

**FINAL ORDERS OF THE VIRGINIA COURTS
IN CONTESTED CASES ARISING UNDER THE
VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT
2010**

A & C Drywall Company, Edward A. Hegamyer, Acting Commissioner of Labor and Industry v.
Civil Action No. CL10002159 (City of Alexandria Circuit Court)

A & M Drywall Company, Edward A. Hegamyer, Acting Commissioner of Labor and Industry v.
Civil Action No. CL10002158 (City of Alexandria Circuit Court)

Advanced Technologies Processing, Inc., C. Ray Davenport, Commissioner of Labor and
Industry v.
Civil Action No. CL08-2355 (Henrico County Circuit Court)

Avis Construction Company, Inc., C. Ray Davenport, Commissioner of Labor and Industry v.
Civil Action No. CL08-1872 (Chesterfield County Circuit Court)

Dean Steel Erection Company, Inc., Courtney Malveaux, Commissioner of Labor and Industry v.
Case No. CL07000083 (Greene County Circuit Court)

Dean Steel Erection Company, Inc., Courtney M. Malveaux, Commissioner of Labor and
Industry v.
Case No. CL10-324 (Shenandoah County Circuit Court)

F. L. Showalter, Incorporated, Courtney M. Malveaux, Commissioner of Labor and Industry v.
Civil Action No. CL06-77 (Buckingham County Circuit Court)

Godsey & Son, Inc., Courtney M. Malveaux, Commissioner of Labor and Industry v.
Civil Action No. CL09-000412 (Hanover County Circuit Court)

Holman Boiler Repair & Plumbing, Inc., C. Ray Davenport, Commissioner of Labor and Industry
v.
Civil Action No. CL09-297 (Arlington County Circuit Court)

Indmar Coating Corporation, C. Ray Davenport, Commissioner of Labor and Industry v.
Chancery No. CH 04-45-01 (Sussex County Circuit Court)

Jolor Alliance, LLC D/B/A Winrepc, Courtney M. Malveaux, Commissioner of Labor and
Industry v.
Civil Action No. CL-09-492 (City of Winchester Circuit Court)

Nichols Construction, LLC, C. Ray Davenport, Commissioner of Labor and Industry v.
Civil Action No. 587-07 (Buchanan County Circuit Court)

Plecker Construction Company, C. Ray Davenport, Commissioner of Labor and Industry v.
Case No. CL06001074-00 (Augusta County Circuit Court)

Ram Development Corp., C. Ray Davenport, Commissioner of Labor and Industry v.
Civil Action No. CL-2009-0011341 (Fairfax County Circuit Court)

Roofing & Restoration, Inc., Courtney Malveaux, Commissioner of Labor and Industry v.
No. CL10000027-00 (Bath County Circuit Court)

Summit Communications General Contracting, LLC, Courtney Malveaux, Commissioner of
Labor and Industry v.
No. CL08000321-00 (Campbell County Circuit Court)

Supreme Computer and Electronic Recycling, Inc., C. Ray Davenport, Commissioner of Labor
and Industry v.
Civil Action No. CL08-2356 (Henrico County Circuit Court)

Tate & Hill, Inc., C. Ray Davenport, Commissioner of Labor and Industry v.
Case No. CL06-4121-1 (City of Richmond Circuit Court)

Thompson Construction, and Howard M. Thompson, Jr., C. Ray Davenport, Commissioner of
Labor and Industry v.
Civil Action No. CL09005107-00 (Montgomery County Circuit Court)

Thyssenkrupp Elevator Corporation, C. Ray Davenport, Commissioner of Labor and Industry v.
Chancery No. CL-07-534 (Wise County Circuit Court)

Tidewater Skanska, Inc., Edward A. Hegamyer, Acting Commissioner of Labor and Industry v.
Case No. CL-2009-16684 (Fairfax County Circuit Court)

Trafford Corporation, C. Ray Davenport, Commissioner of Labor and Industry v.
Case No. CL06-4101-4 (City of Richmond Circuit Court)

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

EDWARD A. HEGAMYER
Acting Commissioner of Labor and Industry
Plaintiff,

v.

A&C DRYWALL COMPANY,
Defendant.

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Civil Action No. CL1000:159

ORDER

This matter came before the Court on Acting Commissioner Hegamyer's Motion for Nonsuit as a matter of right pursuant to Va. Code § 8.01-380, and IT APPEARING that on April 5, 2010, the Commissioner filed a complaint against A&C Drywall Company, that no nonsuit has been taken to this cause, and that the defendant has not filed a cross-bill, it is therefore ADJUDGED, ORDERED AND DECREED that the Commissioner's motion is GRANTED and that this matter be and hereby is nonsuited without prejudice as a matter of right pursuant to Va. Code § 8.01-380. It is FURTHERMORE ORDERED that the Clerk will strike this matter from the docket of this Court and place it among the ended civil cases.

Entered this 22nd day of June, 2010.

W. A. Bramble
Judge

WE ASK FOR THIS:

Commissioner of Labor and Industry

By Ashley E. Mitchell

**Ashley E. Mitchell, VSB # 74216
Special Assistant Commonwealth's Attorney
Department of Labor & Industry
Powers-Taylor Building
13 South 13th Street
Richmond, Virginia 23219**

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

EDWARD A. HEGAMYER
Acting Commissioner of Labor and Industry
Plaintiff,

v.

A&M DRYWALL CONSTRUCTION, INC.,
Defendant.

Civil Action No. CL1000:158

ORDER

This matter came before the Court on Acting Commissioner Hegamyer's Motion for Nonsuit as a matter of right pursuant to Va. Code § 8.01-380, and IT APPEARING that on April 5, 2010, the Commissioner filed a complaint against A&M Drywall Construction, Inc., that no nonsuit has been taken to this cause, and that the defendant has not filed a cross-bill, it is therefore ADJUDGED, ORDERED AND DECREED that the Commissioner's motion is GRANTED and that this matter be and hereby is nonsuited without prejudice as a matter of right pursuant to Va. Code § 8.01-380. It is FURTHERMORE ORDERED that the Clerk will strike this matter from the docket of this Court and place it among the ended civil cases.

Entered this 22nd day of June, 2010.

W. A. Blumenthal
Judge

WE ASK FOR THIS:

Commissioner of Labor and Industry

By Ashley E. Mitchell

**Ashley E. Mitchell, VSB # 74216
Special Assistant Commonwealth's Attorney
Department of Labor & Industry
Powers-Taylor Building
13 South 13th Street
Richmond, Virginia 23219**

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

| | | |
|--|---|----------------------------|
| C. RAY DAVENPORT , Commissioner of Labor and Industry, |) | |
| |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | CIVIL ACTION NO. CL08-2355 |
| |) | |
| ADVANCED TECHNOLOGIES PROCESSING, INC. |) | |
| |) | |
| Defendant. |) | |

AGREED FINAL ORDER

WHEREAS, on or about May 1, 2008, Commissioner C. Ray Davenport issued citations to the defendant, Advanced Technologies Processing, Inc., alleging twenty serious, six willful and one other-than-serious violations of the Virginia Occupational Safety and Health Standards (VOSH) for General Industry, and proposing a civil penalty of \$359,850.00 (VOSH inspection number 311658439); and

WHEREAS, Advanced Technologies Processing, Inc., filed within 15 working days from the date of the receipt of the citation, a written notice contesting the violations and proposed penalties, as provided for in § 40.1-49.4, of the *Code of Virginia*;

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Serious citation 1, item 1, and the accompanying proposed penalty of \$1,000.00 are vacated.

2. Serious citation 1, item 2, is affirmed with the penalty reduced from \$1,050.00 to \$630.00.
3. Serious citation 1, item 3, is affirmed with the penalty reduced from \$1,050.00 to \$630.00.
4. Serious citation 1, item 4, is affirmed with the penalty reduced from \$600.00 to \$360.00.
5. Serious citation 1, items 5, 6, 7, 8 and 9, are grouped as a single serious violation and affirmed with a single penalty reduced from \$6,600.00 to \$4,000.00.
6. Serious citation 1, item 10, is affirmed with the penalty reduced from \$600.00 to \$360.00.
7. Serious citation 1, items 11a and 11b, are affirmed with the penalty reduced from \$600.00 to \$360.00.
8. Serious citation 1, items 12 and 13, are grouped as a single serious violation and affirmed with a single penalty reduced from \$1,350.00 to \$450.00.
9. Serious citation 1, items 14a and 14b, are reduced to other-than-serious and affirmed with a penalty reduced from \$600.00 to \$360.00.
10. Serious citation 1, item 15, is affirmed with the penalty reduced from \$1,050.00 to \$630.00.
11. Serious citation 1, item 16, is reduced to other-than-serious and affirmed with the penalty reduced from \$1,500.00 to \$900.00.
12. Serious citation 1, item 17, is reduced to other-than-serious and affirmed with the penalty reduced from \$600.00 to \$360.00.
13. Serious citation 1, items 18 and 19, are grouped as a single serious violation and affirmed with a single penalty reduced from \$3,000.00 to \$900.00.

14. Serious citation 1, item 20, and the accompanying proposed penalty of \$450.00 are vacated.
15. Willful citation 2, item 1, and the proposed penalty of \$56,700.00 are affirmed.
16. Willful citation 2, item 2, and the proposed penalty of \$56,700.00 are affirmed.
17. Willful citation 2, item 3, and the proposed penalty of \$56,700.00 are affirmed.
18. Willful citation 2, items 4a and 4b, are reduced to serious and the accompanying proposed penalty of \$56,700.00 is reduced to \$7,000.00.
19. Willful citation 2, item 5, is reduced to serious and the accompanying proposed penalty of \$56,700.00 is reduced to \$7,000.00.
20. Willful citation 2, items 6a and 6b, are reduced to serious and the accompanying proposed penalty of \$56,700.00 is reduced to \$7,000.00.
21. Other-Than-Serious citation 3, item 1, is affirmed with no penalty.
22. Advanced Technologies Processing, Inc. shall pay in partial payment of the penalties assessed for the above citations, the sum of ninety-two thousand, three-hundred and sixty-five hundred dollars (\$92,365.00) to be paid as follows:

Nine Thousand Two Hundred and Sixty Three dollars (\$9,263.00) of this payment must be remitted to the Commonwealth with the signed agreed order to be deposited on the day the order is entered. Eighty-Three Thousand One Hundred and Two dollars (\$83,102.00) is to be paid in fifty-nine (59) payments of One Thousand Three Hundred Eighty Five dollars (\$1,385.00) each, payable on the first day of each month for the next fifty-nine (59) successive months and one (1) payment of One Thousand Three Hundred Eighty Seven dollars (\$1,387.00) on the next successive month. The first monthly payment shall be due on the first day of the month that begins at least fifteen days after the entry of this

order. Each payment will be made in the form of a check or money order, payable to the "Treasurer of Virginia," with inspection number 311658439 noted thereon.

23. The remaining amount of penalty, one-hundred and eight thousand, six-hundred and seventy-five dollars (\$108,675.00) which has not yet become due and payable to the Commonwealth, shall be forgiven provided that all the requirements listed below have been satisfied by Advanced Technologies Processing, Inc.:

- a. The Commonwealth shall forgive thirty-six thousand, two-hundred and twenty-five dollars (\$36,225.00) of the penalty amount which has not become due and payable if, between July 1, 2010, and June 30, 2011, no additional violations are issued to Advanced Technologies Processing, Inc., arising out of the sections of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry which formed the basis for the citations affirmed by this Order. Should Advanced Technologies Processing, Inc. violate any of the standards which form the basis for the affirmed violations referenced above, it shall pay a partial payment in the amount of thirty-six thousand, two-hundred and twenty-five dollars (\$36,225.00), upon the final determination (final order) of the Commissioner of Labor and Industry or the final determination (final order) of a court of competent jurisdiction that Advanced Technologies Processing, Inc., has violated any sections which formed the basis for the citations affirmed by this Order.
- b. The Commonwealth shall forgive thirty-six thousand, two-hundred and twenty-five dollars (\$36,225.00) of the penalty amount which has not become due and payable if, between July 1, 2011, and June 30, 2012, no additional violations are

issued to Advanced Technologies Processing, Inc., arising out of the sections of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry which formed the basis for the citations affirmed by this Order. Should Advanced Technologies Processing, Inc. violate any of the standards which form the basis for the affirmed violations referenced above, it shall pay a partial payment in the amount of thirty-six thousand, two-hundred and twenty-five dollars (\$36,225.00), upon the final determination (final order) of the Commissioner of Labor and Industry or the final determination (final order) of a court of competent jurisdiction that Advanced Technologies Processing, Inc., has violated any sections which formed the basis for the citations affirmed by this Order.

