Filed: 7/10/2024 7:11 PM
Clerk
Marion County, Indiana

STATE OF INDIANA) IN THE MARION SUPERIOR COURT NO. 13
) SS:
COUNTY OF MARION) CAUSE NO. 49D13-2106-PL-018812

SALINI IMPREGLIO/S.A. HEALY JOINT VENTURE and THE LANE CONSTRUCTION CORPORATION,

Petitioners,

v.

INDIANA DEPARTMENT OF LABOR and the INDIANA OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION,

Respondents.

PETITIONERS' PETITION FOR ATTORNEYS' FEES AND COSTS

Petitioners submit the following Petition for Attorneys' Fees and Costs in accordance with the Court's June 10, 2024 Order (the "Order").

Introduction

Getting to the Order was no small feat. It took over three years of litigation and near constant battles with Respondents regarding the propriety of being in front of this Court, the scope of the agency record, the adequacy of Respondents' document production, and the adequacy of Respondents' submission of documents for *in camera* review. (Order, ¶¶ 9, 11-12, 14, 24-26.) Petitioners overcame and proved Respondents' misconduct, "including repeated and continuing disobedience of Court orders, misrepresentations to the Court and Petitioners' counsel, and spoliation of evidence." (*Id.* at ¶ 24.) This misconduct "caused significant delays and needlessly forced Petitioners and the Court to expend significant resources." (*Id.* at ¶ 25.) It was

"unreasonable," and "Respondents and their counsel" acted "with disregard for Petitioners, the Court, and the orderly process of justice." (*Id.*)

In the end, however, Petitioners' diligence and legal work paid off. The Order was a complete victory for Petitioners and set aside all the Safety Orders and $61,100.00 in penalties. (Order, pp. 10-11; Pet., Ex. A.) Perhaps most significant of all was the setting aside of the Safety Order citing Petitioners for having committed a willful violation of IOSHA rules. A willful violation is a stain on a company's record as an employer and vendor. It is the harshest non-fatality violation an employer can receive. If the willful violation were upheld, there was a significant chance it would negatively affect Petitioners' business. (Ex. A, Decl. Bondanza, ¶¶ 5-15.)

Petitioners would not have had to file the Petition for Judicial Review in June 2021 and incur outside counsel fees but for Respondents violating their due process rights by refusing to certify the petition for administrative review to the Indiana Board of Safety Review. (Order, ¶¶ 18-19; Ex. A, Decl. Bondanza, ¶¶ 16-18.) After Respondents improperly denied Petitioners the opportunity for administrative review, Petitioners tried to reach an early resolution of this case. In summer and fall 2021, Petitioners approached Respondents about the possibility of settlement. But Respondents refused to engage in any settlement negotiations. (Ex. B, Aff. Sugarman, ¶ 13, Ex. 5.) Under these circumstances, Petitioners were left no choice but to litigate.

The litigation—during which Respondents "needlessly forced Petitioners and the Court to expend significant resources"—resulted in Petitioners incurring $334,216.17 in attorneys' fees and costs through June 30, 2024. Petitioners have paid all the attorneys' fees and costs owed through today's date (payment is due within 30 days of being invoiced), which totals $324,236.89,

reflecting services provided through April 30, 2024. (Ex. A, Decl. Bondanza, ¶ 19; Ex. B, Aff. Sugarman, Exs. 1-3.) Because Petitioners have paid the attorneys' fees, they are deemed presumptively reasonable under the market theory adopted by Indiana courts, and an examination of the fee-award factors courts consider under Indiana Rule of Professional Conduct 1.5(a) further confirms the reasonableness of the fees incurred.

