

**FINAL ORDERS OF THE VIRGINIA COURTS  
IN CONTESTED CASES ARISING UNDER THE  
VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT  
2020**

84 Lumber Company, a Limited Partnership d/b/a 84 Lumber Company, C. Ray Davenport, Commissioner of Labor and Industry v. Case No. CL19002728-03 (Circuit Court of the County of Chesterfield)

American Sign Supply, and its successors, American Sign Builders Corp., et al., C. Ray Davenport, Commissioner of Labor and Industry v. Case No. CL13000834-00 (Circuit Court of the City of Chesapeake)

The Council of Co-Owners of the Representative Condominium, a/k/a The Representative Condos of Arlington, C. Ray Davenport, Commissioner of Labor and Industry v., Case No. CL20000531-00 (Circuit Court of the County of Arlington)

Deel & Street Logging, LLC, C. Ray Davenport, Commissioner of Labor and Industry v. Case No. CL20000840-00 (Circuit Court of the County of Buchanan)

DLS Contracting, Inc., C. Ray Davenport, Commissioner of Labor and Industry v., Case No. CL200004253-00 (Circuit Court of the City of Virginia Beach)

GR Restoration Painting, Inc., C. Ray Davenport, Commissioner of Labor and Industry v., Case No. CL20000762-00 (Circuit Court of the County of Montgomery)

Griffin Pipe Products Co., LLC d/b/a U.S. Pipe, C. Ray Davenport, Commissioner of Labor and Industry v., Case No. CL20000949-00 (Circuit Court of the City of Lynchburg)

James River Air Conditioning Company, C. Ray Davenport, Commissioner of Labor and Industry v., Case No. CL19000231-00 (Circuit Court of the County of Chesterfield)

Mastec Advanced Technology, C. Ray Davenport, Commissioner of Labor and Industry v., Case No. CL17002008-00 (Circuit Court of the County of Chesterfield)

Michael D. Reid d/b/a Reid & Taylor Roofing, C. Ray Davenport, Commissioner of Labor and Industry v., Case No. CL20000157-00 (Circuit Court of the County of Northampton)

Purcell Construction Corporation, C. Ray Davenport, Commissioner of Labor and Industry v., Case No. CL20002646-00-4 (Circuit Court of the City of Richmond)

R. W. Harper & Son, Inc., C. Ray Davenport, Commissioner of Labor and Industry v., Case No. CL20002035-08 (Circuit Court of the City of Richmond)

Reuter & Hanney, Inc., Commissioner of Labor and Industry v., Case No. CL20002899-00 (Circuit Court of the County of Henrico)

S.L. Williamson, Inc., C. Ray Davenport, Commissioner of Labor and Industry v., Case No. CL16000553-00 (Circuit Court of the County of Albemarle)

United Parcel Service, Inc., C. Ray Davenport, Commissioner of Labor and Industry v. Case No. CL16001033-00 (Circuit Court of the City of Roanoke)

Viewpoint Tree Service & Property Management, LLC, C. Ray Davenport, Commissioner of Labor and Industry v., Case No. CL19000971-00 (Circuit Court of the County of Bedford)

Westar Roofing Corporation, C. Ray Davenport, Commissioner of Labor and Industry v., Case No. CL20002850-00 (Circuit Court of the City of Chesapeake)

Witchduck Development, Inc. d/b/a Dunn Demolition, C. Ray Davenport v., Case No. CL19002213-00 (Circuit Court of the City of Hampton)

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

C. RAY DAVENPORT  
Commissioner of Labor and Industry,

Plaintiff,

v.

Case No. CL19002728-00

84 LUMBER COMPANY, A LIMITED PARTNERSHIP,  
d/b/a 84 Lumber Company

Defendant.

**FINAL ORDER**

This matter comes before the Court on the Joint Motion of Plaintiff C. Ray Davenport, Commission of Labor and Industry, and Defendant 84 Lumber Company, a Limited Partnership d/b/a 84 Lumber Company, advising the Court that the parties have entered into a settlement agreement, incorporated and attached hereto as **Exhibit A**, and

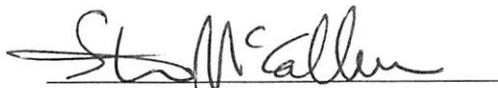
IT APPEARING that as part of said settlement agreement, the Defendant withdraws its notice of contest of the citations at issue; and therefore the parties seek dismissal with prejudice of Plaintiff's Complaint.

Having considered the Joint Motion, it is

ADJUDGED, ORDERED and DECREED that the Joint Motion to Dismiss is GRANTED and that Plaintiff's Complaint is DISMISSED WITH PREJUDICE, and removed from the Court's docket.

The Clerk is instructed to transmit a certified copy of this Order to endorsing counsel.

Entered this 1<sup>st</sup> day of April, 2020.

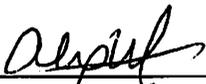
  
\_\_\_\_\_  
Judge

A COPY TESTE:  
WENDY S. HUGHES, CLERK  
BY:   
\_\_\_\_\_  
Kim Krafcik, Deputy Clerk

Final Order

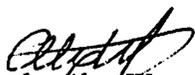
*C. Ray Davenport, Commissioner v. 84 Lumber Company, a Limited Partnership*  
CL19002728-00

SEEN AND AGREED:



Alex W. West, Esq. (VSB # 84607)  
Special Assistant Commonwealth's Attorney  
Chesterfield County  
c/o Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, VA 23219  
(804) 371-2631  
(804) 371-6524 (fax)  
alex.west@doli.virginia.gov  
*Counsel for Plaintiff*

And



/s/ Micah Schwartz, by Alex West with permission by email

Dana L. Rust, Esq. (VSB # 28408)  
Micah B. Schwartz, Esq. (VSB # 77299)  
MCGUIREWOODS LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, Virginia 23219  
(804) 774-1000  
(804) 698-2158 (fax)  
drust@mcguirewoods.com  
mschwartz@mcguirewoods.com  
*Counsel for Defendant*

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

**84 LUMBER COMPANY, A LIMITED PARTNERSHIP,**  
a Pennsylvania limited partnership

Inspection Number 1324491

RECEIVED & FILED  
CHESTERFIELD CIRCUIT COURT  
2020 MAR 31 AM 9:54  
WENDY S. HUGHES  
CLERK OF COURT  
TESTE: [Signature]  
TIGERKID DEPUTY CLERK

### SETTLEMENT AGREEMENT

**THIS AGREEMENT** is entered into by C. Ray Davenport, Commissioner of Labor and Industry (Commissioner) and 84 Lumber Company, a Limited Partnership d/b/a 84 Lumber Company (Employer).

WHEREAS, on or about August 9, 2018, the Commissioner issued citations to the employer alleging two serious violations and seven other than serious violation of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry. A total of \$9,720.00 in penalties was proposed by the Commissioner along with the violation. (Copy of the citation attached by reference hereto).

WHEREAS, the Employer filed a notice of contest of all violations contained in the citations within 15 working days from the date of the receipt of the citations, as provided by § 40.1-49.4 of the Code of Virginia;

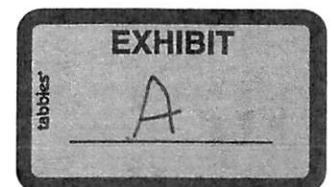
WHEREAS, pursuant to Va. Code § 40.1-49.4(E), on September 3, 2019 the Commissioner caused a Complaint to be filed in the Chesterfield County Circuit Court, case number CL19002728-00 (the "Litigation") to affirm the contested citations; and

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

NOW, THEREFORE, the parties agree to the following:

#### TERMS AND CONDITIONS OF AGREEMENT

1. Upon full execution of the agreement, the Commissioner will modify the citations as follows:
  - a. Serious Citation 1, Item 1 is reduced to other-than-serious with a reduced penalty of \$2,880.00.
  - b. Serious Citation 1, Item 2 is reduced to other-than-serious with a reduced penalty of \$1,980.00.



c. Citation 2, Items 1 through 7 are affirmed as other-than-serious violations with no monetary penalty.

2. Within forty-five (45) days from the execution of this agreement, the Employer will provide evidence of the installation of physical protection from vehicular collision to the 500 gallon Papco fuel tank noted in Citation 1, Item 1 (and depicted in the photographs produced as VOSH00011), such as bollards or metal poles.

The documentation required will be sent to the following address:

Harvey Trice  
Regional Safety Director  
Virginia Department of Labor and Industry  
1570 East Parham Road  
Richmond, Virginia 23228

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

4. The Employer certifies that the violations alleged in this agreement have been abated. Unless already provided, within forty-five (45) calendar days of the execution of this Agreement, the Employer agrees to provide documentation proving the violations alleged have been abated. Notwithstanding any other provision, the Employer must provide documentation proving the abatement of Citation 1, Item 2 (first aid) within ninety (90) calendar days of the execution of this Agreement, unless the Employer can demonstrate and document the unavailability of first aid training due to the COVID-19 public health emergency, in which case the Employer shall abate Citation 1, Item 2 as soon as practicable thereafter.

5. As consideration for the modification of the terms of the original citations, the Employer agrees to withdraw its original notice of contest filed with respect to the above-styled case and waives its right to contest the remaining terms contained in this agreement.

6. The Employer will post a copy of this Settlement Agreement for a period of fifteen (15) days at the worksite in a conspicuous location where notices to its employees are generally posted.

7. Unless otherwise provided in this agreement or in a separate penalty installment payment agreement, penalties assessed under this agreement are due and payable within forty-five (45) calendar days of the effective date of this agreement. It is expressly understood that any modifications to citation classification or penalty level, or any vacating of a citation or penalty in this agreement are contingent upon the Employer's full payment of all penalties due. Failure by the Employer to substantially comply with the terms of this agreement or to make a penalty payment by the due date constitutes a breach of this agreement. Any breach shall mean that all originally proposed citations 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.

8. This Agreement compromises and settles the above contested claims. Under 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 will not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party.

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

10. This Agreement is entered into by each of the parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. This Agreement constitutes the entire agreement between the parties concerning the aforesaid settlement and citation(s), and all prior negotiations, offers, and agreements, whether written or oral, are either superseded or merged in this document. This agreement cannot be amended except by a writing signed by the parties.

11. A court's ruling rendering any provision(s) of this Agreement invalid or unenforceable shall not affect the validity of the remaining provisions of the Agreement.

12. Following full execution of this agreement, the Commissioner will move to dismiss the Litigation in the court in which it is pending, and pursuant to 16 Va. Admin. Code § 25-60-340(F), this agreement shall be attached and incorporated with the proposed order of dismissal.

13. Each person signing this Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or she has signed.

14. This Agreement may be executed in any number of copies, each of which shall be deemed a counterpart original.

*{remainder of page intentionally left blank; signature page to follow}*

**84 LUMBER COMPANY, A LIMITED PARTNERSHIP**  
**d/b/a 84 Lumber Company**

By: Allison Kulka (SEAL) 03/20/2020  
Date

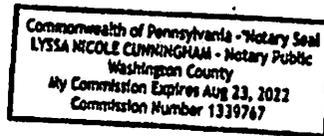
Name: Allison Kulka  
Its: Safety Specialist

State of Pennsylvania, City/County of Washington;  
to wit:

The foregoing instrument was acknowledged before me this 20 day of March, 2020 by  
Lyssa Nicole Cunningham on behalf of Allison Kulka

Lyssa Nicole Cunningham  
Notary Public

My commission expires: 8/23/22



**C. RAY DAVENPORT**  
**COMMISSIONER OF LABOR AND INDUSTRY**

By: [Signature] (SEAL) 03/23/20  
Date  
Marta Fernandes  
Director, Occupational  
Safety Compliance

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

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

Plaintiff,

v.

Case No. CL19002728-00

**84 LUMBER COMPANY, A LIMITED PARTNERSHIP,**  
d/b/a 84 Lumber Company

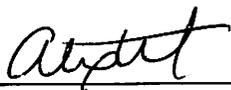
Defendant.

**JOINT MOTION TO DISMISS**

The parties, Plaintiff C. Ray Davenport, Commission of Labor and Industry, and Defendant 84 Lumber Company, a Limited Partnership, by and through their respective undersigned attorneys, move to dismiss the Complaint in this case with prejudice because the parties have entered into a settlement agreement whose terms include dismissal of the Complaint with prejudice. A proposed Order dismissing the Complaint is enclosed.

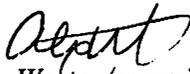
Respectfully submitted,

**C. RAY DAVENPORT, Commissioner**

By:   
Alex W. West, Esq. (VSB # 84607)  
Special Assistant Commonwealth's Attorney  
Chesterfield County  
c/o Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, VA 23219  
(804) 371-2631  
(804) 371-6524 (fax)  
alex.west@doli.virginia.gov  
*Counsel for Plaintiff*

RECEIVED & FILED  
CHESTERFIELD CIRCUIT COURT  
2020 MAR 31 AM 9:53  
WESTLEY S. HUGHES  
CLERK OF COURT  
TESTER  
COURT REPORTER

Jointly so moved:

  
/s/ Micah Schwartz, by Alex West w/ permission by email

Dana L. Rust, Esq. (VSB # 28408)

Micah B. Schwartz, Esq. (VSB # 77299)

MCGUIREWOODS LLP

Gateway Plaza

800 East Canal Street

Richmond, Virginia 23219

(804) 774-1000

(804) 698-2158 (fax)

[drust@mcguirewoods.com](mailto:drust@mcguirewoods.com)

[mschwartz@mcguirewoods.com](mailto:mschwartz@mcguirewoods.com)

*Counsel for Defendant*

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

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

Civil Action No. CL13-834-00

v. )

AMERICAN SIGN SUPPLY and its )  
successors, )  
AMERICAN SIGN BUILDERS CORP., )  
AMERICAN SIGN SUPPLY, )  
INCORPORATED, and )  
ERWIN L. HUTCHINS )  
 )  
Defendants. )

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 April 2, 2013, the Commissioner filed a complaint American Sign Supply, 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 12<sup>th</sup> day of August, 2020.

