

PORT EVERGLADES FRANCHISE APPLICATION

An application will not be deemed completed and processed until all required documents and fees are received.
A separate application must be filed for each type of franchise Applicant wishes to apply for.

CHECK ONE

<input checked="" type="checkbox"/>	STEAMSHIP AGENT	<input type="checkbox"/>	STEVEDORE
<input type="checkbox"/>	CARGO HANDLER	<input type="checkbox"/>	TUGBOAT & TOWING
<input type="checkbox"/>	VESSEL BUNKERING	<input type="checkbox"/>	VESSEL OILY WASTE REMOVAL
<input type="checkbox"/>	VESSEL SANITARY WASTE WATER REMOVAL		

Note: Applicant is defined as the legal entity applying for the franchise. All information contained in this application shall apply only to the Applicant, not to any parent, affiliate, or subsidiary entities.

Applicant's

Name ELLER-ITO STEVEDORING COMPANY, LLC
(Name as it appears on the certificate of incorporation, charter, by-laws, or other official document)

Applicant's Business Address 1007 N America Way, Ste 501 Miami, FL
Number / Street City/State/Zip 33132

Phone # 305-379-3700 E-mail address chrisarocha@ellerito.com

Fax #: 305-371-9969

Name of the person authorized to bind the Applicant
(This person's signature must appear on Page 10.)

Name CHRISTOPHER C. AROCHA

Title Senior Vice President

Business Address Same as applicant's business address
Number / Street City/State/Zip

Phone # 305-379-3700 E-mail address chrisarocha@ellerito.com

Fax #: _____

Provide the Name and Contact Information of Applicant's Representative to whom questions about this application are to be directed: (if different from the person authorized to bind the Applicant)

Representative's Name TIMOTHY J. ARMSTRONG, Esq.

Representative's Title Attorney

Representative's Business Address 108 Cnnon Ct West Ponte Verde Beach, FL
Number / Street City/State/Zip 32082

Representative's Phone # 305-479-7915

Representative's E-mail address tarmstrong@tjarmstronglaw.com

Representative's Fax #: _____

PLEASE COMPLETE THIS APPLICATION AND LABEL ALL REQUIRED BACKUP DOCUMENTATION TO CLEARLY IDENTIFY THE SECTION OF THE APPLICATION TO WHICH THE DOCUMENTATION APPLIES (I.E., SECTION A, B, C, etc.).

Section A

1. List the name(s) of Applicant's officers including CEO, COO, CFO, director(s), member(s), partner(s), shareholder(s), principal(s), employee(s), agents, and local representative(s) active in the management of the Applicant.

Officers:

Title Senior Vice President
First Name Christopher Middle Name Charles
Last Name Arocha
Business Street Address 1007 N. America Way, Suite 501
City, State, Zip Code Miami, FL 33132
Phone Number (305) 379-3700 Fax Number (305) 371-9969
Email Address chrisarocha @ ellerito.com

Title Vice President of Operations
First Name Fernando Middle Name Nicolas
Last Name Alvarez
Business Street Address 1007 N. America Way, Suite 501
City, State, Zip Code Miami, FL 33132
Phone Number (305) 379-3700 Fax Number (305) 371-9969
Email Address falvarez @ ellerito.com

Title Vice President, Finance
First Name Silvia Middle Name Elena
Last Name Guardado
Business Street Address 1007 N. America Way, Suite 501
City, State, Zip Code Miami, FL 33132
Phone Number (305) 379-3700 Fax Number (305) 371-9969
Email Address sguardado @ ellerito.com

Title _____
First Name _____ Middle Name _____
Last Name _____
Business Street Address _____
City, State, Zip Code _____
Phone Number () _____ Fax Number () _____
Email Address _____ @ _____

Attach additional sheets if necessary.

2. RESUMES: Provide a resume for each officer, director, member, partner, shareholder, principal, employee, agent, and local representative(s) active in the management of the Applicant, as listed above.

Section B

1. Place checkmark to describe the Applicant:
() Sole Proprietorship () Corporation () Partnership (X) Joint Venture () Limited Liability Company
2. Provide copies of the documents filed at the time the Applicant was formed including Articles of Incorporation (if a corporation); Articles of Organization (if an LLC); or Certificate of Limited Partnership or Limited Liability Limited Partnership (if a partnership). If the Applicant was not formed in the State of Florida, provide a copy of the documents demonstrating that the Applicant is authorized to conduct business in the State of Florida.

Section C

1. Has there been any change in the ownership of the Applicant within the last five (5) years? (e.g., any transfer of interest to another party)
Yes ___ No X If "Yes," please provide details in the space provided. Attach additional sheets if necessary.
2. Has there been any name change of the Applicant or has the Applicant operated under a different name within the last five (5) years?
Yes ___ No X If "Yes," please provide details in the space provided, including: Prior name(s) and Date of name change(s) filed with the State of Florida's Division of Corporations or other applicable state agency. Attach additional sheets if necessary.
3. Has there been any change in the officers, directors, executives, partners, shareholders, or members of the Applicant within the past five (5) years?
Yes X No ___ If "Yes," please provide details in the space provided, including:
Prior officers, directors, executives, partners, shareholders, members
Name(s) Ana M. Lopez / VP, Finance
New officers, directors, executives, partners, shareholders, members
Name(s) Silvia E. Guardado / VP, Finance
Also supply documentation evidencing the changes including resolution or minutes appointing new officers, list of new principals with titles and contact information, and effective date of changes. Attach additional sheets if necessary.

Section D

Provide copies of all fictitious name registrations filed by the Applicant with the State of Florida's Division of Corporations or other State agencies. If none, indicate "None"_____.

Section E

1. Has the Applicant acquired another business entity within the last five (5) years?
Yes ___ No X If "Yes," please provide the full legal name of any business entity which the Applicant acquired during the last five (5) years which engaged in a similar business activity as the business activity which is the subject of this Port Everglades Franchise Application.
If none, indicate "None" _____.

2. Indicate in the space provided the date of the acquisition and whether the acquisition was by a stock purchase or asset purchase and whether the Applicant herein is relying on the background and history of the acquired firm's officers, managers, employees and/or the acquired firm's business reputation in the industry to describe the Applicant's experience or previous business history. Attach additional sheets if necessary.

N/A

3. Has the Applicant been acquired by another business entity within the last five (5) years?
Yes ___ No X If "Yes," provide the full legal name of any business entity which acquired the Applicant during the last five (5) years which engaged in a similar business activity as the business activity which is the subject of this Port Everglades Franchise Application.
If none, indicate "None" _____.

4. Indicate in the space provided the date of the acquisition and whether the acquisition was by a stock purchase or asset purchase and whether the Applicant herein is relying on the background and history of the parent firm's officers, managers, employees and/or the parent firm's business reputation in the industry to describe the Applicant's experience or previous business history. Attach additional sheets if necessary.

N/A

Section F

Provide the Applicant's previous business history, including length of time in the same or similar business activities as planned at Port Everglades.

Resume attached

Section G

1. Provide a list of the Applicant's current managerial employees, including supervisors, superintendents, and forepersons.
Attached
2. List the previous work history/experience of the Applicant's current managerial employees, including their active involvement in seaports and length of time in the same or similar business activities as planned at Port Everglades.

Christopher C. Arocha / Senior V.P. - 17 years
Fernando N. Alvarez / V.P. of Operations - 36 years
Silvia Guardado / V.P. of Finance - 7 years

Section H

List all seaports, including Port Everglades (if application is for renewal), where the Applicant is currently performing the services/operation which is the subject of this Franchise application. Use this form for each seaport listed. Photocopy additional pages as needed (one page for each seaport listed).

If none, state "None" _____.

Seaport PORT EVERGLADES Number of Years Operating at this Seaport 3

List below all of the Applicant's Clients for which it provides services at the seaport listed above.

Client Name (Company)	Number of Years Applicant has Provided Services to this Client
ROYAL CARIBBEAN	2 YEARS

Section H

List all seaports, including Port Everglades (if application is for renewal), where the Applicant is currently performing the services/operation which is the subject of this Franchise application. Use this form for each seaport listed. Photocopy additional pages as needed (one page for each seaport listed).

If none, state "None" _____.

Seaport Miami Number of Years Operating at this Seaport 1998

List below all of the Applicant's Clients for which it provides services at the seaport listed above.

Client Name (Company)	Number of Years Applicant has Provided Services to this Client
SEABOARD MARINE	15 YEARS
ROYAL CARIBBEAN	15 YEARS
ECUADORIAN LINE	8 YEARS
CELEBRITY CRUISES	8 YEARS
AZAMARA CRUISES	4 YEARS
CHINA SHIPPING	9 YEARS
EVERGREEN	4 YEARS
FECWRY	2 MONTHS
WALLENIOUS LINE	13 YEARS
AMERICAN PRESIDENT	10 YEARS
PRESTIGE CRUISES	3 YEARS

Seaport: Port Everglades _ Royal Caribbean

Section I

1. Provide a description of all past (within the last five (5) years) and pending litigation and legal claims where the Applicant is a named party, whether in the State of Florida or in another jurisdiction, involving allegations that Applicant has violated or otherwise failed to comply with environmental laws, rules, or regulations or committed a public entity crime as defined by Chapter 287, Florida Statutes, or theft-related crime such as fraud, bribery, smuggling, embezzlement or misappropriation of funds or acts of moral turpitude, meaning conduct or acts that tend to degrade persons in society or ridicule public morals.

The description must include all of the following:

- a) The case title and docket number
- b) The name and location of the court before which it is pending or was heard
- c) The identification of all parties to the litigation
- d) General nature of all claims being made

If none, indicate "None" _____.
See Q.3

2. Indicate whether in the last five (5) years the Applicant or an officer, director, executive, partner, or a shareholder, employee or agent who is or was (during the time period in which the illegal conduct or activity took place) active in the management of the Applicant was charged, indicted, found guilty or convicted of illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, entry of a plea of guilty or nolo contendere where the illegal conduct or activity (1) is considered to be a public entity crime as defined by Chapter 287, Florida Statutes, as amended from time to time, or (2) is customarily considered to be a white-collar crime or theft-related crime such as fraud, smuggling, bribery, embezzlement, or misappropriation of funds, etc. or (3) results in a felony conviction where the crime is directly related to the business activities for which the franchise is sought.

Yes ___ No X

If you responded "Yes," please provide all of the following information for each indictment, charge, or conviction:

- a) A description of the case style and docket number
- b) The nature of the charge or indictment
- c) Date of the charge or indictment
- d) Location of the court before which the proceeding is pending or was heard
- e) The disposition (e.g., convicted, acquitted, dismissed, etc.)
- f) Any sentence imposed
- g) Any evidence which the County (in its discretion) may determine that the Applicant and/or person found guilty or convicted of illegal conduct or activity has conducted itself, himself or herself in a manner as to warrant the granting or renewal of the franchise.

Section J

The Applicant must provide a current certificate(s) of insurance. Franchise insurance requirements are determined by Broward County's Risk Management Division and are contained in the Port Everglades Tariff No. 12 as amended, revised or reissued from time to time. The Port Everglades Tariff is contained in the Broward County Administrative Code, Chapter 42, and is available for inspection on line at: <http://www.broward.org/port/tariff>.

Attached

Section K

1. The Applicant must provide its most recent audited or reviewed financial statements prepared in accordance with generally accepted accounting principles, or other documents and information which demonstrate the Applicant's creditworthiness, financial responsibility, and resources, which the Port will consider in evaluating the Applicant's financial responsibility.

2. Has the Applicant or entity acquired by Applicant (discussed in Section E herein) sought relief under any provision of the Federal Bankruptcy Code or under any state insolvency law filed by or against it within the last five (5) year period?

Yes No

If "Yes," please provide the following information for each bankruptcy or insolvency proceeding:

- a) Date petition was filed or relief sought
- b) Title of case and docket number
- c) Name and address of court or agency
- d) Nature of judgment or relief
- e) Date entered

3. Has any receiver, fiscal agent, trustee, reorganization trustee, or similar officer been appointed in the last five (5) year period by a court for the business or property of the Applicant?

Yes No

If "Yes," please provide the following information for each appointment:

- a) Name of person appointed
- b) Date appointed
- c) Name and address of court
- d) Reason for appointment

4. Has any receiver, fiscal agent, trustee, reorganization trustee, or similar officer been appointed in the last five (5) year period by a court for any entity, business, or property acquired by the Applicant?

Yes No

If "Yes," please provide the following information for each appointment:

- a) Name of person appointed
- b) Date appointed
- c) Name and address of court
- d) Reason for appointment

Section L

List four (4) credit references for the Applicant, one of which must be a bank. Use this format:

Name of Reference PORT MIAMI Nature of Business LESSOR

Contact Name DALGIS BENTANCOURT Title Seaport Real Estate Manager

Legal Business Street Address 1015 N America Way, Suite 210

City, State, Zip Code Miami, FL 33132

Phone Number (305) 347-4841

(Provide on a separate sheet.)

Section M

1. Security: Pursuant to Port Everglades Tariff 12, Item 960, all Franchisees are required to furnish an Indemnity and Payment Bond or Irrevocable Letter of Credit drawn on a U.S. bank in a format and an amount not less than \$20,000 as required by Broward County Port Everglades Department.

2. Has the Applicant been denied a bond or letter of credit within the past five (5) years?
Yes ___ No X
If "Yes," please provide a summary explanation in the space provided of why the Applicant was denied. Use additional sheets if necessary.

Section N

1. Provide a list and description of all equipment currently owned and/or leased by the Applicant and intended to be used by the Applicant for the type of service(s) intended to be performed at Port Everglades including the age, type of equipment and model number.
No equipment issued in steamship agent operations.
2. Identify the type of fuel used for each piece of equipment.
n/a
3. Indicate which equipment, if any, is to be domiciled at Port Everglades.
n/a
4. Will all equipment operators be employees of the Applicant, on the payroll of the Applicant, with wages, taxes, benefits, and insurance paid by the Applicant?
Yes ___ No ___
If "No," please explain in the space provided who will operate the equipment and pay wages, taxes, benefits, and insurance, if the franchise is granted. Use additional sheets if necessary.

Section O

Provide a copy of the Applicant's current Broward County Business Tax Receipt (formerly Occupational License).

Section P

1. Provide a copy of Applicant's safety program.
2. Provide a copy of Applicant's substance abuse policy.
3. Provide a copy of Applicant's employee job training program/policy.
4. Provide information regarding frequency of training.
5. Include equipment operator certificates, if any.