Indiana courts have recently and repeatedly found that the fees charged by Bose McKinney & Evans LLP ("Bose") are reasonable and have ordered complete recovery of those fees. In November 2021, Judge Paul Felix awarded Bose's client every cent of Bose's $1,351,775.49 in attorneys' fees plus $132,107.88 in additional costs and expenses. Similarly, in December 2022, Judge Heather Welch of Marion Superior Court 1 ruled that the total attorneys' fees sought and rates charged by counsel, which included $181,211.43 charged by Bose, were reasonable. Numerous other Indiana courts have similarly concluded that Bose's fees are reasonable. The Court should award Petitioners the entirety of their fees and costs in challenging the Safety Orders due to the repeated misconduct of Respondents and their counsel in anticipation of and during this litigation marked by spoliation of evidence, misrepresentations to the Court and Petitioners' counsel, and the willful disregard of this Court's orders.

Legal Standard

The Court has wide discretion to sanction a party under its inherent authority and award attorneys' fees. *Allied Prop. & Cas. Ins. Co. v. Good*, 919 N.E.2d 144, 154-156 (Ind. Ct. App. 2009) ("We review a trial court's sanctioning power for an abuse of discretion.") The amount of an attorney fee award is likewise reviewed for an abuse of discretion. *Himsel v. Ind. Pork Producers Ass'n*, 95 N.E.3d 101, 112 (Ind. Ct. App. 2018). "An abuse of discretion occurs if a decision is clearly

against the logic and effect of the facts and circumstances before the court, or if the trial court has misinterpreted the law." *Id.* at 109.

Argument

1. **The Court should award Petitioners their costs and attorneys' fees as a sanction.**

The Court should award Petitioners all their attorneys' fees and litigation costs as a sanction for Respondents' repeated misconduct. The Court ordered that "[s]anctions under the Court's inherent authority are warranted" and concluded that "an award of attorneys' fees and costs of this action to Petitioners may be warranted." (Order, pp. 9-10.) Although the Court ruled that "vacating the Safety Orders is an appropriate sanction for the misconduct," the Court had already concluded that the Safety Orders were insufficiently served, and any attempt to cure the insufficient service was time-barred and therefore futile. (Order, ¶¶ 16-17, 28.) Because the deficient service was an independent basis for setting aside all the Safety Orders, the Court should award Petitioners' their attorneys' fees and litigation costs as a sanction.

Sanctions awarding Petitioners their attorneys' fees and costs are particularly appropriate here for several reasons. First, Respondents and their counsel repeatedly engaged in multiple types of misconduct, including spoliation of evidence, disobedience of court orders, and misrepresentations to Petitioners and the Court. (*Id.* at pp. 4-6, 9-10.)

Second, the misconduct spanned years, "caused significant delays and needlessly forced Petitioners and the Court to expend significant resources." (*Id.* at ¶ 25.) Respondents' disobedience of Court orders started when it failed to produce a single document by January 18, 2022, despite the December 17, 2021 order requiring Respondents to produce the complete supplemented agency record by that date. (*Id.* at ¶¶ 8-9.) Respondents did not complete their

production of what they claimed to be the complete agency record until August 25, 2023, more than a year-and-a-half after it was due. (*Id.* at ¶ 9.) Respondents' misrepresentations to the Petitioners and Court also spanned years. (*Id.* at ¶¶ 11-14.) Further, Respondents never submitted all documents they claimed were privileged for *in camera* review as required by the September 30, 2022 order. (*Id.* at ¶ 10.) Under these facts, awarding Petitioners their fees as a sanction is appropriate. *See generally Int'l Bus. Machines Corp. v. ACS Hum. Servs., LLC*, 999 N.E.2d 880, 894 (Ind. Ct. App. 2013) (affirming sanction and amount when there was insufficient explanation for delays in production of documents and the trial court "intervened numerous times in the discovery process to secure [non-party's] compliance").

