

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

VOLUME XIX
JULY 1, 1997 - JUNE 30, 1998



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, 1997, through June 30, 1998, 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.

TABLE OF CONTENTS

VOLUME XIX

JULY 1, 1997 - JUNE 30, 1998

California Concepts Company, Theron J. Bell v.
Chancery No. 146969 (Fairfax County Circuit Court) 4

Dean Steel Erection Company, Theron J. Bell v.
Chancery No. C-98-64 (Spotsylvania County Circuit Court) 6

Metalite Incorporated, Theron J. Bell v.
Chancery No. CH98-39 (City of Suffolk Circuit Court) 9

N. C. Monroe Construction, Theron J. Bell v.
Chancery No. CH97-1673 (Chesterfield County Circuit Court) 11

RMK Construction Company, Inc., Theron J. Bell v.
Chancery No. CH-96-43 (Wythe County Circuit Court) 14

Victory, L.L.C., Theron J. Bell v.
Chancery No. V-13199 (Montgomery County Circuit Court) 22

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

Theron J. Bell, Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.)	Chancery No. 146969
)	
John Dorozyński, d/b/a California Concepts Company,)	
)	
Defendant.)	

DECREE PRO CONFESSO

This cause came to be heard upon Commissioner Theron J. Bell's Motion for Decree Pro Confesso against John Dorozyński, d/b/a California Concepts Company, declaring that \$9,150.00 in proposed civil penalties arising from contested Virginia Occupational Safety and Health (VOSH) citations, identified by VOSH Inspection Number 123683997 and as attached to the Commissioner's Bill of Complaint, be upheld; and declaring Defendant personally liable for the \$9,150.00 in civil penalties pursuant to Code § 13.1-622, since Defendant purported to act as or on behalf of a corporation, knowing that California Concepts Company was not incorporated in Virginia.

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 John Dorozynski be held personally liable for payment to the Commonwealth of Virginia of \$9,150.00 in civil penalties, arising from contested Virginia Occupational Safety and Health (VOSH) citations as set out in Inspection No.

123683997, 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 certify copies of this order to Theron J. Bell, 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: F. B. Bach

ENTER: 12/10/97

I ASK FOR THIS:

THERON J. BELL
Commissioner of Labor and Industry

By: John R. Murphy
Counsel

John R. Murphy
Assistant Commonwealth's Attorney
County of Fairfax
4110 Chain Bridge Road, Rm. 123
Fairfax, Virginia 22030
(703) 246-2776

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF SPOTSYLVANIA

THERON J. BELL, Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.)	Chancery No. C-98-64
)	
DEAN STEEL ERECTION)	
COMPANY, INC.)	
)	
Defendant.)	

AGREED ORDER

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

1. That Serious citation 1, Item 1, attached to the Bill of Complaint is affirmed as written;
2. That the Defendant shall pay a penalty of \$5000.00 within fifteen (15) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Commonwealth of Virginia, with VOSH inspection number 125454322 noted on the payment;
3. That, in the event that the Defendant fails to comply with paragraph 2 of this Order, the citation shall be reinstated as originally issued and shall become a final order;
4. That the Defendant shall withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order;
5. 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;

6. 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;
7. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;
8. That this Order does not purport to limit the effect of Virginia Code § 40.1-51.3:2;
9. That the Commissioner may use this order in future proceedings under Virginia Code §§ 40.1-49.4(I), -49.4(J), -49.4(K), or any other authority; and
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 4th day of June, 1998.

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

W. H. Leadbetter, Jr.
Circuit Court Judge

WE ASK FOR THIS:

THERON J. BELL, Commissioner
of Labor and Industry

P. Ann Bucci
P. Ann Bucci
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
Office of Legal Support
13 South Thirteenth Street
Richmond, VA 23219-4101
Counsel to Commissioner Bell

SEEN AND AGREED:

DEAN STEEL ERECTION COMPANY, INC.

Russell O'Roark
Russell O'Roark, Safety Director
Dean Steel Erection Company, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF SUFFOLK

Theron J. Bell, Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.)	Chancery No. CH98-39
)	
METALITE, INCORPORATED)	
)	
Defendant.)	