Section Q

1. Has the Applicant received within the past five (5) years or does the Applicant have pending any citations, notices of violations, warning notices, or fines from any federal, state, or local environmental regulatory agencies?
Yes ___ No X

2. Has the Applicant received within the past five (5) years or does the Applicant have pending any citations, notices of violations, warning notices, or civil penalties from the U.S. Coast Guard?
Yes ___ No X

3. Has the Applicant received within the past five (5) years or does the Applicant have pending any citations, notices of violations, warning notices, or fines from the Occupational Safety and Health Administration?
Yes X No ___

If you responded "Yes" to any of this section's questions 1, 2, or 3 above, please provide a detailed summary for each question containing the following information:

- a) Name and address of the agency issuing the citation or notice
- b) Date of the notice
- c) Nature of the violation
- d) Copies of the infraction notice(s) from the agency
- e) Disposition of case
- f) Amount of fines, if any
- g) Corrective action taken

Attach copies of all citations, notices of violations, warning notices, civil penalties and fines issued by local, state, and federal regulatory agencies, all related correspondence, and proof of payment of fines.

4. Provide a statement (and/or documentation) which describes the Applicant's commitment to environmental protection, environmental maintenance, and environmental enhancement in the Port.

Section R

Provide written evidence of Applicant's ability to promote and develop growth in the business activities, projects or facilities of Port Everglades through its provision of the services (i.e., stevedore, cargo handler or steamship agent) it seeks to perform at Port Everglades. For first-time applicants (stevedore, cargo handler and steamship agent), the written evidence must demonstrate Applicant's ability to attract and retain new business such that, Broward County may determine in its discretion that the franchise is in the best interests of the operation and promotion of the port and harbor facilities. The term "new business" is defined in Chapter 32, Part II of the Broward County Administrative Code as may be amended from time to time.

By signing and submitting this application, Applicant certifies that it has read and understands the governing rules and regulations for a franchise as provided in Chapter 32, Part II, of the Broward County Administrative Code as amended. For additional information, visit: <http://www.municode.com/resources/gateway.asp?pid=13528&sid=9>.

By signing and submitting this application, Applicant certifies that all information provided in this application is true and correct and further, understands that providing false or misleading information on this application may result in the franchise application being denied, or in instances of renewal, a franchise revoked. Applicant hereby waives any and all claims for any damages resulting to the Applicant from any disclosure or publication in any manner of any material or information acquired by Broward County during the franchise application process or during any inquiries, investigations, or public hearings.

The individual executing this application personally warrants that s/he has the full binding authority to execute this application on behalf of the Applicant. Applicant further understands that if there are any changes to the information provided herein (subsequent to this application submission) and/or to its officers, directors, senior management personnel and/or in its business operation as stated in this application, Applicant agrees to provide such updated information to the Port Everglades Department of Broward County including the furnishing of the names, addresses (and other information as required above) with respect to persons becoming associated with Applicant after its franchise application is submitted and any other required documentation requested by Port Everglades Department staff as relating to the changes in the business operation. This information must be submitted within ten (10) calendar days from the date of any change made by the Applicant.

Applicant certifies that all workers performing functions for Applicant who are subject to the Longshore and Harbor Workers' Act are covered by Longshore and Harbor Workers' Act, Jones Act Insurance, as required by federal law.

By signing and submitting this application, Applicant authorizes the Port Everglades Department of Broward County to make any inquiry or investigation if it seems appropriate to verify or augment the information contained in this application, and authorizes others to release to the Port Everglades Department of Broward County any and all information sought in such inquiry. Applicant further understands that under the laws of the State of Florida, this application is subject to the Florida Public Records Act (Chapter 119, Florida Statutes) as may be amended.

11/17/14
11:45 AM

Signature of Applicant's Authorized Representative  Date Signed 11/17/14

Signature name and title - typed or printed Christopher C. Arocha / Senior VP

Witness Signature (*Required*) 

Witness name-typed or printed Ariagna Diaz-Pomares

Witness Signature (*Required*) 

Witness name-typed or printed Armando Vasquez

If a franchise is granted, all official notices/correspondence should be sent to:

Name Christopher C. Arocha Title Senior Vice President

Address 1007 N. America Way, Ste 501 Phone 305-379-3705
Miami, FL 33132

Section A

Christopher C. Arocha
Senior Vice President
Eller-ITO Stevedoring Co., LLC
Stevedoring Experience and History

Senior Vice President for Eller-ITO Stevedoring Co., LLC (2007-Present)

Position Objectives

- Senior Officer is responsible to manage the day-to-day business of the Company, including stevedoring operations, sales and marketing, and finance and administration. Accountable for the financial results of the Company.

Position titles of persons reporting to this position

- Vice President of Finance/Controller, Operations Manager, Safety & Risk Manager.

Key Accountabilities

- Creation of a challenging, team based work environment with highly motivated, results oriented staff.
- Achievement of Board-approved safety, environmental, financial, service level, productivity, unit revenue and unit cost targets.
- Active solicitation, procurement, cultivation, and management of the commercial relationships of Eller-ITO Stevedoring Co., LLC with its customers.
- Development and ownership of business plan and budget.
- Strategic long range planning for the business of the company and implementation of agreed elements.
- Create and sustain excellent relationship with Port of Miami and other applicable regulatory authorities. Create and sustain excellent relationship with the ILA at a Senior Level.

Assistant Operations Manager for Eller-ITO Stevedoring Co., LLC (2003-2007)

- Coordinate operations and plans for all company supervisors and labor working on vessels.
- Communicate with principals on particulars and interest for their ships.

Stevedore for Eller-ITO Stevedoring Co., LLC(1998-2005)

- Supervised operations on cruise ships, container vessels, trailer ro-ro, break bulk and car boats.

Assistant Warehouse Manager for Eller-ITO Stevedoring Co., LLC (1997-1999)

- Performed all warehouse operations including stripping and stuffing palletized cargo and lashing of loose freight.
-

Fernando N. Alvarez

Experience

1972-1978 POSEIDON / ROYAL CARIBBEAN CRUISE LINE
Operations Manager

1978-11985 HARRINGTON & CO.
Manager Stevedoring and Container Terminal

1985-1998 CONTINENTAL
Stevedoring and Terminal Operations Manager

1998-Present

Operations Manager

- Responsible for stevedoring supervision staff and their job deployment
- Responsible for operations and cost control in the Mechanic Shop and Warehouse (Sheb B)
- Coordinate with carriers and/or agents planning procedures and loading plans for vessel follow up with EDI Department
- Gantry and Seaboard Marine crane committee representative for Eller-ITO Stevedoring Co., LLC
- Oversees with risk manager safety program and enforcement of safety regulations.
- Coordinate equipment requirement and shop personnel for vessel operations with Maintenance and Repair Shop.
- Interface with other Port operations such as Port of Miami and Pomtoc in order to conduct smooth operations for our principal.
- Quote new business and special projects.

Résumé of
Silvia Guardado
12990 NW 9th Lane, Miami, Florida 33182
Phone: (305) 321-8012
E-mail: guardado.silvia@gmail.com

PROFESSIONAL EXPERIENCE

Eller-ITO Stevedoring Company, L.L.C. – Miami, Florida

A stevedoring company that is based at Port Miami, Florida with a rich history in the transportation industry and the largest Stevedore Container handling equipment pool in Miami. Eller-ITO specializes in providing technologically-advanced, world-class services, quickly and professionally, through a competent, well-trained staff.

Vice President of Finance (March 2012 to Present) and Assistant Vice President of Finance (May 2010 to March 2012)

Responsibilities include but are not limited to:

- Producing timely accurate financial reports for the company's board of directors.
- Working alongside the Senior Vice President in the strategic planning of the business and the preparation of financial budget to forecast future earnings.
- The overall creation, monitoring and maintenance of the company's accounting and financial information to ensure it adheres to financial rules and regulations.
- Gathering business performance data to analyze and compare to previous periods, and develop recommendations for improvements in revenue growth and resource allocation.
- Overseeing cash, investments and insurance programs to ensure a strong capital structure and cash flow.
- Coordinating year-end audit and making sure accounting policies and internal controls over financial transactions are maintained.
- Overseeing human resources and supervising accounting personnel.
- The hiring, training and mentoring accounting staff.

Port of Miami Crane Management, Inc. (PMCM) – Miami, Florida

A non-profit corporation that is a component unit of Miami-Dade County created for the sole purpose of maintaining the container handling equipment and gantry cranes at the Dante B. Fascell Port of Miami

General Accounting Manager (November 2007 to May 2010) and Accountant (September 2006 to November 2007)

- Ensured the accurate compilation, analysis and reporting of all economic activities including accounts payables, payroll, and general disbursements as well as budget transfers and its proper reporting into the Company's accounting books following the established internal controls to conform with Generally Accepted Accounting Principles (GAAP).
- Prepared/reviewed daily cash management report and bank reconciliation.
- Supervised the assignments of the payable staff to ensure vendors were paid accurately and efficiently.
- Supervised the Asset Manager, inventory process, fixed assets, and depreciation schedules.
- Prepared year-end financial statements in accordance with GAAP and assisted external auditors with annual audit.
- Prepared budgets, expenditures forecast, and provided variance analysis.
- Prepared the accounting and operations PowerPoint presentation for the monthly Board of Directors meetings and delivered the financial report to the Board.

PROFESSIONAL EXPERIENCE (continued)

- Prepared/reviewed Request for Proposals and contracts for acquisitions of services and materials in conformity with Florida Sunshine Law.
- Served as the liaison between PMCM and the Port of Miami.
- Performed special projects as assigned by the Chief Executive Officer

IDS Telcom – Miami, Florida

A \$50 million regional telecommunications company with 30,000 commercial and residential customers

Senior Financial Reporting Analyst (May 2004 - January 2006) and Supervisor Accounts Payable (April 2003 - May 2004)

- Prepared monthly financial analyses, financial reporting and debt covenant compliance package.
- Maintained dispute database for all telecommunications vendors.
- Facilitated the closing of the monthly accounting records.
- Assisted in preparation of schedules and analyses used to determine the sales price of the company and for inclusion in the asset purchase agreement.
- Created various ad hoc reports.
- Performed special projects, as requested by the chief executive officer and the chief financial officer.
- Worked with operations, payroll, human resource and billing departments in preparation and analysis of operational cost reports.
- Negotiated with vendors to settle disputes and agree upon payment amounts and terms.

Innerhost Inc. – Miami, Florida

Junior Accountant (September 2000 to April 2003)

- Prepared weekly and monthly line count reports.
- Prepared and analyzed daily sales reports for management.
- Prepared journal entries for monthly closing of accounting records.
- Maintained general ledger and accounting binder.
- Prepared bank reconciliation for multiple bank accounts.
- Maintained fixed asset ledger, controlled inventory, and performed routine audits on new equipment purchased.
- Assisted in the preparation on the annual expense budget for the company.
- Prepared monthly Power Point presentations of the company's financial performance for department heads.

DTK Computer Inc. – Miami, Florida

Accounts Payable Clerk (September 1998 to April 2000)

- Received and verified invoices and requisitions for goods and services complying with company policies and procedures.
- Maintained accounts payable ledger.
- Maintained updated vendor files.
- Prepared closing of daily, monthly and yearly operations by generating billing, inventory receiving, cash receipts, and purchasing reports.
- Prepared bank reconciliation.

- Maintained returned product reports for credit (RMA) to offset accounts payable report.
- Assisted in year-end inventory audit.

EDUCATION

Master of Business Administration

Finance Major
The H. Wayne Huizenga School of Business and Entrepreneurship
Nova Southeastern University, Davie, Florida
December 2012

