

# **STATE OF LOUISIANA**

## **OFFICE OF STATE INSPECTOR GENERAL**



## **OFFICE OF STATE FIRE MARSHAL**

**Date Released:**

**November 13, 2012**

**File No. CID-12-035**

# Table of Contents

|  |    |
|--|----|
| <b>Letter to the Governor</b>          |    |
| <b>Executive Summary</b> .....         | 1  |
| <b>Background</b> .....                | 3  |
| <b>Scope and Methodology</b> .....     | 3  |
| <b>Findings and Recommendations</b>    |    |
| Greensburg Carnival Ride Accident..... | 4  |
| Alabama Payroll Issues.....            | 9  |
| Weapons Buyback.....                   | 10 |
| Military Ribbons.....                  | 14 |
| <br><b>Appendix A – Responses</b>      |    |



BOBBY JINDAL  
GOVERNOR

STEPHEN B. STREET, JR.  
STATE INSPECTOR GENERAL

**State of Louisiana**  
Office of the Governor  
Office of State Inspector General

October 31, 2012

Honorable Bobby Jindal  
Governor of the State of Louisiana  
P.O. Box 94004  
Baton Rouge, LA 70804-9004

*Re: Case No. CID-12-035*

Dear Governor Jindal:

This report addresses concerns raised about activities within the Office of the State Fire Marshal. The report provides details of the manner in which the Fire Marshal investigated and reported on a carnival ride accident in Greensburg in 2011, payroll reporting issues, weapons buyback transactions, and the wearing of military ribbons. The report includes six recommendations that, if implemented, appropriately address the findings detailed in this report.

We provided drafts of the report to the Department of Public Safety/Office of State Police, to State Fire Marshal Butch Browning, and to Pat Aronstein, Donald Carter, Joel Domangue, and Dan Wallis. Responses from the Department of Public Safety and Donald Carter are included as Appendix A. Mr. Aronstein, Mr. Domangue, and Mr. Wallis chose not to submit their own responses.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Stephen B. Street, Jr.", written over the typed name and title.

Stephen B. Street, Jr.  
State Inspector General

SBS/tab

Enclosure

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## **Executive Summary**

The Metropolitan Crime Commission submitted multiple complaints to the Office of Inspector General alleging misconduct by employees of the Office of State Fire Marshal (SFM). The SFM is an agency within the Department of Public Safety and Corrections. Many of the allegations were minor in nature or found to be without sufficient evidence to be substantiated. Investigative findings of other allegations are described below:

- On May 14, 2011, a carnival ride accident in Greensburg, Louisiana resulted in severe injuries to two teenagers. While investigating the accident, an SFM investigator found that a safety inspection conducted by an SFM inspector approximately seven hours prior to the accident failed to detect mechanical problems with the ride. The investigator stated that he informed State Fire Marshal Butch Browning of possible problems with the inspection and possible liability of the SFM prior to Mr. Browning's public statements about the incident. Despite receiving that information, Mr. Browning publicly attributed the cause of the accident solely to "operator error." The SFM Mechanical Safety Section concluded its investigation and confirmed mechanical problems with the ride, including a missing parking brake and improper controls, which existed when an inspection was performed earlier on the day of the accident. The SFM investigator and mechanical safety inspector stated that the accident would not have occurred had the ride been equipped in accordance with the manufacturer's specifications.
- Joel Domangue, the SFM's former Chief of Emergency Services, instructed SFM employees deployed to Alabama to assist in search and rescue operations after a tornado there in May 2011 to claim hours on their timesheets for work not performed. Mr. Domangue also directed the employees to claim eighteen hours of compensation for a "rest day" after their return to Louisiana. Our investigation found that when Mr. Browning was made aware of the problem, he reported it to the Department of Public Safety's Office of Management and Finance, which resulted in the recovery of overpayments totaling \$11,038 from 13 employees.
- During June 2010, the SFM's Arson Division traded in its old handguns for credits toward the purchase of newer models. In order to personally purchase old weapons at discounted prices, three non-law enforcement SFM employees signed and submitted forms to Barney's Police Supplies, falsely stating that they were law enforcement officers and would use the weapons in the performance of their official SFM duties. Mr. Browning also signed the forms attesting that the three employees were law enforcement officers. The forms certified that records checks were conducted and that "no convictions for misdemeanor crimes of domestic violence" were revealed. We found no evidence that the SFM conducted such required checks prior to the purchase. The forms allowed Barney's to forgo the federal requirement to conduct background checks on individuals purchasing firearms. Neither Mr. Browning nor the three employees remember signing the documents. Background checks conducted in April 2012 as part of the OIG investigation revealed no criminal records or restraining orders that would have prohibited the three employees from purchasing the guns had they undergone federally required background checks.

The Louisiana State Police recovered the guns from all three individuals and required them to undergo the required federal background check as part of its own Internal Affairs investigation, which remains ongoing.

- While serving as State Fire Marshal, Mr. Browning wore military ribbons on his uniform that he received for certain achievements while he was the Fire Chief in Gonzales, Louisiana. The ribbons, which were purchased at a military surplus store for use in a program created by Mr. Browning in 2005, are identical to those used to recognize United States military service personnel for certain specific accomplishments. Although Mr. Browning intended the ribbons to represent fire, rather than military achievements, 18 U.S.C. §704, also known as the Stolen Valor Act, prohibits the wearing of medals when not authorized under regulations made pursuant to law. Mr. Browning discontinued wearing the ribbons after Department of Public Safety administrators advised him to do so in 2010. On June 28, 2012, the United States Supreme Court declared a portion of the Stolen Valor Act unconstitutional on grounds that it infringes upon speech protected by the First Amendment. Although the Supreme Court ruling did not address the subsection of the law that prohibits the unauthorized wearing of ribbons, it is important to note that, in the wake of the Supreme Court decision, the United States Attorney for the Middle District of Louisiana recently chose to dismiss a criminal indictment charging the unauthorized wearing of military medals “due to unresolved issues related to the constitutionality of section 704 (a).” Separately, on August 28, 2012, the U.S. Ninth Circuit Court of Appeals found that the “wearing” portion of the Stolen Valor Act was still valid after the Supreme Court’s June 28 decision.
- In February 2012, a letter purportedly written by Mr. Browning confessing to serious acts of fraud and mismanagement was sent to several legislators and investigative agencies. Investigation by both the OIG and the State Police determined the letter to be a forgery. Because the source of the forged letter remains under criminal investigation, preliminary findings will not be discussed in this public report. The OIG will continue its partnership with the Louisiana State Police in this criminal investigation.

## **Background**

The Louisiana Office of State Fire Marshal is an agency within the Louisiana Department of Public Safety and Corrections (DPS). The Office employs inspectors and investigators to, among other things, enforce fire codes, inspect buildings for compliance with established codes, inspect and certify the safety of carnival rides, and investigate fires of unknown origin and amusement park accidents.

Nominees for the position of State Fire Marshal are customarily presented to the governor by DPS. The Louisiana Senate votes whether to confirm the nominee that the governor selects.

## **Scope and Methodology**

We conducted our investigation in accordance with Principles and Standards for Offices of Inspector General as promulgated by the Association of Inspectors General.

The scope of our investigation was limited to allegations forwarded to the Office of Inspector General concerning certain activities at the Office of State Fire Marshal. The investigation consisted of reviewing SFM and other documents, as well as interviewing current and former SFM employees, SFM vendors, and others.

## **Greensburg Carnival Ride Accident**

LAC 55:V.2501, et seq., and La. R.S. 40:1484.1, et seq., direct the State Fire Marshal to promulgate and enforce rules and regulations on amusement rides. Among those regulations is a requirement that all amusement rides operating in the state be inspected “at least once during the duration of each event” where a ride is being operated. If an SFM inspector finds that an amusement ride presents an imminent danger, he may close the ride until it is made safe. State law also allows the SFM to “adopt and issue rules...establishing standards for the installation, repair, maintenance, use, operation, and inspection of amusement attractions and rides for the protection of the public.”<sup>1</sup>

As listed in the SFM’s Amusement Safety Manual, the Louisiana legislature declared the following in La. R.S. 40:1485.1:

1. Carnival or amusement rides are used by a large number of citizens of this state and also attract to this state a large number of nonresidents, significantly contributing to the tourism industry and tax base of this state.
2. The safety of the public using carnival or amusement rides is an important matter of public policy.
3. There are inherent risks associated with all machinery, equipment, or animals that are impractical or impossible for an amusement owner to eliminate with all reasonable safety precautions, and an informed rider is in the best position to avoid these risks.
4. The safety of carnival or amusement rides will be greatly improved at minimal cost if riders are subject to minimum safety standards for their own protection and the protection of others.

