

The Contractors Critic

Reporting on Safety, Productivity and Honesty in the Construction Industry.

LEONARD S. FIORE, INC., AN ABC MEMBER

Safety Problems and Legal Woes

Fiore garners shocking record of safety lapses

Big headaches sometimes come from small packages.

Take, for instance, Leonard S. Fiore, Inc., a relatively small, family-controlled, Pennsylvania construction company that has racked up a shocking record of serious federal safety violations.

The 150-employee company also has provoked an astonishing number of civil suits as it poured concrete and put up sticks over the last 50 years.

Moreover, when placed under an investigator's magnifying glass, this seemingly ordinary firm has accumulated a curious number of business aliases, especially considering its limited scope of action. (*See box, page 8*)

The company's work site violations alone are enough to make any safety conscious – or at least lawsuit leery party – sit up and take notice.

A review of the citations Leonard S. Fiore has collected in past years show Occupational Safety and Health Administration (OSHA) inspectors proposing over \$174,000 in past fines on some 130 violations.

What makes Leonard S. Fiore's safety violations so egregious and

final dollar sign so large is the 15 "repeat" citations that it has collected.

For example, on July 20, 2001, OSHA inspectors discovered some \$22,800 in safety violations involving failure to observe headgear and fall protection regulations at a Fiore job site in State College, Penn. (*Inspection*

#112994843)

A serious violation received a modest fine of \$2,800 and OSHA inspectors tacked on an additional \$20,000 "repeat" fine.

Similarly, an inspection that incurred two serious violations and two repeat violations earned Fiore a

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Safety scofflaws ask mercy for being tiny

While this particular safety violation did not generate the largest fine for Leonard S. Fiore, it does show how they maneuver when caught red-handed — as it was once a week, for four weeks in February 2001.

For example, an OSHA inspector went to a job site at 5990 Route 6N, Edinboro, Pa.

on Feb. 20 and 21 and reported observing a dangerously deployed aerial lift at the site. After some investigation, the inspector wrote up the citation and imposed a penalty of \$2,500. (*Inspection* #303705297)

The inspector's log of his further contacts reveals the Fiore

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Safety

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total initial fine of \$15,000 on Feb. 14, 2001 at Central High School in Mill Hall, Pa. (*Inspection #303343313*)

In this case, OSHA inspectors

OSHA inspectors propose \$174k in initial fines on 139 violations.

noted violations in four areas: requirements for “protective systems,” general excavation safety requirements, construction safety training and education and scaffolding safety rules.

Fiore’s golden rule for dealing with work hazards seems to be,

Scofflaw

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organization at its most arrogant and smarmy.

After several contacts with Fiore supervisor Gene Hadden in which the fine and the reasons for it were laid out and admitted by the company, a handwritten note was entered on March 5, 2001.

“[Received] call from Gene Hadden who questioned penalty amount. He felt [Fiore] didn’t get full reduction for size of [company]. He understood [OSHA] called [the company] to get number of employees & [OSHA] informed by a new secretary that [number] of employees was more than 250. Mr. Hadden

“Ignore until expensive.”

The Wilkes-Barre OSHA office inspected a Williamsport, Pa. project on July 16, 1999. Fiore received initial penalties of \$25,200 for one serious and two repeat offenses. (*Inspection #110030186*)

Underscoring Fiore’s arrogant level of indifference to safety regulations is the fact that not only has the company been frequently cited for “serious” and “repeat” offenses, but also for “willful” offenses, a characterization OSHA inspectors rarely use unless the offense is particularly blatant.

Fiore has been cited too often for safety violations that threaten life and limb. There is not enough room to describe them all in detail, but see the accompanying table on page 3 to get a sense of how heedless the company managers have been.

stated actual maximum was a little over 100 in summertime.* I checked file & [OSHA] allowed 20% reduction for size which would be same [percent] for 100-250 [employees]. This did not affect EISA [expedited informal settlement agreement] amount. Mr. H. agreed to accept — No changes.”

But, hey, as the Chinese waiter famously observed, “You don’t ask for nothing, you don’t get nothing.”

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* For the record, when it serves Fiore’s interests to be bigger, it is. In the most recent Dun & Bradstreet listing, Leonard S. Fiore, Inc. proudly claims 150 employees. All year long.

Fiore settles in wrongful death lawsuit

Janice A. Calvin, as administratrix for Samuel Calvin v. Leonard S. Fiore, Inc. et al

This lawsuit filed Jan. 14, 1993 in the Cambria County (Pa.) Court of Common Pleas, alleged that on March 18, 1991, 32-year-old Samuel Calvin, an ironworker employed by V.M. Ruggery Steel Erection Co., fell to his death while working on a limestone pulverizing plant being worked on in Edensburg, Pa.

