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Accident Case – Part 2:  
Investigation and  
Commencing the Action

Materials By:  
Andrew J. Smiley, Esq.

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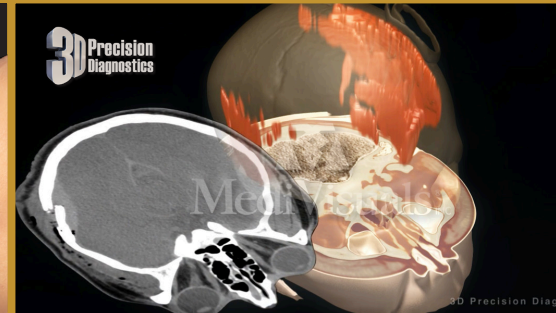
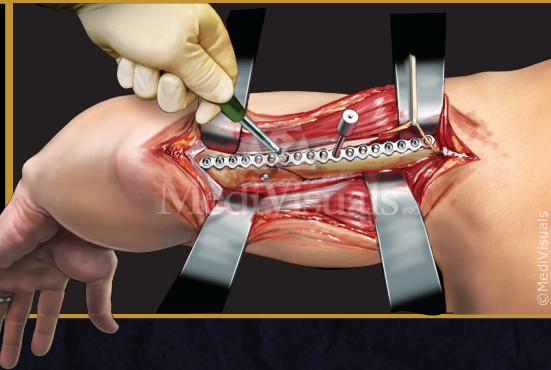
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*Justice of the Supreme Court, New York*



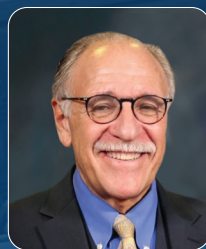
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*Real Estate, Co-op and Condominium, Contracts/Corporate/ Business Disputes*



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*Commercial, Dissolutions Employment, Entertainment, Finance*



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*Former General Counsel, Signature Bank, HSBC, N.A., Credit Suisse Banking and Finance, Compliance*



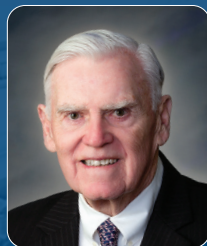
**Rhonda L. Epstein, Esq.**  
*Employment Law, Co-op and Condominium Law*



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*Contract/Corporate/ Business Disputes, Real Property/Land Use/ Zoning, Employment*



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*Contract/Corporate/ Business Disputes, Securities, Intellectual Property, Entertainment*



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*Maritime Law, Marine and Admiralty Insurance*



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*Insurance Coverage, Complex Business/ Corporate Disputes*



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*Presiding Justice of the Appellate Division, 2nd Judicial Department*



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*Insurance, Reinsurance, Regulatory, Complex Commercial*



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*Intellectual Property, Licensing and Advertising Law*



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*Acting Supreme Court Justice, 1st Department, Commercial Division*



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**Andrew J. Smiley, Esq.**  
**Smiley & Smiley, LLP**  
**122 East 42<sup>nd</sup> Street, NYC 10168**  
**212.986.2022**  
**asmiley@smileylaw.com**  
**www.smileylaw.com**  
**www.thementoresq.com**

### ***CURRICULUM VITAE***

#### **Education:**

· Brooklyn Law School - Juris Doctorate 1996

Moot Court Honor Society - Vice President/Executive Board (Chair of Trial Division)  
Moot Court Honor Society - Competitor - National Appellate Trademark Competition  
Moot Court Honor Society – Coach, National Trial Team – Regional Champions  
CALI Excellence For The Future Award - Advanced Legal Research  
Judge Edward and Doris A. Thompson Award for Excellence in Trial Advocacy

· Tulane University, New Orleans, LA - Bachelor of Arts (Honors, Psychology) 1993

#### **Professional:**

· *Smiley & Smiley, LLP*

Managing Partner & Senior Trial Attorney, January 2001 - present

Associate, June 1996 - December 2000

Law Clerk, September 1993 - June 1996

Major verdicts and settlements in plaintiffs' personal injury, medical malpractice and wrongful death litigation.



## **Andrew J. Smiley, Esq. *Curriculum Vitae*, Page 2**

· *Adjunct Clinical Instructor of Law - Brooklyn Law School*, Trial Advocacy Program (1998-2004)

· *New York “Super Lawyer”*

2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022

### Bar Admissions:

- The United States Supreme Court
- New York State Courts
- United States Eastern District, Southern District & Northern District of New York
- United State District Court of Vermont.

### Organizations/Affiliations:

· New York State Academy of Trial Lawyers

- Immediate Past President (May 2018- May 2019)
- President (May 2017 – May 2018)
- President-Elect – (April 2016- May 2017)
- Vice President – 1st Dept. (July 2013-May 2016)
- Executive Committee (May 2019 – present)
- Board of Directors (2013- present)
- Judicial Screening Committee (2013- present)
- Master CLE Instructor (2020 – present)
- CLE Instructor (2013 – present)

· New York City Trial Lawyers Alliance

- Chairman of Board of Governors (July 2017 – July 2019)
- President (July 2015 – July 2017)
- Vice President (June 2013 – July 2015)
- Treasurer (June 2011 – June 2013)
- Secretary (June 2009- June 2011)
- Board of Directors (2000-present)

· Judicial Screening Committee, Kings County Democratic Party (2013)

· New York State Bar Association

· Brooklyn Bar Association

- Medical Malpractice Committee
- Supreme Courts Committee

· The American Association for Justice

· American Bar Association

· Brooklyn Law School Alumni Association

· National Order of Barristers

· Porsche Club of America (CVR Region)

· Porsche Sim Racing League

· Sports Car Driving Association (SCDA)



**Andrew J. Smiley, Esq. Curriculum Vitae, Page 3**

Continuing Legal Education (CLE) Presentations:

*How to Litigate a Catastrophic Automobile Accident Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, July 6, 2022

*How to Litigate a Catastrophic Automobile Accident Case – Part 5: Mediation and Settlement*, New York State Academy of Trial Lawyers, June 2, 2022

*How to Litigate a Catastrophic Automobile Accident Case – Part 4: Expert Depositions*, New York State Academy of Trial Lawyers, May 4, 2022

*How to Litigate a Catastrophic Automobile Accident Case – Part 3: Liability and Damages Experts*, New York State Academy of Trial Lawyers, April 6, 2022

*How to Litigate a Catastrophic Automobile Accident Case – Part 2: Commencing the Action*, New York State Academy of Trial Lawyers, March 2, 2022

*How to Litigate a Catastrophic Automobile Accident Case – Part 1: The Investigation*, New York State Academy of Trial Lawyers, February 4, 2022

*Anatomy of a Trial, a Trial Skills Series – Part 5: Summations*, New York State Academy of Trial Lawyers, January 5, 2022

*Anatomy of a Trial, a Trial Skills Series – Part 4: Cross-Examination*, New York State Academy of Trial Lawyers, December 1, 2021

*Anatomy of a Trial, a Trial Skills Series – Part 3: Direct Examination*, New York State Academy of Trial Lawyers, November 3, 2021

*Anatomy of a Trial, a Trial Skills Series – Part 2: Opening Statements*, New York State Academy of Trial Lawyers, October 6, 2021

*Anatomy of a Trial, a Trial Skills Series – Part 1: Jury Selection*, New York State Academy of Trial Lawyers, September 10, 2021

*How to Successfully Litigate a Personal Injury Case Series - Part 7: It's a Wrap!*, New York State Academy of Trial Lawyers, July 7, 2021

*How to Successfully Litigate a Personal Injury Case Series - Part 6: The Trial*, New York State Academy of Trial Lawyers, June 2, 2021

*How to Successfully Litigate a Personal Injury Case Series - Part 5: Pre-Trial Disclosures and Gearing up for Trial*, New York State Academy of Trial Lawyers, May 5, 2021

*How to Successfully Litigate a Personal Injury Case Series - Part 4: Depositions*, New York State Academy of Trial Lawyers, April 7, 2021

*How to Successfully Litigate a Personal Injury Case Series - Part 3: Your Adversary, the Preliminary Conference and Initial Discovery*, New York State Academy of Trial Lawyers, March 3, 2021

