

**IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
THIRD DIVISION**

**STATE OF ARKANSAS, *ex rel.*
TIM GRIFFIN, ATTORNEY GENERAL**

PLAINTIFF

v.

CASE NO. 04CV-23-1125

**GROUND ZERO CONSTRUCTION, INC.;
and ROD GARMAN**

DEFENDANTS

CONSENT JUDGMENT

Plaintiff, the State of Arkansas, *ex rel.* Tim Griffin, Attorney General, and Defendants Ground Zero Construction, Inc. and Rod Garman, including all of their subsidiaries, affiliates, agents, representatives, employees, successors, and assigns (“Defendants” together with the State or Plaintiff, the “Parties”), by and through their counsel, Kutak Rock LLP, have agreed to the stipulations and terms of this Consent Judgment (“Judgment”) and with all Parties having waived their right to appeal.

This Judgment resolves the Plaintiff’s investigation of alleged violations of the Arkansas Underground Facilities Damage Prevention Act, Ark. Code Ann. § 14-271-101 *et seq.* (“AUFDP”) and the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 *et seq.* (“ADTP”).

I. THE PARTIES

1. Plaintiff is charged with enforcing the provisions of the AUFDP and the ADTPA. *E.g.*, Ark. Code Ann. § 14-271-104(b)(1)(A); Ark. Code Ann. § 4-88-104.

2. Defendant Ground Zero Construction, Inc. is an Arkansas for-profit corporation registered with the Arkansas Secretary of State.

3. Defendant Rod Garman is the Owner, President, and/or Treasurer of Ground Zero Construction, Inc. He is also the registered agent of Ground Zero Construction, Inc.

II. BACKGROUND

4. On April 27, 2023, the State of Arkansas, *ex. rel.* Tim Griffin, Attorney General filed a Complaint against Defendants Ground Zero Construction, Inc., and Rod Garman. The State alleges that Defendants repeatedly damaged natural gas lines in violation of the AUFDDPA and the ADTPA.

5. The Parties are entering into this consent judgment, which incorporates the substantive terms herein.

III. STIPULATIONS

6. Defendants consent to jurisdiction and venue in this Court for purposes of entry of this Judgment as well as for the purpose of any subsequent action to enforce it. Plaintiff and Defendants agree to and do not contest the entry of this Judgment.

7. At all times relevant to this matter, Defendants' provision of excavation services constituted business, commerce, and/or trade in Arkansas.

8. At all times relevant herein, Defendants were "persons" who engaged in the practices alleged herein that constitute the provision of "services." Ark. Code Ann. § 4-88-102(5) and (7).

9. The Parties stipulate that Defendants attended a training on underground facilities damage prevention offered by the One Call Center after the State filed this action.

10. Pursuant to Ark. Code Ann. § 14-271-104(a)(2)(A), a person who violates the Arkansas Underground Facilities Damage Prevention Act three or more times in a twelve-month period shall be ordered to pay a civil penalty in an amount up to ten thousand dollars for each violation. Ark. Code Ann. § 14-271-104(a)(2)(A)(iii). For the purposes of calculating subsequent violations under the penalty provisions in Ark. Code Ann. § 14-271-104(a)(2)(A), Defendants stipulate that violations have occurred for a twelve-month period beginning the day this Court enters this Consent Judgment that is executed by all parties. This provision does not apply for the purpose of enforcing the terms of this Consent Judgment.

IV. JURISDICTION

11. The Court finds that it has jurisdiction over Defendants for purposes of entry of this Judgment as well as for the purpose of any subsequent action to enforce it.

12. The Court finds that it has jurisdiction over the subject matter and over the Parties for the purpose of entering and enforcing this Judgment. Ark. Code Ann. § 14-271-104(b)(1); Ark. Code Ann. § 4-88-104; Ark. Code Ann. § 4-88-112.

13. The Court finds that venue is proper. Ark. Code Ann. § 14-271-104(b)(1), Ark. Code Ann. § 4-88-104, Ark. Code Ann. § 4-88-112.

V. INJUNCTIVE RELIEF AND PAYMENT TO THE STATE

14. Defendants must comply with the provisions of the Arkansas Underground Facilities Damage Prevention Act. This includes, but is not limited to, the following acts:

15. Defendants shall not use mechanized equipment within the approximate location of an underground facility as those terms are defined by Ark. Code Ann. § 14-271-102 *et. seq* and Ark. Code Ann. § 14-271-110(a)(5)(A–B).

16. Defendants shall not excavate more than twenty days after they provide notice to the One Call Center unless they reinstate the notice procedure as set forth in Ark. Code Ann. § 14-271-112(b).

17. Defendants shall not excavate without notifying the One Call Center to obtain location markings as set forth in Ark. Code Ann. § 14-271-112(b)(1).

18. Defendants shall stay apprised of and comply with any changes to the Arkansas Underground Facilities Damage Prevention Act.

19. Defendants agree to pay the State of Arkansas a \$50,000.00 civil penalty under the provisions of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. 4-88-101 *et. seq.* Out of the \$50,000.00 civil penalty, \$30,000.00 is suspended subject to Defendants' strict compliance with the injunctive terms as set forth in this Consent Judgment. Said payment shall be used by Arkansas for such purposes permitted by state law, at the sole discretion of the Arkansas Attorney General. Defendants shall pay the unsuspended portion of the civil penalty (\$20,000.00) within thirty days from the day this Court enters this fully executed Consent Judgment. The State will provide Defendants payment instructions separately.

20. If, upon motion by the State, the Court finds that Defendants violated any provision of this Judgment, the suspended portion of the \$50,000.00 monetary judgment shall become unsuspended and the entire monetary judgment amount becomes immediately due, plus interest computed from the date of entry of this Consent Judgment.

