

SECRETARY OF LABOR,

Complainant,

v.

MILO CONSTRUCTION CORPORATION,

Respondent.

OSHRC DOCKET NO. 96-1154

APPEARANCES:

For the Complainant:

J. Mark Ogden, Esq., Office of the Solicitor, U.S. Department of Labor, Los Angeles, California

For the Respondent:

Moo Il Suk, Milo Construction Corp., Tamuning, Guam

Before: Administrative Law Judge: Benjamin R. Loye

DECISION AND ORDER

This proceeding arises under the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 *et seq.*; hereafter called the "Act").

Respondent, Milo Construction Corporation (Milo), at all times relevant to this action maintained a place of business at Sirena Plaza, Agana, Guam, where it was engaged in construction. Respondent is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

On February 2 through July 24, 1996, the Occupational Safety and Health Administration (OSHA) conducted an inspection of Milo's Agana work site. As a result of that inspection, Milo was issued citations alleging violations of the Act together with proposed penalties. By filing a timely notice of contest Milo brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

Prior to the hearing, Complainant moved to dismiss Milo's Notice of Contest, based on Milo's failure to comply with this judge's discovery orders, and/or to deem Complainant's Requests for Admissions admitted due to Milo's failure to comply with discovery orders entered by this judge. Pursuant to this judge's October 14, 1997 Order, the cited violations were deemed admitted. On October 31, 1997,

a hearing was held in Agana, Guam for the purpose of determining whether the matter should be dismissed and to determine the appropriate penalties to be assessed. Final arguments were made at the hearing, and this matter is ready for disposition.

Complainant's Motion to Dismiss

I find that dismissal of the notice of contest is too drastic a remedy in this case. Continuances were sought by both parties in this case, and imposed by the court on its own motion. Milo has been sanctioned for its failure to respond to discovery and/or court orders in a timely fashion, in that it may not contest any of the underlying violations in this matter, all of which were deemed admitted.

Because further sanctions would not be constructive; Complainant's motion is DENIED.

Penalties

Serious citation 1, item 1 alleges:

29 CFR 1926.451(a)(8): Scaffold(s), including accessories such as braces, brackets, trusses, screw legs, ladders, etc. damaged or weakened from any cause were not immediately repaired or replaced:

- (a) Throughout the project, tubular welded frame scaffold with damaged or weakened parts, such as, but not necessarily limited to completely rusted through frames, cross braces, and pick board support hooks, were not immediately removed or replaced, exposing employees to falls from elevations of about 12 to 62 feet to the concrete sidewalks or asphalt street below.

Facts

OSHA Compliance Officer (CO) Johnny Cruz testified that Milo employees were exposed to the cited violations (Tr. 14). Cruz stated that the Chinese employees on the site showed him their alien labor cards identifying them as Milo employees (Tr. 15).

Moo Il Suk, Milo's president, testified that he has had troubles with OSHA for two years (Tr. 32-33; Exh. R-1). As a result, Mr. Suk did not want to take on responsibility for the Sirena Plaza project, and so subcontracted the project out to Chinese construction companies (Tr. 34). Suk testified that the Chinese firms were unable to secure entry into Guam for their laborers; Milo, therefore, brought the Chinese laborers in under its work visa (Tr. 35). Milo admitted that it had a project manager and project engineer with supervisory power over the site, but stated that the Chinese subcontractors also had their own supervisors. Suk believed that Milo had no responsibility to control the Chinese subcontractors (Tr. 35-37, 52). Suk testified that the Chinese refused to obey Milo's safety suggestions; when the Chinese insisted on doing the work in their own way, Milo let them do it (Tr. 37, 39-40). Suk stated that he kept the Chinese

workers on, despite their refusal to obey his safety instructions, because of the difficulty in obtaining replacement workers (Tr. 40).

Discussion

As noted above, the violation, its classification as serious, and Milo's knowledge thereof, were deemed admitted; *See* Request for Admission Nos. 1-3. Nonetheless Milo argues that the cited violations were created by its independent contractor, and that only the subcontractor's employees were exposed.

The Commission has held that on a multi-employer site, the general contractor is well situated to obtain abatement of hazards, either through its own resources or through its supervisory role with respect to other contractors. The general contractor is, therefore, responsible for violations it could reasonably have been expected to prevent or abate by reason of its supervisory capacity. *IBP Inc.*, 17 BNA OSHC 2073, 1997 CCH OSHD ¶____ (No. 93-3059, 1997). Milo admits it was the prime contractor on site. As such it was responsible for exercising its supervisory authority to insure that its subcontractors abate safety hazards discovered on the work site.

