

ATTORNEY GENERAL OF THE STATE OF NEW YORK
ANTITRUST BUREAU

In the Matter of

Assurance No.
18-026

**Investigation by ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York,**

of

Taylor Garbage Service, Inc.,

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“NYAG”) commenced an investigation pursuant to Executive Law § 63(12) and General Business Law § 343 into collusion among waste haulers in the Broome County area. This Assurance of Discontinuance (“Assurance”) contains the findings of NYAG’s investigation and the relief agreed to by NYAG and Taylor Garbage Service, Inc. (“The Company”).

NYAG’S FINDINGS

1. The Company is a corporation engaged in the business of collecting and transporting solid waste and recycling, and operates primarily in Broome County.
2. Bert Adams Disposal, Inc. (“BAD”) is also engaged in the business of collecting and transporting solid waste, and also operates primarily in Broome County.
3. In approximately July 2014, representatives of the Company and BAD met to discuss competition in their market. At or shortly after this meeting, the two parties agreed that they would no longer solicit one another’s existing customers by offering lower prices.

4. The Company and BAD routinely agreed in advance which company would win a particular bid, regularly exchanged information about the rates they were charging current customers as well as the rates that they proposed to submit in bids, and agreed not to pursue the business of each other's current customers through active solicitation or through price competition.

5. The Company and BAD regularly submitted deliberately inflated bids and price quotes to prospective customers to ensure that the incumbent would keep its customers. These "cover bids" were submitted because an outright refusal to submit a bid to a prospective customer could have caused that customer to suspect collusion between the Company and BAD. If either company inadvertently placed a winning bid with one of its co-conspirator's historical customers, the company would typically withdraw that winning bid or price quotation, so that the business would remain with the incumbent provider.

6. Agents of the Company and BAD carried out the collusive conduct by various means, including through hundreds of telephone calls and text messages in which they exchanged price information and arranged bids so that neither company would offer a more favorable price to the other's existing customers.

7. NYAG finds that, through the above-described conduct, the Company entered into contracts, agreements, arrangements or combinations whereby competition has been restrained, all in violation of The Donnelly Act (General Business Law § 340).

PROSPECTIVE RELIEF

WHEREAS, the Company admits NYAG's Findings (1)–(7) above;

WHEREAS, NYAG is willing to accept the terms of this Assurance pursuant to Executive Law § 63(15) and to discontinue its investigation;

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate; and

WHEREAS, this Assurance reflects the Company's admission of wrongdoing and timely cooperation that helped advance NYAG's investigation:

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

8. The Company shall not engage in collusive or otherwise anticompetitive conduct.

9. The Company shall implement an antitrust compliance program consisting of the following:

a. Within ten (10) calendar days of execution of this Assurance, the Company shall communicate with all its personnel to (i) inform them that the Company has executed this Assurance and (ii) outline the conduct prohibited by this Assurance.

b. Within thirty (30) calendar days of execution of this Assurance, the Company shall designate an individual, without any connection to the conduct described in paragraphs (1)–(7) above, to serve as a compliance officer and to discharge the duties set forth below, and no attorney-client or other professional relationship shall be formed between the compliance officer and the Company. The person designated as the compliance officer shall be responsible for developing, implementing, and administering an antitrust compliance plan and ensuring that the Company complies with the terms and conditions of the compliance plan and this Assurance.

c. Within thirty (30) calendar days of execution of this Assurance, the Company shall provide the NYAG with a sworn statement confirming that it has taken the steps required to comply with this Assurance and setting forth such compliance (the

“Certification”). The Certification shall include the information contained in the communications to personnel, the identity of the designated compliance officer, and a description of the compliance program as required by this paragraph.

d. For each of the three years following the execution of this Assurance, the Company shall provide the NYAG with an annual report of the status of the compliance program.

e. The Company expressly agrees and acknowledges that a default in the performance of any obligation under this paragraph is a violation of the Assurance, and that the NYAG thereafter may commence the civil action proceeding contemplated in paragraph 14 of this Assurance, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraph 18, pursuant to Executive Law § 63(15).

