

# SHUMATE'S PRIOR VIOLATIONS OF FALL PROTECTION STANDARDS

The Critic's lead story in this issue is about how Carlos Rivera-Garcia died on a Shumate job site. Garcia's death is even more tragic, because it was preventable. While the exact details of this fatal accident are still sketchy, the published accounts indicate that Garcia was hit by an improperly hoisted pipe, and then fell about 20 feet to his death.

Deaths from falls are among the leading causes of construction jobsite fatalities, year after year. Falls killed 260 construction workers in 2010, according to an Associated General Contractors analysis of accident data, posted on line by Hubble Smith of the La Vegas Review-journal on August 26, 2011.

OSHA has focused on preventing fall fatalities in recent years, including citing Shumate for violations of fall danger and fall protection regulations.

Several questions demand attention: how did a heavy pipe fall onto Garcia in the first place? Wasn't it secured? Or was Garcia assigned to attempt to anchor a pipe that was too heavy for him to control by himself?

Shumate's history of fall protection and OSHA citations raises more pointed questions. Why was a

falling pipe able to knock Garcia completely out of the scissors lift, so that he fell to his death? Wasn't there a guard rail on the lift? And if there was a guard rail, was it high enough? Was Garcia wearing a fall harness, and if so, where was it anchored? Published accounts on fall protection rules indicate that both a guard rail and safety harness are recommended on scissors lifts. (<http://sissorliftsite.com/sissor-lift-fall-protection>)

And finally, why didn't OSHA's prior fines against Shumate motivate the company to comply with OSHA regulations?

It's possible that comprehensive fall protection measures may have prevented Garcia's death. But how likely is it that Shumate rigorously implemented all potential safeguards against a fall? Shumate has frequently been cited for violating OSHA's standards that protect workers from fall hazards. If Shumate violated the minimal legal requirements, what are the chances that Shumate would have instituted any other innovative fall protection measures, over and beyond the OSHA requirements?

Shumate's fall-related violations date back at least to 2004, when OSHA cited Shumate for 3 serious citations and proposed an \$11,200 fine, for violating requirements for job site safety protections against fall dangers including the risk of impalement on exposed rebar.

In 2006, OSHA cited Shumate for a serious violation of a similar regulation, and proposed a \$1500 fine.

By 2009, OSHA cited Shumate again for violating fall protection standards which require use of guardrails, safety nets, or personal fall arrest systems, at an Atlanta job site. These are the precise regulations that would have protected Garcia.

In fact, just four months prior to Garcia falling to his death, in February, 2011, OSHA proposed yet another \$4000 fine and a serious violation against Shumate for violating a regulation protecting workers against fall dangers from protruding steel, at a Austell, Georgia job site.

None of these prior citations against Shumate for fall protection violations helped trigger measures that may have saved Garcia's life several weeks later.

# The Contractors' Critic

Reporting on Safety, Productivity, and Honesty in the Construction Industry.

## OSHA fines Shumate \$14,000 for worker killed at the Benjamin Mays High School job

OSHA has proposed a \$14,000 fine against Shumate Mechanical/Air Conditioning for failure to provide a safe workplace after a worker was killed by a falling pipe at the Benjamin High School construction project last year. Shumate improperly attempted to lift a 20-foot-long pipe by resting it on scissor-lift guard rails.

OSHA has previously proposed a \$1300 fine against Shumate for a violation on the Middle and High school construction job in Locust Grove Georgia, and a \$4500 fine for fall violations at the Dacula, Georgia, Middle School.

Last June, Carlos Rivera-Garcia of Gainesville, age 31, was working in a hydraulic scissors lift vehicle on a Shumate job at the Benjamin E. Mays High School, in southwest Atlanta.

Just after lunchtime ended, Garcia was laboring in the hydraulic lift, about 20 feet above the ground. Suddenly, a heavy metal pipe somehow came loose and hit Garcia. Garcia may have survived getting hit by the pipe, but the impact knocked him out of the scissors lift. He plummeted twenty feet to the pavement below and was killed, according to the Atlanta Constitution's June 25, 2011 article and other local media accounts.

