

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

COMMISSIONER OF LABOR OF THE  
STATE OF NORTH CAROLINA,

Complainant,

-vs-

TRANSCONTINENTAL AC US, LLC,  
*and its successors,*

Respondent.

) DOCKET NO.: OSHANC 2020-6316  
) INSPECTION NUMBER: 318189743  
) CSHO ID: T5134  
)  
)  
)

CONSENT ORDER

FILED

DEC 14 2022

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 is a corporation duly organized and existing under the laws of the State of Delaware.
2. During 2020, Respondent maintained a worksite at 700 Crestdale Road, Matthews, North Carolina (the “worksite”).
3. Between February 17, 2020 and June 25, 2020, Compliance Safety and Health Officer Robert Maedje, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent’s worksite.
4. As a result of the inspection, on June 29, 2020, Complainant issued the following Citation(s):

**CITATION NUMBER ONE (Serious)**

<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.147(c)(4)(i)	Immediately upon receipt	\$7,000.00
2	29 CFR 1910.147(c)(5)(i)	Immediately upon receipt	\$6,300.00
3	29 CFR 1910.147(c)(7)(i)(A)	Immediately upon receipt	\$6,300.00
4	29 CFR 1910.212(a)(1)	Immediately upon receipt	<u>\$7,000.00</u>
<b>TOTAL</b>			<b>\$26,600.00</b>

5. The Respondent submitted a timely Notice of Contest dated August 13, 2020.

6. The N.C. Occupational Safety and Health Review Commission issued a Notice of Hearing in this matter on October 20, 2022.

7. The Respondent posted the Notice of Hearing in its workplace in advance of the hearing in a location that was accessible to its employees.

8. The parties have conferred and 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. Delete the last sentence of the AVD for Citation 1, Item 001. Adjust the penalty for Citation 1, Item 1 to \$14,000.
  - ii. Delete Citation 1, Item 4 and the penalty.
- c. Without admitting any allegations of the Citation and Notice of Penalty, or waiving any defense to the Citation, Respondent agrees to the following at the worksite:
  - i. Improve and maintain an effective and comprehensive safety and health program. As part of the safety and health program, Respondent will conduct job hazard analyses for tasks that have the potential to expose workers to hazards. This

will specifically include Lockout/Tagout, machine guarding and struck-by/caught between hazards and other topics as applicable by 29 CFR 1910. In addition, Respondent will conduct a machine guarding and lockout/tagout assessment/evaluation of all the equipment at the Matthews facility within sixty (60) days of this Consent Order;

ii. 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 machine guarding, lockout/tagout and other topics as required by 29 CFR 1910;

iii. Ensure that safety and health rules are enforced (by Respondent) through regular, scheduled and unscheduled, worksite inspections and established, documented progressive disciplinary procedures. Respondent will require safety inspections and observations of the worksite and equipment to be conducted on at least a monthly basis and will document the inspections. Respondent will maintain records of all worksite inspections, audit, evaluations and disciplinary actions associated with safety and health issues;

iv. Respondent will conduct regular inspections of the light curtains installed on the Coater machines to ensure they are fully operational and installed/set-up to prevent employees from entering hazardous areas of the machines. These inspections should occur at least on a daily basis and/or during set-up or maintenance and prior to the machine being returned to normal production operations; and

- v. 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 Consent Order 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 Consent Order 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.
9. The foregoing terms are reasonable and supported by the underlying facts.
10. 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.
- 3. The Respondent shall pay the total penalty of \$26,600 within 30 days of this Consent Order.

This the

  
\_\_\_\_\_  
Laura Wetsch (Dec 14, 2022 10:34 EST)

Hearing Examiner

CONSENTED TO:

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: legally binding signature  
Location: 1  
Date: 2022.12.14 09:39:33-05'00'  
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*Counsel for Respondent*

CERTIFICATE OF SERVICE

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

MICHAEL D. MCKNIGHT  
OGLETREE DEAKINS  
FORUM IV  
8529 SIX FORKS RD, STE 600  
RALEIGH, NC 27615

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:

STACEY A. 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

By email to [carla.rose@labor.nc.gov](mailto:carla.rose@labor.nc.gov).

THIS THE 28 DAY OF December 2022.



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Karissa B. Sluss  
Docket and Office Administrator  
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