- c. The Commonwealth shall forgive thirty-six thousand, two-hundred and twenty-five dollars (\$36,225.00) of the penalty amount which has not become due and payable if, between July 1, 2012, and June 30, 2013, no additional violations are issued to Advanced Technologies Processing, Inc., arising out of the sections of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry which formed the basis for the citations affirmed by this Order. Should Advanced Technologies Processing, Inc., violate any of the standards which form the basis for the affirmed violations referenced above, it shall pay a partial payment in the amount of thirty-six thousand, two-hundred and twenty-five dollars (\$36,225.00), upon the final determination (final order) of the Commissioner of Labor and Industry or the final determination (final order) of a court of competent jurisdiction that Advanced Technologies Processing, Inc., has

violated any sections which formed the basis for the citations affirmed by this Order.

24. As consideration for the modification of the terms of the original citations, Advanced Technologies Processing, Inc., agrees to withdraw its original notice of contest filed with respect to the above-styled cases and waives its right to contest the remaining terms contained in this agreement. **If not already provided**, Advanced Technologies Processing, Inc., agrees to provide to the Commonwealth within thirty (30) days of the effective date of this agreement documentation verifying abatement of each violation affirmed in this agreement. The documentation shall comply with §307.E.2. of the Virginia Occupational Safety and Health (VOSH) Administrative Regulations Manual, which states that "Documents demonstrating that abatement is complete may include, but are not limited to, evidence of purchase or repair of equipment, photographic or video evidence of abatement, or other written records." The documentation shall be provided to:

Stan Dykstra, Compliance Manager
Virginia Department of Labor and Industry
Richmond Regional Office
North Run Business Park
1570 E. Parham Road
Richmond, VA 23228-2360

25. The defendant, Advanced Technologies Processing, Inc., has represented to the Commonwealth that it has ceased operations in Virginia as of the date of the filing of this order. Should the defendant wish to re-establish operations in Virginia during the next three years following the entry of this Order, it agrees to:

- a. Immediately notify the Commonwealth in writing at the address listed above no more than two working days after any of the following activities are initiated by it, or any company associated with it, in Virginia:
 - i. bulb crushing, repackaging or recycling
 - ii. computer crushing and/or recycling
 - iii. automobile, commercial or consumer battery crushing and/or recycling
- b. Conduct initial and quarterly full shift personal air sampling for employee exposure to mercury during packaging and repackaging operations of light bulbs and provide the Commonwealth at the address listed above with copies of the initial sampling reports, and the quarterly sampling reports within two weeks of the end of each quarter, for a period of one year from the date that operations are re-established in Virginia.
- c. Conduct initial and quarterly representative wipe sampling for the presence of mercury on working, storage and eating surfaces throughout the facility and provide the Commonwealth with copies of the initial sampling reports, and the quarterly sampling reports within two weeks of the end of each quarter, for a period of one year from the date that operations are re-established in Virginia.
- d. Institute a medical monitoring program for employee exposure to mercury which will include a baseline urine sample for each employee and quarterly samples. The defendant will provide the Commonwealth with copies of the initial sampling reports, and the quarterly sampling reports within two weeks of the end of each quarter, for a period of one year from the date that operations are re-established in Virginia.

- e. Develop and implement a written comprehensive safety and health program for all of its worksites in Virginia within 60 days of the date that operations are re-established in Virginia. The program will establish policies and procedures for recognizing and protecting employees from safety and health hazards. This program, at a minimum, shall comply with federal OSHA's Occupational Safety and Health Program Management Guidelines (http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=12909), and shall address the following subjects:
- (i) management commitment to safety and a mechanism for employee involvement;
 - (ii) worksite analysis;
 - (iii) hazard recognition, prevention and control; and
 - (iv) safety and health training.
- f. This safety program shall emphasize hazard prevention and control. An essential component of this program shall be that hazards which are detected must be corrected in a timely and reasonable manner. The defendant shall make the safety and health of its employees one of its top corporate priorities and require all management and supervisory personnel to treat the subject accordingly.
- g. The safety program shall list and discuss the respective responsibilities of management and supervisors, lead persons and field employees with respect to safety on the worksite. Authority and responsibilities must be given to supervisors and lead persons for the enforcement of safety rules. The safety officer and job superintendents must have authority delegated to them by


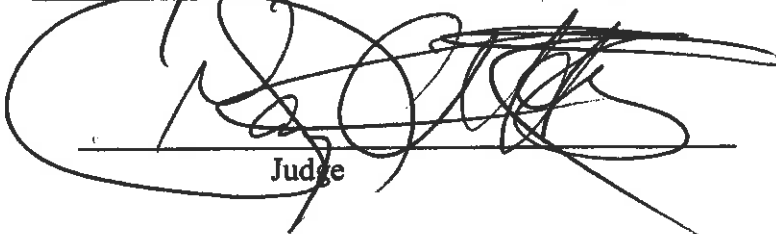
management to issue internal employer citations or reports for violations of safety and health rules. Additionally, this must include the authority to halt unsafe work which is likely to cause injury or death, when it is observed by them on the jobsite.

- h. The defendant shall initiate, within the written safety program, an internal system of enforcement of employer and state safety and health rules and regulations which provides for progressively severe internal penalties culminating in the option of removal of the unsafe employee from his or her employment upon occurrence of a third repeat violation. This system of enforcement shall apply equally to all defendant's employees, both management and field personnel.
- i. The defendant shall institute safety meetings on at least a monthly basis to discuss the hazards employees are exposed to while performing their individual job duties and the corresponding safe practices. As part of these meeting, employees will be encouraged to notify management, without fear of reprisal, of any unsafe condition which may exist in their work area. Management shall address such concerns within a reasonable time period. Management also shall provide for investigation of accidents and "near miss" incidents so that their causes and means for prevention can be identified and discussed with employees at these meetings. Training materials will be provided in English and Spanish.
- j. As part of the above safety and health program, the defendant agrees to insure periodic monitoring of its job sites by a qualified person to determine that its operations, including its supervisors, are in compliance with all applicable VOSH regulations.

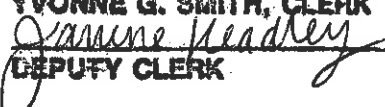
26. Pursuant to *Virginia Administrative Code* §16 VAC 25-60-40(1), Advanced Technologies Processing, Inc., shall post a copy of this order for ten (10) consecutive days at its workplaces in Virginia in a conspicuous location where notices to employees generally are posted.
27. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by Advanced Technologies Processing, Inc. Pursuant to Va. Code §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.
28. The defendant, Advanced Technologies Processing, Inc., represents that it is entering into this agreement of settlement in the spirit of conciliation and cooperation in an effort to avoid litigation. This agreement shall not be construed as an admission by the defendant of civil or criminal liability for any violation or penalty alleged by the Commonwealth. By entering into this agreement, the defendant does not admit the truth of any alleged facts, any of the characterization of defendant's alleged conduct or any conclusions set forth in the citation(s) issued in this matter. Neither this agreement nor the defendant's consent to entry of a final order of the Commissioner pursuant to this agreement shall constitute an admission by the defendant of violation of the Virginia Occupational Safety and Health (VOSH) laws, regulations or standards promulgated

thereunder. The defendant is entering into this agreement without any prejudice to its right to assert in any subsequent action or proceeding that any future existing conditions identical or similar to those alleged in the original citations do not violate the VOSH laws, regulations or standards promulgated thereunder.

29. Each party will bear its own costs in this matter.
30. The Clerk shall strike this matter from the docket and place it among the ended civil cases. The Clerk shall send a certified copy of this order to the Special Assistant Commonwealth's Attorney and the Defendant's counsel.

Entered this 4th day of January, 2009 


Judge

A COPY TESTE:
YVONNE G. SMITH, CLERK

DEPUTY CLERK

WE ASK FOR THIS:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

By: 

Counsel for Plaintiff

12/23/09

Date

Robert B. Feild (VA Bar No.23864)
Special Assistant Commonwealth's Attorney
13 South Thirteenth Street
Richmond, VA 23219
(804) 786-4777

SEEN AND AGREED TO:

Advanced Technologies Processing, Inc.,

By:

Temple W. Cabell
Counsel for Defendant

12/23/09
Date

Temple W. Cabell (Va. Bar No. 20305)
Schaffer & Cabell
416 West Franklin Street
Richmond, Virginia 23220
(804) 648-0064

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

| | | |
|---|---|----------------------------|
| C. RAY DAVENPORT, |) | |
| Commissioner of Labor and Industry, |) | |
| <i>Plaintiff,</i> |) | |
| v. |) | Civil Action No. CL08-1872 |
| |) | |
| AVIS CONSTRUCTION COMPANY, INC., |) | |
| <i>Defendant.</i> |) | |

FINAL ORDER

This matter came before the Court for trial on January 28, 2010, pursuant to *Va. Code* 40.1-49.4.E, based upon Avis Construction Company, Inc's contest of a Virginia Occupational Safety and Health (VOSH) citation and proposed penalties issued to it by the Commissioner of Labor and Industry (Commissioner Davenport). After hearing the evidence presented by both parties, the Court found that Commissioner Davenport failed to prove by a preponderance of the evidence that with regard to the hard hat violation §1926.100(a), the aerial lift violation §1926.453(b)(2)(v), the fall protection violation §1926.501(b)(13) (as amended) and the three grouped ladder violations §§1926.1053(b)(1), 1926.1053(b)(4) and 1926.1053(b)(5)(i) that the defendant knew or should have known of the existence of the hazards. For the hand washing violation 16 VAC 25-160-10 the court finds that the Commissioner did not prove that the cited standard was violated by Avis. The court further finds that Commissioner Davenport has proved by a preponderance of the evidence with regard the electrical violation §1926.403(h) that the cited standards applied, that the defendant did not meet the requirements of the standards cited, that employees were exposed to the hazard and that

the defendant knew or should have known of the existence of the hazards.

In the alternative, those citations vacated on the grounds listed above would also be vacated because the evidence presented to support the violations was on the day before the dates of the inspection listed on the Citation and the Complaint.

It is ORDERED, ADJUDGED, and DECREED that citation 1, items 1, 2, 3, and 4a, b, and c as attached to the plaintiff's Complaint, citing *VOSH Standards for the Construction Industry* and the *Virginia Administrative Code* are vacated. Citation 2, item 2 is affirmed with no penalty attached.

This matter shall be, and hereby is, dismissed with full prejudice and stricken from the docket of this Court. The Clerk shall send an attested copy of this Order to all counsel of record.

Entered this 27th day of February, 2010


Michael A. Burgess
Judge

A COPY TESTE:
JUDY L. WORTHINGTON, CLERK

BY 
DEPUTY CLERK

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GREENE

COURTNEY MALVEAUX,)
Commissioner of Labor & Industry)
)
Plaintiff,)
v.)
)
DEAN STEEL ERECTION)
COMPANY, INC.)
)
Defendant)

Case No. CL07000083-00

AGREED ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. In settlement of the matters alleged in this action, the citation attached to the Complaint is hereby amended as follows:
 - a. Citation 1, Item 1, is reclassified from a Willful to a Serious violation. The assessed penalty of \$70,000.00 is reduced to \$7,000.00.
2. Dean Steel Erection Company, Inc., shall pay the penalty of \$7,000.00 within thirty (30) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 309531044 noted on the payment.
3. Dean Steel Erection Company, Inc., certifies that the violation alleged in this agreement was abated.
4. As further consideration for the modification of the terms of the original citation, Dean Steel Erection Company, Inc., agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

VIRGINIA: GREENE COUNTY CIRCUIT COURT CLERK'S OFFICE
I CERTIFY THAT THE DOCUMENT TO WHICH THIS AUTHENTICATION
IS AFFIXED IS A TRUE COPY OF A RECORD IN THE GREENE COUNTY
CIRCUIT COURT, THAT I HAVE CUSTODY OF SAID RECORD, AND THAT
I AM THE CUSTODIAN OF THAT RECORD.
GIVEN UNDER MY HAND AND SEAL OF THIS COURT, THIS 13
DAY OF Sept 2010

TESTE: Marie C. Purrer MARIE C. PURRER, CLERK
DEPUTY CLERK

5. Dean Steel Erection Company, Inc., shall post a copy of this Order for a period of thirty (30) days in a conspicuous location where notices to its employees are generally posted.

6. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by Dean Steel Erection Company, Inc. Pursuant to Va. Code §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

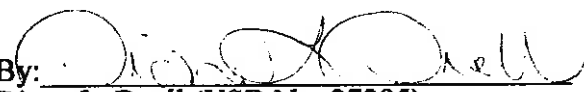
7. The Clerk shall strike this matter from the docket of this Court, place it among the ended civil cases, and shall send an attested copy of this Order to both counsel of record.

