

**FINAL ORDERS OF THE VIRGINIA COURTS
IN CONTESTED CASES ARISING UNDER THE
VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT
2023**

William A. Hazel, Inc., Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL17000430-00 (Circuit Court of the County of Fauquier)

Slurry Pavers, Inc., Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL23000144-00 (Circuit Court of the County of Lancaster)

Thomas Builders of Virginia, Inc., Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL20003644-00 (Circuit Court of the County of Bedford)

Digges Development Corporation, Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL-2023-0004562 (Circuit Court of the County of Fairfax)

FAM Construction, LLC, Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL-2022-0011346 (Circuit Court of the County of Fairfax)

FAM Construction, LLC, Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL-2023-0004561 (Circuit Court of the County of Fairfax)

FAM Construction, LLC, Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL-2022-0002506 (Circuit Court of the County of Fairfax)

Cardinal Multi Services, LLC, C. Ray Davenport, Commissioner of Labor and Industry v. Case No. CL-2023-0002734 (Circuit Court of the County of Fairfax)

New River Electrical Corporation, Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL-2022-0005578 (Circuit Court of the County of Fairfax)

PKC Construction Co., Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL-2021-0003203 (Circuit Court of the County of Fairfax)

Cowan Systems, LLC, Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL19000819-00 (Circuit Court of the County of Amherst)

Southern Environmental Services, Inc., Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL21003960-00 (Circuit Court of the City of Richmond)

Utility Trailer Manufacturing Company, Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL19001479-00 (Circuit Court of the County of Washington)

S.A. Halac Iron Works, Inc., Gary G. Pan, Commissioner of Labor and Industry v., Case No. CL23003079-00 (Circuit Court of the County of Loudoun)

thereafter identified as Serious Item 1a and 1b, respectively, and the two associated civil penalties are combined and affirmed at \$40,000.00; and
b) Willful-Serious Citation 1, Item 2 is combined with Item 1, and affirmed as amended in the preceding sub-paragraph; and

2. That Hazel agrees to pay a civil penalty of forty thousand dollars (\$40,000.00) 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 1094344 noted on the payment. It is expressly understood that all VOSH Citation modifications in this Agreed Order are contingent upon Hazel's full and timely payment of the penalty as agreed. Hazel's failure to substantially comply with the terms of this Order or to pay the affirmed penalty by the due date constitutes a breach of this Order—unless Hazel demonstrates good cause for such failure. Any breach, unexcused by good cause, shall mean that the originally proposed violations and penalty 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 Hazel shall within 120 days of this Order's entry, conduct worker safety training for all field personnel, accompanied by written training materials and attendance records, in observing Virginia's regulations regarding trenching/excavations, and in safe practices for using powered hand tools. Documentation of such training, including a copy of the materials covered and signed attendance sheets shall be provided the Commissioner, either by emailing Daniel Wells at daniel.wells@doli.virginia.gov or by mail to: Department of Labor and Industry, Northern VA Regional Office, c/o Daniel Wells, 9400 Innovation Drive, Manassas, VA 20110.

4. That Hazel acknowledges the regulatory requirement of *VOSH Std. §1926.651(k)(1)* for a competent person to conduct an inspection of excavations and trenches prior to the start of work and as needed throughout the shift. For a period of twelve (12) months following this Order's execution, Hazel will require this pre-work inspection to be documented and signed off by the competent person performing any such inspection.
5. That for a period of thirty-six (36) months following this Order's execution, the Commissioner agrees not to classify as Repeat any cited violation by Hazel of *VOSH Std. §§ 1926.651(k)(2) or 1926.652(a)(1)*.
6. That as consideration for the modification of the terms of the original citation and proposed penalties, and agreement to the terms described herein, Hazel withdraws its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;
7. That the parties agree the upheld violation has been abated through completion of the underlying construction and development project.
8. That as required by *Va. Rule 16 VAC 25-60-40*, Hazel will post a copy of this Agreed Order for ten (10) working days at its construction sites and workplaces in Virginia in conspicuous locations where it generally posts notices to its employees;
9. 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;
10. 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;

11. That no part of the foregoing or following agreements, statements, findings and actions taken by Hazel shall be deemed an admission by Hazel 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; and shall not be construed as an admission by Hazel of civil or criminal liability for any violation or penalty alleged by the Commissioner; and 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 prejudice and stricken from the docket of this Court. The Clerk shall send an attested copy of this Order to the parties' counsel and then will place this matter amongst the Court's ended cases.

Entered this 30TH day of Nov., 2023.




Judge

Douglas L. Fleming, Jr.
Chief Judge

WE ASK FOR THIS:


GARY G. PAN, Commissioner of Labor and Industry


Alfred B. Albiston (VSB No. 29851)
Special Assistant Commonwealth's Attorney
Fauquier 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:

WILLIAM A. HAZEL, INC.


Paul J. Waters, Esquire (VSB # 47923)
WATERS LAW GROUP, LLC
611 South Ft. Harrison Avenue, #304
Clearwater, FL 33756
Phone/Fax: (727) 474-4736 x1
pwaters@oshattorney.com

Counsel for defendant

CC: ALBISTON
WATERS
11-30-23
RE

VIRGINIA:

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

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

v.

WILLIAM A. HAZEL, INC.
Defendant.

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No. CLCL17000430-00

AGREED ORDER'S EXHIBIT A

VOSH inspection number 1094344, citation issued March 22, 2016.

Virginia Department of Labor and Industry
Virginia Occupational Safety and Health (VOSEH) Compliance
10515 Battleview Parkway
Manassas, VA 20109

Inspection Number: 1094344
Inspection Date: 09/24/2015-
09/24/2015
Issuance Date: 03/21/2016



Citation and Notification of Penalty

Company Name: William A. Hazel, Inc.
Inspection Site: 6161 Willow Place Bealeton, VA 22712

Citation 1 Item 1

Type of Violation: Willful-Serious

1926.651(k)(2): Where the competent person finds evidence of a situation that could result in a possible cave-in, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, exposed employees shall be removed from the hazardous area until the necessary precautions have been taken to ensure their safety.

On September 24, 2015 located at 6161 Willow Place, Bealeton, Virginia, 22712, employees of William A. Hazel, Inc. were working in an open trench preparing for the installation of a fire hydrant. The trench measured approximately sixteen (16) feet in width and seven (7) feet in depth. The trench had an existing eight (8) inch ductile iron pipe that was being cut in preparation of installing the fire hydrant therefore; the soil was classified as a Type C soil requiring either shoring or 1 1/2 to 1 sloping to protect employees from cave-in. The East wall of the trench was vertical and the North and South walls were near vertical. The Competent Person on the site after inspecting the trench, recognized the hazard of the vertical and near vertical walls but did not either require that the walls be properly sloped or provide shoring prior to ordering employees into the trench.

Date by Which Violation Must Be Abated:

March 25, 2016

Proposed Penalty:

\$63000.00

Virginia Department of Labor and Industry
Virginia Occupational Safety and Health (VOSE) Compliance
10515 Battleview Parkway
Manassas, VA 20109

Inspection Number: 1094344
Inspection Date: 09/24/2015-
09/24/2015
Issuance Date: 03/21/2016



Citation and Notification of Penalty

Company Name: William A. Hazel, Inc.
Inspection Site: 6161 Willow Place Bealeton, VA 22712

Citation 1 Item 2

Type of Violation: Willful-Serious

1926.652(a)(1): Each employee in an excavation shall be protected from cave-ins by an adequate protective system.

On September 24, 2015 located at 6161 Willow Place, Bealeton, Virginia, 22712, employees of William A. Hazel, Inc. were working in an open trench preparing for the installation of a fire hydrant. The trench measured approximately sixteen (16) feet in width and seven (7) feet in depth. The trench had an existing eight (8) inch ductile iron pipe that was being cut in preparation of installing the fire hydrant therefore; the soil was classified as a Type C soil requiring either shoring or 1 1/2 to 1 sloping to protect employees from cave-in. The East wall of the trench was vertical and the North and South walls were near vertical. The Competent Person on the site determined not to provide either shoring or adequate sloping prior to ordering employees into the trench.

This exposed employees to serious injury or death from a trench cave-in.

Date by Which Violation Must Be Abated:

March 25, 2016

Proposed Penalty:

\$63000.00


Kimberly H. Moubrey
NoVA Region Sr. Safety Director


FILED AT 11:32 M

MAY 30 2023

GAIL H. BARR, CLERK


BY: GP D.C.

We ask for this:



James H. Revere, III, Esquire (VSB#33757)
Kalbaugh, Pfund & Messersmith, P.C.
901 Moorefield Park Drive, Suite 200
Richmond, Virginia, 23236
Telephone (804) 320-6300
Fax (804) 320-6312
E-mail: jh.revere@kpmlaw.com

SEEN AND OBJECTED TO: upon the grounds stated in the brief and at hearing, including that the Court incorrectly interprets the Commonwealth's regulation by not including operator usage as an included requirement of the described exemption to § 16VAC25-97-30.A.2 as described in § 16VAC 25-97-30.D, and not giving effect to the plain language "used by the driver," and thereby failing to interpret it in accordance with the remedial purpose of the VOSH Act. Additionally, the Commissioner objects that the Court neglected to specifically address the Demurrer in regards to the alternative citation alleging a violation of § 16VAC25-60-120.



Alfred B. Albiston, Esquire (VSB#29851)
Special Assistant Commonwealth's Attorney
Lancaster County
c/o Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, Virginia 23219
Telephone (804) 786-6760
Fax (804) 371-6524
Email: Alfred.Albiston@doli.virginia.gov

VIRGINIA:

IN THE CIRCUIT COURT FOR BEDFORD COUNTY

GARY G. PAN
Commissioner of Labor and Industry

Plaintiff,

v.

**THOMAS BUILDERS OF
VIRGINIA, INC.**

Defendant.

Civil Action No. CL²⁰210003644-00

5-4-23

ORDER

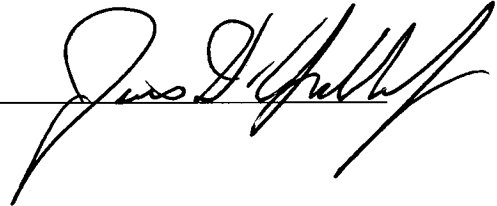
This matter came before the Court on Commissioner Pan's Motion for Nonsuit as a matter of right pursuant to *Va. Code* § 8.01-380, and IT APPEARING that on October 26, 2020, the Commissioner filed a complaint against defendant Thomas Builders of Virginia, Inc., CL²⁰⁰⁰³⁶⁴⁴⁻⁰⁰~~21001798-00~~, that no nonsuit has been taken to this cause, and that the defendant has not filed a crossbill, it is therefore ADJUDGED, ORDERED AND DECREED that the Commissioner's Motion for Nonsuit 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 4th day of May 2023.