Bachelor of Business Administration

Finance Major
Florida Int'l University, Miami, Florida
May 2006

COMPUTER SKILLS

Microsoft Office (advanced Excel), Great Plains, FRX, Prism, Peachtree, and MAS 200.

~~~~~ REFERENCES ARE AVAILABLE UPON REQUEST ~~~~~

Section B

FLORIDA DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS



## Detail by Entity Name

### Foreign Limited Liability Company

ELLER-I.T.O. STEVEDORING COMPANY L.L.C.

### Filing Information

|                 |              |
|-----------------|--------------|
| Document Number | M98000000642 |
| FEI/EIN Number  | 650842170    |
| Date Filed      | 06/18/1998   |
| State           | DE           |
| Status          | ACTIVE       |

### Principal Address

1007 NORTH AMERICA WAY, SUITE 501  
MIAMI, FL 33132

Changed: 02/16/2010

### Mailing Address

1007 NORTH AMERICA WAY, SUITE 501  
MIAMI, FL 33132

Changed: 02/16/2010

### Registered Agent Name & Address

C T CORPORATION SYSTEM  
1200 SOUTH PINE ISLAND ROAD  
PLANTATION, FL 33324

### Authorized Person(s) Detail

#### **Name & Address**

Title MGR

VICKERS, RAYMOND  
210A EPPES HALL  
112 S. COPELAND ST  
FLORIDA STATE UNIVERSITY  
TALLAHASSEE, FL 32306

Title SENIOR VICE PRESIDENT

AROCHA, CHRISTOPHER

1007 NORTH AMERICA WAY, SUITE 501  
MIAMI, FL 33132

Title VICE PRESIDENT - FINANCE

GUARDADO, SILVIA  
1007 NORTH AMERICA WAY, SUITE 501  
MIAMI, FL 33132

### Annual Reports

| Report Year | Filed Date |
|-------------|------------|
| 2013        | 03/25/2013 |
| 2014        | 04/14/2014 |
| 2015        | 01/13/2015 |

### Document Images

|                                               |                          |
|-----------------------------------------------|--------------------------|
| <a href="#">01/13/2015 -- ANNUAL REPORT</a>   | View image in PDF format |
| <a href="#">04/14/2014 -- ANNUAL REPORT</a>   | View image in PDF format |
| <a href="#">03/25/2013 -- ANNUAL REPORT</a>   | View image in PDF format |
| <a href="#">03/20/2012 -- ANNUAL REPORT</a>   | View image in PDF format |
| <a href="#">04/21/2011 -- ANNUAL REPORT</a>   | View image in PDF format |
| <a href="#">02/16/2010 -- ANNUAL REPORT</a>   | View image in PDF format |
| <a href="#">01/16/2009 -- ANNUAL REPORT</a>   | View image in PDF format |
| <a href="#">04/16/2008 -- ANNUAL REPORT</a>   | View image in PDF format |
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| <a href="#">03/23/2000 -- ANNUAL REPORT</a>   | View image in PDF format |
| <a href="#">04/28/1999 -- ANNUAL REPORT</a>   | View image in PDF format |
| <a href="#">06/18/1998 -- Foreign Limited</a> | View image in PDF format |

Section D

**APPLICATION FOR REGISTRATION OF FICTITIOUS NAME**

Note: Acknowledgements/certificates will be sent to the address in Section 1 only.

Section 1

1. Miami CFS  
Fictitious Name to be Registered (see instructions if name includes "Corp" or "Inc")  
Suite 501

1007 North American Way  
Mailing Address of Business

Miami Florida 33132  
City State Zip Code

3. Florida County of principal place of business: Miami-Dade

(see instructions if more than one county)

FEI Number: 65-0842170

FILED

2011 APR 11 AM 8:41

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

G11000035449  
04/11/11--01049--029 \*\*50.00

This space for office use only

Section 2

**A. Owner(s) of Fictitious Name If Individual(s): (Use an attachment if necessary):**

1. Last First M.I. Address City State Zip Code

2. Last First M.I. Address City State Zip Code

**B. Owner(s) of Fictitious Name If other than an individual: (Use attachment if necessary):**

1. Eller-T.O. Stevedoring Company, L.L.C.  
Entity Name  
Suite 501 1007 North American Way  
Address  
Miami Florida 33132  
City State Zip Code  
Florida Document Number: M98000000642  
FEI Number: 65-0842170  
 Applied for  Not Applicable

2. Entity Name Address City State Zip Code Florida Document Number FEI Number  
 Applied for  Not Applicable

Section 3

I the undersigned, being an owner in the above fictitious name, certify that the information indicated on this form is true and accurate. In accordance with Section 885.09, F.S., I further certify that the fictitious name to be registered has been advertised at least once in a newspaper as defined in chapter 50, Florida Statutes, in the county where the principal place of business is located. I understand that the signature below shall have the same legal effect as if made under oath.

[Signature] 4/6/11 tarmstrong@armstrongmejer.com  
Signature of Owner Date E-mail address: (to be used for future renewal notification)

Phone Number: 305-379-3700

Section 4

**FOR CANCELLATION COMPLETE SECTION 4 ONLY:  
FOR FICTITIOUS NAME OR OWNERSHIP CHANGE COMPLETE SECTIONS 1 THROUGH 4:**


I (we) the undersigned, hereby cancel the fictitious name \_\_\_\_\_  
\_\_\_\_\_, which was registered on \_\_\_\_\_ and was assigned  
registration number \_\_\_\_\_

\_\_\_\_\_  
Signature of Owner Date Signature of Owner Date

Mark the applicable boxes  Certificate of Status — \$10  Certified Copy — \$30  
NON-REFUNDABLE PROCESSING FEE: \$50

FLORIDA DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS

[www.sunbiz.org](http://www.sunbiz.org)



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**Fictitious Name Detail**

Fictitious Name

MIAMI CFS

**Filing Information**

Registration Number G11000035449  
Status ACTIVE  
Filed Date 04/11/2011  
Expiration Date 12/31/2016  
Current Owners 1  
County MIAMI-DADE  
Total Pages 1  
Events Filed NONE  
FEI/EIN Number 65-0842170

**Mailing Address**

STE 501, 1007 NORTH AMERICAN WAY  
MIAMI, FL 33132

**Owner Information**

ELLER-I.T.O. STEVEDORING COMPANY L.L.C.  
STE 501, 1007 NORTH AMERICAN WAY  
MIAMI, FL 33132  
FEI/EIN Number: 65-0842170  
Document Number: M98000000642

**Document Images**

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**Section F**

**ELLER-ITO ORGANIZATION & BUSINESS HISTORY**

Organized as a Delaware limited liability company On June 5, 1998, Eller-I.T.O. Stevedoring Company, L.L.C. ("Eller-ITO") qualified to do business in the State of Florida on June 18, 1998. Soon after its formation, Eller-ITO established offices and other facilities in Miami, Florida. From inception Eller-ITO's Members (or Owners) have been Ports America Florida, Inc.<sup>1</sup> and Continental Stevedoring and Terminals, Inc., each of which owns fifty percent of the company.

The largest stevedore in the Port of Miami-Dade, Eller-ITO serves cargo and cruise vessels calling at the Port. Eller-ITO's business also includes terminal and warehouse operations in the Port of Miami-Dade. Recently Eller-ITO established a container freight station for its customers.

Initially Eller-ITO continued the business of its Members and predecessors. For example, Eller-ITO and its predecessors have stevedored all of Royal Caribbean's cruise ships in the Port of Miami since the "Song of Norway" arrived in 1970. As Eller-ITO's customer base expanded, its work also

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<sup>1</sup>On June 26, 2000, I.T.O. Corporation of Florida, a Florida corporation, filed an Amendment to its Articles of Incorporation, changing its name to P&O Ports Florida, Inc. On June 4, 2007, P&O Ports Florida, Inc. filed an Amendment to its Articles of Incorporation, changing its name to Ports America Florida, Inc. Although the name has changed, the corporate entity has remained the same.

increased. For instance, Eller-ITO has been the sole stevedore in the Port of Miami-Dade for Seaboard Marine, which has grown into one of the largest cargo lines serving Central America, South America, and the Caribbean.

To serve its customers, Eller-ITO has developed the largest stevedoring and cargo-handling equipment pool in the Port of Miami-Dade for cruise, container, and break bulk/special cargo. Regular equipment purchases and leases are an integral part of Eller-ITO's business plan. Moreover, Eller-ITO's shop maintains and repairs its equipment.

Throughout Eller-ITO's existence its officers have been directly responsible for its operations. A Board of Managers meets monthly to oversee their performance. Eller-ITO employs supervisors, vessel superintendents and coordinators, shipside managers, and administrative personnel, to perform services for customers and their vessels. Pursuant to collective bargaining agreements with the International Longshoremen's Association ("ILA"), Eller-ITO utilizes ILA members to load and discharge passengers and cargo, to handle baggage and cargo, to operate, maintain, and repair its equipment, and to work in its warehouse. Included in the collective bargaining agreements are: a Deepsea Longshore Agreement, a Deepsea Clerks and Checkers Agreement, and a Mechanics and Maintenance Agreement.

**Section G**

**ELLER-ITO STEVEDORING CO., LLC  
EMPLOYEES**

**STEVEDORES**

1 ALEMANY, ENRIQUE  
2 ALIZAGA, MANUEL  
3 ANDERSON, JUSTIN  
4 BROWN, BRUCE  
5 CASTRO, JOSE A.  
6 CHARLES SCHROEDER  
7 CHIANG, JOHNNY  
8 DOMINGUEZ, ANTONIO  
9 FERNANDEZ, SANTIAGO  
10 FIGUEROA, ALEX  
11 FORMOSO, IDALBERTO  
12 GOMEZ, JOHNNY  
13 HERRERA, MANUEL  
14 HURST, LORRAINE  
15 LEBRON, JONATHAN  
16 LIE-NIELSEN, TELLEF  
17 MADEO, DOMINICK  
18 PEREZ, GILBERTO  
19 PEREZ, LEONARDO  
20 PESTANA, ANTHONY  
21 SANTOS, ERICK  
22 SCHROEDER, CHARLIE A.  
23 SCHROEDER, KEVIN  
24 SMITH, J.C.  
25 SULLIVAN, MENZO  
26 TABRAUE, MARIO G.  
27 VARGAS, MARIO

**OFFICE**

1 ALVAREZ, FERNANDO  
2 AROCHA, CHRISTOPHER  
3 DIAZ-POMARES, ARIAGNA  
4 DIAZ, DOMINGO  
5 GONZALEZ, MARCELO  
6 GUARDADO, SILVIA  
7 GUARDADO, VICTOR  
8 JOHNSON, ALFONSO  
9 MARTINEZ, FRED  
10 PAREDES, ELENA  
11 ROBLETO, KATTIE  
12 SUAREZ, PABLO  
13 VAZQUES, ARMANDO

TOTAL EMPLOYEES: 40

Section I

**U.S. Department of Labor**  
Occupational Safety and Health Administration  
1000 South Pine Island Road  
Suite 100  
Fort Lauderdale, FL 33324  
Phone: (954)424-0242 FAX: (954)424-3073



**INVOICE/  
DEBT COLLECTION NOTICE**

---

**Company Name:** Eller-ITO Stevedoring Company L.L.C.  
**Inspection Site:** Seaboard Spirit, Birth 164, Port of Miami, Miami, FL 33167  
**Issuance Date:** 10/20/2011  
**Summary of Penalties for Inspection Number** 315353235

|                                 |      |                |
|---------------------------------|------|----------------|
| <b>Citation 1, Serious</b>      | = \$ | <b>7000.00</b> |
| <b>TOTAL PROPOSED PENALTIES</b> | = \$ | <b>7000.00</b> |

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To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due and will cash the check or money order as if these restrictions or conditions do not exist.


If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to 2 times.

Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

**Interest.** Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is 4%. Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

**Delinquent Charges.** A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

**Administrative Costs.** Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.

  
\_\_\_\_\_  
Darlene Fossum  
Area Director

Date 12/21/11

Corrective action, taken by you for each alleged violation should be submitted to this office on or about the abatement dates indicated on the Citation and Notification of Penalty.

If the hazards itemized on this citation(s) are not abated/corrected and a follow-up inspection is conducted, your establishment may receive a Failure to Abate Citation for the uncorrected hazards with subsequent additional monetary penalties of up to thirty (30) times the original penalty amount of the uncorrected hazards.

A work sheet has been provided to assist in providing the required abatement information. A completed copy of his work sheet should be posted at the worksite with the Citation(s).

U.S. Department of Labor  
Occupational Safety and Health Administration  
100 PETERS ROAD  
Building H-100  
TALLAHASSEE, FL 32304  
Phone: (904)424-0242 FAX: (904)424-3073



## Citation and Notification of Penalty

Maritime Stevedoring Company, LLC  
its successors  
South America Way  
Tallahassee, FL 32304

Inspection Number: 313101057  
Inspection Date(s): 04/28/2009 - 05/06/2009  
Issuance Date: 08/05/2009

Location Site:  
100 Port Boulevard  
Tallahassee, FL 32304

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations described in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (including weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you mail notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the OSHA 3000 booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is overturned by the Review Commission or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal

ference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 3 Notice to Employees to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Area Director in writing that you intend to contest citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.

**Penalty Payment** - Penalties are due within 15 working days of receipt of this notification unless contested. See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Prepare your check or money order payable to "DOL-OSHA". Please indicate the Inspection Number on the back of the check or money order.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

The law also requires a copy of all abatement verification documents, required by 29 CFR 1903.19 to be sent to OSHA, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (including weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

U.S. DEPARTMENT OF LABOR  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

**GUIDELINES FOR PREPARING A NOTIFICATION OF CORRECTIVE ACTION**

**Notification of Corrective Action** - For each violation which you do not contest, you are required by 29 CFR 1903.19 to submit an Abatement Certification to the Area Director of the OSHA office issuing the citation and identified above. The certification must be sent by you within 10 calendar days of the abatement date indicated in the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is identified as **Serious** and the citation states that abatement documentation is required, documents such as those identified above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

**Abatement verification documents must contain the following information:** 1) Your name and address; 2) inspection number (found on the front page); 3) the citation and citation item number(s) to which the violation relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

OSHA also requires a copy of all abatement verification documents, required by 29 CFR 1903.19 to be sent to the Area Director, also be posted at the location where the violation appeared and the corrective action took place.

**Inspection Activity Data** - You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation, not sooner than 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.

**NOTE: NON-CERTIFICATION OF ABATEMENT CAN RESULT IN ADDITIONAL PENALTIES BEING ASSESSED!**

ABATEMENT CERTIFICATION

Darlene Fossum, Area Director  
U.S. Department of Labor - OSHA  
8040 PETERS ROAD  
Building H-100  
FORT LAUDERDALE, FL 33324  
Phone: (954)424-0242

Eller-ITO Stevedoring Company, LLC  
899 South America Way  
Miami, FL 33132

The hazard referenced in Inspection Number 313101057 for the violation identified as:

The hazard referenced in Inspection Number 313101057 for the violation identified as Citation 1 and Item 1 was corrected on Aug. 6, 2009 by the following method: The driver was sent back for re-certification / training.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_ by the following method: \_\_\_\_\_

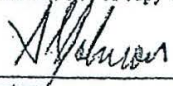
The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_ by the following method: \_\_\_\_\_

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_ by the following method: \_\_\_\_\_

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_ by the following method: \_\_\_\_\_

NOTE: 29 USC 666, (g): Whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months or both.

POSTING: A copy of the completed Corrective Action Worksheet should be posted for employee review.



Signature

Al Johnson, Risk Manager

Typed or Printed Name

We have also taken the following measures:

- Our Risk Manager has completed the OTI 5400- 40hr OSHA Training taught by USF.
- Our Superintendents have been trained in the OSHA 10hr training course.
- The appropriate Labor / Management issues have been addressed.
- We are conducting on-going meetings with the ILA labor to ensure safety standards are

U.S. Department of Labor  
Occupational Safety and Health Administration

Inspection Number: 313101057  
Inspection Dates: 04/28/2009 - 05/06/2009  
Issuance Date: 08/05/2009



**Citation and Notification of Penalty**

Company Name: Eller-ITO Stevedoring Company, LLC  
Location Site: 1630 Port Boulevard, Miami, FL 33132

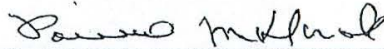
**Citation 1 Item 1** Type of Violation: **Other**

29 CFR 1917.43(b)(3): Load engaging means was not fully lowered, controls neutralized and brakes set when loaded industrial truck was left unattended:

- a. At the Seaboard Marine Terminal area, a top loader (Taylor #526) was left unattended without having its top-pick container attachment fully lowered, on or about 5/6/2008.

Note: Certification of abatement must be submitted for this citation item as required by 29 CFR 1903.19(c).

|                                         |            |
|-----------------------------------------|------------|
| Date By Which Violation Must be Abated: | 08/11/2009 |
| Proposed Penalty:                       | \$ 0.00    |

*RLC*   
 Darlene Fossum  
 Area Director

**SUMMARY OF PROPOSED PENALTIES**

Summary of Penalties for Inspection Number 313101057

|                                 |             |             |
|---------------------------------|-------------|-------------|
| Citation 1, Other               | = \$        | 0.00        |