*How to Successfully Litigate a Personal Injury Case Series - Part 2: Early Settlement, Jurisdiction, Venue & Commencing The Lawsuit*, New York State Academy of Trial Lawyers, February 3, 2021

*How to Successfully Litigate a Personal Injury Case Series - Part 1: Getting the Case, Investigation and Ready to File*, New York State Academy of Trial Lawyers, January 6, 2021



**Andrew J. Smiley, Esq. *Curriculum Vitae*, Page 4**

Continuing Legal Education (CLE) Presentations Continued:

*Brick by Brick: Building a Personal Injury Practice*, New York State Academy of Trial Lawyers, December 10, 2020

*Working with Experts to Build Your Case*, New York State Academy of Trial Lawyers, October 8, 2020

*Fitness Industry Liability: Gyms, Trainers and Waivers*, The Mentor Esq. Podcast, September 8, 2020

*Let's Make a Federal Case Out of It: Litigating Personal Injury Cases in Federal Court*, New York State Academy of Trial Lawyers, June 9, 2020

*Crisis Management - The Corona Virus Pandemic*, The Mentor Esq. Podcast, April 9, 2020

*Do You Have a Federal Tort Claims Act Case in Your Office*, New York State Academy of Trial Lawyers, December 10, 2019

*Auto and Truck Claims, Accidents and Litigation 2019 – Evaluating Damages and Use of Experts*, New York State Bar Association, September 9, 2019

*Thoughts and Strategies in the Ever-Evolving Product Liability Litigation – The Plaintiff's Perspective*, The Defense Association of New York, March 12, 2019

*Trial Techniques: Lessons on Dealing with Millennial Jurors; Summations; Requests to Charge and Post-Trial Motions*, The Defense Association of New York, January 31, 2019

*Trial Techniques: Interactive Lessons from the Plaintiff and Defense Perspectives*, The Defense Association of New York, September 17, 2018

*Punitive Damages – What to Plead, What to Prove: Medical Malpractice*, New York State Academy of Trial Lawyers, June 8, 2017 & June 21, 2017

Presenter on Evidence, *2016 Annual Update, Precedents & Statutes for Personal Injury Litigators*, New York State Academy of Trial Lawyers, September 30, 2016\

*Medical Malpractice in New York: A View from All Sides: The Bench, The Bar and OCA*, New York State Bar Association, October 11, 2015

*Effectively Using Experts in Personal Injury Cases*, Lawline, October 8, 2015

*Killer Cross Examination Strategies*, Clear Law Institute, April 21, 2015

**Andrew J. Smiley, Esq. Curriculum Vitae, Page 5**

Continuing Legal Education (CLE) Presentations Continued:

*Powerful Opening Statements*, Clear Law Institute, January 13, 2015

*The Dram Shop Law: New York Liquor Liability*, Lawline.com, November 20, 2014

*Killer Cross Examination Strategies*, Lawline.com, November 20, 2014

*Trial Techniques: Tricks of the Trade Update*, Lawline.com, October 14, 2014

*Personal Trainer Negligence Update*, Lawline.com, October 14, 2014

*Trial Techniques – Part 2: Cross- Examination & Closing Arguments*, Brooklyn Bar Association, May 15, 2014

*Trial Techniques – Part 1: Jury Selection, Opening Statements & Direct Examination*, Brooklyn Bar Association, May 7, 2014

*Health, Fitness & Adventure Sports Liability*, New York State Bar Association, August 1, 2013

*Direct Exams: How To Make Your Witnesses Shine*, New York State Academy of Trial Lawyers, May 6, 2013

*Opening Statements: A Recipe for Success*, Lawline.com, August 7, 2012

*“You Had Me at Hello”: Delivering an Effective and Powerful Opening Statement*, New York State Academy of Trial Lawyers, April 1, 2012

*Preparing the Construction Accident Case*, New York County Lawyers Association, March 26, 2012

*The Nuts and Bolts of a Trial*, New York State Academy of Trial Lawyers, October 24, 2011

*Personal Trainer Negligence*, Lawline.com, March 22, 2011

*Effectively Using Experts in Personal Injury Cases*, Lawline.com, May 4, 2011

*Trial Techniques: The Tricks of the Trade*, Lawline.com, February 16, 2011

*Practice Makes Perfect: Learn to Practice Like a Pro*, Lawline.com, January 18, 2011

*Jury Selection 101*, New York State Academy of Trial Lawyers, December 14, 2010

*Practical Guidelines for Getting Items into Evidence*, Lawline.com, March, 2010

*Winning Your Case: Trial Skills that Count*, Lawline.com, August 21, 2009



## **Andrew J. Smiley, Esq. Curriculum Vitae, Page 6**

### Television Appearances – Legal Commentary:

#### *Fox News Channel*

- The O'Reilly Factor
- What's Happening Now with Martha McCallum
- America's News Room
- Fox & Friends
- Fox Business Channel
- Neil Cavuto
- Money with Melissa Francis

*CNN -Anderson Cooper 360*

*ET – Entertainment Tonight*

*Bloomberg TV*

*Headline News*

*Tru TV*

*Court TV*

*The Morning Show with Mike and Juliet*

### Interests, Hobbies:

Porsche Club - High Performance Driving Events, Sim Racing, Yoga, Cooking

Podcaster – The Mentor Esq.

# THE MENTOR ESQ

A podcast for lawyers and aspiring lawyers hosted by Andrew J. Smiley, Esq. This podcast is accredited by the NYS Academy of Trial Lawyers. Earn CLE credits by listening!

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## Episodes of the Mentor, Esq.

Find a list of episodes below, or [click here to sort by category](#). Click the episode title to find a full description, video, and links to CLE credits on applicable episodes.



### CLE: How to Successfully Litigate a Personal Injury Case Series Part 4

APRIL 13, 2021 / "LITIGATING A PERSONAL INJURY CASE" SERIES, CLE EPISODES, SEASON 2, VIDEO EPISODES / 01:22:36

-Video Episode - Andrew discusses properly preparing and conducting depositions. 1.5 CLE credits.



00:00

00:00





# Episodes

Check out the full list of Mentor, Esq. episodes below, or filter by category.

ALL

"LITIGATING A PERSONAL INJURY CASE" SERIES

CLE EPISODES

INTERVIEW EPISODES

SEASON 1

SEASON 2

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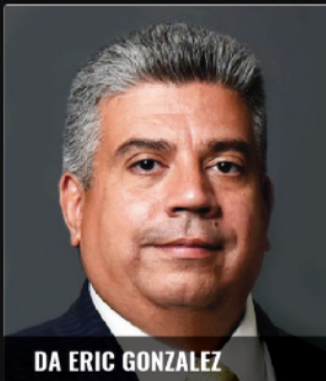
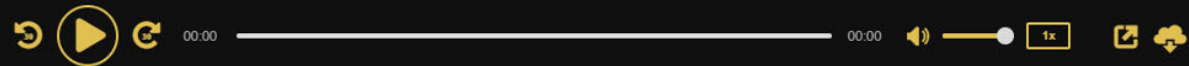
INTERVIEW

CHRIS PAIZ, ESQ

## Season 2 – Episode 9: Racing Cars with Chris Paiz

JANUARY 26, 2021 / ADMIN / INTERVIEW EPISODES, SEASON 2, VIDEO EPISODES

-Video Episode - Andrew interviews Chris Paiz, a fellow lawyer and car racing enthusiast.



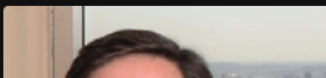
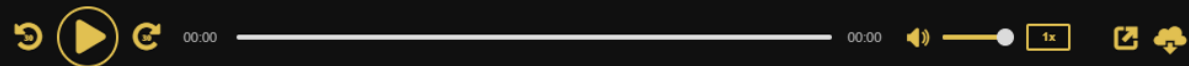
INTERVIEW

DA ERIC GONZALEZ

## Season 2 – Episode 8: An Interview with Brooklyn, New York's DA Eric Gonzalez

DECEMBER 29, 2020 / ADMIN / INTERVIEW EPISODES, SEASON 2, VIDEO EPISODES

-Video Episode - In this week's episode, Andrew welcomes the District Attorney of Kings County in Brooklyn, New York, Eric Gonzalez.



