Well, whatever the close of  
16 discovery is," or "Maybe today, if you'll give me  
17 till today".

18 And Counsel's response wasn't, "I  
19 reviewed everything", like we have. I spent hours  
20 reviewing everything. They didn't reviewing  
21 anything. They say, "Well, it should be --

22 I am telling you that we shouldn't do

1 it today. Let me get my FOIA back, and I will show  
2 you where we had conversations regarding the time  
3 period. I will show you where either Jennifer  
4 Anderson or Ben said to you, "This is the time period  
5 that we're looking at". They said it specifically.

6 Because I was asking for other things,  
7 and they made sure they let you know that I couldn't  
8 get those things because the time period was from  
9 July of 2015 to March of 2016. And we said okay; and  
10 now they're changing that.

11 MR. BARR: I think, your Honor, if we wait for  
12 the FOIA to come back, I think we're only going to  
13 delay this process even longer.

14 MR. PERL: How long could it take to get me the  
15 FOIA stuff? Here's a better one:

16 Since somebody is in control -- I  
17 mean, there's a mystical person that's like the  
18 Wizard of Oz who controls the Illinois Commerce  
19 Commission. Whenever I try to figure out who's  
20 actually directing anything -- they have these things  
21 in his office, but they're not allowed to give them  
22 to me. Why doesn't whoever's in charge just give



1     them to me, and I can have them today, and I'll look  
2     at them as opposed to me waiting for the FOIA?  
3     Because I'm going to get them anyway.

4                     And Ben told you last time that he has  
5     them, but he's not allowed to give them to me. So if  
6     they actually talk to whoever's in charge -- the  
7     Wizard -- and the Wizard say's, "Hey since we don't  
8     want to use any more State resources, give them to  
9     Mr. Perl so he can look at them", give them to me  
10    tomorrow. And I'll have them tomorrow, and we can  
11    come back next week and figure it out.

12                    But it's just always -- it's like  
13    hiding the ball. It's here. It's over here. Why  
14    would I make a decision -- why would you make a  
15    decision now when I FOIA'd this? And I told you last  
16    time we would because I want to help all of us figure  
17    out what the date should be.

18                    I think the date should be March of  
19    2016. I think it's clear. I stipulated that if they  
20    want to use anything beyond that or anything that  
21    they didn't use at this hearing at the next hearing,  
22    go right ahead.

1           MR. BARR: Your Honor, back on the May 20th,  
2 2016 hearing the scope still wasn't defined.

3           JUDGE KIRKLAND-MONTAQUE: May what?

4           MR. BARR: May 20th, 2016. And I can read it,  
5 if you'd prefer. It says, "Hopefully once  
6 information starts flowing between the Commission and  
7 Lincoln, hopefully we can define the scope".

8           MR. PERL: Well, that doesn't mean time scope  
9 it. It means the scope of everything. And, by the  
10 way, I'm at a little bit of a disadvantage by him  
11 reading one sentence from a hearing and I can't see  
12 the whole thing.

13          JUDGE KIRKLAND-MONTAQUE: Right.

14          MR. PERL: That's probably not proper. So the  
15 scope of that probably meant the scope of the  
16 tickets, not the time scope. That's a whole different  
17 thing. That doesn't mean time and scope.

18          MR. BARR: I think we can go round and round,  
19 your Honor.

20          JUDGE KIRKLAND-MONTAQUE: I know. I'm trying  
21 to address this. I want to address this. In fact, I  
22 did not look because I thought that the information

1 was going to be presented to me today.

2 MR. PERL: Well, evidently they have the  
3 transcripts because --

4 JUDGE KIRKLAND-MONTAQUE: I have them. I can  
5 go read through them myself.

6 MR. PERL: Actually, I would really like --

7 By the way, reading from May one  
8 sentence when there's probably 20 or 30 pages  
9 there --

10 MR. BARR: That was the end of it. That was  
11 the last page.

12 MR. PERL: -- doesn't really give me a flavor  
13 because I'm just going off of memory. And, again,  
14 I'm not as young I used to be, but I certainly can  
15 remember what I can remember. I know there have been  
16 times when we spoke about the time scope.

17 Remember, scope can mean a lot of  
18 different things. It's not just time. And I know  
19 we've talked about this because I was arguing  
20 vehemently that we got all of this -- and it says  
21 20,000 e-mails and blah, blah, blah. And you said,  
22 "Well, they've agreed, Mr. Perl, to limit the scope".

1 You even said that. I said, "Okay. If you limit the  
2 scope, I guess I lose that argument", and I did lose  
3 the argument.

4 MR. BARR: But you said the scope was the time.  
5 The scope was the terms of the --

6 MR. PERL: No. It was the timing of it. It  
7 was the timing of it.

8 JUDGE KIRKLAND-MONTAQUE: The discovery that  
9 you propounded on them, wasn't there time limits?

10 MR. BARR: Counsel and I disagree about this.  
11 It's our interpretation it was an open-ended question  
12 of when --

13 JUDGE KIRKLAND-MONTAQUE: There was no like,  
14 say, between these dates they'll give us such and  
15 such? I mean, because how do you -- it's got to have  
16 an end date. And my impression of this is February  
17 1st wasn't the end of discovery. It was when we  
18 would be complete with discovery.

19 MR. PERL: Here's my last piece of evidence for  
20 you:

21 In their fourth answer to my  
22 discovery, in late Setemper of 2016, they only gave

1 me information through March of 2016. That should  
2 end it right there. If they really thought it was  
3 continuing till September, why didn't they give me  
4 any documents from April, May, June, July, August,  
5 Setemper? They didn't, because they believed the  
6 scope to be March of 2016. That's clear.

7 I don't think we need to say anything  
8 other than that other than, why wouldn't you have --  
9 because I know I got tickets. I can guarantee you I  
10 got tickets in April, May, June, July, August,  
11 September of 2016. I can guarantee you I got  
12 tickets. But they didn't list those in that scope.  
13 They only went to the March date because they knew  
14 the day was March of 2016 back then. And I don't  
15 know what the response could be to that, but that  
16 should be conclusive right there.

17 MR. BARR: And I think, your Honor, we've made  
18 our arguments.

19 JUDGE KIRKLAND-MONTAQUE: Why wouldn't you go  
20 past March?

21 MR. BARR: I'm not trying to take -- you know,  
22 I was not the one who updated it in September. I

1 don't know why.