| <b>TOTAL PROPOSED PENALTIES</b> | <b>= \$</b> | <b>0.00</b> |

Pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OSSIE Hyman

U.S. Department of Labor  
Occupational Safety and Health Administration  
1000 South Pine Island Road  
Suite 100  
Fort Lauderdale, FL 33324  
Phone: (954)424-0242 FAX: (954)424-3073



## Citation and Notification of Penalty

**To:**  
Eller-ITO Stevedoring Company L.L.C.  
and its successors  
1007 North America Way Suite 501  
Miami, FL 33132

**Inspection Number:** 315353235  
**Inspection Date(s):** 05/04/2011 -  
**Issuance Date:** 10/20/2011

**Inspection Site:**  
Seaboard Spirit, Birth 164, Port of Miami  
Miami, FL 33167

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you mail notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment of the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal

conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 3 Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.

**Penalty Payment** - Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to "DOL-OSHA". Please indicate the Inspection Number on the remittance.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

The law also requires a copy of all abatement verification documents, required by 29 CFR 1903.19 to be sent to OSHA, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Notice to Employees** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

U.S. Department of Labor  
Occupational Safety and Health Administration

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### NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 10/20/2011. The conference will be held at the OSHA office located at 1000 South Pine Island Road, Suite 100, Fort Lauderdale, FL, 33324 on \_\_\_\_\_ at \_\_\_\_\_.

Employees and/or representatives of employees have a right to attend an informal conference.

U.S. DEPARTMENT OF LABOR  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

GUIDELINES FOR PREPARING A NOTIFICATION OF CORRECTIVE ACTION

**Notification of Corrective Action** - For each violation which you do not contest, you are required by 29 CFR 1903.19 to submit an Abatement Certification to the Area Director of the OSHA office issuing the citation and identified above. The certification must be sent by you within 10 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citations states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

**All abatement verification documents must contain the following information:** 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by 29 CFR 1903.19 to be sent to OSHA, also be posted at the location where the violation appeared and the corrective action took place.

**Inspection Activity Data** - You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation, but not sooner than 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.

**NOTE: NON-CERTIFICATION OF ABATEMENT CAN RESULT IN ADDITIONAL PENALTIES BEING ASSESSED!**

**ABATEMENT CERTIFICATION**

Darlene Fossum, Area Director  
U.S. Department of Labor - OSHA  
1000 South Pine Island Road  
Suite 100  
Fort Lauderdale, FL 33324  
Phone: (954)424-0242

Eller-ITO Stevedoring Company L.L.C.  
1007 North America Way Suite 501  
Miami, FL 33132

The hazard referenced in Inspection Number 315353235 for the violation identified as:

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_  
by the following method: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_  
by the following method: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_  
by the following method: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_  
by the following method: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_  
by the following method: \_\_\_\_\_.

**NOTE: 29 USC 666.(g):** Whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months or both.

**POSTING:** A copy of the completed Corrective Action Worksheet should be posted for employee review.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

U.S. Department of Labor  
Occupational Safety and Health Administration

Inspection Number: 315353235  
Inspection Dates: 05/04/2011 -  
Issuance Date: 10/20/2011



**Citation and Notification of Penalty**

**Company Name:** Eller-ITO Stevedoring Company L.L.C.  
**Inspection Site:** Seaboard Spirit, Birth 164, Port of Miami, Miami, FL 33167

**Citation 1 Item 1** Type of Violation: **Serious**

29 CFR 1918.86(n): Drivers drove vehicles, either forward or backward, where personnel were in positions where they could have been struck:

On or about 05/04/11 at Birth 164, Port of Miami FL 33167, an employee was exposed to being struck-by a truck trailer and container that was moved in the forward direction from their stowed location in a ship.

**PLEASE NOTE: CERTIFICATION AND DOCUMENTATION OF ABATEMENT IS REQUIRED FOR THIS VIOLATION.**

|                                         |            |
|-----------------------------------------|------------|
| Date By Which Violation Must be Abated: | 11/08/2011 |
| Proposed Penalty:                       | \$ 7000.00 |

A handwritten signature in black ink, appearing to read "Darlene Fossum", written over a horizontal line.

Darlene Fossum  
Area Director

pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

§2200.91 Discretionary review; Petitions for discretionary review; Statements in opposition to petitions.

(a) *Review discretionary.* Review by the Commission is not a right. A Commissioner may, as a matter of discretion, direct review on his own motion or on the petition of a party.

(b) *Petitions for discretionary review.* A party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a petition for discretionary review. Discretionary review by the Commission may be sought by filing with the Judge a petition for discretionary review within the ten-day period provided by §2200.90(b)(2). Review by the Commission may also be sought by filing directly with the Executive Secretary a petition for discretionary review. A petition filed directly with the Executive Secretary shall be filed within 20 days after the date of docketing of the Judge's report. The earlier a petition is filed, the more consideration it can be given. A petition for discretionary review may be conditional, and may state that review is sought only if a Commissioner were to direct review on the petition of an opposing party.

(c) *Cross-petitions for discretionary review.* Where a petition for discretionary review has been filed by one party, any other party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a cross-petition for discretionary review. The cross-petition may be conditional. See paragraph (b) of this section. A cross-petition shall be filed with the Judge during the 10 days provided by §2200.90(b) or directly with the Executive Secretary within 27 days after the date of docketing of the Judge's report. The earlier a cross-petition is filed, the more consideration it can be given.

(d) *Contents of the petition.* No particular form is required for a petition for discretionary review. A petition should state why review should be directed, including: Whether the Judge's decision raises an important question of law, policy or discretion; whether review by the Commission will resolve a question about which the Commission's Judges have rendered differing opinions; whether the Judge's decision is contrary to law or Commission precedent; whether a finding of material fact is not supported by a preponderance of the evidence; whether a prejudicial error of procedure or an abuse of discretion was committed. A petition should concisely state the portions of the decision for which review is sought and should refer to the citations and citation items (for example, citation 3, item 4a) for which review is sought. A petition shall not incorporate by reference a brief or legal memorandum. Brevity and the inclusion of precise references to the record and legal authorities will facilitate prompt review of the petition.

(e) *When filing effective.* A petition for discretionary review is filed when received. If a petition has been filed with the Judge, another petition need not be filed with the Commission.

(f) *Failure to file.* The failure of a party adversely affected or aggrieved by the Judge's decision to file a petition for discretionary review may foreclose court review of the objections to the Judge's decision. See *Keystone Roofing Co. v. Dunlop*, 539 F.2d 960 (3d Cir. 1976).

(g) *Statements in opposition to petition.* Statements in opposition to petitions for discretionary review may be filed in the manner specified in this section for the filing of petitions for discretionary review. Statements in opposition shall concisely state why the Judge's decision should not be reviewed with respect to each portion of the petition to which it is addressed.



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
1120 20th Street, N.W., Ninth Floor  
Washington, DC 20036-3419

COPY

Phone: (202) 606-5405

Fax: (202)606-5409

**Notice of Decision**

**In Reference To:**

*Hyman*

**Secretary of Labor v. Eller-ITO Stevedoring Company, LLC**  
**OSHRC Docket No. 11-3010**

1. Enclosed is a copy of my decision. It will be submitted to the Commission's Executive Secretary on **January 29, 2013**. The decision will become the final order of the Commission at the expiration of thirty (30) days from the date of docketing by the Executive Secretary, unless with that time a Member of the Commission directs that it be reviewed. All parties will be notified by the Executive Secretary of the date of docketing.

2. Any party that is adversely affected or aggrieved by the decision may file a petition for discretionary review by the Review Commission. *A petition may be filed with this Judge within ten (10) days from the date of this notice. There after, any petition must be filed with the Review Commission's Executive Secretary within twenty (20) days from the date of the Executive Secretary's notice of docketing.* See paragraph No. 1. The Executive Secretary's address is as follows:

1/24/13  
✗

**Executive Secretary**  
**Occupational Safety and Health**  
**Review Commission**  
**One Lafayette Center**  
**1120 20th Street, N.W. - 9th Floor**  
**Washington, D.C. 20036-2347**

3. The full text of the rule governing the filing of a petition for discretionary review is 29 C.F.R. 2200.91 (51 Fed. Reg. 32026, Sept. 8, 1986). It is appended hereto for easy reference, as are related rules prescribing post-hearing procedures.

*Covette Rooney*

**COVETTE ROONEY**  
**Chief Judge**

**DATED: January 14, 2013**  
**Washington, D.C.**



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
1120 20<sup>th</sup> Street, N.W., Ninth Floor  
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

ELLER-ITO STEVEDORING COMPANY, LLC,

Respondent.

*Hyman*

OSHRC Docket No. 11-3010

APPEARANCES: Angela F. Donaldson, Esquire, U.S. Department of Labor  
Office of the Solicitor, Atlanta, Georgia  
For the Complainant.

James W. McCready, III, Esquire, Seipp and Flick  
Coral Gables, Florida  
For the Respondent.

BEFORE: Chief Judge Covette Rooney

**DECISION AND ORDER**

This proceeding is before the Occupational Safety and Health Review Commission ("the Commission") under section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* ("the Act"). The Occupational Safety and Health Administration ("OSHA") inspected a work site of Respondent, Eller-ITO Stevedoring Company, LLC ("ESC"), in Miami, Florida, after a fatal accident on May 4, 2011. The accident occurred during the discharge of cargo from a ship at the Port of Miami, when an employee was struck as a cargo container was in the process of being unloaded. After the inspection, OSHA issued to Respondent ESC a one-item serious citation alleging a violation of 29 C.F.R. § 1918.86(n). ESC contested the citation, and the hearing in this matter was held in Miami, Florida, on August 15 and 16, 2012. Both parties have filed post-hearing briefs.

*The Parties' Stipulated Facts*

Respondent ESC is a stevedoring company that is incorporated in the State of Florida. On May 4, 2011, ESC assigned a "gang" of nine employees to unload cargo containers from a ship named the Seaboard Spirit at the Port of Miami. The nine employees were all members of the International Longshoremen's Association ("ILA"), Local 1416. ESC regularly uses ILA workers for its stevedoring operations, and, at the time of the accident, ESC had access to a pool of about 620 ILA workers. The work on May 4, 2011, was a "roll-on/roll-off" ("Ro-Ro") operation, in which chassis-mounted cargo containers stored on the ship were to be taken off the ship. The first container to be removed was the one involved in the accident. The container was 20 feet long and weighed about 4800 pounds. The chassis it was mounted on weighed about 6000 pounds. At the beginning of the operation, the container was in storage on the ship's access ramp and was secured to the ramp with chains. The container was to be removed by means of a tractor or "mule" backing up to the chassis and container on the ramp in order to attach the mule to the chassis. The mule operator would then drive the mule with the chassis attached to it off the ramp and onto the dock. Before the chassis and container could be driven off the ramp, the chains securing the container had to be removed. Wheel chocks in front of the chassis tires also had to be removed before the chassis and container could be taken off the ramp. See Amended Joint Pre-Hearing Statement ("Statement"), pp. 7-9, Stip. Facts 1-7, 14-20.

The nine-person gang consisted of four "lashers," one "lasher/striker," a "header," two mule operators, and a towmotor operator. The "lashers" were responsible for unlashings the chains that secured the cargo containers to the vessel. Oscar ("Ossie") Hyman, the "lasher/striker," was the team leader of the lashers. (Tr. 52, 170, 393). Willie Turner, the "header," was the group leader who supervised the gang. (Tr. 35, 166, 202). Another individual, Enrique Alemany, was ESC's superintendent in charge of the operation. (Tr. 35, 56). Before the work began on May 4, 2011, Mr. Turner held a gangway safety meeting with the gang members. At about 1:00 p.m., the work commenced, and the lashers unlashings all but one rear chain from the subject container. The mule was then attached to the chassis so that it could be driven off the access ramp. Just before the accident occurred, Mr. Hyman gave the "all clear" signal to the mule

operator to proceed to move the chassis and container off the access ramp. The container, however, remained chained to the vessel, as the rear chain had not been removed. Minutes later, Mr. Hyman was found lying in the walkway that ran along the side of the access ramp. *See* Statement, pp. 7-9, Stip. Facts 8-13, 17-23.

*The OSHA Inspection*

OSHA Compliance Officer ("CO") Michael Marquez conducted the inspection in this case. OSHA learned of the accident at 2:45 p.m. on May 4, 2011, and he was at the site by 3:30 p.m. He spoke to the police when he arrived, to find out what had happened.<sup>1</sup> The CO learned that ESC was a stevedoring company, that it obtained its employees from the ILA, and that the work at the site was a Ro-Ro operation that involved unloading cargo containers from the ship. The employees worked in teams to unlash the chains securing the containers, and Mr. Hyman's job was to coordinate their work. His job was also to give a verbal and hand signal to the mule driver once a container was unlashd and the chocks were removed so the container could be driven down the access ramp. The CO learned the accident occurred when the mule driver tried to drive the subject container off the ramp; although Mr. Hyman had removed the chocks, the container's rear chain was still attached, and the container slid over towards the walkway alongside the ramp and struck Mr. Hyman. (Tr. 30-35, 47-48, 51-53, 67).

At the hearing, the CO discussed C-9, pages 1-15, photographs taken at the site. Page 1 shows the Seaboard Spirit, the port, and a yellow mule. Page 3 shows the access ramp where the subject container had been and the walkway on the right side of the ramp.<sup>2</sup> Page 4 is a close-up of the ramp and walkway; the CO measured the walkway to be 20 to 23 inches wide. Page 4 also shows a hardhat on the walkway; the hardhat's location is in the area where Mr. Hyman was struck. Page 9 shows some of the containers chained to the ship. The CO interviewed most of the gang members who had been working at the site that day, and he took written statements from Mr. Alemany and

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<sup>1</sup> The CO learned that the decedent, Mr. Hyman, was still at the site but had been removed from where the accident had occurred. He also learned that the subject mule and container had been moved off the ramp so that the emergency personnel could get to Mr. Hyman. (Tr. 35-36, 123).

<sup>2</sup> The bottom of Page 3 also shows another ramp that is part of the ship; this ramp is hinged and folds down hydraulically when the ship is in port so that cargo can be loaded or unloaded. (Tr. 42-46).

Mr. Turner.<sup>3</sup> Mr. Alemany drew C-6, a diagram of the back of the ship where the unloading was done. C-6 shows where the mule and the container were on the access ramp and Mr. Hyman's location on the walkway near the rear of the container. C-6 also shows the folding ramp and the port. Mr. Alemany put his initials on C-6 to show where he had been standing on the port; he also indicated on C-6 where the gangway safety meeting had been held. (Tr. 36-42, 46-55, 59-61, 65, 88-90, 123, 127).

