

FILED

**BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION**

MAY 31 2017

RALEIGH, NORTH CAROLINA

**NC Occupational & Safety
Review Commission**

**COMMISSIONER OF LABOR FOR)
THE STATE OF NORTH CAROLINA)
COMPLAINANT,)
v.)
INTERNATIONAL TRAY PADS &)
PACKAGING, INC.)
and its successors)
RESPONDENT.)**

**DOCKET NO.: OSHANC 2016-5816
INSPECTION NO.: 318051992
CSHO ID.: I0931**

ORDER

THIS CAUSE came on for hearing and was heard before the undersigned R. Joyce Garrett, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on May 17, 2017, at 10 A.M. pursuant to a Notice of Hearing. Jason R. Rosser, Assistant Attorney General, North Carolina Department of Justice, appeared by teleconference for Complainant. Attorney Marcus Lebeouf and Attorney Adam R. Young of Seyfarth Shaw LLP, appeared by teleconference for the Respondent. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing.

At the time of the Hearing the parties agreed upon and consented to the following Stipulations.

STIPULATIONS

1. Respondent and Complainant waive the presence of a court reporter at the Hearing and the making of a transcript of the Hearing.
2. International Tray Pads & Packaging, Inc. was a corporation duly organized and existing under the laws of the State of North Carolina. International Tray Pads & Packaging, Inc. merged into Pactiv LLC, an alternative entity duly organized and existing under the laws of the State of Delaware and licensed to do business in North Carolina. Respondent maintains a place of business in Aberdeen, North Carolina.

3. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing and both parties consent to the conduct of this Hearing by the Undersigned and to entry of this Order.

4. On February 24, 2016, Chris Moore, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 3299 NC Highway 5, Aberdeen, North Carolina.

5. As a result of the inspection, on May 10, 2016, Complainant issued the following Citation and Notification of Penalty (herein referred to as the "Original Citation"):

CITATION 01 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.147(c)(4)(ii)	5/18/2016	\$ 3,500.00

6. The Respondent submitted a timely Notice of Contest, dated June 22, 2016.

7. The parties agree to bear their own attorney's fees, costs and other expenses that have been incurred in connection with any stage of these proceedings up to and including the filing of this Order.

8. Complainant and Respondent agree that provided the respective Motions of each party are granted (a) there are no other matters that remain to be decided, and that other than a ruling with respect to the Motions no outstanding issues remain to be resolved by an evidentiary hearing of this matter; (b) this Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion; (c) the modification of any portion of the Original Citation by Complainant shall not be deemed to be an admission by Complainant that any such portion was alleged without merit, (d) none of the agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Original Citation as amended or waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Order brought directly under the Occupational Safety and Health Act of North Carolina (hereinafter referred to as the "Act") by Complainant, this Order shall have the full force and effect of a final order; and (e) the agreements, statements, stipulations and actions herein by Complainant and by Respondent are solely for the purpose of resolving this matter economically and amicably without litigation and shall not be used for any other purpose except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes; (f) the penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been calculated in accordance with the standard Field Operations Manual procedure and giving consideration by Complainant to standard mitigating factors and to specific factors applicable to Respondent; and (g) there has been no employee objection to the reasonableness of any abatement period.

9. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act.

MOTIONS

Complainant moved to make the following amendments to the Original Citation (“Complainant’s Motion”):

a) **Change the AVD for Citation 01, Item 001 to “Site, seal pad, SP #3 machine, ‘Padder Machine’, anvil and AZCO cutting blade - the employer did not have a written lockout/tagout procedure for seal pad operators (‘padder machine operators’) to control hazardous energy”; and**

b) **Change the Classification of Citation 01, Item 001 from serious to non-serious;**

except as set forth in this motion, the Original Citation shall remain unmodified or amended and Respondent shall pay the proposed penalty of \$ 3,500.00 within ten (10) days following the date of this Order (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No.318051992) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

Respondent did not object to Complainant’s Motion.

Respondent confirmed that:

- the violations alleged in the Original Citation as amended have been abated as hereinafter described;
- Respondent agrees to maintain a safety program;
- Respondent represents that the seal pad (SP #3 machine, ‘padder machine’) is out of service; if and when the seal pad (SP #3 machine, ‘padder machine’) is returned to service, Respondent agrees to develop written lockout/tagout procedures to protect seal pad operators (‘padder machine operators’) from exposure to hazardous energy at the seal pad (SP #3 machine, ‘padder machine’);
- Respondent represents that the seal pad (SP #3 machine, ‘padder machine’) is out of service; if and when the seal pad (SP #3 machine, ‘padder machine’) is returned to service, Respondent agrees to provide lockout/tagout training to seal pad operators (‘padder machine operators’) required to clean on or about the anvil and AZCO cutting blade of the seal pad (SP #3 machine, ‘padder machine’).

Respondent requested that upon the granting of Complainant’s Motion that the Undersigned consider the following motion by the Respondent (“Respondent’s Motion”):

to withdraw Respondent's Notice of Contest to the Original Citation as amended pursuant to Complainant's Motion set forth above.

Complainant did not object to Respondent's Motion.

FINDINGS OF FACT

Based on the Stipulations at the time of the Hearing and the record, the Undersigned makes the following Findings of Fact:

1. This Court has jurisdiction over the parties and the subject matter of this Hearing.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. Neither party has any objection, procedural or otherwise, to this Hearing.
4. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Act.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

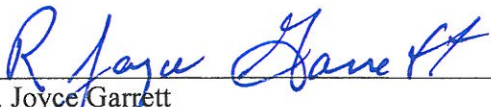
CONCLUSIONS OF LAW

The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**. Respondent shall pay the penalty of \$3,500.00 in the manner set forth in Complainant's Motion.

This 17th day of May, 2017.



R. Joyce Garrett
Administrative Law Judge

OSHANC 2016-5816

CONSENTED TO:

For Complainant



Jason R. Rosser, Assistant Attorney General
North Carolina Department of Justice

For Respondent

Michael W. Rehor
Director, Environmental Health & Safety
Pactiv LLC

And

Mark A. Lies, II, Attorney at Law
Seyfarth Shaw LLP
Attorney for Respondent

Adam R. Young, Attorney At Law
Seyfarth Shaw LLP
Attorney for Respondent


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CONSENTED TO:

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North Carolina Department of Justice

For Respondent




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Director, Environmental Health & Safety
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And



Mark A. Lies, II, Attorney at Law
Seyfarth Shaw LLP
Attorney for Respondent



Adam R. Young, Attorney At Law
Seyfarth Shaw LLP
Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER, upon:

MARK A. LIES, II
SEYFARTH SHAW
131 S. DEARBORN ST.
SUITE 2400
CHICAGO, IL 60603

JASON ROSSER
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH, NC 27602-0629

by depositing a copy of the same in the United States Mail, First Class;

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH, NC 27699-1101

by depositing a copy of the same in the NCDOL Interoffice Mail.

THIS THE 31 DAY OF May 2017.

ARLENE K. EDWARDS
CHAIRMAN



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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