Judge



I ASK FOR THIS:

GARY G. PAN,
Commissioner of Labor and Industry



Alfred B. Albiston (VSB No. 29851)
James B. Brooks (VSB No. 89036)
Special Assistant Commonwealth's Attorneys
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
james.brooks@doli.virginia.gov
Counsel for the Commissioner of Labor and Industry

CC: CWA
Brooks
Bennett
5523
CWO

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

GARY G. PAN,
Commissioner of Labor and Industry,

Plaintiff,

v.

Case No. CL-2023-4562

DIGGES DEVELOPMENT CORPORATION,

Defendant.

FINAL ORDER OF DEFAULT JUDGMENT

This cause came to be heard upon Commissioner Gary G. Pan's Motion for Default Judgment against Digges Development Corporation declaring that \$258,185.00 in proposed civil penalties arising from a contest of a Virginia Occupational Safety and Health (VOSH) citation, identified by VOSH Inspection Number 1417434 and as attached to the Commissioner's Complaint as Exhibit A be affirmed as the Defendant Digges Development Corporation is in default in this action.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one (21) days have elapsed since service of process on the Defendant and that no responsive pleadings have been filed by the Defendant, nor has an appearance been made in this action on its behalf and for good cause shown, it is therefore

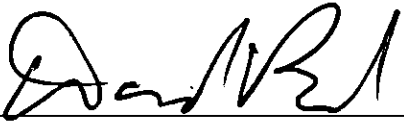
ADJUDGED, ORDERED, and DECREED that Plaintiff be awarded default judgment in this cause against the Defendant and judgment is hereby ENTERED in favor of Gary G. Pan and against Digges Development Corporation in the amount of \$258,185.00 in civil penalties, plus interest at the legal rate, arising from a contested Virginia Occupational Safety and Health (VOSH) citation as set out in Inspection No. 1417434, and that the citations attached to the Complaint as Exhibit A are hereby AFFIRMED.

08/22/23 em: Tt At, Judgments
cc: Tt/D's Atty.
8/18/23



It is further ADJUDGED, ORDERED, and DECREED that the Clerk of this Court shall strike this matter from the docket and place it among the ended civil cases.

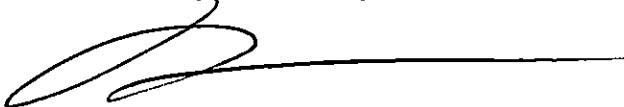
The Clerk shall mail certified copies of this order to Defendant's registered agent, and to Plaintiff's counsel. Pursuant to Rule 1:13, endorsement by the Defendant shall be dispensed with.

JUDGE: 
David Bernhard

ENTERED: 8/18/2023

I ask for this:

GARY G. PAN,
Commissioner of Labor and Industry

By: 
Kaitlin M. Hopingardner, Esq. (VSB # 97034)
Special Assistant Commonwealth's Attorney
Fairfax County
c/o Department of Labor and Industry
600 E Main Street, Suite 207
Richmond, VA 23219
(804) 786-2641
Kaitlin.hopingardner@doli.virginia.gov

Waived pursuant to Rule 1:13


Digges Development Corporation
1461 Church Hill Place
Reston, VA 20194

(The court notes Thomas H. Digges, Secretary of the Corporation and a new lawyer was present and requested a continuance which was denied.)

John T. Frey
CLERK, CIRCUIT COURT
FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

GARY G. PAN
Commissioner of Labor and Industry

Plaintiff,

v.

Civil Action No. CL-2022-11346

FAM CONSTRUCTION, LLC

Defendant.

FINAL ORDER

This matter came before the Court on the parties' Joint Motion to Dismiss the Complaint of plaintiff Gary G. Pan, Commissioner of Labor and Industry (Commissioner), originally filed on August 18, 2022, against the defendant FAM Construction, LLC. (FAM), and IT APPEARING that the Commissioner and FAM have subsequently settled all outstanding issues through a separate Settlement Agreement, attached to this Order as Exhibit A as required by 16 Va. Admin. Code 25-60-340.F; upon agreement of the parties and for good cause show, it is therefore ADJUDGED, ORDERED, AND DECREED that:


The Joint Motion to Dismiss is GRANTED and that this matter be and hereby is dismissed with prejudice.

The Clerk will strike this matter from the docket of this Court, place it among the ended


8/23/23 e.m.:TT+Δ Attorney

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

Entered this 25 day of August 2023.


By: 
Hon.

We ask for this:


James B. Brooks (VSB No. 89036)
Kaitlin Hopingardner (VSB No. 97034)
Special Assistant Commonwealth's Attorneys
Fairfax County
c/o Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219
Tel.: 804-786-0610
Fax: 804-786-8418
Email: james.brooks@doli.virginia.gov

Counsel for Plaintiff Commissioner

Seen and agreed:


Michael W. Robinson (VSB No. 26522)
Hayley F. Degnan (VSB No. 95756)
1850 Towers Crescent Plaza, Suite 400
Tysons, VA 22182
Tel.: 703-760-1988
Fax: 703-821-8949
Email: mwrobinson@venable.com

Counsel for Defendant FAM Construction, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of August, 2023, a copy of the Proposed

Order was sent by electronic mail to counsel for Plaintiff:

James B. Brooks, Esquire
Special Asst. Commonwealth's Attorney
Fairfax County
Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, Virginia 23219
james.brooks@doli.virginia.gov

Counsel for Plaintiff

/s/ Hayley F. Degnan

Hayley F. Degnan

Exhibit A
Settlement Agreement

GARY G. PAN
Commissioner of Labor and Industry

FAM CONSTRUCTION, LLC
Inspection Nos. 1484753, 1526081, 1574820

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into by Gary G. Pan, Commissioner of Labor and Industry (Commissioner), and FAM Construction, LLC (Employer).

WHEREAS, on or about December 28, 2020, inspection number 1484753, the Commissioner issued citations to the Employer alleging one serious violation and one willful-serious violation of the Virginia Occupational Safety and Health (VOSH) Standards. A total of \$124,975.00 in penalties were proposed by the Commissioner along with the violation. (Copy of the citation attached by reference hereto);

WHEREAS, on or about October 6, 2021, inspection number 1526081, the Commissioner issued citations to the Employer alleging three serious violations of VOSH Standards. A total of \$39,831.00 in penalties were proposed by the Commissioner along with the violation. (Copy of the citation attached by reference hereto);

WHEREAS, on or about May 4, 2022, inspection number 1574820, the Commissioner issued citations to the Employer alleging two serious violations of VOSH Standards. A total of \$13,434.00 in penalties were 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 (together, the "cases") within fifteen working days from the date of the receipt of the citations, as provided by § 40.1-49.4 of the Code of Virginia;

WHEREAS, the Commissioner caused to be filed Complaints to affirm the contested VOSH citations under Va. Code § 40.1-49.4(E) in the Fairfax County Circuit Court, under case numbers CL-2022-2506, CL-2023-4561, and CL-2022-11346 (the "Litigation"); and

WHEREAS, the parties desire to settle these cases 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 without any finding of wrongdoing or liability on the part of Employer;

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 and penalties as follows:

a. Inspection Number 1484753 is amended as follows:

- i. Citation 1, Item 1, is amended from a Serious violation to an Other-Than-Serious violation; the \$9,975.00 proposed payment associated with the alleged violation is reduced to \$4,988.00.
- ii. Citation 2, Item 1, is amended from a Willful-Serious violation to an Unclassified violation; the \$115,000.00 proposed payment associated with the alleged violation is reduced to \$65,000.00.

b. Inspection Number 1526081 is amended as follows:

- i. Citation 1, Item 1, is amended from a Serious violation to an Other-Than-Serious violation; the \$13,277.00 proposed payment associated with the alleged violation is reduced to \$6,639.00.
- ii. Citation 1, Item 2 is vacated.
- iii. Citation 1, Item 3 is affirmed; the \$13,277.00 proposed payment associated with the alleged violation is reduced to \$10,000.00.

c. Inspection Number 1574820 is amended as follows:

- i. Citation 1, Item 1a is affirmed, the \$13,434.00 proposed payment associated with the alleged violation is reduced to \$10,000.00.
- ii. Citation 1, Item 1b is vacated.

2. The Employer, upon execution of this Settlement Agreement, will pay the Commonwealth \$96,627.00 for the settlement of the claims associated with above alleged violations. Payment must be received within thirty days from the date this settlement agreement is executed. Payment must be made in the form of a check or money order. Payment must be made payable to the "Treasurer of Virginia", with the VOSH inspection numbers (1484753, 1526081, 1574820) noted on the payment. Payment must be mailed or delivered to:

Virginia Department of Labor and Industry
c/o Accounting
Main Street Centre
600 E Main Street, Suite 207
Richmond, VA 23219

3. Pursuant to Va. Code § 2.2-614.1(C), returned checks or dishonored credit card or debit card payments shall incur a handling fee of the greater of \$35.00 or the amount of the costs charged by the financial institution, and shall not be considered timely payment.

4. So long as no material breach occurs, the Commissioner agrees to waive any interest and administrative costs otherwise assessable pursuant to Va. Code §§ 40.1-49.4(A)(4)(a) and 2.2-4805.

5. All potential repeat violations from inspection numbers 1484753, 1526081, and 1574820 will only apply to violations occurring within three years from the final order date.

6. Within sixty days from the execution of this agreement, the Employer will hire or designate a current employee to serve as a dedicated safety consultant. The dedicated safety consultant will have specific construction experience, and the authority to: (1) conduct an inspection and audit of all sites, (2) notify FAM's leadership of any safety issues identified, (3) shut down operations, and (4) notify VOSH in the event of serious safety violations. The Employer will empower the dedicated safety consultant to review the written safety plans previously submitted by each subcontractor, or, to the extent warranted, to require each subcontractor to submit a new or updated version of its written safety plan to assure worksite safety to FAM. The safety consultant will have the authority to review such plans, evaluate the plans for their adequacy, and advise on improvements to the safety plans.

