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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SUNSHINE TOWING, INC.,

Petitioner,

CASE NO. 04-4481F

vs.

ANCHOR TOWING, INC. AND
DEPARTMENT OF TRANSPORTATION,
Respondents.

ANCHOR TOWING, INC.,

Petitioner,

vs.

CASE NO. 06-4880F

SUNSHINE TOWING, INC.,

Respondent.

**SUNSHINE TOWING'S REPLY TO ANCHOR'S RESPONSE TO MOTION FOR
PROTECTIVE ORDER REGARDING DEPOSITIONS AND VERIFIED MOTION TO
STRIKE FALSE, IMMATERIAL, IMPERTINENT AND SCANDALOUS
ALLEGATIONS IN ANCHOR'S RESPONSE**

SUNSHINE TOWING, INC. ("Sunshine") hereby files its reply¹ to Anchor's response to Sunshine's motion for the entry of a protective order prohibiting Anchor Towing, Inc. ("Anchor") from taking the depositions of John C. Shawde and Paul S. Singerman. In addition, Sunshine moves to strike certain allegations made in Anchor's response as false, immaterial, impertinent, and scandalous. In support thereof, Sunshine states the following:

¹ To the extent that the Court considers it necessary that the movant file a motion for authority to file a reply, the movant hereby moves the Court for the entry of an order allowing this reply to be filed.

1. As more fully set forth below, Sunshine vigorously disputes certain factual allegations made by Anchor in its response, and affirmatively states that certain of these false statements were inserted into Anchor's response for the sole purpose of attempting to embarrass or otherwise impugn Sunshine's counsel as those allegations were never made, and Anchor's inclusion of these patently false statements did not serve any purpose in addressing the legal issues before the Court in Sunshine's motion for protective order.

2. Prior to the July 16, 2007 phone call between Mr. Shawde and Mr. Cody, Anchor never indicated that it sought to take any depositions, from Berger Singerman. The first indication of the possibility of any deposition be taken arose that July 16, 2007 call. During that July 16th call, Mr. Shawde advised Mr. Cody that Berger Singerman, John C. Shawde and Kelly O'Keefe "were not sure if we would avail ourselves of that defense", and that Mr. Shawde would advise Mr. Cody shortly whether or not that defense would be asserted. No other possible depositions were discussed during that July 16, 2007 phone call. The clear import of that conversation was that there would be no need for a deposition of Mr. Shawde, let alone a deposition of anyone else, if Berger Singerman (or John C. Shawde or Kelly O'Keefe) were not intending to rely on section 57.105's safe harbor defense for counsel.

3. That Anchor would want to take the deposition of John C. Shawde only if Berger Singerman (or John C. Shawde or Kelly O'Keefe) were intending to rely on the safe harbor provision of section 57.105 is admitted in paragraph 7 of Anchor's response. Anchor has now changed its position and advised the undersigned, only days before the hearing, that regardless of what position Sunshine or the other respondents take, Anchor intends to take the depositions of Mr. Shawde and Paul S. Singerman without limitation. (See letter dated July 25, 2007 attached as Exhibit A). Anchor's latest position is also completely contrary to its statements in

its July 20, 2007 letter (see attached Composite Exhibit B) which states that "the reason for including Mr. Singerman is that you indicated to me that your firm may be raising the certain defenses Obviously, if you and your firm withdraw your defense under this same provision, I will not need to take Mr. Singerman's depo. I may still need to take yours with regard to matters in your most recent billings, copies of which were provided in response to our interrogatories." Since the respondents have stated that they will not rely on that defense, Anchor's reason for taking the depositions is no longer present.

4. Anchor has also totally misrepresented statements made by Sunshine's counsel for the purpose of poisoning the well in this proceeding. Anchor makes the patently false allegation in paragraph 6 of its response that "Mr. Shawde even stated that there was a possibility that he would be throwing his client under the bus with regard to some of its claims in its protest." **Mr. Shawde categorically and unequivocally never stated that there was a possibility that he or his firm would be "throwing his client under the bus".** Anchor included this statement in its response for the sole purpose of inflaming this Court and prejudicing Sunshine and its counsel. Accordingly, paragraph 6 of Anchor's response should be stricken from the record.