The exposed employees were brought in from mainland China to perform Milo's contract. Milo had personnel on the site with supervisory authority (Request for Admission No. 95). Milo was, therefore, responsible for correcting violations of which it was aware. Milo admits that it did no more than "suggest" that its subcontractors correct hazardous conditions, because of the difficulty in obtaining replacement labor.

Milo's explanation in no way mitigates the gravity of the cited violation. Milo has a history of prior OSHA violations (Request for Admission No. 96-97); its admitted efforts to circumvent OSHA regulations demonstrate a lack of good faith. I find that the proposed penalty of \$3,000.00 is appropriate.

Serious citation 1, item 2 alleges:

29 CFR 1926.451(a)(10): Planking used on scaffold(s) was not scaffold grade or the equivalent as recognized by approved grading rules for the species of wood used:

- (a) By all sides of the building, planking was not scaffold grade or equivalent as 2x4 lumber was used on scaffold spans about six feet apart, exposing employees of falls up to 62 feet to the concrete sidewalk or asphalt street below.

The violation, its classification as serious, and Milo's knowledge thereof, were deemed admitted; *See* Request for Admission Nos. 4-6.

For the reasons cited in item 1, I find that the proposed penalty of \$3,000.00 is appropriate.

Serious citation 1, item 3 alleges:

29 CFR 1926.501(a)(2): Employees were not forbidden from working on surfaces without the requisite strength and structural integrity to support employee(s) safely:

- (a) By the southwest corner of the building, employees were not forbidden from working on surfaces without the strength and integrity to support employees as a material loading platform was made of 5/8s inch plywood that was not secured nor overlapped to the supports, exposing employees to the hazard of falling about 26 feet to the soil below.
- (b) By the southwest corner of the building between A8.1 and B8.1, employees were not forbidden from working on surfaces without the strength and integrity to support employees as a material loading platform was made of 5/8s inch plywood that was not secured nor overlapped to the supports, that buckled when loads of lumber were placed on it, and that used shoring jacks as the horizontal supports, exposing employees to the hazard of falling about 38 feet to the ground below.

The violation, its classification as serious, and Milo's knowledge thereof, were deemed admitted;
See Request for Admission Nos. 7-10.

For the reasons cited in item 1, I find that the proposed penalty of \$3,000.00 is appropriate.

Serious citation 1, item 4 alleges:

29 CFR 1926.502(b)(4): When the 200 pound test load was applied in a downward direction, the top edge of the guardrail shall not deflect to a height less than 39 inches above the walking/working level:

- (a) On the south side of the building on the 3rd floor, the top rail of a guardrail system deflected to a height of about 17 inches when a downward load was applied, exposing employees chipping concrete to the hazard of falling about 26 feet to the ground below.

The violation, its classification as serious, and Milo's knowledge thereof, were deemed admitted;
See Request for Admission Nos. 11-13.

The Secretary proposes a penalty of \$3,000.00 for this item.

Willful citation 2, item 1 alleges:

29 CFR 1926.416(a)(1): Employees were permitted to work in proximity to electric power circuits and were not protected against electric shock by deenergizing and grounding the circuits or effectively guarding the circuits by insulation or other means:

- (a) On the third level at the north east corner, the employer permitted employees to work within 3 to 5 feet of 13.8 KVA overhead lines and 75 KVA transformers that were not deenergized grounded or insulated, exposing employees moving 8 foot long rebar to the hazard of electrocution.

The violation, its classification as willful, and Milo's knowledge thereof, were deemed admitted; *See* Request for Admission Nos. 14-16.

CO Cruz testified that Milo knew that employees were exposed to the energized lines and had requested that blankets be installed for insulation (Tr. 20). Milo did not, however, install the blankets, or get permission to install the blankets (Tr. 20). Nonetheless the employees continued to work in the area (Tr. 20).

I find that the circumstances of the violation, and the factors enumerated in citation 1, item 1, justify the proposed \$49,000.00 penalty.

Willful citation 2, item 2 alleges:

29 CFR 1926.451(a)(13): An access ladder or equivalent safe access to scaffold(s) was not provided:

- (a) By the west, north, north east, and east side of the building, an access ladder or equivalent safe access was not provided as access to scaffolds was obtained by climbing on cross braces or by stepping across 2 to 4 foot gaps from the building edges, exposing employees to falls from elevations from about 6 to 38 feet to the concrete sidewalk or asphalt street below.