Garcia left a grief-stricken family behind. CEO Brent Reid



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## RACKETEERING SUIT TRIGGERS COURT ORDER AGAINST SHUMATE OVER THEFTS

Shumate Mechanical is occasionally allowed to win work as a woman-owned company, due to Sandy Shumate's manager position.

But another Shumate, Rhonda (a/k/a Lisa) Shumate had a rockier career path at Shumate Mechanical.

A privately filed Federal Court suit charged Rhonda, Shumate Mechanical, and two former Shumate employees with Racketeering, computer theft, corporate espionage, "...in direct violation of the civil and criminal laws of the United States and the State of Georgia..." according to the Federal Court complaint.

As a consequence, Shumate Mechanical and Rhonda/Lisa Shumate are currently under a court order prohibiting them from stealing information from a competing contractor.

The sordid situation began to transpire a few years ago, when a supposed employee of a competing mechanical contractor in the Atlanta Georgia vicinity, were spotted

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## Active OSHA Investigation

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of Winter Construction, who'd hired Shumate for part of the renovation project, said, "It was a tragic day and our thoughts and prayers go out to the family."

Winter Construction was the general contractor on the Benjamin E Mays High School renovation, and Shumate was one of their subcontractors, with a half-dozen or more Shumate workers on the site when Garcia was killed. The job was a few months along when the fatality occurred, and it is scheduled to be finished in December 2011.

OSHA refuses to provide any details on the tragedy, citing the ongoing nature of their investigation. OSHA's website doesn't even acknowledge the probe of Shumate, but OSHA Area Director Andre Richards confirmed in writing that the case against Shumate is still pending. The investigation may get concluded in another month or two, according to OSHA sources.

## SHUMATE BYPASSES GEORGIANS TO HIRE FROM MEXICO

The Georgia construction industry has suffered during the last few years. Some published accounts calculate construction unemployment at about 35%. This means that construction employers can pick and choose whom to hire, and what wages to pay.

But Shumate Mechanical did not always choose to hire from the massive pool of unemployed Georgians, or even from US citizens. The Web Site MyVisaJobs shows that Shumate has instead applied to hire Mexican labor through the so-called "Green Card" Visa program, on some occasions. The web site information indicated that Shumate applied to hire mechanical and insulation workers, and all of the applications were approved. However, approved applications do not necessarily mean that all of the Mexican workers were actually hired, or that they still work at Shumate.

Shumate Mechanical did not apparently violate laws and regulations by hiring from Mexico even when thousands of Georgians are unemployed, assuming that Shumate followed all the procedures. However employers must certify there are no local qualified workers who've applied for those jobs, before they can apply to hire foreign labor. The Critic finds it hard to believe that Shumate could truthfully certify there were no qualified US workers available to work at the mechanical and insulation trades, when 35% of Georgian construction workers are unemployed.

## About Shumate

Shumate Mechanical is one of the largest residential and commercial mechanical contractors in the Southeast United States. It has operations in Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee, Virginia and Texas. Shumate operates under various names, including Shumate Air Conditioning and the Alliance Supply fabrication shop, both in Georgia, Shumate Raleigh in North Carolina, and a handful of other operations.

Shumate's web site for its Georgia operation claims the company was founded by Harold Shumate in 1978, and began as a family-owned and operated company.

## SHUMATE'S BACKGROUND

Shumate apparently began in some states as a Lennox or Comfort Systems franchise, but at a later date those shops became part of the regional Shumate operation. The Shumate operations focus on installation of air conditioning and refrigeration systems, but also perform a variety of mechanical and electrical work, even including gas piping.

Shumate's largest operations may be in Georgia, with its headquarters in Duluth, near Atlanta. Shumate also operates Alliance Supply and Piping, a fabrication shop, in Lavonia, in Northeast Georgia.

By 1997, Shumate employed 200 workers in the HVAC installation and maintenance industry, and boasts of 450 employees currently. Harold Shumate's picture still graces the company's website, and other Shumates, including Rhonda (a/k/a Lisa and Sandy Shumate) have also worked for the company.

## SHUMATE CONTACT INFORMATION

shumatemechanical.com  
2805 Premiere Parkway  
Duluth, GA. 30097

Shumate work sites with recently failed building permit inspections in Gwinnet County, GA. Shumate was the listed HVAC subcontractor on these jobs.

