

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,
United States Department of Labor,

Complainant,

v.

LYNNWAY AUTO AUCTION, INC.,

Respondent.

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*
* DOCKET NO. 17-2113
*
* REGION I
*
* INSPECTION NO. 1229973
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SETTLEMENT AGREEMENT

Complainant and Respondent hereby stipulate and agree that:

(1) On November 1, 2017, Respondent was cited for alleged violations of the Occupational Safety and Health Act of 1970, 29 USC 651, et seq., hereinafter referred to as the Act and was issued Notifications of Proposed Penalty in the total amount of \$267,081.00.

(2) Respondent, an employer within the meaning of section 3(5) of the Act, duly filed with a representative of the Secretary of Labor a notice of intent to contest the citations and related penalties. This notice was duly transmitted to the Occupational Safety and Health Review Commission and it is agreed that jurisdiction of this proceeding is conferred upon said Commission by section 10(c) of the Act.

(3) Complainant and Respondent have agreed to resolve this matter, without the necessity of further pleadings, as follows:

(A) Serious Citation No. 1:

Citation No. 1, items no. 2, 3, 4a, 4b, 6, 9a, 9b, 12 and 13 shall be affirmed as issued.

Citation No. 1, items no. 1, 5, 7, 8, and 10 shall be recharacterized from Serious to Other than Serious.

Citation No. 1, item no. 11 shall be deleted.

Repeat Citation No. 2:

Citation No. 2, item no. 1 shall be recharacterized as Serious, and Respondent shall perform and institute the safety measures set forth below.

Citation No. 2, item no. 2 shall be affirmed as issued.

Other than Serious Citation No. 3:

Citation No. 3, item no. 1 shall be affirmed as issued.

(B) Total penalties shall be modified from \$267,081.00 to \$200,000.00. Respondent shall pay this amount in accord with the payment schedule set forth in Paragraph 7, below.

Penalties for each individual citation items shall be modified to the following amended amounts:

Citation No. 1:

Item 1: \$7,600.00; Item 2: \$9,959.00; Item 3: \$7,600.00; Item 4a: \$12,500.00;
Item 4b: \$0 (grouped); Item 5: \$7,600.00; Item 6: \$12,500.00; Item 7: \$9,959.00;
Item 8: \$9,959.00; Item 9a: \$9,959.00; Item 9b: \$0 (grouped); Item 10: \$7,700.00;
Item 11 \$0 (deleted); Item 12: \$7,700.00; Item 13: \$12,600.00.

Citation No. 2:

Item 1: \$12,675.00; Item 2: \$69,713.00.

Citation No. 3:

Item 1: \$1,976.00.

(C) The abatement dates for each of the items of the Citations, as amended, is within sixty (60) days of the signing of this Settlement Agreement.

(D) Respondent shall perform and institute the following additional safety measures within sixty (60) days of the signing of this Settlement Agreement, covering all employees on Respondent's premises, including all temporary employees, and all references to "employees" in this Settlement Agreement shall refer to all employees, including temporary employees. Respondent may perform and institute other safety measures in relation struck-by and crushing hazards from moving vehicles on Respondent's premises:

- In the auction arena floor, Respondent shall designate pedestrian and other non-driving employee safe locations, walkways, and crosswalks with painted lines on the auction floor arena, and install bollards or other physical perimeter barriers which are capable of absorbing impact forces for protecting against being struck by moving vehicles.
- Respondent shall establish, post, and enforce speed limits throughout Respondent's premises.
- Respondent shall develop, implement, and enforce rules requiring all auction management, including auctioneers, auction ring personnel, lane chiefs, and workers directing auction lane traffic to be provided with and wear high visibility vests in all vehicle traffic areas on Respondent's premises. Respondent shall also develop, implement, and enforce rules requiring that employees who drive vehicles wear appropriate high visibility clothing when accessing vehicles in parking lot areas, and wear appropriate footwear.

