

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

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

COMPLAINANT,

v.

**PS SPLICING, LLC,
*and its successors,***

RESPONDENT.

) **DOCKET NO.: OSHANC 2019-6202**
) **INSPECTION NUMBER: 318163458**
) **CSHO ID: F1857**

FILED

OCT 21 2022

) **STIPULATION AND NOTICE OF SETTLEMENT** NC OSH Review Commission
)
)
)
)
)
)
)
)
)
)

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

INCIDENT SUMMARY AND BACKGROUND

On April 10, 2019, a construction crew working as a subcontractor of Respondent punctured a natural gas line in the vicinity of 115 N. Duke Street, Durham, North Carolina, while using a horizontal directional drilling machine. This address was home to several businesses. According to the Durham Fire Department’s incident report, the line was compromised at approximately 9:06 a.m.

The first 811 (utility damage prevention line) call regarding the line breach was made by Respondent at 9:28 a.m.; the same caller reached out to 911 at 9:38 a.m. according to Durham emergency dispatch.

At approximately 10:07 a.m., an explosion occurred. There were two fatalities and multiple injuries.

FACTS

1. Complainant is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, including making inspections and issuing citations and other pleadings, pursuant to N.C.G.S. Article 16, Chapter 95.
2. Respondent is a limited liability company duly-organized and operating under the laws of North Carolina.
3. Respondent is in the business of telecommunication splicing, installation, fiber, placing, inspection, management, field supervision, and directional drilling.
4. Respondent is an "employer" within the meaning of N.C.G.S. §95-127(11); all of Respondent's employees referred to herein are "employees" within the meaning of N.C.G.S. §95-127(11).
5. This was a multi-employer worksite.
6. Respondent was tasked with boring a path for conduit.
7. Respondent subcontracted the boring work to Optic Cable Technology.
8. Optic Cable Technology breached a natural gas line.
9. Beginning on April 18, 2019, CSHOs from the North Carolina Department of Labor conducted an inspection and investigation of the explosion and this employer.
10. As a result of the inspection, one **Serious** citation was issued on October 8, 2019, carrying the following proposed abatement dates and penalties:

CITATION NUMBER ONE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.20(b)(2)	immediately upon receipt	\$ 2,100.00

11. For the alleged violation, the Complainant calculated the proposed penalty and proposed abatement date according to the procedures set forth in the Complainant's North Carolina Operations Manual. Pursuant to Chapter VI, section B of the North Carolina Operations Manual, Complainant applied the following Adjustment Factors to the Gravity Based Penalty of \$7,000.00 to calculate the Proposed Adjusted Penalty, as appropriate: 60% credit for size, 0% credit for good faith, and 10% credit for history, yielding a \$2,100.00 adjusted penalty.
12. Respondent submitted a timely Notice of Contest, dated November 25, 2019.
13. On or about January 2, 2020, Respondent filed "Employer's/Respondent's Statement of Position," which did not request formal pleadings.
14. 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 amendment to the Citation and Notification of Penalty:
 - (a) **Reclassify Citation 1, Item 001 from SERIOUS to NONSERIOUS.**
 - (b) **Reduce the penalty for Citation 1, Item 001 by 30% (\$630.00) from \$2,100.00 to \$1,470.00.**
3. In consideration of this Agreement, the Employer agrees to:

(a) 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.

(b) Ensure that subcontractors it hires have their own safety program that complies with Section 3a.

(c) Waive its rights under the Occupational Safety and Health Act of North Carolina, N.C.G.S. § 95-126 to -155, to contest any citation item(s), penalty(ies), or abatement date(s) listed on the NCOSHA-2 before the Safety and Health Review Board of North Carolina and/or any other tribunal.

4. 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.

5. Upon approval of this Stipulation and Notice of Settlement by the Hearing Examiner, the Respondent agrees to pay the new proposed penalty of **\$1,470.00 within ten (10) 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. 318163458) 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.

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 or waiver of defenses; provided, however, that in any subsequent 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 for any other purpose 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. 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.

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

This the 19th day of October, 2022.

APPROVED BY:

**Nicole H.
Brown**

Digitally signed by Nicole
H. Brown
Date: 2022.10.20
12:03:38 -04'00'

Nicole Brown
District Supervisor
Occupational Safety and Health Division

JOSHUA H. STEIN
Attorney General

Stacey A
Phipps

Digitally signed by Stacey A_ Phipps
DN: OU=NCDOJ/Atty General, O=Labor
Section, CN=Stacey A_ Phipps,
E=sphipps@ncdoj.gov
Reason: I am approving this document
with my legally binding signature
Location: 1
Date: 2022.10.20 12:16:58-04'00'
Foxit PDF Editor Version: 11.2.3

Stacey A. Phipps
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629/Labor Section
Raleigh, NC 27602-0629
sphipps@ncdoj.gov
(919) 716-6697

ATTORNEYS FOR COMPLAINANT



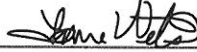
Christopher Skinner
MGC Law
4130 ParkLake Ave
Suite 550
Raleigh NC 27612
Christopher.skinner@mgclaw.com
(919) 719-8218

FOR RESPONDENT

stipulated in the agreement.

This the ____ day of October, 2022.

Oct 21, 2022



Laura Wetsch (Oct 21, 2022 11:10 EDT)

LAURA WETSCH
Hearing Examiner

BY CONSENT:

JOSHUA H. STEIN
Attorney General

**Stacey A
Phipps**

Digitally signed by Stacey A. Phipps
DN: OU=NCDOJ/Atty General, O=Labor
Section, CN=Stacey A. Phipps,
E=sphipps@ncdoj.gov
Reason: I am approving this document
with my legally binding signature
Location: 1
Date: 2022.10.20 12:17:33-04'00'
Foxit PDF Editor Version: 11.2.3



Stacey A. Phipps
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629/Labor Section
Raleigh, NC 27602-0629
sphipps@ncdoj.gov
(919) 716-6697

Christopher Skinner
MGC Law
4130 ParkLake Ave
Suite 550
Raleigh NC 27612
Christopher.skinner@mgclaw.com
(919) 719-8218

ATTORNEYS FOR COMPLAINANT

FOR RESPONDENT

CERTIFICATE OF SERVICE

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

CHRISTOPHER SKINNER
MGC LAW
4130 PARK LAKE AVE STE 550
RALEIGH NC 27612

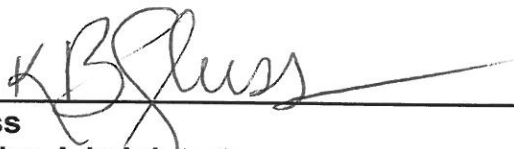
STACEY A. PHIPPS
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602

By depositing a copy of same in the United States Mail, First Class, postage prepaid at Raleigh, North Carolina, and upon:

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

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

THIS THE 4 DAY OF November, 2022.



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