

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

IRWIN INDUSTRIES
5901 Edison Drive
Oxnard, CA 93033,

Employer.

DOCKETS 12-R4D3-3276
and 3277

DECISION

Background and Jurisdictional Information

At all relevant times, Irwin Industries (hereinafter sometimes referred to as Employer, or Irwin) was an employer in the manufacturing industry. On May 24, 2012, the Division of Occupational Safety and Health (Division) opened an accident investigation at Employer's facility at 5901 Edison Drive, Oxnard, California (the site). On November 2, 2012, the Division cited Employer for the following alleged violations of the California Code of Regulations¹.

<u>Cit/Item</u>	<u>Alleged Violation</u>	<u>Type</u>	<u>Penalty</u>
1-1	4999(a) [Employees performing rigging operations had not been trained]	General	\$ 1,200
1-2	5006(a) [Untrained person operating the crane]	General	\$ 1,200
2-1	4999(c)(1) [Load not attached to hook by slings or other suitable means]	Serious	\$18,000

¹ Unless otherwise specified, all references are to sections of Title 8, California Code of Regulations.

Employer filed timely appeals contesting the violation in Citation 1, Items 1 and 2, and appealing on all grounds in Citation 2. Additionally, Employer raised multiple affirmative defenses including lack of employer knowledge and independent employee act (IEAD).

A formal evidentiary hearing was convened on November 21, 2013, at Van Nuys, California, before Administrative Law Judge (ALJ) Sandra L. Hitt. Robert Peterson, of the Robert D. Peterson Law Corporation, represented Employer. James Clark, Staff Counsel, represented the Division. The parties asked that they be allowed to submit written closing briefs and this request was granted. The date for the submission of briefs was extended due to the illness of counsel and the need to obtain copies of Exhibits. The matter was submitted for Decision on March 5, 2014.

Introduction

These citations all relate to an accident which occurred at Employer's facility on May 4, 2012. On that day, Nicholas Base, a welder-fabricator, was assigned to help Frank Smith, a foreman, move I-Beams. The I-Beams to be moved were approximately 22 feet in length and weighed about 1600 pounds. Base was to rig the I-Beams for lifting by a crane, which Smith operated.

The parties stipulated the penalties were calculated in accordance with the Division's policies, procedures and regulations.

The Exhibits produced at hearing are listed in Appendix A, as are the names of the witnesses who testified.

Docket 12-R4D3-3276

Citation 1, Item 1, General § 4999(a)

Summary of Evidence

Nicholas Base, the injured employee, testified. He had been employed at Irwin for approximately six months when the accident occurred. Prior to his employment with Irwin Industries, he had been a driver for Federal Express. Before that, he had worked in a "shop similar to Irwin for four or five years on and off." On the date of the accident he was working for Employer as a welder-fabricator. That morning his supervisor sent him to help Frank Smith (foreman) to move I-Beams and weld gussets. Base explained that the I-Beams, which were approximately 22 feet in length and weighed about 1600 pounds, were to be lifted eight feet into the air by an overhead crane and moved approximately 20 feet to another location.

Base was given the task of “rigging” the I-Beams to the crane’s hook. Base had some previous experience rigging on other jobs, and he had used a “dog clamp” (which he used on the day of the accident) before. The beams were attached to the crane using a hook and a “dog clamp” attached to the beam’s flange. The shorter side of the dog clamp was attached over the webbing inside the beam and the longer side of the clamp attached to the flange on the outside.

Base and Smith successfully moved two I-Beams before the accident that morning. Base had rigged a third I-Beam and was helping to guide it to the next location when it fell, hitting his foot and causing serious injury.

Zwaal, who investigated the accident for the Division, sent a document request (Exhibit 8) to Employer. Among the documents requested were rigging training records, safety training records from February 1, 2012 to May 1, 2012, and information about crane operator training. Employer did not produce any records showing that Base had been trained as a rigger. Nor did Employer present any evidence at the hearing that Base had been trained as a rigger. Base testified that Employer did not train him as a rigger, but he had gained some experience as a rigger on another job. Smith testified that he got his rigging certification in 2010.

Findings and Reasons for Decision

The Division established a general violation of § 4999(a).

Employer did not establish any affirmative defenses to this Citation Item.

