

**FINAL ORDERS OF THE VIRGINIA COURTS  
IN CONTESTED CASES ARISING UNDER THE  
VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT  
2014**

Abateco Services, Inc., William P. Burge, Commissioner of Labor and Industry v.  
Civil Action No. CL12-2399 (Circuit Court of the County of Chesterfield)

American Service Center Associates, LLC, C. Ray Davenport, Commissioner of Labor and  
Industry v.  
Civil Action No. CL14001543-00 (Circuit Court of the County of Arlington)

D.A. Foster Company, Courtney M. Malveaux, Commissioner of Labor and Industry v.  
Civil Action No. CL13-2532 (Circuit Court of the County of Arlington)

Ev-Air-Tight, Shoemaker, Incorporate, C. Ray Davenport, Commissioner of Labor and Industry  
v.  
Civil Action No. CL13-3052 (Circuit Court of the County of Arlington)

Ev-Air-Tight, Shoemaker, Incorporate, C. Ray Davenport, Commissioner of Labor and Industry  
v.  
Civil Action No. CL13-5020 (Circuit Court of the City of Alexandria)

Hubbell Lighting, Inc., C. Ray Davenport, Commissioner of Labor and Industry v.  
Case No. CL-08003821-00 (Circuit Court for the County of Montgomery)

J. Sanders Construction Company, C. Ray Davenport, Commissioner of Labor and Industry v.  
Civil Action No. 13-107 (Circuit Court for the County of King William)

KBS, Inc., C. Ray Davenport, Commissioner of Labor and Industry v.  
Civil Action No. CL13-9314 (Circuit Court for the City of Norfolk)

KBS, Inc., C. Ray Davenport, Commissioner of Labor and Industry v.  
Civil Action No. CL13-9315 (Circuit Court for the City of Norfolk)

KBS, Inc., C. Ray Davenport, Commissioner of Labor and Industry v.  
Civil Action No. CL13-9316 (Circuit Court for the City of Norfolk)

MEB General Contractors, Inc., C. Ray Davenport, Commissioner of Labor and Industry v.  
Case No. CL13000-66-00 (Circuit Court for the County of Richmond)

MSH Homes, Inc., C. Ray Davenport, Commissioner of Labor and Industry v.  
Civil Action No. CL13000737-00 (Circuit Court for the City of Chesapeake)

Meeks Disposal Company, C. Ray Davenport, Commissioner of Labor and Industry v.

Civil Action No. CL10001317-00 (Circuit Court for the City of Portsmouth)

Service Management Systems, Inc., C. Ray Davenport, Commissioner of Labor and Industry v.  
Civil Action No. CL13-3560 (Circuit Court for the County of Chesterfield)

Spirit's Restaurant, C. Ray Davenport, Commissioner of Labor and Industry v.  
Case No. CL14-469 (Circuit Court for the City of Fredericksburg)

Southwest Airlines Co., C. Ray Davenport, Commissioner of Labor and Industry v.  
Civil Action No. CL00088128-00 (Circuit Court for the County of Loudoun)

Titan Contracting and Leasing Co., Inc., C. Ray Davenport, Commissioner of Labor and Industry  
v.  
Civil Action No. CL10-1591 (Circuit Court for the County of Henrico)

Titan Wheel Corporation of Virginia, C. Ray Davenport, Commissioner of Labor and Industry v.  
Case No. CL 14000561-00, (Circuit Court for the County of Smyth)

Titan Wheel Corporation of Virginia, C. Ray Davenport, Commissioner of Labor and Industry v.  
Case No. CL 14000562-00, (Circuit Court for the County of Smyth)

**VIRGINIA:**

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

|  |   |                                   |
|--|---|-----------------------------------|
| <b>WILLIAM P. BURGE,</b>                   | ) |                                   |
| <b>Commissioner of Labor and Industry,</b> | ) |                                   |
| <b><i>Plaintiff,</i></b>                   | ) |                                   |
| <b>v.</b>                                  | ) | <b>Civil Action No. CL12-2399</b> |
|  | ) |                                   |
| <b>ABATECO SERVICES, INC.</b>              | ) |                                   |
| <b><i>Defendant,</i></b>                   | ) |                                   |
|  | ) |                                   |

**FINAL ORDER**

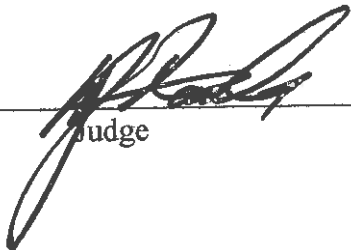
This matter came before the Court for trial on January 24, 2014, under *Va. Code* 40.1-49.4.E, and based upon Abateco Services Inc.'s (Abateco) contest of a Virginia Occupational Safety and Health (VOSH) citation and proposed penalties issued to it by the Commissioner of Labor and Industry (Commissioner Burge). After hearing the evidence presented by both parties, the Court finds that Commissioner Burge proved by a preponderance of the evidence with regard to the floor opening fall protection violation, §1926.501(b)(4)(i), the wall opening fall protection violation §1926.501(b)(14), the floor hole cover securing violation §1926.502(i)(3), the floor hole cover marking violation §1926.502(i)(4), and the power cord securing violation §1926.416(e)(2) that the cited standards applied, that the standards were violated, that the employer knew of the violations, and that employees were exposed to the hazard. With respect to §1926.95(a) (protection of employees from foot injuries) and §1926.102(a)(1) (protection of employees from eye and face injuries) the Court finds that Commissioner Burge did not prove by a preponderance of the evidence that the standard was violated.

It is ORDERED, ADJUDGED, and DECREED that citation 1, items 1 and 2 as attached to the plaintiff's Complaint, citing *VOSH Standards for the Construction Industry* §1926.95(a)

and §1926.102(a)(1) are vacated. Citation 1, item 3a - §1926.501(b)(4)(i) and citation 1, item 3b - §1926.501(b)(14) with a penalty of \$1,225.00 for the grouped citation; citation 1, item 4a - §1926.502(i)(3) and citation 1, item 4b - §1926.502(i)(4) with a penalty of \$735.00 for the grouped citation; and citation 2, item 1 - §1926.416(e)(2) with no penalty are affirmed. Judgment is hereby entered in favor of the Plaintiff, William P. Burge, Commissioner of Labor & Industry, in the amount of \$1,960.00.

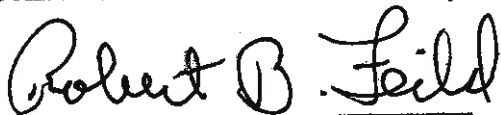
This matter shall be, and hereby is, dismissed with full prejudice and stricken from the docket of this Court. The Clerk shall send an attested copy of this Order to all counsel of record.

Entered this 4th day of March, 2014.

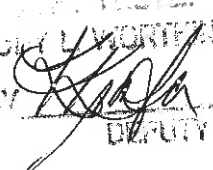
  
\_\_\_\_\_  
Judge

SEEN:

**WILLIAM P. BURGE,**  
Commissioner of Labor and Industry



Robert B. Feild (VSB # 23864)  
Special Assistant Commonwealth's Attorney  
County of Chesterfield  
600 East Main Street, Suite 207  
Richmond, Virginia 23219  
804-786-4777/ Fax 786-8418

TESTED:  
JOHN L. WORTINGTON, CLERK  
BY   
DEPUTY CLERK

**SEEN AND OBJECTED TO** as to the upholding of citation 1, items 3a, 3b, 4a and 4b for the reasons set forth in Court.

**ABATECO SERVICES INC.**

A handwritten signature in cursive script that reads "R. Leonard Vance". The signature is written in black ink and is positioned above a horizontal line.

