

**STATE OF FLORIDA
BUILDING COMMISSION**

IN RE:

KLAUS PARKING SYSTEMS
ATLANTIC, INC.

CASE NO.

DS 2015-081

**PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA BUILDING COMMISSION**

Klaus Parking Systems Atlantic, Inc. (“Klaus”) petitions the Florida Building Commission (the “Commission”) for a declaratory statement (the “Petition”) regarding the application of the Florida Building Code (“FBC”) to its multilevel parking lifts/systems (the “System”), and states as follows:

JURISDICTION

1. The Florida Building Commission (the “Commission”) has jurisdiction to issue declaratory statements pursuant to Section 120.565, Florida Statutes, relating to an agency’s interpretation and enforcement of the specific provisions of the FBC, which the agency is authorized to enforce. Section 553.775(3)(f), Florida Statutes.

THE PETITIONER

2. Klaus’s address is 655 N.W. 128 Street, North Miami, Florida 33168. Petitioner’s telephone number is (305) 687-5733, but should be contacted by through undersigned counsel.

3. Klaus is a Florida Corporation and its parent company, Klaus Multiparking, is one of the leading manufacturers of the Systems in the world and has been for over 40 years. Please *See*, www.multiparking.com.

4. Klaus has installed over 3,000 Systems in the State of Florida and Klaus has another 1,000 Systems ready to be installed. The System is manufactured by Klaus in Germany and shipped to the United States for installation in parking garages in local jurisdictions that allow the use of such Systems in order to provide required on-site parking pursuant to local governments off street parking ordinances or land development regulations.

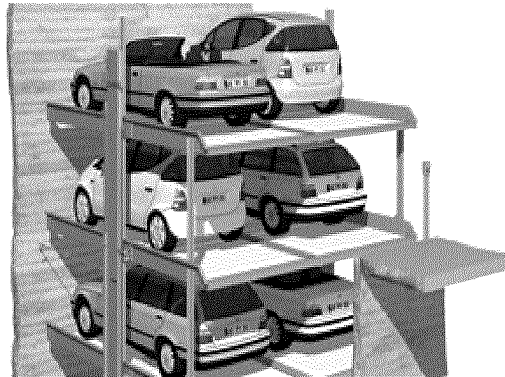
5. The System is “anchored and attached” to the structural elements of the parking garage. For example, the System lifts are bolted to the floor with no less than four points of contact as well bolted to each other and the side walls of the structure, operating arms are hung from the ceiling of the parking garage and the key switch has a stabilizer “hanger” from the ceiling above, each lift is hardwired and has its own electrical junction box connected to the floor of the parking garage, which is connected to the disconnect of the structure, and the building’s fire sprinkler system is integrated within the lift structure elements as part of the parking garage.

6. Klaus has been retained by a developer to install a System in a 52 story tower consisting of 154 dwelling units. To date, building permit plans for the System have not been submitted to the local government for review and approval. Klaus is a “substantially affected person” as it intends to install a System in this development in the near future and has questions and is in doubt as to the applicability of the FBC to the System as further provided herein.

SUMMARY OF FACTS

7. Several municipalities (i.e. City of Miami, City of Sunny Isles Beach, and City of Coral Gables) around the State of Florida permit the use of the System to satisfy off street parking requirements for proposed developments.

8. Klaus has been retained by developers across the State of Florida to install the Systems within their developments. While the System has many potential configurations, the System generally being installed in Florida is a form of vertical tandem parking that permits self-parking or valet parking attendants to park and retrieve the vehicles. The System at issue here looks like the following:



9. These types of parking lifts are becoming very popular for both public and private parking needs due to the high prices of land and the high cost of building structured parking, particularly in the more urban areas of Florida. In fact, one municipality where Klaus has provided the System allows 100% of a projects' required parking to be done with these multi-level lifts.

10. Klaus's entire System is certified and approved by National Recognized Testing Laboratories (NRTL), such as such as UL, Intertek, TUV¹, which are authorized by the Occupational Safety and Health Administration (OSHA) to ensure workplace product safety. The Klaus's NRTL approval not only includes the control system, but the entire lifting structure itself.

¹ A complete list of approved NRTLs can be found at <https://www.osha.gov/dts/otpca/nrtl/nrtllist.html>.

11. Klaus believes that such certification(s) are essential due to failures that have taken place in certain systems that have created major property damage and, in at least one case, death of a valet. *See*, article at: <http://nypost.com/2012/11/26/man-killed-after-car-falls-off-lift-in-parking-garage/>, as well as the images attached as Exhibit “A” showing failures of non-certified systems.