The violation, its classification as willful, and Milo's knowledge thereof, were deemed admitted; *See* Request for Admission Nos. 17-19.

CO Cruz testified that Milo had been cited several times previously for fall protection violations, and had done nothing to prevent these violations from being repeated (Tr. 29). Milo introduced no evidence mitigating the gravity of this item. The gravity of this item, in addition to the factors enumerated in citation 1, item 1, justify the proposed \$49,000.00 penalty.

Willful citation 2, item 3 alleges:

29 CFR 1926.451(d)(10): Standard guardrails and toeboards were not installed at all open sides and ends on tubular welded frame scaffolds more than 10 feet above the ground or floor:

- (a) On or about February 2, 1996, by the southeast side of the building, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 32 feet to the vertical rebar below.
- (b) On or about February 2, 1996, by the east side of the building, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees tying rebar to the hazard of falling about 38 feet to the vertical rebar below.

- (c) On or about February 2, 1996, by the north side of the building, there were no guardrails on the open sides of the tubular welded frame scaffold for about 48 feet along length of the scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees installing formwork to the hazard of falling about 38 feet to the asphalt street and vertical rebar below.
- (d) On or about February 2, 1996, by the west side of the building, there were no guardrails on the open sides of the tubular welded frame scaffold for about 147 feet along the length of the scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees tying rebar and removing formwork to the hazard of falling about 38 feet to the ground below.
- (e) On or about February 2, 1996, by the northeast side of the building from C3 to C6.1 and C6.1 to F6.1 there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees tying rebar and tightening formwork to the hazard of falling about 38 feet to the asphalt below.
- (f) On or about March 30, 1996, by the west side of the building from A.1 to A8.1, there were no guardrails on the open sides of the tubular welded frame scaffold for about 148 feet along the length of the scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees removing formwork to the hazard of falling about 50 to 62 feet to the asphalt street below.
- (g) On or about March 30, 1996, by the southeast side of the building from C3 to C6.1 and C6.1 to F6.1, there were no guardrails on the open sides of the tubular welded frame scaffold, exposing employees erecting formwork to the hazard of falling about 50 to 62 feet to the asphalt parking lot below.
- (h) On or about March 30, 1996, by the north side of the building from A1 to C1, there were no guardrails on the open sides of the tubular welded frame scaffold for about 48 feet along the length of the scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 62 feet to the vertical rebar below.
- (i) On or about March 30, 1996, by the east side of the building from F6.1 to F9, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees tying rebar and installing formwork to the hazard of falling about 50 to 62 feet to the vertical rebar and 2x4 lumber fence posts below.
- (j) On or about March 30, 1996, by the north side of the building from A.1 to C.1, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 38 to 50 feet to the road below.

- (k) On or about March 30, 1996, by the east side of the building from F6.1 to F9, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 38 to 50 feet to the vertical rebar and 2x4 lumber fence posts below.
- (l) On or about March 30, 1996, by the northeast side of the building from C3 to C6.1 and C6.1 to F6.1, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees doing formwork to the hazard of falling about 38 to 50 feet to the asphalt parking lot below.
- (m) On or about March 30, 1996, by the west side of the building from A1 to A8, there were no guardrails on the open sides of the tubular welded frame scaffold for about 148 feet along the length of the scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees removing formwork to the hazard of falling about 38 to 50 feet to the asphalt road below.
- (n) On or about March 30, 1996, by the north side of the building from A.1 to C.1, there were no guardrails on the open sides of the tubular welded frame scaffold for about 48 feet along the length of the scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 26 feet to the road below.
- (o) On or about March 30, 1996, by the northeast side of the building from C3 to C6.1 and C6.1 to F6.1, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 26 to 38 feet to the asphalt below.
- (p) On or about March 30, 1996, by the north side of the building from A.1 to C.1, there were no guardrails on the open sides of the tubular welded frame scaffold for about 48 feet along the length of the scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 38 feet to the ground below.
- (q) On or about March 30, 1996, by the west side of the building from A1 to A8, there were no guardrails on the open sides of the tubular welded frame scaffold for about 148 feet along the length of the scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 26 to 38 feet to the asphalt road below.
- (r) On or about April 1, 1996, by the north side of the building from A1 to C1, there were no guardrails on the open sides of the tubular welded frame scaffold for about 48 feet along the length of the scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 26 to 38 feet to the ground below.