5. The remainder of Anchor's response is without merit. Anchor argues that this Court did not establish any discovery cutoff. Even if this were true, parties are entitled to reasonable notice, and three days notice is insufficient. Anchor attempted to (but did not) serve Mr. Singerman with a deposition subpoena on the afternoon of Monday July 23rd for a deposition on Thursday July 26 in Coral Gables, Florida.. Mr. Singerman is out of the state of Florida, and is not able to rearrange his schedule to accommodate a deposition prior to the

hearing. Anchor served Mr. Shawde with a subpoena on Monday, July 23rd at 2:45pm for a deposition on July 26th (see attached Composite Exhibit B).

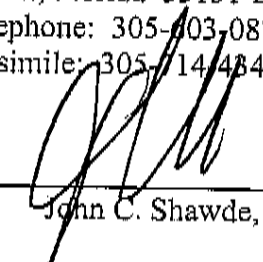
6. Anchor next asserts that "Sunshine Towing cannot have it both ways, requiring opposing counsel to testify, while attempting to keep its counsel closeted." This is simply false. Sunshine, John C. Shawde and Kelly O'Keefe are prepared to testify at the fee hearing under the scope of the rulings entered by this Court, just as Miguel DeGrandy and Stephen Cody are required to testify. The motion for protective order is solely related to Anchor's last minute attempts to take certain depositions, not to preclude testimony at trial.

7. For the foregoing reasons, Sunshine requests the entry of a protective order prohibiting Anchor from taking the depositions of John C. Shawde or Paul S. Singerman (or any other depositions at this late date). Furthermore, Sunshine requests that this Court strike from the record in this case paragraph 6 of Anchor's response as false, immaterial, impertinent and scandalous.

WHEREFORE, Sunshine requests that the Court enter an order prohibiting Anchor from taking any depositions in connection with this matter, including but not limited to the depositions of John C. Shawde and Paul S. Singerman, striking paragraph 6 of Anchor's response, and such further relief as this Court deems just and proper.

Respectfully submitted,

BERGER SINGERMAN
Attorneys for Sunshine Towing, Inc.
200 South Biscayne Boulevard, Suite 1000
Miami, Florida 33131-2398
Telephone: 305-403-0879
Facsimile: 305-714-4340

By: 

John C. Shawde, Esq.

Florida Bar No. 449784
jshawde@bergersingerman.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via facsimile and U.S. Mail, postage prepaid to: Miguel De Grandy, Esq. and Stephen M. Cody, Esq., Miguel De Grandy, P.A., 800 Douglas Road, Suite 850, Coral Gables, Florida 33131; and C. Denise Johnson, Esq., Florida Department of Transportation, 605 Suwannee Street, Tallahassee, Florida 32399-0450 this 26th day of July, 2007.

By: _____

John C. Shawde
Florida Bar No. 449784

VERIFICATION

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared John C. Shawde, who swears after being duly sworn upon oath that he has read the foregoing Motion and that all facts stated therein are true and correct and based upon his first hand knowledge.

By: _____

Name: John C. Shawde



Shakita Smith
Notary Public, State of Florida

Commission No. DD 653669
My Commission expires: 3-21-2011

07/25/2007 14:35 FAX

001/002

Miguel De Grandy, P.A.

800 DOUGLAS ROAD., SUITE 850
CORAL GABLES, FL 33134-2088
TELEPHONE:(305) 444-7737
TELECOPIER(305) 443-2616

Fax Transmission

Please Call to confirm receipt _____

Please respond by return fax _____

Call only if transmission is incomplete _____

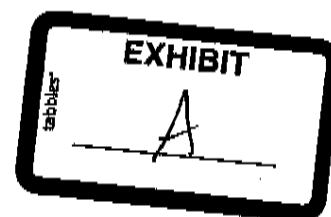
Please Deliver Immediately

TO: John C. Shawde, Esq 305-714-4340
Kelly A. O'Keefe, Esq. 850- 561-3013
FROM: Stephen Cody
Date: July 25, 2007
No of Pages: 2 (Including cover sheet)
Case Name: Anchor Towing v. Sunshine Towing

