

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

AMERICAN PUMP & TANK INSTALLATION CO., INC.
and ALADINO GREGORIO, as an officer and/or shareholder
of AMERICAN PUMP & TANK INSTALLATION, CO. INC.,

Prime Contractor,

and

SUBURBAN RESTORATION CO. INC., and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO.
INC.,

Subcontractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on a
public work project for New York State Office of General
Services (Jamaica Armory Project).

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In the Matter of

SUBURBAN RESTORATION CO. INC., and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO. INC.,

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on a
public work project for the New York State Office of General
Services (Camp Smith).

DEFAULT
REPORT
&
RECOMMENDATION

Prevailing Wage Case
PRC No. 2006000402
Case ID: PW11 2009022796
Queens County

Prevailing Wage Case
PRC No. 2006002412
Case ID: PW11 070023
Westchester County

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In the Matter of

SUBURBAN RESTORATION CO. INC., and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO. INC.,

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on a
public work project for New York State Office of General
Services (Bronx PC Bldg. 1 Project).

Prevailing Wage Case
PRC No. 2006002686
Case ID: PW11 080009
Bronx County

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In the Matter of

SUBURBAN RESTORATION CO. INC., and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO. INC.,

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on a
public work project for New York State Office of General
Services (Pilgrim PC Project).

Prevailing Wage Case
PRC No. 2005007370
Case ID: PW11 080012
Bronx County

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In the Matter of

SUBURBAN RESTORATION CO. INC., and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO. INC.,

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on a
public work project for New York State Office of General
Services (Bronx PC Bldg. 101 & 102 Project).

Prevailing Wage Case
PRC No. 2006003380
Case ID: PW09 080010
Bronx County

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In the Matter of

SUBURBAN RESTORATION CO. INC., and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO. INC.,

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on a
public work project for New York State Office of General
Services (Manhattan PC Bldg. 102 & 103).

Prevailing Wage Case
PRC No. 2006006588
Case ID: PW11 080003
New York County

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In the Matter of

SUBURBAN RESTORATION CO. INC., and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO. INC.,

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on a
public work project for New York State Office of General
Services (Brooklyn Armory Project).

Prevailing Wage Case
PRC No. 2006006994
Case ID: PW11 080006
Bronx County

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In the Matter of

SUBURBAN RESTORATION CO. INC., and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO. INC.,

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on a
public work project for New York State Office of General
Services (Bronx PC Bldg. 102 Project).

Prevailing Wage Case
PRC No. 2006007768
Case ID: PW11 080011
Bronx County

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In the Matter of

SUBURBAN RESTORATION CO. INC., and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO. INC.,

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on a
public work project for the Warwick Valley Central School
District.

Prevailing Wage Case
PRC No. 01005495
Case ID: PW11 020001
Orange County

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In the Matter of

SUBURBAN RESTORATION CO. INC., and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO. INC.,

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on a
public work project for the New York State Office of General
Services (Creedmoor PC).

Prevailing Wage Case
PRC No. 2005001130
Case ID: PW11 080004
Queens County

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In the Matter of

SUBURBAN RESTORATION CO. INC. and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO. INC.,

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on a
public work project for the Hyde Park Central School District.

Prevailing Wage Case
PRC No. 2010002329
Case ID: PW11 2009022798
Dutchess County

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In the Matter of

SUBURBAN RESTORATION CO. INC., and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO. INC.,

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on a
public work project for the Eastchester Union Free School
District.

Prevailing Wage Case
PRC No. 2011001405
Case ID: PW11 2011000692
Westchester County

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In the Matter of

SUBURBAN RESTORATION CO. INC., and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO. INC.,

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on a
public work project for New York State Office of General
Services (Bronx PC Wards 9 & 13 Project).

Prevailing Wage Case
PRC No. 2005006413
Case ID: PW11 080005
Bronx County

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In the Matter of

SUBURBAN RESTORATION CO. INC., and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO. INC.,

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on
a public work project for New York State Office of General
Services (Bronx PC Ward 3 Project).

Prevailing Wage Case
PRC No. 2005007149
Case ID: PW11 080008
Bronx County

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In the Matter of

SUBURBAN RESTORATION CO. INC., and
JOHN MARKOVIC and/or ROMAN MARKOVIC, as officers
and/or shareholders of SUBURBAN RESTORATION CO. INC.,

Prime Contractor,

for a determination pursuant to Article 8 of the Labor Law as to
whether prevailing wages and supplements were paid to or
provided for the laborers, workers and mechanics employed on a
public work project for New York State Office of General
Services (Manhattan PC Bldg. 104 Project).

Prevailing Wage Case
PRC No. 0503342
Case ID: PW11 2009022799
New York County

To: Honorable Roberta Reardon
Commissioner of Labor
State of New York

Pursuant to an Amended Notice of Hearing issued on August 15, 2024 (HO 1),¹ a three-day videoconference hearing was commenced on September 30, 2024, in Albany, New York with participating parties and/or witnesses appearing remotely at various other locations. The administrative proceeding continued on October 1, 2024, and concluded on October 2, 2024. The purpose of the hearing was to provide the parties with an opportunity to be heard on the issues raised in the Amended Notice of Hearing and to establish a record from which the Hearing Officer could prepare this Report and Recommendation for the Commissioner of Labor. When the hearing concluded, the parties were given the opportunity to submit Proposed Findings of Fact and Conclusions of Law ("Proposed Findings"), and both parties submitted post hearing briefs by the submission deadline. The New York State Department of Labor ("Department") submitted Proposed Findings, and Respondent, Suburban Restoration Co. Inc., and John Markovic and/or Roman Markovic, as officers and/or shareholder of Suburban Restoration Co. Inc., (hereafter all known as: "Suburban"), submitted a Pre-Answer Motion to Dismiss all Fifteen Prevailing Wages Cases.

¹ Documentary evidence will be referenced as follow: Hearing Officer Exhibits, HO X; and Department Exhibits, DOL X. Transcript references will be in the format: T p X or T pp X, X or T pp X-Y.

The hearing concerned investigations conducted by the Bureau of Public Work ("Bureau") of the Department into whether Suburban, complied with the requirements of Labor Law Article 8 (§§ 220 *et seq.*) in the performance of fifteen public work contracts it was involved in, and whether American Pump & Tank Installation Co., Inc. and Aladino Gregorio, as an officer and/or shareholder of American Pump & Tank Installation Co., Inc., (hereafter known as: "American") the prime contractor on Project 1, is vicariously liable for the underpayments, interest and civil penalty associated with that project pursuant to Labor Law § 223.

Project 1 involved a public work contract between American and the New York State Office of General Services ("OGS") in Queens County to repair steam leaks at the Jamaica Armory located at 93-05 168th Street, Jamaica, New York (PRC No. 2006000402). Suburban entered into a subcontract agreement with American to provide services in connection with the steam repair for the Jamaica Armory, namely abatement of asbestos piping at various locations at the Armory.

Project 2 involved a public work contract between Suburban and OGS in Westchester County for the removal and disposal of asbestos at facilities at Camp Smith located in Cortlandt Manor, New York (PRC No. 2006002412).

Project 3 involved a public work contract between Suburban and OGS in Bronx County to abate asbestos in Building 1 at the Bronx Psychiatric Center located at 1500 Waters Place, Bronx, New York (PRC No. 2006002686).

Project 4 involved a public work contract between Suburban and OGS in Suffolk County to remediate mold and perform repairs in Building No. 81, at the Pilgrim Psychiatric Center located at 998 Crooked Hill Road, West Brentwood, New York (PRC No. 2005007370).

Project 5 involved a public work contract between Suburban and OGS in Bronx County to abate asbestos in Buildings 101 and 102 at the Bronx Psychiatric Center located at 1500 Waters Place, Bronx, New York. (PRC No. 2006003380).

Project 6 involved a public work contract between Suburban and OGS in New York County for the cleanup of dead pigeons and droppings to Buildings 102 and 103 at the Manhattan Psychiatric Center located on Ward's Island, New York (PRC No. 2006006588).

Project 7 involved a public work contract between Suburban and OGS in Kings County to repair roofs and to perform masonry work at the Brooklyn Armory located at 355 Marcy Avenue, Brooklyn, New York (PRC No. 2006006994).

Project 8 involved a public work contract between Suburban and OGS in Bronx County to remediate smoke and water damage in Building 102 of the Bronx Psychiatric Center located at 1500 Waters Place, Bronx, New York (PRC No. 2006007786).

Project 9 involved a public work contract between Suburban and the Warwick Valley Central School District in Orange County to abate asbestos at the Warwick Middle School and the Kings Elementary School located at 225 West Street, Warwick, New York and 199 Kings Highway, Warwick, New York, respectively (PRC No. 01005495).

Project 10 involved a public work contract between Suburban and OGS in Queens County to remediate lead paint at Building 61 at Creedmoor Psychiatric Center located in Queens Village, New York (PRC No. 2005001130).

Project 11 involved a public work contract between Suburban and the Hyde Park Central School District (“Hyde Park CSD”) in Dutchess County to perform asbestos abatement and toilet room alterations to Haviland Middle School, Violet Avenue Elementary School, and Hyde Park Elementary School, all located in Hyde Park, New York (PRC No. 2010002329).

Project 12 involved a public work contract between Suburban and the Eastchester Union Free School District (“Eastchester UFSD”) in Westchester County for asbestos abatement and floor tile replacement at Eastchester High School and Anne Hutchinson Elementary School located in Eastchester, New York (PRC No. 2011001405).

Project 13 involved a public work contract between Suburban and OGS in Bronx County to repair concealed piping that had burst and required abatement of asbestos in Wards 9 and 13 at Building 102 in the Bronx Psychiatric Center, located at 1500 Waters Place, Bronx, New York (PRC No. 2005006413).

Project 14 involved a public work contract between Suburban and OGS in Bronx County to remove asbestos floor and ceiling tiles in Ward 3 at Building 102 in the Bronx Psychiatric Center located at 1500 Waters Place, Bronx, New York (PRC No. 2005007149).

Project 15 involved a public work contract between Suburban and OGS in New York County to remove hazardous materials in Building No. 104 at the Manhattan Psychiatric Center located at 600 East 125th Street, Ward's Island, New York (PRC No. 0503342).

HEARING OFFICER

Marshall H. Day was designated as Hearing Officer and conducted the hearing in this matter.

APPEARANCES

The Bureau was represented by Department General Counsel, Jill Archambault, Evan Zablów, Associate Attorney, of Counsel.

There was no appearance made by, and on behalf of the Suburban or American.²

ISSUES

1. Did Suburban pay the rate of wages or provide the supplements prevailing in the locality at issue, and, if not, what is the amount of underpayment?
2. Was any failure by Suburban to pay the prevailing rate of wages or to provide the supplements prevailing in the locality at issue "willful" violation?
3. Did any of the underpayment of wages and/or supplements by Suburban involve the falsification of payroll records?
4. Are John Markovic or Roman Markovic shareholders of Suburban who owned or controlled at least ten per centum of the outstanding stock of Suburban?
5. Are John Markovic or Roman Markovic officers of Suburban who knowingly participated in a willful violation of Labor Law Article 8?

² Although the start of each successive hearing was delayed to provide, Respondents, Suburban, the opportunity to appear at the administrative hearing, Respondents failed to appear and Mr. Roman Markovic indicated that they had logistical and communication challenges which prevented them from participating. Due to the failure to appear at any of the scheduled hearing dates, the Respondents, Suburban, were held in default of the proceeding.

6. Should interest on the underpayment of wages and/or supplemental benefits be assessed against American and/or Suburban and, if so, in what amount?
7. Should any period of the time for which interest would otherwise be assessed on any underpayments of prevailing wages and/or supplements be reduced?
8. Should American, as prime contractor on the first project, be liable for non-compliance or evasion by Suburban of its obligation to pay prevailing wages and/or supplemental benefits for that project, pursuant to Labor Law Section 223?
9. Should a civil penalty be assessed against American and/or Suburban and, if so, in what amount?
10. The disposition of any funds being withheld and/or cross withheld from Suburban by the public entity(ies) listed pursuant to the Notices of Withholding issued by the Bureau of Public Work and Prevailing Wage Enforcement as a result of the underpayments by Suburban to workers as alleged.
11. Should the Motion to Dismiss brought forth in the Suburban's Post-Hearing Answer be granted?

FINDINGS OF FACT

The hearing concerned separate investigations made by the Bureau on fifteen projects involving public work performed by Suburban.

Both Suburban and American failed to file an Answer³ to the charges contained in the Amended Notice of Hearing or to appear and/or participate in the hearing. As a consequence, both are in held in default in this proceeding.

The Amended Notice of Hearing alleges that Suburban failed to pay or provide prevailing wages and supplement benefits to its laborers, workmen and/or mechanics on all the enumerated projects, and that American, as the prime contractor on Project 1, is responsible for Suburban's

³ Given that Suburban was a *pro se* litigant, Suburban was granted the opportunity, and did submit, a post-hearing Answer to the charges contained in the Amended Notice of Hearing.

non-compliance or evasion to pay those prevailing wages and supplements on that project, pursuant to Labor Law § 223.

PROJECT 1

JAMAICA ARMORY PROJECT

PRC #: 2006000402

On or about January 9, 2006, American entered into a contract with OGS to repair steam leaks at the Jamaica Armory located at 93-05 168th Street, Jamaica, New York (“Jamaica Armory Project” or “Project 1”) (DOL 132; T pp 456, 457).

On or about February 16, 2006, Suburban entered into a subcontract agreement with American to perform services in connection with the Jamaica Armory Project, namely abatement of asbestos piping at various locations at the Armory (“Subcontract”) (DOL 134; T pp 459, 460).

On or about July 1, 2005, the Bureau issued Prevailing Wage Rate Schedule 2005 for Queens County. Prevailing Wage Rate Schedule 2005 for Queens County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Jamaica Armory Project from July 1, 2005 through June 30, 2006, including the following classification: Asbestos Worker with wages of \$24.45 per hour and supplements of \$7.10 per hour (DOL 137; T pp 464, 465).

On or about March 21, 2007, and January 5, 2008, two workers filed PW-4 complaints with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Jamaica Armory Project (DOL 131; T pp 455, 456).

On or about November 2, 2009, the Bureau requested that Suburban furnish payroll records and other documents relating to the Jamaica Armory Project (DOL 133; T pp 457, 458).

Suburban failed to provide certified payrolls and/or other records outlining that they paid their workers on the Jamaica Armory Project correctly. Documents and information provided by collateral sources enabled the Bureau to complete its investigation (DOL 132, 134; T p 470).

The Bureau relied upon the PW-4 complaints and one of the worker’s calendar (Mr.

Golevewski's calendar) to determine the days and hours worked by three workers on Project 1 (DOL 131, 186 L; T pp 466, 467, 468-470).

The Bureau classified the workers on the Jamaica Armory Project as asbestos worker because of the nature of the work, the workers' allegations on the claims, the PW 39 screen shot, and the Subcontract (DOL 131, 132, 134; T p 464).

Based on the PW-4 complaint forms and collateral information obtained, the Bureau credited Suburban for paying the workers \$24.00 an hour for each hour worked, and this hourly wage was credited by the Bureau in their audit (DOL 136).

The Bureau prepared a Detail of Underpayments and a Summary for Project 1, and determined that, during the period from the week ending January 29, 2006 through week ending March 26, 2006, Suburban underpaid prevailing wages and supplements to three (3) laborers, workmen, and mechanics performing work on the Jamaica Armory Project in the total amount of \$2,460.50 (DOL 131, 136, 138; T 463, 470, 471).

On or about November 13, 2017, the Bureau issued to Suburban Notices of Labor Law Inspection Findings notifying Suburban of the Bureau's findings with respect to the Jamaica Armory Project (DOL 135; T pp 462, 463).

PROJECT 2

CAMP SMITH PROJECT

PRC #: 2006002412

On or about May 22, 2006, Suburban entered into a contract with OGS for the removal and disposal of asbestos at facilities at Camp Smith located in Cortlandt Manor, New York ("Camp Smith Project" or "Project 2") (DOL 33; T pp 218-220).

On or about July 1, 2005, the Bureau issued Prevailing Wage Rate Schedule 2005 for Westchester County. Prevailing Wage Rate Schedule 2005 for Westchester County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Camp Smith Project from July 1, 2005 through June 30, 2006, including the following classifications: Laborer-Building with wages of \$30.30 per hour and supplements of \$14.85 per hour; and Roofer with wages of \$32.08 per hour and supplements

of \$21.57 per hour (DOL 38; T pp 238-241).

Starting on or about March 5, 2007, multiple workers filed PW-4 complaints with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Camp Smith Project. The complaints contained allegations that the workers on the Camp Smith Project were paid \$24.00 an hour (DOL 28; T pp 201-203).

On or about September 7, 2007, the Bureau requested that Suburban furnish payroll records and other documents relating to the Camp Smith Project (DOL 31; T p 213).

Suburban did not timely comply with the Bureau's request, however, on or about November 30, 2007, Suburban provided certified payrolls relating to the Camp Smith Project (DOL 32; T p 214). Documents, including a second set of certified payrolls for Project 2, and information provided by collateral sources enabled the Bureau to complete its investigation (DOL 30, 36).

Bureau compared the two sets of certified payrolls just mentioned, and found the hours listed on each set of payrolls did not match⁴, as well as the gross pay and net pay were completely different on the respective documents (DOL 30, 32; T pp 215-217).

The Bureau relied upon the PW-4 claims, the certified payrolls provided by Suburban and the agency of jurisdiction, to determine that Suburban failed to pay or provide prevailing wages and/or supplements to seven (7) workers on the Camp Smith Project (DOL 28, 30, 32, 36).

The Bureau relied upon the PW- 4 complaints, the certified payrolls received from the jurisdiction, and the weekly worker checklist from the asbestos project monitor to determine the days and hours worked by Suburban's seven (7) workers on the Camp Smith Project (DOL 28, 30, 32, 36, 186 C; T pp 225, 231).

The Bureau classified the workers on the Camp Smith Project as Laborer/ Building and Roofing classifications because of the nature of the work as demonstrated by the worker's allegations and/or PW-4 claim forms, the contract documents, the PW 39 screenshot, weekly worker checklist and classifications on the payrolls (DOL 28, 29, 30, 32, 33, 36; T p 235).

⁴ The Suburban certified payroll records showed less hours than the certified payroll records received by the district (T p 232). Two of the workers were given the opportunity to review both of the certified payroll records and they agreed that the hours listed on the certified payroll submitted by the jurisdiction had the correct hours and they were not paid the prevailing wages listed on those documents, but received \$24.00 per hour (T pp 237, 238)

The Bureau prepared a Detail of Underpayments and a Summary for Project 2, and determined that during the week ending March 26, 2006, through week ending May 7, 2006, Suburban underpaid prevailing wages and supplements to seven (7) laborers, workmen, and mechanics performing work on the Camp Smith Project in the total amount of \$31,465.20 (DOL 37A, 39; T pp 227, 228, 243).

In its Detail of Underpayments, the Bureau credited Suburban for paying the workers \$24.00 for each hour worked (DOL 37A; T p 242)).

On or about March 12, 2008, the Bureau issued to Suburban Notices of Labor Law Inspection Findings notifying Suburban of the Bureau's findings with respect to the Camp Smith Project (DOL 40; T pp 244, 245).

On or about October 5, 2016, the Bureau issued a Notice to Withhold Payment to the Ellenville Central School District directing it to cross withhold payment in the amount of \$105,277.95 due to Suburban.

On or about December 5, 2017, the Bureau confirmed that Ellenville Central School District had withheld funds in the amount of \$105,277.95 due to Suburban (DOL 41; T pp 245, 246).

PROJECT 3

BRONX PC BLDG. 1 PROJECT

PRC #: 2006002686

On or about May 22, 2006, Suburban entered into a contract with OGS to abate asbestos in Building 1 at the Bronx Psychiatric Center, located at 1500 Waters Place, Bronx, New York ("Bronx PC Bldg. 1 Project" or "Project 3") (DOL 109, 112; T pp 410, 411, 413, 414).

On or about July 1, 2005, the Bureau issued Prevailing Wage Rate Schedule 2005 for Bronx County. Prevailing Wage Rate Schedule 2005 for Bronx County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Bronx PC Bldg. 1 Project from July 1, 2005 through June 30, 2006, including the following classifications: Carpenter Heavy and Highway (Building) with wages of \$44.56 per hour and supplements of \$26.05 per hour; Carpenter (Floor Coverer) with

wages of \$39.25 per hour and supplements of \$27.86 per hour; Laborer (Building): Asbestos Abatement with wages of \$25.50 per hour and supplements of \$15.79 per hour; Painter (Brush) with wages of \$33.00 per hour and supplements of \$19.91 per hour; and Painter (Drywall Taper) with wages of \$35.32 per hour and supplements of \$17.77 per hour (DOL 115; T pp 420-422).

On or about March 21, 2007, a worker filed two PW-4 complaints with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Bronx PC Bldg. 1 Project (DOL 108; T pp 409, 410).

On or about March 7, 2008, the Bureau requested that Suburban furnish payroll records and other documents relating to the Bronx PC Bldg. 1 Project (DOL 110; T pp 411, 412).

Suburban did not timely comply with the Bureau's request, however, on or about March 17, 2009, Suburban provided certified payrolls and other documentation relating to the Bronx PC Bldg. 1 Project. These documents and information provided by collateral sources enabled the Bureau to complete its investigation (DOL 109, 111, 112; T pp 412, 413).

The Bureau relied upon the PW-4 complaints and Suburban's certified payrolls to determine the days and hours worked by four (4) workers (DOL 108, 111, 186 J; T pp 417-420). When the Bureau investigator found a conflict among the hours listed in PW-4 complaints and the hours listed in the certified payroll, the investigator gave deference to the data regarding hours worked in the W-4 complaint forms (T p. 420).

The Bureau classified the workers on the Bronx PC Bldg. 1 Project as Carpenter Heavy and Highway (Building), Carpenter (Floor Coverer), Laborer (Building): Asbestos Abatement, Painter (Brush), and Painter (Drywall Taper) based upon the nature of the work, the workers' allegations in their claims, the PW 39 screen shot, the certified payrolls, and the subcontractor agreement (DOL 108, 109, 111, 112; T p 420).

The Bureau provided a credit to Suburban for making payments of \$24.00 an hour for each hour worked (DOL 114; T p 422).

The Bureau prepared a Detail of Underpayments and Summary for Project 3, and determined that, during the week ending May 7, 2006, through week ending June 4, 2006, Suburban underpaid prevailing wages and supplements to four (4) laborers, workers, and mechanics performing work on the Bronx PC Bldg. 1 Project in the total amount of \$13,315.88

(DOL 114, 116; T pp 416, 422, 423).

On or about November 2, 2009, the Bureau issued to Suburban Notices of Labor Law Inspection Findings notifying Suburban of the Bureau's findings with respect to the Bronx PC Bldg. 1 Project (DOL 113; T pp 414-416).

On or about October 5, 2016, the Bureau issued a Notice to Withhold Payment to the Ellenville Central School District directing it to cross withhold payment in the amount of \$21,930.66 due to Suburban.

On or about December 5, 2017, the Bureau confirmed that the Ellenville Central School District had withheld funds in the amount of \$21,930.66 due to Suburban (DOL 117; T pp 424).

PROJECT 4

PILGRIM PC PROJECT

PRC #: 2005007370

On or about March 20, 2006, Suburban entered into a contract with OGS to remediate mold and perform repairs in Building No. 81, at the Pilgrim Psychiatric Center, located at 998 Crooked Hill Road, West Brentwood, New York ("Pilgrim PC Project" or "Project 4") (DOL 65, 68; T pp 287-289, 290, 291, 293, 294).

On or about July 1, 2005, the Bureau issued Prevailing Wage Rate Schedule 2005 for Suffolk County. Prevailing Wage Rate Schedule 2005 for Suffolk County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Pilgrim PC Project from July 1, 2005 through June 30, 2006, including the following classification: Laborer (Building) with wages of \$25.85 per hour and supplements of \$19.44 per hour (DOL 71; T pp 302, 303).

On or about July 1, 2006, the Bureau issued Prevailing Wage Rate Schedule 2006 for Suffolk County. Prevailing Wage Rate Schedule 2006 for Suffolk County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Pilgrim PC Project from July 1, 2006 through June 30, 2007, including the following classifications: Carpenter (Building) with wages of \$34.27 per hour and supplements of \$28.42 per hour; Laborer (Building) with wages of \$27.00 per hour and

supplements of \$20.63 per hour; Painter (Brush) with wages of \$33.50 per hour and supplements of \$18.85 per hour; and Painter (Drywall Taper) with wages of \$33.50 per hour and supplements of \$18.90 per hour (DOL 72; T pp 303, 304).

Starting on or about March 21, 2007, multiple workers filed claims with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Pilgrim PC Project (DOL 64; T pp 286, 287).

On or about March 7, 2008, the Bureau requested that Suburban furnish payroll records and other documents relating to the Pilgrim PC Project (DOL 66; T pp 289).

Suburban did not timely comply with the Bureau's request, however, on or about October 31, 2008, Suburban provided certified payrolls and other documentation relating to the Pilgrim PC Project. Documents and information provided by collateral sources enabled the Bureau to complete its investigation (DOL 67, 68; T pp 291, 295, 296).

The Bureau relied upon the PW- 4 complaints and Suburban's certified payrolls on the project to determine the days and hours worked by twelve (12) workers (DOL 64, 67, 186 F; T pp 297-300).

The Bureau classified the workers on Pilgrim PC Project as Carpenter (Building), Laborer (Building), Painter (Brush), and Painter (Drywall Taper) because of the nature of the work, the workers' allegation on the claims, the PW 39 prevailing rate screen shot, Suburban's classification of the workers on the certified payrolls, and contractor agreement (DOL 64, 65, 67, 68; T p 300).

The Bureau credited Suburban for paying the workers \$24.00 an hour⁵ (DOL 70; T p 301, 304, 305). The Bureau was able to substantiate the rates the workers stated they received on the PW-4 complaints using check stubs, stub summaries and further inquiry through the workers (T pp 305, 306).

The Bureau prepared a Detail of Underpayments and a Summary for Project 4, and determined that, during the week ending June 4, 2006, through week ending November 12, 2006, Suburban underpaid prevailing wages and supplements to twelve (12) workers who performed

⁵ Leszek Swierkowski who was deemed a supervisor on the project was credited with being paid \$25.00 per hour in the audit.

work on the Pilgrim PC Project in the total amount of \$43,549.22 (DOL 70, 73; T pp 300, 305).

On or about November 2, 2009, June 16, 2011, and December 18, 2017, the Bureau issued to Suburban Notices of Labor Law Inspection Findings notifying Suburban of the Bureau's findings with respect to the Pilgrim PC Project (DOL 69; T pp 296, 297).

On or about June 19, 2008, the Bureau issued a Notice to Withhold Payment to OGS directing it to withhold payment in the amount of \$100,000.00 due to Suburban for the Pilgrim PC Project⁶.

On or about May 12, 2010, the Bureau confirmed that OGS had withheld funds in the amount of \$12,957.00 due to Suburban.

On or about October 5, 2016, the Bureau issued a Notice to Withhold Payment to the Dormitory Authority of the State of New York ("DASNY") directing it to cross withhold payment in the amount of \$131,579.39 due to Suburban.

On or about November 3, 2017, the Bureau confirmed that the DASNY had withheld funds in the amount of \$131,579.39 due to Suburban as a result of that notice (DOL 74; T pp 307-309).

PROJECT 5
BRONX PC BLDG. 101 & 102 PROJECT
PRC #: 2006003380

On or about May 8, 2006, Suburban entered into a contract with OGS to abate asbestos in Buildings 101 and 102 at the Bronx Psychiatric Center, located at 1500 Waters Place, Bronx, New York ("Bronx PC Bldg. 101 & 102 Project" or "Project 5") (DOL 3, 6; T pp 43, 44).

On or about July 1, 2005, and July 1, 2006, the Bureau of Public Work and Prevailing Wage Enforcement ("Bureau") issued Prevailing Wage Rate Schedules 2005 and 2006 respectively for Bronx County (DOL 11 and 12; T pp 53, 54, 122).

Prevailing Wage Rate Schedule 2005 for Bronx County set forth the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics

⁶ Although the PRC number listed on the withholding request was wrong (PRC listed was for Project 6), the Case ID number was correct and tied into Project 4.

performing work on public work projects in Bronx county from: July 1, 2005 through June 30, 2006, including the following classifications: Carpenter Heavy and Highway (Building) with wages of \$44.56 per hour and supplements of \$26.05 per hour; Carpenter (Floor Coverer) with wages of \$39.25 per hour and supplements of \$27.86 per hour; and Laborer (Building) Asbestos Abatement with wages of \$25.50 per hour and supplements of \$15.79 per hour.

Prevailing Wage Rate Schedule 2006 for Bronx County set forth the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Bronx PC Bldg. 101 & 102 Project from July 1, 2006 through June 30, 2007, including the following classifications: Carpenter Heavy and Highway (Building) with wages of \$45.66 per hour and supplements of \$25.01 per hour; and Laborer (Building) Asbestos Abatement with wages of \$26.25 per hour and supplements of \$9.20 per hour.

Starting on or about March 21, 2007, multiple workers filed claims with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Bronx PC Bldg. 101 & 102 Project (DOL 2; T pp 36-39).

On or about August 20, 2008, the Bureau requested that Suburban furnish payroll records and other documents relating to the Bronx PC Bldg. 101 & 102 Project (DOL 4; T pp 40, 41).

Suburban did not timely comply with the Bureau's request, however, on or about March 17, 2009, Suburban provided certified payrolls and other documentation relating to the Bronx PC Bldg. 101 & 102 Project. Documents and information provided by collateral sources enabled the Bureau to complete its investigation (DOL 5; T pp 41-43).

On or about October 31, 2008, Suburban provided documents titled Business Banking Statement. These Statements are copies of various checks that Suburban allegedly issued to various parties from June 1, 2006, to January 31, 2007 (DOL 8-15) along with a note for most checks (DOL 171-182) (hereinafter collectively referred to as "2006 Payroll Records"). The 2006 Payroll Records did not include any paystub information including the hourly wage or supplements paid to the workers, the hours worked by the workers, which projects the work occurred on, or any withholding or tax deductions (DOL 171, 182; T pp 71-73, 98-111).

The Bureau relied upon the PW- 4 complaints, Suburban's certified payrolls, contemporaneous calendar maintained by a worker, and records from independent asbestos

project monitors, which included weekly job reports and an asbestos abatement daily project log, on the project to determine the days and hours worked by eight (8) workers (DOL 2, 5, 7, 8, 186 A; T pp 45-50, 62-70, 73-76, 80-90).

When the Bureau investigator found a conflict between the certified payrolls and air monitors daily project log entry and exit time, the investigator gave deference to the data regarding hours worked in the daily project log, because the daily project log was a contemporaneous record generated by a third-party observer on Project 5 (DOL 8; T pp. 79-82, 90).

In addition, on this particular project, a claimant provided a personal calendar which listed his hours worked. The hours listed in the personal calendar corresponds with the hours listed on his PW-4 claim form, and therefore were used to verify hours that particular laborer, worker or mechanic worked on Project 5 (DOL 183; T pp 85).

The Bureau classified the workers on Project 5 as carpenters heavy and highway (building), carpenters (floor coverer), and laborers (building) asbestos abatement because of the nature of the work, the workers' allegation on the claims, the PW 39 prevailing rate screen shot, Suburban's classification of the workers on the certified payrolls, contractor agreement, and records from independent asbestos project monitors on the project (DOL 2, 3, 5, 6, 7, and 8; T pp 80-90, 122-23).

The workers' claims that they were paid \$24.00 an hour are consistent with Suburban's 2006 Payroll Records mentioned above. Suburban's certified payrolls show wages and supplemental benefits inconsistent with the amounts shown in the 2006 Payroll Records. Additionally, when the amounts Suburban paid its workers in the 2006 Payroll Records are divided by the hours those workers worked, the result is a wage of \$24.00 an hour (DOL 184). For these reasons, the Bureau found that certified payroll reports that Suburban submitted for 2006 were not credible (DOL 184; T pp 41-42, 89-95, 98-99, 103-116).

Although no direct testimony was taken from Suburban's bookkeeper in this proceeding, in a previous hearing concerning other Suburban projects from the same time period, Suburban's bookkeeper testified that all workers were paid \$24.00 an hour (*See, DOL 188 p 5497*; T pp 91, 117-120).

The Bureau credited Suburban for making certain payments to the workers. Those payments were the wages the workers alleged they were paid for each hour worked, e.g., \$24.00 an hour; times the actual hours worked, both regular and overtime hours⁷ (DOL 186A; T pp 90, 93-95, 97, 112-114).

The Bureau prepared a Detail of Underpayments and a Summary for Project 5, and determined that during the week ending June 11, 2006, through week ending December 10, 2006, Suburban underpaid prevailing wages and supplements to eight (8) workers who performed work on the Bronx PC Bldg. 101 & 102 Project in the total amount of \$29,399.65 (DOL 10, 13; T pp 51-58, 76).

On or about November 2, 2009, and November 15, 2017, the Bureau issued to Suburban Notices of Labor Law Inspection Findings notifying Suburban of the Bureau's findings with respect to the Bronx PC Bldg. 101 & 102 Project (DOL 9; T pp 50, 51).

On or about September 28, 2016, the Bureau issued a Notice to Withhold Payment to the Oteora Central School District directing it to cross withhold payment in the amount of \$80,695.10 due to Suburban on that project (DOL 14; T pp 59-62, 123).

On or about November 18, 2016, the Bureau confirmed that the Oteora Central School District had withheld funds in the amount of \$80,695.10 due to Suburban.

PROJECT 6
MANHATTAN PC BLDG. 102 & 103 PROJECT
PRC #: 2006006588

On or about October 4, 2006, Suburban entered into a contract with OGS for the clean-up of dead pigeons and droppings at Buildings 102 & 103 at the Manhattan Psychiatric Center located on Ward's Island, New York ("Manhattan PC Bldg. 102 & 103 Project" or "Project 6") (DOL 77, 80; T pp 312, 313, 316).

On or about July 1, 2006, the Bureau issued Prevailing Wage Rate Schedule 2006 for New York County. Prevailing Wage Rate Schedule 2006 for New York County detailed the

⁷ Leszek Swierkowski, a supervisor, was credited with receiving \$25.00 per hour in the audit for this project (T pp 91-92).

amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Manhattan PC Bldg. 102 & 103 Project from July 1, 2006 through June 30, 2007, including the following classification: Laborer (Basic) with wages of \$26.25 per hour and supplements of \$17.49 per hour (DOL 83; T pp 324).

On or about March 21, 2007, a worker filed a PW-4 complaint with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Manhattan PC Bldg. 102 & 103 Project (DOL 76; T pp 311, 312).

On or about August 20, 2008, the Bureau requested that Suburban furnish payroll records and other documents relating to the Manhattan PC Bldg. 102 & 103 Project (DOL 78; T pp 313, 314).

Suburban did not timely comply with the Bureau's request, however, on or about October 31, 2008, Suburban provided certified payrolls relating to the Manhattan PC Bldg. 102 & 103 Project (DOL 79). Documents and information provided by collateral sources enabled the Bureau to complete its investigation (DOL 77, 80; T pp 314).

The Bureau relied upon the PW-4 claim and the certified payrolls to determine the days and hours worked by three (3) workers (DOL 76, 79, 186-G; T pp 318, 321, 323).

The Bureau classified the workers on the Manhattan PC Bldg. 102 & 103 Project as Laborer (Basic) based upon the nature of the work, the worker's allegations on the claim, the PW39 screen shot, Suburban's certified payrolls, and the contractor agreement (DOL 76, 77, 79, 80; T p 323).

The Bureau credited Suburban with making payments of \$24.00 for each hour worked, which were verified through cancelled checks (DOL 82; T pp 315, 319, 320, 323).

The Bureau prepared a Detail of Underpayments and a Summary for Project 6 and determined that during the week ending September 24, 2006, through week ending October 8, 2006, Suburban underpaid prevailing wages and supplements to three (3) workers who performed work on the Manhattan PC Bldg. 102 & 103 Project in the total amount of \$2,364.96 (DOL 82, 84; T pp 331-333).

On or about November 2, 2009, the Bureau issued to Suburban Notices of Labor Law Inspection Findings notifying Suburban of the Bureau's findings with respect to the Manhattan

PC Bldg. 102 & 103 Project (DOL 81; T p 317).

PROJECT 7
BROOKLYN ARMORY PROJECT
PRC #: 2006006994

On or about October 18, 2006, Suburban entered into a contract with OGS to repair roofs and to perform masonry work at the Brooklyn Armory, located at 355 Marcy Avenue, Brooklyn, New York (“Brooklyn Armory Project” or “Project 7”) (DOL 87, 93; T pp 335, 338, 390).

On or about July 1, 2006, the Bureau issued Prevailing Wage Rate Schedule 2006 for Kings County. Prevailing Wage Rate Schedule 2006 for Kings County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Brooklyn Armory Project from July 1, 2006 through June 30, 2007, including the following classifications: Laborer (Building) with wages of \$29.25 per hour and supplements of \$17.49 per hour; and Roofer with wages of \$36.33 per hour and supplements of \$21.57 per hour (DOL 93; T pp 350-352).

On or about March 21, 2007, a worker filed a claim with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Brooklyn Armory Project (DOL 86; T p 334).

On or about August 20, 2008, the Bureau requested that Suburban furnish payroll records and other documents relating to the Brooklyn Armory Project (DOL 88; T pp 335, 336).

Suburban did not timely comply with the Bureau’s request, however, on or about October 31, 2008, Suburban provided certified payrolls and other documentation relating to the Brooklyn Armory Project (DOL 89; T p 337). Documents and information provided by collateral sources enabled the Bureau to complete its investigation (DOL 87, 90).

The Bureau relied upon the PW-4 complaint and Suburban’s payrolls to determine the days and hours worked by six (6) workers (DOL 86, 89, 186 H; T pp 342-349).

The Bureau classified the workers as Laborer (Building) and Roofer because of the nature of the work, the worker’s allegations on the claim, the PW 39 screen shot, Suburban’s classification on its payrolls, and the contractor agreement (DOL 86, 87, 89, 90; T p 338, 339,

349).

The Bureau credited Suburban with making payments of \$24.00 for each hour worked⁸ (DOL 92; T pp 349, 350).

The Bureau prepared a Detail of Underpayments and a Summary for Project 7. The Bureau found that, during the week ending October 15, 2006, through week ending January 14, 2007, Suburban underpaid prevailing wages and supplements to six (6) workers who performed work on the Brooklyn Armory Project in the total amount of \$19,386.84 (DOL 92, 94; T pp 341, 342, 352, 353).

On or about November 2, 2009, the Bureau issued to Suburban Notices of Labor Law Inspection Findings notifying Suburban of the Bureau's findings with respect to the Brooklyn Armory Project (DOL 91; T pp 340, 341).

On or about October 22, 2008, the Bureau issued a Notice to Withhold Payment to the OGS directing it to withhold payment in the amount of \$33,000.00 due to Suburban. There was no acknowledgement from the jurisdiction that this amount was withheld as a result of this notice. However, according to the PW-29 case contact sheet associated with this project, on or about September 5, 2017, the withholding amount was confirmed withheld (DOL 85, 95; T pp 353, 354).

PROJECT 8
BRONX PC BLDG. 102 PROJECT
PRC #: 2006007768

On or about November 28, 2006, Suburban entered into a contract with the OGS to remediate smoke and water damage in Building 102 of the Bronx Psychiatric Center, located at 1500 Waters Place, Bronx, New York ("Bronx PC Bldg. 102 Project" or "Project 8") (DOL 17, 20; T p 133).

On or about July 1, 2006, the Bureau issued Prevailing Wage Rate Schedule 2006 for Bronx County. Prevailing Wage Rate Schedule 2006 for Bronx County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and

⁸ Leszek Swierkowski, a supervisor, was credited with receiving \$25.00 per hour in the audit for this project.

mechanics performing work on the Bronx PC Bldg. 102 Project from July 1, 2006 through June 30, 2007, including the following classifications: Laborer – Building (Basic Laborer) with wages of \$29.25 per hour and supplements of \$17.49 per hour; and Painter (Brush) with wages of \$33.50 per hour and supplements of \$18.85 per hour (DOL 24; T p 149).

On or about March 21, 2007, a worker filed a PW-4 complaint with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Bronx PC Bldg. 102 Project. The claim contained allegations that the workers were paid \$24 an hour for all work performed on the Bronx PC Bldg. 102 Project (DOL 16; T pp 130-132).

In response to the claim, on or about August 20, 2008, the Bureau requested that Suburban furnish payroll records and other documents relating to the Bronx PC Bldg. 102 Project (DOL 18; T pp 133, 134).

Suburban did not timely comply with the Bureau's request, however, on or about October 31, 2008, Suburban provided a certified payrolls and other documentation relating to the Bronx PC Bldg. 102 Project (DOL 19; T pp 134-136).

Documents and information provided by collateral sources, e.g., contract agreement and OGS daily labor reports,⁹ enabled the Bureau to complete its investigation (DOL 20, 21; T pp 137, 138).

The Bureau relied upon Suburban's certified payrolls, the worker's complaint form, the OGS labor rate worksheet, and the OGS daily labor report, to determine the days and hours worked by five (5) workers on the Bronx PC Bldg. 102 Project (DOL 19, 16, 21, 186 B).

When the Bureau found a conflict among the PW-4 compliant, certified payrolls and OGS daily labor report, the Bureau gave deference to the data regarding hours worked in the OGS daily labor report because the OGS daily labor report was a contemporaneous record that was signed by both the Suburban and the Engineer in Charge for OGS (T pp 136-145).

⁹ Project 8 was time and material contract tied to a purchase order in which OGS kept daily labor reports, so they are only billed for hours Suburban performed services on the project. In addition, Suburban had to submit labor rate worksheets to OGS outlining the prevailing wage and supplement rates they paid to each employee, so they could get reimbursed for the rates paid for those hours worked. The labor rate worksheets would be submitted to OGS with Suburban's invoice for payment. The rate sheets confirmed Suburban was aware that Project 8 was a prevailing wage rate project (T p 143-145).

The Bureau classified the workers on Project 8 as Laborer – Building (Basic Laborer) and Painter (Brush) because of work performed as set forth in the PW 39 prevailing rate screenshot, contract documents, the allegations in the complaint, and Suburban’s classification as “Laborer Int. Demo” on the certified payrolls, OGS labor rate worksheet, and OGS daily labor report (DOL 17, 16, 19, 20, 21).

The Bureau determined that the workers on the Bronx PC Bldg. 102 Project were paid \$24.00 an hour based upon the workers’ PW-4 complaints that they were paid \$24.00 an hour and Suburban’s 2006 Payroll Records (DOL 16, 184). The amounts the workers were paid on the 2006 Payroll Records did not correlate with any amount allegedly paid on the certified payrolls or the labor rate sheets. Additionally, when the amounts Suburban paid its workers on the 2006 Payroll Records are divided by the hours those workers worked, the result is a wage of \$24.00 an hour (DOL 20). Given the differences, the Bureau found that certified payroll reports that Suburban submitted for 2006 were not credible, especially with regards to the amounts allegedly paid (T pp 153-156).

In its Detail of Underpayments, the Bureau credited Suburban for paying the workers \$24.00 an hour for each hour worked e.g., \$24.00 an hour; times the actual hours worked, both regular and overtime hours (DOL 23; p 147).

Based on its investigation, the Bureau determined that Suburban was aware of, but failed to pay or provide prevailing wages and/or supplements in accordance with the prevailing wage schedule in effect at the time to five (5) workers on the Bronx PC Bldg. 102 Project in the Laborer – Building (Basic Laborer) and Painter (Brush) classifications (DOL 21, 23, and 25; T p 144).

The Bureau prepared a Detail of Underpayments and a Summary for Project 8, and determined that during the week ending October 22, 2006, through week ending October 29, 2006, Suburban underpaid prevailing wages and supplements to five (5) workers who performed work on the Bronx PC Bldg. 102 Project in the total amount of \$6,548.19 (DOL 23, 25; T pp 147-157).

On or about November 2, 2009, and June 13, 2011, the Bureau issued to Suburban Notices of Labor Law Inspection Findings notifying Suburban of the Bureau’s findings with respect to the Bronx PC Bldg. 102 Project (DOL 22; T p 145).

On or about October 5, 2016, the Bureau issued a Notice to Withhold Payment to the Ellenville Central School District directing it to cross withhold payments in the amount of \$17,959.92 due to Suburban (DOL 26; T pp 157, 158)

On or about December 5, 2017, the Bureau confirmed that the Ellenville Central School District had cross withheld funds in the amount of \$17,959.92 due to Suburban.

PROJECT 9
WARWICK CSD PROJECT
PRC #: 01005495

On or about May 7, 2001, Suburban entered into a contract with the Warwick Valley Central School District to abate asbestos at the Warwick Middle School, located at 225 West Street, Warwick, New York, and the Kings Elementary School, located at 199 Kings Highway, Warwick, New York (collectively the “Warwick CSD Project” or “Project 9”) (DOL 160, 163; T pp 505, 506).

On or about July 1, 2001, the Bureau issued Prevailing Wage Rate Schedule 2001 for Orange County. Prevailing Wage Rate Schedule 2001 for Orange County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Warwick CSD Project from July 1, 2001 through June 30, 2002, including the following classification: Asbestos Worker (Abatement) with wages of \$22.00 per hour and supplements of \$7.25 per hour (DOL 168; T pp 513, 514, 522).

On or about January 2, 2002, a PW-4 complaint was filed with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Warwick CSD Project (T pp 517, 518). In response to the claim, the Bureau commenced an investigation of the Warwick CSD Project.

On or about January 3, 2002, the Bureau requested that Suburban furnish payroll records and other documents relating to the Warwick CSD Project (DOL 161; T pp 506, 507).

Suburban did not timely comply with the Bureau’s request, however, on or about January 31, 2002, Suburban provided the certified payrolls and specifications for the Warwick CSD Project (DOL 163; T pp 509, 510). Documents and information provided by collateral sources,

e.g. daily project logs filed out by a third-party monitor, enabled the Bureau to complete its investigation (DOL 160, 162, 164, 165; T pp 511, 512).

The Bureau relied upon the certified payrolls, asbestos monitor records provided by the agency of jurisdiction, and workers' payroll checks later submitted by Suburban to determine the days and hours worked by four (4) workers (DOL, 162, 164, 165; T pp 510, 513, 515-51).

The Bureau classified the workers on the Warwick CSD Project as Asbestos Worker (Abatement) because of the nature of the work, the PW 39 screen shot, asbestos monitor records, and the specifications and bid form for the project (DOL 160, 162, 163; T p 521).

Utilizing the weekly cancelled checks issued to each worker in 2001, the Bureau gave Suburban a contractor credit in the audit in the amount paid to each worker, if there was no collaborating information for hours worked or rates paid, the Bureau credited Suburban with paying the workers \$20.00 an hour for each hour worked (DOL 165, 167; T pp 521, 523-526).

The Bureau prepared a Detail of Underpayments and a Summary for Project 9, and determined that, during the week ending July 22, 2001, through week ending August 5, 2001, Suburban underpaid prevailing wages and supplements to four (4) workers who performed work on the Warwick CSD Project in the total amount of \$4,076.04 (DOL 167, 169; T pp 520, 526, 527).

On or about February 5, 2001, and December 18, 2017, the Bureau issued to Suburban Notices of Labor Law Inspection Findings notifying Suburban of the Bureau's findings with respect to the Warwick CSD Project (DOL 166; T p 519).

On or about February 5, 2002, the Bureau issued a Notice to Withhold Payment to the Warwick Valley Central School District directing it to withhold payment in the amount of \$17,844.13 due to Suburban for the Warwick CSD Project.

On or about February 11, 2002, the Bureau confirmed that the Warwick Central School District had withheld funds in the amount of \$18,080.00 due to Suburban (DOL 170; T pp 527, 528).

PROJECT 10
CREEDMOOR PC PROJECT
PRC #: 200501130

On or about May 13, 2005, Suburban entered into a contract with OGS to remediate lead paint at Building 61 at Creedmoor Psychiatric Center located in Queens Village, New York (“Creedmoor PC Project” or “Project 10”) (DOL 151, 153; T pp 486, 487, 488, 489).

On or about July 1, 2004, the Bureau issued Prevailing Wage Rate Schedule 2004 for Queens County. Prevailing Wage Rate Schedule 2004 for Queens County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Creedmoor PC Project from July 1, 2004 through June 30, 2005 in the following classification: Painter with wages of \$32.25 per hour and supplements of \$16.67 per hour (DOL 157; T pp 494-496).

On or about July 1, 2005, the Bureau issued Prevailing Wage Rate Schedule 2005 for Queens County. Prevailing Wage Rate Schedule 2005 for Queens County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Creedmoor PC Project from July 1, 2005 through June 30, 2006 in the following classification: Painter classification with wages of \$33.00 per hour and supplements of \$19.91 per hour (DOL 156, T pp 493, 494).

On or about March 21, 2007, and December 27, 2008, two (2) workers filed PW-4 complaints with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Creedmoor PC Project (DOL 150; T pp 485, 486).

On or about August 20, 2008, the Bureau requested that Suburban furnish payroll records and other documents relating to the Creedmoor PC Project (DOL 152; T pp 487, 488).

Suburban failed to comply with the Bureau’s request for payroll records¹⁰ and documents. Documents and information provided by collateral sources enabled the Bureau to complete its investigation (DOL 151, 153).

The Bureau relied upon the W-4 claims to determine the days and hours worked by the

¹⁰ There were no certified payrolls received by the Bureau for this project.

two (2) workers (DOL 150; *see also* DOL 186 N; T pp 491, 492).

The Bureau classified the workers on the Creedmoor PC Project as Painter because of the nature of the work, the workers' allegations on the claims, the PW 39 prevailing screen shot, and the contractor agreement (DOL 150, 151, 153; T p 493).

The Bureau credited Suburban for paying the workers \$20 and hour for each hour worked (DOL 155).

The Bureau prepared a Detail of Underpayments and a Summary for Project 10, and determined that, during the week ending May 8, 2005, through week ending September 18, 2005, Suburban underpaid prevailing wages and supplements to two (2) workers who performed work on the Creedmoor PC Project in the total amount of \$21,048.14 (DOL 155, 158; T pp 490, 491, 497).

On or about November 2, 2009, and June 16, 2011, the Bureau issued to Suburban Notices of Labor Law Inspection Findings notifying Suburban of the Bureau's findings with respect to the Creedmoor PC Project (DOL 154; T pp 489, 490).

PROJECT 11
HYDE PARK CSD PROJECT
PRC #: 2010002329

On or about June 1, 2005, Suburban entered into a contract with the Hyde Park Central School District ("Hyde Park CSD") to perform asbestos abatement and toilet room alterations to Haviland Middle School, Violet Avenue Elementary School, and Hyde Park Elementary School located in Hyde Park, New York ("Hyde Park CSD Project" or "Project 11") (DOL 120, 122; T pp 428-431).

On or about July 1, 2004, the Bureau issued Prevailing Wage Rate Schedule 2004 for Dutchess County. Prevailing Wage Rate Schedule 2004 for Dutchess County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Hyde Park CSD Project from July 1, 2004 through June 30, 2005 for the following classification: Laborer – Building (Asbestos/Hazardous) with wages of \$30.20 per hour and supplements of \$14.05 per hour (DOL 126; T pp 444-445).

On or about July 1, 2005, the Bureau issued Prevailing Wage Rate Schedule 2005 for Dutchess County. Prevailing Wage Rate Schedule 2005 for Dutchess County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Hyde Park CSD Project from July 1, 2005 through June 30, 2006, the following classification: Laborer – Building (Asbestos/Hazardous) with wages of \$30.20 per hour and supplements of \$14.40 per hour (DOL 127; T pp 445, 447).

On or about July 1, 2006, the Bureau issued Prevailing Wage Rate Schedule 2006 for Dutchess County. Prevailing Wage Rate Schedule 2006 for Dutchess County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Hyde Park CSD Project from July 1, 2006 through June 30, 2007 the following classification: Laborer – Building (Asbestos/Hazardous) with wages of \$30.80 per hour and supplements of \$15.35 per hour (DOL 127; T pp 445, 447).

Starting on or about March 21, 2007, multiple workers filed PW-4 complaints with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Hyde Park CSD Project (DOL 119; T pp 426).

On or about November 2, 2009, the Bureau requested that Suburban furnish payroll records and other documents relating to the Hyde Park CSD Project (DOL 121; T p 129).

Suburban failed to comply with the Bureau's request for payroll records and documents¹¹ (T p 442).

Documents and information provided by collateral sources enabled the Bureau to complete its investigation, including cancelled checks issued directly to one of the claimants, Mr. Andrew Ciborowski (DOL 120, 122, 123; T pp 430, 431).

The Bureau relied upon the PW-4 complaints to determine the days and hours worked by five (5) workers (DOL 119; *see also* DOL 186 K; T 447).

The Bureau classified the workers on the Hyde Park CSD Project as Laborer – Building (Asbestos/Hazardous) because of the nature of the work, the claims, PW 39 screen shot, and contractor agreement (DOL 119, 120, 122; T pp 437).

¹¹ There were no certified payrolls received by the Bureau for this project.

The Bureau analyzed the 2006 Payroll Records that Suburban submitted for 2006 and found that the 2006 Payroll Records supported the workers' claims that they were paid \$24.00 an hour in 2006. While these 2006 Payroll Records did not contemplate the relevant time periods for the Hyde Park CSD Project (2005), they did corroborate the claimants' allegations on the 2006 projects thereby lending credibility to the claimant's allegations that they were paid \$20.00 for 2005 during the Hyde Park CSD Project, again this information was bolstered by the testimony of Mr. Tyszka, the PW-4 complaints, the payroll information received by Suburban and the canceled checks provided by Mr. Ciborowski¹² (DOL 123; T p 431-434, 437, 438-441).

The Bureau credited Suburban for paying the workers \$20.00 an hour for each hour worked in 2005 and \$24.00 an hour for each hour worked in 2006 based upon the workers' allegations (DOL 119, 125; T pp 427, 440, 443).

The Bureau prepared a Detail of Underpayments and Summary for Project 11, and determined that, during the week ending June 12, 2005 through week ending August 27, 2006, Suburban underpaid prevailing wages and supplements to five (5) workers in the Laborer – Building (Asbestos/Hazardous) classification who performed work on the Hyde Park CSD Project in the total amount of \$15,509.45 (DOL 125, 128; T pp 436, 443, 452).

On or about December 8, 2010, and November 14, 2017 the Bureau issued to Suburban Notices of Labor Law Inspection Findings notifying Suburban of the Bureau's findings with respect to the Hyde Park CSD Project (DOL 124; T pp 435, 436).

On or about September 11, 2017, the Bureau issued a Notice to Withhold Payment to DASNY directing it to cross withhold payment in the amount of \$12,141.68 due to Suburban.

On or about November 3, 2017, DASNY indicated that the amount currently withheld as a result of that notice was zero. However, DASNY also indicated that funds in the amount of \$131,579.39 due to Suburban were withheld for the Bureau Case ID: PW09 080012, and it was later disclosed that DASNY had in fact withheld the amount requested of \$12,141.68 (*See, DOL 74 – Project 4, and footnote 18, DOL 129; T p 453*).

¹² None of the checks issued to Mr. Ciborowski had any change (cents) associated with the checks, indicating they were based on a flat hourly rate (T pp 433, 434).

PROJECT 12
EASTCHESTER PROJECT
PRC #: 2011001405

On or about August 23, 2004, Suburban entered into a contract with the Eastchester Union Free School District (“Eastchester UFSD”) for asbestos abatement and floor tile replacement at Eastchester High School and Anne Hutchinson Elementary School in Eastchester, New York (“Eastchester UFSD Project” or “Project 12”) (DOL 98, 101; T pp 361, 362, 364-366).

On or about July 1, 2005, the Bureau issued Prevailing Wage Rate Schedule 2005 for Westchester County. Prevailing Wage Rate Schedule 2005 for Westchester County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Eastchester UFSD Project from July 1, 2005 through June 30, 2006 in the following classification: Asbestos Worker with wages of \$26.30 per hour and supplements of \$12.55 per hour (DOL 104; T p 386).

On or about March 21, 2007, two (2) workers filed claims with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Eastchester UFSD Project (DOL 97; T pp 358-360, 380).

On or about February 22, 2011, the Bureau requested that Suburban furnish payroll records and other documents relating to the Eastchester UFSD Project (DOL 99; T pp 362, 363).

Suburban failed to timely comply with the Bureau’s request for payroll records and documents. Although certified payrolls were received by the Bureau¹³, documents and information provided by collateral sources enabled the Bureau to complete its investigation (DOL 98, 100, 101; T pp 364, 366).

The Bureau relied upon the PW- 4 complaints and the contract documents to determine the days and hours worked by two (2) workers (DOL 97, 100; *See also*, DOL 186 I; T pp 370, 380, 382, 384, 385).

The Bureau classified the workers on the Eastchester UFSD Project as Asbestos Worker

¹³ A copy of the certified payrolls was received by the Bureau from the architects, KG&D Architects, associated with the project.

based upon the nature of the work, the workers' allegations in the claims, the PW 39 screen shot, Suburban's classifications of the workers on its certified payroll, and the contractor agreement (DOL 97, 98, 100, 101; T p 385).

The Bureau prepared a Detail of Underpayments and a Summary for Project 12, and determined that, during the week ending July 31, 2005, through week ending August 7, 2005, Suburban underpaid prevailing wages and supplements to two (2) workers who performed work on the Eastchester UFSD Project in the total amount of \$4,505.44 (DOL 103, 105; T pp 369, 391, 392).

In its audit, the Bureau credited Suburban for making payments of \$20.00 an hour for each hour worked to the workers (DOL 103; T pp 360, 361, 388, 389).

On or about February 22, 2011, and November 14, 2017, the Bureau issued to Suburban Notices of Labor Law Inspection Findings notifying Suburban of the Bureau's findings with respect to the Eastchester UFSD Project (DOL 102; T pp 367-369).

On or about February 24, 2011, the Bureau issued a Notice to Withhold Payment to Eastchester UFSD directing it to withhold payment in the amount of \$8,165.75 due to Suburban. On or about November 3, 2017, the Bureau confirmed that Eastchester UFSD had withheld \$6,105.40 due to Suburban (DOL 106; T p 392).

On or about September 14, 2017, the Bureau issued a Notice to Withhold Payment to DASNY directing it to cross withhold payment in the amount of \$12,988.76 due to Suburban. On or about November 3, 2017, DASNY indicated that the amount currently withheld as a result of that notice was zero. However, DASNY also indicated that funds in the amount of \$131,579.39 due to Suburban were withheld for the Bureau Case ID: PW09 080012, and it was later disclosed that DASNY had in fact withheld the amount requested of \$12,988.76 (DOL 106; T p 392). *See also; DOL 74 – Project 4, and footnote 18 below.*

PROJECT 13
BRONX PC WARDS 9 & 13 PROJECT
PRC #: 2005006413

On or about September 15, 2005, Suburban entered into a contract with OGS to repair

concealed piping that had burst and required abatement of asbestos in Wards 9 and 13 at Building 102 at the Bronx Psychiatric Center, located at 1500 Waters Place, Bronx, New York (“Bronx PC Wards 9 & 13 Project” or “Project 13”) (DOL 44, 46; T pp 250-253).

On or about July 1, 2005, the Bureau issued Prevailing Wage Rate Schedule 2005 for Bronx County. Prevailing Wage Rate Schedule 2005 for Bronx County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Bronx PC Wards 9 & 13 Project from July 1, 2005 through June 30, 2006, including the following classifications: Carpenter Heavy and Highway (Building) with wages of \$44.56 per hour and supplements of \$26.05 per hour; Carpenter (Floor Coverer) with wages of \$39.25 per hour and supplements of \$27.86 per hour; Painter (Drywall Taper) with wages of \$35.32 per hour and supplements of \$17.77 per hour; Laborer – Buildings (Asbestos Abatement) with wages of \$25.50 per hour and supplements of \$15.79 per hour; Painter (Brush) with wages of \$33.00 per hour and supplements of \$19.91 per hour; and Electrician with wages of \$43.00 per hour and supplements of \$32.35 per hour (DOL 50; T p 263, 264).

On or about March 21, 2007, a worker filed a PW-4 complaint with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Bronx PC Wards 9 & 13 Project (DOL 43; T pp 249, 250).

On or about March 7, 2008, the Bureau requested that Suburban furnish payroll records and other documents relating to the Bronx PC Wards 9 & 13 Project (DOL 45; T pp 251, 252).

Suburban did not timely comply with the Bureau’s request, however, on or about September 9, 2008, Suburban provided some records¹⁴. Documents and information provided by collateral sources enabled the Bureau to complete its investigation (DOL 46, 47).

The Bureau relied upon the W-4 complaint and the asbestos monitor’s records (daily project logs and weekly job report exit and entry logs) to determine the days and hours worked by three (3) workers on the Bronx PC Wards 9 & 13 Project (DOL 46, 47; *see also* DOL 186 D; T pp 257-259).

The Bureau classified the workers on the Bronx PC Wards 9 & 13 Project as Carpenter

¹⁴ There were no certified payrolls received by the Bureau for this project.

Heavy and Highway (Building), Carpenter (Floor Coverer), Painter (Drywall Taper), Laborer – Buildings (Asbestos Abatement), Painter (Brush), and Electrician classifications because of the nature of the work as demonstrated by the worker’s allegations and/or PW-4 complaint, the contract documents, the PW 39 screenshot, and the asbestos monitor’s records (DOL 43, 44, 46, 47; T p 254, 263).

The Bureau prepared a Detail of Underpayments and Summary for Project 13, and determined during the week ending September 25, 2005, through week ending December 18, 2005, Suburban underpaid prevailing wages and supplements to three (3) workers who performed work on the Bronx PC Wards 9 & 13 Project in the total amount of \$31,360.50 (DOL 49, 51; T pp 261, 265, 266).

In its Detail of Underpayments, the Bureau credited Suburban for paying the workers \$24.00 for each hour worked (DOL 51).

On or about November 2, 2009, and December 18, 2017, the Bureau issued to Suburban Notices of Labor Law Inspection Findings notifying Suburban of the Bureau’s findings with respect to the Bronx PC Wards 9 & 13 Project 9 (DOL 48; T pp 259, 260).

On or about September 29, 2016, the Bureau issued a Notice to Withhold Payment to the Onteora Central School District directing it to cross withhold payment in the amount of \$26,679.36 due to Suburban (DOL 52; T pp 266, 267).

On or about November 18, 2016, the Bureau confirmed that the Onteora Central School District had withheld funds in the amount of \$26,679.36 due to Suburban (DOL 52).

PROJECT 14
BRONX PC WARD 3 PROJECT
PRC #: 2005007149

On or about October 24, 2005, Suburban entered into a contract with OGS to remove asbestos floor and ceiling tiles in Ward 3 at Building 102 at the Bronx Psychiatric Center, located at 1500 Waters Place, Bronx, New York (“Bronx PC Ward 3 Project” or “Project 14”) (DOL 141, 143; T pp 473-476).

On or about July 1, 2005, the Bureau issued Prevailing Wage Rate Schedule 2005 for

Bronx County. Prevailing Wage Rate Schedule 2005 for Bronx County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Bronx PC Ward 3 Project from July 1, 2005 through June 30, 2006, including the following classifications: Carpenter Heavy and Highway (Building) with wages of \$44.56 per hour and supplements of \$26.05 per hour; Carpenter (Floor Coverer) with wages of \$39.25 per hour and supplements of \$27.86 per hour; Laborer – Buildings (Asbestos Abatement) with wages of \$25.50 per hour and supplements of \$15.79 per hour; and Painter (Brush) with wages of \$33.00 per hour and supplements of \$19.91 per hour (DOL 146; T pp 479).

On or about March 21, 2007, a worker filed a claim with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Bronx PC Ward 3 Project (DOL 140; T pp 472, 473).

On or about March 7, 2008, the Bureau requested that Suburban furnish payroll records and other documents relating to the Bronx PC Ward 3 Project (DOL 142; T pp 474, 475).

Suburban did not comply with the Bureau's request¹⁵. Documents and information provided by collateral sources enabled the Bureau to complete its investigation (DOL 141, 143).

The Bureau relied upon the PW-4 complaints to determine the days and hours worked (DOL 140; *see also* DOL 186 M; T pp 480).

The Bureau classified the workers on the Bronx PC Ward 3 Project as Carpenter Heavy and Highway (Building), Carpenter (Floor Coverer), Laborer – Buildings (Asbestos Abatement), and Painter (Brush) because of the nature of the work, the workers' allegations on the claims, the PW 39 screen shot, and contractor agreement (DOL 140, 141, 143).

The Bureau credited Suburban with making payments of \$24.00 an hour for each hour worked (DOL 145).

The Bureau prepared a Detail of Underpayments and a Summary for Project 14, and determined that, during the week ending September 25, 2005, through week ending December 18, 2005, Suburban underpaid prevailing wages and supplements to two (2) workers who performed work on the Bronx PC Ward 3 Project in the total amount of \$11,425.60 (DOL 145,

¹⁵ There were no certified payrolls received by the Bureau for this project.

147; T pp 477, 478, 482, 483).

On or about November 2, 2009, and December 18, 2017, the Bureau issued to Suburban Notices of Labor Law Inspection Findings notifying Suburban of the Bureau's findings with respect to the Bronx PC Ward 3 Project (DOL 144; T pp 476, 477).

On or about September 28, 2016, the Bureau issued a Notice to Withhold Payment to the Onteora Central School District directing it to cross withhold payment in the amount of \$26,679.36 due to Suburban.

On or about November 18, 2016, the Bureau confirmed that the Onteora Central School District had withheld funds in the amount of \$26,679.36¹⁶ due to Suburban (DOL 148; 483, 484).

PROJECT 15
MANHATTAN PC BLDG. 104 PROJECT
PRC #: 0503342

On or about November 10, 2005, Suburban entered into a contract with OGS to remove hazardous materials in Building No. 104 at the Manhattan Psychiatric Center, located at 600 E. 125th Street, Ward's Island, New York ("Manhattan PC Bldg. 104 Project" or "Project 15") (DOL 55, 57; T pp 270, 271, 273).

On or about July 1, 2005, the Bureau issued Prevailing Wage Rate Schedule 2005 for New York County. Prevailing Wage Rate Schedule 2005 for New York County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Manhattan PC Bldg. 104 Project from July 1, 2005 through June 30, 2006 in the following classification: Laborer – Building (Asbestos Abatement) with wages of \$25.50 per hour and supplements of \$15.79 per hour (DOL 60; T p 279).

On or about March 21, 2007, a worker filed a PW-4 complaint with the Bureau alleging that Suburban failed to pay the proper prevailing wages and supplements to workers who performed work on the Manhattan PC Bldg. 104 Project (DOL 54; T pp 270).

On or about April 6, 2010, the Bureau requested that Suburban furnish payroll records

¹⁶ Please note that although the amount requested to be cross-withheld on this project is the same amount requested to be cross-withheld on Project 13 they are separate withholding requests which should have doubled the amount held by that jurisdiction.

and other documents relating to the Manhattan PC Bldg. 104 Project (DOL 56; T p 272).

Suburban failed to comply with the Bureau's request for payroll records and documents¹⁷.

Documents and information provided by collateral sources enabled the Bureau to complete its investigation (DOL 55, 57).

The Bureau relied upon the PW-4 complaint to determine the days and hours worked by the worker on the Manhattan PC Bldg. 104 Project (DOL 54; *see also* DOL 186 E; T pp 275).

The Bureau classified the workers on Manhattan PC Bldg. 104 Project as Laborer – Building (Asbestos Abatement) because of the nature of the work, the workers' allegation on the claims, the PW 39 prevailing rate screen shot, and the contractor agreement (DOL 54, 55, 57; T p 278).

The Bureau credited Suburban for making payments of \$24.00 an hour to the worker (DOL 59; T p 278).

The Bureau prepared a Detail of Underpayments and Summary for Project 15, and determined that during the week ending December 25, 2005, through week ending April 23, 2006, Suburban underpaid prevailing wages and supplements to one (1) worker in the Laborer – Building (Asbestos Abatement) classification who performed work on the Manhattan PC Bldg. 104 Project in the total amount of \$3,938.64 (DOL 59, 61, T pp 277, 278, 280, 281).

On or about June 16, 2011, the Bureau issued to Suburban Notice of Labor Law Inspection Findings notifying Suburban of the Bureau's findings with respect to the Manhattan PC Bldg. 104 Project (DOL 58; T pp 276, 277).

On or about March 10, 2022, the Bureau confirmed that the DASNY had withheld funds in the amount of \$393,377.00¹⁸ due to Suburban on the various public work projects they were involved in. (DOL 62; T p 281-283).

¹⁷ There were no certified payrolls received by the Bureau for this project.

¹⁸ The various cross and direct withholdings held by DASNY were comprised of the following: Project 1, PRC 200600042, \$17,186.59; Project 4, PRC 2005007370, \$131,579.39; Project 6, PRC 2006006588, \$3,731.41; Project 10, PRC 200501130, \$65,825.35; Project 11, PRC 2010002329, \$12,141.68; Project 12, PRC 201101405, \$12,988.76; Project 15, PRC 0503342, \$15,122.68 and two projects from prior proceeding, PRC 2006000796, \$62,632.33; and PRC 2005006195, \$72,168.81; *See DOL 62*.

GENERAL TESTIMONY RELEVANT TO ALL FIFTEEN PROJECTS

Mirosław “Mirek” Tyszk

Mirosław Tyszk¹⁹ testified that he worked on each of the projects at issue, with the exception of the Warwick CSD Project (DOL 2, 16, 28, 43, 54, 64, 76, 86, 97, 108, 119, 131, 140, 150; T pp 180-81).

Mr. Tyszk held at all relevant times, a Department issued asbestos handling certificate (DOL 8 p 0140; T p 179). He testified regarding the work that he performed while employed for Suburban, i.e. tile removal, removal of a mastic, removal of insulation, mold, sheet rock, etc. (T pp 176-78, 187-91). Mr. Tyszk also testified regarding what other workers he worked with on the Suburban projects at issue (T p 181).

Mr. Tyszk confirmed that he was paid by Suburban by two checks on a weekly basis, that those checks were signed by either John or Roman Markovic, or sometimes “his wife” and that he never received a pay stub that indicated the project the work was done on or the wage he was paid (T pp 182-85). He further testified that he was paid \$20.00 an hour for every project until the pay was increased to \$24.00 an hour for every project regardless of the work that he performed or the county where the project occurred (T pp 185-86).

Mr. Tyszk testified that he completed PW 4 claims using a contemporaneously maintained calendar and submitted those claim forms to the Bureau (T pp 188-91, 194).

Aleksander Chojecki

Aleksander Chojecki²⁰ testified that he worked on mostly commercial buildings covering the following five projects: PW11 080010 Bronx; PW11 080011 Bronx; PW11 080012 Pilgrim PC; PW11 080006 Brooklyn Armory; and PW11 2009022798 Hyde Park (DOL 2, 16, 64, 86, 119; T pp 398- 99). He testified regarding the nature of the work that he performed with Suburban, i.e. asbestos remover, removing asbestos from pipes, insulation, mastic and tiles,

¹⁹ Mr. Tyszk appeared on day two of the default hearing. On that same morning of his testimony the Administrative Adjudication Unit received an email from Respondent, Roman Markovic, as president of, Suburban stating he was not going to appear.

²⁰ Mr. Chojecki appeared on day three of the default hearing.

removal of sheetrock and then retiling the area, putting up new sheetrock and then painting (T pp 397-400). He held a Department issued asbestos handling certificate (DOL 8; T p 399).

Mr. Chojecki testified regarding what other workers he worked with on the Suburban projects at issue, and when asked who owned or operated Suburban, he stated: “I remember at first it was Roman’s father. What was his last name? Then, he got older, so his son took over. He was the one who was overlooking the entire thing. It was Roman.” (T pp 400-01). He also testified that Suburban paid him by check, that the rate he was paid stayed the same regardless of the work he performed or what county the work was performed in, and that Suburban never provided him with paystub information (T pp 401-04).

GENERAL FACTS

The Bureau employed the same methodology for the various project audits and accounted for any minor discrepancies among the rates paid on the projects in their audits, adjusting the audit calculations as deemed necessary (T pp 419, 437, 464, 478, 493, 523, 532).

During 2006, Marek Golebiewski, was employed by Suburban and kept, and contemporaneously maintained, a calendar of the hours that he worked for Suburban (DOL 183). The Bureau used this calendar to corroborate the allegations on Mr. Golebiewski’s PW 4 complaint forms, and it played a role in determining the days and hours of other workers who worked on the same projects as him (T pp 83-84, 534-35).

Based the analysis of the 2006 Payroll Records and collateral information received by the Bureau, the Bureau concluded that the workers who did not submit claims on the fifteen projects at issue also received \$20.00 an hour in 2005 (or earlier) and \$24.00 an hour in 2006. These pay rates are supported by what the workers who did submit claims testified to and what was outlined in their PW-4 complaint forms as to what rates they were paid during those time periods.

During the time that work was performed on each of the projects at issue, John Markovic was president of Suburban, as shown on the PW-15 Contractor Profile that Suburban submitted to the Bureau and on each of the certified payrolls. John Markovic also signed the contract agreements as president for each project (DOL 34, 5, 19, 30, 32, 67, 79, 89, 100, 111, 162; *see also* DOL 35). Also, Roman Markovic was named the contractor representative for Suburban on

the Hyde Park CSD Project, titled as the authorized representative for Suburban on behalf of John Markovic as President of Suburban on the Jamaica Armory Project and the Bronx PC Wards 9 & 13 Project, and was identified by Mr. Chojecki as one of individuals overseeing everything on the construction sites as John Markovic got older.

John Markovic and Roman Markovic by virtue of their control over all the projects at issue knowingly participated in Suburban's failure to pay or provide prevailing wages and supplements to or for the benefit of the laborers, workmen and/or mechanics who performed work on the fifteen projects at issue (T pp 528-530).

Suburban falsified payroll records because they knowingly certified and submitted payroll records on a number of the projects that Suburban knew contained hours and pay rates that were inaccurate, with one project having two sets of certified payrolls that did not match. The record as a whole demonstrates that Suburban paid its workers only \$20.00, \$24.00 or \$25.00 an hour for each hour worked, yet Suburban's certified payroll records purport to show that Suburban paid the workers prevailing wages and supplement benefits above those hourly rates. (T pp 530-31).

CONCLUSIONS OF LAW

MOTION TO DISMISS

In post-hearing submissions, Suburban submitted a post-hearing Answer and moved for the Administrative Adjudication Unit to Dismiss all fifteen prevailing wage cases, arguing that the Department's seventeen to twenty-three year delay in holding an administrative hearing on the projects caused Suburban substantial prejudice since they were not expeditiously conducted in a timely manner.

Suburban first argues that the extensive delay in the Department bringing forward the various cases had a negative impact on them financially and limited their ability to defend their case. Alleging that a procedural due process violation occurred based on the fact that the various withholdings and cross-withholdings issued to the jurisdictions of record totaling almost

\$1,400,000.00²¹ completely obliterated Suburban's ability to retain and/or be represented by counsel.

Although Suburban argues that the extensive delay had a negative impact on them both financially and limited their ability to defend their case, they fail to demonstrate the "severe prejudice" they faced as a result of delay, especially given the fact that Suburban went forward on a *pro se* basis in a prior administrative proceeding held by this body, fully participating, was given the opportunity to be heard on that matter, provided a rigorous defense on a case that lasted three plus years and resulted in a filing of an Article 78 proceeding challenging the findings in that case. Suburban was given numerous opportunities to attend the proceeding in this matter and uphold their due process rights by actively participating herein and chose not to participate.²²

Suburban next raises that they were prejudiced by John Markovic's inability to testify at the hearing (due to health issues), however Suburban fails to establish what or how his testimony may have refuted the clear underpayment of prevailing wages and supplements on the fifteen public work projects at issue given the substantial documentary evidence at hand. Especially, given the fact that Roman Markovic was actively involved in the projects directing and controlling all the employees on each of the projects at issue, performed various administrative functions for the business and was fully aware of how and when each employee under his firm's control was paid. Roman Markovic had the ability to appear on his father's behalf and testify on the discrepancies between Suburban's payroll records and the certified payrolls his company produced and chose not to participate in this hearing.

Finally, Suburban argues that the Department purposely inflicted financial damage onto Suburban by the issuance of over \$700,000.00 in cross-withholdings against Suburban in 2016 and 2017. Suburban makes this statement without disclosing the fact that, on or about January 9, 2018, Suburban and the Attorney General for the State of New York, on behalf of the Department, entered into a stipulation of settlement in which Suburban had the opportunity to take out an undertaking/s to protect its' financial interest and have the cross-withheld funds released. There is also no indication as to whether Suburban choose to take advantage of this

²¹ This administrative body could only confirm as a result of this proceeding that the trust funds withheld on behalf of the workers even taking into account all eighteen projects associated with this and the prior three project hearing held before the Administrative Adjudication Unit totals \$742,741.45.

²² Although Roman Markovic had contact with the Administrative Adjudication Unit at no time, either before or during the administrative hearing, did Mr. Markovic express that he felt he was deprived of his right to counsel.

opportunity.²³ Thus, Respondents, Suburban, have failed to establish prejudice or irreparable harm sufficient to warrant overturning the substantial evidence of prevailing wage violations addressed herein, and given the extensive testimony elicited concerning the violations and the documents received into evidence on behalf of the Department, I find no basis for granting such a motion²⁴.

I have considered the remaining contentions raised in the motion and find them to either be without merit or, considering the foregoing, not necessary to resolve the matter.

Accordingly, Suburban's Motion to Dismiss is Dismissed.

JURISDICTION OF ARTICLE 8

New York State Constitution, article 1, § 17 mandates the payment of prevailing wages and supplements to workers employed on public work projects²⁵. This constitutional mandate is implemented through Labor Law article 8. Labor Law §§ 220, *et seq.* "Labor Law § 220 was enacted to ensure that employees on public works projects are paid wages equivalent to the prevailing rate of similarly employed workers in the locality where the contract is to be performed and authorizes the [Commissioner of Labor] to ascertain said prevailing wage rate, as well as the prevailing 'supplements' paid in the locality." (*Matter of Beltrone Constr. Co. v McGowan*, 260 AD2d 870, 871-872 [1999]). Labor Law § 220.2 establishes that the law applies to a contract for public work to which the State, a public benefit corporation, a municipal corporation or a commission appointed pursuant to law is a party. Labor Law §§ 220 (7) and (8), and 220-b (2) (c), authorize an investigation and hearing to determine whether prevailing wages or supplements were paid to workers on a public work project.

In 1983, the New York State Court of Appeals established what was until recently the test for whether a project was subject to the Labor Law public work provisions. *Matter of Erie*

²³ This Stipulation of Settlement was entered into as a result of Suburban bringing an Article 78 proceeding, on or about October 3, 2017 (appealing the Commissioner's Order on three of eighteen cases), seeking, *inter alia*, an order compelling the Department to schedule a hearing to determine whether Suburban complied with the prevailing wage law, Labor Law Article 8, in its performance of eighteen public work projects (fifteen of which are discussed herein), and to vacate all notices of cross-withholding issued by the Department with respect to those projects.

²⁴ See also, Interest Rate section below. Courts have consistently sustained agencies in not dismissing administrative proceedings brought to vindicate important public policies based upon extensive delay.

²⁵ This section derives ultimately from the 1905 amendment of section 1 of article XII of the New York State Constitution of 1894.

County Indus. Dev. Agency v. Roberts, 94 A.D.2d 532 (4th Dept. 1983), *affd* 63 N.Y.2d 810 (1984). Erie involved a construction contract on a project financed by an industrial development agency, and established the now-familiar two-prong test:

(1) the public agency must be a party to a contract involving the employment of laborers, workmen, or mechanics, and (2) the contract must concern a public works project. *Id at 537*. In 2013, the New York State Court of Appeals adopted a new, three-prong test to determine whether a particular project constitutes a public work project. *De La Cruz v. Caddell Dry Dock & Repair Co., Inc.*, 21 NY3d 530 (2013). The Court states this test as follows:

First, a public agency must be a party to a contract involving the employment of laborers, workmen, or mechanics. Second, the contract must concern a project that primarily involves construction-like labor and is paid for by public funds. Third, the primary objective or function of the work product must be the use or other benefit of the general public. *Id at 538*.

The Departments of Jurisdiction in the fifteen projects are public entities and are parties to the instant public work contracts. The contracts involved construction-like labor paid for by public funds. Finally, the work products are clearly for the use or other benefit of the general public. As such, Labor Law Article 8 applies, and all laborers, workmen and mechanics employed on all fifteen of the public work projects at issue are required to be paid of prevailing wages and supplemental benefits on each project at issue.

CLASSIFICATION OF WORK

Labor Law § 220 (3) requires that the wages to be paid and the supplements to be provided to laborers, workers or mechanics working on a public work project be not less than the prevailing rate of wages and supplements for the same trade or occupation in the locality where the work is performed. The trade or occupation is determined in a process referred to as “classification.” (*Matter of Armco Drainage & Metal Products, Inc. v State of New York*, 285 AD 236, 241 [1954]). Classification of workers is within the expertise of the Department. (*Matter of Lantry v State of New York*, 6 NY3d 49, 55 [2005]; *Matter of Nash v New York State Dept of Labor*, 34 AD3 905, 906 [2006], *lv denied*, 8 NY3d 803 [2007]; *Matter of CNP*

Mechanical, Inc. v Angello, 31 AD3d 925, 927 [2006], *lv denied*, 8 NY3d 802 [2007]). The Department’s classification will not be disturbed “absent a clear showing that a classification does not reflect ‘the nature of the work actually performed.’” (*Matter of Nash v New York State Dept of Labor*, 34 AD3 905, 906, *quoting Matter of General Electric, Co. v New York State Department of Labor*, 154 AD2d 117, 120 [3d Dept. 1990], *affd* 76 NY2d 946 [1990], *quoting Matter of Kelly v Beame*, 15 NY 103, 109 [1965]). Workers are to be classified according to the work they perform, not their qualifications and skills. (*See, Matter of D. A. Elia Constr. Corp v State of New York*, 289 AD2d 665 [1992], *lv denied*, 80 NY2d 752 [1992]).

The record contains ample evidence from the workers, the contract documents, PW-4 complaints, Suburban’s payrolls, third party logs and investigator testimony to justify the classifications used in each instance.

UNDERPAYMENT METHODOLOGY

“When an employer fails to keep accurate records as required by statute, the Commissioner is permitted to calculate back wages due employees by using the best available evidence and to shift the burden of negating the reasonableness of the Commissioner’s calculations to the employer....” (*Matter of Mid Hudson Pam Corp. v Hartnett*, 156 AD2d 818, 821 [1989] (citation omitted)). “The remedial nature of the enforcement of the prevailing wage statutes ... and its public purpose of protecting workmen ... entitle the Commissioner to make just and reasonable inferences in awarding damages to employees even while the results may be approximate....” *Id.* at 820 (citations omitted). Methodologies employed that may be imperfect are permissible when necessitated by the absence of comprehensive payroll records or the presence of inadequate or inaccurate records. (*Matter of TPK Constr. Co. v Dillon*, 266 AD2d 82 [1999]; *Matter of Alphonse Hotel Corp. v Sweeney*, 251 AD2d 169, 169-170 [1998]).

Testimony from the workers, the Bureau’s analysis of the 2006 Payroll Records that were produced, the conflict among multiple documents created by Suburban, and the inability of Suburban to produce payroll records matching the information on certified payrolls on Projects 2, 3, 4, 5, 6, 7, 8, 9, 12 all call into question the reliability of Suburban’s certified payroll records.

Moreover, because Suburban failed to keep proper payroll records, the Bureau properly relied upon information outside of certified payroll records in determining the amount of underpayment. Worker PW-4 complaints, weekly job reports, asbestos abatement daily project logs (when available), workers testimony, as well as a worker's personal calendar, were the best available evidence to indicate the days and hours worked.

Substantial evidence, including worker W-4 complaints and worker's testimony, established that the majority of Suburban employees were paid a wage of \$20.00 or \$24.00 per hour for all hours worked (depending on the year the work was performed), and did not receive any supplemental benefit payments. Suburban's own payroll records (canceled checks prior to 2006) and the Department's analysis of the 2006 Payroll Records made available supported these statements. The amounts Suburban paid, as shown on their statements, when divided by the number of hours worked, were all neatly divisible by the \$20.00 or \$24.00 per hour rate. Suburban's certified payrolls showed the days worked by its employees, however they were unreliable with respect to the hours worked and the wages paid when compared to other documents. The hours and wages listed on the certified payrolls were clearly inconsistent with workers' statements, PW-4 complaints and collateral records, and did not match Suburban's own various payroll records. However, Suburban was credited for making payments of \$24.00 per hour for each hour worked on the majority of the projects, and those credited rates only deviated when evidence showed an alternate rate paid (mainly, \$20.00 or \$25.00 per hour).

With respect to Projects 1, 10, 11, 13, 14, 15, the Bureau requested that Suburban furnish payroll records and supporting documentation to show that they paid the proper prevailing wage and supplement rates on those projects. Suburban failed to comply with those requests, forcing the Bureau to rely on alternate records and interaction with the workers to conclude its investigation. Since Suburban's 2006 Payroll Records did not cover projects worked on prior to June of 2006, the Bureau used the best available evidence and lent credit to the workers' allegations as to what rates they were paid on the earlier projects²⁶. The Bureau also relied on documents and information provided by collateral sources to determine the days and hours worked and rates paid to the workers.

²⁶ The 2006 Payroll Records Suburban submitted to the Bureau, on or about October 31, 2008, consisting of copies of various checks that Suburban allegedly issued to various parties only covered the time period from June 1, 2006, to January 31, 2007.

When the Bureau did not have payroll records for the time period at issue, the Bureau analyzed the 2006 Payroll Records they did have and found that the 2006 Payroll Records supported the workers' claims that they were paid \$24 an hour in 2006. While these statements did not contemplate the relevant time periods for the earlier projects, they did corroborate the claimants' allegations on the 2006 projects thereby lending credibility to the claimants' allegations that they were paid \$20 for worked performed in 2005 on Projects 9, 10, 11 and 12.

Labor Law § 661 requires an employer to establish, maintain, and preserve for not less than six years, contemporaneous, true, and accurate payroll records showing for each week worked the hours worked, the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages for each employee, plus such other information as the commissioner deems material and necessary. Suburban was on notice in each instance that those records were required and failed to produce accurate payroll records although given the time to do so.

Evidence in the record established that the certified payrolls of Suburban did not accurately reflect the wages paid to the workers who performed services on the Projects when those records were available. Also, there is a clear absence of comprehensive payroll and time records on which the Bureau could rely to credit Suburban with the full payment of wages and supplemental benefits to its workers. The limited payroll records that were submitted to the Bureau did not include any paystub information, e.g., hourly wage or supplements rates paid, the hours worked, which projects the work occurred on, or any statutory mandated withholding or tax deductions. Under those circumstances, it was permissible and reasonable for the investigator to reach the conclusions made and employ the methodology he used to determine the days and hours worked, as well as rates paid to the workers.

Since Suburban failed to adhere to this statute and failed to maintain the time and payroll records required under the labor law to negate the reasonableness of the Bureau's calculations, the Bureau's audits should be sustained.

INTEREST RATE

Labor Law §§ 220 (8) and 220 b (2) (c) require that, after a hearing, interest be paid from the date of underpayment to the date of payment at the rate of 16% per annum as prescribed by section 14-a of the Banking Law. (*Matter of CNP Mechanical, Inc. v Angello*, 31 AD3d 925, 927 [2006], *lv denied*, 8 NY3d 802 [2007]).

Although the courts have consistently sustained agencies in not dismissing administrative proceedings brought to vindicate important public policies based upon extensive delay (*Matter of Corning Glass Works v. Ovsanik*, 84 NY2d 619, 624 (1994); *Matter of Cayuga-Onondaga Counties Bd. of Coop. Educ. Servs. v. Sweeney*, 224 AD2d 989 [4th Dept. 1996], *affd* 89 NY2d 395 [1996]), the courts have both endorsed and directed agencies to exclude interest from an award for that period of time attributable solely to the agency's unreasonable delay. *Matter of CNP Mechanical, Inc. v. Angello*, 31 AD3d 925, 928, *lv denied*, 8 NY3d 802; *Matter of Nelson's Lamplighters, Inc. v. New York State Department of Labor*, 267 AD2d 937, 938 (3d Dept. 1999). *Matter of M. Passucci General Constr. Co., Inc. v. Hudacs*, 221 AD2d 987, 988 (4th Dept. 1995). *Matter of Georgakis Painting Corp. v. Hartnett*, 170 AD2d 726, 729 (3d Dept. 1991).

Although Suburban and/or American on Project 1 is responsible for the interest on the aforesaid underpayments at the 16% per annum rate from the date of underpayment to the date of payment, that interest should be waived for a total of ten (10) years given the repeated delays and period of unexplained inactivity that lasted for years.²⁷

WILLFULNESS OF VIOLATION

Pursuant to Labor Law §§ 220 (7-a) and 220-b (2-a), the Commissioner of Labor is required to inquire as to the willfulness of an alleged violation, and in the event of a hearing, must make a final determination as to the willfulness of the violation. This inquiry is significant

²⁷ The Department offered no evidence explaining the considerable delays between investigation and prosecution in this matter.

because Labor Law § 220-b (3) (b) (1) ²⁸ provides, among other things, that when two final determinations of a “willful” failure to pay the prevailing rate have been rendered against a contractor within any consecutive six-year period, such contractor shall be ineligible to submit a bid on or be awarded any public work contract for a period of five years from the second final determination.

For the purpose of Labor Law article 8, willfulness “does not imply a criminal intent to defraud, but rather requires that [the contractor] acted knowingly, intentionally or deliberately” – it requires something more than an accidental or inadvertent underpayment. (*Matter of Cam-Ful Industries, Inc. v Roberts*, 128 AD2d 1006, 1006-1007 [1987]). “Moreover, violations are considered willful if the contractor is experienced and ‘should have known’ that the conduct engaged in is illegal (citations omitted).” (*Matter of Fast Trak Structures, Inc. v Hartnett*, 181 AD2d 1013, 1013 [1992]; see also, *Matter of Otis Eastern Services, Inc. v Hudacs*, 185 AD2d 483, 485 [1992]). The violator’s knowledge may be actual or, where he should have known of the violation, implied. (*Matter of Roze Assocs. v Department of Labor*, 143 AD2d 510 [1988]; *Matter of Cam-Ful Industries, supra*) An inadvertent violation may be insufficient to support a finding of willfulness; the mere presence of an underpayment does not establish willfulness even in the case of a contractor who has performed 50 or so public works projects and is admittedly

²⁸ “When two final determinations have been rendered against a contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor or any successor within any consecutive six-year period determining that such contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article has willfully failed to pay the prevailing rate of wages or to provide supplements in accordance with this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public work projects are rendered simultaneously, such contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with the state, any municipal corporation or public body for a period of five years from the second final determination, provided, however, that where any such final determination involves the falsification of payroll records or the kickback of wages or supplements, the contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any partner if the contractor or subcontractor is a partnership or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract with the state, any municipal corporation or public body for a period of five years from the first final determination.” Labor Law § 220-b (3) (b) (1), as amended effective November 1, 2002.

familiar with the prevailing wage law requirement. (*Matter of Scharf Plumbing & Heating, Inc. v Hartnett*, 175 AD2d 421 [1991]).

The weight of the evidence in the record as a whole demonstrates that Suburban knew of the requirements to pay the prevailing rate of wages and supplements on the public work projects at issue and in fact did not pay the prevailing rates as required (T p 529), and therefore the violations which occurred on each project can only be considered a willful violation in each instance. There was clear evidence presented that the workers were paid a flat hourly rate for all hours worked, that the rate did not change depending on what public work project the work was performed on, and that flat rate was well below the prevailing wage and supplement rates in the jurisdictions they performed services in (T p 532).

The Bureau sent Suburban separate records requests for each project at issue and received very limited responses including copies of checks issued to some of the workers, and some certified payrolls which were inconsistent with those checks. Suburban did not supply either time records, or specific paystub information detailing how checks were calculated, what statutory deductions were taken or what pay rates were provided. Concluding that the worker PW-4 complaints it had received had merit, the Department reviewed the records it had and compiled information from each check and stub-like record into a summary sheet, creating a check analysis which it used to compile its audit detail for each project.

Since the check analysis appeared to confirm the complainants' statements that they were consistently paid \$24.00 per hour, regardless what class of work they were performing or what the required prevailing wage for that classification was, the DOL assumed that was the rate all employees had been paid, except for two (Swierkowski and Majewski) who, to judge by the Department check analysis, had been paid \$25.00 and \$23.00 per hour respectively. While the certified payrolls did not appear to be reliable with respect to what workers were actually paid, the Department did rely on them, as well as the "Daily Labor Reports" signed by an OGS engineer as well as John Markovic for Suburban to determine what class of work employees were doing and what prevailing rate was therefore required. In case of conflict between Suburban records and worker self-reports (complaints and interviews), the Department also relied on the latter to determine how many hours an employee had worked on a project.

Applying the assumed actual \$24.00 per hour rate of pay (or \$20.00 per hour rate in earlier years) supported by the Department check analysis to the hours and classifications of all employees, including those who had not complained, the Department estimated underpayment, that is, the difference between what the checks and other records indicated workers were actually paid, and what they should have been paid if Suburban had really been paying the required prevailing rate of wages and supplements.

The substantial evidence in this matter warrants a finding of willfulness by Suburban.

FALSIFICATION OF PAYROLL RECORDS

Labor Law § 220-b (3) (b) (1) further provides that if a contractor is determined to have willfully failed to pay the prevailing rates of pay, and that willful failure involves a falsification of payroll records, the contractor shall be ineligible to bid on or be awarded any public work contract for a period of five (5) years from the first final determination. For this section of the law to be meaningful, the term “falsification of payroll records” must mean more than a mere arithmetic error; if it did not, in any case where the certified payrolls did not perfectly match the payments to workers such payrolls could be deemed falsified, and the contractor debarred. The definition of the word falsify generally involves the intent to misrepresent or deceive (“falsify.” *Merriam-Webster*, 2011, <http://www.merriam-webster.com/dictionary/falsify>). In the absence of a statutory definition, the meaning ascribed by lexicographers is a useful guide. *De La Cruz v. Caddell Dry Dock & Repair Co., Inc.*, 21 NY3d 530, 537-538; *Quotron Systems v. Gallman*, 39 NY2d 428, 431 (1976).

It is clear from the record that Suburban failed to meet its obligation to maintain true and accurate payroll records, and I find, especially in light of the worker’s testimony that the laborers, workmen or mechanics worked more hours than listed on the certified payrolls and were paid wages far below the prevailing wage in the jurisdictions at issue, that the willful failure to pay or provide prevailing wages and/or supplements involved the falsification of payroll records on the projects Suburban maintained them on. There were also instances in which Suburban created two different certified payroll records, one they sent to the Bureau and the other they sent to the jurisdiction of record, both of which contained different information, and clearly indicating that the records were in fact false. (T pp 530, 531) Additionally, there was

another instance in which the prevailing wage and supplement rates listed in the labor rate worksheets submitted to OGS with Suburban's invoice for payment and the certified payrolls for that project noticeably did not correlate with any amounts listed as paid in the 2006 Payroll Records during the time frame, again evidencing that the certified payrolls with respect to that project were in fact false.

The substantial evidence in this matter warrants a finding of the falsification of payroll records by Suburban.

PARTNERS, SHAREHOLDERS OR OFFICERS

Labor Law § 220-b (3) (b) (1) further provides that any such contractor, subcontractor, successor, or any substantially owned-affiliated entity of the contractor or subcontractor, or any of the partners or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, or any officer of the contractor or subcontractor who knowingly participated in the willful violation of Labor Law Article 8 shall likewise be ineligible to bid on, or be awarded public work contracts for the same time period as the corporate entity. John Markovic was president of Suburban, signed various documents including contract documents, certified payrolls and asbestos related submissions, and was involved in requisitions for payments on various Projects. In addition, Roman Markovic acting as an authorized representative of John Markovic in his role as president of Suburban, negotiated adjustments in contract proposals, submitted invoices on behalf of the company, signed off on asbestos project notifications and manifests, supervised sites, interacted with the jurisdictions of record and interacted with the Bureau in response to Department's investigation, (DOL 8,134) as such, he was an officer who knowingly participated in the violation of Labor Law Article 8 (T pp 532, 533).

John Markovic was the majority shareholder and president of Suburban. Roman Markovic was a representative of the corporation acting on John Markovic's behalf and was an officer of Suburban who ran the corporation from 1998 through 2006. Accordingly, both are subject to a finding of willfulness. Roman Markovic by his own admission in his Answer became a shareholder of Suburban with a four percent ownership interest in the company. Making him

one of the two largest shareholders and an officer who directed and controlled the workers during the time the projects were up and running as alluded to by the employee witnesses.

Additionally, according to the contractor profile, John Markovic, Colette Markovic and Roman Markovic all had authority to sign checks on behalf of Suburban (DOL 34), and there was testimony that Roman also signed some of the checks given to the workers and that he took over when his father, John, got older. Given the fact that Roman Markovic exhibited dominion and control over the administrative functions, monetary issues and personnel on the work sites, interacted with the Bureau on the various investigations, and the jurisdiction of record on contract issues clearly shows he acted in the capacity of an officer of the corporation throughout the various projects.

CIVIL PENALTY

Labor Law §§ 220 (8) and 220-b (2) (d) provide for the imposition of a civil penalty in an amount not to exceed twenty-five percent (25%) of the total amount due (underpayment and interest). In assessing the penalty amount, consideration shall be given to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations, and the failure to comply with record-keeping and other non-wage requirements. Based on the contract sizes and withholding requests issued by the Bureau it is evident that Suburban was a substantial business concern operating during the periods at issue. The number of workers involved, although small when spread out over the extensive number of projects at issue here, illuminates the fact that the full statutory penalty should be assessed. Suburban failed to show good faith during the investigation, failed to comply with mandatory record keeping requirements and refused to cooperate with the Department's investigation by promptly providing records when requested or maintain certified payrolls on some of the projects even though it was clear they were required to do so. Suburban has had previous experience with public work projects. There is strong evidence of a history of violations. The violations vary in size, but involve matters of record keeping, classification, the proper payment of wages, falsification of payroll records and the non-payment of any wage supplements. In addition, just given the volume of cases subject to this proceeding it demonstrates that Suburban is and/or was an experienced public work contractor who should be burdened with the full extent of the

statutory imposition that can be imposed. In light of these facts, I find a penalty of twenty-five percent (25%) appropriate.

LIABILITY UNDER LABOR LAW § 223

A prime contractor is responsible for its subcontractor's failure to comply with, or evasion of, the provisions of Labor Law Article 8. (Labor Law § 223; *Konski Engineers PC v Commissioner of Labor*, 229 AD2d 950 [1996], *lv denied* 89 NY2d 802 [1996]). Such contractor's responsibility not only includes the underpayment and interest thereon, but also includes liability for any civil penalty assessed against the subcontractor, regardless of whether the contractor knew of the subcontractor's violation. (*Canarsie Plumbing and Heating Corp. v Goldin*, 151 AD2d 331 [1989]). Suburban performed work on Project 1 as a subcontractor of American. Consequently, American, pursuant to Labor Law § 223, in its capacity as the prime contractor on Project 1, is vicariously liable for the total amount found due from Suburban on that Project.

RECOMMENDATIONS

Based upon default of the Respondents, Suburban, John Markovic and Roman Markovic, and American in answering or contesting the charges contained in the Department's Amended Notice of Hearing, and upon the sworn and credible testimonial and documentary evidence adduced at hearing in support of those charges, and based upon the weight of the evidence set forth in the record as a whole, I:

RECOMMEND that the Commissioner of Labor adopt the within findings of fact and conclusions of law as the Commissioner's determination of the issues raised in this case, and based on those findings and conclusions, the Commissioner should make the following determinations and orders in connection with the issues raised in this case:

DENY Suburban's Motion to Dismiss; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$2,460.50 on the Project 1, for the audit period week ending January 29, 2006, through week ending March 26, 2006; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$31,465.20 on the Project 2, for the audit period week ending March 26, 2006, through week ending May 7, 2006; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$13,315.88 on the Project 3, for the audit period week ending May 7, 2006, through week ending June 4, 2006; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$43,549.22 on the Project 4, for the audit period week ending June 4, 2006, through week ending November 12, 2006; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$29,399.65 on the Project 5, for the audit period week ending June 11, 2006, through week ending December 10, 2006; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$2,364.96 on the Project 6, for the audit period week ending September 24, 2006, through week ending October 8, 2006; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$19,386.64 on the Project 7, for the audit period week ending October 15, 2006, through week ending January 14, 2007; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$6,548.19 on the Project 8, for the audit period week ending October 22, 2006, through week ending October 29, 2006; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$4,076.04 on the Project 9, for the audit period week ending July 22, 2001, through week ending August 5, 2001; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$21,048.14 on the Project 10, for the audit period starting week ending May 8, 2005, through week ending September 18, 2005; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$15,509.45 on the Project 11, for the audit period starting week ending June 12, 2005, through week ending August 27, 2006; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$4,505.44 on the Project 12, for the audit period starting week ending July 31, 2005, through week ending August 7, 2005; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$31,360.50 on the Project 13, for the audit period week ending September 25, 2005, through week ending December 18, 2005; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$11,425.60 on the Project 14, for the audit period starting week ending September 25, 2005, through week ending December 18, 2005; and

DETERMINE that Suburban underpaid prevailing wages and supplemental benefits to its laborers, workmen and mechanics in the amount of \$3,938.64 on the Project 15, for the audit period starting week ending December 25, 2005, through week ending April 23, 2006; and

DETERMINE that John Markovic and Roman Markovic are officers and owners of Suburban; and

DETERMINE that John Markovic and Roman Markovic knowingly participated in the violation of Labor Law Article 8 on the fifteen projects at issue; and

DETERMINE that the failure of Suburban to pay the prevailing wage or supplement rate on the fifteen projects was a “willful” violation of Labor Law Article 8; and

DETERMINE that the failure of the Suburban to pay the prevailing wage or supplement rates on each of the fifteen projects was a separate and distinct “willful” violation of Labor Law Article 8; and

DETERMINE that the willful violation of Suburban did involve the falsification of payroll records on Projects 2, 3, 4, 5, 6, 7, 8, 9, 12 under Labor Law Article 8; and

DETERMINE, that as a result of the Suburban’s knowing willful participation in the falsification of payroll records within the meaning of Section 220-b(3)(b) of the Labor Law on

the certain named Projects, both the entity (Suburban) and the individuals (John Markovic and Roman Markovic) are ineligible to submit a bid on or be awarded any public work contract with the state, any municipal corporation or public body for a period of five (5) years from the issuance of the Order & Determination associated with this report; and

DETERMINE that Suburban (both the entity and individuals) is responsible for any underpayment of wages or supplemental benefits determined to be owed to its laborers, workmen and/or mechanics on all the Projects at issue; and

DETERMINE that based on the statutory factors set forth in Labor Law Article 8, Suburban is responsible for interest on the total underpayments on the named Projects at the statutorily mandated rate of sixteen (16%) per annum from the date of underpayment to the date of payment; however, due to delays attributable solely to the Department such interest shall be **WAIVED** for a period of ten (10) years; and

DETERMINE that based on the statutory factors set forth in Labor Law Article 8, Suburban is assessed a civil penalty in the amount of twenty-five (25%) of the underpayment and interest due on the named Projects; and

DETERMINE that American, as prime contractor on Project 1, is vicariously liable for non-compliance or evasion by Suburban of its obligation to properly pay wages and supplemental benefits pursuant to Labor Law Section 223 on that project; and

ORDER that the Bureau compute the total amount due (underpayments, interest less the waiver of ten (10) years of interest, and civil penalty) on all fifteen projects; and

ORDER that all named Departments of Jurisdictions remit payment of any withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with its computation of the total amount due, by forwarding the same to the Bureau; and

ORDER that if any withheld amount is insufficient to satisfy the total amount due, Suburban, and American on Project 1, upon the Bureau's notification of the deficit amount, shall immediately remit the outstanding balance, made payable to the Commissioner of Labor, and sent to the Bureau at: Bureau of Public Work, New York State Department of Labor, Harriman State Office Campus, Building 12, 1st Floor, Room 130, Albany, New York 12226; and

ORDER that the Bureau compute and pay the appropriate amount due for each employee on all fifteen Projects, and that any balance of the total amount due shall be forwarded for deposit to the New York State Treasury.

Dated: May 13, 2025
Albany, New York

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Marshall H. Day", is written over a light blue horizontal line.

Marshall H. Day, Chief Administrative Law Judge