- Respondent shall develop, implement, and enforce rules concerning the operation of vehicles on Respondent's premises, including but not limited to rules concerning obeying speed limits as set forth above; maintaining awareness of blind spots; and maintaining a reasonable distance from other vehicles while driving. Respondent's rules shall be part of a safe driving program created by Respondent for all employees who drive vehicles on Respondent's premises.
- Respondent shall develop, implement, and enforce rules prohibiting the opening of driver's doors and hoods if and when the vehicle leaves its assigned parking spot.
- Respondent shall conduct a weekly safe driver meeting prior to the weekly auction for all employees who drive vehicles in the auction floor area and all employees who supervise them, and for lane chiefs.
- Respondent shall periodically determine or re-determine whether each driver is physically capable of operating a vehicle for Respondent. Respondent shall periodically observe the drivers perform their duties in the course of making this determination. Respondent shall also periodically determine if each driver has a valid license to operate a vehicle by either checking the license and interviewing the driver and/or obtaining information from the Massachusetts Registry of Motor Vehicles.
- Respondent shall, as part of its safety program, review all accidents and near-misses involving struck-by and crushing hazards to employees from moving vehicles on Respondent's premises.

- Respondent's rules, training materials and programs pertaining to the safety measure listed in the Settlement Agreement shall be in writing, in a language that is understandable to the employee. Respondent shall communicate all such rules to all employees, and shall conduct training of all such persons on complying with all such rules. Respondent shall provide copies of all such rules to all employees and shall document that it has done so. Respondent shall monitor all operations and conduct periodic inspections to determine whether such rules are being followed, and shall discipline employees who do not follow such rules utilizing a progressive system of discipline.

(E) The Citation and Notification of Penalty is deemed amended to include any and all abatement measures, including agreements as to actions to be taken by the employer, which are described in this Agreement. The measures described in this Agreement (including, without limitation, this Paragraph (3)) are hereby incorporated as terms and abatement conditions of this Agreement.

(4) In view of the foresaid, Respondent hereby withdraws its Notice of Contest and the parties agree that the Citations and proposed penalties and the abatement measures and dates, as amended by this Agreement, shall be affirmed and become the final Order of the Occupational Health and Safety Review Commission.

(5) Respondent certifies that the violations alleged have been abated or will be abated by the abatement dates as shown in the Citations as amended above. For each item in the Citations which is affirmed in this agreement, Respondent will submit to the issuing area director an Abatement Certification as required by 29 CFR 1903.19(c). For each item such certification shall be submitted within 30 days of signing this agreement or within 10 days of the abatement

date described herein, whichever is later. Respondent also agrees to submit such abatement documentation as is required by 29 CFR 1903.19(d).

(6) Respondent further certifies that \$20,000.00 of the total penalty, as amended herein, has been paid with the return of the Settlement Agreement to Complainant. Respondent shall pay the remaining balance of the amended penalty, \$180,000.00, in 18 equal monthly payments of \$10,000.00, beginning on March 15, 2018, with each subsequent payment due on the 15st of the month thereafter.

The initial payment and all installment payments shall be by certified check, bank check or money order. All future installment payments shall be transmitted to the OSHA Andover Area Office, c/o Anthony Covello, Area Director, U.S. Department of Labor – OSHA, 138 River Road, Suite 102, Andover, MA 01810.

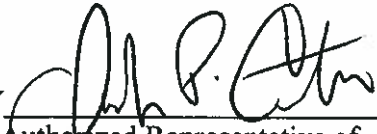
The original proposed penalty of \$267,081.00 will become due and payable, less amounts paid, immediately upon demand of Complainant if Respondent fails to make payment of any single installment on or before the date it is due or within a grace period of ten (10) days after it is due;

(7) Respondent certifies that there is no authorized employee representative at Respondent's workplace. It is hereby further certified by Respondent that this Settlement Agreement has been served on employees, by posting this agreement on 1.26.18, in a place where the Citation is required to be posted, in accordance with Rule 7 and 100 of the Commission's Rules of Procedures.

(8) Respondent agrees to comply with the Act in all respects in the future.

(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.

BY


Authorized Representative of
Lynnway, Auto Auction, Inc.

Kate S. O'Scannlain
Solicitor of Labor

Michael D. Felsen
Regional Solicitor


James Glickman
Senior Trial Attorney

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U.S. Department of Labor
Attorneys for Complainant

DATE January 30, 2018

NOTICE

The Secretary of Labor and Lynnway Auto Auction, Inc. have entered into an agreement to settle a certain proceeding now pending before the Occupational Safety and Health Review Commission. A copy of the agreement is attached hereto.

A motion by the parties for approval of the settlement is now pending. Any employee who has any objection to the agreement may, on or before the expiration of ten (10) days from the date of this posting, send the same by mail to:

Honorable William Coleman
Occupational Safety and Health Review Commission
One Lafayette Centre
1120 20th Street, N.W., Room 990
Washington, D.C. 20036-3419

Dated _____, 2018.

Attachment