

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

R. ALEXANDER ACOSTA, Secretary of Labor, :
United States Department of Labor, :
 : OSHRC DOCKET
Complainant, :
 : Nos. 16-0806 (health)
v. : 16-0921 (safety)
 :
ACME PARTS, INC., :
 :
Respondent. :
 :

STIPULATED SETTLEMENT

NICHOLAS C. GEALE
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Based upon the following recital, the Complainant and the Respondent herein agree to the following as a conclusion of this matter:

1. The Secretary hereby amends the Citations in OSHRC Docket No. 16-0806 (health) as follows:
 - a. Citation 1, Item 3a is withdrawn.
 - b. Citation 2, Items 1a & 1b are withdrawn.
2. The Secretary hereby amends the Citations in OSHRC Docket No. 16-0921 (safety) as follows:
 - a. Citation 1, Item 3 is withdrawn.
 - b. Citation 1, Items 1a, 1b, 1c and 1d are amended to delete instance (c).
3. The Secretary hereby amends the proposed penalties to reflect a total proposed penalty of \$40,000, to be apportioned as set forth below:

Citation	Item No.	Original Proposed Penalty	Amended Proposed Penalty
OSHRC Docket No. 16-0806 – Health Citations, Inspection No. 1099994			
1	1	\$4,900	\$2,600
1	2	\$4,900	\$2,600
1	3a	\$4,900	(Withdrawn)
1	3b	Grouped	\$2,600
1	3c	Grouped	Grouped
1	4	\$4,900	\$2,600
1	5	\$7,000	\$5,500
1	6a	\$7,000	\$5,500
1	6b	Grouped	Grouped
1	6c	Grouped	Grouped
2	1a	\$70,000	(Withdrawn)
2	1b	Grouped	(Withdrawn)
3	1	\$1,000	\$0
3	2	\$1,000	\$100
OSHRC Docket No. 16-0921 – Safety Citations, Inspection No. 1100364			
1	1a	\$7,000	\$5,500
1	1b	Grouped	Grouped
1	1c	Grouped	Grouped
1	1d	Grouped	Grouped
1	2	\$4,900.00	(Withdrawn in Complaint)

1	3	\$4,900.00	(Withdrawn)
1	4	\$3,500	\$2,600
1	5a	\$3,500	\$2,600
1	5b	Grouped	Grouped
1	6	\$3,500	\$2,600
1	7	\$3,500	\$2,600
1	8	\$4,900	\$2,600
TOTAL		\$141,300	\$40,000

4. Based upon the above, the Respondent withdraws its notices of contest as to the citations and proposed penalties as amended.
5. Respondent affirmatively states that:
 - a. All violations alleged in the citations that have not been withdrawn have been abated and/or will be abated as set forth below.
 - b. Respondent will continue to comply with the Occupational Safety and Health Act and the regulations promulgated thereunder.
 - c. Except as relevant to the lead consultant abatement actions as described below and to the lead-related hazard communication training that is the subject of Citation 1, Item 6a of OSHRC Docket No. 16-0806, Respondent will provide to OSHA all abatement verification documentation no later than 75 days after this agreement is fully executed. With respect to lead-related hazard communication training that is required for Citation 1, Item 6a of OSHRC Docket No. 16-0806, Respondent shall provide abatement documentation to OSHA by the deadline set forth in Paragraph 5(g).

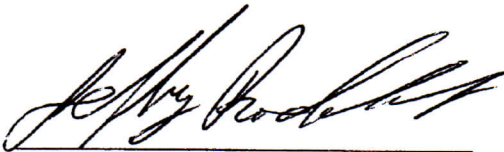
- d. Respondent will hire a qualified professional consultant with expertise in lead hazards and abatement to comprehensively evaluate Respondent's facility and recommend improvements and practices to effectively address and abate lead hazards.
- e. Respondent will provide to OSHA the resume and qualifications of its proposed lead consultant no later than 30 days after this agreement is fully executed. OSHA will have the authority to reject any proposed consultant(s) if concerns exist regarding the expertise of the consultant(s) selected. If OSHA rejects the proposed consultant, Respondent shall have 30 days to propose a different consultant, which OSHA shall have authority to reject. This process shall continue until such time as OSHA informs Respondent, via email to jcowling@armstrongteasdale.com and jokeefe@armstrongteasdale.com, that it does not object to the proposed lead consultant.
- f. Respondent will provide to OSHA the complete report and recommendations of its lead consultant no later than 60 days after OSHA informs Respondent that it does not object to the proposed lead consultant.
- g. Respondent will provide to OSHA abatement verification documentation showing that it has implemented the measures recommended by the lead consultant no later than 90 days after providing the consultant's report and recommendations to OSHA.
- h. Respondent will timely inform the International Association of Machinists & Aerospace Workers (IAMAW) union, in writing, of all abatement actions implemented at its facility in compliance with this agreement.

