OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

1120 20th Street, N.W., Ninth Floor

Washington, DC 20036-3457

SECRETARY OF LABOR, **Complainant,** **v.** **BIG LOTS, INC.,** **Respondent.**	**OSHRC DOCKET NO. 14-1306**

ORDER DENYING RESPONDENT'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

This matter is before the Occupational Safety and Health Review Commission (the Commission) under section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq*. (the Act). On June 5, 2015, Respondent filed a Motion to enforce the parties' settlement agreement, together with exhibits and an affidavit from Respondent Counsel (Motion). On June 25, 2015, Complainant, the Secretary of Labor (Secretary), filed an Opposition to Respondent's Motion, together with exhibits and an affidavit from Counsel for the Secretary (Opposition). On July 2, 2015, Respondent filed a Motion for leave to file a reply brief to the Secretary's Opposition, together with a reply brief (Reply).[1]

For the reasons set forth below, Respondent's Motion is denied.

Background.

The Columbus, Ohio Area Office of the Occupational Safety and Health Administration (OSHA) inspected Respondent's workplace, located at 500 Phillipi Road, Columbus, Ohio 43228, on June 11, 2014. On July 31, 2014, OSHA issued to Respondent a four item serious citation, with subparts, a two item repeat citation, and a notification of penalty (citation). The

[1] Respondent's Motion to file a Reply Brief is granted.

serious citation items allege violations of hazardous materials[2], personal protective equipment[3], electrical[4], and machine guarding[5] standards. The repeat citation items allege violations of materials handling and storage[6] and electrical[7] standards. The total proposed penalty is $47,920.00.

Respondent filed a notice of contest. This case was docketed with the Commission. The Secretary filed a Complaint dated October 27, 2014. Respondent filed an Answer and affirmative defenses dated December 5, 2014. The Answer denied that Respondent violated the citation items as alleged and denied the appropriateness of the citation classifications and proposed penalties. A Notice of Hearing issued setting the hearing for May 12 through 14, 2015, in Columbus, Ohio.

On March 9, 2015, Counsel for the Secretary informed the undersigned judge that the parties had reached a settlement of this case. An Order Acknowledging Proposed Settlement issued directing the parties to file a fully executed settlement agreement within 30 days of the settlement notification, on or before April 8, 2015. On April 20, 2015, Counsel for the Secretary filed a Motion for an extension of time to file the settlement agreement. An Order issued granting the extension of time to May 11, 2015. As the executed settlement agreement was not filed with the Commission, a Notice of Hearing issued, on May 26, 2015, returning this case to the hearing calendar.[8]

Thereafter, Respondent filed a Motion to enforce the parties' settlement agreement, the Secretary filed an Opposition, and Respondent filed a Reply. These documents set forth the parties' disagreement regarding the settlement status of this case.

Settlement Negotiation

While the settlement status of this case is questioned, the relevant facts regarding the parties' settlement negotiation, conducted through email messages, are undisputed.

[2] 29 C.F.R. § 1910.110(f)(2)(i).
[3] 29 C.F.R. § 1910.132(e), 1910.132(f)(1).
[4] 29 C.F.R. § 1910.305(g)(2)(iii), 1910.334(a)(2)(ii).
[5] 29 C.F.R. § 1910.212(a)(5).
[6] 29 C.F.R. § 1910.176(b).
[7] 29 C.F.R. § 1910.305(b)(1)(ii).
[8] During a June 2015 conference call, the parties agreed to reschedule the hearing to December 8, 9, and 10, 2015. A Rescheduled Notice of Hearing and Revised Scheduling Order has issued.

Respondent Counsel Matthew Austin sent a settlement offer to Counsel for the Secretary Mary Bradley, via email attachment, on February 23, 2015. Mr. Austin's email stated '[a]ttached is Big Lot's proposal for complete settlement of OSHRC Docket No. 14-1306, Inspection No. 980298. Please provide your response as soon as possible so we can comply with the revised discovery dates if this matter is not settled." *See* Motion (Exhibit 1). Respondent's offer was set forth on the attachment[9] as follows:

BIG LOTS SETTLEMENT OFFER #1

Eliminate the Following:

