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1 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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3 PROCEEDINGS AT HEARING

4 IN RE:

5 GILBANE BUILDING COMPANY #3212

6

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8 DATE: AUGUST 8TH, 2007

9 TIME: 8:00 A.M.

10 PLACE: DEPT. OF LABOR AND TRAINING

11 BOARD OF SAFETY AWARENESS

12 1511 PONTIAC AVENUE

13 CRANSTON, RHODE ISLAND

14

15

16 BEFORE: BERNARD TREML, CHAIRMAN

17

18 PRESENT:

19 FOR THE DEPT. OF LABOR AND TRAINING

20 KARL SWANSON RON D'AMBRUOSO

21 TIMOTHY BYRNE ELAINE HEISS

22 ROBIN COIA

23 NICHOLAS GIARDINO

24 BEN COPPLE

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3 **ALSO PRESENT:**
4 **FOR GILBANE BUILDING COMPANY**
5 **ROBERT VIERRA, PROJECT MANAGER**
6 **DENISE CHOQUETTE, SENIOR LEGAL COUNSEL**

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I N D E X

WITNESSES

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KARL SWANSON	4
ROBERT VIERRA	5

**RHODE ISLAND COURT REPORTING
747 NORTH MAIN STREET
PROVIDENCE, RI 02904
(401) 437-3366**

(HEARING COMMENCED AT 8:12 A.M.)

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4 **THE CHAIRMAN:** Call the meeting
5 to order. First order of business is acceptance of
6 the minutes of the previous meeting. Has everyone
7 had a chance to look them over? I need a motion.

8 **MR. GIARDINO:** I make a motion to accept.

9 **MS. COIA:** I second the motion.

10 **THE CHAIRMAN:** Motion to accept
11 by Mr. Giardino and seconded by Ms. Coia to accept
12 the minutes of the previous meeting.

13 **MR. COPPLE:** Mr. Chairman, you
14 don't have a quorum, so you can't vote on that. You
15 can just hear testimony.

16 **THE CHAIRMAN:** Would you swear
17 in the investigator, please.

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20 **(THE WITNESSES, CHIEF INVESTIGATOR, KARL SWANSON**
21 **SWORN IN)**

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24 **THE CHAIRMAN:** Are we going to

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1 swear them in also? Okay.

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4 (THE WITNESS, ON BEHALF OF GILBANE BUILDING COMPANY,
5 ROBERT VIERRA, SWORN IN)

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8 MR. SWANSON: The alleged
9 violation was on 6-15, 2007. The violation number
10 is 3212. The name of the violator, alleged violator,
11 is Gilbane Building Company.

12 Gilbane Building Company, 7 Jackson
13 Walkway, Providence, Rhode Island 02903.

14 On this alleged happening was at the New
15 Youth Assessment Facility on Power Road in Cranston,
16 Rhode Island.

17 On May 23rd '07, Department of Labor and
18 Training investigators Lisa Tirocchi and Karl
19 Swanson visited the above-mentioned job site and
20 interviewed Robert J. Clark and Robert L. Vanbiber,
21 Jr. employees of Masonry Cosmetics, Inc.

22 These individuals were working at the above
23 job location without an OSHA-10 Certification. This
24 is one violation of Rhode Island General Law
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1 37-23-1, Safety Awareness Board.

2 And the recommendation on the penalty was
3 \$1,000 from the Director.

4 THE CHAIRMAN: Yes. Would you

5 like to say something?

6 MS. CHOQUETTE: Well, a couple
7 of things. One, with respect to the alleged
8 violation, the two individuals identified were
9 working for a subcontractor under contract with the
10 state.

11 Gilbane enrolled as the Program Manager and
12 I have a copy of the contract. Contracts for all the
13 trades are held by the state, not by Gilbane.

14 Part of our obligation under our Program
15 Manager agreement is to put in place in place a
16 project safety plan, which in fact we have.

17 To read the agreement, sign the affidavit
18 and agree to adhere to the program requirements.

19 I made copies of one page of the program,
20 page six of the bigger document. Which indicates
21 that the OSHA 10 hour training certification card is
22 required.

23 And in fact, Gilbane requires any trade
24 contractor any person who is coming to the site to
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1 sign in to the site, the project site. There is
2 offices at the Youth Training Building. And also the
3 smaller building.