2 MR. PERL: Because Jennifer was still here.

3 JUDGE KIRKLAND-MONTAQUE: Jennifer was not here  
4 in September.

5 MR. CHIRICA: The end of September. So this  
6 was signed by you and submitted on December 19th,  
7 2016. And it says that, "This is all of the files  
8 between July 24th, 2015\* and March 22nd, 2016". And  
9 those are dates that are used in Question 29 and  
10 Question 30.

11 MR. PERL: Right there, again, why do they  
12 continually use the March 22nd date? Because that's  
13 the date we were using. And that's in December,  
14 again. I just don't understand.

15 JUDGE KIRKLAND-MONTAQUE: Let me just ask you  
16 this: What's your rationale for extending it beyond  
17 March?

18 MR. BARR: Our argument is that the Commission  
19 tasked us with analyzing their fitness. You know,  
20 like all other fitness cases it's from the time of  
21 last renewal usually through when the application is  
22 submitted. But in this case --

1           JUDGE KIRKLAND-MONTAQUE:  There's no  
2 application.  So, technically, if you go by that, it  
3 it should be from the last renewal to the date that  
4 this order was issued.  But we're not going to do --  
5 the order initiating these proceedings.

6           MR. PERL:  Well, if they withdraw what they're  
7 doing right now and they just give us a regular  
8 hearing in July, I guess they could do that.  And  
9 then it would be from a 2-year period, and then we  
10 wouldn't have this special meeting.

11                    But just because they're allowed to do  
12 it we can't be fooled by the fact that nobody else  
13 typically -- I've never seen Lincoln in the middle of  
14 a period --

15                    6 months after we got our renewal they  
16 did this.  That's not ordinary.  If they waited the  
17 2-year period, then I would agree with them that  
18 everything's fair game.

19           JUDGE KIRKLAND-MONTAQUE:  Okay.  Where is the  
20 Commission order initiating this proceeding?  Does  
21 anyone have it?  You said you've got the memo?

22           MR. PERL:  No.  No  no.  Oh, do you mean the

1 memo?

2 MR. BARR: That's the order (indicating).

3 MR. PERL: What's the date on that order?

4 JUDGE KIRKLAND-MONTAQUE: February 24, 2016.

5 All right. Given that it's openended,  
6 that the order doesn't define the time period, and it  
7 refers to things that have happened in the past, and  
8 we had a big debate about whether the beginning point  
9 should be at the beginning of the renewal period,  
10 which was July 24th of '15, and the Commission's  
11 order was dated February 24th, I think it's fair  
12 game.

13 And I think, based on these responses  
14 to all of the discovery requests that Staff made,  
15 that the period of time for reviewing is up until the  
16 March -- and I don't know the specific date --

17 MR. PERL: March 22nd.

18 JUDGE KIRKLAND-MONTAQUE: -- the March 22nd  
19 date.

20 MR. BARR: I'm not going to object, your Honor.  
21 But I just want to clarify that, you know, the  
22 investigation files for tows during that period --



1 JUDGE KIRKLAND-MONTAQUE: Are fair.

2 MR. PERL: Well, hold on. They didn't disclose  
3 those to me until just recently.

4 MR. BARR: I just recently got them. We can  
5 say that no more tows from that period as of today's  
6 date. But if I don't get the file --

7 JUDGE KIRKLAND-MONTAQUE: How many files do you  
8 have?

9 MR. BARR: 10 or 15, at most.

10 MR. PERL: Well, I don't know. Can we  
11 actually...

12 MR. BARR: I'm prepared to send them to you.  
13 We talked about this yesterday.

14 JUDGE KIRKLAND-MONTAQUE: I mean, we have to  
15 set an end date.

16 MR. PERL: But in discovery we usually set an  
17 end from when you've given stuff to people, not stuff  
18 that has occurred, but you didn't give it to them  
19 until --

20 What if they gave me this stuff the  
21 day before trial, but it occurred in the relevant  
22 time period?

1 JUDGE KIRKLAND-MONTAQUE: Well, up to today.

2 MR. BARR: Well, we're willing to stipulate up  
3 to today. I mean, we talked about this yesterday.  
4 You know, once the Judge defines the scope and we  
5 reach a scope, I was going to resupplement Question  
6 29, all of the investigation files, based on that  
7 scope.

8 MR. PERL: Well, then I'm going to want time  
9 for me to respond to it.

10 JUDGE KIRKLAND-MONTAQUE: Respond to discovery.

11 MR. PERL: Whatever it is, I don't know when  
12 I'm going to get it.

13 MR. BARR: I mean, it's 10 to 15 files, your  
14 Honor. I mean, if it's 10 to 15 files, there may be  
15 20 citations. You know, whether or not it's resolved  
16 at this point --

17 JUDGE KIRKLAND-MONTAQUE: I don't think it's  
18 going to shoot us out too much further, do you think?

19 MR. PERL: I don't know.

20 JUDGE KIRKLAND-MONTAQUE: Let's say we limit  
21 it. Nothing you receive past today, like any new  
22 tickets or anything, even if they were within that

1 time period, you can't use them.

2 We're going to limit information that  
3 Staff has as of February 1st, 2017 even if it's  
4 within the time period from July 24th, 2015 to March  
5 22nd, 2016. So that's the scope.

6 Did I make that too complicated?

7 MR. PERL: No, that wasn't too complicated. I  
8 understood.

9 JUDGE KIRKLAND-MONTAQUE: You understand it?  
10 So that means you might be -- it sounds like you're  
11 going to get some new files.

12 MR. BARR: I would like to send them -- I can't  
13 put them on a CD today. But to prevent any issue of,  
14 down the road, them saying these weren't turned over,  
15 I can put them on the --

16 MR. PERL: Here's my bigger problem with  
17 that -- and this is why I don't want to agree with  
18 it. But you've ruled how you've ruled. This is why  
19 I don't want to agree with it:

20 They're going to present -- we have a  
21 fitness hearing, and we have all of these tickets  
22 pending that haven't been resolved --

1           THE REPORTER: Mr. Perl, can you slow down just  
2 a little bit, please?

3           MR. PERL: Sure.

4                       They're going to present, at the  
5 fitness hearing, that we have a great number of  
6 tickets that were written to us for certain time  
7 periods and we didn't do anything about them.  
8 They're repeat tickets.

9                       If I just got the tickets yesterday, I  
10 couldn't have done anything about it until now.

11           MR. BARR: I mean, he can introduce  
12 evidence and exhibits saying these are when they were  
13 given to me.