- i. OSHA's contact for purposes of the required abatement information shall be Kay Gee, Area Director of the Manhattan Area OSHA office.
6. Respondent shall pay the amended proposed penalty of \$40,000 by making an initial payment of \$5,000 by September 10, 2017, followed by a payment of \$5,000 on September 10, 2018, and then payments of \$10,000 annually, on the following dates: September 10, 2019, September 10, 2020, and September 10, 2021 until the entire sum of \$40,000 is paid in full. Respondent's checks shall be made payable to "Occupational Safety and Health – Labor" in the amount set forth above and sent to the Occupational Safety and Health Administration Manhattan Area Office located at 201 Varick Street, Room 908, New York, NY 10014.

A ten day grace period shall be allowed for receipt of each payment. In the event that the Area Office does not receive any check by the twentieth day of the month in which the check is due, the Area Office shall notify Respondent of that fact by regular mail. If the Area Office does not receive payment within ten days of the mailing, the total amended proposed penalty of \$40,000, less any monies already paid, shall be due immediately.
7. The citations are hereby amended to include the terms of this Stipulated Settlement as required abatement of the underlying conditions referred to in the citations. Failure to comply with ¶ 5 above shall be a failure to abate the citations that are not withdrawn as written and amended.
8. Respondent certifies that on August 24, 2017, this stipulation will be posted where affected employees may see it.

9. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.
10. None of the foregoing agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by Respondent of the allegations contained within the citations, notifications of penalty and the complaints herein. The agreements, statements, stipulations, findings and actions taken herein are made for the purpose of settling this matter amicably and they shall not be used for any purpose, except for proceedings and matters arising under the Occupational Safety and Health Act.

DATED: August 24th, 2017
New York, New York




JEFFREY RODOLITZ
President

ACME PARTS, INC.

NICHOLAS C. GEALE
Acting Solicitor of Labor

JEFFREY S. ROGOFF
Regional Solicitor



KATHRYN STEWART
Senior Trial Attorney



R. ALEXANDER CÁRDENAS,
Trial Attorney

Attorneys for Complainant
U.S. Department of Labor
R. ALEXANDER ACOSTA,
Secretary of Labor

CERTIFICATE OF SERVICE

I hereby certify that on _____, I served a copy of the attached Stipulated Settlement on _____, the authorized employee representative at the following address:

This service was accomplished by mailing the Stipulated Settlement to the representative at this last known address by postage pre-paid first class mail.

NAME: _____

TITLE: _____

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2017, I personally delivered a copy of the attached Stipulated Settlement to Pedro Ingles, the authorized employee representative at the following address:

901 Elton Street
BROOKLYN NY 11208

NAME: _____

TITLE: _____

Jeffrey Rodolitz
President

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ORDER APPROVING SETTLEMENT

In OSHRC Docket No. 16-0806, Respondent, by a letter dated May 10, 2016, contested the citations issued to Respondent by Complainant on April 19, 2016. In its letter, Respondent also contested the penalties proposed by Complainant for the citations.

In OSHRC Docket No. 16-0921, Respondent, by a letter dated June 1, 2016, contested the citations issued to Respondent by Complainant on May 18, 2016. In its letter, Respondent also contested the penalties proposed by Complainant for the citations.

An executed Stipulated Settlement has been received from the parties, and this stipulation addresses all matters at issue between the parties in this proceeding. The Stipulation having been read and considered, it is

ORDERED: (1) That the terms of the Stipulated Settlement are approved and incorporated as part of this Order; and

(2) That this Order, pursuant to Section 12(j) of the Act, 29 U.S.C. § 661(j), will become the final order of the Commission at the expiration of thirty (30) days from the date of docketing by the Executive Secretary, unless within that time a member of the Commission directs that it be reviewed.

Dated: this _____ day of _____, 2017

SO ORDERED:

HONORABLE HEATHER A. JOYS
Judge, Occupational Safety
& Health Review Commission