



COMMONWEALTH OF PENNSYLVANIA

OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

August 2, 2021

CRIMINAL PROSECUTIONS SECTION

16th Floor, Strawberry Square

Harrisburg, PA 17120

717-772-3589

pmccarthy@attorneygeneral.gov

Matthew D. Lee, Esquire
Fox Rothschild LLP
2000 Market Street, 20th Floor
Philadelphia, PA 19103-3222

Re: Commonwealth v. Glenn O. Hawbaker, Inc., No. CP-14-CR-461-2021

Dear Mr. Lee:

This letter is intended to document the terms of a plea agreement entered into between the Office of Attorney General (OAG) and your client, Glenn O. Hawbaker, Inc. (GOH), in the above-listed matter, which arose from the Office of Attorney General's investigation regarding the alleged theft of prevailing wage fringe benefit funds due under the Pennsylvania Prevailing Wage Act, the federal Davis-Bacon Act, and/or the Davis-Bacon Related Acts (the "Covered Conduct").

GOH will plead *nolo contendere* to four counts of Theft by Failure to Make Required Disposition of Funds Received, 18 Pa.C.S. § 3927(a), graded as first-degree felonies, based on conduct in the years 2015-18 (subject to the applicable statute of limitations as modified by the parties' Tolling Agreements).

GOH will be sentenced to serve a concurrent five-year term of probation on each count, with the sentences to run concurrent to each other. As a condition of probation, GOH will submit to oversight by a Corporate Monitor that will oversee the company's compliance with all state and federal prevailing wage laws and regulations, including the Pennsylvania Prevailing Wage Act, 43 P.S. §§ 165-1 *et seq.*, the Davis-Bacon Act, 40 U.S.C. §§ 3141 *et seq.*, and the Davis-Bacon Related Acts, 29 C.F.R. § 5.1, during the five-year term of probation. The parties hereby agree that the Court will appoint Alfred B. Robinson, Jr., Esquire to serve as Corporate Monitor. GOH will pay all fees and costs associated with the Corporate Monitor's work, including any fees and costs associated with professional services utilized by the Corporate Monitor as set forth below. The Corporate Monitor shall have the following scope of work:

1. The Corporate Monitor will, within 60 days of the date of sentencing, submit a written plan to the Court outlining the details of the monitoring plan.¹
2. After submission of the monitoring plan to the Court, the Corporate Monitor will submit compliance reports to the Court on an at least quarterly basis during the first year and as frequently as deemed necessary by the Corporate Monitor thereafter, a copy of which will be supplied to the Centre County Adult Probation Department and the OAG.
3. The Corporate Monitor will monitor GOH's prevailing wage practices and ensure GOH complies with all state and federal prevailing wage laws and regulations, including the Pennsylvania Prevailing Wage Act, the Davis-Bacon Act, and the Davis-Bacon Related Acts, from January 1, 2019, until the completion of the sentence (the "Monitoring Period"). At the sole discretion of the Corporate Monitor, the Corporate Monitor may utilize professional services, including but not limited to accounting, actuarial and/or legal services, as may be necessary.
4. If the Corporate Monitor determines that there were any deficiencies in GOH's prevailing wage practices during the Monitoring Period, GOH will remedy such deficiencies, including the payment of any funds or benefits determined to be due and owing. The Corporate Monitor's determinations with respect to the Pennsylvania Prevailing Wage Act, the Davis-Bacon Act, and the Davis-Bacon Related Acts shall be final. However, he may, at his sole discretion, seek guidance from appropriate administrative agencies. The parties shall resolve all other disputes in good faith.
5. The Corporate Monitor shall oversee the payment of restitution for the charged period (2015-18) by GOH to affected victims, as described below.

In the event GOH ceases to engage in prevailing wage projects subject to the Pennsylvania Prevailing Wage Act, the Davis-Bacon Act, and/or the Davis-Bacon Related Acts for any reason, notice shall be provided to the Corporate Monitor, the Court, the Centre County Adult Probation Department, and the OAG. Other than oversight of the payment of restitution as described above, corporate monitoring will not be required during any period GOH is not engaged in prevailing wage projects. If GOH re-engages in prevailing wage projects during the term of probation, it shall notify the Corporate Monitor, the Court, the Centre County Adult Probation Department, and the OAG, and corporate monitoring will resume for the remaining period of probation.

As additional conditions of probation, GOH will be required to:

1. Ensure that the Corporate Monitor has access to any and all GOH internal or third-party records, documents, or files requested by the Corporate Monitor, in a format requested by the Corporate Monitor.

¹ Prior to submitting the monitoring plan to the Court, the Corporate Monitor will provide a copy of the plan to GOH and the OAG, so the parties may provide feedback.

2. Provide any and all information requested by the Corporate Monitor.
3. Comply with any and all directives given by the Corporate Monitor regarding GOH's prevailing wage practices.

GOH will also be sentenced to pay restitution for the charged period in the amount of \$20,696,453.00 to affected victims. GOH will issue the payments directly to the affected victims, under the supervision of the Corporate Monitor.² Restitution will be paid in a manner so as to limit tax implications on victims. Subject to federal and state law and regulations, restitution may be paid in cash or in the form of retirement account contributions, or as otherwise directed by the Corporate Monitor. Restitution will be paid as directed by the Corporate Monitor within 120 days of sentencing.³

GOH will be sentenced to reimburse the OAG for third-party expert fees incurred as costs of prosecution within 120 days of sentencing. That amount is \$240,562.78.⁴

The Court, in its discretion, will determine what, if any, fine(s) and court costs will be imposed.

The OAG agrees that it will not bring any additional criminal charges related to the Covered Conduct against GOH or any of its shareholders, officers, and employees for conduct occurring during the period January 1, 2015, through the present.

If the above-described plea is accepted by the Court and GOH is sentenced in accordance with this agreement, GOH agrees that it will not attempt to challenge the conviction through the filing of a direct appeal, a Post Conviction Relief Act petition, or a federal habeas corpus petition. GOH may, in its discretion, challenge the discretionary aspects of the sentence only as it relates to the imposition and/or amount of any fines imposed by the Court.

Attachment A to this plea agreement is confidential and shall not be disclosed publicly by OAG or GOH under any circumstances. If this plea agreement and Attachment A is provided to the Court, Attachment A shall be filed under seal and maintained under seal until GOH completes its sentence.

² A list of victims and the amounts due to each is attached as Attachment A.

³ In the event a victim cannot be located or identified, restitution for that victim shall not revert to GOH but shall be disbursed in a manner determined by the Corporate Monitor.

⁴ That includes \$8,348.28 in expert fees for services rendered by Timothy Helm and \$232,214.50 in expert fees for services rendered by EisnerAmper and Stout.

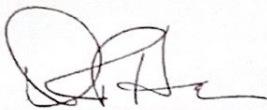
Please acknowledge that GOH agrees to the terms of this agreement by signing below.

Very truly yours,



PHILIP M. McCARTHY
Deputy Attorney General

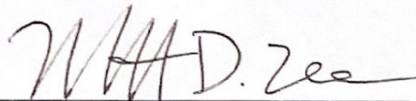
ACKNOWLEDGED, ACCEPTED, AND AGREED TO:



DANIEL HAWBAKER, in his capacity as
President
Glenn O. Hawbaker, Inc.

DATE:

8/2/21



MATTHEW D. LEE, ESQUIRE
Fox Rothschild LLP
Attorney for Glenn O. Hawbaker, Inc.

DATE:

8/2/21