

**Thibault, Gary**

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**From:** Griggs, Janet  
**Sent:** Wednesday, February 20, 2008 1:53 PM  
**To:** Thibault, Gary; Smith, Garry; Line, Greg; Smith, W  
**Subject:** House of Raeford  
**Attachments:** houseofraeford.doc

Attached is my written initial assessment of the House of Raeford situation. This is intended as a working document to generate general discussion. If you have any additions, subtractions, and/or questions, please do not hesitate to raise them. Thank you.

## LIST OF POSSIBLE VIOLATIONS OF ACT BY HOUSE OF RAEFORD

1. Section 42-1-640 – Performance of statutory duty not excused by Title.  
“Nothing in this Title shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.”
2. Section 42-5-20 – Insurance or proof of financial ability to pay required.  
“In the case of self-insurers the commission shall required the deposit of an acceptable security, indemnity, or bond to secure the payment of the compensation liabilities as they are incurred.”
3. Section 42-5-190 – Tax on self-insurers.  
“Every employer carrying his own risk under the provisions of Section 42-5-20 shall report under oath to the SCWCC his actual cost incurred under the provisions of this title.... The commission shall assess against the actual cost incurred a maintenance tax....”
4. Section 42-7-200(F) – Workers’ Compensation Uninsured Employers’ Fund...funding.  
“To establish and maintain the South Carolina Workers’ Compensation Uninsured Employers’ Fund, there must be earmarked from the collections of the tax on insurance carriers and self-insured persons...an amount sufficient to establish and annually maintain the fund at a level....”
5. Section 42-7-310(d) – Establishment ...funding...of Second Injury Fund.  
“The funding of the Division of the Second Injury Fund on a continuing basis is by ... (2) equitable assessments upon each carrier which, as used in this section, includes all insurance carriers, self-insurers.... Each insurance carrier, self-insurer...shall make payment based upon workers’ compensation normalized premiums during the preceding calendar year.”
6. Section 42-9-220 – Manner in which compensation shall be paid.  
“Compensation under this Title shall be paid periodically, promptly and directly to the person entitled thereto, unless otherwise specifically provided.”
7. Section 42-9-230 – Date on which compensation payable under agreement shall be come due.  
“The first installment of compensation payable under the terms of an agreement is due on the fourteenth day after the employer has knowledge of the injury....”
8. Section 42-15-60(A) – Time period medical treatment and supplied furnished....  
“The employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required....”
9. Section 42-19-10 – Employers’ records and reports of injuries.  
“Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment on forms approved by the commission.”

"If the injury requires minimal medical attention at a cost not to exceed an amount specified by regulation of the WCC, and does not cause more than one lost workday or permanency, the employer is not required to make a written report to the commission...provided the employer maintains a record as prescribed by the commission and pays directly the incurred cost of the resulting medical attention."

10. Section 42-19-30 – Penalty for failure to make required reports.

"Any employer...who refuses or neglects to submit required forms, record, and reports any may be necessary for the proper handling or adjudication of a claim is liable for a penalty of not less than ten dollars nor more than one hundred dollars for each refusal or neglect."

According to Section 42-9-440, "[t]he commission shall report all cases of suspected false statement or misrepresentation, as defined in Section 38-55-530(D) to the Insurance Fraud Division of the Office of the Attorney General for investigation and prosecution...."

Greg's claim records indicate the Columbia Farms plant only filed 10 claims for 2007. That seems to be an incredibly small number for such a large employer. Furthermore, Greg's listing of claimants only includes two Hispanic-sounding names, which seems peculiar given the article quotes a manager saying his workforce is about 80% to 90% Hispanic. However, this evidence is both anecdotal and circumstantial. Given the fact the Observer spent twenty-two months investigating and interviewed more than two hundred workers, I doubt how much more we can do. We can certainly investigate their records; however, they likely will not be proof of wrongdoing.