Section 4999(a) provides: “The qualified person (rigger) shall be trained and capable of safely performing the rigging operation. All loads shall be rigged by a qualified person or by a trainee under the direct visual supervision of a qualified person (rigger).”

The Division established a violation of § 4999(a). Zwaal issued a document request to Employer asking for, among other things, training records for Base. Employer produced no records showing that Base had been trained as a rigger or was a rigger trainee. Nor did, Employer present any evidence at the hearing that Employer had trained Base to rig. Where a party has the motive and opportunity to present evidence, and fails to do so, the inference may be drawn that any evidence it had would not be favorable. (See Evidence Code §§ 412 and 413). Base stated that Employer had not trained him as a rigger. Although Base testified that he had some experience rigging at a previous job, there was no evidence that Base had ever been trained anywhere as a rigger.

At hearing, Employer also seemed to argue that Base was a *rigger trainee* operating under a qualified rigger. There was no evidence to demonstrate that Base was a *rigger trainee*. The only evidence adduced regarding Base's job classification was that Base was a *welder-fabricator* temporarily assigned to help Frank Smith on the date of the accident. Smith testified that he did not always need help with moving the beams. On the date of the accident, Base's supervisor told Smith to "go get Base to help" because Base had finished what he was doing. None of this evidence supports a finding that Base was a rigger trainee, rather than a welder-fabricator temporarily assigned to a different job.

Employer contested only the violation in Citation 1, Item 1. Employer did not present sufficient evidence to sustain any affirmative defense to this citation item. Citation 1, Item 1 is sustained.

Citation 1, Item 2, General § 5006(a)

Summary of Evidence

As noted above, Zwaal sent a document request (Exhibit 8) to Employer. Among the documents requested were documents with information about crane operator training. Employer did not produce any documentation of Smith's authorization and training in crane operation. Shop superintendent Ed Powell told Zwaal that Employer did not produce crane operator authorization and training records for Smith because Smith's crane operator certification had expired.

Frank Smith testified that he is now retired, and had retired before, but came out of retirement to return to work in the industry.

All in all, he worked for Irwin a "good 14 years." He estimates he spent fifty years in the industry doing the same type of work he performed for Employer. On the date of the accident, he worked at Irwin as a shop foreman. He was the foreman overseeing the entire project.² Smith testified that "lots of times" he could move the beams – using a crane - by himself. Sometimes he would "ask guys to help him."

Smith testified that he had been trained as a crane operator. Smith also testified that Employer's procedure was for its crane operators to attend an annual class taught by outside trainers in order to be certified. Smith did not know how long his crane operator's certification had been lapsed--he stated that he did not believe it had been as long as two years.

² Smith did not remember the name of the project but said that he was responsible from the beginning, including the layout, setting up fixtures to make parts and moving beams).

Findings and Reasons for Decision

The Division did not establish a violation of § 5006(a).

Section 5006(a) provides: “Only employees authorized by the employer and trained in the safe operation of cranes or hoisting apparatus shall be permitted to operate such equipment.”

The alleged violation description reads: The Division determined that the employee operating the crane had not received training in the safe operation of cranes.

The Division has the burden to prove a violation, including the applicability of the safety order, by a preponderance of the evidence. *Travenol Laboratories, Hyland Division*, Cal/OSHA App. 76-1073, Decision After Reconsideration (Oct. 16, 1980) at pp. 2-3; *Howard J. White, Inc.*, Cal/OSHA App. 78-741, Decision After Reconsideration (June 16, 1983).) The phrase "preponderance of the evidence" is usually defined in terms of probability of truth, or of evidence that, when weighed with that opposed to it, has more convincing force and greater probability of truth. (*Lone Pine Nurseries*, Cal/OSHA App. 00-2817, Decision After Reconsideration (Oct. 30, 2001), citing *Leslie G.V. Perry & Associates* (1996) 43 Cal.App. 4th 472, 483, review denied.)

The circumstances here are similar to those set forth in Item 1, above. The Division asked for information about the crane operator training that Employer had provided for Smith. Employer did not produce any documents to show that Smith was a trained and authorized crane operator, giving rise to the inference that Smith was not a trained and authorized crane operator on the date of the accident.

