



UNITED STATES OF AMERICA  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
One Lafayette Centre  
1120 20th Street, N.W. — 9th Floor  
Washington, DC 20036-3419

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**SECRETARY OF LABOR**  
Complainant,

v.

**ELMONT GLASS COMPANY, INC.**  
Respondent.

**OSHRC DOCKET  
NO. 93-2979**

**NOTICE OF DOCKETING  
OF ADMINISTRATIVE LAW JUDGE'S DECISION**

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on June 17, 1994. The decision of the Judge will become a final order of the Commission on July 18, 1994 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before July 7, 1994 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary  
Occupational Safety and Health  
Review Commission  
1120 20th St. N.W., Suite 980  
Washington, D.C. 20036-3419

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.  
Counsel for Regional Trial Litigation  
Office of the Solicitor, U.S. DOL  
Room S4004  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 606-5400.

FOR THE COMMISSION

Ray H. Darling, Jr.  
Executive Secretary

Date: June 17, 1994

DOCKET NO. 93-2979

NOTICE IS GIVEN TO THE FOLLOWING:

**Daniel J. Mick, Esq.**  
Counsel for Regional Trial Litigation  
Office of the Solicitor, U.S. DOL  
Room S4004  
200 Constitution Ave., N.W.  
Washington, D.C. 20210

**Patricia Rodenhausen, Esq.**  
Regional Solicitor  
Office of the Solicitor, U.S. DOL  
201 Varick, Room 707  
New York, NY 10014

**Mr. Anthony J. Merisola**  
Elmont Glass Company, Inc.  
101 Amber Street  
Staten Island, NY 10306

**Michael H. Schoenfeld**  
Administrative Law Judge  
Occupational Safety and Health  
Review Commission  
One Lafayette Centre  
1120 20th St. N.W., Suite 990  
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SECRETARY OF LABOR,

Complainant,

v.

ELMONT GLASS CO., INC.,

Respondent.

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OSHRC Docket No. 93-2979

**Appearances:**

Alan L. Kammerman, Esq.  
 Office of the Solicitor  
 U.S. Department of Labor  
 For Complainant

Anthony J. Merisola, President  
 ECI Safety Services Company  
 Staton Island, New York  
 For Respondent

**Before: Administrative Law Judge Michael H. Schoenfeld**

**DECISION AND ORDER**

**Background and Procedural History**

This case arises under the Occupational Safety and Health Act of 1970, 29 U.S.C. § § 651 - 678 (1970) ("the Act").

Having had its worksite inspected by a compliance officer of the Occupational Safety and Health Administration, Elmont Glass Company, Inc., ("Respondent") was issued two citations on or about September 15, 1993. Citation 1 alleged 3 serious violations of the Act and proposed penalties of \$1500, \$1500 and \$750 for each violation, respectively. Citation 2 alleged 2 other than serious violations of the Act. and proposed no monetary penalties. Respondent timely contested. Following the filing of a complaint and answer, the case came

on to be heard on May 11, 1993 in New York, New York. No affected employees exercised their right to party status (Tr. 3).

The citations issued to Respondent are as follows:

Serious item 1 - 29 C.F.R. § 1926.20(b)(1) - frequent and regular inspections of the worksite and equipment were not conducted by a competent person designated by the employer. Penalty proposed: \$1500.

Serious item 2 - 29 C.F.R. § 1926.556(b)(2)(iv) - employees working in an aerial lift were not working from a position standing firmly on the floor of the basket. Penalty proposed: \$1500.

Serious item 3 - 29 C.F.R. § 1926.556(b)(2)(v) - employees working from an aerial lift did not have secured safety belts. Penalty proposed: \$750.

Other than serious item 1 - 29 C.F.R. § 1926.59(g)(8) - Material safety data sheets for all chemicals used on the site were not available on the site. Proposed penalty: \$0.

Other than serious item 2 - 29 C.F.R. § 1926.100(b) - Employees working under a glass panel in the ceiling were not wearing hard hats. Proposed penalty: \$0.

At the opening of the hearing the parties announced that a stipulated settlement had been reached that morning prior to going on the record. Under the terms of the agreement Citation 1, Item 1 and Citation 2, Item 2 were withdrawn. Citation 1, Items 2 and 3 were combined to reflect one violation (Items 2a and 2b). Citation 2, Item 1 was withdrawn. An amended penalty of \$1,200 was proposed for Item 2 (including parts a and b).

Respondent represented that its employees traveled between work places during their work shift on August 26, 1993, and that Material Safety Data Sheets were available through facsimile transmission in the event of an emergency.

Based on the above Respondent withdraws its notice of contest and answer as to the citation and proposed penalty as amended. Respondent affirmatively states that the violation as amended has been abated and that it will comply with the Act in the future. Respondent agrees to pay the amended penalty of \$1,200 by check made payable to OSHA - Labor mailed to the OSHA office in New York City. Finally, both parties agree to bear their own fees and other expenses incurred with any stage of this proceeding.

**Respondent's representative acknowledged acceptance of the terms of the agreement (Tr. 5).**

**The settlement is found to be appropriate in all respects. Its terms are incorporated fully herein.**

### **FINDINGS OF FACT**

**All findings of fact necessary for a determination of all relevant issues have been made above. Fed. R. Civ. P. 52(a). All proposed findings of fact and conclusions of law inconsistent with this decision are hereby denied.**

### **CONCLUSIONS OF LAW**

- 1. Respondent was, at all times pertinent hereto, an employer within the meaning of § 3(5) of the Occupational Safety and Health Act of 1970, 29 U. S. C. § § 651 - 678 (1970).**
- 2. The Occupational Safety and Health Review Commission has jurisdiction over the parties and the subject matter.**
- 3. Respondent was in serious violation of the Act in that it failed to comply with the standards at 29 C.F.R. § § 1926.556(b)(2)(iv) and 1926.556(b)(2)(v) (Citation 1, as amended, Items 2a and 2b). A penalty of \$1,200 is appropriate.**
- 4. Respondent was not in violation of the Act as alleged in Citation 1, Item 1, and Citation 2, Items 1 and 2.**

ORDER

1. Citation 1, Item 1 and Citation 2, Items 1 and 2 are VACATED.
2. Citation 1, Item 2, as amended, is AFFIRMED.
3. Respondent shall pay a civil penalty of \$1,200.

Dated:

**JUN 15 1994**  
Washington, D.C.

  
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MICHAEL H. SCHOENFELD  
Judge, OSHRC