

October 24, 2017

VIA U.S. MAIL

Beth A. Wood  
Office of the State Auditor  
2 S. Salisbury Street  
20601 Mail Service Center  
Raleigh, NC 27699-0601

Re: Martin Edwards/Eastway State Audit

Dear State Auditor Wood:

As you know, our firm represents Martin Edwards and Associates (“MEA”) and Eastway Wrecker Service of Charlotte (“Eastway”) (collectively, “our Clients”). This letter is in response to the Audit Report entitled “DWI/Felony Speeding to Elude Vehicle Seizure Program” (hereinafter, “Report”). We were disappointed that you chose to publicly release the Report before giving our Clients an opportunity to fully respond. We are puzzled as to why your Office released the Report, and made public statements, before giving us an opportunity to address your auditors’ questions or concerns. Such an opportunity would have avoided the dissemination of multiple inaccurate and misleading statements. Now that we have obtained a copy of the Report (which appears to have been leaked to the media prior to its official publication), we have reviewed the Report and our Clients’ records, which show that the Report, and your public statements, contain multiple inaccurate and misleading statements that impugn the reputation of our Clients. Contrary to your General Counsel’s letter, we did not make any “untrue” statements, and the records prove it.

The audit was flawed from the beginning because the scope of your audit was inconsistent with the objective of the audit. As noted in the Report, the “objective” of your audit was to determine whether our Clients “operated...in accordance with the contract terms and state regulations.” Section 2.2(f) of our Clients’ contracts state

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that the contracting parties are only required to retain records on seized vehicles for three years. However, as noted in the Report, the scope of your audit exceeded three years, and instead, covered a five-year period. As such, the scope of your audit was unreasonably and arbitrarily over broad.

Moreover, in accordance with Section 2.2(f), our Clients have maintained records for the vehicles they have seized during the applicable retention period. However, the volume of records required to be retained by our Clients is burdensome, so much so that it slowed their computer systems. Since our Clients were advised by their technology personnel to purge unnecessary records, our Clients periodically purge any records outside the applicable document retention period. Some of the documents requested by your office fell outside that document retention period, and as such, were not produced to your Office.

Despite stating in the “methodology” section of the Report that your “auditors interviewed personnel,” your Office failed to request a single interview of any individual from MEA. On four separate occasions, our Firm told representatives of your office that our Clients would cooperate with your auditors. However, your auditors chose not to interview them, and instead, published an inaccurate and misleading Report. Such actions raise concerns that the audit may have been motivated by ulterior motives related to this public/private program.

In the “findings” section of the Report, you stated “Auditors performed limited procedures to determine the status and location of these vehicles. However, auditors were unable to make a clear determination. Information contained in reports and documentation...from the Division of Motor Vehicles (DMV), Contractors, and other external sources was not consistent and therefore could not be relied upon to make conclusions.” We find it puzzling that you acknowledged that you only performed a limited audit that could not be relied upon to make conclusions, yet you “concluded” that 234 vehicles worth \$634,000 were “unaccounted for.” This statement is an inaccurate and misleading statement. It is clear from the Report that your Office intentionally or recklessly failed to fully investigate the status of, and location of, those vehicles. As such, there is no support for the statement that our Clients cannot account for 234 vehicles.

Our Clients can account for all of the vehicles listed in your Report. Eastway accounted for all 13 vehicles attributed to it almost immediately. With respect to MEA, documents addressing the status and location of the vast majority of those vehicles were previously produced to your auditors. Records on 181 of the 221 vehicles attributed to MEA were produced to your office, which is evidenced by the bates-stamps. Records for additional vehicles were either outside the three-year document retention period (and thus, not required to be retained by MEA), or could not be produced because your Office provided inaccurate VIN numbers, or the records do not exist because the vehicle was never seized. Records on all of the vehicles have been produced to the appropriate authorities.

With regard to the Mercedes SLK 350 that you have referenced on several occasions, the information was given to you on January 27, 2017, (Bates# 2534) indicating that on that date, the car was located on our Client's lot in Linden, North Carolina. No one from the Auditor's office attempted to verify that it was or was not there. The vehicle was sold on March 3, 2017, with a representative of the State present. Despite your Office being provided with this information and the vehicle subsequently being auctioned pursuant to law, the "missing Mercedes" was featured prominently and insinuatingly in numerous of your media reports and public presentations.