However, Smith testified that he had been trained as a crane operator, that he had been a certified crane operator, and that he did not think that his certification had been expired for as long as two years. Smith also testified that it was Employer’s practice to have crane operators attend a class annually to be “certified”³ in crane operation, and that he had worked for Employer “off and on” for 14 years, indicating that Smith had at one time been trained by Employer as a crane operator.

The only hard evidence on this issue was Smith’s testimony that he had been trained and certified as a crane operator and did not think his crane operator “certification” had been expired for as long as two years. The Division

³ There is no requirement under section 5006(a) for crane operators to be “certified.” There is such a requirement in 5006.1, for mobile and tower cranes. The “certification” about which Smith testified was Employer’s own practice.

failed to meet its burden to demonstrate that Smith was not a trained crane operator. The evidence preponderates in favor of Employer on this point.

Citation 1, Item 2 is dismissed.

Citation 2, Serious, § 4999(c)(1)

Summary of Evidence

As noted above, on the morning of the accident, Base's supervisor⁴ sent him to help Smith to move I-Beams and weld gussets.

After receiving this assignment, Base started to walk across the shop to get a sling to rig the I-Beams, but Smith said it would take too long and told him to use the dog clamp. Base explained that "the shorter side of the dog clamp goes on the webbing (inside the beam) and the long side goes outside." The dog clamp is also called an E-clamp (presumably because the clamp resembles the grip of a dog's mouth or the small letter "e") or a plate clamp. See Exhibits 3 and 9. Employer had a couple of dog clamps in the shop. Base explained that he usually used the dog clamp when lifting plates by crane.

On the date of the accident, Base and Smith (who was operating the crane) successfully lifted two I-Beams using the dog clamp. After he had rigged the third I-Beam, Base was helping to guide it with his hands onto some metal horses, when it fell. As the I-Beam was falling, Base saw the dog clamp still attached to the crane's hook – but no longer holding onto the I-Beam. The I-Beam hit his foot when it fell. Base testified that when Smith visited him in the hospital, Smith admitted that he had had loads slip from the dog clamp on two prior occasions while lifting them with a crane.

Base was in the hospital for about five days. As a result of the accident he had to have surgery. He lost his big toe, some bone in other toes, and also lost some flexibility in his toes.

Smith stated that on the date of the accident Employer was moving H-Beams. According to Smith, an H-Beam is as high as it is wide. The weight on an H-Beam is more evenly distributed than on an I-Beam. Smith recalled that he and Base had already moved one beam and were moving the second when the accident occurred.

⁴ Base was not sure whether supervisor John Zeller or someone named Elias had given him this assignment. Base testified that in addition to Zeller and Elias, there was also a shop superintendent named Ed Powell. Powell usually conducted the safety meetings, but sometimes foreman Frank Smith conducted these meetings.

Smith testified that he had used the dog-clamp to move beams before. He testified that they called the dog clamps “plate clamps.” “Basically, that’s what they were made for--plates.” Smith said that he thought the flange of beam was about the thickness of a metal plate, so he thought it would be “okay” to use a dog clamp for lifting beams. Prior to the date of the accident, he had another accident while lifting smaller beams - column beams. He believes he had two clamps on the beam when the prior accident occurred. He testified that he usually tests to see if the clamp will hold by picking the beam up slowly, then he might give it a little “jerk,” explaining that “if it is going to come off, it usually comes off right away.” He testified that he jerked the beam at issue but that it did not come loose when he tested it (it fell off later in the move).

Lorenzo Zwaal testified that he is an associate safety engineer with the Division and has worked at the Division since February 12, 2012. He is current with the training mandated for all Division safety engineers. Prior to his employment with the Division he worked in loss prevention at State Compensation Insurance Fund, as Safety Director for Rolls Scaffolds & Equipment, and as Risk Manager for Santa Barbara City College.

Exhibit 3 is a photograph of a “dog clamp.”⁵ Zwaal testified that Jeff Golden, Irwin’s Safety Director, identified the clamp in Exhibit 3 as the one used in the accident. Zwaal also testified that Exhibit 9 is a photograph of a dog clamp and an I-Beam. The photograph provided to Zwaal by Golden, and that Golden told Zwaal that the dog clamp depicted in Exhibit 9 was the one involved in the accident.

