

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

NORTHEASTERN LAND SERVICES, LTD.,
d/b/a/ THE NLS GROUP

and

Case No. 01-CA-039447

JAMISON JOHN DUPUY, an Individual

**CHARGING PARTY'S REPLY TO REGIONAL DIRECTOR'S OPPOSITION TO
CHARGING PARTY'S REQUEST FOR BOARD REVIEW**

In response to the Regional Director's Opposition To Charging Party's Request For Board Review ("Opposition") the Charging Party, Jamison J. Dupuy ("Dupuy") respectfully submits the following:

I. ISSUES RAISED BY CHARGING PARTY'S REQUEST FOR REVIEW

The Opposition that had been penned by the Deputy Regional Attorney, Scott F. Burson, employs the following *non sequitur* platitude on Page 1 to try to misstate the issues that had been raised in the Request for Review:

"At issue is whether, following a Board determination of liability and Court Enforcement, a charging party or discriminatee may compel litigation of complex compliance matters, notwithstanding a good-faith and well-founded determination by the Regional Director that, considering all the circumstances, a negotiated settlement is warranted."

Below are the 13 major substantive legal issues which were raised in the Request for Review that warrant this Board's intervention and demand an investigation by the Office of Inspector General to determine whether the tortious and criminal acts committed by the now retired Regional Director, Rosemary Pye, the Deputy Regional Attorney, Scott F. Burson, and the Compliance Office, Claire Powers, and their apparent violations of the Board's Rules and Regulations were politically motivated and whether Dupuy had been wrongfully targeted:

1. Whether the now retired Regional Director, Rosemary Pye, the Deputy Regional Attorney, Scott F. Burson, and the Compliance Office, Claire Powers, had violated the National Labor Relations Act (“Act”) and Dupuy’s due process rights by completely excluding him from participating in setting the terms of his job reinstatement, the backpay determination and the structure of the *functionally* unsecured Compliance Settlement Agreement (“CSA”) that has an interest-free 11½ years installment payment plan?

2. Whether the now retired Regional Director, Rosemary Pye, the Deputy Regional Attorney, Scott F. Burson, and the Compliance Office, Claire Powers, had engaged in criminal wrongdoing by making and the using a CSA in violation of 18 U.S.C. §1001 (a)(3) that contains false statements of material facts claiming that Dupuy was represented by legal counsel and had actively participated in the backroom deal that had been struck with the Employer (“NLS”) to sidestep the “80 percent problem” that has been documented by the Office of Inspector General in his Report No. OIG-AMR-63-10-02?

3. Whether the now retired Regional Director, Rosemary Pye, the Deputy Regional Attorney, Scott F. Burson, and the Compliance Office, Claire Powers, had violated the Act and Dupuy’s due process rights by attempting to fraudulently induce him into signing the patently fraudulent CSA that waived all of his legal rights by falsely telling him that the CSA would be secured with a Security Agreement (when they each knew that NLS was “judgment proof” because it owned no assets) and then refused to give him a copy of the Security Agreement by falsely telling him that it was a confidential document between “the Agency and the Respondent?”

4. Whether the now retired Regional Director, Rosemary Pye, and the Deputy Regional Attorney, Scott F. Burson, and the Compliance Office, Claire Powers, and Jeffery M.

Deuink had violated the Act and Dupuy's due process rights by attempting to coerce him into signing the patently fraudulent CSA by refusing to furnish him with a copy of the Security Agreement, refusing to grant him additional time to evaluate his rights after setting deadlines during a holiday period when they knew beforehand that he was unavailable, and then telling him that he would not receive *any* of court-ordered backpay award it had been collecting from NLS until he had signed the CSA that waived all of his legal rights?

5. Whether the now retired Regional Director, Rosemary Pye, as an agent of the Board, had exceeded her jurisdiction under *Scepter, Inc. v. NLRB*, 448 F.3d 388, 390–391 (D.C. Cir. 2006), to change the remedy of a court-enforced order that mandated the payment of interest on backpay by waiving the payment of same during the 11½ year installment payment period?

