

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

VOLUME XXIV
JULY 1, 2002 - JUNE 30, 2003



The Virginia Department of Labor and Industry
Powers-Taylor Building
13 South Thirteenth Street
Richmond, Virginia 23219

PREFACE

This publication contains the orders of the Virginia Circuit Courts in contested cases from July 1, 2002, through June 30, 2003, arising under Title 40.1 of the Code of Virginia, 1950, as amended. The Department of Labor and Industry is responsible for publishing the final orders by virtue of §40.1-49.7 which states, "The Commissioner of Labor shall be responsible for the printing, maintenance, publication and distribution of all final orders of the General District and Circuit Courts. Every Commonwealth's Attorney's office shall receive at least one copy of each such order (1979, C. 354)."

The Table of Contents provides an alphabetical listing of the reported cases for the fiscal year. Reference is made to Title 29 of the Code of Federal Regulations, Parts 1910 and 1926. These regulations were adopted by the Virginia Safety and Health Codes Board pursuant to § 40.1-22, as amended.

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF GOOCHLAND

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. C-02-4
)	
A. D. WHITTAKER CONSTRUCTION, INC.)	
)	
Defendant.)	

**SUBSTITUTION OF PLAINTIFF
AND AGREED FINAL ORDER**

WHEREAS, on or about February 11, 2000, former Commissioner Jeffrey D. Brown issued a citation to the defendant A. D. Whittaker Construction, Inc. (A. D. Whittaker) alleging four Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, and proposing total penalties of \$2,375.00. (A copy of the citation identified as VOSH inspection number 303099923 is attached); and

WHEREAS, A. D. Whittaker filed, within 15 working days from the date of the receipt of the citations, a written notice contesting all violations and proposed penalties, as provided for in § 40.1-49.4 of the Code of Virginia; and

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of A. D. Whittaker, and avoid the time and expense of court proceedings; and

WHEREAS, Virginia Governor Mark Warner subsequently appointed C. Ray Davenport to succeed Jeffrey D. Brown as Commissioner of Labor and Industry, effective March 4, 2002;

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

1. that current Commissioner C. Ray Davenport, under Rule 2:16 of the Rules of the Supreme Court of Virginia, be substituted as party plaintiff in this action as successor in interest to Jeffrey D. Brown;
2. that subject to the conditions described below, the violations and proposed penalties will be amended as follows:
 - a. *Serious citation 1, Item 1* is affirmed as written and A. D. Whittaker owes \$470.00 in lieu of the \$625.00 proposed penalty,
 - b. *Serious citation 1, Item 2a-b* is affirmed as written and A. D. Whittaker owes \$470.00 in lieu of the \$625.00 proposed penalty,
 - c. *Serious citation 1, Item 3* is affirmed as written and A. D. Whittaker owes \$465.00 in lieu of the \$625.00 proposed penalty,
 - d. *Serious citation 1, Item 4* is affirmed as written and A. D. Whittaker owes \$375.00 in lieu of the \$500.00 proposed penalty,

These amendments will be made, provided A. D. Whittaker complies with requirements listed in paragraphs 3 through 6 below;

3. that A. D. Whittaker shall pay \$1,780.00 to the Commissioner upon execution of this Agreed Order; due within fifteen days of receipt of this Order, and made by check or money order, payable to the Commonwealth of Virginia, with the VOSH inspection number 303099923 noted on the payment;
4. that A. D. Whittaker will post a copy of this Agreed Order at each of its work sites in Virginia, for a period of 30 days, in conspicuous locations where notices to its employees are generally posted;
5. that A. D. Whittaker certifies that each of the affirmed violations referenced above in this Order have been corrected and abated; **If not already provided**, the Employer agrees to provide to the Commissioner within thirty (30) days of the effective date of this Order documentation verifying abatement of the violations affirmed above. The documentation shall comply with §307.E.2. of the VOSH Administrative Regulations Manual, providing 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:

Ron Graham, VOSH Compliance Manager
Virginia Department of Labor and Industry, Richmond Regional Office
Main Street Station, 1500 E. Main Street, Suite 222
Richmond, VA 23219 Phone 804/ 371-0444

6. that A. D. Whittaker’s failure to comply with the above terms, particularly the terms of paragraphs 3 through 5 above, shall constitute a breach of this Agreed Order; **upon the occurrence of any such breach, the original penalties and violations for this citation will be affirmed and become a final order of the Commissioner**; and any unpaid amount shall become due and payable 15 days following the breach;

7. that A. D. Whittaker withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;

8. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of Virginia Code § 40.1-51.3:2; and this Order will not be construed as an admission of liability by A. D. Whittaker of civil liability for any violation alleged by the Commissioner;

9. 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.

Entered this 8th day of November, 2002.

F. Ward Harkrader, Jr.
Judge F. Ward Harkrader, Jr.

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Alfred B. Albiston
Alfred B. Albiston (VSB #29851)

Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804/ 786-6760, Fax 786-8418

Seen and agreed:

A. D. WHITTAKER CONSTRUCTION, INC.

Lisa Spickler Goodwin
Lisa Spickler Goodwin (VSB #37804)
Counsel for Defendant
Hirschler, Fleischer, PC
P. O. Box 500
Richmond, Virginia 23218-0500
804/ 771-9500, Fax 644-0957

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. CH02-930
)	
A. D. WHITTAKER CONSTRUCTION, INC.)	
)	
Defendant.)	

AGREED FINAL ORDER

WHEREAS, on or about February 11, 2000, former Commissioner Jeffrey D. Brown issued a citation to the defendant A. D. Whittaker Construction, Inc. (A. D. Whittaker) alleging four Serious and one Other Than Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, and proposing total penalties of \$6,375.00. (A copy of the citation identified as VOSH inspection number 304531775 is attached); and

WHEREAS, A. D. Whittaker filed, within 15 working days from the date of the receipt of the citations, a written notice contesting all violations and proposed penalties, as provided for in § 40.1-49.4 of the Code of Virginia; and

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of A. D. Whittaker, and avoid the time and expense of court proceedings;

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

1. that subject to the conditions described below, the violations and proposed penalties will be amended as

follows:

- a. *Serious citation 1, Item 1* is affirmed as written and A. D. Whittaker owes \$675.00 in lieu of the \$1,125.00 proposed penalty,
- b. *Serious citation 1, Item 2* is affirmed as written and A. D. Whittaker owes \$675.00 in lieu of the \$1,125.00 proposed penalty,
- c. *Serious citation 1, Item 3a-g* is amended to vacate Item 1-3b, while affirming the remaining sub-items; A. D. Whittaker owes \$675.00 in lieu of the \$1,125.00 proposed penalty,
- d. *Serious citation 1, Item 4a-b* is affirmed as written and A. D. Whittaker owes \$1,800.00 in lieu of the \$3,000.00 proposed penalty,
- e. *Other Than Serious citation 2, Item 1* is affirmed as written with no proposed penalty.

These amendments will be made, provided A. D. Whittaker complies with requirements listed in paragraphs 2 through 5 below;

2. that A. D. Whittaker shall pay \$3,825.00 to the Commissioner upon execution of this Agreed Order; due within fifteen days of receipt of this Order, and made by check or money order, payable to the Commonwealth of Virginia, with the VOSH inspection number 304531775 noted on the payment;
3. that A. D. Whittaker will post a copy of this Agreed Order at each of its work sites in Virginia, for a period of 30 days, in conspicuous locations where notices to its employees are generally posted;
4. that A. D. Whittaker certifies that each of the affirmed violations referenced above in this Order have been corrected and abated; **If not already provided**, the Employer agrees to provide to the Commissioner within thirty (30) days of the effective date of this Order documentation verifying abatement of the violations affirmed above. The documentation shall comply with §307.E.2. of the VOSH Administrative Regulations Manual, providing 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:

Ron Graham, VOSH Compliance Manager
Virginia Department of Labor and Industry, Richmond Regional Office
Main Street Station, 1500 E. Main Street, Suite 222
Richmond, VA 23219
Phone 804/ 371-0444

5. that A. D. Whittaker's failure to comply with the above terms, particularly the terms of paragraphs 2 through 4 above, shall constitute a breach of this Agreed Order; **upon the occurrence of any such breach, the original penalties and violations for this citation will be affirmed and become a final order of the Commissioner**; and any unpaid amount shall become due and payable 15 days following the breach;

6. that A. D. Whittaker withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;

7. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of Virginia Code § 40.1-51.3:2; and this Order will not be construed as an admission of liability by A. D. Whittaker of civil liability for any violation alleged by the Commissioner;

8. 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.

Entered this 1st day of November, 2002.

Cleo E. Powell
Judge Cleo E. Powell

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Kenneth E. Nickels
Kenneth E. Nickels
Deputy Commonwealth's Attorney
County of Chesterfield
P. O. Box 25

Chesterfield, Virginia 23832
804/ 748-1221, Fax 717-6277

Seen and agreed:

A. D. WHITTAKER CONSTRUCTION, INC.

Lisa Spickler Goodwin

Lisa Spickler Goodwin (VSB #37804)

Counsel for Defendant

Hirschler, Fleischer, PC

P. O. Box 500

Richmond, Virginia 23218-0500

804/ 771-9500, Fax 644-0957

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
Plaintiff,)	
)	
v.	)	Chancery No. CH02-1190
)	
A. T. CARR, INC.,)	
Defendant.)	

DECREE PRO CONFESSO

This cause came to be heard upon Commissioner C. Ray Davenport's Motion for Decree Pro Confesso against A. T. Carr, Inc., declaring that \$32,675.00 in proposed civil penalties arising from three sets of contested Virginia Occupational Safety and Health (VOSH) citations, identified by VOSH Inspection Numbers 303903579, 304134372, and 304134018 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 no responsive pleadings have been filed by the Defendant, nor has an appearance been made in this action on his behalf, it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff be awarded judgment by default in this cause against the Defendant, affirming that A. T. Carr, Inc. be held liable for payment to the Commonwealth of Virginia of \$32,675.00 in civil penalties, arising from contested Virginia Occupational Safety and Health (VOSH) citations as set out in Inspection Nos. 303903579, 304134372, and 304134018. 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: Frederick G. Rockwell III
Frederick G. Rockwell, III

ENTER: 12/17/02

I ASK FOR THIS:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

By: Alfred B. Albiston

Counsel

Alfred B. Albiston (VSB # 29851)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219-4101
804-786-6760, Fax 786-8418

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

C. RAY DAVENPORT, Commissioner of)
Labor and Industry,)
)
Plaintiff,)
)
v.)
)
AMERICAN PLUMBING AND)
MECHANICAL, INC. d.b.a. ATLAS)
PLUMBING & MECHANICAL,)
INC.,)
)
Defendant.)

Chancery No. CH03-389

AGREED ORDER

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 a penalty of \$375.00.
2. Willful Citation 2, Items 1a, 1b and 1c are affirmed with a penalty of \$15,000.00.
3. American Plumbing and Mechanical, Inc. shall pay the sum of \$15,375.00 in the form of a check or money order, payable to the "Treasurer of Virginia," with inspection number 125454850 noted thereon, within 30 days of the date this order is entered.
4. American Plumbing and Mechanical, Inc. certifies that the violations affirmed in this Order have been abated.
5. As further consideration for the modification of the terms of the original citation, American Plumbing and Mechanical, Inc., agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

6. American Plumbing and Mechanical, Inc., shall post a copy of this Order for thirty consecutive days, beginning from the date of entry of this Order, at its office in Manassas Park in a conspicuous location where notices to its employees are generally posted.

