

DARIA A. LOY-GOTO 6175
 Regulated Industries Complaints Office
 Department of Commerce and Consumer Affairs
 State of Hawaii
 Leiopapa A Kamehameha Building
 235 South Beretania Street, Suite 900
 Honolulu, Hawaii 96813
 Telephone: 586-2660

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 PROF & VOCATIONAL
 LICENSING DIVISION

DEPT. OF COMMERCE
 AND CONSUMER AFFAIRS

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DEPT OF COMMERCE
 & CONSUMER AFFAIRS
 STATE OF HAWAII

HEARINGS OFFICE

Attorney for Department of Commerce
 and Consumer Affairs

CONTRACTORS LICENSING BOARD
 DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
 STATE OF HAWAII

DEPT. OF COMMERCE
 AND CONSUMER AFFAIRS
 2010 FEB 22 P 11:01
 HEARINGS OFFICE

In the Matter of the Contractor's Licenses of) CLB 2006-123-L
)
 M.A. MORTENSON COMPANY) SETTLEMENT AGREEMENT PRIOR TO
) FILING OF PETITION FOR DISCIPLINARY
 and) ACTION AND BOARD'S FINAL ORDER
)
 STEVEN R. WESTBY,)
)
 Respondents.)
)
)

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SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION
 FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER

Petitioner, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS'
 REGULATED INDUSTRIES COMPLAINTS OFFICE (hereinafter "RICO" or "Petitioner"),
 through its undersigned attorney, Respondent M.A. MORTENSON COMPANY (hereinafter
 "Respondent Mortenson"), and Respondent STEVEN R. WESTBY (hereinafter "Respondent
 Westby"), by and through their attorney, enter into this Settlement Agreement on the terms and
 conditions set forth below.

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A. UNCONTESTED FACTS

1. At all relevant times herein, Respondent Mortenson was licensed by the Contractors Licensing Board (hereinafter the "Board") as an engineering and general contractor under license number CT 12463. The license was issued on or about April 24, 1991. The license will expire on or about September 30, 2010.

2. At all relevant times herein, Respondent Westby was licensed by the Board as an engineering and general contractor under license number CT 25977. The license was issued on or about May 20, 2005. The license will expire on or about September 30, 2010.

3. At all relevant times herein, Respondent Westby was the responsible managing employee for Respondent Mortenson.

4. For purposes of this action, the mailing address for Respondent Mortenson and Respondent Westby is c/o Allen R. Wolff, Esq., Olshan Grundman, 65 East 55th Street, New York, New York 10022.

5. RICO received a complaint alleging Respondents entered into a contract with an unlicensed contractor.

6. RICO alleges that Respondents entered into a contract with an unlicensed contractor.

7. The foregoing allegations, if proven at an administrative hearing before the Board, would constitute violations of the following statute(s) and/or rule(s): Hawaii Revised Statutes ("HRS") § 436B-19(17) (violating chapter or applicable licensing laws), § 436B-19(16) (employing or utilizing any person not licensed under the licensing laws), and § 444-17(17) (entering into a contract with an unlicensed contractor).

8. The Board has jurisdiction over the subject matter herein and over the parties hereto.

B. REPRESENTATIONS BY RESPONDENTS:

1. Respondents are fully aware that Respondents have the right to be represented by an attorney and is represented in this matter by Allen R. Wolff, Esq., Olshan Grundman, 65 East 55th Street, New York, New York 10022.

2. Respondents enter into this Settlement Agreement freely, knowingly, voluntarily, and under no coercion or duress.

3. Respondents are aware of the right to have a hearing to adjudicate the issues in the case. Pursuant to HRS § 91-9(d), Respondents freely, knowingly, and voluntarily waive the right to a hearing and agree to dispose of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondents being at all times relevant herein licensed as engineering and general contractors by the Board acknowledge that Respondents are subject to penalties including but not limited to, revocation, suspension or limitation of the licenses and administrative fines, if the foregoing allegations are proven at hearing.

5. Respondents do not admit to violating any law or rule, but acknowledge that RICO has sufficient cause to file a Petition for Disciplinary Action against Respondents' licenses, and state they relied on representations made by the contractor about licensure and state the contractor was immediately replaced after the deficiency was brought to their attention.

6. Respondents enter into this Settlement Agreement as a compromise of the claims and to conserve on the expenses of proceeding with an administrative hearing on this matter.

7. Respondents agree that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO No. CLB 2006-123-L.

C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondents agree to pay, jointly and severally, a fine in the amount of FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00). Payment shall be made by **cashier's check or money order made payable to "DCCA - Compliance Resolution Fund"** and mailed to the Regulated Industries Complaints Office, Attn: Daria Loy-Goto, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. Payment of the fine shall be due at the time this fully executed Settlement Agreement is returned to RICO.