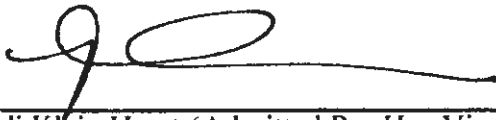
Entered this 9th day of September, 2010.


Judge Daniel R. Bouton

WE ASK FOR THIS:

Courtney Malveaux,
Commissioner of Labor and Industry

By: 
Diane L. Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorney
13 South 13th Street
Richmond, Virginia 23219-4101
804.786.4289
804.786.8418 (fax)



By: _____
Randi Klein Hyatt (Admitted Pro Hac Vice)
Kollman & Saucier, PA
1823 York Road
The Business Law Building
Timonium, Maryland 21903
443.632.2430
410.727.4391 (fax)

Counsel for Dean Steel Erection Company, Inc.

passage of the original two year period.

2. Dean Steel Erection Company, Inc., agrees that it will have a sufficient number of competent person(s) on-site and involved during the assembly and disassembly of any crane on a jobsite for which Dean Steel Erection is the entity responsible for the particular crane's operation. Competent persons will be deemed those individuals with currently valid Certified Crane Operator (CCO) status, or other individuals possessing sufficient and relevant experience and/or training regarding safe practices and procedures involved with crane assembly and disassembly.

3. Dean Steel Erection certifies that the violation alleged in this agreement was abated.

4. Dean Steel Erection shall post a copy of this Order for a period of thirty (30) days in a conspicuous location where notices to its employees are generally posted.

5. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by Dean Steel Erection. Pursuant to Va. Code §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

6. The Clerk shall strike this matter from the docket of this Court, place it among the ended civil cases, and shall send an attested copy of this Order to all counsel of record.

Entered this 17 day of December, 2010.



Judge

A True Copy Teste:
DENISE F. DARB-ESTER, CLERK

By: Karla S. Ortt D.C.

WE ASK FOR THIS:

Courtney M. Malveaux,
Commissioner of Labor and Industry

By: Ashley E. Mitchell
Ashley E. Mitchell (VSB # 74216)
Special Assistant Commonwealth's Attorney
Shenandoah County
13 South 13th Street
Richmond, Virginia 23219-4101
Telephone: 804.786.6760
Facsimile: 804.786.8418

By: J. Barrett Lucy
J. Barrett Lucy (VSB # 48512)
Gentry, Locke, Rakes & Moore, LLP
10 Franklin Road, SE
Suite 800
Roanoke, VA 24011
Telephone: 540.983.9300
Facsimile: 540.983.9400

Randi Klein Hyatt
Kollman & Saucier, P.A.
The Business Law Building
Timonium, Maryland 21093
410.727.4300

Counsel for Dean Steel Erection Company, Inc.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF BUCKINGHAM

| | | |
|-------------------------------------|---|--------------------------|
| COURTNEY M. MALVEAUX, |) | |
| Commissioner of Labor and Industry, |) | |
| <i>Plaintiff,</i> |) | |
| v. |) | Civil Action No. CL06-77 |
| |) | |
| F. L. SHOWALTER INCORPORATED |) | |
| |) | |
| <i>Defendant.</i> |) | |

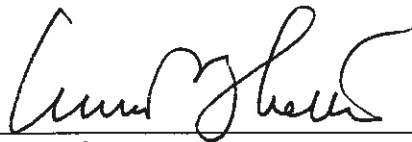
AGREED ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. a. Serious Citation 1, Item 1 is vacated.
b. Willful Citation 2, Item 1 is reclassified as serious and affirmed with a reduced penalty of \$4,000.00.
c. Other than Serious Citation 3, Item 1 is vacated.
2. That F.L. Showalter, Inc. (Showalter) shall pay the total penalty of \$4,000.00 within fifteen (15) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 308020429 noted on the payment.
3. Showalter certifies that the violation affirmed in this Order has been abated;
4. As further consideration for the modification of the terms of the original citation, Showalter agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

5. That Showalter shall post a copy of this Order for ten consecutive days, beginning from the date of entry of this Order, at its workplaces in Virginia in a conspicuous location where notices to its employees are generally posted;
6. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;
7. That the Commissioner may use this Order in future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia, or any other authority.
8. This Order is meant to settle the above contested claims, and none of the foregoing agreements, statements or actions taken by Showalter shall be deemed an admission by Showalter of any of the allegations contained in VOSH Inspection Number 308020429. Under Virginia Code § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. The agreements, statements and actions taken herein are made solely for the purpose of settling this matter economically and amicably without further litigation and this Order shall not be used for any other purpose other than for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.
9. The Clerk shall strike this matter from the docket of this Court, place it among the ended chancery cases, and shall send an attested copy of this order to both counsel of record.

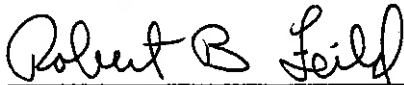
Entered this 15th day of Oct, 2010.



Judge

WE ASK FOR THIS:

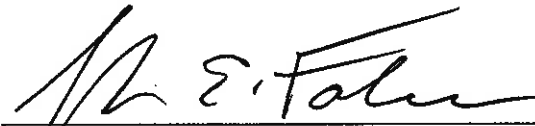
COURTNEY MALVEAUX, Commissioner of Labor and Industry



Robert B. Feild
Special Assistant Commonwealth's Attorney
County of Buckingham
13 South Thirteenth Street
Richmond, Virginia 23219
Phone: 804/786-4777
Fax: 804/786-8418

Seen and Agreed:

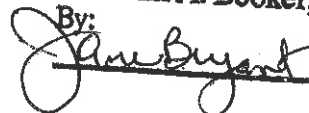
F. L. SHOWALTER, INCORPORATED



John E. Falcone, Esq.
Petty, Livingston, Dawson & Richards
P.O. Box 1080
Lynchburg, Virginia 24505
Phone: 434/846-2768
Fax: 434/847-0141

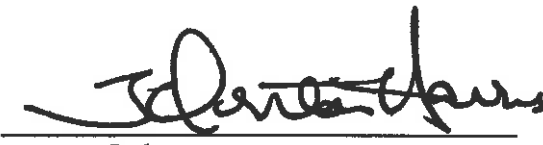
COB inst #10-675

A Copy, Teste:
Malcolm A. Booker, Jr.

By:  Deputy/Clerk

6. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;
7. That the Commissioner may use this Order in future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia, or any other authority, but that the violation affirmed as part of this order may not be used as the basis of a repeat citation after May 21, 2012.
8. This Order is meant to settle the above contested claims, and none of the foregoing agreements, statements or actions taken by Godsey shall be deemed an admission by Godsey of any of the allegations contained in VOSH Inspection Number 312511439. Under Virginia Code § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. The agreements, statements and actions taken herein are made solely for the purpose of settling this matter economically and amicably without further litigation and this Order shall not be used for any other purpose other than for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.
9. The Clerk shall strike this matter from the docket of this Court, place it among the ended chancery cases, and shall send an attested copy of this order to both counsel of record.

Entered this 24th day of May 2010.



Judge

WE ASK FOR THIS:

COURTNEY MALVEAUX, Commissioner of Labor and Industry



Robert B. Feild, VSB no. 23864
Special Assistant Commonwealth's Attorney
County of Hanover
13 South Thirteenth Street
Richmond, Virginia 23219
Phone: 804/786-4777
Fax: 804/786-8418

Seen and Agreed:

GODSEY & SON, INC.



Bradley P. Marrs, VSB no. 25281
Meyer, Goergen & Marrs, P.C.
7130 Glen Forest Drive, Suite 305
Richmond, Virginia 23226
804-288-3600

A COURT TESTE
FRANK D. HARGROVE, JR. CLERK
HANOVER CIRCUIT COURT


VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON

| | | |
|---|---|---------------------------|
| C. RAY DAVENPORT, |) | |
| Commissioner of Labor and Industry, |) | |
| <i>Plaintiff,</i> |) | |
| v. |) | Civil Action No. CL09-297 |
| |) | |
| HOLMAN BOILER REPAIR & PLUMBING, |) | |
| INC., |) | |
| <i>Defendant.</i> |) | |

AGREED ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. That the citations attached to the Complaint are hereby amended as follows:
 - a) Serious Citation 1, Item 1 is vacated;
 - b) Serious Citation 1, Item 2 is vacated; and
 - c) Serious Citation 1, Item 3 is amended to a violation of §1926.1011(k)(9)(vi) and reduced to an other than serious citation with no penalty.
2. That the Defendant shall withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;
3. That the Defendant shall provide training to each of its employees that conduct boiler repair and plumbing services within forty-five days of the entry of this order and provide documentation of this training to the Commissioner at the following address:

Lee Willis
Regional Director
Department of Labor and Industry
3013 Peters Creek Road
Roanoke, Virginia 24019

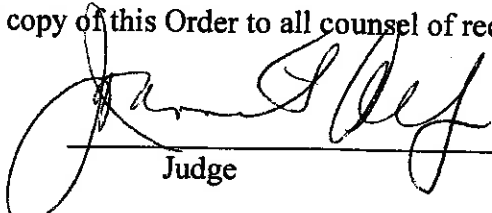
4. That the Defendant shall post a copy of this Order for ten consecutive days, beginning from the date of entry of this Order, at its workplace in a conspicuous location where notices to its employees are generally posted;
5. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;
6. That the Commissioner may use this Order in future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia, or any other authority;
7. That under Virginia Code § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party;
8. Except for these proceedings, and matters arising out of these proceedings, and any other subsequent VOSH proceedings between the parties, nothing in this agreement nor any foregoing statements, findings or actions taken by the Defendant shall be deemed an admission by the Defendant of the allegations of the citation, said allegations having been specifically denied. The agreements, statements, findings and actions taken herein are made for the purpose of compromising and settling this matter economically and amicably, and they shall not be used for any other purpose whatsoever, except as herein stated.
9. That each party shall bear its own costs in this matter.

It is ORDERED, ADJUDGED, and DECREED that this matter be, and hereby is, dismissed with full prejudice and stricken from the docket of this Court.

Entered this 18 day of May 2010.

ORDER IS FINAL

The Clerk shall send an attested copy of this Order to all counsel of record.



Judge

WE ASK FOR THIS:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

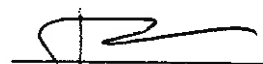


Robert B. Feild #23864
Special Assistant Commonwealth's Attorney
✓ 13 South Thirteenth Street
Richmond, Virginia 23219
Phone 804-786-4777
Fax 804-786-8418

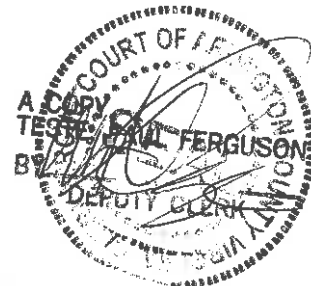
Counsel for Commissioner Davenport

SEEN AND AGREED:

HOLMAN BOILER REPAIR & PLUMBING, INC.


✓ Timothy J. McEvoy #33277
Cameron McEvoy, PLLC
11325 Random Hills Road, Suite 200
Fairfax, Virginia 22030
Phone: (703) 273-8898
Fax: (703) 273-8897

Counsel for Holman Boiler Repair & Plumbing, Inc.



VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF SUSSEX

| | | |
|---|---|---------------------------------|
| C RAY DAVENPORT, Commissioner of |) | |
| Labor and Industry, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Chancery No. CH 04-45-01 |
| |) | |
| INDMAR COATINGS CORPORATION |) | |
| |) | |
| Defendant. |) | |

AGREED ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. a. Serious Citation 1, Items 1a and 1b are affirmed with a reduced penalty of \$350.00 for the grouped violation;
- b. Serious Citation 1, Item 2 is affirmed with a reduced penalty of \$350.00;
- c. Serious Citation 1, Item 3 is affirmed with a reduced penalty of \$350.00;
- d. Serious Citation 1, Item 4 is affirmed with a reduced penalty of \$1,160.00;
- e. Serious Citation 1, Items 5a and 5b are affirmed with a reduced penalty of \$1,160.00 for the grouped violation;
- f. Serious Citation 1, Items 6a and 6b are affirmed with a reduced penalty of \$1,160.00 for the grouped violation;

- g. Serious Citation 1, Item 7 is affirmed with a reduced penalty of \$1,160.00;
- h. Serious Citation 1, Items 8a and 8b are affirmed with a reduced penalty of \$1,160.00 for the grouped violation;
- i. Serious Citation 1, Items 9a and 9b are affirmed with a reduced penalty of \$1,160.00 for the grouped violation;
- j. Serious Citation 1, Items 10a and 10b are affirmed with a reduced penalty of \$1,160.00 for the grouped violation;
- k. Serious Citation 1, Item 11 is affirmed with a reduced penalty of \$570.00;
- l. Serious Citation 1, Item 12 is affirmed with a reduced penalty of \$350.00;
- m. Serious Citation 1, Item 13 is affirmed with a reduced penalty of \$1,160.00;
- n. Serious Citation 1, Item 14 is affirmed with a reduced penalty of \$1,160.00;
- o. Serious Citation 1, Item 15 is affirmed with a reduced penalty of \$1,160.00;
- p. Serious Citation 1, Item 16 is affirmed with a reduced penalty of \$350.00;
- q. Serious Citation 1, Items 17a, 17b and 17c are affirmed with a reduced penalty of \$1,160.00 for the grouped violation;
- r. Serious Citation 1, Item 18 is affirmed with a reduced penalty of \$570.00;
- s. Serious Citation 1, Items 19a and 19b are affirmed with a reduced penalty of \$570.00 for the grouped violation;
- t. Serious Citation 1, Item 20 is affirmed with a reduced penalty of \$350.00;
- u. Serious Citation 1, Item 21 is affirmed with a reduced penalty of \$1,160.00;
- v. Serious Citation 1, Item 22 is affirmed with a reduced penalty of \$570.00;
- w. Serious Citation 1, Item 23 is affirmed with a reduced penalty of \$1,160.00;
- x. Serious Citation 1, Item 24 is affirmed with a reduced penalty of \$570.00;

- y. Willful Citation 2, Item 1 is affirmed with a reduced penalty of \$38,640.00;
- z. Willful Citation 2, Item 2 is affirmed with a reduced penalty of \$38,640.00;
- aa. Willful Citation 2, Items 3a and 3b are affirmed with a reduced penalty of \$38,640.00 for the grouped violation.

2. IndMar Coatings Corporation will pay the assessed penalty as follows:

a. The Employer, upon entry of this Agreed Order, will pay to the Commonwealth \$36,000.00 in partial payment of the penalties assessed for the above citations to be paid as follows: One Thousand dollars (\$1,000.00) of this payment must be remitted to the Commonwealth with the signed agreed order to be deposited on the day the order is entered. Thirty-Five Thousand dollars (\$35,000.00) is to be paid in thirty-five (35) payments of One Thousand dollars (\$1,000.00) each, payable on the first day of each month for the next thirty-five (35) successive months. The first monthly payment shall be due on the first day of the month that begins at least fifteen days after the entry of this order. Each payment will be made in the form of a check or money order, payable to the Commonwealth of Virginia, with the VOSH inspection number (305667891) noted on each payment.

b. Should IndMar Coatings Corporation, between the entry of this order and one year from the entry of this order, violate any of the sections of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry that formed the basis for the citations affirmed by this agreement, the Employer will pay a second partial payment of the total penalties assessed for the above citations in the amount of \$33,450.00 upon issuance of the citation for such repeat or willful violations by the Commissioner of

Labor and Industry. This penalty payment is in addition to and separate from any penalties that the Commissioner we may assess for the subsequent repeat or willful violations which trigger the partial payments addressed above. IndMar Coatings Corporation's obligation to pay this partial payment will cease one year from the entry of this order, if IndMar has satisfied all the requirements of this agreement and no triggering event has occurred. On that date, the remaining amount of the second partial penalty that has not yet become due and payable to the Commonwealth because of subsequent violations will be waived

c. Should IndMar Coatings Corporation, between one year from the entry of this order and two years from the entry of this order, violate any of the sections of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry that formed the basis for the citations affirmed by this agreement, the Employer will pay a third partial payment of the total penalties assessed for the above citations in the amount of \$33,400.00 upon issuance of the citation for such repeat or willful violations by the Commissioner of Labor and Industry. IndMar Coatings Corporation's obligation to pay this partial payment will cease one year from the entry of this order, if IndMar has satisfied all the requirements of this agreement and no triggering event has occurred. On that date, the remaining amount of the third partial penalty that has not yet become due and payable to the Commonwealth because of subsequent violations will be waived

d. Should IndMar Coatings Corporation, between two years from the entry of this order and three years from the entry of this order, violate any of the sections of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry that formed the basis for the citations affirmed by this agreement, the Employer will pay a

fourth partial payment of the total penalties assessed for the above citations in the amount of \$33,400.00 upon issuance of the citation for such repeat or willful violations by the Commissioner of Labor and Industry. IndMar Coatings Corporation's obligation to pay this partial payment will cease one year from the entry of this order, if IndMar has satisfied all the requirements of this agreement and no triggering event has occurred. On that date, the remaining amount of the fourth partial penalty that has not yet become due and payable to the Commonwealth because of subsequent violations will be waived

3. IndMar Coatings Corporation, Inc. certifies that the violations affirmed in this Order have been abated;
4. As further consideration for the modification of the terms of the original citation, IndMar Coatings Corporation, Inc., agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.
5. This Order is meant to settle the above contested claims, and none of the foregoing agreements, statements or actions taken by IndMar Coatings Corporation, Inc. shall be deemed an admission by the IndMar Coatings Corporation, Inc. of any of the allegations contained in VOSH Inspection Number 305667891. Under Virginia Code § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. The agreements, statements and actions taken herein are made solely for the purpose of settling this matter economically and amicably without further litigation and this Order shall not be used for any other purpose other than for future enforcement proceedings and enforcement actions

pursuant to Title 40.1 of the Code of Virginia.

6. The Clerk shall strike this matter from the docket of this Court, place it among the ended chancery cases, and shall send an attested copy of this order to both counsel of record.

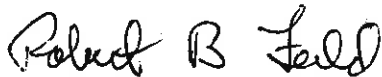
Entered this 16 day of March 2009.
10



Judge Sam Campbell

WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry



Robert B. Feild
Special Assistant Commonwealth's Attorney
County of Sussex
13 South Thirteenth Street
Richmond, Virginia 23219
Telephone: (804) 786-4777
Facsimile: (804) 786-8418

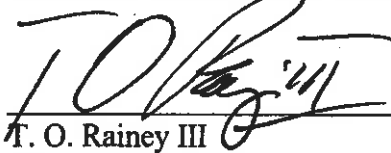
3-15-2010

Date

Counsel for Commissioner Davenport

SEEN AND AGREED:

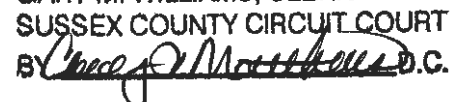
INDMAR COATINGS CORPORATION, INC.



T. O. Rainey III
Hill & Rainey
2425 Boulevard, Suite 9
Richmond, VA 23219
Phone: 804-526-8300
Facsimile: 804-526-2872

3/10/2010
Date

Counsel for IndMar Coatings Corporation, Inc.

A TRUE COPY
GARY M. WILLIAMS, CLERK
SUSSEX COUNTY CIRCUIT COURT
BY  D.C.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

| | |
|-------------------------------------|-----------------------------|
| COURTNEY M. MALVEAUX |) |
| Commissioner of Labor and Industry, |) |
| <i>Plaintiff,</i> |) |
| v. |) Civil Action No. CL09-492 |
| |) |
| JOLOR ALLIANCE, LLC |) |
| D/B/A WINREPCO, |) |
| <i>Defendant.</i> |) |


AMENDED FINAL ORDER

This matter came before the Court for trial on April 26, 2010, pursuant to *Va. Code* 40.1-49.4.E, and based upon JoLor Alliance d/b/a Winrepcos (JoLor) contest of a Virginia Occupational Safety and Health (VOSH) citation and proposed penalties issued to it by the Commissioner of Labor and Industry (Commissioner Malveaux). After hearing the evidence presented by the plaintiff, the Court finds that Commissioner Malveaux proved by a preponderance of the evidence that the cited standards applied to and were violated by JoLor. The Court further finds that employees of JoLor were exposed to the hazards and that JoLor knew or should have known of the violations.

It is ORDERED, ADJUDGED, and DECREED that the citations attached to the plaintiff's Complaint are affirmed. Judgment is hereby entered in favor of the Plaintiff, Courtney M. Malveaux, Commissioner of Labor & Industry, in the amount of \$21,000.00.

This matter shall be, and hereby is, dismissed with full prejudice and stricken from the docket of this Court. The Clerk shall send an attested copy of this Order to all counsel of record.

Entered this 27 day of April, 2010.



Judge

COURTNEY M. MALVEAUX,
Commissioner of Labor and Industry

Robert B. Feild
Robert B. Feild (VSB # 23864)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804-786-4777/ Fax 786-8418

A COPY TESTE:



DEPUTY CLERK
WINCHESTER CIRCUIT COURT

VIRGINIA:

IN THE CIRCUIT COURT OF BUCHANAN COUNTY

C. RAY DAVENPORT,
Commissioner of Labor and Industry
Plaintiff,


v.

NICHOLS CONSTRUCTION, LLC,
Defendant.

Civil Action No. 587-07

ORDER

AND NOW, this ^{21ST} day of ~~December, 2009~~ ^{JANUARY 2010}, it is hereby ORDERED that Nichols Construction, LLC's Plea in Bar is GRANTED for the reasons set forth in this Court's October 7, 2009 letter to counsel, a copy of which is attached hereto as Exhibit A. The findings of fact and conclusions of law set forth in that letter are incorporated by reference into this Order, as if fully restated herein. Plaintiff, C. Ray Davenport's Complaint against Nichols Construction is hereby DISMISSED with prejudice.



The Hon. Patrick R. Johnson

NICHOLS CONSTRUCTION, LLC
Seen and Agreed.

By: Joyce E. Taber
Joyce E. Taber (VSB No. 47266)
MORGAN, LEWIS & BOCKIUS, LLP
1111 East Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202.739.3000
202.739.3001 (fax)

Thomas Benjamin Huggett
MORGAN, LEWIS & BOCKIUS, LLP
1701 Market Street
Philadelphia, Pennsylvania 19103
215.963.5191
215.963.5001 (fax)

Counsel for Defendant
NICHOLS CONSTRUCTION, LLC

C. RAY DAVENPORT,
COMMISSIONER OF LABOR
AND INDUSTRY

Seen and Objected to.

By: Robert B. Feild
Robert B. Feild (VSB No. 23864)
Special Assistant

Commonwealth's Attorney
Department of Labor and
Industry

Powers-Taylor Building
13 South Thirteenth Street
Richmond, Virginia 23219
804.786.4777
804.786.8418 (fax)

Counsel for Plaintiff
C. RAY DAVENPORT,
COMMISSIONER OF LABOR
AND INDUSTRY

A Copy

Teste: Beverly S. Tifler, Clerk
Circuit Court of Buchanan
County, Virginia

Bonnie Allen

Deputy Clerk

EXHIBIT A

Commonwealth of Virginia



TWENTY-NINTH JUDICIAL CIRCUIT

COUNTIES OF BUCHANAN, DICKENSON, RUSSELL AND TAZEWELL

CIRCUIT COURT JUDGES:

PATRICK R. JOHNSON
Buchanan County Courthouse
P.O. Box 1995
Grundy, VA 24614
(276) 935-2451
(276) 935-8516 Fax

KEARY R. WILLIAMS (Retired)
P.O. Box 849
Grundy, VA 24614
(276) 935-2451
(276) 935-8516 Fax

MICHAEL L. MOORE
Russell County Courthouse
P.O. Box 435
Lebanon, VA 24266
(276) 889-8049
(276) 889-8090 Fax

HENRY A. VANOVER
Dickenson County Courthouse
P.O. Box 190
Clintwood, VA 24228
(276) 926-1635
(276) 926-5580 Fax

TERESA M. CHAFIN
Tazewell County Courthouse
P.O. Box 968
Tazewell, VA 24651

October 7, 2009

OCT 15 2009

Joyce E. Taber, Esq.
Morgan, Lewis & Cockius, LLP
1111 East Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Thomas Benjamin Huggett, Esq.
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, Pennsylvania 19103-2921

Robert B. Field, Esq.
Senior Staff Attorney
Commonwealth of Virginia, Department of Labor and Industry
Powers-Taylor Building
13th South Thirteenth Street
Richmond, Virginia 23219

Re: *C. Ray Davenport v. Nichols Construction, LLC*, Civil Action No. 587-07

Dear Counsel,

The Court has reviewed the above-referenced case, including Defendant's Plea In Bar, Commissioner's Memorandum in Opposition to Defendant's Plea In Bar, Declarations, Surveys, and oral argument presented at the November 13, 2008 hearing in Buchanan County, Virginia. After careful consideration of the issues, the Court makes the following rulings.