The Attorney General's office may have initiated an investigation into this matter, and, perhaps, we should coordinate any efforts with them. If we open an investigation, we can subpoena payroll records under Section 42-3-150. Greg's information indicates the Employer has about twenty-five open claims, about eighteen hundred employees, and a total of one hundred ninety-six injuries in the past ten years, few of whose claimant's names are Hispanic.

We could investigate their records, interview employees, and interview managers; however, I doubt we would uncover any more definitive information than the investigative reporters uncovered. Any investigation would further be hampered by the fact that the Employer indicates there is 100% turnover on a yearly basis. Perhaps we could talk with Employer's counsel to generate compliance with the law.

## MEMORANDUM

TO: Gary R. Thibault  
FROM: Janet Godfrey Griggs  
DATE: July 7, 2008  
RE: House of Raeford Allegations

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After reviewing the newspaper articles and the investigation report generated by the Commission's investigative team, I agree with their conclusions. While the accusations in the Charlotte Observer articles are certainly alarming and egregious, the allegations do not appear to be substantiated based on the Commission's investigation and interviews. The audit team interviewed employees, interviewed management, reviewed injury records, and conducted inspections of facilities in West Columbia and Greenville. Furthermore, they interviewed the third party administrator, former supervisors, senior management at the corporate office, a medical doctor used by the Greenville plant, and an OSHA representative.

The audit team's findings indicate, with a few minor exceptions, the House of Raeford is in compliance with the Workers' Compensation Act. The investigation failed to uncover substantial proof of incidents as reported by the newspaper. While the poultry industry certainly appears to have some problems, there was nothing revealed by the audit team requiring action by the Commission, or that the Commission has jurisdiction to correct, other than those recommendations in the team's report.

## Memo

July 8, 2009

To: Gary Cannon  
Fm: Audit Team

**RE: Your Request for the Audit Team to Conclude Its Investigation of House of Raeford**

Upon assuming duties as the Executive Director of the Commission, you were briefed by the department directors on outstanding issues that were before the Commission. One issue was the investigation by an audit team of the House of Raeford that had not been officially concluded. House of Raeford is a major poultry operation that conducts business in South Carolina under the name Columbia Farms. Two Columbia Farms processing plants are located in South Carolina; one is in West Columbia and the other is in Greenville. The investigation was initiated following the publication of a six-part series entitled "The Cruellest Cuts" in The Charlotte Observer in February and March 2008. The articles made a number of serious allegations regarding House of Raeford's workers' compensation practices and policies.

In response to the articles, the Commission's Executive Director at that time, Gary Thibault, formed an audit team in March of 2008 to investigate the allegations. The audit team was made up of directors from the following areas of the Commission – Greg Line, Claims; Al McCutcheon, Insurance and Medical Services; Garry Smith, Compliance; and W.C. Smith, Self-Insurance.

The first order of business of the audit team was to divide the investigation into separate major tasks, which were:

- 1) Set objectives for the investigation;
- 2) Distill complaints in the newspaper articles into major allegations;
- 3) Establish a methodology that would generate any evidence regarding each of the major allegations.
- 4) Collect evidence
- 5) Make investigation findings as they relate to each objective.

The audit team completed a draft report of investigation which was submitted to Mr. Thibault for discussion in mid-May 2008. The draft conclusion of the audit team was:

- 1) The plants do a good job of treating cuts and minor injuries, and Musculoskeletal complaints are generally documented and address:
- 2) House of Raeford was in noncompliance of 12A and 12M procedures;
- 3) House of Raeford was in noncompliance of properly posting notice (poster):

- 4) With the noted exceptions above, House of Raeford was in basic compliance with the SC Workers Compensation Act, and its noncompliance was technical in nature and did not rise to the level of violation of law;
- 5) House of Raeford's self-insurance surety requirement is in compliance with the Commission formula.

Mr. Thibault met with the audit team in June 2008 to discuss the draft report. Mr. Thibault opined that the 12As reported by the House of Raeford did not at first glance appear to be an adequate number, considering the size of the workforce at the two plants.

