Lynnway Auto Auction to Correct Hazards, Implement Safety Measures, And Pay Penalties in U.S. Department of Labor Settlement

BOSTON, MA – The U.S. Department of Labor has reached a settlement with Lynnway Auto Auction Inc., in which the Billerica facility agrees to correct hazards, implement significant safety measures, and pay $200,000 in penalties. The Department’s Occupational Safety and Health Administration (OSHA) cited Lynnway for 16 violations following a May 2017 incident in which a sport utility vehicle fatally struck five people during an auto auction.

As part of the settlement, Lynnway will designate and mark non-driving locations, walkways, and crosswalks; install barriers in the auto auction area; establish and enforce speed limits and a safe driving program; periodically evaluate employees’ driving capabilities and licenses; provide employee training; and review all vehicle accidents or near-misses.

“The settlement commits Lynnway to correct existing hazards, and requires it to take continuous action to help prevent future employee injuries or fatalities,” said OSHA Regional Administrator Galen Blanton.

“The processes put into place by this agreement have the goal of ensuring that such needless loss of lives will not occur again,” said Regional Solicitor of Labor Michael Felsen.

TrueBlue Inc., doing business as PeopleReady, which supplied temporary employees to Lynnway, also agreed to correct hazards, implement a traffic control program, and pay a $12,675 penalty. OSHA cited the staffing firm for exposing employees to struck-by hazards.

The Lynnway settlement became a final order of the Occupational Safety and Health Review Commission on April 5, 2018; the TrueBlue settlement agreement became final on March 5, 2018. OSHA’s Andover Area Office conducted the inspections. Senior Trial Attorney James Glickman of the Boston regional solicitor’s office litigated the cases for OSHA.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA’s role is to ensure these conditions for America’s working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov.

# # #

Media Contacts:
Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
Jim Lally, 617-565-2074, Lally.James.C@dol.gov

Release Number: 18-466-BOS/BOS 2018-045

U.S. Department of Labor news materials are accessible at http://www.dol.gov. The Department’s Reasonable Accommodation Resource Center converts departmental information and documents into alternative formats, which include Braille and large print. For alternative format requests, please contact the Department at (202) 693-7828 (voice) or (800) 877-8339 (federal relay).
News Release

U.S. Department of Labor | March 28, 2018

U.S. Department of Labor Orders Reinstatement of Massachusetts Pilot Who Lost Job after Reporting a Safety Concern

BOSTON, MA – The U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) has ordered Jet Logistics IDOL will have 90 days (along with our partners at Education) to review and respond.nc. (JLI) and New England Life Flight Inc. – doing business as Boston MedFlight (BMF) – to reinstate a pilot who lost his job after complaining about what he reasonably believed were violations of the Federal Aviation Administration (FAA) regulations.

While stationed at Hanscom Air Force Base in Bedford in December 2015, the pilot first voiced to JLI and BMF his apprehension about whether a new scheduling policy would provide pilots with required FAA rest time. In January 2016, he contacted the FAA to register his concerns. He was terminated in March 2016 after he declined two flight assignments because he believed he had not been given the time to rest mandated by regulation.

An OSHA investigation concluded the pilot was terminated for reporting safety concerns, a protected activity under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21). In addition to reinstating the employee, and clearing his personnel file of any reference to the issues involved in the investigation, the Agency also ordered JLI and BMF to pay the pilot $133,616.09 in back wages and interest; $100,000 in compensatory damages; reasonable attorney fees; and to refrain from retaliating against the employee. The employers must also post a notice informing all employees of their whistleblower protections under AIR21.

“This pilot should be commended – not penalized – for raising legitimate safety concerns that can affect him, his co-workers, and the general public,” said Galen Blanton, OSHA Boston-area Regional Administrator.

The order may be appealed to the department's Office of Administrative Law Judges, but such action does not delay the effect of the preliminary reinstatement order.


# # #

Editor’s note: The U.S. Department of Labor does not release the names of employees involved in whistleblower complaints.

Media Contacts:

Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number:  18-324-BOS/BOS 2018-039

U.S. Department of Labor news materials are accessible at http://www.dol.gov. The Department’s Reasonable Accommodation Resource Center converts departmental information and documents into alternative formats, which include Braille and large print. For alternative format requests, please contact the Department at (202) 693-7828 (voice) or (800) 877-8339 (federal relay).
CONCORD, NH – The U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) has cited Luis Guallpa – doing business as Guallpa Contracting Corp. – for exposing workers to fall and other hazards at a Nashua work site. The Milford, Massachusetts, roofing contractor faces $299,324 in proposed penalties.

OSHA inspectors observed six of Guallpa’s employees working on a roof without fall protection, and also observed workers using ladders unsafely, and failing to use head protection. The Agency cited the employer for exposing employees to fall hazards of up to 25 feet, for ladder and head protection violations, and for failing to provide effective training. OSHA cited Guallpa for similar hazards in 2014 and 2015.

“Fall protection is required when employees are working at heights of six feet or higher,” said Rosemarie Cole, OSHA New Hampshire Area Office Director. “This employer’s continued failure to follow safety standards is placing employees at risk of serious injury or death.”

The company has 15 business days from receipt of its citations and penalties to comply, request an informal conference with OSHA’s area director, or contest the findings before the independent Occupational Safety and Health Review Commission.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA’s role is to ensure these conditions for America’s working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit http://www.osha.gov.

# # #

Media Contacts:

Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number: 18-471-BOS/BOS 2018-037
U.S. Department of Labor Orders JetBlue to Reinstate and Pay Back Wages and Damages to Flight Attendant

BOSTON, MA – The U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) has ordered JetBlue Corporation to reinstate and compensate a flight attendant who was fired for raising safety concerns about a flight. The order requires JetBlue Corporation to clear the affected personnel file and pay $143,783.66 in back pay, compensatory damages, and attorneys’ fees, and post a notice informing all employees of their whistleblower protections.

On July 15, 2015, a passenger aboard a flight scheduled to leave from John F. Kennedy International Airport remarked about a perceived safety violation. In response, the attendant exited the plane onto the jet way to contact a supervisor for guidance on addressing the safety concern. JetBlue fired the attendant in September 2015, in part, for stepping off the plane, and making the call from the jet way.

An OSHA investigation concluded that the attendant’s whistleblower activity, which is protected under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21), was a contributing factor in the termination.

JetBlue can appeal the order before the Department’s Office of Administrative Law Judges, but such action does not delay the effect of the preliminary reinstatement order.

OSHA enforces the whistleblower provisions of AIR21 and 21 other statutes protecting employees who report violations of airline, commercial motor vehicle, consumer product, environmental, financial reform, food safety, health care reform, nuclear, pipeline, public transportation agency, railroad, maritime, and securities laws. More information is available at www.whistleblowers.gov. For information about OSHA, visit www.osha.gov.

Editor’s note: The U.S. Department of Labor does not release the names of employees involved in whistleblower complaints.

