

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
DOCKET #: 2007-10802

COMMONWEALTH

V.

POWERS FASTENERS, INC.

DEFERRED PROSECUTION AGREEMENT

The Office of the Attorney General of the Commonwealth of Massachusetts and Powers Fasteners, Inc. ("Powers") hereby enter into this Deferred Prosecution Agreement (the "Agreement").

I. The Criminal Indictment

The Commonwealth conducted a criminal investigation into matters relating to the collapse of a portion of the I-90 Connector Tunnel ("Connector Tunnel"). The criminal violation charged against Powers as it relates to this investigation is described in the Indictment, *Commonwealth of Massachusetts v. Powers Fasteners, Inc.*, SUCR Indictment No. 2007-10802 ("Indictment"), a copy of which is attached as Exhibit A, and the Commonwealth's allegations in support of that indictment are described in the Statement of the Case, and the Amended Bill of Particulars, copies of which are attached hereto as Exhibit B. Powers entered a not guilty plea, and has filed with the Court a

Motion to Dismiss the Indictment contesting the allegations described in the Statement of the Case and Amended Bill of Particulars.

II. Statement of Facts

The facts below are set out for the purposes of this Agreement only, and shall not constitute admissions by any party for any purpose whatsoever.

1. The Central Artery/Tunnel Project (the "CA/T Project" or the "Big Dig") is a major public transportation infrastructure project built through downtown Boston, Massachusetts. The CA/T Project was planned, designed, and constructed over a period of more than twenty years from 1985 to the present.

2. The Connector Tunnel was constructed as part of the CA/T Project, to connect Interstate Route 90 (the Massachusetts Turnpike) to the depressed artery leading to the Ted Williams Tunnel and Logan Airport. Modern Continental Corporation Inc. ("MCC") contracted with the Massachusetts Highway Department ("MHD") to construct the Connector Tunnel ceiling, which was suspended from the Connector Tunnel's concrete roof by a system that included steel anchors inserted into the roof and affixed by an epoxy adhesive. Installation of the Connector Tunnel ceiling system was commenced, and substantially completed, in 1999.

3. Bechtel/Parsons Brinckerhoff ("B/PB") contracted with MHD to act as the Management Consultant to the MHD and the Massachusetts Turnpike Authority ("MTA") on the CA/T Project. B/PB was responsible for, among other items, managing the design and construction of the Project. B/PB was responsible for overseeing and monitoring the construction contractors' compliance with the construction contract.

4. On July 10, 2006, Angel and Milena Del Valle were traveling eastbound in the left lane of the Connector Tunnel to the Ted Williams Tunnel in Boston, Massachusetts when a section of the concrete suspended ceiling in the Connector Tunnel collapsed and struck their vehicle. Milena Del Valle, who was occupying the front passenger seat, was killed, and Angel Del Valle was injured.

5. The concrete panels in this section of the suspended ceiling were held in place by steel frames which were supported by adjustable hanger rods connected to roof brackets. The brackets were attached to the Connector Tunnel roof by stainless steel bolts that were held in place by an epoxy adhesive. This system was used in the easternmost section of all three bores of the Connector Tunnel and intermittently throughout the remainder of the Connector Tunnel.

6. Gannett Fleming ("Gannett") contracted with MHD to act as the designer responsible for the final design of the suspended ceiling system in the Connector Tunnel. MCC contracted with MHD and was the contractor responsible for constructing the suspended ceiling system in the Connector Tunnel. Newman Renner Colony ("NRC"), contracted with MCC to provide components of the suspended ceiling system, including the epoxy anchors.

7. The Commonwealth contends that both Gannett and MCC were dependent upon the availability of accurate and complete representations regarding the epoxy from NRC and NRC's supplier, Powers. Powers contends that as the design professionals and sophisticated users of construction materials, Gannett and MCC had an independent responsibility to investigate all characteristics of the epoxy which they considered relevant to the design and construction of the Connector Tunnel, including but not limited

to conducting independent testing; reading and heeding all available published materials concerning the epoxy; and, upon consultation with NRC and/or Powers, permitting those entities to perform on-site testing and evaluation as requested. Powers further contends that it took reasonable steps to provide NRC, Gannett and MCC with accurate and complete representations regarding the epoxy, and further, upon consultation, Powers requested permission to conduct on-site testing, which permission was denied by MCC.

8. The Commonwealth contends that the epoxy that was used to suspend the ceiling was Power-Fast, Fast Set (item ## 8402 and 8422), a product marketed by Powers and sometimes labeled as NRC-1000 Gold, item # 8431 (herein collectively referred to as "Fast Set"). Powers also sold an epoxy under the name Power-Fast, Standard Set ("Standard Set").

9. Gannett's design for the suspended ceiling for the eastern-most section of the Connector Tunnel was finalized in October 1998. The specifications called for the use of a chemical adhesive type anchor system.

10. Before making a required submission to Gannett and B/PB for their approval of the chemical adhesive type anchor system, MCC received from Powers a draft report prepared for the International Conference of Building Officials ("ICBO"). The report stated that Standard Set epoxy was approved by ICBO for use for long-term dead loads such as the Connector Tunnel's suspended ceiling, but that Fast Set was approved only for short-term loads such as those resulting from intermittent but not sustained forces. MCC included this report as part of its required submission to Gannett and B/PB. Powers contends that prior to the approval of the Power-Fast epoxy anchors for use in suspending the Connector Tunnel ceiling, Powers disclosed to numerous

entities responsible for the design, construction, materials, and safety of the Connector Tunnel either the fact that Fast Set had failed the creep test, or the ICBO limitation of Fast Set with respect to sustained loads, or both.