7. Within 180 days from the execution of this agreement, the Employer will host one contractor training session. This session should focus on construction safety, elements of a safety management system, and worksite audits of hazardous conditions. This session should include the Employer's direct employees and be open to contractors and VDOT personnel routinely working on projects.

8. Within sixty days from the execution of this agreement, the Employer will provide a written update detailing its expected timeline for implementation of the requirements contained in paragraphs 6 and 7.

9. Should the Employer cease operations or go out of business, the Employer will notify DOLI in writing. Should the Employer restart conducting business, it will notify DOLI in writing and fully comply with all provisions of this settlement prior to restarting its business or conducting any work.

10. Any documentation required by paragraphs 6 through 9, above, will be sent to the

following address:

**Daniel Wells
Regional Safety Director
Virginia Department of Labor and Industry
9400 Innovation Drive, Suite 120
Manassas, Virginia 20110**

11. Upon execution of this Agreement in full, counsel for the Commissioner will file a motion to dismiss the Litigation in the Fairfax County Circuit Court under the expectation that cases CL-2022-2506, CL-2023-4561, and CL-2022-11346 will be dismissed and the matter filed among the Court's closed cases. The Employer agrees to endorse such an order as "seen and agreed" and to take no steps to hinder the entry of such an order. Under 16 Va. Admin. Code § 25-60-340(F), this Agreement shall be made an exhibit and incorporated into the dismissal order.

12. The Employer represents that it is entering into this Agreement of Settlement in the spirit of conciliation and cooperation in an effort to avoid further litigation. This Agreement shall not be construed as an admission by Employer of civil or criminal liability for any violation or penalty alleged by the Commissioner. By entering into this Agreement, the Employer does not admit the truth of any alleged facts, any of the characterization of the 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 civil liability for any violation alleged by the Commissioner.

13. The Employer certifies that the violations alleged in this agreement have been abated. Unless already provided, within sixty calendar days of the execution of this Agreement, the Employer agrees to provide documentation proving the violations alleged have been abated in accordance with paragraph 10, above.

14. 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 cases and waives its right to contest the remaining terms contained in this Agreement in accordance with its terms.

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

16. Unless otherwise provided in this agreement or in a separate installment payment agreement, the payments made pursuant to this agreement are due and payable within thirty calendar days of the effective date of this agreement. It is expressly understood that any modifications to citations are contingent upon the Employer's full payment of the amounts due under this agreement. Failure by the Employer to substantially comply with the terms of this agreement or to make the payment by the due date constitutes a breach of this agreement.

17. 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. This Agreement may be used for future enforcement proceedings and enforcement actions under Title 40.1 of the Code of Virginia against the Employer.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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}

IN WITNESS WHEREOF, the Commissioner and the Employer, intending to be legally bound, duly acknowledges and executes this Settlement Agreement for Inspection Numbers 1484753, 1526081, and 1574820.

FAM CONSTRUCTION, LLC

By: 

Pablo Mella
Chief Executive Officer
FAM Construction, LLC

08/21/2023
Date

GARY G. PAN,
Commissioner of Labor and Industry

By: 

Charles Stiff, Assistant Commissioner
Virginia Department of Labor and Industry

8/21/2023
Date

John T. Frey
CLERK, CIRCUIT COURT
FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

GARY G. PAN
Commissioner of Labor and Industry

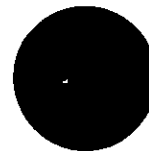
Plaintiff,

v.

Civil Action No. CL-2023-4561

FAM CONSTRUCTION, LLC

Defendant.



FINAL ORDER

This matter came before the Court on the parties' Joint Motion to Dismiss the Complaint of plaintiff Gary G. Pan, Commissioner of Labor and Industry (Commissioner), originally filed on March 22, 2023, against the defendant FAM Construction, LLC. (FAM), and IT APPEARING that the Commissioner and FAM have subsequently settled all outstanding issues through a separate Settlement Agreement, attached to this Order as Exhibit A as required by 16 Va. Admin. Code 25-60-340.F; upon agreement of the parties and for good cause show, it is therefore ADJUDGED, ORDERED, AND DECREED that:

The Joint Motion to Dismiss is GRANTED and that this matter be and hereby is dismissed with prejudice.

The Clerk will strike this matter from the docket of this Court, place it among the ended

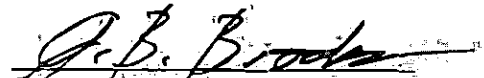
civil cases, and shall send an attested copy of this Order to both counsel of record.

Entered this 7th day of September 2023.

By: 
Hon.


Grace Burke Carroll

We ask for this:


James B. Brooks (VSB No. 89036)
Kaitlin Hopingardner (VSB No. 97034)
Special Assistant Commonwealth's Attorneys
Fairfax County
c/o Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219
Tel.: 804-786-0610
Fax: 804-786-8418
Email: james.brooks@doli.virginia.gov

Counsel for Plaintiff Commissioner

Seen and agreed:


Michael W. Robinson (VSB No. 26522)
Hayley F. Degnan (VSB No. 95756)
1850 Towers Crescent Plaza, Suite 400
Tysons, VA 22182
Tel.: 703-760-1988
Fax: 703-821-8949
Email: mwrobinson@venable.com

Counsel for Defendant FAM Construction, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of August, 2023, a copy of the Proposed Order was sent by electronic mail to counsel for Plaintiff:

James B. Brooks, Esquire
Special Asst. Commonwealth's Attorney
Fairfax County
Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, Virginia 23219
james.brooks@doli.virginia.gov

Counsel for Plaintiff

/s/ Hayley F. Degnan
Hayley F. Degnan

Exhibit A
Settlement Agreement

GARY G. PAN
Commissioner of Labor and Industry

FAM CONSTRUCTION, LLC
Inspection Nos. 1484753, 1526081, 1574820

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into by Gary G. Pan, Commissioner of Labor and Industry (Commissioner), and FAM Construction, LLC (Employer).

WHEREAS, on or about December 28, 2020, inspection number 1484753, the Commissioner issued citations to the Employer alleging one serious violation and one willful-serious violation of the Virginia Occupational Safety and Health (VOSH) Standards. A total of \$124,975.00 in penalties were proposed by the Commissioner along with the violation. (Copy of the citation attached by reference hereto);

WHEREAS, on or about October 6, 2021, inspection number 1526081, the Commissioner issued citations to the Employer alleging three serious violations of VOSH Standards. A total of \$39,831.00 in penalties were proposed by the Commissioner along with the violation. (Copy of the citation attached by reference hereto);

WHEREAS, on or about May 4, 2022, inspection number 1574820, the Commissioner issued citations to the Employer alleging two serious violations of VOSH Standards. A total of \$13,434.00 in penalties were 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 (together, the "cases") within fifteen working days from the date of the receipt of the citations, as provided by § 40.1-49.4 of the Code of Virginia;

WHEREAS, the Commissioner caused to be filed Complaints to affirm the contested VOSH citations under Va. Code § 40.1-49.4(E) in the Fairfax County Circuit Court, under case numbers CL-2022-2506, CL-2023-4561, and CL-2022-11346 (the "Litigation"); and

WHEREAS, the parties desire to settle these cases 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 without any finding of wrongdoing or liability on the part of Employer;

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 and penalties as follows:

a. Inspection Number 1484753 is amended as follows:

- i. Citation 1, Item 1, is amended from a Serious violation to an Other-Than-Serious violation; the \$9,975.00 proposed payment associated with the alleged violation is reduced to \$4,988.00.
- ii. Citation 2, Item 1, is amended from a Willful-Serious violation to an Unclassified violation; the \$115,000.00 proposed payment associated with the alleged violation is reduced to \$65,000.00.

b. Inspection Number 1526081 is amended as follows:

- i. Citation 1, Item 1, is amended from a Serious violation to an Other-Than-Serious violation; the \$13,277.00 proposed payment associated with the alleged violation is reduced to \$6,639.00.
- ii. Citation 1, Item 2 is vacated.
- iii. Citation 1, Item 3 is affirmed; the \$13,277.00 proposed payment associated with the alleged violation is reduced to \$10,000.00.

c. Inspection Number 1574820 is amended as follows:

- i. Citation 1, Item 1a is affirmed, the \$13,434.00 proposed payment associated with the alleged violation is reduced to \$10,000.00.
- ii. Citation 1, Item 1b is vacated.

2. The Employer, upon execution of this Settlement Agreement, will pay the Commonwealth \$96,627.00 for the settlement of the claims associated with above alleged violations. Payment must be received within thirty days from the date this settlement agreement is executed. Payment must be made in the form of a check or money order. Payment must be made payable to the "Treasurer of Virginia", with the VOSH inspection numbers (1484753, 1526081, 1574820) noted on the payment. Payment must be mailed or delivered to:

Virginia Department of Labor and Industry
c/o Accounting
Main Street Centre
600 E Main Street, Suite 207
Richmond, VA 23219

3. Pursuant to Va. Code § 2.2-614.1(C), returned checks or dishonored credit card or debit card payments shall incur a handling fee of the greater of \$35.00 or the amount of the costs charged by the financial institution, and shall not be considered timely payment.

4. So long as no material breach occurs, the Commissioner agrees to waive any interest and administrative costs otherwise assessable pursuant to Va. Code §§ 40.1-49.4(A)(4)(a) and 2.2-4805.

5. All potential repeat violations from inspection numbers 1484753, 1526081, and 1574820 will only apply to violations occurring within three years from the final order date.

6. Within sixty days from the execution of this agreement, the Employer will hire or designate a current employee to serve as a dedicated safety consultant. The dedicated safety consultant will have specific construction experience, and the authority to: (1) conduct an inspection and audit of all sites, (2) notify FAM's leadership of any safety issues identified, (3) shut down operations, and (4) notify VOSH in the event of serious safety violations. The Employer will empower the dedicated safety consultant to review the written safety plans previously submitted by each subcontractor, or, to the extent warranted, to require each subcontractor to submit a new or updated version of its written safety plan to assure worksite safety to FAM. The safety consultant will have the authority to review such plans, evaluate the plans for their adequacy, and advise on improvements to the safety plans.

7. Within 180 days from the execution of this agreement, the Employer will host one contractor training session. This session should focus on construction safety, elements of a safety management system, and worksite audits of hazardous conditions. This session should include the Employer's direct employees and be open to contractors and VDOT personnel routinely working on projects.