- (s) On or about April 1, 1996, by the west side of the building A1 to A8, there were no guardrails on the open sides of the tubular welded frame scaffold for about 148 feet along the length of the scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 26 to 38 feet to the asphalt road below.
- (t) On or about April 1, 1996, by the northeast side of the building from C3 to C6.1 and C6.1 to F6.1, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 26 to 38 feet to the vertical rebar below.
- (u) On or about April 1, 1996, by the north side of the building from A1 to C1, there were no guardrails on the open sides of the tubular welded frame scaffold for about 48 feet along the length of the scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 32 feet to the ground below.
- (v) On or about April 1, 1996, by the west side of the building from A1 to A8, there were no guardrails on the open sides of the tubular welded frame scaffold as there were intermittent guardrails for about 148 feet along the length of the scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees removing formwork to the hazard of falling about 38 to 50 feet to the asphalt road below.
- (w) On or about April 1, 1996, by the northeast side of the building from C3 to C6.1 and C6.1 to F6.1, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 38 to 50 feet to the asphalt below.
- (x) On or about April 1, 1996, by the east side of the building from F6.1 for F9, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 38 to 50 feet to the soil below.
- (y) On or about April 1, 1996, by the north side of the building from A1 to C1, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 38 to 50 feet to the road below.
- (z) On or about April 1, 1996, by the east side of the building from F6.1 to F9, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees tying rebar and installing formwork to the hazard of falling about 50 to 62 feet to the vertical 2x4 lumber fence posts and rebar below.
- (aa) On or about April 1, 1996, by the north side of the building from A1 to C1, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of

about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 50 to 62 feet to the road below.

- (bb) On or about April 1, 1996, by the northeast side of the building from C3 to C6.1 and C6.1 to F6.1, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees erecting formwork to the hazard of falling about 50 to 62 feet to the asphalt below.
- (cc) On or about April 1, 1996, by the west side of the building from A1 to A8.1, there were no guardrails on the open sides of the tubular welded frame scaffold for about 148 feet along the length of the scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees removing formwork to the hazard of falling about 50 to 62 feet to the asphalt road below.
- (dd) On or about April 12, 1996, by the east side of the building from F6.1 to F9, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees tying rebar and installing formwork to the hazard of falling about 50 feet to the vertical rebar below.
- (ee) On or about April 12, 1996, by the northeast side of the building from C3 to C6.1 and C6.1 and F6.1, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees erecting formwork to the hazard of falling about 62 feet to the asphalt below.
- (ff) On or about April 12, 1996, by the east side of the building from F6.1 to F9, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees tying rebar and installing formwork to the hazard of falling about 62 feet to the vertical rebar below.
- (gg) On or about April 12, 1996, by the north side of the building from A1 to C1, there were no guardrails on the open sides of the tubular welded frame scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 62 feet to the road below.
- (hh) On or about April 12, 1996, by the west side of the building from A1 to A8.1, there were no guardrails on the open sides of the tubular welded frame scaffold for about 148 feet along the length of the scaffold and there were gaps of about 2 to 4 feet between the scaffold platforms and building, exposing employees to the hazard of falling about 62 feet to the vertical rebar below.

The violation, its classification as willful, and Milo's knowledge thereof, were deemed admitted; *See* Request for Admission Nos. 20-55.

CO Cruz testified that between February and July, he inspected various stages of the project. Imminent danger notices were posted, and work was stopped to allow the contractor an opportunity to correct observed violations (Tr. 16-17, 28). Nonetheless Cruz found repeated violations of the cited standard, 34 in all, on his visits between February 2, and April 12 1996 (Tr. 22-24).

I find that the circumstances of the violations, and the factors enumerated in citation 1, item 1, justify the proposed \$70,000.00 penalty.

Willful citation 2, item 4 alleges:

29 CFR 1926.501(b)(1): Each employee on walking/working surface with an unprotected side or edge which is 6 feet or more above a lower level was not protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems:

- (a) On or about February 2, 1996, on the south side of the building on the 3rd floor between C and F9, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees throwing debris to the floor below to the hazard of falling about 12 feet to the garage floor below and about 26 feet to the ground below.
- (b) On or about February 2, 1996, on the east side of the building on the 3rd floor between F6.1 and F9, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees to the hazard of falling about 26 feet to the ground below.
- (c) On or about February 2, 1996, on the south side of the building on the 3rd floor between C and F9, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees accepting materials to the hazard of falling about 12 feet to the garage floor below and about 26 feet to the ground below.
- (d) On or about February 2, 1996, on the east side of the building on the 4th floor between C8.1 and C6.1, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees erecting plywood formwork to the hazard of falling about 12 feet to the floor below and about 38 feet to the ground below.
- (e) On or about February 2, 1996, on the west side of the building on the 3rd floor between A1 and A8.1, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees removing plywood formwork to the hazard of falling about 26 feet to the ground below.
- (f) On or about February 2, 1996, on the east side of the building on the 3rd floor between F6.1 and 7.1, each employee was not protected from falling for about 24 feet along the edge as there were no guardrail systems, safety net systems, or personal fall arrest systems,

exposing employees tying vertical rebars to the hazard of falling about 26 feet to the vertical rebar below.

