FINAL ORDERS OF THE VIRGINIA COURTS IN CONTESTED CASES ARISING UNDER THE VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT
2008

Builders Service Group, C. Ray Davenport v.
Chancery No. CL07000221-00 (Rockingham County Circuit Court)

Custom Contracting, Inc., C. Ray Davenport v.
Chancery No. CH04-181 (Roanoke City Circuit Court)

Dri-Rite Basement Company Incorporated, C. Ray Davenport v.
Chancery No. CH05-000153-00 (Campbell County Circuit Court)

English Construction Company, Inc., C. Ray Davenport v.
Chancery No. CL08000238-00 (Hanover County Circuit Court)

Ennis Paint, C. Ray Davenport v.
Chancery No. CH05-1264 (Henrico County Circuit Court)

Gibbs Masonry and Construction, Inc., C. Ray Davenport v.
Chancery No. CL06000031 (Hanover County Circuit Court)

Mid Eastern Builders, Inc., C. Ray Davenport v.
Chancery No. CL06-4120-4 (Richmond City Circuit Court)

Mid Eastern Builders, Inc., C. Ray Davenport v.
Chancery No. 06-1696 (Henrico County Circuit Court)

Otis Elevator Company, C. Ray Davenport v.
Chancery No. CL06-150 (Alleghany County Circuit Court)

Palmer's Crane & Welding Services, Inc., C. Ray Davenport v.
Chancery No. CL08002265-00 (Lynchburg City Circuit Court)

Stratton Construction Company, W.A., C. R. Davenport v.
Chancery No. CL08-000092-0 (Amelia County Circuit Court)

Tomac Corporation, C. Ray Davenport v.
Chancery No. 04000367-00 (Hanover County Circuit Court)

United Parcel Service, Inc., C. R. Davenport v.
Chancery No. CH05-0003350 (Virginia Beach City Circuit Court)

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ROCKINGHAM

C. RAY DAVENPORT,	)	
Commissioner of Labor and Industry	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil No. CL07000221-00**
	)	
BUILDERS SERVICES GROUP, INC.	)	
	)	
Defendant.	)	
	)	

CONSENT SETTLEMENT ORDER

THIS MATTER came to be heard upon the agreement of the parties for a full and final disposition in this matter,

IT APPEARING that the parties hereto have reached an agreement with respect to all matters complained of in the Bill of Complaint, and as such it is hereby

ORDERED, the Complaint is Dismissed as settled, with Prejudice, on the following terms and conditions:

1. Defendant shall be found in violation of Count 1, Item 1, which violation shall be classified as "SERIOUS", and for which a fine shall be imposed upon the Defendant in the reduced amount $1,550; and
2. Defendant shall be found in violation of Count 1, Item 2, which violation shall be classified under the reduced classification of "OTHER THAN SERIOUS", and for which a fine shall be imposed upon the Defendant in the reduced amount $750; and

3. Defendant shall be found in violation of Count 1, Item 3, which violation shall be classified under the reduced classification of "OTHER THAN SERIOUS", and for which a fine shall be imposed upon the Defendant in the reduced amount $750; and

4. Defendant shall pay the penalty of $3050.00 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 310365242 noted on the payment. The amount of the penalty to be paid shall not be construed to indicate a particular classification of the amended violation.

5. Builders Services Group, INC. certifies that the violations alleged in this agreement were abated and 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. All other claims, violations and penalties enumerated in the Complaint are hereby dismissed by the Plaintiff with prejudice.

IT IS FURTHER ORDERED, that there being nothing further in the case it shall be stricken from the court's docket.

ENTERED this 15th day of Feb, 2008.

/S/: John J. McGrath, Jr.
Judge of the Circuit Court of Rockingham County

I ASK FOR THIS:

Thomas M. Dunlap, VSB #44016

A TRUE COPY
ATTESTE
DEPUTY CLERK

Robert D. Peterson, Esq. (CA) *pro hac vice*
DUNLAP, GRUBB & WEAVER, P.C.
199 Liberty Street, S.W.
Leesburg, Virginia 20175-2175
(703) 777-7319 (telephone)
(7030 777-3656 (facsimile)
tdunlap@dglegal.com
Counsel for Defendant

SEEN AND AGREED:

