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BEFORE THE ARIZONA CORPORAT

IN THE MATTER OF: )

TRI-CORE COMPANIES, LLC an Arizona )  
limited liability company, et al., )

Respondents. )

**ORIGINAL**

DOCKET NO.  
S-20867A-12-0459

PROCEDURAL  
CONFERENCE

At: Phoenix, Arizona

Date: December 12, 2013

Filed: **DEC 27 2013**

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1           BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Arizona Corporation Commission, in Hearing Room 1 of  
4 said Commission, 1200 West Washington Street, Phoenix,  
5 Arizona, commencing at 10:00 a.m., on the 12th of  
6 December, 2013.

7

8 BEFORE:    MARC E. STERN, Administrative Law Judge

9

10 APPEARANCES:

11

12 For the Arizona Corporation Commission, Securities  
13 Division:

14

15           Ms. Stacy Luedtke  
16           Staff Attorney, Securities Division  
17           1300 West Washington Street  
18           Phoenix, Arizona 85007

19

20 For Tri-Core Companies, LLC, Tri-Core Business  
21 Development, LLC, and Jason Todd Mogler:

22

23           THRASHER JEMSEK  
24           By Mr. Bobby O. Thrasher, Jr.  
25           530 East McDowell Road, Suite 107-495  
            Phoenix, Arizona 85004

            KAREN L. KESSLER, RPR  
            Certified Reporter  
            Certificate No. 50821

1 ALJ STERN: We're on the record in the matter of  
2 Tri-Core Companies, et al., in Docket  
3 No. S-20867A-12-0459.

4 And at this time we'll take appearances. And on  
5 behalf of the Securities Division.

6 MS. LUEDTKE: Stacy Luedtke.

7 ALJ STERN: And on behalf of -- I'm not sure who  
8 today -- I guess Tri-Core, the Tri-Core Companies and --

9 MR. THRASHER: Mr. Mogler.

10 ALJ STERN: Okay.

11 MR. THRASHER: Yes, Judge. Bobby Thrasher.

12 ALJ STERN: And you don't represent any of the  
13 ERC entities at this point?

14 MR. THRASHER: I don't have the copy of the  
15 caption in front of me. I'm not representing ERC  
16 Compactors or ERC Investments.

17 ALJ STERN: Yeah. I think that's the only two  
18 that are named in the proceeding.

19 Let me ask you a question, Mr. Thrasher. Did  
20 you ever get a complete copy of that purchase agreement,  
21 or whatever it was that apparently your client had, and  
22 two different -- it looks like it's not one agreement.  
23 It's like two different agreements. You know what I  
24 mean?

25 MR. THRASHER: It may be that the -- Judge, I

1 have given counsel and the Court what I have. It may be  
2 that the signature pages, given that they were faxed,  
3 may be different. But my inclination was that it was a  
4 complete agreement. I'll certainly go back and check  
5 our records.

6 ALJ STERN: Well, it's just strange that some of  
7 the, I don't know how you refer to that, but the type on  
8 some of the pages is entirely different than, well, for  
9 sure the signature page is.

10 MR. THRASHER: May I see your copy, Judge? And  
11 I forwarded -- I didn't handle the transaction.

12 ALJ STERN: I mean, the pages are, they're even  
13 not in order.

14 MS. LUEDTKE: Well, section 3.9 is completely  
15 different on the signature page than it is on the non,  
16 the page without the signatures.

17 ALJ STERN: Excuse me. What did you say,  
18 Ms. Luedtke?

19 MS. LUEDTKE: If you look at section 3.9 on page  
20 eight of the original -- it's before you get to the  
21 signature page.

22 ALJ STERN: Of the original?

23 MS. LUEDTKE: Right. It says pending litigation  
24 or proceedings.

25 ALJ STERN: Right.

1 MS. LUEDTKE: This is where I think we were  
2 talking about last time where it says that everything is  
3 resolved. And then if you go to the signature page,  
4 which would be, for some reason it's page seven where  
5 it's initialed.