- (g) On or about February 2, 1996, at the northwest corner of the building on the 3rd floor by A1, B1 and A2, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees removing plywood formwork to the hazard of falling about 26 feet to the ground below.
- (h) On or about March 30, 1996, on the south side of the building between A8.1, A9 to B8.1 and B9, each employee was not protected from falling for about 26 feet along the edge as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees unloading lumber and scaffold material to the hazard of falling about 26 feet to the ground below.
- (i) On or about March 30, 1996, on the west side of the building on the 3rd floor between A1 and A8.1, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees falling about 26 feet to the ground below.
- (j) On or about March 30, 1996, at the northwest corner of the building on the 4th floor between C to F9, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees installing plywood platform access to the hazard of falling about 38 feet to the ground below.
- (k) On or about March 30, 1996, at the southeast and southwest corners of the building on the 4th floor, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees using the area to access the material platform to the hazard of falling about 38 feet to the ground below.
- (l) On or about March 30, 1996, at one elevator shaft on the 4th floor, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees passing next to the shaft to avoid a pile of debris to the hazard of falling about 38 feet to the ground below.
- (m) On or about March 30, 1996, at a second elevator shaft on the 4th floor, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees passing next to the shaft to avoid a pile of debris to the hazard of falling about 38 feet to the ground below.
- (n) On or about April 1, 1996, on the south side of the building at the 4th floor level, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems for about 4 by 8 feet along the edges of a material loading platform, exposing employees installing plyforms to the hazard of falling about 38 feet to the ground below.

- (o) On or about April 1, 1996, on the south side of the building at the 3rd floor level, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems for about 4 by 8 feet along the edges of a material loading platform, exposing employees to the hazard of falling about 26 feet to the ground below.
- (p) On or about April 1, 1996, on the east side of the building on the 5th floor between F6.1 and F9, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees to the hazard of falling about 50 feet to the ground below.
- (q) On or about April 1, 1996, on the south side of the building on the 5th floor between A8.1 and F8.1, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees about 50 feet to the ground below.
- (r) On or about April 1, 1996, on the south side of the building on the 5th floor between A1 and A8.1, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees about 50 feet to the ground below.
- (s) On or about April 1, 1996, at the southeast corner, southwest corner, and center of the south side of the building on the 3rd floor, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees throwing debris to the floor below to the hazard of falling about 26 feet to the ground below.
- (t) On or about April 1, 1996, at the southwest side of the building on a loading platform between A8.1, A9 to B8.1, and B9, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems for about 36 feet along the edges, exposing employees to the hazard of falling about 26 feet to the ground below.
- (u) On or about April 1, 1996, on the west side of the building on the 3rd floor between A1 and A8.1, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees to the hazard of falling about 26 feet to the ground below.
- (v) On or about April 1, 1996, at the southwest and southeast corners of the building on the 4th floor, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees to the hazard of falling about 38 feet to the ground below.
- (w) On or about April 1, 1996, at an elevator shaft on the 3rd floor, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal

fall arrest systems, exposing employees passing next to the shaft to avoid a pile of debris to the hazard of falling about 26 feet to the ground below.

- (x) On or about April 12, 1996, at the northeast side of the building on the 6th floor, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees to the hazard of falling about 62 feet to the ground below.
- (y) On or about April 12, 1996, on the north side of the building between A1 and C1, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees erecting plyforms to the hazard of falling about 62 feet to the ground below.
- (z) On or about April 12, 1996, at the southeast corner of the building between F8.1 and F9, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees to the hazard of falling about 50 feet to the ground below.
- (aa) On or about April 12, 1996, at the southwest corner of the building on the 5th floor, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees throwing construction materials over the floor edge to the hazard of falling about 50 feet to the ground below.
- (bb) On or about April 12, 1996, on the northeast side of the building on the 6th floor between C1 to C6.1 and C6.1 to F6.1, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees erecting plyforms to the hazard of falling about 62 feet to the ground below.
- (cc) On or about April 12, 1996, on the south side of the building on the 4th floor, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems on a material loading platform, exposing employees to the hazard of falling about 38 feet to the ground below.
- (dd) On or about April 12, 1996, on the southwest side of the building on the 4th floor between A8.1, A9 to B8.1 and B9, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems on a material loading platform, exposing employees loading stacks of metal planks and 2x4 lumber to the hazard of falling about 38 feet to the ground below.
- (ee) On or about April 12, 1996, on the south side of the building on the 6th floor between A8.1 and F8.1, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems for about 106 feet along the edge, exposing employees erecting plyforms to the hazard of falling about 62 feet to the ground below.