  
\_\_\_\_\_  
Judge

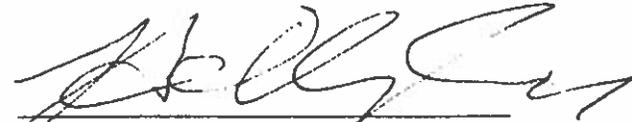
*see attached endorsement*

1/2

I ASK FOR THIS:

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

By:

  
\_\_\_\_\_  
Holly Trice (VSB#82735)

Special Assistant Commonwealth's Attorney  
600 E. Main Street  
Suite 207  
Richmond, VA 23219  
804-786-2641  
Holly.trice@doli.virginia.gov

*Plaintiff's Counsel*

OB 8/12/2020

2/2

FILED by Arlington County Circuit Court  
02/05/2020



CL20000531-00  
GOVT  
NS

**VIRGINIA:**

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

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

*Plaintiff,*

v.

Case No. CL20000531-00

**THE COUNCIL OF CO-OWNERS OF THE REPRESENTATIVE CONDOMINIUM,  
a/k/a THE REPRESENTATIVE CONDOS OF ARLINGTON,**

*Defendant.*

**MOTION AND ORDER OF NON-SUIT**

THIS DAY came the parties, by counsel and stated that the above-referenced action has settled, and as part of said settlement the notice of contest has been withdrawn subject to the terms and conditions of the settlement agreement executed by the parties. The parties have represented to the Court that Plaintiff has not entered previous non-suits, and no counterclaims or cross-claims have been filed.

UPON CONSIDERATION WHEREOF, the Court does hereby GRANT the Plaintiff's motion and enters a NON-SUIT in this matter. The Clerk is directed to mail a certified copy of this Order to counsel of record, and to remove this action from the docket.

ENTER: William J. Neumaier  
Judge  
DATE: Feb. 5, 2020

WE ASK FOR THIS:



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Shannon L. Baldwin, Esq.

Assistant Commonwealth's Attorney, Arlington County/City of Falls Church

1425 N. Courthouse Road, Suite 5200

Arlington, VA 22201

Tel: 703-228-4552

sbaldwin@arlingtonva.us

*Counsel for the Plaintiff*

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF BUCHANAN

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

v.

Case No. CL20000840-00

**DEEL & STREET LOGGING, LLC,**  
*Defendant.*

**FINAL ORDER OF DEFAULT JUDGMENT**

THIS DAY CAME C. Ray Davenport, Commissioner of Labor and Industry, by counsel, on his motion for default judgment, and IT APPEARING to the Court that the Defendant, Deel & Street Logging, LLC, having been served with process in this action for more than twenty-one days without any responsive pleadings being filed, is IN DEFAULT. For reasons stated in the motion, at the hearing, and for other good cause shown, the Court hereby

ENTERS a judgment by default in favor of the Commissioner against the Defendant, and further AFFIRMS the citations issued by the Commissioner in Inspection number 1453201, as attached to the Complaint as Exhibit A, and further

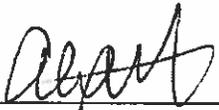
ENTERS JUDGMENTS against the Defendant in favor of the Commissioner in the full penalty amount of THIRTY NINE THOUSAND ONE HUNDRED FORTY-FOUR DOLLARS and ZERO CENTS (\$39,144.00), plus post-judgment interest until paid and administrative charges consistent with Va. Code §§ 2.2-4805 and 40.1-49.4(A)(4)(a). The Clerk shall provide a certified copy of this order to counsel for the Commissioner, and remove this matter from the docket.

ENTERED this 18th day of November, 2020.

  
Judge

*C. Ray Davenport, Commissioner v. Deel & Street Logging, LLC*  
Case number CL20000840-00  
Final Order of Default Judgment

We ask for this:

By:   
Alex W. West, Esq. (VSB # 84607)  
Special Asst. Comm. Attorney, Buchanan County  
c/o Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, VA 23219  
(804) 371-2631  
(804) 371-6524 (fax)  
alex.west@doli.virginia.gov

All other endorsements are waived pursuant to Rule 1:13.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

C. RAY DAVENPORT,  
Commissioner of Labor and Industry,

*Plaintiff,*

v.

Case No. CL20004253-00

DLS CONTRACTING, INC.,

*Defendant.*

**MOTION AND ORDER OF DISMISSAL**

THIS DAY came the parties, by counsel and stated that the above-referenced action has become moot, as Defendant has withdrawn the notice of contest of the underlying VOSH citation. The Commissioner therefore WITHDRAWS his Motion for Default Judgment, and moves the Court to enter an Order dismissing this action with prejudice as moot.

UPON CONSIDERATION WHEREOF, the Court does hereby GRANT the Plaintiff's motion and enters a DISMISSAL WITH PREJUDICE of this civil action as moot. The Clerk is directed to mail a certified copy of this Order to counsel of record, and to remove this action from the docket. Defendant's endorsements are waived pursuant to Rule 1:13.

DATE: 9/16/20

W. B. Stuckley  
Judge

WE ASK FOR THIS:

Alex W. West  
Alex W. West, Esq.

Special Assistant Commonwealth's Attorney, Virginia Beach  
c/o Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, VA 23219  
Tel: (804) 371-2631 / Fax: (804) 371-6524  
Email: alex.west@doli.virginia.gov

*Counsel for the Commissioner*

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

Tux

VIRGINIA:

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

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

v.

GR RESTORATION PAINTING INC.  
*Defendant.*

)  
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)  
)  
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Case No. CL20000762-00

ORDER

THIS MATTER came before the Court on MAY 20, 2020, upon Plaintiff, C. Ray Davenport's, Motion for Leave to File First Amended Complaint. Upon the appearance for good cause shown, the Court SUSTAINS the Motion for Leave to Amend. Specifically, it is hereby ORDERED that the Plaintiff's Complaint be amended.

It is so ORDERED.

The Clerk is DIRECTED to send a copy of this Order to all counsel of record.

Date: 5/20 /2020

ENTERED:

Hon. \_\_\_\_\_

A Copy – Teste:  
ERICA W. CONNER  
Circuit Court Montgomery County, Virginia

By: \_\_\_\_\_ Deputy Clerk

By: [Signature]  
Adolfo D. Lopez, Esq. (VSB # 94409)  
Montgomery County Special Assistant Commonwealth's Attorney  
c/o Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, Virginia 23219  
T: 804-786-0610

F: 804-786-8418

[adolfo.lopez@doli.virginia.gov](mailto:adolfo.lopez@doli.virginia.gov)

*Counsel for C. Ray Davenport*

*Commissioner of the Department of Labor and Industry*

**CERTIFICATE OF SERVICE**

I hereby transmitted by first-class mail a true copy of this plaintiff's "Order," to Jose G. Romero, Registered Agent for Defendant, GR Restoration Painting Inc., at 158 Green Acres Avenue, Richmond, Virginia 23224 on this 14th day of May 2020.



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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF LYNCHBURG

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

v.

GRIFFIN PIPE PRODUCTS CO., LLC  
d/b/a U.S. PIPE  
*Defendant.*

)  
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)  
) File # CL20000949  
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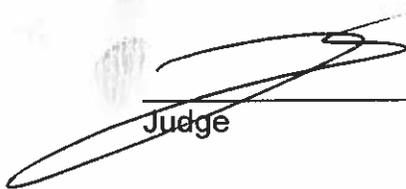
*MC rec'd  
12/15 ABA*

ORDER FOR VOLUNTARY NONSUIT

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 October 1, 2020, the Commissioner filed a complaint against defendant Griffin Pipe Products Co., LLC, doing business as U.S. Pipe, that the parties have settled the previously contested Virginia Occupational Safety and Health citation, No. 1392887, 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 4<sup>th</sup> day of ~~November~~ <sup>December</sup>, 2020.

  
\_\_\_\_\_  
Judge

I ASK FOR THIS:

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



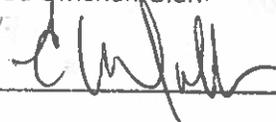
---

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

804-786-6760  
804-786-8418 Fax  
[alfred.albiston@doli.virginia.gov](mailto:alfred.albiston@doli.virginia.gov)

*Counsel for the Commissioner of Labor and Industry*

A Copy, Teste.  
Todd Swisher, Clerk  
By:



---

Deputy Clerk

CC: ABA



Agreement, the non-breaching party may seek enforcement of the Settlement Agreement through an appropriate motion. The non-breaching party shall have the burden of demonstrating by a preponderance of the evidence that the other party committed a material breach of the parties' Settlement Agreement.

3. If, upon motion by the Commissioner, the Court determines, by a preponderance of the evidence, that JRAC has not acted in good faith in applying for acceptance into Virginia SHARP (Safety and Health Achievement Recognition Program) in accordance with the parties' Settlement Agreement, within the agreed upon time period in the Settlement Agreement, the classification for Citation 2, Items 1 and 3 shall immediately revert to the original willful classifications. If the willful citations are re-imposed per this Section 3, the Commissioner shall not seek, nor may the Court Order, any additional financial penalties against JRAC.

4. Neither this Order nor any order of the Commissioner entered pursuant to this Order shall be offered, used or admitted in evidence in any proceeding or litigation, whether civil or criminal, other than a proceeding arising under VOSH laws, regulations or standards.

5. Each party will bear its own costs and attorneys' fees in this matter.

6. The Clerk shall strike this matter from the docket and place it among the ended civil cases. The Clerk shall certify copies of this order to both counsels of record.

Entered this            day of           , 2020.  
MAY 22 2020



Judge Edward A. Robbins, Jr.

A COPY TESTE:  
WENDY S. HUGHES, CLERK

BY:   
Kim Krafcik, Deputy Clerk

We ask for this:

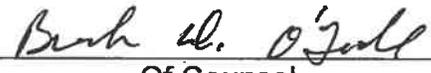
**C. RAY DAVENPORT,**  
Commissioner of Labor and Industry

By:   
Alfred B. Albiston (VSB # 29851)  
Special Assistant Commonwealth's Attorney  
c/o Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, Virginia 23219-2430  
(804) 786-6760  
(804) 786-4318 Fax  
[alfred.albiston@doli.virginia.gov](mailto:alfred.albiston@doli.virginia.gov)

*Counsel for Plaintiff*

Seen and agreed:

**JAMES RIVER AIR CONDITIONING COMPANY**

By:   
Of Counsel

Brendan D. O'Toole, Esquire (VSB #71329)  
WILLIAMS MULLEN  
200 South 10<sup>th</sup> Street, Suite 1600,  
Richmond, Virginia 23219  
[botoole@williamsmullen.com](mailto:botoole@williamsmullen.com)  
(804) 420-6588 (telephone)  
(804) 420-6507 (facsimile)

*Counsel for Defendant*

## SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into by the Commonwealth of Virginia, Commissioner of Labor and Industry ("Commissioner") and James River Air Conditioning ("JRAC").

WHEREAS, on September 18, 2017, the Commissioner, on behalf of the Virginia Department of Labor and Industry ("DOLI") issued citations to JRAC alleging violations of Virginia Occupational Safety and Health (VOSH) regulations and assessing proposed penalties (the "Citation"); and

WHEREAS, JRAC timely filed a notice of contest of all violations and penalties contained in the Citation; and

WHEREAS, the Commissioner filed a civil Complaint pursuant to Va. Code Ann. § 40.1-49.4 to enforce the Citation (Civil No. CL19-231, hereinafter the "Litigation"); and

WHEREAS, by its Order of January 3, 2020, the Circuit Court of the County of Chesterfield dismissed the Commissioner's First Amended Complaint in the Litigation; and

WHEREAS, on January 13, 2020, the Commissioner filed a Motion for Reconsideration With Proffers; and

WHEREAS, on January 24, 2020, the Circuit Court denied the Motion for Reconsideration, dismissed the Commissioner's First Amended Complaint with prejudice, and struck the Litigation from the docket; and

WHEREAS, the Commissioner filed a Notice of Appeal to the Court of Appeals of Virginia (Record No 031620) on January 28, 2020 (the "Notice of Appeal"), appealing the dismissal of the Litigation (the "Appeal"); and

NOW, THEREFORE, for and in consideration of the foregoing, the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

1. The above Recitals are incorporated herein by reference.
2. Within five (5) business days after this Agreement is executed by both parties, the parties will jointly file a notice with the Court of Appeals of Virginia certifying that the case has been settled and that the terms of the settlement require further proceedings in the Chesterfield Circuit Court.