CO Marquez determined that ESC had violated the cited standard; the mule was moving the chassis and container off the ramp, and Mr. Hyman was in an area where he could have been and was in fact struck. ESC's management was aware of the cited hazard in light of C-1, ESC's lasher training course dated April 21, 2011, and another fatality that had occurred about five weeks before Mr. Hyman's accident. The CO testified that no one had seen the accident and that no one knew Mr. Hyman was standing next to the chassis and container when he gave the "all clear" signal to the mule operator. He believed that management could have known of Mr. Hyman's location, however, as it was in plain view. The CO also testified that while there had been a safety meeting before the work began, there had been no monitoring of the work; further, while Mr. Alemany said he was monitoring the cargo leaving the ship, he could not see Mr. Hyman from where he was standing on the port. (Tr. 67-79, 117-18, 131-35, 150).

#### Jurisdiction

The parties have agreed that Respondent is an employer engaged in a business affecting commerce within the meaning of § 3(5) of the Act. They have also agreed that jurisdiction of this matter is conferred upon the Commission by §n 10(c) of the Act. *See* Statement, p. 10. I find, therefore, that Respondent is an employer with employees under the Act and that the Commission has jurisdiction of the parties and subject matter of this proceeding.

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<sup>3</sup> Mr. Alemany's written statements to OSHA are C-7 and C-8; C-5 is his written report of the accident to ESC. While I have considered all of his statements, and have referenced certain parts of them in this decision, I have noted two assertions that appear contrary to the CO's testimony. In C-5, Mr. Alemany indicates that the cause of the accident was an apparent miscommunication between Mr. Hyman and Mr. Palmer when Mr. Hyman was trying to remove the chocks. In C-8, on page 5, Mr. Alemany indicates that the one-man striker setup was the cause of the accident, due to the striker's various duties. The CO, however, testified that based on what he learned, the accident was caused by the container sliding over towards the walkway and striking Mr. Hyman. As Mr. Alemany did not testify, and no other witness offered testimony similar to the just-noted assertions, they are not accepted as fact.

*The Secretary's Burden of Proof*

To demonstrate that an employer violated an OSHA standard, the Secretary must prove that: (1) the cited standard applies; (2) its terms were not met; (3) employees had access to the violative condition; and (4) the employer knew, or with the exercise of reasonable diligence could have known, of the violative condition. *See, e.g., S&G Packaging Co.*, 19 BNA OSHC 1503, 1505 (No. 98-1107, 2001) (citation omitted).

*The Cited Standard*

The cited standard, 29 C.F.R. § 1918.86(n), provides:

*Vehicle stowage positioning.* Drivers shall not drive vehicles, either forward or backward, while any personnel are in positions where they could be struck.

The citation alleges a violation of the standard as follows:

On or about 05/04/11, at Berth 164, Port of Miami FL 33167, an employee was exposed to being struck-by a truck trailer and container that was moved in the forward direction from their stowed location in a ship.

*Whether the Cited Standard Applies*

ESC contends that the cited standard does not apply to the circumstances of this case. It notes the title of the standard, that is, "vehicle stowage positioning," and the fact that the operation on May 4, 2011 was the discharge, not stowage, of the cargo container. R. Brief, pp. 13-14. The Secretary, on the other hand, contends the standard does apply, noting certain language in the standard's preamble. S. Brief, pp. 20-21. For the following reasons, I find that the cited standard is applicable.

First, the parties have stipulated that the work on May 4, 2011, was a Ro-Ro operation. *See* Statement, p. 7, Stip. Fact 6. Second, the title of 29 C.F.R. §1918.86, which contains the cited standard, is "Roll-on roll-off (Ro-Ro) operations." The title then refers to "§1918.2, Ro-Ro operations." Section 1918.2 contains the definitions for OSHA's Longshoring Standard and defines "Ro-Ro operations" as:

[T]hose cargo handling and related operations, such as lashing, that occur on Ro-Ro vessels, which are vessels whose cargo is driven on or off the vessel by way of ramps and moved within the vessel by way of ramps and/or elevators.

Third, as the Secretary notes, the preamble to the Longshoring Standard states:

Final § 1918.86, titled "Roll-on roll-off (Ro-Ro) operations," ... addresses operations aboard Ro-Ro-vessels....In such operations, lashing personnel are exposed to being struck by vehicular traffic. In addition, other employees involved with loading or unloading wheeled cargo, both drivers and pedestrians, are exposed to traffic hazards. This section addresses the hazards attributable to this process, in which employees and vehicles are in closely confined and marginally illuminated space.

62 Fed. Reg. 40147, 40177 (July 25, 1997).

Neither party has mentioned the preamble's statement in regard to the specifically cited standard. That statement is as follows:

Proposed paragraph (n) provided signaling requirements when vehicles were being maneuvered into stowage positions when other personnel are in the adjacent vicinity. OSHA received several comments on this issue suggesting that a performance-based requirement, one stating the goals to be achieved, would be more appropriate than the specifications contained in the proposed provision....Since the objective of this provision is to prevent vehicles being driven into stowage positions from striking employees who are lashing these vehicles into place, and since the proposed requirement allowed employees only one way to achieve this goal, i.e. under the direction of a signaler, OSHA has developed a more performance oriented requirement for the final rule to provide both protection and enhanced flexibility.

*Id.* at 40179. In view of the above, the cited standard could be interpreted as applying only to "vehicles being driven into stowage positions" when other personnel are in the adjacent vicinity. It is clear, however, that vehicles being driven during both stowage and discharge operations present a struck-by hazard to other employees in the adjacent vicinity, including those who perform lashing and unlashings work. This conclusion is supported by the language on page 40177 of the preamble, set out above. In particular, that language states that "lashing personnel are exposed to being struck by vehicular traffic" and that "other employees involved with loading or unloading wheeled cargo, both drivers and pedestrians, are exposed to traffic hazards."

The title of the cited standard is "vehicle stowage positioning." The Commission has held, however, that "reliance on a heading to determine the scope and application of a standard is inconsistent with the usual rule of statutory construction." *Continental Oil Co.*, 7 BNA OSHC 1432, 1433 (No. 13750, 1979) (citations omitted). The Commission has also held that "headings and titles ... cannot be used to limit or alter the plain

meaning of the text contained in statutes and regulations.” *Austin Bldg. Co.*, 8 BNA OSHC 2150, 2153 (No. 77-3878, 1980) (citations omitted). The terms of the standard prohibit driving vehicles forward or backward while any personnel are in positions where they could be struck. These terms on their face apply to the condition at the site that resulted in the accident. I have considered the language on page 40179 of the preamble. Regardless, the standard’s terms, together with the language on page 40177 of the preamble, persuade me that section 1918.86(n) applies in this case. In finding that the standard applies, I am adhering to “the well-settled principle that the Act is to be construed liberally to effectuate its purpose of ‘assur[ing] so far as possible ... safe ... working conditions.’” *Brock v. L.R. Willson & Sons, Inc.*, 773 F.2d 1377, 1382-83 (D.C. Cir. 1985) (citation omitted, quotations as in original). ESC’s contention is rejected.

*Whether the Terms of the Standard Were Not Met*

Respondent ESC contends, but makes no actual argument, that the Secretary has not established this element of her burden of proof. R. Brief, p. 29. The Secretary contends she has shown the terms of the standard were not met. She notes Mr. Hyman was positioned in the narrow walkway immediately adjacent to where the container and chassis were located on the ramp. She also notes that the standard prohibits the forward movement of vehicles when personnel are in a position where they could be struck; Mr. Hyman was in such a position and was in fact struck when the mule driver attempted to drive forward with the chassis and container attached to the mule. S. Brief, pp. 21-22.

I agree with the Secretary that the terms of the standard were not met. First, the parties have stipulated the mule driver was attempting to drive the chassis and container off the access ramp when the accident occurred. Second, they have also stipulated that after the accident, Mr. Hyman was found lying in the walkway that ran along the side of the access ramp. *See* Statement, p. 9, Stip. Facts 21 and 23. Third, the CO’s testimony and the photographs in the record show that Mr. Hyman was in the walkway when he was struck. C-9, pages 8-9 and 11-14, depict the walkway where the accident took place. The CO testified that he believed Mr. Hyman had been standing in the area behind the hard hat shown in C-9, page 14; this was based on a written statement indicating that

when he was struck, Mr. Hyman fell to his knees and then face forward such that his hard hat would have been in front of where he had been standing.<sup>4</sup> (Tr. 127).

In view of the evidence of record, I find that the Secretary has demonstrated the second element of her burden of proof.

*Whether Employees Had Access to the Cited Condition*

ESC contends, again without any supporting argument, that the Secretary has not shown this element of her burden of proof. R. Brief, p. 29. The Secretary contends she has met her burden in this regard. S. Brief, p. 22. Based on the foregoing discussion, I find that the Secretary has established employee exposure to the cited condition.

*Whether the Employer Knew or Could Have Known of the Cited Condition*

As the Secretary states, the “employer knowledge” element is the primary issue in this case. To meet her burden in this regard, the Secretary must show that ESC either knew, or with the exercise of reasonable diligence could have known, of the presence of the violative condition. See *Pride Oil Well Serv.*, 15 BNA OSHC 1809, 1814 (No. 87-0692, 1992) (citations omitted). The actual or constructive knowledge of the employer’s foreman or supervisor can be imputed to the employer. *Id.* S. Brief, p. 22.

Reasonable diligence requires the employer to formulate and implement adequate work rules and training programs and to adequately supervise employees. It also requires the employer to inspect the work area, anticipate hazards and take measures to prevent violations or accidents. *Id.* See also *Halmar Corp.*, 18 BNA OSHC 1014, 1016 (No. 94-2043, 1997), *aff’d*, 152 F.3d 918 (2d Cir. 1998). Constructive knowledge is imputable “unless [the employer] establishes that it took all necessary precautions to prevent the violations.” *Daniel Constr. Co.*, 10 BNA OSHC 1549, 1552 (No. 16265, 1982). S. Brief, p. 23.

Reasonable diligence also “implies effort, attention, and action; not mere reliance upon another to make violations known.” *N&N Contractors, Inc.*, 18 BNA OSHC 2121, 2124 (No. 96-0606, 2000) (citing to *Carlisle Equip. Co.*, 24 F.3d 790, 794 (6th Cir. 1994)), *aff’d*, 255 F.3d 122 (4th Cir. 2001). See also *Pa. Power & Light Co. v. OSHRC*, 737 F.2d 350, 358 (3d Cir. 1984) (foreseeability of violation is established by showing inadequacies in safety precautions, training of employees, or supervision). And, as the

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<sup>4</sup> See C-5, C-6, C-7 (Mr. Alemany’s statements and his diagram of back of ship and Mr. Hyman’s location).

Commission has noted, employers cannot count on employees' common sense, experience, and training by former employers or a union to preclude the need for specific instructions. *Par Elec. Contractors, Inc.*, 20 BNA OSHC 1624, 1628 (No. 99-1520, 2004) (citations omitted). S. Brief, p. 23.

Based on what the CO learned, no one saw the accident and no one knew that Mr. Hyman was standing next to the chassis and container when he gave the "all clear" signal to the mule operator. (Tr. 70, 117-18). ESC thus did not have actual knowledge of the violative condition in this case. The issue to resolve, therefore, is whether ESC could have known of the violative condition with the exercise of reasonable diligence. The relevant evidence in this regard is summarized below.

*How ESC Obtains its Employees from the ILA*

When ESC requires employees for a job, it advises the ILA's union hall how many workers it needs. The union bids out the jobs to its members, who generally get the jobs based on their seniority earned by years of service. ESC can request certain positions, such as equipment operators, for its jobs but it cannot request any particular individuals for its jobs. May 4, 2011, was a holiday and the ILA workers who obtained the jobs that day received time and a half for eight hours of work, regardless of the amount of time the job took.<sup>5</sup> (Tr. 32-33, 195-97, 249-52).

*Testimony of CO Marquez*

The CO testified that while ESC had a good Ro-Ro operation on paper, it was not relayed to the ILA workers. C-1, ESC's lasher training course, was given to him by Alfonso Johnson, ESC's risk manager. The CO learned from Mr. Johnson that no ILA laborers had received or been trained in C-1.<sup>6</sup> He also learned that as the striker on May 4, 2011, Mr. Hyman was responsible for removing the wheel chocks, ensuring the chains were off, and giving a verbal and hand signal to the mule driver; Mr. Hyman removed the wheel chocks but did not ensure the container's rear chain was unlashed, causing him to be struck. The CO said that instead of being where he was to give the "all clear," Mr. Hyman could have stood in a small "alcove," shown in C-9, page 14; he also could have

<sup>5</sup> The employees who worked for ESC on May 4, 2011, all held "B" cards, except for Mr. Hyman and Mr. Turner. Mr. Hyman held an "A" card, meaning he had at least 15 years of experience, and Mr. Turner held an "AAA" card, meaning he had at least 25 years of experience. (Tr. 164, 195-97, 205, 251; R-10).

<sup>6</sup> Mr. Johnson indicated that ESC had had difficulties with the ILA and the collective bargaining agreement ("CBA") in regard to getting the ILA laborers trained. (Tr. 76).

been on the walkway, as long as he was to the rear of the subject container and to the side of the red container in C-9, page 4. (Tr. 67, 74-82, 103-04, 118-21, 138-39, 149).

The CO further testified that except for the safety meeting, the supervisors did not monitor the employees' work before the accident. He said that Mr. Alemany's location on the port, as indicated in C-6 and C-9, page 1, did not allow him to see up the ramp.<sup>7</sup> The CO believed Mr. Alemany could have been in a different place on the port, such as where the person circled in C-9, page 14, is standing, to monitor the cargo; from there, Mr. Alemany could have seen Mr. Hyman. The CO also believed Mr. Alemany could have watched the unloading work from the area directly above the ramp; this area, which has guardrails around it, is shown in C-9, page 3. CO Marquez learned of no prior incidents involving employees of ESC that were like Mr. Hyman's; however, the fatality that occurred five weeks before was similar, *i.e.*, the wheels of a chassis on a ramp were not chocked, there was an issue with the chassis brakes, and the chassis rolled forward and struck an employee. (Tr. 77-78, 82-88, 129-42, 149-59).

Testimony of Willie Turner

Willie Turner, the header on May 4, 2011, testified he has been a longshoreman for over 25 years; for the last 12 years, he has worked as a header. He generally works with ESC but also works with other companies. He learned his job duties through on-the-job training and also has had lasher and header classes through the ILA. Other training he has had includes forklift operation and HAZMAT training, which was provided through the Southeast Florida Employers Port Association ("SEFEPA"). In addition, he attends ESC safety meetings, which are held about once a month. (Tr. 164-66, 187).

Mr. Turner has worked the Seaboard Spirit as a header in Ro-Ro operations for about three days a week for years. As header, he is responsible for his gang and for discharging and loading the ship. He also holds an approximately five-minute gangway safety meeting before the work begins. At the meeting on May 4, 2011, he covered the men's assignments, safety and equipment to use. He assigned Mr. Hyman to be the striker that day, told him his duties, and told him, as he tells all the men, to "look out for the rest of the men, look out for yourself." After the mule driver connected the mule to the chassis, Mr. Hyman was to remove the chocks from the chassis wheels and undo the

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<sup>7</sup> Mr. Alemany's location on the port is indicated by the initials "EA" on the far right side of C-9, page 1.

chains in the back of the chassis; after making sure the chassis was ready to be moved and he and any others were "clear," he was to signal the driver to take the chassis down the ramp. Mr. Turner stated there is "no set thing" as to where the striker is to stand when giving the signal; he can be to the front and side or back and side of the chassis, as long as he is "safe." Mr. Turner had known Mr. Hyman for years and had worked with him as striker and mule driver; he had had no problems with him and considered him a good worker and very experienced longshoreman. He said Mr. Hyman was familiar with the Seaboard Spirit, as he was a "seniority man." (Tr. 166-74, 182, 191-94, 206-07).

