

**BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS**

**IN RE: CRAIG HARTZELL
 AZIMUTH, INC.**

C2011-06

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by William E. Pierson, P.E., its Vice-President, (hereinafter “the Board”) for the purpose of agreeing to resolve a disputed Complaint seeking disciplinary action against Craig Hartzell (hereinafter “Respondent Hartzell”) and Azimuth, Inc. (hereinafter “Respondent Firm”) (together, “Respondents”). Board President Edward L. Robinson, having voluntarily recused himself, declined to participate in matters related to this Complaint and its resolution. 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, Azimuth, Inc. is organized under the laws of the State of West Virginia, with its principal place of business in Morgantown.
3. Respondent Hartzell, as the President and CEO of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.
4. Prior to the filing of this Complaint, it was alleged to the Board by one of its licensees that Respondents were performing engineering services in the State of West Virginia in alleged violation of applicable law. Respondents dispute that the alleged actions constituted any violation of law within the jurisdiction of the Board.
5. The Board’s investigation revealed that Respondent Firm is a West Virginia corporation which, through its website, offered various engineering services to the Department of

Defense and other government and commercial entities in a number of jurisdictions.

6. During a telephone conversation with Respondent Hartzell, Mr. Johnson expressed his concern that Respondent Firm's website states that Respondent Firm offers "commercial engineering services."
7. In response, Respondent Hartzell explained that Respondent Firm does not offer commercial engineering services and that any representation to that effect was a mistake and Respondent Firm promptly removed all references to "commercial engineering services" from its website but retained language describing Respondent Firm as "a leading electronic and software engineering firm for the Department of Defense and other government entities "
8. At the time of the investigation, Respondents were performing at least one engineering contract in West Virginia: Contract #50055458 (Request for Proposal (RFP) 90001011W) with West Virginia University (hereafter "the WVU Contract").
9. The WVU Contract, which involves design, development and manufacturing during Phase I and additional manufacturing under an optional Phase II, is funded in part or in whole with financial assistance from the Federal Transit Administration of the United States Department of Transportation.
10. Prior to the filing of the Complaint, the Board received a communication from counsel for Respondents regarding the WVU contract, asserting preemption under federal law, and explaining the factual and legal bases for such assertion ("Pre-Complaint Letter").
11. Respondent admits that the WVU Contract, while it is federally funded, is not a contract directly with the federal government.
12. The Board initiated complaint number C2011-06 at its regular meeting on November 15, 2010, which was filed on December 2, 2010.
13. In initiating the Complaint, the Board had and continues to have a good-faith belief that it has jurisdiction over the matter and that the exercise of same is not pre-empted by federal law.
14. In response to the Complaint, Respondents, through their counsel, further explained the

scope of the Respondent Firm's work in West Virginia and sought guidance from the Board regarding future compliance with West Virginia engineering law, while maintaining in good faith their position that regulation and/or licensure by the Board in connection with the federal government and certain federally funded work is preempted by federal law.

15. At all relevant times, as alleged in the complaint, Respondent did not have a valid license to practice engineering, as set forth in West Virginia Code § 30-13-1 et seq., in the State of West Virginia.
16. At all relevant times, as alleged in the complaint, Respondent Firm did not have a valid Certificate of Authorization, as defined by West Virginia Code § 30-13-1 et seq.
17. Respondent Firm has no officers or employees who are licensed professional engineers in any state. Therefore, no one currently holds the qualifications necessary to submit a comity application for licensure and, as of the date of this Consent Order, Respondent Firm does not have the current ability to obtain a Certification of Authorization (COA) in West Virginia.
18. Phase II of the WVU Contract, according to representations of Respondents, does not involve engineering work, but rather the manufacture of devices already engineered in Phase I of the WVU Contract. Therefore, the Board makes no finding in this Consent Order concerning Phase II of the WVU Contract.
19. With the understanding that the Board reserves the right to assert jurisdiction with regard to Respondents' other federal or federally-funded contracts and/or Respondents' continued offering of engineering services under such contracts without being licensed or certified to do so, the parties wish to settle the issues arising from the WVU Contract.
20. Respondents' prompt response in connection with this investigation and Complaint, including Respondent Firm's modifications to its website during the investigation, mitigates Respondents' culpability regarding the asserted violations of West Virginia engineering law; therefore, based upon the foregoing, the Board, in its discretion, will not assess administrative costs although it is within its power to assess such costs under W. Va. Code § 30-13-21(d) (4) and W. Va. Code R § 7-1-14.4.

21. To the extent this Consent Order is approved by the Board, Respondents waive their right to a hearing on this matter and other rights set forth in West Virginia Code § 30-13-1 *et seq.* and the procedural rules of the Board.

