

**STATE OF CONNECTICUT  
DEPARTMENT OF MOTOR VEHICLES**

PETITION OF TOWING & RECOVERY : December 19, 2017  
PROFESSIONALS OF CONNECTICUT, :  
INC. FOR THE CONSIDERATION OF :  
THE ESTABLISHED RATES AND :  
CHARGES FOR THE NONCONSENSUAL :  
TOWING AND TRANSPORTATION OF :  
MOTOR VEHICLES :

**RESPONSE TO POSTHEARING SUBMISSIONS**

In accordance with General Statutes § 4-176, § 14-137-28 of the Regulations of Connecticut State Agencies and Hearing Officer RisCassi's order, the Towing & Recovery Professionals of Connecticut, INC. ("TRPC"), through counsel, respectfully submits this Response to Posthearing Submissions made by Connecticut Legal Services, INC. ("CLS") and the Insurance Association of Connecticut ("IAC"), both dated December 13, 2017.<sup>1</sup>

**I. BOTH SUBMISSIONS IMPERMISSIBLY INTRODUCE NEW EVIDENCE**

According to Hearing Officer RisCassi's order, the Department of Motor Vehicles ("Department") would keep the record open for interested parties to submit comments specifically related to the evidence introduced at the hearing.<sup>2</sup> During the proceedings, Hearing Officer RisCassi made it clear that new evidence would not be allowed as it might disadvantage others involved in the hearing. Accordingly, it is equally clear that Hearing Officer RisCassi intended the posthearing comments to serve as briefs, which would necessarily be limited to the evidence already on the record, with TRPC limiting its comments to those made by CLS and IAC.

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<sup>1</sup> TRPC will address the two posthearing submissions in a single response as their subject matter overlaps.

<sup>2</sup> Neither CLS nor IAC submitted a petition to become a party or an intervenor under § 14-137-38(p) of the Regulations of Connecticut State Agencies. Neither CLS nor IAC requested permission to introduce expert or fact witnesses, or to cross examine any of TRPC's witnesses. Rather, CLS and IAC submitted "testimony" through their attorneys (lobbyists) in the form of oral argument.

In apparent disregard for Hearing Officer RisCassi's order, both CLS and IAC have offered new evidence. This evidence was neither presented beforehand, nor was any proper foundation provided for its admission as full exhibits. Finally, TRPC has not had an opportunity to cross examine those responsible for presenting the evidence to test their credibility and otherwise explore the inherent weaknesses of the proffered evidence. The inclusion of this evidence would prejudice TRPC under these circumstances and would be contrary to just and fair due process. TRPC, therefore, objects to the inclusion of Appendix A and B of CLS' posthearing submission, Attachments 1-2 and 4-6 of IAC's posthearing submission, and the portions of their posthearing submissions addressing this evidence.<sup>3</sup> Without waiving its objection, TRPC will endeavor to respond to the comments made by CLS and IAC, without introducing new evidence in accordance with Hearing Officer RisCassi's order.

## **II. COMMENTS CONCERNING THE NONCONSENSUAL TOWING AND STORAGE BASE RATES**

### **A. The Towing and Recovery Vehicle and Equipment Is the Life Blood of the Licensed Wrecker Service's Operation.**

CLS argues that TRPC's emphasis on the towing and recovery vehicle and equipment is unsubstantiated. (*CLS Br.*, pp. 2-3.) The record, however, reflects that:

- the towing and recovery vehicle and equipment is the core nonhuman operating cost for a licensed wrecker service;
- the price of towing and recovery vehicles and equipment has increased multifold, well beyond the CPI;
- technological changes to passenger and commercial vehicles since the last rate increase, effective January 1, 2007, have required advanced and more expensive towing and recovery vehicles and equipment;

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<sup>3</sup> TRPC also objects to footnote 6 of IAC's brief, which included a link to a Hartford Business Journal article. TRPC does not, however, take issue with Attachment 3 of IAC's posthearing submission, which is a Final Decision issued by the Department. A reference to the Department's rulings is appropriate in a posthearing brief or submission of this nature.

- the enactment of federal emissions standards in 2008 and 2010 have made towing and recovery vehicles and equipment much more expensive to purchase and to maintain and repair, particularly beyond their warranty period; and
- the overall investment to participate in the towing industry, including state police rotational tow lists, has increased significantly as it relates to the vehicles and equipment, such that the investment for light duty towing services is at least \$200,000 and between \$600,000 and \$750,000 for medium duty and over one million for the heavy duty towing vehicles and equipment, without taking into account continued repair and maintenance of those vehicles and equipment.