V.M. Ruggery was a subcontractor for Fiore, and was carrying out work on a building for New Enterprise Stone. Calvin’s fatal injuries allegedly resulted from “negligence and carelessness” on the part of the New Enterprise Stone and Fiore, the plaintiff claimed.

The wrongful death suit alleged that “Samuel Calvin was on the roof of the building... [when] at or about 11:30 A.M., [Jan. 23, 1991]... [he] fell from the roof of the building to the ground level approximately sixty six feet below.” He suffered fatal injuries and was later declared dead at Conemaugh Valley Memorial Hospital. Mrs. Calvin was pregnant with the couple’s first child at the time of her husband’s death.

A settlement was ordered Aug. 27, 1996 in which Fiore was ordered to pay the widow \$75,000. (*Case #1993-129*)

OSHA violations

The following is a list of Occupational Safety and Health Administration (OSHA) violations involving Leonard S. Fiore, Inc. The listing only represents violations incurred in the past 20 years. The violations listed reflect initial citations and fines; the amounts may have been reduced or bargained down at later dates. For more information see the OSHA website at: <http://www.osha.gov>

Inspection #	Date	Location	Violation(s)	Fine
112663489	2/20/04	332 East Park Ave., Ste. #1, State College, PA	1 serious	\$1,600
112663620	2/18/04	2400 Cassady Ave., Huntingdon, PA	1 repeat	\$1,200
112900162	7/11/03	1576 Spring Valley Rd., State College, PA	1 serious, 2 repeat	\$12,200
112986146	4/28/03	Off Pollock Rd., University Park, PA	1 serious, 1 other	\$1,625
305834558	10/22/02	1300 Fox Hollow Rd., State College, PA	1 serious	\$1,300
112993308	6/26/02	1930 Cliffside Dr., State College, PA	2 serious	\$3,250
112662846	5/20/02	1281 Shortlidge Rd., State College, PA	1 serious	\$2,800
304185788	1/14/02	Garvey Manor, Hollidaysburg, PA	2 serious, 2 other	\$1,950
112662606	12/4/01	North Atherton St., State College, PA	1 serious	\$900
112994314	10/31/01	Off 17th St., Huntingdon, PA	1 serious	\$1,300
112994843	7/20/01	North Atherton St., State College, PA	1 serious, 1 repeat	\$22,800
303705297	2/21/01	5990 Route 6n, Edinboro, PA	1 serious	\$1,625
303343313	2/14/01	Central High School, Mill Mall, PA	2 serious, 2 repeat	\$15,000
112659750	2/7/01	243 South Allen St., State College, PA	1 repeat, 1 other	\$8,000
303705115	2/01/01	5990 Route 6n, Edinboro, PA	1 serious	\$875
112902093	8/25/00	103 Innovation Blvd., State College, PA	1 other	
112901996	7/27/00	500 Porter Rd., State College, PA	1 repeat	\$4,000
112895198	11/23/99	Pennsylvania State University, State College, PA	1 other	
110030186	7/16/99	140 West 3rd St., Williamsport, PA	1 serious, 2 repeat	\$25,200
116203647	4/21/99	Shield Building, University Park, State College, PA	2 serious, 2 other	\$1,950
116202987	4/5/99	29th St. & Blair Ave., Huntingdon, PA	2 serious, 1 repeat	\$5,600
301042735	1/22/99	Bus Transit Center, 3rd St., Williamsport, PA	2 serious, 2 other	\$2,600
116201229	11/9/98	Nittany Mall, State College, PA	2 serious, 1 other	\$3,025
116199167	6/19/98	Park Forrest Middle School, State College, PA	1 other	
109024588	8/15/94	Curtain & University Park Dr., State College, PA	1 serious	\$1,300
109022475	5/2/94	Off Shorlidge Rd., State College, PA	1 other	\$500
109027615	6/28/93	461 Beaver Ave., State College, PA	1 serious	\$975
102604725	5/31/90	277 West Beaver, State College, PA	4 serious, 2 willful, 2 other	\$20,700
102869005	7/27/89	126 High St., State College, PA	3 serious	\$1,260

