

==New York State==
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How to Litigate a Construction
Accident Case – Part 3:
Depositions

Materials By:
Andrew J. Smiley, Esq.



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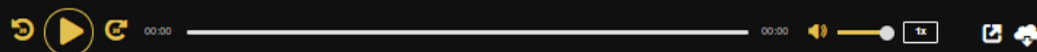
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CLE: How to Successfully Litigate a Personal Injury Case Series Part 4

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.



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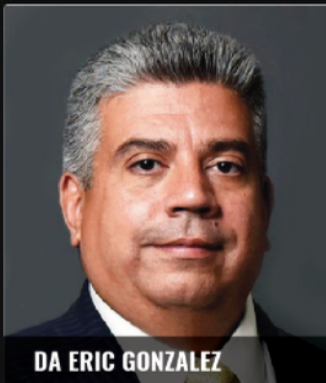
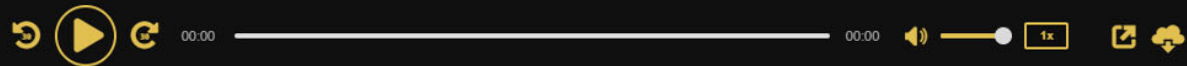
INTERVIEW

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.



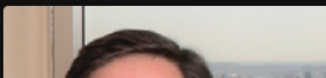
INTERVIEW

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.

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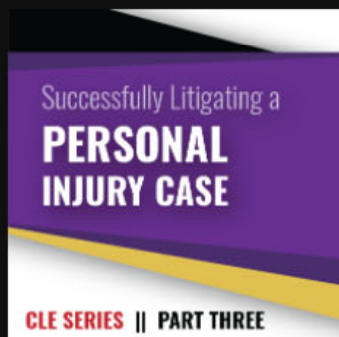
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CLE: How to Successfully Litigate a Personal Injury Case Series Part 4

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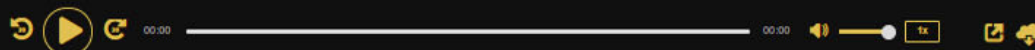
-Video Episode - Andrew discusses properly preparing and conducting depositions. 1.5 CLE credits.



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

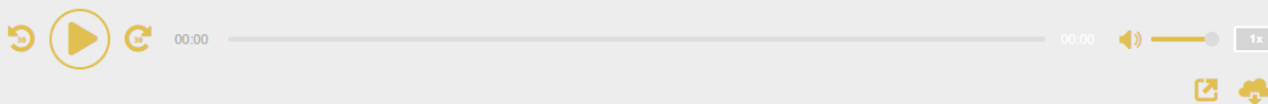
Andrew J. Smiley, Esq.

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.

Contact Andrew Smiley at 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



CLE - Taking the “Umm” out of SUM/UM Coverage



1

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

-----X

GARY HARRIGAN and KATHY HARRIGAN,

PLAINTIFFS,

-against-

Index No:
156824/2014

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

DEFENDANTS.

-----X

-----X

UNITED RENTALS (NORTH AMERICA) INC.,

THIRD-PARTY PLAINTIFF,

-against-

Index No:
59558/2015

COORDINATED METALS, INC.,

THIRD-PARTY DEFENDANT.

-----X

DATE: March 21, 2016

TIME: 3:10 p.m.

(Caption continued on the next page)

<p style="text-align: right;">Page 2</p> <p style="text-align: center;">2</p> <p>EXAMINATION BEFORE TRIAL of the Defendant, LEND LEASE (US) CONSTRUCTION LMB, INC., by KENNETH SOLTER, taken by the Respective Parties, pursuant to an Order, held at the offices of Fabiani, Cohen & Hall, LLP, 570 Lexington Avenue, New York, New York 10022, before Marleine Lamey, a Notary Public of the State of New York.</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">4</p> <p>APPEARANCES: (Con't.)</p> <p>ROPERS MAJESKI KOHN & BENTLEY Attorneys for the Third-Party Defendant COORDINATED METALS, INC. 750 Third Avenue New York, New York 10017 BY: JASON BECKERMAN, ESQ.</p> <p style="text-align: center;">* * * * *</p>
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">3</p> <p>APPEARANCES:</p> <p>SMILEY & SMILEY, LLP Attorneys for the Plaintiffs GARY HARRIGAN and KATHY HARRIGAN 122 East 42nd Street New York, New York 10168 BY: ANDREW J. SMILEY, ESQ.</p> <p>FABIANI COHEN & HALL, LLP Attorneys for the Defendants G-Z/10UNP REALTY, LLC and LEND LEASE (US) CONSTRUCTION LMB, INC. 570 Lexington Avenue New York, New York 10022 BY: ARAM ERENBURG, ESQ.</p> <p>HARRIS BEACH, PLLC G-Z/10UNP REALTY, LLC; Attorneys for the Defendant and Third-Party Plaintiff UNITED RENTALS (NORTH AMERICA) INC. 100 Wall Street New York, New York 10005 BY: DAVID KOCHMAN, ESQ.</p> <p>GALLAGHER, WALKER, BIANCO & PLASTARAS, LLP Attorneys for the Defendant GENIE INDUSTRIES, INC. 98 Willis Avenue Mineola, New York 11501 BY: ROBERT J. WALKER, ESQ. File #: 86-37430</p>	<p style="text-align: right;">Page 5</p> <p style="text-align: center;">5</p> <p>IT IS HEREBY STIPULATED AND AGREED by and between (among) counsel for the respective parties hereto, that:</p> <p>All rights provided by the C.P.L.R., including the right to object to any question, except as to form, or to move to strike any testimony at this (these) examination(s), are reserved, and, in addition, the failure to object to any question or to move to strike any testimony at this (these) examination(s) shall not be a bar or waiver to make such motion at, and is reserved for the trial of this action;</p> <p>IT IS FURTHER STIPULATED AND AGREED by and between (among) counsel for the respective parties hereto, that this (these) examination(s) may be sworn to by the witness(es) being examined, before a Notary Public other than the Notary Public before whom this (these) examinations was (were) begun; but the failure to do so, or to return the original of this (these)</p>