6. Whether the now retired Regional Director, Rosemary Pye, as an agent of the Board, had violated the Takings Clause of the Fifth Amendment by taking Dupuy's private property (the exclusive right to receive the interest from the court-enforced Board order, which according to *Nathanson v. NLRB*, 344 U.S. 25 (1952) the Board was charged with collecting from NLS as Dupuy's "agent,") and giving it to NLS (by waiving its collection) for a public use (to induce NLS to settle the case) without giving Dupuy just compensation?

7. Whether the now retired Regional Director, Rosemary Pye had violated Board policy that had been established by way of adjudication in *Kentucky River Medical Center*, 356 NLRB 8 (2010), which ruled that in all pending cases the backpay determinations shall be paid with interest compounded on a daily basis (because the Board ruled that the "retroactive application of this new approach significantly promotes the purposes of the Act, by improving a basic statutory remedy") by waiving the court-enforced interest on the court-enforced backpay award during the 11½ year installment payment period?

8. Whether the purported offer of job reinstatement from NLS was invalid under existing Board precedent set forth more particularly in Dupuy's Request for Review because:
- a. NLS did not provide a copy of the employment contract;
 - b. Employment was conditioned upon approval by NLS' undisclosed client;
 - c. NLS did not disclose the following material terms of the employment:
 - i. Whether or not the omitted employment contract was open-ended as it was before Dupuy was unlawfully fired by NLS;
 - ii. The name of the client company;
 - iii. The exact location of the job;
 - iv. The type of work that Dupuy would be required to perform (i.e. FERC or Non-FERC regulated project, title research or obtaining right-of-way agreements, or obtaining permits). Prior to being unlawfully fired from his job, Dupuy only had to acquire right-of-way agreements on a FERC regulated gas transmission pipeline project, which is substantially less onerous work than running title and obtaining permits;
 - v. The number of hours per day that Dupuy would be required to work for the day rate he was offered or the total number of hours Dupuy would be required to work during the week. On Dupuy's two prior periods of employment with NLS he was contractually required to work 10 hours a day and 6 days week with no overtime pay in violation of the Federal Labor Standards Act (a valid offer cannot be premised upon an unlawful act);
 - vi. The in-service date of the project so that Dupuy could determine his after tax take-home pay. Whether or not reimbursed hotel and meal expenses are tax deductible is a function of whether or not the job assignment is temporary or indefinite and the length of time of the temporary assignment is away from the taxpayer's home;
 - d. The compensation that had been offered to Dupuy was materially less than what he had been paid before he was unlawfully fired by NLS;
 - e. NLS had imposed on Dupuy an arbitrarily short deadline to begin work almost immediately when the Compliance Officer, Claire Powers, and NLS knew that Dupuy would not be available?

9. Whether the Compliance Officer, Claire Powers, had violated controlling Board policy as set forth in *Boland Marine & Mfg. Co.*, 280 NLRB 454, 460-461 (1986) (“a respondent may not rely on statistical formulas to demonstrate that claimants would have been laid off, but rather must make a showing as to each claimant”) and *Aneco, Inc.*, 333 NLRB 691 (2001) (“[i]n compliance matters, a wrongdoing employer bears the burden of proving that a discriminatee would not have remained at the same job which he was unlawfully denied”) to use statistical presumptions that are contradicted by the evidence to make her Backpay Determination?

10. Whether the following evidence supports Dupuy’s contention that his employment with NLS was permanent and was not intermittent as presumed by the Compliance Officer:

- a. Dupuy’s employment contract with NLS was open-ended;
- b. Dupuy was offered benefits given to full-time permanent employees of NLS such as enrollment in its health care and dental group insurance program and participation in its 401K Retirement Plan with matching employer contributions;
- c. Employment information contained in the Compliance Officer’s Backpay Determination shows that 22 right-of-way agents worked at least four or more consecutive years for NLS;
- d. Employment information contained in the Compliance Officer’s Backpay Determination shows that NLS had so much work available for the first three months of 2008 and the first nine months of 2009 that the Employer had to go out and find 41 additional right-of-way agents to hire?