11. Powers' 1997 Design Manual used for the Connector Tunnel ceiling distinguished Fast Set from Standard Set with respect to attributes like gel and curing times, but did not state any limitation of Fast Set with respect to sustained loads.

12. In the fall of 1999, representatives from B/PB and MCC observed five locations where epoxy anchors used to hold the suspended ceiling in place had migrated or displaced from the roof of the Connector Tunnel approximately one month after they were first installed. The failed anchors caused B/PB to issue a Deficiency Report ("DR-1") to MCC.

13. B/PB instructed MCC to conduct a physical inspection of the anchors. Powers representatives met with MCC and B/PB onsite and observed the anchor displacement. Powers did not offer any conclusions why the anchors were failing, but did offer potential explanations and, in response to a request from MCC, offered a recommendation as to how to replace and retest the failed anchors.

14. The Commonwealth contends that in 1999, Powers knew that the Connector Tunnel contractor intended to use Power-Fast to anchor the Connector Tunnel suspended ceiling and was aware that the Fast Set formulation had failed "creep testing" under applicable industry standards. The Commonwealth contends that Powers understood that Fast Set was unsuitable for sustained loads. The Commonwealth further contends that when Project officials noted anchor displacement in the Connector Tunnel ceiling in 1999 and asked Powers for an explanation, Powers knew that either Fast Set or

Standard Set was used to secure the anchors; knew that there was a likelihood that Fast Set was used to secure the anchors and either ignored or failed to confirm that fact. The Commonwealth further contends that Powers recklessly misled Project officials into adopting an inadequate remedy for failed ceiling anchors that Powers employees observed during a 1999 inspection of the suspended ceiling. Powers contends that it believed that Standard Set was intended to be used and believed that it was used for the suspended ceiling.

15. The National Transportation Safety Board ("NTSB") conducted an investigation into the Accident and concluded that the epoxy sold by NRC to MCC was the Fast Set epoxy, manufactured by Sika Corporation and sold by Powers to NRC. The NTSB further determined that the use of the Fast Set epoxy was the cause of the ceiling collapse, because that formulation had poor "creep resistance," that is, it was not capable of sustaining the long-term loads inherent in the suspended ceiling design.

III. Compliance Agreement

Powers has adopted a Compliance Agreement which sets forth certain standards of conduct to protect public safety and to promote corporate integrity. (Attached hereto as Exhibit C) The Compliance Agreement is a material term of this Agreement.

IV. Deferral of Prosecution

In consideration of Powers' entry into this Agreement and its commitment to comply with all of the terms of the Compliance Agreement incorporated into this Agreement, the Attorney General, as a condition of this Agreement, will forthwith enter a nolle prosequi of the Indictment pursuant to Mass.R.Crim.P. 16(a) upon a certification by Powers that Powers has met its obligations under Paragraphs 2-6 of the Compliance

Agreement, which certification will be made within 120 days or less of Powers' execution of this Agreement. The Indictment shall be reinstated only if within three years of the entry of the nolle prosequi, Powers knowingly and intentionally breaches a substantial and material term of the Compliance Agreement, which breach has or may adversely affect public safety, and which Powers fails to correct within ten (10) business days after notice from the Commonwealth. Upon a good faith determination by the Attorney General that such an uncured breach has occurred, the Attorney General may file the Indictment in Suffolk Superior Court and it shall have the same effect as if the nolle prosequi had not been entered. In the event of re-filing of the Indictment, Powers expressly waives all rights to challenge the re-filing of the Indictment under any statute of limitations, all rights to make any constitutional, statutory or other claim concerning pre-indictment delay, and all rights it may have to challenge the re-filing of the Indictment based on any alleged violation of Powers' due process rights and any and all rights under *Commonwealth v. Miranda*, 419 Mass. 1 (1993). Furthermore, all time between the entry of the nolle prosequi and re-filing of the Indictment shall be excluded from consideration of any speedy trial claim. Provided, however, that notwithstanding any provision contained herein, following the re-filing of the Indictment, Powers shall have the right to move to dismiss the Indictment on the ground that it was re-filed in violation of the terms of this Agreement, in addition to the rights and defenses set forth below.

Powers' entry into this Agreement does not constitute a waiver of its right to pursue any existing defense to the Indictment including but not limited to its presently pending Motion to Dismiss in the event that the Indictment is re-filed, or to otherwise contest the Indictment to such extent as it may currently do so. No additional rights shall

be created by the re-filing of the Indictment. This Agreement and any actions taken by Powers pursuant hereto are solely for resolution of a pending and contested criminal charge and cannot be used for any purpose in any civil, criminal, or administrative proceeding except and only to the extent required for purposes of enforcing the Agreement.

V. Other Terms

It is understood that this Agreement is binding on the AG but specifically does not bind any other federal, state or municipal agencies, and any other federal, state or municipal licensing, or regulatory authorities.

This Agreement sets forth all the terms of the Agreement between Powers and the AG. No modifications or additions to this Agreement shall be valid unless they are in writing and signed by the AG and Powers' attorneys, and a duly authorized representative of Powers Fasteners, Inc.

Powers' entry into this Agreement, and all waivers by Powers of rights under this Agreement, are knowing and voluntary and in express reliance on advice of counsel.