Joyce E. Taber, Esq.
Thomas B. Huggett, Esq.
Robert B. Field, Esq.
October 7, 2009
Page 2 of 7

This case involves the fatality of Nichols Construction ("Nichols") employee, Mr. Richard Cox, at the Buchanan Mine #1 operated by Consolidation Coal Company ("Consolidated") in Buchanan County, Mavisdale, Virginia. Nichols contracted to perform services for Consolidated at its Buchanan Mine Site and property.

On May 4, 2006, Mr. Cox was fatally injured when he came in contact with an energized pre-existing pole guy wire while clearing brush in preparation for scheduled electrical installation work. On May 5, 2006, Plaintiff and Commissioner of Labor and Industry, C. Ray Davenport, ("Commissioner") conducted an inspection of the accident site. Virginia Occupational Safety and Health ("VOSH"), the Department of Mines, Minerals and Energy ("DMME"), and the Mine Safety and Health Administration ("MSHA" or "the Act") conducted initial investigations. The Global Positioning System ("GPS") survey shows that the fatal accident occurred outside the Division of Mined Land Reclamation ("DMLR") Permit No. 13000338 boundary. The victim was 18 feet outside the boundary of the permit area at the time of the accident and the associated pole was 4 feet outside the same permit boundary.

On November 3, 2006, the Commissioner cited Nichols for violating Section 1910.269(a)(3) of the Code of Virginia for failing to determine prior to commencement of the work what safety conditions existed and alternatively, for violating Section 40.1-51.1(a) of the Code for failing to take precautions that ensure safe working conditions for employees. On November 17, 2006, MSHA issued several citations to Nichols, including one for failing to notify MSHA within fifteen minutes of the accident in violation of 30 C.F.R. § 50.10. MSHA also cited Consolidated in connection to the accident. The Commissioner filed a Complaint requesting the Court to issue an order affirming the VOSH citations and proposed penalty, and requiring abatement of the violation cited. Nichols then filed an Answer and a Plea In Bar to Plaintiff's Complaint alleging that MSHA preempts VOSH jurisdiction, thereby moving the Court to dismiss the Commissioner's Complaint.

The issue before the Court is whether MSHA preempts VOSH under the circumstances and thus, whether Nichols is subject to the VOSH citations.

The Commissioner first argues that MSHA is without jurisdiction in this case because of the accident location. The Commissioner cites a memorandum from George Willis, Director of DMME, addressed to the Commissioner reporting that the accident was not chargeable as a coal mine fatality because of the accident location; 18 feet outside the permit area. The Commissioner correctly states that MSHA jurisdiction extends to work done on mines by contractors and that the U.S. Code mine definition does not include the mine permit boundary. However, the Commissioner argues that MSHA jurisdiction cannot extend forever and that at some point jurisdiction must end. The logical end to MSHA jurisdiction, the Commissioner argues, is at the permit boundary.

Joyce E. Taber, Esq.
Thomas B. Huggett, Esq.
Robert B. Field, Esq.
October 7, 2009
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Nichols argues in return that Congress included a very broad definition of mine in MSHA and cited the Third Circuit's interpretation of Congress's intent to give the definition of a mine the "broadest possible interpretation and that doubts were to be resolved in favor of inclusion of a facility within the coverage of the Act." *Marshall v. Stoudt's Ferry Prep. Co.*, 602 F.2d 589, 591-192, (3rd Cir. 1979), cert. denied, 444 U.S. 1015 (1980). Further, Nichols cites the Fourth Circuit case of *Harman Mining Corporation v. FMSHR*, also finding that Congress intended a broad interpretation of "mine." 671 F.2d 794, 796 (4th Cir. 1981). The *Harman* Court held that "the broad definition of a 'mine' in the Act demonstrates that Congress intended that term to encompass all of the facilities used at a coal preparation plant." *Id.*

While this Court agrees with the Commissioner that MSHA jurisdiction may not extend forever, the Commissioner fails to provide any supporting or persuasive legal precedent asserting any relation between the state permit boundary and MSHA's mine definition. MSHA defines "mine" to include "lands, . . . structures, facilities, equipment, machines, tools, or other property . . . used in, or to be used in, or resulting from, the work of extracting such materials from their natural deposits." 30 U.S.C. § 802(h)(1)(C). In this case, the accident occurred 18 feet outside the DMME permit boundary during a project to maintain and upgrade the electrical systems powering the pump house that supplies necessary water to coal extraction operations and the coal preparation plant. Mr. Cox was injured by the very electrical systems engaged in Consolidated's coal extraction process.

The Court finds no relation between the DMME permit area and MSHA mine definition. The Court agrees with the Third and Fourth Circuits that Congress's broad definition of mine in MSHA calls for the broadest interpretation and accordingly finds that the accident occurred on a site constituting "lands, . . . structures, facilities, equipment, machines, tools, or other property" used in the extraction of coal from its natural deposit. § 802(h)(1)(C). Therefore, the Court finds that the accident occurred at the mine and MSHA jurisdiction in this case is not limited to the DMME permit area.

The Commissioner next argues that Nichols is not an "operator" under MSHA, relying on *Old Dominion Power Company v. Donovan*, 772 F.2d 92 (4th Cir. 1985). MSHA maintains jurisdiction over "each coal or other mine . . . and each operator of such mine." 30 U.S.C. § 803. The Act defines "operator" to include "any independent contractor performing services or construction at such mine." § 802(d). Accordingly, MSHA maintains exclusive jurisdiction over independent contractors performing services at a mine site.

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The Commissioner admits that *Old Dominion* is not controlling on this Court but nonetheless urges the Court to adopt its ruling. The issue in *Old Dominion* was whether the power company was an independent contractor and an operator under MSHA. The court held that an operator under MSHA is an independent contractor "engaged in the mine construction or the extraction process, and who has a 'continuing presence at the mine.'" *Id.* at 96-97. The court concluded that the power company was not an operator because its contacts with the mine were remote from mining activities and the power company's only contact with the mine was inspection, maintenance, and a monthly meter read of which the company used to bill the mine and sell electricity. *Id.* at 96. Further, the court noted, "MSHA seeks to regulate those few moments every month when electric workers read or maintain meters on mine property. Old Dominion's employees are otherwise totally regulated by OSHA." *Id.*

The Commissioner argues that like *Old Dominion*, Nichols performs identical work for other customers not operating mining sites, and therefore, such activities are remote from mining activities. The Commissioner also asserts that Nichols did not engage in activities where their employees came into contact with mining hazards. Further, the Commissioner states that Nichols is subject to VOSH regulations when doing work away from mining sites.

Nichols responds first, that *Old Dominion* is not controlling in this case and it's holding is incongruous with Congressional intent. It is well-established law, conceded by both parties, that this Court is not bound by federal court precedent. See *A.L. Lockhart v. Fretwell*, 506 U.S. 364, 376 (1993) (J. Thomas dissenting); *Troup v. Cont'l Cas. Co.*, No. 1834-4, 1996 WL 10656 at *2 (Va. Cir. Ct. Oct. 4, 1996). Nichols asserts that by MSHA's express language defining "operator," Congress intended MSHA jurisdiction to extend to "any independent contractor." 30 U.S.C. § 802(d) (emphasis added). Nichols cites *Otis Elevator Company v. Secretary of Labor*, in support of this argument. The *Otis* court held that the Act "does not extend only to *certain* independent contractors performing services at a mine; [but] by its terms it extends to *any* independent contractor performing services at a mine." 921 f.2d 1285, 1289 (D.C. Cir. 1990) (emphasis in original).

Nichols also cites Seventh and Tenth Circuit opinions rejecting *Old Dominion's* more restrictive standard. See *Joy Tech., Inc. v. Sec'y of Labor*, 99 F.3d 991, 999-1000 (10th Cir. 1996); and *N. Ill. Steel Supply Co. v. Sec'y of Labor*, 294 F.3d 844, 849 (7th Cir. 2002). The *Otis Elevator* court explained its deviation from *Old Dominion's* interpretation, stating that the *Old Dominion* court placed complete reliance on two pieces of legislative history. 921 F.2d at 1291. The *Otis Elevator* court determined that *Old Dominion's* "quoted phrases are words of inclusion, not exclusions" and "[n]othing in the legislative history expressly states an intent to cover *only* these independent contractors. . ." *Id.* (emphasis in original).

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The Court agrees with the Seventh and Tenth Circuits and the D.C. Circuit Court and rejects *Old Dominion's* overly restrictive interpretation of "operator" under MSHA. The Court holds that Congress's intent, as indicated by the clear language of the statute, is that MSHA jurisdiction shall extend to any independent contractor, including independent contractors such as Nichols, performing work on maintenance and upgrading projects for electrical systems. The Court finds that Nichols was an independent contractor for Consolidated at the time of the accident, and is therefore an operator subject to MSHA jurisdiction as defined by the Act.

Thirdly, Nichols argues that it is an operator subject to MSHA jurisdiction even if this Court applies *Old Dominion's* operator definition. Even if the Court agreed with *Old Dominion's* interpretation, which it does not, the Court finds that Nichols would still qualify as an operator under MSHA. *Old Dominion's* interpretation requires an operator to be "engaged in mine construction or extraction" activities and have a "continuing presence at a mine."

Nichols argues that it was involved in coal extraction at the mine site. Nichols engaged in brush clearing and trimming trees as part of a larger Nichols project to maintain and upgrade the electrical systems powering the pumphouse that supplies necessary water to the coal extraction and coal processing operations. The Commissioner responds that Nichols merely engaged in routine maintenance. The *Old Dominion* court held that the power company's routine maintenance was remote from mining activities and thus, the power company was not an operator under MSHA. Nichols points out that *Old Dominion's* employees only entered the mine site property to further their employer's interest in selling electricity. Nichols employees, however, were at the mine performing services directly necessary for coal extraction and processing. The Court finds that unlike *Old Dominion*, Nichols was not acting as a mere vendor but provided only its own services needed for mine construction and extraction activities.

Additionally, the Court finds that Nichols had a continuing presence at the mine. Nichols performed over 100 projects for Consolidated in the prior five years. At least five Nichols employees are regularly present at Consolidation mine sites on a weekly basis. While engaged in the specific project during which the accident occurred, Nichols employees were present for several weeks performing work and services in furtherance of the maintenance and upgrade project. Unlike the *Old Dominion* workers who only entered mine property on a limited basis for the purpose of selling electricity, Nichols employees were often present at the mine site for extensive periods of time.

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Thomas B. Huggett, Esq.
Robert B. Field, Esq.
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The facts of this case indicate that Nichols had an average of twenty employees working a combined 14,718 hours at mine sites in the same quarter in which the accident occurred. While the facts do not indicate how many of those employees or hours are attributable to this particular mine site, the Court is persuaded that the Nichols employees presence at the mine site was not the equivalent of the minimal employee presence in *Old Dominion*.

The *Old Dominion* court held that the company was not an "operator" because its employees rarely entered mine property or contacted the hazards associated with mining. 772 F.2d at 95. MSHA contains regulations requiring proper grounding of guy wires and safe maintenance of electrical equipment. See 30 C.F.R. § 77.705; 30 C.F.R. § 77.502. Through such regulation, MSHA determined that guy wires and electrical equipment maintenance constitute mining hazards. In fact, these specific hazards covered by the Act were the precise causes of Mr. Cox's fatal injury. Therefore, even if the Court applied the *Old Dominion* standard, Nichols meets the unduly restrictive definition and qualifies as an operator under that court's interpretation.

Furthermore, the Court recognizes that VOSH standards and regulations do not apply where the federal Occupational Safety and Health Act (OSHA) is preempted. 16 VA. ADMIN. CODE § 25-60-20(2) (1994). Moreover, OSHA shall not apply "to working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health." 29 U.S.C. § 653(b)(1) (2006).

OSHA preemption is determined by a two-part test set forth by the Federal Occupational Safety Health Review Commission (OSHRC). That test states that OSHA is preempted where "an agency other than OSHA possesses the statutory authority to regulate the health and safety of workers and . . . the other agency has taken actions to exercise the authority by promulgating regulations to exempt the particular working conditions." *The Nat'l Coal Museum*, 19 BAN OSHC 1748 (No. 32461, 2001). MSHA has statutory authority to regulate the health and safety of workers at coal or other mines. 30 U.S.C. § 803 (2006). As the Court already determined that that accident in this case occurred at a mine under MSHA jurisdiction, the first prong of the test is satisfied.

The second prong of the test requires that such agency must have taken "actions to exercise the authority by promulgating regulations." *Nat'l Coal Museum*, BAN OSHC 1748. As noted earlier, MSHA promulgated such regulations addressing safety precautions related to the precise hazards at issue. See 30 C.F.R. § 77.705 (addressing guy wire safety); and 30 C.F.R. § 77.502 (addressing electrical equipment maintenance). Additionally, MSHA did in fact issue citations to both Nichols and Consolidated for the accident.