Media Contacts:

Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number: 18-306-BOS/BOS 2018-032
News Release

U.S. Department of Labor | Feb. 9, 2018

U.S. Department of Labor Investigation Results in Sentencing Of Former Connecticut Resident for Theft of Benefit Checks

HARTFORD, CT – After an investigation by the Department of Labor’s Employee Benefits Security Administration (EBSA) and Office of Inspector General (OIG), Yolanda Silverio, a former eligibility coordinator for a Connecticut company that administers trust funds for public and private sector health benefit plans, has been sentenced by the U.S. District Court for the District of Connecticut to 10 months of imprisonment followed by three years of supervised release. The court has also ordered Silverio to pay $35,461.34 in restitution, perform 150 hours of community service, and notify any future employers in writing of her two prior fraud convictions.

Silverio, a former Meriden resident, received checks from individual participants in health plans as payment toward their union-related health benefits. Such plans are covered under the Employee Retirement Income Security Act.

The Department found that Silverio diverted 49 of these checks totaling $35,461.34 into her own bank accounts between May 2013 and July 2014. In 2004, she was convicted in federal court for embezzling more than $105,000 from two Connecticut businesses.

“Diverting benefit payments for one’s own use violates the law, and undermines the hard-earned benefits of American employees and their families,” said Carol S. Hamilton, EBSA Acting Regional Director in Boston. “The U.S. Department of Labor is committed to fighting fraud and abuse of employee benefit plans and pursues legal action against those who abuse their position of trust.”

“Yolanda Silverio abused her position of trust by diverting the hard-earned health benefits of American workers to her own personal use. We will continue to work with EBSA and law enforcement partners to vigorously pursue those who defraud employee benefit plans,” said Peter Nozka, Acting Special Agent-in-Charge, New York Region, U.S. Department of Labor Office of Inspector General.

The case was prosecuted by Assistant U.S. Attorney Susan L. Wines of the office of U.S. Attorney John H. Durham.

ERISA protects health, 401(k) plans and other benefit plans. Employers and workers can reach EBSA toll-free at 866-444-3272 for help with problems related to private sector retirement and health plans. Additional information can be found at http://www.dol.gov/ebsa.

# # #

Media Contacts:
Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number: 18-236-BOS/BOS 2018-020

U.S. Department of Labor news materials are accessible at http://www.dol.gov. The Department’s Reasonable Accommodation Resource Center converts departmental information and documents into alternative formats, which include Braille and large print. For alternative format requests, please contact the Department at (202) 693-7828 (voice) or (800) 877-8339 (federal relay).
U.S. Department of Labor Assists in Pension Fund Theft Investigation That Nets Criminal Conviction

PROVIDENCE, RI – The U.S. Department of Labor’s Employee Benefits Security Administration (EBSA) participated in a multi-agency investigation related to pension fund theft that has resulted in a criminal conviction. John M. Hairabet, Jr., a former business associate and office manager of New England Anesthesiologists Inc. and president of Anesthesia Management Consultants LLC – both based in Warwick, Rhode Island – has been sentenced to 37 months in federal prison for embezzling $120,313 in employee elective deferrals that were to be deposited into an employee 401(k) pension fund, as well as $587,218 from bank accounts belonging to New England Anesthesiologists.

The U.S. District Court for the District of Rhode Island has also ordered Hairabet to serve 3 years supervised release upon completion of his term of incarceration, and to pay restitution to the victims in this case – including pensioners whose money was embezzled from the employee 401(k) pension fund. The total amount of restitution to be paid has not yet been determined. Hairabet pleaded guilty in July 2017 to one count of pension fund theft, six counts of wire fraud, and two counts of money laundering.

“Theft from pension funds violates the law and cheats plan participants,” said Employee Benefits Security Administration (EBSA) Acting Regional Director Carol S. Hamilton, in Boston. “The U.S. Department of Labor will continue to investigate and take action to counter any activity that threatens employees’ hard-earned retirement benefits.”

The matter was investigated by EBSA, IRS Criminal Investigation, and the U.S. Secret Service. The case was prosecuted by the U.S. Attorney’s Office for Rhode Island.

The Employee Retirement Income Security Act protects 401(k) plans and other benefit plans. Employers and workers can reach EBSA toll-free at 866-444-3272 for help with problems related to private sector retirement and health plans. Additional information can be found at http://www.dol.gov/ebsa.

# # #

Media Contacts:

Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number: 18-176-BOS/BOS 2018-018
U.S. Department of Labor Reaches Settlements with Maine Bakery To Pay $94,167 in Back Wages and Penalties

MANCHESTER, NH – The U.S. Department of Labor has reached settlements with Bread and Roses Bakery Inc. of Ogunquit, Maine, after the Department found the company violated terms of the H-2B nonimmigrant visa program under the Immigration and Nationality Act and the minimum wage, overtime, recordkeeping, and child labor requirements of the Fair Labor Standards Act (FLSA). Under the agreements, Bread and Roses will pay $73,115 in back wages and damages to employees, and $21,052 in penalties.

The H-2B program permits employers to hire nonimmigrant foreign workers to perform temporary nonagricultural labor or services in the United States. A Wage and Hour Division investigation found that Bread and Roses Bakery failed to comply with the H-2B program’s requirement to recruit American workers before hiring foreign workers when it provided inaccurate pay rates in advertising for counter attendants. The employer advertised rates of $8.79-to-$9.09 per hour, but actually paid the H-2B employees $10-to-$13 per hour. U.S. workers may have applied for these jobs had accurate rates been provided.

Bread and Roses Bakery also employed H-2B workers in an unapproved job classification when it hired 21 H-2B employees to work as counter attendants, but actually employed many of them as bakers. The employer also failed to pay the legally required prevailing wage to nine employees.

The investigation also found that the bakery violated the FLSA when it paid 45 employees straight time for overtime. Minimum wage violations resulted when the employer failed to reimburse 10 H-2B employees for visa expenses. Additionally, Bread and Roses employed one minor in violation of the hours restrictions applicable to 14- and 15-year-old employees, and failed to maintain an accurate record of the hours worked by employees.

“This case highlights our commitment to protecting U.S. workers by ensuring that employers provide them the best opportunity for employment before using nonimmigrant visa programs,” said the Department’s Wage and Hour Division Northern New England District Director Daniel Cronin.

“This agreement also demonstrates our commitment to ensuring that all workers are paid what they have earned and leveling the playing field for law-abiding employers,” said Merle Hyman, Counsel for Wage and Hour Programs in the office of the Regional Solicitor of Labor.

The Division’s Northern New England District Office conducted the investigation. Attorney Sheila Gholkar of the Boston Regional Office of the Solicitor litigated the case for the Division.

For more information about the H-2B program, contact the Division’s toll-free helpline at 866-4US-WAGE (487-9243) or its Northern New England District Office at 603-666-7716. Information also is available at http://www.dol.gov/whd.

U.S. Department of Labor news materials are accessible at http://www.dol.gov. The Department’s Reasonable Accommodation Resource Center converts departmental information and documents into alternative formats, which include Braille and large print. For alternative format requests, please contact the Department at (202) 693-7828 (voice) or (800) 877-8339 (federal relay).
Administrator, Wage and Hour Division, U.S. Department of Labor v. Bread and Roses Bakery, Inc. 
Case No. 2018-TNE-00004.