Powers does hereby bind itself to this Agreement and all of its terms and conditions by its undersigned attorney and Chief Executive Officer, pursuant to authority granted by its Board of Directors in the form of a Board Resolution (a copy of which is attached hereto as Exhibit D).

Consistent with the Commonwealth's obligations under G.L. 258B, §3, the Commonwealth has consulted with the family of the victim. The family has expressed their support for this resolution. See Letter to Attorney General Martha Coakley; March

5, 2008, and Statement on behalf of family; December 21, 2007 (copies of which are attached hereto as Exhibit E).

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COMMONWEALTH OF MASSACHUSETTS

By its attorneys,

MARTHA COAKLEY
ATTORNEY GENERAL

By:

Paul F. Ware (by AMK)

Paul F. Ware, Jr., BBO #516240
Special Assistant Attorney General
Anthony Feeherry, BBO #160860
Special Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617)727-2200

POWERS FASTENERS, INC.

By its attorneys,

Max D. Stern, BBO #479560
Martin E. Levin, BBO #296150
Stern Shapiro Weissberg & Garin, LLP
90 Canal Street, Ste 500
Boston, MA 02110
(617)742-5800

By its Chief Executive Officer,

Christopher Powers
Chairman, Board of Directors
Powers Fasteners, Inc.
2 Powers Lane
Brewster, NY 10509

Dated: December 17, 2008

COMMONWEALTH OF MASSACHUSETTS

By its attorneys,


MARTHA COAKLEY
ATTORNEY GENERAL

By:

Paul F. Ware, Jr., BBO #516240
Special Assistant Attorney General
Anthony Feeherry, BBO #160860
Special Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617)727-2200

POWERS FASTENERS, INC.

By its attorneys,


Max D. Stern, BBO #479560
Martin E. Levin, BBO #296150
Stern Shapiro Weissberg & Garin, LLP
90 Canal Street, Ste 500
Boston, MA 02110
(617)742-5800

By its Chief Executive Officer,


Christopher Powers
Chairman, Board of Directors
Powers Fasteners, Inc.
2 Powers Lane
Brewster, NY 10509

Dated: December 17, 2008

Exhibit A

INDICTMENT
SUCR2007- 10802

~~ATTORNEY GENERAL~~

Involuntary Manslaughter
M.G.L. c. 265, § 13
1 Count

Commonwealth of Massachusetts

SUFFOLK, SS.

At the SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT FOR
CRIMINAL BUSINESS, begun and holden at the CITY OF BOSTON, within and for the County
of Suffolk, on the First Monday of August in the year of our Lord two thousand and seven.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath
present that

POWERS FASTENERS, INC., a New York corporation

at Boston, in the County of Suffolk, on July 10, 2006, did assault and beat one Yetty Milena DelValle,
and by such assault and beating did kill the said Yetty Milena DelValle.

Specifically, that POWERS FASTENERS, INC., a New York corporation on divers dates
from on or about May 1, 1999 to on or about July 10, 2006, did engage in wanton or reckless conduct
and/or did wantonly or recklessly omit to act, and that such wanton or reckless conduct and/or
omission or omissions was a proximate cause of the death of Yetty Milena DelValle at Boston, in the
County of Suffolk, on July 10, 2006.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in
such case made and provided.

Paul F. Lavee
Special Assistant Attorney General

A TRUE BILL.

John M. Lavee 8/8/07
Foreperson of the Grand Jury.

Superior Court Department - Criminal Business
AUG 08 2007

Filing, 2007

Returned into said Superior Court by the Grand Jurors and ordered to be filed.

Maureen A. Hennigan
Clerk of Court

A TRUE COPY

Attest *[Signature]*
Assistant Clerk-Suffolk
Superior Criminal Court

Exhibit B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
DOCKET #: 2007-10802

COMMONWEALTH

V.

POWERS FASTENERS, INC.

COMMONWEALTH'S STATEMENT OF THE CASE

The Commonwealth respectfully submits this statement of the case. This statement is not a full and complete recitation of the facts supporting the above-captioned case, nor is it a bill of particulars. The purpose of this document is to aid the Court, defense counsel, and the probation department in assessing the general nature and circumstances of the crime alleged.

The Central Artery / Third Harbor Tunnel Project ("Project"), commonly known as the "Big Dig," was a jointly funded state and federal transportation project intended to improve travel in Boston by replacing the old elevated Central Artery with a new tunnel so that I-93 could run under rather than through the heart of the city, extending the Massachusetts Turnpike (I-90) to Logan Airport through a new tunnel under Boston Harbor (the "Ted Williams Tunnel"), and constructing a new bridge over the Charles River to carry I-93 north of the city. Construction on these projects commenced in 1991, proceeded in stages, and was substantially complete by 2005.

Connecting the Massachusetts Turnpike to Logan Airport required construction not just of the new Ted Williams Tunnel ("TWT") under the harbor, but of a connector tunnel between the TWT where it emerges in South Boston and the original end of I-90 in

downtown Boston ("I-90 Connector Tunnel"). For the most part, the TWT, which opened in 1995, was built before the I-90 Connector Tunnel, which opened in 2003. However, a portion of the I-90 Connector Tunnel structure closest to the TWT ("portal area") was built at the same time as the TWT to allow the construction of a temporary traffic ramp.

The final design for the portal area ceiling called for the use of post-installed adhesive anchors for the suspended ceiling. The specifications did not require the use of any particular manufacturer's adhesive anchor, but clearly identified the loads that the anchors would be required to sustain.