R. Leonard Vance, Attorney at Law

VS#15305

P. O. Box 1591

Richmond, VA 23113

Phone: 804.690-0779

rlvance22@verizon.net

Counsel for Abateco Services Inc.

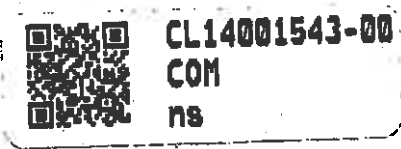
VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON

JUL 25 14 PM 2:25

C. RAY DAVENPORT, )  
 Commissioner of Labor and Industry, )  
 )  
*Plaintiff,* )  
 v. )  
 )  
 AMERICAN SERVICE CENTER )  
 ASSOCIATES, LLC, and its successors )  
 )  
*Defendant.* )

Civil Action No. CL14001543-00



ORDER

This matter came before the Court on Commissioner Davenport's Motion for Nonsuit as a matter of right pursuant to *Va. Code* § 8.01-380, and IT APPEARING that on Jul 8, 2014, the Commissioner filed a complaint against American Service Center Associates, LLC, that no nonsuit has been taken to this cause, and that the defendant has not filed a cross-bill, it is therefore ADJUDGED, ORDERED AND DECREED that the Commissioner's motion is GRANTED and that this matter be and hereby is nonsuited without prejudice as a matter of right pursuant to *Va. Code* § 8.01-380.

It is FURTHERMORE ORDERED that the Clerk will strike this matter from the docket of this Court and place it among the ended civil cases.

Entered this \_\_\_\_\_ day of July, 2014.

*William T. Newman, Jr.*  
 Judge


8/7/2014  
5:03:54 PM

WILLIAM T. NEWMAN, JR.  
 JUDGE  
 17390

I ASK FOR THIS:

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

By:

  
Alfred B. Albiston (VSB #29851)  
Special Assistant Commonwealth's Attorney  
Arlington County  
c/o 600 East Main Street, Suite 207  
Richmond, Virginia 23219

804-786-6760 *phone*  
804-786-8418 *fax*  
[albiston.alfred@dol.gov](mailto:albiston.alfred@dol.gov)

  
A COURT OF THE COMMONWEALTH OF VIRGINIA  
CIRCUIT COURT OF ARLINGTON COUNTY  
CLERK OF THE COURT  
BY: 

**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON**

|                                     |   |                            |
|-------------------------------------|---|----------------------------|
| <b>COURTNEY M. MALVEAUX,</b>        | ) |                            |
| Commissioner of Labor and Industry, | ) |                            |
|                                     | ) |                            |
| <i>Plaintiff,</i>                   | ) |                            |
| v.                                  | ) | Civil Action No. CL13-2532 |
|                                     | ) |                            |
| <b>D. A. FOSTER COMPANY,</b>        | ) |                            |
|                                     | ) |                            |
| <i>Defendant.</i>                   | ) |                            |

**DEFAULT JUDGEMENT**

**AND ORDER SUBSTITUTING PARTY PLAINTIFF**

This cause came to be heard upon Commissioner Courtney M. Malveaux's ("Commissioner's") Motion for Default Judgment against the Defendant, D.A. Foster Company ("D.A. Foster"), declaring that \$1,925.00 in proposed civil penalties arising from contested Virginia Occupational Safety and Health (VOSH) citations, identified by VOSH Inspection Number 316614387 and as attached to the Commissioner's Complaint, be upheld.

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

ADJUDGED, ORDERED, and DECREED that the Plaintiff Commissioner be awarded judgment by default in this cause against the Defendant, affirming that D.A. Foster Company be held liable for payment to the Commonwealth of Virginia of \$1,925.00 in civil penalties, arising from the contested Virginia Occupational Safety and Health (VOSH) citations as set out in



VOSH Inspection Number 316614387.

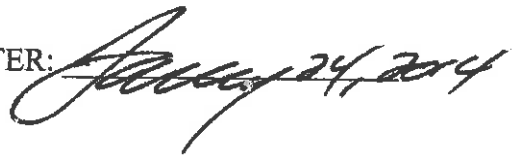
It is further ORDERED under *Rule 2:16* of the *Rules of the Supreme Court of Virginia*, that William P. Burge, Commissioner of Labor and Industry, by counsel, be substituted as party plaintiff in this action as successor in interest to former Commissioner Courtney M. Malveaux.

Finally, it is 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, William J. McGolrick, at 47832 Scotsborough Square, Sterling, Virginia 20165, and to William P. Burge, Commissioner of Labor and Industry, at 600 East Main Street, Suite 207, Richmond, Virginia 23219. Pursuant to *Rule 1:13*, endorsement by defense counsel shall be dispensed with.

JUDGE:



ENTER:



I ASK FOR THIS:

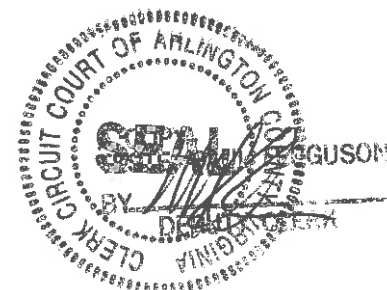
**COURTNEY M. MALVEAUX,**  
Commissioner of Labor and Industry

By:



Alfred B. Albiston (VSB #29851)  
Special Assistant Commonwealth's Attorney  
Arlington County  
600 East Main Street, Suite 207  
Richmond, Virginia 23219

804-786-6760 phone  
804-786-8418 fax  
[albiston.alfred@dol.gov](mailto:albiston.alfred@dol.gov)





JUL 30 '14 PM 2:29

**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON**

|                                     |   |                            |
|-------------------------------------|---|----------------------------|
| <b>C. RAY DAVENPORT,</b>            | ) |                            |
| Commissioner of Labor and Industry, | ) |                            |
| <i>Plaintiff,</i>                   | ) |                            |
| v.                                  | ) | Civil Action No. CL13-3052 |
|                                     | ) |                            |
| <b>EV-AIR-TIGHT, SHOEMAKER,</b>     | ) |                            |
| <b>INCORPORATED,</b>                | ) |                            |
| <i>Defendant.</i>                   | ) |                            |

**AGREED ORDER**

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

1. That the citation attached to the Complaint is hereby amended as follows:
  - a) Serious Citation 1, Items 1a and 1b are grouped with Willful Citation 2, Item 1 and the grouped violation is affirmed with a penalty of \$17,000.00.
  - b) Serious Citation 1, Items 2a and 2b are affirmed with a reduced penalty of \$525.00.
  - c) Willful Citation 2, Item 2 is vacated.
  - d) Willful Citation 2, Item 3 is reclassified a serious violation with a reduced penalty of \$3,500.00.
  
