

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

**RALEIGH, NORTH CAROLINA**

**FILED**

MAY 13 2025

NC OSH Review Commission

<b>COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA</b>	)	<b>DOCKET NO: 2023 - 6607</b>
	)	
	)	<b>INSPECTION</b>
	)	<b>NO: 318265329</b>
<b>Complainant,</b>	)	
	)	<b>CSHO ID: F8082</b>
<b>v.</b>	)	
<b>ECT ACQUISITION LLC DBA EAST COAST TOWING and its successors</b>	)	<b><u>CONSENT ORDER</u></b>
	)	
<b>Respondent.</b>	)	

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THIS CAUSE coming on pursuant to the Notice of Pre-Hearing Conference (“Hearing Notice”) on May 12, 2025 at 10:00 a.m., via Lifesize teleconferencing platform. Sage A. Boyd, Assistant Attorney General, North Carolina Department of Justice, appeared for Complainant. Michael D. McKnight, Attorney with Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Raleigh, North Carolina, appeared for Respondent.

Pursuant to the Hearing Notice a pre-hearing conference (the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case including considering such matters that may be necessary or advisable for the completion of the case, and if possible, to reach a resolution without the necessity of further hearing. No affected employee of Respondent attended to have a say in, or participate as a party in, the Hearing. During the Hearing, at approximately noon, the Hearing was continued to May 13, 2025 at 9:00 a.m., via the same Lifesize teleconferencing platform.

On May 13, 2025 at 9:00 a.m., via Lifesize teleconferencing platform, the Hearing reconvened. At the Hearing, Complainant and Respondent (i) notified the Undersigned that the parties agree upon certain stipulations (“Stipulations”) and wish to make certain motions (“Motions”), and (ii) requested that the Stipulations and Motions be made part of the Hearing record and that a Consent Order be issued. The Stipulations and Motions are as follows:

**STIPULATIONS**

1. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter “the Act”), including making inspections and issuing citations and other pleadings, and brings this action pursuant to N.C.G.S. §§95-133 et seq.

2. Pursuant to N.C.G.S. §95-135 the Review Commission has jurisdiction over the parties and the subject matter of this action.

3. Respondent is a North Carolina limited liability company duly organized and existing under the laws of the State of North Carolina, which does business in North Carolina and maintains a place of business in Raleigh, North Carolina. Respondent operates a towing company that specializes in automotive and heavy-duty towing of larger vehicles such as semis, buses, box trucks, and large trucks. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(11); Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(10).

4. During the period between May 9, 2023 and May 16, 2023, Compliance Safety and Health Officer Margaret Ness, employed by the North Carolina Department of Labor, accompanied by Compliance Safety and Health Officer-in-training Roxie Parker, also employed by the North Carolina Department of Labor, conducted an inspection of Respondent’s worksite located in the parking lot at 1312 Kirkland Road, Suite 117 in Raleigh, North Carolina, pursuant to a reported fatality (the “Inspection”).

5. As a result of the Inspection, on November 7, 2023, Complainant issued the following Citation and Notification of Penalty (herein referred to as the “Original Citation”):

CITATION 01 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	NCGS 95-129(01)	Immediately Upon Receipt	\$ 6,250.00

6. Respondent submitted a timely Notice of Contest, dated December 12, 2023.

7. The Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the “Rules”).

8. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing; both parties consent to the conduct of this Hearing by the Undersigned, and to entry of this Consent Order. Complainant and Respondent confirm that there has been no employee objection in this matter to the reasonableness of any abatement period.

9. Respondent posted the Original Citation and the Hearing Notice as required by the Rules. Neither Complainant nor Respondent have received notification from any affected employee that such employee, or its representative, wishes to have a say in, or participate as a party in, this matter, or has any objections in connection with this matter including without limitation objection to the reasonableness of any abatement time.

10. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated. Complainant confirms that no additional documentation of abatement is required by Complainant.

11. The parties agree that upon granting of Complainant's Motion that the proposed penalty for the Item designated in the Original Citation has been calculated in accordance with the standard Field Operations Manual procedure; and the new proposed penalty for the Item designated in the Original Citation as amended pursuant to Complainant's Motion has been derived in consideration of the standard mitigating factors and specific factors applicable to Respondent.

12. Respondent agrees:

a) That Respondent has amended its Driver Policy and Procedures to instruct employees performing a heavy-duty tow to ensure the vehicle being towed is immobilized by checking to see if the brakes are set or that the vehicle is otherwise secured based on the circumstances of the tow prior to initiating a tow set-up and will submit this policy to Complainant.

b) That Respondent will develop and require that Respondent's employees performing a heavy-duty tow of a low profile vehicle utilize a Respondent-developed checklist outlining the measures taken to immobilize or otherwise secure the vehicle based on the circumstances of the tow to document how Respondent's employees prevent movement. Respondent will conduct quarterly audits of the aforementioned checklists to ensure that Respondent's employees are following Respondent's Driver Policy and Procedures for a period of two years.

c) That, within 60 days of the approval of this Consent Order by the Review Commission, Respondent will provide refresher training on immobilizing towed vehicles prior to tow set-up to any of its drivers who may be called upon to perform a heavy-duty tow as part of the driver's job duties.

d) To pay the penalty of \$5,000.00 assessed in this matter within 30 days of the date of this Consent Order.

