

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS,

Complainant,

v.

JOEL KOETJE, INC.,

Respondent.

CASE NO. OSH 2007-25

ORDER NO. 272

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board (Board) on January 11, 2008, and attended by Robyn M. Kuwabe, Deputy Attorney General, for Complainant, and Joel Koetje, President, for Respondent (via telephone), IT IS HEREBY ORDERED THAT:

1. The issues to be determined at trial are as follows:
  - A. Whether Citation 1, Item 1, including the associated penalty, resulting from Inspection No. 311428155, was valid and proper.

Citation 1, Item 1 alleged:

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

Two employees were observed working 13 feet above the lower levels without any type of fall protection, thus exposing the employees to a fall hazard which could result in serious injuries or death.

29 CFR 1926.501(b)(13) provides:

Residential construction. Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of 1926.502.

- B. Whether Citation 1, Item 2, including the associated penalty, resulting from Inspection No. 311428155, was valid and proper.

Citation 1, Item 2, alleged:

29 CFR 1926.1053(b)(1) [Refer to chapter 12-154.1, HAR] was violated because:

Two employees were using a Werner 8-foot ladder where the side rails did not extend 3 feet above the upper landing, thus exposing the employees to an 8-foot fall to the lower levels below which could result in serious injuries or death.

29 CFR 1926.1053 provides in relevant part:

- (b) Use. The following requirements apply to the use of all ladders, including job-made ladders, except as otherwise indicated:
  - (1) When portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least 3 feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at its top to a rigid support that will not deflect, and a grasping device, such as a grabrail, shall be provided to assist

employees in mounting and dismounting the ladder. In no case shall the extension be such that ladder deflection under a load would, by itself, cause the ladder to slip off its support.

2. The deadline for the parties' final naming of witnesses is **February 19, 2008**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with the witnesses' addresses and brief summary of expected subject of their testimony, to the other party and to the Board by this date. Each party shall also exchange any expert witness reports by this date.
3. The discovery cutoff date is **March 19, 2008**. All other discovery and information requests, including depositions and document requests, must be completed by this date.
4. Trial in this matter is scheduled for **April 22, 2008, at 9:00 a.m.**, in the Board's hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The trial will continue from day-to-day until completed.
5. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, January 14, 2008.


HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chairman



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

### NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Robyn M. Kuwabe, Deputy Attorney General  
Joel Koetje, President