

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**THE CAVANAGH LAW FIRM**  
A Professional Association

1850 NORTH CENTRAL AVENUE  
SUITE 2400  
PHOENIX, ARIZONA 85004-4527  
(602) 322-4009

David A. Selden (007499)  
dselden@cavanaghlaw.com  
Julie A. Pace (014585)  
jpace@cavanaghlaw.com  
Justin V. Niedzialek (025654)  
jniedzialek@cavanaghlaw.com  
Fax: (602) 322-4101

Joy L. Hernbrode, Esq. (020494)  
Assistant Attorney General  
Arizona Attorney General's Office  
1275 W. Washington Street  
Phoenix, AZ 85007

Co-Counsel for Respondent

**BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA**

DIVISION OF OCCUPATIONAL SAFETY &  
HEALTH OF THE INDUSTRIAL  
COMMISSION OF ARIZONA,

Complainant,

v.

STATE OF ARIZONA, ARIZONA STATE  
FORESTRY DIVISION

Respondent.

NO. L3419-317242683

**SETTLEMENT AGREEMENT**

(Assigned to the Honorable Michael  
A. Mosesso)

On July 1, 2013 through December 3, 2013, Arizona Division of Occupational Safety and Health ("ADOSH") conducted an inspection of Respondent Arizona State Forestry Division's ("ASFD" or "Respondent") worksite located at the Weaver Mountains/Yarnell Hill Fire, Yarnell, Arizona 85362 (the "Fire"), resulting in the issuance

15 JUN 03 PM 2:23 10/11/13

1 of the following citations on December 5, 2013.

2 Citation 1, Item 1 was issued for an alleged Willful Serious violation of A.R.S. §  
3 23-403 (A). Citation 1, Items 1(a) through (d) had an assessed penalty of \$70,000.00.

4 Citation 1, Item 1 was also issued with an additional penalty under A.R.S. § 23-  
5 418.01 for each employee that died, in the total amount of \$475,000.00.

6 Citation 2, Item 1 was issued for an alleged Serious violation of A.R.S. § 23-  
7 403(A). Citation 2, Items 1(a) through (c) had an assessed penalty of \$7,000.00.

8 Citation 2, Item 2 was issued for an alleged Serious violation of A.R.S. § 23-  
9 403(A). Citation 2, Items 2(a) through (b), had an assessed penalty of \$7,000.00.

10 WHEREAS, Respondent filed a timely notice of contest on December 19, 2013,  
11 with respect to the above-referenced citations, and ADOSH and Respondent now desire to  
12 settle this matter without the necessity and uncertainty of a formal hearing. Both parties  
13 agree that it is in their respective best interests and the best interests of the State of  
14 Arizona to settle this matter without going through the procedures, as well as, time and  
15 expense associated with litigating through a formal hearing.

16 WHEREAS, a dispute exists between the parties regarding the Citations, as ASFD  
17 strongly denies that there is any validity to the above-referenced Citations and strongly  
18 asserts that it has complied with all OSHA standards, that all of its actions to plan,  
19 coordinate and execute efforts to contain the Fire equaled or exceeded all industry  
20 practices for wildland firefighting, and that ADOSH's allegations are groundless.

21 WHEREAS there have been no hearings or adjudicated findings of fact or  
22 conclusions of law adjudicating whether there is any validity to any of the allegations in  
23 the Citation.

24 NOW, THEREFORE, the parties agree as follows:

25 1. This Agreement shall not be deemed as an admission of any matter and  
26 Respondent does not admit that it violated any of the standards cited.

1           2.     Information developed by ADOSH in the course of ADOSH's inspection or  
2 investigation in this case is not admissible in any court or before any administrative body  
3 except as provided in A.R.S. § 23-408(E) and this paragraph. ADOSH may waive its  
4 rights and privileges under A.R.S. § 23-408(E) in any criminal proceeding, in any case or  
5 proceeding in which the Industrial Commission of Arizona ("Commission") or State of  
6 Arizona is a party or potential party, and in any case or proceeding, the outcome of which,  
7 may affect the operations of the Commission.

