

MARK J. BENNETT
Attorney General of Hawaii

2672

J. Gerard Lam
Deputy Attorney General
Department of Attorney
General, State of Hawaii
Labor Division
425 Queen Street
Honolulu, Hawaii 96813
Telephone: 586-1450

5326

Attorneys for Director,
Department of Labor and Industrial Relations

HAWAII
LABOR RELATIONS BOARD

05 FEB -2 A8:42

Circulate:

HAWAII LABOR RELATIONS BOARD
STATE OF HAWAII

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

vs.

CNL GRAND WAILEA RESORT, INC.,

Respondent.

CASE NO. OSH 2004-11

STIPULATION AND SETTLEMENT
AGREEMENT; EXHIBITS "A"- "B";
APPROVAL AND ORDER

STIPULATION AND SETTLEMENT AGREEMENT

On or about June 14, 2004 to June 21, 2004, Complainant Director,
Department of Labor and Industrial Relations ("Director"), by and through the State of
Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected the Grand

Wailea Resort Hotel & Spa located at 3850 Wailea Alanui Drive, Kihei, Hawaii 96753 (“Grand Wailea”).

As a consequence of said inspection, the Director, through HIOSH’s Administrator, issued a Citation and Notification of Penalty (“Citation”) to Respondent CNL Grand Wailea Resort, Inc. (“CNL”), alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$6,375.00. See Exhibit “A”. CNL timely contested the Citation.

At the time of said inspection, the employer, as defined in HRS § 396-3, at Grand Wailea was KSL Grand Wailea Management Company, LLC. See Exhibit “B”.

Accordingly, the caption of this case, the underlying Citation, and this Stipulation and Settlement Agreement (“Agreement”) shall be amended to name KSL Grand Wailea Management Company, LLC (hereinafter “Respondent”), in place of CNL.

Henceforth and hereinafter, the Citation, as amended below, shall be treated as one issued against Respondent, and this Agreement shall be construed solely as one between the Director and Respondent.

NOW THEREFORE, The Director and Respondent having reached a full and complete settlement of the instant contested case presently pending before the Hawaii Labor Relations Board (“Board”) stipulate and agree as follows:

1. The caption of this case, the underlying Citation and Notification of Penalty, and this Stipulation and Settlement Agreement (“Agreement”) shall be amended to name KSL Grand Wailea Management Company, LLC, in place of CNL Grand Wailea Resort, Inc.

2. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes (“HRS”) and over KSL Grand Wailea Management Co., LLC.

3. At all relevant times, Respondent maintained a workplace at 3850 Wailea Alanui Drive, Kihei, Hawaii 96753.

4. 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 therefore subject to the requirement of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

5. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than November 12, 2004; failure to timely do so may result in additional penalties or follow up inspections.

6. The Citation, which is attached as Exhibit “A,” is amended as follows:

a. The Citation shall be treated as one issued against Respondent KSL Grand Wailea Management Company, LLC, not CNL Grand Wailea Resort, Inc.

b. The following sentence under Citation 1 Item 1 shall be deleted: "This lack of training resulted in an employee falling and becoming paralyzed."

7. By entering into this Agreement, Respondent agrees not to contest the Citation, as amended, only for the limited purpose of proceedings under the Hawaii Occupational Safety and Health Law, and not for any other purpose.

8. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.


9. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

10. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

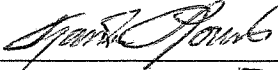
11. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, 1/20/05.


APPROVED AS TO FORM:


PATRICIA M. NAPIER, ESQ.
Attorney for Respondent

KSL GRAND WAILEA MANAGEMENT
CO., LLC

By: 
Its: DIRECTOR OF RISK MANAGEMENT

APPROVED AS TO FORM:


J. GERARD LAM
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS


NELSON B. BEFITEL

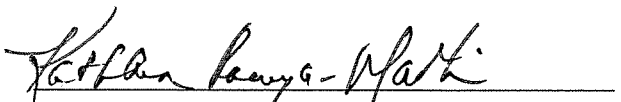
APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 123