### **The Investigation**

On May 14, 2011, two teenagers were seriously injured while riding a “Zipper” amusement ride in Greensburg, Louisiana. On the night of the accident, State Fire Marshal Butch Browning met two SFM investigators, Donald Carter and Lance LaMarca, and SFM mechanical safety inspector Joseph LeSage, in Greensburg to determine the cause of the accident. Mr. Carter and Mr. LeSage learned the accident occurred at the end of a ride as the teenagers were exiting. They also learned that SFM Inspector Byron Wade conducted a set-up inspection of the Zipper hours before the accident.

Examination of the ride revealed that the power buttons on the control panel had been changed to toggle switches and the parking brake had been removed. The original control panel had push button safety mechanisms that stop the ride upon release and were protected with a shroud to prevent accidental activation. The retrofitted toggle switches present at the time of the accident were not spring-loaded and, therefore, stayed in position after release. Further, the toggle switches were not protected by a safety shroud. Carnival workers told Mr. Carter and Mr.

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<sup>1</sup> La. R.S. 40:1484.3

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LeSage that they replaced the buttons with toggle switches and removed the parking brake after the original equipment malfunctioned.



Photo of the Zipper's Altered Control Panel On May 14, 2011

On the night of the accident, Mr. Carter and Mr. LeSage informed Mr. Browning that human error and mechanical problems may have contributed to the accident. Mr. Carter told Mr. Browning that the ride was missing safety controls and a parking brake, and that the SFM may face liability if these defects were not identified during the set-up inspection. In a recorded interview, Mr. LeSage confirmed to us that Mr. Carter told Mr. Browning "several times" at the accident scene that the inspector may have erred by allowing the ride to operate with improper equipment, and that such an error may expose the SFM to liability.

### The Inspection

Byron Wade stated to us that the Zipper was already in operation when he arrived to perform his inspection approximately seven hours prior to the accident. He ordered the ride closed due to missing cables, and allowed it to resume operation once the cables were properly installed.

According to Mr. Wade, he noticed the toggle switches on the control panel but did not think that they were retrofitted. Although Mr. Wade stated to us that it did not apply to the Zipper, his inspection report indicates that he checked the rides' "Anti-Roll, Devices, Safety Stops." He also stated that he did not check the Zipper's emergency brake lever, which Mr. LeSage stated should have been checked during the set-up inspection. Mr. Wade stated that the control panel and parking brake were in original condition when he conducted a more detailed annual inspection seven months earlier, on September 29, 2010.

Mr. Wade's May 14, 2011 inspection report, which documented inspections of four different rides on a single form, indicated that Mr. Wade verified the presence of the rides' "Operating Manual." LAC 55:V.2517 requires that an amusement ride's manual "be kept with the

amusement ride attraction and shall be available for use by the assistant secretary (the Fire Marshal).” During the accident investigation, Mr. LeSage learned that the Zipper’s manual was not on site as required by law, even though Mr. Wade’s inspection report indicated that the manual was present.

“Guidelines for Basic Ride Inspection,” a publication from the National Association of Amusement Ride Safety Officers (NAARSO) that we received from the SFM, provides direction on the minimum standards for inspecting amusement rides. According to Bill Owens, manager of the SFM’s Mechanical Safety division, the NAARSO guidelines were available to SFM inspectors at the time of the Greensburg accident. The guidelines state, “All controls should be checked for normal and proper operation. Any control deficiencies or malfunctions indicated, must be repaired before the ride is allowed to operate with passengers.”

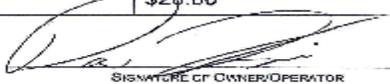
The NAARSO guidelines also include requirements for the amusement rides’ brakes:

“All brakes must be checked to determine that they are in apparently satisfactory mechanical or electrical condition, prior to operation. The brakes should be tested by the operator before loading passengers to be sure that they function properly. Any indication of improper brake condition or action is cause not to allow the ride to operate, until the necessary corrections have been made.”

The SFM’s Procedural Order 317 was enacted on April 15, 2002 and also in effect on May 14, 2011. The portion of the Order that instructs inspectors on “Completing The Inspection Report” states, “Only items actually inspected should be checked; for example: sweeps, bracing, retaining devices, etc.” Mr. Wade indicated on the Zipper’s inspection report form that he examined all the possible categories except “Gasoline Engine-fuel, Storage, Container” and “Other.” According to his own statement, Mr. Wade did not check the Zipper’s control panel, operator presence switch, emergency stop button, or brake lever.

Order 317 also establishes “guidelines that enable Amusement Ride and Attraction Inspectors to safely perform thorough and complete inspections.” The Order specifies, “An OSFM Amusement Ride Safety Inspection Report shall be completed for each inspection performed.” Mr. Wade, however, recorded the May 14 inspections of four different rides on a single inspection report.

In additional contrast to Procedural Order 317, Mr. LeSage explained to us that if a box on the Inspection Report is marked, it does not necessarily mean that an inspector examined the item represented. He stated that some inspectors check all the boxes on their reports as a matter of practice, regardless of whether the category is ever inspected. Mr. LeSage also stated that the inspectors do not rely upon the numbered categories to determine how to conduct their set-up inspections.

| LOUISIANA OFFICE OF THE STATE<br>FIRE MARSHAL, CODE ENFORCEMENT<br>AND BUILDING SAFETY<br>MECHANICAL SAFETY SECTION |  | PAGE _____ OF _____   |   |
|---|--|---|---|
| <b>AMUSEMENT RIDE SAFETY INSPECTION REPORT</b>  |  |   |   |
| DATE INSPECTED<br>5/14/11   | PERMIT NO.   | SERIAL NO.  | STATE IDENTIFICATION NO.  |
| Owner: _____  |  |   |   |
| Name of Company: <u>MAC'S CARNIVAL &amp; ATTRACTIONS - GREENSBURG, I.A.</u>   |  |   |   |
| Name of Ride: _____ Manufacturer: _____   |  |   |   |
| Manufacturing Date: _____ Seating Capacity: _____ Ride Speed: _____   |  |   |   |
| 1. <input checked="" type="checkbox"/> Sweeps, Structures-leveling, alignment                                       | 12. <input checked="" type="checkbox"/> Fences                                   | <input checked="" type="checkbox"/> Drive <input checked="" type="checkbox"/> Chains <input type="checkbox"/> Belts |   |
| 2. <input checked="" type="checkbox"/> Bracing - ride support   | 13. <input checked="" type="checkbox"/> Anti-Roll, Devices, Safety Stops         | <input type="checkbox"/> Access <input type="checkbox"/> Egress   |   |
| 3. <input checked="" type="checkbox"/> Retaining Devices  | 14. <input checked="" type="checkbox"/> Manufacturer's Data Plate                | 17. <input checked="" type="checkbox"/> Fire Extinguisher   |   |
| 4. <input checked="" type="checkbox"/> Wire Rope Drive  | 15. <input checked="" type="checkbox"/> Axles, Shafting, Pivots, Gears, Bearings | 18. <input type="checkbox"/> Gasoline Engine-fuel, Storage, Container   |   |
| 5. <input checked="" type="checkbox"/> Fasteners - pins, bolts, safety clips, etc.                                  | 16. <input checked="" type="checkbox"/> Signs - age, wgt, hair, first aid, etc.  | 19. <input checked="" type="checkbox"/> AR Appearance/Cleanliness   |   |
| 6. <input checked="" type="checkbox"/> Electrical   | 17. <input checked="" type="checkbox"/> Carriers - Upholstery, seat condition    | 20. <input checked="" type="checkbox"/> Condition of Park Grounds   |   |
| 7. <input checked="" type="checkbox"/> Signs - age, wgt, hair, first aid, etc.                                      | 18. <input checked="" type="checkbox"/> Safety Restrainers                       | 21. <input checked="" type="checkbox"/> Operating Manual  |   |
| 8. <input checked="" type="checkbox"/> Carriers - Upholstery, seat condition  | 19. <input checked="" type="checkbox"/> Guarding Moving Parts                    | 22. <input type="checkbox"/> Other _____  |   |
| 9. <input checked="" type="checkbox"/> Safety Restrainers   |  |   |   |
| 10. <input checked="" type="checkbox"/> Guarding Moving Parts   |  |   |   |
| 11. <input checked="" type="checkbox"/> Guarding Moving Parts   |  |   |   |
| OFFICIAL ORDERS LISTED BELOW MUST BE IN COMPLIANCE BY ALLOTTED TIME   |  |   | COMPLIANCE TIME<br>MONTH/DAY  |
| 1) DRAGON WAGON - 170323LA - SER# 831490  |  |   | \$20.00   |
| A) REPLACE MISSING R-KEY  |  |   | PRIOR TO OPENING  |
| 2) MERRY GO ROUND - 170324LA - SER# 75078   |  |   | \$20.00   |
| 3) ZIPPER - 170320LA - SER# 81-18107  |  |   | \$20.00   |
| A) PUT ON CROSSING CABLES   |  |   | PRIOR TO OPENING  |
| 4) TEA TIME - 157382LA - SER# 04108   |  |   | \$20.00   |
| <br>SIGNATURE OF INSPECTOR       | Byron Wade   | 418<br>INSPECTOR I.D.   | <br>SIGNATURE OF OWNER/OPERATOR |
| FAILURE TO CONDEMN ANY UNSAFE CONDITION, OPERATION OR EQUIPMENT AT<br>INSPECTION DOES NOT CONSTITUTE APPROVAL.      |  |   |   |