2. That the Defendant shall pay the total penalty of \$21,525.00 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 316556208 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, except as otherwise provided in paragraphs 7 through 10 herein;
5. That the Defendant shall post a copy of this Order for ten consecutive days, beginning from the date of entry of this Order, at its workplaces in Virginia in a conspicuous location where notices to its employees are generally posted;
6. That the Commissioner will reduce the classification of the willful citation affirmed in this order to a serious citation if the Defendant has not violated any of the sections which formed the basis for the citations affirmed by this Order within three years of the entry of this order or entry of an order in *C. Ray Davenport v. Ev-Air-Tight Shoemaker, Inc.*, Civil Action No. CL12-2770, City of Alexandria Circuit Court, whichever order is entered first.
7. That the Defendant will send its safety officer to an OSHA 30 hour Construction Industry Training Program that includes as a component of the training information on crystalline silica hazards. This training shall be taken any time between July 16, 2014 and ninety (90) days after entry of the final order. Upon completion of the training, documentation of the training shall be sent to:  
  
Robert Feild  
Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, Virginia 23219
8. That the Defendant will provide evidence of respirator fit testing and medical examinations for all employees required to use respirators who were hired after the testing conducted as documented in the Defendant's January 4, 2013 submission to the Commissioner. Documentation of the fit testing and medical examinations will be sent to the address in

Paragraph 7 by sixty (60) days after entry of the final order in this case.

9. That the Defendant will submit a written respiratory protection program that meets the requirements of §1910.134(c) as made applicable to the construction industry by § 1926.103 to the address in Paragraph 7 by sixty (60) days after entry of the final order in this case.

10. That the Defendant will submit a written program addressing the control of employee exposures to respirable dust containing crystalline silica to meet the requirements of §1926.55(a) to the address in Paragraph 7 by sixty (60) days after entry of the final order in this case.

Elements to be addressed in the program shall include but not be limited to: engineering and work practice controls, such as limiting duration of employee's time of exposure, use of wet methods, and use of ventilation; respiratory protection, such as proper respirator selection and use, medical evaluations and fit testing; and exposure monitoring. The Defendant further agrees to implement the necessary changes to its program if the Proposed Rule on Respirable Crystalline Silica, § 1926.1053 published in the Federal Register / Vol. 78, No. 177 / September 12, 2013, becomes final in Virginia within three years of the entry of the final order in this case.

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

12. 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.

13. 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.

14. Except for these proceedings, and matters arising out of these proceedings, and any other subsequent VOSH proceedings between the parties, nothing in this agreement nor any foregoing

statements, findings or actions taken by the Defendant shall be deemed an admission by the Defendant of the allegations of the citation, said allegations having been specifically denied. Furthermore, the parties agree that the citation, as amended, does not make any charges either, expressed or implied, that the conditions set forth were the cause or proximate cause of any accident or damages. The agreements, statements, findings and actions taken herein are made for the purpose of compromising and settling this matter economically and amicably, and they shall not be used for any other purpose whatsoever, except as herein stated.

15. 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 \_\_\_\_ day of \_\_\_\_\_ 2014.

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

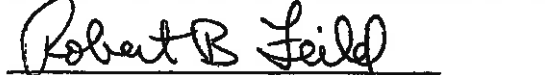
  
Judge

8/7/2014  
5:04:32 PM

WILLIAM T. NEWMAN, JR.  
JUDGE  
17390

WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry

  
Robert B. Feild, Va. Bar No. 23864  
Special Assistant Commonwealth's Attorney  
County of Arlington  
600 East Main Street, Suite 207  
Richmond, Virginia 23219  
Telephone: (804) 786-4777  
Facsimile: (804) 786-8418

Counsel for Commissioner Davenport

SEEN AND AGREED:

EV-AIR-TIGHT, SHOEMAKER, INC.

  
Counsel for Defendant

Geoffrey S. Gavett, VSB No. 33393  
Gavett, Datt & Barish, P.C.  
15850 Crabbs Branch Way, Suite 330  
Rockville, Maryland 20855  
Tel: 301-948-1177  
Fax: 301-948-4334

Counsel for Ev-Air-Tight, Shoemaker, Inc.

VIRGINIA:

CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

C. RAY DAVENPORT  
Commissioner of Labor and Industry

Plaintiff,

v.

EV-AIR-TIGHT, SHOEMAKER, INC.

Defendant.

Case No. CL13-30552

[VOSH Inspection No. 316556208]

CERTIFICATION

Robert Shoemaker, President of Ev-Air-Tight Shoemaker, Inc. ("Employer"), pursuant to an Agreed Order issued by the Circuit Court for the County of Arlington, hereby certifies as follows in the above-captioned matter.

1. Employer has withdrawn its original notice of contest in this matter.
2. The violations affirmed by the Court Order have been abated because the project in question has been completed and the violations alleged on the subject project no longer exist.
3. With respect to Citation 1-2a, Employer acquired large movable exit signs which it has committed to using under similar conditions in the future. Photographic evidence of abatement using these exemplar signs were provided to the Commission on January 3, 2013.
4. With respect to remaining citations, Employer shall provide certification of compliance with Paragraphs 7 through 10 of the Agreed Order within 60 days of entry of

the Agreed Order.

5. A copy of the Agreed Order shall be posted for ten consecutive days at Employer's workplaces in the Commonwealth of Virginia in a conspicuous location where notices to employees are generally posted.

8/19/14  
Date

Robert B. Shoemaker  
Robert Shoemaker, President  
Ev-Air-Tight Shoemaker, Inc.



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

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

v. )

EV-AIR-TIGHT, SHOEMAKER, INC. )  
*Defendant.* )

Civil Action No. CL13-5020

AGREED ORDER

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

1. That the citation attached to the Complaint is hereby amended as follows:
  - a) Serious Citation 1, Items 1a, 1b and 1c are affirmed with a reduced penalty of \$525.00 for the grouped violation.
  - b) Serious Citation 1, Item 2 is affirmed with a reduced penalty of \$1,750.00
  - c) Serious Citation 1, Item 3 is vacated.
  - d) Other than Serious Citation 2, Item 1 is affirmed with a reduced penalty of \$250.00.
  - e) Other than Serious Citation 2, Item 2 is affirmed with no penalty.
  - f) Other than Serious Citation 2, Item 3 is affirmed with a reduced penalty of \$250.00.
2. That the Defendant shall pay the total penalty of \$2,775.00 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 315953547 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 ten consecutive days, beginning from the date of entry of this Order, at its workplaces in Virginia in a conspicuous location where notices to its employees are generally posted;
6. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;
7. That the Commissioner may use this Order in future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia, or any other authority.
8. That, under Virginia Code § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party.
9. Except for these proceedings, and matters arising out of these proceedings, and any other subsequent VOSH proceedings between the parties, nothing in this agreement nor any foregoing statements, findings or actions taken by the Defendant shall be deemed an admission by the Defendant of the allegations of the citation, said allegations having been specifically denied. Furthermore, the parties agree that the citation, as amended, does not make any charges either, expressed or implied, that the conditions set forth were the cause or proximate cause of any accident or damages. The agreements, statements, findings and actions taken herein are made for the purpose of compromising and settling this matter economically and amicably, and they shall not be used for any other purpose whatsoever, except as herein stated.
10. That each party shall bear its own costs in this matter.

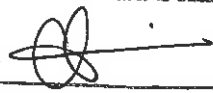
It is ORDERED, ADJUDGED, and DECREED that this matter be, and hereby is,  
dismissed with full prejudice and stricken from the docket of this Court.

Entered this 31<sup>st</sup> day of July 2014.

