

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

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

COMPLAINANT,

v.

**CAROCON CORPORATION
*and its successors,***

RESPONDENT.

) **DOCKET NO.: OSHANC 2019-6188**
) **INSPECTION NUMBER: 318156510**
) **CSHO ID: P3114**

) **STIPULATION AND**
) **NOTICE OF SETTLEMENT**

FILED

MAR 20 2023

NC OSH Review Commission

NOW COME the parties in the above-captioned action, by and through the undersigned counsel and pursuant to Rule .0701 of the Rules of Procedure adopted by the North Carolina Occupational Safety and Health Review Commission, respectfully show unto the Hearing Examiner as follows:

FACTS

1. Respondent is a domestic corporation duly organized and existing under the laws of the State of North Carolina. Respondent maintains a place of business in Charlotte, North Carolina.
2. On 2/10/2019 James Cook, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 4410 Napa Oak Drive, Charlotte, NC 28217.
3. This was a multi-employer construction site for an apartment complex.
4. As a result of the inspection, on 8/2/19, Complainant issued the following Citations:

CITATION NUMBER ONE (Willful Serious)

<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.501(b)(13)	Immediately	\$70,000.00

Or in the alternative:

001	29 CFR 1926.501(b)(1)	Immediately	\$70,000.00
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CITATION NUMBER TWO (Serious)

<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 19210.178(l)(1)(i)	Immediately	\$5,000.00

5. The Respondent submitted a timely Notice of Contest, dated 9/11/19.
6. The parties having reached a Settlement Agreement now seek approval of said Agreement by the Hearing Examiner.

STIPULATIONS

Effective upon approval of this Stipulation and Notice of Settlement, the parties to this action hereby agree and stipulate to the following settlement of the matters at issue herein:

1. Respondent agrees that the violations alleged in the Citation and Notification of Penalty, as amended, have been abated, and agrees to continue to use its best efforts to comply with the requirements of the Occupational Safety and Health Act of North Carolina (hereinafter referred to as the "Act").
2. Complainant agrees to make the following amendments to the Citations:
 - a. **Reclass Citation 1, Item 001 to SERIOUS;**
 - b. **Reduce the \$70,000.00 penalty for Citation 1, Item 001 by \$10,000.00 to a \$60,000.00 settlement amount;**
 - c. **Amend both AVDs under Citation 1, Item 001, to read as follows:**

a) jobsite- where guardrails were not in place on the second and third floor breezeways, exposing employees to a fall of 6 feet or more.

d. No changes shall be made to Citation 2, Item 001.

3. Respondent agrees to the following:

a. Maintain and where applicable improve upon an effective and comprehensive safety and health program. As part of the safety and health program, the Employer will conduct job hazard analyses of tasks that might expose employees to hazards. In addition, the Employer will implement elements to meet the requirements of the OSH Division Focused Construction Inspection criteria if applicable and required by 29 CFR 1926 and revise existing safety and health programs to address issues resulting from this inspection. This safety program will include fall protection, scaffolding, machine guarding, forklifts, struck by and caught between hazards, electrical, emergency action planning, PPE/Hazard Assessment, and Hazard Communication. As part of its first tier subcontractor selection process, the employer will continue to request its first tier subcontractors to make available a copy of the subcontractor's safety and health programs which should include evaluation of a subcontractor's Workers' Compensation Experience Modification Rates, OSHA 300 logs, and subcontractor safety and health program. In addition, the Employer will designate and mark hoisting areas for each building/floor where materials, supplies, and equipment will be lifted and staged. These areas will contain an adequate fall protection system to be utilized while employees (or subcontractors employees) are working/walking around these areas. Where the Employer identifies or is made aware of safety or health hazards on the jobsite, the Employer shall immediately remove any employees or subcontractors' employees from the hazard(s) until corrective measures have been fully implemented;

b. Continue conducting 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. Provisions will be made for periodic retraining as needed. This training will include but is not limited to: fall protection, electrical hazards, machine guarding, struck by and caught between hazards, forklifts, ladders, chemical hazards, and the use of personal protective. In addition, the Employer will require all its project superintendents who have not already successfully completed an OSHA 30- Hour Construction Course to attend and successfully complete an OSHA 30- Hour Construction Course within one year of the execution date of this Agreement;

c. Ensure or continue to ensure that safety and health rules are enforced (by the Employer) through regular, scheduled and unscheduled, worksite inspections and established, documented progressive disciplinary procedures. The Employer will ensure that the worksite inspections are conducted on at least a daily basis and are documented. The Employer will maintain records of all worksite inspections, audit, evaluations and disciplinary actions associated with safety and health issues. These records will be made available to the OSH Division upon request for one year after the execution date of the Agreement;

d. Continue any present Safety Program, including conducting periodic safety meetings with employees at regular intervals. The Employer will continue to conduct weekly toolbox talks with employees and subcontractors. The Employer will actively encourage all workers to participate in workplace safety activities. During such meetings, employees should be able to communicate safety suggestions or complaints to their supervisor;

4. Respondent agrees to continue with its present safety program, 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 safety spokesperson. Respondent agrees to meet regularly with its employees to discuss safety issues and receive safety suggestions or complaints from employees. Respondent's safety spokesperson shall also make recommendations regarding safety to supervisors who will then present such information to employees at the periodic meetings. Respondent agrees that all employees who make suggestions or complaints to the Committee, shall have the same protection provided employees under Article 21, Chapter 95 of the North Carolina General Statutes.

