

Q. No faxes?  
A. Nope.  
Q. No contracts?  
A. No.  
Q. No U.S. mail?  
A. No.  
Q. Nothing from Safe Environmental?  
A. Nothing. (Ex. 12, 106:14-207:3)

As Amaya also testified, there was no consideration involved in Amaya's original, subsequently self-denied, claim for obtaining full permission and authority to "use" Petitioner's Ohio License:

Q. Did you -- what, if anything, did you say about paying him for the license?  
A. Can -- do you want me charge me anything? He said no but like I said.  
Q. So did he -- did he say yes, you can have the license before you asked him what you want for it?  
A. Yes.  
Q. And then when he said yes, what were your words? Did you say -- how did you express?  
A. Oh, thank you.  
Q. But how did you express the thing about payment, what were your words?  
A. No. You going to charge me anything for this? He said no.  
Q. Did he say it was a favor?  
A. No, he don't mention it's a favor.  
Q. He just said no?  
A. Yes. (Ex. 12, 292:19-293:13.)

In order to establish that an oral contract was in place, the terms must be established by oral testimony to determine whether the "words, deeds, acts, and silence of the parties disclose[d] the intent to contract and the terms of the agreement." *Gates v. Paul*, 2011 WL 6036397, \* 4 (Ohio App. 10<sup>th</sup> Dist. Dec. 6, 2011) citing *Rutledge v. Hoffman* (1947), 81 Ohio App. 85, 85, 75 N.E.2d 608, 608 (Ohio App. 1<sup>st</sup> Dist. 1947). As Amaya testified, no contract existed. Amaya also testified that there was no mutual assent as he has not a shred of evidence to confirm that Paganelli ever heard his request, let alone understood it, to "use" Petitioner's License. (Ex. 12, 157:13 – 159:4, 162:23-163:5, 177:2-4, 205:19-24.) Furthermore, given the fact that Paganelli had no idea about the Site, the work to be performed, the costs, the parties, the location, the timing, and every other potential detail, no reasonable fact finder could conclude

that in a brief phone conversation with Amaya, Paganelli had any remote understanding of Amaya's request, assuming such a request was made. Accordingly, no contract or agreement was in place for which liability could or can be determined under CERCLA § 107(a)(3).

Accordingly, Petitioner cannot conceivably be determined to be a liable party under CERCLA § 107(a) and is entitled to reimbursements of costs and attorney fees. While this evidence alone is sufficient to establish any lack of liability, the evidence also shows that Amaya and Vadas engaged in a pattern of deception and fraud such that that Amaya and Vadas knew that no such authority had ever been given Asbestek by Petitioner.

## **2. Vadas and Amaya Deceptively and Fraudulently Used Petitioner's Ohio License**

Ohio defines theft by deception, in pertinent part, as follows:

(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

(1) Without the consent of the owner or person authorized to give consent;

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(3) By deception<sup>13</sup>;

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(B) (1) Whoever violates this section is guilty of theft.

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If the value of the property or services stolen is seven thousand five hundred dollars or more and is less than one hundred fifty thousand dollars, a violation of this section is grand theft, a felony of the fourth degree. (R. C. §2913.02.)

Ohio defines forgery, in pertinent part, as follows:

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<sup>13</sup> R.C. §2913.01 defines deception as "knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact."

(A) No person, with purpose to defraud<sup>14</sup>, or knowing that the person is facilitating a fraud, shall do any of the following:

- (1) Forge any writing of another without the other person's authority;
- (2) Forge any writing so that it purports to be genuine when it actually is spurious, or to be the act of another who did not authorize that act, [  
**or**]
- (3) Utter, or possess with purpose to utter, any writing that the person knows to have been forged.

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(C)(1)(a) Whoever violates division (A) of this section is guilty of forgery.

- (b) Except as otherwise provided in this division or division (C)(1)(c) of this section, forgery is a felony of the fifth degree. If property or services are involved in the offense or the victim suffers a loss, forgery is one of the following:

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- (ii) If the value of the property or services or the loss to the victim is one hundred fifty thousand dollars or more, a felony of the third degree. (R.C. §2913.31.)