Third, the misconduct was egregious and clearly unacceptable. (*Id.* at ¶ 24) (concluding that "Respondents and their counsel have engaged in conduct that is unacceptable in this Court.") Respondents willfully disobeyed court orders. (*Id.* at ¶ 24.) They failed to submit document(s) for *in camera* review despite being ordered to do so, and repeatedly being informed of the deficiency by Petitioners. (*Id.*) Additionally, Respondents "altered their Lane file **after** the Petition was filed." (*Id.* at ¶ 25.) They failed to explain or cure their improper removal of material from the agency file after issuing the Safety Orders in derogation of agency policy. (*Id.*) In sum, "Respondents and their counsel have acted in an unreasonable manner with disregard for Petitioners, the Court, and the orderly process of justice." (*Id.*) These facts warrant an award of fees as a sanction. *See Witt v. Jay Petroleum, Inc.*, 964 N.E.2d 198, 203 (Ind. 2003) (affirming sanction and fee award when conduct "was unquestionably contrary to the trial court's order"); *Littler v. Martinez*, 2020 WL 42776 at *33 (S.D. Ind. Jan. 3, 2020) (issuing sanctions when attorney "acted in

an objectively unreasonable manner by engaging in a serious disregard for the orderly process of justice").

Fourth, the misconduct was expressly approved by two IOSHA supervisors. (*Id.* at ¶ 25.) Indeed, "alterations and deletions to the Lane file were intentional, occurred after the Safety Orders were issued, after the Petition was filed, were expressly approved by IOSHA supervisors Berry and Galloway, and violated agency policy." (*Id.* at ¶ 15.) These troubling facts show that improper practices have infected Respondents at managerial levels and make granting this fee Petition proper.

Fifth, Respondents have had eight different attorneys of record in this matter over the past three years. Many different attorneys had opportunities to remedy Respondents' noncompliance with Court orders, correct misstatements to Petitioners and the Court, and cure Respondents' improper removal of material from the agency file after issuing the Safety Orders. The fact that the misconduct spanned so many attorneys demonstrates troubling systemic disregard of their duties to the Court, the regulated community, and opposing parties by both the Respondents and the Indiana Attorney General's Office. *See Littler*, 2020 WL 42776 at *32-34 (sanctioning the Indiana Attorney General's Office when its lack of training was partially to blame for attorney's misconduct and there was evidence "that [attorney] was not given good advice by her supervisors").

Sixth, the Court should award all fees and costs because Respondents' misconduct was material. (Order at ¶ 26.) For example, "communications that Respondents belatedly produced . . . show that IOSHA's interpretation of section 1926.800(r)(6)(ii) was reached only days before IDOL issued the willful safety order[.]" (*Id.*) This fact supported the Court's conclusion that "the

willful Safety Order violated Lane's due process rights to adequate notice." (*Id.* at ¶ 22.) In addition, the belatedly produced communications established that Respondents spoliated evidence. (*Id.* at ¶ 26.) This was material and substantially prejudiced Petitioners "because, under AOPA, the evidence available to Petitioners to challenge the Safety Orders is limited, and Respondents have altered this very evidence." (*Id.*) This fact supported the Court's conclusion that remand would be futile. (*Id.* at ¶ 28.)

Seventh, due to Respondents' misconduct, Petitioners incurred substantially greater attorneys' fees, including fees related to communications, filings, and hearings that would have been unnecessary had Respondents complied with their obligations to compile the complete agency record and follow this Court's orders. *Allied Property & Cas. Ins. Co. v. Good*, 919 N.E.2d 144, 154 (Ind. Ct. App. 2009) ("the sanctions imposed by the court against Allied were compensatory in nature to reimburse the Goods, their attorneys, and the county for costs incurred as a direct result of Allied's violation of the order in limine. The trial court did not abuse its discretion in sanctioning Allied."); *Littler*, 2020 WL 42776 at *33 (issuing sanctions when attorney's misconduct "required opposing counsel to prepare for and participate in multiple hearings and rounds of briefing regarding her and her clients' misconduct"). Awarding Petitioners their fees will provide redress for litigation expenses they never would have incurred but for Respondents' misconduct.