Media Contacts:

James C. Lally, 617-565-2074, lally.james.c@dol.gov
Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov

Release Number: 18-106-BOS
Fairfield Restaurant to Pay $247,922 in Wages, Damages and Penalties for Overtime, Minimum Wage, and Recordkeeping Violations

HARTFORD, CT – The U.S. District Court for the District of Connecticut has entered a consent judgment and ordered a Fairfield restaurant and its owner to pay $244,930 in back wages and liquidated damages to eight employees, as part of a settlement with the U.S. Department of Labor’s Wage and Hour Division.

Division investigators found that Vinny’s of Fairfield Inc. – which does business as Vinny’s Ale House – and owner Ernst H. Buggisch failed to pay required overtime to back-of-the-house employees when they worked more than 40 hours per week. In the settlement, the company also agreed to pay $2,992 in penalties for violations of the overtime, minimum wage and recordkeeping requirements of the Fair Labor Standards Act (FLSA).

The investigation determined that the employer paid the employees overtime at straight time rates, in cash, instead of time-and-one-half their regular pay rates as the law requires. The employer also failed to maintain accurate time records, failed to produce records of the cash payments, maintained two sets of time records, and provided inaccurate records to investigators. In addition, the employer intimidated employees during the investigation, coaching them to lie to investigators. The settlement prohibits the defendants from future FLSA wage, recordkeeping, and retaliation violations.

“This settlement is about getting these employees the wages they legally earned,” said Wage and Hour Division District Director David Gerrain. “The Division encourages all employers to access the many compliance resources we offer, and avoid the liabilities that can come with breaking the law.”

“Businesses that violate the law gain a competitive advantage over law-abiding employers,” said the Department’s Regional Solicitor Michael Felsen, in Boston. “We will vigorously enforce the law to level the playing field for companies that play by the rules and to safeguard employees’ hard-earned wages.”

The Division’s Hartford District Office conducted the investigation and Wage and Hour Counsel Merle D. Hyman of the Department’s regional Office of the Solicitor litigated the case.

Employees and employers with questions about the FLSA or any of the federal wage laws administered by the Division should call the agency’s toll-free helpline at 866-4US-WAGE (487-9243). All calls are confidential. More information is available online at http://www.dol.gov/whd/.

# # #

Acosta v. Vinny’s of Fairfield LLC, doing business as Vinny’s Ale House, Ernst H. Buggisch
Case Number: 3:17-cv-02024-AWT

U.S. Department of Labor news materials are accessible at http://www.dol.gov. The Department’s Reasonable Accommodation Resource Center converts departmental information and documents into alternative formats, which include Braille and large print. For alternative format requests, please contact the Department at (202) 693-7828 (voice) or (800) 877-8339 (federal relay).
Media Contacts:

Ted Fitzgerald, fitzgerald.edmund@dol.gov, 617-565-2075
James C. Lally, lally.james.c@dol.gov, 617-565-2074

News Release

U.S. Department of Labor | Jan. 5, 2018

OSHA Cites Schnabel Foundation Company, Proposes $212,396 in Penalties

ANDOVER, MA – The U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) has cited Schnabel Foundation Company for failing to protect employees against crushing hazards while they installed permanent foundation supports beneath the Woburn Public Library. The company faces $212,396 in proposed penalties.

On July 11, 2017, OSHA opened an inspection after learning that a 2,600-pound rock dislodged from the building’s foundation and fatally struck a Schnabel employee.

The contractor was also cited for failing to instruct employees to recognize and avoid unsafe conditions while working beneath the foundation. OSHA cited the company for similar hazards in 2015 when an employee was pinned by a granite block that came loose.

“Failure to supply proper safeguards and training has led to a needless and avoidable death,” said OSHA Andover Area Office Director Anthony Covello. “It is imperative that employers train their employees, and equip them with the necessary tools to prevent crushing and other hazards.”

The company has 15 business days from receipt of its citations and penalties to accept the findings, request an informal conference with OSHA’s area director, or contest the findings before the independent Occupational Safety and Health Review Commission.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA’s role is to ensure these conditions for America’s working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit http://www.osha.gov.

# # #

Media Contacts:

Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov.
James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number: 17-1714-BOS/BOS 2018-004
Maine Vegetable Farm Pays $10,164 Penalty and Amends Hiring and Pay Practices in U.S. Department of Labor Agreement

MANCHESTER, NH – The U.S. Department of Labor has reached a settlement with a Maine vegetable farm after an investigation found that it willfully violated terms of the H-2B non-immigrant visa program under the Immigration and Nationality Act (INA). Under the settlement agreement, Green Thumb Farms Inc. of Fryeburg has paid $10,164 in penalties to the Department and agreed to comply with the law, applicable H-2B regulations, and the obligations agreed and attested to in all of its temporary employment certification applications.

The H-2B program permits employers to temporarily hire nonimmigrant foreign workers to perform nonagricultural labor or services in the U.S. for a limited period of time.

Green Thumb Farms had hired foreign H-2B workers to pack potatoes. The employer failed to comply with the required recruitment of persons in the U.S., including contacting all former U.S. employees hired for potato packing in previous seasons. It also did not offer persons in the U.S. the same transportation and housing it had offered to H-2B persons. In addition, the employer misrepresented in its application that employees would be working only 40 hours per week, when they regularly worked 50 hours per week.

“The protections for U.S. employees that stem from the law’s requirements to contact, recruit, and offer them employment are clear and known to employers who request to hire under the H-2B visa program.” said the Department’s Wage and Hour Division Northern New England District Director Daniel Cronin.

“This case is important because it highlights the Department’s commitment to enforcing the requirement for employers to recruit and hire qualified, available persons in the U.S. before requesting permission to hire foreign workers. The H-2B program safeguards American employees against displacement and also protects vulnerable foreign workers from being paid less than the prevailing wage or otherwise working under substandard conditions,” said Merle Hyman, Counsel for Wage and Hour Programs in the office of the Regional Solicitor of Labor.

The Division’s Northern New England District Office conducted the investigation. Attorney Sheila Gholkar of the Boston Regional Office of the Solicitor litigated the case for the Division. For more information about the H-2B program, contact the Division’s toll-free helpline at 866-4US-WAGE (487-9243) or its Northern New England District Office at 603-666-7716. Information also is available at http://www.dol.gov/whd.


# # #
Media Contacts:

James C. Lally, 617-565-2074, lally.james.c@dol.gov
Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov

Release Number: 17-1536-BOS
News Release

U.S. Department of Labor | Dec. 21, 2017

New Hampshire Man Pleads Guilty to Obstruction of Justice in Connection with U.S. Department of Labor Wage and Hour Investigation, and Lawsuit

CONCORD, NH – A New Hampshire man has pleaded guilty in federal court to one count of obstruction of justice in connection with a U.S. Department of Labor wage and hour investigation and litigation. It is believed to be the first federal criminal prosecution arising from a Department wage and hour investigation in New Hampshire.

Kevin Corriveau, owner and operator of Kevin Corriveau Painting Inc. of Nashua, was the subject of an investigation by the Department’s Wage and Hour Division and a subsequent civil lawsuit and consent judgment filed by the Department’s Office of the Solicitor for alleged violations of the Fair Labor Standards Act (FLSA).

In his plea, on Dec. 15, 2017, Corriveau admitted that he caused an employee of his company to provide false information to investigators from the Department’s Wage and Hour Division in 2009 and 2011 regarding the extent of overtime hours worked by employees of the company.

