STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: DECEMBER 26, 2012)

JPL LIVERY SERVICES	:	
V.	:	**C.A. No.: PC 06-2570**
STATE OF RHODE ISLAND; DAVID R. GIFFORD, Director of the Department of Health; THOMAS GILSON, Chief Medical Examiner; ROBERT O'DONNELL; ROSEMARY BOOTH GALLOGLY; JEROME D. MOYNIHAN	:	
		– CONSOLIDATED WITH –
JPL LIVERY SERVICES, INC. D/B/A/ OCEAN STATE TRANSFER	:	
V.	:	**C.A. No.: PC 08-8293**
RHODE ISLAND DEPARTMENT OF ADMINISTRATION; RHODE ISLAND DEPARTMENT OF HEALTH	:	

DECISION

TAFT-CARTER, J. This case involves a contract dispute between JPL Livery Services, Inc. ("JPL") and the State of Rhode Island. The matter is before this Court for decision following a non-jury trial on two complaints filed by JPL against various state agencies and officials. The actions were consolidated on August 23, 2010 and tried without a jury in May 2012. At the conclusion of the Plaintiff's case, Defendants Department of Administration ("DOA") and Department of Health ("DOH") moved for judgment as a matter of law pursuant to Rule 52 of the Superior Court Rules of Civil Procedure. This

Court reserved its decision and at the conclusion of testimony instructed the parties to file post-trial memoranda. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

The testimony established that in 1995, JPL contracted with the State to provide livery services for the transportation of mortal remains. Joseph L. Pilosa, Jr., former President of JPL ("Pilosa"), testified that the livery services were provided from anywhere within the State of Rhode Island to the Office of State Medical Examiners in Providence (the "OME").[1] JPL provided these services pursuant to successive contracts from 1995 until the most recent contract was terminated by the State on December 10, 2007. Pilosa testified that it was his firm belief that the contract with the State was exclusive and unconditional. This belief was based on the fact that JPL was the only livery company that provided this service to the State. Pilosa testified that he and his employees were professionals who worked diligently for the State.

The compensation to JPL was based on each transport. JPL was paid $125 "per case" for transporting the mortal remains from locations within the greater Providence area, and $130 for transportation from all other areas of the state. The 2005 contract (the "Contract") required JPL to provide these transportation services "as requested by agency"[2] and that "continuation of the contract beyond the initial fiscal year will be at the discretion of the state." (Contract at 2-3.) The Contract also provided that: "Termination may be effected by the State based upon determining factors such as unsatisfactory performance or the determination by the State to discontinue the

[1] The OME is a division of the DOH.
[2] That the services were to be performed "as requested by agency" is stated at least three times in the contract.

goods/services, or to revise the scope and need for the type of goods/services; also management owner determinations that may preclude the need for goods/services." (Contract at 2.) The Contract was subject to "the specifications, terms and conditions set forth" in the associated bid number. (Contract at 1.) In addition, the Contract mandated that JPL abide by specific criteria regarding the documentation of its employees, its vehicles, and insurance. (Bid Specifications at 3, 6-7.) Among other things, the Contract required JPL to provide "proof of valid drivers license for all employees," "proof of background checks done on all employees," and "proof of workers compensation insurance." (Bid Specifications at 6.) Moreover, JPL was required to immediately provide the OME with any changes in personnel and submit the necessary documentation for the new employee to OME. (Bid Specification at 6.) The Contract further stated that "[f]ailure to provide annual insurance certification may be grounds for cancellation." (Contract at 2.)

Until October 2005, Pilosa and the State had an amicable and professional relationship. In October 2005, however, Robert E. O'Donnell, Jr. ("O'Donnell") was appointed as the new administrator at the OME. Pilosa testified that from the inception, he was certain that O'Donnell wanted JPL removed from service.

At trial, the Defendants presented credible testimony that JPL failed to comply with the terms of the Contract. The evidence established that in 2005, JPL submitted a bid to the State and was awarded the contract to provide livery services for DOH. It is undisputed that under its first two contracts with the State, and for a short period of time under the 2005 contract, DOH exclusively used JPL to provide livery services to OME. However, budgetary issues arose in March 2006 and the OME began implementing cost-

cutting measures which included reducing the use of livery services. The DOH concluded that it was cost effective to use its own personnel for livery services. As a result, O'Donnell informed Pilosa that he was reducing the number of requests for livery services. O'Donnell testified that the OME was instituting a new policy whereby OME employees would be primarily responsible for transporting mortal remains during normal working hours, i.e., Monday through Saturday, 8 a.m to 4 p.m. Under this policy, OME would continue to call on JPL for livery services on weekends and in special circumstances during these hours. This new arrangement was not satisfactory for Pilosa. Pilosa objected to the change and maintained that under the Contract, JPL was the exclusive provider of livery services to the OME. JPL believed that O'Donnell had a personal agenda to have JPL removed from the state contract. Pilosa's conclusion, however, was not based on fact; it is mere speculation.