Zwaal opined that the accident occurred because the throat of the dog clamp did not fully grab the flange of the I-Beam due to the webbing, which “comes out a bit.” Zwaal stated that when he discussed the accident with Powell, Powell said he would have used an I-Beam clamp (that attaches to both sides of the flange) for the job.

Zwaal testified that the Merrill Bros. E-clamp which Employer used to lift I-Beams was meant for lifting plate steel. Zwaal testified that he verified that with the manufacturer and he looked at the manufacturer’s manual for the E-clamps. Exhibit 10 is a manual with a description of lifting clamps which Zwaal obtained from Cooper and which can be found at www.cooperhandtools.com/campbell (see Exhibit 10). Zwaal also testified that he contacted someone at Cooper (the company that purchased Merrill) and that person directed him to the division that makes the clamps.

Zwaal testified that he has investigated three or four accidents involving crushing injuries. He has performed two investigations involving the falling of

⁵ The dog clamp is alternatively referred to as an E-clamp or plate clamp herein.

heavy loads. Zwaal determined that a reasonable possibility of serious injury was presented by the circumstances of this accident.

Findings and Reasons For Decision

The Division established a serious/accident-related violation of § 4999(c)(1)

The proposed penalty is reasonable.

Employer did not establish any affirmative defenses to this citation.

The Violation

Section 4999(c)(1) provides: “The load shall be attached to the hook by means of slings or other suitable and effective means which shall be rigged to insure the safe handling of the load.”

The alleged violation description for Citation 2 stated: “The Division determined that the Merrill Bros. 3 ton E-clamp used on May 4, 2012, to rig an I-Beam failed causing serious injury to an employee. The E-clamp used was not suitable to insure the safe handling of the loads.” The safety order does not define “suitable,” nor is there a Decision After Reconsideration using suitable in this particular context. Section 3207 defines suitable as: “Suitable. Capable of performing with safety the particular function specified in these regulations.”

At hearing, Smith remembered the beam in question as an H-Beam. He described the H-Beam as being as wide as it is high, whereas the I-Beam is longer than it is wide. The weight on an H-Beam is more evenly distributed than that on an I-Beam. Smith was the only one who referred to the beam as an H-Beam. Zwaal described it as an I-Beam, Golden described it as an I-Beam and Base described it as an I-Beam. Therefore, the evidence preponderates in favor of the contention that the beam in question was an I-Beam.

The issue here is whether the “plate” or “E” clamp was suitable for the beam being lifted at the time of the accident. Zwaal testified that the Merrill Bros. E-clamp which Employer used to lift I-Beams was not suitable for lifting an I-Beam. Employer, at hearing and in the closing brief, made much about who manufactured the clamp, attempting to cast doubt on Zwaal’s testimony that he had verified with the manufacturer that the E-clamp or dog clamp was intended to be used to assist in lifting metal plate. Zwaal testified that Cooper had purchased Merrill, the original manufacturer of the clamp. In any event, there is no dispute that the E-clamp was intended for use with metal plate. Even Smith testified that “basically, that’s what they [the E-clamps or dog

clamps] were made for--plates.” Nonetheless, there was no evidence that the E-clamps could be used *only* for metal plates. Smith testified that he thought the flange of an I-beam was about the thickness of a metal plate, so he thought it was “okay” to use the dog clamp for lifting beams.

Zwaal opined that the accident occurred because the throat of the dog clamp did not fully grab the flange of the I-Beam due to the webbing, which “comes out a bit.” He thought that perhaps Base had not been able to get the entire dog clamp to grab the flange of the I-Beam. Base testified that when he saw the I-Beam falling, the E-clamp was still attached to the hook, indicating that it had been securely rigged. It was uncontroverted that the beam slipped from the dog clamp. Zwaal stated that when he discussed the accident with Powell, Powell said he would have used an I-Beam clamp (that attaches to both sides of the flange) for the job. Base testified that he wanted to use a sling with the dog clamp, but Smith said “No,” because it would take too long. This evidence, taken together, was sufficient to establish a prima facie case that the E-clamp used was not suitable for lifting and moving I-beams.

