

FILED

MAR 29 2023

NC OSH Review Commission

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

COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

JELD-WEN, INC.,
and its successors,

RESPONDENT.

) DOCKET NO: OSHANC 2020-6232
) INSPECTION NUMBER: 318177631
) CSHO ID: S0077

STIPULATION AND
NOTICE OF
SETTLEMENT

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, Jeld-Wen, Inc., is a foreign corporation, which was authorized to do business in North Carolina on August 27, 2015. It is active and current and maintains a place of business in North Wilkesboro, North Carolina.
2. Respondent is in the business of manufacturing windows and doors.
3. 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(10).
4. On September 10, 2019, Compliance Safety and Health Officer (CSHO) Kirby Atwood opened a partial inspection of Respondent's worksite located at 205 Lanes Drive, North Wilkesboro, NC, as the result of a timely-reported injury referral.

5. On August 25, 2019, one of Respondent's employees was injured while changing a die on Press #2 (Macrodyne, Model#PPM2500, Serial#206628-PPM2500-3) (Press#2), which is used to make door skins. The employee used a Hyster 90 forklift, a powered industrial truck, with an attachment, to change the die in Press #2.
6. The employee suffered a partial crush injury to his left thumb which resulted in hospitalization and amputation.
7. Upon arrival on September 10, 2019, CSHO Atwood performed introductions, presented credentials, and conducted an opening conference with Jeff Mang, Plant Manager for Respondent. He explained the scope of the inspection (partial) and that any plain view hazards would also be addressed.
8. Mang consented to the inspection and accompanied CSHO Atwood during the walkthrough.
9. On October 31, 2019, CSHO Atwood conducted the closing conference with Mang and Crystal Pollin, Regional Safety & Health Manager for Respondent.
10. On October 31, 2019, Mang reviewed and signed the Employer and Employee Rights and Responsibilities form (OSHA 59) and was provided with a copy thereof.
11. As a result of the inspection, one **SERIOUS** citation with four subparts was issued on November 7, 2019, carrying the following proposed abatement dates and penalties:

CITATION NUMBER ONE (SERIOUS)

<u>Item No.</u>	<u>Standard</u>	<u>Abate Date</u>	<u>Penalty</u>
	Citation One (Serious)		
001a	1910.147(c)(4)(i)	CDI	\$ 6,300.00
001b	1910.147(c)(6)(i)	12/6/2019	grouped
002a	1910.178(a)(4)	Immed	\$ 7,000.00
002b	1910.178(a)(5)	Immed	grouped
			\$ 13,300.00

12. For each 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 to calculate the Proposed Adjusted Penalty, as appropriate: 0% for size, 0-10% credit for good faith, and 0-10% credit for history.

13. Respondent submitted a timely Notice of Contest, dated January 13, 2020.
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 amendments to the Citations:
 - a. **Reclassify Citation 1, Item 001a to NONSERIOUS but retain the penalty of \$6,300.00.**
 - b. **Reclassify Citation 1, Item 001b to NONSERIOUS but retain the grouped penalty status.**
 - c. **Change Citation 1, Item 002a to a N.C.G.S. § 95-129(1) General Duty Clause violation, and retain the \$7,000.00 penalty**
 - d. **Amend the AVD for Item 002a to read as follows: "a) facility – where employees were using an attachment on a Hyster 90 forklift that was not certified and stamped by a professional engineer to move press dies," and note that "a feasible and acceptable method of abating this instance is to have this and any forklift attachments**

of this nature certified and stamped by a professional engineer before use by any employee.”

e. **Delete Citation 1, Item 002b and the penalty associated therewith.**

3. Respondent agrees to the following:

a. **Conduct a documented review of the die change-out procedure and audits of such procedure during the six months following the issuance of a final order in this matter. Such review should include two audits- one of which is planned and one of which is unplanned.**

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 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. Respondent's agreement to accept any Citation or take any other action specified in this Stipulation and Notice of Settlement under a particular standard shall not be deemed as an admission by Respondent that the cited standard applies to its operations for purposes of any other matter.

7. Upon approval of this Stipulation and Notice of Settlement by the Hearing Examiner, the Respondent agrees to pay the proposed penalty of **\$13,300.00 within thirty (30) 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. 318177631) 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 **28th** day of March, 2023.

APPROVED BY:

**Kevin
McGuire**

Digitally signed by Kevin
McGuire
Date: 2023.03.28
09:57:20 -04'00'

Kevin McGuire
District Supervisor
Occupational Safety and Health Division

JOSHUA H. STEIN
Attorney General

**Stacey A_
Phipps**

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CN=Stacey A. Phipps, E=sphipps@ncdoj.gov
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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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COMPLAINANT,

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**JELD-WEN, INC.,
*and its successors,***

RESPONDENT.