11. Whether the now retired Regional Director, Rosemary Pye, the Deputy Regional Attorney, Scott F. Burson, and the Compliance Office, Claire Powers, were bound to follow the Board’s stated policy in *Bolivar-Tees, Inc.*, 349 NLRB 720, 728 (2007), *enforced*, 551 F.3d 722 (8th Cir. 2008):

“A Board order is a vindication of public policy and is binding not only on a named respondent but also is binding upon the respondent’s “officers, agents, successors and assigns.” As the Board has stated “It is well settled that the mere

discontinuance in business does not necessarily render moot the allegations of unfair labor practices against a respondent.” Redway Carriers, Inc., 301 NLRB 1113 (1991). See East Dayton Tool & Die Co., 239 NLRB 141 fn. 1 (1978); Armitage Sand & Gravel, 203 NLRB 162, 166–167 (1973), *enfd.* in part 495 F.2d 759 (6th Cir. 1974), citing Southport Petroleum Co. v. NLRB, 315 U.S. 100, 107 (1942). Although Bolivar ceased operations, its “officers, agents, successors and assigns” retain the responsibility to manage the corporate assets so that the corporate assets are available to remedy the corporation’s unfair labor practices.”

to hold Jeffrey M. Deuink, Jessie B. Green, Jr., and Susan S. Green, as officers and agents of NLS, personally liable for the court-enforced backpay order that was made expressly binding on them as officers, agents, successors and assigns of NLS because they each had participated in the unlawful labor practice that gave rise to this case?

12. Whether the now retired Regional Director, Rosemary Pye, the Deputy Regional Attorney, Scott F. Burson, and the Compliance Office, Claire Powers, were bound to follow the Board’s stated policy in *Domsey Trading Corp.*, 357 NLRB No. 180 (2011), *enfd.*, __F.Appx.__ (2nd Cir. Jan. 30, 2013):

“As the Board has previously observed, a ‘Board order is a vindication of public policy and is binding not only on a named respondent but also is binding upon the respondent’s ‘officers, agents, successors and assigns.’ Thus, a corporate respondent’s cessation of business, or even its dissolution, does not extinguish the responsibility for remedying its unfair labor practices. The officers, agents, successors, and assigns remain responsible for managing and preserving corporate assets so that those assets will be available to satisfy a Board-ordered, court-enforced money judgment.”

to hold Jeffrey M. Deuink , Jessie B. Green, Jr., and Susan S. Green, as officers and agents of NLS, personally liable for failing in their obligations to managing and preserving corporate assets so that those assets would be available to satisfy a Board-ordered, court-enforced money judgment; and to also hold Jeffrey M. Deuink personally liable, as the sole shareholder, president, treasurer, and only named director of NLS, a Subchapter S Corporation, that he had intentionally undercapitalized and had been winding down the operations of this company since

the Board's Decision and Order was issued in 2009 ordering him, Jessie B. Green, Jr., and Susan S. Green to reinstate Dupuy to his former job and to pay him back wages with interest.

13. Whether there exist substantial evidence or a rational basis in law for the Board to approve the functionally unsecured and unenforceable Compliance Settlement Agreement that does not presently effectuate the purpose and the policies of the Act and contains false statements of material facts in criminal violation of 18 U.S.C. §1001 (a) (3) and waives all of the Board's legal rights and remedies under the Act to fully respond to a default of that agreement by NLS?

II. MISREPRESENTATIONS FOUND IN REGION ONE'S OPPOSITION

Instead of addressing the 13 substantive legal issues raised in the Request for Review, the Deputy Regional Attorney, Scott F. Burson, falsifies or omits certain facts or inserts [straw man](#) arguments in the Opposition in order to mislead the Board while also invoking "evidentiary privilege" to prevent a full and proper disclosure of all of the evidence in this case.

The most obvious [straw man](#) argument worth mentioning is found on Page 14 of the Opposition, where the Deputy Regional Attorney lies to the Board by falsely stating in the underlined part below that Dupuy had requested a subpoena:

"The Region urges the Board to reject Dupuy's attempt to engage in a fishing expedition through subpoena for evidence an experienced Compliance Officer has not found, in order to urge upon the Board and ultimately the Court of Appeals a theory of liability not yet in existence. Dupuy *might* succeed in this attempt, but the prospect of success is vanishingly small."