14           MR. PERL: So what I'm saying, Judge, is it  
15 puts me at a disadvantage because Counsel is going to  
16 argue that -- like they said earlier in the hearing  
17 today, "Here's 20 new tickets you got. 5 of them are  
18 from 5842 Broadway. You keep getting tickets there".

19                       But I didn't know about those tickets  
20 a year ago. I just found out about them now. Maybe  
21 I could solve the problem now, but it doesn't matter  
22 because I'm up for a fitness hearing because I got

1 those tickets and I didn't know about them.

2                   If they'd told me about these tickets  
3 a year ago, when they should have told me, I could  
4 have resolved the problem. But it precludes me from  
5 doing that now. So when I go to a fitness hearing, I  
6 have 20 more open tickets, which looks bad for me.  
7 And there might be tickets for the same thing that  
8 happened a year ago.

9                   And let's say in February of 2016, the  
10 relevant time period, one of my drivers got 7 tickets  
11 for the same thing because we didn't know he was  
12 doing it -- we don't know what they're doing; we're  
13 not there when they're doing it -- and I'm just  
14 finding out about it now. Well, I couldn't have  
15 solved the problem.

16           MR. BARR: The 10 tickets weren't all at the  
17 same the address.

18           MR. PERL: Well, let me put it this way:

19                   There's 10 or 20 tickets they've told  
20 you about. And if it's not that many tickets, then  
21 don't worry about it. Don't put them in there. I  
22 think they know that they're piling the tickets on

1 now because one of their main arguments -- this I do  
2 know from talking to them -- is the amount of tickets  
3 that you're getting is a problem and the types of  
4 tickets that you're getting is a problem.

5 So if you don't tell me about these  
6 tickets a year ago, I can't solve the problem because  
7 I don't know it exists; and that's not fair. I should  
8 have had an opportunity to solve these issues and  
9 these tickets within the last year, which I would  
10 have done. Because you know, and you know me in this  
11 courtroom. I resolve as much as I can as timely as I  
12 can, including 85 tickets that we're resolving now.

13 So I don't think it's fair to give me  
14 more tickets now that they're going to use against us  
15 that I didn't know about when, by the way, when they  
16 knew about it. Because they opened up the files --

17 MR. BARR: Just because we open up an  
18 investigation doesn't mean that a citation -- you  
19 know, a citation wouldn't have been written. I  
20 citation gets written, and then it gets forwarded to  
21 me.

22 JUDGE KIRKLAND-MONTAQUE: When were these

1 written?

2 MR. BARR: These citations? Off the top of my  
3 head, I don't know. I know I got them at the  
4 beginning of January. All of the files -- we had it  
5 highlighted. And, most likely, it was the one --

6 MR. CHIRICA: There were some such as 15-0875,  
7 and that was just disclosed now in 2017.

8 MR. PERL: 2015, and that was just written. 20  
9 of them are 2015 cases.

10 JUDGE KIRKLAND-MONTAQUE: Well, let me ask  
11 this:

12 Since you're not going to actually  
13 have a hearing on individual citations and these are  
14 new to Lincoln -- so you haven't resolved them; you  
15 haven't paid them, or anything of that nature -- what  
16 would you use that, just in your numbers, to say that  
17 they -- without it being adjudicated or addressed?

18 MR. BARR: I envisioned how we will use them,  
19 but at the same time it's based on their questions.  
20 I'm supplementing our answer for that time period.

21 So it's of kind Catch 22. If I didn't  
22 give them to him --

1           MR. PERL:  You know what they're using them  
2 for?  They're using them to show that we've got more  
3 tickets than less.

4           JUDGE KIRKLAND-MONTAQUE:  Well, I'm just  
5 looking at both sides.  I'm trying to -- if you're  
6 not going to look at them individually --

7           MR. PERL:  Well, these tickets here now, Judge,  
8 the new tickets we're getting, there's like 40 of  
9 them.

10          MR. BARR:  If you count the ones at the bottom,  
11 those are ones that now that we've defined the  
12 scope -- you know, what we talked about yesterday, I  
13 said that I would resupplement Questions 22, 29, and  
14 30.  Some of those would go out since we defined the  
15 scope; so they wouldn't part of the --

16          MR. PERL:  Now, there's actually -- if you want  
17 to know the amount of new ones, it's not 10 or 20;  
18 it's 35.

19          MR. BARR:  No.  What I'm saying is it's just  
20 going to be these ones here, and maybe some of them  
21 down here.

22          MR. PERL:  But if you count just these ones



1 here, that's 35 tickets right there. And I'm only  
2 counting the yellow ones. I'm not even counting the  
3 other ones.

4 MR. BARR: In between the spaces, those were  
5 already provided. It's just the highlighted ones.  
6 These are the new ones that, and I'm assuming some of  
7 them are down here; but it's not all of these 15  
8 ones. I can show you what was provided on September  
9 23rd. These will all be entered, except for the  
10 highlighted ones.

11 MR. PERL: It's still close to 40.

12 MR. BARR: But the 40, after we define the  
13 scope -- now that we've defined the scope until  
14 March, some of them are going to go away. So when I  
15 resupplement the answers, as we discussed yesterday,  
16 you're going to have less.

17 MR. PERL: And so, again, my big problem is  
18 that they were hanging on to these for quite a while.  
19 They wrote the other tickets in that time period.  
20 And adding them on now puts us at a disadvantage  
21 because it's 20 or 25 more tickets that they're  
22 going to claim we got, which is one of the reasons

1 that they're saying we should lose our license,  
2 because we have so many tickets.

3 MR. BARR: We can argue the number of citations  
4 that are written. They can make the same argument.  
5 We know we don't have a very good argument when we  
6 say, Well, these are still pending and they haven't  
7 been adjudicated one way or another. I mean, that's  
8 the argument they're going to make, which we fully  
9 expect them to make.

10 JUDGE KIRKLAND-MONTAQUE: They don't have the  
11 opportunity to, like they did with these 85, to reach  
12 an agreement one way or the other.

13 MR. BARR: I mean, if Counsel wants to sit down  
14 and discuss these 16 citations, I'm more than open to  
15 make time to discuss them.

16 MR. PERL: Are you saying that the relevant  
17 time period is the violation occurred before March  
18 22nd, 2016 or the ticket was written before March  
19 22nd, 2016?