3. In settlement of the matters alleged in the Litigation, the citations and penalties issued to JRAC are hereby amended as follows:
  - a. Serious citation 1, item 1, is affirmed with a penalty of \$1,000.00.
  - b. Serious citation 1, item 2, and the accompanying penalty of \$7,000.00 are vacated.
  - c. Serious citation 1, item 3, is affirmed with a penalty of \$3,000.00.
  - d. Willful citation 2, item 1, is amended to serious and affirmed with a penalty of \$10,000.00.
  - e. Willful citation 2, item 2, is amended to serious and affirmed with a penalty of \$10,000.00.
  - f. Willful citation 2, item 3, is amended to serious and affirmed with a penalty of \$10,000.00.
4. JRAC shall pay the penalty of \$34,000.00 within thirty (30) days of the date this Agreement is executed by both parties. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with the VOSH inspection number, 1221798, noted on the payment.
5. Within five (5) business days after this Agreement is executed by both parties, the Commissioner or his authorized representative will update the OSHA Information System which will result in modifying the information posted on the OSHA website regarding the Citation consistent with the amendments to the Citation outlined in this Agreement. The Commissioner will take all other reasonable steps necessary to secure modification of the information posted on the OSHA website as outlined in this paragraph 5.
6. Immediately upon execution of this Agreement by both parties, JRAC's eligibility to receive VOSH Consultation Services from DOLI will be restored.
7. JRAC will complete the Virginia SHARP (Safety and Health Achievement Recognition Program) application process, provided JRAC first meets all eligibility requirements for application to SHARP, including achieving the 3-year average Total Case Incident Rate (TCIR) and Days Away Restricted or Transferred Rate (DART) comparison against the most recently published Bureau of Labor Statistics (BLS) rates for its industry; and thereafter take reasonable and necessary steps to apply for acceptance to Virginia SHARP within two (2) years following the execution of this Agreement by both parties. For clarity, this paragraph 7 only requires JRAC to take reasonable and necessary steps in good faith to apply to Virginia SHARP within 2 years of execution of this Agreement by both parties. Notwithstanding the foregoing, the parties agree that JRAC will have fulfilled its obligations under this Agreement by complying with this paragraph 7, even if the Commissioner ultimately chooses not to award Virginia SHARP status to JRAC for any good faith reason, or if JRAC is otherwise ineligible for Virginia SHARP status

for whatever good faith reason.

8. Given the significant efforts required to meet the criteria for acceptance into Virginia SHARP, the Commissioner shall not challenge JRAC's efforts to gain acceptance into Virginia SHARP until at least eighteen (18) months have passed from the execution of this Agreement.
9. Should either party believe that the other party has materially failed to comply with any term of this Agreement in good faith, the aggrieved party shall provide written notice to the other party stating the nature of the alleged non-compliance. The parties agree that the alleged noncompliance will be addressed through good faith negotiations. If the parties cannot thereafter resolve their disagreement, said dispute and its accompanying written record may be submitted to the Court for resolution, in accordance with the Agreed Order entered in this case.
10. Pursuant to §16VAC 25 60 40(1), JRAC shall post a copy of the Agreed Order entered in this case by the Chesterfield Circuit Court for ten (10) working days in a conspicuous location where notices to employees generally are posted.
11. JRAC represents that it is entering into this Agreement in the spirit of conciliation and cooperation in an effort to avoid further litigation. This Agreement shall not in any way be construed as an admission by JRAC that the Commissioner's allegations or conclusions in the Litigation or citations are true, or that JRAC is liable, either civilly, criminally, or administratively, to the Commissioner, to VOSH, or to the Commonwealth of Virginia for any violation or penalty alleged by the Commissioner. This Agreement and performances thereunder are made solely to avoid the cost, expense and uncertainty of the Litigation and are not and shall not be construed as an admission of truth of any fact, a violation of VOSH laws, regulations, or standards promulgated thereunder, or a declaration against interest on the part of JRAC.
12. 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, in which it is alleged that an employer acted in violation of or failed to act in accordance with any provision of Chapter 3 of Title 40.1, or any state or federal occupational safety and health law, standard or regulation.
13. The citations and penalties as modified above, and any new obligations contained in this Agreement, are a final order of the Commissioner of Labor and Industry. This Agreement may be used for future enforcement proceedings and

enforcement actions pursuant to Title 40.1 of the Code of Virginia. However, the violations affirmed in this agreement may only be used as the basis for a repeat violation under Va. Code §40.1-49.4.J for a period of 2 years from execution of this Agreement by both parties.

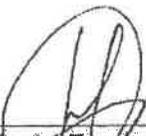
[SIGNATURES APPEAR BELOW]

**JAMES RIVER AIR CONDITIONING**

  
\_\_\_\_\_  
Name: Hugh A. Joyce  
Its: Owner and President

4/17/2020  
Date

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

  
\_\_\_\_\_  
Marta Fernández,  
VOSH Safety Compliance Director

04/16/2020  
Date

APPROVED as required by Va. Code § 2.2-514

Date:

Office of the Attorney General of Virginia

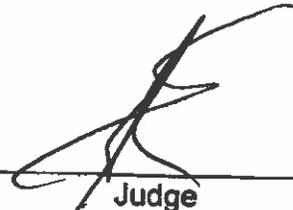
*/s/ Donald D. Anderson*

---

Donald D. Anderson  
Deputy Attorney General



Entered this 6 day of February, 2020.

  
\_\_\_\_\_  
Judge

I ask for this:

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

A COPY TESTE:  
WENDY S. HUGHES, CLERK  
BY:   
Kim Krafcik, Deputy Clerk



Alfred B. Albiston (VSB No. 29851)  
Chesterfield Special Assistant Commonwealth's Attorney  
c/o Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, Virginia 23219

(804) 786-6760  
(804) 786-8418 fax  
[Alfred.albiston@doli.virginia.gov](mailto:Alfred.albiston@doli.virginia.gov)

*Counsel for Plaintiff C. Ray Davenport, Commissioner of Labor and Industry*

Seen and agreed:

**MASTEC ADVANCED TECHNOLOGY**



Stephen K. Dixon (VSB No. 87462)  
Alana F. Genderson (pro hac vice)  
MORGAN, LEWIS & BOCKIUS LLP  
1111 Pennsylvania Avenue NW  
Washington, DC 20004  
Telephone: (202) 739-3000  
Facsimile: (202) 739-3001  
[stephen.dixon@morganlewis.com](mailto:stephen.dixon@morganlewis.com)

*Counsel for Defendant MasTec Advanced Technology*

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

**MASTEC NORTH AMERICA, INC.**

VOSH Inspection No. 1041216

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (the Agreement) is made and entered into this 28<sup>th</sup> day of January, 2020 (the "effective date" of this Agreement), by and between C. Ray Davenport, Commissioner of Labor and Industry ("Commissioner") and Mastec Advanced Technologies. ("Mastec") (collectively, the "Parties").

**RECITALS**

WHEREAS, the Commissioner issued a Citation and Notification of Penalty for Inspection Number 1041216 ("Citation") to "Mastec Advanced Technology and its successors", on or about, August 7, 2015, alleging two Serious violations of the Virginia Occupational Safety and Health ("VOSH") law and regulations, with proposed civil penalties of \$14,000.00 (copy of VOSH Citation attached); and

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

WHEREAS, the Commissioner filed a civil Complaint in the Chesterfield County Circuit Court, styled, *C. RAY DAVENPORT, Commissioner of Labor and Industry v. MASTEC NORTH AMERICA, INC. d/b/a/ MASTEC ADVANCED TECHNOLOGY*. (Case

No. CL17-2008), seeking to affirm the citation and the associated penalties (the "Case"), and to which for each, Mastec filed an Answer denying liability; and

WHEREAS, the parties agree that the case caption should be amended so that the defendant is renamed from "MASTEC NORTH AMERICA d/b/a/ MASTEC ADVANCED TECHNOLOGY" to "MASTEC ADVANCED TECHNOLOGY" to reflect the proper corporate entity involved in this matter, per Mastec's contemporaneously submitted Unopposed Motion to Substitute Parties; and

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

#### **TERMS AND CONDITIONS OF AGREEMENT**

1. For the matter concerning VOSH inspection number 1041216, docketed under case number CL17-2008, the "Serious" citation 1, its component Items 1 and 2 and their proposed penalties are amended as follows:

- a. Item 1 and the accompanying proposed \$7,000.00 civil penalty and classification are vacated; and
- b. Item 2 will remain classified as a "Serious" violation, and its proposed \$7,000.00 civil penalty is amended to \$3,500.00 and affirmed. The alleged violation description for Item 2 shall be deleted in its entirety and amended to state the following, "At this location, the employer's training program did not specify whether employees should elevate satellite dishes to their working heights on ladders by balancing dishes on shoulders (the so-called shoulder method), pulling the satellite dish up with a rope (the so-

called rope method), or both. This Item has been abated, because the employer now trains employees on both the rope and shoulder methods.”

2. In exchange for and recognition of this action, Mastec agrees to perform the following conditional terms in the Commonwealth of Virginia, which must be completed on or before March 1, 2020, Mastec shall continue the practices described in this paragraph for at least six months from the effective date of the Agreement. After six months from the effective date of the Agreement, Mastec may continue the practices described in this paragraph on an ongoing basis, subject to its review and discretion:

- a. Mastec will increase the amount of time spent on hands-on ladder training since VOSH inspection number 1041216 took place;
- b. Mastec will require satellite dish technicians to use Petzl helmets, clamps, and levelers (during training and in the field) while climbing extension ladders;
- c. Mastec will emphasize ladder safety among other safety topics through its program known as the “Golden Rules of Safety;” and
- d. Mastec’s training will allow satellite dish technicians to choose between the shoulder and rope methods (as defined in Paragraph 1 above), and will discourage ladder usage in high-wind conditions.

3. Mastec shall pay the agreed civil penalty of \$3,500.00 within thirty (30) days of the date of execution of this Agreement. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 1041216 noted on the payment.

4. Pursuant to *Virginia Administrative Code* §16 VAC 25-60-40(1), Mastec shall

post a copy of this Settlement Agreement for ten (10) consecutive days at a conspicuous place or location in its workplaces in Virginia where notices to its employees generally are posted.

5. Mastec hereby withdraws its original notice of contest, and certifies that the violation affirmed as amended, and referenced in paragraph 1 of this Agreement, has been corrected and abated.

### **SETTLEMENT OF CLAIMS**

6. This Agreement is meant to settle the above contested claims, and is not to be considered an admission of liability by Mastec. 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.

7. No part of the foregoing or following agreements, statements, findings and actions taken by Mastec shall be deemed an admission by Mastec of a violation of the Code or any other law or an admission of the allegations contained within the citation or notification of penalty in this matter. Rather, the agreements, statements, findings, and actions taken herein are made solely for the purpose of compromising and settling this matter amicably, to avoid protracted and expensive litigation, and shall not to be used in any judicial or administrative forum for any purpose whatsoever, except the Commissioner reserves its right to issue Repeat violations pursuant to Virginia law for the citation item affirmed as amended in paragraph 1 above. It is specifically understood by both Mastec and the Commissioner that the compromise and settlement

of this matter is not intended to and shall not constitute an admission or finding of civil liability or responsibility of any kind in any civil personal injury or wrongful death action (or any indemnification action related to a civil personal injury or wrongful death action) and such civil liability or responsibility is specifically denied by Mastec.

8. Nothing in this order shall be construed to restrict in any way Mastec's right in future VOSH inspections to argue that its procedures comply with the applicable standards.

9. Nothing in this order shall be construed to restrict in any way the Commissioner's right under the same or similar factual circumstances, to issue citations to Mastec or any other employer in future VOSH inspections for violations of the cited VOSH regulation affirmed as amended in paragraph 1 above.

10. Upon receiving the executed Agreement, the Commissioner shall immediately thereafter draft and submit to Mastec a Joint Motion and Order to dismiss the Case, with prejudice. Once signed, the Joint Motion and Order will be filed with the Chesterfield County Circuit Court, with the expectation that the Case will be dismissed and filed among its closed cases.

**MASTEC ADVANCED TECHNOLOGIES,**

BY: Kathleen Butler  
Agent

January 28, 2020  
Date

Commonwealth of Virginia,

County/City of Centennial, to wit:

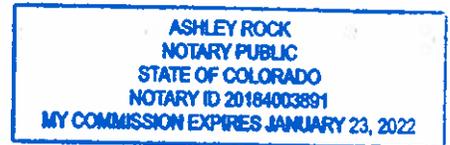
I, the undersigned Notary Public in and for the jurisdiction aforesaid, do hereby certify that Kathleen Butler, whose name is signed to the foregoing as a(n) Vice President, Human Resources for Mastec Advanced Technologies, has acknowledged the same before me as his/her true and voluntary act on behalf of said corporation.

Given under my hand this 28<sup>th</sup> day of January, 2020.

