BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE:	**THOMAS H. RUSSELL,** **THOMAS RUSSELL, LLC d/b/a** **THOMAS RUSSELL COMPANY**	**C2010-22** **(Amended)**

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Edward L. Robinson, P.E., its president (hereinafter "the Board") for the purpose of agreeing to disciplinary action to be taken against Thomas H. Russell (hereinafter "Respondent) and Thomas Russell, LLC d/b/a Thomas Russell Company (hereinafter "Respondent Firm"). As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter, and the Board, upon approval of such agreement, does hereby **FIND** the following:

1. The Board is a state entity created by West Virginia Code § 30-13-1 *et seq.* and is empowered to regulate the practice of professional engineering pursuant to the same.
2. Respondent Firm, Thomas Russell, LLC d/b/a Thomas Russell Company, is organized under the laws of the State of Oklahoma with its principal place of business located at 7050 S. Yale Avenue, Suite 210, Tulsa, Oklahoma.
3. Respondent, as a manager of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.
4. On or about April 8, 2010, Derrick Oneal, an employee of Respondent Firm, submitted a comity application to the Board reporting that Respondent Firm had offered to practice engineering in West Virginia prior to acquiring the appropriate licensure and certificate of authorization. Specifically, Respondents had executed a contract to perform engineering in the State of West Virginia in September 2009.
5. At all relevant times, with regard to the allegations contained in this complaint, Respondent Thomas H. Russell did not have a valid professional engineering license.

6. At all times relevant to the allegations contained within this complaint, Respondent Firm did not have a valid Certificate of Authorization.

7. On April 28, 2010, Derrick Oneal was issued West Virginia Professional Engineering License number 18622.

8. On May 15, 2010, Thomas Russell, LLC d/b/a Thomas Russell Company was issued Certificate of Authorization number CO3745-00.

9. At its next regular meeting, the Board initiated complaint number C2010-22 against Derrick Oneal and Respondent Firm which was filed on June 15, 2010.

10. At its July 20, 2010 meeting, the Board amended complaint number C2010-22, changing the individual named in the complaint to Thomas H. Russell.

11. Respondent admit that he offered to provide engineering services for a project located in the State of West Virginia without a valid Professional Engineering license.

12. Respondent Firm admits it offered to provide engineering services for a project located in the State of West Virginia without a valid Certificate of Authorization in this State.

13. Respondents' prompt response in connection with this Complaint mitigates Respondents' culpability regarding the admitted violations of West Virginia engineering law; therefore, based upon the foregoing, the Board, in its discretion, will not assess administrative costs although the Board does find that it is within their power to assess such costs according to W.Va. Code R § 7-1-14.4.

14. Respondents have waived their right to a hearing on this matter and other rights set forth in W. Va. Code § 30-13-1 *et seq.* and the procedural rules of the Board.

CONCLUSIONS OF LAW

1. It is unlawful for any person to practice or offer to practice engineering in the State of West Virginia unless that person is duly registered under the provisions of West Virginia engineering law. West Virginia Code § 30-13-2.
2. West Virginia engineering law allows a firm to practice or offer to practice engineering only upon the issuance of a certificate of authorization by the Board. West Virginia Code § 30-13-17.
3. The Board is authorized to "assess civil penalties against any person who violates any provision of this article or any rule promulgated by the board for each offense in an amount determined by the board." West Virginia Code § 30-13-21(b); *see also* W. Va. Code § 30-13-21(d)(4).
4. Practicing or offering to practice engineering without a license, to which Respondent has admitted herein, is an action that would subject a person to discipline by the Board, including a civil penalty up to Five Thousand Dollars ($5,000.00). W.Va. Code R § 7-1-15.1.
5. Practicing or offering to practice engineering without a valid Certificate of Authorization, to which Respondent Firm has admitted herein, is an action that could subject a firm to discipline by the Board, including a civil penalty up to Five Thousand Dollars ($5000.00). W.Va. Code R § 7-1-15.1.
6. Each day of continued violation may constitute a separate offense. W.Va. Code R § 7-1-15.3.