Citation 1	Item 1	Serious	$4,400	Corrected during inspection
Citation 1	Item 2(a)	Serious	$3,300	Employees were previously trained on this OSHA Standard. Employees were trained again during July and August 2014.
Citation 1	Item 2(b)	Serious	$0	Employees were previously trained on this OSHA Standard. Employees were trained again during July and August 2014.
Citation 1	Item 3	Serious	$5,500	Corrected during inspection
Citation 1	Item 4(a)	Serious	$7,000	Corrected during inspection
Citation 1	Item 4(b)	Serious	$0	Corrected during inspection

Modify the Following:

Citation 2	Item 1	Repeat	$27,500	Modify to Serious; Reduce penalty accordingly; $2,500 suggested penalty *The "bend" on Rack 401-001-3-1 was minimal, at most, and in no way exposed employees to a "caught in" or "struck by" hazard. *Racks 402-072-1-1 and 406-136-1-1 had minimal bend on the weld – more appropriately described as a small ding; The weight of the pallets were significantly below the pounds per pallet capacity; the ding in the weld was too minor to reduce the pounds per pallet capacity to a level below the weight on the pallets on the rack. *The employer operates thousands of stores and

[9] Respondent's settlement offer attachment was set forth in landscape format and did not contain marked table rows and columns.

				millions of feet of warehouse space throughout the U.S. The previous citation was 4 years ago at a retail store in a different state with a different rack system, different weight limit, different stored materials, and did not involve the stacking of pallets in a warehouse environment. *****This investigation was prompted by Big Lot's 2009 DART Rate. During the five years between the 2009 Rate and OSHA's investigation, Big Lot's DART Rate dramatically improved. [*DART Rate summarized for all years 2008 to 2014*.] As you can clearly see, Big Lot's is an incredibly safe place to work.
Citation 2	Item 2	Repeat	$220	Willing to conceded (sic) to this and pay full fine if appropriate modifications are made elsewhere

See Motion (Exhibits B, 2).

By email, dated February 27, 2015, Ms. Bradley advised Mr. Austin that OSHA conditionally accepted Respondent's settlement offer. This email read:

> Hi Matt,
> OSHA accepts your client's offer of settlement, with the exception of the proposed penalty for Citation 2, Item 1. OSHA will only agree to the reclassification from Repeat to Serious if your client accepts a $7,000 penalty.
>
> Citation 1 Item 1 Serious $4,400 – Accept offer
> Citation 1 Item 2(a) and 2(b) Serious $3,300 – Accept offer
> Citation 1 Item 3 Serious $5,500 – Accept offer
> Citation 1 Item 4(a) and 4(b) Serious $7,000 – Accept offer
> Citation 2, Item 1 – Reclassified from Repeat ($27,500) to Serious ($7,000)
> Citation 2 Item 2 Repeat $220 – Accept offer
>
> Please review and advise if we have a deal. If so, I will contact the Review Commission and will prepare the settlement agreement.
> Thank you.
> MLB (Mary L. Bradley, Esq.)

See Motion (Exhibits B, 3); Opposition (Exhibit A).

By email message from Mr. Austin to Ms. Bradley, dated March 5, 2015, Respondent accepted the Secretary's modified settlement proposal, as follows:

> Hi Mary – Big Lot's accepts the settlement proposal as modified by OSHA. Do you have a standard settlement / release you would like to use? Matt Austin.

See Motion (Exhibits B, 4); Opposition (Exhibit B, K).

That date, March 5, 2015, again by email message, Ms. Bradley advised Mr. Austin that she would prepare a standard settlement agreement for his review. The email read:

> Thank you, Matt, I will prepare a standard settlement and will forward to your attention for review and signature. In addition, I will contact the Review Commission to notify the Judge of this settlement. The matter will then be removed from the docket. MLB

See Opposition (Exhibit C).

As mentioned above, the undersigned judge received settlement notification from Counsel for the Secretary on March 9, 2015. Thereafter, Counsel for the Secretary experienced a delay in completing the draft standard settlement stipulation and forwarding the draft settlement to Respondent Counsel for his review. *See* Motion (Exhibits B, 5, 6, 7); Opposition (Exhibits D, E). An extension of time to file the executed settlement agreement with the Commission was requested and granted. *See* Opposition (Exhibit F).