Prior to beginning construction, the contractor was required to prepare "submittals," documents describing the materials and methods it proposed to use to obtain the necessary approvals. Attached to the adhesive anchor submittal were pages from Powers Fasteners' 1997 design manual pertaining to a Powers epoxy product known as "Power-Fast." The Powers manual pages indicated that there were two versions of "Power-Fast," "Fast-Set" and "Standard-Set," but did not disclose any difference between Power-Fast Fast-Set and Power-Fast Standard Set epoxy that was pertinent to the tunnel ceiling. While Powers' distributor did order a small quantity of Standard-Set for other projects, invoices from the distributor to the contractor indicate that only Fast-Set was delivered to the I-90 Connector Tunnel job site. Subsequent forensic testing has confirmed that only Fast-Set was used for the tunnel ceiling.

Within a few months of installation of the ceiling anchors the contractor observed anchors pulling out of the ceiling and asked for Powers' assistance in determining the cause of the problem. Powers' Regional Representative and its Field Engineering

Manager visited the tunnel on two occasions in October 1999. Thereafter, Powers' Engineering Manager asserted that the anchor movement was due to installation problems, and probably to excessive torque (that is, over-tightening) on certain hangers. Powers' Engineering Manager recommended a repair procedure by which anchors which were observed to have displaced were replaced, and the replacement bolts "proof tested" to a specified load. At no time did Powers advise the contractor that Fast-Set was inappropriate for the ceiling anchors and for supporting sustained loads, though Powers had such information.

Installation of the ceiling anchors in the portal area was completed in December 1999. The I-90 Connector Tunnel was opened to traffic in 2003. On July 10, 2006, ceiling panels in the portal area of the I-90 Connector Tunnel collapsed onto a car driven by Angel Del Valle and in which his wife, Milena Del Valle, was a passenger. Ms. Del Valle was crushed to death by the ceiling collapse.

Powers has known since 1991, when it worked with a chemical manufacturer to develop Power-Fast Fast-Set epoxy as a quick-setting alternative to an existing product, that its Fast-Set product was unsuitable for sustained loads. Powers conducted "creep" testing (testing of an epoxy's ability to support a load over time) of the product in its own lab, during which tests the anchors displayed significant displacement.

In April 1995 the International Conference of Building Officials ("ICBO") issued Acceptance Criteria ("AC") for Adhesive Anchors in Concrete and Masonry Elements, commonly referred to as "AC 58," which set forth voluntary industry standards for creep testing. Powers had Fast-Set creep tested to that standard. Creep tests of Fast-Set were performed from 1995 to 1997; Fast-Set failed each time, with the tested anchors showing

displacement exceeding the maximum permitted by AC 58 and in many cases pulling out of the concrete within a few hours of the beginning of the test. Powers was advised of these results but made no disclosure to the construction trades or to third parties to whom Powers wished to sell its product.

Powers' 1997 design manual – the version of the manual used by the contractor for the I-90 Connector Tunnel ceiling – distinguishes Fast-Set and Standard-Set with respect to gel and curing times, but contains no mention of any difference between Fast-Set and Standard-Set with respect to its ability to bear sustained loads.

Powers' distributor made selected disclosures of creep resistance to the Massachusetts Highway Department ("MassHighway") in August 1999 unrelated to the Big Dig. The distributor sought to obtain blanket MassHighway approval to use Powers' epoxy on future MassHighway projects elsewhere in Massachusetts. At no time did Powers or its consultants make such disclosures available to any entity involved in the design or construction of the I-90 Connector Tunnel ceiling.

Powers knew by June 1999 that the contractor intended to use its Power-Fast epoxy to anchor the I-90 Connector Tunnel suspended ceiling, and that that load would be massive and over live traffic. Powers likewise knew that its Fast-Set product was entirely unsuitable for use with the ceiling anchors.

After workers observed anchor displacements in October 1999, Powers was explicitly asked by the construction contractor to assist in determining the cause of those anchor failures. In response to this request, however, Powers failed to disclose creep as the probable explanation for the problem. Rather, Powers encouraged project personnel to

believe that the problem was installation and excessive torque, and to adopt a fix consistent with that implausible and ultimately incorrect explanation of the failure.

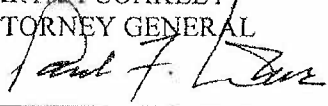
In January 2000, in the context of a different Big Dig contract, Powers provided certifications concerning Power-Fast which asserted that Fast-Set was "identical in all essential respects including formulation, with the exception of accelerated set time, to Standard Set." This statement was demonstrably false.

The Commonwealth contends that Powers recklessly withheld material information from the design professionals, the general contractor and the construction manager, and recklessly misled those entities to adopt an inadequate remedy for the failed ceiling anchors. The Commonwealth further contends that Powers knew that Fast-Set was inappropriate for sustained loads as early as 1991, but intentionally avoided public disclosure of that information for competitive reasons and to maximize its profits.

Respectfully Submitted
For the Commonwealth,

MARTHA COAKLEY
ATTORNEY GENERAL

By:


Paul F. Ware
Special Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Specially assigned to the Hon. Patrick F. Brady

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
DOCKET #: 2007-10802

COMMONWEALTH

V.

POWERS FASTENERS, INC.

COMMONWEALTH'S AMENDED BILL OF PARTICULARS

Now comes the Commonwealth in the above-captioned case and, in response to this Court's Order dated March 14, 2008, and pursuant to Mass.R.Crim.P. 13(b)(1), provides the following Amended Bill of Particulars:

As to Indictment SUCR2007-10802 (Involuntary Manslaughter):

Date: July 10, 2006.