Mr. Turner testified that when the work began, he was located on the port near the end of the rope that secured the ship to the port.<sup>8</sup> He said he had a good view from there, as he could see the workers and the containers as they were discharged from the ship. He could also see if the mule driver was going too fast, such that he (Mr. Turner) would have to caution the driver to slow down; he noted that driving too fast and turning too sharply could cause the chassis and container to turn over. Mr. Turner could not see Mr. Hyman from his location, and he did not see the accident. He also did not board the ship to inspect it before the work began.<sup>9</sup> He stated he could see everything he needed to see from his location on the port and that he had to be there to view the work activities as the containers came off the ship. He further stated that during a shift a worker might come to him with a problem, such as a chain being too tight, in which case he (Mr. Turner) would inform the mule driver and the striker. Mr. Turner agreed that part of his job as header was to prohibit workers from standing or sitting in dangerous places, such as under suspended or moving loads, or between fixed objects and moving loads. When asked if he could recall any instances when he had monitored workers in this regard, he did not answer the question. Further, when asked if he admonished workers or threatened them with discipline if he saw something unsafe, he said he did not; rather, he would stop them and say, "look, this is how it's got to be done." (Tr. 175-83, 194-95, 198-204).

Mr. Turner's opinion was that Mr. Hyman had been standing between the wall of the ship and the moving load. He knew of no other strikers who had stood next to the chassis when signaling the mule driver; he said strikers typically stand "to the side to the

<sup>8</sup> Mr. Turner's testimony indicates he was positioned on the opposite side of the port from Mr. Alemany. (Tr. 177-80). See also C-9, page 1.

<sup>9</sup> Mr. Turner indicated he sometimes boarded a ship to do an inspection before work began. (Tr. 184, 199).

back” when signaling the driver. When asked if he believed that Mr. Hyman knew not to stand where he was when the accident occurred, he stated that he had “been researching that in [his] mind for a long time” and that he “[could not] answer that question.” He did believe that Mr. Hyman had been trained.<sup>10</sup> When asked what training he had personally observed as to where the striker should stand or work to be safe around moving vehicles, Mr. Turner said it was to “make sure ... you’re clear of all things ... [a]nd ... make sure the equipment is ready and look out for the men.” When asked what he told the men at his gangway safety meetings, he said he instructed them to “not stand behind [the] equipment” and to “[s]tay out of the way so it can move.” He also told them to “be aware.” (Tr. 171-75, 184-86, 191, 203-05).

Testimony of Torrence Palmer

Torrence Palmer, the mule operator on May 4, 2011, testified he worked through the ILA and had worked the Seaboard Spirit before as a mule operator. He said he had been certified as an equipment operator for some time and that R-7, entitled “Powered Industrial Truck General Safety Awareness,” looked like a manual he received when he was trained through SEFEPA years ago. That training instructed him to drive defensively and to be alert for persons on foot and other traffic when loading and unloading ships; it also instructed him to look ahead, behind and around before every move and to keep personnel clear from both sides where he was working. To maintain his certification, Mr. Palmer takes a written test and has a driving evaluation every two years. (Tr. 210-18).

Mr. Palmer further testified that on May 4, 2011, Mr. Hyman gave him the “all clear” signal twice. He stated he looked in his mirror and then stuck his head out the window to see if Mr. Hyman was clear before he tried to move the mule forward; to him, it had looked like Mr. Hyman was far enough back. Mr. Palmer said he had worked with Mr. Hyman before, when he was an operator and Mr. Hyman was the striker, and that he had never had any problems working or communicating with him. (Tr. 215-16).

Testimony of Alfonso Johnson

Alfonso Johnson, ESC’s risk manager and safety director since April 2008, testified that he is responsible for enforcing ESC’s safety rules and that part of his job is

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<sup>10</sup> Mr. Turner did not recall seeing C-1 before, but he believed he had had training classes that covered the material in C-1. He did not know if Mr. Hyman had ever seen the procedures set out in C-1; however, he said he had gone over all of the procedures in his safety meetings ever since he was a header. (Tr. 187-90).

to observe ESC employees as they work in a ship. Further, he coordinates with SEFEPA, which trains ILA workers like Mr. Palmer to operate equipment; Mr. Hyman was also trained in equipment operation, and he was a certified mule operator, top loader (forklift) operator and gantry crane operator. According to Mr. Johnson, Mr. Hyman had a good reputation and was a hard worker; he had worked for ESC over 300 times, as flagman, equipment operator and striker, before May 4, 2011. (Tr. 241-43, 249-58).

Mr. Johnson further testified that while OSHA requires certification of equipment operators, no certification is required for lashing employees; thus, ESC provides training to the lashing employees who work under its supervision.<sup>11</sup> Mr. Johnson wrote a lashing training course ("manual") in 2009, which was revised in April 2011; R-9 and C-1 are the two manuals, respectively. The manual was provided to the ILA, and its contents were covered in the safety meetings ESC holds for ILA employees every other month.<sup>12</sup> These meetings are open to all ILA employees, but only ESC superintendents and ILA headers and "second men" are required to attend.<sup>13</sup> The gangway safety talks the header holds before work begins also address safety, and the ESC superintendents perform "walk-about" ship inspections to identify hazards. Mr. Johnson identified R-22 as a representative sample of the safety talk and inspection forms superintendents must fill out; the safety talks and inspections must be done for every operation, but the forms need only be completed four times a month. (Tr. 249-50, 258-63, 267-82, 335, 359-367).

Mr. Johnson read into the record the following provision from C-1, page 17:

Release the tractor brakes and proceed with caution, ensuring that the chassis brakes are fully released before leaving the parked location and that all pedestrians and workers are clear from the chassis/trailer.

He stated that the provision was consistent with the training and instructions given to persons who are certified to operate powered industrial equipment. He further stated that C-1 also covered other issues specifically related to lashing and unlashings on Ro-Ro vessels. (Tr. 256-58, 264-67).

<sup>11</sup> Mr. Johnson said lashers are often the ILA's newer, lower-level workers with less training. (Tr. 261).

<sup>12</sup> In the alternate months, ESC holds safety meetings for its own employees. (Tr. 259).

<sup>13</sup> The "second man" is a working supervisor who assists the header. The second man on the Seaboard Spirit on May 4, 2011, was Deluxe Wise; he was operating a towmotor (forklift) on the ship, but he was also responsible for watching the work and safety of the other ILA employees. (Tr. 310, 343, 352-54).

Mr. Johnson discussed the Accident Review Board ("Board"), which reviews accidents involving ILA members brought before it by the stevedoring companies operating out of the Port of Miami; the accidents primarily involve property damage.<sup>14</sup> The Board's review of an accident can result in the ILA employee being issued a safety letter, a warning letter, or suspension from work. Mr. Johnson identified R-13 as copies of such discipline of ILA employees.<sup>15</sup> (Tr. 288-92, 300-06, 337-40).

Mr. Johnson investigated the circumstances of Mr. Hyman's accident. He went to the accident scene, interviewed employees, and viewed the ship's videos. Based on his investigation, no one knew Mr. Hyman was standing next to the chassis container when he gave the "all clear" signal to Mr. Palmer, and it was not plainly visible that the rear chain of the chassis had not been cut; he noted Mr. Palmer's testimony that he looked back and believed that Mr. Hyman was clear of the container. Mr. Johnson testified that in view of his years of experience, training and certification in equipment operation, and the gangway safety meeting that day, Mr. Hyman should have known not to stand next to the load. Mr. Johnson stated that Mr. Hyman failed to do his job by not removing the rear chain and by not being clear of the chassis. He also stated that the best location for Mr. Turner and Mr. Alemany to observe the work was on the dock. He disagreed with the CO that Mr. Alemany could have stood on the bridge. (Tr. 283-88, 306-15).

#### Discussion

Upon considering the foregoing, and other evidence in the record, I find that ESC could have known of the cited condition with the exercise of reasonable diligence. Mr. Johnson believed that Mr. Hyman should have known not to stand next to the chassis when he gave the "all clear" signal to the mule operator. The totality of the evidence, however, does not support his belief.

#### Whether Work Rules were Adequately Communicated and Training Programs were Adequately Implemented

Page 16 of C-1, the lashing manual Mr. Johnson developed, sets out the basic procedure for unlashng during Ro-Ro operations when a container unit is on a ramp:

<sup>14</sup> The Board's members consist of management and labor; the management members are from the five to six companies who operate out of the Port of Miami. Mr. Johnson is ESC's representative on the Board; he said about 90 percent of the accidents reviewed involve property damage. (Tr. 223-33, 305, 340).

<sup>15</sup> R-13 also shows discipline of some superintendents imposed by ESC; further, Mr. Johnson discussed instances of suspension for violations of SEFEPA's drug and alcohol policy. (Tr. 290-91, 316-19).

- a. Unlash chains from front first
- b. Attach the Mule to chassis/trailer
- c. Unlash sides and rear of unit
- d. Remove Chocks from wheels

The manual then goes on to describe the procedure in more detail. On page 17, C-1 states that once the parking brakes are applied, the remaining lashing and wheel chocks must be removed. C-1 then states, also on page 17, as follows:

- Never position yourself under the chassis or trailer.
- Never position yourself near or in the vicinity of a moving chassis or trailer.
- Release the tractor brakes and proceed with caution, ensuring that the chassis brakes are fully released before leaving the parked location, and that all pedestrians and workers are clear from the chassis/trailer.

(C-1, emphasis in original). Despite these instructions, the CO testified that Mr. Johnson told him the ILA laborers had not received or been trained in C-1. (Tr. 74-77). Mr. Johnson conceded this was so. He said that before Mr. Hyman's accident, the procedures were covered in ESC's safety meetings but only ILA supervisors were required to attend the meetings; it was only after the accident that he was able to arrange with the ILA for all of the ILA laborers to be trained in C-1. (Tr. 259-62, 335, 367-70).

Mr. Johnson testified, as indicated above, that Mr. Hyman should have known not to stand next to the load in light of his training in equipment operation. As the Secretary notes, the evidence ESC presented as to Mr. Hyman's training was the following:

- 6/13/94 written test for mule driver training by SEFEPA (R-2; Tr. 329);
- 6/13/94 driving test for mule driving by SEFEPA (R-3);
- 10/13/94 classroom exam for top loader and heavy lift truck (R-4; Tr. 329);
- 7/30/09 three-year evaluation for mule driving (R-7; Tr. 330);
- 10/27/09 hazardous materials exam by SEFEPA (R-8; Tr. 330).

Question 16 of R-2, a true/false test, states: "When a mule driver has a striker he should stand between the trailer and the tractor/mule." Mr. Hyman correctly marked Question 16 as "false." As the Secretary points out, none of the other documents set out above specifically addresses the safe positioning of lashers or strikers during Ro-Ro

operations.<sup>16</sup> Thus, ESC's training records show that nearly 17 years before the date of the accident, Mr. Hyman correctly answered a question pertaining to the positioning of a striker during Ro-Ro operations. Mr. Johnson admitted that he was not aware of any testing of Mr. Hyman's understanding of mule driver responsibilities since 1994. He also admitted that he was not aware of Mr. Hyman being tested on his understanding of safe lashing or unlashng procedures at any time. (Tr. 331-32). S. Brief, pp. 11-12.

Mr. Johnson also testified that Mr. Hyman should have known not to stand next to the load due to the gangway safety meeting held before each operation. Mr. Turner, however, testified there was "no set thing" as to where the striker is to stand when giving the "all clear" signal; he can be to the front and side or back and side of the chassis, as long as he is "safe." (Tr. 171, 174). Further, while Mr. Turner said he had gone over all of the procedures in C-1 in his meetings ever since he had been a header, his description of what he stated in those meetings was vague and unclear. (Tr. 187-90). As set out *supra*, Mr. Turner told the men to "look out for the rest of the men, look out for yourself," to "be aware," and "to make sure ... you're clear of all things." (Tr. 171, 191, 205). He also said to "not stand behind [the] equipment" and to "[s]tay out of the way so it can move." (Tr. 184). In my view, these instructions are simply not specific enough to advise a lasher or striker where to stand to be safe. Even the instruction in C-1 (to "never position yourself near or in the vicinity of a moving chassis or trailer") is more specific than Mr. Turner's stated instructions. Significantly, Mr. Turner was asked two different times if he believed Mr. Hyman knew not to stand where he was at the time of the accident. Both times, Mr. Turner said he could not answer the question. (Tr. 171-72, 186). The second time, Mr. Turner said he had "been researching that in [his] mind for a long time" and that he "[could not] answer that question." (Tr. 186). This response, in my opinion, is key, and supports a conclusion that Mr. Hyman did not in fact know he should not have been standing where he was at the time of the accident.<sup>17</sup>

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<sup>16</sup> Question 25 of R-4, a true/false exam, states: "You must always keep a good lookout for workers on foot or drivers of other machines." Mr. Hyman correctly marked Question 25 as "true." This question, while relevant for equipment drivers, is not specific to the training at issue here. Also, while R-21, a DVD about hazardous materials Mr. Hyman saw in the 1990's, was viewed at the hearing, its only noteworthy part as to this case was to show that a container can fall from a chassis due to actions of the driver. (Tr. 399-401).

<sup>17</sup> C-6, Mr. Alemany's diagram discussed above, shows Mr. Hyman's location as being at the rear and side of the container. Based on Mr. Turner's testimony that a striker could be to the "back and side" of the chassis, Mr. Hyman could have believed that his location on May 4, 2011 was safe.

Mr. Johnson additionally testified, as noted above, that Mr. Hyman should have known not to stand where he was in view of his many years of experience. He conceded, however, that even experienced longshoremen sometimes need direction, as much as a newer longshoreman. (Tr. 380). For this reason, and all of those stated *supra*, I conclude that, at the time Mr. Hyman's accident, ESC's work rules were not adequately communicated and that its training programs were not adequately implemented.

*Whether Employees were Adequately Supervised and Disciplined*

The record shows the ILA laborers, during Ro-Ro operations, work throughout the ship and around moving chassis-held containers; at times, they encounter problems like chains with tension on them or a chassis with faulty brakes. (Tr. 342, 349-50). Mr. Turner and Mr. Johnson agreed that part of the header's job is to prohibit workers from being in dangerous places, such as under suspended or moving loads, or between fixed objects and moving loads; however, when asked, twice, if he could recall any instances of monitoring workers in this regard, Mr. Turner did not answer the question. (Tr. 202-04, 255-56; C-2, p. 7). Mr. Turner testified he inspected the Seaboard Spirit before work began on May 4, 2011, but did not board the ship; rather, he viewed it from his location on the dock.<sup>18</sup> He also testified he could see everything he needed to see from there, and he indicated he needed to be there to watch the unloading of the container on the ramp. (Tr. 199-200). According to Mr. Johnson, Mr. Turner met his header responsibilities without boarding the ship, as he provided "clear and understandable" safety instructions during the gangway safety meetings. (Tr. 355-58). Also according to Mr. Johnson, Deluxe Wise, the "second man" of the gang on May 4, 2011, was assisting Mr. Turner in his supervisory duties; Mr. Wise was operating a towmotor, or forklift, on board the ship that day, but he was also responsible for watching the work and safety of the other ILA laborers. (Tr. 310, 343, 352-54). Mr. Johnson conceded that Mr. Wise's ability to watch the work activities was limited to what he could see from his forklift. (Tr. 353).