12. Based on Klaus’s experience with different governmental jurisdictions it is apparent that some Building Officials require proof of such certifications and/or testing while others do not believe that the FBC applies to the System and its structural integrity, except for the mechanical and electrical installations needed to power and move the cars and parking bed.

13. There are no direct standards in the FBC that appear to regulate the System, as a whole. Instead the Code provides:

- (a) Section 3001.6 of the FBC dealing with Elevators and Conveyance systems excludes “automobile parking lifts;” and

14. Sections 102.4 and 3001.2, “Reference Codes and Standards,” provide that the ALI (American Lift Institute) standards and ALI-ALTV (2006) standards are incorporated in the FBC by reference. However, a review of the ALI website reveals that the System is not the type of products that is covered by the ALI standards. The only types of products handled by ALI are shown here and the System (i.e. a mechanical multi-level parking lift) is not covered. *See*, <http://www.autolift.org/types.php>. Thus, except for mechanical and electrical standards, the System is not regulated under the FBC according to some Building Officials, but not others.

15. In addition to concerns regarding load bearing capacity, other areas of operation can have disastrous results and these include:

- (a) Some lifts can be operated without any “key lock protection,” allowing anyone in the garage to raise or lower the lift;
- (b) The nature of the chain mechanism for lifting and lowering the vehicle and its strength or lack, thereof.
- (c) The location of the high voltage control box which some vendors install on the floor of a garage which can flood in major storm events.
- (d) Lifts that can only be lowered with electric power and that are “stuck” in the event of loss of power; and
- (e) Full load bearing capacity for the entire lift, while some do not provide it at the end or edge of the lift.

COUNSEL FOR THE PETITIONER

16. Petitioner is represented by Clifford A. Schulman, Esq., Weiss Serota Helfman Cole & Bierman, P.L., 2525 Ponce de Leon Boulevard, Suite 700, Coral Gables, Florida 33134; telephone (305) 854-0800, facsimile (305) 854-2323, and email CSchulman@wsh-law.com.

THE STATUTES, RULE AND CODE PROVISIONS, AND THEIR EFFECT OF PETITIONER

17. FBC Provisions

- (a) The FBC
 - i. *See*, FBC Sections cited above.

18. Florida Statutes

(a) Chapter 553, Part IV, Florida Statutes (2015).

19. Klaus intends to install a System in the development described in Paragraph 6 above, and is directly affected since it is in real and substantial doubt as to the applicability of the FBC to its System given that individual Building Officials have differing interpretations of the applicability of the FBC to the System.

NATURE OF DECLARATORY STATEMENT SOUGHT

20. Klaus seeks a declaratory statement answering the following questions:

- (a) Is the building, including the System, regulated by the FBC?
- (b) If yes, Is the System governed by Chapter 30 ALI Standards?; and
- (c) If not, Does the FBC require that the entire System (including the lifting structure itself) be certified by an OSHA approved NRTL?

PETITIONER'S PROPOSED ANSWERS TO QUESTIONS

POSED IN THE PETITION

Yes, since the System is “anchored and attached” (*See*, Paragraph 5 above) to the structural elements of the building and is not governed by the Chapter 30 ALI standards (*See*, Paragraph 14 above). Therefore, the design and development of the System will fall within the technical scope of the FBC requiring that the entire System (including the lifting structure itself) be certified by an OSHA approved NRTL and regulated under the following provisions of the FBC:

Florida Building Code 5th Edition (2014) Building

104.11. Alternative materials, design and methods of construction and equipment.

The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

104.11.1 Research reports.

Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

104.11.2 Tests.

Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the building official shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the building official for the period required for retention of public records.

105.14 Permit issued on basis of an affidavit.

Whenever a permit is issued in reliance upon an affidavit or whenever the work to be covered by a permit involves installation under conditions which, in the opinion of the building official, are hazardous or complex, the building official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work. In addition, they shall be responsible for conformity to the permit, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. In the event such architect or engineer is not available, the owner shall employ in his stead a competent person or agency whose qualifications are reviewed by the building official. The building official shall ensure that any person conducting plans review is qualified as a plans examiner under Part XII of Chapter 468, Florida Statutes, and that any person conducting inspections is qualified as a building inspector under Part III of Chapter 468, Florida Statutes.

1707.1 General.

In the absence of approved rules or other approved standards, the building official shall make, or cause to be made, the necessary tests and investigations; or the building official shall accept duly authenticated reports from approved agencies in respect to the quality and manner of use of new materials or assemblies as provided for in Section 104.11. The cost of all tests and other investigations required under the provisions of this code shall be borne by the applicant.