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Thomas B. Huggett, Esq.
Robert B. Field, Esq.
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The Court finds the Commissioner's argument that the MSHA citation did not relate to safety, but merely for failing to notify MSHA of the accident within the requisite time unpersuasive. MSHA had the authority to promulgate such rules, did in fact promulgate such rules, and issued citations for violations thereof. The Court therefore holds that MSHA satisfies the two-prong test and preempts OSHA. In accordance with the Administrative Code of Virginia Section 25-60-20(2), the Court finds that under the circumstances present in this case, MSHA preempts VOSH and finds VOSH to be without proper jurisdiction.

Additionally, a settlement in civil penalty proceedings regarding MSHA citations against Consolidated for its role in the same accident at issue were recently approved. *MSHA v. Consolidation Coal Co.*, Docket No. VA 2007-38, 2007-30 (FMSHRC June 9, 2009). While not conclusive, the fact that the Commissioner did not cite Consolidated for violations in connection with the accident further evidences MSHA's proper jurisdiction over the matter. Equally persuasive is the recent Decision by the Federal Mine Safety and Health Review Commission, also finding that Nichols was an operator as within the meaning of 30 C.F.R. § 50.2(c). *Nichols Construction, Inc. v. MSHA*, Docket No. VA 2007-17-R; *MSHA v. Nichols Construction Inc.*, Docket No. VA 2007-24 (FMSHRC September 24, 2009).

For these reasons, the Court hereby grants Nichols Plea In Bar and Dismisses the Commissioner's Complaint with prejudice. Counsel for Nichols is directed to prepare an order reflecting the findings of the Court and to forward the same to the Plaintiff's counsel for endorsement and then to the Court for entry.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick R. Johnson", is written over a horizontal line. The signature is stylized and somewhat cursive.

Patrick R. Johnson, Judge

PRJ/jls

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF AUGUSTA

C. RAY DAVENPORT,)
Commissioner of Labor & Industry)
)
Plaintiff,)
v.)
)
PLECKER CONSTRUCTION)
COMPANY)
)
Defendant)

Case No. CL06001074-00

AGREED ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED,
ADJUDGED, and DECREED as follows:

1. In settlement of the matters alleged in this action, the citation attached to the Complaint is hereby amended as follows:
 - a. Citation 1, Item 2 is reduced from serious to other-than-serious. The initial penalty of \$7,000.00 is reduced to \$3,500.00
2. Plecker Construction Company shall pay the penalty of \$ 3,500.00 within thirty (30) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 308494798 noted on the payment.
3. Plecker Construction Company certifies that the violation alleged in this agreement was abated.
4. As further consideration for the modification of the terms of the original citation, Plecker Construction Company agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

5. Plecker Construction Company shall post a copy of this Order for a period of thirty (30) days in a conspicuous location where notices to its employees are generally posted.

6. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by Plecker Construction Company. Pursuant to Va. Code §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

7. The Clerk shall strike this matter from the docket of this Court, place it among the ended civil cases, and shall send an attested copy of this Order to both counsel of record.


Entered this 5th day of February, 2010.

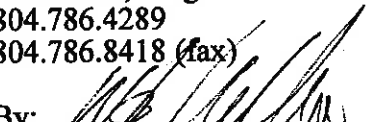


Judge Victor V. Ludwig

WE ASK FOR THIS:

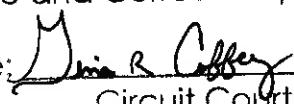
C. Ray Davenport,
Commissioner of Labor and Industry

By: 
Diane L. Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorney
13 South 13th Street
Richmond, Virginia 23219-4101
804.786.4289
804.786.8418 (fax)

By: 
W. F. Vellines, Jr. (VSB No. 13525)
Vellines, Cobbs, Goodwin & Glass, P.L.C.
Post Office Box 235
Staunton, Virginia 24402-0235
540.885.1205
540.885.7599 (fax)

Counsel for Plecker Construction Company

A True and Correct Copy,

Teste:  Dep. Clk.
Circuit Court
County of Augusta, Virginia

VIRGINIA:

IN THE FAIRFAX CIRCUIT COURT

C Ray Davenport
Plaintiff(s)

Civil Action No. CL-2009-0011341

vs.

Ram Development Corp
Defendant(s)

FINAL ORDER

The above-styled case having been stayed by a Suggestion in Bankruptcy received by this Court and said suggestion requiring this Court to continue such stay until the matter is determined by the court in Bankruptcy, it is,

ORDERED that this case be stricken from the docket and placed among the matters ended in the Clerk's Office without prejudice to any party to renew the cause without further expense or delay, by notice to the Clerk of the Court and all counsel and parties of record of removal of the stay in bankruptcy by the Bankruptcy Court,

It is further directed that a copy of this Order be mailed forthwith to all counsel of record and to all unrepresented parties.*

ENTERED this 11 day of Jan., 2010.



Circuit Court Judge

*Given the provision for mailing of copies and to assure the prompt disposition of the business of this Court, the Court is dispensing with signatures pursuant to Rule 1:13.

A COPY TESTE:
JOHN T. FREY, CLERK
BY: John T. Frey
Deputy Clerk
Date: 5-20-10
Original retained in the office of
the Clerk of the Circuit Court of
Fairfax County, Virginia

RECORDED & INDEXED

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF BATH

| | | |
|--|---|---------------|
| COURTNEY MALVEAUX, |) | |
| Commissioner of Labor and Industry, |) | |
| <i>Plaintiff,</i> |) | |
| v. |) | CL10000027-00 |
| |) | |
| ROOFING & RESTORATION, INC. |) | |
| |) | |
| <i>Defendant.</i> |) | |

DEFAULT

This cause came to be heard upon Commissioner Malveaux's Motion for Default against Roofing & Restoration, Inc., declaring that \$17,500.00 in proposed civil penalties arising from a contested Virginia Occupational Safety and Health (VOSH) citation, identified by VOSH Inspection Number 310066435 and as attached to the Commissioner's Complaint be upheld.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one (21) days have elapsed since service of process on the Defendant and that no responsive pleadings have been filed by the Defendant, nor has an appearance been made in this action on its behalf, it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff be awarded judgment by default in this cause against the Defendant, Roofing & Restoration, Inc., and affirming that Roofing & Restoration, Inc., be held liable for payment to the Commonwealth of Virginia of \$17,500.00 in civil penalties, arising from a contested Virginia Occupational Safety and Health (VOSH) citation as set out in Inspection No. 311066435. It is also ADJUDGED, ORDERED, and DECREED that the Clerk of this Court shall strike this matter from the docket and place it among the ended civil cases.

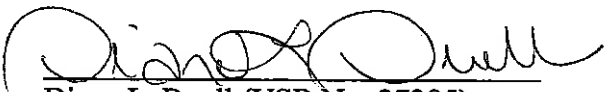
The Clerk shall mail certified copies of this order to Defendant's registered agent, and to Plaintiff's counsel. Pursuant to *Rule 1:13*, endorsement shall be dispensed with.

JUDGE: 11 | 11

ENTER: 9 | 30 | 10

I ask for this:

COURTNEY MALVEAUX,
Commissioner of Labor and Industry

By: 
Diane L. Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South 13th Street
Richmond, VA 23219-4101
804.786.4289
804.786.8418 (fax)
diane.duell@doli.virginia.gov

A TRUE COPY-TESTE:

 ^{Rep} CLERK
BATH COUNTY CIRCUIT COURT

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CAMPBELL

COURTNEY MALVEAUX,
Commissioner of Labor and Industry,
Plaintiff,

v.

SUMMITT COMMUNICATIONS
GENERAL CONTRACTING, LLC
11619 Rimrock Canyon Drive
Charlotte, North Carolina 28226

Defendant.

10

914

CL08000321-00

VIRGINIA
CIRCUIT COURT
CAMPBELL COUNTY
RECORDED 5/26/10
AT 10:20 AM
TESTE: V. Young
DEPUTY CLERK

DEFAULT

This cause came to be heard upon Commissioner Malveaux's Motion for Default against Summitt Communications General Contracting, declaring that \$1,350.00 in proposed civil penalties arising from a contested Virginia Occupational Safety and Health (VOSH) citation, identified by VOSH Inspection Number 310586722 and as attached to the Commissioner's Complaint be upheld.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one (21) days have elapsed since service of process on the Defendant and that no responsive pleadings have been filed by the Defendant, nor has an appearance been made in this action on its behalf, it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff be awarded judgment by default in this cause against the Defendant, Summitt Communications General Contracting, LLC, and affirming that Summitt Communication General Contracting, LLC, be held liable for payment to the Commonwealth of Virginia of \$1,350.00 in civil penalties, arising from a contested Virginia Occupational Safety and Health (VOSH) citation as set out in Inspection No. 310586722. It is

also ADJUDGED, ORDERED, and DECREED that the Clerk of this Court shall strike this matter from the docket and place it among the ended civil cases.

The Clerk shall mail certified copies of this order to Defendant, Summitt Communications General Contracting, LLC, at 11619 Rimrock Canyon Drive, Charlotte, North Carolina 28226, and to Plaintiff's counsel. Pursuant to *Rule 1:13*, endorsement shall be dispensed with.

JUDGE: *John T. Cook*

ENTER: 5/25/2010

I ask for this:

COURTNEY MALVEAUX,
Commissioner of Labor and Industry

A COPY TESTE:
DEBORAH E. HUGHES
Circuit Court Clerk
Campbell County, Virginia

By: *[Signature]*
Deputy Clerk

By: *[Signature]*
Diane L. Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
Powers-Taylor Building
13 South 13th Street
Richmond, VA 23219
(804) 786-4289
diane.duell@doli.virginia.gov

cc. Diane Duell
Scanned
Summit Communications

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

C. RAY DAVENPORT, Commissioner of)
Labor and Industry,)
)
Plaintiff,)
v.) CIVIL ACTION NO. CL08-2356
)
SUPREME COMPUTER AND ELECTRONIC)
RECYCLING, INC.)
Defendant.)

AGREED FINAL ORDER

WHEREAS, on or about May 12, 2008, Commissioner C. Ray Davenport issued citations to the defendant, Supreme Computer and Electronic Recycling, Inc., alleging thirteen serious, two willful and one other-than-serious violations of the Virginia Occupational Safety and Health Standards (VOSH) for General Industry, and proposing a civil penalty of \$126,400.00 (VOSH inspection number 312228109); and

WHEREAS, Supreme Computer and Electronic Recycling, Inc., filed within 15 working days from the date of the receipt of the citation, a written notice contesting the violations and proposed penalties, as provided for in § 40.1-49.4, of the *Code of Virginia*;

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Serious citation 1, item 1, is affirmed with the penalty reduced from \$1,000.00 to \$400.00.

2. Serious citation 1, item 2, is affirmed with the penalty reduced from \$1,000.00 to \$400.00.
3. Serious citation 1, item 3, is affirmed with the penalty reduced from \$1,000.00 to \$400.00.
4. Serious citation 1, items 4a and 4b, are affirmed with the penalty reduced from \$1,000.00 to \$400.00.
5. Serious citation 1, item 5, is affirmed with the penalty reduced from \$1,000.00 to \$400.00.
6. Serious citation 1, item 6, is affirmed with the penalty reduced from \$1,000.00 to \$400.00.
7. Serious citation 1, item 7, is affirmed with the penalty reduced from \$1,000.00 to \$400.00.
8. Serious citation 1, items 8a and 8b, are affirmed with the penalty reduced from \$1,000.00 to \$400.00.
9. Serious citation 1, item 9, is affirmed with the penalty reduced from \$1,000.00 to \$400.00.
10. Serious citation 1, items 10a and 10b, are affirmed with the penalty reduced from \$1,000.00 to \$400.00.
11. Serious citation 1, item 11, is affirmed with the penalty reduced from \$1,000.00 to \$400.00.
12. Serious citation 1, item 12, is affirmed with the penalty reduced from \$1,000.00 to \$400.00.