The use of state employees to provide livery services is the basis for JPL's breach of contract claim. (Amended Complaint at ¶¶ 15, 18.) Pilosa testified that because JPL historically performed all of the state livery work and from his reading of the Contract, he believed that it was an exclusive contract for services. This belief was unfounded. Jerome Moynihan ("Moynihan"), Administrator of Purchasing Systems with the DOA, testified that he was employed in 2005. He explained that the Contract was exclusive to the company hired to pick up the mortal remains but not exclusive of the work. He further testified that he became aware that DOH was unhappy with JPL because JPL had on different occasions arrived late at the scene, placed an incorrect toe tag on a deceased so as to cause confusion as to identification, and failed to properly transport a child. Also, he testified that an individual employed by JPL had stolen from a deceased.

Although acknowledging that JPL's performance in the past was successful, Moynihan asserted that immediately before JPL's contract was terminated, JPL performed poorly. Moynihan testified that the termination of the Contract was proper. In addition, Deborah Reavey Reynolds, former Chief Purchasing Agent at DOH, testified that the contract was non-exclusive. Ms. Reynolds noted that the Contract was a blanket contract and that JPL was paid per unit. In addition, she testified that the term "as requested" meant "whenever needed by DOH." The State's witnesses provided credible testimony.

At the same time, Angela Harwood, Scene Investigator at OME, did not agree with O'Donnell's decision to limit JPL's services despite admitting that she never read the Contract. The Court has given her testimony little weight. Carl Zambrano, also a Scene Investigator with the OME, testified against the O'Donnell policy to divert JPL's services with the State. Mr. Zambrano had a history of disputes with O'Donnell as he had previously filed two complaints against the Chief Medical Examiner.

On June 29, 2007, O'Donnell and the Chief Medical Examiner wrote to the DOA's Division of Purchases requesting permission to terminate the contract with JPL based on several instances of alleged misconduct by JPL employees, JPL's alleged failure to comply with several contract terms, and JPL's failure to address these concerns after being notified of them. (Def.'s Post-Trial Memo, Exhibit O.) In its letter, the OME cited "the potential for harm to the citizens of Rhode Island" and noted that if given permission to terminate JPL's contract, it would be imperative to "enter into a temporary, emergency contract" with another provider because "[l]ivery service is essential to operations of the Office of State Medical Examiners." (Id.) In addition to the letter, O'Donnell also sent an email to OME personnel stating, effective immediately, JPL "will not be used for

Livery service . . . until further notice" and that OME personnel would be required to contact either of two listed ambulance service companies on a rotating basis. (Trial Exhibit 4.)

Then, on July 19, 2007, Moynihan wrote to JPL stating that despite DOH's concerns, it had been decided that no action would be taken to terminate the Contract because JPL had substantially complied with the request for production and documentation. (Def.'s Post-Trial Memo, Exhibit I.) Moynihan ended the letter by stating that "any future failure by JPL to comply with the terms of its contract with the State shall result in punitive action being taken, including but not limited to, termination of JPL's contract with the State."

Moynihan's next letter to JPL terminated the Contract, effective December 10, 2007.[3] (Def.'s Post-Trial Memo, Exhibit L.) The letter cited to several non-exclusive violations of the terms of the award. First, DOH asserted that JPL had deceived the State as to the existence of certain personnel and also as to the backgrounds of those personnel. Among other things, the Contract required JPL to "provide proof of background checks done on all employees." On November 30, 2007, JPL requested evidence of Bureau of Criminal Investigation ("BCI") checks for nine alleged drivers whose existence was left undisclosed by JPL's President in signed answers to interrogatories provided to the Superior Court on July 10, 2007. (Def.'s Post-Trial Memo, Exhibit J.) Shortly thereafter, JPL supplied evidence of BCI checks only for eight of the named individuals, six of whom apparently had serious criminal records. (Def.'s Post-Trial Memo, Exhibit L.) Furthermore, DOH asserted that JPL had twice failed to respond to requests for livery

[3] The letter is not dated, but it references JPL's failure on December 3, 2007 to provide OME with sufficient background checks for certain JPL employees. The Court finds that the letter was written after December 3, 2007.

services in a timely manner in August 2007. (Id.) Additionally, DOH asserted that JPL's President personally failed to follow established protocol when he carried a deceased child in his arms out of a hospital morgue at 2 a.m. on November 30, 2007, rather than placing the child on a carrier. (Id.)