Patrick Bolling, VSB #65279
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804/786.6760
Patrick.Bolling@doli.virginia.gov
Counsel for Plaintiff

2

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

C. RAY DAVENPORT, Commissioner of Labor and Industry,	)	
Plaintiff,	)	
v.	)	Chancery No. CH04-181
CUSTOM CONTRACTING, INC.,	)	
Defendant.	)	

6

DEFAULT JUDGEMENT

This cause came to be heard upon Commissioner C. Ray Davenport's Motion for Default Judgment against Custom Contracting, Inc., declaring that $2,800.00 in proposed civil penalties arising from a contested Virginia Occupational Safety and Health (VOSH) citation, identified by VOSH Inspection Number 305671802 and as attached to the Commissioner's Bill of 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 a demurrer and motion to dismiss filed by Defendant and scheduled to be heard on August 1, 2007 was withdrawn by Defendant's Counsel, in his advising the Court before August 1 that there were no issues to be heard except withdrawal of counsel and that the demurrer and motion to dismiss are without merit. On May 2, 2008 the attorney for Defendant withdrew from representation of Custom Contracting. No answer or other responsive pleading was filed by the Defendant and no subsequent appearance has been made in this action on Custom Contracting's behalf, it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff be awarded judgment by default

in this cause against the Defendant, affirming that Custom Contracting, Inc. be held liable for payment to the Commonwealth of Virginia of $2,800.00 in civil penalties, arising from contested Virginia Occupational Safety and Health (VOSH) citations as set out in Inspection Number 305671802. 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 chancery cases. The Clerk shall mail certified copies of this order to the Defendant's registered agent and to C. Ray Davenport, Commissioner of Labor and Industry, at 13 South Thirteenth Street, Richmond, Virginia 23219. Pursuant to *Rule* 1:13, endorsement by defense counsel shall be dispensed with.

JUDGE: _____ ENTER: July 30, 2008

I ASK FOR THIS:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

By: _____
Counsel

Robert B. Feild (VSB # 23864)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219-4101
804-786-4777, Fax 786-8418

A COPY TESTE BRENDA S. HAMILTON, CLERK
By _____ Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CAMPBELL

C. RAY DAVENPORT, Commissioner of Labor and Industry,	)	
Plaintiff,	)	
v.	)	Civil No.CH05-000153-00
DRI-RITE BASEMENT COMPANY INCORPORATED,	)	
Defendant	)	

FINAL ORDER

This matter came before the Court for trial on December 1, 2008, under *Va. Code* 40.1-49.4.E, and based upon Dri-Rite Basement'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 finds that Commissioner Davenport proved by a preponderance of the evidence with regard to the training violation, §1926.21(b)(2), the first aid violation, §1926.50(c), the competent person violation §1926.651(k)(1), and the hazard communication violations §§1926.1200(e)(1)(i) (list of chemicals), 1926.1200(e)(1) (written program), §1926.1200(h)(1) (hazard communication training), that the cited standards applied, that the standards were violated, that the employer knew of the violations, and that employees were exposed to the hazard. With respect to §1926.652(a)(1)(protection of employees in excavations) the Court finds that the retaining wall and the ground sloping away from the trench provided enough protection for employees so that Dri-Rite Basement did not need to meet the additional safety

requirements of the standard so that Commissioner Davenport did not prove by a preponderance of the evidence that the standard was violated.

It is ORDERED, ADJUDGED, and DECREED that citation 1, item 4 as attached to the plaintiff's Bill of Complaint, citing *VOSH Standards for the Construction Industry* §1926.652(a)(1) is vacated. Citation 1, item 1 - §1926.21(b)(2) with a penalty of $1,050.00, , citation 1, item 2 - §1926.50(c) with a penalty of $300.00, citation 1, item 3 - §1926.651(k)(1) with a penalty of $525.00, citation 2, item 1 - §1926.1200(e)(1)(i) with no assessed penalty, citation 2, item 2 - §1926.1200(e)(1) with no assessed penalty, and citation 2, item 3 - §1926.1200(h)(1) with no assessed penalty are affirmed. Judgment is hereby entered in favor of the Plaintiff, C. Ray Davenport, Commissioner of Labor & Industry, in the amount of $1875.00.

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 12th day of December, 2008.