The record further shows that Mr. Alemany, the ESC superintendent responsible for the operation on May 4, 2011, was also located on the dock but on the opposite side from Mr. Turner. (Tr. 56-61, 177-80; C-6; C-9, pp. 1, 5). The CO testified that Mr. Alemany's location, as indicated in C-6 and C-9, page 1, did not allow him to see up the

<sup>18</sup> Mr. Turner indicated he sometimes boarded a ship to inspect it before work began. (Tr. 184, 199).

ramp. The CO believed Mr. Alemany could have been in a different place on the port, such as where the person circled in C-9, page 14, is standing, to monitor the cargo; from there, Mr. Alemany could have seen Mr. Hyman. The CO also believed Mr. Alemany could have watched the unloading from the area directly above the ramp; this area, which has guardrails around it, is shown in C-9, page 3. (Tr. 56-61, 86-87, 135-36, 139-41, 150-57). Mr. Johnson believed the positions of Mr. Turner and Mr. Alemany were appropriate, even though neither could see into the ship's interior. He indicated that there were other safe places they could have been, and he did not believe both had to be on the dock at the same time to watch the cargo leaving the ship. (Tr. 343-48, 352). He disagreed with the CO's opinion that Mr. Alemany could have been in the area directly above the ramp, which he said was the bridge. Mr. Johnson stated that longshoring employees are not allowed there unless they have the invitation of the captain; however, he did not know what the captain might have allowed, if asked, and he was unaware of ESC supervisors ever having asked for permission to access certain parts of the ship in order to have different vantage points of the work activities. (Tr. 347-49).

Mr. Johnson indicated ESC required its superintendents to perform walk-about inspections before, during and after its operations on the ships to identify hazards; these inspections and the gangway safety talks were required for every operation, but forms documenting these actions only had to be completed four times a month by each superintendent. Mr. Johnson said he could verify the inspections were being done when the forms were not turned in as he had a radio on his desk that permitted him to hear discussions of work activities by the superintendents, headers and equipment operators. He admitted, however, that he could not confirm if what he heard meant the superintendent had discovered the problem or a laborer had brought it to the attention of the superintendent. He also admitted that 90 percent of the time, it was the laborers who brought issues to the superintendents' attention. (Tr. 278-79, 359-367).

Based on the foregoing, I find that ESC did not adequately supervise employees. Although Mr. Turner sometimes boarded ships before an operation, he did not do so on May 4, 2011. And, while part of the header's job is to prevent employees from being in dangerous places, Mr. Turner did not answer the question when he was asked if he had monitored employees in this regard. Mr. Johnson noted that the "second man" is also

responsible for ensuring the work is done safely, but he agreed that Mr. Wise, the second man on May 4, 2011, was limited to what he could see from the forklift. Further, while ESC required its superintendents to inspect ships before, during and after operations to detect hazards, the record shows this was not uniformly done. In a written statement, Mr. Alemany indicated he did not board the ship on May 4, 2011, due to his many other duties; he also indicated that pre-work inspections of the Seaboard Spirit were usually not done as it was always in compliance. (C-8, pp. 1, 6). Finally, in view of the record, I find that Mr. Turner and Mr. Alemany did not both need to be monitoring the work from the port at the same time. One of them could have been watching the work on board, for example; further, Mr. Alemany could have been positioned as the CO explained.

As to discipline, I conclude discipline of employees was inadequate. Mr. Turner testified he did not admonish or threaten workers with discipline; instead, he would stop them and say, "look, this is the way it's got to be done." (Tr. 176, 195). He also claimed he had never seen workers under his supervision performing unsafe acts. (Tr. 175-76). As to the Board's disciplinary function, the record showed that the incidents the Board reviewed primarily involved accidents with property damage. The record revealed no cases of the Board reviewing possible discipline where an employee had been found doing something unsafe but there had been no accident that resulted in property damage or personal injury. (Tr. 223-24, 229-31, 339). Mr. Johnson agreed the accidents the Board reviewed did not indicate one way or the other whether supervisors were monitoring workers to discover unsafe acts. He also agreed that for every accident the employer was aware of there were about 300 "near misses." (Tr. 340-42). Finally, Mr. Johnson in essence agreed that Mr. Hyman could have worked in the same unsafe manner previously and it was simply not detected. (Tr. 376).

#### The Previous Accident

As the Secretary notes, ESC had reason to be particularly diligent in regard to the training and practices of experienced longshoremen who were discharging cargo from ramps during Ro-Ro operations, in view of another fatal accident that occurred about five weeks before Mr. Hyman's accident. The prior accident involved a laborer with 15 years of experience. He was standing in front of a chassis, rather than to the side, to perform unlash; the wheels of the chassis were not chocked, as they should have been, and the

mule was not yet attached to the chassis, as it should have been; the brakes of the chassis failed, and the chassis moved forward and crushed the laborer. (Tr. 380-84, 398). Mr. Johnson testified the accident was due to the lashing team's failure to follow proper procedures. (Tr. 382). Regardless, as the Secretary indicates, the prior accident took place despite the laborer's 15 years of experience and C-1, which prohibited the actions that caused in the accident. *See* C-1, pp. 16-17. As she also indicates, the prior accident put ESC on notice as to the adequacy of the training of the ILA laborers, even experienced ones, who performed unlashng work during Ro-Ro operations.<sup>19</sup> S. Brief, pp. 26-27. I agree with the Secretary in this regard.<sup>20</sup> I find that the prior accident supports a conclusion that ESC had constructive knowledge of the violation. The Secretary has, therefore, met her burden of establishing knowledge in this matter.

*Whether the Accident was due to Unpreventable Employee Misconduct*

ESC contends that the accident in this case was due to unpreventable employee misconduct. To prove this affirmative defense, the employer must show that it had: (1) established work rules designed to prevent the violation; (2) adequately communicated the rules to its employees; (3) taken steps to discover violations of the rules; and (4) effectively enforced the rules when violations were discovered. *Jensen Constr. Co.*, 7 BNA OSHC 1477, 1499 (No. 76-1538, 1979). For the reasons set out *supra*, I find that ESC has not met its burden of proving its affirmative defense. Its defense is rejected, and the alleged violation is affirmed as a serious violation.

*Penalty Determination*

The Secretary has proposed a penalty of \$7,000.00 for the violation in this case. The Commission, in assessing penalties, must give due consideration to the gravity of the violation and to the employer's size, history and good faith. *See* § 17(j) of the Act, 29 U.S.C. § 666(j). The CO recommended the proposed penalty of \$7,000.00 without any adjustments for size, history or good faith, due to the large size of the employer, its recent violation history, and the high probability that the cited condition could have and did

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<sup>19</sup> The record shows that Mr. Turner, in the safety meeting on May 4, 2011, told the gang to not unlash the container on the ramp until the mule was connected to the chassis. (Tr. 62, 66-67, 192-93; C-5; C-7, p. 1).

<sup>20</sup> I also agree with the Secretary that despite the potential challenges posed by the CBA and the union hiring process, ESC had the opportunity to provide its specific procedures to the ILA workers during the gangway safety meetings that took place before every operation. S. Brief, p. 27-28.

result in an accident causing death or serious injury. (Tr. 91-94). I find the proposed penalty to be appropriate. That penalty is assessed.

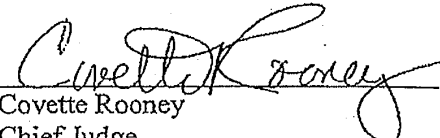
*Findings of Fact and Conclusions of Law*

The foregoing decision constitutes the findings of fact and conclusions of law in accordance with Federal Rule of Civil Procedure 52(a).

*ORDER*

In accordance with the foregoing findings of fact and conclusions of law, it is ORDERED that:

1. Item 1 of Serious Citation 1, alleging a violation of 29 C.F.R. § 1918.86(n), is AFFIRMED, and a penalty of \$7,000.00 is assessed.

  
Covette Rooney  
Chief Judge

Date:  
Washington, D.C.

**§2200.91 Discretionary review; Petitions for discretionary review; Statements in opposition to petitions.**

(a) *Review discretionary.* Review by the Commission is not a right. A Commissioner may, as a matter of discretion, direct review on his own motion or on the petition of a party.

(b) *Petitions for discretionary review.* A party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a petition for discretionary review. Discretionary review by the Commission may be sought by filing with the Judge a petition for discretionary review within the ten-day period provided by §2200.90(b)(2). Review by the Commission may also be sought by filing directly with the Executive Secretary a petition for discretionary review. A petition filed directly with the Executive Secretary shall be filed within 20 days after the date of docketing of the Judge's report. The earlier a petition is filed, the more consideration it can be given. A petition for discretionary review may be conditional, and may state that review is sought only if a Commissioner were to direct review on the petition of an opposing party.

(c) *Cross-petitions for discretionary review.* Where a petition for discretionary review has been filed by one party, any other party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a cross-petition for discretionary review. The cross-petition may be conditional. See paragraph (b) of this section. A cross-petition shall be filed with the Judge during the 10 days provided by §2200.90(b) or directly with the Executive Secretary within 27 days after the date of docketing of the Judge's report. The earlier a cross-petition is filed, the more consideration it can be given.

(d) *Contents of the petition.* No particular form is required for a petition for discretionary review. A petition should state why review should be directed, including: Whether the Judge's decision raises an important question of law, policy or discretion; whether review by the Commission will resolve a question about which the Commission's Judges have rendered differing opinions; whether the Judge's decision is contrary to law or Commission precedent; whether a finding of material fact is not supported by a preponderance of the evidence; whether a prejudicial error of procedure or an abuse of discretion was committed. A petition should concisely state the portions of the decision for which review is sought and should refer to the citations and citation items (for example, citation 3, item 4a) for which review is sought. A petition shall not incorporate by reference a brief or legal memorandum. Brevity and the inclusion of precise references to the record and legal authorities will facilitate prompt review of the petition.

(e) *When filing effective.* A petition for discretionary review is filed when received. If a petition has been filed with the Judge, another petition need not be filed with the Commission.

(f) *Failure to file.* The failure of a party adversely affected or aggrieved by the Judge's decision to file a petition for discretionary review may foreclose court review of the objections to the Judge's decision. See *Keystone Roofing Co. v. Dunlop*, 539 F.2d 960 (3d Cir. 1976).

(g) *Statements in opposition to petition.* Statements in opposition to petitions for discretionary review may be filed in the manner specified in this section for the filing of petitions for discretionary review. Statements in opposition shall concisely state why the Judge's decision should not be reviewed with respect to each portion of the petition to which it is addressed.







ELLER-1 OP ID: IS

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
10/02/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|                                                                                                                            |  |                                                                                                                                                                      |  |
|----------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>PRODUCER</b><br>Bruce Gendelman Co., Inc.<br>Suite 101<br>500 W Brown Deer Rd<br>Milwaukee, WI 53217<br>Bruce Gendelman |  | <b>CONTACT NAME:</b> Isabel Collazo<br><b>PHONE (A/C, No, Ext):</b> 262-478-1000 <b>FAX (A/C, No):</b> 262-478-1001<br><b>E-MAIL ADDRESS:</b> icollazo@gendelman.com |  |
|                                                                                                                            |  | INSURER(S) AFFORDING COVERAGE                                                                                                                                        |  |
|                                                                                                                            |  | NAIC #                                                                                                                                                               |  |
| <b>INSURED</b> Eller-ITO Stevedoring Company<br>LLC<br>1007 North America Way, Ste 501<br>Miami, FL 33132                  |  | INSURER A : Catlin Indemnity Company <span style="float: right;">24503</span><br>INSURER B :<br>INSURER C :<br>INSURER D :<br>INSURER E :<br>INSURER F :             |  |

**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                                                                                      | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                                                    |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------|---------------|-------------------------|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><input checked="" type="checkbox"/> Marine Liability<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC<br>OTHER: |           |          | HLO49901014   | 10/01/2014              | 10/01/2015              | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000<br>MED EXP (Any one person) \$ 10,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000 |
|          | <b>AUTOMOBILE LIABILITY</b><br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS                                                                                                                                 |           |          |               |                         |                         | COMBINED SINGLE LIMIT (Ea accident) \$<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$                                                                                           |
|          | <input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR<br><input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br>DED RETENTION \$                                                                                                                                                                                                 |           |          |               |                         |                         | EACH OCCURRENCE \$<br>AGGREGATE \$                                                                                                                                                                                                        |
|          | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                                                                                                                                          |           |          | N/A           |                         |                         | PER STATUTE OTH-ER<br>E.L. EACH ACCIDENT \$<br>E.L. DISEASE - EA EMPLOYEE \$<br>E.L. DISEASE - POLICY LIMIT \$                                                                                                                            |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Certificate holder is included as an Additional Insured as required by written contract as respects to the Named Insureds Operations.  
 Coverage includes Pollution Liability.

|                                                                                                 |                                                                                                                                                                                                                                |
|-------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CERTIFICATE HOLDER</b><br><br>Broward County<br>1850 Eller Drive<br>Ft. Lauderdale, FL 33316 | <b>CANCELLATION</b><br><br>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE<br> |
|-------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**SECTION K**

**APPLICANT'S FINANCIAL DOCUMENTS TO BE REVIEWED BY**

**PORT EVERGLADES FINANCE DIVISION**

**Section L**

**Section L**

Name of Reference SIGNAL ADMINISTRATION Nature of Business INSURANCE  
Contact Name DELISA HARDAGE Title MEMBER SERVICE REPRESENTATIVE  