*(Petition [“Pet.”], pp. 4-5, 13-14, Ex. D; Lambiase Live Testimony.)*<sup>4</sup>

Christopher Lambiase (“Lambiase”), the President of New England Truck Master, Inc. (“NE Truck Master”), also testified that NE Truck Master sells towing and recovery vehicles and equipment to a majority of the licensed wrecker services in Connecticut. He further testified that the trend to purchase new vehicles has decreased from five to seven years to three to five years. This trend is the result of the recent federal emission standards that have rendered the vehicles too expensive to maintain or repair after the warranty period. *(Lambiase Live Testimony.)*

Furthermore, Leland Telke (“Telke”), the Executive Director of the TRPC, testified that towing and recovery vehicles and equipment are being used much more now than before the last rate increase. Telke explained that the vehicles have to operate on a 24/7 basis just to keep the licensed wrecker service in business. *(Telke Live Testimony.)* Lastly, Paul Krisavage, the project manager for the Connecticut Department of Transportation’s (“DOT”) Traffic Incident Management (“TIM”) Program, a training program for first responders developed by the Federal Highway Administration and implemented by DOT after the last rate increase, explained how the Connecticut towing industry has taken the initiative, and incurred significant expense, to equip

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<sup>4</sup> TRPC has not cited to specific sections of the hearing transcript as the hearing transcript is not yet available. TRPC is willing to provide specific transcript citations or to submit proposed findings of fact if requested by the Department upon receipt of the hearing transcript.

their vehicles and to undergo training to assist the State of Connecticut with its TIM Program. (*Pet.*, pp. 11-12, Ex. H; *Krisavage Live Testimony.*)

CLS referred to one licensed wrecker service as a basis to refute TRPC's weighted emphasis on the towing and recovery vehicle and equipment. (*CLS Br.*, pp. 2-3.) This impermissible new evidence does not diminish the emphasis placed on the towing and recovery vehicle and equipment by TRPC.

First, CLS cannot argue, on the one hand, that TRPC has not offered enough evidence to support each operating cost and, on the other hand, provide one example of a licensed wrecker service who apparently has not purchased a new towing and recovery vehicle within the emerging trend as testified by Lambiase. Second, this lone example does not refute Lambiase's testimony, who distributes towing and recovery vehicles across each weight class to a majority of the licensed wrecker services in Connecticut.<sup>5</sup> Lambiase's sworn and credible testimony is more than sufficient to demonstrate this emerging trend. Third, if TRPC could submit new evidence, it would provide a much larger list of licensed wrecker services that have purchased towing and recovery vehicles within that narrowing time period. All of these undisputed facts more than justify the weight attributed to the cost increase of the towing and recovery vehicle.

B. Workers Compensation Insurance Premiums Have Increased for Licensed Wrecker Services.

IAC argues that TRPC incorrectly included workers' compensation premiums as an operating cost that has increased since the last rate increase. (*IAC, Br.*, pp. 6-7.) IAC's submission is very misleading and completely ignores its own documentation.

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<sup>5</sup> CLS also appears to assert that the retention of older towing and recovery vehicles has the result of lowering the tax liability for that particular licensed wrecker service, which by implication, would result in an economic benefit to that service. (*CLS Br.*, p. 2.) This assertion, however, does not take into account the maintenance and repair costs required to keep those vehicles operating (often on a 24/7 basis).

First, as discussed above, this newly submitted evidence should be disregarded. Aside from a direct violation of Hearing Officer RisCassi's order, there is no foundation to authenticate the narrative provided in IAC's submission or to validate the documentation provided. Furthermore, TRPC has been deprived of the opportunity to cross examine the individual or individuals behind the submission of this information.

Second, IAC argues that the creation of a new class code for towing will result in a lower "loss cost" rate when compared to the class code that some licensed wrecker services were under (trucking, code 7228) prior to the pending effective date of this new towing code. (*IAC, Br., p. 7.*) This argument is incorrect because IAC completely disregards the other class code under which many licensed wrecker services fall – class code 8380 (repairers).

IAC inaccurately states that 7228 (trucking) is the only code and attributes that statement to Philip Sibiga ("Sibiga"), the managing member of Premier Insurance Associates, LLC, and a specialist in the placement of workers' compensation insurance for high hazard professions. (*Pet., pp. 6-7, Ex. F.*) Sibiga referenced both class codes – 7228 (trucking) and 8380 (repairers) – and averaged them for purposes of the overall percentage increase in "loss cost" rates, which directly impact workers' compensation premiums. (*Id.*)

The information impermissibly provided by IAC reveals that licensed wrecker services with employees operating under the trucking class code (7228) could see a decrease in workers' compensation insurance premiums. However, those licensed wrecker services with employees operating under the repairer class code (8380) could see a significant increase in premiums. The Department can take administrative notice of the large number of licensed wrecker services who participate in towing and recovery as well as repairer services. Regs., Conn. State Agencies § 14-137-38(n)(4).