Place: South Boston, County of Suffolk, Massachusetts.

Manner & Means: On divers dates from on or about May 1, 1999 to on or about July 10, 2006, Powers Fasteners, Inc. did engage in a course of conduct whereby they recklessly withheld material information about their Power Fast epoxy's performance in sustained load applications from the design professionals, the general contractor and the construction manager involved in the design and construction of the suspended ceiling system in the I-90 Connector Tunnel. Further, Powers recklessly misled those same entities into adopting an inadequate remedy for failed ceiling anchors that Powers employees observed during a 1999

rec'd
4/1/08
mkl

inspection of the suspended ceiling. During this time, Powers knew that Power Fast epoxy was used to secure the tunnel ceiling anchors; knew therefore that either Fast Set or Standard Set was used to secure the anchors; knew that there was a likelihood that Fast Set was used to secure the anchors and either ignored or failed to confirm that fact. The acts and omissions alleged herein were intentional.

The Commonwealth reserves the right to supplement or amend this Bill of Particulars at any time.

Respectfully Submitted
For the Commonwealth,

MARTHA COAKLEY
ATTORNEY GENERAL

By: Paul Ware (by DR)
Paul F. Ware
Special Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Date: 4/1/08

Exhibit C

CORPORATE COMPLIANCE AGREEMENT

Preamble: This Corporate Compliance Agreement ("CCA") is an attachment of a deferred prosecution agreement ("DPA") in Commonwealth of Massachusetts v. Powers Fasteners Inc. (Suffolk Superior Court, Docket No. 2007-10802). In consideration for the promises contained in this CCA and the DPA, the Commonwealth of Massachusetts ("Commonwealth") and Powers Fasteners, Inc. ("Powers") – collectively "Parties" – each agrees to all of the terms in this CCA.

1. All references to paragraphs are references to paragraphs within this CCA. This CCA is deemed executed as of the date on which it is signed by all Parties hereto ("Effective Date"). This CCA shall remain in effect through December 31, 2011; provided, however, that Powers' right or obligation to cure any material breach of the terms of this CCA as may be reported in the final report (referenced in paragraph 8) shall continue for 30 days after Powers' receipt of notice thereof (in accordance with paragraphs 7-8). In this CCA, "Fast Set" refers to Power-Fast, Fast Set epoxy (however formerly or currently named, labeled or packaged).

2. A. Upon the Effective Date, Powers shall permanently cease all sales, distribution, marketing and production of Fast Set by itself and/or on its behalf.

B. Within 60 days of the Effective Date, Powers shall permanently cease all sales, distribution, marketing and production of any and all other adhesives to be used as adhesive anchors by itself and/or on its behalf unless or until: (1) there is a current, final independent report issued by the International Code Council, Evaluation Services (ICC-ES) (or successor entity) approving such product or (2) there (a) is a laboratory report issued by an ICC-ES (or successor entity)/ International Accreditation Service accredited laboratory demonstrating that the product complies with ICC-ES AC58 ("AC58") or ICC-ES AC308 ("AC308") and

(b) Powers has acted in a commercially reasonable manner to obtain a current, final independent report issued by the ICC-ES (or successor entity) approving such product. If Powers has obtained or hereafter receives a ICC-ES (or successor entity) report, then Powers shall promptly (a) include the report number in all its paper and all its electronic literature concerning or featuring the product; (b) post the report on all its website(s); (c) send a copy of the report to all its distributors of the product; and (d) send a copy of the report to all contractors, engineers, architects, state and federal transportation agencies, and building officials, with whom Powers determines (based on a diligent search of its records) that it has had contact. If ICC-ES (or successor entity) rejects the product, Powers shall immediately cease all sales, distribution, marketing and production of such product by itself and/or on its behalf, and notify the persons and entities referenced in the prior sentence of such rejection, and ask such persons and entities to further disseminate such information.

3. Within 30 days of the Effective Date, Powers shall implement a recall, with full refund, of Fast Set from the shelves of its customers, representatives, and distributors.

4. Within 45 days of the Effective Date, Powers shall place the following in all its literature – all paper literature, all electronic literature, and all web site(s) - concerning or featuring Power-Fast (however named, labeled or packaged), including but not limited to its specification and design manuals, with such information remaining therein until December 31, 2011:

- A. All names, numbers and other identifiers of Fast Set;
- B. Notice that Powers no longer sells Fast Set;
- C. Notice that ongoing inspection of an installed adhesive anchor is highly recommended, and any slippage may be a sign of failure;

D. Notice that Fast Set has failed all creep tests conducted pursuant to AC58; Fast Set is not recommended for sustained tensile load applications, including without limitation sustained dead load or live load applications; Fast Set received ICBO approval for "short term loads, such as those resulting from wind or earthquake forces only" and only with an increased factor of safety; and as with all adhesive anchors, Powers recommends that the design professional determine whether Fast Set has been used appropriately;

E. In addition to the information provided pursuant to paragraph 4(A-D), Powers shall place in all such electronic literature and all such web sites, an active link to the web site(s) for the technical advisory referenced in paragraph 5 and all modifications, amendments, and successors to such advisory; and

F. In addition to the information provided pursuant to paragraph 4(A-D), Powers shall place in all such paper literature, a list of the web site(s) for the technical advisory referenced in paragraph 5 and all modifications, amendments, and successors to such advisory.