Ms. Bradley forwarded the draft stipulation and settlement agreement, together with a letter regarding the settlement agreement, to Mr. Austin for his review, via email attachment, on April 22, 2015. *See* Motion (Exhibit B, 8); Opposition (Exhibit G). The settlement agreement set forth the understanding of Ms. Bradley and her client OSHA regarding the settlement terms agreed to by the parties. In part, the settlement agreement read:

1. Citation 1, Item 1, as amended herein, shall be affirmed as a serious violation with a $4,400 penalty.
2. Citation 1, Items 2(a) and 2(b), as amended herein, shall be affirmed as a serious violation with a $3,300 penalty.
3. Citation 1, Item 3, as amended herein, shall be affirmed as a serious violation with a $5,500 penalty.
4. Citation 1, Item 4(a) and (b), as amended herein, shall be affirmed as a serious violation with a $7,000 penalty.
5. Citation 2, Item 1, as amended herein, shall be reclassified and affirmed as a serious violation with a $7,000 penalty.
6. Citation 2, Item 2, shall be affirmed as a repeat violation with a $220.00 penalty.
7. The total penalty due in this proceeding is $27,420.00, which the Respondent agrees to pay to the Complainant . . . .

In addition, the stipulation and settlement, drafted by Ms. Bradley, contained the following terms: Respondent's withdrawal of its notice of contest, Respondent's agreement to comply with all applicable abatement verification provisions set forth in 29 C.F.R. § 1903.19, the parties' agreement to the entry of a final order in this case consistent with the settlement agreement terms, an agreement that each party will bear its own attorney fees, costs and other expenses incurred in connection with this proceeding, a non-admissions agreement, Respondent's certification that a copy of the settlement agreement will be posted in accordance with the Commission's Procedural Rules in a manner that will afford notice to affected employees, and a Notice advising that any party, including any authorized employee representative of affected employees and any affected employee not represented by an authorized representative, who has any objection to the entry of an order, as set forth in the settlement agreement, should communicate their objections to the undersigned administrative law judge, within ten days of the posting of the agreement. *See* Motion (Exhibit B, 8); Opposition (Exhibit G).

On May 5, 2015, via email message, Respondent Counsel Austin notified Ms. Bradley that the stipulation and settlement agreement that Ms. Bradley drafted did not reflect the settlement terms as understood by Mr. Austin. Mr. Austin's email read:

> Mary,
> Thank you for sending me the proposed settlement agreement. The document you sent, though, indicates a $27,420 penalty, but we agreed to a $7,220 penalty. Specifically, the document you sent erroneously kept full penalties for Citation 1, Items 1, 2(a), 2(b), 3, 4(a), and 4(b) when we agreed to eliminate all of those. We further agreed to modify one of the repeats to a serious with a $7,000 penalty, and accept the repeat with a $220 penalty. I trust this was just an oversight. Please correct the figures and resend.
> Matt Austin.

See Motion (Exhibit B, 9); Opposition (Exhibit H).

On May 6, 2015, via email message, Ms. Bradley replied to Mr. Austin, acknowledging Ms. Bradley's "misreading" of Respondent's February 23, 2015 settlement offer and Ms. Bradley's miscommunication of Respondent's February 23, 2015 settlement offer to her client OSHA. Ms. Bradley's May 6, 2015 email states:

> Hi Matt,
> Attached is the offer of settlement received by me on 2/23/2015. I re-read the attachment. I now see that I misread the offer believing it to say that Big Lots accepted

> the items listed in the upper portion of the offer, with a request to modify citation 2, item 1, from $27,200 to $7,000 and to accept Citation 2, Item 2.
>
> My sincere apologies to Big Lots, as I totally missed seeing the heading, "Eliminate The Following," on the upper portion of the offer. Consequently, I communicated an inaccurate offer to OSHA. I am almost certain that OSHA would NOT have accepted an offer to vacate those items. However, I will forward the offer to OSHA and will notify you of OSHA's response.
> MLB (Mary L. Bradley, Esq.)

See Motion (Exhibit B, 10); Opposition[10] (Exhibits I, J).

Later that day, May 6, 2015, in an email message to Mr. Austin, Ms. Bradley wrote that it appeared Mr. Austin had accepted OSHA's March 5, 2015 settlement proposal (OSHA Counteroffer) as reflected in the settlement agreement drafted by Ms. Bradley. *See* Opposition (Exhibits G, K),

The April 22, 2015, May 5, and 6, 2015, email messages with attachments, exchanged between the parties, clearly disclosed that the parties did not have a "meeting of the minds" regarding the settlement terms.