After termination of the JPL Contract, the State again solicited bids for a contract to provide the OME with livery services. (Pl.'s Post-Trial Memo at 3-4.) Soon thereafter, the contract was awarded to a new provider. (Id.) While the terms of that contract are not clear from the record, the rate of compensation was higher per mortal remains when compared to that for JPL. (Pl.'s Post-Trial Memo at 4.)

The initial action was filed on May 10, 2006. In that complaint, the Plaintiff sought injunctive relief, compensatory damages, and attorneys' fees from the State of Rhode Island and officials in the DOH, claiming that the DOH officials were breaching and/or interfering with JPL's livery services contract with the State. On May 12, 2010, JPL amended the complaint, naming additional officials in the DOA as co-defendants and seeking reinstatement of JPL's contract with the State, damages from violation and termination of the contract, and compensation for attorneys' fees and costs. The second action was filed on December 22, 2008. The Plaintiff asks the Court to reinstate the contract with the State and seeks damages for the alleged breach and unlawful termination of JPL's contract with the State. The Plaintiff names the DOA and DOH as co-defendants. Before trial, DOA filed a motion in limine to "[p]rohibit the mentioning, or the introduction of any parol or extrinsic evidence used to vary, alter or contradict the clear language in the contract that JPL was to be used 'as requested' by the Department of Health." On March 29, 2012, after four days of testimony, this Court granted DOA's

motion in limine and prohibited JPL from referring to the Contract as exclusive. The Court in its ruling reasoned that the contractual language was not exclusive. The instant suit followed.

II

Standard of Review

Rule 52(a) of the Superior Court Rules of Civil Procedure states that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon." Super. R. Civ. P. 52(a). Therefore, in a non-jury trial, the trial justice sits as the trier of fact as well as of law. Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). Thus, the trial justice "weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences." Id. A trial justice's findings of fact will not be disturbed unless such findings are clearly erroneous, the trial justice misconceived or overlooked material evidence, or unless the decision fails to do substantial justice between the parties. Opella v. Opella, 896 A.2d 714, 718 (R.I. 2006) (quoting Bogosian v. Bederman, 823 A.2d 1117, 1120 (R.I. 2003)). Furthermore, an extensive analysis and discussion of the evidence and testimony is not required to comply with the mandates of Rule 52. Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998); see also Anderson v. Town of East Greenwich, 460 A.2d 420, 423 (R.I. 1983). "Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case." Cowsill, 716 A.2d at 747. Although the trial justice need not "categorically accept or reject each piece of evidence," the trial justice's decision must "reasonably indicate[] that [the justice] exercised independent

judgment in passing on the weight of the testimony and credibility of the witnesses." Notarantonio v. Notarantonio, 941 A.2d 138, 144, 147 (R.I. 2008).

III

Analysis

The central question in this dispute is whether or not the State lawfully terminated its contract with JPL on December 10, 2007. JPL asserts that "[t]here was no basis for terminating the contract that [JPL] had with the Defendants" and that "the actions of the Defendants in terminating this contract were illegal, arbitrary and capricious." (Amended Complaint at ¶ 46.) JPL also states in its complaint that "at no time was [JPL] afforded an opportunity to be heard in response to" the Defendants' displeasure with JPL's performance. (Id. at ¶ 45.) JPL points to the testimony and documents produced at trial to argue that the conduct of DOH and DOA failed to comport with standards of good faith and fair dealing, claiming that JPL "was summarily terminated without cause, in violation of Rhode Island General Laws 37-2-3 et sq., 37-2-49." (Complaint of Dec. 22 at ¶ 3.)

The State responds with several arguments. The State first argues that DOA lawfully terminated the contract with JPL. The State points to the terms of the Contract and argues that DOA acted with good faith in doing so. Additionally, the State argues that DOH did not breach the Contract when it utilized its own employees for livery services prior to termination of the JPL Contract. Finally, the State argues that JPL failed to adequately prove any measure of damages to justify recovery and that JPL should have first exhausted its administrative remedies before filing its suit in Superior Court.

