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Transaction ID 62295513
Case No. OSH 2018-04**

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HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of)	CASE NO. OSH 2018-04
)	(Inspection No. 1284958)
DIRECTOR, DEPARTMENT OF)	
LABOR AND INDUSTRIAL)	ORDER NO. 1016
RELATIONS,)	
)	
Complainant,)	STIPULATION OF FACTS and ORDER
)	
vs.)	
)	
LEAKMASTER INC.,)	
)	
Respondent.)	

STIPULATION OF FACTS

Complainant DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL
RELATIONS (“Director”), and Respondent LEAKMASTER INC. (“Respondent”), by
and through their respective counsel, hereby stipulate and agree that the facts set forth

herein shall be, and are hereby, conclusively established for purposes of this contested case proceeding under sections 396-11 and 396-11.5 of the Hawaii Revised Statutes (“HRS”).

Nothing in this Stipulation shall preclude either party from offering any additional evidence at trial, except that evidence offered for the sole purpose of contradicting a stipulated fact shall not be allowed.

This Stipulation may be amended only by a further stipulation signed by the parties and/or their respective counsel.

Respondent and Director stipulate into evidence the entire investigative file which consists of Bates Stamped Leakmaster Inc. 001 – Leakmaster Inc. 284 and Leakmaster Inc. Photos 001 – 034.

Director and Respondent by and through their respective counsel, stipulate and agree to the following:

1. The Hawaii Labor Relations Board (“Board”) has jurisdiction over this contested case pursuant to section 396-11, HRS.
2. Respondent and Director stipulates that a violation was committed and Respondent does not contest the validity of Citation 1, Item 1 of HIOSH Inspection 1284958, repeat-serious violation of 29 CFR 1926.501(b)(10) [section 12-110-50(a), HAR] with an assessed penalty of \$31,500.00.
3. Respondent and Director stipulate that this is a Serious violation as death or serious bodily harm could have resulted.
4. Respondent stipulates the formula used to calculate the \$31,500.00 penalty was in accordance with the applicable law/guidelines.

5. Since 2015, Respondent was previously cited by the Director for violating 29 CFR 1926.501(b)(10) three prior times in Inspection Number 1225753, 1140337, and 1061744 and all three prior citations have become final orders.

6. At all relevant times Respondent maintained a worksite at 94-130 Leokane Street, Waipahu, Hawaii, 96797. The worksite is a four story building Extra Space Storage building where the flat roof is approximately 48 feet above the concrete ground.

7. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

8. On December 19, 2017, three of Respondent's employees were at the worksite applying silicone coating to waterproof the entire roof of the building.

9. Moloikaialiilani Kai Akau ("Akau") was an employee of Respondent's and on December 19, 2017 was the foreman at the worksite.

10. On December 19, 2017, the Hawaii Occupational Safety and Health Division ("HIOSH") conducted an occupational safety inspection of Respondent's worksite in HIOSH Inspection Number 1284958. On February 7, 2018, the Director, through HIOSH, issued a Citation and Notification of Penalty ("Citation") against Respondent. Citation 1, Item 1 of the Citation, alleged a "repeat serious" violation of 29 CFR 1926.501(b)(10) [section 12-110-50(a) of the Hawaii Administrative Rules ("HAR")]. The proposed penalty for Citation 1, Item 1, was \$31,500.00.

11. Respondent was previously cited by the Director for a violation of 29 CFR 1926.501(b)(10) as Citation 1, Item 2, in HIOSH Inspection Number 1225753,

for worksite located at 84-1170 Farrington Hwy, Waianae, Hawaii 96792. The citation was issued on May 23, 2017. Respondent and Director entered into an Informal Settlement Agreement (“ISA”), which became a final order on June 13, 2017.

12. Respondent was previously cited by the Director for a violation of 29 CFR 1926.501(b)(10) as Citation 1, Item 1 in HIOSH Inspection Number 1140337 for worksite located at 3460 Pawaina Street, Honolulu, Hawaii 96826. The citation was issued on May 31, 2016. Respondent did not contest the citation and paid the penalty in full. The citation became a final order on June 20, 2016

13. Respondent was previously cited for a violation of 29 CFR 1926.501(b)(10) as Citation 1, Item 2 in HIOSH Inspection Number 1061744 for worksite 1311 N. King Street, Honolulu, Hawaii 96817. The citation was issued on July 16, 2015. Respondent and Director entered into an Informal Settlement Agreement (“ISA”), which became a final order on August 27, 2015.