) **DOCKET NO: OSHANC 2020-6232**
) **INSPECTION NUMBER: 318177631**
) **CSHO ID: S0077**

CONSENT ORDER

FILED

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NC OSH Review Commission

The parties having appeared before the undersigned for a duly-noticed hearing, and having informed the undersigned hearing officer that they have reached a resolution of the citations issued in this matter, and the undersigned having reviewed the citations, the documents filed by the parties, and the representations of counsel, now pursuant to Rule .0507 of the Rules of Procedure adopted by the North Carolina Occupational Safety and Health Review Commissions, the undersigned makes the following:

FINDINGS OF FACT

1. Respondent, Jeld-Wen, Inc., is a foreign corporation, which was authorized to do business in North Carolina on August 27, 2015. It is active and current and maintains a place of business in North Wilkesboro, North Carolina.
2. On September 10, 2019, Compliance Safety and Health Officer (CSHO) Kirby Atwood opened a partial inspection of Respondent's worksite located at 205 Lanes Drive, North Wilkesboro, NC, as the result of a timely-reported injury referral.
3. As a result of the inspection, one **SERIOUS** citation with four subparts was issued on November 7, 2019, carrying the following proposed abatement dates and penalties:

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002a	1910.178(a)(4)	Immed	\$ 7,000.00
002b	1910.178(a)(5)	Immed	grouped
			\$ 13,300.00

4. The Respondent submitted a timely Notice of Contest dated January 13, 2020.
5. The parties have mutually agreed to resolve the Citation(s) upon the following terms, and seek the undersigned's approval of the same:
 - a. Respondent agrees that the violations alleged in the Citation and Notification of Penalty, as amended below, 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").
 - b. Complainant agrees to make the following amendments to the Citation items:
 - i. Reclassify Citation 1, Item 001a to NONSERIOUS but retain the penalty of \$6,300.00.
 - ii. Reclassify Citation 1, Item 001b to NONSERIOUS but retain the grouped penalty status.
 - iii. Change Citation 1, Item 002a to a N.C.G.S. § 95-129(1) General Duty Clause violation, and retain the \$7,000.00 penalty
 - iv. Amend the AVD for Item 002a to read as follows: "a) facility – where employees were using an attachment on a Hyster 90 forklift that was not certified and stamped by a professional engineer to move press dies," and note that "a feasible and acceptable method of abating this instance is to

have this and any forklift attachments of this nature certified and stamped by a professional engineer before use by any employee.”

- v. Delete Citation 1, Item 002b and the penalty associated therewith.
- c. Without admitting any allegations of the Citation and Notice of Penalty, or waiving any defense to the Citation, Respondent agrees to the following:
- i. Conduct a documented review of the die change-out procedure and audits of such procedure during the six months following the issuance of a final order in this matter. Such review should include two audits- one of which is planned and one of which is unplanned.
 - ii. 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.
- d. Each party agrees to bear its own attorney's fees, costs and other expenses that have been incurred in connection with these proceedings.

- e. 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. Respondent's agreement to accept any Citation or take any other action specified in this Stipulation and Notice of Settlement under a particular standard shall not be deemed as an admission by Respondent that the cited standard applies to its operations for purposes of any other matter.
 - f. There are no other outstanding matters to be addressed in this proceeding.
 - g. Neither party has received any notification from any employee indicating an intent to participate in or attend the hearing in this matter.
- 6. The foregoing terms are reasonable and supported by the underlying facts.
 - 7. No outstanding issues remain to be resolved by a hearing of this matter.

Based on the foregoing, the undersigned makes the following:

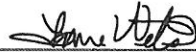
CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and over the subject matter.
2. The parties' proposed resolution of this matter is consistent with the purpose and objectives of the Act.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. The parties' agreement, as set out above, is approved.
2. The parties shall comply with the terms and conditions set out above.

This **Mar 29, 2023**



Laura Wetsch (Mar 29, 2023 10:05 EDT)

LAURA WETSCH
Hearing Examiner

BY CONSENT:

JOSHUA H. STEIN
Attorney General

**Stacey A
Phipps**

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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

MICHAEL D MCKNIGHT
OGLETREE DEAKINS
8529 SIX FORKS RD STE 600
RALEIGH NC 27615

STACEY PHIPPS
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, 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
carla.rose@labor.nc.gov

via email.

THIS THE 31 DAY OF March 2023.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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