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

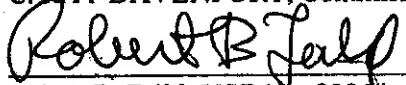
  
\_\_\_\_\_  
Judge

A Copy Teste:  
Edward Semonian, Clerk

By  \_\_\_\_\_, Deputy Clerk  
31<sup>st</sup> July 2014

WE ASK FOR THIS:


C. RAY DAVENPORT, Commissioner of Labor and Industry

  
\_\_\_\_\_  
Robert B. Feild, VSB No. 23864  
Special Assistant Commonwealth's Attorney  
City of Alexandria  
600 East Main Street, Suite 207  
Richmond, Virginia 23219  
Telephone: (804) 786-4777  
Facsimile: (804) 786-8418

Counsel for Commissioner Davenport

SEEN AND AGREED:

EV-AIR-TIGHT, SHOEMAKER, INC.

  
\_\_\_\_\_  
Counsel for Defendant

Geoffrey S. Gavett, VSB No. 33393  
Gavett, Datt & Barish, P.C.  
15850 Crabbs Branch Way, Suite 330  
Rockville, Maryland 20855  
Tel: 301-948-1177  
Fax: 301-948-4334

Counsel for Ev-Air-Tight, Shoemaker, Inc.

VIRGINIA:

CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

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

v. :

EV-AIR-TIGHT, SHOEMAKER, INC. :  
Defendant. :

Case No. CL13-5020  
[VOSH Inspection No. 315953547]

CERTIFICATION

Robert Shoemaker, President of Ev-Air-Tight Shoemaker, Inc. ("Employer"), pursuant to an Agreed Order issued by the Circuit Court for the City of Alexandria, hereby certifies as follows in the above-captioned matter.

1. Employer has withdrawn its original notice of contest in this matter.
2. The violations affirmed by the Court Order have been abated because the project in question has been completed and the violations alleged on the subject project no longer exist.
3. A copy of the Agreed Order shall be posted for ten consecutive days at Employer's workplaces in the Commonwealth of Virginia in a conspicuous location where notices to employees are generally posted.

8/19/14  
Date

Robert Shoemaker  
Robert Shoemaker, President  
Ev-Air-Tight Shoemaker, Inc.

**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE COUNTY OF MONTGOMERY**

**C. RAY DAVENPORT**  
Commissioner of Labor & Industry

Plaintiff,

v.

**HUBBELL LIGHTING, INC.,**

Defendant.

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Case No. CL-08003821-00

**AGREED ORDER**

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

1. In settlement of the matters alleged in this action, the citation attached to the Complaint is hereby amended as follows:

- a. Citation 1, Item 1, remains serious as cited, with a \$5,000.00 penalty;
- b. Citation 1, Item 2, is reduced from a serious to an other-than-serious violation; with a \$1,500.00 penalty;
- c. Citation 2, item 1, is reduced from a willful to serious violation. The \$63,000.00 penalty is reduced to \$25,000.00; and
- d. Citation 3, item 1, remains other-than serious as cited, with a \$1,000.00.

2. Hubbell Lighting, Inc., shall pay the penalty of \$32,500.00 within thirty (30) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 311116503 noted on the payment.

3. As part of the settlement of this citation, the parties agree to the following conditions:

- a. Hubbell Lighting, Inc. will provide to the Department daily inspection records

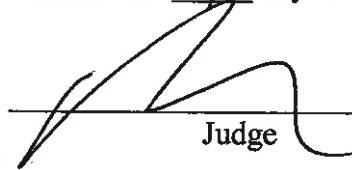
and preventative maintenance logs for each of the forklifts at its facility. These records shall include the six month period between December 1, 2013 through May 1, 2014. The records shall be sent to:

Lee Willis, Regional Safety Manager  
Virginia Department of Labor and Industry  
Brammer Village, 3013 Peters Creek Road  
Roanoke, VA 24019

- b. Hubbell Lighting, Inc. agrees to allow for one monitoring inspection of its work place during the next twelve (12) months. The inspection shall follow the guidelines as set forth in the Virginia Occupational Safety and Health (VOSH) Field Operations Manual (FOM).
4. Hubbell Lighting, Inc. certifies that the violations alleged in this agreement were abated.
5. As further consideration for the modification of the terms of the original citation, Hubbell Lighting, Inc. agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.
6. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by Hubbell Lighting, Inc. Pursuant to Va. Code §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.
7. The Clerk shall strike this matter from the docket of this Court, place it among the

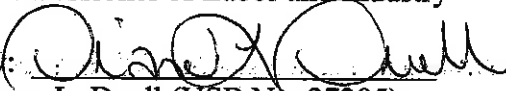
ended civil cases, and shall send an attested copy of this Order to counsel of record.

Entered this 16 day of May, 2014.

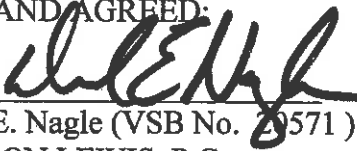
  
\_\_\_\_\_  
Judge

WE ASK FOR THIS:

C. Ray Davenport,  
Commissioner of Labor and Industry

By:   
Diane L. Duell (VSB No. 27285)  
Special Assistant Commonwealth's Attorney  
600 East Main Street, Room 207  
Richmond, Virginia 23219-2430  
804.786.4289  
804.786.8418 (fax)  
[diane.duell@doli.virginia.gov](mailto:diane.duell@doli.virginia.gov)

SEEN AND AGREED:

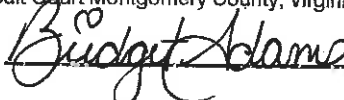
By:   
David E. Nagle (VSB No. 29571 )  
JACKSON LEWIS, P.C.  
Two James Center  
1021 East Cary Street, Suite 1200  
Richmond, Virginia 23219  
804.212.2850  
804.649.0403 (fax)  
[nagled@jacksonlewis.com](mailto:nagled@jacksonlewis.com)

Dion Y. Kohler, Esq.  
Georgia Bar No. 427715  
JACKSON LEWIS, P.C.  
1155 Peachtree Street, N.E.  
Suite 1000  
Atlanta, Georgia 30309  
404.586.1843  
404.525.1173  
[kohlerd@jacksonlewis.com](mailto:kohlerd@jacksonlewis.com)

Counsel for Hubbell Lighting, Inc.

A Copy – Teste:

ERICA W. WILLIAMS  
Circuit Court Montgomery County, Virginia

By: , Deputy Clerk

**VIRGINIA:**

**IN THE CIRCUIT COURT OF KING WILLIAM COUNTY**

|   |   |                         |
|---|---|-------------------------|
| <b>C. RAY DAVENPORT,</b>                | ) |                         |
| Commissioner of Labor and Industry,     | ) |                         |
| <i>Plaintiff,</i>                       | ) |                         |
| v.                                      | ) | Civil Action No. 13-107 |
|   | ) |                         |
| <b>J. SANDERS CONSTRUCTION COMPANY,</b> | ) |                         |
|   | ) |                         |
| <i>Defendant.</i>                       | ) |                         |

**AGREED ORDER**

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

1. That the citations attached to the Complaint are hereby vacated;
2. That the Defendant shall withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;
3. That the Defendant shall post a copy of this Order for ten consecutive days, beginning from the date of entry of this Order, at its workplaces in Virginia in a conspicuous location where notices to its employees are generally posted;
4. That the Defendant will have the owner of the company or other management official complete an asbestos supervisor initial training course (forty hour course) accredited by the Board for Asbestos, Lead and Home Inspector of the Commonwealth of Virginia, Department of Professional and Occupational Regulation within sixty (60) days of the entry of the final order. Upon completion of the training, the Defendant shall send documentation of the training to:



Robert B. Feild  
Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, Virginia 23219

5. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;
6. 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 13<sup>th</sup> day of August, 2014.