5. 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 Stipulation and Notice of Settlement.

6. The parties agree that this Stipulation and Notice of Settlement is a full and final settlement of the claims set out in the underlying Citation and Notification of Penalty, and none of the foregoing agreements, statements, stipulations and actions taken by the Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Citation and Notification of Penalty, which allegations Respondent denies, or a waiver by Respondent of defenses; provided, however, that in any subsequent OSHANC proceeding with respect to matters covered by this Stipulation and Notice of Settlement brought directly under the Act by Complainant, this Agreement shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein are made solely for the purpose of settling this matter economically and amicably without further litigation and shall not be used as an admission by Respondent and shall not be used for any other purpose or in any other

proceeding (including without limitation any civil court actions) except for proceedings and matters arising under the Occupational Safety and Health Act and Article 21, Chapter 95 of the North Carolina General Statutes.

7. Upon approval of this Stipulation and Notice of Settlement by the Hearing Examiner, the Respondent agrees to pay the settlement amount of \$ **65,000.00 within seven (7)** days following the receipt of the Order approving the Stipulation and Notice of Settlement, by check, payable to North Carolina Department of Labor, OSHA Division (Identifying Inspection No. 318156510) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina, 27699-1101. Credit card payment may also be arranged.

8. Respondent agrees that by signing this Stipulation and Notice of Settlement and upon approval of said Stipulation and Notice of Settlement by the Hearing Examiner, its Notice of Contest is withdrawn as a matter of law.

9. The parties agree that there are no other matters that remain to be decided, and there has been no employee objection to the reasonableness of any abatement period.

10. Respondent shall post this Stipulation and Notice of Settlement in accordance with Rules .0107(e), .0107(f), .0107(h) and .0701(c) of the Rules of Procedure of the North Carolina Occupational Safety and Health Review Commission.

WHEREFORE, the parties to this action hereby respectfully request approval of this Stipulation and Notice of Settlement.

**NOTICE OF FILING
BY WAY OF ELECTRONIC MEANS**

Under current safety measures taken in light of the COVID 19 pandemic, it is difficult to gather original signatures on a single document. Accordingly, the parties have agreed that all documents filed with the Review Commission related to this settlement may be filed through electronic means, in accordance with the Review Commission's temporary submission process with original hard copies to follow as soon as it is possible to do so.

This the 15th day of March, 2023.

APPROVED BY:

Lee Peacock
Digitally signed by Lee Peacock
Date: 2023.03.15 16:26:41 -04'00'

Lee Peacock
West Compliance Bureau Chief
Occupational Safety and Health Division

JOSHUA H. STEIN
Attorney General

Stacey A. Phipps
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ATTORNEYS FOR COMPLAINANT

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ATTORNEY FOR RESPONDENT

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

**COMMISSIONER OF LABOR OF THE
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RESPONDENT.

) **DOCKET NO.: OSHANC 2019-6188**
) **INSPECTION NUMBER: 318156510**
) **CSHO ID: P3114**

) **CONSENT ORDER**

FILED

MAR 20 2023

NC OSH Review Commission

This cause comes on to be heard before the undersigned Hearing Examiner (the Court) and being heard upon consent of the parties hereto, upon consideration of the Stipulation and Notice of Settlement submitted by the parties (the Agreement), the Court makes the following:

FINDINGS OF FACT

1. That the Agreement is reasonable and supported by the underlying facts.
2. That no outstanding issues remain to be resolved by a hearing of this matter.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties to this action and over the subject matter.
2. That the Agreement is consistent with the purpose and objectives of the Occupational Safety and Health Act of North Carolina (The Act), and complies with Rule .0701 of the Rules of Procedure of the North Carolina Occupational Safety and Health Review Commission.

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

1. That the Agreement is approved.
2. That both parties are hereby required to comply with the terms and conditions

stipulated in the agreement.

This the **Mar 20, 2023**

R. Joyce Garrett

R. Joyce Garrett (Mar 20, 2023 10:13 EDT)

R. JOYCE GARRETT
Hearing Examiner

BY CONSENT:

JOSHUA H. STEIN
Attorney General

**Stacey A
Phipps**

Stacey A. Phipps
Special Deputy Attorney General
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**Greg C.
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gahlum@jahlaw.com C = US O =
Johnston Allison and Hord, P.A.
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ATTORNEYS FOR COMPLAINANT

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

GREG AHLUM
JOHNSTON ALLISON & HORD PA
1065 EAST MOREHEAD ST
CHARLOTTE NC 28204

STACEY PHIPPS
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602-0629

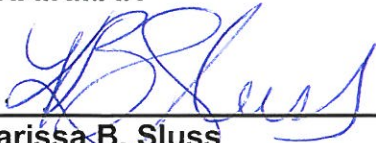
by depositing same in the United States Mail, Priority Mail, first class, postage
prepaid, at Raleigh, North Carolina; and upon:

NC DEPARTMENT OF LABOR
1101 MAIL SERVICE CENTER
RALEIGH NC 27699

Via email to carla.rose@labor.nc.gov.

THIS THE 22 DAY OF March 2023.

PAUL E. SMITH
CHAIRMAN



Karissa B. Sluss
Docket and Office Administrator
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