6 ALJ STERN: Right.

7 MS. LUEDTKE: And you can see 3.10 in there, so  
8 I assume above that is 3.9. There's all these  
9 disclosures about the ACC litigation and another civil  
10 suit going on. So I don't know if you have that. I  
11 mean --

12 MR. THRASHER: I don't have it, obviously, in  
13 front of me.

14 Do you have a copy of what you'd like me to look  
15 at?

16 MS. LUEDTKE: Just what you gave me.

17 MR. THRASHER: And, Judge, for the court's  
18 information, I was not and did not handle -- I think the  
19 parties actually did their own agreement. I did look at  
20 it at some point, but I did not handle any of the  
21 closing or the signing. I was given, this was the copy  
22 that I was given at the conclusion of the negotiations  
23 between the parties.

24 And I'm sorry, Stacy, you were looking at  
25 which --

1 MS. LUEDTKE: If you go to page eight, if you  
2 see section 3.9, it's kind of a short paragraph with no  
3 reference to litigation.

4 MR. THRASHER: Yeah.

5 MS. LUEDTKE: And then if you go to the  
6 signature pages, the corresponding -- I'm not sure why  
7 it's marked page seven with the signature pages, but you  
8 can tell what would be section 3.9 on page seven now  
9 discloses some litigation.

10 MR. THRASHER: So here's what I believe  
11 happened, because I agree with you, 3.9, I think that  
12 the parties mixed the drafts. Because I do know that  
13 there was a subsequent draft to the representation that  
14 the matter had been dismissed. And I don't know if it  
15 was Mr. Quinn, as I sit here, I don't know if I received  
16 this from Mr. Quinn or from Mr. Mogler, but at the time  
17 I did have contact with both of them. I know that  
18 Mr. Quinn had a separate attorney in Chicago that he was  
19 working with. I had no contact with that attorney. But  
20 I had seen a subsequent draft of this.

21 So, Judge, I don't believe that this is the  
22 final executed draft. I think that the parties have  
23 somehow --

24 MS. LUEDTKE: That's just the only place that I  
25 saw the discrepancy. But I think probably, if you look

1 through it, there's more.

2 ALJ STERN: And Mr. Mogler never said to you  
3 before we started into this thing for a couple days that  
4 he no longer owned these entities?

5 MR. THRASHER: Judge, I think, if you'll recall,  
6 I did receive a copy of the draft. And I had been  
7 working on some parallel litigation in Nevada for ERC of  
8 Nevada. So I can't avow to the Court that I wasn't  
9 aware because, obviously, I received the copy of the  
10 signed purchase agreement. Unfortunately, they had  
11 literally dozens of entities, and so when I saw --

12 ALJ STERN: You mean Mr. Mogler and this  
13 gentleman in Chicago?

14 MR. THRASHER: Well, no -- well, I think  
15 Mr. Mogler and Mr. Quinn both have considerable  
16 entities. Certainly Mr. Mogler and Mr. Hinkeldey,  
17 through either Tri-Core or the ERC companies, had  
18 formed, I don't think that I would be off base to say,  
19 dozens of different entities. So unfortunately -- and,  
20 you know, as I explained to the Court, it was my error.  
21 When I saw the purchase agreement, I did not put two and  
22 two together until we had started the hearings and my  
23 paralegal was drafting the conflict waiver for another  
24 witness that the State intended to call that I noticed,  
25 unfortunately at that point and not earlier, that there

1 was that conflict, that the ERC entities had been sold.  
2 And I think what triggered my recollection is I had been  
3 reviewing discovery in preparing for the trial. And  
4 prior to that, like I said, I wasn't intimately involved  
5 in the transaction, but I had received a copy of the  
6 signed purchase agreement. So it was my error.

7 ALJ STERN: Okay. Here's what I'm thinking.  
8 It's going back a little bit in order in time.

9 So at the time you requested a hearing on behalf  
10 of Mr. Mogler and these other entities, which you did  
11 with respect to ERC, the two ERC entities, you didn't  
12 have authority to request a hearing for them. So  
13 essentially -- am I correct?

14 MR. THRASHER: No, Judge. I think at the time I  
15 did have authority to request, because at that time  
16 there was common ownership. Mr. Mogler had owned ERC  
17 Compactors, or did own -- and, again, I don't have it in  
18 front of me so I'm making some avows based on my best  
19 recollection -- but my understanding is that Mr.  
20 Mogler -- and I'm not certain that Mr. Mogler was the  
21 only owner -- but an LLC that he owned or controlled,  
22 and it may have been ERC of Nevada -- candidly, Judge, I  
23 would have to go back and look at the records -- owned  
24 ERC Compactors and ERC Investments. Subsequent to that  
25 is when it was sold to Mr. Quinn.