Job Site	Type of Failed Inspection
Web Industries, Suwanee	HVAC Complete Rough (2)
Boilab/ Chemtura Lab, Lawrenceville	HVAC Heating Temporary Final
Chattahoochee Station, Norcross	HVAC Final
Gwinnet Progress Center Lawrenceville	HVAC Heating Temporary Final
4853 Carlene, Lilburn	HVAC Final
Atlanta Regional Commission, Crestwood Office Building, Duluth	HVAC Final (2)

## WHY SHOULD CONSTRUCTION CUSTOMERS BE CONCERNED THAT SHUMATE FAILED 20% OF THEIR BUILDING PERMIT INSPECTIONS IN ONE JURISDICTION?

Building permit inspections are very simple, according to published accounts by former inspectors. The building code sections are black and white. Either something passes the code or it doesn't. There are few grey areas. The codes are crisp, can be measured and there is little room for argument. Local building inspectors inspect structures for code compliance only. The codes are minimum requirements designed specifically for safety in regards to the life and property of individuals and the community. (<http://www.askthebuilder.com>)

The information contained in *The Contractors' Critic* does not reflect a complete history of the business practice of Shumate Mechanical and/or its related companies.

*The Contractors' Critic* is publishing information that contractors do not and will not publish about themselves. *The Contractors' Critic* has relied on the public record to present this information to the public in an effort to promote safety, productivity, honesty, and environmental compliance in the construction industry.

Shumate responded to a written request for a response about the information contained in this brochure, and *The Critic* incorporated Shumate's clarifications. Any subsequent response by Shumate will be published on the *Critic's* website.

*The Contractors' Critic* will continue to seek and publish additional data. Copies of all Shumate court cases, liens, OSHA violations, and other supporting documentation cited in this brochure will be posted on the *Critic's* website.

# SHUMATE'S HIGH ACCIDENT RATE

Federal OSHA investigations and statistical surveys also reveal that Shumate Mechanical's accident rate is triple the average for the company's size and type of work. That means if you hired Shumate as opposed to a typical plumbing, heating, and air conditioning contractor you are facing triple the risk that your sub-contractors' workers will get injured. And every injury on your job site can translate into a costly court suit against you, the project owner or general contractor.

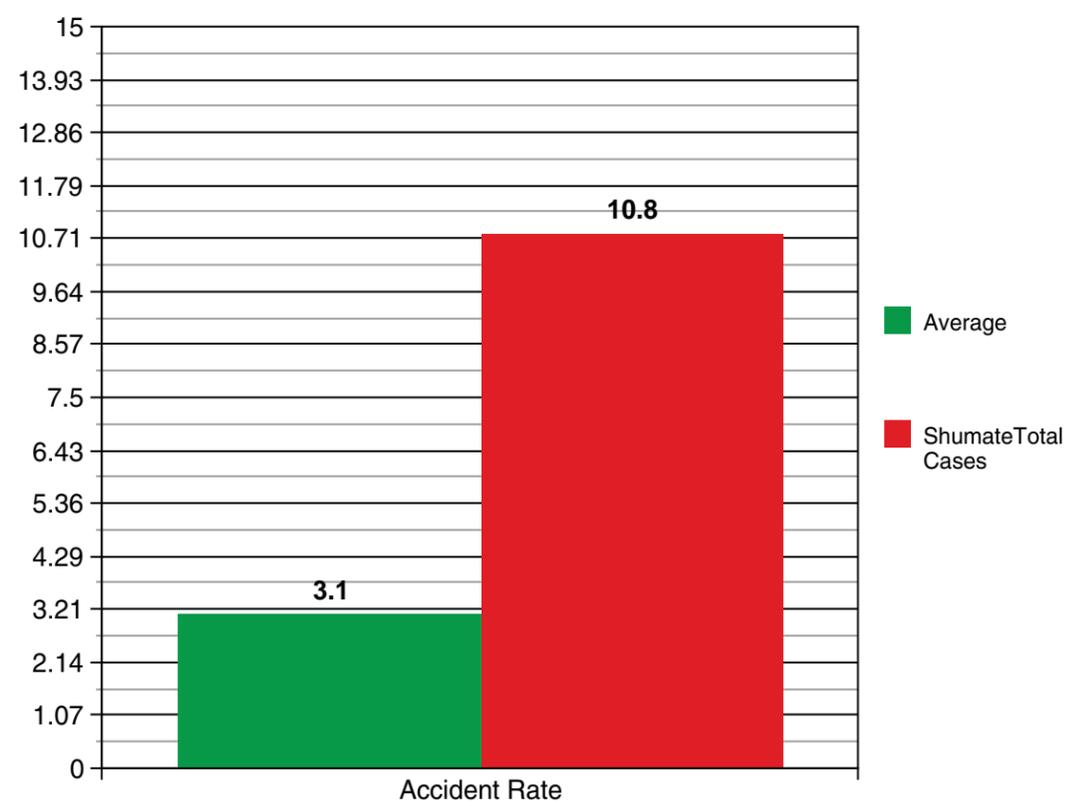
Here's the proof. The Federal OSHA's on-line data provides a search feature for "Establishment Specific Injury & Illness Rates." Enter Shumate Mechanical, and you'll see they reported a staggering "Total Case (accident) Rate" of 10.8 for the year 2008, which was the most recent period for which OSHA provides data on Shumate.