Please find transmitted herewith

1. July 25, 2007 letter from Stephen Cody to John C. Shawde

THE INFORMATION CONTAINED IN THE FACSIMILE IS ATTORNEY PRIVILEGED FOR THE EXPRESS USE OF THE PARTY NAMED ABOVE. IF YOU ARE NOT THE PARTY NAMED ABOVE OR AGENT FOR THE PARTY, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION OR COPYING OF THIS TRANSMISSION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AT (305) 444-7737 AND RETURN THE ORIGINAL TRANSMISSION TO USE AT THE ABOVE ADDRESS, VIA THE U.S. POSTAL SERVICE. YOU WILL BE REIMBURSED FOR POSTAGE. THANK YOU.



07/25/2007 14:35 FAX

002/002

MIGUEL DE GRANDY P.A.

ATTORNEYS AT LAW

July 25, 2007

Via Facsimile

John C. Shawde, Esq.
Berger Singerman
200 South Biscayne Boulevard, Suite 1000
Miami, FL 33131

RE: Deposition of John C. Shawde, *Anchor Towing v. Sunshine Towing*,
DOAH Case No. 06-4880F

Dear Jack:

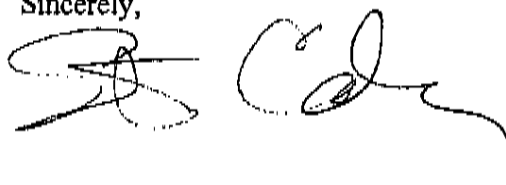
This letter is a follow up to our conversation this afternoon regarding your deposition.

If Judge Cohen denies the motion for protective order regarding your deposition, we intend to inquire of you concerning your firm's billings of Sunshine Towing with regard to the second bid protest, which includes the rates charged by members of your firm, as well as the hours expended for the tasks which were recorded in the bills you provided in response to our interrogatories.

We also reserve the right make inquiries of any matter which is permitted by the Florida Rules of Civil Procedure.

If you have any questions, please contact me at the number below.

Sincerely,



Stephen M. Cody, Of Counsel

cc: Miguel A. De Grandy, Esq.
Kelly O'Keefe, Esq. (via fax)

JUL-26-2007 THU 12:51 PM BERGER SINGERMANN

Jul 20 2007 5:43PM Stephen Cody, P.A.

3056489622

p. 2

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANCHOR TOWING, INC.,

Petitioner(s),

vs.

SUNSHINE TOWING, INC.,

Respondent(s).

Case No. 06-48807

SUBPOENA DUCES TECUM

TO:

JOHN C. SINGERMAN
BERGER SINGERMANN
200 S. BISCAYNE BLVD #1000
MIAMI FL 33131

YOU ARE COMMANDED to appear at MIGUEL DE GUADY, P.A.

800 DOUGLAS RD # 850, CORAL GABLES, FL

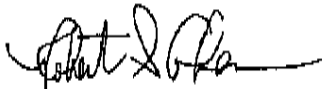
to testify at a deposition/final hearing (strike one) at
3 o'clock P.M., on the 26th day of July, 2007.

YOU ARE FURTHER COMMANDED to have with you at said time and place the following
(use additional paper if necessary):

NOT APPLICABLE

YOU SHALL RESPOND to this Subpoena as directed unless excused by the party who
requested issuance of the Subpoena or by order of this Division.

ISSUED this 16th day of July, 2007, in Tallahassee, Leon County, Florida.


ROBERT S. COHEN
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

THIS SUBPOENA HAS BEEN ISSUED AT THE REQUEST OF:

Stephen Cody (305)444-7737
800 Douglas Road, Suite 850 Coral Gables, FL

EXHIBIT

B

Section 120.569(2)(k), Florida Statutes

(k)1. Any person subject to a subpoena may, before compliance and on timely petition, request the presiding officer having jurisdiction of the dispute to invalidate the subpoena on the ground that it was not lawfully issued, is unreasonably broad in scope, or requires the production of irrelevant material.

2. A party may seek enforcement of a subpoena, order directing discovery, or order imposing sanctions issued under the authority of this chapter by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena or order resides. A failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while a subpoena is being challenged under subparagraph 1. The court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order whenever the court determines that such an award should be granted under the Florida Rules of Civil Procedure.