1 ALJ STERN: All right.

2 MR. THRASHER: And if counsel, maybe she has a  
3 better recollection. But that is exactly what I recall  
4 sitting here in front of you today.

5 So what I'm saying is when ERC of Nevada, or  
6 when those ERC entities were sold, they were given, you  
7 know, the purchase agreement was given to me, I did not  
8 put two and two together just because of the voluminous  
9 amount of information I had received in this case. I  
10 mean, just the State's exhibits are, you know, thousands  
11 of pages and, candidly, the respondents' exhibits are  
12 even more.

13 ALJ STERN: All right. Well, at this point in  
14 time, I guess, there won't be any more defense presented  
15 on behalf of those two entities, at least the way I look  
16 at it. Because -- you saw the letter that was  
17 docketed --

18 MS. LUEDTKE: I did.

19 ALJ STERN: -- from --

20 MS. LUEDTKE: I did, and I have actually spoken  
21 with Mr. Roshka's office, so...

22 ALJ STERN: Okay. I got the impression they  
23 might even be trying to resolve it with respect to those  
24 two entities.

25 MS. LUEDTKE: We have spoken about it. There

1 are some issues that I think that we're not going to be  
2 able to resolve. But I think what we anticipate is  
3 going to hearing with them unrepresented and them not  
4 here.

5 ALJ STERN: Okay. All right. Well, I, you  
6 know, I don't have a problem with it, I guess, but I  
7 just wanted to know what sort of thing was happening  
8 with those two entities, because we're talking --

9 MR. THRASHER: Judge, and I haven't had any  
10 other conversations with counsel for ERC Compactors or  
11 ERC Investments. I understand their position is, and I  
12 think it's accurate, that when the alleged conduct  
13 occurred, Mr. Quinn, who is now the, the sole member of  
14 that, of that entity, didn't own the entity. So I think  
15 that's the position that's being taken.

16 ALJ STERN: Right. But if in fact those LLCs  
17 are found liable for any part or all of this, jointly  
18 and severally, with any other respondents, if I  
19 understand this so called purchase agreement, then your  
20 client is the one who ultimately is responsible.

21 MR. THRASHER: I understand that's the position.

22 ALJ STERN: Okay. Is that what the Division's  
23 view of this all is?

24 MS. LUEDTKE: That's my understanding. I mean,  
25 he's representing now that this isn't a copy of the

1 purchase agreement. I mean, I'm not the attorney for  
2 ERC, but I would be tendering my defense. I mean, I  
3 don't know exactly what's going on.

4 MR. THRASHER: Judge, I think she misstates  
5 that. That's not exactly what I'm avowing. What I'm  
6 avowing to the Court, or the hearing officer, is that it  
7 appears based on the copy that was given to me that  
8 those are different drafts. And I will also avow to the  
9 Court I will go back -- I understand we have a  
10 deposition later today -- but I will go back and I will  
11 review our records and review all the emails received  
12 from Mr. Mogler and Mr. Quinn, and I will provide copies  
13 of all the drafts of purchase agreements that I received  
14 from all parties. And that may be a question of fact to  
15 be determined during the hearing. But I'm not, I'm not  
16 avowing to Your Honor or Ms. Luedtke that that is in  
17 fact the final draft, because I don't believe that to be  
18 true.

19 ALJ STERN: Okay. Well, I don't know. You  
20 know, the whole thing is a bit strange.

21 MS. LUEDTKE: I don't think that it's  
22 necessarily completely relevant for, I mean in terms of  
23 where we are for the hearing. I mean, I think we're  
24 still in the same place regardless.

25 ALJ STERN: Right.

1 MR. THRASHER: Yeah, I agree.

2 ALJ STERN: Okay. So anyhow, at this time we  
3 are scheduled to go forward in February.

4 I noticed you have, I guess a settlement plan,  
5 consent agreement.

6 MS. LUEDTKE: Ms. Kordosky is consenting, and  
7 that's up next week.

8 ALJ STERN: It's going to open meeting, right?

9 MS. LUEDTKE: Yes.

10 ALJ STERN: All right. So I don't think there's  
11 anything else other than that. I think at the time --  
12 Mr. Rycraft is not present. I don't know what the  
13 situation is with that entity and the Division, but I  
14 assume they're still planning to participate and  
15 defend --

16 MS. LUEDTKE: It's my understanding.

17 ALJ STERN: Okay.

18 MR. THRASHER: Judge, the only other issue that  
19 I would make the Court aware of at this point is I have  
20 a jury trial beginning January 25th. I anticipate it  
21 being concluded prior to this hearing. So I'm just  
22 making the Court aware that that's on my calendar.