From 2007 through April 2011, Corriveau had been directing employees to report only non-overtime work on payroll and time records to conceal FLSA overtime violations from being found in those records. In 2011, Corriveau himself also falsely stated to investigators that his employees did not work overtime on a Needham, Massachusetts, construction project.

In 2013 – in connection with the civil suit filed against him – Corriveau knowingly created and provided the Department’s attorneys with fraudulent invoices and an altered change order that falsely stated that his employees did not work overtime on the Needham project.

Corriveau is scheduled to be sentenced on March 26, 2018, according to Acting United States Attorney John J. Farley of the District of New Hampshire.

The Department’s Wage and Hour Division and Office of the Inspector General investigated the case with assistance from the Department’s Office of the Solicitor and Employee Benefits Security Administration.

The criminal case is being prosecuted by Assistant U.S. Attorney Robert M. Kinsella and Special Assistant U.S. Attorney Scott Miller. Scott Miller is also a Senior Trial Attorney at the Labor Department’s Office of the Solicitor in Boston, Massachusetts.

Media Contacts:
Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number: 17-1690-BOS
OSHA Cites Connecticut Contractor for Mercury and Respirator Hazards at New Hampshire Demolition Site

CONCORD, NH – The U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) has cited Manafort Brothers, Inc. for exposing workers to mercury and respirator hazards while they dismantled a mercury boiler at a Portsmouth worksite. The Plainville, Connecticut, construction contractor faces penalties of $329,548.

OSHA’s inspection – in response to workers’ complaints – found that employees were being exposed to high levels of mercury during the demolition and Manafort Brothers Inc. was not taking steps to reduce those exposures to below permissible levels. In addition, the company did not evaluate the respirator program’s effectiveness in protecting workers against exposures and did not consult with the employees to identify and correct any respirator problems.

“These hazards were certainly preventable,” said OSHA’s New Hampshire Area Director Rosemarie O. Cole. “High mercury exposure can result in permanent nervous system and kidney damage. It is critically important that employers remain vigilant and ensure that effective safeguards are in place to prevent and minimize workers’ exposures.”

In total, OSHA cited the company for two willful and six serious violations concerning mercury, respirators, protective clothing, and sanitary conditions.

The company has 15 business days from receipt of its citations and penalties to comply, request an informal conference with OSHA’s area director, or contest the findings before the independent Occupational Safety and Health Review Commission.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA’s role is to ensure these conditions for America’s working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov.

###

Media Contacts:

Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
Jim Lally, 617-565-2074, Lally.James.C@dol.gov

Release Number: 17-1583-BOS
Packaging Company Pays $420,000 to 205 Employees In Settlement Agreement with U.S. Department of Labor

Settlement Follows Joint Investigation with Massachusetts Attorney General

BOSTON, MA – A Dudley contract packager of aerosol containers and the U.S. Department of Labor have reached a settlement agreement resolving alleged violations of the federal Fair Labor Standards Act (FLSA). Shield Packaging Co. Inc. has paid $210,227 and an equal amount in liquidated damages to 205 employees and pledged future compliance with the FLSA.

The Department’s Wage and Hour Division found that the company failed to pay the employees overtime based on their regular pay rates between April 1, 2015, and Oct. 31, 2016. The company also failed to pay employees for – and keep proper records of – the time they spent putting on and removing safety equipment required for their jobs. The FLSA requires that employees receive one-and-one-half times their regular rates of pay for hours they work beyond 40 in a workweek and that employers maintain accurate records of employees’ wages and work hours.

The Division’s investigation was part of a joint enforcement effort with the Fair Labor Division of the Massachusetts Attorney General’s Office. The state’s investigation identified alleged violations of state laws including failure to pay minimum wage, hindrance, and paystub violations, for which the company will pay more than $564,000 in wages and penalties.

“This cooperative federal-state effort and the resulting settlements compensate these employees for wages they rightfully earned but did not receive. As the Department of Labor enforces the Fair Labor Standards Act, we encourage all employers to take advantage of the Division’s education and outreach efforts to help them understand their responsibilities and how to properly comply with the law,” said the Wage and Hour Division’s Northeast Regional Administrator Mark Watson Jr.

Senior Trial Attorney Susan Salzberg of the Department’s Boston Regional Solicitor’s Office provided legal support in this matter.

The Wage and Hour Division is committed to providing employers with the tools they need to understand and comply with the variety of labor laws the Division enforces in a variety of languages. It offers useful resources ranging from an interactive E-laws advisor to a complete library of free, downloadable workplace posters. In addition, the Division’s Community Outreach and Resource Planning Specialists conduct ongoing outreach activities to educate stakeholders, including employers, employees, business and labor groups and professional associations, among others, with accessible, easy-to-understand information about their rights and responsibilities.

For more information about the FLSA, contact the Division’s toll-free helpline at 866-4US-WAGE (487-9243) or its Boston District Office at 617-624-6700. Information also is available at http://www.dol.gov/whd.

U.S. Department of Labor news materials are accessible at http://www.dol.gov. The Department’s Reasonable Accommodation Resource Center converts departmental information and documents into alternative formats, which include Braille and large print. For alternative format requests, please contact the Department at (202) 693-7828 (voice) or (800) 877-8339 (federal relay).
Media Contacts:

Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number: 17-1539-BOS
Pizza Restaurants and Owner to Pay Employees $53,000 for Wage Violations, and $14,000 to Former Employee Who Refused to Make False Statements

HARTFORD, CT – A Manchester-based chain of pizza restaurants and its owner will pay $26,575 in back wages and an equal amount in liquidated damages to employees to rectify violations of the federal Fair Labor Standards Act (FLSA) found by the U.S. Department of Labor. The restaurant chain and owner will also pay $14,000 in damages to a former employee who refused to provide false information to investigators.

The U.S. District Court for the District of Connecticut entered a consent judgment ordering Chemro, LLC – doing business as People’s Choice – and its owner, Robert Y. Mercier II, to comply with the FLSA and to refrain from discharging or discriminating against employees who initiate or cooperate with an FLSA investigation. They will also pay $1,168 in civil money penalties to the Department.

An investigation by the Department’s Wage and Hour Division found that the defendants allegedly violated the FLSA’s minimum wage, overtime, and recordkeeping requirements between February 2013 and November 2015. Specifically, they did not pay one-and-one-half their regular rates of pay to three employees who worked overtime hours of up to 75 hours per week and took payroll deductions for cash register shortages that resulted in one employee receiving less than the minimum wage. The unpaid overtime for this period includes wages and damages that the defendants concealed from the Division during a prior investigation in 2015. The previously hidden unpaid overtime dates back to February 2013.

The defendants also maintained and supplied false time and payroll records and statements to investigators during the current investigation and a prior investigation in 2015. The records included receipts that falsely stated that the employees received back wages. Investigators also found that between about December 2015 and April 2016, Mercier continually pressured one employee to make false statements to investigators, leading the employee to believe he had no choice but to resign. In its complaint, the Department charged that this behavior by the employer resulted in the worker’s constructive discharge, in violation of the FLSA’s anti-retaliation provision, the first such claim made by the Department in New England.