The possible increase in workers' compensation premiums from class code 8380 (repairers) to class code 7225 (towing) will be significant. That increase is so significant that it apparently led the NCCI to conclude that the net change to workers' compensation premiums would be negligible. Page two of IAC's Attachment Two (p. 116) explained: "Negligible impact to overall statewide premium is expected as a result of these changes." NCCI further explained that the "premium impact in Connecticut is expected to be the same as the proposed national treatment." (*IAC Br., Attach. 2, p. 117.*) Accordingly, at best, licensed wrecker services will see a negligible change to their already high workers' compensation premiums.

IAC has offered no evidence to support its contention that the addition of a new class code for towing will result in a statistically significant net decrease in workers' compensation premiums for licensed wrecker services. IAC has offered no evidence (and certainly could not do so) to suggest that most licensed wrecker services in Connecticut do not operate repair shops. Finally, and perhaps most importantly, there is absolutely no evidence on the record demonstrating that the insurance industry will pass along the unsubstantiated net decrease in workers' compensation premiums as a credit to those whose "loss cost" rates will result in a decrease from the class code 7228 to the new class code 7225. Ultimately, IAC has impermissibly introduced new evidence, attempted to confuse the issue and contradicted its own documentation.

C. Property Tax Rates Have Increased for Licensed Wrecker Services.

IAC argues that TRPC has used incomplete property tax information. (*IAC Br., p. 8.*) TRPC, however, did provide geographical diversity and certainly did not "cherry pick" as accused by IAC. If TRPC wanted to "cherry pick," then it would not have included the Enfield licensed wrecker service, which showed only a modest increase in its property tax rate (8.5

percent), which had the effect of lowering the average property tax rate increase significantly. (*Pet.*, pp. 5-6, *Ex. E.*) Additionally, as explained by Hunt Demarest, a Certified Public Accountant, who reviewed the property tax information for this Petition, the issue is not simply the mill rate adopted by each municipality, but the overall property tax paid by the licensed wrecker services (often the result of revaluation). (*Demarest Live Testimony.*) Ultimately, the tax rates incurred by licensed wrecker services have increased as set forth in the Petition.

D. The Consumer Price Index Is One Factor in Assessing whether the Nonconsensual Towing and Storage Base Rates Are “Just and Reasonable.”

CLS argues that the Consumer Price Index (“CPI”) should be the lone factor in determining whether the nonconsensual towing and storage rates are “just and reasonable.” (*CLS, Br.*, pp. 2-3.) This position contradicts the statutory and regulatory authorities governing the nonconsensual towing and storage rates and would impose a hardship on the towing industry.

As stated in TRPC’s petition, CPI is one factor the Department may consider in assessing the reasonableness of the existing rates. (*Pet.*, pp. 9-10.) General Statutes § 14-66(a)(2). The regulations promulgated by the Department include the consideration of operating costs. Regs., Conn. State Agencies § 14-63-36a. A focus exclusively on CPI would impose a hardship on licensed wrecker services because the percentage increase in operating costs often exceed the CPI, as in the case of towing and storage vehicles. However, as presented in the Petition, and explained by Demarest at the hearing, the Petition does not double count operating costs; rather it took an average of the major operating costs that impact all licensed wrecker services regardless of the size and nature of operations. (*Pet.*, p. 12, *Ex. E; Demarest Live Testimony.*)

E. The Department Has Considered Fuel Costs Separate from the Nonconsensual Towing and Storage Base Rates.

IAC argues that apparent recent fuel cost trends are an important factor in determining the nonconsensual towing and storage base rates. (*IAC, Br., p. 9.*) Putting aside the fact that the evidence was submitted in violation of Hearing Officer RisCassi's order, the Department has concluded that fuel costs are separate from the base rates.

The Department has stated:

the base rate is intended to reflect and to cover all costs associated with nonconsensual towing operations, including general operating and administrative expenses . . . . However, [fuel] costs are only one of the many cost items that are factored into the base rate. It is the approved mileage rate, as distinct from the base rate, that is primarily intended to incorporate fuel costs.

