



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 E. Kilbourn Avenue, Suite 725, Milwaukee, WI 53202-3141
414-727-WILL (9455) | Fax 414-727-6385 |
www.will-law.org

August 5, 2024

Sent via Email

SRingel@sao.wincoil.gov

Carbon Copy Sent via Email

StatesAttorney@sao.wincoil.gov

J. Hanley

Winnebago County State's Attorneys

Care of Samantha Ringel

Victim Service Provider

Winnebago County State's Attorney's Office

Re: Demand for Return of First Supply, LLC's Truck in Case # 2024-TR-0000772.

Dear State's Attorney Hanley:

As you know, 725 ILCS § 120/4.5(b)(4) provides that “[t]he office of the State’s Attorney shall assist in having any stolen or other personal property held by law enforcement authorities for evidentiary or other purposes returned as expeditiously as possible” It incorporates by reference 725 ILCS § 120/115-9(a), which authorizes your office to use photographs to demonstrate “the nature of the property” in a prosecution.

On behalf of our client, First Supply, LLC, we are writing to you about a truck that your office has been holding since January of this year. The truck belongs to First Supply. As explained below, First Supply is incurring tens of thousands of dollars in damages by your office’s failure to return the truck.

First Supply is a family-owned plumbing and HVAC distributor based in Wisconsin. First Supply uses several trucks to make deliveries around the Midwest. It rents these trucks for about \$2,800 a month. Under the rental agreement, First Supply is responsible for all costs associated with its use of the trucks—including repairs.

In mid-January 2024, a First Supply truck was lawfully stopped at a red light when a reckless driver crossed the median and collided with the truck. No

one has alleged that First Supply or its driver was at fault. They are victims of a crime.

A sheriff's deputy responded. The deputy photographed the truck and then impounded it on the theory that it might be evidence of the reckless driver's crimes. No warrant authorized the seizure.

The case against the reckless driver was dismissed on July 29, 2024, based on a motion filed by your office. Notably, the reckless driver had been cited only for violating two traffic offenses: 625 ILCS § 5/11-709(a) Improper Traffic Lane Usage (Citation Number 10417890) and 625 ILCS § 5/11-601(a) Fail to Reduce Speed (Citation Number 10417891).

No one from your office informed First Supply that the case against the reckless driver was dismissed—First Supply discovered that fact on its own and then reached out to ask when it can get its truck back. To First Supply's knowledge, your office has not entered into a deferred prosecution agreement or anything of the sort with the reckless driver.

On August 1, 2024, First Supply's corporate counsel called your office and spoke with a receptionist, seeking to have the truck returned. The receptionist declined to give the counsel an email or phone number of a victim advocate. Worse still, the receptionist said that someone (presumably First Supply) would need to file a "motion" and that "within two months" First Supply would receive instructions on how and where to pick up the truck. Notably, the case against the reckless driver is currently "closed pending clerk action," so if a motion needs to be filed in that case, it will need to be reopened.

On August 2, 2024, a victim advocate emailed First Supply's corporate counsel, stating: "The case . . . [against the reckless driver] has been dismissed I do not have an exact time frame of when the evidence in the case will be released. When I am notified that it is being released, I will contact you." Notably, multiple victim advocates have been assigned to assist First Supply, and they have not been helpful.

First Supply's most recent interactions with your office track how it has been treated for several months. In mid-March 2024, a First Supply employee spoke with Sergeant Jeffrey Maville, a sheriff's deputy. Sergeant Maville said that "[t]hey are done with the truck" and that he would "call into the State[]s Attorney's Office to see if they are able to release the truck" Over the next several months, both First Supply's corporate counsel and its outside counsel at Michael Best & Friedrich LLP made several attempts to work with your office to secure the truck's release. They were unable to speak with the prosecutor assigned

to the case against the reckless driver. At one point, a victim's advocate informed First Supply that your office would "retain[] the evidence for the duration of any litigation," which is apparently "standard practice." We note that litigation appears to be over.

First Supply is incurring damages. First Supply has been forced to pay \$2,800 a month for a truck that it cannot use. It also has been unable to assess the truck to determine necessary repairs. Additionally, it has had to rent a second truck to make deliveries.

Your office has not explained why it needs to keep the truck. Only two traffic offenses were ever at issue (even if your office could have filed more serious charges), and the case against the reckless driver appears to be over. If your office is planning a future prosecution, your office has photographs of the truck and can call the deputy who saw the truck immediately after the crash. Sergeant Maville acknowledged months ago that the Sheriff's Office is "done with the truck."

As victims, First Supply and its members have several rights:

- "to be treated with fairness and respect," 725 ILCS § 120/4(a)(1),
- "to be free from . . . abuse," *id.*,
- "to communication with the prosecution," § 120/4(a)(3), and
- "to the timely disposition of the case following the arrest of the accused," § 120/4(a)(6).

See also Ill. Const. art. I, § 8.1(b) (granting victims standing to assert rights); *People ex rel. Carey v. Covelli*, 336 N.E.2d 759, 764 (Ill. 1975) (explaining no statute "prevent[s] the court from releasing property seized under a search warrant to the owners or to those persons entitled to possession"); *See People v. Canaday*, 275 N.E.2d 356, 360 (Ill. 1971) (citing *United States v. Alexander*, 415 F.2d 1352, 1357 (7th Cir. 1969)) ("[I]t is contended that the defendants' right to due process was violated because the trial judge, prior to trial, ordered the return to the owner of some of the television sets which had been seized from the defendants Were the court forbidden to enter such an order, owners of perishable property which had been stolen and recovered through a seizure would suffer total loss. In the case of other property, owners would be deprived of the use and right to dispose of it during the pendency of what are often protracted court proceedings.").

At bottom, First Supply is being re-victimized by your office. The very notion that a victim of reckless driving can have his or her property confiscated indefinitely is unconscionable.

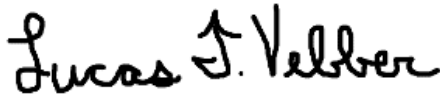
Under well-established precedent, First Supply’s “right of property . . . [is] fundamental, natural, inherent, inalienable[,] and sacred.” *People v. Hermann*, 501 N.E.2d 842, 846 (Ill. Ct. App. 1986) (affirming a trial court’s order to return seized property to two defendants). Absent “clear” authority, your office cannot seize or take property. *Id.* at 847. Your office lacks any authority, let alone “clear” authority, to keep the property of a victim.

First Supply has rights under the United States and Illinois Constitutions that your office is disregarding. Under the Takings Clause, your office must pay “just compensation” because it has “physically acquire[d] private property for a public use.” *E.g., Cedar Point Nursey v. Hassid*, 594 U.S. 139, 147 (2021). Accordingly, even if your office can justify keeping the truck for a future prosecution (and we do not agree that the truck would be necessary for such prosecution), Illinois needs to compensate First Supply for the taking of the truck. Additionally, the truck was seized without a warrant, and the impoundment constitutes an unreasonable “continuing seizure.” *Fontana v. Haskin*, 262 F.3d 871, 879–80 (9th Cir. 2001).

We urge you to carefully review your office’s practices because they are inconsistent with constitutional and statutory law.

The truck must be released by **August 9, 2024**. We look forward to your response before then.

Sincerely,



Lucas T. Vebber
Deputy Counsel
*Admitted only in Wisconsin



Skylar Croy
Associate Counsel
*Admitted only in Wisconsin



Daniel P. Lennington
Deputy Counsel
*Admitted only in Wisconsin



Patrick J. Hughes, ARDC #6225212
Center for American Rights
747 N. LaSalle St. Suite 210
Chicago IL 60654