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



Judge

WE ASK FOR THIS:

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

Robert B. Feild  
Counsel for Plaintiff

Robert B. Feild  
VSB No. 23864  
Special Assistant Commonwealth's Attorney  
County of King William  
Main Street Centre  
600 East Main Street, Suite 207  
Richmond, VA. 23219  
Tel: 804-786-4777  
Fax: 804-786-8418

SEEN AND AGREED:

B. Elliot Bondurant  
Counsel for Defendant

B. Elliot Bondurant  
Hudson and Bondurant, P.C.  
P.O. Box 231  
West Point, Virginia, 23181  
Tel: 804-843-3262  
Fax: 804-843-4946

Certified to be a TRUE COPY  
of record in my custody.  
PATRICIA M. NORMAN, Clerk  
Circuit Court, King William County  
By: Sandy Walker  
Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

|                                    |   |                   |                      |
|------------------------------------|---|-------------------|----------------------|
| C. RAY DAVENPORT                   | ) |                   |                      |
| Commissioner of Labor and Industry | ) |                   |                      |
| Plaintiff,                         | ) |                   |                      |
|                                    | ) |                   |                      |
| v.                                 | ) | Civil Action Nos. | CL13-9314 315942 417 |
|                                    | ) |                   | CL13-9315            |
| KBS, INC.,                         | ) |                   | CL13-9316            |
| Defendant.                         | ) |                   |                      |

ORDER

These matters came before the Court on Commissioner Davenport's Motion for Nonsuit of each of the above three (3) cases as a matter of right pursuant to *Va. Code* § 8.01-380, and IT APPEARING that on December 17, 2013, the Commissioner filed three complaints against KBS, Inc., that no nonsuit has been taken to any of these causes, and that the defendant has not filed any cross-bill, it is therefore ADJUDGED, ORDERED AND DECREED that the Commissioner's motion is GRANTED and that these matters be and hereby are each nonsuited with prejudice as a matter of right pursuant to *Va. Code* § 8.01-380.

It is FURTHERMORE ORDERED that the Clerk will strike these matters from the docket of this Court, place them among the ended civil cases, and shall send an attested copy of this Order to both counsel of record.

Entered this \_\_\_\_ day of September, 2014.

*Mary Jane Hall*

Mary Jane Hall, Judge


Sep. 24 2014 3:12 PM

COPY TESTE:  
 GEORGE E. SCHAEFER, CLERK  
 NORFOLK CIRCUIT COURT  
 BY *Janice O'Hern*  
 Janice O'Hern, Deputy Clerk  
 Authorized to sign on behalf  
 of George E. Schaefer  
 Date: *9-25-14*

Judge

I ask for this:

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



Alfred B. Albiston (VSB No. 29851)  
Special Assistant Commonwealth's Attorney  
City of Norfolk  
c/o Department of Labor and Industry  
600 East Main Street, Ste. 200  
Richmond, Virginia 23219

804.786.6760  
804.786.8418 *fax*  
[albiston.alfred@dol.gov](mailto:albiston.alfred@dol.gov)

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

C. RAY DAVENPORT  
Commissioner of Labor and Industry  
Plaintiff,

v.

KBS, INC.,  
Defendant.

)  
)  
)  
)  
) Civil Action Nos. CL13-9314  
) CL13-9315 31649/414  
) CL13-9316  
)

**ORDER**

These matters came before the Court on Commissioner Davenport's Motion for Nonsuit of each of the above three (3) cases as a matter of right pursuant to Va. Code § 8.01-380, and IT APPEARING that on December 17, 2013, the Commissioner filed three complaints against KBS, Inc., that no nonsuit has been taken to any of these causes, and that the defendant has not filed any cross-bill, it is therefore ADJUDGED, ORDERED AND DECREED that the Commissioner's motion is GRANTED and that these matters be and hereby are each nonsuited with prejudice as a matter of right pursuant to Va. Code § 8.01-380.

It is FURTHERMORE ORDERED that the Clerk will strike these matters from the docket of this Court, place them among the ended civil cases, and shall send an attested copy of this Order to both counsel of record.

Entered this \_\_\_\_ day of September, 2014.

*Mary Jane Hall*  
Mary Jane Hall, Judge  
Sep 24 2014 3:12 PM  
\_\_\_\_\_  
Judge

COPY TESTE:  
GEORGE E. SCHAEFER, CLERK  
NORFOLK CIRCUIT COURT  
BY *Janice O'Hern*  
Janice O'Hern, Deputy Clerk  
Authorized to sign on behalf  
of George E. Schaefer  
Date: *9-25-14*

I ask for this:

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



Alfred B. Albiston (VSB No. 29851)  
Special Assistant Commonwealth's Attorney  
City of Norfolk  
c/o Department of Labor and Industry  
600 East Main Street, Ste. 200  
Richmond, Virginia 23219

804.786.6760  
804.786.8418 *fax*  
[albiston.alfred@dol.gov](mailto:albiston.alfred@dol.gov)

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

|                                    |   |                             |
|------------------------------------|---|-----------------------------|
| C. RAY DAVENPORT                   | ) |                             |
| Commissioner of Labor and Industry | ) |                             |
| <i>Plaintiff,</i>                  | ) |                             |
|                                    | ) |                             |
| v.                                 | ) | Civil Action Nos. CL13-9314 |
|                                    | ) | CL13-9315                   |
| KBS, INC.,                         | ) | CL13-9316 316 571 074       |
| <i>Defendant.</i>                  | ) |                             |

ORDER

These matters came before the Court on Commissioner Davenport's Motion for Nonsuit of each of the above three (3) cases as a matter of right pursuant to Va. Code § 8.01-380, and IT APPEARING that on December 17, 2013, the Commissioner filed three complaints against KBS, Inc., that no nonsuit has been taken to any of these causes, and that the defendant has not filed any cross-bill, it is therefore ADJUDGED, ORDERED AND DECREED that the Commissioner's motion is GRANTED and that these matters be and hereby are each nonsuited with prejudice as a matter of right pursuant to Va. Code § 8.01-380.

It is FURTHERMORE ORDERED that the Clerk will strike these matters from the docket of this Court, place them among the ended civil cases, and shall send an attested copy of this Order to both counsel of record.

Entered this \_\_\_\_ day of September, 2014.

Mary Jane Hall, Judge  
Sep 24 2014 3:12 PM  
\_\_\_\_\_  
Judge

COPY TESTE:  
GEORGE E. SCHARFER, CLERK  
NORFOLK CIRCUIT COURT  
BY *Janice O'Hern*  
Janice O'Hern, Deputy Clerk  
Authorized to sign on behalf  
of George E. Scharfer  
Date: *9-25-14*

I ask for this:

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



Alfred B. Albiston (VSB No. 29851)  
Special Assistant Commonwealth's Attorney  
City of Norfolk  
c/o Department of Labor and Industry  
600 East Main Street, Ste. 200  
Richmond, Virginia 23219

804.786.6760  
804.786.8418 *fax*  
[albiston.alfred@dol.gov](mailto:albiston.alfred@dol.gov)



VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF RICHMOND

C. RAY DAVENPORT,  
Commissioner of Labor and Industry,  
  
Plaintiff,  
  
v.  
  
MEB GENERAL CONTRACTORS, INC.  
  
Defendant.