CONCLUSIONS OF LAW

22. Subject to the effects of the doctrine of federal preemption, if any, it is unlawful for any person to practice or offer to practice engineering, as defined by West Virginia Code § 30-13-1 *et seq.*, in the State of West Virginia unless that person is duly registered under the provisions of West Virginia engineering law. W. Va. Code § 30-13-2.
23. 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. W. Va. Code § 30-13-17.
24. 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.” W. Va. Code § 30-13-21(b); see also W. Va. Code § 30-13-21(d)(4).
25. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-1 *et seq.*, without a license is an action that may 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.
26. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-1 *et seq.*, without a valid Certificate of Authorization is an action that may 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.
27. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as the circumstances leading to the violation; the nature and severity of the violation and the risk of harm to the public; the extent to which the cited person or firm has cooperated with the Board and the Board’s investigation; and other matters as may be appropriate. W.

Va. Code R. § 7-1-15.4.

28. Each day of continued violation may constitute a separate offense. W.Va. Code R § 7-1-15.3.

CONSENT OF RESPONDENTS

Craig Hartzell, individually and as the President and CEO of Azimuth, Inc, by affixing his signature hereon, agrees to the following:

29. Respondents, through their counsel, are aware of their right to pursue this matter through appropriate administrative and/or court procedures, including their right to a formal hearing before the Board, and Respondents intelligently and voluntarily waive their right to do so provided the Board accepts the terms and conditions set forth in this Consent Order.
30. Respondent Hartzell admits that he does not have a license to offer or provide engineering services in the State of West Virginia.
31. Respondent Firm admits that it does not have a Certificate of Authority to offer or provide engineering services in the State of West Virginia.
32. Respondent Hartzell accepts for the purposes of this Consent Order that it is the Board's position that he offered and provided engineering services in the State of West Virginia without a valid license, as defined by West Virginia § 30-13-1 *et seq.*
33. Respondent Firm accepts for the purposes of this Consent Order that it is the Board's position that it offered and provided engineering services in the State of West Virginia without the required Certificate of Authorization, as defined by West Virginia § 30-13-1 *et seq.*
34. Subject to and without waiving the legal positions articulated in the Pre-Complaint Letter and asserted in response to the investigation or Complaint in this matter and for the express purpose of resolving this matter, 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.

35. Except as to contracts with the Federal Government or certain other federally funded contracts, which Respondents understand involve issues which may still be pursued by the Board, Respondents agree they will not practice or offer to practice any engineering, as defined by W. Va. Code §30-13-1 *et seq.*, in the State of West Virginia unless and until they contract with or hire a properly licensed Professional Engineer with a valid Certificate of Authorization.
36. Respondents acknowledge that the Board reserves its right to exercise power and authority over individuals and firms with federal and federally-funded contracts for engineering work to the extent permitted by federal law.
37. Respondents acknowledge that entering into the negotiation of this Consent Order constitutes a waiver of any and all objections regarding the timeliness of Board action on Complaint Number C2011-06. This paragraph is binding on the parties even in the event that the Board does not approve this Consent Order.
38. 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' activities in West Virginia in consideration of this Consent Order.
39. 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, except for Board President, Edward L. Robinson, who specifically recused himself from participating in matters relating to this Complaint and its resolution. This paragraph is binding on the participants even if the Board does not approve this Consent Order.
40. Respondents acknowledge that the Board may reject this proposal, notice and complete the hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.

41. Upon acceptance by the Board, 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.
42. Respondents understand that the Complaint and their written response regarding same are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.
43. Respondents agree 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).
44. Respondents acknowledge that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any certification which may be issued to Respondents by the Board, and the addition of any other charges which may arise or ensue from Respondents' non-compliance with this Consent Order.
45. Respondents acknowledge that proof of any material 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 certification issued to Respondents by the Board, 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

46. On the basis of the foregoing, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as settlement of Complaint number C2011-06 pursuant to West Virginia Code § 30-13-22(b).

47. The Board **ORDERS** Respondent Hartzell to pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00) in settlement of Complaint #C2011-06.
48. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) in settlement of Complaint #C2011-06.
49. 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.
50. Respondent Firm shall modify its website description of itself to read, "As a leading electronic and software engineering firm for the Department of Defense (DoD) and other federal agencies and federally-funded projects,"
51. The Board reserves the right to initiate a Board Complaint against Respondents regarding the offering of engineering services on Respondent Firm's website.
52. 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).
53. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
54. 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.

55. This matter relates solely to the WVU contract and shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalties agreed to herein.
56. This Consent Order does not evidence compliance or noncompliance with West Virginia engineering law or any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance or noncompliance be implied.
57. This Consent Order shall have no adverse impact on or precedential value in connection with the consideration of any future license application filed by Respondent Hartzell or an employee of Respondent Firm and shall not serve as the factual or legal basis for the denial of any such application.

AGREED TO BY:




CRAIG HARTZELL, individually and on behalf of
AZIMUTH, INC.

31 MARCH, 2011
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this: 15TH day of APRIL, 2011.

**WEST VIRGINIA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS**

By: 

WILLIAM E. PIERSON, Ph.D., P.E.
BOARD VICE-PRESIDENT

PREPARED BY:

DEBRA L. HAMILTON (WV Bar ID: 1553)
DEPUTY ATTORNEY GENERAL
STATE CAPITOL BLDG. 1, ROOM 26-E