

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

**COMMISSIONER OF LABOR OF THE  
STATE OF NORTH CAROLINA**

**COMPLAINANT,**

**v.**

**PRECISION DRIVE SYSTEMS, LLC  
*and its successors***

**RESPONDENT.**

) **DOCKET NO.: OSHANC 2017-5925**  
) **INSPECTION NUMBER: 318097748**  
) **CSHO ID: P8193**

**ORDER**

NOV - 5 2018

THIS CAUSE came on for hearing and was heard before the undersigned Richard M. Koch, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on October 10, 2018, at 10:00 A.M. pursuant to a Notice of Hearing. Rory Agan, Assistant Attorney General, North Carolina Department of Justice, appeared by teleconference for Complainant. Tim Fry, Director of Operations, Precision Drive Systems, LLC, 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. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter "the Act"). The Review Commission has jurisdiction over the parties and the subject matter to this action.
2. Respondent is a North Carolina limited liability company, active and in good standing, in the State of North Carolina, and maintains a place of business in Bessemer City, North Carolina. Respondent is an "employer" as defined by N.C.G.S. Section 95-127(11) and it maintains employees as defined by N.C.G.S. Section 95-127(10).
3. On January 12, 2017, an Occupational Safety and Health Officer with the North Carolina Department of Labor conducted an inspection of Respondent's worksite located in Bessemer City, North Carolina ("the Inspection").
4. As a result of the Inspection, on April 24, 2017, Complainant issued the following Citation and Notification of Penalty (herein referred to collectively as the "Original Citation"):

**CITATION NUMBER ONE (Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1a	29 CFR 1910.24(f)	6/9/2017	\$750.00
1b	29 CFR 1910.36(d)(1)	5/18/2017	\$Grouped with 1a
2	29 CFR 1910.24(h)	6/9/2017	\$225.00
3	29 CFR 1910.212(a)(1)	6/9/2017	\$2800.00

**CITATION NUMBER TWO (Nonserious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.110(d)(10)	6/9/2017	\$0.00
2	29 CFR 1910.157(c)(1)	5/18/2017	\$0.00
3	29 CFR 1910.212(b)	5/18/2017	\$0.00
4	29 CFR 1910.215(b)(9)	5/18/2017	\$0.00
5	29 CFR 1910.242(b)	5/18/2017	\$225.00
6	29 CFR 1910.303(g)(1)	4/28/2017	\$0.00
7	29 CFR 1910.304(f)(1)(iv)	4/28/2017	\$0.00
8	29 CFR 1910.304(g)(5)	4/28/2017	\$0.00
9	29 CFR 1910.1200(g)(8)	5/18/2017	\$0.00
10	29 CFR 1910.1200(f)(6)(ii)	5/18/2017	\$0.00

5. The Respondent submitted a timely Notice of Contest.
6. A Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").
7. Respondent and Complainant waive the presence of a court reporter at the Hearing and the making of a transcript of the Hearing. 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.
8. Respondent posted the Original Citation and the Hearing Order as required by the Rules. Neither Complainant nor Respondent have received notification from any affected employee that such employee, or its representative, wishes to have a say in, or participate as a party in, this matter, or has any objections in connection with this matter including without limitation objection to the reasonableness of any abatement period.
9. The parties agree to bear their own attorney's fees (if any), 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.
10. 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 claim 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 further 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.

11. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act. Further :
  - a. Respondent agrees to conduct a quarterly audit of machines and their guards to verify that all guardable machines are guarded and in proper working order;
  - b. Respondent agrees to document the audit in writing and retain the audits for one year from creation, to be provided to OSHA inspectors upon request during an inspection; and
  - c. Respondent agrees to do a weekly walkthrough of the facility to ensure all exit doors were unlocked and available for use by employees while employees are working in the building.

### MOTIONS

Complainant moved to make the following amendments to the Original ("Complainant's Motion") Citation contingent on the allowance of Respondent's Motion:

1. Reduce the penalty associated with Citation 01, Item 1 to \$550.00;
2. Reduce the penalty associated with Citation 01, Item 3 to \$1000.00;
3. The total new penalty would be \$2000.00, payable the first Monday of the month after entry of this Order.

Respondent did not object to Complainant's Motion.

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 on 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 the 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**.

This the 10<sup>th</sup> day of October, 2018.



Richard M. Koch  
Administrative Law Judge

**CONSENTED TO:**

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Rory Agan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629/Labor Section  
Raleigh, North Carolina 27602-0629

Telephone No. (919) 716-6680

ATTORNEYS FOR COMPLAINANT

*TIMOTHY STAL* 10-OCT-18

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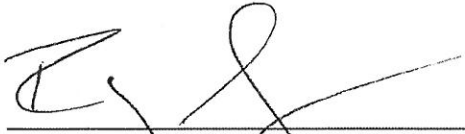
Tim Fry  
Director of Operations  
Precision Drive Systems, LLC  
4367 Dallas Cherryville Highway  
Bessemer City, North Carolina 28016

Telephone No. (704) 992-1206 (x119)

FOR RESPONDENT



**CONSENTED TO:**



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Rory Agan  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629/Labor Section  
Raleigh, North Carolina 27602-0629

Telephone No. (919) 716-6680

ATTORNEYS FOR COMPLAINANT

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Tim Fry  
Director of Operations  
Precision Drive Systems, LLC  
4367 Dallas Cherryville Highway  
Bessemer City, North Carolina 28016

Telephone No. (704) 992-1206 (x119)

FOR RESPONDENT

CERTIFICATE OF SERVICE

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

TIM FRY  
DIRECTOR OF OPERATIONS  
PRECISION DRIVE SYSTEMS, LLC  
4367 DALLAS CHERRYVILLE HWY  
BESSEMER CITY, NC 28016

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

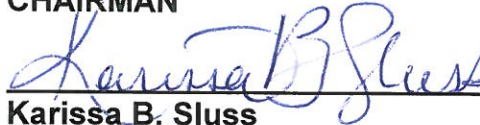
by depositing a copy of the same in the United States Mail, First Class;

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 5 DAY OF November 2018.

ARLENE K. EDWARDS  
CHAIRMAN



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