In July, Mr. Thibault directed the team to re-write the draft report to include possible sanctions the Commission could impose, if the preponderance of the evidence were to show that House of Raeford was in violation of one or more sections of the SC Workers' Compensation Act. The audit team prepared the requested document and met with Mr. Thibault in August and indicated the following actions could be taken if the evidence were to indicate violations of the Act:

- 1) Assess fines for House of Raeford's failure to correctly record injuries on the Form 12A;
- 2) Assess fines for failure to display Form 2, Employer's Notice of Being Subject to the Act;
- 3) Require a three-year self-insurance probationary period for Nash Johnson & Sons Farms, Inc. (a/k/a House of Raeford). During the three-year probationary period, require House of Raeford to provide the Commission's Self-Insurance Division with detailed supporting documentation for each new self-insurance tax return along with their Form 10 filing;
- 4) During the three-year probationary period, require an annual audit by the Commission's Claims Department of Form 12As and Form 12Ms recorded and reported by House of Raeford.

Also, Mr. Thibault requested from the Commission's general counsel, Janet Griggs, that a list of potential violations of the South Carolina Workers' Compensation Act be created, if the allegations in the articles were found to be true. Ms. Griggs responded by providing the requested legal opinion document to Mr. Thibault.

The audit team discussed with Mr. Thibault the difficulty in establishing a specific number of 12As that had not been filed, if in fact House of Raeford had been in violation by not complying with the law in this area. A matter the audit team investigated was whether the first-aid logs would be a means of checking to see whether 12As had been properly executed and filed with the Commission as appropriate. However, the team opined this would not be accurate because the first-aid log did not distinguish in every instance whether the complaint was work-

related. Further, the first-aid logs kept by the two plants were widely different. The West Columbia plant had significantly fewer entries, while the nurse at the Greenville plant purported to record every visit by an employee, regardless of whether the medical complaint was work-related. Fining the Greenville plant for every entry in the first-aid log that did not correlate to a 12A would not work well, because in reality the Greenville plant had done a better job than the West Columbia plant in recording first-aid cases. So the fine for the Greenville plant's purported noncompliance would be greater because the plant purportedly had done a better job in recording complaints than the West Columbia plant.

Mr. Thibault indicated to the audit team that he was pursuing the idea of subpoenaing HCFA records from medical providers located in the surrounding area of the plants so the Commission could compare the medical records to determine whether they correlated with the 12As. Also, he said he was investigating whether an actuary could be hired to compare the number of claims a poultry operation the size of House of Raeford would typically have, as opposed to what House of Raeford reported. Mr. Thibault later determined that this methodology would not be effective or was cost-prohibitive.

Approximately two months later Executive Director Thibault announced that he would be retiring effective March 1, 2009. No further action was taken on the Columbia Farms investigation.

As per your request, please find enclosed the investigation that the audit team has completed and presented to you for your review.

**Report of Investigation by  
House of Raeford Audit Team**

**July 8, 2009**

**To: Gary Canon  
Fm: Audit Team**

**Background:**

A Commission investigation was initiated following the publication in February and March of a six-part series "The Cruellest Cuts" in The Charlotte Observer. The articles, which are shown as **Exhibit 1**, made a number of allegations regarding the workers' compensation practices of House of Raeford, a major poultry operation in South Carolina.

In response to the articles, the Commission's executive director at that time, Gary Thibault, formed an audit team in April of 2008, made up of directors from the following areas of the Commission – Claims, Insurance and Medical Services, Compliance, and Self-Insurance.

Also, Mr. Thibault requested from the Commission's general counsel, Janet Griggs, potential violations of the South Carolina Workers' Compensation Act, if the allegations in the articles were found to be true. Ms. Griggs responded by providing the document shown as **Exhibit 2**.