(Emphasis added.) (*IAC, Br., Attach. 3, p. 2.*) The Department also rejected a sliding scale for the fuel charge as it would require daily oversight by the Department. (*Id.*) It is a false overstatement and excessive rhetoric to suggest, as IAC does, that licensed wrecker services “will continue to reap a windfall when fuel costs decrease.” (*IAC, Br., p. 9.*)

F. IAC's Reference to Privately Owned Parking Lots and Garages Is Irrelevant and Inaccurate.

IAC argues that the proposed increase to the nonconsensual storage rates is excessive because the rates charged by privately owned parking lots and garages are well below the proposed rate increase. (*IAC Br., p. 10.*) This comparison is irrelevant and inaccurate – it is not an “apples to apples” comparison.

First, many of these lots and garages are self service, which means they do not need to employ additional individuals to provide access to one's vehicle. Second, most of the vehicles parked in these lots and garages operate, while in most instances a nonconsensual tow involves the towing and storage of a vehicle that is inoperable. As a result, specialized skill and



machinery is required to move or relocate the inoperable vehicles and contain leaking fluids in accordance with environmental laws. Third, the two garages referenced in IAC's brief are much larger than the typical storage facility of a licensed wrecker service, which means that these lots and garages can lower their costs per vehicle and still recover their costs associated with operating the lot or garage. The smaller lots used by licensed wrecker services makes it much harder to recover the costs associated with operating their storage facilities as they have less vehicles subject to those charges.<sup>6</sup>

### **III. THE ABANDONED MOTOR VEHICLE SURCHARGE IS LAWFUL, JUST AND REASONABLE**

#### **A. The Department Has the Legal Authority to Incorporate A Charge for Abandoned Motor Vehicles into the Base Rate.**

CLS and IAC argue that there is no legal authority to incorporate an abandoned motor vehicle surcharge into the nonconsensual base rate. This argument is belied by the express statutory and regulatory language governing nonconsensual towing and storage.<sup>7</sup>

The statute governing nonconsensual towing and storage expressly references abandoned motor vehicles. General Statutes § 14-66(a)(1) provides in relevant part:

No person, firm or corporation shall engage in the business of operating a wrecker for the purpose of towing or transporting motor vehicles, including motor vehicles which are disabled, inoperative or wrecked or are being removed in accordance with the provisions of section 14-145, 14-150 or 14-307, unless such person, firm

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<sup>6</sup> IAC also does not account for any federal or state subsidies that may impact the financial operation of the lots and garages owned and/or operated by Bradley International Airport. The Federal Aviation Administration provides monetary grants to airports that abide by certain written assurances under the Airport Improvement Program. 49 U.S.C. § 47107(a). The storage facilities operated by licensed wrecker services do not enjoy any federal or state subsidies.

<sup>7</sup> IAC argues that "TRPC declined to articulate a serious defense with regard to the legality of its proposed surcharge." (*IAC, Br. P. 3.*) However, TRPC articulated a legal basis for the abandoned motor vehicle surcharge on pages 18 and 19 of its Petition. Additionally, the focus of the hearing was to present a factual record in support of the Petition rather than to make legal arguments properly left for a submission such as this.

or corporation is a motor vehicle dealer or repairer licensed under the provisions of subpart (D) of this part.

(Emphasis added.) The Department may consider factors such as operating costs, which certainly include those costs associated with the handling of abandoned motor vehicles. Regs., Conn. State Agencies § 14-63-36a. Furthermore, a law enforcement officer may direct a licensed wrecker service to remove a vehicle, such as an abandoned motor vehicle, because it is an emergency or a threat to public safety. General Statutes § 14-66(g).<sup>8</sup>

It is also disingenuous of CLS to assert that the towing and storage of an abandoned motor vehicle is not a nonconsensual tow.<sup>9</sup> (*CLS Br.*, p. 1.) No one disputes that the rates and charges a licensed wrecker service can charge for such a service is limited to the nonconsensual towing and storage rates. An express reference to § 14-150 in § 14-66 dispels any notion that the towing and storage of an abandoned motor vehicle is not a nonconsensual tow. Finally, the Department has recognized that a nonconsensual tow includes “the removal of disabled vehicles from our state highway system.” (*Pet.*, Ex. B, p. 1.)