In light of this evidence, the burden of production shifted to Employer. In *Paramount Scaffold, Inc.*, Cal/OSHA App. 01-4564, Decision After Reconsideration (Oct. 7, 2004) the Appeals Board held that where the Division presents evidence, which, if believed, would support a finding if unchallenged, the burden of producing evidence shifts to the employer to present convincing evidence to avoid an adverse finding.

Smith testified that only once before had a beam slipped when he was using a dog clamp to attach it to the hook. However, Base testified that Smith told him this had occurred *twice* before. Smith stated that he tested to see if the clamp would hold by giving a little “jerk” on the cable because “if it is going to slip, it usually slips right away.” Therefore, Employer was aware of the danger of slippage when using the dog clamp to lift beams.

The Appeals Board has consistently held employers accountable for the acts and knowledge of its foreman. The primary test to determine whether or not an employee is a supervisor or foreman is the employee's responsibility for the safety of others. (*City of Sacramento, Department of Public Works*, Cal/OSHA App. 93-1947, Decision After Reconsideration (February 5, 1998).)

MV Transportation, Inc., Cal/OSHA App. 02-2930 Decision After Reconsideration (December 10, 2004).

Smith was a foreman with responsibility for safety. Smith testified that he was in charge of the entire project, and Base testified that Smith sometimes conducted the safety meetings. Therefore, Smith’s knowledge is imputed to Employer.

Here, Employer offered some evidence to contradict the Division's position that the dog clamp was not suitable for lifting the type of beam being lifted at the time of the accident. That evidence was Smith's testimony to the effect that he had done this (lifted an I-Beam with a dog clamp) many times before and it had slipped only once. This testimony contradicted Smith's testimony that he usually tests the load by "jerking" on the cable and that "if the load is going to slip, it usually does so right away." From having only one load slip (prior to the accident) it would not be possible to know that "if the load is going to slip, it usually does so right away⁶." Smith's inconsistent testimony could not be given much weight.

Employer pointed out in its brief that the Division did not know why the I-Beam fell, since the dog clamp had been used to successfully lift two other beams that morning. However, it is uncontroverted that the I-Beam slipped from the clamp. Base testified that as the I-Beam was falling, he looked up and saw the clamp still attached to the hook.

The evidence preponderates in favor of the Division's position that the E-clamp was not suitable for lifting and moving an I-Beam: Base testified that he had wanted to use a sling on the day in question, but Smith said it would take too long. Zwaal opined that the dog clamp was not suitable for lifting the I-Beam because of the webbing, which "comes out a bit" (making it difficult for the entire dog clamp to grab the flange). Powell, Employer's shop superintendent, would not have used the dog clamp for the job. Rather, he stated he would have used an I-Beam clamp, which attaches on both sides of the flange. Even Smith testified that dog clamps were made for lifting plates. What is more, before this accident, Smith had had *at least* one other accident where a beam slipped from a dog clamp.

The only evidence that Employer produced with regard to the suitability of the E-clamp was the testimony of the foreman involved in the accident who said that he thought it would be "okay" to use the dog clamp to lift an I-Beam because the flange of an I-Beam is about the thickness of plate steel, and that he had used the dog clamp to lift I-Beams before without incident.

If weaker and less satisfactory evidenced is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust. Cal. Evid. Code § 412.

It was in Employer's power to provide other opinion testimony regarding the suitability of the E-clamp for lifting I-Beams, and not limit the evidence on this point to the testimony of the foreman involved in the accident. Where a party has the motive and opportunity to present evidence, and fails to do so,

⁶ Moreover, if the clamp were reliable, the question arises why it had to be "tested" to see if it would hold.

the inference may be drawn that the evidence it had would not be favorable. (See Evidence Code §§ 412 and 413).

Citation 2 is sustained.

The Serious Classification

In order to show a serious violation the Division must show a realistic possibility of serious injury. Lab. Code § 6432(a).

Labor Code Section 6432(a) provides, in pertinent part, that a serious violation exists where there is realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. Under Labor Code Section 6432(e)(1), the definition of serious physical harm is:

- (1) Inpatient hospitalization for purposes of other than medical observation.
- (2) The loss of any member of the body.
- (3) Any serious degree of permanent disfigurement.
- (4) Impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency on or off the job, including, but not limited to, depending on the severity, second-degree burns, crushing injuries, including internal injuries even though skin surface may be intact, respiratory illnesses, or broken bones.