Respondent Counsel, however, viewed the email exchange otherwise. Mr. Austin regarded the email exchange as reflecting a firm agreement between the parties to accept Respondent's February 23, 2015 settlement proposal, with a single change requested by Counsel for the Secretary regarding citation 2, item 1, set forth in Ms. Bradley's March 5, 2015 email. *See* Opposition (Exhibits A, L). Mr. Austin's May 8, 2015 email to Ms. Bradley, set forth Respondent's understanding regarding the settlement terms to be included in the agreement. The May 8, 2015 email states:

> Mary,
> Thank you for providing me the [second May 6, 2015] email [Opposition Exhibit K]. By background, ***so we're all on the same page***, our settlement proposal unequivocally stated that we proposed to eliminate penalties 1, 2(a), 2(b), 3, 4(a), and 4(b) along with a reclassification of Citation 2, Item 1 to Serious with a corresponding reduction in penalty from $27,500 to $2,500. Your counteroffer specifically stated, "OSHA accepts your client's offer of settlement, with the exception of the proposed penalty for Citation 2, Item 1. OSHA will only agree to the reclassification from Repeat to Serious if your

[10] Counsel for the Secretary had communicated Respondent's settlement offer to her client, OSHA, as follows: (1) Accept all of the proposed "Serious" violations, as issued; (2) Modify the first "Repeat" item as a Serious violation, with a reduced penalty; and, (3) Accept the second "Repeat" violation, as issued. *See* June 25, 2015 Bradley Affidavit, page 2, n.1.

> client accepts a $7,000 penalty." ***To be clear***, that was the ***only exception*** mentioned in your counterproposal and that ***singular exception*** is what my client accepted on March 5, 2015. Please revise the settlement documents to reflect this agreement and forward it to me for signature.
> Matt Austin.

See Opposition (Exhibit L)(emphasis added). The specificity set forth by Mr. Austin in his May 8, 2015 email is absent in the brief email messages and attachments exchanged during the parties' earlier email settlement negotiation. This degree of clarity, ensuring that all parties were "on the same page," would have disclosed the misunderstanding between the parties regarding agreeable settlement terms earlier during their settlement communications.

Ms. Bradley reiterated to Mr. Austin the parties' miscommunication and misunderstanding regarding the settlement terms, in a May 12, 2015 email message, as follows:

> Hi Matt,
> As previously indicated, I made an error communicating Big Lots' offer to OSHA (as indicated by my communication, below). Consequently, I am not authorized to sign off on the settlement agreement, as it does not accurately reflect OSHA's understanding of the offer made by Big Lots.
> In good faith, OSHA agreed to reclassify Citation 2, Item 1, from a repeat violation to a serious violation, with a $7,000 penalty and accepted Big Lots' offer to affirm Citation 2, Item 2, only. Please advise if Big Lots would like to make an offer of settlement, for consideration by OSHA, on Citation 1, Items 1-4.
> My sincere apology for this error.
> MLB (Mary L. Bradley, Esq.)

See Opposition (Exhibit M).

Positions of the Parties

Respondent contends that during the email exchange, set forth above, the Secretary and Respondent entered into a settlement agreement that created a binding contract between the parties. Respondent argues that the email exchange includes all essential elements of a contract including, offer, acceptance, contractual capacity, consideration, manifestation of mutual assent, and legality of object and of consideration. Motion at p. 5-7. Respondent contends that the settlement agreement terms "reflected in the emails between the parties' counsel" complies with the Commission Rule 100 requirements, as Respondent served a copy of Respondent's Motion on all parties and posted the Motion, on June 5, 2015, where affected employees would see it.

Motion at p. 5, certificate of service. Respondent further argues that the email exchange between the parties complies with the requirements of Commission Rule 100, as the email exchange reflects "written" settlement terms, "signed" by counsel in the email signature blocks. Reply at p. 8. Respondent moves for an Order enforcing and approving the settlement agreement entered into between the parties and terminating this proceeding.