OSHA cont'd, page 4

Osha violations

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Inspection #	Date	Location	Violation(s)	Fine
100396845	4/28/89	Martin St., Bellwood, PA	3 other	
000745737	4/26/89	Penn State Campus, Altoona, PA	5 serious, 1 other	\$1,610
100931666	11/22/88	Route 144 & Route 150, Bellfonte, PA	10 serious, 1 repeat, 1 other	\$5,900
100392463	7/29/88	Martin and Herman Dr., State College, PA	1 other	
000765214	7/15/88	400 Block, S. Allen St., State College, PA	8 serious, 1 repeat 3 other	\$11,800
000765545	11/4/87	1300 Fox Hollow Rd., State College, PA	1 serious	\$210
000817361	12/5/86	VA Hospital, Altoona, PA	1 other	
000810986	10/22/86	120 Burrowes St., State College, PA	1 serious, 1 repeat	\$2,000
000810648	7/9/86	Route 26 & Porter Ave., State College, PA	1 repeat	\$480
000810531	6/25/86	Off N. Atheraton St., State College, PA	1 serious, 2 other	\$160
100414937	5/22/86	Pollock Rd., State College, PA	2 other	
002815744	10/1/85	Furnace St. Exit, Cumberland, MD	1 other	
000603852	8/29/85	216 W. College Ave., State College, PA	1 other	
000607838	7/5/85	Off Route 322e, Lewistown, PA	1 serious, 3 other	\$360
000607887	6/27/85	206 W. College Ave., State College, PA	1 other	
000607721	5/15/85	Route 322 & Polloak Rd., State College, PA	1 other	
002830842	3/18/85	Furnace St. Exit, Cumberland, MD	1 serious	\$280
001147081	8/9/84	Owen Illinois Glass Container Div., Brinkville, PA	DEATH, 1 serious	\$640 *
001144518	7/12/84	Airport Rd., State College, PA	1 willful	\$8,000
001117597	6/15/84	Orchard Park Lots 71 & 72, State College, PA	3 serious, 2 other	\$1,170
001139567	4/23/84	Hastings & Bigler Rd., State College, PA	3 other	
001764521	4/12/84	North Ashwicken Ct., State College, PA	1 serious, 3 other	\$180
000191759	3/7/84	Navy & Marine Corps Reserve Ctr., Edensburg, PA	1 other	

Total proposed fines surpass \$174,000

*130 total OSHA violations, 51% serious or repeat violations
5 of the accidents occurred within the last 3 years alone!*

** A worker fell to his death on a Leonard S. Fiore jobsite. OSHA cited Leonard S. Fiore for violations of safety net rules among other things. According to OSHA records, Leonard S. Fiore has received multiple citations for fall protection violations since this 1984 accident.*

Fiore's self-inflicted legal woes

The following lawsuits are just a sampling of Leonard S. Fiore's voluminous and varied legal problems.

Litigation against Fiore:

Kathleen Green v. John C. Haas Associates, L. S. Fiore and Leonard S. Fiore, Inc., Case #2004-304; Filed 1/29/04, Centre County (Pa.) Court of Common Pleas

Attorneys for the plaintiff, Kathleen Green, requested a summons be issued in the recently filed civil action against Fiore.

Johnstown Housing Authority v. Leonard S. Fiore, Inc., Case #2000-46; Filed 6/5/00, Cambria County (Pa.) Court of Common Pleas

Fiore was the general contractor in the \$1.6 million "South Fork Development," which called for the construction of 15 three-bedroom homes for low income buyers in South Fork, Pa. The project commenced in September 1995 with completion slated for February 1997. When new residents moved in they discovered alleged "nail pops" in resilient tile floors and other damages.

The housing authority conducted an inspection in November 1999 which produced an expert opinion that concluded it would cost approximately \$14,590 to fix the damage. The housing authority sued Fiore, alleging breach of contract and negligence. Fiore denied the allegations in a 50-point letter, and asked the court to dismiss the charges. Other factors, including the actions of persons not employed by Fiore, contributed to the damages, they claimed.

Charles and Lynn Ertter, d.b.a. as C&L Installers v. Leonard S. Fiore, Inc., Case #1999-1122; Filed 4/12/99, Cambria County (Pa.) Court of Common Pleas

The Ertters sued Fiore for allegedly failing to pay a balance of \$28,120 owing on the installation of carpeting and ceramic flooring. The matter was settled out of court for an undisclosed sum, according to a civil discontinuance request filed Aug. 17, 1999.

Judith Ann Marks v. Wal-Mart Stores, Inc., (later amended to include) Leonard S. Fiore Construction Co., Case #1997-0557; Filed 1/31/97, Cambria County (Pa.) Court of Common Pleas

Marks, a disabled person, initiated a lawsuit against Wal-Mart and Fiore in which she alleged that she fractured her neck when her three-wheeled Amigo cart tipped over as she exited the Johnstown Wal-Mart store at about 8 p.m. on Oct. 25, 1996. She filed suit, seeking a sum greater than \$25,000 and demanding a jury trial. The defendants denied her claims.