DECREE PRO CONFESSO

This cause came to be heard upon Commissioner Theron J. Bell's Motion for Decree Pro Confesso against Metalite, Incorporated, declaring that the contested Virginia Occupational Safety and Health (VOSH) citations and penalties totaling \$3,150.00, identified by VOSH Inspection Number 126621713 and as attached to the Commissioner's Bill of Complaint, be affirmed.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one days have elapsed since service of process on the Defendant, and that no responsive pleading has been filed by the Defendant, it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff be awarded judgment by default in this cause affirming Citation No. 1, Items 2, 3a, 3b, 5 and 6, the accompanying proposed penalties in the amount of \$3,150.00, and the order of abatement. It is also

ADJUDGED, ORDERED, and DECREED that the Clerk of this Court shall send to the

Defendant a copy of this Decree by certified mail.

May 19, 1998

Date

Westbrook J. Parker

Judge

I ASK FOR THIS:

Theron J. Bell

Commissioner of Labor and Industry

By: F. Jeffereson James
Counsel

F. Jefferson James
Assistant Commonwealth's Attorney
City of Suffolk
441 Market Street, Room 223
Post Office Box 1811
Suffolk, Virginia 23439-1811
(757) 925-6302

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

THERON J. BELL, Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.)	Chancery No. CH97-1673
)	
N.C. MONROE)	
CONSTRUCTION CO.,)	
)	
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 reduced to an Other-than-Serious violation;
 - b) Serious citation 1, Items 2a and 2b are reduced to Other-than-Serious violations;
 - c) Serious citation 1, Item 3 is affirmed as written;
 - d) Serious citation 1, Item 4 is affirmed as written;
 - e) Serious citation 1, Item 5 is affirmed as written;
2. That the Defendant shall pay a penalty of \$2,025.00 within fifteen (15) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Commonwealth of Virginia, with VOSH inspection number 126639905 noted on the payment;
3. That, in the event that the Defendant fails to comply with paragraph 2 of this Order, the

citation amendments described above shall be null and void and the citations shall be reinstated as originally issued and shall become a final order;

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

5. 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;

6. 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;

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

8. That this Order does not purport to limit the effect of Virginia Code § 40.1-51.3:2;

9. That the Commissioner may use this order in future proceedings under Virginia Code §§ 40.1-49.4(I), -49.4(J), -49.4(K), or any other authority; and

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 23 day of February, 1998.

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

W. R. Shelton

W. R. Shelton

Circuit Court Judge

WE ASK FOR THIS:

THERON J. BELL, Commissioner
of Labor and Industry

Kenneth Nickels

Kenneth Nickels, Esq.
Assistant Commonwealth's Attorney
County of Chesterfield
Post Office Box 25
Chesterfield, Virginia 23832
(804) 748-1221
Counsel to Commissioner Bell

SEEN AND AGREED:

N.C. MONROE CONSTRUCTION COMPANY

Melvin Hutson

Melvin Hutson, Esquire
Thompson & Hutson, LLC
301 North Main Street, Suite 1700
Post Office Box 88
Greenville, South Carolina 29602-0088
Counsel to N. C. Monroe Construction Company

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF WYTHE

THERON J. BELL, Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.)	Chancery No. CH-96-43
)	
RMK CONSTRUCTION)	
COMPANY, INC.)	
)	
Defendant.)	

AGREED ORDER

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

1. That the citations attached to the Bill of Complaint are hereby amended as follows:
 - a) Serious citation 1, Item 1 is grouped with Serious citation 1, Item 2 and Serious citation 1, Item 3 and the penalty for the three grouped violations is \$2,500.00;
 - b) Serious citation 1, Item 2 is grouped with Serious citation 1, Item 1 and the penalty is deleted;
 - c) Serious citation 1, Item 3 is grouped with Serious citation 1, Item 1 and the penalty is deleted;
 - d) Serious citation 1, Item 4 is affirmed as written and the penalty is reduced to \$2,500.00;
 - e) Serious citation 1, Item 5 is affirmed as written with a penalty of \$2,500.00;

- f) Serious citation 1, Item 6 is affirmed as written with a penalty of \$2,500.00;
- g) Willful citation 2, Items 1(a) and 1(b) are affirmed as written and the penalty is reduced to \$10,000.00;
- h) Willful citation 2, Item 2 is affirmed as written and the penalty is reduced to \$10,000.00;
- I) Willful citation 2, item 3 is affirmed as written and the penalty is reduced to \$10,000.00;

2. That the Defendant shall pay a penalty of \$40,000.00, in lieu of the penalties originally proposed in the citations, as follows:

