

representations that the following injunctive provisions are the result of negotiation and compromise by the parties and do not constitute an admission by defendants that the legal claims and factual allegations set forth in the plaintiff's Complaint are correct or that defendants have engaged in any activities in violation of law or trade practice regulations; and the Court finding and concluding from the record in this cause and the representations of the parties that it has personal jurisdiction over the defendants and subject matter jurisdiction in this cause and that entry of the following injunctive provisions would be reasonable and legally appropriate;

IT IS THEREFORE ORDERED, with the consent of the parties, that defendants, together with their employees, officers, agents, subcontractors, corporate successors and assigns, and any other companies or firms under defendant Henry Heil's management or control, and any others acting in concert with either defendant who have knowledge hereof, be and hereby are Permanently Enjoined and prohibited from engaging in driveway paving transactions with North Carolina home owners unless:

a. All such transactions not initiated or executed at defendants' business premises fully comply with the disclosure provisions and requirements of N.C. Gen. Statute § 14-401.13 (Failure to give right to cancel in off-premises sales), a copy of which is attached hereto;

b. All such transactions comply with applicable local ordinances, including those pertaining to off-premises sales, itinerant solicitors, driveway construction or street connection permits and standards; and

c. All such transactions meet applicable standards in the asphalt paving industry concerning site and base-course preparation, proper drainage, proper pavement quality, compaction, thickness and surface smoothness;

d. All such transactions not initiated or executed at defendants' business premises

begin no sooner than the fourth day following execution of the written contract by the home owner and the defendants' conveying to the home owner copies of the contract, the three-day right of cancellation notices and the cancellation forms required herein.

IT IS FURTHER ORDERED, with the consent of the parties, that the Court makes no award of costs, expenses, restitution to consumers, damages, penalties or attorneys' fees, as those matters are to be governed by the aforementioned Settlement Agreement that has been executed separately by and between the parties;

IT IS FURTHER ORDERED, with the consent of the parties, that this Court retains jurisdiction over this matter for purposes of ensuring the proper enforcement of the terms, conditions and restrictions set forth immediately above;

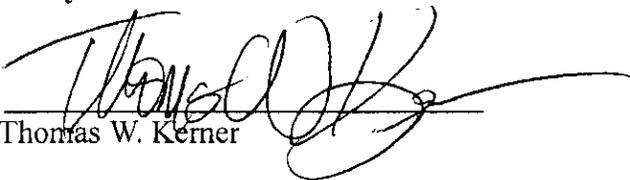
This the 4th day of May, 2010



SUPERIOR COURT JUDGE

WE CONSENT:

**Kerner Law Firm, PLLC
Attorneys for Defendant**

By 

Thomas W. Kerner

(Remaining signatures on following page)

**H.A.R.D Top Asphalt and Maintenance
of the Carolinas, L.L.C. Defendant**

By Henry Heil
Henry Heil, Manager/Member

Henry Heil, Defendant

Henry Heil
Henry Heil (In his individual capacity)

**State of North Carolina, *ex rel.*
Roy Cooper, Plaintiff**

By David N. Kirkman
David N. Kirkman
Assistant Attorney General

§ 14-401.13. Failure to give right to cancel in off-premises sales.

(a) It shall be a Class 3 misdemeanor for any sellers, as defined hereinafter, in connection with an off-premises sale, as defined hereinafter, willfully to:

- (1) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of 10 points, a statement in substantially the following form: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."
- (2) Fail to furnish each buyer, at the time he signs the off-premises sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in boldface type in a minimum size of 10 points, the following information and statements in the same language, e.g., Spanish, as that used in the contract:

"NOTICE OF CANCELLATION

(enter date of transaction)

(date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. In the event you purchased antiques at an antique show and cancel, and your residence is out-of-state, you must deliver the purchased goods to the seller.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram, to

(name of seller)

at _____
(address of seller's place of business)

not later than midnight of _____
(date)

I hereby cancel this transaction.

(date)

(buyer's signature)

- (3) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.
- (4) Fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.
- (5) Misrepresent in any manner the buyer's right to cancel.