Aside from the fact the undersigned Charging Party has never requested a subpoena in this case, the Deputy Regional Attorney appears to have also invoked "evidentiary privilege" in Footnote 5 of the Opposition in order to prevent this Board from evaluating Region One's acceptance of the patently fraudulent CSA; and by extension thereof, from investigating any

wrongdoing or criminal behavior on the part of the now retired Regional Director, Rosemary Pye, himself, and the Compliance Office, Claire Powers, as follows:

“5 Because of the evidentiary privilege applicable to communications relevant to settlement discussions, the Region is not, at this stage of the proceedings, at liberty to disclose records voluntarily produced in conjunction with settlement discussions or representations made on behalf of Respondent with respect to its financial condition and intentions. At this stage of the proceedings, the Board must evaluate the Region’s acceptance of the Compliance Determination based on its confidence in the experience and judgment of the Regional Compliance Officer, her supervision, and Regional Management to make an appropriate assessment of the compliance issues presented.”

As the Board well knows, it can require the employer to waive any purported evidentiary privilege as a condition for the review of any settlement agreement sought for its approval.

Moreover, in all cases of an adverse compliance determination that is appealed by a charging party to the Federal Court of Appeal, the Board must produce substantial evidence on the record considered as a whole to support its decision to approve that compliance determination. *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951), and establish a rational basis in law for its decision. Therefore, the Board’s “confidence in the experience and judgment of the Regional Compliance Officer, her supervision [sic], and Regional Management to make an appropriate assessment of the compliance issues presented” used as the *sole basis* for approving a Compliance Determination that adversely affects the rights of the Charging Party herein will not pass judicial review.

In making an argument that under a balanced consideration of the factors illuminated in *Independent Stave*, 287 NLRB 740 (1987), there is support for the Region’s compliance determination, the Deputy Regional Attorney lies to the Board again on Page 7 of the Opposition by falsely stating in the underlined passage below that NLS employees (and by inference Dupuy) are hired for terms of specific contracts:

“NLS does not continuously retain employees. Instead, employees are hired for the term of specific contracts, and rehired for subsequent contracts. There is no guarantee that any employee will be rehired for subsequent employment, or, if rehired, in what interval.” In order to determine these variables for the purpose of the compliance determination, the Compliance Officer employed an approach endorsed by the Compliance Manual for such circumstances. She assumed that the average earnings of a group of comparator employees with the most nearly continuous employment performing assignments similar to Dupuy is a reasonable approximation of what Dupuy’s earnings would have been during the backpay period.” [Underlining Added.]

Attached to Dupuy’s Request for Review as PDF No. 1 is a copy of his Employment Contract with NLS. It is an **open-ended contract**. The fact that Dupuy’s Employment Contract was open-ended was stated four times in his Request for Review on Pages 38, 59 and 60. Also, as found in the Compliance Officer’s Backpay Determination and as stated on Page 22 of the Request for Review in bold font and italicized was the fact there were listed 22 right-of-way agents who worked at least four or more consecutive years for NLS.¹ The argument advanced by the Deputy Regional Attorney is premised upon a lie that “employees are hired for the term of specific contracts, and rehired for subsequent contracts.”² Using that lie as the anchor, the Deputy Regional Attorney then bootstraps this argument: “[t]here is no guarantee that any

¹ On Page 16 of the Opposition the Deputy Regional Attorney lies to the Board by falsely stating that: “Dupuy mistakenly asserts that four employees in the sample group worked what appear to be four years during the backpay period, and this compels a finding that he would have been employed during the *entire* backpay period.”

What the Charging Party actually wrote in bold font and italicized on Page 39 of his Request for Review is as follows: ***According to the “Respondent’s List” that is contained in the Backpay Determination, there are 22 right-of-way agents who worked at least four or more consecutive years for Deuink’s shell company. Employment of four or more consecutive years is certainly not temporary or intermittent employment by any definition.***

Therefore, the presumption of intermittent employment is not only contradicted by the facts; it does not accurately reflect the reality of Dupuy’s employment relationship with NLS and wrongfully shifted the burden of proof from the wrongdoing employer to the injured employee.”