Well-settled rules of contract interpretation guide the present inquiry. "In interpreting a contract the parties' intention must govern if that intent can be clearly inferred from the terms of the contract and carried out consistent with settled rules of law." Westinghouse Broadcasting Co., Inc. v. Dial Media, Inc., 410 A.2d 986, 991 (R.I. 1980). "Whether a particular contract is or is not ambiguous is a question of law." Young v. Warwick Rollermagic Skating Ctr., Inc., 973 A.2d 553, 558 (R.I. 2009). If a contract is determined to be clear and unambiguous, then "the meaning of its terms constitute a question of law for the court." Id. (quoting Cassidy v. Springfield Life Ins. Co, 262 A.2d 378, 380 (R.I. 1970)). "Unless plain and unambiguous intent to the contrary is manifested, words used in contract language are assigned their ordinary meaning." Cerilli v. Newport Offshore, Ltd., 612 A.2d 35, 37-38 (R.I. 1992). Therefore, "[i]n determining whether or not a particular contract is ambiguous, the court should read the contract 'in its entirety, giving words their plain, ordinary, and usual meaning.'" Young, 973 A.2d at 558 (quoting Mallane v. Holyoke Mutual Ins. Co. in Salem, 658 A.2d 18, 20 (R.I. 1995)). Moreover, in making this determination, the Court should "refrain from engaging in mental gymnastics or from stretching the imagination to read ambiguity where none is present." Mallane, 658 A.2d at 20.

At the outset, the Court finds that the language in the present contract is clear and unambiguous. In exchange for a promise to transport mortal remains to the OME over a period of time, as requested by DOH and at the rates listed in the Contract, JPL agreed to several unambiguous provisions. Among those provisions were the following: (1) "continuation of the contract beyond the initial fiscal year will be at the discretion of the state" (Contract at 2.); (2) "[t]ermination may be effected by the State based upon

determining factors such as unsatisfactory performance or the determination by the State to discontinue the goods/services, or to revise the scope and need for the type of goods/services; also management owner determinations that may preclude the need for goods/services" (Contract at 2.); (3) JPL's providing proofs of background checks and insurance "for any new employee immediately." (Bid Specifications at 6.) Cf. Flippi v. Flippi, 818 A.2d 608, 624 (R.I. 2003) (applying the bargained-for exchange test to determine consideration and mutuality of obligation).

JPL argues that this contractual language impermissibly allows the State to terminate the agreement in circumstances beyond JPL's ability to control. Therefore, JPL argues that the contract is illusory unless "unsatisfactory performance" means "material breach." JPL cites Centerville Builders, Inc. v. Wynne, 683 A.2d 1340, 1341 (R.I. 1996), for the proposition that "when the promises of the parties depend on the occurrence of some future event within the unilateral control of the promisors, the promises are illusory and the agreement is nonbinding."

Here, the clear and unambiguous language of the Contract allows for termination of the Contract after the first fiscal year, citing G.L. 1956 § 37-2-33. (Contract at 2.) The Court finds that the State's power to terminate the present contract was simply a part of the bargain to which JPL voluntarily assented and does not affect the promises of the parties. "In general termination clauses supported by adequate consideration are not illusory." Holliston Mills, Inc. v. Citizens Trust Co., 604 A.2d 331, 336 (R.I. 1992); see also Joni Auto Rentals, Inc. v. Weir Auto Sales, Inc., 491 A.2d 328, 330 (R.I. 1985) (finding a binding contract where one party's obligation is triggered by the other party's promise to do something); Lehner v. Adam Hat Stores, Inc., 143 A.2d 313, 317 (1958)

("That the condition applicable to one party is lighter than the condition applicable to the other does not render the favored party's promise illusory."); 2 Joseph M. Perillo & Helen Hadjiyannakis Bender, Corbin on Contracts § 6.10 at 293 (rev. ed. 1995) (stating that the validity of a contract does not "depend[] upon equality of advantages or values" and that "[e]ach right or power or privilege possessed by one party does not have to have its exact counterpart in the other"). As such, both JPL and the State were bound by the Contract, and the State was obligated by the Contract's terms to compensate JPL for livery services, "as requested." The Court, therefore, finds that according to the clear language of the Contract, it was the intention of the parties to allow the State to end requests for livery services and to terminate the contractual relationship with JPL under appropriate conditions. Cf. Linan-Faye Const. Co. v. Housing Authority of City of Camden, 49 F.3d 915, 918-31 (3rd Cir. 1995) (analyzing a "termination for convenience" clause in a government contract).