7. American Plumbing and Mechanical, Inc. will send to the Commissioner a copy of its written safety program used for its employees in Virginia that meets the Safety and Health Program Management Guidelines; Issuance of Voluntary Guidelines Federal Register 54:3904-3916 (January 26, 1989) within two months of the 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 American Plumbing and Mechanical, Inc. shall be deemed an admission by the American Plumbing and Mechanical, Inc. of any of the allegations contained in VOSH Inspection Number 125454850. 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. This matter is hereby dismissed with prejudice, and 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 20th day of June, 2003.

George F. Tidey

Judge WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry

Cheryl Herndon
Cheryl Herndon
Assistant Commonwealth's Attorney
County of Henrico
P.O. Box 27032
Richmond, VA. 23272
804-501-4218

6/19/03
Date

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

6/6/03
Date

Counsel for Commissioner Davenport

SEEN AND AGREED:

AMERICAN PLUMBING AND MECHANICAL, INC.

Steve Turner
Steve Turner
AMPAM
President of Atlas Plumbing
909 Owens Court
Manassas Park, Virginia 20111

6/2/03
Date

Corporate Representative for American Plumbing and Mechanical, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

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

Plaintiff,)

v.)

Chancery No. CH03-356

AMERICAN PLUMBING AND)
MECHANICAL, INC. d.b.a. ATLAS)
PLUMBING & MECHANICAL,)
INC.,)

Defendant.)

AGREED ORDER

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

1. Serious Citation 1, Items 1a, 1b, 1c, 1d and 1e are affirmed with a penalty of \$1,590.00.
2. Serious Citation 1, Item 2 is affirmed with a penalty of \$1,595.00.
3. Serious Citation 1, Item 3a and 3b, Instance (a), are affirmed with a penalty of \$1,590.00.
4. Serious Citation 1, Item 3b, Instance (b) is vacated.
5. American Plumbing and Mechanical, Inc. shall pay the sum of \$4,780.00 in the form of a check or money order, payable to the "Treasurer of Virginia," with inspection number 303260236 noted thereon, within 30 days of the date this order is entered.
6. American Plumbing and Mechanical, Inc. certifies that the violations affirmed in this Order have been abated.

7. As further consideration for the modification of the terms of the original citation, American Plumbing and Mechanical, Inc., agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

8. American Plumbing and Mechanical, Inc., shall post a copy of this Order for thirty consecutive days, beginning from the date of entry of this Order, at its office in Manassas Park in a conspicuous location where notices to its employees are generally posted.

9. This Order is meant to settle the above contested claims, and none of the foregoing agreements, statements or actions taken by American Plumbing and Mechanical, Inc. shall be deemed an admission by the American Plumbing and Mechanical, Inc. of any of the allegations contained in VOSH Inspection Number 303260236. 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.

10. This matter is hereby dismissed with prejudice, and 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 20th day of June, 2003.

George F. Tidey
Judge

WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry

Cheryl Herndon 6/19/03
Cheryl Herndon Date
Assistant Commonwealth's Attorney County of Henrico
P.O. Box 27032
Richmond, VA. 23272
804-501-4218

Robert B. Feild 6/6/03
Robert B. Feild Date
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:

AMERICAN PLUMBING AND MECHANICAL, INC.

Steve Turner 6/2/03
Steve Turner Date
AMPAM
President of Atlas Plumbing
909 Owens Court
Manassas Park, Virginia 20111

Corporate Representative for American Plumbing and Mechanical, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF BATH

C. RAY DAVENPORT, Commissioner of)
Labor and Industry,)
)
Plaintiff,)
)
v.)
)
AUGUSTA LUMBER CO., INC.,)
)
Defendant.)

Chancery No.: CH02000033

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 affirmed as written, with an assessed penalty of \$75.00;
 - b) Serious Citation 1, Items 2a and 2b are affirmed as written, with an assessed penalty of \$75.00;
 - c) Serious Citation 1, Item 3 is affirmed as written, with an assessed penalty of \$100.00;
 - d) Serious Citation 1, Items 4a and 4b are affirmed as written, with an assessed penalty of \$75.00;
 - e) Serious Citation 1, Item 5 is affirmed as written, with an assessed penalty of \$100.00;
 - f) Serious Citation 1, Item 6 is affirmed as written, with an assessed penalty of \$100.00;
 - g) Serious Citation 1, Item 7 is affirmed as written, with an assessed penalty of \$75.00;
 - h) Serious Citation 1, Item 8 is affirmed as written, with an assessed penalty of \$75.00;
 - I) Serious Citation 1, Item 9 is affirmed as written, with an assessed penalty of \$75.00;
 - j) Serious Citation 1, Item 10 is affirmed as written, with an assessed penalty of \$100.00;
 - k) Serious Citation 1, Items 11a and 11b are affirmed as written, with an assessed penalty of \$75.00;
 - l) Serious Citation 1, Items 12a and 12b are affirmed as written, with an assessed penalty of \$75.00;

- m) Serious Citation 1, Item 13 is affirmed as written, with an assessed penalty of \$75.00;
- n) Serious Citation 1, Item 14 is affirmed as written, with an assessed penalty of \$75.00;
- o) Serious Citation 1, Item 15 is affirmed as written, with an assessed penalty of \$75.00;
- p) Serious Citation 1, Items 16a and 16b are affirmed as written, with an assessed penalty of \$75.00;
- q) Serious Citation 1, Item 17 is affirmed as written, with an assessed penalty of \$75.00;
- r) Serious Citation 1, Items 18a and 18b are affirmed as written, with an assessed penalty of \$125.00;
- s) Serious Citation 1, Item 19 is affirmed as written, with an assessed penalty of \$100.00;
- t) Serious Citation 1, Item 20 is affirmed as written, with an assessed penalty of \$75.00;
- u) Serious Citation 1, Item 21 is affirmed as written, with an assessed penalty of \$75.00;
- v) Serious Citation 1, Item 22 is affirmed as written, with an assessed penalty of \$100.00;
- w) Serious Citation 1, Items 23a and 23b are affirmed as written, with an assessed penalty of \$75.00;
- x) Serious Citation 1, Item 24 is affirmed as written, with an assessed penalty of \$100.00;
- y) Serious Citation 1, Item 25 is affirmed as written, with an assessed penalty of \$75.00;
- z) Serious Citation 1, Items 26a and 26b are affirmed as written, with an assessed penalty of \$75.00;
- aa) Serious Citation 1, Item 27 is affirmed as written, with an assessed penalty of \$100.00;
- bb) Serious Citation 1, Items 28a, 28b, 28c and 28d are affirmed as written, with an assessed penalty of \$75.00;
- cc) Repeat Serious Citation 2, Item 1 is affirmed as written, with an assessed penalty of \$160.00;
- dd) Repeat Serious Citation 2, Item 2 is affirmed as written, with an assessed penalty of \$240.00;
- ee) Other than Serious Citation 3, Item 1 is affirmed as written with no penalty;
- ff) Other than Serious Citation 3, Item 2 is affirmed as written with no penalty;
- gg) Other than Serious Citation 3, Item 3 is affirmed as written with no penalty;
- hh) Other than Serious Citation 3, Item 4 is affirmed as written with no penalty;
- ii) Other than Serious Citation 3, Item 5 is affirmed as written with no penalty;

- jj) Other than Serious Citation 3, Item 6 is affirmed as written with no penalty;
- kk) Other than Serious Citation 3, Item 7 is affirmed as written with no penalty;
- ll) Other than Serious Citation 3, Item 8 is affirmed as written with no penalty, and;
- mm) Other than Serious Citation 3, Item 9 is affirmed as written with no penalty.
2. That the Defendant shall pay the total penalty of \$2,750.00 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 126614213 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 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; 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.

Entered this 20th day of November, 2002.

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

Duncan M. Byrd, Jr.
Duncan M. Byrd, Jr., Judge

WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry

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

Counsel for Commissioner Davenport

SEEN AND AGREED:

AUGUSTA LUMBER CO., INC.

K. Brett Marston
K. Brett Marston (VSB No. 35900)
GENTRY LOCKE RAKES & MOORE
P.O. Box 40013
Roanoke, Virginia 24022-0013
Telephone: (540) 983-9300
Facsimile: (540) 983-9400

Counsel for Augusta Lumber Co., Inc.

**VIRGINIA:
IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD**

JOHN MILLS BARR, Commissioner of)
Labor and Industry,)
)
Plaintiff,)
v.) CHANCERY NO. 98-001100-00
)
BAKER ROOFING COMPANY)
)
Defendant.)

AGREED ORDER

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

1. Serious Citation 1, Item 1a and 1c are affirmed with a penalty of \$250.00;
2. Serious Citation 1, Item 1b is reduced to other than serious with no penalty;
3. Serious Citation 1, Item 2 is affirmed with a penalty of \$250.00;
4. Serious Citation 1, Item 3 is amended to an unclassified violation and grouped with Willful Citation 2, Item1 which is also amended to an unclassified violation and the grouped violation is affirmed with a penalty of \$7,000.00;
5. Baker Roofing Company shall pay the sum of \$7,500.00 in the form of a check or money order, payable to the "Treasurer of Virginia," with inspection number 126635275 noted thereon, within 30 days of the date this order is entered.
6. Baker Roofing Company certifies that the violations affirmed in this Order have been abated;
7. As further consideration for the modification of the terms of the original citation, Baker Roofing Company, agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

8. Baker Roofing Company, shall post a copy of this Order for thirty consecutive days, beginning from the date of entry of this Order, at its central office in a conspicuous location where notices to its employees are generally posted;
9. This Order is meant to settle the above contested claims. 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. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.
10. 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 9th day of June, 2003.

Michael C. Allen
Judge

WE ASK FOR THIS:

Commissioner of Labor and Industry

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

5/21/03
Date

Counsel for the Commissioner

SEEN AND AGREED:

BAKER ROOFING COMPANY

Robert J. Barry
Robert J. Barry
KAUFMAN & CANOLES

P.O. Box 3037
Norfolk, Virginia 23514
Telephone: (757) 624-3268
Facsimile: (757) 624-3169

Counsel for Baker Roofing Company

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HANOVER

C. RAY DAVENPORT,
Commissioner of Labor and Industry,

Plaintiff,

v.

Chancery No. 02-109

BAT MASONRY COMPANY, INCORPORATED,

Defendant

ORDER

The plaintiff having filed this action requesting an order affirming a citation for two violations of the VOSH Standards for the Construction Industry as set out in Inspection No. 303249817, dated September 28, 2001, the parties, represented by counsel, appeared for trial on November 27, 2002, and the matter was tried before the Court on that date.

NOW this Court, having considered the testimony and other evidence presented by the parties, and the arguments of their respective counsel, and finding it appropriate to dismiss the citations, hereby

ADJUDGES, ORDERS and DECREES that the plaintiff's Bill of Complaint be and hereby is DISMISSED WITH PREJUDICE, and the matter shall be placed among the closed causes of this Court.