8. Within sixty days from the execution of this agreement, the Employer will provide a written update detailing its expected timeline for implementation of the requirements contained in paragraphs 6 and 7.

9. Should the Employer cease operations or go out of business, the Employer will notify DOLI in writing. Should the Employer restart conducting business, it will notify DOLI in writing and fully comply with all provisions of this settlement prior to restarting its business or conducting any work.

10. Any documentation required by paragraphs 6 through 9, above, will be sent to the

following address:

Daniel Wells
Regional Safety Director
Virginia Department of Labor and Industry
9400 Innovation Drive, Suite 120
Manassas, Virginia 20110

11. Upon execution of this Agreement in full, counsel for the Commissioner will file a motion to dismiss the Litigation in the Fairfax County Circuit Court under the expectation that cases CL-2022-2506, CL-2023-4561, and CL-2022-11346 will be dismissed and the matter filed among the Court's closed cases. The Employer agrees to endorse such an order as "seen and agreed" and to take no steps to hinder the entry of such an order. Under 16 Va. Admin. Code § 25-60-340(F), this Agreement shall be made an exhibit and incorporated into the dismissal order.

12. The Employer represents that it is entering into this Agreement of Settlement in the spirit of conciliation and cooperation in an effort to avoid further litigation. This Agreement shall not be construed as an admission by Employer of civil or criminal liability for any violation or penalty alleged by the Commissioner. By entering into this Agreement, the Employer does not admit the truth of any alleged facts, any of the characterization of the 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 civil liability for any violation alleged by the Commissioner.

13. The Employer certifies that the violations alleged in this agreement have been abated. Unless already provided, within sixty calendar days of the execution of this Agreement, the Employer agrees to provide documentation proving the violations alleged have been abated in accordance with paragraph 10, above.

14. 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 cases and waives its right to contest the remaining terms contained in this Agreement in accordance with its terms.

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

16. Unless otherwise provided in this agreement or in a separate installment payment agreement, the payments made pursuant to this agreement are due and payable within thirty calendar days of the effective date of this agreement. It is expressly understood that any modifications to citations are contingent upon the Employer's full payment of the amounts due under this agreement. Failure by the Employer to substantially comply with the terms of this agreement or to make the payment by the due date constitutes a breach of this agreement.

17. 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. This Agreement may be used for future enforcement proceedings and enforcement actions under Title 40.1 of the Code of Virginia against the Employer.

18. 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.

19. 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.

20. 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.

21. 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.

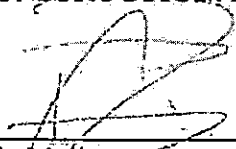
22. Each person signing this Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or she has signed.

23. 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}

IN WITNESS WHEREOF, the Commissioner and the Employer, intending to be legally bound, duly acknowledges and executes this Settlement Agreement for Inspection Numbers 1484753, 1526081, and 1574820.

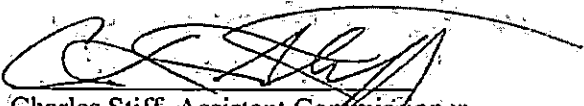
FAM CONSTRUCTION, LLC

By: 

Pablo Molla
Chief Executive Officer
FAM Construction, LLC

08/21/2023
Date

GARY G. PAN,
Commissioner of Labor and Industry

By: 

Charles Stiff, Assistant Commissioner
Virginia Department of Labor and Industry

8/21/2023
Date

John T. Frey
CLERK, CIRCUIT COURT
FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

GARY G. PAN
Commissioner of Labor and Industry

Plaintiff,

v.

Civil Action No. CL-2022-2506

FAM CONSTRUCTION, LLC

Defendant.

FINAL ORDER

This matter came before the Court on the parties' Joint Motion to Dismiss the Complaint of plaintiff Gary G. Pan, Commissioner of Labor and Industry (Commissioner), originally filed on February 23, 2022, against the defendant FAM Construction, LLC. (FAM), and IT APPEARING that the Commissioner and FAM have subsequently settled all outstanding issues through a separate Settlement Agreement, attached to this Order as Exhibit A as required by 16 Va. Admin. Code 25-60-340.F; upon agreement of the parties and for good cause show, it is therefore ADJUDGED, ORDERED, AND DECREED that:

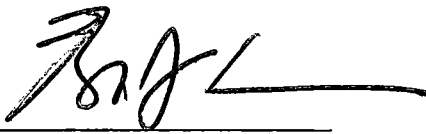
The Joint Motion to Dismiss is GRANTED and that this matter be and hereby is dismissed with prejudice.

The Clerk will strike this matter from the docket of this Court, place it among the ended

9/19/23 em: π + Δ Attorney

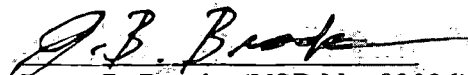
civil cases, and shall send an attested copy of this Order to both counsel of record.

Entered this 12th day of September 2023.

By: 
Hon. _____

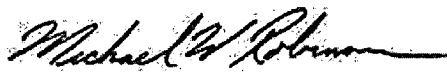
We ask for this:

Brett A. Kassabian


James B. Brooks (VSB No. 89036)
Special Assistant Commonwealth's Attorney
Fairfax County
c/o Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219
Tel.: 804-786-0610
Fax: 804-786-8418
Email: james.brooks@doli.virginia.gov

Counsel for Plaintiff Commissioner

Seen and agreed:


Michael W. Robinson (VSB No. 26522)
Hayley F. Degan (VSB No. 95756)
1850 Towers Crescent Plaza, Suite 400
Tysons, VA 22182
Tel.: 703-760-1988
Fax: 703-821-8949
Email: mwrobinson@venable.com

Counsel for Defendant FAM Construction, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of August, 2023, a copy of the Proposed Order was sent by electronic mail to counsel for Plaintiff:

James B. Brooks, Esquire
Special Asst. Commonwealth's Attorney
Fairfax County
Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, Virginia 23219
james.brooks@doli.virginia.gov

Counsel for Plaintiff

/s/ Hayley F. Degnan
Hayley F. Degnan

Exhibit A
Settlement Agreement

GARY G. PAN
Commissioner of Labor and Industry

FAM CONSTRUCTION, LLC
Inspection Nos. 1484753, 1526081, 1574820

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into by Gary G. Pan, Commissioner of Labor and Industry (Commissioner), and FAM Construction, LLC (Employer).

WHEREAS, on or about December 28, 2020, inspection number 1484753, the Commissioner issued citations to the Employer alleging one serious violation and one willful-serious violation of the Virginia Occupational Safety and Health (VOSH) Standards. A total of \$124,975.00 in penalties were proposed by the Commissioner along with the violation. (Copy of the citation attached by reference hereto);

WHEREAS, on or about October 6, 2021, inspection number 1526081, the Commissioner issued citations to the Employer alleging three serious violations of VOSH Standards. A total of \$39,831.00 in penalties were proposed by the Commissioner along with the violation. (Copy of the citation attached by reference hereto);

WHEREAS, on or about May 4, 2022, inspection number 1574820, the Commissioner issued citations to the Employer alleging two serious violations of VOSH Standards. A total of \$13,434.00 in penalties were 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 (together, the "cases") within fifteen working days from the date of the receipt of the citations, as provided by § 40.1-49.4 of the Code of Virginia;

WHEREAS, the Commissioner caused to be filed Complaints to affirm the contested VOSH citations under Va. Code § 40.1-49.4(E) in the Fairfax County Circuit Court, under case numbers CL-2022-2506, CL-2023-4561, and CL-2022-11346 (the "Litigation"); and

WHEREAS, the parties desire to settle these cases 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 without any finding of wrongdoing or liability on the part of Employer;

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 and penalties as follows:

a. Inspection Number 1484753 is amended as follows:

- i. Citation 1, Item 1, is amended from a Serious violation to an Other-Than-Serious violation; the \$9,975.00 proposed payment associated with the alleged violation is reduced to \$4,988.00.
- ii. Citation 2, Item 1, is amended from a Willful-Serious violation to an Unclassified violation; the \$115,000.00 proposed payment associated with the alleged violation is reduced to \$65,000.00.

b. Inspection Number 1526081 is amended as follows:

- i. Citation 1, Item 1, is amended from a Serious violation to an Other-Than-Serious violation; the \$13,277.00 proposed payment associated with the alleged violation is reduced to \$6,639.00.
- ii. Citation 1, Item 2 is vacated.
- iii. Citation 1, Item 3 is affirmed; the \$13,277.00 proposed payment associated with the alleged violation is reduced to \$10,000.00.

c. Inspection Number 1574820 is amended as follows:

- i. Citation 1, Item 1a is affirmed, the \$13,434.00 proposed payment associated with the alleged violation is reduced to \$10,000.00.
- ii. Citation 1, Item 1b is vacated.

2. The Employer, upon execution of this Settlement Agreement, will pay the Commonwealth \$96,627.00 for the settlement of the claims associated with above alleged violations. Payment must be received within thirty days from the date this settlement agreement is executed. Payment must be made in the form of a check or money order. Payment must be made payable to the "Treasurer of Virginia", with the VOSH inspection numbers (1484753, 1526081, 1574820) noted on the payment. Payment must be mailed or delivered to:

Virginia Department of Labor and Industry
c/o Accounting
Main Street Centre
600 E Main Street, Suite 207
Richmond, VA 23219

3. Pursuant to Va. Code § 2.2-614.1(C), returned checks or dishonored credit card or debit card payments shall incur a handling fee of the greater of \$35.00 or the amount of the costs charged by the financial institution, and shall not be considered timely payment.

4. So long as no material breach occurs, the Commissioner agrees to waive any interest and administrative costs otherwise assessable pursuant to Va. Code §§ 40.1-49.4(A)(4)(a) and 2.2-4805.

5. All potential repeat violations from inspection numbers 1484753, 1526081, and 1574820 will only apply to violations occurring within three years from the final order date.

6. Within sixty days from the execution of this agreement, the Employer will hire or designate a current employee to serve as a dedicated safety consultant. The dedicated safety consultant will have specific construction experience, and the authority to: (1) conduct an inspection and audit of all sites, (2) notify FAM's leadership of any safety issues identified, (3) shut down operations, and (4) notify VOSH in the event of serious safety violations. The Employer will empower the dedicated safety consultant to review the written safety plans previously submitted by each subcontractor, or, to the extent warranted, to require each subcontractor to submit a new or updated version of its written safety plan to assure worksite safety to FAM. The safety consultant will have the authority to review such plans, evaluate the plans for their adequacy, and advise on improvements to the safety plans.