20 MR. BARR: It should be from the event, from  
21 when the tow happened, not when the ticket was  
22 written. So if a tow happened February 1st of 2016

1 and the citation, after the investigation, was  
2 written, say, in July -- I don't know; I'm just  
3 throwing out some things here -- that should count.

4 MR. PERL: No, that shouldn't count because the  
5 ticket wasn't written in the relevant time period. I  
6 thought we were talking about when the ticket was  
7 written. Aren't we talking about when tickets are  
8 written here, not when the violation allegedly  
9 occurred? Because those are the dates we've been  
10 going by, when the ticket was written.

11 They should be held to the March 22nd  
12 date, the date the ticket was written, not when the  
13 event occurred.

14 MR. CHIRICA: Say if they wrote a ticket  
15 yesterday and gave it to Ben on the spot, but the  
16 ticket was for something that happened in July of  
17 2015 --

18 MR. BARR: The Commission should be allowed to  
19 investigate these complaints whether it's working  
20 with witnesses, working with property managers. And  
21 some people just don't get back to us.

22 JUDGE KIRKLAND-MONTAQUE: The problem is,

1     though, we have to cut it off. We have to look  
2     within a certain -- we'll be here forever. We need  
3     to just create a window.

4             MR. BARR: And I think that's where we are.  
5     The window is July 2015 to March 2016. And we're  
6     going to argue that the tow that happened, the events  
7     that happened involving Lincoln Towing during that  
8     period should be investigated.

9             And we're willing to send every  
10    investigation file during that period that they don't  
11    already have, Bates stamped, right after this  
12    hearing.

13            JUDGE KIRKLAND-MONTAQUE: Let me ask you this:

14                    The answer that they updated in  
15    September that went back to -- that they gave you  
16    information up to March, what type of information?  
17    Was it citations?

18            MR. CHIRICA: The one that I believe your Honor  
19    is holding was given around December 19th; and the  
20    dates there they have are through the March date.

21            JUDGE KIRKLAND-MONTAQUE: Okay. Hold on one  
22    second. Now, this answers says, "See also copies of

1 the following investigation files opened between July  
2 24th and March 22nd, 2016 that resulted in the  
3 issuance of administrative citations".

4 So the administrative citations had to  
5 have been issued after the March 22nd date, I would  
6 think.

7 MR. BARR: Correct.

8 JUDGE KIRKLAND-MONTAQUE: Look at the answer.

9 MR. BARR: The investigation was open.

10 MR. PERL: Well, that one they're not using  
11 anymore. 15-0888 they said they're not using.

12 JUDGE KIRKLAND-MONTAQUE: Okay. But the  
13 wording of the answer...

14 MR. PERL: Okay. We were issued tickets by  
15 this date.

16 JUDGE KIRKLAND-MONTAQUE: It sounds to me like  
17 the investigation was by that date, and the tickets  
18 probably were issued after the date.

19 JUDGE KIRKLAND-MONTAQUE: Because if the  
20 investigation ends today, then more than likely I'm  
21 going to write a citation today or tomorrow.

22 MR. PERL: You would think. But they obviously

1 didn't do that because we're just getting tickets  
2 from 9 months ago.

3 MR. BARR: Because some investigations take  
4 longer than others.

5 And to be frank with you, your Honor,  
6 you know, we reach out to Lincoln Towing. Our  
7 officers reach out to Lincoln Towing for copies of  
8 contracts. We don't get a response. They get no  
9 response from anybody from Lincoln Towing. So  
10 sometimes the investigator will just say, "You know  
11 what? I'm not going to get a response. I'm going to  
12 write the ticket."

13 MR. PERL: Absolutely not true. They stopped  
14 reaching out to us a year ago. They no longer call.  
15 They just write tickets. Geisbush, I don't know if  
16 he even writes tickets to anyone else, only Lincoln  
17 Towing. They never call us anymore. They just write  
18 tickets and give them to them.

19 My client has been complaining to me  
20 for months. He said, "Allen, they never even call us  
21 anymore. They just write tickets", since this has  
22 been opened.

1           JUDGE KIRKLAND-MONTAQUE: Okay. We've got to  
2 resolve this one way or the other. I think that the  
3 time frame being established between July 24th, 2015  
4 and March 22nd, 2016, that's the period of time that  
5 events could have occurred.

6                   And if citations were written after  
7 that, but by no later than today, and Staff has them,  
8 then he can supplement his answer with any of those  
9 citations. To give Lincoln the opportunity to address  
10 this new information, I think it's fair to give you a  
11 little time to look at them and determine if there's  
12 anything further you need to do. But I don't want  
13 this to hold up us moving towards an evidentiary  
14 hearing. These are the steps we're taking.

15           MR. BARR: I agree, your Honor. The only  
16 request I'd make really of Counsel is that I just be  
17 able to -- I can send them file through our online  
18 file share that I think Counsel can use, all of the  
19 Bates stamped investigations for that time period.

20                   I would just ask until -- you know, to  
21 supplementa our actual responses, given the late hour  
22 tonight, that I could give them a hard copy of the

1 discovery requests. They'll have all of the  
2 investigation files. The only thing I would need to  
3 go through and do is edit out the numbers to match up  
4 that period.

5                   So I have the files ready to send  
6 them. It's just a matter of uploading them. I would  
7 just ask that tomorrow, Friday at the latest, the  
8 opportunity to actually sign the documents and send  
9 them to him.

10           MR. CHIRICA: Would it be possible, Ben, for  
11 you, in your interrogatory answers, to refer to which  
12 Bates stamped numbers apply to it?

13           MR. BARR: I'm not going to go through a  
14 thousand documents. They all have the investigation  
15 numbers on them. And you can see -- in the file, you  
16 can just scroll down and see the investigation file.  
17 I'm not going to take 2 weeks' worth of time and do  
18 that.

19           MR. PERL: Well, just for clarity, that's what  
20 we typically do in litigation. That's how it's done.  
21 But, again, I know this is not exactly the same as  
22 standard litigation, but that's the way you do it so



1 the other side doesn't have to sift through boxes and  
2 thousands of documents to figure out what matches up  
3 with what.

4 JUDGE KIRKLAND-MONTAQUE: Are you doing it  
5 electronically?

6 MR. BARR: Yeah. But it's all in sequential  
7 order. So Investigation 160001 and then all of the  
8 pages for that, it's numbered at the top. They have  
9 our golden rod sheet that has, you know, where it's  
10 signed off. And then they have the investigation  
11 report that says 160001 -- I'm just using that as an  
12 example. And then we'll send 10 pages after that.  
13 You'll will see another golden rod page that says  
14 160002.