“This resolution secures for these hard-working employees the proper compensation they should have received in the first place,” said Wage and Hour’s Hartford District Director David Gerrain. “Employers who knowingly violate or attempt to evade the law gain an unfair competitive advantage over responsible employers who honor their obligations.”

“Intimidating employees – or in any way suggesting they should make false statements or not cooperate with legitimate investigations – is illegal and has consequences,” said Regional Solicitor of Labor Michael Felsen.
The FLSA requires that most employees receive one-and-one-half times their regular rates of pay when they work more than 40 hours in a work week and that employers maintain adequate and accurate records of employees’ wages and work hours.

The Division’s Hartford District Office investigated, while Senior Trial Attorney Scott M. Miller in Boston’s solicitor’s office litigated the case.

The Division is committed to providing employers with the tools they need to assist them – in a variety of languages – in fulfilling their obligation to understand and comply with the variety of laws the Division enforces. It offers useful resources ranging from an interactive E-laws advisor to a complete library of free, downloadable workplace posters. In addition, the Division’s Community Outreach and Resource Planning Specialists conduct ongoing outreach activities to educate stakeholders, including employers, employees, business and labor groups, and professional associations, among others, with accessible, easy-to-understand information about their rights and responsibilities.

For more information about the FLSA and other federal wage laws, call the Wage and Hour Division’s toll-free helpline at 866-4US-WAGE (487-9243). Information also is available at http://www.dol.gov/whd.

###

Acosta v. Chemro LLC d/b/a People’s Choice, Robert Y. Mercier II.  
Civil Action Number: 3:17-cv-01719-AWT.

**Media Contacts:**

Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov 
James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number: 17-1436-BOS
News Release
U.S. Department of Labor | Nov. 9, 2017

Massachusetts Restaurant to Pay $282,264 for Wage and Hour Violations

BOSTON, MA – A Chestnut Hill restaurant and its owner will pay $141,132 in back wages and an equal amount in liquidated damages to 15 employees in a settlement with the U.S. Department of Labor. Café Misono Inc. and owner Kenneth Lee have also amended their pay practices to comply with federal Fair Labor Standards Act (FLSA) requirements. They will also pay a $7,000 civil money penalty to the Department.

The Department’s Wage and Hour Division found that the company and its owner failed to comply with the FLSA’s minimum wage, overtime, and recordkeeping requirements between March 31, 2013, and March 28, 2016. Specifically, they failed to pay the federal minimum wage of $7.25 per hour to dishwashers who worked more than 60 hours per week and a server who worked about 17 hours per week for tips only. They also failed to pay overtime to cooks, dishwashers, and servers who worked more than 40 and up to 60 hours per week. Additionally, they supplied inaccurate information to the Division concerning the employees’ working hours.

The FLSA requires that employees receive one-and-one-half times their regular rates of pay when they work more than 40 hours in a workweek and that employers maintain adequate and accurate records of employees’ wages and work hours.

“Employers that choose to underpay their workers, and then attempt to mask their behavior by providing inaccurate information to the government, are doubly violating the law. This hurts workers; it hurts taxpayers, and it hurts responsible employers who obey the law,” said Regional Solicitor of Labor Michael Felsen.

“The Wage and Hour Division is fully committed to ensuring that workers receive the wages they have rightfully earned. Violations such as these can be avoided if employers know and heed the requirements of the law,” said Division District Office Director Carlos Matos, in Boston.

The Department’s consent judgment was filed on Oct. 16, 2017. Judge Rya W. Zobel of the U.S. District Court for the District of Massachusetts signed the judgement on Oct. 23, 2017.

The Wage and Hour Division’s Boston District Office conducted the investigation. Senior Trial Attorney James Glickman of the Boston Regional Office of the Solicitor litigated the case for the Division.

The Division is committed to providing employers with the tools they need to understand and comply with the variety of labor laws the Division enforces in a variety of languages. It offers useful resources ranging from an interactive E-laws advisor to a complete library of free, downloadable workplace posters. The Division’s Community Outreach and Resource Planning Specialists conduct ongoing outreach activities to educate stakeholders, including employers, employees, business and labor groups and professional associations, among others, with accessible, easy-to-understand information about their rights and responsibilities.

For more information about the FLSA, contact the Division’s toll-free helpline at 866-4US-WAGE (487-9243) or its Boston District Office at 617-624-6700. Information also is available at http://www.dol.gov/whd. U.S. Department of Labor news materials are accessible at http://www.dol.gov. The Department’s Reasonable Accommodation Resource Center converts departmental information and documents into alternative formats, which include Braille and large print. For alternative format requests, please contact the Department at (202) 693-7828 (voice) or (800) 877-8339 (federal relay).
Acosta v. Café Misono Inc. and Kenneth Lee Inc., et al, CA No.17-cv-11993-RWZ.

# # #

Media Contacts:

James C. Lally, 617-565-2074, lally.james.c@dol.gov
Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov

Release Number: 17-1424-BOS
U.S. Department of Labor Cites Lynnway Auto Auction For Exposing Employees to Numerous Hazards

BOSTON, MA – The U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) cited Lynnway Auto Auction Inc. for electrical, struck-by, and other hazards at its auto auction facility in Billerica.

On May 3, 2017, OSHA inspected the facility after five people were struck by a sport utility vehicle and died as a result of their injuries. The agency issued 16 citations to the company for motor vehicle hazards, blocked exit routes, violations of the hazard communication standard, and recordkeeping deficiencies. Lynnway faces proposed penalties totaling $267,081.

“This company was cited in 2014 for exposing employees to similar hazards,” said OSHA Regional Administrator Galen Blanton, in Boston. “It is critically important that employers remain vigilant about safety and implement required safety measures.”

OSHA also conducted a joint employer inspection, and determined that temporary workers from TrueBlue Inc. – doing business as PeopleReady – were also exposed to struck-by hazards. The agency cited the Dover, New Hampshire, staffing firm for one serious violation for a struck-by hazard, and proposed a penalty totaling $12,675.

View the citations for Lynnway Auto Auction Inc. and TrueBlue Inc. dba PeopleReady.

The companies have 15 business days from receipt of their citations and penalties to comply, request an informal conference with OSHA’s area director, or contest the findings before the independent Occupational Safety and Health Review Commission.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA’s role is to ensure these conditions for America’s working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov.

Media Contacts:
Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
Jim Lally, 617-565-2074, Lally.James.C@dol.gov

Release Number: 17-1460-BOS
U.S. Department of Labor and Massachusetts Packaging Company and Staffing Agencies Reach Agreements to Enhance Workplace Safeguards

SPRINGFIELD, MA – The U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) and Shield Packaging Co. Inc., ASI Staffing Group Corp., and Southern Mass Staffing have reached agreements to correct hazards and enhance safety following a May 2016 incident in which an employee was injected with a flammable propellant gas.

OSHA found that the Dudley, Massachusetts, company – which packages aerosol containers – failed to implement required procedures to lock out the machine’s power sources or train the employee on how to recognize and avoid the hazard.

Under the terms of the settlement agreement, Shield Packaging will pay $150,000 in penalties; provide OSHA with documentation that all hazards have been corrected; retain a professional engineer to approve the design and installation of a safety interlock on the machine that injured the worker; retain a qualified safety consultant to perform a comprehensive inspection of the plant; and develop a workplace safety and health program.

