



**Illinois Office of the State Fire Marshal
Division of Elevator Safety
James R. Thompson Center
100 West Randolph Street, Suite 4-600
Chicago, Illinois 60601
312-814-8734
Fax 312-814-8959**



**MINUTES
ELEVATOR SAFETY REVIEW BOARD MEETING
CLOSED SESSION
Thursday, November 12, 2009
Des Plaines, Illinois**

Board Members Present: Chairman, Frank Christensen
William Bogdan
David Dattilo
Thomas Ganiere
Craig Grant
Mark Hertsberg
Richard Jandora
Tom Jirik
K. Douglas Jones
Darrel G. Swienton
Kelly Weller
Gerald Wolin

Board Members Absent: Rod Gilles

OSFM Staff Present: John Fennell, Legal Counsel
Robert Capuani, Director of Elevator Safety
Elaine Del Greco

John Fennell: The reason I asked for closed session is because, by the way a roll call would reflect that everybody is here, we need to discuss the settlement authority. We have three hearings coming up in January -- ThyssenKrupp, Otis and Thompson Elevator Inspection. The Board will be asked to hear evidence of these companies violating the Act. They got permits from the local municipality rather than getting from the State of Illinois when there was no agreement between the municipality and the State of Illinois. There will be evidence produced. We have never discussed the authority of the Administrator to settle an action before a hearing. There is a pre-hearing conference on December 1st to discuss these matters and we need to discuss settlement authority.

John Fennell to
Richard Jandora: Nothing gets out of this room.

John Fennell: If one of these were to say no contest to the charges and agree to plead guilty, I need to know what our authority is.

Frank Christensen: I will be on the conference call.

John Fennell: No you will not. The Board is the hearing entity. You will not be on the conference call. I don't want you to have evidence before the hearing.

Tom Jirik: Who will be a party to this call?

John Fennell: Myself and Bob Capuani.

Tom Ganiere: If this goes to hearing what could fines be?

John Fennell: My read of the Act is that fines could be anything -- suspension of a license, revocation of a license, or a finding attached to the license. No dollar amount is specified in the Act other than a fine for the owner that can be no more than \$1,500 per day per violation. Notices to the companies included a possible fine of \$1,500 for each day that the violations occur. What they did was fail to get the permit. My initial thought is we are trying to send a message. My thought was considering \$1,500. I don't have the authority from the Board. Do you want to go higher or lower or specify a range for the fine?

Tom Ganiere: In addition to revocation or suspension can we do a probation type of thing?

John Fennell: There is no provision for that. My thinking is that's a criminal penalty. I don't see any authority for that.

Craig Grant: Would all three be offered the same approach?

John Fennell: If asked to settle we would go for the same penalty.

Frank Christensen: Thyssen is a second offense.

John Fennell: Then that would not be the same.

Tom Jirik: Who was it send to, someone in charge?

Bob Capuani: A verbal to John Boyd.

John Fennell to Tom Jirik: Not a word goes out of this room. I think it was a verbal....

Craig Grant: By that verbal reprimand, would that go to other first time offenders?

Kelly Weller: We have previously had hearings regarding two inspectors, one who took too long but, we did not at that time license inspection companies.

Tom Jirik: Did we as a Board know about the cases against the companies?

Frank Christensen: We could have questioned Thyssen on the second offense.

Tom Ganiere: You asked about the state's authority for a penalty. For me a minimum would be \$1,500.

John Fennell: We are not taking a vote. We will just go around the room.

Jerry Wolin: Question: What are the negative consequences of the violation?

John Fennell: The harm that was caused is that every other contractor, owner or inspection company can go to the city; you don't have to go to the state. We granted a variance on a conveyance for something we don't know anything about, and unless we do something no one will take us seriously. This, Mr. Wolin, is the thought on authority.

Jerry Wolin: \$1,500 will be a minimum, \$10,000 a maximum.

Kelly Weller: I helped getting the variances, and did not think it was the building owner's fault. \$5,000 minimum, don't know about Thyssen, \$5,000 on Otis, minimum.

Craig Grant: A minimum to be brought forward... (interrupted)

John Fennell: This pre-hearing is nothing more than procedural. I tell them what my arguments are; they tell me what theirs is.

Craig Grant: \$1,500 is fine for a minimum, \$5,000 maximum for very serious offenses.

Tom Ganiere: \$1,500 minimum, \$10,000 maximum. I agree that they one that as two violations should be more than the other two.

Rick Jandora: I will say a fine of \$1,500 for all parties, the reason being that they did what they always do in these situations. A fine is appropriate. They are just doing what they have done for decades.

Mark Hertsberg: In order to have some teeth I will raise the minimum to \$3,000.

Bill Bogdan: \$1,500 minimum, \$10,000 maximum. Do we set some type of precedent by going to hearing if we settle?

Doug Jones: I go with \$1,500. If first offenses we don't go with the maximum. The punishment should fit the crime. A first offense \$5,000 maximum.

Dave Dattilo: Having come out of the environmental industry the authorities get our attention with a pretty healthy fine. I'd say at least \$5,000.

Tom Jirik: \$1,500 minimum, \$5,000 maximum. Comment - I'm curious when it comes to Thompson in this case. Why didn't he bring to anyone's attention? Will this be asked?

John Fennell: Yes.

Tom Jirik: Will this meeting be recorded?

John Fennell: No.

Frank Christensen: Minimum of \$5,000.

Darrell Swienton: \$5,000 to start.

John Fennell: The only transcript would be a written settlement agreement without prejudice.

Dave Dattilo: Are you going to offer?

John Fennell: No, I am going to let them ask first.

Tom Ganiere: Does the Board approve the settlement agreement?

John Fennell: Yes.

Kelly Weller moved to conclude the session at 10:23 a.m. and Bill Bogdan seconded the motion. The motion carried 11-0.

The regular meeting then continued. Tom Ganiere moved to end the closed session and Craig Grant seconded the motion. The motion carried 11-0.

Respectfully submitted,

Richard Jandora
Secretary, Elevator Safety Review Board

ed