

MARK J. BENNETT 2672  
Attorney General of Hawaii

05 DEC 21 P1:36

HERBERT B.K. LAU 2591  
Deputy Attorney General  
Department of Attorney  
General, State of Hawaii  
Labor Division  
425 Queen Street  
Honolulu, Hawaii 96813  
Telephone: 586-1450

HAWAII  
LABOR RELATIONS BOARD

Attorneys for Director of Labor  
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the matter of	)	CASE NO. OSAB 2005-14
	)	(Report No. 308487305)
DIRECTOR, DEPARTMENT OF LABOR	)	
AND INDUSTRIAL RELATIONS,	)	
	)	STIPULATION AND SETTLEMENT
Complainant,	)	AGREEMENT; EXHIBIT A;
	)	APPROVAL AND ORDER
	)	
vs.	)	
	)	
PROTECH ROOFING LLC,	)	
	)	
Respondent.	)	
	)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations  
("Director") and Respondent PROTECH ROOFING LLC ("Respondent")  
having reached a full and complete settlement of the above-  
captioned contested case presently pending before the Hawaii  
Labor Relations Board ("Board") stipulate and agree as follows:

On or about May 16, 2005, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 1008 Hoa Street, Honolulu, Hawaii, 96825.

As a consequence of said inspection, the Director, through HIOSH, issued a Citation and Notification of Penalty on June 6, 2005 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$375.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 1008 Hoa Street, Honolulu, Hawaii, 96825.
3. 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 requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. The Citation of June 6, 2005 is withdrawn, and in consideration Respondent shall comply with paragraphs 5 through 7 below.

5. Respondent will participate in the Department of Labor's fall protection safety initiative by purchasing an approved eight-feet by four-feet banner, and prominent posting it at its baseyard or a worksite for the next six (6) months after the approval of this Settlement Agreement. The banner may be purchased from any printer of Respondent's choice. The design of the banner shall be provided by the Director and any modification to the design will require approval from the Director prior to the printing of the banner. Respondent shall coordinate with the Director in obtaining the Director's banner design for its printer. Within thirty (30) days of this Settlement Agreement Respondent shall provide the Director with proof of the purchase of the banner. A thirty-day extension may be sought from HIOSH.

6. Within thirty (30) days of the filing of the instant Settlement Agreement, Respondent shall submit to HIOSH a written progressive disciplinary procedure which shall be incorporated into its written safety program. A thirty-day extension may be sought from HIOSH.

7. Within thirty (30) days of the filing of the instant Settlement Agreement, Respondent shall provide HIOSH

written certification that it has implemented a program of periodic safety inspections that is performed by its own supervisory personnel at each of its worksites.

8. The Citation of June 6, 2005 shall become a final order of the Director if Respondent fails to perform any of the conditions stated in paragraphs 5 through 7, and the \$375.00 penalty shall become immediately due and payable to the Director.

9. Respondent shall post a copy of this Settlement Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Settlement 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 Settlement 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, December 21, 2005.

APPROVED AS TO FORM:

Craig T. DeLa Cruz  
CRAIG T. DELA CRUZ, ESQ.  
Attorney for Respondent

PROTECH ROOFING LLC

By: Mark Spigal  
Its Managing Director

APPROVED AS TO FORM:

Herbert B.K. Lau  
HERBERT B.K. LAU  
Deputy Attorney General  
Attorney for Director of Labor  
and Industrial Relations,  
State of Hawaii

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS

Nelson B. Befitel  
NELSON B. BEFITELE

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

ORDER NO: 166  
DATED: DECEMBER 21, 2005

Brian K. Nakamura  
BRIAN K. NAKAMURA, Chair

Kathleen Racuya-Markrich  
KATHLEEN RACUYA-MARKRICH, Member

Emory J. Springer  
EMORY J. SPRINGER, Member

*Director of Labor and Industrial Relations v. Protech Roofing LLC; Case No. OSH 2005-14;  
Inspection No. 308487305 - Stipulation and Settlement Agreement*

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: 7004 2510 0003 2979 0546

## Citation and Notification of Penalty

**To:**  
Protech Roofing LLC  
and its successors  
1221 Kapiolani St #808  
Honolulu, HI 96814

**Inspection Number:** 308487305 (Hervie Messier)

**Inspection Date(s):** 05/16/2005 - 05/16/2005

**Issuance Date:** 06/06/2005

**OSHC ID:** U5995

**Optional Report No.:** 10905

**Inspection Type:** Referral

**Scope of Inspection:** Partial Inspection

**Inspection Site:**  
1008 Hoa St  
Honolulu, HI 96825

*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.

**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 its 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](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.





## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 06/06/2005. 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: 308487305  
Inspection Dates: 05/16/2005 - 05/16/2005



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 06/06/2005

**Citation and Notification of Penalty**

Company Name: Protech Roofing LLC  
Inspection Site: 1008 Hoa St, Honolulu, HI 96825

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

29 CFR 1926.501(b)(13) [Refer to chapter 12-121.2, HAR] was violated because:

Two roofers working on the 18 feet high roof were not protected by any type of fall protection systems. The lack of fall protection exposes the employees to injuries from falls.

29 CFR 1926.501(b)(13) states "Each employee engaged in residential construction activities 6 feet (1.8 m) of more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems or personal fall arrest systems unless another provision in paragraph (b) provides for an alternative fall protection measure."

Location: Exterior roof of building under construction on site

Date By Which Violation Must be Abated: 06/13/2005  
Penalty: \$375.00

A handwritten signature in black ink, reading "Nelson B. Befitel".

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: Protech Roofing LLC  
Inspection Site: 1008 Hoa St  
Honolulu, HI 96825  
Issuance Date: 06/06/2005

Summary of Penalties for Inspection Number 308487305

Citation 01, Serious	=	\$375.00
<b>TOTAL PENALTIES</b>	=	<b>\$375.00</b>

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.

9450 6426 0000 0152 4002

**U.S. Postal Service<sup>TM</sup>**  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)  
For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Safety	Postage	\$ .83	308487305
	Certified Fee	2.30	
	Return Receipt Fee (Endorsement Required)	1.75	
	Restricted Delivery Fee (Endorsement Required)		
	Total Postage & Fees	\$ 4.88	

Sent To: **Protech Roofing LLC**  
Street, Apt., Rm., or P.O. Box: **1221 Kapiolani St., #808**  
City, State, ZIP+4: **Honolulu, Hawaii 96814**

See Reverse for Instructions

6/28/05

**S SECTION ON DELIVERY**

☐ Agent  
☒ Addressee

(Printed Name) A.T. LEE C. Date of Delivery 6/28/05

Dress different from item 1? ☐ Yes  
delivery address below: ☐ No

☐ Express Mail  
☐ Return Receipt for Merchandise  
☐ C.O.D.

elivery? (Extra Fee) ☐ Yes

0003 2979 0546