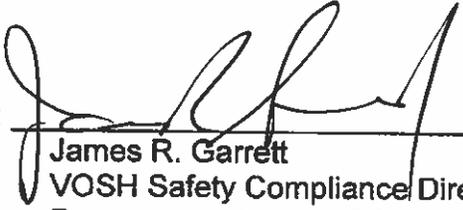
Ashley Rock (Ashley Rock)  
Notary Public

My commission expires: 1/23/2022

Registration No.: 20184003891



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

By:   
James R. Garrett  
VOSH Safety Compliance Director  
Department of Labor & Industry

Commonwealth of Virginia:

City of Richmond, to wit:

I, the undersigned Notary Public in and for the jurisdiction aforesaid, do hereby certify that James R. Garrett, whose name is signed to the foregoing as VOSH Safety Compliance Director, on behalf of C. Ray Davenport, Commissioner of Labor and Industry, has acknowledged the same before me as her true and voluntary act on behalf of the Commonwealth of Virginia.

Given under my hand this 5<sup>th</sup> day of February, 2020.

  
Notary Public

My commission expires: 2/29/2020

Registration No.: 336377



**VIRGINIA OCCUPATIONAL SAFETY and HEALTH (VOSH)  
CITATION AND PROPOSED CIVIL PENALTIES  
ISSUED TO  
MASTEC ADVANCED TECHNOLOGY**

**VOSH inspection number 1041216; issued August 7, 2015**

Virginia Department of Labor and Industry  
Virginia Occupational Safety and Health (VOSH) Compliance

North Run Business Park  
1570 E. Parham Road  
Richmond, VA 23228  
Phone: (804) 371-3104 Fax: (804) 371-3166



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## Citation and Notification of Penalty

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To: Ms. Alana F. Genderson, Attorney  
Mastec Advanced Technology  
and its successors  
7500 Whitepine Road  
Chesterfield, VA 23832

Inspection Number: 1041216  
Inspection Date(s): 02/12/2015  
Issuance Date: 08/07/2015

Inspection Site:  
7500 Whitepine Road  
Chesterfield, VA 23832

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

**Citation and Notification of Penalty.** Described herein are alleged violations of Virginia's Occupational Safety and Health (VOSH) laws, standards and/or regulations. Any penalty proposed is based on the corresponding violation. In accordance with Virginia Code §40.1-49.4(b)(4), you must abate all alleged violations by the dates listed and pay the penalties proposed, unless, within 15 working days (excluding weekends and State and Federal holidays) from the date you receive this citation, you submit a written notice of contest to the Virginia Department of Labor and Industry Regional Office at the address listed above. Issuance of this citation does not constitute a finding by the Commissioner that you have violated the law, standard or regulation described unless you fail to file a written notice of contest or this citation is affirmed by a court of law.

Please read the enclosed booklet entitled *Employer Responsibilities and Courses of Action Following a VOSH Inspection* in conjunction with this citation to learn your rights and responsibilities.

**Posting.** Virginia law requires you to immediately post a copy of this Citation in a prominent place at or near the location of the violation(s), or if it is not practicable because of the nature of your operations to do so, in a place where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) have been abated, or for 3 working days (excluding weekends, State and Federal holidays), whichever is longer. **The penalty amounts may be marked out or covered up prior to posting. Please note that these penalty amounts are releasable by the Department in response to a Freedom of Information Act (FOIA) request.**

**Informal Conference.** You have the right to an informal conference with the appropriate VOSH Regional Safety or Health Director at which you may present evidence to support amending the citation, order of abatement or penalties proposed. An informal conference, which is normally held during the 15 working day contest period, is optional. If you wish to attend an informal conference, you must contact the appropriate VOSH Regional Safety or Health Director at the Regional Office listed above.

**If you request an informal conference, you must notify your employees of the time and place.** Be sure to bring to the conference any documentation of existing conditions as well as abatement steps taken thus far. If conditions warrant, this matter may be resolved amicably without the need for litigation, by way of an Informal Settlement Agreement.

**Requesting an informal conference does not extend the 15 working day contest period.**

**Right to Contest.** You have the right to contest this Citation. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. This citation and the penalties proposed will become a final order of the Commissioner of Labor and Industry unless you notify VOSH in writing within 15 working days of receiving this citation that you contest the citation or any part thereof.

**Penalty Payment.** Penalties are due within 15 working days of receipt of this notification unless you contest. Make your check or money order payable to "Commonwealth of Virginia ". **Please indicate the Inspection Number on the check or money order.**

The Virginia Department of Labor and Industry does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action.** For violations which you do not contest, you must promptly notify the appropriate VOSH Regional Safety or Health Director at the Regional Office listed above, by completing the enclosed Report on Correction of Violations form, and indicates that you have taken appropriate corrective action by the date(s) specified in this citation. The form must include abatement steps you have taken and the dates, together with adequate supporting documentation, e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results, etc.

**Employment Discrimination Unlawful.** Virginia Code §§40.1-51.2:1 and -51.2:2 prohibit discrimination against any employee who has filed a complaint or who has exercised any rights under the safety and health provisions of Title 40.1 of the Code of Virginia. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the VOSH Office of Whistleblower Protection at Suite 207, 600 East Main Street, Richmond, Virginia 23219.

**Notice to Employees.** The law gives an employee or his/her representative the opportunity to contest in writing any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Regional Office at the address shown above and postmarked within 15 working days (excluding weekends and State and Federal holidays) of the employer's receipt of this Citation.

Virginia Department of Labor and Industry  
Virginia Occupational Safety and Health (VOSH) Compliance  
North Run Business Park,  
1570 E. Parham Road  
Richmond, VA 23228  
Phone: (804) 371-3104 Fax: (804) 371-3166



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## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with VOSH to discuss the Citation(s) issued 08/07/2015. The conference will be held at the VOSH office located at North Run Business Park, 1570 E. Parham Road Richmond, VA 23228 on \_\_\_\_\_ at \_\_\_\_\_. Employees and/or representatives of employees have a right to attend an informal conference.

Virginia Department of Labor and Industry  
Virginia Occupational Safety and Health (VOSH) Compliance  
North Run Business Park,  
1570 E. Parham Road  
Richmond, VA 23228

Inspection Number: 1041216  
Inspection Date: 02/12/2015-  
08/05/2015  
Issuance Date: 08/07/2015



**Citation and Notification of Penalty**

Company Name: Mastec Advanced Technology  
Inspection Site: 7500 Whitepine Road Chesterfield, VA 23832

**Citation 1 Item 1**                      Type of Violation: **Serious**

1926.1053(b)(22): At this location, employees using ladders were carrying objects or loads that could cause the employee to lose balance and fall: On or about February 12, 2015, an employee using a 32 foot extension ladder sustained fatal injuries from a fall while carrying a digital satellite dish up the ladder.

**Date by Which Violation Must Be Abated:**

**Proposed Penalty:**

**Corrected During Inspection**

**\$7000.00**

**Citation 1 Item 2**                      Type of Violation: **Serious**

1926.1060(a): At this location, the employer had a ladder training program for employees using ladders and stairways. On or about February 12, 2015, an employee was being trained to carry a satellite dish while climbing a 32' extension ladder. The employee was permitted to climb a ladder during windy conditions. Three points of contact were not maintained with the ladder at all time, nor was a tag line used to hoist equipment and tools to the work area. The employee lost his balance while climbing the ladder and sustained fatal injuries when he fell from the ladder.

**Date by Which Violation Must Be Abated:**

**Proposed Penalty:**

**Corrected During Inspection**

**\$7000.00**

A handwritten signature in black ink, appearing to read "Stanley J. Dykstra".

Stanley J. Dykstra  
Regional Safety Director

**Virginia Department of Labor and Industry**  
**Virginia Occupational Safety and Health (VOSH) Enforcement**  
North Run Business Park,  
1570 E. Parham Road  
Richmond, VA 23228  
Phone: (804) 371-3104 FAX: (804) 371-3166



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## INVOICE/DEBT COLLECTION NOTICE

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**Company Name:** Mastec Advanced Technology  
**Inspection Site:** 7500 Whitepine Road Chesterfield, VA 23832  
**Issuance Date:** 08/07/2015  
**Inspection Number:** 1041216

**Summary of Proposed Penalties:**

Citation 1 Item 1, Serious	7000.00
Citation 1 Item 2, Serious	7000.00
<b>TOTAL PROPOSED PENALTIES:</b>	<b>14000.00</b>

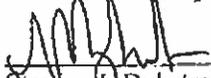
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Pursuant to Virginia Code §40.1-49.4.A.4.(a), the Commissioner of the Department of Labor and Industry may assess interest on all past-due penalties as well as administrative costs incurred in the collection of the penalties for violations of Virginia Occupational Safety and Health (VOSH) laws, regulations, and standards. Interest charges are assessed at an annual rate in accordance with Virginia Code §2.2-4805.

Interest shall accrue from the date on which the citation, either as issued or as amended, becomes a final order of the Commissioner. A citation becomes a final order 15 working days after the date that the employer receives the citation unless the employer files a notice of contest with VOSH. **Interest is waived if the employer pays the full amount within 30 calendar days of the final order date.**

A debt is past-due 30 calendar days after the final order date unless the employer makes a satisfactory payment arrangement with the Commissioner. If the debt remains unpaid for more than 90 days, it is deemed delinquent and referred to the Office of the Attorney General or other collection agency for collection. Administrative costs incurred in collecting the debt will be added to the amount of the debt.

To avoid potential interest and collection costs, please send payment promptly for the total amount of the uncontested penalties shown on the citation to the Accounting Office, Virginia Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, Virginia 23219. You may use the enclosed self-addressed envelope. **Please make your check or money order payable to: "Commonwealth of Virginia". Please indicate the Inspection Number on the payment. Do not send payment to the Regional Office.**

  
\_\_\_\_\_  
Stanley Dykstra  
VOSH Regional Safety/Health Director

8/6/2015  
\_\_\_\_\_  
Date

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF NORTHAMPTON

C. RAY DAVENPORT,  
Commissioner of Labor and Industry,

*Plaintiff,*

v.

Case No. CL20000157-00

MICHAEL D. REID,  
d/b/a REID & TAYLOR ROOFING,

*Defendant.*

MOTION AND ORDER OF NON-SUIT

THIS DAY came the parties, by counsel and stated that the above-referenced action has settled, and as part of said settlement the notice of contest has been withdrawn subject to the terms and conditions of the settlement agreement executed by the parties. The parties have represented to the Court that Plaintiff has not entered previous non-suits, and no counterclaims or cross-claims have been filed.

UPON CONSIDERATION WHEREOF, the Court does hereby GRANT the Plaintiff's motion and enters a NON-SUIT in this matter. The Clerk is directed to mail a certified copy of this Order to counsel of record, and to remove this action from the docket.

DATE: 8/11/2020

W. Ann Lee

Judge

WE ASK FOR THIS:

Alex West

Alex W. West, Esq.  
Special Assistant Commonwealth's Attorney, Northampton County  
c/o Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, VA 23219  
Tel: (804) 371-2631 / Fax: (804) 371-6524  
Email: alex.west@doli.virginia.gov

*Counsel for the Commissioner*

*Endorsent digital  
with*

Northampton Co. Circuit Court  
I certify that the document to which this authentication  
is affixed is a true copy of a record in the  
Northampton County Circuit Court,  
that I have custody of that record and  
I am the custodian of that record.

A TRUE COPY.

TESTE: TRACI L. JOHNSON, CLERK

By: Traci L. Johnson, Deputy Clerk

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

**Reid and Taylor Roofing**  
Inspection Number 1416868

### **SETTLEMENT AGREEMENT**

**THIS AGREEMENT** is entered into by the Commonwealth of Virginia, Commissioner of Labor and Industry (Commissioner) and Reid and Taylor (Employer).

WHEREAS, on or about September 17, 2019, the Commissioner issued a citation (inspection number 1416868) to the Employer alleging one serious violation of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry and assessing \$1,620.00 in proposed penalties;

WHEREAS, the Employer filed a notice of contest of all violations contained in the citations within 15 working days from the date of the receipt of the citations, as provided by ' 40.1-49.4 of the Code of Virginia; and

WHEREAS, the parties want to settle these case short of litigation in a way that will further, protect and promote the safety and health of the employees of the Employer and avoid the time and expense of litigation;

NOW, THEREFORE, the parties agree to the following:

#### **TERMS AND CONDITIONS OF AGREEMENT**

##### **Inspection Number 1416868**

1. Upon full execution of the agreement the Commissioner will modify the penalties and citations as follows:
  - a. Serious citation 1, items 1a and 1b are affirmed with a penalty of \$1,080.00.
  - b. The Employer will pay the assessed penalty for Inspection #1416868 as follows:

The Employer, upon execution of this settlement agreement, will pay to the Commonwealth \$1,080.00 in payment of the penalties assessed for the above citation. The Employer will make the check or money order payable to the Treasurer of Virginia, with the VOSH inspection number noted on the payment.
4. As consideration for the modification of the terms of the original citations, the Employer agrees to withdraw its original notices of contest filed with respect to the above-styled cases and waives its right to contest the remaining terms contained in this agreement.