The Clerk shall send a copy of this order to counsel of record upon entry.

Enter: 12/23/02

John R. Alderman

Judge

I ask for this:

William L. Thurston

William L. Thurston, Esquire
MARCHANT, THURSTON, HONE & BLANKS, LLP
5600 Grove Avenue

Richmond, Virginia 23226
(804) 285-3888
Fax (804) 285-7779
Counsel for the Defendant

Seen and objected to:

Alfred B. Albiston
Alfred B. Albiston, Esquire
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
(804) 786-6760
Fax (804) 786-8418
Counsel for the Plaintiff

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. 14069
)	
BLAKE CONSTRUCTION CO., INC.)	
)	
Defendant.)	

AGREED ORDER

WHEREAS, on or about June 19, 2000, the Commissioner issued citations to the defendant Blake Construction Co., Inc. (Blake Construction) alleging four Serious and two Other Than Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, and proposing total penalties of \$2,800.00. (A copy of the citations identified as VOSH inspection number 303252043 is attached); and

WHEREAS, Blake Construction filed, within 15 working days from the date of the receipt of the citations, a written notice contesting all violations and proposed penalties, as provided for in *Virginia Code* § 40.1-49.4; and

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of Blake Construction, and avoid the time and expense of court proceedings;

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

1. that subject to the conditions described below, the violations and proposed penalties will be amended as follows:
 - a. *Serious citation 1, Item 1* is amended to Other Than Serious. The proposed penalty of \$525.00 is amended to \$315.00.

- b. *Serious citation 1, Item 2* is amended to Other Than Serious. The proposed penalty of \$875.00 is amended to \$525.00.
- c. *Serious citation 1, Item 3* is affirmed. The proposed penalty of \$700.00 is amended to \$420.00.
- d. *Serious citation 1, Item 4* is affirmed. The proposed penalty of \$700.00 is amended to \$420.00.
- e. *Other Than Serious citation 2, Item 1* is affirmed with no penalty.
- f. *Other Than Serious citation 2, Item 2* is vacated.

This settlement will be made, provided Blake Construction complies with requirements listed in paragraphs 2 through 5 below;

- 2. that Blake Construction shall pay \$1,680.00 to the Commissioner upon execution of this Agreed Order; due within fifteen days of receipt of this Order, and made by check or money order, payable to the Commonwealth of Virginia, with the VOSH inspection number 303252043 noted on the payment;
- 3. that Blake Construction will post a copy of this Agreed Order at each of its work sites in Virginia, for a period of 10 working days, in conspicuous locations where notices to its employees are generally posted, in compliance with the *VOSH Administrative Regulations Manual § 16 VAC 25-60-40(1)* ;
- 4. that Blake Construction certifies that each of the affirmed violations referenced above in this Order have been corrected and abated; **If not already provided**, Blake Construction agrees to provide to the Commissioner within thirty (30) days of the effective date of this Order documentation verifying abatement of the violations affirmed above. The documentation shall comply with the *VOSH Administrative Regulations Manual § 16 VAC 25-60-307.E.2*, providing 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:

Lloyd C. Bolt, VOSH Compliance Manager
Virginia Department of Labor and Industry, Tidewater Regional Office
Interstate Corporate Center, 6363 Center Drive, Suite 101
Norfolk, Virginia 23502-4101 Phone 757-455-0891

- 5. that Blake Construction’s failure to comply with the above terms, particularly the terms of paragraphs 2 through 4 above, shall constitute a breach of this Agreed Order; **upon the occurrence of any such breach, the**

original penalties and violations for this citation will be affirmed and become a final order of the

Commissioner; and any unpaid amount shall become due and payable 15 days following the breach;

6. that Blake Construction withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;

7. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of *Virginia Code* § 40.1-51.3:2; and this Order will not be construed as an admission of liability by Blake Construction of civil liability for any violation alleged by the Commissioner;

8. 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.

Entered this 23rd day of January, 2003.

Samuel Taylor Powell, III
Samuel Taylor Powell, III
Judge

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Alfred B. Albiston
Plaintiff's Counsel

Alfred B. Albiston (VSB # 29851)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804-786-6760, Fax 786-4318

Seen and agreed:

BLAKE CONSTRUCTION CO., INC.

Melisa J. Anderson
Defense Counsel

Melisa J. Anderson, Esquire

Constangy Brooks & Smith, LLC
Suite 2400
230 Peachtree Street, N.W.
Atlanta, Georgia 30303-1557
404-230-6787, Fax 525-6955

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FREDERICKSBURG

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
v.	)	Chancery No. CH02-150
)	
BREEDEN MECHANICAL, INC.)	
)	
Defendant.)	

AGREED ORDER

WHEREAS, on or about September 20, 2000, the Commissioner issued a citation to the defendant Breeden Mechanical, Inc. (Breeden Mechanical) alleging two Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, and proposing total penalties of \$1,750.00. (A copy of the citation identified as VOSH inspection number 303898290 is attached); and

WHEREAS, Breeden Mechanical filed, within 15 working days from the date of the receipt of the citation, a written notice contesting all violations and proposed penalties, as provided for in Virginia Code § 40.1-49.4; and

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of Breeden Mechanical, and avoid the time and expense of court proceedings;

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

1. that subject to the conditions described below, the violations and proposed penalties will be amended as follows:
 - a. *Serious citation 1, Item 1* is amended and affirmed as Other Than Serious. The \$875.00 proposed penalty is vacated.
 - b. *Serious citation 1, Item 2* is vacated, along with the \$875.00 proposed penalty.

This settlement will be made, provided Breeden Mechanical complies with requirements listed in paragraphs 2 and 3 below;

2. that Breeden Mechanical will post a copy of this Agreed Order at each of its work sites in Virginia, for a period of 10 working days, in conspicuous locations where notices to its employees are generally posted, in compliance with the *VOSH Administrative Regulations Manual § 16 VAC 25-60-40(1)*;

3. that Breeden Mechanical certifies that the affirmed violation referenced above in this Order has been corrected and abated;

4. that Breeden Mechanical's failure to comply with the above terms, particularly the terms of paragraphs 2 and 3 above, shall constitute a breach of this Agreed Order; upon the occurrence of any such breach, the original penalties and violations for this citation will be affirmed and become a final order of the Commissioner; and any unpaid amount shall become due and payable 15 days following the breach;

5. that Breeden Mechanical withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;

6. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of *Virginia Code § 40.1-51.3:2*; and this Order will not be construed as an admission of liability by Breeden Mechanical of civil liability for any violation alleged by the Commissioner;

7. 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.

Entered this 28th day of January, 2003.

John Whittier Scott, Jr.
Judge

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Charles S. Sharp
Plaintiff's Counsel

The Hon. Charles S. Sharp
Commonwealth's Attorney
City of Fredericksburg
P. O. Box 886
Fredericksburg, Virginia 22404
540-372-1040, Fax 372-1181

Seen and agreed:

BREEDEN MECHANICAL, INC.

Andrew C. Bisulca
Defense

Andrew C. Bisulca, Esquire (VSB #20131)
7880 Backlick Road, Ste. 8
Springfield, Virginia 22150
703-644-3533, Fax 644-3537

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF DINWIDDIE

C. RAY DAVENPORT)	
Commissioner of Labor and Industry)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. CH03 -51
)	
CHAPARRAL (VIRGINIA), INC.)	
)	
Defendant.)	

AGREED ORDER

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

1. Serious Citation 1, Items 1a and 1b are reduced to other-than-serious violations and affirmed with a penalty of \$325.00 and these Items shall not serve as the basis for repeat citation for any future violation of the cited section should one occur;
2. Serious Citation 1, Item 2 is affirmed with a penalty of \$900.00 and this Item shall not serve as the basis for a repeat citation for any future violation of the cited section should one occur;
3. Serious Citation 1, Items 3a, 3b, 3c, and 3d are reduced to other-than-serious violations and affirmed with a penalty of \$375.00 and these Items shall not serve as the basis for a repeat citation for any future violation of the cited section should one occur;
4. Serious Citation 1, Item 4 is reduced to other-than-serious violation and affirmed with a penalty of \$340.00 and this Item shall not serve as the basis for a repeat citation for any future violation of the cited section should one occur;
5. Other than Serious Citation 2, Items 1a and 1b are affirmed with a reduced penalty of \$150.00 for the grouped violation;
6. Chaparral (Virginia) Inc. ("Chaparral") shall pay the sum of \$2,090.00 in the form of a check or money order, payable to the "Treasurer of Virginia," with inspection number 302589569 noted thereon, within 30 days the date of this order is entered;

7. Chaparral certifies that all violations occurred in 1999 during the construction phase in which Chaparral was building a facility in Dinwiddie County, Virginia. Chaparral understands and the Commissioner agrees that the Commissioner will not use these violations as the basis of a repeat citation in the future;
8. Chaparral and the Commissioner agree that all violations affirmed in this Order have been abated some time ago;
9. As further consideration for the modification of the terms of the original citation, Chaparral agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order;
10. Chaparral shall post a copy of this Order for thirty consecutive days, beginning from the date of entry of this Order, at its office in Dinwiddie in a conspicuous location where notices to its employees are generally posted;
11. This Order is meant to settle the above contested claims. 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 as evidence in the trial of any action to recover 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;
12. The Clerk shall strike this matter with prejudice from the docket of this Court, place it among the ended chancery cases, and send an attested copy of this Order to both counsel of record.

Entered this 27th of June, 2003.

Pamela S. Baskervill
Judge

WE ASK FOR THIS:

Douglas M. Nabhan
Douglas M. Nabhan (VSB# 24078)
Dana C. M. Peluso (VSB# 41674)
Williams Mullen, a Professional Corporation
Two James Center
P. O. Box 1320

Richmond, VA 23218-1320
(804)643-1991
Fax: (804) 783-6507
Counsel for Defendant

Robert B. Feild
Robert B. Feild, Esquire
Department of Labor and Industry
13 South Thirteenth Street, 3rd Floor
Richmond, Virginia 23219-4101
Facsimile: 804-786-8418
Counsel for Plaintiff

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

C. RAY DAVENPORT,)
Commissioner of Labor and Industry,)
)
Plaintiff,)
)
v.) Chancery No. CH02-433
)
DAGENHART SPRINKLER CO., INC.)
)
Defendant.)

AGREED ORDER

WHEREAS, on or about November 17, 1999, the Commissioner issued a citation to the defendant Dagenhart Sprinkler Co., Inc. (Dagenhart Sprinkler) alleging two Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, and proposing total penalties of \$1,400.00. (A copy of the citation identified as VOSH inspection number 303096341 is attached); and

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

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of Dagenhart Sprinkler, and avoid the time and expense of court proceedings;

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

1. that subject to the conditions described below, the violations and proposed penalties will be amended as follows:
 - a. *Serious citation 1, Item 1a* is amended to Other-Than-Serious, with no monetary penalty.
 - b. *Serious citation 1, Item 1b and 1c* is affirmed as grouped. The Employer will owe \$735.00 in lieu of the proposed penalty of \$875.00.

