

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

FILED

COMMISSIONER OF LABOR OF )  
THE STATE OF NORTH CAROLINA, )

FEB 14 2018

COMPLAINANT, )

North Carolina Department of Labor  
Occupational Safety and Health Review Commission

**ORDER**

v. )

OSHANC NO: 2017-5882

INSPECTION NO.: 318087764

LINTON INDUSTRIES, INC. )

CSHO ID: J1267

*and its successors,* )

RESPONDENT. )

THIS CAUSE came on for hearing and was heard before the undersigned Reagan H. Weaver, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on February 12, 2018 at 9:00 am pursuant to the stipulation of the parties to have this hearing one day prior to a scheduled hearing set for February 13, 2018. Rory Agan, Assistant Attorney General, North Carolina Department of Justice, appeared by teleconference on behalf of the Complainant and David Linton, President, Linton Industries, Inc. appeared on behalf of 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 is a corporation duly organized and existing under the laws of the State of North Carolina. Respondent maintains a place of business in Washington, North Carolina.
2. On September 15, 2016, Diedrik Lewis, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 2401 W. 5<sup>th</sup> Street in Washington, North Carolina.
3. As a result of the inspection, on December 6, 2016, Complainant issued the following Citations:

**CITATION NUMBER ONE (Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.178(p)(1)	Immediate	\$1,000.00
2	29 CFR 1910.303(g)(2)(i)	Immediate	\$1,000.00

**CITATION NUMER TWO (Nonserious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.253(b)(4)(iii)	Immediate	\$0.00
2	29 CFR 1910.305(b)(1)(ii)	Immediate	\$0.00
3	29 CFR 1910.305(g)(2)(iii)	Immediate	\$0.00

4. The Respondent submitted a timely Notice of Contest, dated January 17, 2017.
5. 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 the entry of this order.
6. Complainant and Respondent waive the presence of a court reporter and the making of a transcript of the hearing.
7. The parties agree to bear their own attorneys' 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, there are no outstanding issues 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 Respondent of any of the allegations contained in the Original Citation as amended or as a 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; e) the agreements, statements, stipulations and actions herein

by Complainant and 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

- I. Complainant moved to make the following amendments to the Original Citation ("Complainant's Motion"):

- a) Delete Citation 1, Item 1 and the associated penalty; and
- b) Reclassify Citation 1, Item 2 as "Nonserious" and delete the associated penalty.

Respondent did not object to Complainant's motion and confirmed the following:

- a) The violations alleged in the Original Citation as amended have been abated;
- b) Respondent agrees to continue with its present safety program, including conducting regular, periodic meetings with employees to discuss safety issues;
- c) During all safety meetings with employees, employees will be encouraged to communicate safety suggestions or complaints to their supervisor who will forward such information to Respondent's safety spokesperson;
- d) Respondent's safety spokesperson will make recommendations regarding safety to supervisors who will present such information to employees at the regular safety meetings;
- e) Respondent agrees that all employees who make suggestions or complaints shall have the same protection provided employees under Article 21, Chapter 95 of the North Carolina General Statutes;
- f) Respondent agrees that it will continue to operate its powered industrial trucks (PIT's) with seatbelts. Respondent specifically agrees to ensure that if any of

its PITs lack seatbelts that it will install seatbelts prior to any such PIT being used;

- g) Respondent agrees to train all PIT operators on the use of seatbelts prior to their first use of Respondent's PITs.

- II. Respondent requested that upon the granting of Complainant's Motion that the undersigned consider the following Motion:

Withdraw its 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 North Carolina Safety and Health Review Commission.
3. 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 revisions of the Act.
4. Neither party has any objection, procedural or otherwise, to this Hearing.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.
6. The parties agree that the validity of this Order shall not be affected by the fact that the consenting signatures of the parties may be executed in multiple counterparts or that they are electronically applied and communicated to the Court.

### **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:**

- That Complainant's Motion is hereby **GRANTED**; and
- That Respondent's Motion is hereby **GRANTED**.

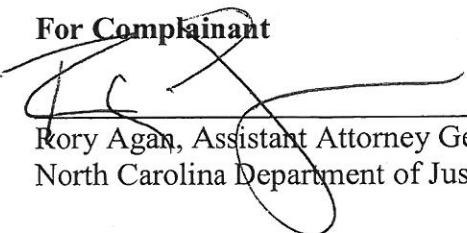
This the 12<sup>th</sup> day of February, 2018.

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Reagan H. Weaver  
Administrative Law Judge

**Consented to:**

**For Complainant**



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Rory Agan, Assistant Attorney General  
North Carolina Department of Justice

David C. Linton Jr.

David Linton, \_\_\_\_\_  
Linton Industries, Inc.

CERTIFICATE OF SERVICE

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

DAVID LINTON  
LINTON INDUSTRIES, INC.  
75 MANSFIELD RD  
WASHINGTON NC 27889

certified mail, return receipt requested, and upon:

RORY AGAN  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH, NC 27602-0629


by USPS first class mail, and upon:

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 16 DAY OF February 2018.

ARLENE K. EDWARDS  
CHAIRMAN

  
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Karissa B. Sluss  
Docket and Office Administrator  
NC Occupational Safety & Health Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
TEL.: (919) 733-3589  
FAX: (919) 733-3020

**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**.

This the 12<sup>th</sup> day of February, 2018.

  
Reagan H. Weaver  
Administrative Law Judge

**Consented to:**

**For Complainant**

\_\_\_\_\_  
Rory Agan, Assistant Attorney General  
North Carolina Department of Justice

\_\_\_\_\_  
David Linton,  
Linton Industries, Inc.