## Season 2 – Episode 7: Fighting Through the Dark

# Continued Legal Education (CLE) Episodes

We are proud to offer CLE (or Continuing Legal Education) episodes of the Mentor, Esq in partnership with the New York State Academy of Trial Lawyers. You can earn **FREE** CLE credits just by listening to the episodes below and making note of the codes given in each one. To redeem your CLE credit, visit the episode page to find the link to the episode's unique Academy form and enter the code.

To see more information, other CLE opportunities, or to join the Academy, visit their website at [trialacademy.org](https://trialacademy.org).

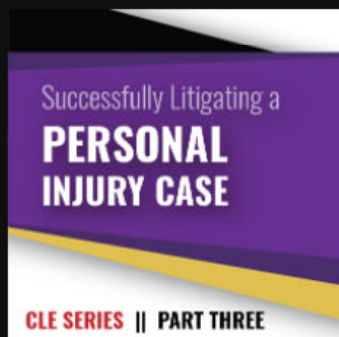
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## CLE: How to Successfully Litigate a Personal Injury Case Series Part 4

APRIL 13, 2021 / "LITIGATING A PERSONAL INJURY CASE" SERIES, CLE EPISODES, SEASON 2, VIDEO EPISODES / 01:22:36

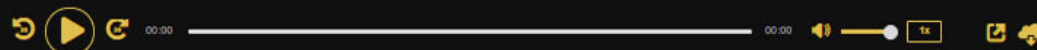
-Video Episode - Andrew discusses properly preparing and conducting depositions. 1.5 CLE credits.



## CLE: How to Successfully Litigate a Personal Injury Case Series Part 3

MARCH 9, 2021 / "LITIGATING A PERSONAL INJURY CASE" SERIES, CLE EPISODES, SEASON 2, VIDEO EPISODES

- Video Episode - Andrew discusses adversaries, the preliminary conference, and the initial discovery. 1.5 CLE credits.







## The Mentor, Esq.



Hosted By

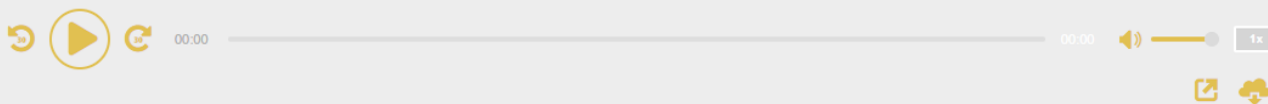
Andrew J. Smiley, Esq.

We hope you enjoy this highly rated podcast hosted by Andrew J. Smiley, Esq. and featuring interviews with other experts in law and litigation, CLE and educational series, and great legal advice.



## CLE: Taking the “Umm...” out of SUM/UM Coverage

FEBRUARY 23, 2021 / ADMIN / CLE EPISODES, SEASON 2, VIDEO EPISODES / COMMENTS OFF



In Andrew's current CLE series, “How to Litigate a Personal Injury Case”, the topic of SUM and UM coverage has come up several times. In fact, it came up so many times during the Q&A sessions that the Mentor, Esq. worked with the Academy to do an entire CLE on the topic!

If you are listening and would like to answer the poll in the program for **1.5** CLE credits, you can do so by emailing the Academy at [info@trialacademy.org](mailto:info@trialacademy.org).

Contact Andrew Smiley at [andrew@thementoresq.com](mailto:andrew@thementoresq.com).

<http://www.smileylaw.com/podcast>

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- › [CLE: How to Successfully Litigate a Personal Injury Case Series Part 4](#) April 13, 2021
- › [CLE: How to Successfully Litigate a Personal Injury Case Series Part 3](#) March 9, 2021
- › [CLE: Taking the “Umm...” out of SUM/UM Coverage](#) February 23, 2021
- › [CLE: How to Successfully Litigate a Personal Injury Case Series Part 2](#) February 9, 2021



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July 1, 2014

OSHA  
201 Varick Street  
Room 908  
New York, New York 10014  
Attention: FOIA Officer

14-282  
SIMS# 752393

*RE: Gary Harrigan*  
*D/A: 1/13/2014*  
*CMI-954645*  
*FOIA#:14-171-SIMS#:744813*

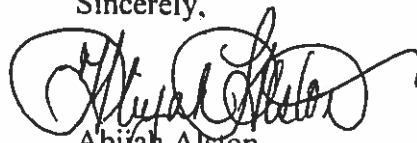
Dear Sir/Madam:

Please be advised that this office represents Gary Harrigan, for personal injuries sustained on the above date of accident.

Pursuant to the Freedom of Information Act would you please provide this office with a copy of the citations issued to Coordinated Metals Inc., (CMI) regarding the above reference file/identification numbers.

Thank you for your attention to this matter and please do not hesitate to contact this office should you have any questions or concerns.

Sincerely,

  
Abirah Alston  
Paralegal



SMILEY LAW



**U.S. Department of Labor**

Occupational Safety and Health Administration  
Manhattan Area Office  
201 Varick Street - Room 908  
New York, New York 10014  
Tel: (212) 620-3200  
Fax: (212) 620-4121  
OSHA Website Address: <http://www.osha.gov>



July 7, 2014

Mr. Abijah Alston  
Smiley & Smiley, LLP  
Attorneys at Law  
122 East 42<sup>nd</sup> Street, 39<sup>th</sup> Floor  
New York, NY 10168

Re: Coordinated Metals Inc., -954645  
FOIA# 14-282 SIMS#752393  
Your File# Gary Harrigan

Dear Mr. Alston:

On 7/1/2014 we received your request for a copy of our investigation file concerning the above case. We are enclosing a copy of the Alleged Violations and Notification of Proposed Penalty, which is public information.

**Under exemption 7 of the Freedom of Information Act and 29 CFR Part 70, the remainder of file is not available for public disclosure because it is in contest.**

This information will remain exempt from disclosure until the matter of the contest has been settled. Therefore, please resubmit your request for copies of the investigation file in a few months and, if at that time the case is a final order, we will forward to you the rest of the file

You have the right to appeal this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting statements or arguments. The appeal should also include a copy of your initial request and a copy of this letter.

If you appeal, you may mail your appeal to: Solicitor of Labor, U.S. Department of Labor, Room N-2420, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Alternatively, you may email your appeal to [foiaappeal@dol.gov](mailto:foiaappeal@dol.gov), or fax your appeal to (202) 693-5538. The envelope (if mailed), cover email (if emailed), or fax cover sheet (if faxed), and the letter indicating the grounds for appeal, should be clearly marked: "Freedom of Information Act Appeal."

If you have any questions, please feel free to contact this office.

Sincerely,



Kay Gee

Area Director

KG:cs

Enclosure

## U.S. Department of Labor

Occupational Safety and Health Administration  
201 Varick Street  
Room 908  
New York, NY 10014  
Phone: 212-620-3200 Fax: 212-620-4121



## Citation and Notification of Penalty

**To:**  
Coordinated Metals Inc  
626 16th Street  
Carlstadt, NJ 07072

**Inspection Number:** 954645  
**Inspection Date(s):** 01/13/2014 - 01/13/2014  
**Issuance Date:** 05/13/2014

**Inspection Site:**  
823 1st Avenue  
New York, NY 10017

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you either call to schedule an informal conference (see paragraph below) or you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).



If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Right to Contest** – You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.

**Penalty Payment** – Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to "DOL-OSHA". Please indicate the Inspection Number on the remittance. You can also make your payment electronically on [www.pay.gov](http://www.pay.gov). On the left side of the pay.gov homepage, you will see an option to Search Public Forms. Type "OSHA" and click Go. From the results, click on OSHA Penalty Payment Form. The direct link is:

<https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>.

You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$50,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic payment for less than the full amount due, and will process the payments as if these restrictions or conditions do not exist.

**Notification of Corrective Action** – For each violation which you do not contest, you must provide *abatement certification* to the Area Director of the OSHA office issuing the citation and identified above. This abatement certification is to be provided by letter within 10 calendar days after each abatement date. Abatement certification includes the date and method of abatement. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item. The abatement certification letter must be posted at the location where the violation appeared and the corrective action took place or employees must otherwise be effectively informed about abatement activities. A sample abatement certification letter is enclosed with this Citation. In addition, where the citation indicates that *abatement documentation* is necessary, evidence of the purchase or repair of equipment, photographs or video, receipts, training records, etc., verifying that abatement has occurred is required to be provided to the Area Director.

