

ATTORNEY GENERAL OF THE STATE OF NEW YORK
LABOR BUREAU

IN THE MATTER OF THE INVESTIGATION OF
ELIOT SPITZER, ATTORNEY GENERAL OF THE
STATE OF NEW YORK OF

ADVANCED CONTRACTING CORP.; and REFLEX
SERVICES, INC.

**ASSURANCE OF
DISCONTINUANCE
PURSUANT TO
EXECUTIVE LAW § 63(15)**

WHEREAS, pursuant to the provisions of Executive Law § 63(12) and Article 19 of Labor Law, Eliot Spitzer, Attorney General of the State of New York, (hereinafter “OAG”) commenced an investigation in April 2005 into allegations that individuals performing labor at work sites contracted by Advanced Contracting Corp. and Reflex Services, Inc.. (collectively, the “Respondents”), were not paid time and one-half their regular hourly rate of pay for hours worked in excess of 40 in a work week (“overtime”) in violation of 12 NYCRR § 142-2.2.

WHEREAS, based upon the OAG’s investigation of the Respondents, the OAG determined that individuals performing labor at work sites contracted by the Respondents, and who had been referred to such work sites by a staffing service, had repeatedly worked hours in excess of 40 in a work week and had not been paid overtime.

WHEREAS, the Respondents have cooperated with the OAG in its investigation of the Respondents.

WHEREAS, the Respondents by their attorneys, Littler Mendelson, P.C., 885 Third Avenue, New York, New York 10022, have advised OAG of their desire and agreement to resolve the investigation without litigation.

WHEREAS, the Respondents deny that they are the employer of the individuals who performed labor at work sites contracted by the Respondents that had repeatedly worked hours in

excess of 40 in a work week and had not been paid overtime

WHEREAS, OAG accepts this Assurance pursuant to Executive Law § 63(15) in lieu of commencing or causing to be commenced any judicial proceeding or prosecution pursuant to Executive Law § 63(12), Article 19 of the Labor Law, or the Fair Labor Standards Act, concerning the payment of overtime wages to individuals performing labor at work sites contracted by the Respondents from the week ending December 28, 1999 to the week ending March 29, 2005.

AND WHEREAS, the execution of this Assurance shall not be deemed or construed to be an admission by the Respondents of any violation of Article 19 of the Labor Law, 12 NYCRR Part 142; or the Fair Labor Standards Act of 1938, as amended.

IT IS HEREBY AGREED:

Prospective Relief

1. The Respondents, upon signing this Assurance, will pay the OAG the sum of \$495,876.70 plus an additional \$10,000.00 in costs to the OAG for a total settlement amount of \$505,876.70. The total settlement amount shall be made by certified or bank check payable to the “New York State Office of the Attorney General” and forwarded to Devin A. Rice, Assistant Attorney General, New York State Office of the Attorney General, Labor Bureau, 120 Broadway, New York, NY 10271.
2. The Respondents collectively and independently will comply with all provisions of Article 19 of the Labor Law, 12 NYCRR § 142-2.2, and the Fair Labor Standards Act.

Distribution of Settlement Funds

3. The \$495,876.70 (the settlement amount less the costs) will be paid by the OAG to individuals who performed labor at work sites contracted by the Respondents from the week ending December 28, 1999 to the week ending March 29, 2005, who were referred by a staffing service, and who worked overtime hours for which they were not compensated in accordance with 12 NYCRR § 142-2.2. The OAG shall have the discretion to implement a claims process, including but not limited to, the posting and distribution of notice to potential claimants on Respondents' job sites or elsewhere and setting of a claims deadline. OAG shall also have the discretion to distribute the money paid among the claimants according to the best evidence available as to their time worked and monies owed.
4. At the end of the claims period implemented by the OAG, which shall under no circumstance exceed a period of one year from the date that the Respondents make the payment required by paragraph 1 of this Assurance, all unclaimed amounts shall be returned to the Respondents to be used for one or more of the following purposes:
 - a. the purchase of personal protective equipment for use by individuals employed, subcontracted, or contracted by the Respondents to perform demolition and other labor for which personal protective equipment may be desirable, or for which personal protective equipment is required by industry safety standards or law.
 - b. providing training to management, employees, or subcontractors of the Respondents concerning the use of personal protective equipment and the regulatory requirements of the Occupational Health and Safety Act that are applicable to work performed or to be performed by any employees, independent contractors, subcontractors, or persons