5. Within 60 days of the Effective Date, Powers shall send written notice (domestically and internationally as necessary) to all: (A) end users (owners of construction which utilized Fast Set) identified by Powers based on a diligent search of its records; (B) Powers' distributors; and (C) contractors, engineers, architects, code agencies (e.g. ICC), state and federal transportation agencies, and building officials, with whom Powers determines (based on a diligent search of its records) that it has had contact. The written notice shall include the same information provided pursuant to paragraph 4(A-D) and the following language (and attachment): "The Commonwealth of Massachusetts asked us to attach and to bring to your attention an important technical advisory (T 5140.30) released by the Federal Highway Administration reflecting FHWA's safety recommendations. The Commonwealth of

Massachusetts has asked us to strongly encourage you to disseminate this information, including but not limited to end users (owners of construction which utilized Fast Set or a similar product)." A copy of the technical advisory is attached to this CCA.

6. Within 90 days of the Effective Date, Powers shall order and pay for the placement of a notice in all publications where Fast Set is reasonably believed by Powers to have been advertised (based on its diligent review of its records), stating: the information provided pursuant to paragraph 4(D); multiple names of Fast Set; probable applications of Fast Set; and time frame of sales of Fast Set. The order and payment shall be for the placement of said notice in two consecutive editions of each said publication.

7. Powers shall pay to the Commonwealth the sum of \$100,000, for each and every year in which Powers has materially breached the terms of this CCA and has failed to cure said breach within 30 days receipt of notice thereof. Notice of any such breach shall be supplied by the Commonwealth to Powers within 30 days after the Commonwealth's receipt of each report provided in accordance with paragraph 8.

8. Within 60 days of the Effective Date, Powers shall contract with an independent reviewer. The reviewer shall be subject to the approval of the Office of the Massachusetts Attorney General (approval shall not be unreasonably withheld or unreasonably delayed). Such contract shall require the reviewer to: annually review Powers' compliance with paragraphs 2-6 through December 31, 2011; annually provide a written report of each such annual review to Powers, the Commonwealth, and FHWA; and provide a final report in 2012 to such entities. A certification by the reviewer in an annual report of Powers' compliance with paragraphs 2- 6 shall be conclusive proof that Powers has acted in good faith with respect to those obligations during the period covered by such report.

9. This CCA is binding upon and inures to the benefit of the Parties and their respective assigns and successors in interest. This CCA constitutes the complete agreement between the Parties regarding its subject matter with all prior negotiations or understandings with respect thereto merged herein. This CCA shall not be amended or modified except in writing signed by the Parties. This CCA is subject to public disclosure. This CCA may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this CCA. No Party shall be deemed the CCA's drafter and no inferences concerning its terms shall be drawn against any Party on that ground. This CCA shall be interpreted by and governed by the laws of the Commonwealth, exclusive of its choice of law rule. Each of the CCA's terms and provisions are interdependent and not severable from the remainder of this CCA. The Parties stipulate and declare their intention that this CCA shall be interpreted in its entirety and that they would not have entered into this CCA without including any such term or provision that may hereafter be declared invalid, illegal, void or unenforceable.

10. This CCA is freely and voluntarily entered into without any degree of duress or compulsion whatsoever. The Parties have had adequate opportunity to consult with competent legal counsel in connection with the issues covered within, and in negotiating and deciding to enter into, this CCA. Each Party will bear its own legal and other costs incurred in connection with this CCA. The Parties possess the legal authority to execute this CCA and have consulted with all required persons and entities and their respective undersigned has authority to execute and deliver this CCA on its behalf.

11. This CCA and any payments made and any actions taken by Powers pursuant to this CCA are solely in settlement of a disputed matter and can not be used for any purpose in any

proceeding, except (A) in connection with the entry of the DPA in the action referenced in the Preamble of this CCA and/or (B) for purposes of enforcing the DPA and/or this CCA.

12. All notices or other communications required to be given under this CCA shall be delivered to the following persons, or to such other individuals as a Party may designate in writing:

(A) Send notice to Powers Fasteners Inc. to:

Jeffrey Powers, President
Powers Fasteners, Inc.
2 Powers Lane
P.O. Box 366
Brewster, NY 10509

with copies to:


Max D. Stern, Esquire
Martin E. Levin, Esquire
Stern Shapiro Weissberg & Garin, LLP
90 Canal Street, 5th Floor
Boston, MA 02114

(B) Send notice to Commonwealth of Massachusetts to:

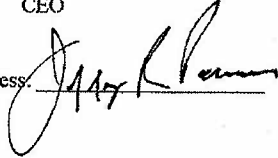
First Assistant Attorney General
Deputy First Assistant Attorney General
Massachusetts Office of the Attorney General
One Ashburton Place
Boston, MA 02108

POWERS FASTENERS, INC.

By:


Christopher Powers
CEO

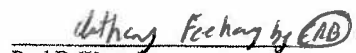
Witness:



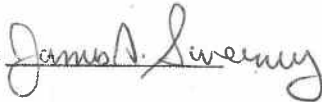
COMMONWEALTH OF MASSACHUSETTS

MARTHA COAKLEY
ATTORNEY GENERAL

By:


Paul F. Ware, Jr.
Special Assistant Attorney General
Anthony Feeherry
Special Assistant Attorney General

Witness:



Dated: December 17 2008



U.S. DEPARTMENT OF
TRANSPORTATION

**Federal Highway
Administration**

Technical Advisory

Subject

**Use and Inspection of Adhesive Anchors in
Federal-Aid Projects**

Classification Code
T 5140.30

Date
March 21, 2008

OPI
HIBT-10

Par.