Case No. CL130000-66-00

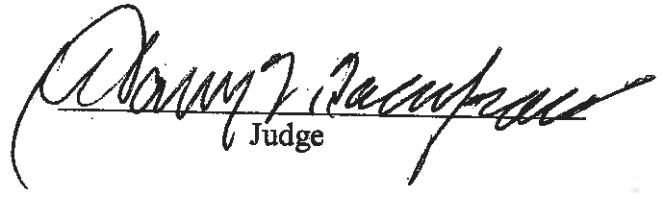
DISMISSAL ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED that the above captioned case is dismissed with prejudice from the court's docket.

The parties have settled all outstanding in this case. A separate settlement agreement has been entered into by the parties.

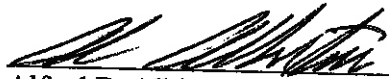
The Clerk shall strike this matter from the docket of this Court, place it among the ended civil cases, and shall send an attested copy of this Order to both counsel of record.

Entered this 20 day of October, 2014.

  
Judge

WE ASK FOR THIS:

C. RAY DAVENPORT,  
Commissioner of Labor and Industry



Alfred B. Albiston (VSB #29851)  
Special Assistant Commonwealth's Attorney  
Richmond County  
c/o Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, Virginia 23219

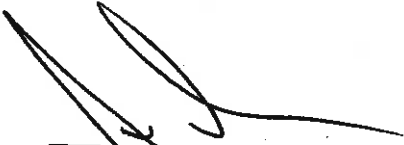
804-786-6760

804-786-8418 *fax*

albiston.alfred@dol.gov

SEEN AND AGREED:

**MEB GENERAL CONTRACTORS, INC.**



Anne G. Bibeau, Esq. (VSB #41488)  
VanDeventer Black, LLP  
101 West Main Street, Suite 500  
Norfolk, Virginia 23510

757-446-8517

757-446-8670 *fax*

ABibeau@vanblk.com

A TRUE COPY  
RICHMOND COUNTY CIRCUIT COURT  
TESTE: ROSA S. FORRESTER, CLERK  
BY: RS Forrester DI  
DATE: 10/20/11

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF CHESAPEAKE**

|                                     |   |                                |
|-------------------------------------|---|--------------------------------|
| <b>C. RAY DAVENPORT,</b>            | ) |                                |
| Commissioner of Labor and Industry, | ) |                                |
| <i>Plaintiff,</i>                   | ) |                                |
|                                     | ) |                                |
| v.                                  | ) |                                |
|                                     | ) | Civil Action No. CL13000737-00 |
|                                     | ) |                                |
| <b>MSH HOMES, INC.,</b>             | ) |                                |
| <i>Defendant.</i>                   | ) |                                |

**AGREED ORDER**

WHEREAS, on or about November 30, 2010, the Commissioner of Labor and Industry ("Commissioner") issued a citation to the defendant, MSH Homes, Inc. ("MSH Homes"), alleging fifteen (15) serious classified violations of the Virginia Occupational Safety and Health Standards (VOSH) for the Construction Industry, and proposing civil penalties of \$66,500.00 (as attached to Complaint as Commissioner's Exhibit A); and

WHEREAS, MSH Homes 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;

WHEREAS, the Commissioner has filed a Complaint before this Court, requesting adjudication of the above described VOSH citation and penalties;

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

1. MSH Homes hereby acknowledges and waives service of the Commissioner's Complaint filed in this matter.

2. Each of the violations are amended and affirmed as follows:

a. Serious Citation 1, Item 1 through Item 7 and Item 14 will be grouped together and otherwise affirmed as classified, with a reduced civil penalty of \$5,600;

b. Serious Citation 1 Item 8 through Item 11 will be grouped together and otherwise affirmed as classified, with a reduced civil penalty of \$5,600.00;

c. Serious Item Citation 1 Item 12 and Item 13 will be grouped together and amended to an Other-Than-Serious classification, with no civil penalty;

d. Citation Item 15 will be vacated.

3. MSH Homes shall pay to the Commissioner the adjusted penalty total of \$11,200.00, provided in monthly payments of \$560.00 each, made on the first day of each month for the next twenty (20) successive months. The initial monthly payment shall be due on the first day of the month that begins at least fifteen days after the entry of this Order. Each payment will be made in the form of a check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 314716259 noted on each payment, and directed to the Department of Labor and Industry, Accounting and Finance Office, at 600 East Main Street, Suite 207, Richmond, Virginia 23219.

4. Within 14 days of entering this Order, MSH Homes, Inc. shall contact the Consultation Division of the Virginia Department of Labor and Industry and arrange for a comprehensive safety and health site survey. A comprehensive VOSH consultation survey shall take place within the next 30 days, unless otherwise mutually agreed to another date by both parties. The request and registration for the consultation survey shall be made to:

Warren E. Rice, Consultation Services Manager  
Virginia Department of Labor and Industry  
600 East Main Street, Ste. 207  
Richmond, VA 23219 Ph. 804.786.6613

MSH Homes will request and participate in this survey and will adopt related employee safety and health recommendations arising therefrom.

5. It is expressly understood that all modifications to citation classification or penalty level, or vacating of a violation item or penalty in this agreement are contingent upon MSH Homes both undertaking a VOSH comprehensive site survey, and upon full and timely payment of all penalties due. Failure by MSH Homes to substantially comply with the terms of this Order constitutes a breach. Any breach shall mean that all originally proposed violations and penalties shall be reinstated and affirmed as a final order of the Commissioner, and all unpaid amounts shall become due and payable 15 calendar days following the breach.

6. In observance of *Virginia Administrative Code* § 16 VAC 25-60-40(1), MSH Homes shall post a copy of this Order for ten (10) consecutive days at a conspicuous place or location on all its jobsites where notices to its employees generally are posted.

7. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability of MSH Homes, said allegations having been specifically denied. 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.

8. MSH Homes certifies that the affirmed violations referenced above in this Order were each corrected or otherwise abated. Furthermore, MSH Homes withdraws its

original notice of contest filed with respect to the above-styled case and waives its right to contest the remaining terms contained in this agreement.

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

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

12. The Clerk shall strike this matter from the docket and place it among the ended civil cases. The Clerk shall send a certified copy of this order to both the Commissioner and to MSH Homes at their addresses provided below.

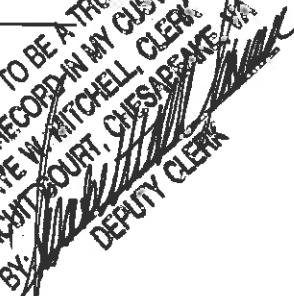
Entered this ~~10th~~ <sup>10th</sup> day of ~~June~~ <sup>July</sup>, 2014.