John T. Cook

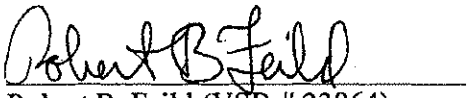
The Honorable John T. Cook
Circuit Court Judge

A COPY TESTE:
DEBORAH E. HUGHES
Clerk of the Circuit Court
Caroline County, Virginia
By: _____
Deputy Clerk

CC: SCAN
R. FELLD
T. CURRENT

SEEN:

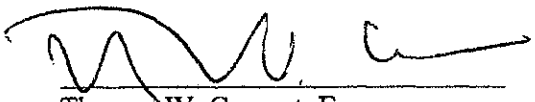
C. RAY DAVENPORT,
Commissioner of Labor and Industry



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

SEEN:

DRI-RITE BASEMENT COMPANY, INC.



Thomas W. Current, Esq.
Day & Current Law Offices
2050 Langhorne Road
P. O. Box 2207
Lynchburg, VA 24501
Phone: 434.528.8877 ext.103
Facsimile: 434.846.4607
Counsel for Dri-Rite Basement Company, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

C. RAY DAVENPORT, Commissioner of Labor and Industry,	)	
Plaintiff,	)	
v.	)	Civil CL08000238-00 ~~Chancery~~ No.: ~~CH04-446~~
ENGLISH CONSTRUCTION COMPANY, INC.,	)	
Defendant.	)	

AGREED ORDER

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

1. That the citation attached to the Bill of Complaint is hereby amended as follows:

   a) Serious Citation 1, Item 1 is vacated.

   b) Serious Citation 1, Item 1 is reduced to an Other than Serious violation with a reduced penalty of $500.00.

2. That the Defendant shall pay the total penalty of $500.00 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 306756446 noted on the payment;

3. That the Defendant shall withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;

4. That the Defendant shall certify within fifteen (15) days of the entry date of this Order that all violations affirmed in this Order have been abated;

20080514000028790 Pg. 1 OF 3
Bk: 11 Pg: 2353
Hanover Co VA
05/14/2008 09:14:25 AM CIVIL

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 the violation affirmed in paragraph 1b may only be used as the basis for a repeat citation for thirty months from the date of the entry of this agreed order.

7. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;

8. 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;

9. 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;

10. 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 6th day of May 2008.

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

200805145000028790 Pg. 2 OF 3
Bk: 11 Pg: 2354
Hanover Co VA
05/14/2008 09:14:25 AM CIVIL

Robert B Feild

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

Counsel for Commissioner Davenport

SEEN AND AGREED:

ENGLISH CONSTRUCTION COMPANY, INC.

James H. Higginbotham, II
English Construction Company, Inc.
P.O. P-7000
Lynchburg, Virginia 24505
Telephone: (434) 845-0301
Facsimile: (434) 848-0306

Counsel for English Construction Company, Inc.

A COPY TESTE
FRANK D. HARGROVE, JR. CLERK
HANOVER CIRCUIT COURT
By _____
DEPUTY CLERK

200805145000028790 Pg. 3 OF 3
Bk: 11 Pg: 2355
Hanover Co VA
05/14/2008 09:14:25 AM CIVIL

VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

C. RAY DAVENPORT,	)	
Commissioner of Labor and Industry,	)	
Plaintiff,	)	
v.	)	**Chancery No. CH05-1264**
	)	
ENNIS PAINT	)	
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, Item 1a is affirmed with an assessed penalty of $1,100.00.
   b. Serious Citation 1, Item 1b is vacated.
   c. Serious Citation 1, Items 2a, 2b, 2c and 2d are vacated.
   d. Serious Citation 1, Item 3 is vacated.
   e. Serious Citation 1, Items 4a and 4b are vacated
   f. Serious Citation 1, Items 5a and 5b are vacated.
   g. Other than Serious Citation 2, Item 1 is vacated.
   h. Other than Serious Citation 2, Item 2 is affirmed with no penalty.
   i. Other than Serious Citation 2, Item 3 is vacated.
   j. Other than Serious Citation 2, Item 4 is vacated.
   k. Other than Serious Citation 2, Item 5 is affirmed.
   l. Other than Serious Citation 2, Item 6 is affirmed.