5. Unless otherwise provided in this agreement the penalties assessed under this agreement are due and payable within 30 calendar days of the effective date of this agreement. It is expressly understood that any modifications to citation classification or penalty level, or any vacating of a citation or penalty in this agreement are contingent upon the Employer's full payment of all penalties due. Failure by the Employer to substantially comply with the terms of this agreement or to make a penalty payment by the due date, constitutes a breach of this agreement. Any breach shall mean that all originally proposed citations 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. The Employer will post a copy of this settlement agreement for thirty (30) days at each work site in Virginia in a conspicuous location where it generally posts notices to its employees.
7. The Employer certifies that the violations alleged in this agreement have been corrected and abated. **If not already provided**, the Employer agrees to provide to the Commissioner within thirty (30) days of the effective date of this agreement documentation verifying abatement of each violation affirmed in this agreement. The documentation shall comply with §307.E.2. of the Virginia Occupational Safety and Health (VOSH) Administrative Regulations Manual, which states that "Documents demonstrating that abatement is complete may include, but are not limited to, evidence of purchase or repair of equipment, photographic or video evidence of abatement, or other written records." The documentation shall be provided to:

Jeannie Buckingham  
VOSH Norfolk Safety Director  
Virginia Department of Labor and Industry  
Interstate Corporate Center, Building 6  
6363 Center Drive, Suite 101  
Norfolk, VA 23503

8. **THIS AGREEMENT** settles the above contested claims. Under 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 charged with a violation, 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, in which it is alleged that an employer acted in violation of or failed to act in accordance with any provision of Chapter 3 of Title 40.1, or any state or federal occupational safety and health law, standard or regulation. This agreement may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

**REID AND TAYLOR**

By: [Signature]  
Agent

7/24/20  
Date

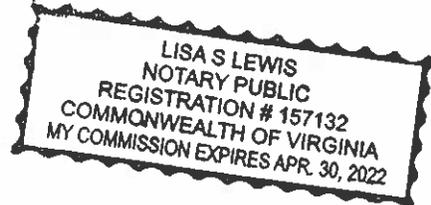
State of Virginia,  
AT LARGE, to wit:

The foregoing instrument was acknowledged before me this 24 day  
of July, 2020, by Michael D. Reid (name), agent/owner (title)  
of Reid and Taylor

[Signature]  
Notary Public

My commission expires: 4/30/22

Registration No.: 157132



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

By: [Signature]  
Marta Fernandes  
VOSH Safety Compliance Director  
Department of Labor & Industry

Commonwealth of Virginia:  
City of Richmond, to wit:

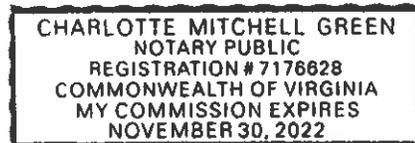
I, the undersigned Notary Public in and for the jurisdiction aforesaid, do hereby certify that Marta Fernandes, whose name is signed to the foregoing as VOSH Safety Compliance Director, on behalf of C. Ray Davenport, Commissioner of Labor and Industry, has acknowledged the same before me as her true and voluntary act on behalf of the Commonwealth of Virginia.

Given under my hand this 29<sup>th</sup> day of July, 2020.

[Signature]  
Notary Public

My commission expires: November 30, 2022

Registration No.: 7176628



**VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND**

C. RAY DAVENPORT  
Commissioner of Labor and Industry,

Plaintiff,

v.

Case No. CL20002646-00 — 4

PURCELL CONSTRUCTION CORPORATION,

Defendant.

**FINAL ORDER**

This matter comes before the Court on the Joint Motion of Plaintiff C. Ray Davenport, Commission of Labor and Industry, and Defendant Purcell Construction Corporation, advising the Court that the parties have entered into a settlement agreement, incorporated and attached hereto as **Exhibit A**, and

IT APPEARING that as part of said settlement agreement, the Defendant withdraws its notice of contest of the citations at issue; and therefore the parties seek dismissal with prejudice of Plaintiff's Complaint.

Having considered the Joint Motion, it is

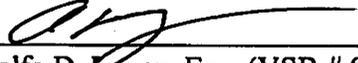
ADJUDGED, ORDERED and DECREED that the Joint Motion to Dismiss is GRANTED and that Plaintiff's Complaint is DISMISSED WITH PREJUDICE.

Entered this 19<sup>th</sup> day of August, 2020.

  
\_\_\_\_\_  
Judge

A Copy  
Teste: EDWARD F. JEWETT, CLERK  
BY:  D.C.

SEEN AND AGREED:

  
\_\_\_\_\_  
Adolfo D. Lopez, Esq. (VSB # 94409)  
Special Assistant Commonwealth's Attorney  
City of Richmond  
c/o Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, VA 23219

Collette McEachin, Esq.  
Commonwealth's Attorney for the city of Richmond  
John Marshall Courts Building  
400 N. 9th St  
Richmond, VA 23219  
*Counsel for Plaintiff*

And

  
\_\_\_\_\_  
Samuel J. Kaufman (VSB No. 48442)  
**OWEN & OWENS PLC**  
15521 Midlothian Turnpike, Suite 300  
Midlothian, Virginia 23113  
Telephone: (804) 464-3053  
Facsimile: (804) 594-0455  
E-mail: [skaufman@owenowens.com](mailto:skaufman@owenowens.com)  
*Counsel for Defendant*

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND  
John Marshall Courts Building

C. RAY DAVENPORT,  
Commissioner of Labor and Industry,

*Plaintiff,*

v.

Case No. CL20002035-00 - 8

R. W. HARPER & SON, INC.,

*Defendant.*

*HC rec'd 1/11  
ABA*

**DISMISSAL ORDER**

This day came the parties, by counsel, and represented that all matters in controversy as set forth in the Complaint filed herein, have been compromised, settled and agreed.

Upon consideration whereof, it appearing proper so to do, it is hereby

ORDERED that this matter be, and the same hereby is, dismissed with prejudice and placed among the ended causes.

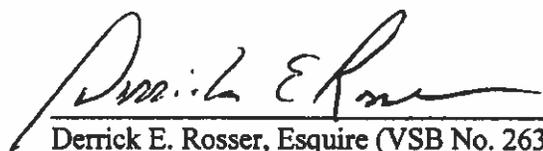
ENTER: 12/30/2020

*C. M. J.*  
\_\_\_\_\_  
JUDGE

We ask for this:

By: *Alfred B. Albiston*  
Alfred B. Albiston (VSB No. 29851)  
Richmond Special Assistant Commonwealth's Attorney  
c/o Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, Virginia 23219  
(804) 786-6760  
(804) 786-8418 fax  
[Alfred.albiston@doli.virginia.gov](mailto:Alfred.albiston@doli.virginia.gov)  
*Counsel for C. Ray Davenport, Commissioner of Labor and Industry*

A Copy  
Teste: EDWARD F. JEWETT, CLERK  
BY: *Edward F. Jewett* D.C.



Derrick E. Rosser, Esquire (VSB No. 26313)

Derrick E. Rosser, P.C.

211-A England Street

Ashland, VA 23005

(804) 798-3232

(804) 798-3159 *Fax*

[derrickrosser@verizon.net](mailto:derrickrosser@verizon.net)

*Counsel for R. W. Harper & Son, Inc.*

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

C. RAY DAVENPORT,  
Commissioner of Labor and Industry,

*Plaintiff.*

Case No. CL20002899-00

v.

REUTER & HANNEY, INC.,

*Defendant.*

**JOINT MOTION AND FINAL ORDER OF DISMISSAL**

This matter comes before the Court on the Joint Motion of Plaintiff C. Ray Davenport, Commission of Labor and Industry, and Defendant Reuter & Hanney, Inc., advising the Court that the parties have entered into a settlement agreement, incorporated and attached hereto as Exhibit A pursuant to 16 Va. Admin. Code § 25-60-340(F), and

IT APPEARING that as part of said settlement agreement, the Defendant withdraws its notice of contest of the citations at issue; and therefore the parties seek dismissal with prejudice of Plaintiff's Complaint.

Having considered the Joint Motion, and for good cause shown, it is

ADJUDGED, ORDERED and DECREED that the Joint Motion to Dismiss is GRANTED and that Plaintiff's Complaint is DISMISSED WITH PREJUDICE.

The Clerk is directed to mail a certified copy of this order to counsel of record.

Entered this 28 day of January, 2021.

A COPY TESTE:  
HEIDI S. BARSHINGER, CLERK  
HENRICO CIRCUIT COURT

A. Elisi Pittman  
DEPUTY CLERK



Judge

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

**REUTER & HANNEY, INC.**

Inspection Number 1306143

### SETTLEMENT AGREEMENT

**THIS AGREEMENT** is entered into by C. Ray Davenport, Commissioner of Labor and Industry (Commissioner) and Reuter & Hanney, Inc. (Employer).

WHEREAS, on or about September 24, 2018, the Commissioner issued citations to the employer alleging three Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry. A total of \$31,175.00 in penalties was proposed by the Commissioner along with the violation. (Copy of the citation attached by reference hereto).

WHEREAS, the Employer filed a notice of contest of all violations contained in the citations within 15 working days from the date of the receipt of the citations, as provided by § 40.1-49.4 of the Code of Virginia;

WHEREAS, pursuant to Va. Code § 40.1-49.4(E), the Commissioner caused a Complaint seeking to affirm the citations to be filed in the Henrico County Circuit Court, styled *C. Ray Davenport, Commissioner of Labor and Industry v. Reuter & Hanney, Inc.*, case number CL20002899-00 (the "Litigation"); and

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

NOW, THEREFORE, the parties agree to the following:

#### TERMS AND CONDITIONS OF AGREEMENT

1. Upon full execution of the agreement, the Commissioner will modify the citations as follows:
  - a. Serious Citation 1, Item 1 is vacated.
  - b. Serious Citation 1, Item 2 is affirmed.
  - c. Serious Citation 1, Item 3 is modified to a violation of § 1910.138(b), with a reduced penalty amount of \$9,352.50, and a modified alleged violation description (AVD) as follows:



**§ 1910.138(b) - Selection.** Employers shall base the selection of the appropriate hand protection on an evaluation of the performance characteristics of the hand protection relative to the task(s) to be performed, conditions present, duration of use, and the hazards and potential hazards identified.

At this jobsite, the company did not ensure that the proper hand-protection was selected while the employee was in the process of troubleshooting a miswired primary and secondary breaker on the control power transformer in "KT2" while the heater circuit was also being back-fed for testing from the alternate temporary voltage source. As a result of the presence of the 120 volt alternate source back-feeding the heater circuit along with the troubleshooting being performed on the wiring, the control power transformer became unintentionally energized. The applied voltage was stepped up by the heating circuit control power transformer to approximately 447 volts. When the unprotected employee contacted the unprotected energized circuit, he was electrocuted.

2. Upon full execution of this Agreement, the Commissioner will take all necessary steps to move the Henrico County Circuit Court to dismiss the Litigation by entry of a Final Order of dismissal with prejudice ("Final Order"), and such Final Order shall incorporate this agreement pursuant to 16 Va. Admin. Code § 25-60-340(F). Employer agrees to endorse such a Final Order as seen and agreed, and otherwise to take no steps to frustrate the entry of this Final Order.

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

4. The Employer certifies, under the penalties associated with Va. Code § 40.1-51.4:2, that the violations alleged in this agreement have been abated.

5. As consideration for the modification of the terms of the original citations, the Employer agrees to withdraw its original notice of contest filed with respect to the above-styled case and waives its right to contest the remaining terms contained in this agreement.

6. The Employer will post a copy of this Settlement Agreement for a period of fifteen (15) days at the worksite in a conspicuous location where notices to its employees are generally posted.

7. Unless otherwise provided in this agreement or in a separate penalty installment payment agreement, penalties assessed under this agreement are due and payable within 30 calendar days of the effective date of this agreement. It is expressly understood that any

modifications to citation classification or penalty level, or any vacating of a citation or penalty in this agreement are contingent upon the Employer's full payment of all penalties due. Failure by the Employer to substantially comply with the terms of this agreement or to make a penalty payment by the due date constitutes a breach of this agreement.

8. This Agreement compromises and settles the above contested claims. Under 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 will not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party.

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

10. This Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, and shall also bind and inure to the benefit of any successor in interest of the Employer, except that the Employer may not assign any right or obligation flowing from this Agreement.

11. This Agreement is entered into by each of the parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. This Agreement constitutes the entire agreement between the parties concerning the aforesaid settlement and citation(s), and all prior negotiations, offers, and agreements, whether written or oral, are either superseded or merged in this document. This agreement cannot be amended except by a writing signed by the parties.

12. A court's ruling rendering any provision(s) of this Agreement invalid or unenforceable shall not affect the validity of the remaining provisions of the Agreement.

13. Each person signing this Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or she has signed.

14. This Agreement may be executed in any number of copies, each of which shall be deemed a counterpart original.

*{remainder of page intentionally left blank; signature page to follow}*

REUTER & HANNEY, INC.

By: Paul R. Cody (SEAL) 12/24/2020  
Date

Name: Paul R. Cody  
Its: Chief Executive Officer

State of Ohio . City/County of Hamilton ;  
to wit:

The foregoing instrument was acknowledged before me this 24th day of December, 2020 by  
Paul R. Cody on behalf of Reuter & Hanney, Inc.

Stephanie Card  
Notary Public

My commission expires: 8/15/2023



C. RAY DAVENPORT  
COMMISSIONER OF LABOR AND INDUSTRY

By: [Signature] (SEAL) 16/29/20  
Date  
Marta Fernandes  
Director, Occupational  
Safety Compliance

VIRGINIA:

IN THE CIRCUIT COURT OF THE ALBEMARLE COUNTY

C. RAY DAVENPORT )  
 Commissioner of Labor and Industry )  
 )  
*Plaintiff,* )  
 )  
 v. )  
 )  
 S.L. WILLIAMSON, INC. )  
 )  
*Defendants.* )

Civil Action No. CL16-553

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 July 25, 2016, the Commissioner filed a complaint against S.L. Williamson, Inc., that no nonsuit has been taken to this cause, and that the defendant has not filed a cross-bill, it is therefore ADJUDGED, ORDERED AND DECREED that the Commissioner's motion is GRANTED and that this matter be and hereby is nonsuited without prejudice as a matter of right pursuant to *Va. Code* § 8.01-380.