**Employer Discrimination Unlawful** – The law prohibits discrimination by an employer against an

employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

**Employer Rights and Responsibilities** – The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Notice to Employees** – The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** – You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at [www.osha.gov](http://www.osha.gov). If you have any dispute with the accuracy of the information displayed, please contact this office.



## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 05/13/2014. The conference will be held by telephone or at the OSHA office located at 201 Varick Street, Room 908, New York, NY 10014 on \_\_\_\_\_ at

\_\_\_\_\_. Employees and/or representatives of employees have a right to attend an informal conference.



## CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 954645

Company Name: Coordinated Metals Inc  
Inspection Site: 823 1st Avenue, New York, NY 10017  
Issuance Date: 05/13/2014

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return to: **U.S. Department of Labor – Occupational Safety and Health Administration, 201 Varick Street, Room 908, New York, NY 10014**

Citation Number \_\_\_\_\_ and Item Number \_\_\_\_\_ was corrected on \_\_\_\_\_  
By (Method of Abatement): \_\_\_\_\_

Citation Number \_\_\_\_\_ and Item Number \_\_\_\_\_ was corrected on \_\_\_\_\_  
By (Method of Abatement): \_\_\_\_\_

Citation Number \_\_\_\_\_ and Item Number \_\_\_\_\_ was corrected on \_\_\_\_\_  
By (Method of Abatement): \_\_\_\_\_

Citation Number \_\_\_\_\_ and Item Number \_\_\_\_\_ was corrected on \_\_\_\_\_  
By (Method of Abatement): \_\_\_\_\_

Citation Number \_\_\_\_\_ and Item Number \_\_\_\_\_ was corrected on \_\_\_\_\_  
By (Method of Abatement): \_\_\_\_\_

Citation Number \_\_\_\_\_ and Item Number \_\_\_\_\_ was corrected on \_\_\_\_\_  
By (Method of Abatement): \_\_\_\_\_

I certify that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

**NOTE: 29 USC 666(g)** whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than 6 months or both.

**POSTING:** A copy of completed Corrective Action Worksheet should be posted for employee review

**U.S. Department of Labor**  
Occupational Safety and Health Administration

**Inspection Number:** 954645  
**Inspection Date(s):** 01/13/2014 - 01/13/2014  
**Issuance Date:** 05/13/2014



**Citation and Notification of Penalty**

**Company Name:** Coordinated Metals Inc  
**Inspection Site:** 823 1st Avenue, New York, NY 10017

**Citation 1 Item 1** Type of Violation: **Serious**

29 CFR 1926.452(w)(6)(i): Employee(s) were allowed to ride on scaffolds when the surface on which the scaffold was moved was not within 3 degrees of level, and/or not free of pits, holes, and obstructions:

823 1st Avenue, New York, NY

On or about 1/13/2014

a) The surface on which a Genie GS3232 was being moved was not free of obstructions. Two employees were injured when an aerial platform extended approximately 17 feet tipped over while it was being moved.

**Date By Which Violation Must be Abated:**  
**Proposed Penalty:**

**Corrected During Inspection**  
**\$4900.00**

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor  
Occupational Safety and Health Administration

Inspection Number: 954645  
Inspection Date(s): 01/13/2014 - 01/13/2014  
Issuance Date: 05/13/2014



**Citation and Notification of Penalty**

Company Name: Coordinated Metals Inc  
Inspection Site: 823 1st Avenue, New York, NY 10017

**Citation 1 Item 2 Type of Violation: **Serious****

29 CFR 1926.454(a): The employer did not have each employee who performed work while on a scaffold trained by a person qualified in the subject matter to recognize the hazards associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards.

823 1st Avenue, New York, NY


On or about 1/13/2014

a) Employees not trained to use or operate Genie GS3232 Scissor Lift while installing and inspecting their work. Two employees were injured while working in a Scissor Lift and the lift tipped over while extended approximately 17 feet.

**NOTE: THE EMPLOYER IS REQUIRED TO SUBMIT ABATEMENT CERTIFICATION FOR THIS ITEM IN ACCORDANCE WITH 29 CFR 1903.19**

Date By Which Violation Must be Abated:  
Proposed Penalty:

06/02/2014  
\$3500.00

  
\_\_\_\_\_  
Kay Gee  
Area Director

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor  
Occupational Safety and Health Administration  
201 Varick Street  
Room 908  
New York, NY 10014  
Phone: 212-620-3200 Fax: 212-620-4121



## INVOICE / DEBT COLLECTION NOTICE

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**Company Name:** Coordinated Metals Inc  
**Inspection Site:** 823 1st Avenue, New York, NY 10017  
**Issuance Date:** 05/13/2014

|   |                  |
|---|------------------|
| <b>Summary of Penalties for Inspection Number</b> | <b>954645</b>    |
| <b>Citation 1, Serious</b>                        | <b>\$8400.00</b> |
| <b>TOTAL PROPOSED PENALTIES</b>                   | <b>\$8400.00</b> |

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To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance. You can also make your payment electronically on [www.pay.gov](http://www.pay.gov). On the left side of the pay.gov homepage, you will see an option to Search Public Forms. Type "OSHA" and click Go. From the results, click on **OSHA Penalty Payment Form**. The direct link is <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>. You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$50,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic payment for less than the full amount due, and will cash the check or money order as if these restrictions or conditions do not exist.

If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to 2 times.



Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

**Interest:** Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is one percent (1%). Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

**Delinquent Charges:** A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

**Administrative Costs:** Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.



 **Kay Gee**  
Area Director



Date

File: HARRIGAN



**Engineering**



**Fire Investigations**



**Environmental Consulting**



**Specialty & Consulting**



**Catastrophe Response**

## ACCIDENT INVESTIGATION

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**Aerial Lift Tipover**  
423 First Avenue  
New York, NY

**Prepared For:**

**Smiley & Smiley, LLP**  
60 East 42nd Street  
New York, NY

**Client Matter O-003988**  
**EFI Global Job No.: 98411-09774**  
**Report Date June 30, 2014**

**Prepared By: Les Knoll, P.E.**

**EFI Global**  
9307 Monroe Road, Suite M  
Charlotte, NC 28270

**July 9, 2014**



**Emergency 24 Hours: 888.888.2467**  
**[www.efiglobal.com](http://www.efiglobal.com)**

July 9, 2014

Smiley & Smiley, LLP  
60 East 42nd Street  
New York, NY

**Re:** Aerial Lift Tipover  
423 First Avenue  
New York, NY

Client Matter O-003988  
EFI Global Job No.: 98411-09774

Dear Sirs:

On January 13, 2014, Mr. Gary Harrigan, employed by Coordinated Metals, a firm subcontracted by Lend Lease Construction LMB, Inc, was operating a Genie scissors lift, model GS-3232 at a construction site at 823 First Avenue, New York, NY. Mr. Harrigan and an employee of the site safety engineers who was to photograph structural details occupied the aerial lift. While the lift was elevated, it tipped over injuring both Mr. Harrigan and the site safety engineering employee.

On April 3, 2014, Mr. Jason Friedman of Smiley & Smiley, LLP contacted EFI Global, requesting an investigation of the accident to determine the cause and the responsibilities of the various parties involved.

EFI Global Senior Mechanical Engineer Les Knoll reviewed accident photos, witness statements, equipment manuals, ANSI standards, OSHA regulations and other materials pertaining to the accident.

On April 23, 2014, Mr. Knoll attended the inspection and functional testing of the subject lift at the United Rentals branch at 848 Magnolia Street, Edison, New Jersey.

It was the purpose of this investigation to determine the cause of the accident and to determine the responsibilities of the parties involved.

This report summarizes the findings of our evaluations and presents the background information and conclusions. Photographs and figures are included throughout this report and as an attachment to the report.