21. The facts as alleged in the Complaint will be taken as true, without further proof, in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Consent Judgment.

22. Nothing in paragraph 20 should be construed to limit the Attorney General from filing an additional enforcement action under the Arkansas Underground Facilities Damage Prevention Act and the Arkansas Deceptive Trade Practices Act.; Ark. Code Ann. 4-88-101 *et seq.* for any subsequent violation.

VI. RELEASE

23. Following full payment of the amounts due by Defendants under this Judgment, Plaintiff shall release and discharge Defendants from all civil claims that the Plaintiff could have brought under the ADTPA and AUFDDPA based on Defendants' conduct as set forth in the Complaint. Nothing contained in this paragraph shall be construed to limit the ability of the Plaintiff to enforce the obligations that Defendants or their officers, subsidiaries, affiliates, agents, representatives, employees, successors, and assigns have under this Judgment. Further, nothing in the Judgment shall be construed to create, waive, or limit any private right of action.

24. Notwithstanding any term of this Judgment, any and all of the following forms of liability are specifically reserved and excluded from the release in Paragraph 23 as to any entity or person, including Defendants:

a. Any criminal liability that any person or entity, including Defendants, has or may have to the State.

b. Any civil liability or administrative liability that any person or entity, including Defendants, has or may have to this State under any statute, regulation, or rule not expressly covered by the release in Paragraph 25 above, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) State or federal securities violations; (iii) State insurance law violations; or (iv) State or federal tax claims.

VII. CONSEQUENCES OF NONCOMPLIANCE

25. Defendants represent that they have fully read this Judgment, have consulted with their counsel, and understand the legal consequences attendant to entering into this Judgment. Defendants understand that any violation of this Judgment may result in the Plaintiff seeking all available relief to enforce this Judgment, including an injunction, civil penalties, court and investigative costs, attorneys' fees, restitution, and any other relief provided by the laws of the State or authorized by a court. If the Plaintiff is required to file a petition to enforce any provision of this Judgment against one or more Defendants, the particular Defendant(s) involved in such petition agrees to pay all court costs and reasonable attorneys' fees associated with any successful petition to enforce any provision of this Judgment against such Defendant(s).

VIII. GENERAL PROVISIONS

26. Any failure of the Plaintiff to exercise any of its rights under this Judgment shall not constitute a waiver of any rights hereunder.

27. Defendants hereby acknowledge that their undersigned representative or representatives are authorized to enter into and execute this Judgment. Defendants are and have been represented by legal counsel and have been advised by their legal counsel of the meaning and legal effect of this Judgment.

28. This Judgment shall bind Defendants and their officers, subsidiaries, affiliates, agents, representatives, employees, successors, future purchasers, acquiring parties, and assigns.

29. Defendants shall deliver a fully executed copy of this Judgment to, or otherwise fully apprise, their executive management having decision-making authority with respect to the subject matter of this Judgment within thirty (30) days of the entry of this Judgment.

30. The settlement negotiations resulting in this Judgment have been undertaken by Defendants and the Plaintiff in good faith and for settlement purposes only, and no evidence of negotiations or communications underlying this Judgment shall be offered or received in evidence in any action or proceeding for any purpose.

31. This Court retains jurisdiction over this Judgment and the Parties hereto for the purpose of enforcing and modifying this Judgment and for the purpose of granting such additional relief as may be necessary and appropriate. No modification of the terms of this Judgment shall be valid or binding unless made in writing, signed by the Parties, and approved by the Court in which the Judgment is filed, and then only to the extent specifically set forth in such Judgment. The Parties may agree in writing, through counsel, to an extension of any time period specified in this Judgment without a court order.

32. The Parties agree that this Judgment does not constitute an approval by the Plaintiff of any of Defendants' past or future practices, and Defendants shall not make any representation to the contrary.

33. The requirements of the Judgment are in addition to, and not in lieu of, any other requirements of state or federal law. Nothing in this Judgment shall be construed as relieving Defendants of the obligation to comply with all local, state, and federal laws, regulations, or rules, nor shall any of the provisions of the Judgment be deemed as permission for Defendants to engage in any acts or practices prohibited by such laws, regulations, or rules.

34. Defendants shall not participate directly or indirectly in any activity to form or proceed as a separate entity or corporation for the purpose of engaging in acts prohibited in this Judgment or for any other purpose which would otherwise circumvent any part of this Judgment.

35. If any clause, provision, or section of this Judgment shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Judgment and this Judgment shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

36. Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall be considered one and the same Judgment.


APPROVED:

DEFENDANT, GROUND ZERO CONSTRUCTION, INC.

By:  _____

Date: 11-16-23

DEFENDANT, ROD GARMAN

By:  _____

Date: 11-16-23

COUNSEL FOR DEFENDANTS

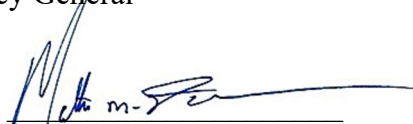
By:  _____

Date: 11/17/2023

PLAINTIFF, STATE OF ARKANSAS

Tim Griffin
Attorney General

By:



Date: 11/17/2023

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IT IS SO ORDERED.

Signed and eFiled by:
Hon. Thomas Smith
19th West Circuit Judge, Division 3



Case Title: STATE OF ARKANSAS ETAL V GROUND ZERO
CONSTRUCTION
Case Number: 04CV-23-1125
Type: JUDGMENT-CONSENT

So Ordered

A handwritten signature in black ink, appearing to read "Tom Smith".



JUDGE THOMAS SMITH