Judge

We ask for this:

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

CERTIFIED TO BE A TRUE COPY  
OF THE RECORD IN MY CUSTODY.  
FAVE W. MITCHELL, CLERK  
CIRCUIT COURT, CHESAPEAKE VA  
BY:  DEPUTY CLERK

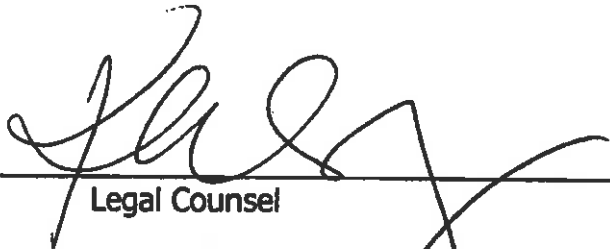


Alfred B. Albiston (VSB No. 29851)  
Special Assistant Commonwealth's Attorney  
City of Chesapeake  
c/o Department of Labor and Industry  
600 East Main Street. Ste. 200  
Richmond, Virginia 23219

804.786.6760  
804.786.8418 fax  
[albiston.alfred@dol.gov](mailto:albiston.alfred@dol.gov)

Seen and agreed:

**MSH HOMES, INC.**



Legal Counsel

Kedron A. Springer, Esq.  
KEDRON A. SPRINGER, P.C.  
508 Baylor Court, Ste. B  
Chesapeake, Virginia 23320

757.410.7760

757.410.7759 *fax*

[lisa@kedronspringer.com](mailto:lisa@kedronspringer.com)

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

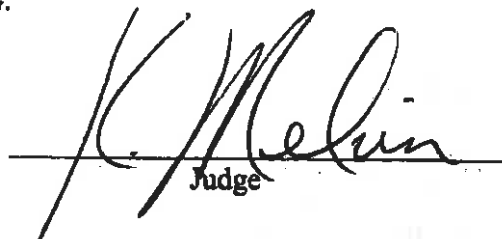
|                                    |   |                                |
|------------------------------------|---|--------------------------------|
| C. RAY DAVENPORT                   | ) |                                |
| Commissioner of Labor and Industry | ) |                                |
| Plaintiff,                         | ) |                                |
|                                    | ) |                                |
| v.                                 | ) | Civil Action No. CL10001317-00 |
|                                    | ) |                                |
| MEEKS DISPOSAL COMPANY,            | ) |                                |
| Defendant.                         | ) |                                |


ORDER

This matter came before the Court on Commissioner Davenport's Motion for Nonsuit as a matter of right pursuant to Va. Code § 8.01-380, and IT APPEARING that on June 3, 2010, the Commissioner filed a complaint against Meeks Disposal Company, that no nonsuit has been taken to this cause, and that the defendant has not filed a cross-bill, it is therefore ADJUDGED, ORDERED AND DECREED that the Commissioner's motion is GRANTED and that this matter be and hereby is nonsuited without prejudice as a matter of right pursuant to Va. Code § 8.01-380.

It is FURTHERMORE ORDERED that the Clerk will strike this matter from the docket of this Court, place it among the ended civil cases, and shall send an attested copy of this Order to both counsel of record.

Entered this 30<sup>th</sup> day of Sept., 2014.

  
 \_\_\_\_\_  
 Judge

A copy, Teste: Cynthia P. Morrison  
Clerk of the Circuit Court of the  
City of Portsmouth, Virginia  
By:  D.C.



I ask for this:

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



---

Alfred B. Albiston (VSB No. 29851)  
Special Assistant Commonwealth's Attorney  
City of Portsmouth  
c/o Department of Labor and Industry  
600 East Main Street. Ste. 200  
Richmond, Virginia 23219

804.786.6760  
804.786.8418 *fax*  
[albiston.alfred@dol.gov](mailto:albiston.alfred@dol.gov)

VIRGINIA:

IN THE CIRCUIT COURT OF CHESTERFIELD COUNTY

|  |   |                            |
|--|---|----------------------------|
| <b>C. Ray Davenport,</b>                 | ) |                            |
| Commissioner of Labor and Industry,      | ) |                            |
| <i>Plaintiff,</i>                        | ) |                            |
| v.                                       | ) | Civil Action No. CL13-3560 |
|  | ) |                            |
| <b>Service Management Systems, INC.,</b> | ) |                            |
| <i>Defendant.</i>                        | ) |                            |

**ORDER**

This matter came before the Court on Commissioner C. Ray Davenport's ("Commissioner") Motion for Nonsuit as a matter of right pursuant to Va. Code § 8.01-380, and IT APPEARING that on June 19, 2014, Commissioner Burge filed a bill of complaint against Service Management Systems, Inc., that no nonsuit has been taken to this cause, and that on June 13, 2014, the Defendant forwarded payment for the citations issued, it is therefore ADJUDGED, ORDERED AND DECREED that the Commissioner's motion is GRANTED and that this matter be and hereby is nonsuited without prejudice as a matter of right pursuant to Va. Code § 8.01-380. It is FURTHERMORE ORDERED that the Clerk will strike this matter from the docket of this Court, place it among the ended civil action cases, and shall send an attested copy of this Order to both parties.

Enter:   
 Judge

Date: 6-23-14

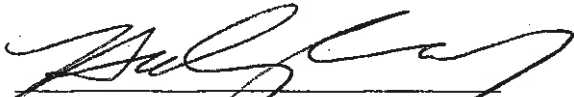
A COPY TESTE:  
 MARY E. CRAZE, CLERK

BY:   
 DEPUTY CLERK

All purposes of the instant cause having been accomplished, the Court does further ORDER that the matter be stricken from the active docket of this court and filed among the ended causes.

I ask for this:

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



Holly E. Trice (VSB# 82735)  
Special Assistant Commonwealth's Attorney  
600 E. Main Street, Suite 207  
Richmond, VA 23219  
804-786-2641, Fax 804-786-8418

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF FREDERICKSBURG

C. RAY DAVENPORT, )  
 Commissioner of Labor and Industry, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SPIRIT'S RESTAURANT, INC., )  
 )  
 Defendant. )

Case No.: CL14-469

FINAL ORDER

Came this day the parties, by counsel, on the Defendant's Special Plea and Motion to Dismiss. Based on said Special Plea and Motion to Dismiss, the Plaintiff's Opposition thereto, argument of counsel, Virginia law and good cause shown; this Court sustains the Defendant's Special Plea and Motion to Dismiss and dismisses this action with prejudice. The plaintiff duly noted its exception to this ruling.

It is so **ORDERED**.

Let the Clerk send a copy teste to all counsel of record.

VIRGINIA:  
 FREDERICKSBURG CITY CIRCUIT COURT  
 A COPY TESTE: JEFF SMALL, CLERK  
 BY: Christine Maloney  
 DEPUTY CLERK

DATE:

9/22/14

Entered this 22<sup>nd</sup> day of September, 2014.



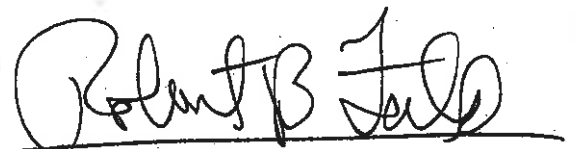
Circuit Court Judge

Seen and agreed:



Mark Nanavali, Esq.

Seen and objected:



Robert Feild, Esq.

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN**

**C. RAY DAVENPORT**  
Commissioner of Labor and Industry

*Plaintiff,*

v.

**SOUTHWEST AIRLINES CO.**

*Defendant.*

)  
)  
)  
)  
) Civil Action No. CL00088128-00  
)  
)  
)  
)

**DISMISSAL ORDER**

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED that the above captioned case is dismissed with prejudice from the Court's docket.

The parties have settled all outstanding issues in the case. A separate Settlement Agreement has been entered into by the parties.

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

Entered this 18 day of August, 2014.