## **BACKGROUND**

On January 13, 2014, Mr. Gary Harrigan, employed by Coordinated Metals, a firm subcontracted by Lend Lease Construction LMB, Inc, was requested by an employee of the worksite safety engineers to take her up in an aerial lift in order to photograph structural details on the storefront of a building at 823 First Avenue, New York, NY. Mr. Harrigan and the site safety engineering employee got into the Genie model GS-3232 scissors lift at approximately 11:30 a.m., and drove to the area to be photographed with the lift platform retracted. The lift had to be positioned in precisely the right location in order to photograph the bolts and other details of the octagonal structure. When the lift was correctly positioned, Mr. Harrigan began to raise the platform to the required height, which, according to Mr. Harrigan, was close to the top of the building's mullions.

In the process of positioning the lift prior to elevation, the lift's left front wheel drove up onto a wooden ramp in close proximity to the building, raising the left front wheel off the ground.

While the lift was elevating, Mr. Harrigan heard no audible alarms and saw no indicators illuminate. His elevation process was not impeded by any interlocks. As far as he knew, the lift was level. As the lift platform approached the height required to do the photography, suddenly and without warning, the lift toppled, causing serious injury to both occupants.

On April 3, 2014, Mr. Jason Friedman of Smiley & Smiley, LLP contacted EFI Global, requesting an investigation of the accident to determine the cause, whether or not there were any equipment failures involved, whether or not there were any jobsite safety or training issues involved, and the responsibilities of the various parties in this matter.

EFI Global personnel reviewed accident photos, witness statements, equipment manuals, ANSI standards, OSHA regulations and other materials pertaining to the accident.

On April 23, 2014, EFI personnel attended the inspection and functional testing of the subject lift at the United Rentals branch at 848 Magnolia Street, Edison, New Jersey. During the testing, the subject Genie GS-3232 scissors lift was put through the pre-operation inspections mandated by ANSI A92.6 as well as all function tests mandated by this standard prior to normal operation. All functions and safety devices were found to operate correctly. It was discovered during the testing of the tilt alarm that the machine's chassis remained level enough not to trigger tilt alarms while only three wheels were in contact with the ground.



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## **EQUIPMENT EVALUATION AND OBSERVATION**

The Genie model GS-3232, serial number GS 3210A-94986, is a multi-stage scissors lift capable of elevating to a platform height of 32 feet (working height 38 feet). The subject machine was built in 2010. The unit has a lifting capacity of 500 pounds. Its unusually narrow width of 2'-8" and fold-down platform railings enable it to pass through standard size doors, a particularly desirable feature for the construction trades.

The machine is battery powered, with a 24-volt electrical system. Platform and propel functions are hydraulic, driven by a battery powered pump. The machine is intended to be operated on a firm, level surface.

In order for the machine to retain a narrow stance and still meet ANSI stability requirements at the full platform height of 32 feet, an outrigger system is employed. Four hydraulically operated outriggers housed within the chassis of the machine can be deployed by operation of the outrigger controls on the platform. Deployment is at the option of the operator and is not automatic; however, the platform cannot be raised more than 22 feet without deployment of the outriggers.

The outriggers work in conjunction with an independent level sensor within the chassis of the machine, and when the outrigger deployment controls are activated, will attempt to auto-level the machine's chassis. If level cannot be achieved and/or one or more of the outriggers senses unstable footing, an audible warning is sounded.

Because of the narrow width compared to the platform height, the machine is not drivable at full height.

The outrigger system on the GS-3232 is concealed within the machine's chassis in order to preserve the machine's 2'-8" width and is barely visible when the machine is first observed. This concealed outrigger feature is unique to this Genie line of 'slab' scissors lifts and as far as is known, is unique to the industry.

The operation of the outriggers and leveling system can be seen in the Youtube video <http://www.youtube.com/watch?v=8YRE866lyOM>. In this video, the surface on which the lift is located is too soft for the outriggers to sense a firm footing, and the system's ability to sense unstable footing is demonstrated.

## DISCUSSION AND ANALYSIS

The Genie GS-3232 is a somewhat unique machine in the classification of 'slab' scissors lifts, those intended to be operated on firm, level surfaces only. Genie has made significant innovations in eliminating the need for stability aids on some machines, and creating lifts with small envelopes that achieve previously unheard of working heights, all while conforming to ANSI stability requirements. The GS-3232 is one such machine. It has a 32-foot platform height while passing through a standard doorway, a feature desirable in the construction industry.

In order to achieve this, the GS-3232 contains safety features not found on other similar 'slab' machines and hence operators not directly familiar with this specific model may not know of the existence of such features without model-specific training.

The outriggers within the chassis on the GS-3232, unique to the Genie line and perhaps unique to scissors lifts, enable the GS-3232 to achieve platform heights otherwise physically impossible with such a narrow machine, while still meeting ANSI A92.6 stability requirements. It is possible with the outriggers and leveling sensors to not only level the machine before elevating, but also to sense if ground conditions are proper for achieving level and stable operation.

In the subject accident, the left front wheel was driven onto the edge of a ramp. The right front wheel was left unsupported. Because of the weight distribution at the time and the rigidity of the chassis, the right front wheel remained suspended in the air. See figure 1 below; the red arrow indicates the suspended right wheel. Note that the right wheel appears to the left when facing the machine, as in the figure. Right and left are oriented to the operator facing forward.

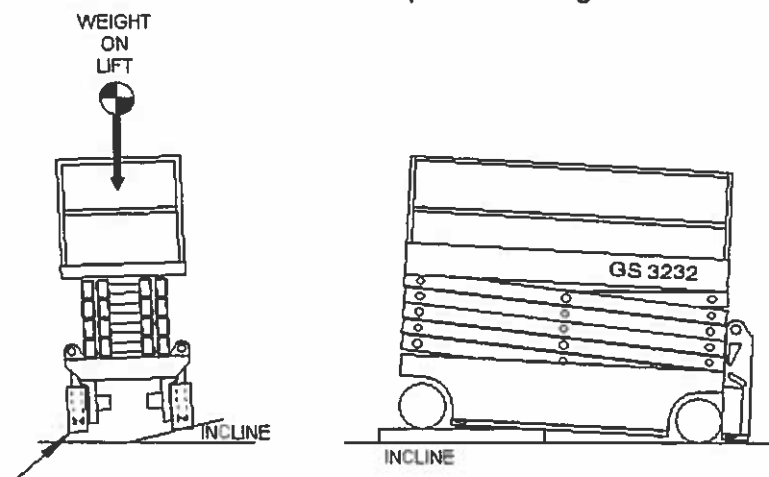


Figure 1  
Front wheels on the inclined ramp

The chassis remained relatively level side-to-side, enough so that the tilt alarm did not activate. As the lift raised and the occupants moved, the center of gravity shifted and the lift tipped, like a table with a short leg.

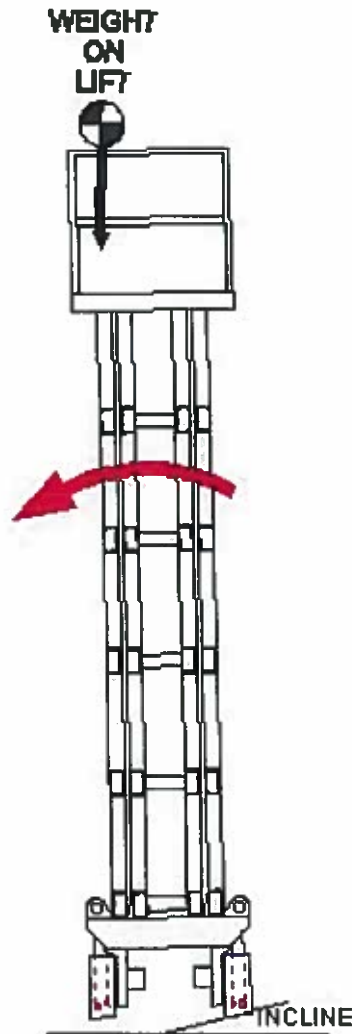


Figure 2  
Lift about to tip

It is the testimony of Mr. Harrigan, substantiated by post-accident photos, that the outriggers on the GS-3232 were not deployed before the accident. Mr. Harrigan testified that he was not instructed nor did he know beforehand that outriggers and a leveling mechanism existed on the GS-3232. He also was not instructed nor did he know beforehand that the lift could remain level enough so as not to activate the tilt alarm even though it was supported on only three wheels.