Byron Wade's Inspection Report of May 14, 2011

## The Reporting

On May 15, 2011, Mr. Browning informed the media that the SFM's "preliminary examination did not reveal any mechanical defects of the Zipper ride." He updated that statement on May 19, 2011 by stating, "The Office has completed its preliminary investigation and has determined the cause of the accident to be operator error." The information that Mr. Browning released to the media mentioned no missing parts or the set-up inspection on the day of the accident.

An email from Mr. LeSage to Mr. Browning on May 17, 2011 reported the completion of the "primary stage of this investigation" and included the finding that "the ride operator somehow accidentally activated the boom switch at the ride control panel deeming the accident 'Operator Error'."

While conducting reenactments with the ride operator, the operator stated to Mr. LeSage that he switched the toggle to the “off” position to stop the ride, causing Mr. LeSage to conclude that the switch was in the “on” position at the time of the accident. Mr. LeSage determined that the replacement toggle switches allowed the operator to activate the ride and leave it in motion while unattended. Neither Mr. LeSage nor Mr. Carter, who wrote an initial incident report of the accident, mentioned Mr. Wade’s set-up inspection in their reports.

A final letter from Mr. LeSage to Mr. Browning dated June 2, 2011 disclosed that the SFM’s Mechanical Safety Section had “concluded the secondary stage of its investigation” and determined:

1. The operator control switches had been changed from push buttons with guards to toggle switches. The retrofitted switches did not have accidental activation guards or a means to automatically return to the “off” position if left unattended.
2. The boom parking brake had been removed. This brake is designed to hold the boom during loading and unloading patrons.
3. The ride owner failed to notify the SFM of the modifications, as required.

Mr. LeSage’s June 2 letter to Mr. Browning also recommended that the Zipper ride’s owner meet all current manufacturer specifications, refurbish the control panel to its original condition, verify that all repairs are performed, have a certified third party inspection conducted, and replace the boom parking brake. Mr. LeSage did not reference Mr. Wade’s inspection report in his letter to Mr. Browning because “it never occurred” to Mr. LeSage that it should be included. The SFM did not release its final report on the Greensburg accident to any media outlet until receiving a specific request for such in May 2012.

When interviewed on March 28, 2012, Mr. Browning stated that he believed information released to the media was true and that there were no mechanical problems with the ride. He initially stated that no one told him on May 14, 2011 that there were problems with the ride or that the SFM may have liability. Later in the interview, however, he stated that Mr. LeSage had advised him on the scene that the toggle switches may have been altered and that Mr. LeSage needed to consult the manual to determine whether the switches were acceptable. In contrast to Mr. Carter’s and Mr. LeSage’s statements, Mr. Browning told us that he was unaware on the day of the accident that Mr. Wade may have overlooked defects during his set-up inspection.

When asked on March 28, 2012 why he thought nothing was mechanically wrong with the equipment, Mr. Browning stated that he did not believe any mechanical defects or broken parts were found on the ride because he considers mechanical issues to be structural parts, welds, bolts, and pins. In his opinion, switches, pedals, and buttons are electrical, not mechanical.

During his recorded interview, Mr. LeSage was asked, “After reviewing the manual and seeing what happened, is it (Mr. Browning’s May 15<sup>th</sup> media release) still a true statement?” Mr. LeSage responded, “No. No...I would have to say, ‘No’,” because, as he explained, his investigation eventually found the Zipper ride to have mechanical problems.

Mr. Carter and Mr. LeSage both stated to us that the accident would not have happened with a properly installed parking brake and control switches in compliance with the manufacturer’s specifications.

## **Alabama Payroll Issues**

During May 2011, a team of 139 emergency responders from throughout Louisiana traveled to Tuscaloosa, Alabama to assist in search and rescue operations following a tornado there. Joel Domangue, who was then the SFM's Chief of Emergency Services, led the operation. Mr. Domangue resigned his position in May 2012.

SFM employees assigned to the Alabama mission stated that Mr. Domangue instructed them to record 18 hours on their timesheets each day of their trip regardless of the times actually worked. He also instructed them to charge 18 hours of recovery time on the day after returning to Louisiana because the Federal Emergency Management Agency (FEMA) would pay such expenses.

Mr. Domangue stated to us that he merely informed his employees that FEMA would reimburse up to eighteen hours per day for time actually worked. However, SFM employee William Petty sent Mr. Domangue an email on May 11, 2011 to memorialize Mr. Domangue's order that the employees' time sheets "should reflect time for 6:00 am to 12:00 am for each day worked and the day after you returned home." Additionally, several SFM employees who went to Alabama stated that their orders about timekeeping came directly or indirectly from Mr. Domangue.

According to Mr. Domangue, Victoria Carpenter of the Louisiana Governor's Office of Homeland Security and Emergency Preparedness, and someone from the Alabama Emergency Management Administration, informed him of the 18 hour "post deployment rest day." Ms. Carpenter denied to us that she made such a statement. She stated that what FEMA does allow is compensation for up to 18 hours per day for work actually performed.

After complying with Mr. Domangue's order, Mr. Petty later informed his supervisor that time sheets of the SFM employees deployed to Alabama contained inaccurate entries. That information was ultimately relayed to Mr. Browning. Our investigation found that when Mr. Browning was made aware of the problem, he reported it to DPS's Office of Management and Finance, which resulted in the recovery of overpayments totaling \$11,038 from 13 employees.

Mr. Domangue's actions may have violated state law which prohibits filing false public records.<sup>2</sup>

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<sup>2</sup> La. R.S. 14:133 Filing or Maintaining False Public Records

## Weapons Buyback

During June 2010, the State Fire Marshal's Arson Division traded in its old handguns for credits toward the purchase of newer models. SFM employees were allowed to personally purchase the old weapons at discounted prices, a common practice when agencies purchase new weapons. Federal regulation 27 C.F.R. §478.134,<sup>3</sup> in pertinent part, allows officers who participate in a weapons buyback program to submit a form attesting that the weapons will be used "in performing official duties and that the firearm is not being acquired for personal use or for purposes of transfer or resale." Twelve SFM employees, including Mr. Browning, signed eighteen such forms that were submitted to Barney's Police Supplies, the dealer which supplied the new weapons. Six of the twelve employees purchased two firearms each. Mr. Browning's signature appears twice on each form as "Chief or authorized signature."