Litigation cont'd on pg 6

Fiore v. Lott Bankruptcy Suit

Leonard S. Fiore, Inc. v. Lott Constructors, Inc., et al

Fiore filed this suit in 1999 in the Centre County (Pa.) Court of Common Pleas in connection with a matter entitled *Ben B. Floyd, trustee v. Leonard S. Fiore, Inc., in re: H.A. Lott, Inc., debtor* in the US Bankruptcy Court, Southern District of Texas, Houston Division.

This comical, "falling out among thieves" tale traces its roots to a construction project launched in Dec. 21, 1993 by a Texas corporation, operating under the business alias, Lott Constructors, Inc. (LCI), but authorized to do business in Pennsylvania.

The project in question was a \$36.2 million deal with the Pennsylvania Department of General Services to be the general contractor in the construction of the so-called "Academic/Athletic Convocation & Events Center" at the Pennsylvania State University in State College, Pa.

Work began in the project, but "on or about June 19, 1995, an involuntary Chapter 7 bankruptcy petition was filed involving

Bankruptcy, cont'd pg 6



Litigation

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During the course of the suit, Marks' vision was evaluated to determine whether her eyesight was sufficient to negotiate her way. The case was settled out of court, according to an April 29, 1999 statement declaring the case "discontinued, and forever ended."

Bay Harbour Electric, Inc. v. Leonard S. Fiore, Inc., Case #99-GN 3564; Filed in 1999 in Blair County (Pa.) Court of Common Pleas

Bay Harbour Electric sued Fiore alleging that on Nov. 21, 1996, Fiore had subcontracted Bay Harbour Electric to perform about \$427,500 worth of electrical work on Wal-Mart store No. 2540 in Clarion, Pa., but failed to pay an outstanding sum of \$15,998 due on the project since June 15, 1998.

Court documents dated Dec. 16, 1999 showed that the matter was settled for an undisclosed sum and discontinued.

Crown American Properties, L.P. v. Leonard S. Fiore, United Foundations; Case #1133 GN 98; Filed 2/23/98, Blair County (Pa.) Court of Common Pleas

It appears Crown American had the Blair County Sheriff's Department serve a summons on Fiore and United Foundations with the next available document showing the parties settled the issue between themselves on Aug. 23, 1998 without disclosing the terms.

Adam J. and Donna J. Craig v. Ambrose Electric Co., Leonard S. Fiore, Inc.; Case #1995-771; Filed 3/1/95, Cambria County (Pa.) Court of Common Pleas

The Craigs sued Fiore and Ambrose Electric for an amount in excess of \$25,000 for injuries Mr. Craig, a tile floor cleaner, allegedly suffered Feb. 19, 1994 when an electrical conduit fell on him while working at a project at the County Market in Richland Township.

A motion filed by the defendants Aug. 26, 1996 asking that the civil suit be dismissed was denied.

Sean Patrick Allen, et al v The Altoona Hospital, L.S. Fiore Inc., et al; Case #90 C.P. 2006 ; Filed 2/7/91; Blair County (Pa.) Court of Common Pleas

U.S. Postal Service Carrier Allen sued the Altoona Hospital and Fiore both as a business and as a person, for an unstated sum for injuries Allen sustained Dec. 5, 1988 when a bank of unsecured service boxes, which Fiore detached and failed to remount or post warnings, subsequently fell on Allen.



Bankruptcy

Cont'd from pg 5

H. A. Lott, Inc. (HAL)," an entity apparently significantly linked to Lott Constructors. A month later, Ben B. Floyd was appointed trustee.

Floyd as trustee alleged that LCI had HAL pay two invoices totaling approximately \$203, 664 to subcontractor Fiore, and further asserted that this constituted a fraudulent conveyance of funds.

Floyd claimed that after filing for bankruptcy and using LCI as a conduit, HAL had improperly funneled the funds to Fiore "with the actual intent to hinder, delay or defraud its existing or future creditors." Floyd asked the federal court to block the transfers. Fiore then hired a lawyer to defend itself.

On May 10, 1999, a federal judge dismissed the trustee's issue whereupon Fiore instituted the matter in an effort to recover the \$6,514 it claimed to have spent on defending itself.

The flap was apparently resolved when on Dec. 26, 2000, Fiore submitted a request to the Centre County court asking to dismiss the suit, on the assurances that the matter was "settled." (Case #97-3251)

Once burnt, yet never shy, Fiore still fiddles with pay

Way back in the early 1980s, skilled workers at three Pennsylvania public works projects complained that Leonard S. Fiore, Inc. was cheating them out of their fair wages.