The first order of business of the audit team was to divide the investigation into separate tasks, which were as follows:

- A) Set objectives for the investigation;
- B) Distill complaints in the newspaper articles into major allegations;
- C) Develop a methodology to that would generate evidence regarding each of the major allegations;
- D) Collect evidence;
- F) Make investigative findings regarding each of the objectives.

The following is the audit's team's response to each of these tasks:

**A. Audit team's objectives:**

- 1) Determine whether the allegations made in the articles have validity.
- 2) Determine whether House of Raeford is in violation of one or more sections of the SC Workers' Compensation Act.

3) Determine whether House of Raeford's self-insured surety requirement is adequate.

**B. Distillation of the complaints in the newspaper's articles into major allegations:**

1) Hispanic workers at House of Raeford's poultry operations are afraid of being fired for reporting injuries.

2) Workers are fired for reporting injuries/claims.

3) Injury claims are not being filed properly by the employer.

4) Injured workers are not being treated properly (denied proper medical treatment, returned to work too soon, etc.).

5) House of Raeford knowingly hires Hispanics illegally in the country for the purpose of creating a docile work force easily controlled due to their reluctance to report injuries and file injury claims.

6) House of Raeford does not cooperate with enforcement agencies.

**C. Outline of the audit team's investigation methodology that generated evidence in response to the allegations:**

1) The team interviewed 58 employees at the West Columbia (March 20 and April 16, 2009) and Greenville (April 10, 2009) plants.

2) The team interviewed staff responsible for workers' compensation at the West Columbia and Greenville plants.

3) The team conducted an on-site inspection of facilities at the West Columbia and Greenville plants. The team also reviewed injury records from January 1, 2006 to March 2008.

4) The team inspected injury records of Key Risk, House of Raeford's third-party claims administrator (TPA).

5) The team interviewed Ames Alexander of the Charlotte Observer, the lead writer for the series of articles.

6) Garry Smith interviewed two former supervisors from the West Columbia plant regarding supervisory practices.

7) Garry Smith interviewed a union shop steward at the West Columbia plant and a representative from UFCW Local 1996.

8) The team interviewed senior management at the Batesburg-Leesville corporate office.

9) The team attempted to interview an outside medical provider used by the West Columbia plant, but the request for an interview was declined by the medical provider.

10) The team interviewed a medical doctor from Exigent, the first-line outside medical provider used by the Greenville plant.

11) Al McCutcheon interviewed a representative of the OSHA Division of the South Carolina Department of Labor, Licensing, and Regulation and reviewed OSHA compliance inspection records available on the Internet related to the West Columbia and Greenville plants.

**D. Investigation findings that address the three objectives of the investigation:**

**Objective 1: Determine whether the allegations made in the articles have validity.**

a.) Charlotte Observer allegation: Hispanic workers are afraid of being fired for reporting accidents.

The audit team found a high percentage of Hispanics interviewed stated they were afraid of being fired for reporting accidents.

Union organizers have been mostly unsuccessful in recruiting Hispanic employees. The small percentages of employees at the plants that have joined the union (approximately 10%) are white and African-American. The shop steward at the West Columbia plant is a black female who does not speak Spanish. It appears these factors have resulted in a union that is not very strong at the West Columbia and Greenville plants and contributes to Hispanic employees' fear of being fired for reporting injuries.

b.) Charlotte Observer allegation: Workers are fired for reporting claims.

Although employees provided hearsay accounts of employees having been fired for reporting injuries, employees were unable to provide specific incidents in which Hispanic employees had actually been fired for reporting injuries.

Current supervisors, managers, and two former supervisors, categorically deny workers are fired for reporting injuries.

c.) Charlotte Observer allegation: Injury claims are not being filed properly by the employer.

The audit team found there was a significant difference between the medical only reports maintained by the West Columbia and Greenville plants. The West Columbia plant reported 79 medical only entries from 2006 through the present; the Greenville plant reported 809 for the same period.

However, the numbers of 12As reported to the TPA in the same period were similar, 42 for the West Columbia plant and 54 for the Greenville plant.