- contracted to work on job sites of the Respondents.
- c. providing training to the management and subcontractors of the Respondents concerning federal and New York state wage and hour laws.
5. If any unclaimed funds are returned to Respondents pursuant to paragraph 4 of this Assurance, Respondents shall submit a plan detailing how the unclaimed funds will be expended, prior to expenditure of such unclaimed funds, for review and approval by the OAG. Such plan must be submitted to the attention of the Bureau Chief, Labor Bureau, Office of the Attorney General.
 6. Any individual who is eligible for and elects to receive any portion of the settlement amount provided to the OAG pursuant to this Assurance shall execute a Release in the form attached hereto as **Exhibit "A"**, as a condition precedent to such individual's receipt of the settlement amount or any portion thereof. No individual will receive the settlement amount, or any portion thereof, without full and proper execution of the Release. The original of each executed Release will be provided to counsel for the Respondents no later than 30 days following execution thereof.
 7. The OAG may use any information received as part of its investigation of the Respondents or any other person or entity in determining distribution of the settlement amount, and the Respondents agree to assist the OAG with any reasonable request to ascertain the identity of individuals who may be eligible to claim the settlement amount or any portion thereof.
 - a. Any requests for information by the OAG to Respondents shall be sent through Respondents' counsel, Littler Mendelson, P.C.

Monitoring/Future Operations

8. On such occasions as the Respondents use contracted labor to perform demolition or other construction work through a third-party staffing service (or similar such entity), Respondents agree as follows:
 - a. Respondents will institute a protocol to ensure that such staffing service receives sums sufficient to compensate workers in accordance with all New York State and federal labor laws, including minimum wage and overtime laws.
 - b. In the event a third-party staffing service, that provides laborers or workers to Respondents for work on job-sites contracted to the Respondent, fails to pay such laborers or workers the mandatory minimum or overtime wages required by law, Respondents agree they will be financially liable for any such underpayment.
 - i. Any potential liability created pursuant to the operation of paragraph 8(b) of this Assurance is not an admission, agreement, or otherwise that Respondents' relationship with such contracted, third-party laborers or workers is to be construed as an employer/employee relationship.

Miscellaneous

9. The Respondents agree that they shall not, collectively or individually, seek or accept, directly or indirectly, reimbursement or indemnification by payment made pursuant to any insurance policy with regard to any or all of the amounts payable pursuant to this Assurance.
10. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance by any of the Respondents shall constitute prima facie proof of violation of Article 19 of the Labor Law, 12 NYCRR § 142-2.2, the Fair Labor Standards Act, and Executive Law § 63(12) in any

civil action or proceeding hereafter commenced by the OAG against such Respondent for the period of the week ending December 28, 1999 to the week ending March 29, 2005.

11. Nothing contained in this Assurance shall be construed to cover any claims of any type by any other state agency or any claims that may be brought by the OAG to enforce the Respondents' obligations, either joint or several, arising from or relating to the provisions contained in this Assurance. This Assurance does not bind any other federal, state, or local governmental agency.
12. This Assurance and any dispute thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
13. No failure or delay by the OAG in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise therefor preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided herein shall be cumulative.
14. The Respondents consent to the jurisdiction of the OAG in any action or proceeding to enforce this Assurance.
15. The Respondents enter into this Assurance voluntarily and represent that no threats, offers, promises, or inducements of any kind have been made by the OAG or any member, officer, employee, agent or representative of the OAG to induce the Respondents to enter into this Assurance.
16. This Assurance may be changed, amended or modified only by a writing signed by all parties hereto.
17. This agreement, consisting of eight (8) pages, plus Exhibit "A", and jurat, constitutes the

entire agreement between the Respondents and OAG and supercedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Assurance.

18. If any provision of this Assurance is found to be unenforceable, such finding shall not effect the enforcement of the remaining provisions hereof.
19. This Assurance shall be binding upon the Respondents and their successors, heirs and assigns.
20. This Assurance shall be effective and binding only when this Assurance is signed by all parties. This Assurance may be executed in one or more counterparts, each of which shall be deemed an original but which together shall constitute one instrument.
21. Respondents acknowledge that they have been effectively represented by legal counsel during this investigation and that they have reviewed this Assurance with their legal counsel, Andrew P. Marks and Gerald T. Hathaway, Littler Mendelson, P.C., 885 Third Avenue, New York, New York 10022, prior to execution of the agreement.

WHEREFORE, the following signatures are affixed hereto on the dates set forth below.

By: _____
EUGENE H. SKOWRONSKI, as
President of Advanced Contracting Corp.

By: _____
JOSEPH P. DONNOLO, as President of
Reflex Services, Inc.

By: _____
Counsel to Respondents
Andrew P. Marks, Esq.
Gerald T. Hathaway, Esq.
Littler Mendelson, P.C.
885 Third Avenue
New York, New York 10022

ACCEPTED:

ELIOT SPITZER
Attorney General of the State of New York

By: _____
DEVIN A. RICE
JAMES W. VERSOCKI
Assistants Attorney General
Labor Bureau
NYS Office of Attorney General
120 Broadway, 26th Floor
New York, New York 10271
(212) 416-8700