8           3.     Willful Serious Citation 1, Item 1, the additional penalties under A.R.S. §  
9 23-418.01, and Serious Citation 2, Items 1 and 2 shall be amended as follows:

10           Citation 1, Item 1 Type of Violation: Unclassified

11           A.R.S. § 23-403: The employer did not furnish to each of its employees  
12 employment and a place of employment which were free from recognized  
13 hazards that were causing or likely to cause death or serious physical harm,  
14 in that firefighters were exposed to the risk of smoke, fire, serious injury or  
15 death.

16           a.     On June 30, 2013, personnel assigned to the Yarnell Hill Fire and under  
17 the management of the Arizona State Forestry Division failed to re-  
18 evaluate, re-prioritize and update fire suppression strategies and plans  
19 after fire behavior and weather conditions dramatically changed, which  
20 resulted in firefighter exposure to serious hazards resulting from a rapidly  
21 progressing, wind-driven wildland fire.

22           4.     In lieu of payment of the assessed penalties to ADOSH, Respondent agrees  
23 that it will provide enhanced safety training for incident command management,  
24 additional fire suppression activities, and improved wildland firefighter safety, and agrees  
25 to pay to the dependents of each of the 19 firefighters who experienced fatal injuries the  
26 aggregate sum of Ten Thousand Dollars (\$10,000.00) for each decedent, unless waived as  
described herein. With respect to the twelve decedents of the named Plaintiffs in *Ashcraft  
et al. v. State of Arizona, et al.*, U.S. District Court for the District of Arizona, Cause No.  
CV-14-02308, this obligation shall be satisfied upon the execution of a waiver by each

1 Plaintiff in that case. With respect to each of the remaining seven decedents, this payment  
2 obligation shall be satisfied upon payment to the spouse; or if no spouse, to the children  
3 pro rata; or if no children, to the parents; the aggregate amount of such payments shall not  
4 exceed \$70,000.00. This Settlement Agreement shall not be deemed an admission by  
5 Respondent of the existence of or merit to any of the elements, alleged grounds for, or  
6 statutory requirements for the imposition of any penalty under A.R.S. § 23-418.01.

7 5. Respondent represents as a material fact leading to the Settlement  
8 Agreement that, without admitting that Respondent violated any OSHA standards in the  
9 suppression of the Yarnell Hill Fire, Respondent is in compliance with A.R.S. § 23-403 as  
10 of the date of this settlement.

11 6. The parties agree that Respondent, by this Settlement Agreement, moves to  
12 withdraw its Notice of Contest regarding Inspection No. L3419-317242683. This  
13 withdrawal is conditioned on the presiding Administrative Law Judge, pursuant to A.A.C.  
14 R20-5-828 of the Occupational Safety and Health Rules of Procedure before the Industrial  
15 Commission of Arizona, waiving the legal effect of A.A.C. R20-5-817.

16 7. Each party agrees to bear its own attorneys' fees and costs. The parties also  
17 agree that ADOSH is not responsible for any portion of mediator Chris Skelly's fees.

18 8. This Settlement Agreement is a full and final determination of this matter  
19 and alleviates any need for and constitutes a waiver of the right to hearing or alternative  
20 determination on the merits of the citations, classifications, and stated penalties.

21 9. The parties covenant and agree that this is a settlement of a disputed matter,  
22 that the citation, classification, notification of penalty, this Settlement Agreement and/or  
23 the Administrative Law Judge's final Order, individually and/or collectively, is not an  
24 admission by ASFD nor any of its employees, that it or they violated, knowingly or  
25 otherwise, the requirements of A.R.S. § 23-403 or any standard or regulation adopted  
26 pursuant to A.R.S. § 23-410 or § 23-414 or any provision of the article enumerated and

1 A.R.S. § 23-401, et al., nor is it an admission by ASFD, nor any of its employees, that any  
2 of the matters alleged in the citations issued as a result of Inspection No. L3419-  
3 317242683 existed, nor were it or they a cause or proximate cause of any injuries or  
4 fatalities.

5 10. This Settlement Agreement is in furtherance of the purpose of industrial  
6 safety and the Arizona Occupational Safety and Health Act of 1972 and represents a full  
7 and final determination of this matter.

8 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of June, 2015.