The complaint led to a payroll audit by state authorities which concluded that, yes, indeed, Fiore had failed to pay the workers on the projects at the agreed-upon rates.

Fiore was accused of using floating classification designations — labeling a worker a carpenter one day and a plain laborer the next day — as ruse to circumvent prevailing wage laws.

The complaint eventually led to a controversial 1991 state Supreme Court split decision in *Leonard S. Fiore, Inc. v. Commonwealth of Pennsylvania, Department of Labor and Industry*, which to this day disadvantages skilled construction industry workers and elicits debate in the workplace among industry observers.

The 1991 decision essentially determined that, while there was ample evidence to show Fiore was gypping its workers, there insufficient evidence to prove the family-owned business was doing it “intentionally.”

The carefully devised decision by the business-friendly court went Fiore’s way, that is true. But the accompanying investigations and related opinions put executives at

the 150-employee, \$52 million-a-year firm on notice that, basically, “it’s not nice to fool Mother Nature.”

The initiating complaints from workers surfaced in the 1980s. It led to an audit by the state’s Prevailing Wages Division. The audit confirmed the pay shortage, but the company fought the findings the best it could.

By August 1986, Fiore and the Pennsylvania Department of Labor and Industry had worked out a proposed deal which called for Fiore to pay a small sum of money to the kernel group of complaining workers in exchange for a finding that there was no intentional violation of the Prevailing Wage Act.

A hearing was held on the issue on Aug. 15, 1986. The three affected workers showed up to represent their case, but Fiore proved a no-show.

At the next main hearing, Richard S. Fiore testified. Under cross-examination, Fiore painted a picture of a firm employing a “multi-classification” system that

allowed the company to shift workers from one tasks and craft-designation to another.

This “system” allowed the company to adjust the workers’ wages up and down, from day to day, more or less at will. No one was strictly a carpenter, a welder, or a laborer, Richard Fiore explained.

Fortunately for the company,

Pay, cont’d pg 8



Saga of Lenny Jr's 4th speeding ticket

You have to hand it to the Fiore, they’re tenacious, especially when they’ve been caught breaking the law, as they have been from time to time.

Take the time Leonard S. Fiore, Jr. got his fourth speeding ticket on July 10, 1988, “for traveling 73 miles per hour in a 40 mile-per-hour zone,” according to court documents.

At the hearing, he offered the marvelously-conceived excuse “that he had exceeded the speed limit because he was late for a social event for which he had already paid.”

“The hearing examiner found that Fiore’s justification for speeding 33 miles per hour above the speed limit was insufficient,” appeals judges later noted.

Moreover, Fiore had been previously convicted of speeding citations three times before between January of 1983 and August of 1985.

On March 2, 1989, the department mailed an official notice to Fiore... [imposing] a fifteen-day suspension of his driving privileges, effective April 6, 1989.” Fiore thereupon appealed to the Blair County (Pa.) Court of Common Pleas.

His argument at the subsequent hearing? “...[T]he suspension was unfair and too severe in light of his driving record over the past twenty-six years.”

Ticket, cont’d pg 10

welders and carpenters often discovered they had worked primarily in the laborer classification when payday rolled around.

The hearing officer concluded that Fiore had violated the Prevailing Wage rule, but not intentionally.

When state Labor and Industry Secretary, Harris Wofford, reviewed the hearing officer's decision he concluded otherwise.

Fiore's "multi-classification" scam led to poor record-keeping and ultimately allowed Fiore to violate the prevailing wage law. The company was therefore barred from bidding on any more state-funded construction projects.

Fiore appealed this decision and asked for the debarment to be suspended while it fought it out.

The request for suspension was denied and, in the end, a decision by an even higher state court panel affirmed the decision that the violation was intentional.

Fiore then asked the Supreme Court to suspend the debarment while it appealed the secretary's decision to the state Supreme Court. The request was granted.

State Supreme Court justices heard the arguments in this case in September 1990, and finally handed down its split decision Jan. 17, 1991.

As was said, the high court concluded while it was blatantly clear that Fiore had violated the wage law, there was not enough hard evidence and smoking guns

to prove it acted intentionally.

A dissenting judge noted forcefully, however, that in his opinion the company had to have known that some of the workers were working in one classification, yet were being paid at a lower classification.

While Fiore "won" the case, experts continue to argue about the controversial decision, in part,

at least that the justices had based their arguments on evidence law, not a strict interpretation of the law itself.

In other words, the court and Fiore had managed to recreate in the precincts of Pennsylvania's highest court the old vaudevillian courtroom skit in which the judge tells the mocking defendant, "You didn't do it, and don't do it again."