Proof that Amaya and Vadas were engaged in a theft by deception and forgery is demonstrated by the following: (1) Vadas' and Amaya's description of the circumstances of obtaining the Ohio License are wholly inconsistent; (2) the Notification Forms submitted to ODH contained Vadas' name instead of Paganelli's when Vadas knew that Paganelli's name would have been proper if authorization had been granted; (3) Amaya and Vadas deceptively used Bonilla's Supervisor License without Bonilla's authority and when Amaya and Vadas knew Bonilla would not be working at the Site; (4) if Paganelli had actually provided authority for the Ohio License, it would follow that he would also have obtained Paganelli's Supervisor License; (5) Vadas deceptively altered his fax letterhead depending upon the recipient of his documents so

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<sup>14</sup> R.C. §2913.01 defines "defraud" in pertinent part as "to knowingly obtain, by deception, some benefit for oneself or another."

as to conceal unauthorized use of the Ohio License; (6) Vadas admittedly created a spurious Safe Environmental return envelope to falsely give ODH the impression that the Notification Form was actually coming from Petitioner when it was not; (7) Vadas obtained an official bank check and fraudulently identified the remitter as Safe Environmental to bolster support of the false information being submitted to ODH when Safe Environmental neither authorized nor paid for any fees related to the Site; and (8) Amaya's purported telephone communication with Paganelli is insufficient to support his original claim that authority was given by phone consent. Each is discussed following.

**a. Testimony Regarding "Use" of Ohio License Is Wholly Inconsistent between Amaya and Vadas**

Amaya's and Vadas' versions of circumstances and events surrounding Petitioner's Ohio License are substantially dissimilar. Amaya testified that Vadas assured him Asbestek would perform using Nationwide's Ohio License. According to Amaya, it is only when he learned that Nationwide did not have an Ohio License, coupled with pressure to commence the friable asbestos abatement project, that he sought the assistance of Petitioner at the Site. Wholly opposite is the claim of Vadas, who testified that he and Amaya, together, called Collins together at their very first meeting and confirmed that neither Asbestek nor Nationwide had an Ohio License (Ex. 11, 121:18-21.) Vadas and Amaya then discussed the need for an Ohio License for Asbestek as an immediate priority (Ex. 11, 132:1-7.) Consequently, Vadas began downloading and filling out forms for the Ohio License application and advised Amaya that there may be a delay in getting the job started due to the time it takes to get an Ohio License (Ex. 11, 132:1-7; 133:1-3.) Vadas claimed that at that point, which is as early as August 16, 2007, and fifteen days prior to Amaya's alleged conversation with Paganelli, Amaya stated, "Don't worry about it. I can get Tony Paganelli's license if we need to." (Ex. 11, 132:20-24.)

Yet Vadas admitted that both he and Amaya were aware that Paganelli had no idea about the job they were discussing at this first meeting (Ex. 11, 126:9-10.) Vadas testified that he prepared the application for the Ohio License which he gave, along with a prepared certified envelope, to Amaya for mailing (Ex. 11, 166:18-23; 186:23.) Vadas never inquired of Amaya whether or not Asbestek's Ohio License application was in fact submitted to the State of Ohio. (Ex. 11, 130:19 – 131:4.) Vadas testified:

Q: So you filled out the asbestos contractor's license for Asbestek --

A. Right.

Q. -- and gave it to Tomas --

A. Right.

Q. -- and told him to mail it?

A. Yes.

Q. And you saw the green certified [mail] piece?

A. Right.

Q. And you assumed he mailed it?

A. Right.

Q. And he never told you he didn't?

A. Right.

Q. And he never told you he didn't receive that license?

A. Right.

Q. At any time?

A. No.

Q. Never told you that?

A. Never told me that. (Ex. 11, 187:11-188:6)

When asked about the period of time he first learned from Amaya that Petitioner's Ohio License would be used, Vadas took no effort to either inquire about the status of Asbestek's supposed Ohio License application nor did he inquire as to the validity of Petitioner's apparent authority:

A. No. No. Again, you're asking me when he gave me that license, [Petitioner's] license?

Q. Yes. Safe Environmental's license.

A. Okay. He gave me Safe Environmental's license in Hammond at his office.<sup>15</sup>

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<sup>15</sup> The License was not given in person, but was faxed by Amaya to Vadas so that Vadas could prepare the ODH Notification Form. See Exhibit 25, which bears the August 31, 2007 3:42 p.m. facsimile stamp from Amaya's fax machine and the August 31, 2007 5:40 p.m. facsimile stamp of Vadas' fax machine.