9  
10 THE CAVANAGH LAW FIRM, P.A.

11 By: David A. Selden  
12 David A. Selden  
13 Julie A. Pace  
14 Justin V. Niedzialek  
15 Attorneys for Respondent

16 DIVISION OF OCCUPATIONAL SAFETY AND  
17 HEALTH OF THE INDUSTRIAL COMMISSION OF  
18 ARIZONA

19 By: Valli Goss  
20 Valli Goss  
21 Attorneys for Complainant  
22  
23  
24  
25  
26

LAW OFFICES  
THE CAVANAGH LAW FIRM, P.A.  
1850 NORTH CENTRAL AVE., STE. 2400  
PHOENIX, ARIZONA 85004  
(602) 322-4041

**BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA**

**CERTIFICATE OF SERVICE**

The attached FINDINGS AND ORDER APPROVING SETTLEMENT AGREEMENT was placed in, and is now a part of, the Commission file, and a copy thereof was served upon the complainant, respondent, and upon all other parties hereinafter named, on **JUNE 25, 2015**, by depositing copies in the United States mail in postage-prepaid envelopes addressed to such parties at their addresses shown below:

ARIZONA STATE FORESTRY DIVISION/STATE OF ARIZONA  
ATTN: SCOTT HUNT  
1110 W WASHINGTON ST STE 100  
PHOENIX AZ 85007

**Respondent**

JOY L HERNBRODE  
ASSISTANT ATTORNEY GENERAL  
NATIONAL RESOURCES SECTION  
1275 W WASHINGTON STREET  
PHOENIX AZ 85007  
(HAND DELIVERED)

DAVID A SELDEN  
ATTORNEY AT LAW  
1850 N CENTRAL AVE STE 2400  
PHOENIX AZ 85004-4527

**Co-Counsel for ARIZONA STATE FORESTRY DIVISION/STATE OF ARIZONA, Respondent**

OSHA, DIV OF OCCUPATIONAL SAFETY & HEALTH  
ATTN: WILLIAM WARREN, DIRECTOR  
800 WEST WASHINGTON STREET  
PHOENIX AZ 85007

**Complainant**

VALLI GOSS, ESQ.  
ICA LEGAL DEPT  
800 W WASHINGTON ST STE 303  
PHOENIX AZ 85007  
(HAND DELIVERED)

**Counsel for OSHA, DIVISION OF OCCUPATIONAL SAFETY & HEALTH, Complainant**

  
\_\_\_\_\_  
Signature of person certifying service

**BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA**

DIVISION OF OCCUPATIONAL SAFETY &  
HEALTH OF THE INDUSTRIAL  
COMMISSION OF ARIZONA,

Complainant,

v.

STATE OF ARIZONA, ARIZONA STATE  
FORESTRY DIVISION,

Respondent.

NO. L3419-317242683

**FINDINGS AND ORDER  
APPROVING SETTLEMENT  
AGREEMENT**

*Assigned to ALJ Michael A. Mosesso*

On July 1, 2013 through December 3, 2013, the Division of Occupational Safety and Health of the Industrial Commission of Arizona ("ADOSH" or "Division") conducted an inspection of the worksite of Respondent Arizona State Forestry Division ("ASFD" or "Respondent") located at the Weaver Mountains/Yarnell Hill Fire, Yarnell, Arizona 85362, Inspection No. L3419-317242683.

This inspection resulted in ADOSH issuing a Citation and Notification of Penalty to the Respondent on December 5, 2013, specifically:

1. ADOSH issued Citation 1, Item 1 alleging a Willful Serious violation of A.R.S. § 23-403(A). ADOSH assessed a monetary penalty in the amount of \$70,000.00 for Citation 1, Item 1.
2. ADOSH also issued Citation 1, Item I with an additional \$25,000.00 penalty under A.R.S. § 23-418.01 for each of the nineteen employees who died, in the total amount of \$475,000.00.
3. ADOSH issued Citation 2, Item 1 alleging a Serious violation of A.R.S. § 23-403(A). ADOSH assessed a monetary penalty in the amount of \$7,000.00 for Citation 2, Item 1.