23 ALJ STERN: All right. We'll just keep it in  
24 mind.

25 So when we come back, I guess your investigator

1 will be called back for cross?

2 MS. LUEDTKE: Yes. We do have -- we wanted to  
3 do the audio files that we had some issues with that you  
4 wanted portions of them played. So we're going to do  
5 that. And Mr. Thrasher has cross still. But I don't  
6 anticipate having to put my whole case back on since a  
7 new party or respondent is not coming in. I just want  
8 that to be clear for the record.

9 MR. THRASHER: I agree, Judge.

10 ALJ STERN: Okay. And then I think there were a  
11 number of exhibits, and I have it written down  
12 somewhere, that we hadn't quite reached a resolution of,  
13 that when we come back, I guess, we'll have to address  
14 the issue.

15 MS. LUEDTKE: I think they were the audio files  
16 and the transcriptions.

17 ALJ STERN: Oh, okay.

18 MS. LUEDTKE: And that's what we were going to  
19 do after -- I was going to let him finish his cross and  
20 then go back to that so that there was less in the  
21 record, as you suggested that you wanted.

22 ALJ STERN: Okay.

23 MR. THRASHER: Judge, my recollection is that  
24 counsel and I had an agreement regarding what she  
25 intended to put on for the Court.

1 ALJ STERN: I'm just wondering where I had that  
2 notation. I don't know where it is right now, but it  
3 may be with -- oh, here it is.

4 I think we were talking about S-22(a) and (b),  
5 S-25, 225 --

6 MS. LUEDTKE: Yeah, those are the transcriptions  
7 and the audio.

8 ALJ STERN: Okay. All right.

9 MS. LUEDTKE: Sad that I know that right off the  
10 top of my head.

11 ALJ STERN: Because there were a bunch of those  
12 that were a problem. Okay.

13 Anything else today?

14 MS. LUEDTKE: The only other thing that I had in  
15 my request was if there -- there had been some  
16 discussions and comments made during the beginning of  
17 the cross about discovery issues, and I don't want, you  
18 know, discovery issues to come up in the middle of  
19 hearing again. I'd rather have the opportunity to brief  
20 whatever discovery issues that he, he obviously  
21 anticipates that some may arise. So if there is going  
22 to be a discovery issue, I think that it would be  
23 appropriate to set a deadline to file any type of  
24 discovery motion that's going to be raised by  
25 respondents so that we can approach that in advance of

1 the hearing and not delay it again.

2 ALJ STERN: Mr. Thrasher, do you need some  
3 documents?

4 MR. THRASHER: I do, Judge. I intend on -- and  
5 I believe, actually, my paralegal is working on that as  
6 we speak -- doing a subpoena. Because my understanding  
7 is from our prior hearing is that Ms. Luedtke is  
8 requesting a subpoena. So if she is intending on filing  
9 a protective order and there is -- at this point I don't  
10 know that we have a disclosure issue. I'm certainly  
11 going to subpoena the State's file, and if she is going  
12 to move for a protective order, then maybe we do have a  
13 discovery issue.

14 ALJ STERN: What are you subpoenaing?

15 MR. THRASHER: I would like to have all the  
16 investigator notes, logs, who she talked to, when she  
17 talked to them, all the -- my understanding is, Judge,  
18 there were reports that were generated that we have not  
19 received. You know, I think that we're entitled to all  
20 that.

21 ALJ STERN: Today is December 12th. How long do  
22 you think it's going to take you to prepare your  
23 subpoena? And I don't sign it. You have to go --

24 MR. THRASHER: I understand.

25 ALJ STERN: Okay.

1 MR. THRASHER: That's one of the complications.  
2 Judge, I can get something to the State by, I  
3 would say, Monday, Tuesday at the very latest.

