

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

**RALEIGH, NORTH CAROLINA**

FEB 6 2019

Administrative  
Services

<b>COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA</b>	)	<b>DOCKET NO: 2018 - 6022</b>
	)	
	)	<b>INSPECTION</b>
<b>Complainant,</b>	)	<b>NO: 318128758</b>
	)	
v.	)	<b>CSHO ID: P3114</b>
<b>ESTES EXPRESS LINES, INC. and its successors</b>	)	<b><u>FINAL ORDER</u></b>
	)	
	)	
<b>Respondent.</b>	)	

**THIS CAUSE** coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on January 31, 2019 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. Melissa H. Taylor, Special Deputy Attorney General appeared by teleconference as counsel for the Complainant; Edward E. Coleman III, attorney with Ragsdale Liggett PLLC, Raleigh, N.C. appeared by teleconference for the Respondent.

Pursuant to the Hearing Order a pre-hearing conference (the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing. At the Hearing Complainant and Respondent notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”).

This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the

Stipulations hereinafter set forth. Based on the Original Citation, Complainant's Complaint, and Respondent's Answer filed in the matter, it appears that on February 7, 2018 one of Respondent's employees was in an accident while operating a forklift (the "Accident") at Respondent's worksite located at 10815 Reames Road in Charlotte, North Carolina (the "Work Site"), and that: (1) Respondent was in the business of providing local and nationwide pick-up and delivery of general freight; (2) pursuant to a referral based on the Accident, an inspection of Respondent's Work Site took place; (3) the Inspector (hereinafter defined) alleged that (a) Respondent did not ensure that all nameplates on Hyster Fortis 40 forklifts were maintained in a legible/unblocked condition; (b) employees utilized Hyster Fortis 40 forklifts to load and unload trucks and wheel chocks were not placed under the rear wheels to prevent the trucks from rolling; (c) forklift operators did not receive a combination of formal instruction, practical "hands-on" training and were not evaluated to determine their ability to perform truck operations safely in the workplace; (d) employees were operating Hyster Fortis 40 to move materials throughout the dock area without looking in the direction of travel and on February 7, 2018 an employee backed the forklift off the dock and was injured; (e) operators of a Hyster Fortis 40 forklift had not received initial training on such workplace-related topics such as, but not limited to, the difference between the truck and an automobile, visibility (including restrictions due to loading), vehicle capacity and vehicle stability; (f) after a forklift involved accident in October 2017 and in November 2017 Respondent failed to ensure retraining of the forklift operators involved in the accidents; (g) no performance evaluations had been conducted in the last three years for the powered industrial fork truck operators who utilized the Hyster Fortis Forklift; (h) Respondent did not certify that each forklift operator, operating a powered industrial truck such as the Hyster Fortis forklift model number S40FT, had successfully been trained and evaluated; and (i) the OSHA 300A Annual Summary for calendar year 2017 was not posted on February 8, 2018; Respondent denied all such allegations.

As a result of this Hearing, Complainant and Respondent (sometimes referred to herein as "Estes") request that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Final Order. The Stipulations and Motions are as follows:

### **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 Virginia corporation which was authorized to do business in the State of North Carolina on January 27, 1969; it is active and current in the State of North Carolina and maintains a place of business in Charlotte, North Carolina. Respondent is an "employer" within

the meaning of N.C.G.S. Section 95-127(10); all of Respondent's employees referred to in this matter are "employees" within the meaning of N.C.G.S. Section 95-127(9).

3. During the period between February 8, 2018 and February 21, 2018, Safety Compliance Officer James Cook, employed by the North Carolina Department of Labor (the "Inspector"), conducted an inspection of the Work Site (the "Inspection"). Officer Cook properly entered onto Respondent's Work Site and properly conducted the Inspection pursuant to an accident referral. Paul Giles, Terminal Manager for Respondent, consented to the Inspection.

4. As a result of the Inspection, on April 13, 2018, Complainant issued two citations ("Citation 01" and "Citation 02") as more specifically described on **Exhibit "A"** (collectively the "Original Citation").

5. Respondent submitted a timely Notice of Contest dated June 1, 2018. On or about July 6, 2018 Complainant received "Respondent's/Employer's Statement of Position" which requested that formal pleadings be served. Complainant filed the Complaint on August 22, 2018, and Respondent filed its Answer on September 13, 2018.

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 this 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 Final Order.

8. Respondent posted the Original Citation and the Order of Pre-Hearing Conference as required by the Rules. Neither Complainant nor Respondent has 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. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion (hereinafter defined) have been abated.