While your Report states that MEA "hindered the audit," that is not the reality. Prior to attempting to serve the subpoena on MEA, you were advised that they were represented by counsel who had offered to accept the service of the subpoena and cooperate with the investigation and smooth things out between the parties. You rejected this offer, but this rejection was not conveyed to counsel until the precise time your agents once again entered on my client's premises in an attempt to serve the subpoena. The subpoena your Office served on MEA requested thousands of pages of documents on hundreds of cars and expected the documents within one week. After the first production of documents, an auditor from your office responded that "the first document production [was] substantial and made in good faith." Despite our cooperation, unprofessional and overly aggressive tactics were used on behalf of OSA, including: a misleading notice of a judicial hearing, contacting our client directly after knowing they were represented by counsel, setting unreasonable and arbitrary deadlines, justifying these actions by referring to our Clients as "people like

that,” and using profanity on a phone call with our Client, MEA, prior to issuing a subpoena.

MEA made four productions of documents – producing the documents on a rolling basis as they were located and processed. With each production, our Firm told you “our client stands ready and willing to cooperate with OSA. Any requests for such cooperation should be directed to [Attorney Alex Williams]. As such, if you or anyone with OSA have questions about a particular vehicle, please let me know.” At no time did our Firm receive a request from OSA to interview our Clients about particular vehicles. While we disagree with many of the conclusions made by your attorney, Timothy Hoegemeyer, he was correct about one point – your office had our Clients’ documents for five months. During that time, your Office never called to inquire about a specific vehicle on your list. Had your Office asked such questions, we would have gladly made our Clients available for an interview – as we have done with the North Carolina Department of Motor Vehicles. Instead, your Office made false statements based upon a “limited review.”

Of the 221 vehicles attributed to MEA, our Client has determined the status for all 221 vehicles – accounting for all of the vehicles:

- 99 vehicles were auctioned;
- 70 vehicles were never seized (per law enforcement);
- 20 vehicles were released by the sub-contractor towing company before MEA could retrieve the vehicle;
- 14 vehicles were returned to the owner by MEA after being shown the appropriate court approval;
- 5 vehicles are still at MEA’s facility waiting to be auctioned;
- 5 vehicles were never reported by the DMV as being seized (i.e. DMV’s records do not show that they were seized);
- 3 vehicles were never reported to MEA as seized vehicles (i.e. they did not show up on the daily report);
- 2 vehicles could not be located in DMV’s system because of an inaccurate VIN number;
- 1 vehicle is being held for law enforcement purposes (i.e. evidence in prosecution);

- 1 vehicle was reported stolen by a sub-contractor towing company; and
- 1 vehicle was seized in the western part of the state.

Similarly, Eastway can account for each of the 13 vehicles attributed to it. Accordingly, it is blatantly false that our Clients cannot account for the vehicles listed in the Report. Your false allegations went further when you implied that our Clients were engaged in criminal activity. Specifically, in the Report you state "there is a risk that contractors inappropriately benefited from the contract." During an interview with a local media member after the completion and release of the Audit, you stated, "There's absolutely the potential for criminal activity here" and "there's absolutely a probability that money that should have gone to the schools didn't go to the schools." These comments have led to threats to our Client. Had you completed your review (instead of relying on limited resources that your report acknowledges could not be trusted to make conclusions), you would have realized that our Clients have never inappropriately benefitted from their contracts. Instead, they are good, hard-working people who earn a living by providing a much-needed service to this State.

This is not the first time that MEA has been audited, and each time, the audit has proven that MEA has done nothing wrong. In this instance, our Clients have complied with the terms of their respective contracts. Moreover, the information provided to authorities conclusively proves the Report and statements by you regarding 234 "missing" vehicles and criminal activity were false and defamatory. Given the harassment by your Office and the false statements published by you, our Clients hereby demand that you rescind your Report, retract your false statements, and make a public apology.

Sincerely,



Alexander P. Sands III

cc: Timothy Hoegemeyer (Via e-mail)