2. That the Defendant shall pay the total penalty of $1,100.00 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 307361295 on the payment;

3. That the Defendant shall withdraw its original notice of contest, and hereby waives its right to contest the remaining items affirmed by this Order;

4. That the Defendant shall certify within fifteen (15) days of the entry date of this Order that all violations affirmed in this Order have been abated;

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;

8. 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;

9. 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. Furthermore, the parties agree that the citation, as amended, does not make any charges either, expressed or implied, that the conditions set forth were the cause or proximate cause of any accident or damages. 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.

10. 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 3rd day of September 2008.

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

Judge Gary A. Hicks

A COPY TESTE:
YVONNE G. SMITH, CLERK
DEPUTY CLERK

WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry

Robert B Feild

8-25-2008
DATE

Counsel for Plaintiff,
Robert B. Feild
Virginia Department of Labor and Industry
13 S. 13th Street
Richmond, Virginia 23219
Phone: 804-786-4777
Facsimile: 804-786-8418

Anthony Gambardella

8/25/2008
DATE

Counsel for Defendant,
Anthony Gambardella
Woods Rogers PLC
823 East Main Street, Suite 1200
Richmond, Virginia 23219
Phone: 804-343-5022
Facsimile: 804-343-5021

McCord Wilson
2777 Stemmons Freeway, Suite1125
Dallas, Texas 75207
Phone: 214-630-4700
Facsimile: 214-630-9996

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

C. RAY DAVENPORT, Commissioner of Labor and Industry, *Plaintiff,* v. **GIBBS MASONRY AND CONSTRUCTION, INC.** *Defendant.*	))))))))))	Civil No. CL06000031

AGREED ORDER

UPON AGREEMENT of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED 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, a SERIOUS violation of §1926.50(c) and the proposed penalty of $225.00, is vacated.

b. Citation 1, Item 2a is amended from a SERIOUS violation to an OTHER-THAN-SERIOUS violation of §1926.451(g)(1)(vi) with a penalty of $100.00.

c. Citation 1, Item 2b remains a SERIOUS violation of §1926.501(b)(1) with a penalty of $162.50.

2. Gibbs Masonry and Construction, Inc., shall pay the penalty of $262.50 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 the VOSH inspection number 308020387 noted on the payment. The amount of the penalty to be paid shall not be construed to indicate a

particular classification of the amended violation.

3. Gibbs Masonry and Construction, Inc., certifies that the affirmed violations referenced above in this order have been corrected and abated.

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

5. Pursuant to *Virginia Administrative Code* § 16 VAC 25-60-40(1), Gibbs Masonry and Construction, Inc., shall post a copy of this order for ten (10) consecutive days in a conspicuous location where notices to employees generally are posted.

6. This Order is meant to settle the above contested violations, and is not to be considered an admission of liability by Gibbs Masonry and Construction, 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. Each party will bear its own costs in this matter.

8. 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 both counsels of record.

Entered this 15th day of October, 2008.

Judge

WE ASK FOR THIS:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

By: _____
Robert Feild (VSB # 23864)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804/786-6760, Fax 786-4318
Counsel for Plaintiff

SEEN AND AGREED:

GIBBS MASONRY AND CONSTRUCTION, INC.

By: _____
Of Counsel

Deborah O. Jennings (VSB #16358)
Jennings and Jennings
10138-C Hull Street Road
804.335.0893 office
804.276.8013 fax
Counsel for Defendant

A COPY TESTE
FRANK D. HARGROVE, JR. CLERK
HANOVER CIRCUIT COURT
By _____
DEPUTY CLERK

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

C. RAY DAVENPORT, Commissioner of Labor and Industry, Plaintiff, v. MID EASTERN BUILDERS, INC., Defendant.	))))))))))	Case No.: CL06-4120 - 9

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 reduced to Other Than Serious with a reduced penalty of $437.50;

b) Serious Citation 1, Items 2a and 2b are reduced to Other Than Serious with a reduced penalty of $437.50 for the grouped citation;

c) Serious Citation 1, Item 2c is vacated;

d) Serious Citation 1, Items 3a and 3b are reduced to Other Than Serious with a reduced penalty of $500.00 for the grouped citation; and

e) Repeat Citation 2, Item 1 is amended to a violation of 1926.501(b)(1) and reduced to Serious with a reduced penalty of $1,000.00;

2. That the Defendant shall pay the total penalty of $2,375.00 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 309879526 noted on the payment;

3. That the Defendant shall withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;

4. That the Defendant shall certify within fifteen (15) days of the entry of this Order that all violations affirmed in this Order have been abated;

5. That the Defendant shall post a copy of this Order for thirty (30) 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 is not to be considered an admission of liability or guilt by Mid Eastern Builders, 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; and

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.