Had this information been made available to him through familiarization training, utilization of the outriggers and the leveling system would have prevented the accident.

If the outriggers had been extended before the lift was elevated, the outriggers could have compensated for the height difference between the ramp and the ground, and the machine would have been properly leveled.

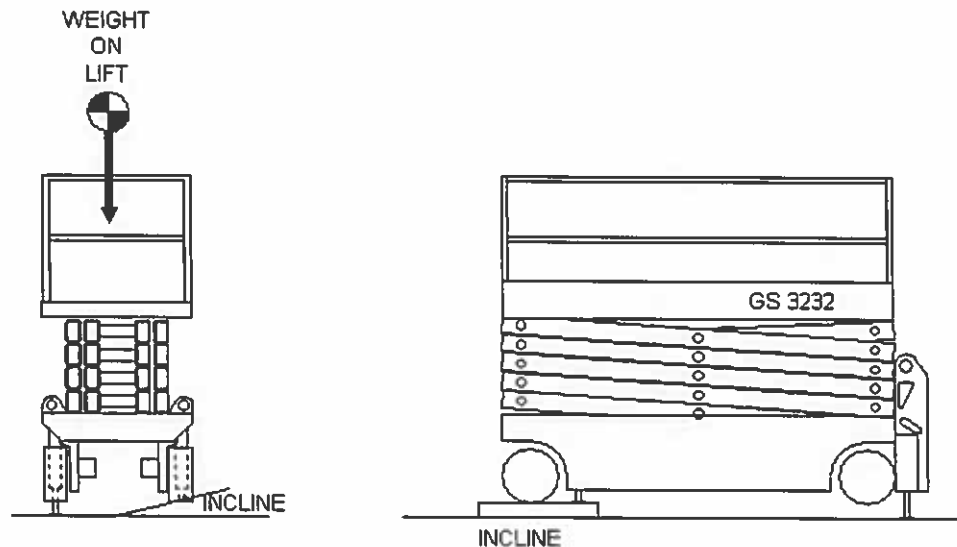


Figure 3  
Outriggers leveling the lift

If there was such a difference in height between the two front wheels that the machine could not be leveled by means of the outriggers, an audible alarm would have sounded, alerting the operator of potential problems in raising the machine.

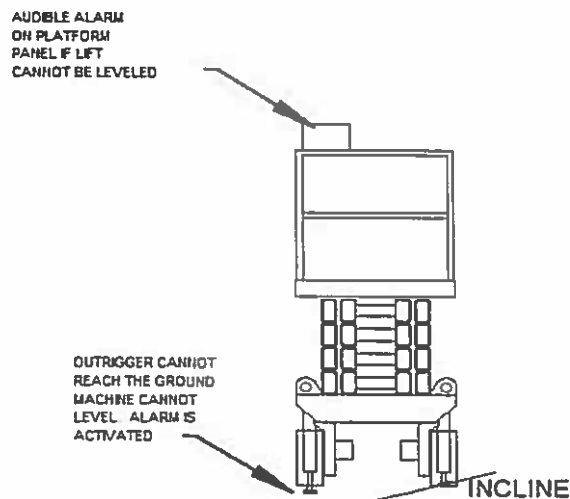


Figure 4  
Lift unable to level

The utilization of the outriggers and leveling system on the GS-3232 would have prevented the accident either by leveling the machine prior to elevation or would have given an audible indication to the operator that the machine could not be leveled under existing conditions. Mr. Harrington could have utilized these safety features had he known they existed and had he known how to utilize them.

The ANSI A 92.6-2006 definition of 'user' (Section 3) is a person(s) or entity who has care and custody and control of the machine. This definition usually applies to the employer of the person operating the aerial lift. Mr. Harrigan's employer, Coordinated Metals in this case, assumes the duties of the user as defined by ANSI. Consolidated Metals rented the lift from United Rentals, and authorized Mr. Harrigan to use it.

According to Mr. Harrigan, there were no manuals on the machine at the time of the accident. Although it is one of the responsibilities of the operator to "ensure that the operating and maintenance manuals are stored in the weather resistant storage compartment on the aerial platform" (Section 8.2.1), this responsibility is shared by the user. Section 7.2.1 states that "The user shall keep and maintain a copy(ies) of the operating and maintenance manual(s) in the weather resistant storage compartment provided by the manufacturer." Both the standards for the operator and user state that the manual is considered an integral part of the aerial platform and is vital to communicate vital safety information to users and operators.

Making sure the manuals are on the machine is a shared responsibility, in this case between user or employer and operator.

In the case of the GS-3232 with its unique technology, the manuals and training play an all the more important role. The GS-3232 is far from a commonplace machine. It is a unique design by Genie utilizing outriggers or stabilizers built into the frame in conjunction with an auto-leveling device which, when utilized, can make the machine safe to use even on a surface that is not level.

The problem is, the operator has to know the stabilizers and auto-leveling systems are there and how to use them. An operator not machine-specific trained on the GS-3232 could well look at the machine and not even notice the outriggers, which, when retracted, are barely visible.

At first glance, an operator used only to conventional 'slab' scissors lifts without outriggers could easily mistake the Genie GS 3232 for a conventional slab machine. As the side-by-side comparison below shows, the chassis of the GS-3232 and a more conventional Skyjack 4632 look quite similar. The outriggers on the GS-3232 are nearly concealed. They have to be for the lift to maintain clearances.





Photo 1  
Genie GS-3232 with outriggers



Photo 2  
Skyjack 4632 without outriggers

The pictures above clearly show that the GS-3232 could easily be mistaken for a conventional 'slab' type scissors lift. Only through familiarization training with this model of machine would an operator know how the outrigger and leveling features worked, and how to implement them.

Outriggers are not unheard of on scissors lifts. Scissors lifts designated as 'rough terrain' lifts have their outriggers plainly visible on the outside of their frames. This is the type of machine that Mr. Harrigan would likely be familiar with and would recognize and know that outriggers could be deployed.



Photo 3  
Genie all-terrain with outriggers



Photo 4  
Subject Genie GS-3232  
Also with outriggers

The pictures above clearly show the differences in chassis configurations between a conventional 'rough terrain' scissors lift and the Genie GS-3232. To someone without familiarization training, it would be easy to mistake the GS-3232 for a 'slab' machine without outriggers.

Since the machine was being used outdoors on potentially non-level surfaces, training in the operation of the auto-level feature would be vital for the safety of an operator. The operators manual, had it been available to the operator at the time of the accident, states that the machine should be used on firm, level surfaces. Instructions on page 47 of the manual explain the operation of the outriggers and tell the operator that the lighted indicators on the outrigger control panel show when use of the outriggers has properly leveled the machine.

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Since these features are unique to a slab machine, machine-specific training should have been made available to the operator. This is the responsibility of the user (or employer) according to ANSI A92.6, Section 7.6, which states:

"Whenever a user directs or authorizes an individual to operate an aerial platform, the user shall ensure that the person has been:

- (1) Trained before being assigned to operate the aerial platform.
- (2) Familiarized with the aerial platform to be operated."

ANSI A92.6, Section 7.7, further defines the required familiarization training, stating that:

"The user shall permit only properly trained personnel to operate an aerial platform. The user shall ensure that before use the operator is familiar with the model of aerial platform to be operated, and specifically:

1. Knows where the weather resistant compartment for manual storage is located.
2. Knows the operating and maintenance manuals supplied by the manufacturer (remanufacturer) are stored in the weather resistant compartment and is familiar with the operating and safety manuals.
3. Understands all control functions, placards and warnings.
4. Is aware of and understands all safety devices specific to the model aerial platform being used.

The need for familiarization training is restated in the section on responsibilities of operators, ANSI A92.6-2006, Section 8.5.3:

"When an operator is directed to operate an aerial platform he/she is not familiar with, the operator shall receive instructions regarding the following items:

1. The location of the weather resistant compartment (for manual storage).
2. The purpose and function of all controls.
3. Safety devices and operating characteristics specific to the aerial platform."

Familiarization training is every bit as important as the general training outlined in Section 8.5.1 of ANSI A92.6-2006. Mr. Harrigan states that he was an experienced operator of aerial lifts, in which case his employer, as an aerial lift user, need only ensure this is true, and not necessarily retrain Mr. Harrigan in the general operator training. It still remains the duty of the employer/user to ensure the operator is familiar with the very make and model of aerial lift to be used.