Fiore corporate IDs: what's in a name

Being the busy little bees they are, the Fiores have operated under at least seven corporate monikers. The same core family group has pursued profit under the following, sometimes interlocking, aliases:

Leonard S. Fiore, Inc.

Leonard S. Fiore, Sr., Chairman; Mary Fiore, Shareholder; Leonard S. Fiore, Jr., President; Richard F. Fiore, Vice President, Secretary; Michael A. Fiore, Treasurer

Fiore SC, Inc.

Leonard S. Fiore, Jr., President; Richard F. Fiore, Secretary; Michael M. Fiore, Treasurer

Fiore Financial Resources, Inc.

Leonard S. Fiore, Jr., President; Michael Fiore, Vice President, Secretary; Richard Fiore, Treasurer

Fiore Brothers, Inc.

Leonard S. Fiore, Jr., President; Richard Fiore, Secretary; Michael Fiore, Treasurer

Fiore, G. P., Inc.

Leonard S. Fiore, Jr., President; Richard F. Fiore, Secretary; Michael A. Fiore, Treasurer

Fiore (Sheetz) Limited Partnership

General partner, Fiore, G. P., Inc.

Fiore Development Limited Partnership

General partner, Fiore, G. P., Inc.

Little Guy v. Big Operator: manager axed for ethical stand

Veteran store manager Mark Ford was apparently only trying to help. Naturally, he got screwed for his efforts.

Court documents in the case of *Mark Ford v. Leonard S. Fiore Jr., et al*, filed July 11, 1995 in Blair County (Pa.) Court of Common Pleas show that Ford had worked for Fishers Big Wheel department store from 1977 to 1994.

The store in Altoona was part of a larger corporate entity known as Fishers Big Wheel, which filed for bankruptcy in 1993.

The bankruptcy would put the livelihoods of 24 people at risk, Ford said.

To forestall the economic tragedy, Ford tried to get financing to buy the store and its inventory, with the idea of saving the store and the jobs it provided.

However, Ford was unsuccessful in his attempt to secure financing, so he turned to the named defendants, Leonard Fiore, Jr., his wife Francis Fiore and two married couples: Michael and Mary McCaulley, and

Matthew and Darlene McCaulley.

The three couples offered to provide financing and “employ [Ford] as manager of the business for at least five years” at a starting salary of \$40,000. It was further agreed that Ford would get two percent (2%) “interest in the business for each year of employment, for a total of ten percent (10%),” Ford said in court documents.

And there other emoluments tossed in to sweeten the deal. Ford was allegedly promised a stepped bonus rigged to percentages of sales and regularly programmed salary increases.

“In reliance on these promises, Plaintiff abandoned his own attempts to purchase the business, continued in his position as manager and used his best efforts to assist Defendants in their purchase,” Ford said in his complaint.

The three couples purchased the business on Feb. 4, 1994 and Ford became manager. So far, so good from Ford’s point of view.

However, about 8 months later, on Oct. 24, 1994 he was abruptly and

“arbitrarily terminated,” court documents recounted.

Out the window went the promised five years’ job security. Down the drain went the promised \$40,000 salary.

But then came the zinger.

“The day that [Ford] was terminated, he was replaced by Janice Ebersole, an individual with very little background in the retail clothing business but a personal friend of... Leonard Fiore,” the complaint stated.

Ford objected. He demanded the owners honor their agreement. They refused. He sued seeking the \$200,000 the five-year employment plan would have provided.

The defendants may have needed Ford’s experience and expertise in setting up successful clothing store, but they were cagey enough to ace the sucker out when the time came.

Ford apparently lost his lawsuit, because on March 31, 1998 a Pennsylvania judge tersely denied his forlorn request to have the court’s previous rulings reconsidered. (*Case #95 CP 1276*)

No Wonderly he’s mad — Fiores were involved

In the ugly matter of *Richard Wonderly v. Fiore’s Country Garden Market, et al*, filed in Blair County (Pa.) Court of Common Pleas, we see yet more evidence of the Fiore family’s willingness to “use and abuse” people.

Wonderly brought suit in late 1998 seeking \$25,000 or more in damages from the market, its owner Leonard S. Fiore, along with co-owners Richard Fiore, Michael

Fiore, Nancy Fiore and Marilyn Seymore alleging breach of contract.

According to his original complaint, Wonderly started employment at the market in May 1996 as produce manager. Five months later he was called aside and promoted to “Deli, Seafood and Kitchen Manager.”

The Fiores summoned Wonderly to a meeting to work out the deal.