10. The Company shall submit itself to antitrust oversight by NYAG as follows:

a. The Company shall retain all records relating to its obligations under this Assurance, including copies of all correspondence, emails, and memoranda communicating to all its personnel its obligations pursuant to this Assurance. The Company shall, upon thirty (30) days' written notice from the NYAG, provide all documentation and information necessary for the NYAG to verify compliance with this Assurance.

b. The Company shall, upon request by NYAG, permit NYAG to interview, either informally or on the record, the Company's officers, employees, or agents, who

may have their individual counsel present, regarding compliance with this Assurance.

The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by the Company.

11. The Company agrees that it will pay by wire transfer, payable to the State of New York, five hundred thousand dollars (\$500,000.00) in penalties, fees and costs pursuant to the following schedule:

- \$250,000.00 within ten (10) business days of execution of this Assurance (the “First Payment”);
- \$125,000.00 within one (1) year of the First Payment (the “Second Payment”); and
- \$125,000.00 within one (1) year of the Second Payment.

12. Any payments and all correspondence related to this Assurance must reference Assurance #18-026.

13. To secure the payment described by paragraph 11, the Company will execute and deliver, at the time of the execution and delivery of this Assurance, the accompanying Affidavit for Judgment by Confession (attached hereto as Exhibit A), confessing judgment for the Monetary Relief Amount of \$500,000, plus collection fees of twenty two percent (22%) of any unpaid Monetary Relief Amount at the time of any subsequent default, plus statutory costs of \$15.00. NYAG will reduce the Monetary Relief Amount by the principal amount of payments made by the Company to NYAG to calculate the Unpaid Monetary Relief Amount at the time of any subsequent default.

14. In the event that the Company fails to timely and properly make payment as required by paragraph 11, NYAG shall provide the Company with written notice, by first class

mail, of such failure. If the Company does not cure such failure within 30 days of NYAG's written notice, NYAG may file and enter the applicable Affidavit for Judgment by Confession as a judgment against the Company, at any time, and without further notice, for the balance owed pursuant to this Assurance at the time of default, less any payments made prior to default, plus the collection fees and statutory costs described above.

15. The Company represents and warrants that the signatory below has been duly authorized to and has the authority to sign an Affidavit for Judgment by Confession on behalf of the Company, as per the corporate resolution attached hereto as Exhibit B.

16. The Company agrees to promptly provide a copy of this Assurance to any current, former, or prospective customer of the Company who, either formally or informally, seeks, requests or otherwise asks the Company, through its employees or agents, about NYAG's investigation into collusion among waste haulers in the Broome County area.

MISCELLANEOUS

17. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by the Company and their counsel and NYAG's own factual investigation as set forth in Findings (1)-(7) above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the NYAG in its sole discretion.

18. If the Assurance is voided or breached, the Company agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, the Company expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude NYAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against the Company, or from using in any way any statements, documents or other materials produced or provided by the Company prior to or after the date of this Assurance.

19. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Company in agreeing to this Assurance.

20. The Company represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. The Company shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects the Company's (i) testimonial

obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which NYAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by the Company.

21. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

22. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of NYAG.

23. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the NYAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

24. To the extent not already provided under this Assurance, the Company shall, upon request by NYAG, provide all documentation and information necessary for NYAG to verify compliance with this Assurance.

25. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the Firm to:

Taylor Garbage Service, Inc.
c/o David G. Burch, Esq.
Barclay Damon LLP
125 East Jefferson Street
Syracuse, New York 13202

If to NYAG, to:

Zach Biesanz
New York State Office of the Attorney General
Antitrust Bureau
120 Broadway
New York, New York 10271

26. Acceptance of this Assurance by NYAG shall not be deemed approval by NYAG of any of the practices or procedures referenced herein, and the Company shall make no representation to the contrary.

27. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by NYAG.

28. If a court of competent jurisdiction determines that the Company has breached this Assurance, the Company shall pay to NYAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

29. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The NYAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

30. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

31. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on March 30,
2018.

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, NY 10271

By: 

Zach Biesanz, Esq.
Assistant Attorney General

TAYLOR GARBAGE SERVICE, INC.
3104 Old Vestal Rd.
Vestal, NY 13850

By: 

David Burch, Esq., Counsel for Company

By: 

Robert Taylor, President
Taylor Garbage Service, Inc.