7. Within 180 days from the execution of this agreement, the Employer will host one contractor training session. This session should focus on construction safety, elements of a safety management system, and worksite audits of hazardous conditions. This session should include the Employer's direct employees and be open to contractors and VDOT personnel routinely working on projects.

8. Within sixty days from the execution of this agreement, the Employer will provide a written update detailing its expected timeline for implementation of the requirements contained in paragraphs 6 and 7.

9. Should the Employer cease operations or go out of business, the Employer will notify DOLI in writing. Should the Employer restart conducting business, it will notify DOLI in writing and fully comply with all provisions of this settlement prior to restarting its business or conducting any work.

10. Any documentation required by paragraphs 6 through 9, above, will be sent to the

following address:

Daniel Wells
Regional Safety Director
Virginia Department of Labor and Industry
9400 Innovation Drive, Suite 120
Manassas, Virginia 20110

11. Upon execution of this Agreement in full, counsel for the Commissioner will file a motion to dismiss the Litigation in the Fairfax County Circuit Court under the expectation that cases CL-2022-2506, CL-2023-4561, and CL-2022-11346 will be dismissed and the matter filed among the Court's closed cases. The Employer agrees to endorse such an order as "seen and agreed" and to take no steps to hinder the entry of such an order. Under 16 Va. Admin. Code § 25-60-340(F), this Agreement shall be made an exhibit and incorporated into the dismissal order.

12. The Employer represents that it is entering into this Agreement of Settlement in the spirit of conciliation and cooperation in an effort to avoid further litigation. This Agreement shall not be construed as an admission by Employer of civil or criminal liability for any violation or penalty alleged by the Commissioner. By entering into this Agreement, the Employer does not admit the truth of any alleged facts, any of the characterization of the 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 civil liability for any violation alleged by the Commissioner.

13. The Employer certifies that the violations alleged in this agreement have been abated. Unless already provided, within sixty calendar days of the execution of this Agreement, the Employer agrees to provide documentation proving the violations alleged have been abated in accordance with paragraph 10, above.

14. 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 cases and waives its right to contest the remaining terms contained in this Agreement in accordance with its terms.

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

16. Unless otherwise provided in this agreement or in a separate installment payment agreement, the payments made pursuant to this agreement are due and payable within thirty calendar days of the effective date of this agreement. It is expressly understood that any modifications to citations are contingent upon the Employer's full payment of the amounts due under this agreement. Failure by the Employer to substantially comply with the terms of this agreement or to make the payment by the due date constitutes a breach of this agreement.

17. 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. This Agreement may be used for future enforcement proceedings and enforcement actions under Title 40.1 of the Code of Virginia against the Employer.

18. 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.

19. 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.

20. 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.

21. 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.

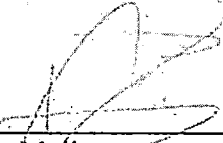
22. Each person signing this Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or she has signed.

23. 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}


IN WITNESS WHEREOF, the Commissioner and the Employer, intending to be legally bound, duly acknowledges and executes this Settlement Agreement for Inspection Numbers 1484753, 1526081, and 1574820.

FAM CONSTRUCTION, LLC

By: 
Pablo Molla
Chief Executive Officer
FAM Construction, LLC

08/21/2023
Date

GARY G. PAN,
Commissioner of Labor and Industry

By: 
Charles Stiff, Assistant Commissioner
Virginia Department of Labor and Industry

8/21/2023
Date

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

GARY G. PAN,
Commissioner of Labor and Industry,

Plaintiff,

v.

Case No. CL-2023-2734

CARDINAL MULTI SERVICES, LLC,

Defendant.

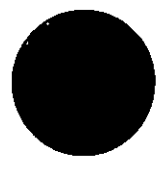
FINAL ORDER OF DEFAULT JUDGMENT

This cause came to be heard upon Commissioner Gary G. Pan's Motion for Default Judgment against Cardinal Multi Services, LLC declaring that \$115,000.00 in proposed civil penalties arising from a contest of a Virginia Occupational Safety and Health (VOSH) citation, identified by VOSH Inspection Number 1483393 and as attached to the Commissioner's Complaint as Exhibit A be affirmed as the Defendant Cardinal Multi Services, LLC is in default in this action.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one (21) days have elapsed since service of process on the Defendant and that no responsive pleadings have been filed by the Defendant, nor has an appearance been made in this action on its behalf and for good cause shown, it is therefore

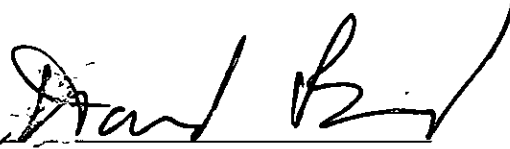
ADJUDGED, ORDERED, and DECREED that Plaintiff be awarded default judgment in this cause against the Defendant and judgment is hereby ENTERED in favor of Gary G. Pan and against Cardinal Multi Services, LLC in the amount of \$115,000.00 in civil penalties, plus interest at the legal rate, arising from a contested Virginia Occupational Safety and Health (VOSH) citation as set out in Inspection No. 1483393, and that the citations attached to the Complaint as Exhibit A are hereby AFFIRMED.

08/22/23 em: r At, Judgments
D
cc: T/A, A, A, A
8/18/23



It is further ADJUDGED, ORDERED, and DECREED that the Clerk of this Court shall strike this matter from the docket and place it among the ended civil cases.

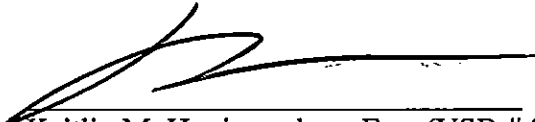
The Clerk shall mail certified copies of this order to Defendant's registered agent, and to Plaintiff's counsel. Pursuant to Rule 1:13, endorsement by the Defendant shall be dispensed with.

JUDGE: 
David Bernhard

ENTERED: 8/18/2023

I ask for this:

GARY G. PAN,
Commissioner of Labor and Industry

By: 
Kaitlin M. Hopingardner, Esq. (VSB # 97034)
Special Assistant Commonwealth's Attorney
Fairfax County
c/o Department of Labor and Industry
600 E Main Street, Suite 207
Richmond, VA 23219
(804) 786-2641
Kaitlin.hopingardner@doli.virginia.gov

Waived pursuant to Rule 1:13

Cardinal Multi Services, LLC
5504 Oakwood Rd
Alexandria, VA 22310

(The Court notes the appearance of Claudia Wintec, Office Manager for the LLC, who requested a continuance and is a non-lawyer, which request was denied.)
LF



VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

GARY G. PAN,
Commissioner of Labor and Industry,

Plaintiff.

Case No. 2022-5578

v.

NEW RIVER ELECTRICAL CORPORATION,

Defendant.

AGREED FINAL ORDER

COME NOW the parties, jointly and by counsel, having reached a settlement of all matters complained of in the Complaint, and moving that this Court enter this Agreed Final order embodying the terms of the settlement reached; and further

FINDING that pursuant to 16 Va. Admin. Code § 25-60-340(F) this Court has authority to approve a settlement of this action embodied in a court order; and therefore

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

1. That the citation in VOSH Inspection 1449947 attached to the Complaint in this action as Exhibit A is hereby amended as follows:

- a. Citation 1, Item 1 is amended to an Other-Than-Serious violation of 29 C.F.R § 1926.960(c)(1)(iii) with a penalty of \$13,045.00.
- b. Citation 1, Item 2a is affirmed as a Serious violation of 29 C.F.R § 1926.960(d)(2) with a penalty of \$13,045.00.
- c. Citation 1, Item 2b is vacated.
- d. Citation Items 3a and 3b are hereby grouped and reclassified as Other-Than-

WJ em

Serious violations of 29 C.F.R § 1926.960(g)(2) and § 1926.960(g)(3), with an associated penalty of \$6,985.00.

2. The total penalties from the amended citations are due and payable within fifteen (15) business days after the date of this Order. All penalty payments will be made payable to the "Treasurer of Virginia" and mailed to Department of Labor and Industry, c/o Accounting, 600 East Main Street, Suite 207, Richmond, VA 23219. The memo line will read "Inspection 1449947."

3. The Defendant certifies that the violations resulting from this Order have been abated. Unless already provided, within thirty (30) calendar days of this Order, the Defendant agrees to provide documentation proving all violations alleged have been abated.

4. Within forty-five (45) calendar days of the date of this Order, the Defendant will establish and provide training to its field foremen in Virginia on a new policy requiring at least one (1) New River supervisor or foreman to be present within the boundary of the substation when New River employees are engaged in live, energized work inside the substation. Training must be provided at no cost to the employee and conducted in a language and format each employee understands. Within thirty calendar (30) days following such training, Defendant will provide documentation proving such training was conducted, including a roster of attendees and the name of the trainer, to the regional office which issued the original citations.

5. The Defendant must comply with all portions of 16 Va. Admin. Code § 25-60-307, including but not limited to, employee notification requirements regarding abatement. The Commissioner shall deem the Defendant's posting of abatement verification documents in its corporate headquarters and transmission of abatement verification documents to all affected employees as sufficient employee notification under 16 Va. Admin. Code § 25-60-307(H).

Pursuant to Va. Code § 40.1-49.4(C), the failure to abate or provide abatement documentation may subject Defendant to a subsequent follow-up inspection and additional citations and penalties, or may be deemed a violation of this Order, at the option of the Commissioner.

6. That, in consideration of this agreement, the Department of Labor and Industry agrees to reduce the repeat-violation window on Citation 1, Item 2a from thirty-six (36) months from the date of this final order to twelve (12) months from the date of this final order.

7. That this agreement shall not be construed as an admission by the Defendant of civil liability for any violation alleged by the Commissioner.

8. That this agreement shall not be constructed as an admission by the Commissioner as to any factual or legal positions of the Defendant. Pursuant to Va. Code § 40.1-51.3:2, the fact of the 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, as consideration for the modification of the terms of the original citations, the Defendant hereby withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the remaining items contained in this Final Order.

10. That the Defendant will post a copy of this Final Order for a period of fifteen (15) calendar days in a conspicuous location where notices to its employees are generally posted.