(b) Regardless of the seller's compliance or noncompliance with the requirements of the preceding subsection, it shall be a Class 3 misdemeanor for any seller, as defined hereinafter, to willfully fail or refuse to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction. If the seller failed to provide a form Notice of Cancellation to the buyer, then oral notice of cancellation by the buyer is sufficient for purposes of this subsection.

(c) For the purposes of this section, the following definitions shall apply:

- (1) Off-Premises Sale. – A sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars (\$25.00) or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "off-premises sale" does not include a transaction:
 - a. Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or
 - b. In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635) or regulations issued pursuant thereto; or
 - c. In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days; or
 - d. Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or
 - e. In which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this

exclusion; or

- f. Pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission; or
 - g. Executed at an auction; or
 - h. Sales of motor vehicles defined in G.S. 20-286(10) by motor vehicle sales representatives licensed pursuant to G.S. 20-287 et seq.
- (2) Consumer Goods or Services. – Goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.
 - (3) Seller. – Any person, partnership, corporation, or association engaged in the off-premises sale of consumer goods or services. However, a nonprofit corporation or association, or member or employee thereof acting on behalf of such an association or corporation, shall not be a seller within the meaning of this section.
 - (4) Place of Business. – The main or permanent branch office or local address of a seller.
 - (5) Purchase Price. – The total price paid or to be paid for the consumer goods or services, including all interest and service charges.
 - (6) Business Day. – Any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and Good Friday. (1985, c. 652, s. 1; 1987, c. 551, ss. 1, 2; 1993, c. 141, c. 539, s. 282; 1994, Ex. Sess., c. 24, s. 14(c).)

**H.A.R.D. TOP ASPHALT MAINTENANCE
OF THE CAROLINAS, L.L.C., and
HENRY HEIL**

This Settlement Agreement is entered into by Roy Cooper, Attorney General of the State of North Carolina (hereinafter "Attorney General"), and Henry Heil and his company H.A.R.D. Top Maintenance of the Carolinas, L.L.C.

I. PARTIES

1. Henry Heil (hereinafter "Heil") is a resident of Pender County, North Carolina. H.A.R.D. Top Maintenance of the Carolinas, L.L.C. (hereinafter "the Corporation"), a corporation which Heil owns and controls, has its principal offices in Pender County. Heil and the Corporation install and repair asphalt driveways and parking areas on premises located in the state of North Carolina and elsewhere.
2. The Attorney General is the North Carolina official empowered to enforce the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*, as well as several related marketing practices statutes.

II. FACTUAL BACKGROUND

3. In June of 2008, the Attorney General brought an enforcement action against Heil and the Corporation in Wake County Superior Court pursuant to authority found in the aforementioned Act. In that action, entitled State of North Carolina, ex rel. Roy Cooper, Attorney General, Plaintiff, versus H.A.R.D. Top Maintenance of the Carolinas, L.L.C., and Henry Heil, Defendants (File No. 08 CVS 09961), the Attorney General alleged, among other things, that Heil and the Corporation regularly failed to provide customers with written and verbal notification of their three-day rights to reconsider and cancel the sale, as set for in North Carolina General Statute § 14-401.13 and the Federal Trade Commission's Door-to-Door Sales Rule, 16 Code of Federal Regulations § 429.1.
 4. The Attorney General further alleged in the aforesaid enforcement action that Heil and the Corporation pressured home owners to execute contracts and pay for the work before they could reconsider.
 5. One remedy the Attorney General sought under the aforesaid enforcement action was restitution to consumers who had been harmed by the practices of Heil and the Corporation. Another remedy was the recovery of up to \$5000 in civil penalties for each violation of the aforesaid Act.
 6. Heil and the Corporation filed an Answer in the aforementioned enforcement action denying that they had violated any laws or regulations and denying further that any of their business practices were deceptive or improper.
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7. Following initial discovery in the aforementioned action, the court appointed a mediator, Attorney Lorrie Dollar of the Wake County Bar, and ordered the parties to pursue resolution of the action with the help of Ms. Dollar.

8. With Ms. Dollar's assistance, the parties have now negotiated a resolution of the aforesaid enforcement action. The terms and conditions of that resolution are set forth in this Settlement Agreement.