13. Serious citation 1, item 13, is affirmed with the penalty reduced from \$1,000.00 to \$400.00.
14. Willful citation 2, item 1, is reduced to serious and the accompanying proposed penalty of \$56,700.00 is reduced to \$7,000.00.
15. Willful citation 2, item 2, and the proposed penalty of \$56,700.00 are affirmed.
16. Other-Than-Serious citation 3, item 1, is affirmed with no penalty.
17. Supreme Computer and Electronic Recycling, Inc., shall pay in partial payment of the

penalties assessed for the above citations, the sum of thirty-two thousand, six-hundred and seventy-five hundred dollars (\$32,675.00) to be paid as follows:

Three Thousand Two Hundred and Seventy Seven dollars (\$3,277.00) of this payment must be remitted to the Commonwealth with the signed agreed order to be deposited on the day the order is entered. Twenty-Nine Thousand Three Hundred and Ninety Eight dollars (\$29,398.00) is to be paid in fifty-nine (59) payments of Four Hundred Ninety dollars (\$490.00) each, payable on the first day of each month for the next fifty-nine (59) successive months and one (1) payment of Four Hundred Eighty Eight dollars (\$488.00) on the next successive month. The first monthly payment shall be due on the first day of the month that begins at least fifteen days after the entry of this order. Each payment will be made in the form of a check or money order, payable to the "Treasurer of Virginia," with inspection number 312228109 noted thereon.

18. The remaining amount of penalty, thirty-six thousand, two-hundred and twenty-five dollars (\$36,225.00) which has not yet become due and payable to the Commonwealth, shall be forgiven provided that all the requirements listed below have been satisfied by Supreme Computer and Electronic Recycling, Inc. :

- a. The Commonwealth shall forgive twelve-thousand and seventy-five dollars (\$12,075.00) of the penalty amount which has not become due and payable if, between July 1, 2010, and June 30, 2011, no additional violations are issued to Supreme Computer and Electronic Recycling, Inc., arising out of the sections of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry which formed the basis for the citations affirmed by this Order. Should Supreme Computer and Electronic Recycling, Inc., violate any of the standards which form the basis for the affirmed violations referenced above, it shall pay a partial payment in the amount of twelve-thousand and seventy-five dollars (\$12,075.00), upon the final determination (final order) of the Commissioner of Labor and Industry or the final determination (final order) of a court of competent jurisdiction that Supreme Computer and Electronic Recycling, Inc., has violated any sections which formed the basis for the citations affirmed by this Order.
- b. The Commonwealth shall forgive twelve-thousand and seventy-five dollars (\$12,075.00) of the penalty amount which has not become due and payable if, between July 1, 2011, and June 30, 2012, no additional violations are issued to Supreme Computer and Electronic Recycling, Inc., arising out of the sections of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry which formed the basis for the citations affirmed by this Order. Should Supreme Computer and Electronic Recycling, Inc., violate any of the standards which form the basis for the affirmed violations referenced above, it shall pay a partial payment in the amount of twelve-thousand and seventy-five dollars (\$12,075.00), upon the final determination (final order) of the Commissioner of

Labor and Industry or the final determination (final order) of a court of competent jurisdiction that Supreme Computer and Electronic Recycling, Inc., has violated any sections which formed the basis for the citations affirmed by this Order.

- c. The Commonwealth shall forgive twelve-thousand and seventy-five dollars (\$12,075.00) of the penalty amount which has not become due and payable if, between July 1, 2012, and June 30, 2013, no additional violations are issued to Supreme Computer and Electronic Recycling, Inc., arising out of the sections of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry which formed the basis for the citations affirmed by this Order. Should Supreme Computer and Electronic Recycling, Inc., violate any of the standards which form the basis for the affirmed violations referenced above, it shall pay a partial payment in the amount of twelve-thousand and seventy-five dollars (\$12,075.00), upon the final determination (final order) of the Commissioner of Labor and Industry or the final determination (final order) of a court of competent jurisdiction that Supreme Computer and Electronic Recycling, Inc., has violated any sections which formed the basis for the citations affirmed by this Order.

19. As consideration for the modification of the terms of the original citations, Supreme Computer and Electronic Recycling, Inc., agrees to withdraw its original notice of contest filed with respect to the above-styled cases and waives its right to contest the remaining terms contained in this agreement. **If not already provided**, the defendant agrees to provide to the Commonwealth within thirty (30) days of the effective date of this agreement documentation verifying abatement of each violation affirmed in this agreement. The documentation shall comply with §307.E.2. of the Virginia Occupational

Safety and Health (VOSH) Administrative Regulations Manual, which states that “Documents demonstrating that abatement is complete may include, but are not limited to, evidence of purchase or repair of equipment, photographic or video evidence of abatement, or other written records.” The documentation shall be provided to:

Stan Dykstra, Compliance Manager
Virginia Department of Labor and Industry
Richmond Regional Office
North Run Business Park
1570 E. Parham Road
Richmond, VA 23228-2360

20. The defendant, Supreme Computer and Electronic Recycling, Inc., has represented to the Commonwealth that it has ceased operations in Virginia as of the date of the filing of this order. Should the defendant wish to re-establish operations in Virginia during the next three years following the entry of this Order, it agrees to:
 - a. Immediately notify the Commonwealth in writing at the address listed above no more than two working days after any of the following activities is initiated by it, or any company associated with it, in Virginia:
 - i. bulb crushing, repackaging or recycling
 - ii. computer crushing and/or recycling
 - iii. automobile, commercial or consumer battery crushing and/or recycling
 - b. Conduct initial and quarterly full shift personal air sampling for employee exposure to mercury during packaging and repackaging operations of light bulbs and provide the Commonwealth at the address listed above with copies of the initial sampling reports, and the quarterly sampling reports within two weeks of

the end of each quarter, for a period of one year from the date that operations are re-established in Virginia.

- c. Conduct initial and quarterly representative wipe sampling for the presence of mercury on working, storage and eating surfaces throughout the facility and provide the Commonwealth with copies of the initial sampling reports, and the quarterly sampling reports within two weeks of the end of each quarter, for a period of one year from the date that operations are re-established in Virginia.
- d. Institute a medical monitoring program for employee exposure to mercury which will include a baseline urine sample for each employee and quarterly samples. The defendant will provide the Commonwealth with copies of the initial sampling reports, and the quarterly sampling reports within two weeks of the end of each quarter, for a period of one year from the date that operations are re-established in Virginia.
- e. Develop and implement a written comprehensive safety and health program for all of its worksites in Virginia within 60 days of the date that operations are re-established in Virginia. The program will establish policies and procedures for recognizing and protecting employees from safety and health hazards. This program, at a minimum, shall comply with federal OSHA's Occupational Safety and Health Program Management Guidelines (http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=12909), and shall address the following subjects:
 - (i) management commitment to safety and a mechanism for employee involvement;

- (ii) worksite analysis;
- (iii) hazard recognition, prevention and control; and
- (iv) safety and health training.

- f. This safety program shall emphasize hazard prevention and control. An essential component of this program shall be that hazards which are detected must be corrected in a timely and reasonable manner. The defendant shall make the safety and health of its employees one of its top corporate priorities and require all management and supervisory personnel to treat the subject accordingly.
- g. The safety program shall list and discuss the respective responsibilities of management and supervisors, lead persons and field employees with respect to safety on the worksite. Authority and responsibilities must be given to supervisors and lead persons for the enforcement of safety rules. The safety officer and job superintendents must have authority delegated to them by management to issue internal employer citations or reports for violations of safety and health rules. Additionally, this must include the authority to halt unsafe work which is likely to cause injury or death, when it is observed by them on the jobsite.
- h. The defendant, shall initiate, within the written safety program, an internal system of enforcement of employer and state safety and health rules and regulations which provides for progressively severe internal penalties culminating in the option of removal of the unsafe employee from his or her employment upon occurrence of a third repeat violation. This system of enforcement shall apply equally to all defendant's employees, both management and field personnel.

i. The defendant shall institute safety meetings on at least a monthly basis to discuss the hazards employees are exposed to while performing their individual job duties and the corresponding safe practices. As part of these meeting, employees will be encouraged to notify management, without fear of reprisal, of any unsafe condition which may exist in their work area. Management shall address such concerns within a reasonable time period. Management also shall provide for investigation of accidents and “near miss” incidents so that their causes and means for prevention can be identified and discussed with employees at these meetings. Training materials will be provided in English and Spanish.

j. As part of the above safety and health program, the defendant agrees to insure periodic monitoring of its job sites by a qualified person to determine that its operations, including its supervisors, are in compliance with all applicable VOSH regulations.

21. Pursuant to *Virginia Administrative Code* §16 VAC 25-60-40(1), Supreme Computer and Electronic Recycling, Inc., shall post a copy of this order for ten (10) consecutive days at its workplaces in Virginia in a conspicuous location where notices to employees generally are posted.

22. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by Supreme Computer and Electronic Recycling, Inc. Pursuant to Va. Code §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This

Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

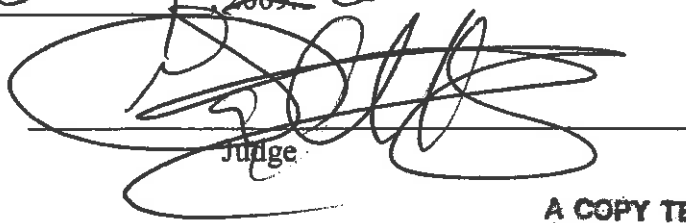
23. The defendant, Supreme Computer and Electronic Recycling, Inc., represents that it is entering into this agreement of settlement in the spirit of conciliation and cooperation in an effort to avoid litigation. This agreement shall not be construed as an admission by the defendant of civil or criminal liability for any violation or penalty alleged by the Commonwealth. By entering into this agreement, the defendant does not admit the truth of any alleged facts, any of the characterization of defendant's alleged conduct or any conclusions set forth in the citation(s) issued in this matter. Neither this agreement nor the defendant's consent to entry of a final order of the Commissioner pursuant to this agreement shall constitute an admission by the defendant of violation of the Virginia Occupational Safety and Health (VOSH) laws, regulations or standards promulgated thereunder. The defendant is entering into this agreement without any prejudice to its right to assert in any subsequent action or proceeding that any future existing conditions identical or similar to those alleged in the original citations do not violate the VOSH laws, regulations or standards promulgated thereunder.

24. Each party will bear its own costs in this matter.

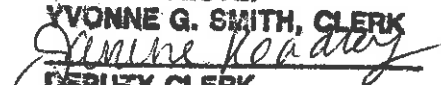
25. The Clerk shall strike this matter from the docket and place it among the ended civil cases. The Clerk shall send a certified copy of this order to the Special Assistant

Commonwealth's Attorney and the Defendant's counsel.

Entered this 4th day of January, ~~2009~~ 2010 (Hnd)



Judge

A COPY TESTE:
YVONNE G. SMITH, CLERK

DEPUTY CLERK

WE ASK FOR THIS:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

By: Robert B Feild
Counsel for Plaintiff

12/23/09
Date

Robert B. Feild (Va. Bar No. 23864)
Special Assistant Commonwealth's Attorney
13 South Thirteenth Street
Richmond, VA 23219
(804) 786-4777

SEEN AND AGREED TO:

SUPREME COMPUTER AND ELECTRONIC RECYCLING, INC.

By: Temple W. Cabell
Counsel for Defendant

12/23/09
Date

Temple W. Cabell (Va. Bar No. 20305)
Schaffer & Cabell
416 West Franklin Street
Richmond, Virginia 23220
(804) 648-0064

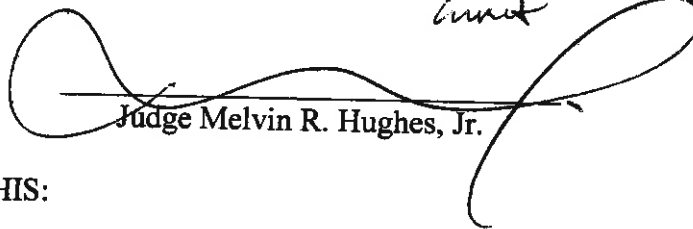
a conspicuous location where notices to its employees are generally posted.

6. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by Tate & Hill, Inc. Pursuant to Va. Code §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

7. The Clerk shall strike this matter from the docket of this Court, place it among the ended civil cases, and shall send an attested copy of this Order to both counsel of record.


Pursuant to *Rule* 1:13, endorsement shall be dispensed with.

Entered this 16 day of ~~August~~ ^{Sept} 2010.
inuit


Judge Melvin R. Hughes, Jr.

WE ASK FOR THIS:

C. Ray Davenport,
Commissioner of Labor and Industry

By: 
Diane L. Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorney
13 South 13th Street
Richmond, Virginia 23219-4101
804.786.4289
804.786.8418 (fax)

A Copy
Teste: Bevill M. Dean, Clerk

By:  D.C.

By: _____
Eileen McNeil Newkirk (VSB No. 40187)
P. O. Box 35755
Richmond, Virginia 23235
804.272.3229

Counsel for Tate & Hill, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF MONTGOMERY

C. RAY DAVENPORT,)
Commissioner of Labor and Industry,)
Plaintiff,)
v.)
THOMPSON CONSTRUCTION,)
and HOWARD M. THOMPSON, JR.)
Defendant.)