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

Entered this 26<sup>th</sup> day of February, 2020.

Claude V. Warner, Jr.  
 Judge

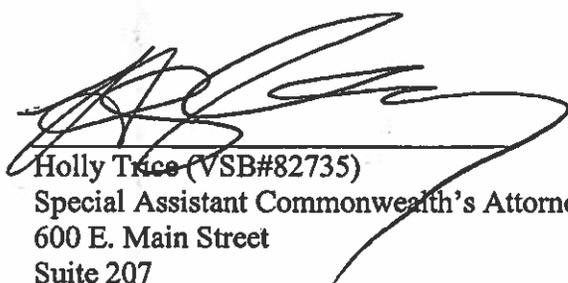


a true copy TESTE:  
 JON R. ZUG, CLERK  
 by: Stacey Brandt  
 Deputy Clerk

I ASK FOR THIS:

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

By:



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

*Plaintiff's Counsel*

**VIRGINIA:**

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

**C. RAY DAVENPORT,** )  
Commissioner of Labor and Industry, )  
*Plaintiff,* )  
v. ) Case # CL16001033-00  
**UNITED PARCEL SERVICE, INC.** )  
*Defendant.* )

**AGREED ORDER**

WHEREAS, on or about January 13, 2015, plaintiff C. Ray Davenport, Commissioner of Labor and Industry ("Commissioner") issued a citation to defendant, United Parcel Service, Inc. ("UPS"), alleging one Serious violation of § 40.1-51.1(A) of the *Code of Virginia*, and proposing a \$2,100.00 civil penalty; and

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

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

1. That the VOSH citation, attached as Exhibit "A" is hereby amended as follows:
  - a) Citation 1, Item 1 is amended from a "Serious" classified violation of *Va. Code* § 40.1-51.1(a), to an "Other Than Serious" classified violation of 16VAC25-60-120, and the accompanying \$2,100.00 penalty is upheld and affirmed;
2. That the description of the violation as amended as follows:

**"16VAC25-60-120: The employer did not assure compliance with the manufacturer's specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance applicable to the installation, operation and use of the Small Sort Cycling Diverter while employees operated it.**

The Small Sort Cycling Diverter Audit Checklist, in relevant part, requires operators to "[v]erify photo eyes are aligned and operating in accordance with designated diverter." On July 24, 2014, at 3941 Thirlane Road, Roanoke, VA, 24019, at the facility's Small Sorts Diverter package conveyor line: packages piled up and fell onto work stations below, creating struck-by hazards for employees." The employer did not ensure its operators verified the photo eyes were aligned and operating properly, thus causing packages at times to stack on top of each other and fall onto a work area below."

3. That UPS will pay the agreed civil penalty of two thousand one hundred dollars (\$2,100.00) 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 the VOSH inspection number 317796266 noted on the payment.
4. That UPS withdraws its original notice of contest and hereby waives its right to contest the remaining terms in this Order.
5. It is expressly understood that any citation modifications in this Agreed Order are contingent upon UPS's full and timely payment of the penalty as agreed. Any failure by UPS to substantially comply with the terms of this Order or to make a timely penalty

*Del*

payment constitutes a breach of this Order. Any breach shall mean that the originally proposed violation and penalty shall be reinstated and affirmed as a final order, and the unpaid amount shall become due and payable 15 calendar days following the breach; UPS's responsibilities and duties under this Agreed Order shall otherwise continue until the agreed amount has been paid in full and no further payment is due;

6. That as required by *Va. Rule* 16 VAC 25-60-40, UPS will post a copy of this settlement agreement for ten (10) working days at its 3941 Thirlane Road workplace in a conspicuous location where it generally posts notices to its employees;

7. That UPS certifies the cited violation has been abated; and if not previously provided, agrees to provide the Commissioner within thirty (30) days of this Order documentation verifying abatement of the affirmed violation in this agreement. The documentation shall comply with 16VAC25-60-307.E.2. of the VOSH Administrative Regulations Manual, stating that "Documents demonstrating that abatement is complete may include, but are not limited to, evidence of purchase or repair of equipment, photographic or video evidence of abatement, or other written records." The documentation shall be provided to:

Mr. Russell Bambarger  
VOSH Southwest Regional Safety Director  
Virginia Department of Labor and Industry  
3013 Peters Creek, Rd., Roanoke, VA 24019

8. That this Order shall be construed to advance the purpose of *Va. Code* § 40.1-3, and that no third party shall hereby have any right of action for breach of any provision of this title unless otherwise specifically provided;

9. That, under *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

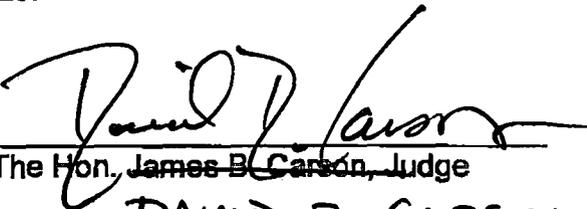
penalty under Chapter 3 of Title 40.1 of the *Code of Virginia* shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party;

10. That this agreement shall not be construed as an admission by UPS of civil or criminal liability for any violation or penalty alleged by the Commissioner; and

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

It is further ORDERED, ADJUDGED, and DECREED that this matter be, and hereby is, dismissed with full prejudice and stricken from the docket of this Court. The Clerk is directed to provide notice of this Order to all counsel of record.

Entered this 16<sup>th</sup> day of May, 2020.

  
The Hon. ~~James B. Carson~~, Judge  
DAVID B. CARSON

WE ASK FOR THIS:

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

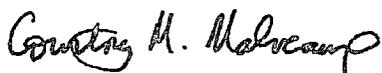
  
Alfred B. Albiston (VSB # 29851)  
Special Assistant Commonwealth's Attorney  
Bedford County  
c/o Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, Virginia 23219

(804) 786-6760  
(804) 786-8418 Fax  
Alfred.Albiston@doli.virginia.gov

*Counsel for plaintiff*

SEEN AND AGREED:

**UNITED PARCEL SERVICE, INC.**

  
Courtney M. Malveaux (VSB No. 51064)  
D. Paul Holdsworth (VSB No. 89258)  
Jackson Lewis P.C.  
701 E. Byrd Street, 17<sup>th</sup> Floor  
Richmond, Virginia 23219  
(804) 649-0404  
(8904) 649-0403  
Courtney.Malveaux@jacksonlewis.com  
Paul.Holdsworth@jacksonlewis.com

*Counsel for defendant*

*del*

**VIRGINIA:**

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

<b>C. RAY DAVENPORT,</b>	)	
Commissioner of Labor and Industry,	)	
<i>Plaintiff,</i>	)	
v.	)	Case # CL16001033-00
	)	
<b>UNITED PARCEL SERVICE, INC.</b>	)	
<i>Defendant.</i>	)	

**AGREED ORDER'S EXHIBIT A**

VOSH inspection number 317796266, citation issued January 13, 2015

Virginia Department of Labor and Industry  
Occupational Safety and Health Compliance  
Brammer Village  
3013 Peters Creek Road  
Roanoke, VA 24019  
Phone: (540) 562-3580 FAX: (540) 562-3587



## Citation and Notification of Penalty

<b>To:</b>	<b>Inspection Number:</b>	317796266
United Parcel Service and its successors 3941 Thirlane Road Roanoke, VA 24014	<b>Inspection Date(s):</b>	07/24/2014 - 10/20/2014
<b>Inspection Site:</b>	<b>Issuance Date:</b>	01/13/2015
3941 Thirlane Rd Roanoke, VA 24019	<i>The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.</i>	

Described herein are alleged violations of Virginia's Occupational Safety and Health Laws, standards and/or regulations. Any penalty proposed is based on the corresponding violation. In accordance with Virginia Code §40.1-49(B), you must abate all alleged violations by the dates listed and pay the penalties proposed, unless, within 15 working days (excluding weekends and State holidays) from the date you receive this citation, you submit a notice of contest to the Virginia Department of Labor and Industry Roanoke Office at the address listed above. Issuance of this citation does not constitute a finding by the Commissioner that you have violated the law, standard or regulation described unless you fail to file a notice of contest or this citation is affirmed by a court of law.

**Please read the enclosed booklet entitled Employers Rights in conjunction with this citation to learn your rights and responsibilities.**

**Posting** - Virginia law requires you to immediately post a copy of this Citation in a prominent place at or near the location of the violation(s), or, if it is not practicable because of the nature of your operations to do so, in a place where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) have been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty amounts may be marked out or covered up prior to posting. It should be noted that these amounts, however, are releasable by the Department in response to a Freedom of Information Act (FOIA) request.

**Informal Conference** - You have the right to an informal conference with Lee A. Willis, Southwest Region Safety Director, at which you may present evidence which you believe supports amending either the citation or penalties proposed. An informal conference, which is held during the 15 working day contest period, is optional. If you wish to attend an informal conference, you must contact Lee A. Willis, Southwest Region Safety Director, at the Roanoke Office address and telephone listed above. If you prefer to use e-mail please correspond to: willis.lee@dol.gov

If you request an informal conference, you must notify your employees of the time and place. Be sure to bring to the conference any documentation of existing conditions as well as abatement steps taken thus far. If conditions warrant, this matter may be resolved amicably without the need for litigation, by way of an Informal Settlement Agreement.

**Requesting an informal conference does not extend the 15 working day contest period.**

**Right to Contest** - You have the right to contest this Citation. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. This citation and the penalties proposed will become a final order of the Commissioner of Labor and Industry unless you notify the Southwest Region Safety Director in writing within 15 working days of receiving this citation that you contest the citation or any part thereof.

**Penalty Payment** - Penalties are due within 15 working days of receipt of this notification unless you contest. Make your check or money order payable to "Commonwealth of Virginia". Please indicate the Inspection Number on the check or money order.

The Virginia Department of Labor and Industry does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For violations which you do not contest, you should notify the Southwest Region Safety Director at the Roanoke Office promptly, by completing the enclosed Report on Correction of Violations form, that you have taken appropriate corrective action by the date(s) specified in this citation. The form must include abatement steps you have taken and the dates, together with adequate supporting documentation, e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results, etc.

**Employer Discrimination Unlawful** - The law prohibits discrimination against an employee who has filed a complaint or who has exercised any rights under the Labor Laws of Virginia. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Virginia Department of Labor and Industry, Occupational Safety and Health Discrimination Office at Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219.

**Notice to Employees** - The law gives an employee or his/her representative the opportunity to contest any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Roanoke Office at the address shown above and postmarked within 15 working days (excluding weekends and State holidays) of the employers receipt of this Citation.

**IMPORTANT NOTICE**

**(READ THIS CAREFULLY)**

The proposed penalties assessed for this inspection's citation(s) reflect reductions that have been granted for the size, good faith, and history of the employer.

<b>ORIGINAL PENALTY</b>	<b>\$2800.00</b>
<b>PROPOSED PENALTY</b>	<b>\$2100.00</b>

**INFORMAL SETTLEMENT OFFER**

An additional **30% reduction** in penalties (rounded to the nearest dollar) will be granted if the **INFORMAL SETTLEMENT AGREEMENT** is signed and returned by the employer to **VOSH** within 15 State working days (excluding weekends and State holidays) of the receipt of the citation. Penalties must be submitted no longer than 14 days after the Informal Settlement Agreement is executed. A detailed abatement plan must be submitted with the **INFORMAL SETTLEMENT AGREEMENT** for those items which have not been abated and will require a longer abatement period.

<b>REDUCED PENALTY AMOUNT FOR INFORMAL SETTLEMENT:</b>	<b>\$1470.00</b>
--	------------------

Corrective Action, taken by you for each alleged violation should be submitted to this office on or about the abatement date(s) indicated on the Citation and Notification of Penalty and included with the submitted **INFORMAL SETTLEMENT AGREEMENT**. A work sheet has been provided to assist in submitting the required abatement information.

**This is the only offer for penalty reductions that will be made.**

Meetings may be held to discuss questions concerning citation/violation issues (other than the penalties) or dates and methods of abatement prior to the final contest date of the citation. Please contact Lee A. Willis at the Virginia Department of Labor and Industry, Roanoke Region Office at (540) 562-3580, extension 128, for an appointment.