Eighth, all this misconduct occurred despite a recent Southern District of Indiana decision where the court sanctioned State defendants, their attorney, and the Indiana Attorney General's Office because of false representations to the judge, false discovery responses, and a brief that contained falsities. (*Id.* at ¶¶ 23-24) (citing *Littler*, 2020 WL 42776 at *26-30, 32-38). The Southern

District of Indiana hoped the sanctions order would deter misconduct in the future, which "is critical" for government defendants and employees "who are regularly involved in litigation[.]" *Littler*, 2020 WL 42776 at *37-38. It further hoped its order would encourage the State defendants and Indiana Attorney General's Office to take new training initiatives and practices seriously to avoid future misconduct. *Id.* at *35-36. In its conclusion, the court warned that it would impose "increasingly severe sanctions" if misconduct occurred in the future. *Id.* at *38. In this case, misconduct occurred after *Littler*, so in accordance with the Southern District of Indiana's order, "severe sanctions" are warranted.

Finally, an award of attorneys' fees as a sanction is supported by caselaw. In *Littler*, the court ordered the Indiana Attorney General's Office and attorney at issue to pay plaintiff's attorney all his requested $114,364.41 in attorney's fees and costs. 2020 WL 13881702 at *1, 5 (S.D. Ind. Jan. 28, 2020). Similarly, in *Witt*, the Indiana Supreme Court affirmed the trial court's finding of contempt and sanction of $108,487.32 in costs and attorneys' fees. 964 N.E.2d at 200, 202. This finding and sanction were joint and several, imposed against a plaintiff, his attorney, and his environmental consultant. *Id.* at 200. Additionally, the Indiana Court of Appeals has affirmed a sanction of $425,178.85 when the party seeking sanctions filed multiple motions to compel, the opposition to the motions was not reasonable, the trial court had to intervene numerous times to secure discovery compliance, and the sanctioned party did not provide an adequate explanation for its delays. *Int'l Bus. Machines Corp.*, 999 N.E.2d at 894-895. Applying the facts of this case to

the wealth of authority cited above establishes that the Court should award Petitioners all their fees and litigation costs.[1]

The Court invited argument regarding the allocation of any award between Respondents and their counsel. (Order, pp. 10-11.) Petitioners request that the Court hold Respondents and the Indiana Attorney General's Office jointly and severally liable for any award of attorneys' fees and litigation costs because all of them engaged in the misconduct at issue. Moreover, because Petitioners were not privy to communications between Respondents and their counsel of record, Petitioners do not know the extent some of the misconduct was driven by Respondents, their attorneys, or a joint effort.

2. <u>Bose's fees are reasonable</u>.

A. Bose's fees are presumptively reasonable because Petitioners paid them.

Bose's fees are presumptively reasonable because Petitioners paid them. *See generally Thomson Inc. v. Ins. Co. of N. Am.*, 11 N.E.3d 982, 1023 (Ind. Ct. App. 2014); *Mehta v. Shah*, 113 F. App'x 165, 169 (7th Cir. 2004) ("These are bills that Superior paid to its attorneys and there is a presumption that they would not pay fees that were unreasonable.") In fact, the Seventh Circuit holds that "the best evidence of the market value of legal services is what people pay for it. Indeed, this is not 'evidence' about market value; it is market value. Although courts interpolate the word 'reasonable' into clauses of this kind, the best guarantee of reasonableness is willingness to pay." *Balcor Real Est. Holdings, Inc. v. Walentas-Phoenix Corp.*, 73 F.3d 150, 153 (7th Cir. 1996); *see*

[1] Awarding all litigation costs, including, but not limited to deposition expenses, is appropriate. *See generally Weiss v. Harper*, 803 N.E.2d 201, 207-208 (Ind. Ct. App. 2003).

also In re Method of Processing Ethanol Byproducts & Related Subsystems ('858) Pat. Litig., 2022 WL 1402875, at *2 (S.D. Ind. May 3, 2022) (collecting cases).

Here, Petitioners have paid all of Bose's fees except for those incurred in May, June, and July 2024, which are not yet due (Bose's fees are due within 30 days of being invoiced). (Ex. B, Aff. Sugarman, ¶ 10, Exs. 1-3.) Thus, Bose's fees are presumptively reasonable.

