

United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1244 North Speer Boulevard, Room 250
Denver, Colorado 80204-3582

Phone: (303) 844-3409

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SECRETARY OF LABOR,

Complainant,

v.

OSHRC DOCKET NO. 01 -2193

KEYSTONE STRUCTURAL CONCRETE
LTD., and its successors,

Respondent.

FINAL ORDER

This matter comes up on Keystone's June 10, 2002 motion to reconsider this judge's June 4, 2002 Order vacating its notice of contest. Keystone's motion is accompanied by its counsel's first notice of appearance, and his untimely response to this judge's May 10, 2002 Order to Show Cause. Keystone retained counsel shortly before a scheduled March 2002 hearing. On March 11, 2002, in response to the parties representation that the case was settled, this judge cancelled the hearing, and ordered that the settlement agreement be filed by April 6, 2002. The settlement agreement was drafted by Complainant's counsel and mailed to Keystone's counsel on March 12, 2002. On May 10, this judge issued an order asking each party to show good cause why no agreement had been filed. However, because Keystone's counsel never filed an entry of appearance in this matter he was not served with any of this judge's orders, apparently learning about them indirectly from his client and opposing counsel. Keystone's counsel signed the settlement agreement in this matter on May 15, 2002 and returned it to Complainant's counsel. In his June 10, 2002 filings, counsel states that his failure to execute the settlement agreement was due to inadvertence Counsel further states that he mistakenly relied on opposing counsel to respond to the show cause order.

Counsel offers no cognizable for his failure to timely execute and file the settlement agreement Nor does counsel offer any reasonable explanation for his failure to read and comply with this judge's May 10, 2002 show cause order. Counsel correctly notes, however, that settlement is encouraged by the Commission at any stage of the proceedings, and requests that his client not be penalized for his mistake. The June 4, 2002 Order vacating Keystone's notice of contest is, therefore, vacated.

As the parties have filed a Settlement Agreement in this matter and ten (10) days have elapsed since service without objection it is:

ORDERED,

The Settlement Agreement filed by the parties is approved. The terms of that agreement, together with the citation and proposed penalties as amended by such agreement, are hereby adopted as orders of the Occupational Safety and Health Review Commission.

/s/

James H. Barkley

Judge, OSHRC

Dated: June 13, 2002

**UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

SECRETARY OF LABOR)	
Complainant,)	
)	OSHRC Docket
)	No. 01-2193
KEYSTONE STRUCTURAL CONCRETE,)	
LTD., AND ITS SUCCESSORS,)	
Respondent.)	

SETTLEMENT AGREEMENT

Come now complainant and respondent and submit the following settlement agreement pursuant to Rule 2200.100 of the Commission's Rules of Procedure:

This settlement agreement specifies the terms of settlement as set out below for each contested item and disposes of all issues in the case. Affected employees have not filed objections to the reasonableness of any abatement time.

1. Complainant agrees to withdraw the following Items:

Citation Number	Item	29 CFR Standard	Penalty Amount	Violation/ Abatement Date
1	1	1926.403(b)(1)(iii)	\$1,400.00	Corrected During Inspection
1	2	1926.404(f)(6)	\$1,400.00	Corrected During Inspection

2. This withdrawal of these items in no way affects the Secretary's interpretation of compliance with these standards or their application to this employer.
3. Respondent withdraws its notice of contest.
4. Respondent promises to continue its good-faith efforts to comply with the

Occupational Safety and Health Act.

5. Respondent certifies that the affected employees in the above-styled case are not represented by an authorized employee representative.

6. Respondent certifies that a copy of this settlement agreement has been served upon the unrepresented affected employees in the manner set forth in Rule 2200.100 of the Rules of Procedure, by posting same on the 15th day of May, 2002.

7. Each party agrees to bear its own attorney's fees, costs and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

EUGENE SCALIA
Solicitor of Labor

WILLIAM E. EVERHEART
Regional Solicitor

KEYSTONE STRUCTURAL CONCRETE

JANICE L. HOLMES
Council for Safety and Health

By:

By:

/s/
PARTICK GARNER
Attorney

/s/
AARON R. RAMIREZ
Attorney

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U. S. Department of Labor
Office of the Solicitor
525 Griffin, Suite 501
Dallas, Texas 75202

Attorneys for Respondent
Signed this 15 day
of May, 2002.

Attorneys for Complainant.
Signed this 23 day
of May, 2002.