 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS  
Public Safety Services 

**Individual Officer Firearm Purchase Form**

Date: 6-8-10

Barney's Police Supplies  
218 Four Park Rd  
Lafayette, La. 70507  
337-896-3667

RE: (Officers Name) Joel Domangue

Dear Barney's Firearms,  
I hereby certify under penalty of perjury, the above named law enforcement officer will use the requested firearm for use in performing official duties and that the firearm is not being acquired for personal use or for purposes of transfer or resale.

  
Purchaser Signature

  
Chief or other authorized signature

I further certify under penalty of perjury, that a criminal records check has been conducted on the law enforcement officer who is purchasing the firearm and reveals no convictions for misdemeanor crimes of domestic violence.

  
Purchaser Signature

  
Chief or other authorized signature

**Invoice #:** 98263  
**Serial #:** 80K 1583  
**Date:** 6/8/10 

Is Yours Working??  
Smoke Detectors Save Lives!!  
OFFICE OF THE STATE FIRE MARSHAL  
8181 INDEPENDENCE BOULEVARD, BATON ROUGE, LA 70806  
(225) 925-4911 1-800-256-5452

An example of the Individual Officer Firearm Purchase Form bearing the signatures of Joel Domangue and H. Butch Browning

<sup>3</sup>27 C.F.R. §478.134 reads in part, "Sale of firearms to law enforcement officers – (a) Law enforcement officers purchasing firearms for official use who provide the licensee with a certification on agency letterhead, signed by a person in authority within the agency (other than the officer purchasing the firearm), stating that the officer will use the firearm in official duties and that a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of domestic violence are not required to complete Form 4473 or Form 5300.35."

Barney's relied upon the forms to certify that the employees purchasing the old weapons were "law enforcement" officers, and that their criminal records had been checked to ensure the absence of any "convictions for misdemeanor crimes of domestic violence." The forms allow Barney's to forgo the federal requirement to conduct background checks on officers purchasing firearms. Barney's relied upon Mr. Browning's signature as evidence that background checks had been performed.

Mr. Browning signed forms that allowed three non-law enforcement employees to obtain firearms, although they had never been issued firearms to perform their SFM duties. The Louisiana Commission on Law Enforcement has no record that the three employees, William Aronstein, Daniel Wallis, and Joel Domangue, ever completed a Peace Officer Standards and Training (POST) academy or ever qualified on a POST firearms course. Further, the SFM did not list Mr. Aronstein, Mr. Wallis, or Mr. Domangue as POST-certified employees either. Mr. Browning informed us that because Mr. Aronstein, Mr. Wallis, and Mr. Domangue were not POST certified, they were not authorized to carry firearms in performance of their duties. According to Mr. Wallis, who is the Deputy Assistant Fire Marshal, he completed a non-POST reserve officer's academy and qualified with a weapon in the 1990s.

A State Police records search found that between May 2010 and July 2010, no criminal history background checks were conducted on Mr. Aronstein, Mr. Wallis, Mr. Domangue, or any other SFM employee who participated in the buyback program. However, OIG investigators conducted criminal history inquiries on the SFM employees who purchased weapons and found that none had arrests that would have disqualified them from purchasing a firearm if the purchases had been conducted according to federal law.

During our investigation, the Louisiana Supreme Court, the entity that maintains Louisiana's statewide database of protective orders, confirmed that no SFM employees who purchased weapons ever had a restraining order against them.

According to Mr. Aronstein, he purchased two used SFM handguns for \$150 each. He followed through on previously established plans to sell one of the guns to Marc Reech, a retired SFM employee, although Mr. Aronstein signed the Individual Officer Firearm Purchase Form affirming that the purchase was not for the purpose of resale. Mr. Aronstein stated that Donald Carter, the SFM investigator facilitating the weapons purchase, knew that Mr. Aronstein was purchasing a weapon for Mr. Reech.

Mr. Aronstein and Mr. Wallis stated that they did not recall ever seeing or signing the forms, but agreed that their signatures on the forms were authentic. Mr. Aronstein stated that he would not have signed the form if he had read the words on the page. Mr. Wallis also speculated that he signed the form without reading it. Although Mr. Browning did not recall signing any of the 18 forms, he acknowledged that his signatures on the forms were authentic.

While maintaining that the first signature on his form was authentic, Mr. Domangue claimed that he was not the signer of the form's second signature. To determine the veracity of Mr. Domangue's assertion, we submitted the document along with Mr. Domangue's original handwriting exemplars to Robert Foley, a handwriting analysis expert who is a "Diplomate of the American Board of Forensic Documents Examiners, Inc." Mr. Foley found that the person who signed the exemplars "definitely signed" both signatures on the Barney's form. Mr. Foley stated, "This is the strongest opinion that could be rendered based upon the documents submitted for comparison."

In consideration of Mr. Foley's expert opinion and the established facts regarding Mr. Domangue's acquisition of the weapon, it can be reasonably concluded that Mr. Domangue signed both signatures on the document.

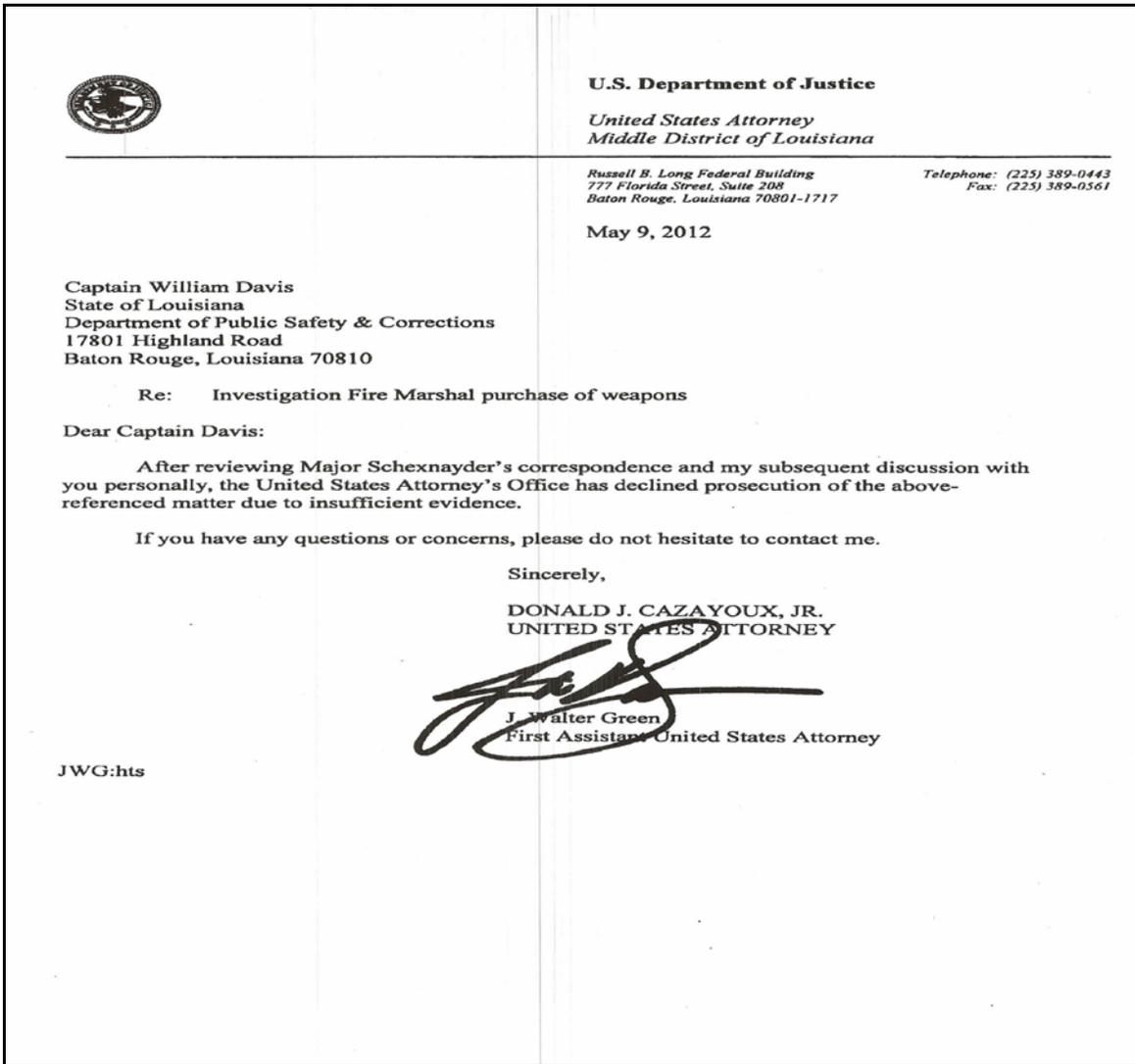
According to Marc Reech, he prepared the forms that the SFM employees used to purchase the old weapons in compliance with instructions from Barney's prior to his retirement. He transferred Barney's proposed language onto SFM letterhead and presented it to Mr. Browning for his signature. When Mr. Reech realized that he would retire before the transaction to purchase the new weapons could be completed, he assigned Mr. Carter the task of completing the weapons purchase and buyback. Mr. Carter stated that when he received the forms from Mr. Reech, they already contained Mr. Browning's signature.