- c. *Serious citation 1, Item 2* is affirmed. The Employer will owe \$385.00 in lieu of the proposed penalty of \$525.00.

These amendments will be made, provided Dagenhart Sprinkler complies with requirements listed in paragraphs 2 through 5 below;

2. that Dagenhart Sprinkler shall pay \$1,120.00 to the Commissioner upon execution of this Agreed Order; due within fifteen days of receipt of this Order, and made by check or money order, payable to the Commonwealth of Virginia, with the VOSH inspection number 303096341 noted on the payment;

3. that Dagenhart Sprinkler will post a copy of this Agreed Order at each of its work sites in Virginia, for a period of 10 working days, in conspicuous locations where notices to its employees are generally posted, in compliance with the *VOSH Administrative Regulations Manual* § 16 VAC 25-60-40(1);

4. that Dagenhart Sprinkler certifies that each of the affirmed violations referenced above in this Order have been corrected and abated; **If not already provided**, the Employer agrees to provide to the Commissioner within thirty (30) days of the effective date of this Order documentation verifying abatement of the violations affirmed above. The documentation shall comply with the *VOSH Administrative Regulations Manual* § 16 VAC 25-60-307.E.2, providing 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:

Ronald L. Graham, VOSH Compliance Manager
Virginia Department of Labor and Industry, Central Regional Office
1500 E. Main Street, Suite 222
Richmond, Virginia 23219
Phone 804/ 371-0444

5. that Dagenhart Sprinkler’s failure to comply with the above terms, particularly the terms of paragraphs 2 through 4 above, shall constitute a breach of this Agreed Order; **upon the occurrence of any such breach, the original penalties and violations for this citation will be affirmed and become a final order of the Commissioner**; and any unpaid amount shall become due and payable 15 days following the breach;

6. that Dagenhart Sprinkler withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;

7. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of *Virginia Code* § 40.1-51.3:2; and this Order will not be construed as an admission of liability by Dagenhart Sprinkler of civil liability for any violation alleged by the Commissioner;

8. 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.

Entered this 2nd day of May, 2003

George F. Tidey

Judge George F. Tidey

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Alfred B. Albiston

Plaintiff's Counsel

Alfred B. Albiston
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804/786-6760, Fax 786-4318
VSB # 29851

Seen and agreed:

Dagenhart Sprinkler, LC

John P. Frye

Defense Counsel

John P. Frye, Esquire
Katzen & Frye, P.C.
7272 Hanover Green Drive
Mechanicsville, Virginia 23111
804/ 746-3296, Fax 730-8739
VSB # 26214

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF CHESTERFIELD

C. RAY DAVENPORT,
Commissioner of Labor and Industry

v.

Chancery No. CH 01-615

DEAN STEEL ERECTORS, INC.

**SUBSTITUTION OF PLAINTIFF
AND AGREED FINAL ORDER**

WHEREAS, on or about January 21, 1999, former Commissioner Jeffrey D. Brown issued a citation to the defendant, Dean Steel Erectors, Inc., alleging two serious violations of the Virginia Occupational Safety and Health Standards (VOSH) for the Construction Industry, and proposing a civil penalty of \$2250;

WHEREAS, Dean Steel Erectors 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*; and

WHEREAS, Virginia Governor Mark Warner subsequently appointed C. Ray Davenport to succeed Jeffrey D. Brown as Commissioner of Labor & Industry, effective March 4, 2002,

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

1. That current Commissioner C. Ray Davenport, under Rule 2:16 of the *Rules of the Supreme Court of Virginia*, be substituted as party plaintiff in this action as successor in interest to Jeffrey D. Brown
2. That the citation attached to the Bill of Complaint is hereby amended as follows:
 - a. Citation 1, Item 1, is reduced from Serious to Other-than-serious. The initial penalty of \$1125 is reduced to \$450.
 - b. Citation 1, Items 2a, 2b, 2c and 2d are reduced from Serious to Other-than-serious. The initial penalty of \$1125 is reduced to \$450.

3. Dean Steel Erectors shall pay the total penalty of \$900.00 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 302286463 noted on the payment.
4. Pursuant to *Virginia Administrative Code* § 16 VAC 25-60-40(1), Dean Steel Erectors 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.
5. Dean Steel Erectors certifies that the affirmed violations referenced above in this Order have been corrected and abated.
6. This Order is meant to compromise and settle the above contested violations and does not purport to limit the effect of Va. Code § 40.1-51.3:2. This order shall be construed to advance the purpose of Code § 40.1-3. This Order will not be construed as an admission of liability by Dean Steel Erectors of civil liability for any violation alleged by the Commissioner.
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 Chancery cases. The Clerk shall certify copies of this order to the Special Assistant Commonwealth's Attorney and defense counsel.

Entered this 16th day of June, 2003.

Timothy J. Hauler
Judge Timothy J. Hauler

We ask for this:

C. Ray Davenport,
Commissioner of Labor and Industry

By: Diane L. Duell
Diane L. Duell
Special Assistant Commonwealth's Attorney
Virginia Department of Labor & Industry
13 South 13th Street
Richmond, Virginia 23219-4101
804.786.4289

By: Randi Klein Hyatt
Randi Klein Hyatt

Counsel for Defendant
SHAWE & ROSENTHAL, LLP
Sun Life Building
20 South Charles Street, 11th Floor
Baltimore, Maryland 20201
410.752.1040

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF STAUNTON

C. RAY DAVENPORT,
Commissioner of Labor and Industry

v.

Chancery No. CH 01-76-00

DEAN STEEL ERECTORS, INC.

**SUBSTITUTION OF PLAINTIFF
AND AGREED FINAL ORDER**

WHEREAS, on or about September 29, 1998, former Commissioner Jeffrey D. Brown issued a citation to the defendant, Dean Steel Erectors, Inc., alleging one willful violation of the Virginia Occupational Safety and Health Standards (VOSH) for the Construction Industry, and proposing a civil penalty of \$35,000.00;

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

WHEREAS, Virginia Governor Mark Warner subsequently appointed C. Ray Davenport to succeed Jeffrey D. Brown as Commissioner of Labor & Industry, effective March 4, 2002,

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

1. That current Commissioner C. Ray Davenport, under Rule 2:16 of the *Rules of the Supreme Court of Virginia*, be substituted as party plaintiff in this action as successor in interest to Jeffrey D. Brown
2. That the citation attached to the Bill of Complaint is hereby amended as follows:
 - a. Citation 1, Item 1, is changed from a willful to an unclassified violation. The initial penalty of \$35,000.00 is reduced to \$5000.00.
3. Dean Steel Erectors shall pay the total penalty of \$5,000.00 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 126613231 noted on the payment.
4. Pursuant to *Virginia Administrative Code* § 16 VAC 25-60-40(1), Dean Steel Erectors 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.

5. Dean Steel Erectors certifies that the affirmed violation referenced above in this Order has been corrected and abated.

6. This Order is meant to compromise and settle the above contested violation and does not purport to limit the effect of Va. Code § 40.1-51.3:2. The Commissioner will not use this order in future proceedings under Code § 40.1-49.4.J. This order shall be construed to advance the purpose of Code § 40.1-3. This Order will not be construed as an admission of liability by Dean Steel Erectors of civil liability for any violation alleged by the Commissioner.

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 Chancery cases. The Clerk shall certify copies of this order to the Special Assistant Commonwealth's Attorney and defense counsel.

Entered this 17th day of June, 2003.

Humes J. Franklin, Jr.

Judge

We ask for this:

C. Ray Davenport,
Commissioner of Labor and Industry

By: Diane L. Duell
Diane L. Duell
Special Assistant Commonwealth's Attorney
Virginia Department of Labor & Industry
13 South 13th Street
Richmond, Virginia 23219-4101
804.786.4289

By: Randi Klein Hyatt
Randi Klein Hyatt
Counsel for Defendant
SHAWE & ROSENTHAL, LLP
Sun Life Building
20 South Charles Street, 11th Floor
Baltimore, Maryland 20201
410.752.1040

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF PATRICK

C. RAY DAVENPORT, Commissioner of)
 Labor and Industry,)
)
 Plaintiff,)
 v)
)
 GUY M. TURNER, INC.)
)
 Defendant.)

CHANCERY NO. 02-4368

AGREED ORDER

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 reduced to other-than-serious and affirmed with a penalty of \$1,000.00;
2. Serious Citation 1, Item 2 is affirmed with a penalty of \$4,000.00 and this Item shall not serve as the basis for a repeat citation for any future violation of the cited section should one occur;
3. Willful Citation 2, Item 1a is reduced to serious, redesignated Serious Citation 1, Item 3 and affirmed with a penalty of \$7,000.00;
4. Willful Citation 2, Item 1b is reduced to serious, redesignated Serious Citation 1, Item 4 and affirmed with a penalty of \$7,000.00.;
5. Guy M. Turner, Inc. shall pay the sum of \$19,000.00 in the form of a check or money order, payable to the "Treasurer of Virginia," with inspection number 303095269 noted thereon, within 30 days of the date this order is entered.
6. Guy M. Turner, Inc. certifies that the violations affirmed in this Order have been abated;
7. As further consideration for the modification of the terms of the original citation, Guy M. Turner, Inc., agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

8. Guy M. Turner, Inc., shall post a copy of this Order for thirty consecutive days, beginning from the date of entry of this Order, at its office in Martinsville in a conspicuous location where notices to its employees are generally posted;
9. This Order is meant to settle the above contested claims, and none of the foregoing agreements, statements or actions taken by Guy M. Turner, Inc. shall be deemed an admission by the Guy M. Turner, Inc. of any of the allegations contained in VOSH Inspection Number 303095269. 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.
10. 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 2nd day of June, 2003.

Martin F. Clark, Jr.
Martin F. Clark, Jr., Judge

WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry

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

Counsel for Commissioner Davenport

SEEN AND AGREED:

GUY M. TURNER, INC.

K. Brett Marston
K. Brett Marston (VSB No. 35900)
GENTRY LOCKE RAKES & MOORE
P.O. Box 40013
Roanoke, Virginia 24022-0013
Telephone: (540) 983-9300
Facsimile: (540) 983-9400

Counsel for Guy M. Turner, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. 177463
)	
G. P. HOMES, LC)	
)	
Defendant.)	