15 JUDGE KIRKLAND-MONTAQUE: What was your  
16 question?

17 MR. CHIRICA: My question is the document on  
18 the CD that I got from Ben -- I think it was last  
19 week or maybe the week prior -- it was a DVD. I put  
20 it in my computer, and there was one file on it. It  
21 was called Q29 file. The file was a PDF that had, I  
22 think, 1800.

1 MR. BARR: It was not 1800. It was 1100.

2 MR. CHIRICA: Or 1100. It might have been  
3 1100. I don't know. It was over a thousand pages.  
4 And they were Bates stamped, but there were a  
5 thousand pages to one document. And you can scroll  
6 through, but it's just all --

7 MR. BARR: It's every investigation file one  
8 after another.

9 JUDGE KIRKLAND-MONTAQUE: Okay. What was your  
10 question?

11 MR. CHIRICA: So if I'm looking at his  
12 interrogatory request and it says everything that  
13 Geisbush is going to -- that Officer Geisbush will  
14 testify to -- it says, "Any and all of his reports".

15 And I think here in one of them he  
16 might list -- well, that's the older one. In the  
17 newer one he might list all of these citation  
18 numbers. But for me to find them -- it's kind of  
19 difficult to find them if he doesn't say, "Well,  
20 Geisbush will testify to Bates numbers this through  
21 this".

22 MR. BARR: If it's as simple as searching the

1 document by hitting Control F and typing in the word  
2 "Geisbush", and his name is going to come up. He  
3 just has to hit enter to find him.

4                   Every investigation is signed off by  
5 the officer and says who does it. I don't think Staff  
6 needs to spend more time and delay this process even  
7 further. I mean, I'd be more than willing to send  
8 these documents to them today, but given this late  
9 hour --

10           JUDGE KIRKLAND-MONTAQUE: Let me ask you this:  
11 Did you send them -- what was the order? Was it  
12 chronological?

13           MR. BARR: 99 percent are chronological except  
14 for the ones that I just recently received. I put  
15 them at the end.

16           JUDGE KIRKLAND-MONTAQUE: So if you've got a  
17 date, you can kind of figure it out?

18           MR. BARR: I don't know if we need to  
19 reorganize them. If that's how Staff wants them --  
20 or, you know, Counsel wants them, they can play  
21 around and reorganize them.

22           JUDGE KIRKLAND-MONTAQUE: I'm just trying to

1 understand what the issue is. It sounds like you can  
2 find....

3 MR. PERL: We could do anything. But all the  
4 way through Staff always complains that the reason  
5 they don't do things is because they take too long.  
6 And I have found, historically, that the more you do  
7 that and complain about it it takes even longer. So  
8 I have found that doing things the right way the  
9 first time usually takes less time than arguing about  
10 it 10 times, which is what we always do here, to get  
11 to the same point, and then we've wasted more time.

12 And I don't believe -- Staff says time  
13 is wasting. We haven't wasted any time. If we'd  
14 received the documentation that we wanted timely, we  
15 would have had a hearing already.

16 MR. BARR: The documents, except for the ones  
17 that I just received, were tendered to Counsel back  
18 in September. So I don't think Staff should be  
19 required to take the time to look through every  
20 investigation file and say, "Investigate 16001 is  
21 Bates stamped 01 to 10". It's just going to delay  
22 the process.

1           MR. CHIRICA: Well, not for each one, just for  
2 each question. So Question 29 is going to be from 1  
3 to a hundred.

4           MR. BARR: 29 and 30 encompass 22. There's  
5 more listed in 29 and 30. And 22 -- actually, it  
6 might be the same. So 22, 29, and 30 might be the  
7 same response in terms of number of files.

8           MR. PERL: I mean, we have them all, Ben.  
9 There's no question about it.

10          MR. BARR: To be honest, it's a ridiculous  
11 request. It's just going to delay this process even  
12 more to ask for them to be Bates stamped. You came  
13 in here last time and you said you wanted them Bates  
14 stamped, and I Bates stamped them. Now you're coming  
15 in here saying that you want them in this order, in  
16 that order. I mean, we're just delaying the process  
17 even further. We're wasting time.

18          MR. PERL: Let's just agree that -- we'll live  
19 with it. But just so you know, for the record, the  
20 delay is caused by Staff and not us because you guys  
21 don't do litigation, typically; and you don't do it  
22 properly.

1                   So all you've got to do is, when you  
2 look at Discovery Request No. 29, you say, "Please  
3 Bate stamped Nos. 1 through 42 for No. 29". That's  
4 how everyone does the discovery. To say that it's  
5 causing a delay, of course it takes longer to do it  
6 that way. It does. It takes longer to take the  
7 short time to not give us any documents when you do  
8 it that way.

9                   So we'll live with it. We'll spend  
10 the time and attention to do so there's no further  
11 delay caused.

12                  MR. BARR: At this point, your Honor, I would  
13 just ask that we set a date for when depositions have  
14 to be taken by and we actually set the fitness  
15 hearing today.

16                  JUDGE KIRKLAND-MONTAQUE: But you need time to  
17 respond.

18                  MR. PERL: I do. And I haven't even received  
19 it yet. So Counsel wants me to figure out a date  
20 without having given me the supplemental documents.

21                  MR. BARR: It's for 10 investigation files.

22                  MR. PERL: Okay. So let's limit it to 10 then.

1 On the record, let's limit it to 10. Counsel says to  
2 you that it's for 10, but it's not 10.

3 JUDGE KIRKLAND-MONTAQUE: All right. Less than  
4 20.

5 MR. BARR: Less than 20. I can't certify the  
6 number, but I can tell you it's not that large.

7 MR. PERL: Okay. So it goes from 10 to 20 to  
8 not that large.

9 JUDGE KIRKLAND-MONTAQUE: Well, it's not exact.  
10 I get that.

11 MR. PERL: Okay. But that's why we don't know.

12 JUDGE KIRKLAND-MONTAQUE: But less than 20 is  
13 not --

14 MR. PERL: He doesn't know that, though. He's  
15 not really saying that.

16 JUDGE KIRKLAND-MONTAQUE: No. No. We're just  
17 saying less than 20 right now.

18 MR. PERL: Are we?

19 MR. BARR: I'm saying, roughly, 20.

20 JUDGE KIRKLAND-MONTAQUE: Do you want to check?

21 MR. BARR: I can go check now, but it's just  
22 wasting -- I mean, if you want me to count out each

1 one, I can go see.