B. The fees incurred by Petitioners are reasonable under Indiana Rule of Professional Conduct 1.5(a).

Indiana Professional Conduct Rule 1.5 provides "non-exclusive factors to be considered" when determining the reasonableness of attorneys' fees. *Waterfield v. Waterfield*, 61 N.E.3d 314, 332 (Ind. Ct. App. 2016). Those factors are:

> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) The fee customarily charged in the locality for similar legal services;
> (4) The amount involved and the results obtained;
> (5) The time limitations imposed by the client or by the circumstances;
> (6) The nature and length of the professional relationship with the client;
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) Whether the fee is fixed or contingent.

Id. The attorneys' fees Petitioners incurred are reasonable under these factors.

Facts supporting an award of all Petitioners' fees under these factors are discussed throughout this brief, in the Declaration of David Bondanza, the Affidavit of Bradley Sugarman, and the Order. A few additional points warrant discussion here.

First, this matter required significant time and labor evidenced by the length of the agency record (over 7,000 pages), length of the briefs on judicial review (58 pages for Petitioners, and 52 pages for Respondents), number of hearings, numbers of filings, and length of time Bose attorneys spent litigating this matter. Moreover, the issues presented were difficult, novel, and required high levels of skill to perform the legal work properly. Petitioners presented arguments under the United States and Indiana Constitutions, Indiana statutes, federal regulations, and Indiana common law. The novelty of this matter is demonstrated by Ellen Osborne's (the IOSHA inspector at issue) testimony that she had issued one willful violation in her 15-year career at IOSHA—namely, the willful Safety Order issued to Lane, which she herself would not have issued. (Pet'rs. Nov. 27, 2023 Br., p. 45.) Additionally, there is a dearth of caselaw involving section 1926.800(r)(6)(ii), the OSHA regulation Respondents claimed Lane willfully violated.

Second, Bose's rates are comparable to other large firms in Indianapolis for other complex litigation. This is evidenced by the fact that Indiana courts repeatedly conclude that Bose's fees are reasonable, including a recent seven-figure fee award. Specifically, in November 2021, Judge Paul Felix concluded that Bose's fees were reasonable and awarded Bose's client $1,351,775.49 in attorneys' fees. (Ex. C, p. 12.) Similarly, on two occasions, one in 2021 and one in 2022, Judge Heather Welch of Marion Superior Court 1 ruled that the total attorneys' fees sought and rates charged by counsel, which included six figures worth of attorneys' fees charged by Bose in each

case, were reasonable. (Ex. D, pp. 17-21; Ex. E, pp. 7-13.) These orders are not unique as courts throughout Indiana regularly hold that Bose's fees are reasonable.[2]

Third, although the penalties at issue were $61,100, the willful safety order had the potential to significantly harm Petitioners' business in multiple ways. Importantly, Petitioner Lane prides itself on its safety record, and it had never had a willful safety violation affirmed against it as an employer during over a century of business. (Ex. A, Decl. Bondanza, ¶¶ 4-15.) This exemplary safety record has been a valuable tool for Lane in the recruitment and retention of key employees in the competitive construction industry. (*Id.*) In addition, a construction company's safety record is a key consideration for many customers of construction services, and prospective customers routinely require companies to include information about the issuance of any safety violations or citations in bids or contract proposals. (*Id.*) Thus, the existence of a willful safety violation on Petitioners' record carried the potential to downgrade its future bids and contract proposals in the eyes of prospective customers, thereby threatening to harm Petitioners' business through the loss of future contracts, revenues, profits, and good will. (*Id.*) Consequently, it was of the utmost importance to Petitioners to challenge and overturn the willful safety violation to prevent the potential stain and harm it could have left on their future business prospects. This importance was magnified further due to Petitioners' steadfast belief—since affirmed by this Court—that the issuance of the willful safety violation was unfounded and violative of due process. In short, the cost to Petitioners of the willful safety order far exceeded