DATED: February 2, 2005


BRIAN K. NAKAMURA, Chair


CHESTER C. KUNITAKE, Member


KATHLEEN RACUYA-MARKRICH,
Member

State of Hawaii

Department of Labor and Industrial Relations

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

830 PUNCHBOWL STREET, ROOM 425

Honolulu, HI 96813

Phone: (808) 586-9110

FAX: (808) 586-9104



Certified Number: 7003 3110 0003 5610 3205

Citation and Notification of Penalty

To:
CNL Grand Wailea Resort Inc
and its successors
3850 Wailea Alanui Dr
Kihei, HI 96753

Inspection Number: 307258434 Edward Sarapata

Inspection Date(s): 06/14/2004 - 06/21/2004

Issuance Date: 08/02/2004

OSHA ID: Y4986

Optional Report No.: 06404

Inspection Site:
3850 Wailea Alanui Dr
Kihei, HI 96753

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the law has occurred unless there is a failure to contest as provided for in the law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

EXHIBIT A

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

State of Hawaii

Department of Labor and Industrial Relations

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 08/02/2004. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 307258434
Inspection Dates: 06/14/2004 - 06/21/2004



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 08/02/2004

Citation and Notification of Penalty

Company Name: CNL Grand Wailea Resort Inc
Inspection Site: 3850 Wailea Alanui Dr, Kihei, HI 96753

Citation 1 Item 1 Type of Violation: **Serious**

HAR §12-60-2(b)(4)(C) was violated because:

The employer did not develop and institute a safety and health training program for supervisors to ensure they have an understanding of the specific and potential hazards to which they were exposed. This lack of training resulted in an employee falling and becoming paralyzed.

§12-60-2(b)(4)(C) states "The employer shall ensure that the supervisors and managers understand their responsibilities under the safety and health program and their importance to the safety and health of the workplace. In particular, the training for managers and supervisors shall enable them to:

- (i) Recognize potential hazards;
- (ii) Maintain safety and health protection in the work area; and,
- (iii) Reinforce employee training on the nature of the potential hazards and required protective measures."

Location: Establishment, 3850 Wailea Alanui, Kihei, Maui

Abatement Documentation Required

Date By Which Violation Must be Abated:
Penalty:

09/06/2004
\$4,500.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 307258434

Inspection Dates: 06/14/2004 - 06/21/2004



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 08/02/2004

Citation and Notification of Penalty

Company Name: CNL Grand Wailea Resort Inc
Inspection Site: 3850 Wailea Alanui Dr, Kihei, HI 96753

Citation 1 Item 2 Type of Violation: Serious

29 CFR 1910.215(b)(9) [Refer to chapter 12-80.1, HAR] was violated because:

Employees were working with two abrasive wheel grinders; one had a safety tongue guard that measured 1 1/4" from the grinding wheel, and the other was missing. These employees were exposed to a struck-by hazard from a potential shattering wheel.

29 CFR 1910.215(b)(9) states "Exposure adjustment. Safety guards of the types described in Subparagraphs (3) and (4) of this paragraph, where the operator stands in front of the opening, shall be constructed so that the peripheral protecting member can be adjusted to the constantly decreasing diameter of the wheel. The maximum angular exposure above the horizontal plane of the wheel spindle as specified in paragraphs (b)(3) and (4) of this section shall never be exceeded, and the distance between the wheel periphery and the adjustable tongue or the end of the peripheral member at the top shall never exceed one-fourth inch."

Location: Grand Wailea Resort & Spa, 3850 Wailea Alanui
(a) Sweeper repair shop
(b) Landscaping services shop

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$1,875.00

A handwritten signature in black ink, appearing to read "Nelson B. Befitel", written over a horizontal line.