4 ALJ STERN: Tuesday. So that, you're saying  
5 that would be December 16th or 17th.

6 MR. THRASHER: I think that's correct.

7 ALJ STERN: Well, I'd get that filed if you're  
8 going to do it.

9 And how long will the State need to respond to  
10 it with the holiday coming in the middle of it all?

11 MS. LUEDTKE: We'll get it on file as soon as  
12 possible, Judge, because I don't want to be you know  
13 briefing this in the middle of our hearing.

14 ALJ STERN: Okay. Well, if you get it filed by  
15 the 17th, because of the holiday situation and I don't  
16 know what your personal situation is, Ms. Luedtke, how  
17 about -- you'd be able to get a response filed by the  
18 6th of January?

19 MS. LUEDTKE: I anticipate I would do it before  
20 then.

21 ALJ STERN: I would think so. Okay. Whatever.  
22 But that's pretty much the time frame then. We'll look  
23 for your filing by the 17th, and the Division will have  
24 till the 6th to file a response. And then if she gets  
25 it in earlier, that's fine too.

1 MR. THRASHER: And, Judge, as I said, I'm not  
2 intending on filing anything other than just the  
3 subpoena, so, you know, I think at that point it's in,  
4 it would be incumbent upon the State, if they're  
5 objecting to our request, to file for some type of  
6 protective order or --

7 MS. LUEDTKE: I actually believe the more  
8 appropriate approach in this situation would be a motion  
9 showing good cause for you to allow the discovery.

10 ALJ STERN: Well, you know, he hasn't even tried  
11 to secure whatever it is he's looking for yet, so until  
12 that time comes -- I mean, the evidence that goes before  
13 the Commission is essentially what is presented in the  
14 hearing.

15 MR. THRASHER: I understand, Judge. I'm just  
16 trying to figure out -- is it the State's position that  
17 she wants me to file a motion for good cause before I  
18 make the request? Because I haven't made the request  
19 yet, so --

20 ALJ STERN: Well, I mean, you know, there's  
21 different ways to do this. You can file a request for  
22 discovery or whatever it is you're looking for. I don't  
23 think they're going to give you their entire  
24 investigative file, but that's just my guess. But with  
25 respect to whatever it is you're looking for, if they

1 aren't going to agree with it, then you can proceed with  
2 your subpoena and, then they can file for a protective  
3 order or whatever it is.

4 MR. THRASHER: And, Judge, my understanding is,  
5 and this was just on, at the hearing I did it orally, my  
6 recollection is the State responded that she wanted a  
7 subpoena and would not release anything absent a  
8 subpoena. If it's her position now that she --

9 MS. LUEDTKE: I did not.

10 MR. THRASHER: I apologize then.

11 ALJ STERN: Well, I'll tell you what. Rather  
12 than debate it on the record, you two work it out. If  
13 you can't get along, do your request or whatever. If  
14 it's not responded to, or whatever. And then you  
15 subpoena it, and then they will do whatever they, file a  
16 motion to quash or whatever.

17 MR. THRASHER: Yes, Judge.

18 ALJ STERN: We will look at it that way.

19 MR. THRASHER: Yes, Judge.

20 ALJ STERN: Okay?

21 MR. THRASHER: Thank you.

22 ALJ STERN: That will take care of it.

23 Anything else?

24 MS. LUEDTKE: No, Judge.

25 ALJ STERN: Thank you. That concludes this

1 proceeding, and we will get to look forward to the new  
2 year. Thank you. Have a nice holiday.

3 (The proceedings concluded at 10:20 a.m.)

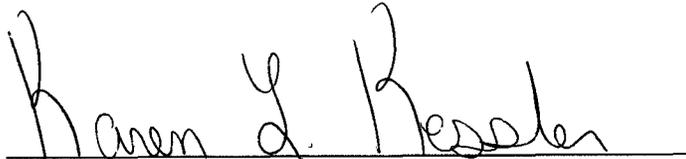
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1 STATE OF ARIZONA )  
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I, KAREN L. KESSLER, RPR, Certified Reporter  
 No. 50821 for the State of Arizona, do hereby certify  
 that the foregoing printed pages constitute a full, true  
 and accurate transcript of the proceedings had in the  
 foregoing matter, all done to the best of my skill and  
 ability.

WITNESS my hand this 21st day of December,  
 2013.

  
 \_\_\_\_\_  
 KAREN L. KESSLER, RPR  
 Certified Reporter  
 Certificate No. 50821