Not only has the Deputy Regional Attorney lied to the Board about what the Charging Party had written, but he then tied that lie to an argument that the Charging Party had not made to use that false argument as a **straw man**. There are simply too many such **straw man** arguments in the Opposition to debunk them all without getting sidetracked from the substantive legal issues that have been set forth herein above and fully briefed in the Request for Review.

² Because this lie can be easily debunked by simply reading Dupuy’s Employment Contract, it is submitted that this lie by the Deputy Regional Attorney is a criminal violation under 18 U.S.C. §1001 (a) (3). At issue are the terms of the Charging Party’s Employment Contract not what may be the terms of other employees’ employment contracts. The Board should refer this clear violation of 18 U.S.C. §1001 (a) (3) to the Office of Inspector General.

employee will be rehired for subsequent employment, or, if rehired, in what interval,” to falsely suggest to the Board that Dupuy would not have been employed by NLS for the first three months of 2008 and the first nine months of 2009, when the evidence as found in the Compliance Officer’s Backpay Determination clearly show that during these two time periods, NLS had so much work that it had to find 41 new right-of-way agents to hire who had never worked for the company before. See Table 3 of the Request for Review.

As pointed out on Page 38 of the Request for Review, the selection process of the so-called representative employees used by the Compliance Officer was arbitrary because no consideration had been given to any of the following material factors that would determined whether the employment patterns at issue were due to lack of work or some other reason(s):

1. Whether or not any of the representative employees had voluntarily left the employ of NLS.
2. Whether or not any of the representative employees had refused to return to the employ of NLS after being laid-off.
3. Whether or not any of the representative employees had simply been replaced with other workers at a lower pay rate.
4. Whether or not any of the representative employees were separated from NLS for reasons other than lack of work.
5. Whether or not any of the representative employees had voluntarily taken a leave of absence or other time off from the company due to personal reasons.

Because the Deputy Regional Attorney cannot rebut the evidence showing that during the two time periods in question, NLS had so much work that it had to find 41 new right-of-way agents to hire who had never worked for the company before, he attempts on Page 16 of the Opposition to intentionally mislead the Board away from the fact that the employer has the evidentiary burden of proof as to whether Dupuy would have been laid-off as follows:

“Dupuy asserts that increases in the work force in 2008 and 2009 indicate that he should have been employed during that time. There is no basis to suggest that Dupuy would have been employed at that time.”

On Page 3 of the Opposition, the Deputy Regional Attorney makes the following misleading statement that has been underlined below:

“Over a period of months, Ms. Powers engaged in a review of NLS’s payroll and employment records for the period following the unlawful discharge. During this period, the Compliance Officer was in regular contact with Dupuy.”

What makes this statement misleading is the omission of the fact that however he characterizes the frequency of the Compliance Officer contact with Dupuy, the Compliance Officer only contacted Dupuy to request financial information about his interim earnings. At no time prior to the Compliance Officer presenting the CSA to Dupuy as a **done deal** on December 20, 2011, were *any* of the terms of her backroom deal with NLS disclosed. Moreover, not until the now retired Regional Director issued her Compliance Determination on February 28, 2012, were *all* of the terms of the backroom deal finally disclosed. Dupuy was never part of the settlement process. This omission of facts regarding the nature of the contact that the Compliance Officer had with Dupuy was intended to falsely imply to the Board that his due process rights under the Act had been observed. When in actuality, as previously stated on Pages 1 and 2 of Dupuy’s letter to the now retired Regional Director, Rosemary Pye that is attached to his Request for Review as PDF No. 12 the Compliance Officer, Claire Powers, had violated his due process rights under the Board’s Rule and Regulations, as follows:

“II. THE NON-COMPLIANCE WITH SECTION 10570 AND SECTION 102.52

According to Paragraph 8 of the Compliance Settlement Agreement all parties have agreed that the installment payments constitute the full backpay due and accrued interest thereon through the settlement date and all parties waive their rights to dispute the reinstatement offer and accuracy of the amount of backpay and accrued interest thereon. Because your Compliance Officer did not follow the mandates and the guidelines of Section 10570 of your Compliance Manual and Section

102.52 of your Compliance Regulations I cannot make an informed decision as to whether or not I should waive my procedural due process rights under the National Labor Relations Act (the “Act”).