Other contractors in Shumate's construction (NAICS #238220) classification of plumbing, heating, and air-conditioning contractors of similar size (250-999 employees) have an average accident rate of only 3.1 in 2010, the most recent year for which the Bureau of Labor Statistics provides data.

In other words, Shumate suffers an injured worker for every 18,000 man-hours worked while any run-of-the-mill HVAC contractor only has a worker hurt every 67,000 man-hours, on average.

One consequence of that higher-than-average accident rate is the increased chance that some of those accidents will be very serious, or even fatal, when injuries are that frequent.

Shumate Accident Rate VS. Average Rate



## SHUMATE VS OSHA

Canny management attorneys will usually advise employers to appeal any OSHA citations. Of course, that means more money for the lawyer, but the bitter truth is that appeals of OSHA citations are too often successful in reducing penalties that were already inadequate to deter further misconduct. As David Michaels, the OSHA Assistant Secretary pointed out on his 2010 Congressional testimony regarding a worker killed in a fall, the original penalty against that employer was only \$2000 which was later reduced to \$1400. The US Senate Committee on Health, Education, Labor and Pensions reported in 2008 that OSHA's penalties are too low, that OSHA consistently reduces penalties by almost 40% in fatality cases, and that OSHA reduces penalties even more when the citation is contested – that fighting the government gets an employer a "Contested Discount" of 300%

In some States, OSHA Departments favor easy resolutions, Celeste Montforton, a former OSHA employee who now lectures at George Washington University, told the Las Vegas Sun in a 2008 article, "They would rather make the thing go away. If you can make it go away by an informal settlement, where the company says we're going to put in a good safety program ... OSHA might rather close the case and go on to the next investigation."

A close look at Shumate's skirmishes with OSHA shows the company has successfully obtained reductions, and even dismissals of many OSHA citations both through informal settlements, and by contesting the citations. For instance, OSHA cited Shumate on April 27, 2011 for serious and other-than-serious violations regarding powered industrial trucks, and proposed a \$2125 fine. Shumate appealed and successfully overturned the serious violation and fine. Shumate successfully obtained dismissal of a June 22, 2011 OSHA citation for a wiring violation through an informal settlement. Shumate successfully appealed a February 4, 2010 serious violation and \$2500 fine for a fall protection violation. Shumate-Raleigh was able to get a serious violation and \$500 fine for a fall protection violation deleted in January, 2010, through an informal settlement, although a second, less serious fall protection citation and \$500 fine remained. Even a 2009 appeal of a serious violation and fine of the electrical regulations was successfully reduced from \$1200 to \$750, although the citation was upheld.

The Critic does not mean to imply that Shumate has done anything untoward by appealing these OSHA citations; it appears to be smart business and on occasion a citation may have been issued mistakenly. But the Critic is concerned that citations that disappear and fines that vanish after so-called informal settlements may be sending the wrong message to the regulated community; that there is only a trivial price to pay for an unsafe work place. In the Critic's opinion, the initial OSHA citation and fine may present a more accurate picture of an employer's safety record, as opposed to the plea-bargained, informal settlements that invariably reduce the employer's liability. That is why the Critic presents, in the graph on the following pages, the amounts and types of the initial citations and fines that OSHA issued.