4 On the day in question, the two individuals
5 never signed in. We were never even made aware that

6 they signed in and they were on site.

7 In fact, we weren't even aware that

8 Mr. Swanson signed in. He had signed in when he was

9 there on the 27th of April. But, on the 23rd of May,

10 he didn't sign in to the project site office.

11 We were not aware that the Department of

12 Labor and Training was there.

13 So, our position is we are not the proper

14 entity to be before this board with respect to this

15 violation. We have all of our programs and

16 procedures in place. We do a good job maintaining

17 and making sure that all our trades, you know, that

18 we are managing have all of their training.

19 You can see specifically section 8 Article

20 8 specifically says construction contracts and

21 contracts between the owner, which is the state, and

22 the contractors, the trade contractors, not

23 Gilbane.

24 So, my reading of the and my reading of the

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1 regulations, there's no basis in law for Gilbane to

2 be cited with respect to these particular

3 violations.

4 The people were not our on-site employees

5 that are defined by the regulations.

6 Mr. Vierra, our Project Manager, you can

7 ask any questions if you like with respect to the
8 procedures and terms of signing in.

9 And as indicated in the documents I gave
10 you, all of the OSHA cards and the affidavits are
11 maintained at the project site. And they would have
12 been made available to Mr. Swanson if he had asked
13 for them on that day.

14 So, that's basically in a nut shell our
15 position.

16 MR. COPPLE: Before we get too
17 far, we should have the board members ask any
18 questions they have to Karl.

19 THE CHAIRMAN: Okay. Does
20 anybody have any questions? MS. COIA: Karl, would
21 you go in and check the signùin?

22 MR. SWANSON: Some sites do
23 require it. You know, we didn't do it on this one, I
24 guess.

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1 MS. COIA: Okay. And both
2 gentlemen were unaware of.

3 MR. SWANSON: They were from
4 Ohio.

5 MS. COIA: And as far as Costa
6 Brothers, did you speak to anyone from?

7 MR. SWANSON: Yes, I spoke to

8 the name was Costa. Lisa Tirocchi was with me.

9 MS. COIA: They were aware of
10 it, they were aware of the OSHA regulation, but they
11 just did not enforce it in this particular case?

12 MR. SWANSON: Yes.

13 THE CHAIRMAN: Where is Costa
14 Brothers from?

15 MR. SWANSON: I believe they
16 are from Tiverton or on that side of the border.

17 MR. VIERRA: They are from
18 Fairhaven, Mass.

19 THE CHAIRMAN: Does anybody
20 else have any questions?

21 MR. GIARDINO: The procedure
22 for coming on site, is there one entrance?

23 MR. VIERRA: We have two
24 entrances.

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1 MR. GIARDINO: On that day, had
2 Costa Brothers been working there for a while?

3 MR. VIERRA: They'd been there
4 the last seven or eight months.

5 MR. GIARDINO: And how about
6 the Cosmetic Masonry?

7 MR. VIERRA: They brought them
8 in to look at some issues we were having with

9 brick. So they were brought in, if you will.

10 MR. GIARDINO: So, were they
11 actually working?

12 MR. VIERRA: They were
13 working. But, they should have followed safety
14 requirements too.

15 MR. GIARDINO: Do you know if
16 the Costa Brothers had requirement in their
17 subcontracts with Masonry to have 10 hour paper?

18 MR. VIERRA: I don't know that.

19 MS. CHOQUETTE: Just to further
20 clarify from what I understand, the two individuals,
21 the Cosmetic Masonry they were employed by, they
22 were brought in by Costa Brothers because of an
23 issue with respect to the color of the masonry the
24 bricks.

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1 And that was an issue that was Costa
2 Brother's problem. And the work that he had hired
3 them, the consulting work he had hired them to do
4 was not anything that was authorized by the
5 state. It was something that he was sort of doing on
6 his own. To try to fix a problem that he had.

7 I'm not sure what the resolution was. But,
8 they were not there under any scope of work aspects
9 of their contract with the state. It was outside

10 even Costa Brother's subùcontract, trade contract
11 with the State of Rhode Island.

12 MR. GIARDINO: And have you had
13 any other instances where people with OSHA 10 cards
14 try to come under the project that were not
15 allowed? Has anything happened before?