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

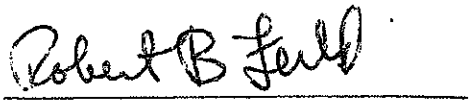
Enter: 5/6/08

Margaret P. Spencer
Judge

A Copy,
Teste: BEVILL M. DEAN, CLERK
BY: _____ D.C.

WE ASK FOR THIS:

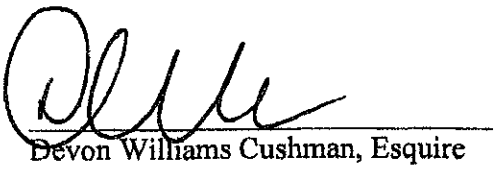
C. RAY DAVENPORT, Commissioner of Labor and Industry



Robert B. Feild, Esquire
Special Assistant Commonwealth's Attorney
County of Henrico
13 South Thirteenth Street
Richmond, Virginia 23219
Telephone: 804-786-4777
Facsimile: 804-786-8418
Counsel for Commissioner Davenport

SEEN AND AGREED:

MID EASTERN BUILDERS, INC.



Devon Williams Cushman, Esquire
Hirschler Fleischer, P.C.
P.O. Box 500
Richmond, Virginia 23218-0500
Telephone: (804) 771-9548
Facsimile: (804) 644-0957
Counsel for Mid Eastern Builders, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

C. RAY DAVENPORT, Commissioner of Labor and Industry,	)	
Plaintiff,	)	
v.	)	Case No.: CL06-1696
MID EASTERN BUILDERS, INC.,	)	
Defendant.	)	

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, Items 1a, 1b and 1c are reduced to Other Than Serious with a reduced penalty of $437.50;

b) Repeat Citation 2, Item 1 is amended to a violation of 1926.501(b)(1) and reduced to Other Than Serious with a reduced penalty of $500.00.

2. That the Defendant shall pay the total penalty of $937.50 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 309879500 noted on the payment;

3. That the Defendant shall withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;

4. That the Defendant shall certify within fifteen (15) days of the entry of this Order that all violations affirmed in this Order have been abated;

5. That the Defendant shall post a copy of this Order for thirty (30) 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 is not to be considered an admission of liability or guilt by Mid Eastern Builders, 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; and

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.

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

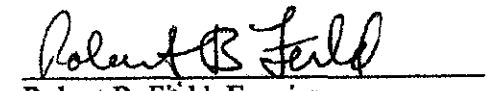
Enter: 5/5/08

A COPY TESTE:
YVONNE G. SMITH, CLERK
DEPUTY CLERK

Judge

WE ASK FOR THIS:

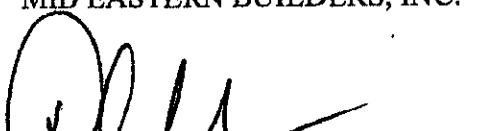
C. RAY DAVENPORT, Commissioner of Labor and Industry



Robert B. Field, Esquire
Special Assistant Commonwealth's Attorney
County of Henrico
13 South Thirteenth Street
Richmond, Virginia 23219
Telephone: 804-786-4777
Facsimile: 804-786-8418
Counsel for Commissioner Davenport

SEEN AND AGREED:

MID EASTERN BUILDERS, INC.



Devon Williams Cushman, Esquire
Hirschler Fleischer, P.C.
P.O. Box 500
Richmond, Virginia 23218-0500
Telephone: (804) 771-9548
Facsimile: (804) 644-0957
Counsel for Mid Eastern Builders, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF ALLEGHANY COUNTY

C. RAY DAVENPORT, Commissioner of Labor and Industry, Plaintiff, v. OTIS ELEVATOR COMPANY, Defendant.	)))))))))	Civil Action No. CL06-150

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 1a is reduced to Other Than Serious with a reduced penalty of $750.00;

b) Serious Citation 1, Item 1b is vacated; and

c) Serious Citation 1, Item 2 is reduced to Other Than Serious with a reduced penalty of $750.00.