2 JUDGE KIRKLAND-MONTAQUE: I just want to give  
3 them a realistic time to reply.

4 MR. BARR: Let me go check.

5 (Whereupon, brief a recess was  
6 taken.)

7 MR. BARR: It's exactly 10.

8 JUDGE KIRKLAND-MONTAQUE: Perfect. So 10, I'm  
9 thinking how many days? 20?

10 MR. PERL: 2 weeks.

11 JUDGE KIRKLAND-MONTAQUE: So let me look.  
12 What's the date?

13 MR. PERL: 14 days to review if they are 10 new  
14 files.

15 JUDGE KIRKLAND-MONTAQUE: There are going to be  
16 10.

17 MR. CHIRICA: And to clarify, the document that  
18 you sent us are searchable?

19 MR. BARR: I believe so.

20 JUDGE KIRKLAND-MONTAQUE: Let me ask this,  
21 because I thought of that same thing:

22 So if your signing your name...



1 MR. CHIRICA: That doesn't come up.

2 MR. BARR: You can make it searchable in a PDF.  
3 I don't know what it's called, but you can.

4 MR. CHIRICA: If you have the software for it.

5 MR. PERL: The only reason we raised this is  
6 because, again, Counsel said earlier, "All you've got  
7 to do is type in the name, and it'll come up".

8 MR. BARR: That's how system works.

9 MR. PERL: But you're the one giving it to us.  
10 You should know that.

11 MR. CHIRICA: So now he's got 10 files only.  
12 And they're somewhere in the 11,000.

13 MR. BARR: No, they're the last 10. As I  
14 previously stated, they're the last 10 from the  
15 11,005 documents that you got on September of 2016.

16 MR. CHIRICA: Just the last 10?

17 MR. BARR: The last 10. Because I didn't go  
18 back in and try to order them in by date, which is  
19 what I said earlier. I put them at the end.

20 JUDGE KIRKLAND-MONTAQUE: Okay. That's not a  
21 big deal.

22 MR. CHIRICA: All right.

1           JUDGE KIRKLAND-MONTAQUE:  Okay.  So today's the  
2  1st.  2 weeks is going to be the 15th.  February 15th  
3  will be the time by which Lincoln reviews the files  
4  and what?  What else might happen by that day,  
5  Mr. Perl?

6           MR. PERL:  So we can review the files.  And  
7  then I think we can -- since we're finding out now  
8  that Staff is standing on their prior response -- so  
9  they're not adding any witnesses -- at that point in  
10 time we can come up with an idea of how long we  
11 believe it will take to do the depositions; and then  
12 I think we can set a hearing.

13                         You know, let's come back in --

14           MR. BARR:  I don't want to set another status  
15 hearing.  I think we just need to set, you know,  
16 depositions will be taken by this date.

17                         And we're not going to object and say,  
18 you know, "You didn't give us 30 days' notice or 21  
19 days' notice", whatever the rule says.  We're ready  
20 to go.  If he wants to take depositions tomorrow,  
21 let's do it, and then let's get a hearing set before  
22 April.

1           MR. PERL:   Okay.  I'm not ready to go.  And I  
2   told the Court last time that I have, like, 2 or 3  
3   trials scheduled.  I was given 90 days to do the  
4   depositions; that's what we agreed to.  60 days for  
5   them to give them to me, which they took the 60 days.  
6   And I was given 90 days.  And we can certainly go  
7   back in record, if we want to, and find that.

8           MR. BARR:  I'm not disputing it, but I think  
9   that time fram is a little rich.

10          JUDGE KIRKLAND-MONTAQUE:  Well, given that  
11   they're only 5 --

12          MR. BARR:  5 officers, one who is on leave,  
13   which we may or may not be able to call.

14          MR. PERL:  Well, I guess you can't call him  
15   either.

16          MR. BARR:  But that's my point.  I mean, if you  
17   can't take a deposition of an officer because he's on  
18   leave, obviously we can't call him.

19          JUDGE KIRKLAND-MONTAQUE:  So the universe is  
20   small in terms of these witnesses.

21          MR. PERL:  So this is why I made this  
22   recommendation:  I have a bunch of trials going on,

1 including right now, and next week it's going on. I  
2 would like to take the 14 days that you were going to  
3 give me to review these new files, come back in 15 or  
4 16 days. I will give you an idea from my schedule of  
5 how long it will take me to do these depositions, and  
6 then we can set a hearing date.

7 I don't know what else to tell you.  
8 Otherwise, I want my 90 days that I was given because  
9 they were given 60, and they used them all. And I  
10 didn't argue that 60 days was too many. And they  
11 literally used up to their 60th day, today, to do it.  
12 And I was given 90.

13 MR. BARR: We cut our witness list short to try  
14 to advance this even further in order to get this to  
15 a hearing.

16 MR. PERL: They cut their witness list short  
17 because I pounded it in to them that they didn't need  
18 these people because it would take forever. It  
19 wasn't their doing. It was my doing.

20 JUDGE KIRKLAND-MONTAQUE: All right. All  
21 right. Okay. I just think 90 days, that's 3 months.

22 MR. PERL: So that's why I'm asking you to let

1 me come back here in 15 days.

2 MR. BARR: Why can't we set it today? And then  
3 if for some reason he finds for these 10  
4 investigation files, that are not very big at all,  
5 that he has to have more time to review them and more  
6 time to take the depositions, they we can --

7 MR. PERL: Listen, I thought I was coming here  
8 today getting 90 days. That's what I was told. So I  
9 scheduled my other life -- my personal life, Spring  
10 break, all of my other trials -- around me getting 90  
11 days from today to finish discovery; and then we were  
12 going to have a hearing thereafter. That's what we  
13 said the world was.

14 I'm finding out today that that might  
15 not be the case. I need to go back to my office,  
16 figure out my actual other cases in life, and then  
17 I'll come back here. Otherwise, I want the 90 days  
18 that we agreed to.

19 JUDGE KIRKLAND-MONTAQUE: Let me throw this out  
20 there -- and, if I recall correctly, I think that  
21 scheduleing was your suggestion; and that was fine  
22 because you were just thinking in terms of how much

1 time you would need. You know, you said 60 days for  
2 him, and we set 90 days for you to do the deposition.