1708.1 Where required.

Where proposed construction is not capable of being designed by approved engineering analysis, or where proposed construction design method does not comply with the applicable

material design standard, the system of construction or the structural unit and the connections shall be subjected to the tests prescribed in Section 1710. The building official shall accept certified reports of such tests conducted by an approved testing agency, provided that such tests meet the requirements of this code and approved procedures.

1709.2 Test standards.

Structural components and assemblies shall be tested in accordance with the appropriate reference standards. In the absence of a standard that contains an applicable load test procedure, the test procedure shall be developed by a registered design professional and approved. The test procedure shall simulate loads and conditions of application that the completed structure or portion thereof will be subjected to in normal use.

SECTION 1710. PRECONSTRUCTION LOAD TESTS

1710.1 General.

In evaluating the physical properties of materials and methods of construction that are not capable of being designed by approved engineering analysis or do not comply with the applicable referenced standards, the structural adequacy shall be predetermined based on the load test criteria established in this section.

1710.2 Load test procedures specified.

Where specific load test procedures, load factors and acceptance criteria are included in the applicable referenced standards, such test procedures, load factors and acceptance criteria shall apply. In the absence of specific test procedures, load factors or acceptance criteria, the corresponding provisions in Section 1710.3 shall apply.

1710.3 Load test procedures not specified.

Where load test procedures are not specified in the applicable referenced standards, the load-bearing and deformation capacity of structural components and assemblies shall be determined on the basis of a test procedure developed by a registered design professional that simulates applicable loading and deformation conditions. For components and assemblies that are not a part of the seismic-force-resisting system, the test shall be as specified in Section 1710.3.1. Load tests shall simulate the applicable loading conditions specified in Chapter 16.

1710.3.1 Test procedure.

The test assembly shall be subjected to an increasing superimposed load equal to not less than two times the superimposed design load. The test load shall be left in place for a period of 24 hours. The tested assembly shall be considered to have successfully met the test requirements if the assembly recovers not less than 75 percent of the maximum deflection within 24 hours after the removal of the test load. The test assembly shall then be reloaded and subjected to an increasing superimposed load until either structural failure occurs or the superimposed load is equal to two and one-half times the load at which the deflection limitations specified in Section 1710.3.2 were reached, or the load is equal to two and one-half times the superimposed design load. In the case of structural components and assemblies for which deflection limitations are not specified in Section 1710.3.2, the test specimen shall be subjected to an increasing superimposed load until structural failure occurs or the load is equal to two and one-half times the desired superimposed design load. The allowable superimposed design load shall be taken as the lesser of:

1. The load at the deflection limitation given in Section 1710.3.2.
2. The failure load divided by 2.5.
3. The maximum load applied divided by 2.5.

1715.3.2 Deflection.

The deflection of structural members under the design load shall not exceed the limitations in Section 1604.3. The High-Velocity Hurricane Zone (HVHZ) shall comply with Section 1616.3.1.

CONCLUSION

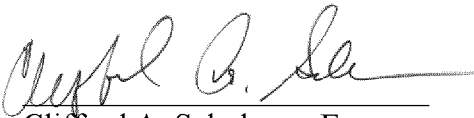
As a result of the proliferation of the System throughout the State of Florida, it is essential for the public health, safety and welfare for there to be uniform standards and procedures for the installation of the System. Petitioner respectfully believes that the System is not governed by the Chapter 30 ALI standards, but should be and is capable of being regulated under the FBC and the provisions noted above and that the Building Officials of the State shall require, prior to installation, proof of compliance by an OSHA approved NRTL of the entire System (including the lifting structure itself).

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing via electronic mail to those individual shown on the Service List below on this 9th day of July, 2015.

Respectfully submitted,

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COMPOSITE EXHIBIT "A"

NEW YORK POST

Man killed after car falls off lift in parking garage

November 26, 2012 | 2:00pm

By Jessica Simeone



Photo: G.N.Miller/New York Post

A parking attendant was fatally injured this morning when a car fell off of a lift, pinning him underneath, authorities said.

The victim, Victoriano Vizcaino, 45, was working at icon Parking on Barclay Street near Church Street when he loaded the SUV onto the lift around 8:10 a.m., cops said. The car then rolled off the lift and crushed Vizcaino, cops said.

Emergency workers rushed to the scene, but Vizcaino was pronounced dead, said a spokesman for the FDNY.