AGREED ORDER

WHEREAS, on or about March 1, 2000, the Commissioner issued a citation to the defendant G. P. Homes, LC (G. P. Homes) alleging five Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, and proposing total penalties of \$10,875.00. (A copy of the citation identified as VOSH inspection number 301826913 is attached); and

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

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of G. P. Homes, and avoid the time and expense of court proceedings;

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

1. that subject to the conditions described below, the violations and proposed penalties will be amended as follows:
 - A. *Serious citation 1, Item 1* is amended from Serious to Other Than Serious, and the proposed penalty of \$625 is vacated,

- B, *Serious citation 1, Item 2a & 2b* is affirmed and G. P. Homes owes the penalty of \$2,000 as originally proposed,
- C. Serious citation 1, Item 3 is affirmed and G. P. Homes owes the penalty of \$625 as originally proposed,
- D, *Serious citation 1, Item 4* is affirmed and G. P. Homes owes the penalty of \$625 as originally proposed,
- E. Serious citation 1, Item 5 is affirmed and G. P. Homes owes the penalty of \$7,000 as originally proposed,

These amendments will be made, provided G. P. Homes complies with requirements listed in paragraphs 2 through 5 below;

2. that G. P. Homes shall pay \$10,250.00 to the Commissioner upon execution of this Agreed Order; due within fifteen days of receipt of this Order, and made by check or money order, payable to the Commonwealth of Virginia, with the VOSH inspection number 301826913 noted on the payment;
3. that G. P. Homes will post a copy of this Agreed Order at each of its work sites in Virginia, for a period of 30 days, in conspicuous locations where notices to its employees are generally posted;
4. that G. P. Homes certifies that each of the affirmed violations referenced above in this Order have been corrected and abated; **If not already provided**, the Employer agrees to provide to the Commissioner within thirty (30) days of the effective date of this Order documentation verifying abatement of the violations affirmed above. The documentation shall comply with the *VOSH Administrative Regulations Manual* § 16 VAC 25-60-307.E.2, providing 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:

Charles E. Franklin, VOSH Compliance Manager
Virginia Department of Labor and Industry, Northern Virginia Regional Office
10515 Battleview Parkway
Manassas, Virginia 20109
Phone 703/ 392-0900

5. that G. P. Homes's failure to comply with the above terms, particularly the terms of paragraphs 2 through 4 above, shall constitute a breach of this Agreed Order; **upon the occurrence of any such breach, the original penalties and violations for this citation will be affirmed and become a final order of the Commissioner**; and any unpaid amount shall become due and payable 15 days following the breach;
6. that G. P. Homes withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;
7. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of Virginia Code § 40.1-51.3:2; and this Order will not be construed as an admission of liability by G. P. Homes of civil liability for any violation alleged by the Commissioner;
8. 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.

Entered this 15th day of August, 2002.

Dennis J. Smith
Judge

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

John J. Murray
Plaintiff's Counsel

John J. Murray
Assistant Commonwealth's Attorney
County of Fairfax
4110 Chain Bridge Road, Room 123
Fairfax, Virginia 22030
703/ 246-2776, Fax 691-4004

Seen and agreed:

G. P. HOMES, LC

Gregory D. Haight
Defense Counsel

Gregory D. Haight, Esquire
Haight, Tramonte, Siciliano, Flask, Yeonas & Roberts, P.C.
8221 Old Courthouse Road, Suite 300
Vienna, Virginia 22182
703/ 734-4800, Fax 442-9526

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF PATRICK

C. RAY DAVENPORT, Commissioner of)	
Labor and Industry,)	
Plaintiff,)	
v.	)	CHANCERY NO. CH02-4369
)	
INTERNATIONAL PAPER COMPANY)	
)	
Defendant)	

AGREED ORDER

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 a penalty of \$2,500.00.
2. Serious citation 1, item 2 is affirmed with a penalty of \$3,500.00.
3. Willful citation 2, items 1a and 1b are amended to violations of Va. Code §40.1-49.4. and affirmed with a penalty in the amount of \$70,000.00.
4. International Paper Company shall pay the sum of \$76,000.00 in the form of a check or money order, payable to the "Treasurer of Virginia," with inspection number 303095277 noted thereon, within 30 days of the date this Order is executed.
5. International Paper Company certifies that the violations alleged in this agreement have been abated.
6. As further consideration for the modification of the terms of the original citation, International Paper Company agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.
7. International Paper Company shall post a copy of this Order for a period of thirty (30) days at the worksite that was the subject of this case in a conspicuous location where notices to its employees are generally posted.
8. This Order 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 Order may 1); used 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 28th day of April, 2003.

Martin F. Clark, Jr.

Judge

WE ASK FOR THIS:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

By: Robert B. Feild April 22, 2003
Counsel for Plaintiff Date
Robert Feild
Special Assistant Commonwealth's Attorney
13 South Thirteenth Street
Richmond, VA 23219
(804) 786-4777

SEEN AND AGREED TO:

INTERNATIONAL PAPER COMPANY

By: Steven J. Ginski April 18, 2003
Counsel for Defendant Date

Steven J. Ginski
Senior Counsel
Environment, Health, Safety and Logistics
International Place One
6400 Poplar Ave.
Memphis, TN 38197

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. 179651
)	
DAVID JOHNSON,)	
d/b/a DJ's CONCRETE)	
)	
Defendant.)	

DECREE PRO CONFESSO

This cause came to be heard upon Commissioner C. Ray Davenport's Motion for Decree Pro Confesso against David Johnson, sole proprietor of DJ's Concrete, declaring that \$7,450.00 in proposed civil penalties arising from contested Virginia Occupational Safety and Health (VOSH) citations, identified by VOSH Inspection Number 303090237 and as attached to the Commissioner's Bill of Complaint, be upheld; and declaring Defendant personally liable for the \$7,450.00 in civil penalties pursuant to *Va. Code* § 13.1-622, since Defendant held himself out as a sole proprietor of his company DJ's Concrete. To the Commissioner's knowledge, Defendant is not, nor has he ever been, in the military service of the Commonwealth or the United States.

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 his behalf, it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff be awarded judgment by default in this cause against the Defendant, affirming that David Johnson be held personally liable for payment to the Commonwealth of Virginia of \$7,450.00 in civil penalties, arising from contested Virginia Occupational Safety and Health (VOSH) citations as set out in Inspection No. 303090237. 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 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: Arthur B. Veregg

ENTER: April 1, 2003

I ASK FOR THIS:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

By: John J. Murray
Counsel

John J. Murray
Assistant Commonwealth's Attorney
County of Fairfax
4110 Chain Bridge Road, Rm. 123
Fairfax, Virginia 22030
703-247-3776, Fax 691-4004

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ESSEX

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. CH02000051
)	
MASONOMICS, INC.)	
)	
Defendant.)	

AGREED ORDER

WHEREAS, on or about October 11, 2001, the Commissioner issued citations to the defendant Masonomics, Inc. (Masonomics) alleging two Willful, four Serious, and one Other Than Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, and proposing total penalties of \$50,100.00. (A copy of the citations identified as VOSH inspection number 304134356 is attached); and

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

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of Masonomics, and avoid the time and expense of court proceedings;

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

1. that subject to the conditions described below, the violations and proposed penalties will be amended as follows:
 - a. *Willful citation 2, Item 1* is amended to Serious. The Employer will owe \$1,500 in lieu of the proposed penalty of \$15,000.
 - b. *Willful citation 2, Item 2* is affirmed. The Employer will owe \$15,000 in lieu of the proposed penalty of \$30,000.

- c. *Serious citation 1, Item 1a, 1b, & 1c* is affirmed as grouped. The Employer will owe \$1,080 in lieu of the proposed penalty of \$1,200.
- d. *Serious citation 1, Item 2* and *Serious citation 1, Item 4* are grouped as new Item 2a and 2b and jointly affirmed. The Employer will owe \$1,500 in lieu of the proposed penalties of \$1,500 and \$1,200, respectively.
- e. *Serious citation 1, Item 3* is affirmed. The Employer will owe \$1,080 in lieu of the proposed penalty of \$1,200.
- f. *Other Than Serious Citation 3, Item 1* is affirmed as issued with no penalty.

These amendments will be made, provided Masonomics complies with requirements listed in paragraphs 2 through 5 below;

- 2. that Masonomics shall pay \$20,160.00 to the Commissioner upon execution of this Agreed Order; due within fifteen days of receipt of this Order, and made by check or money order, payable to the Commonwealth of Virginia, with the VOSH inspection number 304134356 noted on the payment;
- 3. that Masonomics will post a copy of this Agreed Order at each of its work sites in Virginia, for a period of 10 working days, in conspicuous locations where notices to its employees are generally posted, in compliance with the *VOSH Administrative Regulations Manual § 16 VAC 25-60-40(1)*, ;
- 4. that Masonomics certifies that each of the affirmed violations referenced above in this Order have been corrected and abated; **If not already provided**, the Employer agrees to provide to the Commissioner within thirty (30) days of the effective date of this Order documentation verifying abatement of the violations affirmed above. The documentation shall comply with the *VOSH Administrative Regulations Manual § 16 VAC 25-60-307.E.2*, providing 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:

Ronald L. Graham, VOSH Compliance Manager
 Virginia Department of Labor and Industry, Central Regional Office
 1500 E. Main Street, Suite 222
 Richmond, Virginia 23219
 Phone 804/ 371-0444

5. that Masonomics's failure to comply with the above terms, particularly the terms of paragraphs 2 through 4 above, shall constitute a breach of this Agreed Order; **upon the occurrence** of any such breach, the original penalties and violations for this citation will be affirmed and become a final order of the Commissioner; and any unpaid amount shall become due and payable 15 days following the breach;
6. that Masonomics withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;
7. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of *Virginia Code* § 40.1-51.3:2; and this Order will not be construed as an admission of liability by Masonomics of civil liability for any violation alleged by the Commissioner;
8. 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.

Entered this 17th day of December, 2002.

Harry T. Taliaferro
Judge

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Alfred B. Albiston
Plaintiff's Counsel

Alfred B. Albiston
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804/786-6760, Fax 786-4318
VSB # 29851

Seen and agreed:

MASONOMICS, INC.

Richard A. Minardi, Jr.
Defense Counsel

Richard A. Minardi, Jr., Esquire
Troutman, Sanders, Mays & Valentine
1111 East Main Street, 23rd Floor
Richmond, Virginia 23219
804/ 697-1252, Fax 697-1339

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. 041CH02000928-00
)	
McLEAN CONTRACTING COMPANY,)	
INCORPORATED,)	
)	
Defendant.)	

AGREED FINAL ORDER

WHEREAS, on or about December 28, 2000, former Commissioner Jeffrey D. Brown issued a citation to the defendant McLean Contracting Company, Incorporated (McLean Contracting) alleging one Serious violation of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, and proposing a civil penalty of \$1,625.00. (A copy of the citation identified as VOSH inspection numbers 303256861 is attached); and

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

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of McLean Contracting, and avoid the time and expense of court proceedings;

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

1. Citation 1, item 1, as attached to the Bill of Complaint, citing VOSH Standard § 1926.550(g)(4)(iii)© is affirmed as a Serious violation, and a civil penalty of \$1,625.00 is assessed for the violation;

2. McLean Contracting shall pay the civil penalty within fifteen (15) days of the entry of this order. Payment shall be made by check or money order, payable to the Treasurer of Virginia;
3. Pursuant to the *Virginia Administrative Code* § 16 VAC 25-60-40(1), McLean Contracting will post a copy of this Agreed Order at each of its work sites in Virginia, for a period of 10 days, in conspicuous locations where notices to its employees are generally posted;
4. McLean Contracting certifies that the affirmed violation referenced above in this Order has been corrected and abated, and that McLean Contracting withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;
5. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of *Virginia Code* § 40.1-51.3:2; and this Order will not be construed as an admission of liability by McLean Contracting of civil liability for any violation alleged by the Commissioner;
6. 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.

Entered this 7th day of February, 2003.