- Q. During the summer meeting, correct?
- A. No. I went to his office more than that.
- Q. Okay. Did he give you Safe Environmental's license during phase one or before phase one or after phase one?
- A. During.
- Q. Okay. And what did he say to you when he gave it to you?
- A. That we can't -- you know, we're going to have to use [Paganelli's] license. We can't wait for -- forever to get the [Ohio] license in the mail, something to that effect.
- Q. Okay. Did you ask him if -- about the status of the [Ohio] contractor's license that you filled out earlier for him?
- A. No.
- Q. Did you suggest that he call the Department of Health to see what the status of that was?
- A. No.
- Q. Did he make any indication to you that he did not submit or did submit that form that you filled out at that time?
- A. No, he didn't tell me whether or not he did.
- Q. Did you care?
- A. As long as he had a foreman there.
- Q. Okay. So as long as he had a foreman, you didn't care whose license he used?
- A. Right, even during the friable.<sup>16</sup> I mean, as long as he had a foreman, he could still be on site and as long as he wasn't working, he could still give directions to the foreman just like I could over the phone.
- Q. Did you ever call Safe Environment?
- A. Never.<sup>17</sup> (Ex. 11, 207:11-209:7.)

When asked directly whether he made an inquiry on the status of the Asbestek Ohio License,

Vadas denied that he ever inquired:

- Q. When -- on August 31st when Tomas was sending you a copy of Bonilla's stuff and Safe Environment's stuff, did you ever ask him what the status of his application was for Asbestek?
- A. His -- his personal license?
- Q. No. Asbestek's contractor abatement license.
- A. No. The only thing I could figure is he either was denied or he never got it out.
- Q. Did you ask him?
- A. No.
- Q. Did he tell you?

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<sup>16</sup> Consistent with Amaya's approach to using Bonilla's Specialist License, Vadas was unconcerned about whether the License was being used validly. As long as the data was acceptable to ODH, then according to Vadas, the Notification was legitimate.

<sup>17</sup> As discussed in Section V.B.2.c, *infra*, Vadas submitted numerous documents to ODH using Petitioner's Ohio License and contact information, and arbitrarily changed the contact person without any authority from or contact with Safe Environmental.

A. No. (Ex. 11, 280:3 – 15.)

Because Amaya and Vadas knew that the Ohio License was the single most critical part of the contract and because their entire ability to perform rested on it, their totally inconsistent versions of when, how, and why Petitioner's Ohio License was obtained can only be construed as attempts to conceal their deceptive efforts. Amaya knew he could rely on the issue of his poor English language skills if the deceptive efforts were uncovered; Vadas would rely on Amaya's representations regarding the Ohio License and assert ignorance as to the purpose for particular Notification Form requirements.

**b. Vadas Purposely Prepared Improper ODH Notification Forms**

Vadas testified that he was in charge of preparing Notification Forms for friable asbestos work for the Site. The first Notification Form submitted by Vadas was postmarked on August 31, 2007, and received by ODH on September 4, 2007 (Ex. 23.) Vadas identified the Abatement Contractor as "Safe Environment Corporation of Indiana" [*sic*] with Petitioner's Ohio License Number "AC1922" and Petitioner's correct address, but listed Petitioner's contact person as himself, "John P. Vadas," and Petitioner's contact number as Vadas' cell phone number of (219) 808-1882. Vadas did this to purposely provide false information to ODH as evidenced by the following.

First Vadas withheld this same information from the Ohio EPA. In the EPA Notification Form to the Ohio EPA also prepared on August 31, 2007, Vadas identified the abatement contractor not as Safe Environmental, but as "Asbestek Incorporated" with the Ohio License Number as "Pending in Ohio." (Ex. 20.) Clearly, Vadas knew at this point that no License was pending in Ohio. (Ex. 11, 280:3-15.) This form was faxed to the Ohio EPA: (1) after both Vadas and Amaya alleged that they had already received permission to use Petitioner's Ohio