NELSON B. BEFITEL
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813



SUMMARY OF PENALTIES

Company Name: CNL Grand Wailea Resort Inc
Inspection Site: 3850 Wailea Alanui Dr
Kihei, HI 96753
Issuance Date: 08/02/2004

Summary of Penalties for Inspection Number	307258434
Citation 01, Serious	= \$6,375.00
TOTAL PENALTIES	= \$6,375.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to: 307258434

Johnny So
Vice-President and General Manager
Grand Wailea Resort, Inc.
3850 Wailea Alanui Drive
Kihei, Hawaii 96753

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *MC* ☐ Agent ☐ Addressee
B. Received by (Printed Name) *Mark Cadri* C. Date of Delivery *8/4/04*
D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

Number 7003 3110 0003 5610 3205
(Enter from service label)

3811, August 2001

Domestic Return Receipt

102595-02-M-1540

Page 1 of 1

Track & Confirm
Enter label number:

00007

ABATEMENT CERTIFICATION

State of Hawaii

Department of Labor and Industrial Relations

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

830 PUNCHBOWL STREET, ROOM 425

HONOLULU, HI 96813

CNL Grand Wailea Resort Inc

3850 Wailea Alanui Dr

Kihei, HI 96753

The hazard referenced in Inspection Number 307258434 for the violation identified as Citation 01 and item 001 was corrected on _____.

How corrected _____.

I attest that the Information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

00008

November 19, 2004

J. Gerard Lam, Esq.
Deputy Attorney General
State of Hawaii
Department of the Attorney General Labor Division
425 Queen Street
Honolulu, HI 96813

Re: HIOSH Settlement Agreement

Dear Mr. Lam:

I am writing to clarify the employer of Grand Wailea Resort Hotel and Spa employees on March 8, 2004.

Prior to April 2, 2004, the Grand Wailea Resort Hotel and Spa ("Grand Wailea") was owned by and managed by KSL Grand Wailea Resort, Inc., a wholly owned subsidiary of KSL Recreation Corporation. All employees of the Grand Wailea were employed by KSL Grand Wailea Resort, Inc.

On April 2, 2004, Grand Wailea was sold as part of a stock sale of real property to CNL Hospitality Partners, LP ("sale"). Pursuant to the sale, ownership of Grand Wailea was transferred to CNL Grand Wailea Resort, Inc. and management of the Grand Wailea was transferred to KSL Grand Wailea Management Co., LLC.

At the time of the subject incident, employees of Grand Wailea were employed by KSL Grand Wailea Resort, Inc., not CNL Grand Wailea Resort, Inc., the entity named on the Citation and Notification of Penalty.

Please let me know if you have any questions.

Sincerely,



Frank J. Louis
Director of Risk Management
KSL Resorts

Cc: Duane Nitta
Jill Murakami Baldemor

EXHIBIT B

KSL Resorts • 50-905 Avenida Bermudas • La Quinta, CA 92253 • 760.564.8000 • Fax 760.564.8004 • www.kslresorts.com

ARIZONA BILTMORE RESORT & SPA • LA COSTA RESORT AND SPA •
LA QUINTA RESORT & CLUB • PGA WEST •

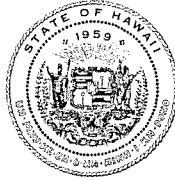


HOTEL DEL CORONADO™ • GRAND WAILEA RESORT HOTEL & SPA •
CLAREMONT RESORT & SPA • EMERALD POINTE RESORT •

THE KSL RESORTS COLLECTION
WWW.KSLRESORTS.COM

2004 NOV 26 PM 10:36

LINDA LINGLE
GOVERNOR



MARK J. BENNETT
ATTORNEY GENERAL

LISA M. GINOZA
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
LABOR DIVISION
425 QUEEN STREET
HONOLULU, HAWAII 96813
Telephone: (808) 586-1450
Fax: (808) 586-1376

February 1, 2005

BN
CK
KRM
VK

Brian K. Nakamura, Chairman
Hawaii Labor Relations Board
830 Punchbowl Street, Room 434
Honolulu, Hawaii 96813


Respondents: CNL Grand Wailea Resort, Inc.
Case No.: OSH 2004-11

Dear Chairman:

Enclosed are an original and four copies of the Stipulation and Settlement Agreement signed by the parties to resolve the above-referenced case. If the documents meet with the Hawaii Labor Relations Board's approval, please have the documents signed and filed

Thank you for your cooperation on this matter.

Very truly yours,


J. Gerard Lam
Deputy Attorney General

enclosure

cc: Patricia M. NaPier, Esq. (w/o encl.)
HIOSH (w/o encl.)