“At this meeting . . . the parties entered into an oral contract at that

point and time, that being October 19, 1996 for the continued employment of Mr. Wonderly until the time that he graduated from school,” the complaint recounted.

A few months later, in March or April 1997, the Fiores boosted his salary to \$460 a week.

However, “The Defendants breached that contract in April of 1998 when they told him that they

Wonderly cont’d, pg 10

Wonderly

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[couldn't] afford to pay everybody at Fiore Country Market and they told him not to come back," Wonderly contended.

Wonderly was disappointed, of course, but did not rush out to sue for wrongful termination. No, he simply took the ordinary first step of filing for the unemployment to which he was rightfully entitled.

The Fiores' immediate reaction to this says all that needs to be said about their ethics, morals and sense of fair play. It took a final cheapskate tactic by the Fiores to force the suit.

"Despite claims that he would be able collect ... Fiore's fought the unemployment and gave as a reason that Mr. Wonderly left on his own, and the Mr. Wonderly's claim was eventually denied by the Unemployment Office," the lawsuit stated.

Now bereft of the promised secure job and stripped of the unemployment benefits he was due, Wonderly got a lawyer and together they toted up his losses:

- \$39,920 for lost salary
- \$5,500 for bank loan for school
- \$3,000 for summer courses he would have paid for from earnings

According to available court documents, the Fiores at first functionally ignored Wonderly's lawsuit, as revealed by the judge's Jan. 27, 1999 peremptory dismissal of the Fiores' reaction, or lack thereof.

"Ordered, directed, and decreed that the Defendants' Preliminary Objections are denied and dismissed for failure to file a brief," the judge stated.

The Fiores of course denied everything. They called Wonderly "obdurate" and his suit "frivolous." They also used a curious bit of lawyer logic that Wonderly was "asking for wages plus the value of everything he would have spent the wages on thereby collecting twice." Asking for one's paycheck so one can pay the rent is not the same as

"[The Fiores] fought the unemployment and gave as a reason that Mr. Wonderly left on his own... Mr. Wonderly's claim was eventually denied by the Unemployment Office."

asking for the paycheck, plus the monthly rent.

Wonderly lost his suit based on the court's May 4, 2001 opinion that, "under Pennsylvania law, it is the *EMPLOYEE* who bears the burden of overcoming the strong presumption of employment at will."

The court also agreed with the Fiores' assertion that in Pennsylvania a "specific term of employment may not be inferred from an employer's oral statements."

That is to say, an employer can wine you, dine you, promise you the moon and throw in a \$10 raise, but, unless you can get the boss to put those blandishments in writing you should consider it all a lie — especially if it comes from a Fiore. (*Case #CP 98*)

Ticket

Cont'd from pg 7

The trial judge said she was inclined to lower Fiore's penalty. Such reductions, the department's representative said, were seldom, if ever, given and it that it would be difficult if not impossible to process.

The sympathetic judge nonetheless opted to lessen the penalty to 10 days suspension, saying "it seems very unfair to give him the maximum penalty just because of the PennDot's physical incapability...."

The bureau appealed the decision to the state's Supreme Court.

In a split decision June 3, 1991, the seven-judge court affirmed the lower trial court judge's ruling, saying that, without the ability to amend the bureau's actions, a trial courts ability to protect against "abuse of discretion" by the department would be meaningless.

Judge Madaline Palladino disagreed and on March 28, 1991 submitted a dissenting opinion, which argued that, when "the party charged [Fiore] has committed the violation for which the penalty was imposed, it is a manifest abuse of discretion for it to modify the penalty because it disagrees with it." (*Case #1482 CD 1989*)

LASER: Praised by Faint Damnation

Jim Pease apparently never tires of reminding HVAC contractors that the best way to respond to LASER's criticisms is to straighten their act. In a 2003 issue of the ABC of Wisconsin newsletter, Mr. Pease reiterated his expensive advice that, "The best preparation for LASER is for an employer to get its house in order."

"Damned by faint praise" is a timeless expression summarizing the tactic of praising someone so modestly as to cast doubt on both the sincerity and intent of the compliment. How LASER has had the good fortune of experiencing the reverse: it seems we've been "praised by faint damnation."

We point to a recently discovered opinion column by Jim Pease published way back on June 13, 2001 in the Wisconsin-based construction industry news organ, *The Daily Reporter*. (More later on this tardy discovery.)

Officials of the construction companies we report on sometimes criticize LASER. By and large, we ignore them. The occasional complaint is only to be expected, considering the natural antipathy between the watchdog and the watched. After all, the alert bulldog can generally rely on poor reviews from the cat burglar.

If the criticism has merit — happily a rare occurrence — we respond. Otherwise, we ignore them.