[2] *Stucker Fork Conservancy District v. Washington Township Water Corp.*, Ex. F, pp. 9-15 ("this Court finds that the rates charged by Bose McKinney in this matter were reasonable."); *Paul Shoopman and Shelley Shoopman v. The Sanctuary of Hamilton Cty. Homeowners Association, Inc.*, Ex. G, pp. 3-5; *Indiana Fine Wine & Spirits, LLC v. Cook*, 2020 WL 6905311, at *3 (S.D. Ind. Nov. 24, 2020) (awarding Bose's client all its requested fees); *Michael Onyett v. AES Corp., Todd Meadors*, 82C01-2306-CT-002986 (Jan. 18, 2024 dkt. entry).

the financial amount of the penalty associated with it. While the legal fees Petitioners incurred were significant, those costs paled in comparison to the threat the willful safety order posed to their business interests and reputation.

Finally, the experience, reputation, and ability of the attorneys working on this matter also warrant awarding Petitioners their fees and costs in full. Notably, the Indiana Court of Appeals has recognized Bose is a "reputable firm[]." *Americans for the Arts v. Ruth Lilly Charitable Remainder Annuity Tr. No. 1 U/A Jan. 18, 2002*, 855 N.E.2d 592, 595 (Ind. Ct. App. 2006). Further, as discussed above, Indiana trial courts have repeatedly awarded Bose's clients all their fees on numerous occasions. Those rulings signify a shared understanding by the Indiana judiciary that Bose has the requisite experience, reputation, and ability to obtain successful legal outcomes in novel and complex disputes at rates which are deemed reasonable within the Indiana legal market.[3] In sum, the fees incurred by Petitioners are reasonable under Indiana Professional Conduct Rule 1.5.

C. Respondents are responsible for Petitioners incurring fees in this matter.

Another appropriate factor to examine when making a fee award is the responsibility of the parties for the incurrence of the attorneys' fees. *Weiss v. Harper*, 803 N.E.2d 201, 208 (Ind. Ct. App. 2003). Here, that factor supports full reimbursement of Petitioners' fees because they arise from Respondents' unlawful and improper acts.

First, Petitioners would not have incurred judicial review fees but for Respondents' refusal to certify Petitioners' administrative appeal to the Safety Board. Indeed, Petitioners sought

[3] Moreover, as discussed above, Petitioners paid an hourly fee rate, so the fees have been market tested and are presumed to be reasonable. Here, the Petitioner paying those fees was also a company over 100 years old with an in-house legal department that deals with a wide range of sophisticated legal issues, particularly in the administrative sphere, and its in-house counsel deemed the bills reasonable for the market and the value obtained. (Ex. A, Decl. Bondanza, ¶ 19.)

administrative review of the Safety Orders, but Respondents violated their due process rights and refused to certify their administrative review to the Safety Board. (Order, ¶¶ 7, 18.) Thus, but for this unlawful and improper act, Petitioners would not have filed the Petition for Judicial Review on June 3, 2021, and incurred fees relating to the Petition. Instead, Petitioners would have handled the administrative appeal process in-house to avoid incurring outside legal fees. (Ex. A, Decl. Bondanza, ¶¶ 16-18.)

Second, Petitioners' fees arise from Respondents' (1) insufficient service of the Safety Orders and (2) their issuance of a willful safety order without any prior notice of Respondents' interpretation of the regulation at issue, both of which violated Petitioners' due process rights. (Order, ¶¶ 18-19.) Had Respondents respected Petitioners' due process rights, many of these costs could have been reduced or avoided altogether. Similarly, Petitioners incurred fees as a result of Respondents' repeated and egregious misconduct, including, but not limited to, communications, motions practice, briefings, and hearings related to that misconduct and to obtain the full agency record relating to the Safety Orders. Once again, had Respondents adhered to agency policies on preserving records and observed their agency record obligations and duty of candor to the Court, the costs of this litigation would have been greatly reduced.