Section 10570 states that the Compliance Officer “will communicate with all parties, eliciting respective positions on compliance issues, answering questions, and establishing facts.” That section further states that “[f]rom the investigation, the Compliance Officer will reach conclusions as to the compliance requirements of each case. At this point, it is generally appropriate to prepare correspondence in which he/she should advise the parties of these requirements . . . to provide both charging party and respondent the opportunity to dispute any conclusions. The correspondence should fully set forth the basis for the conclusions the Compliance Officer has reached, including facts which have been established and arguments considered It should include wage rates and work schedules used in calculating gross backpay, as well as the method used. . . . After advising the parties of the Region’s conclusions regarding compliance requirements, the Compliance Officer should contact the parties to confirm acceptance of the conclusions or identify areas of dispute.”

Your Compliance Officer did not elicit my position on backpay or on the make whole remedy.

Your Compliance Officer did not furnish me with the conclusions that she had reached or the facts she had established or the arguments that she had considered.

Your Compliance Officer did not furnish me with the wage rates and work schedules that she had used in calculating gross backpay, as well as explain the method that she used to calculate the backpay.

Your Compliance Officer sent me no such correspondence that is described in Section 10570.

Your Compliance Officer gave me no information beyond the settlement document itself after it had been executed by the respondent. I have no way to determine whether or not the \$124,115.53 of backpay and the \$77,673.17 of accrued interest that she and the respondent had stipulated to are correct. By my rough estimate the amount of backpay due is at least \$138,000.00.

A. Your Compliance Officer’s Unlawful Refusal To Furnish Requested Information

Paragraph 18 of the Compliance Settlement Agreement requires the respondent to execute and record the annexed Security Agreement and financing statements. Once these security documents have been recorded they become a matter of public record. Nonetheless, your Compliance Officer has unlawfully rejected my request for copies of these security documents prior to their recordation by the respondent.

Consequently, because your Compliance Officer did not follow the mandates and the guidelines of Section 10570 of your Compliance Manual and Section 102.52 of your Compliance Regulations and has unlawfully refused to provide me with copies of the Security Agreement and financing statements before they are recorded, I am unable to properly evaluate the terms of the settlement and therefore I am unable to make an informed decision as to whether or not I should waive all of my procedural due process rights under the Act. For this reason alone I have no choice but to reject the Compliance Settlement Agreement.”

On Page 13 of the Opposition, the Deputy Regional Attorney then flat-out lies to the Board when he writes: “At each stage, Dupuy has been consulted, and his participation has been considered.” The undersigned Charging Party challenges Mr. Burson to produce any evidence showing that he had in any manner participated in the Backpay Determination, setting the terms of his job reinstatement or having any input or even knowing what some of the terms of the CSA were until after Jeffrey M. Deuink had already signed it on December 20, 2011.

As briefed more fully in the Request for Review, Dupuy emailed the Compliance Officer on December 13, 2011, to request a status update because he had not heard from her in over three months and to inform her that he would not be available from December 21, 2011, through January 11, 2012. After learning that Dupuy would be unavailable, she and Jeffrey M. Deuink set-up deadlines for that period of time in the purported offer of job reinstatement and emailed that so-called offer to Dupuy late on the afternoon of December 20, 2011, and emailed him the CSA (without the so-called Security Agreement or the Backpay Determination) later that night. Thereafter, the Compliance Officer refused to provide Dupuy with a copy of her Backpay Determination or a copy of the so-called Security Agreement claiming it was a confidential document. Additionally, the Compliance Officer refused Dupuy’s request for an extension of the linked deadlines that were set forth in the purported offer of job reinstatement and the CSA. All

of this was done solely to coerce Dupuy into signing away all of his legal rights.³ Regarding the fact that Region One also tried to coerce Dupuy into signing the patently fraudulent CSA by refusing to forward any of the backpay award that it has been collecting from NLS, the Deputy Regional Attorney writes:

“Similarly, Dupuy contends that the Region improperly coerced him by Deputy Regional Attorney Burson’s advising him that he could receive the escrowed instalment [sic] payments only by joining the compliance settlement agreement; this statement was no more than an accurate characterization of the status of the escrow payments at the time.”