Mr. Reech did not prepare the form for Mr. Domangue to receive an old weapon. According to Mr. Carter, Mr. Domangue overheard Mr. Carter's telling Mr. Browning that the date to purchase weapons was approaching and Mr. Domangue stated that he wished to purchase an old weapon. When Mr. Carter confirmed that there were enough old weapons for Mr. Domangue, Mr. Browning directed Mr. Carter to allow Mr. Domangue to purchase an old weapon. Mr. Carter prepared a form for Mr. Browning's and Mr. Domangue's signatures. Mr. Carter stated that he did not read the words on the form until long after the transactions had occurred.

According to the Barney's representative who organized the SFM's buyback program, he explained to Mr. Reech and Mr. Carter that non-commissioned SFM employees were allowed to purchase old weapons, but under different guidelines than the commissioned employees, such as being required to travel to Lafayette to purchase and take delivery of the weapons at the Barney's location there and undergo the mandatory federal background check. Barney's also restricted the purchase of revolvers to commissioned employees only, even though Mr. Aronstein, Mr. Domangue, and Mr. Wallis received revolvers. Barney's personnel checked the purchasers' identification cards prior to the sale but did not check commission cards due to the reliance upon the Individual Officer forms to distinguish between commissioned and non-commissioned employees. Mr. Carter is adamant that he was not present at any meeting where a Barney's representative explained the requirements of the buyback program.

The Gun Control Act of 1968 (18 U.S.C. §922.(a)(6)) prohibits any person acquiring or attempting to acquire a firearm from a licensed dealer to knowingly "make any false or fictitious oral or written statement . . . intended or likely to deceive such . . . dealer . . . with respect to any fact material to the lawfulness of the sale."

In a letter to Louisiana State Police on May 9, 2012, Walt Green, the First Assistant United States Attorney for the Middle District of Louisiana, declined prosecution of the activity concerning the gun buybacks "due to insufficient evidence."



The Louisiana State Police recovered the guns in question from Mr. Aronstein, Mr. Domangue, Mr. Wallace, and Mr. Reech as part of its own Internal Affairs investigation, and required them to undergo the mandatory federal background check to reacquire the guns.

## **Military Ribbons**

While employed as the State Fire Marshal, Mr. Browning was observed and photographed wearing ribbons on his dress uniform that appeared to be identical to ribbons awarded to members of the United States military. According to Mr. Browning, he has never served in the military.

Darrin Cagnolatti of the Gonzales Fire Department stated that he and then-chief Browning instituted a program in 2005 to award ribbons to employees for various achievements. Upon learning that the Fire Department could not afford its own original ribbons, Mr. Browning approved the purchase of ribbons from a local military surplus store. The ribbons were awarded to Fire Department employees, including Mr. Browning. After becoming the State Fire Marshal, Mr. Browning continued wearing the ribbons he received in Gonzales.

The ribbons that Mr. Browning wore were identified as signifying recognition in the military for the following:

- Army Occupation Medal
- Meritorious Service Medal
- Air Force Good Conduct Medal
- Defense Meritorious Service Medal
- Kosovo Campaign Medal
- Legion of Merit
- Korean Service Medal
- Army Reserves Overseas Training Ribbon
- Marine Security Guard Ribbon
- National Defense Service Medal
- Navy Expeditionary Medal



An undated example of Mr. Browning's use of the military ribbons.

Mr. Cagnolatti stated that the Gonzales Fire Department's awards program was not intended to represent any kind of military service or honor, and not intended to disrespect the United States military. He stated that it was only established to recognize the training and achievements of Gonzales Fire Department employees.

According to Mr. Browning, he ceased wearing the ribbons in 2010 after State Police received a complaint that his use of the ribbons violated 18 U.S.C. 704, also known as the Stolen Valor Act. He stated that, at the time, he was unaware there was a law pertaining to military ribbons. Mr. Browning explained his use of the ribbons to State Police and DPS legal advisors, who instructed him to no longer wear them.

On June 28, 2012, the United States Supreme Court declared a portion of the Stolen Valor Act unconstitutional on grounds that it infringes upon speech protected by the First Amendment,

**United States v. Alvarez**, 567 U.S. \_\_\_\_, 2012 WL 2427808 (2012). The specific portions of the statute before the Court were 18 U.S.C. 704 (b) and (c), which prohibited false verbal or written statements claiming receipt of military decorations or medals and provided an enhanced criminal penalty if the Congressional Medal of Honor was involved. The **Alvarez** decision did not address the constitutionality of a separate part of the Stolen Valor Act, section 704 (a), which prohibits the wearing of medals when not authorized under regulations made pursuant to law. Although the complaint about Mr. Browning alleged only the improper wearing of military decorations per section 704(a), it is important to note that, in the wake of the **Alvarez** decision, the United States Attorney for the Middle District of Louisiana recently moved to dismiss a criminal indictment charging the unauthorized wearing of military medals “due to unresolved issues related to the constitutionality of section 704(a).” **United States v. Andrew Bryson**, United States District Court, Middle District of Louisiana, Criminal Number 12-24-JJB-SCR. The Court signed an order dismissing the indictment on August 6, 2012.

Two months after *Alvarez*, the U.S. Ninth Circuit Court of Appeals found that the federal law prohibiting unauthorized “wearing,” Section 704(a), was still valid after the Supreme Court’s June 28 decision. *U.S. v. Perelman*, 2012 WL 3667348 (9<sup>th</sup> Cir. Aug. 28, 2012). The Ninth Circuit found that the “wearing” part of the statute was constitutional because it required something the “saying” part of the statute at issue in *Alvarez* did not: “an intent to deceive.” Separately, it should be noted that, while Congress first passed the “saying” part of the statute in 2006,<sup>4</sup> federal law has prohibited the unauthorized wearing of medals since 1923. *U.S. v. Perelman*, 737 F. Supp. 2d 1221, 1234 (D. Nev. Aug. 19, 2010).

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<sup>4</sup> The statute against falsely *stating* that one had won a military medal first became law in Public Law 109-437, effective December 20, 2006. When proposed, it had been entitled the “Stolen Valor Act of 2005.”

## Recommendations:

1. During our investigation, we found that amusement ride owners in Louisiana are allowed to operate their rides prior to an SFM inspection. The SFM should consider scheduling set-up inspections at each new location prior to offering access to the public. The SFM should also consider requesting legislative changes to require that set-up inspections be conducted at each new location prior to offering access to the public.
2. Currently, the SFM is responsible for two different functions: inspecting amusement rides and investigating amusement ride accidents. Internal conflicts will inevitably occur when two such responsibilities are contained within a single entity. DPS Management should consider requesting legislative changes to separate these duties between the SFM and another entity in order to avoid even the appearance of a conflict of interest.
3. SFM inspector Byron Wade submitted a document indicating that he inspected features of an amusement ride on which two teenagers were seriously injured. Investigation of the accident revealed that features that Mr. Wade approved were either non-existent or outside of the manufacturer's specifications. SFM management should consider appropriate disciplinary action against Mr. Wade.
4. We found that SFM inspectors currently complete amusement ride inspection reports contrary to established SFM policy, in that they use one form for multiple inspections and check items that are not inspected. SFM management should require that inspection reports be completed according to policy in order to ensure the credibility and reliability of the forms. SFM management should consider appropriate disciplinary action against the inspectors who completed inspection reports in violation of established policy and against their supervisors who allowed it.
5. Former SFM employee Joel Domangue directed other employees to claim payment for work not actually performed. Because Mr. Domangue's employment at the SFM has since ended, no further action is required.
6. Joel Domangue, William Aronstein, and Dan Wallis submitted forms containing false statements to a firearm dealer, which enabled them to obtain firearms at a discounted cost. Butch Browning also signed off on the forms, wrongly attesting that the purchasers were law enforcement officers, that the weapons would be used in the performance of official duties, and that criminal background checks had been conducted on the employees who purchased weapons. Donald Carter and Marc Reech endorsed the transfer of old weapons to non-law enforcement personnel in a manner contrary to the language on the Individual Officer Firearm Purchase Form that Mr. Reech created and Mr. Carter administered. DPS management should consider appropriate disciplinary action against Mr. Aronstein, Mr. Wallis, Mr. Carter, and Mr. Browning. Because Mr. Domangue's and Mr. Reech's employment at the SFM has since ended and because of the United States Attorney's declination letter, no further action against them is required.