## RACKETEERING SUIT cont'd from front page

at Shumate Mechanical's offices during business hours.

Shumate's target was itself one of the largest mechanical contractors in the Southeast and one of the 50 largest mechanical contractors in the entire United States, and a direct competitor of Shumate Mechanical.

The employee, David Kirkland lied about being at the Shumate office, and was fired. Just a few weeks later, another employee, Scott Brandsma, quit and went right to work for Shumate. Although both Kirkland and Brandsma had signed non-disclosure agreements, "someone" promptly began hacking into the competitor's password-protected computer network, from a computer in the Shumate Mechanical offices.

Computer experts quickly tracked the hacker to Shumate's computer IP address, but Shumate had already spent six months illegally downloading a wealth of the competitor's trade secrets and confidential customer information. Despite complaints to Lisa Shumate, who supervised Brandsma and Kirkland, the attempted computer hacking continued, until the competitor finally hardened their password-protected system. This competing company also learned that Brandsma had taken hard copies of their files with him when he went to work for Shumate.

The competitor filed suit against Shumate in State Court, and the Judge entered an order commending Shumate to return everything they had taken, but Shumate never complied with that court order. The competitor reacted with a subsequent suit filed in federal court.

That federal case was ultimately resolved with a Federal Court order forbidding Shumate from hacking into any more of their competitors confidential information.

# Shumate's OSHA Violations

JOB SITE	SERIOUS VIOLATIONS	OTHER THAN SERIOUS	PROPOSED FINES	TYPES OF VIOLATIONS
Atlanta, GA.	One		\$2500	Shumate cited for a serious violation of fall protection standards.
Henderson, NC	Two		\$1000	OSHA cited Shumate for another two serious violations of fall protection rules.
Columbia, SC	One		\$1200	Shumate was cited for a serious violation related to frayed electrical cords.
Locust Grove, GA	One		\$1300	That was another serious violation of gas welding requirements.
Apharetta, GA	One		\$1500	This is yet another serious citation against lvey for fall protection requirements.
Graniteville, SC	One	One	\$2125	OSHA has an open investigation against Shumate for violating standards for powered industrial trucks, including obstructed views.
Columbus, GA	One Repeated Violation		\$200	This is an open investigation of a repeated violation of gas welding regulations by Shumate.
Austell, GA	One		\$4000	OSHA has an open investigation against Shumate for a serious violation because of exposure of workers to risks of impalement on protruding steel.
	TOTAL PROPOSED VIOLATIONS	TOTAL PROPOSED FINES		
	10	\$13,825		

## A Sampling of Shumate's Failed Building Inspections in Wake County, North Carolina (Raleigh vicinity)

Permit Number	Type of Inspection Failed by Shumate	Inspectors' Comments
M013414	mechanical final	Failed. Test gas piping.
M013748	mechanical final, electrical final	n/a
M014232	mechanical final, mech. final reinspection (3)	Blocks supporting unit must be mortared. Trap outside not allowed, will freeze. Change drain so no trap outside of foundation. No manual left with units.
M010477	electrical final	A/C Unit is overfused at 40A, 35A is maximum.
M012474	mechanical final, electrical final	n/a
M013159	mechanical final, electrical final	Seal refrigeration lines, complete condensation lines and remove tee in primary drain. Prime and glue app pipe, cannot discharge into crawl space. Size wire and overcurrent appropriately.
M017941	Mechanical final	n/a

Shumate has installed literally thousands of HVAC units. You might think they could install these fixtures right the first time, every time, without any inspections, but that's not true.

Shumate's routine failings to meet these easy-to-understand, very minimum requirements could reveal a basic problem with their typical work quality. Shumate's work quality problems may also be related to the multiple complaints against Shumate at the Better Business Bureau, at least one of which remains unresolved as of press time. Although Shumate eventually makes it right, sometimes on the 3<sup>rd</sup> try, these failed inspections add time and expense to the construction project.

And if the building inspector misses a problem with Shumate's work, the project owner could be facing disastrous results if a system fails in the future.