According to Mr. Harrigan, no familiarization training took place or was offered. He was not asked whether he was familiar with the operation of the GS-3232.

The responsibility for safety, job management, training and other lift-related issues is shared between the operator and the user or employer. In ANSI A92.6-2006, Section 7.1, Responsibilities of Users-Basic Principles, it states:

"The information in this standard must be supplemented by good job management, safety control and the sound principles of safety, training, inspection, maintenance, application and operation, consistent with all data available regarding the parameters of intended use and expected environment. Since the user (employer) has direct control over the application and operation of aerial platforms, conformance with good safety practices in this area is the responsibility of the user (employer) and the operating personnel, including the operator."

ANSI is stating that safety in lift operation is a shared responsibility between operator and employer.

Because Mr. Harrigan was authorized by his employer to use the lift, his employer as an aerial lift 'user' according to ANSI, has the responsibility for the familiarization training of Mr. Harrigan. Because this training was not given or offered, Mr. Harrigan's employer shares in the responsibility for the accident.

## **CONCLUSIONS**

1. The Genie GS-3232 has unique safety and operating features, requiring familiarization training in order to utilize them.
2. Mr. Gary Harrigan did not receive familiarization training on the GS-3232 before he used it. It was not offered by his employer.
3. The subject accident occurred because the left front wheel of the lift rode partially up an incline, leaving the right front wheel suspended and unsupported. The rigidity of the lift chassis combined with the weight distribution on the lift prior to the accident permitted the lift to remain level enough so as not to activate the tilt alarms. As the lift rose and weights shifted, the lift tilted toward the unsupported right side and tipped over.
4. Had the outriggers and leveling systems been utilized on the GS-3232, the subject accident would have been avoided.
5. According to ANSI A92.6-2006, familiarization training on aerial lifts is the duty of the employer, defined by ANSI as the user.
6. Had Mr. Harrigan been made aware of the operation of the outriggers and leveling capabilities of the GS-3232, he would probably have used them, assuring the machine was level and stable for operation, or correcting conditions to make the machine level and stable.
7. As part of his familiarization training, had Mr. Harrigan been made aware of the potentially hazardous condition wherein one wheel could be unsupported yet the tilt alarm not be activated, this accident would have been prevented.
8. Since the user, Mr. Harrigan's employer, had direct control over the application and operation of the aerial platform, this employer had responsibility for good job management, safety control and the sound principles of safety, training, inspection, maintenance, application and operation, consistent with all data available regarding the parameters of intended use and expected environment.



## **QUALIFICATIONS**

This report is for the exclusive use of Smiley & Smiley, LLP and is not intended for any other purpose. Our services have been performed using that degree of skill and care ordinarily exercised under similar conditions by reputable members of EFI Global's profession. If any additional information is encountered which relates to this evaluation, EFI Global reserves the right to review our conclusions and opinions accordingly. In some cases, additional studies may be warranted to fully evaluate concerns noted. Our report is based on information made available to us at this time.

Any oral statements made before, during, or after the course of the investigation were made as a courtesy only and are not considered a part of this report.

## **CLOSING**

Our opinions and conclusions are based on examination of the limited areas accessible at the time of our inspections and information made available to us at this time. Should additional information become available, we reserve the right to determine the impact, if any, of the new information on our opinions and conclusions and to revise our opinions and conclusions if necessary and warranted by the discovery of additional information.

EFI Global appreciates the opportunity to provide consulting services to Smiley & Smiley, LLP, our Client in this matter. Please contact us should any questions arise concerning this report, or if we may be of further assistance.

Sincerely,



Les Knoll  
Senior Mechanical Engineer

Reviewed by:





Photo 5  
Accident scene showing toppled lift with outriggers not deployed.



Photo 6

Ramp that left front wheel of lift was on. Note the potential dropoff at lower right.



Photo 7

Subject lift at the April 23, 2014 inspection.



Photo 8  
Left front wheel on a 2 x 4 during the test of the tilt sensor.





Photo 9

Left front wheel on a 2 x 4 during the test of the tilt sensor. The right front wheel (left in this picture) is suspended  $\frac{3}{4}$ " off the ground.



Photo 10

Close-up of right front wheel suspended  $\frac{3}{4}$ " off the ground.

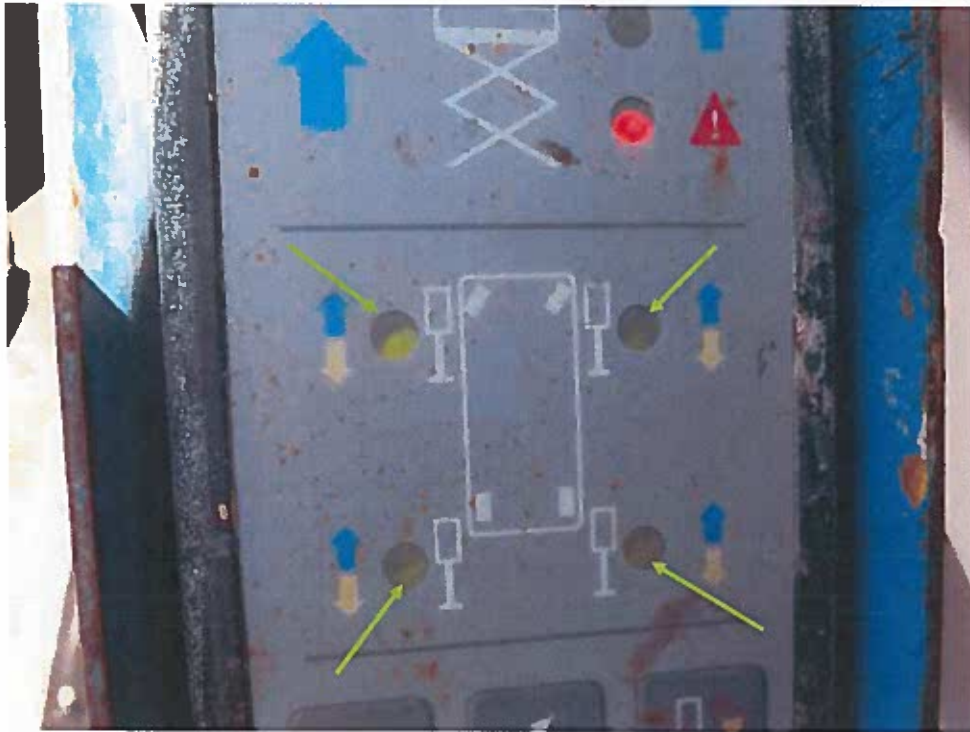


Photo 11

Outrigger control panel at platform controls. There is a green outrigger indicator for each outrigger. All four green outrigger indicators would illuminate if all the outriggers were firmly on the ground and the machine was level. An audible alarm would sound if the outriggers could not level the machine.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Dated Filed:

-----X  
GARY HARRIGAN and KATHY HARRIGAN,

INDEX NO.

Plaintiffs,

Plaintiffs designate New York County  
as the place of trial

-against-

**S U M M O N S**

G-Z/10UNP REALTY, LLC; LEND LEASE (US)  
CONSTRUCTION LMB, INC.; GENIE INDUSTRIES, INC.;  
and UNITED RENTALS (NORTH AMERICA) INC.,

The basis of the venue is

Defendants' principal place of business.

Defendants.

-----X

**To the above named Defendant(s):**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service of this summons, or within 30 days after service of this summons is complete if this summons is not personally delivered to you within the State of New York.

In case of your failure to answer this summons, a judgment by default will be taken against you for the relief demanded in the complaint, together with the costs of this action.

Dated: New York, New York  
July 7, 2014

SMILEY & SMILEY, LLP  
Attorneys for Plaintiffs

By: 

GUY I. SMILEY

122 East 42nd Street, Suite 3900  
New York, New York 10168  
(212) 986-2022

**Defendants:**

G-Z/10UNP REALTY, LLC - 445 Park Avenue, New York New York 10022;  
LEND LEASE (US) CONTSTRUCTION LMB, INC.-200 Park Avenue, New York, NY, 10166;  
GENIE INDUSTRIES, INC.- 18340 NE 76<sup>th</sup> Street, Redmond, Washington 98073;  
UNITED RENTALS (NORTH AMERICA) INC.- 100 First Stamford Place, Stamford, Connecticut,  
06902

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
GARY HARRIGAN and KATHY HARRIGAN,

Plaintiffs,

INDEX NO.