B. Section 14-150 Is Not the Exclusive Remedy for the Towing and Storage of an Abandoned Motor Vehicle.

CLS and IAC argue that § 14-150 is the only means in which a licensed wrecker and recover its costs for the towing and storage of an abandoned motor vehicle. (*CLS Br.*, p. 1; *IAC*

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<sup>8</sup> General Statutes § 14-66(g) provides: “Any law enforcement officer or traffic authority, as defined in section 14-297, may determine that a vehicle blocking a travel lane on a limited access highway constitutes an emergency and a threat to public safety. Upon such determination, such law enforcement officer or traffic authority may direct the operator of a wrecker to remove such vehicle. Any such operator of a wrecker shall be held harmless from liability or causes of action for property damages incurred to such vehicle or to its contents or the surrounding area caused by such emergency removal, provided such removal measures are taken under the direction of such officer or authority and all reasonable care is taken by the operator of the wrecker to limit any further damage to such vehicle, such vehicle's contents or the surrounding area.”

<sup>9</sup> It appears that IAC acknowledged that the towing and storage of an abandoned motor vehicle is a nonconsensual tow. On page 3 of IAC's December 4, 2017 submission, IAC argued “[n]owhere is there mention in § 14-150 of wrecker services being allowed to impose a special rate, fee or assessment on other nonconsensual tows.” (Emphasis added.)

*Br.*, p. 3.) Nowhere in § 14-150 does it say that the provisions contained therein are the exclusive means in which to recover the towing and storage costs associated with an abandoned motor vehicle.

Section 14-150 sets forth a detailed process in which a licensed wrecker must notify the owner or lienholder of the abandoned motor vehicle and the public auction process by which a licensed wrecker may dispose of that vehicle – if that vehicle is over the \$1,500 threshold. It does not say that the Department can not incorporate the operating costs associated with that process into the base charge.

As set forth in the Petition, and explained by Telke, the towing industry is incurring excessive costs and losses in assisting the State of Connecticut in keeping the roadways clear of abandoned motor vehicles.<sup>10</sup> A majority of the vehicles do not even reach the auction threshold of \$1,500, and the licensed wrecker service is left to sell the vehicle to a salvage yard for pennies on the dollar. Even those that do are not being sold for \$1,500 or more. Licensed wrecker services have to pick up abandoned motor vehicles to stay on the rotational towing lists. Additionally, insurance companies are abandoning these vehicles and refusing to pay the storage costs. Incorporating a fee into the base rate (whether as a surcharge or not) would provide some relief to the towing industry, who has risen to the challenge to implement DOT's TIM Program.

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<sup>10</sup> IAC argues that “TRPC fails to account for moneys recovered by wrecker services under § 14-150” but then states: “In its petition, however, TRPC admits that money recovered under § 14-150 at least ‘partially offsets’ the cost of towing and storing abandoned vehicles – a fact that was also acknowledged by TRPC’s counsel during the December 6<sup>th</sup> hearing.” (*IAC Br.*, p. 3.) These two statements appear to be contradictory. TRPC acknowledged that licensed wrecker services do receive some proceeds from the limited vehicles sold under the auction process, but explained in detail why and how those proceeds do not cover all of the costs associated with the towing and storage of an abandoned motor vehicle. (*Pet.*, pp. 19-20; *Telke Live Testimony.*)

C. The Costs Associated with Abandoned Motor Vehicles Were Not Incorporated into the Base Rate, Effective January 1, 2007.

CLS argues that the Department knew that nonconsensual towing and storage “will result in significant uncollectibles, and the base rate, as of 2007, was already adjusted as a result.” (*CLS, Br., pp. 1-2.*) There is nothing in the Department’s Final Decision on the 2006 Petition substantiating this assertion. Rather, in response to TRPC’s request to implement a “two-tiered” storage charges, the Department acknowledged that such a change might serve licensed wrecker services and the public by incentivizing owners and lienholders to collect their vehicles, but ultimately declined to make such a change because of the lack of substantive testimony in support of the proposal. (*Id., p. 2.*) The Department did not discuss the large number of abandoned motor vehicles within the context of rate changes at all.

D. The Department Can Incorporate the Abandoned Motor Vehicle Surcharge into the Base Rate or as A Standalone Charge.

CLS argues that the abandoned motor vehicle is also improper because the Department has expressed a reluctance to create “separate charges.” As stated in Part III.C, *supra*, the Department declined to establish a two-tiered storage rate structure because of the lack of substantive testimony. There was no mention of the Department’s disfavor of surcharges. It should be noted that the Department authorized a fuel surcharge in 2008. (*IAC Br., Attach. 3, p. 5.*) Finally, TRPC is open to how the surcharge is added to the base rate, whether incorporated therein or as a standalone.

E. The Origin of the Abandoned Motor Vehicle Surcharge.

IAC also argues strenuously that the Department should not approve the abandoned motor vehicle surcharge because “[m]uch of TRPC’s evidence amounts to nothing more than rank hearsay from unidentified DMV officials and anonymous members of the General