What the Deputy Regional Attorney omits to tell the Board is the fact that Dupuy had been completely excluded from the settlement process wherein Region One and NLS had drafted this functionally unsecured and non-standard CSA in such a way that Dupuy could never collect any backpay unless and until he waived all of his legal rights. It must be remembered that this whole case arose out of Jeffrey M. Deuink skimming his employees’ wages and not paying them on time. Make no mistake about it, had Dupuy signed the functionally unsecured CSA when it was first presented to him as a done deal on the night of December 20, 2011, Deuink (who the Deputy Regional Attorney concedes on Page 10 of the Opposition paid more in litigation expenses to fight this case than the backpay award at issue) would not have made the first installment payment that was due on January 5, 2012. You judge the tree by the fruit it bears.

On Page 19 of the Opposition, the Deputy Regional Attorney lies to the Board again to setup another [straw man](#) argument by making the following false statement of fact to support his mishmash argument that Dupuy had waived his job reinstatement:

“The Region notes that Dupuy never responded to Respondent’s offer of reinstatement.”

³ Naturally, the Deputy Regional Attorney lied to the Board about this as well by falsely stating on Page 11 of the Opposition: “With respect to the third factor in the *Independent Stave* analysis, there has been no fraud, coercion, or duress in reaching the settlement agreement.”

On the bottom of Page 4 of Dupuy's letter of objections to the now retired Regional Director, Rosemary Pye, dated January 3, 2012, that is attached to his Request for Review as PDF No. 12, it is written: "Attached hereto and incorporated herein please find a copy of my response to Mr. Deuink's purported offer of reinstatement of this same date." The last two pages of PDF No. 12 contain a copy of Dupuy's written response to Mr. Deuink's purported offer of reinstatement. As further noted in said written response to Mr. Deuink, copies of that response had also been emailed to Ms. Pye and to the Compliance Officer, Claire L. Powers.

On Page 10 of the Opposition, the Deputy Regional Attorney attempts to mislead the Board with the following misstatements of the law:

"Dupuy further claims that individual liability should be asserted against Deuink because Respondent's low capitalization burdens its creditors. This is simply not the law. Undercapitalization will result in assertion of personal liability against corporate owners when, as in *Domsey*, it appears that the owners have converted corporate assets to their benefit at the expense of creditors or substantially departed from the norm of capitalization in an industry, thereby defeating reasonable expectations of investors and creditors. It has never been the case, however, that courts will pierce the corporate veil simply because a corporate Respondent's capital is insufficient to cover its debts, even if that insufficiency was foreseeable. Indeed, such a position would negate the corporate form."

It should be noted by the Board that in arguing against the application of *Domsey Trading Corp.*, 357 NLRB No. 180 (2011), *enfd.*, ___ F.Appx. ___ (2nd Cir. Jan. 30, 2013), to the case at hand, the Opposition does not ever address the actual test that had been fashioned by the Board in that case to impose personal liability on a corporate officer or shareholder:

"Persons are held to intend the foreseeable consequences of their conduct.' Accordingly, the question is whether a corporate owner's or officer's conduct 'would have the 'natural, foreseeable, and inevitable consequence' of diminishing a corporation's ability to satisfy the remedial obligation.'" [Footnotes omitted.] 357 NLRB No. 180, slip op. at 5.

The evidence identified by the Request for Review is amply sufficient to warrant the Board remanding this case back to Region One to prepare a compliance specification imposing

personal liability on Jeffrey M. Deuink, Jessie B. Green, Jr., and Susan S. Green, as officers and agents of NLS, for the court-enforced backpay order that was made expressly binding on them as officers, agents, successors and assigns of NLS because they each had participated in the unlawful labor practice that gave rise to this case and had failed since 2002 to take steps to ensure NLS would have sufficient assets to satisfy its remedial obligations under the Act.