## **APPENDIX A**

### **Responses**

BOBBY JINDAL  
GOVERNOR



MICHAEL D. EDMONSON, COLONEL  
DEPUTY SECRETARY

State of Louisiana  
Department of Public Safety and Corrections  
Public Safety Services

October 24, 2012  
0140/0501/EES/12-11886  
HQ-01-1720

Stephen B. Street, Jr.  
Louisiana Office of State Inspector General  
150 Third Street, Third Floor  
Baton Rouge, LA 70801

VIA PERSONAL DELIVERY

RE: Inspector General Report, Office of State Fire Marshal

Dear Mr. Street:

Please find attached the Louisiana Department of Public Safety, Office of State Fire Marshal's response to the investigative report, dated October 10, 2012, by the Office of the State Inspector General (OIG). Pursuant to directives by Mr. Street, this response will address findings and recommendations of the OIG in the report.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Edmonson".

Colonel Michael D. Edmonson  
Deputy Secretary, Public Safety Services  
Superintendent, Louisiana State Police

## **Greensburg Carnival Ride Accident**

In regards to the report dated October 10, 2012, concerning the Greensburg carnival ride accident on May 14, 2011, we do not concur as detailed below.

In order to fully respond, it is critical to appreciate the laws and regulations under which the Office of State Fire Marshal (OSFM) functions. In particular, the regulation of amusement attractions and rides are governed by LA R.S. 40:1484.1 *et seq* and LAC 55:V:2501 *et seq*.

The OSFM conducts two types of inspections pursuant to these laws and regulations. Louisiana Revised Statute 40:1484.4 provides that every amusement ride or attraction shall be subject to an annual inspection to ensure safety in accordance with ASTM-F-24. In further compliance with that statute and LAC 55:V:2505, amusement rides and attractions are also subject to inspection by the OSFM at least once during the duration of an event, which are referred to as "set-up" inspections. While the annual inspection is very detailed, the "set-up" inspection is limited. The set-up inspection usually involves an inspection of the ride set-up, the foundation, the blocking, the cables, whether it operates safely, and whether it can start and stop.

In the case of an amusement ride accident, the OSFM conducts an investigation to determine the root cause of the accident, whether that be an electrical or mechanical malfunction or defect, or human error.

On the night of the accident SFM Browning dispatched OSFM inspector, Mr. Donnie LeSage to conduct an investigation into the cause of the accident. He also ordered OSFM investigators, Mr. Donald Carter and Mr. Lance LaMarca, to assist Mr. LeSage in the investigation by taking witness statements.

When questioned about the Greensburg amusement ride accident Mr. Lesage stated that he was responsible for the mechanical aspects of the investigation. He checked the wiring system and was unable to create or locate a short in the system which would have caused the ride to activate without the operator. Mr. LeSage inferred that the switch had to have been in the "on" position in order for the operator to turn it to the "off" position when he noticed it moving with the children inside. The "Investigation" section of the report incorrectly states that on the night of the accident Mr. LeSage informed SFM Browning that mechanical problems may have contributed to the accident. Mr. LeSage maintains that the night of the accident he observed nothing mechanically wrong with the ride and concluded that the root cause was the operator accidentally hitting the switch to the "on" position. He additionally stated that when he, Mr. Carter and Mr. LaMarca met with SFM Browning that night, all agreed that, based on the preliminary investigation, the accident appeared to have been caused by operator error.

The "Investigation" section of the report states that, "examination of the ride revealed that the power buttons on the control panel had been changed to toggle switches and the parking brake had been removed." It further provides that "Mr. Carter told Mr. Browning that the ride was missing safety controls and a parking brake, and that the SFM may face liability if these defects were not identified during the set-up inspection" and that these statements were supported by Mr. LeSage. Mr. LeSage has consistently maintained in several interviews that when he met with SFM Browning on the night of the accident, while there may have been some discussion about the control box and the brake, without being able to review the ride manual and industry specific bulletins, there was no way for anyone to know what equipment should have been installed and/or had been replaced. SFM Browning and Mr. Carter corroborate that Mr. LeSage had to

review the ride manual to confirm any suspicions about the control box. It is not disputed that the manual and bulletins were not available the night of the accident.

Additionally, SFM Browning denies, and Mr. LeSage has always maintained that he cannot attest to Mr. Carter's assertion that he, Mr. Carter, informed SFM Browning at any time that there may have been an error in the set-up inspection. Mr. LeSage can only confirm that Mr. Carter told him, Mr. LeSage, that there may have been an error on the set-up inspection. Mr. LeSage further explained that he conveyed to Mr. Carter that there needed to be review of the annual and set-up inspections reports, and determine if any problems were noted. He also stated that on the night of the accident he advised Mr. Carter he did not believe that it was the place or the time to discuss issues with Mr. Wade's set-up inspections because he did not have the reports to refer to.

It is important to recognize that while Mr. LeSage is a mechanical safety inspector with knowledge and experience in amusement ride inspections, Mr. Carter is not a mechanical safety inspector. Mr. Carter brings with him no knowledge or experience in amusement ride inspection or a ride's mechanical operation. It is also relevant that in contrast to his later assertions, Mr. Carter contemporaneous to the events, created his own written account of the events of May 14 through May 16, identified as his "Narrative." Nothing in his narrative or other reports corroborate that he communicated these statements to anyone, especially SFM Browning. These contemporaneous notes must be presumed to be more reliable than Mr. Carter's purported recollections months after the incident.

The "Inspection" section of the report references a pamphlet entitled "Guidelines for Basic Ride Inspection," which is a publication from the National Association of Amusement Ride Safety Officers (NAARSO). While this pamphlet has been used to assist in training, it is not statutorily required and has not been formally adopted by the OSFM as policy or procedure. The procedure for a set-up inspection is detailed in LAC 55:V:2505. This regulation establishes the duties and tasks the OSFM is statutorily required to perform. Any implication that the inspector was obligated to follow a procedure in a NAARSO pamphlet is improper.

The "Reporting" section of the report, without explicitly stating conclusions, determinations, or findings, makes several insinuations. We do not concur with those insinuations as follows:

First, the report contains the sentence, "the information that Mr. Browning released to the media mentioned no missing parts or the set-up inspection on the day of the accident." This implies that each of these things should have been included in the news release(s). With regard to the "missing part", as explained above, without having access to the ride manual and bulletins on the night of the accident it was impossible to determine the true existence of any problem with the switches and brake system. SFM Browning, Mr. LeSage, and Mr. Carter each recall Mr. LeSage telling SFM Browning that it was necessary to consult the manual to confirm suspicions about modifications to the ride and for further insight into the possible causes of the accident. The modifications were not mentioned in the news releases because it was not confirmed and not part of the preliminary OSFM investigation.

The May 15, 2011 news release provided to the public information then known to OSFM with the utmost certainty, which did not at that time include a finding that there were any mechanical defects with the ride.

The May 19, 2011 news release was based upon a May 17, 2011 email from Mr. LeSage to SFM Browning, wherein Mr. LeSage stated that “we have completed the primary stage of this investigation and have arrived to the following conclusion. Our collaborative determination is that the ride operator somehow accidentally activated the boom switch at the ride control panel deeming the accident “Operator Error.”” It further stated that the secondary stage of the investigation was ongoing and would include determining what requirements would be imposed on the owner to operate the equipment in Louisiana.