A Charlotte Observer article indicated four Hispanic workers from the West Columbia plant were treated for musculoskeletal disorders, yet they don't appear in the first-aid logs, OSHA logs, or 12A records. Plant officials had no record of these four cases.

The position of the audit team is that the TPA, Key Risk, is in compliance with reporting claims to the Commission that have been reported to them by the plants.

d.) Charlotte Observer allegation: Injured workers are not being treated properly (denied proper medical treatment, returned to work too soon, etc.).

Medical records and employee interviews at the West Columbia and Greenville plants indicate employees are receiving appropriate medical treatment. Of 58 employees interviewed, no employee stated they had been denied proper medical treatment or that they knew of any other employee who had been denied proper medical treatment.

A complaint in the newspaper articles and in some interviews with employees is that injured employees are returned to work too soon. The West Columbia and Greenville plants use light duty extensively whenever medical providers indicate light duty is appropriate. It is a common practice recommended by workers' compensation cost containment experts. One concern of the audit team is that employees with bandaged cuts, etc. should only be assigned to work in clean and dry areas of the plant. On the day of the visit to the Greenville plant, one employee with a bandaged arm was observed cleaning an employee rest room.

A doctor from Exigent who was interviewed stated, in most cases, employees should be able to return to work with certain restrictions on the day following minor surgery. He said these employees would not be on narcotic pain killers that may increase the likelihood of additional injury. He praised the Greenville plant as being very responsive to the needs of injured employees. He stated that from his experience Columbia Farms looks out for their employees better than many other local employers. He said he has received no complaints about Columbia Farms from injured employees.

The doctor from Exigent also disputed the specific newspaper account of one employee who allegedly had been sent back to work immediately after surgery. The surgery was for a non-work-related medical condition.

Many of the Hispanic employees at the West Columbia and Greenville plants do not have family living in the United States. A common practice at both plants is to transport injured employees to the hospital or surgery center on the day of surgery, stay with the employee during surgery and recovery, and transport the employee back to the plant so they can be monitored instead of being taken home where no one is available to attend to their needs. Plant medical records confirm post-surgery employees in the plant are checked on an hourly basis.

Both the West Columbia and Greenville plants failed to correctly record all injuries by means of the 12A. Medical only claims were recorded in a first-aid log.

e.) House of Raeford is knowingly hiring employees that are illegally in the country, for the purpose of creating a docile work force that can be easily controlled due to their reluctance to report injuries.

Hispanic employment by House of Raeford's South Carolina operations mirror Hispanic employment in other labor-intensive jobs throughout South Carolina; therefore, it would be speculation on the part of the audit team to opine whether House of Raeford's employment demographics are the result of a deliberate effort to create a work force that is easily manipulated for the purpose of reducing claim costs.

However, since publication of the series, a number of House of Raeford employees have been arrested on immigration violations. The Greenville plant's human resource manager was arrested in July on 20 felony counts of instructing employees to use fraudulent employment eligibility forms.

Neither plant has maintained historical records on the number or percentage of Hispanic, African-American, and white applicants and

hires. The West Columbia plant has just recently begun to keep such records.

The plants purport to use the documentation procedures outlined in the I-9 federal handbook. Managerial employees stated to the audit team that documentation provided by Hispanic employees is audited by outside legal counsel to ensure the plants' compliance with federal law.

The West Columbia and Greenville plants purport they are in compliance with federal law regarding review and acceptance of documentation provided by Hispanic employees. Plant personnel at both plants admitted they do not use voluntary federal programs to check whether Hispanic workers have provided fabricated documentation to obtain employment.

House of Raeford's stated policy is that if it is learned an employee is undocumented, the employee is terminated, even if an injury has been reported.

f.) Charlotte Observer allegation: House of Raeford does not cooperate with enforcement agencies.