In Opposition, the Secretary contends that the parties never reached agreement regarding settlement terms. The Secretary argues that even if an "oral" or "email agreement" was reached between the parties, any agreement to the proposed settlement terms was rescinded by the Secretary prior to the entry of the Commission's final order in this case. The Secretary emphasizes that a written settlement agreement is required to effectuate the service and notice requirements of Commission Rule 100. The email exchange relied upon by Respondent, even when considered in conjunction with Respondent's posting of its Motion, does not comply with the Commission Rule 100 requirements. In this proceeding, the parties never fully executed or filed a settlement agreement with the Commission for approval. As no binding settlement agreement exists between the parties, Respondent's Motion must be denied.

Discussion

Disputes concerning the settlement of cases pending before the Commission are resolved in accord with the principles of federal common law. As settlement agreements are contracts, normal contract interpretation rules generally apply. *See Lumex Medical Products, Inc*., 18 BNA OSHC 2002, 2006 (No. 97-1522, 1999); *Phillips 66 Co*., 16 BNA OSHC 1332, 1338, 1340-41 (No. 90-1549, 1993).

A primary requirement for a valid contract is that it reflect a "meeting of the minds." The Commission will review the settlement agreement to determine whether the proposed settlement agreement represents a genuine, mutual, agreement between the parties and a "true meeting of the minds" on all settlement terms. *See Billie Gowans*, 21 BNA OSHC 1927, 1927 (No. 06-0936, 2007); *84 Components Co.*, 20 BNA OSHC 2063, 2064 (No. 02-0363, 2003).

In the instant case, Respondent contends that the parties' email exchange reflects an offer and acceptance of settlement terms that created a binding contract between the parties. Specifically, Respondent contends that the binding settlement terms are set forth in Counsel for the Secretary's February 27, 2015 email to Respondent Counsel stating that "OSHA accepts your client's offer of settlement, with the exception of the proposed penalty for citation 2, item 1,"

read in conjunction with Respondent Counsel's March 5, 2015 email to Counsel for the Secretary accepting the Secretary's proposal to modify the proposed penalty for citation 2, item 1 to $7,000. Respondent contends that at this point – the March 5th email – a binding contract was created: a contract binding based upon Respondent's understanding of the contract terms. *See* Motion at p. 6-7. Respondent's contention is rejected.

Review of the email negotiation between the parties reveals that the parties never reached a "true meeting of the minds" and agreement regarding the settlement terms. The parties' lack of agreement regarding the settlement terms was not apparent until the complete, written, draft settlement agreement was prepared by Counsel for the Secretary for the parties' review, acceptance, and execution. As there was no meeting of the minds between the parties regarding the settlement terms, mutual acceptance of the draft written settlement agreement was not achieved and a full written settlement agreement was never executed by the parties.

Commission Rules and case precedent set forth several procedural requirements that must be satisfied before a settlement agreement may be approved by the Commission. The settlement agreement must be complete, written, fully executed by the parties, and served or posted to afford affected employees meaningful participation in the proceeding and settlement process. Certification of the service and posting requirements must be provided to the Commission. Commission Rules 7 and 100; 29 C.F.R. §§ 2200.7; 2200.100.

The settlement agreement must be complete. The Commission reviews and considers for approval complete settlement agreements. It is not the Commission's practice to approve settlement agreements in a "piecemeal fashion." *See 84 Components*, 20 BNA OSHC at 2064 n.3; *Phillips 66*, 16 BNA OSHC at 1335.

The settlement agreement must be in writing and signed by the parties. Commission Rule 100(d); *Consolidated Aluminum Corp.,* 9 BNA OSHC 1144, 1154 (No. 77-1091, 1980). *See General Motors Corp.* 14 BNA OSHC 1753, 1753 (No. 88-1112, 1990); McKie *Ford, Inc. v. Secretary*, 191 F.3d 853, 857 (8th Cir. 1999). *See also, Empire-Detroit Steel Div. v. Occupational Safety and Health Review Comm'n*, 579 F.2d 378, 382-83 (6th Cir. 1978). "A case is not truly 'settled' until a settlement agreement has been executed by all the parties." *Chartwell Corp.*, 15 BNA OSHC 1881, 1884 n.2 (No. 91-2097, 1992).