2. Failure to Comply with Settlement Agreement. If Respondents fail to fully and timely comply with the terms of this Settlement Agreement as set forth in paragraph(s) C.1 above, Respondents licenses shall be automatically revoked upon RICO's filing of an affidavit with the Board attesting to such failure. In case of such revocation, Respondents shall turn in all indicia of the licenses to the Executive Officer of the Board within ten (10) days after receipt of notice of the revocation. In case of such revocation, Respondents understand Respondents cannot apply for new licenses until the expiration of at least five (5) years after the effective date of the revocation. Respondents understand that if Respondents desire to become licensed again, Respondents must apply to the Board for a new license pursuant to and subject to HRS §§ 92-17, 436B-21, and all other applicable laws and rules in effect at the time.

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3. Possible further sanction. The Board, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Board may deem appropriate if Respondents violate any provision of the statutes or rules governing the conduct of general contractors in the State of Hawaii, or if Respondents fail to abide by the terms of this Settlement Agreement.

4. Approval of the Board. Respondents agrees that, except for the representations, agreements and covenants contained in Paragraphs C.5, C.6, C.7 and C.8 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Board.

5. No Objection if Board Fails to Approve. If the Board does not approve this Settlement Agreement, does not issue an order pursuant thereto, or does not approve a lesser remedy, but instead an administrative hearing is conducted against Respondents in the Board's usual and customary fashion pursuant to the Administrative Procedure Act, Respondents agree that neither Respondents nor any attorney that Respondents may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Board's proceeding against Respondents on the basis that the Board has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.

6. Any Ambiguities Shall be Construed to Protect the Consuming Public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner that most completely protects the interests of the consuming public.

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7. No Reliance on Representations by RICO. Other than the matters specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondents to induce entry into this Settlement Agreement, and Respondents are not relying upon any statement, representation or opinion or promise made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or concerning any other matter.

8. Complete Agreement. This Settlement Agreement is a complete settlement of the rights, responsibilities and liabilities of the parties hereto with respect to RICO Case No. CLB 2006-123-L (previously CLB 2006-123-O); contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly executed by all parties hereto.

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IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: Minneapolis, Minnesota, 1-11-10

M.A. MORTENSON COMPANY
Respondent

By: [Signature]
Its Senior Vice President

DATED: Minneapolis, Minnesota, 1-11-10

[Signature]
STEVEN R. WESTBY
Respondent

DATED: Honolulu, Hawaii, JAN 26 2010

[Signature]
DARIA A. LOY-GOTO
Attorney for Department of Commerce and
Consumer Affairs

APPROVED AS TO FORM:


[Signature]
ALLEN R. WOLFR
Attorney for Respondents

IN THE MATTER OF THE CONTRACTOR'S LICENSES OF M.A. MORTENSON
COMPANY AND STEVEN R. WESTBY; SETTLEMENT AGREEMENT PRIOR TO FILING
OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER;
CASE NO. CLB 2006-123-L

APPROVED AND SO ORDERED:
CONTRACTORS LICENSE BOARD
STATE OF HAWAII



F. M. SCOTTY ANDERSON
Chairperson



NEAL ARITA
Vice Chairperson


ERIC CARSON



WILLIAM A. KAMAI



HAROLD L. MARTIN



RONALD K. OSHIRO



DARYL SUEHIRO

FEB 19 2010

DATE



GUY M. AKASAKI



JOHN E. K. DILL

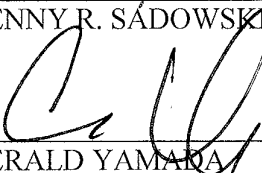
RANDALL B. C. LAU



ALDON K. MOCHIDA



DENNY R. SADOWSKI



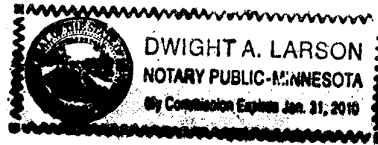
GERALD YAMADA

STATE OF Minnesota)
) SS.
COUNTY OF Henriepin)

On this 11th day of January, 2010, before me personally appeared
Steven R. Wistby, to me known to be the person described and who executed the
foregoing instrument and acknowledged the same as his/~~her~~ free act and deed.


WAL
Name: Dwight A. Larson
Notary Public -- State of Minnesota

My commission expires: 1-31-10



STATE OF Minnesota)
) SS.
COUNTY OF Hennepin)

On this 11th day of January, 2010, before me personally appeared
Thomas Weber, to me known to be the person described, and who executed the
foregoing instrument on behalf of M. A. Mortenson Company as
Senior Vice President, and acknowledged that he/~~she~~ executed the same as
his/~~her~~ free act and deed.


Name: Dwight A. Larson
Notary Public, State of Minnesota

My Commission expires: 1-31-2010