(a) Ten thousand dollars shall be paid to the Commonwealth within five (5) days of the date of entry of this order;

(b) Ten thousand dollars (\$10,000.00) is suspended on condition that, between August 1, 1997 and July 31, 1998, no violations are issued to the Defendant arising out of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry that formed the bases for the citations affirmed by this Order. Should the Defendant violate any of the standards that form the bases for the violations affirmed herein, the Defendant shall pay the remaining amount of the total penalties assessed for the above violations in the amount of \$30,000.00 upon a final order of the Commissioner of Labor and Industry, or a court of competent jurisdiction, that the Defendant has violated any of the standards that formed the bases for the violations affirmed in this Order. Said amount shall be made payable to the Commissioner within fifteen (15) days following entry of the final order.

© Ten thousand dollars (\$10,000.00) of the penalty amount is suspended on condition that, between August 1, 1998 and July 31, 1999, no violations are issued to the Defendant arising out of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry that formed the bases for the citations affirmed by this Order. Should the Defendant violate any of the standards that form the bases for the violations affirmed herein, the Defendant shall pay the remaining amount of the total penalties assessed for the above violations in the amount of \$20,000.00 upon a final order of the Commissioner of Labor and Industry, or a court of competent jurisdiction, that the Defendant has violated any of the standards that formed the bases for the violations affirmed in this Order. Said amount shall be made payable to the Commissioner within fifteen (15) days following entry of the final order.

(d) Ten thousand dollars (\$10,000.00) of the penalty amount is suspended on condition that, between August 1, 1999 and July 31, 2000, no violations are issued to the Defendant arising out of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry that formed the bases for the citations affirmed by this Order. Should the Defendant violate any of the standards that form the bases for the violations affirmed herein, the Defendant shall pay the remaining amount of the total penalties assessed for the above violations in the amount of \$10,000.00 upon a final order of the Commissioner of Labor and Industry, or a court of competent jurisdiction, that the Defendant has violated any of the standards that formed the bases for the violations affirmed in this Order. Said amount shall be made payable to the Commissioner within fifteen (15) days following entry of the final order;

3. That the total penalties assessed in paragraphs 2(b) through 2(d) above are in addition to, and separate from, any additional penalties which may be assessed for any subsequent repeat violations that trigger the partial payments described in those paragraphs;
4. That the requirements of this Order shall cease on July 31, 2000, so long as all penalty amounts due the Commonwealth under this Order have been paid in full. In the event penalty payments are owed or are being paid to the Commonwealth under this Order on July 31, 2000, the responsibilities and duties of the Defendant under this Order shall continue until all such amounts have been paid in full and no further penalty amounts are due;
5. That the Defendant shall institute a program of weekly toolbox safety meetings at each jobsite in the Commonwealth of Virginia where its employees are working. As evidence of compliance with this requirement, the Defendant shall submit, 6 months after the date of this Order, a copy of each weekly safety meeting outline/sign-in sheet from each such jobsite, but covering no more than the previous 6 months. Each outline/sign-in sheet shall bear the signatures of the employees at the jobsite;
6. That the Defendant shall purchase and show to each current or new employee who operates a crane in the Commonwealth of Virginia a video addressing the safe use and operation of cranes. As evidence of compliance with this requirement, the Defendant shall submit the name and production company of the video purchased;
7. That the Defendant shall send each current or new employee who operates a crane in the Commonwealth of Virginia to a crane operation and maintenance training program. As evidence of compliance with this requirement, the Defendant shall submit **within 6 months of the date of this Order** a copy of the invoice requesting payment for instruction of the employees and copies

of the certificates indicating which employees completed the program.

If the Defendant cannot secure space in any of 3 crane maintenance and training programs within 6 months of the date of this Order, the Defendant shall submit no later than 6 months after the date of this Order documentation indicating the names of the programs contacted, that no space was available in any of the programs, and the first date space will be available. The Defendant shall then submit a copy of the invoice requesting payment for instruction of the employees and copies of the certificates indicating which employees completed the program as soon as practicable, but no later than 24 months after the date of this Order;

8. That the Defendant shall revise its safety program to require an annual inspection of any Defendant-owned crane;

9. That the Defendant shall maintain a record of the dates and results of inspections of any Defendant-owned or Defendant-operated crane;

10. That the Defendant shall submit on a quarterly basis for three calendar years, beginning August 1, 1997 and ending July 31, 2000, the minutes of each safety committee meeting. In accordance with the Defendant's written policy, the meetings are to be held every 60 days;