11. That any modifications to citation classification, description, or penalty level, is contingent upon the Defendant's full payment of all penalties due as required by this Order. Failure by the Defendant to substantially comply with the terms of this agreement, including timely

penalty payment, constitutes a breach, and upon any breach all originally proposed citations and penalties shall be reinstated and affirmed as a Final Order of this Court, and all unpaid amounts of the original proposed penalty will become a judgment against the Defendant in favor of the Commissioner fifteen (15) calendar days following the breach, and following written notice by the Commissioner to the Defendant by certified mail or commercial delivery service of such breach. Should the Defendant respond to such notice in writing within fifteen (15) working days disputing the existence of a material breach, the Commissioner may move to reinstate this action and move for appropriate relief from the Court. In such event, however, the Defendant will not be permitted to contest the underlying penalties or citations which are the subject of this Order, only the existence of a breach of this Order.

12. That given the Defendant's withdrawal of its notice of contest, this action is **DISMISSED WITH PREJUDICE**, subject to the terms of this Order.

13. Nothing in this Order should be interpreted as precluded either party from taking appropriate action to enforce the terms of their agreement, or this Order.

14. Each party shall bear their own costs in this matter.

15. The Clerk will transmit a certified copy of this Order to the parties' counsel, and then will place this matter amongst the ended cases.

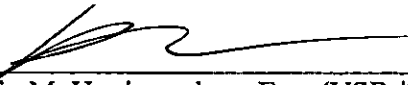
ENTERED this 2 day of May, 2023.

By: _____

Judge

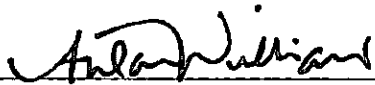
We ask for this:

GARY G. PAN, Commissioner of Labor and Industry

By: 
Kaitlin M. Hopingardner, Esq. (VSB # 97034)
Alex W. West, Esq. (VSB # 84607)
Special Assistant Commonwealth's Attorney
Fairfax County
c/o Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, VA 23219
(804) 371-2631
(804) 371-6524 (fax)
kaitlin.hopingardner@doli.virginia.gov
alex.west@doli.virginia.gov
Counsel for the Commissioner

Seen and agreed:

NEW RIVER ELECTRICAL CORPORATION

By: 
K. Brett Marston, Esq. (VSB # 35900)
Kirk M. Sosebee, Esq. (VSB # 88013)
Aidan C. Williams, Esq. (VSB # 98459)
GENTRY LOCKE
Post Office Box 40013
Roanoke, Virginia 24022-0013
(540)983-9300
(540) 983-9400 (fax)
Marston@gentrylocke.com
Sosebee@gentrylocke.com
Awilliams@gentrylocke.com
Counsel for the Defendant

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

GARY G. PAN,
Commissioner of Labor and Industry,
Plaintiff,

v.

PKC CONSTRUCTION CO.
Defendant.

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)
)
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)
)

Case No. CL-2021-3203

AGREED FINAL ORDER

COME NOW the parties, the plaintiff Gary G. Pan, Commissioner of Labor and Industry ("Commissioner") and defendant PKC Construction Co. ("PKC"), by counsel, having reached a settlement of all matters complained of in the Complaint, and upon agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, and DECREED:

1. That for the contested Virginia Occupational Safety and Health ("VOSH") citation, bearing inspection number 1335211, its component violation Items 1 through 3 are amended as follows:

- a) Item 1 is upheld as Willful;
- b) Item 2 is vacated; and
- c) Item 3 is upheld as Willful;

2. That the combined penalties accompanying the citation affirmed violations 1 and 3 are initially reduced from \$381,762.00 and affirmed as \$190,881.00;

3. That an adjusted civil penalty of \$76,352.00 is due and payable within 6 months following the date of this Order. The penalty payment will be made payable to the

no em

"Treasurer of Virginia" and mailed to: Department of Labor and Industry, c/o Accounting, 600 East Main Street, Suite 207, Richmond, VA 23219. The memo line will read "VOSH Inspection 1335211."

4. The remaining civil penalty of \$114,529.00 is suspended for 3 years following the date of this Order, pending PKC's successful performance of the proactive workplace safety efforts described in paragraphs 5 through 7 below. If PKC performs and documents to the Commissioner each of its responsibilities and tasks as described, the suspended penalty shall be withdrawn and vacated at the expiration of this 3 year term;

5. That for 3 years following the date of this Order, PKC must inform the Commissioner of any work by any PKC employees in the Commonwealth of Virginia, no less than 30 days prior to the beginning of the work and shall notify and permit the Commissioner's VOSH representatives to conduct monitoring inspections of its worksites in Virginia;

6. That PKC will provide its construction worksite managers, and any new construction worksite managers hired within 3 years following the date of this Order, with initial safety training regarding identifying and addressing electrocution hazards and thereafter as necessary. For 3 years following the date of this Order, PKC will also conduct regular safety audits of its projects and worksites, with a particular focus on electrical hazards. PKC shall provide the Commissioner's representatives copies of the training materials and safety audit checklist within 6 months following the date of this Order;

7. That PKC for 3 years following the date of this Order will i) notify VOSH within one (1) month of occurrence of any OSHA-recordable injuries nationwide, ii) inform VOSH

within one (1) month thereafter of all citations issued to it by OSHA or any other state OSH plan, and iii) provide VOSH their annual OSHA 300 logs, by February 1 of the year following that covered by the form;

8. All notifications and any other correspondence to the Commissioner required by or relating to this Order will be either emailed to Daniel Wells Daniel.wells@doli.virginia.gov, or mailed to the following address:

Department of Labor and Industry, c/o VOSH Safety Regional Director, 9400 Innovation Drive, Ste. 120, Manassas, VA 20110.

9. The Employer represents that it is entering into this agreement of settlement in the spirit of conciliation and cooperation to avoid litigation. Neither this agreement nor Defendant's consent to entry of this Order constitutes any admission by Defendant of violation of the occupational safety and health provisions of Title 40.1 and the regulations adopted under that Title. This Order shall not be offered, used or admitted in evidence in any proceeding or litigation, whether civil or criminal, except for proceedings and matters brought by the Commonwealth of Virginia. This agreement shall not be construed as an admission by the employer of civil liability for any violation alleged by the Commissioner. Pursuant to Va. Code § 40.1-51.3:2, the fact of the 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. Defendant retains the right to assert in any subsequent action or proceeding that any future existing conditions identical or similar to those alleged in the original citation, the citation as amended or the complaint do not violate the occupational safety and health

provisions of Title 40.1 and the regulations adopted under that Title. By entering into this Agreement, Defendant does not admit the truth of any alleged facts, any of the characterizations of Defendant's alleged conduct or any of the conclusions set forth in the citation or amended citations issued in this matter;

10. That this agreement shall not be constructed as an admission by the Commissioner as to any factual or legal positions of PKC;

11. That this Order and the rights and obligations hereunder will be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, and will also bind and inure to the benefit of any successor in interest to PKC, except that PKC may not assign any right or obligation flowing from this Order;

12. That 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. That as consideration for the modification of the terms of the original citation and proposed civil penalties, PKC hereby withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the remaining items contained in this Agreed Final Order.

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

15. That any modifications to, or suspension of citation classification, description, or penalty level, is contingent upon both PKC's payment of penalties due as required by paragraph 3, and upon its performance of agreed tasks and provided documentation described in paragraphs 5 - 7 of this Order. Failure by PKC to substantially comply with

the terms of this Order, including timely penalty payment, constitutes a breach, and upon any breach the originally proposed citation and penalties shall be reinstated and affirmed as a Final Order of this Court, and all unpaid amounts of the original proposed penalties will become a judgment against PKC in favor of the Commissioner fifteen (15) calendar days following the breach;

16. That this action is DISMISSED WITH PREJUDICE, subject to the terms of this Order;

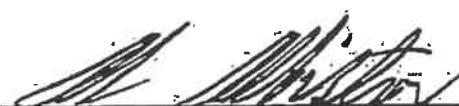
17. That each party shall bear their own costs in this matter; and

18. The Clerk will transmit a certified copy of this Order to the parties' counsel, and then will place this matter amongst the ended cases.

ENTERED this 14 day of February, 2023.

By: 
Judge, Nineteenth Circuit Court of Virginia

We ask for this:


Alfred B. Albiston, Esquire (VSB No. 29851)
Special Assistant Commonwealth's Attorney
Fairfax County
c/o Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, Virginia 23219-2430
Telephone: (804) 786-6760
Facsimile: (804) 786-8418
Email: alfred.albiston@doli.virginia.gov

Counsel for Commissioner Gary G. Pan

Seen and Agreed:



Alexandra M. Romero, Esquire (VSB No. 88646)

ARENTFOX SCHIFF

1717 K Street NW

Washington, DC 20006

Telephone: (202) 828-3469

Facsimile: (202) 857-6395

Email: Alexandra.romero@arentfox.com

Counsel for PKC Construction Co.

VIRGINIA: IN THE CIRCUIT COURT OF AMHERST COUNTY

GARY G. PAN,
Commissioner of Labor and Industry,
Plaintiff,

v.

Case No. CL19-819

COWAN SYSTEMS, LLC,
Defendant.

AGREED FINAL ORDER

IT APPEARING that this Court recently entered an Order of Substitution, replacing plaintiff C. Ray Davenport with Gary G. Pan, Commissioner of Labor and Industry ("Commissioner").

COME NOW the parties, the plaintiff Commissioner and defendant Cowan Systems LLC ("Cowan"), by counsel, having reached a settlement of all matters complained of in the Complaint, and upon agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, and DECREED:

1. That the first line in the Citation 1, Item1 for VOSH Inspection 1150137, as attached to the Complaint in this action as Exhibit A is hereby amended to replace the type of violation from "Serious" to "Unclassified," and to replace the partial line, "Code of Virginia, 40.1-51.1.A," with "Code of Virginia, 40.1-49.4."

2. That the penalty for Citation 1, Item 1 is reduced from \$7,000.00 to \$4,200.00, and this reduced penalty is due and payable within fifteen (15) days after this Order is entered. All penalty payments will be made payable to the "Treasurer of Virginia" and mailed to Department of Labor and Industry, c/o Accounting, 600 East Main Street, Suite 207, Richmond, VA 23219. The memo line will read "VOSH Inspection 1150137."