OSHA also cited ASI Staffing Group Corp. of Leominster, and Southern Mass Staffing of Worcester; the temporary staffing agencies that supplied more than half of the workers at Shield Packaging. ASI Staffing agreed to pay $12,471 in penalties, implement comprehensive safety and health measures at all host companies, and delineate safety responsibilities between ASI and its host companies. Southern Mass Staffing agreed to pay a $12,222 penalty, attend safety and health training, implement a written safety and health management system, and hire an outside safety consultant.

“The Shield Packaging Co. Inc., ASI Staffing Group Corp., and Southern Mass Staffing are jointly responsible for maintaining a safe work environment for temporary workers,” said OSHA Area Director Mary Hoye. “These settlements will help ensure that a comprehensive safety program will be developed to protect all workers – permanent and temporary – from injuries and illnesses.”

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA’s role is to ensure these conditions for America’s working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit http://www.osha.gov.

# # #

Media Contacts:
Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number: 17-1275-BOS
Massachusetts Seafood Processor
To Pay Back Wages and Damages to 60 Employees

BOSTON, MA – A Gloucester seafood processor will pay $90,000 in back wages and an equal amount in liquidated damages to 60 employees to rectify violations identified during an investigation by the U.S. Department of Labor’s Wage and Hour Division.

The U.S. District Court for the District of Massachusetts entered a consent judgment ordering Intershell International Corp., and its owners Yibing Gao-Rome and Monte Rome, to comply with the Fair Labor Standards Act (FLSA) and to refrain from discharging or discriminating against employees who initiate or cooperate with an FLSA investigation. They will also pay $28,050 in civil money penalties to the Department.

“This resolution secures proper compensation for these hard-working employees, and helps ensure that the law will be followed in the future,” said Wage and Hour District Director Carlos Matos.

In 2016, the Department’s Office of the Solicitor filed suit against the defendants alleging that they did not pay overtime to employees – as most were paid through a series of temporary staffing agencies – who cut, cleaned, and packed seafood when they worked more than 40 hours during a work week. The defendants also failed to maintain and provide adequate and accurate payroll and hours records, provided inaccurate records to investigators, and improperly deducted from certain employees’ pay for the cost of cleaning their uniforms.

“Employers may not avoid the obligations they owe their employees – gaining an unfair advantage over employers who honor those obligations – by attempting to shift their legal responsibilities to temporary agencies. It’s critical that host companies acknowledge and comply with their responsibilities to these workers,” said regional Solicitor of Labor Michael Felsen.

View the consent judgment.

The FLSA requires that most employees receive one-and-one-half times their regular rates of pay when they work more than 40 hours in a work week and that employers maintain adequate and accurate records of employees’ wages and work hours.

The Division’s Boston District Office investigated, while Senior Trial Attorney James Glickman and Trial Attorney Sheila Gholkar in Boston’s solicitor’s office litigated the case.

The Division is committed to providing employers with the tools they need to assist them – in a variety of languages – in fulfilling their obligation to understand and comply with the variety of laws the Division enforces. It offers useful resources ranging from an interactive E-laws advisor to a complete library of free, downloadable workplace posters. In addition, the Division’s Community Outreach and Resource Planning
Specialists conduct ongoing outreach activities to educate stakeholders, including employers, employees, business and labor groups, and professional associations, among others, with accessible, easy-to-understand information about their rights and responsibilities.


###

Civil Action Number: 1:16-cv-11999

**Media Contacts:**

Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number: 17-1379-BOS
Pizza Restaurants Amend Payroll Practices; Pay $584K in Back Wages, Damages to 73 Employees in U.S. Department of Labor Agreement

BOSTON – An enterprise operating six limited-service restaurants with pizza delivery in Worcester, Shrewsbury, and Auburn has paid $292,016 in back wages and an equal amount in damages for 73 employees. It has also amended its payroll practices to comply with federal Fair Labor Standards Act requirements in an agreement with the U.S. Department of Labor.

Investigators in the Department’s Wage and Hour Division found that Tavco Chandler Street Inc. and five associated companies – all doing business as Golden Pizza – failed to comply with the FLSA’s overtime and recordkeeping requirements between July 1, 2013 and July 31, 2016. The company failed to record all the hours employees had worked, and failed to pay them overtime at time-and-one-half when they worked more than 40 hours in a week. The Division found the recent violations to be willful, as the company was previously investigated twice in 2011.

“This agreement recovers back wages for the workers who earned them. Golden Pizza’s prompt payment and agreement to a consent judgment ensures that its employees will receive all the wages they are due now, and in the future,” said Carlos Matos, director of the Division’s Boston District Office. “Unfortunately, overtime and recordkeeping violations are not uncommon. Employers are obligated to comply with the Fair Labor Standards Act, and are encouraged to contact us with any questions they may have.”

The Division has received the back wages and is in the process of distributing them to the employees. In the consent judgment, Golden Pizza neither admits nor denies the findings of the Division’s investigation.

The Department’s complaint was filed on May 12, 2017. The consent judgment was signed by Chief Magistrate David H. Hennessy of the U.S. District Court for the district of Massachusetts on June 20, 2017. Acosta v. Tavco Auburn St., Inc. et al, CA No. 4:17-CV-40070.

The FLSA requires that employees receive one-and-one-half times their regular rates of pay when they work more than 40 hours in a workweek and that employers maintain adequate and accurate records of employees’ wages and work hours.

The Division is committed to providing employers with the tools they need to understand and comply with the variety of labor laws the Division enforces in a variety of languages. It offers useful resources ranging from an interactive E-laws advisor to a complete library of free, downloadable workplace posters. In addition, the Division’s Community Outreach and Resource Planning Specialists conduct ongoing outreach activities to educate stakeholders, including employers, employees, business and labor groups and professional associations, among others, with accessible, easy-to-understand information about their rights and responsibilities.
For more information about the FLSA, contact the Division’s toll-free helpline at 866-4US-WAGE (487-9243) or its Boston District Office at 617-624-6700. Information also is available at http://www.dol.gov/whd.

# # #

Media Contact:

James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number: 17-1020-BOS
Consent judgment compensates three Hartford health center employees fired after concerns were raised about tuberculosis exposure

HARTFORD, Conn. – When a Hartford health care facility failed to adequately respond to a tuberculosis exposure in December 2011, its interim senior vice-president for operations, director of nursing and its coordinator of its Healthy Start program actively tried or were associated with efforts to raise awareness among fellow employees, management and the public about the potential dangers. Among other things, they cooperated with public and workplace health agencies that investigated.

Two months later – on Feb. 24, 2012 – Charter Oak Health Center and its then-chief executive officer, Alfreda D. Turner, terminated the three employees. A subsequent whistleblower investigation by the U.S. Department of Labor’s Occupational Safety and Health Administration found that the terminations were unwarranted as the employees’ actions were protected under the Occupational Safety and Health Act of 1970.

The department, the center and Turner have now agreed to a settlement, and a federal court consent judgment and order that provides the center and Turner will compensate the three former employees for lost wages and take other corrective action.