- (ff) On or about April 12, 1996, on the east side of the building on the 6th floor between F6.1 and F8.1, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems for about 50 feet along the edge, exposing employees installing concrete forms to the hazard of falling about 62 feet to the vertical rebars and ground below.
- (gg) On or about April 12, 1996, on the 6th floor of the building between A8.1 and F8.1, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems, exposing employees installing concrete forms and watching the crane lift materials to the hazard of falling about 62 feet to the ground below.
- (hh) On or about April 12, 1996, on the south side of the building on the 6th floor between A8.1 and F8.1, each employee was not protected from falling as there were no guardrail systems, safety net systems, or personal fall arrest systems for about 106 feet along the edge, exposing employees to the hazard of falling about 62 to the ground below.

The violation, its classification as willful, and Milo's knowledge thereof, were deemed admitted; *See* Request for Admission Nos. 56-91.

As noted, Cruz inspected various stages of the project between February and July. Despite the posting of imminent danger notices, Cruz found repeated violations of the cited standard, 34 in all, on his visits, between February 2, and April 12 1996 (Tr. 25).

I find that the circumstances of the violations, and the factors enumerated in citation 1, item 1, justify the proposed \$70,000.00 penalty.

Willful citation 2, item 5 alleges:

29 CFR 1926.1052(c)(1): Stairways having four or more risers or rising more than 30 inches (76cm), whichever is less, were not equipped with one handrail and one stair rail system along each unprotected side or edge:

- (a) The north stairway #1 that rose to a height of 14 to 38 feet was not equipped with one handrail and one stair rail system along each unprotected side or edge, exposing employees using the stairway to access and egress upper floors to the hazard of falling about 14 to 38 feet to the concrete below.
- (b) The south stairway #2 that rose to a height of 14 to 38 feet was not equipped with one handrail and one stair rail system along each unprotected side or edge, exposing employees using the stairway to access and egress upper floors to the hazard of falling about 14 to 38 feet to the concrete below.

The violation, its classification as willful, and Milo's knowledge thereof, were deemed admitted; *See* Request for Admission Nos. 92-94. An imminent danger notice was posted for this item (Tr. 27).

I find that the circumstances of the violations, and the factors enumerated in citation 1, item 1, justify the proposed \$49,000.00 penalty.

ORDER

1. Serious citation 1, item 1, alleging violation of §1926.451(a)(8) is AFFIRMED, and a penalty of \$3,000.00 is ASSESSED.
2. Serious citation 1, item 2, alleging violation of §1926.451(a)(10) is AFFIRMED, and a penalty of \$3,000.00 is ASSESSED.
3. Serious citation 1, item 3, alleging violations of §1926.501(a)(2) is AFFIRMED, and a penalty of \$3,000.00 is ASSESSED.
4. Serious citation 1, item 4, alleging violation of §1926.502(b)(4) is AFFIRMED, and a penalty of \$3,000.00 is ASSESSED.
5. Willful citation 2, item 1, alleging violation of §1926.416(a)(1) is AFFIRMED, and a penalty of \$49,000.00 is ASSESSED.
6. Willful citation 2, item 2, alleging violation of §1926.451(a)(13) is AFFIRMED, and a penalty of \$49,000.00 is ASSESSED.
7. Willful citation 2, item 3, alleging violations of §1926.451(d)(10) is AFFIRMED, and a penalty of \$70,000.00 is ASSESSED.
8. Willful citation 2, item 4, alleging violations of §1926.501(b)(1) is AFFIRMED, and a penalty of \$70,000.00 is ASSESSED.
9. Willful citation 2, item 5, alleging violations of §1926.1052(c)(1) is AFFIRMED, and a penalty of \$49,000.00 is ASSESSED.

Benjamin R. Loye
Judge, OSHRC

Dated: