Secretary v. Hultgren Construction, LLC
OSHRC Docket No. 17-0845
and
Secretary of Labor v. Command Center, Inc.
OSHRC Docket No. 17-0928

Secretary of Labor's Motion for Continuation of Stay of Civil Proceedings

The Honorable Patrick B. Augustine

Exhibit A

Affidavit of Dennis R. Holmes

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
721 19th Street, Room 407
Denver, Colorado 80202

SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR Complainant,	)	**Honorable Patrick B. Augustine**
v.	)	OSHRC Docket Nos. 17-0845 & 17-0928
HULTGREN CONSTRUCTION, LLC Respondent.	)	
and	)	
COMMAND CENTER, INC., Respondent.	)	

AFFIDAVIT OF DENNIS R. HOLMES

DENNIS R. HOLMES, being first duly sworn on oath, deposes and says:

1. I am an Assistant U.S. Attorney, United States Attorney's Office, District of South Dakota, Sioux Falls, South Dakota.

2. On August 4, 2017, I executed an affidavit explaining that our office is conducting a criminal investigation of Hultgren Construction LLC ("Hultgren Construction") with respect to the events and circumstances leading to a December 2, 2016 accident that resulted in the death of a Hultgren Construction employee and injuries to another individual.

3. We have requested that the United States Department of Labor, Office of the Solicitor, seek a stay of the above-captioned civil enforcement proceedings pending the completion of the ongoing criminal investigation and any criminal proceedings that may follow.

4. The criminal investigation is active and ongoing. Given the nature of the investigative activity, we are unable to provide further details. However, part of the investigation

involves whether Hultgren Construction, its members and agents engaged in willful criminal activity with respect to the fatal accident.

5. Our office has requested that the Solicitor's Office petition the designated Administrative Law Judge to continue the stay of the pending civil actions until the criminal matters are resolved. Our request is for the same reasons stated in my August 2017 affidavit, including that the civil violations may involve identical factual issues creating a commonality of evidence and issues between the pending civil litigation and the ongoing criminal investigation. A stay of the civil proceedings is necessary to avoid any interference with or infringement upon the criminal enforcement process that could arise from a related civil enforcement proceeding.

Dennis R. Holmes
Criminal Chief
United States Attorney's Office
District of South Dakota
Sioux Falls, South Dakota

Subscribed and sworn before me this 20th day of August 2018.

REBECCA ANDERSON
NOTARY PUBLIC
SOUTH DAKOTA
SEAL SEAL

Notary Public
My Commission Expires: Nov 6, 2019