10. The parties agree that upon granting of Complainant's Motion 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.

11. **Respondent agrees to continue to use its best efforts to comply with the requirements of the Act. Further Respondent agrees to do the following at the Work Site:**

- a) **Improve and maintain an effective and comprehensive safety and health program. As part of the safety and health program, Estes will conduct job hazard analyses of all tasks that might expose workers to hazards. Estes will revise existing safety and health programs to thoroughly address issues resulting from this Inspection. This program will include documented daily forklift inspection. In**

**addition, Estes will conduct frequent observations/evaluations of forklift operations for unsafe acts and conditions and take appropriate immediate correction actions, which will also include forklift operator re-training. These observations/evaluations will be documented and made available to NCDOL upon request.**

- b) Conduct safety training, as necessary, to ensure that all employees are adequately and effectively trained in the recognition and control or avoidance of hazards associated with their work environment. This training will specifically include, forklift operations, electrical hazards, lockout/tagout, hazard communication, fall protection and other areas as required by 29 CFR 1910. Provisions will be made for periodic retraining as needed. Estes will conduct forklift operator re-training on an annual basis for a three-year period. In addition, Estes will designate at least one management representative to attend and successfully complete an OSHA 10 or 30- Hour General Industry Course within one hundred twenty (120) days of the date of this Final Order.**
- c) Enforce safety and health rules through regular, scheduled and unscheduled, worksite inspections and established, documented progressive disciplinary procedures. Estes will require safety inspections and observations of the worksite and equipment to be conducted on at least a monthly basis for a three-year period and will document the inspections. Estes will maintain records of all worksite inspections, audit, evaluations and disciplinary actions associated with safety and health issues.**
- d) Continue any present Safety Program, including conducting periodic safety meetings with employees on a regular basis. Estes will actively encourage all workers to participate in workplace safety activities.**
- e) Respondent agrees to continue to inspect and maintain the spring brake systems on all trucks and trailers to assure proper functioning of the spring brakes. Respondent agrees to continue following its existing policies related to spring brake inspections, preventative maintenance schedules, and dockworker confirmation that tractors are disconnected prior to entering any trailer positioned at load dock areas. Respondent further agrees to continue reviewing its spring brake preventative maintenance schedules on a quarterly basis to ensure compliance with those schedules and document those reviews in writing or electronically. Written documentation consistent with existing policies will be made available to Complainant upon reasonable request.**
- f) Respondent agrees to continue with its present safety program in North Carolina, including conducting periodic meetings with employees. During such meetings, employees will be able to communicate safety suggestions or complaints to their supervisor who will forward the information to Respondent's North Carolina regional safety manager. Respondent agrees to meet regularly with its North Carolina employees to discuss safety issues and receive safety suggestions or complaints from employees. Respondent's regional safety manager shall also make recommendations regarding safety to supervisors who will then present such**



**information to North Carolina employees at the periodic meetings. Respondent agrees that all North Carolina employees who make suggestions or complaints to their supervisor or the regional safety manager shall have the same protection provided employees under Article 21, Chapter 95 of the North Carolina General Statutes.**

**Further, Respondent agrees to pay the penalty of \$ 24,500 .00 assessed in this matter within 10 days following Respondent's receipt of the filed Final Order (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318128758) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101).**

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

13. Complainant and Respondent agree that provided the respective Motions of each party are granted 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. The parties agree that this Final Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion. The parties further agree that (i) 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, and (ii) none of the foregoing 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 Final Order brought directly under the Act by Complainant, this Final Order shall have the full force and effect of a final order. 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.

### **MOTIONS**

Complainant moved to do the following ("Complainant's Motion"):

**amend the Original Citation as follows:**

- a) Citation 1, item 1 is reclassified to nonserious and the penalty is deleted;**
- b) Citation 1, item 2 and the penalty is deleted;**
- c) Citation 1, items 3, 4a, and 4b are grouped with a penalty of \$14,000.00;**

- d) **Citation 1, item 5 –**
  - i) **instance (a) remains as cited with a penalty of \$3,500.00;**
  - ii) **instance (b) is deleted;**
- e) **Citation 1, items 6a and 6b remain as cited with a penalty of \$7,000.00; and**
- f) **Citation 2, item 1 remains as cited and the penalty is deleted.**

**Except as expressly set forth in Complainant’s Motion, the Original Citation shall remain unmodified or amended.**

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 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 Act.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Final Order.