2. That the Defendant shall pay the total penalty of $1,500.00 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 308602424 noted on the payment;

3. That the Defendant shall withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;

4. That the Defendant shall certify within fifteen (15) days of the entry date of this Order

that all violations affirmed in this Order have been abated;

5. That the Defendant shall post a copy of this Order for thirty (30) 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 the violations affirmed in paragraph 1 may only be used as the basis for a repeat citation for eighteen months from the date of the entry of this agreed order.

7. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;

8. 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;

9. This Order is meant to settle the above contested claims, and is not considered an admission of liability or guilt by Otis Elevator. 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;

10. 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 15th day of September 2008.

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

Judge

We ask for this:

Robert B Feild

9/9/08
DATE

Counsel for Plaintiff,
Robert B. Feild, Va. Bar No. 23864
Virginia Department of Labor and Industry
13 S. 13th Street
Richmond, Virginia 23219
Phone: 804-786-4777
Facsimile: 804-786-8418

9/2/08
DATE

Counsel for Defendant,
Paul J. Waters, Va. Bar No. 47923
Buchanan, Ingersoll & Rooney, P.C.
SunTrust Financial Centre
401 E. Jackson St.
Tampa, FL 33602-5236
Phone: 813- 222-8181
Facsimile: 813-222-8189

I certify that this document is a true copy of a record/filing in the Alleghany County, Virginia Circuit Court and that, as clerk of this court, I have custody of the original document.
DEBRA N. BYER, CLERK
BY Diw A Douglas 9/17/2008
( ) CLERK (✓) DEPUTY CLERK ISSUANCE

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF LYNCHBURG

C. RAY DAVENPORT, Commissioner of Labor & Industry Plaintiff, **PALMER'S CRANE & WELDING SERVICES, INC.,** Defendant.	))))))))))	Civil Action No. CL08002265-00

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 Bill of Complaint is hereby amended as follows:

   a. Citation 1, Item 1 remains a serious violation of §16 VAC 25-145-20(A) as cited, with an issued penalty of $375.00 REDUCED to $225.00.

2. Palmer's Crane & Welding Services, Inc. shall pay the penalty of $225.00 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 311026447 noted on the payment. The amount of the penalty to be paid shall not be construed to indicate a particular classification of the amended violation.

3. Palmer's Crane & Welding Services, Inc. certifies the violation alleged in this agreement was abated.

4. As further consideration for the modification of the terms of the original citation, Palmer's Crane & Welding Services, Inc. agrees to withdraw its original notice of contest and

waives its right to contest the remaining terms contained in this Order.

5. Palmer's Crane & Welding Services, 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 Palmer's Crane & Welding Services, 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. Each party will bear its own costs in this matter.

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 counsels of record.

Entered this 17 day of March, 2008.

Judge

WE ASK FOR THIS:

C. Ray Davenport,
Commissioner of Labor and Industry

By: _____
Patrick S. Bolling (VSB No. 65279)
Special Assistant Commonwealth's Attorney
13 South 13th Street
Richmond, Virginia 23219-4101
(804) 786-6760
(804) 786-8418 (fax)

By: Norman A. Kinnier
Norman A. Kinnier, ESQ. VSB # 17938
Fralin and Kinnier, PC
2104 Langhorne Road, Suite C
Lynchburg, Virginia 24501

Counsel for Palmer's Welding & Crane Services, Inc.

A Copy, Teste:
Larry B. Palmer, Clerk
By: _____, Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF AMELIA

C. RAY DAVENPORT, Commissioner of Labor and Industry, *Plaintiff,*	)	
v.	)	Civil Action No. CL08-000092-0
STRATTON CONSTRUCTION COMPANY, W.A., *Defendant.*	)	

ORDER

This matter came before the Court on Commissioner C. Ray Davenport's ("Commissioner") Motion for Nonsuit as a matter of right pursuant to Va. Code § 8.01-380, and IT APPEARING that on August 20, 2008, the Commissioner filed a complaint against Stratton Construction Company, W. A., that no nonsuit has been taken to this cause, and that the defendant, Stratton Construction Company, W. A., has not filed a cross-claim, 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, place it among the ended chancery cases, and shall send an attested copy of this Order to both parties.