  
\_\_\_\_\_  
Judge

We ask for this:



Alfred B. Albiston (VSB #29851)  
Special Assistant Commonwealth's Attorney  
Loudoun County  
c/o Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, Virginia 23219

804-786-6760  
804-786-8418 fax  
[Albiston.alfred@dol.gov](mailto:Albiston.alfred@dol.gov)

*Counsel for COMMISSIONER OF LABOR AND INDUSTRY, plaintiff*

Seen and Agreed:



Maureen R. Knight, Esq.  
CONSTANGY, BROOKS & SMITH, LLP  
12500 Fair Lakes Circle, Suite 300  
Fairfax, Virginia 22033-3804

571.522.6106  
571.281.2853 fax  
[MKnight@constangy.com](mailto:MKnight@constangy.com)

*Counsel for SOUTHWEST AIRLINES CO., defendant*

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

|  |   |                                   |
|--|---|-----------------------------------|
| <b>C. RAY DAVENPORT</b>                    | ) |                                   |
| <b>Commissioner of Labor and Industry,</b> | ) |                                   |
| <b>Plaintiff,</b>                          | ) |                                   |
| <b>v.</b>                                  | ) | <b>Civil Action No. CL10-1591</b> |
|  | ) |                                   |
| <b>TITAN CONTRACTING AND LEASING</b>       | ) |                                   |
| <b>CO. INC.</b>                            | ) |                                   |
| <b>Defendant,</b>                          | ) |                                   |
|  | ) |                                   |

**AGREED ORDER**

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

1. That the citation attached to the Complaint is hereby amended as follows:
  - a) Serious Citation 1, Item 1a and 1b are affirmed with a reduced penalty of \$2,000.00 for the grouped violation.
  - b) Serious Citation 1, Item 1c is vacated.
  - c) Serious Citation 1, Item 2 is affirmed with a reduced penalty of \$2,000.00.
  - d) Serious Citation 1, Item 3 is vacated.
  - e) Serious Citation 1, Item 4 is affirmed with a reduced penalty of \$5,000.00.
  - f) Serious Citation 1, Items 5a, 5b and 5c are vacated.
  - g) Serious Citation 1, Items 6a and 6b are vacated.
  - h) Willful Citation 2, Item 1 is amended to an unclassified violation of Virginia Code §40.1-49.4 with an assessed penalty of \$70,000.00.

- i) Willful Citation 1, Item 1 is amended to an unclassified violation of Virginia Code §40.1-49.4 with an assessed penalty of \$70,000.00.
2. That the Defendant shall pay the total penalty of \$149,000.00 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 313454761 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 ten consecutive days, beginning from the date of entry of this Order, at its workplaces in Virginia in a conspicuous location where notices to its employees are generally posted;
  6. That the Defendant will conduct a training session or sessions for its employees that install digester membrane covers on the fall protection standard, as set out in §1910.503(a)(2), between June 6, 2014 and sixty (60) days after entry of the final order. Upon completion of the training, documentation of the training shall be sent to:  
  
Robert Feild  
Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, Virginia 23219
  7. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;
  8. That the Commissioner will enter the changes in classification and penalty amount set out in paragraph 1 within thirty (30) days of the entry of this Order.
  9. 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.

10. 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.

11. Except for these proceedings, and matters arising out of these proceedings, and any other subsequent VOSH proceedings between the parties, nothing in this agreement nor any foregoing statements, findings or actions taken by the Defendant shall be deemed an admission by the Defendant of the allegations of the citation, said allegations having been specifically denied. Furthermore, the parties agree that the citation, as amended, does not make any charges either, expressed or implied, that the conditions set forth were the cause or proximate cause of any accident or damages. The agreements, statements, findings and actions taken herein are made for the purpose of compromising and settling this matter economically and amicably, and they shall not be used for any other purpose whatsoever, except as herein stated.

12. That each party shall bear its own costs in this matter.

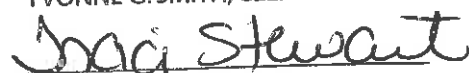
It is ORDERED, ADJUDGED, and DECREED that this matter be, and hereby is, dismissed with full prejudice and stricken from the docket of this Court.

Entered this 1 day of July 2014.

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

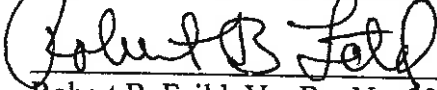
  
\_\_\_\_\_  
Judge

A COPY TESTE:  
YVONNE G. SMITH, CLERK

  
DEPUTY CLERK

WE ASK FOR THIS:

G. RAY DAVENPORT, Commissioner of Labor and Industry



Robert B. Feild, Va. Bar No. 23864

Special Assistant Commonwealth's Attorney

County of Spotsylvania

✓ 600 East Main Street, Suite 207

Richmond, Virginia 23219

Telephone: (804) 786-4777

Facsimile: (804) 786-8418

Counsel for Commissioner Davenport

SEEN AND AGREED:

TITAN CONTRACTING AND LEASING COMPANY, INC.



Counsel for Defendant

C. Jay Robbins, IV

✓ VSB No. 22847

Midkiff, Muncie & Ross, P.C.

300 Arboretum Place, Suite 420

Richmond, Virginia 23236

Tel: 804-560-9600

Fax: 804-560-5997

Counsel for Titan Contracting and Leasing Company, Inc.

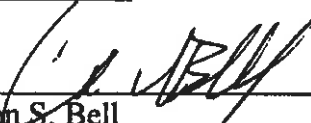


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Special Assistant Commonwealth's Attorney  
Smyth County  
600 E. Main Street, Ste. 207  
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804-786-6760  
804-786-8418/fax  
Albiston.alfred@dol.gov

*Seen and objected to*

By:   
Alfred B. Albiston  
*Counsel for Commissioner of Labor and Industry*

Cameron S. Bell  
VSB No. 47685  
PENN, STUART & ESKRIDGE  
P.O. Box 2288  
Abingdon, Virginia 24212  
276/628-5151  
276/628-5621/fax  
cbell@pennstuart.com

By:   
Cameron S. Bell  
*Counsel for Titan Wheel Corporation of Virginia*

VIRGINIA:

IN THE CIRCUIT COURT OF SMYTH COUNTY

C. RAY DAVENPORT, )  
 COMMISSIONER OF LABOR )  
 AND INDUSTRY )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TITAN WHEEL )  
 CORPORATION OF VIRGINIA )  
 )  
 Defendant. )

CASE NO. CL 14000562-00

ORDER


On October 28, 2014, the parties appeared by counsel upon the Defendant's Motion to Dismiss. Upon review of the pleadings, memoranda, evidence taken at the hearing and argument of counsel, the Court holds that the motion is well taken and it is granted for the reasons stated in the Court's Letter Opinion dated November 5, 2014, which is incorporated by reference.

It is therefore ORDERED that the motion is granted and the Complaint is dismissed.


The Clerk shall send attested copies of this Order to counsel of record.

In consideration whereof, it is ORDERED that this action here and be, and the same hereby is, dismissed with full prejudice and stricken from the docket of the Court.

Entered this 1<sup>st</sup> day of December, 2014.


  
 \_\_\_\_\_  
 Judge

A COPY, TESTE:  
 JOHN H. GRAHAM, CLERK OF THE  
 CIRCUIT COURT OF SMYTH COUNTY

BY   
 \_\_\_\_\_  
 DEPUTY CLERK

Alfred B. Albiston  
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Smyth County  
600 E. Main Street, Ste. 207  
Richmond, VA 23219  
804-786-6760  
804-786-8418/fax  
Albiston.alfred@dol.gov

*Seen and objected to:*

By:   
Alfred B. Albiston  
*Counsel for Commissioner of Labor and Industry*

Cameron S. Bell  
VSB No. 47685  
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276/628-5151  
276/628-5621/fax  
cbell@pennstuart.com

By:   
Cameron S. Bell  
*Counsel for Titan Wheel Corporation of Virginia*