

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

CONSTELLIUM ROLLED PRODUCTS)	
RAVENSWOOD, LLC)	
and)	Case No. 09-CA-116410
UNITED STEEL, PAPER AND FORESTRY,)	
RUBBER, MANUFACTURING, ENERGY,)	
ALLIED INDUSTRIAL AND SERVICE)	
WORKERS INTERNATIONAL UNION,)	
LOCAL 5668, AFL-CIO-CLC)	
)	

CONSTELLIUM’S NOTICE OF SUPPLEMENTAL AUTHORITY

Constellium Rolled Products Ravenswood, LLC (“Constellium” or the “Company”) submits this Notice of Supplemental Authority in support of its position that the Board should rescind its July 24, 2018 Decision and Order (“Decision”) in the above-captioned case (366 NLRB No. 131) and dismiss the Complaint against Constellium.

On April 28, 2020, the parties submitted statements of position with respect to the issues raised by the D.C. Circuit’s decision to remand this case so that the Board could address the potential conflict between Constellium’s obligation under state and federal equal employment opportunity laws and the Act. Subsequently, on July 21, 2020, the Board issued its decision in *General Motors LLC*, which identified and corrected prior indifference “to employers’ legal obligations to prevent hostile work environments on the basis of protected traits.” 369 NLRB No. 127, slip op. at 6 (attached hereto as Exhibit 1).

Constellium’s position is that *General Motors* applies to this case and, consistent with that decision, *Wright Line* is the operative framework for resolving the conflict identified by the D.C. Circuit. *Id.* at 1, 9; *see id.* at 10–11 (applying decision retroactively). Accordingly, further

litigation, including remand to the Administrative Law Judge (“ALJ”), is unwarranted and unnecessary based on the existing record. In his decision, the ALJ applied the *Wright Line* framework and found that the General Counsel’s case lacked the prima facie element of animus or hostility toward protected, concerted activity – namely, employee opposition to the Company’s overtime policy changes. 366 NLRB No. 131, slip op. at 16. Likewise, the Board’s July 2018 Decision acknowledged that Constellium “tolerated its employees engaging in ‘a wide range of protected activity’ to protest the overtime policy.” *Id.* at 4.

Constellium has been advised that the General Counsel has not yet taken a position on these issues. Accordingly, given that *General Motors* was decided after the parties’ submitted their initial statements of position in late April, the Board may consider soliciting supplemental statements of position from the parties on how *General Motors* applies to this case and whether further evidence is needed to resolve the Complaint.

Dated: July 31, 2020

Respectfully Submitted,

/s/ Daniel P. Bordoni

Daniel P. Bordoni
David R. Broderdorf
Geoffrey J. Rosenthal
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-5249
daniel.bordoni@morganlewis.com
david.broderdorf@morganlewis.com
geoffrey.rosenthal@morganlewis.com

*Counsel for Constellium Rolled Products
Ravenswood, LLC*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of Constellium Notice of Supplemental Authority was filed with the Office of the Executive Secretary today, July 31, 2020, using the NLRB's e-Filing system and was served by email upon the following:

Matthew T. Denholm
Regional Director
National Labor Relations Board, Region 9
matthew.denholm@nlrb.gov

Zuzana Murarova
Counsel for the General Counsel
National Labor Relations Board, Region 9
zuzana.murarova@nlrb.gov

Ann Marie Behrle
Compliance Officer
National Labor Relations Board, Region 9
ann.behrle@nlrb.gov

Nathan Kilbert
Assistant General Counsel
United Steelworkers Local 5668
nkilbert@usw.org

Kevin Gaul
Grievance Committee Chairman
United Steelworkers Local 5668
grievancechair@suddenlinkmail.com

/s/ Geoffrey J. Rosenthal

Geoffrey J. Rosenthal