3 MR. BARR: My question is, what would happen if  
4 they come back and say there's nothing new in these  
5 investigation files, and it's not going to take as  
6 much time? What's going to happen then? Is it going  
7 to take 75 days for depositions?

8 MR. BARR: I'm going to figure out between now  
9 and then -- remember, it isn't just so easy to start  
10 taking depositions tomorrow. I have to now formulate  
11 my questions. I have to go through the files and  
12 actually get this done. Based upon the limited  
13 amount of -- I have almost no information in their  
14 interrogatories, which I said I would agree to  
15 because I want to get this done quickly. But every  
16 time I agree to give in to something I don't want  
17 this to turn around and bite me in the behind. I  
18 mean, I really should be just objecting to these  
19 interrogatories and asking for more, but I said I  
20 won't. I'll forget doing that to save even more  
21 time.

22 So all I'm saying to your Honor is

1     since I thought I was getting 90 days and I plan --  
2     by the way, over the last 60 days -- and it wasn't my  
3     suggestion. Ben said he needed 60 days. He could  
4     have said 6 days. I don't know why it took him 60  
5     days to do what we did. It shouldn't have. If all  
6     he was doing was living with these 5 witnesses, what  
7     took 60 days to do that?

8             MR. BARR: We had to go through and evaluate  
9     every file.

10            MR. PERL: Okay. But, see, I don't get to. I  
11     don't get to evaluate everything.

12            MR. BARR: You've had every file since  
13     September.

14            MR. PERL: But so did they.

15            MR. CHIRICA: You just gave us new files.

16            MR. PERL: They took 60 days just to figure out  
17     their witness list. Don't I get 90 days to finish  
18     what I'm doing and take the depositions? It took them  
19     60 dayd.

20                         By the way, they had all of their  
21     files. They said I had the files. So did they.  
22     They created them. They didn't get any new files.

1 And they needed 60 days to do that; and I said, Okay.  
2 Now I want 90 days.

3 JUDGE KIRKLAND-MONTAQUE: Here's my suggestion:  
4 You have the 2 weeks to review the  
5 files that would get us to February 15th.

6 MR. BARR: Is that a new status date?

7 JUDGE KIRKLAND-MONTAQUE: No. That's the date  
8 by which he's going to review the files.

9 Can we come back at that time, and  
10 you'll give us an idea?

11 MR. PERL: That's what I was saying.

12 JUDGE KIRKLAND-MONTAQUE: Okay. That's what  
13 you're saying. But I'm just going to throw this out:

14 Assuming there are no other glitches,  
15 and you've got these 5 witnesses, do you think it's  
16 possible to have, rather than the 90 days, more like  
17 65, 70?

18 MR. PERL: I do. But all I want to do is --

19 And, by the way, Judge, just so we're  
20 clear -- and I don't want to overstate my case here.  
21 But I'm not limited to deposing people that they only  
22 gave as witnesses. I can depose other people, too,



1 that they've used in investigating their files. Just  
2 because they're not putting them forth as witnesses,  
3 if I believe they can help my case, I think I can  
4 depose them. So I want to go back to my office and  
5 look at that as well because there's other people --

6 MR. BARR: Every officer who's written a  
7 citation to you is on that witness list.

8 MR. PERL: But they're not the only ones that I  
9 can depose. There's no such thing as I can only  
10 depose who their witnesses are. I can depose whoever  
11 I want to in this case. I can depose third parties  
12 if I want to. I can depose anybody. So I'm not  
13 limited to just deposing these 5 people in this case  
14 just because they've limited these to their  
15 witnesses. I can certainly depose other people if I  
16 want to.

17 I need to go back to my office. Now  
18 that I know there are these 5 people, I have to  
19 reevaluate this. It took them 60 days to figure that  
20 out, 60 days just to figure out that they weren't  
21 going to call third parties. But I need some time  
22 to -- I don't want 60 days to figure it out. I want

1 some time to figure out now what I'm actually going  
2 to do in my case.

3 Because now the world has kind been  
4 defined; right.

5 JUDGE KIRKLAND-MONTAQUE: Right.

6 MR. PERL: But just rihght now at this moment.

7 JUDGE KIRKLAND-MONTAQUE: And let me say this,  
8 too: The 60 days that he initially got, I was under  
9 the impression that he was probably going to bring in  
10 some third parties, which would require a little more  
11 to do on his part.

12 But now that we're limiting it to  
13 the -- and I understand you can do other witness. But  
14 I think we've got a very narrow list of witnesses  
15 here; and he's trying to --

16 MR. BARR: We're trying to speed this up.  
17 Because at one point Counsel was arguing that this is  
18 taking too long; and at another point he's say  
19 that --

20 MR. PERL: You're only going to hear me say one  
21 thing in litigation ever. It goes the way it goes,  
22 and that justice has to be served whether it takes 10

1 years or 10 days. You don't count it by that. You  
2 actually have to get discovery done. Everything gets  
3 done properly. There's no, like, Oh, my God, now  
4 we're in a hurry because they took 60 days.

5 He could have told us this 59 days  
6 ago, and I could have taken the depositions by now,  
7 but they didn't do that. And if you want to talk  
8 about delays, what in the world takes 65 days tell  
9 me, Okay, We're going to stand on our 5 witnesses.

10 MR. BARR: We evaluated every file based of  
11 whether they're a good witness, whether the facts  
12 matched up, or whether --

13 MR. PERL: I could do my dep preparation until  
14 I know that. I'm finding out now, at 4:00 o'clock,  
15 that this is the world. Don't you think I now have  
16 to do exactly what they did and took 60 days to do  
17 before I could take one deposition?

18 I have to look at every file -- all  
19 Sulikowski you stuff, all Geisbush's because they  
20 haven't limited anything from me. Literally now,  
21 they've told me that he's going to testify as to  
22 every single ticket he's every written -- not

1 testify, but now that's the basis. So now I've got  
2 to go back and look at every single ticket that each  
3 one of these people wrote through 1100 pages.

4 MR. BARR: They've had those investigation  
5 files since September.

6 MR. PERL: But I didn't know what I was doing  
7 up until today. So I couldn't prepare for my  
8 depositions until today. It's going to take me weeks  
9 just to prepare. And, by the way, as Counsel stated,  
10 there's 1100 pieces of paper for us to look at.

11 MR. BARR: You've had it since September.

12 MR. PERL: You had them, too; but you took 60  
13 days just to figure this out. So how is it possible  
14 Staff could take 60 days to figure out there's no  
15 more witnesses, but I can't take 60 days to figure  
16 out how I'm going to do my depositions, when that's  
17 the most important part of my case?