License (Ex. 11, 207:11-15); (2) on the same day that Amaya provided Vadas by facsimile a copy of Petitioner's Ohio License (Ex. 25); and (3) mere seconds **after** Vadas informed Nationwide that Asbestek would be "using" Petitioner's Ohio License. When Vadas was questioned about this discrepancy, he gave a host of incongruous answers including the explanations: (1) that the Ohio EPA is "only concerned about waste stream" (Ex. 11, 318:10-18); (2) that he was waiting on Asbestek's Ohio License application (Ex. 11, 319:7-8); (3) that he was tired because he did stuff late at night (Ex. 11, 267:22-268-1); (4) that he "gave as much information as he could if anybody had asked a goddamn question" (Ex. 11, 267:12-14); and that he kept in contact with the Ohio EPA. (Ex. 11, 266:2.) Yet, Vadas would provide no logical reason for why he failed to notify the Ohio EPA, even in a subsequent or revised form, that Petitioner condoned use of its Ohio License when he repeatedly, and with painstaking effort, did so to ODH. The only logical explanation is that the deceptive use of the Ohio License could only (and need only) be presented to ODH (so that the Notification Form would result in an approved application) while the Ohio EPA would likely be present at the abatement and would be immediately alerted that Petitioner's Ohio License was being used without authorization.

Second, Vadas initially prepared an ODH Notification Form that correctly identified Petitioner's contact information but then took steps to conceal it in the filing. Vadas initially prepared a Notification Form identical to the one submitted and dated August 31, 2007, except that the first draft identified the contact person as "Anthony Paganelli," Petitioner's proper phone number, and the "Name of person filing this notice" as "Anthony Paganelli." (Ex. 22.) This form was not submitted in favor of the fraudulent Notification Form filed and received by ODH (Ex. 23.) A careful inspection of both of Exhibits 22 and 23 (respectively) will clearly reveal that these are the exact same documents with the identically executed entries, except that the contact information for Safe Environmental and the "Name of the person filing the form" was changed



from Anthony Paganelli on Exhibit 22 but to John Vadas on Exhibit 23 prior to submission. This was done because Vadas knew Petitioner's Ohio License was not authorized and sought to conceal contact information from ODH.

Third, Vadas adamantly denied, then admitted, that he prepared Exhibit 22. He first testified:

Q. Have -- had -- have you ever filled out a ten-day notification?

A. Yes.

Q. And when did you do that?

A. I did that for Tomas on the project [at the Site] in Cleveland in Euclid.

(Ex. 11, 96:7-12)

Yet, when he was confronted with the Exhibit 22 (the Notification Form not filed), which he prepared immediately before changing the contact information to avoid detection in the Exhibit 23 (the Notification Form actually filed), he denied that he prepared either of them.

Q: Take a moment to look at [Ex. 22], please. Okay. Have you had a chance to look at that?

A. Yes.

Q. That's the ten-day notification form, right?

A. Yes.

Q. Okay. Did you fill that out?

A. I remember getting a lot of this information, yes.

Q. Who typed that form up?

A. I don't know. I didn't.

Q. You did not type that form up?

A. Nope.

Q. We had testimony from Tomas Amaya that he didn't type it up. He said that you must have. Would that be true?

A: No. I use Word or I use Adobe PDF. This is typed in. I don't have a typewriter.

Q. So you have no idea who typed that up?

A. No.

Q. And it was not you?

A. No, it was not me.

Vadas then admitted, albeit reluctantly, that he is the person who prepared Exhibit 23, which is typed, and then subsequently admitted to typing his forms:

Q: I want to hand you [Ex. 23], have you take a look at that. Let me know when you're finished with that. Do you recognize that document?

A. I recognize the information on the document.  
Q. Okay. This is an -- a prior notification, this is a ten-day form, correct?  
A. Yes.  
Q. It's similar to [Ex. 22] but it differs in terms of the information, correct?  
A. Yes.  
Q. Did you fill out this form in [Ex. 23]?  
A. The one I'm looking at right now?  
Q. Yes.

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Q. Did you fill that out?  
A. No, but it looks like I faxed it.  
Q. Well, let's -- let's focus on the form itself.  
A. Okay.  
Q. Okay. Who filled that form out?  
A. Again, it's typed so I -- I don't -- don't know if my -- can I use -- just look at this one again?  
Q. Sure can.  
A. The font is even different.  
Q. Do you know who filled out [Ex. 23]?