The State was under an obligation to exercise good faith in its contractual relationship with JPL. See §37-2-3(b) (imposing the obligation of good faith on the State in the performance and/or enforcement of its contracts). This good faith requirement attaches to the manner by which the State enforces its termination powers pursuant to the Contract. See Frederick W. Claybrook, Jr., Good Faith in the Termination and Formation of Federal Contracts, 56 Md. L. Rev. 555, 561 (1997) ("When there is a contract [a party] with discretion to terminate should be required to terminate only in good faith." (quoting Steven J. Burton & Eric G. Anderson, Contractual Good Faith: Formation, Performance, Breach, Enforcement (1995)); cf. Sons of Thunder, Inc. v. Borden, Inc., 690 A.2d 575, 589 (N.J. 1997) (upholding jury verdict that defendant breached duty of good faith

notwithstanding express right to terminate contract). When disputes similar to the present one arise in the context of federal contracts, termination by the government amounts to a breach if a plaintiff can show a clear abuse of discretion or the presence of bad faith on the part of the government. See Krygoski Const. Co. v. United States, 94 F.3d 1537, 1543 (Fed. Cir. 1996) (discussing the good faith requirement). A primary reason for this heavy burden of proof in the federal context is the "presumption that public officials act 'conscientiously in the discharge of their duties.'" Id. at 1541 (quoting Kalvar Corp., Inc. v. United States, 543 F.2d 1298, 1301 (Ct. Cl. 1976)).

Under Rhode Island law, § 37-2-3 defines "good faith" as "honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing." Id. JPL presents several reasons in support of its argument that the State did not terminate the Contract in good faith. First, JPL contends that there was no factual basis to the justifications cited in Moynihan's termination letter, effective December 10, 2007, because JPL's performance under the Contract had been "exemplary." Moreover, JPL argues that the issues cited in that letter were too minor to justify terminating the contract, even if assumed to be true. Additionally, JPL argues that O'Donnell's actions prior to the termination of the contract, such as curtailing the number of livery requests made to JPL on behalf of DOH, suggest that in terminating the Contract, the State was not exercising good faith or principles of fair dealing. Essentially, JPL claims that the termination was an extension of O'Donnell's alleged "vendetta" against JPL, and that the issues raised by the State in relation to the eventual termination were merely "pretext." Finally, JPL argues that it was never afforded an adequate opportunity to address the

concerns the State had with JPL's performance, nor was it given any opportunity to be heard in response to the State's complaints and allegations.

The good-faith standard by which the court should hold the State accountable in exercising a termination-for-convenience clause is at issue in this case. In a similar context, the Supreme Court has held that Rhode Island is an employment-at-will state and that in the absence of an agreement, "an employee has no right to continued employment and is 'subject to discharge at any time for any permissible reason or for no reason at all.'" See New England Stone, LLC v. Conte, 962 A.2d 30, 32-34 (R.I. 2009) (quoting Galloway v. Roger Williams Univ., 777 A.2d 148, 150 (R.I. 2001)). In situations where the employee has the benefit of a contractual agreement, the Court required the hearing justice to find only that a cause for termination existed in order to establish good faith termination. Id. at 34. In Conte, the Supreme Court therefore declined to "create additional and implied terms to govern the relationship as a matter of law" or to "impose the type of due-process mandates urged" because the Contract language at issue was sufficiently clear and unambiguous to justify termination. Id. at 33-34. Additionally, like federal officials, Rhode Island public officials would appear to benefit from a presumption of good faith for their actions in administering contracts. See Blue Cross & Blue Shield of R.I. v. Najarian, 865 A.2d 1074, 1081 (R.I. 2005) (stating that the awarding authority in the public bidding process is entitled to the presumption of good faith). Given these precedents, this Court finds that the State's termination of a contract containing a termination-for-convenience clause satisfies the contract's good faith requirement if there is some articulated reason for terminating the contract and the plaintiff has not proven the State acted in bad faith.

Here, the State satisfied the good faith requirement in the administration of the contract at issue when it terminated that contract on December 10, 2007. Indeed, the State exceeded its obligations. Moynihan, an administrator at the DOA, issued a warning letter to JPL on July 19, 2007, advising that "any future failure by JPL to comply with the terms of its contract with the State shall result in punitive action being taken, including but not limited to, termination of JPL's contract with the State." (Def.'s Post-Trial Memo, Exhibit I.) The State has articulated that many of its concerns continued to arise subsequent to issuance of the July 19, 2007 letter. These concerns included JPL employees who transported mortal remains prior to JPL providing the required documentation to DOH, JPL's late submission of insurance certificates, JPL's late arrival at the scene on at least one occasion, and improper handling of deceased bodies. (Def.'s Post-Trial Memo, Exhibits J, K, L.) In the termination letter itself, the State noted JPL's failure to provide an employee's background check and that background checks on other previously unknown employees disclosed unsavory criminal histories. (Def.'s Post-Trial Memo, Exhibit L.)

