

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

**FILED**

**OCT 3 2025**

NC OSH Review Commission

COMMISSIONER OF LABOR OF  
THE STATE OF NORTH CAROLINA,

COMPLAINANT - RESPONDENT,

DOCKET NO. OSHANC 2022-6509  
OSHA INSPECTION NO. 318240728

v.

CONCRETE STRATEGIES, LLC  
and its successors

**ORDER OF THE COMMISSIONERS**

RESPONDENT - PETITIONER.

**DECISION OF THE REVIEW COMMISSION**

This appeal was heard at or about 11:00 A.M. on the 6<sup>th</sup> day of May 2025, via remote online courtroom, by Paul E. Smith, Chairman, William Rowe, and Terrence Dewberry, members of the North Carolina Occupational Safety and Health Review Commission.

**APPEARANCES**

Complainant: Sage Boyd, Assistant Attorney General: North Carolina Department of  
Justice, Raleigh, North Carolina

Respondent: Portia Kayser: Harris, Dowell, Fisher, and Young, LC, Chesterfield,  
Missouri

The undersigned have reviewed the prior Order based upon the record of the proceedings before the Hearing Examiner and the briefs and arguments of the parties.

The Commission AFFIRMS the Order of Hearing Examiner Laura Wetsch.

### **ISSUE PRESENTED**

WHETHER THE HEARING EXAMINER CORRECTLY AFFIRMED  
THE VIOLATION OF 29 CFR 1926.1417(p) CITATION ONE, ITEM  
ONE?

### **SAFETY STANDARDS AND/OR STATUTES AT ISSUE**

29 CFR 1926.1417(p)

The boom or other parts of the equipment contacted an obstruction.

### **FINDINGS OF FACT**

1. Complainant is charged with enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (OSHANC or Act), N.C. Gen. Stat. §§ 95-126 et seq.
2. Respondent is an employer within the meaning of N.C. Gen. Stat § 95-127(10) and is subject to the provisions of OSHANC (N.C. Gen. Stat § 95-128).
3. The undersigned have jurisdiction over this case pursuant to N.C. Gen Stat. § 95-125.
4. On October 9 and 16, 2024, a remote hearing was held before the Honorable Laura Wetsch.
5. On November 7, 2024 Hearing Examiner Laura Wetsch filed an Order finding that the provisions of 29 CFR 1926.1417 (p), had been violated and issued a penalty of \$6,300.00.

6. On December 6, 2024, Respondent timely petitioned the Review Board for a review of the decision of the Hearing Examiner.
7. An Order granting review was filed on December 20, 2024.
8. The oral arguments were heard by the full Commission on May 6, 2025.
9. The Review Commission adopts the Hearing Examiner's findings of facts.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Commission concludes as a matter of law as follows:

1. The foregoing Findings of Fact are incorporated as conclusions of law to the extent necessary to give effect to the provisions of this Order.
2. The Commission has jurisdiction of this cause, and the parties are properly before this Commission.
3. The Respondent is an employer within the meaning of N.C. Gen. Stat § 95-127 and is subject to the Act. N.C. Gen. Stat § 95-128.
4. The Complainant met its burden of proving by substantial evidence that the Respondent committed a serious violation of 29 CFR 1926.1417 (p).
5. The Commission AFFIRMS the Order of Hearing Examiner Laura Wetsch.

## DISCUSSION

Employer Concrete Strategies was subject to the multi-employer doctrine as set forth in *Commissioner of Labor v. Weekley Homes, L.P.*, 169 N.C. App. 17, 609 S.E.2d 407 (2005). Under the multi-employer doctrine, "an employer who controls or creates a worksite safety hazard may be held liable under the Occupational Safety and Health Act even if the employees exposed to the hazard are employed solely by another employer." *Id.* at 23, 609 S.E.2d at 413. In accordance with the multi-employer worksite doctrine, more than one employer may be cited for a hazardous condition that violates an OSHA standard. Additionally, an employer may serve multiple roles or overlapping roles with other employers. Concrete Strategies was a creating employer because they created a hazardous condition that violated an OSHA standard; thereby exposing their own employees and employee(s) of other contractor(s). The general rule stated by the Review Commission is that an "employer is responsible for workplace safety of all employees whose activities it controls in a common undertaking." *Brooks v. Kane*, 3 NCOSHD 307 at 310 (1989).

The Department of Labor established, by substantial and competent evidence, that the cited standard applies, that employees were exposed, that the hazard created the possibility of an accident, that death or serious injury were a probable result, and that the employer knew or should have known of the hazard. The hazard was that the crane's counterweight could strike the brace supporting the concrete wall causing the panel to fall and that did, in fact, occur. The Employees of Concrete Strategies and other contractors were exposed. The hazard created the possibility of a struck-by or crushed-by hazard and that did, in fact, occur. The substantial probable result was death or serious injury, and a death did, in fact, occur. Concrete Strategy's erections foreman John Voss knew or should have known of the condition and that knowledge is

imputed to Concrete Strategy. Testimony showed that everyone on the jobsite was taking their cues from John Voss. Hearing Examiner Wetsch made many detailed findings of facts and spoke to the credibility of witnesses. "When there is conflicting testimony and the Hearing Examiner adopts findings of fact that are based on one party's version of the facts, the [Commission] follows the rule that [']The hearing examiner is in a far better position to determine the credibility of witnesses than we are when an appeal is based solely upon contradictions in testimony, as it is here, the decision of the hearing examiner must be affirmed.[']" *Southern Plumbing and Heating, Inc.* Docket No. OSHANC 94-3957 (RB 1998).

### ORDER

For the reason stated herein, the Review Commission hereby **ORDERS** that the Hearing Examiner's November 7, 2024, Order in this case be, and hereby is, **AFFIRMED** to the extent that it is not inconsistent with this opinion. Respondent is ordered to pay the assessed penalty of \$6,300.00 within 30 days of the filing date of this Order.

This the \_\_\_\_ day of October 2025.

Signature: Paul E. Smith  
Paul E. Smith (Oct 3, 2025 10:33:22 EDT)

Email: psmith@pathlaw.com  
PAUL E. SMITH, CHAIRMAN

Signature: [Signature]  
Terrence Dewberry (Oct 3, 2025 12:17:37 EDT)

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TERRENCE DEWBERRY, MEMBER

Signature: [Signature]  
William D. Rowe (Oct 3, 2025 11:42:52 EDT)

Email: billdrowe@gmail.com  
WILLIAM D. ROWE, MEMBER

CERTIFICATE OF SERVICE

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

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via email.

THIS THE 6 DAY OF October 2025.

  
\_\_\_\_\_  
Karissa B. Sluss  
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