Enter: _____
Judge

Date: 9-5.08

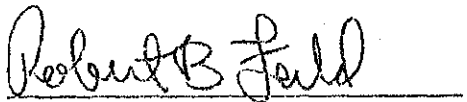
1 of 2

Copy Teste: _____
CLERK

AMELIA COUNTY CIRCUIT COURT

I ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry



Robert B. Feild (VSB# 23864)
Special Assistant Commonwealth's Attorney
13 South Thirteenth Street
Richmond, VA 23219
804-786-4777, Fax 804-786-8418

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

C. RAY DAVENPORT, Commissioner of Labor and Industry Plaintiff, v. **TOMAC CORPORATION** Defendant.	)))))))))	Chancery No. 04000367-00

AGREED FINAL ORDER

WHEREAS, on or about July 9, 2003, the Commissioner of Labor and Industry issued a citation to the defendant, Tomac Corporation, alleging serious and other-than-serious violations of the Virginia Occupational Safety and Health Standards (VOSH) for the Construction Industry, and proposing civil penalties of $3,900.00; and

WHEREAS, Tomac Corporation 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 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 1a, is reduced from serious to other-than serious. The assessed penalty of $1,050.00 is reduced to $525.00;

    b. Citation 1, item 2 is reduced from serious to other-than serious. The assessed penalty of $450.00 is reduced to $100.00; and

    c. Citation 2, item 1 remains other-than-serious as cited. The $300 penalty is reduced to $100.00.

2. Tomac Corporation shall pay the total penalty of $725.00 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 306295759 noted on the payment.

3. Pursuant to *Virginia Administrative Code* § 16 VAC 25-60-40(1), Tomac Corporation shall post a copy of this order for ten (10) consecutive days at a conspicuous place or location where notices to employees generally are posted.

4. Tomac Corporation certifies that the affirmed violations referenced above in this Order were corrected and abated.

5. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by Tomac 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. However, the affirmed violations may not be used as the basis for a repeat violation after the date of the entry of the order.

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

7. 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 19th day of August, 2008.

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)

SEEN AND AGREED:

By:
John M. Barr (VSB No. 29864)
LeClair Ryan, PC
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
804.783.2003
804.783.2294 (fax)

Counsel for Tomac Corporation

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

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

SEP 2 2 2008

C. RAY DAVENPORT, Commissioner of Labor and Industry,	)	
Plaintiff,	)	
v.	)	Chancery No.: CH05-0003350
UNITED PARCEL SERVICE, INC.,	)	
Defendant.	)	

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 Bill of Complaint are hereby amended as follows:

   a) Serious Citation 1, Item 1 is vacated;

   b) Other than Serious Citation 2, Item 1 is affirmed with a reduced penalty of $1,000;

   c) Other than Serious Citation 2, Item 2 is affirmed with a reduced penalty of $1,000.

2. That the Defendant shall pay the total penalty of $2,000.00 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 306820~~306~~ 036 noted on the payment;

3. That the Defendant shall withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;

4. That the Defendant shall certify within fifteen (15) days of the entry date of this Order that all violations affirmed in this Order have been abated;

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 the cited workplace 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. 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;

9. 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. Furthermore, the parties agree that the citation, as amended, does not make any charges, either expressed or implied, that the conditions set forth were the cause or proximate cause of any accident or damages. 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.

10. 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. Nothing in this order shall be

construed to restrict in any way the Commissioner's right to issue citations to the Defendant or any other employer in future Virginia Occupational Safety and Health (VOSH) inspections for a violation of § 1910.151(b) of the VOSH Standards for General Industry for the same or similar fact situations that were the basis for the violations as originally issued to the Defendant in this case.

11. 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 22nd day of Sept 2008.

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

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

Counsel for Commissioner Davenport

CERTIFIED TO BE A TRUE COPY
OF RECORD IN MY CUSTODY
TINA E. SINNEN, CLERK
CIRCUIT COURT, VIRGINIA BEACH, VA
BY Marie Tracy
DEPUTY CLERK

SEEN AND AGREED:

UNITED PARCEL SERVICE, INC.

John C. Cook
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue N.W.
Washington, D.C. 20036
Telephone: (202) 955-8500
Facsimile: (202) 530-9600

Counsel for United Parcel Service, Inc.