The Court finds that JPL's failure to provide a criminal background check for one of its employees was a breach of its contract with the State, and is a valid reason for the State to terminate the Contract in this context. See Conte, 962 A.2d 30 at 33-34. Moreover, even though the Contract does not require that JPL's employees have clean criminal histories, the reason that the State provides for terminating the Contract need not necessarily involve a breach of the Contract on JPL's part. The Contract clearly and unambiguously stated that "[t]ermination may be effected by the State based upon determining factors such as . . . the determination by the State to discontinue the

goods/services." (Contract at 2.) The State could have easily determined that it was not in the public interest to allow certain classes of convicted criminals to perform livery services on the State's behalf, given the access such individuals would gain to private residences across the State. The Contract allows the State to terminate the Contract based on such determinations, and the Contract does not obligate the State to afford JPL a grace period for disapproved practices. See id.; see also Bradford Assoc. v. Rhode Island Div. of Purchases, 772 A.2d 485, 490-91 (R.I. 2001) (finding that removal of plaintiffs from state contract absent a hearing was not unfair). This Court refuses to read into the Contract "due process mandates" that the Contract does not contain. See Conte, 962 A.2d at 33. As a result, the Plaintiffs' allegations that there was not adequate opportunity to address the State's concerns with JPL's performance prior to termination are unavailing.

Moreover, JPL has failed to demonstrate that the State acted in bad faith by terminating the Contract. JPL believes that O'Donnell, in his role as an administrator in the DOH, acted on the basis of a personal vendetta against JPL's then-President, Joseph Pilosa. The evidence produced by JPL in this regard was speculative. The Court finds that the testimony in support of this contention is unconvincing and not credible. On the other hand, the Court found the testimony of the State's witnesses relating to the cost-cutting measures and dissatisfaction with JPL's services extremely credible. It was these reasons that triggered the curtailing of livery requests prior to termination. JPL provided no credible evidence that the State or its employees demonstrated any bad faith at all towards JPL in the time period leading up to termination of the Contract. The Court finds nothing particularly telling about the fact that the State's subsequent contract for livery

services with a different provider awarded the subsequent contractor a higher "per unit" rate, especially considering that the remaining framework of that agreement is not clear from the record. Thus the Court finds that the DOA acted in good faith in terminating JPL's contract with the State and that the Contract was legally terminated pursuant to the Contract's terms.

Finally, consistent with the Court's reasoning and with this Court's ruling of March 21, 2012, the DOH did not breach the State's agreement with JPL by choosing to use its own employees rather than JPL's prior to terminating the Contract. The Contract stated in very certain terms that JPL was to provide livery services "as requested" by DOH. (Contract at 3.) The term "as requested" must be given its plain, ordinary, and usual meaning. See Garden City Treatment Ctr., Inc. v. Coordinated Health Partners, Inc. 852 A.2d 535, 542 (R.I. 2004); Rubery v. Downing Corp., 760 A.2d 945 (R.I. 2000). The Contract's requirement that JPL provide DOH with livery services "as requested" is clear and unambiguous insofar as it places no obligation on the State to request livery services from JPL in the first place. Whatever inferences JPL would have this Court draw to the contrary from testimony or circumstantial evidence are unconvincing and misplaced. JPL has failed to establish in any respect that its contract with the State to provide DOH with livery services was exclusive. Cf. Cavanaugh v. Mayor of Pawtucket, 49 A. 494, 494-97 (R.I. 1901) (analyzing bid solicitation language for the exclusive privilege of removing refuse from the streets of Pawtucket). Therefore, the Court concludes that the DOH did not breach the State's contract with JPL when, prior to termination, it used its own staff or other third parties to supply the OME with livery services for mortal remains.

IV

Conclusion

Having determined that the State lawfully terminated its contract with JPL in good faith and that the State did not breach the same contract by using its own employees for livery services prior to termination, this Court's inquiry is at an end. The Court need not address the issue of lost profits or other alleged damages.

For the foregoing reasons, Judgment is entered in favor of the Defendants and against the Plaintiffs.