“It’s critical to workplace safety and health that employee voices not be stifled” said Galen Blanton, OSHA’s New England regional administrator.

Added Michael Felsen, the department’s New England regional solicitor, “We remind companies that employees have a legal right to raise health and safety concerns about their workplaces without fear of retaliation, and that it’s in the interest of everyone to address those concerns.”

Filed in the U.S. District Court for the District of Connecticut, the consent judgment stipulates corrective actions, including payment of lost wages of $85,000, $30,000, and $10,000, less taxes, for the three workers, neutral letters of reference, and worksite posting and individual notifications to employees about their rights as a whistleblower.

The whistleblower investigation was conducted by OSHA’s regional Office of Whistleblower Protection Programs in Boston. Trial attorney Mark A. Pedulla of the department’s regional Office of the Solicitor in Boston provided legal services for OSHA. The department’s complaint, defendants’ answers and consent judgment were filed between June 12 and 14, 2017. The court signed the consent judgment on June 16, 2017.

Employers are prohibited from retaliating against employees who raise various protected concerns or provide workplace health and safety information to the employer or to the government. OSHA enforces the whistleblower provisions of the OSH Act and 21 other statutes protecting employees who report violations of various airline, commercial motor carrier, consumer product, environmental, financial reform, food safety,
health care reform, nuclear, pipeline, worker safety, public transportation agency, railroad, maritime and securities laws.

Employees who believe that they have been retaliated against for engaging in protected conduct may file a complaint with the Secretary of Labor to request an investigation by the agency’s Whistleblower Protection Program. Detailed information on employee whistleblower rights, including fact sheets, is available at http://www.whistleblowers.gov.

Under the OSH Act, employers are responsible for providing safe and healthful workplaces for their employees. OSHA’s role is to ensure these conditions for America’s working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit http://www.osha.gov.

###

Acosta v. Charter Oak Health Center, Inc. and Alfreda D. Turner
Civil Action Number: 3:17-cv-00959-SRU

**Editor’s note:** The U.S. Department of Labor does not release names of employees involved in whistle-blower complaints.

**Media Contacts:**

Leni Fortson, 215-861-5102, uddyback-fortson.lenore@dol.gov
Joanna Hawkins, 215-861-5101, hawkins.joanna@dol.gov

Release Number: 17-603-BOS
News Release

U.S. Department of Labor | May 10, 2017

Court upholds OSHA finding that railroad company violated Maine employee’s whistleblower rights

BOSTON – A federal appeals court has affirmed that Pan Am Railways, Inc., must pay $260,000 in punitive and compensatory damages to – and take corrective action on behalf of – an employee who was subjected to retaliation for filing a Federal Railroad Safety Act whistleblower complaint.

The U.S. Department of Labor’s Occupational Safety and Health Administration investigated the complaint, filed in 2011, against the North Billerica-based commercial railroad and found the railroad retaliated against the employee, who works in a rail yard in Waterville, Maine, when it charged him with dishonesty in connection with his FRSA complaint. The employee had tried to report an injury.

The department ordered the railroad to take corrective actions and pay the affected employee $10,000 in compensatory damages and $40,000 in punitive damages. Pan Am Railways appealed, and in 2014, an administrative law judge upheld the agency’s finding of retaliation and increased the amount of punitive damages to $250,000. The railroad again appealed, to the department’s Administrative Review Board, which affirmed the judge’s order. It then appealed to the U.S. Court of Appeals for the First Circuit, which denied the railroad’s petition on April 21, 2017.

“This case is a strong reminder that our whistleblower laws prohibit reprisals against employees who file whistleblower complaints, report workplace injuries and illnesses, or raise awareness of hazardous safety or security conditions,” said Galen Blanton, OSHA’s New England regional administrator.

“A safe and healthy workplace is a goal we should all aspire to achieve. Discriminatory actions by employers, including but not limited to retaliation, can freeze employees into silence. Hazardous conditions can go unreported as a result, and lead to avoidable human and financial costs,” said Michael Felsen, the department’s regional solicitor of labor for New England.

OSHA enforces the whistleblower provisions of the FRSA and 21 other statutes protecting employees who report violations of various airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, health care reform, nuclear, pipeline, worker safety, public transportation agency, railroad, maritime and securities laws.

Employers are prohibited from retaliating against employees who raise various protected concerns or provide protected information to the employer or to the government. Employees who believe that they have been retaliated against for engaging in protected conduct may file a complaint with the Secretary of Labor to request an investigation by OSHA’s Whistleblower Protection Program. Detailed information on employee whistleblower rights, including fact sheets, is available at http://www.whistleblowers.gov.
Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit http://www.osha.gov.

# # #

Editor's note: The U.S. Department of Labor does not release names of employees involved in whistle-blower complaints.

Media Contacts:

Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number: 17-556-BOS
OSHA administrative law judge rules that Massachusetts companies operated as single employer at worksite where 3 workers fell

BOSTON – An administrative law judge with the independent Occupational Safety and Health Review Commission has ruled that two Massachusetts contractors – A.C. Castle Construction Co. Inc. and Daryl Provencher, doing business as Provencher Home Improvements – were operating as a single employer at a Wenham worksite when three employees were injured in October 2014.

The employees were performing residential roofing work on a ladder jack scaffold when the wooden plank on which they were standing snapped, causing them to fall 20 feet to the ground. An investigation by the U.S. Department of Labor’s Occupational Safety and Health Administration found that the wooden plank was not graded for scaffold use and its invoice made clear it was not for scaffold use. Other hazards included deficiencies with the scaffold’s components and structure and lack of fall protection for the employees.

OSHA cited A.C. Castle and Provencher as a single employer in April 2015 due to the highly integrated nature of their work operations, including common worksites and common management and supervision. A.C. Castle and Provencher contested their citations and penalties to the review commission. A.C. Castle contended that, as general contractor, it was not responsible for the safety of the workers on the jobsite, asserting that they were employed by Provencher. A trial was held before Administrative Law Judge Sharon D. Calhoun in June 2016. Judge Calhoun ruled on Feb. 28, 2017, that A.C. Castle and Provencher were operating as a single employer at the time of the inspection. A.C. Castle sought review of the decision, which the commission declined. On April 17, 2017, Judge Calhoun’s decision became a final order. A.C. Castle has 60 days from the date of that order to seek review in the 1st Circuit Court of Appeals.

The decision cited a number of factors including A.C. Castle’s checking to ensure that workers were tied off, its responsibility for safety on its worksites, its ability to fire or discipline workers, its directions to Provencher concerning the size of the crew, the presence of A.C. Castle signs and the lack of Provencher signage at worksites, and A.C. Castle’s representing that it had no subcontractors when applying for building permits. Judge Calhoun’s decision upheld the bulk of the citations and determined that A.C. Castle is responsible for paying $173,500 in penalties. The claims against Provencher were extinguished due to his death in December 2016.

“The judge’s decision, now a final order of the commission, upholds OSHA’s findings that A.C. Castle exercised a degree of control and oversight over Provencher’s operations sufficient to render the two a single employer under the Occupational Safety and Health Act, making them responsible as one entity for their employees’ safety,” said Michael Felsen, regional solicitor of labor for New England.