In addition to the statement that the media releases did not reference the set-up inspection, the report also contains the sentence, “neither Mr. LeSage nor Mr. Carter, who wrote the initial of the accident, mentioned Mr. Wade’s set-up inspection in their reports.” The implication in each instance is that the exclusion was improper without specifying how. The set-up inspection was memorialized in a public document, has always been available for public review and was included in Mr. LeSage’s investigative file. Referring to the set-up inspection in the media releases or further documenting that the inspection had been conducted was not necessary.

The report also contains the statement that, “the SFM did not release its final report on the Greensburg accident to any media outlet until receiving a specific request for such in May 2012.” This statement inexplicably implies a duty on behalf of the OSFM to release unsolicited records to the media and implies that the failure of the OSFM to gratuitously provide the report to the media was somehow wrong. The OSFM has no such duty and does not have a practice of releasing unsolicited documents to the media or anyone else. However, the OSFM does have a duty to properly maintain and update its records and that is what the OSFM did. When the investigation was complete, the lead investigator created a report which was provided to SFM Browning. At that point the report became a record maintained by the OSFM and was available for release upon request pursuant to LA R.S. 44:1 *et seq.* Shortly after the accident and long before the start of this instant investigation, the report was in fact released to several members of the public who requested it pursuant to public records requests. It was also released to the media when a request was received in May of 2012. Without a specific request, the OSFM is under no obligation, nor is it an OSFM practice, to provide a copy of any report to the media or anyone else absent a specific request.

The Greensburg Carnival Ride Accident section of the report concludes in part with a statement from Mr. LeSage wherein he replied “no” to the question, if “After reviewing the manual and seeing what happened, is it [Mr. Browning’s May 15, 2011 media release] still a true statement?” The intended inference presumably is that SFM Browning’s news release contained a false statement which is absurd. While Mr. LeSage can now state that it is his conclusion that the ride had been improperly modified, that information was not included in the initial media release because it was not known to him or anyone else with the OSFM at the time of that initial media release. That determination could not be made by Mr. LeSage until he conducted a thorough investigation, which necessarily included an examination of the ride’s manuals and bulletins. The news releases properly contained only the information that was confirmed and known at the time of their dissemination

Finally, the last paragraph states that, “Mr. Carter and Mr. LeSage both stated to us that the accident would have not happened with a properly installed parking brake and control switches in compliance with the manufacturer’s specifications.” This statement insinuates a legal cause of the amusement ride accident, while failing to detail all the causation factors which led to the accident, and in particular, the failure of the operator to comply with Louisiana Administrative Code 55:V:2515 which provides that, “*if an amusement ride is materially rebuilt or modified, the*

*operator shall notify the assistant secretary and submit for approval documentation equivalent to that required in ASTM Standard F1159-94 Standard Practice for the Design and Manufacture of Amusement Rides and Devices...on work that was done.”* In this case, the amusement ride operator failed to notify the OSFM that the controls switch had been modified and the brake had been removed. If the notification had been made as required by law, Mr. Wade would have had that information at the time he conducted the set-up inspection and the ride would have been under a cease and desist order until corrected. The Inspector General investigators notably failed to ask Mr. LeSage and Mr. Carter perhaps the most pertinent question, which was “Had the operator notified the OSFM of the modifications, would the accident have happened?” The answer to that question would also likely have been no.

### **Alabama Payroll Issues**

Members of the Louisiana Office of State Fire Marshal Emergency Response Team provided emergency aid to the citizens of Alabama in response to the series of tornadoes that devastated the region in April of 2011. Within weeks of the team’s return from their mission, an audit was conducted and discovered that overpayments were made to the employees. The overpayments were then recalled from the employees and the funds were returned. In the future, to ensure the accurate accounting of time and resources during emergencies, which are outside the OSFM’s normal daily operations, a representative of the Department of Public Safety, Office of Management and Finance will accompany any out-of-state deployments.

### **Weapons Buyback**

In regards to the conclusions contained in the report dated October 10, 2012, concerning the OSFM “weapons buyback” program, we do not concur in part and elaborate as detailed below.

The Inspector General’s report provides that, “during June 2010, the State Fire Marshal’s Arson Division traded in its old handgun for credit toward the purchase of new models.” This is an inaccurate statement. To clarify, it is a common service by Barney’s Police Supply to take previously used service weapons and completely replace them with new service weapons at no cost to the public. There is no credit toward the purchase of new models as stated in the report. Personnel then have an opportunity to purchase their previously used service weapons at a reduced cost. This was the process that was to take place at the OSFM in June 2010.

As provided in the report and for clarification, after the retirement of Marc Reech, the Arson Chief, Assistant Chief Donald Carter was assigned by SFM Browning to facilitate the OSFM “weapons buyback” program. SFM Browning specifically directed Mr. Carter to research all requirements, obtain an opinion from the Office of Legal Affairs to ensure its legality, arrange the documents, obtain signatures, submit documentation to Barney’s Police Supply, deliver weapons, and ultimately finalize all necessary steps to complete the purchase process.

As further provided in the report, the Barney’s representative, who organized the OSFM’s “weapons buyback” program, explained to Mr. Reech and Mr. Carter that non-commissioned employees could purchase previously owned service weapons, but under different guidelines than commissioned employees. The Barney’s representative also provided that he met with Mr. Carter and spoke to Mr. Carter at least five (5) or six (6) times prior to the buy-back. Mr. Carter failed to follow the procedure for the non-commissioned personnel as instructed by the Barney’s representative and failed to advise the non-commissioned personnel and SFM Browning of this alternate procedure. Ultimately, Mr. Carter processed the non-commissioned personnel in the

same manner as the commissioned personnel, which was not proper. SFM Browning and the non-commissioned employees relied upon Mr. Carter to perform the task with due diligence in determining whether the purchases were possible and the proper procedure to facilitate both the commissioned and non-commissioned employees' purchases.

Finally, the report provides that "Mr. Carter stated that when he received the forms from Mr. Reech, they already contained Mr. Browning's signature." However, this is not otherwise corroborated by any independent facts and is refuted by Mr. Reech and SFM Browning. Specifically, Mr. Reech stated that he may have added a few of the printed names to the forms, but could not have added the date because he did not know when it was to take place. He further stated that he did not know if SFM Browning signed any of the forms prior to the buy-back, but did not believe so because there would be no way to know how many people wanted to purchase a weapon. SFM Browning also recalls Mr. Carter coming to his office the day of the buy-back in order for him, SFM Browning, to sign the forms to complete the purchase. SFM Browning believing Mr. Carter had exercised his due diligence in regard to the buy-back procedure, signed the forms.

At this time, the OSFM is taking measures to consolidate all firearms and related items with the Department of Public Safety (DPS). Any future buy-backs will be facilitated through DPS.

### **Military Ribbons**

In regards to the "Military Ribbons" section of the report, it neglected to formally state a final conclusion. We maintain that SFM Browning did not violate the Stolen Valor Act and that the report should have explicitly stated that conclusion.