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY  
OCCUPATIONAL SAFETY AND HEALTH COMPLIANCE

INFORMAL SETTLEMENT AGREEMENT

In the Matter of: United Parcel Service  
VOSH No.(s): # 317796266

The undersigned representatives of the Employer and the Virginia Department of Labor, Occupational Safety and Health Compliance (VOSH), in settlement of the above citation(s) and penalties which were issued on 01/13/2015, hereby agree as follows:

1. The Employer agrees to correct the violations as cited in the attached citations.
2. The Employer agrees to pay the reduced penalties, amended by this agreement, in the amount of

\$1470.00

3. The Employer, by signing this informal settlement agreement, hereby waives its rights to contest the above citation(s) and penalties, as amended in this agreement.
4. The employer agrees to immediately post a copy of this Informal Settlement Agreement in a prominent place at or near the location of the violation(s) referred to in the attached citation. This Informal Settlement Agreement must remain posted until the violations cited have been corrected, or for 3 working days (excluding weekends and State Holidays), whichever is longer.
5. The employer agrees to continue to comply with the applicable provisions of the Occupational Safety and Health Act of 1970, and the applicable safety and health standards promulgated pursuant to the Act.
6. The Employer agrees to develop/review its safety and health program and modify it as appropriate on an ongoing basis.
7. This citation has been amended by agreement between the commissioner and the employer named above. As part of the written agreement, the employer has waved his right to file a notice of contest to this order. This agreement shall not be construed as an admission by the employer of the civil liability for any violation alleged by the Commissioner.

\_\_\_\_\_  
For Virginia Occupational Safety And Health Compliance  
Lee A. Willis  
(signature and date)

\_\_\_\_\_  
For The Employer  
(signature and date)

**Virginia Department of Labor & Industry**  
Occupational Safety and Health Compliance

Inspection Number: 17796266  
Inspection Dates: 07/24/20 - 10/20/2014  
Issuance Date: 01/13/2015



**Citation and Notification of Penalty**

Company Name: United Parcel Service  
Inspection Site: 3941 Thirlane Rd, Roanoke, VA 24019

**Citation 1 Item 1 Type of Violation: **Serious****

Code of Virginia 40.1 -51.1(A): It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees and to comply with all applicable occupational safety and health rules and regulations promulgated under this title.

Small sorts diverter package conveyor line: Packages pile up and fall onto work stations below creating struck-by hazards for employees.

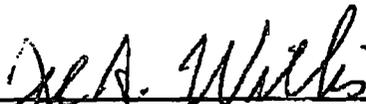
One feasible and acceptable method to correct this hazard is to comply with ANSI B20.1-1976. Although overhead conveyor guards may be guarded by location, spill guards, pan guards, or equivalent shall be provided if material may fall off the conveyor and endanger personnel.

**Date By Which Violation Must be Abated:**

**02/15/2015**

**Proposed Penalty:**

**\$2,100.00**

  
\_\_\_\_\_  
Lee A. Willis  
Southwest Region Safety Director

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**VIRGINIA:**

**IN THE CIRCUIT COURT OF BEDFORD COUNTY**

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

v.

**VIEWPOINT TREE SERVICE & PROPERTY  
MANAGEMENT LLC**  
*Defendant.*

)  
)  
)  
) Civil Action No. CL19-971  
)  
) *2-25-2020*  
)  
)

**AGREED ORDER**

WHEREAS, on or about November 3, 2016, plaintiff C. Ray Davenport, Commissioner of Labor and Industry ("Commissioner") issued a citation to defendant, Viewpoint Tree Service & Property Management LLC ("Viewpoint Tree"), alleging four (4) Serious violations of the Virginia Occupational Safety and Health ("VOSH") Standards for General Industry, and proposing \$15,240.00 in civil penalties; and

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

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

1. That the VOSH citation, attached as Exhibit "A" is hereby amended as follows:
  - a) Citation 1, Item 1 is upheld as a "Serious" classified violation and its \$2,800.00 proposed penalty is amended to 1,060.00 and affirmed;
  - b) Citation 1, Item 2 is upheld as a "Serious" classified violation with its \$7,000.00 proposed penalty affirmed;

To Verify The Digital Signature, visit <https://cisweb.courts.state.va.us/CdvAct/main> (Document ID:019-2306)

- c) Citation 1, Item 3 is upheld as a "Serious" classified violation and its \$2,800.00 proposed penalty is amended to \$1,050.00 and affirmed; and
- d) Citation 1, Item 4 is upheld as a "Serious" classified violation and its \$2,640.00 proposed penalty is amended to \$1,050.00 and affirmed.

**These amendments will be made, provided Viewpoint Tree complies with requirements listed in paragraphs 2 through 4 below;**

2. That the total penalty due of ten thousand one hundred sixty dollars (\$10,160.00) shall be paid to the Commonwealth as follows:

2a. Viewpoint Tree shall pay to the Commissioner \$10,160.00 in payment of the amended penalties for the above citation, to be paid in 23 monthly incremental payments of \$425.00, with a concluding 24<sup>th</sup> payment of \$385.00, each made on the first day of the month for the next twenty-four (24) successive months. The first monthly payment shall be due on the first day of the month that begins at least fifteen days after the entry of this Agreed Order. Each payment will be made in the form of a check or money order, payable to the Commonwealth of Virginia, with the VOSH inspection number 1147436, listed on each check.

2b. Viewpoint Tree's responsibilities and duties under this Agreed Order over and above its responsibilities and duties under applicable law and regulation, shall cease once it has paid the \$10,160.00 adjusted penalty in full. Viewpoint Tree's responsibilities and duties under this Agreed Order shall otherwise continue until all such amounts have been paid in full and no further payments are due; and

2c. It is expressly understood that any penalty amount modifications in this Agreed Order are contingent upon Viewpoint Tree's full and timely payment of the penalties as

adjusted. Viewpoint Tree's failure to substantially comply with the terms of this Order or to make a penalty payment by the due date constitutes a breach of this Order. Any breach shall mean that the originally proposed violations and penalties shall be reinstated and affirmed as a final order, and all unpaid amounts shall become due and payable 15 calendar days following the breach;

3. That as required by *Va. Rule 16 VAC 25-60-40*, Viewpoint Tree will post a copy of this settlement agreement for ten (10) working days at its workplaces in Virginia in a conspicuous location where it generally posts notices to its employees;

4. **If not previously provided**, Viewpoint Tree agrees to provide the Commissioner within thirty (30) days of the effective date of this agreement documentation verifying abatement of each violation affirmed in this agreement. The documentation shall comply with 16VAC25-60-307.E.2. of the VOSH Administrative Regulations Manual, stating that "Documents demonstrating that abatement is complete may include, but are not limited to, evidence of purchase or repair of equipment, photographic or video evidence of abatement, or other written records." The documentation shall be provided to:

Mr. Russell Bamberger  
VOSH Southwest Regional Safety Director  
Virginia Department of Labor and Industry  
3013 Peters Creek, Rd., Roanoke, VA 24019

5. That Viewpoint Tree withdraws its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;

6. That this Order shall be construed to advance the purpose of *Va. 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;

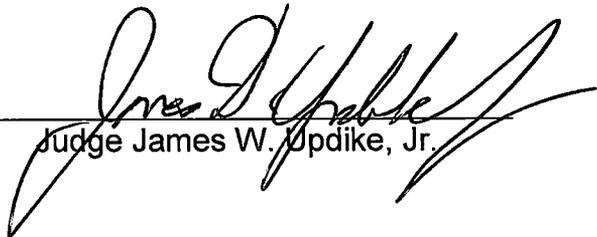
8. That, under *Va. Code* § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the *Code of Virginia* shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party;

9. That this agreement shall not be construed as an admission by Viewpoint Tree of civil or criminal liability for any violation or penalty alleged by the Commissioner; and

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

It is further ORDERED, ADJUDGED, and DECREED that this matter be, and hereby is, dismissed with full prejudice and stricken from the docket of this Court. The Clerk shall send an attested copy of this Order to the Commissioner's legal counsel and to the pro se defendant's address provided below.

Entered this 25<sup>th</sup> day of February, 2020.

  
\_\_\_\_\_  
Judge James W. Updike, Jr.

WE ASK FOR THIS:

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



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

(804) 786-6760  
(804) 786-8418 Fax  
[Alfred.Albiston@doli.virginia.gov](mailto:Alfred.Albiston@doli.virginia.gov)

*Counsel for plaintiff*

SEEN AND AGREED:

**VIEWPOINT TREE SERVICE & PROPERTY MANAGEMENT LLC**



Mark B. Dunevant (VSB No. 76680)  
Sanzone & Baker, L.L.P.  
1106 Commerce Street, Suite 3A  
Lynchburg, Virginia 24506  
(434) 846-4691  
(434) 528-5264 fax  
[m.dunevant@sanzone-baker.com](mailto:m.dunevant@sanzone-baker.com)

*Counsel for defendant*

ce: 2-25-20  
Albiston      ce  
Dunevant

**VIRGINIA:**

**IN THE CIRCUIT COURT OF BEDFORD COUNTY**

<b>C. RAY DAVENPORT,</b>	)	
Commissioner of Labor and Industry,	)	
<i>Plaintiff,</i>	)	
v.	)	Civil Action No. CL19-971
	)	
<b>VIEWPOINT TREE SERVICE &amp; PROPERTY</b>	)	
<b>MANAGEMENT LLC</b>	)	
<i>Defendant.</i>	)	

**AGREED ORDER'S EXHIBIT A**

VOSH inspection number 1147436, citation issued November 3, 2016

**Virginia Department of Labor and Industry**  
**Virginia Occupational Safety and Health (VOSH) Compliance**

Brammer Village  
3013 Peters Creek Road  
Roanoke, VA 24019  
Phone: (540) 562-3580 Fax: (540) 562-3587



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## Citation and Notification of Penalty

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**To:**  
Viewpoint Tree Service & Property Management LLC  
and its successors  
1204 Mosely Dr  
Lynchburg, VA 24502

**Inspection Number:** 1147436  
**Inspection Date(s):** 05/13/2016-11-03-2016  
**Issuance Date:** 11/03/2016

**Inspection Site:**  
1899 Turkey Foot Rd  
Forest, VA 24551

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

**Citation and Notification of Penalty.** Described herein are alleged violations of Virginia's Occupational Safety and Health (VOSH) laws, standards and/or regulations. Any penalty proposed is based on the corresponding violation. In accordance with Virginia Code §40.1-49.4(b)(4), you must abate all alleged violations by the dates listed and pay the penalties proposed, unless, within 15 working days (excluding weekends and State and Federal holidays) from the date you receive this citation, you submit a written notice of contest to the Virginia Department of Labor and Industry Regional Office at the address listed above. Issuance of this citation does not constitute a finding by the Commissioner that you have violated the law, standard or regulation described unless you fail to file a written notice of contest or this citation is affirmed by a court of law.

**Please read the enclosed booklet entitled *Employer Responsibilities and Courses of Action Following a VOSH Inspection* in conjunction with this citation to learn your rights and responsibilities.**

**Posting.** Virginia law requires you to immediately post a copy of this Citation in a prominent place at or near the location of the violation(s), or if it is not practicable because of the nature of your operations to do so, in a place where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) have been abated, or for 3 working days (excluding weekends, State and Federal holidays), whichever is longer. **The penalty amounts may be marked out or covered up prior to posting. Please note that these penalty amounts are releasable by the Department in response to a Freedom of Information Act (FOIA) request.**

**Informal Conference.** You have the right to an informal conference with the VOSH Regional Safety Director at which you may present evidence to support amending the citation, order of abatement or penalties proposed. An informal conference, which is normally held during the 15 working day contest period, is optional. If you wish to attend an informal conference, you must contact the VOSH Regional Safety Director at the Regional Office listed above.

**If you request an informal conference, you must notify your employees of the time and place.** Be sure to bring to the conference any documentation of existing conditions as well as abatement steps taken thus far. If conditions warrant, this matter may be resolved amicably without the need for litigation, by way of an Informal Settlement Agreement.

**Requesting an informal conference does not extend the 15 working day contest period.**

**Right to Contest.** You have the right to contest this Citation. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. This citation and the penalties proposed will become a final order of the Commissioner of Labor and Industry unless you notify VOSH in writing within 15 working days of receiving this citation that you contest the citation or any part thereof.

**Penalty Payment.** Penalties are due within 15 working days of receipt of this notification unless you contest. Make your check or money order payable to "Commonwealth of Virginia ". **Please indicate the Inspection Number on the check or money order.**

The Virginia Department of Labor and Industry does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action.** For violations which you do not contest, you must promptly notify the VOSH Regional Safety Director at the VOSH Regional Office listed above, by completing the enclosed Report on Correction of Violations form, and indicates that you have taken appropriate corrective action by the date(s) specified in this citation. The form must include abatement steps you have taken and the dates, together with adequate supporting documentation, e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results, etc.

**Employment Discrimination Unlawful.** Virginia Code §§40.1-51.2:1 and -51.2:2 prohibit discrimination against any employee who has filed a complaint or who has exercised any rights under the safety and health provisions of Title 40.1 of the Code of Virginia. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the VOSH Office of Whistleblower Protection at Suite 207, 600 East Main Street, Richmond, VA 23219.

**Notice to Employees.** The law gives an employee or his/her representative the opportunity to contest in writing any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Regional Office at the address shown above and postmarked within 15 working days (excluding weekends and State and Federal holidays) of the employer's receipt of this Citation.

Virginia Department of Labor and Industry  
Virginia Occupational Safety and Health (VOSH) Compliance  
Brammer Village  
3013 Peters Creek Road  
Roanoke, VA 24019  
Phone: (540) 562-3580 Fax: (540) 562-3587



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## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with VOSH to discuss the Citation(s) issued 11/03/2016. The conference will be held at the VOSH office located at Brammer Village, 3013 Peters Creek Road, Roanoke, VA 24019 on \_\_\_\_\_ at \_\_\_\_\_. Employees and/or representatives of employees have a right to attend an informal conference.