The full decision can be viewed here.
OSHA’s Andover Area Office conducted the original inspection. Senior Trial Attorney James Glickman of the Boston regional solicitor’s office litigated the case for OSHA.

To ask questions, obtain compliance assistance, file a complaint, or report amputations, eye loss, workplace hospitalizations, fatalities or situations posing imminent danger to workers, the public should call OSHA's toll-free hotline at 800-321-OSHA (6742) or the nearest OSHA area [office](http://www.osha.gov).

Under the OSH Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA’s role is to ensure these conditions for America’s working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit [http://www.osha.gov](http://www.osha.gov).

# # #

Secretary of Labor v. AC. Castle Construction Co., Inc./Daryl J. Provencher, d/b/a Provencher Home Improvement.

OSHRC Docket Number: 15-0706.

**Media Contacts:**

Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number: 17-399-BOS
Bay State fish processors agree to consent judgment, pay employees damages

BOSTON – The U.S. Department of Labor has secured a consent judgment in federal court ordering two Gloucester-based fish processors – Zeus Packing Inc. and Cape Ann Seafood Exchange Inc. – and the companies’ owner Kristian Kristensen to pay over $200,000 in liquidated damages to more than 100 employees to resolve violations of the Fair Labor Standards Act.

An investigation by the department’s Wage and Hour Division found the defendants violated the FLSA’s overtime and recordkeeping requirements from October 2011 through September 2014, and owed 132 employees $203,998 in back wages plus an equal amount in liquidated damages.

The companies and Kristensen paid the back wages in December 2015, but refused to pay the damages and civil money penalties assessed for the violations. As a result, the department filed suit in the U.S. District Court for the District of Massachusetts in March 2016 to recover those amounts. After almost a year of litigation and negotiation, the defendants agreed to settle the matter by consent judgment.

In addition to requiring payment of $203,998 in liquidated damages covering the investigative period, the judgment also orders the defendants to pay $7,215 in back wages plus an equal amount in liquidated damages to the employees, on account of violations committed after the close of the investigation, and $29,500 in civil money penalties to the department. The judgment also restrains the defendants from future violations of the FLSA’s overtime and recordkeeping requirements.

“Employers are best served by recognizing that, as a general rule, if they fail to pay workers the proper minimum wage and overtime pay, they will be liable to pay double,” said Michael Felsen, regional solicitor for New England. “As this case demonstrates, the department takes that employer responsibility under the law seriously.”

“The Wage and Hour Division is committed to providing companies with the tools they need to understand and comply with a variety of labor laws,” said Mark Watson, the division’s northeast regional director.

The division offers useful resources ranging from an interactive Employment Laws Assistance for Workers and Small Businesses advisor to a complete library of free, downloadable workplace posters. Information is available in a variety of languages. In addition, the division’s Community Outreach and Resource Planning Specialists conduct ongoing outreach activities to educate businesses, professional associations, labor groups and others with easy-to-understand information about rights and responsibilities.

The division’s Boston District Office conducted the original investigation. Attorneys James Glickman and Sheila Gholkar litigated the case for the department.

For more information about federal wage laws administered by the Wage and Hour Division, call the agency's toll-free helpline at 866-4US-WAGE (487-9243). Information also is available at http://www.dol.gov/whd/.

U.S. Department of Labor news materials are accessible at http://www.dol.gov. The department’s Reasonable Accommodation Resource Center converts departmental information and documents into alternative formats, which include Braille and large print. For alternative format requests, please contact the department at (202) 693-7828 (voice) or (800) 877-8339 (federal relay).
Hugler v. Zeus Packing Inc., Cape Ann Seafood Exchange Inc. and Kristian Kristensen
Civil Action Number: 16-10442-DPW

Media Contacts:

Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
James C. Lally, 617-565-2075, lally.james.c@dol.gov

Release Number: 17-398-BOS
Employer in fatal Boston trench collapse did not provide safety training and basic safeguards for employees, OSHA finds

Atlantic Drain Service Co. Inc. cited for 18 violations

BOSTON – Robert Higgins and Kelvin Mattocks died on Oct. 21, 2016 in Boston, when the approximately 12-foot deep trench in which they were working collapsed, breaking an adjacent fire hydrant supply line and filling the trench with water in a matter of seconds.

An investigation by the U.S. Department of Labor’s Occupational Safety and Health Administration found that their employer, Atlantic Drain Service Co. Inc., failed to provide basic safeguards against collapse and did not train its employees – including Higgins and Mattocks – to recognize and avoid cave-in and other hazards.

“The deaths of these two men could have and should have been prevented. Their employer, which previously had been cited by OSHA for the same hazardous conditions, knew what safeguards were needed to protect its employees but chose to ignore that responsibility,” said Galen Blanton, OSHA’s New England regional administrator.

OSHA’s inspection determined that Atlantic Drain and owner Kevin Otto, who oversaw the work on the day of the fatalities, did not:

− Install a support system to protect employees in an approximately 12-foot deep trench from a cave-in and prevent the adjacent fire hydrant from collapsing.
− Remove employees from the hazardous conditions in the trench.
− Train the workers in how to identify and address hazards associated with trenching and excavation work.
− Provide a ladder at all times so employees could exit the trench.
− Support structures next to the trench that posed overhead hazards.
− Provide employees with hardhats and eye protection.

As a result, OSHA has cited Atlantic Drain for a total of 18 willful, repeat, serious and other-than-serious violations of workplace safety standards and is proposing $1,475,813 in penalties for those violations. OSHA cited Atlantic Drain trenching worksites for similar hazards in 2007 and 2012. The full citations can be viewed here.

In February, a Suffolk County grand jury indicted Atlantic Drain and company owner, Kevin Otto, on two counts each of manslaughter and other charges in connection with the deaths. OSHA and the department’s Regional Office of the Solicitor worked with the department’s Office of the Inspector General, the Boston Police Department’s Homicide Unit and the Suffolk County District Attorney’s Office during the course of this investigation.
Atlantic Drain has 15 working days from receipt of the citations and proposed penalties to meet with OSHA’s area director, and to contest the citations before the independent Occupational Safety and Health Review Commission, if it chooses to do so.

The walls of an unprotected trench can collapse suddenly and with great force, trapping and engulfing workers before they have a chance to react or escape. Protection against cave-in hazards may be provided through shoring of the trench walls, sloping the soil, or by using a protective trench box. Employers must ensure that workers enter trenches only after adequate protections are in place to address cave-in hazards. More information about protecting employees in trenches and excavations can be found here and here.

“We want to emphasize to all employers that trenching hazards can have catastrophic consequences if they are not addressed effectively before employees enter a trench,” said Blanton.

To ask questions, obtain compliance assistance, file a complaint, or report amputations, eye loss, workplace hospitalizations, fatalities or situations posing imminent danger to workers, call OSHA’s toll-free hotline at 800-321-OSHA (6742) or the nearest OSHA Area Office.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful working conditions for their employees. OSHA’s role is to ensure these conditions for America’s working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit http://www.osha.gov.

###

**Media Contacts:**

Ted Fitzgerald, 617-565-2075, fitzgerald.edmund@dol.gov
James C. Lally, 617-565-2074, lally.james.c@dol.gov

Release Number: 17-413-BOS