First, it is a common practice of military, police and fire service agencies to bestow upon its members awards for various types of service and achievements. These awards are often in the form of medals and colorful ribbons worn on the respective uniform jackets. And, as referenced in the report, this practice was adopted by the Gonzales Fire Department in 2005 when SFM Browning was the Gonzales Fire Chief. This was prior to the Stolen Valor Act, which was enacted in 2006. Although provided to the investigators, the report did not include the Gonzales Fire Department's illustrated list of fire service award ribbons. A copy of the list is attached as Attachment 1. It includes awards for achievements such as a haz-mat certification, a firefighter certification, and firefighter of the year. The report asserts that a complainant alleged that SFM Browning improperly wore military decorations in violation of the Stolen Valor Act, specifically 18 U.S.C. 704(a). The report then provides an analysis of *United States v. Alvarez*, 567 U.S. \_\_\_, 2012 WL 2427808 (2012) and *U.S. v. Perelman*, 2012 WL 3667348 (9<sup>th</sup> Cir. Aug. 28, 2012) to support its conclusion that the United State Supreme Court in *Alvarez* only declared sections 704(b) and 704(c), and not 704(a), unconstitutional. The Ninth Circuit Court of Appeals case, *Perelman*, out of Nevada, was then used to make the argument that 704(a) was still valid and constitutional. However, the most important aspect of *Perelman*, which was not stressed in the report, was the Ninth Circuit's holding that Congress only intended to criminalize the unauthorized wearing of medals when the wearer intends to deceive. *Id.*

While the report infers a finding that there was no violation of the Stolen Valor Act, it fails to explicitly state that to be the finding. The report maintains that *Perelman* is the foremost authority on the status of 704(a). The application of 704(a) under *Perelman* would require that SFM Browning exhibit an intent to deceive in the wearing of his fire service ribbons in order to be in violation. There is no evidence presented in Inspector General's findings to support such a

conclusion. In fact, the information presented supports just the opposite—that the intent behind the ribbons was to reflect achievements in fire service and the ribbons were awarded to him pursuant to a legitimate fire service recognition program. Therefore, even following the standard set forth by *Perelman*, SFM Browning did not, in any manner, violate the Stolen Valor Act.

## **Recommendations**

In response to recommendation “1”, it should be noted that LA R.S. 40:1484.4(C)(3) requires that the ride be inspected “at least once during the duration of the event...” This requirement is adhered to by the OSFM. The OSFM makes every effort to conduct inspections prior to the public having access to the ride. However, sufficient funding would be needed for additional inspectors to fulfill the requirements proposed in the recommendation which is in excess of the current legal requirement.

In response to recommendation “2”, it should be noted that the OSFM investigative authority when there is a ride accident, is an investigation into any malfunction of the ride and/or root cause of the accident. Outcomes are released as they are verified either through news releases or reports, which are generated by the investigative team. As a practice, other agencies are always involved, assisting in the investigation. In this case, the St. Helena Sheriff’s Department and the Greensburg Police Department also took part in the investigation. Presently, the OSFM has made the decision to cease conducting annual inspections on amusement rides. These inspections will, in the near future, be completely performed by third parties certified through the OSFM.

In response to recommendation “3” LAC 55:v:2515(A) provides that, “if any amusement ride is materially rebuilt or modified, the operator shall notify the assistant secretary and submit for approval documentation equivalent to that required in ASTM Standard F1159-94 Standard Practice for the Design and Manufacture of Amusement Rides and Devices (approved April 15, 1994; published June 1994) on work that was done.” The operator of the Zipper was under the statutory obligation to report all modifications to the OSFM. The operator failed to notify the OSFM, and ultimately the inspector, Mr. Byron Wade, of changes to the switches and removal of the break. The fulfillment of that obligation would have ensured that the OSFM amusement ride inspector conducting the set-up inspections pursuant to LAC 55:v:2505 had adequate notices of changes and modifications to the ride prior to the inspection. And, had the modifications not been corrected or approved, the ride would have been under a cease and desist order issued by the OSFM.

In further response to recommendation “3”, Civil Service Rules 12.1-12.3 provide that only the appointing authority retains the authority to discipline employees within his jurisdiction. He will examine the circumstances via an internal investigation and determine if disciplinary action is appropriate and, if appropriate, the level of discipline.

In response to recommendation “4”, the OSFM submits that actions have already been taken to ensure that one form be completed for each ride. Additionally, the OSFM has developed an additional form to be signed by the operator wherein he or she would attest as whether or not modifications have been made to the ride in accordance with LAC 55:v:2515(A). In further response to recommendation “4”, Civil Service Rules 12.1-12.3 provide that only the appointing authority retains the authority to discipline employees within his jurisdiction. He will examine the circumstances via an internal investigation and determine if disciplinary action is appropriate and, if appropriate, the level of discipline.

In response to recommendation "6", Civil Service Rules 12.1-12.3 provide that only the appointing authority retains the authority to discipline employees within his jurisdiction. He will examine the circumstances via an internal investigation and determine if disciplinary action is appropriate and, if appropriate, the level of discipline.

# ATTACHMENT - 1

These ribbons are assigned to the Certification or Achievement awards. Each ribbon pertains to a specific certification or area of knowledge.



GFD Service Ribbon      Longevity Ribbon      Rookie Academy Ribbon      Haz-Mat Cert. Ribbon



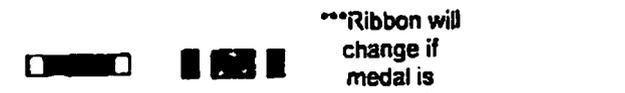
Firefighter Cert. Ribbon      EMS Service Ribbon      Tech. Rescue Ribbon      Instructor Ribbon



Officer Ribbon      Inspector Ribbon      Investigator Ribbon      Driver/Operator Ribbon



EMS Instructor Ribbon      National Fire Academy Ribbon      Law Enforcement Ribbon



Medal for Regional Aid Response Service Ribbon (Hurricanes Katrina and Rita)      Firefighter of the Year

Each Ribbon gains decorative stars to indicate level of training in that area of knowledge

Red with multiple white stripes is dive ribbon.

This ribbon signifies the regional aid and response from members of the department during Hurricanes Katrina and Rita. During times of disaster, special awards may be created by the Chief of the Department, City Council or Mayor.

FLOYD J. FALCON, JR  
DANIEL L. AVANT  
MARK E. FALCON  
SHERRI L. GREGOIRE  
BENJAMIN M. CHAPMAN

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BATON ROUGE, LA 70821

October 23, 2012

Honorable Stephen B. Street, Jr.  
Inspector General  
Office of the State Inspector General  
Post Office Box 94095  
Baton Rouge, Louisiana 70804-9095

RE: Case No. CID-12-035

Dear Mr. Street:

I ask that you accept the premises as Mr. Donald Carter's response to the references to him within the draft investigative report soon to be published by you in this matter. On behalf of my client, I thank you for affording this response opportunity to him.

Regarding the "Greensburg Carnival Ride Accident", Mr. Carter wishes to emphasize his disclosure to Mr. Browning, on the night of the accident, of the identified mechanical defects in the "Zipper" amusement ride. Additionally, be advised that Mr. Carter was told by Mr. Browning to limit the scope of his investigative report solely to the substance of the interviews conducted by him that same night. In honoring this supervisory directive, Mr. Carter did not expound within his report upon the observed defects in the amusement ride and was unable to reference his concern for the quality of the set-up inspection performed earlier that day.

Regarding the "Weapons Buyback", Mr. Carter vehemently disagrees with and challenges your characterization within the draft investigative report that he "endorsed" and "administered" the transfer of the traded-in duty weapons to non-law enforcement personnel. Mr. Browning personally authorized the transfer of these weapons and then directed subordinate personnel to facilitate the transfer process. Mr. Reech created the transfer document, with Mr. Carter's involvement limited solely to compliance with Mr. Browning's directive by providing the form earlier prepared by Mr. Reech for signing by Messrs. Browning and Domangue. Given Mr. Domangue's position of authority and relationship with Mr. Browning, Mr. Carter had no knowledge of whether he (Domangue) was commissioned to serve as a law enforcement officer nor whether Mr. Browning complied with the Office of the State Fire Marshal Procedural Order #310, entitled "Firearms", which requires written permission from the LSP Chief of Staff for officers to purchase discounted weapons through a distributor.

Honorable Stephen B. Street, Jr.  
Page 2 of 2  
October 23, 2012

Accordingly, in both instances identified in your draft investigative report, Mr. Carter appropriately acted in compliance with his agency head's directives. For this reason, he respectfully objects to and has no intention of passively accepting any disciplinary action related to these incidents which may be imposed based upon your recommendation.

Yours truly,

AVANT & FALCON

A handwritten signature in blue ink, appearing to read 'Mark E. Falcon', with a stylized flourish extending to the right.

Mark E. Falcon

MEF:jmt

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A copy of this report has been made available for public inspection at the Office of State Inspector General and is posted on the Office of State Inspector General's website at [www.oig.louisiana.gov](http://www.oig.louisiana.gov). Reference should be made to Case No. CID-12-035. If you need any assistance relative to this report, please contact Stephen B. Street, Jr., State Inspector General at (225) 342-4262.

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- Call the Office of State Inspector General at (225) 342-4262