16 MR. VIERRA: The daily routine
17 when contractors bring new employees on coming out
18 of the union, the subùcontractor is they go through
19 our safety plan. They go through our safety
20 orientation in the morning. We get copies of their
21 cards. If they don't have their cards, they are not
22 working on site.

23 A lot of the cards are kept at the Union
24 Hall. They fax them to us. Anybody that's been

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1 through our safety program gets a sticker for their
2 hard hat. All the copies of their OSHA cards and
3 licences and welding certification, all that, we
4 keep in all in a binder.

5 So, that in the event that Karl or someone
6 from the Department of Labor comes on and they don't
7 have their card on their person, we would have that
8 file in the trailer.

9 MR. GIARDINO: You depend on
10 the fact that you discussed the safety program with

11 the subùcontractors that they provided you with a
12 list of the people who had the OSHA 10 training.

13 MR. VIERRA: The safety
14 training is a requirement before they work on that
15 job. The superintendents know, you know, who is due
16 on the job everyday.

17 MR. GIARDINO: Does anybody
18 check off the people who come in to the project
19 against the list to see if they've been previously
20 checked? How did those two people get on the job?

21 MR. VIERRA: In fact I have the
22 signùin sheet that contains both buildings. May
23 23rd, you can see the second page that contains that
24 date for those two buildings. And it's the second
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1 building.

2 You can see on the date there.

3 MS. COIA: Mr. Chairman, if I
4 can ask a question.

5 Just to follow up with Nick's question.

6 Is there somebody that monitors this
7 particular. I'm just a little confused as to, you
8 know, how someone just two gentlemen just happened
9 to walk in. Is there someone that normally monitors
10 the folks that are in and out?

11 MR. VIERRA: It's, you know,

12 there is a lot of vehicle traffic. Things come in
13 and pick up and drop off.

14 We don't happen to see them. A lot of time
15 they will have a sticker on their hard hat.

16 MS. COIA: So certainly, a
17 company like Costa Brothers they've done business
18 with you in the past, have been subùcontractors for
19 you, so they know the protocol?

20 MR. VIERRA: This is the first
21 time we've worked with them.

22 MS. COIA: Oh, first time. But
23 you did sit with them prior to completing this
24 project and explain.

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1 MR. VIERRA: Their safety plan
2 was part of their contract when they signed their
3 purchase order with the State of Rhode Island. This
4 is all part of that. So they agreed to enforce this
5 as well.

6 MS. COIA: Now, prior to this
7 particular incident was Costa on the property before
8 this incident?

9 MR. VIERRA: Yes.

10 MS. COIA: Would they come in
11 and sign in so they'd know. Did they ever have any
12 other subùcontractors come in to do some work for

13 them that have signed in?

14 MR. VIERRA: Seacoast is one of
15 them.

16 MS. CHOQUETTE: In one of the
17 documents we gave you is the affidavit from Costa
18 that certifies that he understands the safety
19 program.

20 THE CHAIRMAN: Does anybody
21 else have any other questions for the
22 representatives?

23 I guess what we will do is, we will take
24 this testimony and we will review it next time. And

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1 when we have a quorum our decision will be made
2 whether to uphold the fine or suspend it or do
3 whatever the board has to do.

4 MS. COIA: One more question.

5 Just to clarify. Is the fine a \$1,000 fine?

6 MR. SWANSON: that's
7 recommended fine.

8 THE CHAIRMAN: Nobody else has
9 any questions?

10 I thank you for coming. And you will be
11 notified by mail of the decision of the board. Or if
12 you have to come back again for further testimony.

13 MS. CHOQUETTE: Okay. Thank

14 you. The next date is already set?

15 **THE CHAIRMAN: Yes it is. I**

16 **believe it's September 12th. Thank you. Have a good**

17 **day.**

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19 **(HEARING CLOSED AT 8:29 A.M.)**

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C E R T I F I C A T E

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4 **I, Cassandra M. Capraro, a Notary**

5 **Public in and for the State of Rhode Island, hereby**

6 **certify that the foregoing pages are true and**

7 **accurate record of my stenographic notes that were**

8 **reduced to print through computer-aided**

9 **transcription.**

10 **In witness whereof, I hereunto set**

11 **my hand the 8TH day of August, 2007.**

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14

15 CASSANDRA M. CAPRARO
16 CERTIFIED COURT REPORTER, NOTARY PUBLIC
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