However, in this case, because Mr. Pease's article is so unintentionally complimentary to LASER's goals and services, we think it deserves special mention.

In his article, Mr. Pease first lays out his premise: research organizations — also known as "think tanks" — compile data on specific issues, analyze the data, write reports and distribute them to concerned parties.

Mr. Pease, who is affiliated with construction industry management, concludes that some of these groups are "pro-union," because the final reports issued are not always flattering to non-union construction employers. He calls these reports, "attacks."

You can tell by the title, "Are you ready for LASER?" he is particularly worried about us.

He correctly points out that the information we collect on companies includes:

- complaints, citations, charges and

lawsuits involving the employer

- claims that prevailing wage obligations have not been met
- Fair Labor Standards Act, tax, licensing and safety violations
- criminal activities; names and addresses of current and former employees
- past and present clients
- a list of all hazardous or toxic materials used
- copies of all financial statements,

“The best preparation for LASER,” Mr. Pease says, “is for an employer to get its house in order.”

profits and losses, liabilities and inventories of vehicles and equipment

- environmental permits issued to or applied for by the employer
- complaints of poor workmanship, delays, mistakes and overruns on job sites
- breakdowns of all minority employees versus nonminority employees by craft, man-hours, hourly wage, health benefits and pension benefits
- reports of fires, accidents and injuries
- bankruptcies of the employer or any of its owners or officers
- violations of immigration laws

"An example of one of these pro-union research organizations is already operating on the borders of Wisconsin and may soon be operating within the state. It's called Labor and Safety Employer Research or LASER," Mr. Pease warns.

Mr. Pease's implied argument seems to be that the mere act of broadcasting facts taken from the public record to the wider community so informed decisions can be made is somehow reprehensible.

Reprehensible, perhaps, in the same way a watchdog barking at a midnight prowler constitutes a public nuisance because we also wake the neighbors.

"Attacks by these research groups can be very insidious because a targeted employer may not know the attack is occurring," Mr. Pease alleges.

He goes on to claim that, "Organizations like LASER hide behind a shroud of secrecy."

Mr. Pease is not being entirely frank here. He knows that, in the interests and spirit of fairness, accuracy and full disclosure, LASER has a strict policy of

providing notice well in advance of everything we expect to report about the employer. We give the parties ample time to respond and, if necessary, point out any errors that may have been made.

Mr. Pease reveals this later in his article when he advises his construction industry readers to make sure they "Carefully review LASER's correspondence..."

Those most interested in maintaining secrecy are clearly the employers with all those "complaints, citations, charges and lawsuits" hidden in their closets.

And here we'd like to point out the sweet irony of Mr. Pease's accusation. We only learned about his article in May 2003, two years after it was first published in the construction industry newspaper.

Had he followed our policy of open disclosure in the interests of fairness and accuracy, we would have gotten a letter from him and a copy of his article several weeks before June 1, 2001. But that is water under the bridge.

Where we take the greatest pleasure in Mr. Pease's left-handed compliments is in his final recommendation to construction employers on dealing with what he ominously calls, "The threat of LASER."

"The best preparation for LASER," Mr. Pease says, "is for an employer to get its house in order and to avoid the type of conduct that LASER can use in an apparent effort to destroy an employer's reputation. An employer should develop and maintain a serious safety program designed to eliminate violations of all safety laws. Pay practices should be administered to strictly comply with federal and state wage and hour laws and federal, state and local prevailing wage laws. Violations of environmental, immigration, labor and employment, taxation and other business laws should be avoided. And, positive personnel practices that encourage a diverse work force that is treated with respect should be developed and implemented by the employer. If these things are done, LASER won't have anything to write about." (*emphasis added*)

We wholeheartedly agree. It is, indeed all they have to do.

So in the final analysis, it appears LASER may have had some influence upon the construction industry over the last decade — and that impact seems to be for the good. Of that we are proud.

Mr. Pease, we offer you our belated thanks. And, please keep up the good work.

Source Notes

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3564. Blair County Court of Common Pleas, PA.

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The information contained in The Contractor's Critic does not reflect a complete history of the business practices of Leonard S. Fiore, Inc. and/or its related companies. LASER is publishing information that contractors do not and will not publish about themselves. LASER has relied on the public record to present this information to the public in an effort to promote safety, productivity, honesty, and environmental compliance in the construction industry.

Leonard S. Fiore, Inc. has been given the opportunity to review this material for errors and inaccuracies. As of publication, Leonard S. Fiore, Inc. has not made any suggestions or refuted any of the information in this publication.

LASER, Inc. will continue to seek and publish additional data.

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