Legal Business Street Address 8144 Walnut Hill Lane, Suite 1600  
City, State, Zip Code Dallas, TX 75231  
Phone Number (972) 770-1677

Name of Reference AON RISK SERVICES Nature of Business INSURANCE  
Contact Name LOIS MAMULA Title INSURANCE BROKER  
Legal Business Street Address 1001 Brickell Bay Drive, Suite 1100  
City, State, Zip Code Miami, FL  
Phone Number (305) 96-6155

Name of Reference PNC BANK Nature of Business BANKING  
Contact Name CAROLINE MICHELI Title COMMERCIAL BANKING  
Legal Business Street Address First Avenue  
City, State, Zip Code Pittsburgh, PA 15219  
Phone Number (561) 803-9719



**Section P**

**ELLER-ITO** Stevedoring Company, L.L.C.

1007 North America Way, #501 Miami, Florida 33132  
Telephone: (305) 379-3700 / Facsimile: (305) 371-9969

Date: Jan 10, 2014  
To: Arigana  
From: Al Johnson

**Section P.**

1. Provide a copy of Applicants Safety program.

The elements of a good Safety Program are listed below and are outlined in the **Eller-ITO Safety Manual**. Each employee is provided with classroom instruction to ensure they understand, adhere to, and enforce the rules delineated within.

- a. Management Commitment via Written Policy
- b. Employee Assignments, Responsibilities, and Accountabilities.
- c. Safety Rules, Standards, Work Procedures and Communications
- d. Safety Training – Forklifts, Cranes, Top Loaders, Pallet Jacks
- e. Skill Training- First Aid, CPR, PPE Compliance
- f. Accident Prevention and Hazard Recognition
- g. Personal Injury and Property Damage Analysis



## **Safety Manual**

September 3, 2013

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**POLICY**

The business of Eller-I.T.O. Stevedoring Company, L.L.C. ("Eller-ITO") demands that we formulate and effectuate the best safety program possible. This Safety Manual is for use in implementing such a program. The program's purpose is to eliminate personal injury, occupational illness, and equipment and property damage. The Company strives to protect not only its employees but also members of the public who come into contact with our work.

Safety starts at the top. Management and supervisory personnel are responsible for preventing incidents that result in injuries, illnesses, and damage. Each day our duty is to furnish safe and efficient work places and to send each employee home to his or her family in good health.

Christopher C. Arocha  
Senior Vice President

**ELLER – ITO** Stevedoring Company, L.L.C.

---

1007 North America Way, #501 Miami, Florida 33132  
Telephone: (305) 379-3700 / Facsimile: (305) 371-9969

2. Provide a copy of Applicant's substance abuse policy.

**As delineated in the Eller-ITO Employees Handbook, page 21:**

- a. "Eller-ITO we strive to provide a drug- free, healthful, and safe workplace; and employees are required to report to work in mental and physical condition that facilities satisfactory and safe performance of their jobs. No employee who is on Eller-ITO premises or conducting business related activities off Eller-ITO premises may use, possess, distribute, sell or be under the influence of alcohol or illegal drugs. The legal use of prescribed drugs is permitted on the job only if it does not impair an employee's ability to perform job in an effective and safe manner. Violations of this policy may lead to disciplinary action, which may result in immediate suspension or termination of employment, as well as required participation in a substance abuse, rehabilitation, or treatment programs. Such violations also have legal consequences, both civil and criminal."

"If an employee informs management of a drug or alcohol problem, consideration will be given to allowing unpaid leave, so the employee can enroll in a rehabilitation program. Eller-ITO reserves the right to request that an employee take a drug test when there is reasonable suspicion that the employee is using or experiencing the effects of drugs, alcohol, or any other substance."

- b. In regards to the International Longshoreman Association, (contracted labor hired by Eller-ITO), a 'Memorandum of Agreement' to Management –ILA Collective Bargaining Agreement exists that supports the effort to provide a drug-free, safe workplace. The Collective Bargaining Agreement further expands on the right to subject an ILA employee to submit to a sample of urine and / or alcohol for chemical analysis. The purpose of the analysis is to determine or to rule the presence of alcohol, drugs, prohibited dangerous substance that can affect the ability of the employee to perform satisfactorily. In the event that the test shall show positive results, the Collective Bargaining Agreement outlines disciplinary actions that may occur; or if offered and accepted, the opportunity to abide by the terms and conditions for treatment and rehabilitation as set forth in the Alcohol and Substance Abuse Program.

# Employee Handbook



Stevedoring Company L.L.C.

January 2013

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- "White Collar Crime", such as fraud, theft, or embezzlement, which violates local, state, or federal laws. ELLER-ITO will prosecute to the fullest extent of the law any type of fraud or embezzlement and file claims through a bonding agency.
- Falsification of ELLER-ITO records.
- Working under the influence of alcohol or illegal drugs.
- Possession, distribution, sale, transfer, or use of alcohol or illegal drugs on ELLER-ITO premises.
- Possession, distribution, sale, transfer, or use of alcohol or drugs in any location while the employee is on duty or is operating vehicles or equipment owned or leased by ELLER-ITO or its customers.
- Fighting or threatening violence in the workplace.
- Disruptive activity in the workplace.
- Negligence or misconduct resulting, directly or indirectly, in loss of or damage to property owned, leased, or operated by ELLER-ITO or its customers.
- Insubordination or other disrespectful conduct.
- Violation of safety or health rules.
- Smoking in prohibited areas.
- Sexual or other harassment.
- Possession of dangerous or unauthorized materials, such as explosives or firearms, on ELLER-ITO premises.
- Possession of dangerous or unauthorized materials, such as explosives or firearms, in any location while the employee is on duty.
- Unauthorized use of telephones, mail system, or other equipment owned, leased, or operated by ELLER-ITO or its customers.
- Unauthorized disclosure of business "secrets" or confidential information.
- Violation of ELLER-ITO personnel policies.
- Unsatisfactory performance.
- Excessive absenteeism or tardiness or any unjustified absence.

As stated above, the employment relationship is at the mutual consent of ELLER-ITO and the employee. Either party may terminate that relationship at any time, with or without cause, and with or without advance notice.

#### **Drugs, Alcohol Use.**

ELLER-ITO strives to provide a drug-free, healthful, and safe workplace; and employees are required to report to work in mental and physical condition that facilitates satisfactory and safe performance of their jobs. No employee who is on ELLER-ITO premises or conducting business-related activities off ELLER-ITO premises may use, possess, distribute, sell, or be under the influence of alcohol or illegal drugs. Senior management may allow the use of alcohol for special occasions (e.g., after-hours or holiday gatherings). The legal use of prescribed drugs is permitted on the job only if it does not impair an employee's ability to perform the job in an effective and safe manner. Violations of this policy may lead to disciplinary action, which may

result in immediate suspension or termination of employment, as well as required participation in a substance abuse, rehabilitation, or treatment programs. Such violations also have legal consequences, both civil and criminal.

If an employee informs management of a drug or alcohol problem, consideration will be given to allowing unpaid leave, so that the employee can enroll in a rehabilitation program. ELLER-ITO reserves the right to request that an employee take a drug test when there is reasonable suspicion that the employee is using or experiencing the effects of drugs, alcohol, or any other substances.

### **Harassment.**

ELLER-ITO is committed to a work environment that is free from all forms of discrimination, as well as conduct that could be considered harassing, coercive, or disruptive. ELLER-ITO does not tolerate actions or words, including jokes and comments, that disparage or question an individual's race, color, national origin, age, religion, disability, sex, sexual orientation, or any other legally protected characteristic. Sexual harassment is improper visual, verbal, or physical conduct of a sexual nature, such as unwanted sexual advances. This general definition covers many forms of offensive gender-based behavior and includes harassment of a person of the same sex as the harasser.

Unwelcome verbal or physical sexual advances, requests for sexual favors, and other conduct of a sexual nature constitute sexual harassment when such conduct is a term or condition of employment, either explicit or implicit; submission to or rejection of such conduct is a basis or factor for employment decisions; or such conduct has the purpose or effect of interfering with work performance or creating an intimidating, hostile, or offensive work environment. Among examples of verbal and physical sexual harassment are:

- Offering employment benefits in exchange for sexual favors.
- Making or threatening reprisals after a negative response to sexual advances.
- Leers, sexual gestures, or display of sexual parts.
- Derogatory sexual comments, epithets, slurs, or jokes.
- Sexual advances or propositions.
- Graphic, sexually degrading, or abusive words in reference to an individual or his or her body, and suggestive or obscene letters, notes, or invitations.
- Aggressive physical conduct, such as improper touching, assaulting, or impeding or blocking movements.

Every ELLER-ITO employee can report and raise concerns and report without fear of reprisal or retaliation. An employee who experiences or witnesses sexual or other harassment in the workplace must advise a supervisor immediately. If the supervisor is unavailable or the employee believes it would be inappropriate to contact that person, the employee should contact a manager or senior management. Any supervisor or manager who becomes aware of possible sexual or other unlawful harassment must advise the Senior Vice President immediately.

**EMPLOYEE ACKNOWLEDGMENT**

I acknowledge receipt of the Employee Handbook, which describes important information about ELLER-I.T.O. STEVEDORING COMPANY L.L.C. ("ELLER-ITO"), and understand that I should consult my supervisor as to any questions. I have entered into my employment relationship with ELLER-ITO voluntarily and acknowledge that there is no specified length of employment. Accordingly, either I or ELLER-ITO can terminate the employment relationship at will, with or without cause, at any time, so long as the termination does not violate applicable federal or state law.

Since the information, policies, and benefits described in this Handbook are necessarily subject to change, I acknowledge that revisions to the Handbook and to the terms and conditions of my employment, except to ELLER-ITO employment-at-will, may occur. All such changes will be communicated through official notices; and I understand that revised information may supersede, modify, or eliminate existing policies. Only the Senior Vice President and the Board of Managers of ELLER-ITO have the right and power to revise policies in this Handbook or terms and conditions of employment.

Furthermore, I acknowledge that this Handbook is not a contract of employment. I understand that I am responsible to read and comply with the policies in this Handbook and any revisions.

EMPLOYEE'S NAME (printed): \_\_\_\_\_

EMPLOYEE'S SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

MANAGEMENT-ILA  
PROGRAM FOR  
DRUG AND ALCOHOL ABUSE

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**ELLER-ITO** Stevedoring Company, L.L.C.

1007 North America Way, #501 Miami, Florida 33132  
Telephone: (305) 379-3700 / Facsimile: (305) 371-9969

4. Provide information regarding frequency of training.

- Training is offered on a weekly basis (Mon or Tues) for Powered Industrial Trucks (PIT) including Top Loaders, Forklifts, and Heavy Lifts to ILA members requiring certification / or re-certification training. PIT certifications must be renewed every three years per OSHA.
- Crane Operator training is also provided on a weekly basis (every Monday) to ILA members requiring training needs.
- Hazardous Materials Awareness Training- is provided on a quarterly basis /or as need. Haz Mat certifications are required by both Eller-ITO Superintendents and ILA members. Haz-Mat must be renewed every 3 years per OSHA.
- First Aid and CPR training is provided to Eller-ITO Superintendents every two years per OSHA requirements.
- OSHA 10 Hour Safety Training Course is provided to E-I Superintendents every four years as required by OSHA.
- Accident Prevention and Supervisor Management training is provided by Signal Mutual annually. Every Superintendent is required to attend.
- Superintendent Meetings are held on the first Tuesday of each odd month. A myriad of safety and training topics are discussed pertaining to Stevedoring operations / concerns.
- Lastly, an Eller-ITO / ILA Safety Meeting is held on the first Wednesday of every even month. A myriad of safety and training topics are discussed. This includes guest speakers from industry- demonstrating Harness Belts applications, and other safety equipment features.

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**Eller-ITO Training -Recap 2013**

January

- Lashing Training –New Car Carriers @ SB 1-10-13
- Ports America Roadmap Reporting Tools 1-18-13

February

- E-I / ILA Safety Meeting 2-06-13
- Safety Meeting – Stevedores 2-11-13
- Town Hall Meeting @ Union Hall 2-26-13
- Liebherr Crane Operators Training 2-26-13

March

- Signal – Supervisor Leadership Training 3-07-13

April

- Hazardous Communication Standards 4-03-13
- POM Safety Meeting 4-17-13

May

- E-I / ILA Safety Meeting 5-16-13
- ARB Accident Review Board 5-20-13
- New Employee Orientation Training 5-28-13

June

- Safety Meeting – Near Miss 6-05-13
- OSHA Training Classes- All Supervisors 6-17-13
- To PTC & STO- Stevedore Ops Review 6-25-13

July

- E-I / ILA Safety Meeting @ PEV 7-22-13
- Forklift & Top Loader Training 7-31-13
- CPR Training Classes 7-23-13

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August

- What did You do to make your Environment Safe Today 8-07-13
- OTI Train the Trainer Classes in Jax, Fl 8-26-13

September

- New Employee Orientation Training 9-09-13
- Miami Dade Fire Truck 9-18-13
- Porter Training @ PEV 9-19-13

October

- Railway Operations Training 10-09-13

November

- Reach Stacker Training 11-14-13
- New Haz Com Rules Training 11-27-13

December

- E-I / ILA Safety Meeting 12-04-13
- Stevedore Safety Meeting- Ops Procedures 12-10-13

Section Q

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**Q4**

Section Q

4. Provide a statement (and /or documentation) which describes the Applicant's commitment to environmental protection, environmental maintenance, and environmental in the Port.

Eller-ITO is committed to providing a safe and healthy workplace for employees, contractors, and visitors and to minimizing any adverse environment impact during the performance of its business. In conjunction with our parent company, Ports America Inc., Eller-ITO's commitment to the preservation of the environment is demonstrated by its adherence to rules of DERM, EPA, US DOT, HAZ MAT and other regulatory organizations.

Eller-ITO has continued its commitment to numerous environmental initiatives it started several years ago. Included are our participation in Recycling Programs, our requirement that all outside contractors (see Contractor's Questionnaire) are complaint with industry standards before we do business with them, and our continued environmental tracking forms.

Section R

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Section R

6. Provide written evidence of Applicant's ability to promote and develop growth in the business activities, projects or facilities of PEV ....

Eller-ITO is recognized as a premier leader in the Maritime Industry, and is recognized for its exemplary service. Our Strength, however is derived from personal dedication to providing the best service, and confirmed in the end by the expressed approval of those customers we serve.

Our service creates a unique environment where camaraderie and a family atmosphere flourish even while sometimes presenting stressors and challenges to our own reserves. We believe and continually challenge our employees to deliver excellence every day and strive for ways to better assist the cruise passenger's experience.

As we enter into our second year of operations at Port Everglades, we have humbly expanded and became the sole service provider for Royal Caribbean Cruise Lines. Eller-ITO was chosen by RCCL because of experience, professionalism and its harmonious working relationships with both internal and external customers. Eller-ITO has demonstrated its respect for Port Authority as well as BSO jurisdiction.

Continuous monitoring of market trends enables Eller-ITO to better understand the needs and forecast the demands of our services. This is how we recently obtained new business at Port Miami and are the Stevedoring Company providing intermodal transportation services for the FEC Railway Company. And as time goes on and Eller-ITO acquires cargo vessels operations at Port Everglades, we will continue to exemplify service that the customer will deem excellent. Strong customer and market focus is how Eller-ITO will attract, develop and maintain new businesses in at Port Everglades.

Sincerely,