3. That Cowan shall within 90 days of this Order's entry, conduct additional driver safety instruction and training in person or by video means for its employee drivers domiciled in Virginia – accompanied by written materials covered and attendance signatures – especially regarding securing loads before transport and taking protective measures when opening cargo doors. Copies of such training documentation must be provided the Commissioner, either by emailing Russell Bambarger at Russell.Bambarger@doli.virginia.gov, or mailed to: Department of Labor and Industry, Southwest VA Regional Office, c/o Russell Bambarger, Brammer Village, 3013 Peters Creek Road, Roanoke, VA 24019.

4. That, upon performing the employee training described in paragraph 3 above, and forwarding the Commissioner documentation of the same, the violation described in Citation 1, Item 1 will be considered abated.

5. That this agreement shall not be construed as an admission by Cowan of civil liability for any violation alleged by the Commissioner. Pursuant to Va. Code § 40.1-51.3:2, the fact of the 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.

6. That this agreement shall not be constructed as an admission by the Commissioner as to any factual or legal positions of Cowan.

7. That as consideration for the modification of the terms of the original citation and lowering its associated civil penalty, Cowan hereby withdraws its original notice of

contest filed with respect to the above-styled case and waives its right to contest the remaining items contained in this Agreed Final Order.

8. That Cowan will post a copy of this Agreed Final Order for a period of fifteen (15) days at its business premises at 178 Elon Road, Madison Heights, VA 24572, in a conspicuous location where notices to its employees are generally posted.

9. That any modifications to citation classification, description, or penalty level, is contingent upon the Cowan's full payment of all penalties due as required by paragraph 2 of this Order. Failure by Cowan to substantially comply with the terms of this agreement, including timely penalty payment, constitutes a breach, and upon any breach the originally proposed citation and penalty shall be reinstated and affirmed as a Final Order of this Court, and all unpaid amounts of the original proposed penalty will become a judgment against Cowan in favor of the Commissioner fifteen (15) calendar days following the breach.

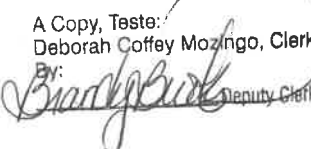
10. That this action is DISMISSED WITH PREJUDICE, subject to the terms of this Order.

11. Each party shall bear their own costs in this matter.

12. The Clerk will transmit a certified copy of this Order to the parties' counsel, and then will place this matter amongst the ended cases.

ENTERED this 21ST day of FEBRUARY, 2023.

By: 
Judge Michael T. Garrett

A Copy, Teste:
Deborah Coffey Mazingo, Clerk
By: 
Deputy Clerk

We ask for this:



Alfred B. Albiston, Esquire (VSB No. 29851)
Special Assistant Commonwealth's Attorney
Amherst County
c/o Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, Virginia 23219-2430
Telephone: (804) 786-6760
Facsimile: (804) 786-8418
Email: alfred.albiston@doli.virginia.gov

Counsel for Commissioner Gary G. Pan

Seen and Agreed:



K. Brett Marston, Esquire (VSB No. 35900)
GENTRY LOCKE
10 Franklin Rd., SE, Suite 900
Roanoke, Virginia 24011
Telephone: (540) 983-9391
Facsimile: (540) 983-9400
Email: marston@gentrylocke.com

Counsel for Cowan Systems LLC

VIRGINIA: IN THE CIRCUIT COURT OF AMHERST COUNTY

GARY G. PAN,
Commissioner of Labor and Industry,
Plaintiff,

v.

Case No. CL19-819

COWAN SYSTEMS, LLC,
Defendant.

COMPLAINT EXHIBIT A

VOSH inspection number 1150137, citation issued November 15, 2016

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

Inspection Number: 1150137
Inspection Date: 05/23/2016-
11/14/2016



Issuance Date: 11/15/2016

Citation and Notification of Penalty

Company Name: Cowan Systems LLC

Inspection Site: Greif, 861 Fibre Plant Rd, Gladstone, VA 24553

Citation 1 Item 1

Type of Violation: **Serious**

Code of Virginia, 40.1-51.1.A: The employer did not furnish employment and a place of employment which was free from recognized hazards that were causing or likely to cause death or serious physical harm to employees. Employees were exposed to struck by hazards as the result of shifting cargo.

On, or about, May 23, 2016, a Cowan Systems LLC truck driver made a delivery of recycled materials to the Greif paper mill in Gladstone, VA. The driver stopped his vehicle approximately 20 feet from the loading dock as was the normal procedure at the mill. As the driver opened the rear doors an unsecured bale of cardboard, weighing approximately 800 pounds, fell onto the employee. The employee suffered a fatal injury.

One feasible method of abatement, among others, to correct this hazard is for the employer to develop, implement, and enforce a safety policy addressing the use of load securement devices, including netting and/or door straps to keep freight from falling on an employee when opening the trailer doors.

Date by Which Violation Must Be Abated:

November 19, 2016

Proposed Penalty:

\$7000.00



Lee A. Willis
VOSH Regional Safety Director

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

GARY G. PAN
Commissioner of Labor and Industry

Plaintiff

v.

**SOUTHERN ENVIRONMENTAL
SERVICES, INC.**

Defendant

Civil Action No. CL21003960-00 -5

FINAL ORDER


This matter came before the Court on the parties' Joint Motion to Dismiss the Complaint of plaintiff Gary G. Pan, Commissioner of Labor and Industry (Commissioner), originally filed on August 31, 2021, against the defendant Southern Environmental Services, Inc. (SES), and IT APPEARING that the Commissioner and SES have subsequently settled all outstanding issues through a separate Settlement Agreement, attached to this Order; upon agreement of the parties and for good cause show, it is therefore ADJUDGED, ORDERED, AND DECREED that:

The Joint Motion to Dismiss is GRANTED and that this matter be and hereby is dismissed with prejudice.

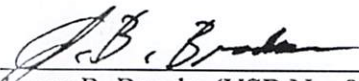
The Clerk will strike this matter from the docket of this Court, place it among the ended civil cases, and shall send an attested copy of this Order to both

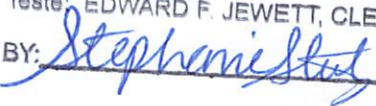
counsel of record.

Entered this 9th day of February 2023.

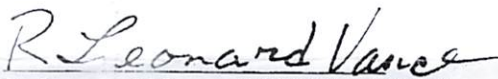
By: 
Hon. Clair G. Cardwell

We ask for this:


James B. Brooks (VSB No. 89036)
Special Assistant Commonwealth's Attorney
City of Richmond
c/o Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, VA 23219
Tel.: 804-786-0610
Fax: 804-786-8418
Email: james.brooks@doli.virginia.gov
Counsel for Plaintiff Commissioner

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

Seen and agreed:


R. Leonard Vance (VSB No. 15305)
P. O. Box 1591
Midlothian, Virginia 23181
Tel.: 804-690-0779
Email: 2rlvance@gmail.com
Counsel for Defendant Southern Environmental Services, Inc.

Attachment:
Settlement Agreement

GARY G. PAN
Commissioner of Labor and Industry

SOUTHERN ENVIRONMENTAL SERVICES, INC.
Inspection No. 1439639

SETTLEMENT AGREEMENT

THIS AGREEMENT, made on this 2nd day of February, 2023 is entered into by the Commonwealth of Virginia, Commissioner of Labor and Industry ("Commissioner") with Southern Environmental Services, Inc. (the "Employer") (collectively, the "Parties").

WHEREAS, on April 15, 2020, the Commissioner issued safety citations to the Employer alleging one Serious violation of the Virginia Occupational Safety and Health (VOSH) Standards, Inspection Number 1439639 and assessing a total of \$13,047.00 in proposed penalties;

WHEREAS, the Employer filed a notice of contest of the violation and penalty contained in the citation within fifteen working days from the date of the receipt of the citations, as provided by § 40.1-49.4 of the Code of Virginia;

WHEREAS, the Commissioner caused to be filed a Complaint to affirm the contested VOSH citations under Va. Code § 40.1-49.4(E) in the City of Richmond Circuit Court against the Employer, Case Number CL2100-3960; and

WHEREAS, the Parties desire to settle this case 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 modifies the citation and monetary penalty in Inspection Number 1439639 in the following manner:
 - a. Citation 1, Item 1, the 16 VAC 25-60-130 violation, is reclassified from Serious to Other-than-Serious; the \$13,047.00 proposed penalty is reduced to \$6,524.00.
 - b. Citation 1, Item 1, the 16 VAC 25-60-130 violation's alleged violation description, paragraph 2, is amended to state the following (changes emphasized in italics):

a) At this jobsite, on or about October 23rd, 2019, located at 2220 West Broad Street, Richmond, VA, the *employee* failed to comply with the manufacturer's specifications and limitations included in the Operations and Safety manual applicable to the operation and use of a JLG scissor lift Model #3246ES, Serial #0200220978 which states:

On page 1-5: "Trip and Fall Hazards . . . Keep both feet firmly positioned on the platform floor at all times" and "Never use the scissor arm assembly to gain access to or leave the platform."

On page 3-1: "Operator Training. Operator training must include the following: Knowledge and understanding of all safety rules and of the control markings, instructions and warnings on the machine itself."

On or about October 23rd, 2019, an employee was assigned a task of pressure washing (Equipment - Greenworks Model GPW 1803) the interior of a HVAC duct, approximately 150 foot long and located approximately 25 feet above the lower level near the ceiling. The employee who was operating a Model 3246ES, Serial #0200220978 JLG Scissor Lift to gain access to the ductwork *did not comply* with operator's training including knowledge and understanding of all safety rules, instructions and warnings on the machine itself. The employee failed to keep both feet firmly positioned on the platform floor, utilizing *the guardrails* to leave the

platform and gain access to the work area, which resulted in a fall causing a fatal injury.