11. That the Defendant shall submit on a quarterly basis for three calendar years, beginning August 1, 1997 and ending July 31, 2000, a list of worksites in the Commonwealth of Virginia where the Defendant has employees assigned;

12. That the Defendant shall permit access by any VOSH Compliance Safety and Health Officer to any of its construction worksites in the Commonwealth of Virginia for three calendar years, beginning August 1, 1997 and ending July 31, 2000, for the purpose of conducting monitoring inspections. The Defendant understands that these inspections may be conducted by

the Commonwealth's compliance officers on a random and unannounced basis.

13. That copies of the toolbox safety meeting sign-in sheets and the name and production company of the crane safety video shall be submitted **within six months of the date of this Order**. The safety committee meeting minutes and worksite lists shall be submitted quarterly for a period of three calendar years, beginning August 1, 1997 and ending July 31, 2000. All documentation shall be sent to:

Lee A. Willis
Compliance Manager
Virginia Department of Labor and Industry
3013 Peters Creek Road, N.W.
Roanoke, Virginia 24019-2756

14. That, in the event that the Defendant fails to satisfy its obligations as set forth in paragraphs 5 through 12 of this Order, the citation amendments described above shall be null and void and the citations shall be reinstated as originally issued and shall become a final order;

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

16. 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;

17. 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;

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

19. That there have been no findings of fact, and no showing of any unlawful activities on the part of the Defendant, and that the payment of \$10,000.00 is not an admission of any wrongdoing

on the Defendant's part, or an admission that anything alleged against the Defendant is taken as true, but on the contrary, any wrongdoing or allegation of wrongdoing is specifically denied by the Defendant. The payment of \$10,000.00 made pursuant to this Order is not in the form of retribution and shall not constitute admission of liability or the validity of the citations, and is not made in compensation for any alleged wrong, but is only for the purpose of avoiding the expense, inconvenience, uncertainty, and delay incident to further litigation, and to settle this case, to the end that the Defendant can devote its full energies to conducting its business. This Order does not purport to limit the effect of Virginia Code § 40.1-51.3:2;

20. That the Commissioner may use this order in future proceedings under Virginia Code §§ 40.1-49.4(I), -49.4(J), -49.4(K), or any other authority; and

21. 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 4th day of August, 1997.

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

J. Colin Campbell
J. Colin Campbell
Circuit Court Judge

WE ASK FOR THIS:

THERON J. BELL, Commissioner
of Labor and Industry

Carla R. Roberts
Carla R. Roberts
Assistant Commonwealth's Attorney
County of Wythe

Post Office Box 37
Wytheville, Virginia 24382
(540) 228-5962
Counsel to Commissioner Bell

SEEN AND AGREED:

RMK CONSTRUCTION COMPANY

Mark M. Lawson

Mark M. Lawson
Elliott Lawson & Pomrenke
Post Office Box 8400
Bristol, VA-TN 24203-8400
(540) 466-8400
Counsel to RMK Construction Company

VIRGINIA: IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

THERON J. BELL, COMMISSIONER OF)
LABOR AND INDUSTRY,)

Plaintiff)

v.)

Chancery No. V-13199)

VICTORY, L.L.C.,)

Defendant)

DECREE PRO CONFESSO

This cause came to be heard upon Commissioner Theron J. Bell's Motion for Decree Pro Confesso against Victory, L.L.C., declaring that the contested Virginia Occupational Safety and Health (VOSH) citations and proposed penalties totaling \$7,750.00, identified by VOSH Inspection Number 126605484 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 pleading has been filed by the Defendant.

It is therefore, ADJUDGED, ORDERED and DECREE that Plaintiff be awarded judgment by default in this cause affirming the VOSH citations and order of abatement and proposed penalties of \$7,750.00.

It is further ORDERED that the Clerk of this Court send a certified copy of this DECREE to the Registered Agent for Victory, L.L.C. and to the Counsel for Plaintiff.

ENTER: June 1, 1998

J. Colin Campbell
JUDGE

I ask for this Order:

Theron J. Bell,
Commissioner of Labor & Industry

Phillip E. Keith
Phillip E. Keith,
Commonwealth's Attorney for
Montgomery County
1 East Main Street, Suite 111
Christiansburg, Virginia 24073
(540) 382-5705