Estes Express Lines, Inc.  
2018 - 6022

**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 Final 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 \$ 24,500.00 in the manner set forth in the Stipulations.

This the 31<sup>th</sup> day of January, 2019.

---

R. Joyce Garrett  
Administrative Law Judge

**CONSENTED TO:**

**For Complainant**



Melissa H. Taylor  
Special Deputy Attorney General  
North Carolina Department of Justice  
PO Box 629/Labor Section  
Raleigh, N.C. 27602-0629  
Telephone No. 919-716-6680  
**ATTORNEY FOR COMPLAINANT**

**For Respondent**

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Edward E. Coleman, III, Attorney at Law  
Ragsdale Leggett PLLC  
2840 Plaza Place  
Suite 400  
Raleigh, N.C. 27612  
Telephone No. 919-881-2230  
**ATTORNEY FOR RESPONDENT**

Estes Express Lines, Inc.  
2018 - 6022

**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 Final 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 \$ 24,500.00 in the manner set forth in the Stipulations.

This the 31<sup>st</sup> day of January, 2019.

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R. Joyce Garrett  
Administrative Law Judge

**CONSENTED TO:**

**For Complainant**

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Melissa H. Taylor  
Special Deputy Attorney General  
North Carolina Department of Justice  
PO Box 629/Labor Section  
Raleigh, N.C. 27602-0629  
Telephone No. 919-716-6680  
ATTORNEY FOR COMPLAINANT

**For Respondent**




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Edward E. Coleman, III, Attorney at Law  
Ragsdale Liggett PLLC  
2840 Plaza Place  
Suite 400  
Raleigh, N.C. 27612  
Telephone No. 919-881-2230  
ATTORNEY FOR RESPONDENT




**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 Final 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 \$ 24,500.00 in the manner set forth in the Stipulations.

This the 31<sup>th</sup> day of January, 2019.

  
\_\_\_\_\_  
R. Joyce Garrett  
Administrative Law Judge

**CONSENTED TO:**

**For Complainant**

\_\_\_\_\_  
Melissa H. Taylor  
Special Deputy Attorney General  
North Carolina Department of Justice  
PO Box 629/Labor Section  
Raleigh, N.C. 27602-0629  
Telephone No. 919-716-6680  
ATTORNEY FOR COMPLAINANT

**For Respondent**

\_\_\_\_\_  
Edward E. Coleman, III, Attorney at Law  
Ragsdale Liggett PLLC  
2840 Plaza Place  
Suite 400  
Raleigh, N.C. 27612  
Telephone No. 919-881-2230  
ATTORNEY FOR RESPONDENT

**Exhibit "A"**  
**Original Citation**

**CITATION NUMBER 01 (Type of Violation: Serious)**

<b><u>Item No.</u></b>	<b><u>Standard</u></b>	<b><u>Abatement Date</u></b>	<b><u>Penalty</u></b>
001	29 CFR 1910.178(a)(6)	Immediately Upon Receipt	\$ 7,000.00
002	29 CFR 1910.178(m)(7)	Immediately Upon Receipt	\$ 7,000.00
003	29 CFR 1910.178(1)(2)(ii)	Immediately Upon Receipt	\$ 7,000.00
Grouped			
004a	29 CFR 1910.178(n)(6)	Corrected During Inspection	\$ 7,000.00
004b	29 CFR 1910.178(1)(3)	Immediately Upon Receipt	\$ 0.00
005	29 CFR 1910.178(1)(4)(ii)(B)	Immediately Upon Receipt	\$ 7,000.00
Grouped			
006a	29 CFR 1910.178(1)(4)(iii)	5/31/2018	\$ 7,000.00
006b	29 CFR 1910.178(1)(6)	5/31/2018	\$ 0.00

**CITATION NUMBER 02 (Type of Violation: NonSerious)**

<b><u>Item No.</u></b>	<b><u>Standard</u></b>	<b><u>Abatement Date</u></b>	<b><u>Penalty</u></b>
001	29 CFR 1904.32(b)(6)	Corrected During Inspection	\$ 900.00
<b>TOTAL</b>			<b>\$ 42,900.00</b>

CERTIFICATE OF SERVICE

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

EDWARD E. COLEMAN, III  
RAGSDALE LEGGETT PLLC  
2840 PLAZA PLACE  
SUITE 400  
RALEIGH, NC 27612

MELISSA H. TAYLOR  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH, NC 27602-0629

by depositing a copy of the same in the United States Mail, postage prepaid, at Raleigh, North Carolina, 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 6 DAY OF February, 2019.

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