14. The OSHA standard that was violated in Citation 1, Item 2 in HIOSH Inspection Number 1225753; Citation 1, Item 1 in HIOSH Inspection Number 1140337, and Citation 1, Item 2 in HIOSH Inspection Number 1061744 is the same OSHA standard that was violated in the instant case.

15. Citation 1, Item 2 in HIOSH Inspection Number 1225753; Citation 1, Item 1 in HIOSH Inspection Number 1140337, Citation 1, Item 2 in HIOSH Inspection Number 1061744, and the instant citation all involve the same or substantially similar condition or hazardous practice.

16. Respondent was contracted by ExtraSpace Storage to apply a high grade CFR silicone to the roof of their building located at 130 Leokane Street, Waipahu, Hawaii 96797.

17. On December 19, 2017, HIOSH Inspector Darrell Suzuki (Inspector Suzuki) observed three Leakmaster employees performing roofing work on the roof of the ExtraSpace Storage Building.

18. On December 19, 2017, Inspector Suzuki observed Leakmaster foreman Akau not wearing fall protection on the roof of worksite. Specifically, Akau was wearing a fall protection harness but he was not tied off as his harness was not attached to the retractable lanyard.

19. Inspector Suzuki observed Akau, without any fall protection, on the roof of the worksite walking from one end to the other end of the roof with a five gallon bucket in his hand.

20. Inspector Suzuki also observed Akau, without any fall protection, at the worksite sitting at the edge of the building, applying the silicone coating with a roller on the edge of the roof, which was 48 feet above the ground.

21. Akau verbally admitted to Inspector Suzuki that he was not properly tied off and that he knew he needed to be tied off.

22. This violation is considered a Serious violation due to the fact that if Akau had fallen from the roof of the worksite, which was approximately 48 feet above the ground, there was a substantial probability that death or serious bodily injury would have resulted, e.g. amputations, paralysis, fractures, lacerations.

23. Citation 1, Item 1 in the instant case, citing the repeat-serious violation of 29 CFR 1926.501(b)(10) [section 12-110-50(a), HAR], proposes a penalty of \$31,500.00.

24. The proposed penalty of \$31,500.00 was calculated according to HIOSH's standard policies and procedures. The penalty was determined by initially determining the severity of the most serious potential injury and the probability of an injury occurring from the cited hazardous condition or practice. The combination of these factors resulted in a gravity-based penalty. The gravity-based penalty can be reduced by certain mitigating factors, i.e., the size of the Respondent, "good faith," and its prior citation history. For repeated violations the gravity-based penalty is multiplied by five for a second or more repeated violation.

25. For the instant citation, a severity level of "high" was given due to the most serious potential injury that could be sustained if an employee fell from the roof, e.g., death, broken bones requiring hospitalization and/or resulting in permanent disability. A probability of "greater" was given because the investigator judged the likelihood of an accident to be relatively high because the distance from the edge of the roof to the ground was 48 feet and the foreman was working at the edge of the roof. The combination of 'high' severity and 'greater probability factors result in a gravity-based penalty of \$7,000.00. However, in this instance the gravity-based penalty was reduced by 10% for the size of the company. Then, the gravity-based penalty of \$6,300.00 was multiplied by a factor of 5 given Respondent's three prior violations. This resulted in an adjusted penalty of \$31,500.00.

DATED: Honolulu, Hawaii, JUL 31 2018.


AMY CHAN

Attorney for Complainant
DIRECTOR OF DEPARTMENT
OF LABOR AND INDUSTRIAL
RELATIONS


RYAN MARKHAM

Attorney for Respondent
LEAKMASTER INC.

SO ORDERED BY THE
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 1016

DATED: August 1, 2018


MARCUS R. OSHIRO, Chairperson


SESNITA A.D. MOEPONO, Member


J.N. MUSTO, Member