Cleo E. Powell
Judge Cleo E. Powell

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Alfred B. Albiston
Alfred B. Albiston, (VSB No. 29851)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219-4101
804-786-6760, Fax 786-8418

Seen and agreed:

MCLEAN CONTRACTING COMPANY, INCORPORATED

G. William Birkhead

G. William Birkhead, Esquire (VSB No. 7235)

Vandeventer Black, LLP

500 World Trade Center

Norfolk, Virginia, 23510-1699

757-446-8600, Fax 446-8670

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

JEFFREY D. BROWN , Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. 041CH98-1064
)	
MILLER BUILDING CORPORATION)	
)	
Defendant.)	

FINAL ORDER

This cause came to be heard upon plaintiff, Commissioner Jeffrey D. Brown’s Motion for Summary Judgment against Miller Building Corporation, on a Default Hearing before this Court on August 23, 2002, declaring that certain violations and \$2,375.00 in proposed civil penalties arising from a contested Virginia Occupational Safety and Health (VOSH) citation, identified by VOSH Inspection Number 125452821 and as attached to the Commissioner's Bill of Complaint, be upheld as a Final Order of this Court.

UPON CONSIDERATION WHEREOF, as the defendant has not provided a proper or timely answer to the Commissioner’s Request for Admissions each matter therein is deemed admitted, and it appearing to the Court that all material facts in this action are no longer genuinely in dispute, and that the defendant has chosen to discontinue its legal defense to this action, it is therefore

ADJUDGED, ORDERED, and DECREED the Commissioner be awarded summary judgment in this cause against the defendant, affirming that Miller Building Corporation be held liable for payment to the Commonwealth of Virginia of a \$2,375.00 civil penalty, arising from the contested Virginia Occupational Safety and Health (VOSH) citation identified under Inspection No. 125452821. It is also ADJUDGED, ORDERED, and DECREED that the Clerk of this Court shall strike this matter from the docket, place it among the ended chancery cases, and shall mail certified copies of this order to the Commissioner’s legal counsel and the defendant’s registered agent Edward R. Parker, Esq., at 5511 Staples Mill Road, Richmond, Virginia, 23228. Pursuant to Rule 1:13, endorsement by defense counsel shall be dispensed with.

JUDGE: T. J. Hauler

ENTER: 8/23/02

I ask for this:

JEFFREY D. BROWN,
Commissioner of Labor and Industry

By: Alfred B. Albiston
Alfred B. Albiston (VSB # 29851)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804/ 786-6760, Fax 786-8419

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF PRINCE WILLIAM

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. 52218
)	
OLD COUNTRY MASONRY, INC.)	
)	
Defendant.)	

AGREED ORDER

WHEREAS, on or about July 21, 1999, the Commissioner issued a citation to the defendant Old Country Masonry, Inc. (Old Country) alleging three Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, and proposing total penalties of \$1,875.00. (A copy of the citation identified as VOSH inspection number 302602347 is attached); and

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

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of Old Country, and avoid the time and expense of court proceedings;

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

1. that subject to the conditions described below, the violations and proposed penalties will be amended as follows:
 - a. *Serious citation 1, Item 1a & 1b* is affirmed as grouped. The proposed penalty of \$625 is also affirmed.
 - b. *Serious citation 1, Item 2* is affirmed. The proposed penalty of \$625 is also affirmed.
 - c. *Serious citation 1, Item 3* is affirmed. The proposed penalty of \$625 is also affirmed.

This settlement will be made, provided Old Country complies with requirements listed in paragraphs 2 through 5 below;

2. that Old Country shall pay \$1,875.00 to the Commissioner upon execution of this Agreed Order; due within fifteen days of receipt of this Order, and made by check or money order, payable to the Commonwealth of Virginia, with the VOSH inspection number 302602347 noted on the payment;

3. that Old Country will post a copy of this Agreed Order at each of its work sites in Virginia, for a period of 10 working days, in conspicuous locations where notices to its employees are generally posted, in compliance with the *VOSH Administrative Regulations Manual* § 16 VAC 25-60-40(1), ;

4. that Old Country certifies that each of the affirmed violations referenced above in this Order have been corrected and abated; If not already provided, Old Country agrees to provide to the Commissioner within thirty (30) days of the effective date of this Order documentation verifying abatement of the violations affirmed above. The documentation shall comply with the *VOSH Administrative Regulations Manual* § 16 VAC 25-60-307.E.2, providing 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:

Ronald L. Graham, VOSH Compliance Manager
Virginia Department of Labor and Industry, Central Regional Office
1500 E. Main Street, Suite 222
Richmond, Virginia 23219
Phone 804/ 371-0444

5. that Old Country’s failure to comply with the above terms, particularly the terms of paragraphs 2 through 4 above, shall constitute a breach of this Agreed Order; upon the occurrence of any such breach, the original penalties and violations for this citation will be affirmed and become a final order of the Commissioner; and any unpaid amount shall become due and payable 15 days following the breach;

6. that Old Country withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;

7. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of *Virginia Code* § 40.1-51.3:2; and this Order will not be construed as an admission of liability by Old Country of civil liability for any violation alleged by the Commissioner;

8. 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.

Entered this 31st day of December, 2002.

Richard B. Potter
Judge

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Alfred B. Albiston
Plaintiff's Counsel

Alfred B. Albiston (VSB # 29851)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804/786-6760, Fax 786-4318
VSB # 29851

Seen and agreed:

OLD COUNTRY MASONRY, INC.

Patricia A. Healy
Defense Counsel

Patricia A. Healy, Esquire
Leming & Healy
233 Garrisonville Road, Suite 204
Stafford, Virginia 22554
540-659-5155, Fax 659-1651

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. CH02-705
)	
R. W. HARPER & SON, INC.)	
)	
Defendant.)	

AGREED ORDER

WHEREAS, on or about November 15, 2000, the Commissioner issued a citation to the defendant R. W. Harper & Son, Inc. (R. W. Harper) alleging three Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, and proposing total penalties of \$4,250.00. (A copy of the citation identified as VOSH inspection number 303902712 is attached); and

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

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of R. W. Harper, and avoid the time and expense of court proceedings;

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

1. that subject to the conditions described below, the violations and proposed penalties will be amended as follows:
 - a. *Serious citation 1, Item 1a* is amended from Serious to Other Than Serious, with no penalty,
 - b. *Serious citation 1, Item 1b* is affirmed as written and R. W. Harper owes \$2,000.00 in lieu of the \$2,500.00 proposed penalty,

- c. *Serious citation 1, Item 2* is amended from Serious to Other Than Serious, and R. W. Harper owes \$250.00 in lieu of the \$525.00 proposed penalty,
- d. *Serious citation 1, Item 3* is amended from Serious to Other Than Serious and R. W. Harper owes \$750.00 in lieu of the \$1,225.00 proposed penalty,

These amendments will be made, provided R. W. Harper complies with requirements listed in paragraphs 2 through 5 below;

- 2. that R. W. Harper shall pay \$3,000.00 to the Commissioner upon execution of this Agreed Order; due within fifteen days of receipt of this Order, and made by check or money order, payable to the Commonwealth of Virginia, with the VOSH inspection number 303902712 noted on the payment;
- 3. that R. W. Harper will post a copy of this Agreed Order at each of its work sites in Virginia, for a period of 30 days, in conspicuous locations where notices to its employees are generally posted;
- 4. that R. W. Harper certifies that each of the affirmed violations referenced above in this Order have been corrected and abated; **If not already provided**, the Employer agrees to provide to the Commissioner within thirty (30) days of the effective date of this Order documentation verifying abatement of the violations affirmed above. The documentation shall comply with the *VOSH Administrative Regulations Manual* § 16 VAC 25-60-307.E.2, providing 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:

Ron Graham, VOSH Compliance Manager
Virginia Department of Labor and Industry, Richmond Regional Office
Main Street Station, 1500 E. Main Street, Suite 222
Richmond, VA 23219
Phone 804/ 371-0444

- 5. that R. W. Harper’s failure to comply with the above terms, particularly the terms of paragraphs 2 through 4 above, shall constitute a breach of this Agreed Order; **upon the occurrence of any such breach, the original penalties and violations for this citation will be affirmed and become a final order of the Commissioner;** and any unpaid amount shall become due and payable 15 days following the breach;

6. that R. W. Harper withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;

7. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of Virginia Code § 40.1-51.3:2; and this Order will not be construed as an admission of liability by R. W. Harper of civil liability for any violation alleged by the Commissioner;

8. 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.

Entered this 1st day of August, 2002.

L. A. Harris, Jr.

Judge

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Alfred B. Albiston

Alfred B. Albiston (VSB #29851)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804/ 786-6760, Fax 786-8418

Seen and agreed:

R. W. HARPER & SON, INC.

William R. Mauck, Jr.

William R. Mauck, Jr., Esquire
Counsel for Defendant
Williams Mullen
P. O. Box 1320
Richmond, Virginia 23218-1320
804/ 783-6436, Fax 783-6507

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

C. Ray Davenport, Commissioner of Labor)
and Industry)
 Plaintiff/Complainant)
)
)
)
)
)
Shirley Contracting Corp.)
 Defendant)

At Law/In Chancery No 179716

ORDER

This matter came to be heard this 11th day of December, 2002 on the Plaintiff/Complainant/**Defendant's** motion to strike the evidence at the conclusion of Plaintiff's evidence.

Upon the matter presented to the Court at the hearing, it is hereby;

ADJUDGED, ORDERED and DECREED as follows:

The motion to strike is granted and this matter is dismissed with prejudice as to both citation items.
Entered this 11th day of December, 2002

Kathleen H. MacKay

SEEN AND Objected to:

SEEN AND Agreed to:

John R. Murphy
Counsel for Plaintiff/Complainant

Joseph H. Kasimer
Counsel for Defendant

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

C. RAY DAVENPORT Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. 32990-RC
)	
SIEMENS AUTOMOTIVE CORPORATION,)	
)	
Defendant.)	

AGREED ORDER

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

1. The penalty for Willful Citation 1, Item 1 is affirmed in the amount of \$60,000.00. Siemens Automotive Corp. shall pay the sum of \$60,000.00 in the form of a check or money order, payable to the "Treasurer of Virginia", with inspection number 300666633 noted thereon, within 30 days of the date this Order is executed.
2. If the conditions listed in paragraph 3 are fully complied with within three years from the date this Order is executed, Willful Citation 1, Item 1, shall be amended to a violation of Va. Code §40.1-49.4. If Siemens Automotive Corp. chooses not to complete the application process for the Commonwealth's Voluntary Protection Program as referenced in paragraph 3, or if any condition listed in paragraph 3 is not fully complied with within three years of the effective date of this Order, Willful Citation 1, Item 1 shall be affirmed and become a final order of the Court, not subject to review by any court or agency, except as set forth in paragraph 4 below.
3. Siemens Automotive Corp. agrees that its Newport News facility that was the subject of Virginia Occupational Safety and Health (VOSH) inspection number 300666633 will complete the application process and obtain approval from the Department of Labor and Industry to enter the Commonwealth's Voluntary Protection Program within three years of the effective date of this Order.

4. Provided that all VPP application steps have been fully completed by Siemens Automotive Corp. for its Newport News facility, the Commonwealth agrees to make a final determination on whether it will approve or deny VPP status for the Newport News facility within three years from the effective date of this Order. If Siemens Automotive Corp. submits a timely application to enter the Voluntary Protection Program but the Commonwealth denies the request, the Commonwealth stipulates and agrees that this denial is a "case decision" within the meaning of the Administrative Process Act, Va. Code Ann. 9-6.14.1 et seq. and that Siemens Automotive Corp. may appeal this decision in the manner provided for in the Administrative Process Act and Part 2A of the Rules of the Supreme Court of Virginia. If such an appeal is successful, Siemens Automotive Corp. shall be deemed to have complied with paragraph 3 of this Order. If unsuccessful, then Willful Citation Item 1 shall be affirmed and become a final order of the Court.
5. Siemens Automotive Corp. certifies that the violation alleged in this agreement - has been abated.
6. As further consideration for the modification of the terms of the original citation, Siemens Automotive Corp. agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.
7. Siemens Automotive Corp. shall post a copy of this Order for a period of thirty (30) days at the worksite that was the subject of this case in a conspicuous location where notices to its employees are generally posted.
8. This Order 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 Order may be used 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 28th day of August, 2002.

R. W. Curran
Judge

WE ASK FOR THIS:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

By: Robert Feild 7/31/02
Counsel for Plaintiff Date

Robert Feild
Special Assistant Commonwealth's Attorney
13 South Thirteenth Street
Richmond, Virginia 23219
(804) 786-4777

SEEN AND AGREED TO:

SIEMENS AUTOMOTIVE CORP

By: Dana L. Rust 7/26/02
Counsel for Defendant Date

Dana L. Rust
McGuireWoods LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
(804)775-1082

VIRGINIA

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

C. RAY DAVENPORT,)
Commissioner of Labor and Industry)
)
Plaintiff,)
)
v.) Chancery No. CH01-786
)
SITE CONSTRUCTION SERVICES, INC.)
)
Defendant.)

AGREED ORDER

Upon agreement of the parties and for good cause shown, the court finds and orders as follows:

1. The parties have agreed that the citation set forth in and attached to the Bill of Complaint in this matter is amended as follows:

a. Serious citation 1, item 1 is vacated. The violation is vacated based upon the affidavit provided by Mahmaoud Mounir, attached hereto as Exhibit A. Mr. Mounir was an inspector for the defendant at the time of the Department's inspection. Mr. Mounir stated that his work did not require him to inspect WB Column -12 which was involved in a collapse on December 16, 1999. Therefore, Mr. Mounir was not exposed to the hazardous condition.

b. The assessed penalty of \$1500 is also vacated.

2. The defendant shall post a copy of this order for thirty (30) consecutive days at its workplaces in Virginia in a conspicuous location where notices to its employees generally are posted.

3. This agreement does not purport to limit the effect of Va. Code § 40.1-51.3:2. The defendant's agreement to the entry of this order shall not limit the Commissioner's use of this order in future proceedings under Va. Code § 40.1-49.4.I, -J, or -K, or under any other authority. This order shall be construed to advance the purpose of Va. Code § 40.1-3.

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

The Clerk shall strike this matter from the docket and place it among the ended chancery cases. The Clerk shall certify copies of this order to counsel.

Entered this 15th day of July, 2002.

Cleo E. Powell

Judge Cleo E. Powell

WE ASK FOR THIS:

Diane L. Duell

Diane L. Duell

Special Assistant Commonwealth's Attorney

13 South 13th Street

Richmond, Virginia 23219

(804) 786-4289

Counsel for Commissioner Davenport

Charles P. Groppe

Charles P. Groppe

MORGAN, LEWIS & BOCKIUS, LLP

1111 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

(202) 739-5681

Counsel for Site Construction Services, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF LOUDOUN

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. 21976
)	
ISRAEL CALIXTO-AGUILAR and)	
MARGARITO SANCHEZ, Partners, and)	
doing business under the style and firm name of)	
STAR PRODUCTIONS COMPANY)	
)	
Defendant.)	

AGREED ORDER

WHEREAS, on or about January 15, 2002, the Commissioner issued a citation to the defendant Star Productions Company (Star Productions) alleging eight Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, and proposing total penalties of \$19,400. (A copy of the citation identified as VOSH inspection number 304535842 has been attached to the Bill of Complaint); and

WHEREAS, co-defendant Israel Calixto-Aguilar filed, within 15 working days from the date of the receipt of the citation, a written notice contesting all violations and proposed penalties, as provided for in *Virginia Code* § 40.1-49.4; and

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of Star Productions, and avoid the time and expense of court proceedings;

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

1. that subject to the conditions described below, the violations and proposed penalties will be amended as follows:
 - a. *Serious citation 1, Item 1* and the proposed penalty of \$1,500 are affirmed as issued.

- b. *Serious citation 1, grouped Item 2a & 2b* and the proposed penalty of \$450 is affirmed as issued.
 - c. *Serious citation 1, Item 3* and the proposed penalty of \$1,050 is affirmed as issued.
 - d. *Serious citation 1, Item 4* and the proposed penalty of \$450 is affirmed as issued.
 - e. *Serious citation 1, Item 5* and the proposed penalty of \$7,000 is affirmed as issued.
 - f. *Serious citation 1, Item 6* and the proposed penalty of \$7,000 is affirmed as issued.
 - g. *Serious citation 1, Item 7* and the proposed penalty of \$1,500 is affirmed as issued.
 - h. *Serious citation 1, grouped Item 8a,8b, & 8c* and the proposed penalty of \$450 is affirmed as issued.
2. that Israel Calixto-Aguilar and Margarito Sanchez shall pay the initial sum of two thousand four hundred and eighty dollars (\$2,480.00) to the Commonwealth as follows:
- a. the co-defendant's shall jointly remit \$280 to the Commonwealth on or before the close of business November 1, 2002. Payment shall be made by check or money order, and shall be payable to the "Commonwealth of Virginia," with VOSH Inspection No. 304535842 noted on this and all subsequent payments.
 - b. the co-defendants shall jointly pay eleven (11) subsequent monthly payments of \$200, on the first day of December 2002 and each month thereafter; the final payment is due on October 1, 2003.
3. that the remaining amount of the penalty (\$16,920.00), which has not yet become due and payable to the Commonwealth, shall be forgiven, PROVIDED, FIRST, that from November 1, 2002, to November 1, 2005, neither Star Productions nor any other co-defendant engages themselves as a subcontractor offering employment in the construction industry,
4. AND SECOND, provided that, between November 1, 2002 and October 31, 2005, no additional violations are issued to any of the co-defendants arising out of either the Virginia statute or the sections of the VOSH Standards for the Construction Industry which formed the basis for the citation items affirmed by this Order; should any of the co-defendants violate any of the standards which form the bases for the violations set forth, the co-defendants shall jointly pay the remaining \$16,920.00, 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 it has violated any sections which formed the basis for the violation items addressed in this Order;

5. that Star Productions will post a copy of this Agreed Order at each of its work sites in Virginia (if any exist), for a period of 30 days, in conspicuous locations where notices to its employees are generally posted;

6. that the responsibilities and duties of each of the co-defendants under this Agreed Order over and above their responsibilities and duties under applicable law and regulation, shall cease on **November 1, 2005** so long as all penalty amounts due the Commonwealth have been paid in full. In the event penalty payments are owed or are being paid to the Commonwealth on the above date, the responsibilities and duties of each of the co-defendants under this Agreed Order shall continue until all such amounts have been paid in full and no further penalty amounts are due.

7. that Star Productions certifies that each of the affirmed violations referenced above in this Order have been corrected and abated;

8. that failure by any of the co-defendants to comply with the above terms, particularly the terms of paragraphs 2 through 5 above, shall constitute a breach of this Agreed Order; **upon the occurrence of any such breach, the original penalties and violations for this citation will be affirmed and become a final order of the Commissioner;** and any unpaid amount shall become due and payable 15 days following the breach;

9. that all penalty payments referred to in paragraphs 2 above are in addition to, and separate from, any penalties which may be assessed for any subsequent repeat violations which trigger the payments addressed above;

10. that Star Productions and its co-defendants withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;

11. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of Virginia Code § 40.1-51.3:2; and this Order will not be construed as an admission of liability by any of the co-defendants of civil liability for any violation alleged by the Commissioner;

12. 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 all parties.

Entered this 4th day of October, 2002.

James Chamblin
Judge

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Dennis J. Hanrahan
Plaintiff's Counsel

Dennis J. Hanrahan
Assistant Commonwealth's Attorney
Loudoun County
20 E. Market Street
Leesburg, Virginia 22075
703/ 777-0242, Fax 777-0160

Seen and agreed:

STAR PRODUCTIONS COMPANY

Israel Calixto-Aguilar
Mr. Israel Calixto-Aguilar, Partner
Star Productions Company
3900 Mt. Vernon Avenue, No. C-11
Alexandria, Virginia 22305

Margarito Sanchez
Margarito Sanchez, Partner
Star Productions Company
3900 Mt. Vernon Avenue, No. C-11
Alexandria, Virginia 22305

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF HARRISONBURG

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. CH0219103-00
)	
GARY W. STATON)	
Sole proprietor of Staton’s Home Improvement)	
)	
Defendant.)	

DECREE PRO CONFESSO

This cause came to be heard upon Commissioner C. Ray Davenport’s Motion for Decree Pro Confesso against Gary W. Staton, sole proprietor of Staton’s Home Improvement, declaring that \$12,750.00 in proposed civil penalties arising from contested Virginia Occupational Safety and Health (VOSH) citations, identified by VOSH Inspection Number 303098883 and as attached to the Commissioner’s Bill of Complaint, be upheld; and declaring Defendant personally liable for the \$12,750.00 in civil penalties pursuant to *Va. Code* § 13.1-622, since Defendant held himself out as a sole proprietor of his company Staton’s Home Improvement.

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 his behalf, it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff be awarded judgment by default in this cause against the Defendant, affirming that Gary W. Staton be held personally liable for payment to the Commonwealth of Virginia of \$12,750.00 in civil penalties, arising from contested Virginia Occupational Safety and Health (VOSH) citations as set out in Inspection No. 303098883, Citations 1 and 2. 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 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: John J. McGarth, Jr.

ENTER: Nov. 2, 2002

I ASK FOR THIS:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

By: Marsha L. Garst
Counsel

The Hon. Marsha L. Garst
Commonwealth's Attorney
City of Harrisonburg
53 Court Square, Ste. 210
Harrisonburg, Virginia 22801
540/ 564-3350, Fax 433-9161

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

C. RAY DAVENPORT , Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. CH02-929
)	
STEEL PERFORMANCE, 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 affirmed as written, with an assessed penalty of \$1,000.00;
 - b) Serious Citation 1, Item 2 is affirmed as written, with an assessed penalty of \$112.50.
2. That the Defendant shall pay the total penalty of \$1112.50 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 301807509 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 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 not 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; 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.

Entered this 12th day of June, 2003.

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

Frederick G. Rockwell, III
Frederick G. Rockwell, III, Judge

WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry

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

Counsel for Commissioner Davenport

SEEN AND AGREED:

STEEL PERFORMANCE, INC.