1. What is the purpose of this Technical Advisory?
 2. Does this Technical Advisory supersede another Technical Advisory?
 3. What is the definition of "Fast Set epoxy"?
 4. What is the background of this Technical Advisory?
 5. What are the recommendations for new Federal-aid projects and existing projects?
-
1. **What is the purpose of this Technical Advisory?** The purpose of this Technical Advisory is to provide guidance and recommendations regarding the use and in-service inspection of adhesive anchors, including those utilizing "Fast Set epoxy" (see definition in paragraph 3), in sustained tension applications on all Federal-aid highway projects.
 2. **Does this Technical Advisory supersede another Technical Advisory?** Yes. This Technical Advisory supersedes Technical Advisory T 5140.26, dated October 17, 2007, by updating the list of "Fast Set epoxies" identified in paragraph 3. Technical Advisory T 5140.26 is herein cancelled.
 3. **What is the definition of "Fast Set epoxy"?** "Fast Set epoxy" refers to an epoxy produced by the Sika Corporation called Sikadur AnchorFix-3. This epoxy is also repackaged and distributed by the names/companies presented in a list of adhesives available from the Federal Highway Administration (FHWA) Web site at the following Web link: <http://www.fhwa.dot.gov/Bridge/adhesives.cfm>. FHWA will update this list as new information becomes available and encourages visitation to this Web site for the latest updates.
 4. **What is the background of this Technical Advisory?**
 - a. On July 10, 2006, a portion of the suspended ceiling system of the I-90 connector tunnel in Boston, Massachusetts, collapsed onto a passing car, killing the passenger and injuring the driver. The suspended ceiling in the

collapsed section was comprised of concrete panels connected to steel hangers suspended from the tunnel concrete ceiling by an adhesive anchor system consisting of stainless steel anchor rods embedded in epoxy. Immediately after the accident, the FHWA launched an independent study and testing plan to determine the probable cause of failure of the suspended ceiling system.

- b. The testing plan consisted of short-term strength and long-term performance testing of the adhesive anchor system installed in the I-90 connector tunnel, as well as an experimental parametric study and a limited sustained load characterization study on the adhesive anchor system supplied for use in the I-90 connector tunnel conducted at the FHWA's Turner-Fairbank Highway Research Center (TFHRC). The testing program identified several installation factors that affect the short-term strength of adhesive anchors. However, while these factors may have contributed to the timing of the failure, the results clearly show that the primary cause of the collapse was the use of "Fast Set epoxy" which is incapable of resisting sustained tension loads without excessive creep.
- c. In addition to the testing conducted on the adhesive used in the I-90 tunnel, data produced at TFHRC show that some anchor systems utilizing adhesives other than "Fast Set epoxy" that have passed the International Code Council (ICC) creep certification process are still vulnerable to creep under typical bridge and tunnel exposure conditions. The results indicate that the current American Society for Testing and Materials (ASTM) and the ICC creep prediction methodology do not appear to guarantee safe performance of adhesive anchors over the entire expected service life (75 to 100 years) of transportation structures. In addition, the ICC does not address issues related to overhead installation of anchors nor the effect that vibration could have on their long-term performance and integrity.
- d. Therefore, as a result of the investigation of the collapsed suspended ceiling support system, and in concurrence with the National Transportation Safety Board's findings, the FHWA is now implementing these safety recommendations to ensure that similar incidents will not occur in the future.
- e. At the time T 5140.26 was issued, the FHWA was aware of the four products originally listed in paragraph 3 as being inadequate. Since that time, the investigation has continued to identify adhesives that are repackaged Sika products that include the fast set hardener (part B of the epoxy). These repackaged adhesives have been added to the original list so that structure's owners are aware of the potential for creep issues associated with these products.

5. **What are the recommendations for new Federal-aid projects and existing projects?**

a. **New Federal-aid projects**

- (1) This Technical Advisory strongly discourages the use of "Fast Set epoxy" for adhesive anchor applications.
- (2) This Technical Advisory also strongly discourages the applications of anchor systems utilizing adhesives other than "Fast Set epoxy" for permanent sustained tension applications or overhead applications until the FHWA is satisfied with an improved certification process that is developed to ensure long-term creep performance and that recognizes the effect of overhead installation.

b. **Existing projects**

- (1) Where applications are those specific to the use of "Fast Set epoxy" adhesive in sustained tension, it is strongly recommended the anchors be retrofitted and/or replaced with a reliable and appropriate mechanical anchor system and that rigorous and regular inspections are performed in the interim.
- (2) Where applications of anchor systems in sustained tension using adhesives other than "Fast Set epoxy" or from an unknown source have been identified, instituting a rigorous and regular inspection program that considers importance and redundancy is strongly recommended to maintain an appropriate level of confidence in their long-term performance. This may require developing a testing protocol and program to determine the site specific ultimate capacities and creep characteristics of the adhesive over the expected life of the structure.



King W. Gee
Associate Administrator
for Infrastructure

Exhibit D

RESOLUTION OF THE BOARD OF DIRECTORS OF
POWERS FASTENERS, INC.