Third, Respondents and their counsel elected to make this case more difficult and expensive than it needed to be. For example, Respondents rejected multiple overtures from Petitioners' counsel to engage in settlement negotiations, which could have led to a quicker and much less expensive resolution of this dispute. (Ex. B, Aff. Sugarman, ¶ 13, Ex. 5.) Respondents' refusal to explore settlement was exacerbated by their aggressive litigation tactics, which drove Petitioners' costs up even higher. Respondents employed these tactics from the outset by moving

to dismiss the Petition for Judicial Review, which the Court denied after full briefing and a hearing. (Order, Sept. 9, 2021.) Next, Respondents took the position that the agency record was only 21 pages long. (Order, ¶ 8.) After briefing and a hearing, the Court granted Petitioners' Motion to Supplement and Compel Agency Record. (*Id.*) Enforcing this victory was the next battle. Getting Respondents to produce documents responsive to the December 2021 order was a long and arduous process that took numerous briefs and hearings. (*Id.* at ¶¶ 9, 11-12, 14, 24-26; *see also* Mot. Clarify, Feb. 18, 2022; Resp. Mot. Clarify, March 7, 2022.) For all these reasons, Respondents are responsible for the attorneys' fees Petitioners incurred, so the Court should order Respondents to pay all their fees.[4]

Conclusion

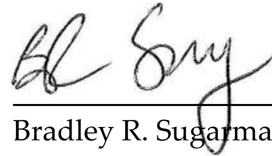
This action was not a run-of-the-mill case. It was factually complex with an agency record over 7,000 pages. (Order, ¶ 12.) It was legally complex with arguments under Indiana statutes, the United States and Indiana Constitutions, OSHA regulations, and Indiana common law. Further complicating this matter were the repeated acts of misconduct by Respondents and their counsel and their aggressive and unyielding litigation posture. Despite the recent *Littler* decision, Respondents committed multiple acts of misconduct spanning several years. The Court already has concluded that sanctions are warranted. (Order, p. 9.) The *Litter* court warned State defendants and the Indiana Attorney General's Office that "increasingly severe sanctions" would

---

[4] This includes the attorneys' fees Petitioners incurred since the Order, including the fees incurred in pursuing this fee petition. *See Barker v. City of W. Lafayette*, 894 N.E.2d 1004, 1009 (Ind. Ct. App. 2008); *Walton v. Claybridge Homeowners Ass'n, Inc.*, 825 N.E.2d 818, 825-826 (Ind. Ct. App. 2005) ("[T]he trial court did not err when it awarded the HOA attorney fees and costs associated with preparing and defending the fee petition."); Ex. C, ¶ 35. Petitioners anticipate submitting a supplemental affidavit with their reply brief, which is due 15 days after Respondents filed their response, describing and requesting costs and fees incurred since June 30, 2024.

be issued if misconduct occurred in the future. 2020 WL 42776 at *38. Considering *Littler* and the misconduct at issue in this case, awarding Petitioners all their attorneys' fees and litigation costs as a sanction, which amounts to $334,216.17 through June 30, 2024, is appropriate.

Respectfully submitted,



Bradley R. Sugarman, Atty. No. 22152-49
Daniel P. McInerny, Atty. No. 10337-71
Thomas F. O'Gara, Atty. No. 19678-49
Jackson L. Schroeder, Atty. No. 35355-49
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
(317) 684-5000
(317) 684-5173 (FAX)
bsugarman@boselaw.com
dmcinerny@boselaw.com
togara@boselaw.com
jschroeder@boselaw.com
Attorneys for Petitioners,
The Lane Construction Corporation and Salini Impreglio/S.A. Healy Joint Venture

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following via electronic transmission this 10th day of July 2024:

Kari Morrigan
Regan M. Perrodin
Bradley S. Davis
Deputy Attorney General
302 W. Washington St.
IGCS, 5th floor
Indianapolis, IN 46204
Jill.Haddad@atg.in.gov
Kari.Morrigan@atg.in.gov
Regan.Perrodin@atg.in.gov
Bradley.Davis@atg.in.gov

Bradley R. Sugarman, Esq.