R. Charles Johnson
R. Charles Johnson
Vice President and General Manager
Steel Performance, Inc.
6342 C Burnt Poplar Court
Greensboro, North Carolina 27409
Telephone: (336) 299-7205

Corporate Representative for Steel Performance, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF SPOTSYLVANIA

C. RAY DAVENPORT,)
Commissioner of Labor and Industry,)
)
Plaintiff,)
v.) Chancery No. CH03-420
)
SUBURBAN PLUMBING AND HEATING,)
INC.)
)
Defendant.)

AGREED ORDER

WHEREAS, on or about April 23, 1999, the Commissioner issued a citation to the defendant Suburban Plumbing and Heating, Inc. (Suburban Plumbing) alleging one Serious violation of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, and proposing a penalty of \$1,500.00. (A copy of the citation identified as VOSH inspection number 301809430 is attached); and

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

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of Suburban Plumbing, and avoid the time and expense of court proceedings;

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

1. that subject to the conditions described below, the grouped violation and proposed penalty will be affirmed as originally issued:

Serious citation 1, Item 1a, 1b, 1c, 1d, 1e, and 1f is affirmed as grouped and Suburban Plumbing owes \$600.00 in lieu of the proposed penalty of \$1,500.00.

This amendment will be made, provided Suburban Plumbing complies with requirements listed in paragraphs 2 through 5 below;

2. that Suburban Plumbing shall pay \$600.00 to the Commissioner upon execution of this Agreed Order; due within fifteen days of receipt of this Order, and made by check or money order, payable to the Commonwealth of Virginia, with the VOSH inspection number 301809430 noted on the payment;
3. that Suburban Plumbing will post a copy of this Agreed Order at each of its work sites in Virginia, for a period of 30 days, in conspicuous locations where notices to its employees are generally posted, in compliance with the *VOSH Administrative Regulations Manual* § 16 VAC 25-60-40(1);
4. that Suburban Plumbing certifies that the affirmed violation referenced above in this Order has been corrected and abated;
5. that Suburban Plumbing's failure to comply with the above terms, particularly the terms of paragraphs 2 through 4 above, shall constitute a breach of this Agreed Order; **upon the occurrence of any such breach, the original penalty for this citation will be affirmed and become a final order of the Commissioner**; and any unpaid amount shall become due and payable 15 days following the breach;
6. that Suburban Plumbing withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;
7. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of *Virginia Code* § 40.1-51.3:2; and this Order will not be construed as an admission of liability by Suburban Plumbing of civil liability for any violation alleged by the Commissioner;
8. 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.

Entered this 11th day of June, 2003.

William H. Ledbetter, Jr.
Judge

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Alfred B. Albiston
Plaintiff's Counsel

Alfred B. Albiston
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804/786-6760, Fax 786-4318
VSB # 29851

Seen and agreed:

SUBURBAN PLUMBING AND HEATING, INC.

John R. Butterfield, Jr.
Company President

John R. Butterfield, Jr., President
Suburban Plumbing and Heating, Inc.
22244 Colton Point Road
P. O. Box 77
Avenue, Maryland 20609-0077
301-769-2010, Fax 769-2013

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF HARRISONBURG

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. CH02-18882
)	
TYSON FOODS, INC.)	
)	
Defendant.)	

**SUBSTITUTION OF PLAINTIFF
AND AGREED FINAL ORDER**

WHEREAS, on or about February 15, 2000, former Commissioner Jeffrey D. Brown issued a citation to the defendant Tyson Foods, Inc. (Tyson Foods) alleging two Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry, and proposing a combined civil penalty of \$7,500.00. (A copy of the citation identified as VOSH inspection number 301826855 is attached); and

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

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of Tyson Foods, and avoid the time and expense of court proceedings;

WHEREAS, Virginia Governor Mark Warner subsequently appointed C. Ray Davenport to succeed Jeffrey D. Brown as Commissioner of Labor and Industry, effective March 4, 2002;

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

1. that current Commissioner C. Ray Davenport, under *Rule 2:16 of the Rules of the Supreme Court of Virginia*, be substituted as party plaintiff in this action as successor in interest to Jeffrey D. Brown;

2. subject to the conditions described below, the violations and proposed penalties will be amended as follows:
 - a. Citation 1, item 1, as attached to the Bill of Complaint, citing *VOSH Standard* § 1910.147(c)(7)(iii)(B) is vacated, along with the proposed civil penalty of \$2,500.00;
 - b. Citation 1, item 2, as attached to the Bill of Complaint, citing *VOSH Standard* § 1910.147(f)(3)(ii)(D) is affirmed as a Serious violation, and Tyson Foods owes \$4,000.00 in lieu of the proposed penalty of \$5,000.00;
3. Tyson Foods shall pay the civil penalty within fifteen (15) days of the entry of this order. Payment shall be made by check or money order, payable to the Treasurer of Virginia;
4. Pursuant to the *Virginia Administrative Code* § 16 VAC 25-60-40(1), Tyson Foods will post a copy of this Agreed Order at each of its work sites in Virginia, for a period of 10 days, in conspicuous locations where notices to its employees are generally posted;
5. Tyson Foods certifies that the affirmed violation referenced above in this Order has been corrected and abated, **If not already provided**, Tyson Foods agrees to provide to the Commissioner within thirty (30) days of the effective date of this Order documentation verifying abatement of the violations affirmed above. The documentation shall comply with the *VOSH Administrative Regulations Manual* § 16 VAC 25-60-307.E.2, providing 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:

Clarence B. Brooks, III, VOSH Compliance Manager
Virginia Department of Labor and Industry, Valley Regional Office
201 Lee Highway
Verona, Virginia 24482
Phone 540/ 248-9280, Fax 248-9284
6. Tyson Foods withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;

7. this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of *Virginia Code* § 40.1-51.3:2; and this Order will not be construed as an admission of liability by Tyson Foods of civil liability for any violation alleged by the Commissioner;

8. and, 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, and to the Department of Labor and Industry, attn: Alfred B. Albiston, Office of Legal Support, 13 South Thirteenth Street, Richmond, Virginia 23219-4101.

Entered this 17th day of *April*, 2003.

James V. Lane
Judge James V. Lane

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Marsha L. Garst
The Hon. Marsha L. Garst
Commonwealth's Attorney
County of Rockingham
53 Court Square, Suite 210
Harrisonburg, Virginia 22801
540-564-3350, Fax 433-9161

Seen and agreed:

TYSON FOODS, INC.

William K. Principe
William K. Principe, Esquire
Constangy, Brooks, & Smith, LLC
Ste. 2400, 230 Peachtree Street, NW
Atlanta, Georgia 30303-1557
404-525-8622, Fax 525-6955

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

C. RAY DAVENPORT,)
Commissioner of Labor and Industry,)
)
Plaintiff,)
)
v.) Chancery No. HS-743-1
)
W. R. KELSO CO, INC. OF VIRGINIA)
)
Defendant.)

FINAL ORDER

This matter came before the Court for trial on December 20, 2002, based upon W. R. Kelso Co. Inc. of Virginia's (W. R. Kelso's) contest of a Virginia Occupational Safety and Health (VOSH) citation and proposed penalty issued to it by the Commissioner of Labor and Industry (Commissioner Davenport). After hearing all of the evidence presented by both parties, the Court ruled as follows:

1. Commissioner Davenport proved by a preponderance of the evidence, with regard to the single violation, that the cited regulation applied, that there was failure to comply with the regulation, that an employee was exposed to the cited hazardous condition, that W. R. Kelso knew, or should have known with reasonable diligence, that the condition existed, and that the violation was properly classified as Serious.
2. With reference to the affirmative defense of intentional employee misconduct, W. R. Kelso did not prove that its work rule regarding fall protection was effectively enforced, in that its Foreman Rodd Hoffman did not immediately address or correct the cited missing fall protection, after having had a reasonable opportunity to observe it.
3. Citation 1, item 1, as attached to the Bill of Complaint, citing VOSH Standard § 1926.501(b)(10) is affirmed as a Serious violation, and a civil penalty of \$625.00 is assessed for the violation.

It is ORDERED, ADJUDGED, and DECREED that judgment be and is hereby entered in favor of the Plaintiff, C. Ray Davenport, Commissioner of Labor & Industry in the amount of \$625.00. 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.

Entered this 17th day of April, 2003.

Walter W. Stout, III
The Honorable Walter W. Stout, III
Circuit Court Judge

WE ASK FOR THIS:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Alfred B. Albiston
Alfred B. Albiston (VSB # 29851)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
(804)786-4289/ 786-8418 Fax

SEEN AND OBJECTED TO:

W. R. KELSO CO, INC. OF VIRGINIA

Robert W. Partin
Robert W. Partin (VSB # 41074)
Defendant's Legal Counsel
Locke & Partin, PLC
P. O. Box 11708
Richmond, Virginia 23230
(804) 285-6253/ Fax 545-9402

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

JEFFREY D. BROWN, Commissioner of)
 Labor and Industry,)
)
 Plaintiff,)
 v.)
 WARD AND STANCIL, INC.)
)
 Defendant.)

Chancery Number: CH00-1185

AGREED ORDER

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

1. Serious citation 1, item I and its penalty of \$600 are affirmed.
2. Willful *citation 2, item 1* is reduced to a Serious citation with a penalty reduction from \$6,000 to \$600;
3. Willful *citation 2, item 2* is reduced to a Serious citation with a penalty reduction from \$10,000 to \$1000;
4. Ward and Stancil, Inc. shall pay \$2200 to the Commonwealth of Virginia.
5. That in accordance with the requirements of F, 40(1) of the Virginia Occupational Safety and Health Administrative Regulations Manual, the Defendant will post a copy of this Order for ten (10) working days, beginning from the date of entry of this Order, at the company's workplace if any exists, in conspicuous locations where notices to the employees are generally posted;
6. Ward and Stancil, Inc. agrees to provide to the Commissioner 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: Main Street Station, 1500 East Main Street, Suite 222, Richmond, Virginia 23219.

7. That as consideration for modifying the penalties above, Ward and Stancil agrees to withdraw the original notice of contest filed with respect to the above-styled case, waives its right to contest the terms contained in this Order, and certifies that all violations alleged in the citations have been abated; .

8. That this Order is meant to compromise and settle the above contested claims, and 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; that this Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia; furthermore, that this Order will not be construed as an admission of liability by the Employer of civil liability for any violation alleged by the Commissioner;

9. That the Clerk will strike this matter from the docket of this Court, place it among the ended chancery cases, and will send an attested copy of this Order to both parties.

Entered this 26th day of March, 2002.

Catherine Hammond
Judge

We ask for this:

JEFFREY D. BROWN,
Commissioner of Labor and Industry

Carol L. Alston
Carol L. Alston, (VSB# 43415)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia-23219
Phone: 804/786-0682
Facsimile: 804/ 786-8418

March 22, 2002
Date

Seen and Agreed:
WARD AND STANCIL, INC.

Dana L. Rust
Dana L. Rust (VSB# 28408)
McGuireWoods LLP

March 22, 2002
Date

One James Center
901 East Cary Street
Richmond, Virginia 23219
Phone: 804/775-1000
Facsimile: 804/ 775-1061