The audit team found no evidence that House of Raeford does not cooperate with enforcement agencies in South Carolina. Management fully cooperated with all requests made by the SCWCC audit team. Also, the West Columbia plant voluntarily schedules "courtesy" inspections by inspectors of South Carolina OSHA twice per year.

**Objective 2: Determine whether House of Raeford is in violation of one or more sections of the SC Act.**

a.) The position of the audit team is it is inconclusive whether House of Raeford's West Columbia and Greenville operations are in compliance with Section 42-19-10 of Title 42, which states as follows in pertinent part: "Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment on forms approved by the commission." The appropriate forms are the 12A and the 12M. The first-aid logs maintained by both plants do not satisfy the requirement of the 12A or 12M. The applicable regulations are R.67-411 (Employer's Report of Injury, Form 12A) and R.67-412 (Employer's Report of Injury, Form 12M), which state respectively in pertinent part:

"Each employer shall keep a record of all injuries, fatal or otherwise, received by its employees in the course of their employment...The record must be made in writing on the Form 12A..."

"The employer's representative shall report annually to the Commission's Accident Reporting Division the number of injuries reported by the employer...during the calendar year and the total cost of medical treatment...The annual report shall be on the Commission's 12M for the period January 1 to December 31."

b.) While the number of first-aid log entries varied significantly between the two plants, the number of 12A's completed by the two plants was similar. The team was unable to determine whether all injuries by accident that arose out of employment were properly recorded by means of the 12A, and, correspondingly, whether the number of injuries and total cost of medical treatment reported by 12M were correct.

c.) Also, the question remains as to whether musculoskeletal complaints are being documented and addressed, although a review of first-aid logs indicated cases of numbness and pain in hands. The logs indicate employees were examined, given Tylenol and/or treatment with cream, and returned to work. However, there are no records of employees returning for subsequent treatment. Interviews with employees did not reveal cases of employees returning with repeat complaints. In addition, four musculoskeletal cases that were filed with the Commission did not appear in first-aid and OSHA logs at the West Columbia plant, so it is unclear whether these employees did not make an initial complaint, or their visit was not recorded

d.) The position of the audit team is both plants were in noncompliance of Regulation 67-301 posting notice. This regulation states in pertinent part: "All employers operating under the Act, whether by law or by election, shall post publicly and keep posted in their place of business a Form 2, Employers' Notice of Being Subject to the Act..." There was no poster at the Greenville plant, and the poster at the West Columbia plant was displayed in an area not frequented by line employees.

e.) Section 42-5-190. Tax on self-insurers. Under this section, self-insured employers are required to report under oath to the SC Workers' Compensation Commission actual cost incurred under the self-insured provisions. If House of Raeford failed to correctly record and report 12A and 12Ms, which the audit team was unable to find conclusive proof this in fact had occurred, this omission would have impeded the Commission's ability to ensure House of Raeford was in compliance with this section.

f.) With the exceptions noted above regarding the lack of conclusive evidence as to whether House of Raeford recorded and reported properly by 12A and 12Ms, and the failure to provide notice to employees by poster, the position of the audit team is House of Raeford's South Carolina poultry operations are in compliance with the SC Workers' Compensation's Act.

**Objective 3: Determine whether the House of Raeford self-insured surety requirement is adequate.**

The position of the audit team is House of Raeford's self-insurance surety requirement is in compliance with the Commission formula.

**E. Recommendations for actions to be taken by the Commission:**

- 1) Provide and discuss report with House of Raeford management.
- 2) Continue to monitor the operations of Nash Johnson & Sons Farms, Inc. (a/k/a House of Raeford) to ensure compliance with the Commission's reporting requirements.
- 4) Require Nash Johnson & Sons Farms, Inc. to provide the Commission's Self-Insurance Division with detailed supporting documentation for each new self-insurance tax return along with their Form 10 filing.
- 5) Require an annual audit by the Commission's Claims Department of Form 12As and Form 12Ms of Nash Johnson & Sons Farms, Inc.