4. ADOSH issued Citation 2, Item 2 alleging a Serious violation of A.R.S. § 23-403(A). ADOSH assessed a monetary penalty in the amount of \$7,000.00 for Citation 2, Item 2.

On December 19, 2013, Respondent filed a timely notice of contest and petition for hearing with respect to the Citations.

Hearing is set for October 13, 2015 in Phoenix.

During the proceedings, ADOSH was represented by attorney Valli Goss, and Respondent by David Selden of the Cavanagh Law Firm and Joy Hernbrode of the Arizona Attorney General's Office.

On June 3, 2015, the parties filed a Settlement Agreement stating their desire to settle this matter without the necessity of a formal hearing.

The Tribunal, having considered the entire file and all related matters, now enters the FINDINGS AND ORDER as follows:

#### FINDINGS

1. This Settlement Agreement is in furtherance of the purpose of industrial safety and the Arizona Occupational Safety and Health Act of 1972.

2. This Settlement Agreement is a full and final determination of this matter and obviates any need for and constitutes a waiver of the right to hearing or any alternate determination on the merits of the citations, classifications, and stated penalties.

#### ORDER

1. The parties' Settlement Agreement filed on June 3, 2015, including the no admission of liability provisions in paragraphs 1, 4 and 9 of the Settlement Agreement is approved, adopted in its entirety, and incorporated by reference in this Order.

2. Citation 1, Item 1, the additional penalties under A.R.S. § 23-418.01, Citation 2, Item 1, and Citation 2, Item 2 are amended by reclassifying them into one citation as follows:



Citation 1, Item 1 Type of Violation: Unclassified

A.R.S. § 23-403: The employer did not furnish to each of its employees employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm, in that firefighters were exposed to the risk of smoke, fire, serious injury or death.

- a. On June 30, 2013, personnel assigned to the Yarnell Hill Fire and under the management of the Arizona State Forestry Division failed to re-evaluate, re-prioritize and update fire suppression strategies and plans after fire behavior and weather conditions dramatically changed, which resulted in firefighter exposure to serious hazards resulting from a rapidly progressing, wind-driven wildland fire.

3. In lieu of payment of the assessed penalties to ADOSH, Respondent shall provide enhanced safety training for incident command management, additional fire suppression activities, and improved wildland firefighter safety, and shall pay to the dependents of each of the nineteen firefighters who experienced fatal injuries the aggregate sum of Ten Thousand Dollars (\$10,000.00) for each decedent, unless waived as described herein. With respect to the twelve decedents of the named Plaintiffs in *Ashcraft et al. v. State of Arizona, et al.*, U.S. District Court for the District of Arizona, Cause No. CV-14-02308, this obligation shall be satisfied upon the execution of a waiver by each Plaintiff in that case. With respect to each of the remaining seven decedents, this payment obligation shall be satisfied upon payment to the spouse; or if no spouse, to the children pro rata; or if no children, to the parents; the aggregate amount of such payments shall not exceed \$70,000.00.

4. Respondent's request in the Settlement Agreement to withdraw its Request for Hearing with regard to Inspection No. L3419-317242683 is granted with prejudice.

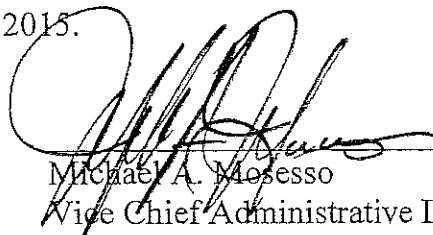
5. The hearing set for October 13, 2015 is cancelled.

6. Each party is to bear its own attorney's fees and costs. It is further ordered

that ADOSH is not responsible for any portion of mediator Chris Skelly's fees.

**NOTICE:** Any party dissatisfied with this Decision may request review to the Review Board by filing a written request with the Administrative Law Judge Division of the Industrial Commission within fifteen (15) days after mailing of this Decision as provided by Arizona Revised Statutes, §§ 23-421(C) and 23-423 (A) and (B). If no such request is made within the time provided, this Decision becomes final.

DATED this 25 day of JUNE, 2015.

  
\_\_\_\_\_  
Michael A. Mosesso  
Vice Chief Administrative Law Judge