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A: 8-31-2007. This was faxed to myself. I don't know.  
Q Is it fair to say that you -- you're very interested in the fax information at the top of this page? You've mentioned it twice. Are you interested in studying that, you want to look at that for a bit and think or are you able to answer questions about the document itself without focusing on that fax information?  
A. That fax is driving me crazy. I'm trying to figure out who I faxed this too.  
Q. Well, can you not do that for a moment and just answer questions about the form itself and then -- then I'll let you look at that and you can think about the fax?  
A. Sure.  
Q. Okay. Who filled out this form?  
A: Well, I put most of the information that I received from various people on this form.  
Q. Did you fill that form out?  
A. Person -- yes, but I don't remember typing it in. I remember doing it by hand. And then -- I don't remember typing -- I don't have the capability to type it.  
Q. What does that mean, you don't have a typewriter?  
A. No, I don't.

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Q: So I'll ask you again, did you fill this form out?  
A. No.  
Q. Who did?

A. I don't know. It could have been – I don't want to speculate because I don't know.

Q. Okay. Well, could it have been you?

A. Could have been, sure.

(Ex. 11, 204:1-231:13)

And, amidst questioning about facsimiles he was sending on August 31 to both Amaya and the Ohio EPA, he made a full admission that he prepared Ex. 23:

Q: So you did make this form; is that correct, [Ex. 23]?

A: Well, it looks like you got it, Counselor.

Q. And you put in your name as the representative for Safe Environment; isn't that correct?

A. I put in my name as contact. I didn't know I can put contact -- I didn't know I had to put [Paganelli's] name.

(Ex. 11, 274: 16-21.)

And yet Vadas did know that he had to put in Paganelli's name because he prepared Exhibit 22 first with Paganelli's name and then changed it to conceal the contact information when he determined the risk of exposure in identifying the proper contact information was too high.

Vadas then testified that he did prepare all Notification Forms on behalf of Asbestek and submit them to ODH and also prepared forms that were typed (Ex. 11, 322:24-323:7.) He admitted preparing and filing the original as well as all revisions (Ex. 11, 327:7-17; 329:5-20.) In fact, at his second deposition, he testified definitively that he filled out, typed and submitted Ex. 23. (Ex. 11, 326:14-327:9.)

**c. Vadas' Improper Forms Were Created to Prevent ODH from Contacting Petitioner and to Thwart Inspection Efforts**

Vadas filed a total of five Notification Forms with ODH; one original on August 31, 2007, and four revised versions on September 12, 17, 21 and 25, 2007. Vadas sent the original and first two revisions over a period of three weeks, containing a series of revised abatement dates and a change in Supervisor in an effort to test any potential response or follow up from the ODH based on the revisions. Once Vadas was convinced that the changes were being accepted

by ODH without any response or inquiry, Vadas sent the third revision with Petitioner's correct contact information on Friday, September 21, one day prior to the planned, two-day weekend abatement because he was then convinced that ODH would not contact Petitioner prior to any work abatement being performed. Even if ODH were to contact Petitioner, Vadas knew the risk of such contact occurring within one business day of the planned abatement was extremely low. As discussed below, he also provided in the last-minute revised Notification Form that abatement would continue into the following week because he knew that ODH would not be able to plan for an inspection on such short notice and that Asbestek would be finished prior to any inspection. The detailed modifications to each form are illustrated as follows.

In the original Notification Form of August 31, 2007, Vadas identified a friable asbestos abatement period of September 14 through September 22, for a total of nine days at ten hours a day for a total of ninety hours.<sup>18</sup> He listed "John P. Vadas" along with Vadas' cell phone number for Petitioner's contact information. (Ex. 23.)

In the first revision Notification Form of September 12, 2007 (Ex. 27), Vadas changed the friable asbestos abatement period from nine days to ten days at ten hours a day for a total of one hundred hours. No change in estimate of material warranted this abatement period modification. No friable asbestos abatement had been performed by Asbestek prior to this revision. Vadas kept the contact person for Petitioner as himself, with his cell phone number. Vadas changed the start date from September 13 to September 15, 2007.

In the second revision Notification Form of September 17, 2007, (Ex. 28), Vadas changed the abatement period from **ten days** to **four days** at ten hours a day for a total of **forty hours**. No change in estimate of material warranted this abatement period modification. No

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<sup>18</sup> Vadas was aware from the original Notification Form to ODH throughout all subsequent deceptive revisions, that Asbestek had plans to "knock it out in two or three days," as he advised Nationwide on this same day that the nine or ten days was only there to look good to a regulator (Ex. 19).