Zwaal testified that, based on his experience, the circumstances of this accident (a large, heavy load falling on someone) presented a reasonable possibility of serious injury. Base's injuries (crushed foot resulting in the loss of his big toe and bone loss in other toes) and five days of hospitalization support a realistic possibility of serious injury. Employer presented no evidence to rebut the Division's position on this point.

The Accident-Related Characterization

Because Employer disputed the reasonableness of the penalty, the allegation that the violation led to a serious injury (pursuant to regulation 336(c)(7) must be considered. A serious injury is one resulting in death, amputation, permanent disfigurement, or 24 hours in the hospital for other than observation. Base's injuries resulted in an amputation. Accordingly the record reflects that the serious injury was the result of a serious violation. As such, the Division's characterization of the violation as serious/accident-related is sustained.

The Penalty

The parties stipulated that the penalty had been calculated correctly. Employer offered no evidence to demonstrate that the \$18,000 penalty for Citation 2 was unreasonable for a serious/accident-related violation. Therefore, a penalty of \$18,000 is determined to be reasonable and is assessed.

The Affirmative Defenses

Employer did not present sufficient evidence to sustain any affirmative defense to this citation item. The citation is sustained.

It is hereby ordered that the citations are established, modified, or dismissed as set forth above and in the attached Summary Table.

Dated: March 21, 2014

SANDRA L. HITT
Administrative Law Judge

SLH:m1

SUMMARY TABLE DECISION

In the Matter of the Appeal of:

IRWIN INDUSTRIES, INC.
Dockets 12-R4D3-3276 and 3277

Abbreviation Key: Reg=Regulatory	
G=General	W=Willful
S=Serious	R=Repeat
ER=Employer	DOSH=Division
EE=employee	w/d= withdrew

IMIS No. 314829789

DOCKET	CITATION	ITEM	SECTION	TYPE	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL	A F F I R M E D	V A C A T E D	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT HEARING	FINAL PENALTY ASSESSED BY BOARD
12-R4D3-3276	1	1	4999(a)	G	ALJ upheld the citation	X		\$1,200	\$1,200	\$1,200
		2	5006(a)	G	ALJ dismissed the citation		X	1,200	1,200	0
12-R4D3-3277	2	1	4999(c)(1)	S	ALJ upheld the citation	X		18,000	18,000	18,000
Sub-Total								\$20,400	\$20,400	\$19,200
Total Amount Due*										\$19,200

Total Amount Due*
(INCLUDES APPEALED CITATIONS ONLY)

NOTE: PLEASE DO NOT SEND PAYMENT TO THE CAL/OSHA APPEALS BOARD.

Payment of final penalty amount should be made to:

Accounting Office (OSH)
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142

*You will owe more than this amount if you did not appeal one or more citations or items containing penalties. Please call (415) 703-4291 if you have any questions.

ALJ: SLH/ml
POS: 03/21/14

APPENDIX A
SUMMARY OF EVIDENTIARY RECORD
IRWIN INDUSTRIES
Docket 12-R4D3-3276/3277

Division's Exhibits – Admitted

Exhibit 1--The jurisdictional package
Exhibit 2--Photograph of the Shop
Exhibit 3--Photograph of dog clamp
Exhibit 4--Photo of Metal Horses
Exhibit 5--Diagram of I-Beam & dog clamp
Exhibit 6--Employee Statement
Exhibit 7--C-10 Form
Exhibit 8--Document Request
Exhibit 9--Photo of dog clamp with lever
Exhibit 10--Manual
Exhibit 11--Close-up photograph of E-Clam (dog clamp) involved in accident
Exhibit 12--Photo of pendant

Employer's Exhibits

Employer presented three Exhibits (Exhibits A, B and C) A and B (uncertified deposition excerpts) were rejected, and the testimony related to them was stricken.
Exhibit C (Brochure about Campbell lifting Clamps) was withdrawn.
Exhibit C was the same as exhibit 10 (Manual).

Witnesses Testifying at Hearing

(In order of their testimony)

Nicholas Base
Lorenzo Zwaal
David Pacheco
Frank Smith