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Two common wage cases settled in Marion County

Prosecutor Curry: Contractors on notice to comply with common wage law

(Indianapolis, Ind.) Marion County Prosecutor Terry Curry announced today the resolution of what is believed to be the state's second and third criminal prosecutions over common wage violations. The state's common wage law requires contractors and subcontractors on public projects to pay a pre-determined wage as set by a locally appointed Common Construction Wage committee. Prosecutor Curry said the common wage requirement applies to all public, taxpayer-funded projects, including public works, schools, libraries and public housing.

"These public construction projects involve hundreds of thousands, if not millions, of public dollars. Failure to pay the common wage to employees on public works projects undermines the entire bidding process, taking business from legitimate contractors and underpaying employees their deserved income," Marion County Prosecutor Terry Curry said. "We have committed to investigating and prosecuting these violations to protect the employees, the competing businesses, and ultimately the taxpayers who are funding these projects."

Charges and a plea agreement have been filed against Art Rafati, owner of Artistic Construction, Inc., for an alleged failure to pay the common wage to four employees on a City of Indianapolis project. Rafati's company was awarded a contract from the city for access curbs, sidewalk, and ramp replacement and repair in Center Township. Rafati is alleged to have reported to the city that he was paying the prevailing wage, but was paying employees less. It is further alleged in the probable cause affidavit that Rafati submitted to the Indiana Laborers' Union information indicating that the employees worked fewer hours than accurate, and he underpaid fringe benefit pay to the union for those employees. Rafati has been charged with one count of Theft (D Felony) and four counts of Common Wage Violation (B Misdemeanors). He is expected to appear for an initial hearing this week and a plea agreement has been filed requiring Rafati to plead guilty to all counts and pay full restitution in the amount of \$9,175.18. If restitution is fully paid prior to sentencing, Rafati will receive Alternative Misdemeanor Sentencing. All other plea agreement terms are open.

A second case, filed by the Marion County Prosecutor's Office in 2013 against David Roark, has also been resolved by a plea agreement. Roark has agreed to plead guilty to Theft for

having underpaid drywall installers for their work on the Barton Towers project in downtown Indianapolis. The Barton Towers project was federally-funded and thus subject to prevailing wage requirements of the Federal Davis-Bacon Act. The Davis-Bacon Act is similar to Indiana Common Wage, in that contractors are required to pay employees the "prevailing local wage." Roark's company, D. Roark Drywall, LLC, had been awarded a 2010 contract for \$417,607 as part of a \$7 million project led by the Indianapolis Housing Agency. Two employees were paid as little as \$12.00 per hour when the required minimum common wage plus fringe benefits was \$39.91 per hour. As part of the plea agreement, Roark is expected to make restitution in the amount of \$24,311 to the two employees.

The Marion County Prosecutor's Office had previously obtained the state's first criminal conviction for common wage violations in 2011 against White River Mechanical, Inc. White River Mechanical had been responsible for plumbing, heating, and air work as a subcontractor on two Indianapolis Public Schools projects. An investigation into the company uncovered that 18 employees were underpaid for their work, totaling more than \$50,000 in unpaid wages and benefits.

For more information on the Marion County Prosecutor's Office, visit www.Indy.gov/MCPO or subscribe to the Prosecutor's newsletter at <http://www.indy.gov/eGov/County/Pros/Pages/contactus.aspx>.

For more information on the state's Common Construction Wage law, visit the Indiana Department of Labor's website at www.in.gov/dol/2723.htm.

A charge of a crime is merely an accusation, and the defendant is presumed innocent until and unless proven guilty.

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NOTE: Charging information and affidavits of probable cause are available at the links below:

David Roark: <https://www.dropbox.com/s/h6ut3hvgghmfo47/David%20Roark%20-%20Common%20Wage.pdf>

Art Rafati: <https://www.dropbox.com/s/yaunhioo6es448w/Art%20Rafati.pdf>