III. CONCLUSION

As currently structured, the CSA is functionally unsecured because NLS owns no assets owing to the fact that its sole shareholder, Jeffrey M. Deuink, had intentionally undercapitalized this shell corporation in order to avoid fully complying with the backpay order. Therefore, if the Board approves this wholly deficient CSA, the Board will also waive all of its legal rights to seek derivative liability and its legal right to assert any of the other remedies currently available to it under the Act to effectuate its policies once NLS defaults because Paragraph 21 of the CSA that was prepared by Region One expressly waives all of the Board's rights under the Act:

“All parties waive all further and other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.”

It should be noted by the Board that the “Compliance Stipulation” template found in the Compliance Casehandling Manual III as Appendix 16, upon which the CSA was apparently modeled, contains no such overly broad waiver of all of the Board's legal rights and remedies under the Act. Since this waiver is non-standard, the Board should find out who at Region One inserted this waiver of its rights and determine the purpose for its inclusion?

The Opposition points to no substantial evidence on the record to be considered as a whole to support a decision by the Board to approve the Compliance Determination or the CSA. Rather, after stating “that a negotiated compromise of the back pay issues reached by NLS and the Region promised a better compliance result to Dupuy than might be achieved through additional

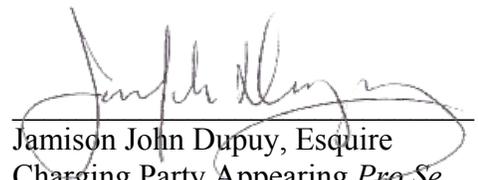
litigation,” the Deputy Regional Attorney invokes “evidentiary privilege” much like the IRS Attorney Lois Lerner invoking her 5th Amendment right when called to testify before members of Congress after first stating that she had broken no laws and had done nothing wrong.

It does not take much imagination to see that instead of working hard to effectuate the policies of the Act by including Dupuy in the process to broker an enforceable and secured settlement agreement, the now retired Regional Director, Rosemary Pye, the Deputy Regional Attorney, Scott F. Burson, and the Compliance Office, Claire Powers, worked hard as *de facto* shills for Jeffery M. Deuink to violate Dupuy’s rights under the law by engaging in tortious and criminal acts and by violating the Rules and Regulations and polices of the Board.

This case reeks of egregious administrative misconduct and wrongdoing on the part of the now retired Regional Director, Rosemary Pye, the Deputy Regional Attorney, Scott F. Burson, and the Compliance Office, Claire Powers. The Board should have the Deputy Regional Attorney, Scott F. Burson, and the Compliance Office, Claire Powers, removed from this case, and referred to the Office of Inspector General for investigation.

A functionally unsecured and unenforceable CSA cannot effectuate the policies of the Act. As attorneys, would any member of the Board sign this document and accept this put-up deal if he or she were the Charging Party in this case or recommend the same to a client?

Respectfully Submitted,



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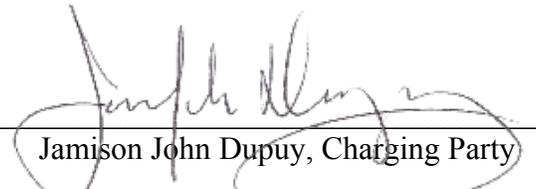
Dated at Searcy, Arkansas
This 5th day of June, 2013

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing **Charging Party's Reply to Regional Director's Opposition To Charging Party's Request For Board Review** upon the following individuals listed below by email this date:

Jonathan B. Kreisberg, Regional Director
National Labor Relations Board, Region One
10 Causeway Street, 6th Floor
Boston, MA 02222-1072
Email: Jonathan.kreisberg@nlrb.gov

Walter C. Hunter, Esquire
Littler Mendelson, PC
1 Financial Plaza
Providence, RI 02903-2448
Email: whunter@littler.com



Jamison John Dupuy, Charging Party

Dated at Searcy, Arkansas
This 5th day of June, 2013