I, Christopher Powers, do hereby certify that I am the Chairman of the Board of Powers Fasteners, Inc. ("Powers"), a corporation having a usual place of business at 2 Powers Lane, Brewster, New York; and that at a special meeting of the Board of Directors held on Tuesday, December 9, 2008 at 8:00 A.M., all of the Directors being present, it was

Voted:

- 1) That Christopher Powers, acting in his capacity as Chief Executive Officer of Powers, is authorized by Powers to sign the Deferred Prosecution Agreement ("DPA") to be entered into between Powers and the Office of the Attorney General of the Commonwealth of Massachusetts in the matter Com. v. Powers Fasteners, Inc., Suffolk Sup. Ct. Docket No. SUCR2007-10802, a true and complete copy of which is attached hereto, and by such signature to bind Powers to the DPA and all of its terms and conditions, and also to perform whatever additional acts may be necessary to insure that the DPA becomes effective and that Powers obtains all rights and benefits to which it is entitled under the DPA; and
- 2) That the law firm of Stern Shapiro Weissberg & Garin, LLP, and Martin E. Levin and Max D. Stern of said firm, are authorized by Powers to sign the said DPA, and by such signature to bind Powers to the DPA and all of its terms and conditions, and also to appear on behalf of the corporation at proceedings in this matter and to perform whatever additional acts may be necessary to insure that the DPA becomes effective and that Powers obtains all rights and benefits to which it is entitled under the DPA.

There being no further business to transact, upon motion duly made and seconded, it was

Voted: That the meeting be adjourned.

Adjourned.

A true copy



Christopher Powers, Chairman

Exhibit E

March 5, 2008

Raquel Ibarra Mora
De la gasolinera El Trapiche
50 Sur - 300 Oeste y 50 Sur
Coronado, Costa Rica

[Translation on next page.]

Attorney General Martha Coakley
Office of the Attorney General of the
Commonwealth of Massachusetts
One Ashburton Place - 18th Floor
Boston, MA 02108 - USA

Estimada Martha Coakley:

Reciba saludos de la familia Ibarra.

Conocemos del gran esfuerzo que usted ha realizado en lo relacionado a nuestro caso. Por esa razón tomamos unos minutos para expresar nuestro agradecimiento.

Por otra parte, agradecemos igualmente a la familia de "Powers Fasteners" por haber aceptado el desafío y la responsabilidad en nuestro caso. Por tener la sensibilidad de hacernos llegar el pésame en un momento tan difícil para nosotros como familia, cosa que nos conmovió profundamente. Aunque sabemos que el dinero no nos devolverá a nuestra madre, nos ha sido de gran ayuda en nuestra condición presente.

Lamentablemente, ninguna otra compañía envuelta en el accidente donde perdimos a nuestra madre, nos ha enviado el pésame. Se han dedicado más a defender sus intereses corporativos mas allá de aceptar su responsabilidad como lo ha hecho Powers Fasteners. Espero usted tome esto en cuenta cuando esté deliberando sobre el futuro de esta familia, que al igual que nosotros, pensamos que desean cerrar este capítulo.

Sin otro particular y agradeciendo una vez más su dedicación.

Quedamos a sus órdenes,


Raquel Ibarra


Jeremy Ibarra


Caled Ibarra

Greetings from the Ibarra family.

We are aware of the great effort you have made in relation to our case. That is why we wish to take a few minutes to express our gratitude.

We are equally grateful to the family of "Powers Fasteners" for having accepted the challenge of taking responsibility in our case. Having the sensitivity to send their condolences in a very difficult time for us as a family, was something that touched us deeply. Although we know that money will not bring back our mother, it has been a great help to us in our current condition.

Unfortunately, no other company involved in the accident where we lost our mother, has sent us their condolences. They have devoted more to defending their corporate interests, than to accepting their responsibility, as Powers Fasteners did. I hope you will take this into account when deliberating in the future of the Powers family, who, we think, like us, want to close this chapter.

We personally thank you once again for your dedication.

At your service,

FOR IMMEDIATE RELEASE

Contact: Bradley M. Henry, Counsel to
the Children of Milena Del Valle
(617) 523-8300
(978) 771-5498 (mobile)

Contact: Jeffrey Denner, Counsel to Milena's
Widower, Angel Del Valle
(617) 227-2800
(617) 605 6200 (mobile)

FAMILY OF MILENA DELVALLE REACHES FIRST SETTLEMENT IN BIG DIG TUNNEL COLLAPSE CASE

BOSTON, MA – December 21, 2007 – The three children (Raquel, Kaleb and Jeremy Mora) and widower (Angel Del Valle) of Milena Del Valle have reached a settlement with the New York supplier of epoxy anchor bolts for the I-90 Connector Tunnel ceiling that collapsed on July 10, 2006. The collapse crushed the Del Valles' car as they were en route to Logan Airport to pick up relatives, killing Milena and injuring her husband, Angel. In confidential negotiations held last week, the supplier, Powers Fasteners, offered \$6 million to resolve the family's claims against it. It is the first settlement in the case filed in August 2006 against a consortium of sixteen companies including the construction manager Bechtel / Parsons Brinkerhoff, contractor Modern Continental, designer Gannett Fleming, the Massachusetts Turnpike Authority and others.

"We are grateful that the Powers family company has done the right thing" said Milena's daughter, Raquel Ibarra Mora and Milena's widower, Angel Del Valle in a joint statement.

"Powers respected our family by answering our questions, giving us a Mass card in memory of Milena, and settling the case. We hope that Bechtel and the other companies now show the same strength of character. We especially want to thank Attorney General Martha Coakley for her dedication to the rights of the public, including our family, in this important public matter. We feel that the Powers family, like ours, has suffered enough."

Attorneys for the family note that the case continues against all of the other defendants as deposition testimony enters its sixth month.