-against-

**VERIFIED COMPLAINT**

G-Z/10UNP REALTY, LLC; LEND LEASE (US)  
CONSTRUCTION LMB, INC.; GENIE INDUSTRIES, INC.;  
and UNITED RENTALS (NORTH AMERICA) INC.,

Defendants.

-----X

Plaintiffs, by their attorneys, SMILEY & SMILEY, LLP, complaining of the  
defendants, hereinafter allege at all times relevant hereto and upon information and belief, as  
follows:

**AS AND FOR A FIRST CAUSE OF ACTION**

1. Plaintiffs, GARY HARRIGAN and KATHY HARRIGAN, reside at 437 South 14th Street, Lindenhurst New York.
2. Defendant, G-Z/10UNP REALTY, LLC, was and still is a domestic corporation duly organized under and existing by virtue of the laws of the State of New York, and having a place of business located at 445 Park Avenue, New York New York.
3. Defendant, LEND LEASE (US), CONSTRUCTION LMB, INC. was and still is a domestic business corporation duly organized under and existing by virtue of the laws of the State of New York, and having a place of business located at 200 Park Avenue, New York, New York.



4. Defendant, GENIE INDUSTRIES, INC. was and still is a foreign business corporation duly authorized to transact business within the State of New York, and having a place of business located at 18340 NE 76<sup>th</sup> Street, Redmond, Washington.

5. Defendant, UNITED RENTALS (NORTH AMERICA), INC. was and still is a foreign business corporation duly authorized to transact business within the State of New York, and having a place of business located at 100 First Stamford Place, Stamford, Connecticut.

6. On January 13, 2014, and for some time prior thereto, the premises located at 823 First Avenue, in the City and State of New York, (hereinafter referred to as "Premises") was under construction.

7. On January 13, 2014, defendant, G-Z/10UNP REALTY, LLC, was the owner of the Premises under construction.

8. On January 13, 2014, defendant, LEND LEASE (US), CONSTRUCTION LMB, INC., was the general contractor at the Premises.

9. On January 13, 2014, and for some time prior thereto, defendant, GENIE INDUSTRIES, INC., was the owner of a 2010 Genie Model GS-3232, serial number GS3210 A-94986, scissor lift (hereinafter referred to as the "Lift") that was used on the Premises.

10. On January 13, 2014, defendant, UNITED RENTALS (NORTH AMERICA), INC. was the lessor of the Lift that was used at the Premises.

11. Sometime prior to January 13, 2014, the defendant G-Z/10UNP REALTY, LLC, entered into a construction contract with the other defendants herein to perform construction and renovation work at the aforesaid Premises.

12. On January 13, 2014, the plaintiff, GARY HARRIGAN, was employed as a construction worker by Coordinated Metals Inc., who was subcontracted by one or more of the aforesaid defendants to perform ironwork services at the aforesaid Premises.

13. On January 13, 2014, at approximately 11:30am, the plaintiff, GARY HARRIGAN, was rightfully and legally on the aforesaid Premises at the invitation and request and with the knowledge permission and consent of the defendants.

14. On January 13, 2014, at approximately 11:30am while the plaintiff, GARY HARRIGAN, was operating the aforesaid lift and performing work at the Premises, the Lift suddenly and without warning toppled over causing the plaintiff GARY HARRIGAN, to sustain catastrophic and devastating personal injuries.

15. The aforesaid occurrence was caused by the negligence, carelessness and recklessness of the defendants, their agents, servants and or employees.

16. Plaintiff, GARY HARRIGAN, in no way contributed to said occurrence and his injuries were due solely to the negligence, carelessness and recklessness of the defendants, their agents, servants and or employees.

17. By reason of the foregoing, plaintiff, GARY HARRIGAN, claims damages in an amount that exceeds the jurisdictional limits of all lower courts which otherwise would have jurisdiction.

#### **AS AND FOR A SECOND CAUSE OF ACTION**

18. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1-17" inclusive of this complaint.

19. Defendants, their agents, servants and or employees violated section 200 of the Labor Law of the State of New York.



20. By reason of the foregoing, plaintiff, GARY HARRIGANY, claims damages in an amount that exceeds the jurisdictional limits of all lower courts which otherwise would have jurisdiction.

**AS AND FOR A THIRD CAUSE OF ACTION**

21. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1-20" inclusive of this complaint.

22. Defendants, their agents, servants and or employees violated section 240 of the Labor Law of the State of New York.

23. By reason of the foregoing, plaintiff, GARY HARRIGAN, claims damages in an amount that exceeds the jurisdictional limits of all lower courts which otherwise would have jurisdiction.

**AS AND FOR A FORTH CAUSE OF ACTION**

24. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1-23" inclusive of this complaint.

25. Defendants, their agents, servants and or employees violated section 241 of the Labor Law of the State of New York.

26. By reason of the foregoing, plaintiff, GARY HARRIGAN, claims damages in an amount that exceeds the jurisdictional limits of all lower courts which otherwise would have jurisdiction.

**AS AND FOR A FIFTH CAUSE OF ACTION**

27. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1-26" inclusive of this complaint.

28. At all times hereinafter mentioned, Plaintiff, KATHY HARRIGAN, was and still is the wife of the plaintiff, GARY HARRIGAN, and as such wife, then and ever since, lived and cohabited with plaintiff, GARY HARRIGAN, her husband.

29. By reason of the foregoing, plaintiff, KATHY HARRIGAN, has been deprived of the services, society, companionship and consortium of her husband.

30. By reason of the foregoing, plaintiff, KATHY HARRIGAN, claims damages in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, plaintiffs demand judgment against the defendants, G-Z/10UNP REALTY, LLC; LEND LEASE (US) CONSTRUCTION LMB, INC.; GENIE INDUSTRIES, INC.; And UNITED RENTALS (NORTH AMERICA) INC., on the First, Second, Third, Fourth and Fifth Causes of Action, together with the costs and disbursements of these actions.

Dated: New York, New York  
July 7, 2014

Yours, etc.,

SMILEY & SMILEY, LLP

By: 

GUY I. SMILEY

Attorneys for Plaintiffs

122 East 42nd Street

Suite 3900

New York, New York 10168

(212) 986-2022

**INDIVIDUAL VERIFICATION**

STATE OF NEW YORK    )  
                                  )SS:  
COUNTY OF NEW YORK)

**GARY HARRIGAN and KATHY HARRIGAN**, being sworn say that we are the plaintiffs in the action herein, We have read the annexed **SUMMONS AND COMPLAINT** and know the contents thereof; that the same is true of our own knowledge, except matters alleged upon information and belief, and that as to those matters we believe them to be true.

Dated: July 10, 2014

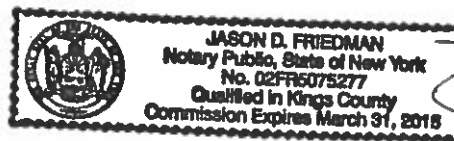
  
GARY HARRIGAN

  
KATHY HARRIGAN

STATE OF NEW YORK  
SS.:

COUNTY OF NEW YORK

On the 10 day of July, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared GARY HARRIGAN and KATHY HARRIGAN personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individuals, or the persons upon behalf of which the individuals acted, executed the instrument.



  
Notary Public

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

GARY HARRIGAN and KATHY HARRIGAN,

Plaintiff,

-against-

G-Z/10UNP REALTY, LLC; LEND LEASE (US) CONSTRUCTION LMB, INC.; GENIE INDUSTRIES, INC.; and UNITED RENTALS (NORTH AMERICA) INC.,

Defendants.

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***SUMMONS and COMPLAINT***

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***SMILEY & SMILEY, LLP***  
*Attorney for Plaintiff*  
CHANIN BUILDING  
122 EAST 42nd STREET  
39<sup>th</sup> Floor-Suite 3900  
NEW YORK, NEW YORK 10168  
(212) 986-2022  
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