CONSENT OF RESPONDENTS

Thomas H. Russell, individually and as manager for Thomas Russell, LLC d/b/a Thomas Russell Company, by affixing his signature hereon, agrees to the following:

1. Respondents are aware of their option to pursue this matter through appropriate administrative and/or court procedures, but Respondents intelligently and voluntarily waive their right to do so.

2. Respondents intelligently and voluntarily waive their right to a formal hearing before the Board in this matter provided the Board accepts the terms and conditions set forth herein.

3. Respondent admits that he offered to provide engineering services for a project in the State of West Virginia prior to obtaining a valid license.

4. Respondent Firm admits it offered to provide engineering services for a project in West Virginia without the required Certificate of Authorization.

5. Respondents accept the findings set forth above and consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.

6. Respondents acknowledge that entering into the negotiation of this Consent Order constitutes a waiver of the six month time limit set forth in West Virginia Code § 30-13-22(b) for the disposition of Complaint Number C2010-22. This paragraph is binding on the participants even in the event that the Board does not approve this Consent Order.

7. Respondents acknowledge that this Consent Order is being executed for the purpose of avoiding further administrative action with respect to the above-styled matter. In this regard, Respondents authorize the Board to review and examine all investigative file materials concerning Respondents prior to or in conjunction with consideration of this Consent Order.

8. Respondents acknowledge that the Board may reject this proposal, complete the hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.

9. Should the Board not approve this Consent Order, Respondents waive any objections to the board or any of its members participating in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Order.

10. Respondents understand that this Consent Order and the underlying Complaint are public records and agrees that the sum and substance of the Complaint and this agreement in part or in their entirety will be set forth in Board publications and on the Board website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).

11. Respondents acknowledge that proof of any misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license or certificate of authorization issued to Respondents, and the addition of any other charges which may arise or ensue from providing false information to the Board in violation of West Virginia engineering law.

ORDER

1. On the basis of the foregoing, and upon entry of this Consent Order by this tribunal, the Board hereby **ORDERS** that this Consent Order shall serve as an informal settlement of this Complaint pursuant to West Virginia Code § 30-13-22(b).

2. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Two Hundred and

Fifty Dollars ($250.00) for offering to practice engineering in the State of West Virginia without a valid license.

3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars ($250.00) for offering to practice engineering in West Virginia without a valid Certificate of Authorization.

4. The civil penalties imposed herein totaling Five Hundred Dollars ($500.00) must be paid within thirty (30) days of the date Respondents receive notice of the Board President's signature hereon, such amount to be made payable to the W. Va. P.E. Board for transfer to the general fund of the State of West Virginia upon receipt. Failure to remit the payment of these civil penalties within the prescribed time period will result in the immediate invalidation of the Respondent Firm's Certificate of Authorization issued by the Board and further disciplinary action.

5. In accordance with the laws and rules governing the Board, this Consent Order and the underlying Complaint are public records and the sum and substance of the Complaint and this agreement in part or in their entirety shall be set forth in Board publications and on the Board website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).

6. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.

7. This Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to same may be the subject of any appeal or other civil or administrative action except an action to enforce the terms of this Consent Order.

8. If the civil penalties imposed herein are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondents upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein ($500.00), together with pre-judgment interest from the date of the President's signature hereon, post-judgment interest from the date of entry of the Judgment Order and all costs of any enforcement action(s), which judgment shall be fully executable in accordance with applicable law.

9. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalties agreed to herein.

10. This Consent Order relates solely to matters within the jurisdiction of the West Virginia Board of Registration for Professional Engineers and does not evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

AGREED TO BY:

T. H. H.

THOMAS H. RUSSELL, individually and
on behalf of **THOMAS RUSSELL, LLC d/b/a**
THOMAS RUSSELL COMPANY

11-9-10

DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this:

15th **day of** November**, 2010.**

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS,

By: _____ 11/15/10

EDWARD L. ROBINSON, P.E.,
BOARD PRESIDENT

DATE

PREPARED BY:

NICOLE A. COFER
ASSISTANT ATTORNEY GENERAL
STATE CAPITOL BLDG. 1, ROOM 26-E
CHARLESTON, WEST VIRGINIA 25305

REVIEWED BY:

MICHAEL A. POLLARD
MICHAEL A. POLLARD, P.C.
624 S. BOSTON, SUITE 1035
TULSA, OKLAHOMA 74119