3. Any public employee subpoenaed to appear at an agency proceeding shall be entitled to per diem and travel expenses at the same rate as that provided for state employees under s. 112.061 if travel away from such public employee's headquarters is required. All other witnesses appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as is provided in civil actions in circuit courts of this state. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement, and in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

Rule 28-106.212, Florida Administrative Code

(1) Upon the request of any party, a presiding officer shall issue subpoenas for the attendance of witnesses for deposition or at the hearing. The requesting party shall specify whether the witness is also requested to bring documents.

(2) A subpoena may be served by any person specified by law to serve process or by any person who is not a party and who is 18 years of age or older. Service shall be made by delivering a copy to the person named in the subpoena. Proof of service shall be made by affidavit of the person making service if not served by a person specified by law to serve process.

(3) Any motion to quash or limit the subpoena shall be filed with the presiding officer and shall state the grounds relied upon.

Specific Authority 120.54(5) FS.
Law Implemented 120.569, 120.57 FS.
History--New 4-1-97.

RECEIVED THIS SUBPOENA ON:

_____, 200____, at _____
o'clock, ____m., and served the same on
_____, 200____, at _____
o'clock, ____m., by delivering a true copy
thereof (together with the fee for one day's
attendance and the mileage allowed by law*)
to: _____

A. COMPLETE IF SERVED BY SHERIFF OR APPOINTEE

_____, 200____,
at _____ o'clock, ____m.
By: _____
Title: _____

B. AFFIDAVIT IF SERVED BY OTHER PERSON

_____, 200____
By: _____

Sworn and subscribed to before me,

this ____ day of _____, 200____, in

_____ County, Florida.

Type of identification: _____

or (check if) ____ personally known.

(notary public)

SEAL:

NOTE: Notarized Affidavit required only if service is made by a person other than a Sheriff, a Deputy Sheriff, or a certified process server. Chapter 48, Florida Statutes.

*Fees and mileage need not be tendered to public employees subject to Section 112.061, Florida Statutes.

MIGUEL DE GRANDY P.A.

ATTORNEYS AT LAW

July 20, 2007

Via Hand Delivery

John C. Shawde, Esq.
Berger Singerman
200 South Biscayne Boulevard, Suite 1000
Miami, FL 33131

RE: Deposition of Paul Steven Singerman and John C. Shawde
Anchor Towing v. Sunshine Towing, DOAH Case No. 06-4880F

Dear Jack:

Since I have not heard from you, I have taken the liberty of setting down your deposition together with the deposition of Paul Steven Singerman. It is my understanding that Mr. Singerman is the managing partner for the Miami office. A subpoena accompanies this letter.

The reason for including Mr. Singerman is that you indicated to me that you and your firm may be raising certain defenses relating to the following provision of section 57.105(1):

However, the losing party's attorney is not personally responsible if he or she has acted in good faith, based on the representations of his or her client as to the existence of those material facts. If the court awards attorney's fees to a claimant pursuant to this subsection, the court shall also award prejudgment interest.

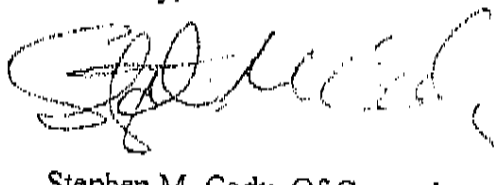
Since the motion for attorneys' fees seeks to assert liability against you and Ms. O'Keefe, individually, as well as Berger Singerman, I need to take Mr. Singerman's deposition, as well as your own, to see whether the defenses available under this "safe harbor" provision for you and your firm differ.

Obviously, if you and your firm withdraw your defenses under the above provision, I will not need to take Mr. Singerman's depo. However, I may still need to take yours with regard to matters in your most recent billings, copies of which were provided in response to our interrogatories.

If you have any questions, please contact me at the number below.

John C. Shawde, Esq.
Berger Singerman
July 20, 2007
Page 2 of 2

Sincerely,



Stephen M. Cody, Of Counsel

Enclosures

Cc: Paul Steven Singerman, Esq.

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