Affected employees must be afforded the opportunity to review and comment on the settlement agreement, regarding the reasonableness of the abatement period, before the

settlement agreement may be approved by the Commission. Accordingly, Commission Rules state that the settlement agreement, upon filing with the Commission, shall contain a proof of service upon all parties and authorized employee representatives and "the posting of notice to non-party affected employees," in the manner prescribed by Commission Rule 7. An Order approving the settlement agreement and terminating the litigation before the Commission shall not issue until at least 10 days after service or posting of the settlement agreement. Any objection to the reasonableness of the abatement time raised by an affected employee or authorized employee representative shall be filed within that 10 day time period. Commission Rules 7(c)(g); 100(c); 29 C.F.R. §§ 2200.7(c)(g); 2200.100(c). *See General Electric Co*., 14 BNA OSHC 1763, 1763-67 (No. 88-2265, 1990); *General Motors,* 14 BNA OSHC at 1753-54; *Consolidated Aluminum,* 9 BNA OSHC at 1154; *McKie Ford,* 191 F.3d at 857.

Respondent's reliance on the parties' February and March 2015 email messages, to support the claim that a binding settlement agreement had been created between the parties, is misplaced. Review of the February 27 and March 5, 2015, email exchange, discloses a negotiation regarding partial – not complete - settlement agreement terms. The email exchange includes no discussion regarding several substantive settlement terms included in the complete, draft, written settlement stipulation, prepared by Counsel for the Secretary, such as withdrawal of Respondent's notice of contest, abatement verification, non-admissions, agreement by each party to pay their own fees and expenses, among other terms. *See* Motion (Exhibits B, 8); Opposition (Exhibit G). The March 5, 2015 email exchange between counsel confirms their intention to draft, review, and execute a complete settlement agreement and not to rely simply on their email exchange. *See* Motion (Exhibits B, 4), Opposition (Exhibits B, C, K). The Commission does not approve settlement agreements in piecemeal fashion.

Respondent's Motion included a certificate of service indicating service on Counsel for the Secretary and posting of the Motion, on June 5, 2015, at a location where it would be seen by affected employees. The certificate of service also stated that the affected employees are not represented by an authorized employee representative. Respondent contends that posting the Motion complies with the Commission Rule 100 service and posting requirements. Respondent's contention is incorrect.

Posting of the complete, executed, settlement agreement is required by Commission Rule 100 to ensure that affected employees are afforded an opportunity to meaningfully participate in

the process and, if appropriate, file an objection regarding the reasonableness of the abatement period. Posting of Respondent's Motion does not comply with the Commission Rule 100 notice and posting requirements. Posting Respondent's Motion was not a posting of the complete, written, executed, settlement agreement reached between the parties, rather it was a posting of Respondent's contentions regarding Respondent's understanding – or misunderstanding – regarding certain settlement terms negotiated with Counsel for the Secretary.

Finally, unlike a traditional contract, one party, the Secretary, may withdraw from the agreement prior to the entry of a final decision by the Commission, as the Secretary has been entrusted by Congress with the "unique role in effectuating the purposes" of the Act. *Marshall v. Sun Petroleum Products Co.,* 622 F.2d 1176, 1187-88 (3d Cir. 1980). Although, the Secretary's authority to withdraw from a complete, fully executed, settlement agreement is not directly relevant in this case, it does reflect on the ability of the Commission to force the Secretary to accept partial terms of a settlement negotiation, especially where that negotiation had not yet been reduced to a formal settlement agreement.[11]

As discussed, the facts reveal that the parties never reached full agreement and a "meeting of the minds" regarding settlement terms. Review of the email negotiation, together with the Motion, Objection, and Reply, reveals that a complete, fully executed, settlement agreement was never served and posted, to afford affected employees an opportunity for meaningful participation in the proceedings. Accordingly, no complete, fully executed, settlement agreement, compliant with the Commission Rules, has been filed with the undersigned Commission Judge for approval. As the parties have not yet reached full agreement regarding settlement terms this case has been rescheduled for hearing.

[11] Irrelevant is Respondent's contention, based on the court's decision in *Marshall v. Sun Petroleum*, that if the Secretary is permitted to withdraw from a full settlement agreement reached between the parties, then OSHA must conduct a *de novo* inspection of Respondent's facility. Reply at p. 10-11.

Order

For the reasons stated above, Respondent's Motion is denied.

The parties are strongly encouraged to continue settlement discussions to reach a mutually agreeable resolution of all citation items in this case without the necessity of litigation.

SO ORDERED.

/s/ Carol A. Baumerich

Dated: August 13, 2015
Washington, D.C.

Honorable Carol A. Baumerich
Judge, OSHRC