Virginia Department of Labor and Industry  
Virginia Occupational Safety and Health (VOSH) Compliance  
Brammer Village  
3013 Peters Creek Road  
Roanoke, VA 24019

Inspection Number: 1147436  
Inspection Date: 05/13/2016-  
11/03/2016  
Issuance Date: 11/03/2016



**Citation and Notification of Penalty**

**Company Name:** Viewpoint Tree Service & Property Management LLC  
**Inspection Site:** 1899 Turkey Foot Rd, Forest, VA 24551

**Citation 1 Item 1**                      Type of Violation: **Serious**

1910.266(g)(2): At this site (1899 Turkeyfoot Rd, Forest, VA), Viewpoint Tree Service and Property Management failed to assure that each vehicle used to perform any logging operation was inspected before initial use during each workshift. Defects or damage shall be repaired or the unserviceable vehicle shall be replaced before work is commenced.

The Chevrolet Kodiak 4500 log truck was not inspected before the workshift. The vehicle had a defective, nonfunctioning back up alarm.

**Date by Which Violation Must Be Abated:** **November 13, 2016**  
**Proposed Penalty:** **\$2800.00**

**Citation 1 Item 2**                      Type of Violation: **Serious**

1910.266(g)(7): The requirements of paragraphs (f)(2)(iii), (f)(2)(v), (f)(2)(vii), (f)(2)(x), (f)(2)(xiii), and (f)(7) of this section shall also apply to each vehicle used to transport any employee off public roads or to perform any logging operation, including any vehicle provided by an employee.

At this site (1899 Turkeyfoot Rd, Forest, VA), Viewpoint Tree Service and Property Management on, or about, 5/13/2016, an employee of Viewpoint Tree Service & Property Management was run over by a log truck. The employer, who was the operator of the log truck, failed to ensure that all employees were clear of the path of travel. The employee received fatal injuries from the incident.

**Date by Which Violation Must Be Abated:** **November 09, 2016**  
**Proposed Penalty:** **\$7000.00**

**Citation 1 Item 3**                      Type of Violation: **Serious**

1910.266(i)(3): At this site (1899 Turkeyfoot Rd, Forest, VA), Viewpoint Tree Service and Property Management failed to ensure that at a minimum, training shall consist of the following elements: safe performance of work tasks, safe use, operation and maintenance of tools, machines and vehicles and recognition of safety and health hazards associated with the employee's specific work tasks.

**Date by Which Violation Must Be Abated:** **November 18, 2016**  
**Proposed Penalty:** **\$2800.00**

Virginia Department of Labor and Industry  
Virginia Occupational Safety and Health (VOSH) Compliance  
Brammer Village  
3013 Peters Creek Road  
Roanoke, VA 24019

Inspection Number: 1147436  
Inspection Date: 05/13/2016-  
11/03/2016



Issuance Date: 11/03/2016

**Citation and Notification of Penalty**

**Company Name:** Viewpoint Tree Service & Property Management LLC  
**Inspection Site:** 1899 Turkey Foot Rd, Forest, VA 24551

**Citation 2 Item 1**

Type of Violation: **Repeat-Serious**

1910.266(i)(7)(i): At this site (1899 Turkeyfoot Rd, Forest, VA), Viewpoint Tree Service & Property Management LLC failed to assure that each employee, including supervisors, received or had received first-aid and CPR training meeting at least the requirements specified in Appendix B.

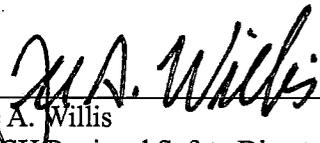
Viewpoint Tree Service & Property Management LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1910.151(b), which was contained in VOSH inspection number 317350833, citation number 1, item number 1 and was affirmed as a final order on April 11, 2014, with respect to a workplace located at 963 Rainbow Forest Drive, Timberlake, VA.

**Date by Which Violation Must Be Abated:**

**December 23, 2016**

**Proposed Penalty:**

**\$2640.00**

  
\_\_\_\_\_  
Lee A. Willis  
VOSH Regional Safety Director

**VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE**

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

*Plaintiff,*

v.

Case No. CL20002850-00

**WESTAR ROOFING CORPORATION,**

*Defendant.*

**CONSENT FINAL JUDGMENT**

ON THIS DAY came the parties, C. Ray Davenport, Commissioner of Labor and Industry, and Westar Roofing Corporation, by counsel, who jointly moved the Court to enter a Consent Final Judgment.

It appearing to the Court that the parties have reached a settlement in this matter, and that pursuant to that agreement,

It is therefore ADJUDGED and ORDERED that the citations issued following Virginia Occupational Safety and Health (VOSH) Inspection number 1336914 against Defendant Westar Roofing Corporation by the Commissioner are AFFIRMED pursuant to Va. Code § 40.1-49.4(E), to include proposed penalties, and the Court hereby

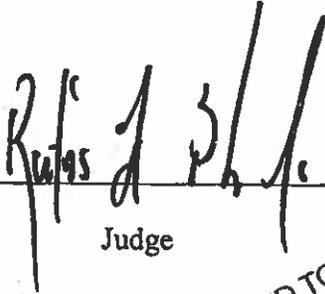
ENTERS JUDGMENT against Defendant Westar Roofing Corporation in favor of the Commissioner of Labor and Industry in the amount of ONE HUNDRED THIRTY NINE THOUSAND NINE HUNDRED EIGHTY-FOUR DOLLARS and ZERO CENTS (\$139,984.00), without costs, with interest at the legal rate from the date of this Order until paid.

The Clerk of the Court is DIRECTED to send certified copies of this Order to the attorney for the Commonwealth, and Alex W. West, Special Assistant Commonwealth's Attorney, 600 East

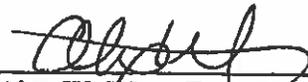
Main Street, Suite 207, Richmond, VA 23219, and to Timothy L. Whited, 2516 Squadron Court, Virginia Beach, VA 23453.

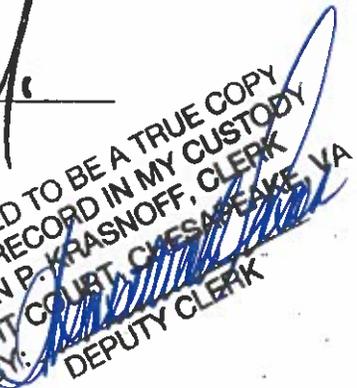
The Clerk may place this case amongst the closed cases and remove it from the Court's docket.

Entered this 26<sup>th</sup> day of May, 2020.

  
\_\_\_\_\_  
Judge

I request this:

  
\_\_\_\_\_  
Alex W. West, Esq. (VSB # 84607)  
Assistant Commonwealth's Attorney, City of Chesapeake  
c/o Department of Labor and Industry  
600 East Main Street, Suite 207  
Richmond, VA 23219  
(804) 371-2631  
(804) 371-6524 (fax)

CERTIFIED TO BE A TRUE COPY  
OF THE RECORD IN MY CUSTODY  
ALAN P. KRASNOFF, CLERK  
CIRCUIT COURT, CHESAPEAKE, VA  
BY:   
DEPUTY CLERK

Seen and agreed:

WESTAR ROOFING CORPORATION

By: 

Timothy L. Whited, President & Director  
2516 Squadron Court  
Virginia Beach, VA 23453

**C. RAY DAVENPORT**

Commissioner of Labor and Industry

**WESTAR ROOFING CORPORATION, and its successors in interest**

Inspection Number 1336914

### **SETTLEMENT AGREEMENT**

**THIS AGREEMENT** is entered into by C. Ray Davenport, Commissioner of Labor and Industry (Commissioner) and Westar Roofing Corporation, a terminated Virginia corporation, and its successors in interest (Employer).

WHEREAS, on or about January 30, 2019, the Commissioner issued citations to the Employer and its successors alleging two Serious violations and one Willful violation of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry. A total of \$139,984.00 in penalties was proposed by the Commissioner along with the violation. (Copy of the citation attached by reference hereto).

WHEREAS, the Employer filed a notice of contest of all violations contained in the citations within 15 working days from the date of the receipt of the citations, as provided by § 40.1-49.4 of the Code of Virginia;

WHEREAS, pursuant to § 40.1-49.4(E) of the Code of Virginia, the Commissioner caused the Chesapeake Commonwealth's Attorney to file a Complaint to affirm the citations in Chesapeake Circuit Court, case number CL20002850-00 (the "Litigation"); and

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

NOW, THEREFORE, the parties agree to the following:

#### **TERMS AND CONDITIONS OF AGREEMENT**

1. Upon full execution of the agreement, the Employer agrees to execute as agreed an Agreed Final Order in the Litigation that affirms all violations as cited, and enters judgment against Employer in the amount of \$139,984.00.
2. The Employer warrants and represents that it is no longer in business. Employer agrees that within ten (10) days of the Employer being reinstated or otherwise continuing its operations it will notify the Commissioner.
3. The Employer certifies that the cited violations have been abated.
4. The Employer represents that it is entering into this agreement of settlement in the

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

5. The Employer waives and withdraws its notice of contest to the citations issued under Inspection number 1336914, and its right to contest the remaining terms contained in this agreement.

6. This Agreement compromises and settles the above contested claims. Under 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 will not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party.

7. This Agreement is entered into by each of the parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. This Agreement constitutes the entire agreement between the parties concerning the aforesaid settlement and citation(s), and all prior negotiations, offers, and agreements, whether written or oral, are either superseded or merged in this document. This agreement cannot be amended except by a writing signed by the parties.

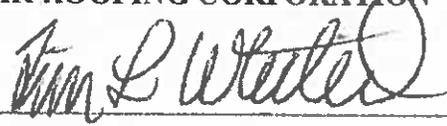
8. This Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, and shall also bind and inure to the benefit of any successor in interest of the Employer, except that the Employer may not assign any right or obligation flowing from this Agreement.

9. A court's ruling rendering any provision(s) of this Agreement invalid or unenforceable shall not affect the validity of the remaining provisions of the Agreement.

10. Each person signing this Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or she has signed.

11. This Agreement may be executed in any number of copies, each of which shall be deemed a counterpart original.

**WESTAR ROOFING CORPORATION**

By:  (SEAL) May 5, 2020  
Date

Name: Tim L. Whited  
Its: President

State of Virginia, City/County of Virginia Beach  
to wit:

The foregoing instrument was acknowledged before me this 5 day of May, 2020 by  
~~Charlotte Mast~~ on behalf of Westar Roofing Corp. President.  
Tim L. Whited



My commission expires: 10/31/2020

**C. RAY DAVENPORT  
COMMISSIONER OF LABOR AND INDUSTRY**

By:  (SEAL) 05/06/2020  
Date  
Marta Fernandes  
Director, Occupational  
Safety Compliance

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF HAMPTON, PART I

C. RAY DAVENPORT  
Commissioner of Labor and Industry

*Plaintiff,*

v.

Civil Action No. CL19002213-00

WITCHDUCK DEVELOPMENT, INC.  
d/b/a DUNN DEMOLITION

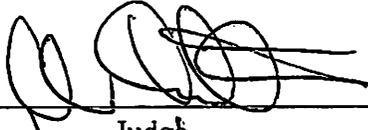
*Defendant.*

**MOTION AND ORDER OF NON-SUIT**

THIS DAY came the Plaintiff, and moved the Court for a non-suit pursuant to § 8.01-380 of the *Code of Virginia*. Plaintiff represented that no counterclaims have been filed, nor has Plaintiff previously taken a non-suit, nor has the Defendant been served.

UPON CONSIDERATION WHEREOF, the Court does hereby GRANT the Plaintiff's motion and enters a NON-SUIT in this matter. The Clerk is directed to mail a certified copy of this Order to counsel of record, and to remove this action from the docket.

ENTER:

  
\_\_\_\_\_  
Judge

DATE:

  
\_\_\_\_\_

1. The first part of the document is a list of names and addresses.

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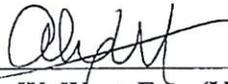
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16. The sixteenth part of the document is a list of names and addresses.

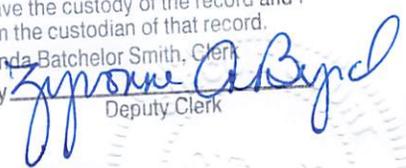
17. The seventeenth part of the document is a list of names and addresses.

18. The eighteenth part of the document is a list of names and addresses.

WE ASK FOR THIS:

  
\_\_\_\_\_  
Alex W. West, Esq. (VSB # 84607)  
Special Assistant Commonwealth's Attorney, City of Hampton  
c/o Department of Labor and Industry  
600 East Main St., Suite 207  
Richmond, VA 23219  
Tel: 804-371-2631  
Fax: 804-371-6524  
[alex.west@doli.virginia.gov](mailto:alex.west@doli.virginia.gov)  
*Counsel for the Plaintiff*

Pursuant to Rule 1:13, all other endorsements are waived

I certify that the document to which  
this authentication is affixed is a  
true copy of an original record in  
the Hampton Circuit Court, that I  
have the custody of the record and I  
am the custodian of that record.  
Linda Batchelor Smith, Clerk  
By   
Deputy Clerk