18 And, by the way, cases are won and  
19 lost in depositions. We all know that. That's when  
20 the cases really are won and lost. So I can't just  
21 start taking depositions tomorrow because I'm not  
22 prepared yet.

1           MR. BARR: Your Honor, each day that this case  
2 gets drug out longer and longer and longer it harms  
3 the people that are subject to the deceptive  
4 practices of Lincoln Towing.

5           MR. PERL: And you want to know what? Each day  
6 that the Illinois Commerce Commission wastes the  
7 people's money and resources, it harms everyone in  
8 the State of Illinois.

9                   And the real story here is how much  
10 money the people -- that comment was totally uncalled  
11 for because most of their tickets have nothing to do  
12 with the ticket; and he know it. So to say that  
13 there's deceptive practices is wrong. The problem is  
14 the Illinois Commerce Commission. That's the realy  
15 problem here; and that's what we should talk about.

16           MR. BARR: I meant unauthorized tows and  
17 illegal tows. I will give you that I should not have  
18 said "deceptive practices".

19           JUDGE KIRKLAND-MONTAQUE: All right, guys.  
20 Here's the deal: I want to see -- I want to target  
21 the end of April.

22           MR. PERL: For...?

1 JUDGE KIRKLAND-MONTAQUE: Evidentiary.

2 MR. PERL: I'm not never going to be able to do  
3 it by then. There's no chance.

4 MR. BARR: At the present time, your Honor,  
5 we're going to be setting a new fitness hearing for  
6 the July --

7 MR. PERL: I'm just telling you right now that,  
8 in what I have going on in my life, personal and  
9 business, there's no chance that I'm going to be able  
10 to be ready in 3 months to try this case. I just  
11 can't do it. I have to get prepared. It took them  
12 -- again, I'm a broken record. It took them 60 days  
13 to figure out who their witness list is. How can we  
14 go to trial in 90 days?

15 Just give me this, Judge: I mean, I  
16 know that Counsel is pushing us into this, let me  
17 come back here in 2 weeks. Let me figure out my  
18 world, and let me figure out these 10 new case we  
19 got. Let me see how long it's going to take to  
20 prepare for these deps. And I'll tell you right now,  
21 at 4:20, for me to try to figure out how long it's  
22 going to take for me to prepare for these deps, take

1 these deps, and get the transcripts from these deps,  
2 and then look at the deps, and prepare for the  
3 hearing, I can't tell you that right now how long  
4 it's going to take.

5 But I can tell you that after I've  
6 literally had maybe 14 days -- not 60 -- but I'll  
7 take 14 days to figure it out. And I'll come back  
8 and tell you, with my trial schedule, and Spring  
9 break, and whatever else I've got going on, when we  
10 can try the case. Because the most important thing  
11 is getting it tried properly not getting it tried  
12 quickly.

13 MR. BARR: Your Honor, this is a hypothetical.  
14 If I said we're not going to include those 10 files,  
15 the answer would still be the same. We wouldn't set  
16 a date. We'd just set it down the road, and I don't  
17 know -- the answer would still be the same. He  
18 doesn't know when depositions are going to be taken.  
19 He doesn't know when he'll prepare for them. And he  
20 doesn't know when there's going to an  
21 evidentiary hearing. We're arguing over less than a  
22 hundred pages.

1           MR. PERL:  When I walked into this room today,  
2   I was under the assumption that the rules still  
3   applied.  Maybe they don't.  But the rules were --  
4   and it wasn't just me saying it.  It was all of us,  
5   and it's in the record -- 60 days for them to give me  
6   their new list, which they're doing today; and 90  
7   days for me to depose whoever the -- not based on how  
8   many witnesses there are -- 90 days to depose the  
9   witnesses; and that's what I relied upon.

10                    So guess what I haven't been doing the  
11   last 60 days?  Preparing.  Because I was told I  
12   didn't have to.  So I didn't prepare for any  
13   depositions up till now.

14           JUDGE KIRKLAND-MONTAQUE:  Here's what we're  
15   going to do --

16           MR. PERL:  I really need the 90 days, to be  
17   honest with you.  Now that I'm thinking about it,  
18   Judge, I really do need -- I need the 90 dayss.  My  
19   life isn't just one case.  So I didn't prepare at all  
20   between now and then because I thought I had 90 days.  
21   I can FOIA our last hearing before, but I was told I  
22   was going to get 90 days; that's what I want.  And



1 I'll agree to that today. I don't need any more time  
2 to evaluate.

3 JUDGE KIRKLAND-MONTAQUE: No. What I want you  
4 to do is come back in 2 weeks with the target of --  
5 you say you can't do 60, but no later than the second  
6 week of May.

7 MR. PERL: Just remember one thing, Judge --  
8 and, again, as we're going -- we're thinking as we're  
9 going. I literally haven't touched this file in 60  
10 days because I didn't think I had to.

11 MR. BARR: Just because he didn't have the  
12 witness list doesn't mean he shouldn't have been  
13 reviewing the investigation files.

14 MR. PERL: Because I was told I had 90 days to  
15 do it. That's what I was told. So I pushed aside --

16 JUDGE KIRKLAND-MONTAQUE: 90 days was to --

17 MR. PERL: To depose witnesses. That's what I  
18 was told. So what I do is I put the other stuff in  
19 front, like we all do in law -- and maybe the  
20 Commerce Commission is different because they don't  
21 have the case load that I have. But I've got to do  
22 the other stuff first. Now this case gets pushed to

1 the top, like we always do, and then I do everything  
2 the way it's supposed to be done.

3 I can't even believe -- it's a little  
4 bit disingenous for Staff to argue now he's got to  
5 get it done quickly when they've taken -- most of the  
6 delays, if not all, have been because of Staff.

7 MR. BARR: Staff hasn't received a new piece of  
8 discovery from Lincoln Towing since May. In terms of  
9 discovery, every time we've come into these hearings  
10 we get a new --

11 JUDGE KIRKLLAND-MONTAQUE: We can go off the  
12 record.

13 (Whereupon, a discussion was had  
14 off the record.)

15 JUDGE KIRKLAND-MONTAQUE: This status hearing  
16 will be continued to February 16th at 11:00 a.m. here  
17 in Chicago. Thank you.

18 (Whereupon, the above-entitled  
19 matter was continued to  
20 February 16th, 2017, at  
21 11:00 a.m.)

22