In the event Respondent does not pay the penalty as stated above, all unpaid amount shall become immediately due and payable, and the Complainant retains the right to institute collection proceedings as allowed by law. Respondent agrees to pay attorney's fees to Complainant in the event that the Complainant institutes collection proceedings to collect the debt.

Payment is to be by check payable to the North Carolina Department of Labor, OSHA Division (identifying Inspection No. **318265329**) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. Credit card payment may also be arranged.

13. The parties agree to bear their own fees, costs and other expenses, including attorney's fees if any, that have been incurred in connection with any stage of these proceedings up to and including the filing of this Consent Order.

14. Complainant and Respondent agree that provided the respective Motion of each party is granted:

a) there are no other matters that remain to be decided, and that other than a ruling with respect to the Motions no outstanding issues remain to be resolved by an evidentiary hearing of this matter;

b) this Consent Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion;

c) the modification of any portion of the Original Citation by Complainant shall not be deemed to be an admission by Complainant that any such portion was alleged without merit;

d) none of the agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Original Citation as amended or a waiver of any defense, provided however, that in any subsequent proceeding with respect to matters covered by this Consent Order brought directly under the Act by Complainant, this Consent Order shall have the full force and effect of a final order;

e) the agreements, statements, stipulations and actions herein by Complainant and by Respondent are solely for the purpose of resolving this matter economically and amicably without further litigation and shall not be used for any other purposes except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes.

### MOTIONS

Complainant moved to do the following ("Complainant's Motion"):

- 1. Amend Citation 01, Item 001 to strike the reference to NCGS 95-129(01) and amend the Standard Alleged Violation Elements (SAVE) and Alleged Violation Description (AVD) language to state as follows:**

**29 C.F.R. 1910.244(a)(2)(iii): After the load has been raised, it shall be cribbed, blocked, or otherwise secured at once.**

- a) Jobsite – where, on or about May 9, 2023, an employee operating a heavy-duty tow truck went underneath a raised 2016 Prevost H3-45 56-**

**passenger luxury motorcoach bus during the tow set-up process without properly securing the bus to prevent movement.**

**2. Reduce the proposed penalty amount from \$6,250.00 to \$5,000.00.**

Complainant agrees that, in making this Motion, it is not requiring that Respondent use a jack as referenced in 29 C.F.R. 1910.244(a)(2)(iii) or any other jack when performing any towing operation or activity.

Except as set forth in this motion, the Original Citation shall remain unmodified or amended.

Respondent did not object to Complainant's Motion.

Respondent requested that upon the granting of Complainant's Motion that the Undersigned consider the following motion by the Respondent ("Respondent's Motion"):

**1. To withdraw Respondent's Notice of Contest to the Original Citation as amended pursuant to Complainant's Motion set forth above.**

Complainant did not object to Respondent's Motion.

**FINDINGS OF FACT**

Based on the Stipulations at the time of the Hearing and the record, the Undersigned makes the following Findings of Fact:

1. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Act.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. This Court has jurisdiction over the parties and the subject matter of this Hearing.
4. Neither party has any objection, procedural or otherwise, to this Hearing.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

**CONCLUSIONS OF LAW**

1. The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.

2. Respondent is an “employer” within the meaning of N.C.G.S. §95-127(11); Respondent’s employees referred to in the Complaint are “employees’ within the meaning of N.C.G.S. §95-127(10).
3. This Court has jurisdiction over the parties and the subject matter of this Hearing.
4. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.

Based on the foregoing Findings of Fact and Conclusions of law, **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

1. That Complainant’s Motion is hereby **GRANTED**;
2. That Respondent’s Motion is hereby **GRANTED**;
3. That Respondent shall meet the requirements of Stipulation 12 as set out above; and
4. That the parties shall comply with the terms and conditions set forth in the Stipulations and in this Consent Order.

Effective the 13<sup>th</sup> day of May, 2025.

**SO ORDERED**

**Signature:** R. Joyce Garrett

**Email:** rjg.rjg@aol.com

R. Joyce Garrett  
Hearing Examiner

CONSENTED TO:

**Signature:** Sage A. Boyd

**Email:** sboyd@ncdoj.gov

Sage A. Boyd  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629/Labor Section  
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*Counsel for Complainant*

**Signature:** Michael D. McKnight

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*Counsel 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

SAGE A BOYD  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH NC 27602

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

via email.

THIS THE 14 DAY OF May 2025.

PAUL E. SMITH  
CHAIRMAN

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