9. By entering into this Settlement Agreement, neither side admits or implies that its allegations, claims or defenses in the aforesaid enforcement action lacked merit or that those of the opposing side possessed merit. Instead, they hereby stipulate that the resolution set forth herein represents a negotiated compromise designed to save the parties from the costly and unnecessary expenditures of time and resources necessary to prove their respective allegations, claims or defenses.

III. MUTUAL UNDERTAKINGS OF THE PARTIES

Pursuant to the foregoing, and in consideration for the other parties' undertakings or waivers herein, the Attorney General and Heil and the Corporation hereby bind themselves as follows:

10. Contemporaneously with the execution hereof, the Attorney General, Heil and the Corporation will execute, and tender to the Court for approval and filing, a document terminating the aforesaid enforcement action. A copy of that document, entitled "Judgment by Consent and Agreed Permanent Injunction," is attached hereto as "Exhibit A."

11. Commencing on the first day of the calendar month that begins at least thirty days after the execution of this Agreement, Heil and the Corporation shall pay to the State of North Carolina a total of Fifty Thousand Dollars and Four Hundred Dollars (\$ 50,400.00) in 36 equal monthly installments of \$1,400.00. These funds shall be collected and applied towards consumer restitution, attorneys' fees, costs, consumer education, enforcement, or other consumer protection purposes at the discretion of the Attorney General, except as provided herein.

12. As between Heil and the corporation, the payment obligations in the preceding paragraph shall be joint and several. Payment shall be tendered to the State of North Carolina in care of David N. Kirkman, Assistant Attorney General, or his successor, Consumer Protection Division, N.C. Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629. (Street address for overnight courier deliveries: 114 W. Edenton Street, Raleigh, NC 27603)

13. All payments described in the two preceding paragraphs shall be in the form of a check or money order made payable to the "North Carolina Department of Justice."

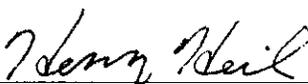
14. To ensure the proper and timely payment of the sums and the total described in the preceding two paragraphs, Heil shall tender to the Attorney General, in care of the aforesaid Assistant Attorney General, a fully executed Confession of Judgment in favor of the State of

North Carolina in the principal sum of Fifty Thousand Dollars (\$50,400.00). An unsigned copy of said Confession of Judgment is attached hereto as "Exhibit B." The Attorney General shall hold and not file the Confession of Judgment unless and until there is a default by Heil and the Corporation in making any of the installment payments described herein. The Attorney General shall provide Heil with two weeks' advance notice, in care of Heil's last known address, of his intent to file the Confession of Judgment. After filing the Confession of Judgment in the appropriate courts, the Attorney General shall, as soon thereafter as practicable, note on pertinent Judgment Dockets any and all installment payments that have already been made by or on behalf of Heil.

15. Heil and the Corporation agree that the Attorney General shall be solely responsible for any homeowner restitution or refund program employing funds received from either of them pursuant to this Agreement, provided, however, that any homeowner who receives restitution or partial restitution through the Attorney General must waive any and all legal claims that they might possess or assert against Heil or the Corporation arising out of any driveway paving transaction they entered into with either Heil or the Corporation. This waiver shall be in writing and bear the homeowner's signature. The Attorney General shall promptly advise Heil and the Corporation that particular homeowners have executed waivers, and either Heil or the Corporation shall be entitled to a copy of that written waiver upon request.

16. With respect to acts or practices committed by either of them prior to the execution hereof, the Attorney General shall not bring another enforcement action against Heil or the Corporation based upon trade practices which were set forth in his claims for relief in the enforcement proceeding filed in Wake County Superior Court under file number 08 CVS 09961. The Attorney General and the State of North Carolina expressly reserve the right to bring proceedings to enforce this Settlement Agreement, the aforementioned Judgment By Consent and Agreed Permanent Injunction and the aforementioned Confession of Judgment, as well as the right to bring any other legal claim or enforcement proceeding not involving the subject matter of the aforesaid Wake County enforcement action.

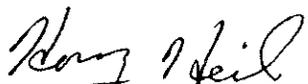
This the 30th day of April, 2010.



Henry Heil
In His Individual Capacity



State of North Carolina, *ex rel.*
Roy Cooper, Attorney General
By David N. Kirkman,
Assistant Attorney General



H.A.R.D. Top Asphalt Maintenance of
the Carolinas, L.L.C.
By Henry Heil