Civil Action No. CL09005107-00

AGREED ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. a. Serious Citation 1, Item 1 is vacated;
- b. Repeat Citation 2, Item 1 is affirmed with a reduced penalty of \$3,000.00;
- c. Repeat Citation 2, Item 2 is affirmed with a reduced penalty of \$7,000.00.
2. Thompson Construction and Howard M. Thompson, Jr. (Thompson) will pay the assessed penalty as follows:
 - a. The Employer, upon entry of this Agreed Order, will pay to the Commonwealth \$2,000.00 in partial payment of the penalties assessed for the above citations to be paid as follows: One hundred sixty dollars (\$160.00) of this payment must be remitted to the Commonwealth with the signed agreed order to be deposited on the day the order is entered. One Thousand Eight Hundred Forty dollars (\$1,840.00) is to be paid in twenty-three (23) payments of Eighty dollars (\$80.00) each, payable on the first day of each month for the next thirty-five (35) successive months. The first monthly payment shall be

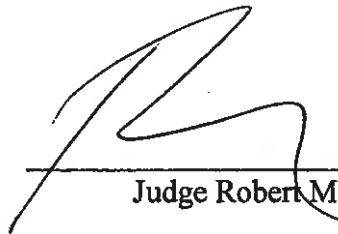
and Industry. Thompson's obligation to pay this partial payment will cease two years from the entry of this order, if Thompson has satisfied all the requirements of this agreement and no triggering event has occurred. On that date, the remaining amount of the third partial penalty that has not yet become due and payable to the Commonwealth because of subsequent violations will be waived

3. Thompson certifies that the violations affirmed in this Order have been abated;
4. As further consideration for the modification of the terms of the original citation, Thompson agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.
5. That the Defendant shall post a copy of this Order for thirty consecutive days, beginning from the date of entry of this Order, at its workplaces in Virginia in a conspicuous location where notices to its employees are generally posted;
6. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;
7. That the Commissioner may use this Order in future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia, or any other authority, but that the violations affirmed as part of this order may not be used as the basis of a repeat citation one year after the date of entry of this Order;
8. This Order is meant to settle the above contested claims, and none of the foregoing agreements, statements or actions taken by Thompson shall be deemed an admission by the Thompson of any of the allegations contained in VOSH Inspection Number 311801591. Under Virginia Code § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in

evidence in the trial of any action to recover for personal injury or property damage sustained by any party. The agreements, statements and actions taken herein are made solely for the purpose of settling this matter economically and amicably without further litigation and this Order shall not be used for any other purpose other than for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

9. The Clerk shall strike this matter from the docket of this Court, place it among the ended chancery cases, and shall send an attested copy of this order to both counsel of record.

Entered this 24 day of MAY 2010.



Judge Robert M. D. Turk

A Copy – Teste:

ERICA W. WILLIAMS

Circuit Court, Montgomery County, Virginia

By:  Deputy Clerk

WE ASK FOR THIS:

COURTNEY MALVEAUX, Commissioner of Labor and Industry

Robert B Feild
Robert B. Feild
Special Assistant Commonwealth's Attorney
County of Montgomery
13 South Thirteenth Street
Richmond, Virginia 23219
Telephone: (804) 786-4777
Facsimile: (804) 786-8418

5-7-10
Date

Counsel for Commissioner Malveaux

SEEN AND AGREED:

THOMPSON CONSTRUCTION and HOWARD M. THOMPSON JR.

B. K. Crucey
B. K. Crucey, Esquire
6686 Roanoke Road
P.O. Box 498
Shawsville, Virginia, 24162
Phone: 540/ 268-2002
Fax: 540/ 268-2004

5-20-10
Date

Counsel for Thompson

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF WISE

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Plaintiff

v.

Chancery No. CL07-534

**THYSSENKRUPP ELEVATOR
CORPORATION**

Defendant.

AGREED ORDER

WHEREAS, on or about October 11, 2006, the Commissioner issued a Citation to the Defendant, ThyssenKrupp Elevator, alleging a serious violation of Va. Code § 40.1-51.1.A, General Duty Clause, and proposing a civil penalty of \$7000.00;

WHEREAS, ThyssenKrupp Elevator, within 15 working days from the date of the receipt of the citation, filed a written notice contesting the violation and proposed penalty, as provided for in § 40.1-49.4, of the *Code of Virginia*; and

Upon agreement of the parties and for good cause shown, it is hereby

ADJUDGED, ORDERED, and DECREED as follows:

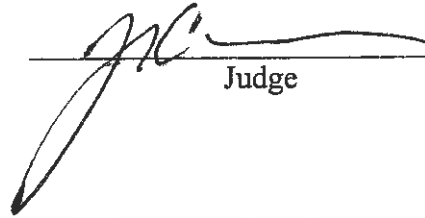
1. That the citation attached to the Bill of Complaint is hereby amended as follows:
 - a. Citation 1, Item 1 is vacated, along with the \$7000.00 proposed penalty.
2. Pursuant to *Virginia Administrative Code* § 16 VAC 25-60-40.1, ThyssenKrupp

Elevator shall post a copy of this order for ten (10) consecutive days at its workplace in Virginia in a conspicuous location where notices to employees generally are posted.

3. Each party will bear its own costs in this matter.

4. The Clerk shall strike this matter from the docket and place it among the ended civil cases. The Clerk shall certify copies of this order to the Special Assistant Commonwealth's Attorney and the Defendant's counsel.

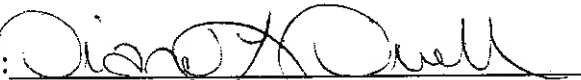
Entered this 4 day of ~~April~~ ^{May}, 2010.





Judge

We ask for this:

C. Ray Davenport,
Commissioner of Labor and Industry

By: 
Diane L. Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorney
Virginia Department of Labor & Industry
13 South 13th Street
Richmond, Virginia 23219-4101
804.786.4289
804.786.8418 (fax)

By: 
Paul J. Waters (VSB No. 47923)
AKERMAN SENTERFITT
Sun Trust Financial Center, Suite 1700
401 East Jackson Street
Tampa, Florida 23602-5803
813.223.7333
813.223.2837 (fax)

A COPY TESTE
By: 
Jack Kennedy Jr., Clerk
Deputy Clerk

Counsel for ThyssenKrupp Elevator

WE ASK FOR THIS:

Edward A. Hegamyer,
Acting Commissioner of Labor and Industry

By John Murray
John Murray
Assistant Commonwealth's Attorney
4110 Chain Bridge Road, Room 123
Fairfax, Virginia 22030
703.246.2776
703.691.4004 (fax)

1 COPY TESTE:
JOHN T. FREY, CLERK

By: Carlota Cantillo
Deputy Clerk

Date: 8/21/10
Original retained in the office of
the Clerk of the Circuit Court of
Fairfax County, Virginia

C. RAY DAVENPORT,
Commissioner of Labor & Industry

TIDEWATER SKANSKA, INC.,
and its successors
Inspection Number 309749794

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into by the Commonwealth of Virginia, Commissioner of Labor and Industry (the Commonwealth) and Tidewater Skanska, Inc., (the Employer).

WHEREAS, on or about May 26, 2006, the Commonwealth issued a citation to the Employer alleging two Serious General Duty Clause violations of Va. Code § 40.1-51.1.A. A total of \$4,550.00 in penalties was proposed by the Commonwealth along with the violations (copy of the citation attached);

WHEREAS, the Employer filed a notice contesting the citations within 15 working days of the date of receiving them, as provided by § 40.1-49.4 of the Code of Virginia;

WHEREAS, the parties desire to settle this case short of trial in a manner that will further protect and promote the safety and health of the employees of Tidewater Skanska, Inc., and its successors and avoid the time and expense of court proceedings;

NOW, THEREFORE, the parties agree to the following:

TERMS AND CONDITIONS OF AGREEMENT

1. Upon full execution of the agreement the Commissioner will modify the citation and penalties as follows:
 - a. Citation 1, item 1, is grouped with Citation 1, item 2 as one serious violation. The assessed penalty remains at \$4,550.00.
2. Tidewater Skanska shall pay the penalty of \$4,550.00 within thirty (30) days of the date of entry of this Agreement. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 309749794 noted on the payment.
3. As consideration for the modification of the terms of the original citations, the Employer agrees to withdraw its original notice of contest filed with respect to the above-styled case and waives its right to contest the remaining terms contained in this agreement.
4. The Employer agrees that it has abated all of the violations.
5. The Employer shall post a copy of this Settlement Agreement for a period of thirty

(30) days at each work site in Virginia in a conspicuous location where notices to its employees are generally posted.

SETTLEMENT OF CLAIMS

6. **THIS AGREEMENT** is meant to settle the above contested claims. Pursuant to Va. Code § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This agreement may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia. However, the affirmed violation may not be used as the basis for a repeat violation.

7. All citations and penalties, as modified above, including all new obligations contained in this Settlement Agreement, are a final order of the Commissioner of Labor and Industry.

**TIDEWATER SKANSKA, INC.
and its successors**

By: Richard S. Voorhees 3 MAR 10
Agent Date

Commonwealth of Virginia,
AT LARGE, to wit:

The foregoing instrument was acknowledged before me this 3rd day of march, 2010,

by Richard S. Voorhees, Director of Safety of Tidewater Skanska, Inc., on
(Name) (Title)

behalf of the corporation.

Heather M. Rowland
Notary Public

My commission expires: Dec. 31, 2013



**R. RAY DAVENPORT,
COMMISSIONER OF LABOR AND INDUSTRY**

By: W. Glenn Cox 3/10/10
Director, VOSH Programs Date

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

| | | |
|----------------------------------|---|----------------------|
| C. RAY DAVENPORT, |) | |
| Commissioner of Labor & Industry |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | Case No. CL06-4104-4 |
| |) | |
| TRAFFORD CORPORATION |) | |
| |) | |
| Defendant |) | |

AGREED ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. In settlement of the matters alleged in this action, the citation attached to the Complaint is hereby amended as follows:
 - a. Citation 1, item 1 is reduced from serious to other-than-serious, with a penalty of \$900.00,
 - b. Citation 1, item 2 is reduced from serious to other-than-serious, with a penalty of \$1,200.00,
 - c. Citation 1, item 3 is reduced from serious to other-than-serious with a penalty of \$4,000.00,
 - d. Citation 2, item 1 remains other-than-serious as cited, with a penalty of \$600.00,
 - e. Citation 2, item 2 remains other-than-serious as cited, with a penalty of \$600.00, and
 - f. Citation 2, item 3 remains other-than-serious as cited, with no penalty.
2. Trafford Corporation shall pay the penalty of \$ 7,300.00 within thirty (30) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 308736412 noted on the payment.

3. Trafford Corporation certifies that the violations alleged in this agreement are abated. No further abatement documentation is required to be submitted.

4. As further consideration for the modification of the terms of the original citation, Trafford Corporation agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

5. Trafford Corporation will retain a qualified outside consultant knowledgeable in Subpart P of 29 C.F.R. Part 1926 to make at least three unannounced site visits to Trafford projects subject to Subpart P to determine compliance with it. The consultant will within fifteen days after each site visit make a written report of compliance findings to Trafford and this Agency. Trafford will inform the outside consultant at least ten days in advance of at least nine such projects subject to Subpart P until the three site visits are conducted. The Agency will not use the consultant's reports as evidence in an enforcement action if Trafford immediately disciplined, in accordance with the company's pre-existing progressive disciplinary program, all foremen and non-supervisory employees responsible for any non-complying conditions.

6. Trafford Corporation shall post a copy of this Order for a period of thirty (30) days in a conspicuous location where notices to its employees are generally posted.

7. This Order is meant to settle the above contested claims, and is not to be considered an admission of any allegation or liability by Trafford Corporation. Pursuant to Va. Code §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

8. The Clerk shall strike this matter from the docket of this Court, place it among

the ended civil cases, and shall send an attested copy of this Order to both counsel of record.

Entered this 5th day of April, 2010.

Beverly W. Smukals
Judge

WE ASK FOR THIS:

C. Ray Davenport,
Commissioner of Labor and Industry

By: Diane L. Duell
Diane L. Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorney
13 South 13th Street
Richmond, Virginia 23219-4101
804.786.4289
804.786.8418 (fax)

A Copy,
Teste: Bevil M. Dean, Clerk

By: Bevil M. Dean D.C.

Trafford Corporation

By: Amandeep S. Sidhu
Amandeep S. Sidhu (VSB No. 71450)
Counsel for Trafford Corporation
Of counsel: Arthur G. Sapper, Esq.
McDermott Will & Emery LLP
600 Thirteenth Street, NW
Washington, DC 20005
(202) 756-8380