- c. Citation 1, Item 1, beginning at "IN THE ALTERNATIVE" (the general duty violation in the alternative, Va. Code § 40.1-51.1.A) all four paragraphs describing the general duty violation are stricken from the citation.
2. The Employer, upon execution of this Settlement Agreement, will pay the Commonwealth \$6,524.00 in payment of the penalties assessed for the above violation. Payment must be received within thirty days from the date this settlement agreement is executed. Payment must be made in the form of a check or money order, payable to the "Commonwealth of Virginia", with the VOSH Inspection Number 1439639, listed on the check or money order. Payment must be mailed to: Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, Virginia, 23219.
3. Upon execution of this Agreement, counsel for the Commissioner will prepare a Joint Motion and Order to Dismiss the Case with prejudice. Once signed by the parties, the Joint Motion and Order to Dismiss will be filed with the City of Richmond Circuit Court, under the expectation that the Case, CL2100-3960, will be dismissed and the matter filed among the Court's closed cases. Under 16 Va. Admin. Code § 25-60-340(F), this Agreement will be made an exhibit and incorporated into the dismissal order.
4. The Employer represents that it is entering into this Agreement 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 under this Agreement shall constitute an admission by the Employer of violation of VOSH laws, regulations, or standards promulgated thereunder.
5. It is expressly understood that any modification to the citations' penalty levels is 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 penalties shall be reinstated and affirmed as a final order of the

Commissioner, and all unpaid amounts shall become due and payable fifteen calendar days following the breach.


- 6. The Employer certifies that the cited violations referred to in this Agreement have been abated.**
- 7. As consideration for the modification of the terms of the original penalty amount, 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.**
- 8. The Employer will post a copy of this Settlement Agreement for ten working days at the work site in a conspicuous location where it generally posts notices to its employees as required by 16 VAC § 25-60-40.**
- 9. This Agreement settles the above contested claims. Under Va. Code § 40.1-51.3:2, the fact of an issuance of a citation 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. This Agreement may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.**
- 10. 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 Commissioner.**
- 11. 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.**
- 12. 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.**
- 13. 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 citations, 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.**

- 14. A court's ruling rendering any provision of this Agreement invalid or unenforceable shall not affect the validity of the remaining provisions of the Agreement.**
- 15. 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.**
- 16. This Agreement may be executed in any number of copies, each of which shall be deemed a counterpart original.**

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the Commissioner and the Employer, intending to be legally bound, duly acknowledges and executes this Settlement Agreement for Inspection Number 1439639.

SOUTHERN ENVIRONMENTAL SERVICES, INC.

By: 
David A. Chandler
President
Southern Environmental Services, Inc.

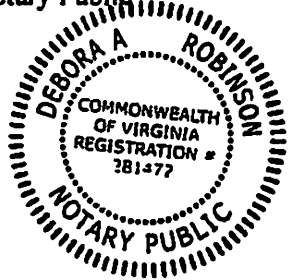
2/2/23
Date

Commonwealth of Virginia, AT LARGE, to wit:

The foregoing instrument was acknowledged before me this 2nd day of February 2023, by David Chandler, President of Southern Environmental Services, Inc.


Notary Public

Commission No.: 281472
Commission expires: 11/30/2026



GARY G. PAN,
Commissioner of Labor and Industry

By: 
Marta Fernandes, Director
Occupational Safety Compliance

2/2/23
Date

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF WASHINGTON

GARY G. PAN,
Commissioner of Labor and Industry,

Substitute Plaintiff.

Case No. CL19001479-00

v.

UTILITY TRAILER MANUFACTURING COMPANY,

Defendant.

AGREED FINAL ORDER

IT APPEARING that this action is back before this Court following remand from the Court of Appeals of Virginia. *Davenport v. Utility Trailer Mfg. Co.*, 74 Va. App. 181 (2022). A petition for appeal with the Supreme Court of Virginia was refused on September 15, 2022. While the petition was pending on April 5, 2022, the Supreme Court of Virginia entered an Order of Substitution replacing C. Ray Davenport with Gary G. Pan, Commissioner of Labor and Industry.

COME NOW the parties, by counsel, having reached a settlement of all matters complained of in the Complaint, and upon agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, and DECREED:

1. That the citation in VOSH Inspection 1235116 attached to the Complaint in this action as Exhibit A is hereby amended as follows:

- a. Citation 1, Item 1 is amended to a Serious violation of Va. Code § 40.1-51.1(A), with an alleged violation description as follows: "The Employer, Utility Trailer Manufacturing Company, failed to furnish to each of his employees safe employment and a place of employment that is free from recognized hazards that are likely to cause death or serious physical harm. On May 22, 2017, a forklift driver, at the facility located at 13160 Monroe

Road, Glade Spring, VA 24340, was carrying a load of 18-foot-long slider rails in the marriages area when a welder collided with the rails. The forklift driver had the forks raised higher than necessary, failed to notify workers in the area by horn of his presence, and transported the rails at the tips of the forks rather than at their base. The forklift driver's actions created a potential struck-by hazard to employees working in the area, exposing them to serious physical harm.

One feasible means of abatement is to remove the forklift operator involved in the accident at issue from all forklift operations, which has been completed by employer, and continue to retrain employees on forklift safety."

2. That the penalty for Citation 1, Item 1 is reduced to \$3,149.25, and this penalty is due and payable within fifteen (15) days after the date of this Order. All penalty payments will be made payable to the "Treasurer of Virginia" and mailed to Department of Labor and Industry, c/o Accounting, 600 East Main Street, Suite 207, Richmond, VA 23219. The memo line will read "Inspection 1235116."

3. That, as acknowledged by the Commissioner, Citation 1, Item 1 has been abated.

4. That this agreement shall not be construed as an admission by the Defendant of civil liability for any violation alleged by the Commissioner.

5. That this agreement shall not be constructed as an admission by the Commissioner as to any factual or legal positions of the Defendant. Pursuant to Va. Code § 40.1-51.3:2, the fact

of the 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.

6. That as consideration for the modification of the terms of the original citations, the Defendant hereby withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the remaining items contained in this Final Order.

7. That the Defendant will post a copy of this Final Order for a period of fifteen (15) days at its worksite in Glade Spring in a conspicuous location where notices to its employees are generally posted.

8. That any modifications to citation classification, description, or penalty level, is contingent upon the Defendant's full payment of all penalties due as required by paragraph 2 of this Order. Failure by the Defendant to substantially comply with the terms of this agreement, including timely penalty payment, constitutes a breach, and upon any breach all originally proposed citations and penalties shall be reinstated and affirmed as a Final Order of this Court, and all unpaid amounts of the original proposed penalty will become a judgment against the Defendant in favor of the Commissioner fifteen (15) calendar days following the breach.

9. That this action is DISMISSED WITH PREJUDICE, subject to the terms of this Order.

10. Each party shall bear their own costs in this matter.

11. The Clerk will transmit a certified copy of this Order to the parties' counsel, and then will place this matter amongst the ended cases.

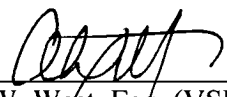
ENTERED this 1st day of February, 2023.

By: John P. Rowlett

Judge, Twenty-Eighth Judicial Circuit of Virginia

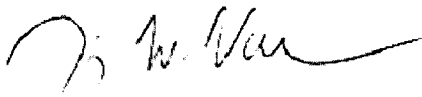
We ask for this:

GARY G. PAN, Commissioner of Labor and Industry

By: 
Alex W. West, Esq. (VSB # 84607)
Alfred B. Albiston, Esq. (VSB # 29851)
Special Assistant Commonwealth's Attorney
Washington 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
alfred.albiston@doli.virginia.gov
Counsel for the Commissioner

Seen and agreed:

UTILITY TRAILER MANUFACTURING COMPANY

By: 
Travis W. Vance, Esq. (VSB # 79764)
David I. Klass, Esq. (VSB # 78697)
FISHER & PHILLIPS, LLP
227 West Trade Street, Suite 2020
Charlotte, NC 28202
(704) 334-4565
tvance@fisherphillips.com
dklass@fisherphillips.com
Counsel for the Defendant

ATTESTED COPIES PROVIDED TO:
 PLT/DEF ATTY - CWA ___ GAL ___
___ GENERAL DIST- JDR ___ - VSP ___
___ GENERAL REC- SPECIAL COMM ___
___ VITAL RECORDS - VSAP ___ OTHER ___

DATE: 2.1.12 (JAMIE)

VIRGINIA:

IN THE CIRCUIT COURT FOR LOUDOUN COUNTY

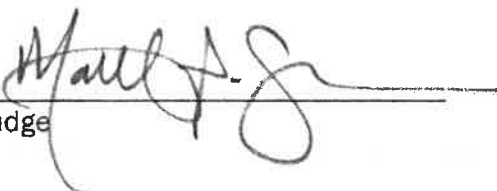
GARY G. PAN,)	
Commissioner of Labor and Industry,)	
<i>Plaintiff,</i>)	
v.)	No. CL23-3079
)	
S. A. HALAC IRON WORKS, INC. and its successors)	
<i>Defendant.</i>)	

NONSUIT ORDER

This matter came before the Court on plaintiff Gary G. Pan, Commissioner of Labor and Industry's Notice of and Motion for Voluntary Nonsuit as a matter of right pursuant to Va. Code § 8.01-380, and IT APPEARING that on May 15, 2023, the Commissioner filed a complaint against defendant S. A. Halac Iron Works, Inc., CL223003079-00, that no nonsuit has been taken to this cause previously, and that the defendant S. A. Halac Iron Works, Inc. has not filed a counterclaim or crossbill, it is therefore ADJUDGED, ORDERED AND DECREED that the Commissioner's Notice of Voluntary Nonsuit 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 22nd day of November 2023.



Judge

I ASK FOR THIS:

GARY G. PAN,
Commissioner of Labor and Industry



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

804-786-6760
804-786-8418 Fax
alfred.albiston@doli.virginia.gov

Counsel for the Commissioner of Labor and Industry

SEEN AND _____



J. Garrett Wozniak, *pro hac vice* and
Mathew L. Moldawer, *pro hac vice*
Kollman & Saucier, PA
1823 York Road
Timonium, Maryland 21093
gwozniak@kollmanlaw.com
mmoldawer@kollmanlaw.com

and

Kevin J. Daniel, Esquire
Troxell Leigh, P.C.
50 Catocin Circle, N.E., Suite 325
Leesburg, Virginia 20176
kdaniel@tlawpc.com

Co-Counsel for defendant S. A. Halac Iron Works, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing COMMISSIONER'S draft NONSUIT ORDER was sent this 31st day of October, 2023, via email and first-class mail, postage prepaid to co-counsel for defendant S. A. HALAC IRON WORKS, INC.:

Kevin J. Daniel, Esquire
Troxell Leigh, P.C.
50 Catocin Circle, N.E., Suite 325
Leesburg, Virginia 20176
kdaniel@tlawpc.com

and

J. Garrett Wozniak, *pro hac vice* and
Mathew L. Moldawer, *pro hac vice*
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