



## Department of Labor v. Nu-Way Products Company Inc

2019 | Cited 0 times | E.D. Arkansas | November 22, 2019

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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF ARKANSAS

JONESBORO DIVISION

EUGENE SCALIA, Secretary, United States Department of Labor PETITIONER v. No.  
3:19-cv-322-DPM NU-WAY PRODUCTS COMP ANY, INC.,

Nu-Way Pool & Spa

ORDER

RESPONDENT

1. The Court congratulates the parties on their agreed resolution. The Court requests some minor changes in the draft injunction. See attached. If they' re acceptable, please send a revised and approved version to chambers.
2. Post-injunction joint status report due by 27 January 2020. If all's well then, the Court will vacate the injunction based on the changed circumstances and dismiss the petition without prejudice.
3. The 17 December 2019 hearing is cancelled. So Ordered.

D.P. Marshall Jr. United States District Judge - ...

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UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS



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### JONESBORO DIVISION

EUGENE SCALIA, Secretary of Labor, United States Department of Labor,

Petitioner, Case No. 3:19-cv-00322-DPM V.

NU-WAY PRODUCTS COMPANY, INC. DBA NU-WAY POOL & SPA,

Respondent.

### AGREED ORDER OF INJUNCTION

This matter is before the Court pursuant to the provisions of Section 13, 29 U.S.C. §662, of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. §651 et seq., and Rule 65 of the Federal Rules of Civil Procedure on the Secretary's Petition for Injunction to Restrain Imminent Danger. The Petitioner seeks to enjoin the Respondent, Nu-Way Products Company, Inc. dba Nu-Way Pool & Spa, from the steps necessary to avoid, correct, or remove conditions of imminent danger alleged to exist at Respondent's worksite located at 220 Garrison Avenue, West Memphis, Arkansas, as set forth in the petition.

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The following conditions exist at the place of employment maintained by Respondent, Nu-Way



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Products Company, Inc. dba Nu-Way Pool & Spa, located at 220 Garrison Avenue in West Memphis, Arkansas, that present an imminent danger to employees which could reasonably be expected to cause death or serious physical harm:

- a. Northwest and south walls of the building have broken, damaged, and displaced structural support columns, which have caused the walls to bulge and could potentially result in the building collapsing while employees are inside/
- b. Northeast and south sides of the building's roof have loose and missing metal sheets, which could result in the metal sheets or debris falling on employees working below.

These working conditions constitute an imminent danger within the meaning of Section 13(a) of the danger exists which could be

I U expected to cause death or serious physical harm immediately or before the of  
danger be eliminated through the enforcement procedures otherwise provided by the Act.

therefme, it is hereby Respondent, its officers, agents, servants, and those persons in active concert or participation with them are enjoined, pending the final disposition of this matter

the enforcement proceedings otherwise provided by the Act,

-t)aM the following steps necessary to avoid, correct, or remove the danger:

- a. Prohibit employees from entering the building, until the following actions (described below in subparagraphs b through e) have been completed. Howtweie-

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Injunction \ vAJ-1{ ;l B i=eh.-iVAt\ .Y ~O? ,.. ;f . ~.

nothing in this Order shall be construed so as to limit the ability of owners and officers of Nu-Way Products Company, Inc. dba Nu-Way Pool & Spa, who are not also employees of Respondent, to occupy,

1 and the property while the following actions ( described in subparagraphs b through e) are ongoing  
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b. Repair the broken, damaged, and displaced structural support columns ; c. Replace the missing sections of metal sheets on the roof; • d. Secure the loose sections of metal sheets on the roof; • e. Arrange for a registered design professional to evaluate the building and confirm that the building is structurally safe.

Each party shall bear his or her own fees, costs, and other expenses incurred by party in connection with any stage of this proceeding to date including, but not limited to, fees which may be available under the Equal Access to Justice Act, as amended.

isdiction over this matter only for the purposes of enforcing this Order of I 0,

The Respondent shall communicate the fact of the entry of this Order and its contents to all individuals who may be affected by it and shall prominently post copies of this Order at or near Respondent's place of employment where imminent danger exists and in any other location where posting will most effectively prevent any individual from exposure to imminent danger.

3 9ated this day

D ° ' -k .l'h0 hereby cofil:scnt entry this agrees order

of , 2019.

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FOR THE SECRETARY OF LABOR:

KA TE S. O'SCANNLAIN Deputy Solicitor of Labor CONNIE A. ACKERMANN Acting Regional Solicitor MADELEINE T. LE Acting Deputy Regional Solicitor By: Isl Amy S. Hairston AMY S. HAIRSTON Trial Attorney Attorneys for Complainant. United States Department of Labor Office of the Solicitor 525 S. Griffin Street, Suite 501 Dallas, Texas 75202 Tel: (972) 850-3142 Fax: (972) 850-3101



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DA TE: November 21, 2019

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FOR THE RESPONDENT:

Nu-Way Products Company, Inc.

Db a Nu-Way Pool & Spa By: Isl Rodrick D. Holmes Rodrick D. Holmes, AR# 2012091 Boyle Brasher, LLC 80 Monroe Ave., Suite 410 Memphis, TN 38103 (901 )521-2860 (phone) (901 )521-2861 (fax) rholmes@boylebrasher.com DATE: November 21, 2019

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