2 (Pages 2 to 5)

<p style="text-align: right;">Page 6</p> <p style="text-align: center;">6</p> <p>1 examination(s) to counsel, shall not be</p> <p>2 deemed a waiver of the rights provided by</p> <p>3 Rules 3116 and 3117 of the C.P.L.R., and</p> <p>4 shall be controlled thereby;</p> <p>5</p> <p>6</p> <p>7 IT IS FURTHER STIPULATED AND</p> <p>8 AGREED by and between(among) counsel for</p> <p>9 the respective parties hereto, that this</p> <p>10 (these) examination(s) may be utilized for</p> <p>11 all purposes as provided by the C.P.L.R.;</p> <p>12</p> <p>13 IT IS FURTHER STIPULATED AND</p> <p>14 AGREED by and between(among) counsel for</p> <p>15 the respective parties hereto, that the</p> <p>16 filing and certification of the original of</p> <p>17 this(these) examination(s) shall be and the</p> <p>18 same hereby are waived;</p> <p>19</p> <p>20 IT IS FURTHER STIPULATED AND</p> <p>21 AGREED by and between(among) counsel for</p> <p>22 the respective parties hereto, that a copy</p> <p>23 of the within examination(s) shall be</p> <p>24 furnished to counsel representing the</p> <p>25 witness(es) testifying, without charge.</p>	<p style="text-align: right;">Page 8</p> <p>1</p> <p>2 KENNETH SOLTER, called as a</p> <p>3 witness, having been first duly sworn by a</p> <p>4 Notary Public of the State of New York, was</p> <p>5 examined and testified as follows:</p> <p>6 EXAMINATION BY</p> <p>7 MR. SMILEY:</p> <p>8 Q. Please state your name for the record.</p> <p>9 A. Kenneth Solter.</p> <p>10 Q. What is your current home address?</p> <p>11 A. 19 Holmes Lane, Wayne, New Jersey</p> <p>12 07470.</p> <p>13 Q. Good afternoon. My name is Andrew</p> <p>14 Smiley. I am going to ask you some questions</p> <p>15 this afternoon. If at any time I ask you a</p> <p>16 question that doesn't make sense to you, let me</p> <p>17 know and I will rephrase it, okay?</p> <p>18 A. Yes.</p> <p>19 Q. I ask you to do as you just did and</p> <p>20 give a verbal response as opposed to a nod or</p> <p>21 shake of the head.</p> <p>22 A. Okay.</p> <p>23 Q. Are you currently employed?</p> <p>24 A. Yes.</p> <p>25 Q. Who are you employed by?</p>
<p style="text-align: right;">Page 7</p> <p style="text-align: center;">7</p> <p>1</p> <p>2 IT IS FURTHER STIPULATED AND</p> <p>3 AGREED by and between(among) counsel for te</p> <p>4 respective parties hereto, that all rights</p> <p>5 provided by the C.P.L.R., and Part 221 of</p> <p>6 the Uniform Rules for the Conduct of</p> <p>7 Depositions, including the right to object</p> <p>8 to any question, except as to form, or to</p> <p>9 move to strike any testimony at this</p> <p>10 examination is reserved; and in addition,</p> <p>11 the failure to object to any question or to</p> <p>12 move to strike any testimony at this</p> <p>13 examination shall not be a bar or waiver to</p> <p>14 make such motion at, and is reserved to,</p> <p>15 the trial of this action.</p> <p>16</p> <p>17 * * *</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 9</p> <p style="text-align: center;">Solter 9</p> <p>1</p> <p>2 A. Gilbane.</p> <p>3 Q. What is the business of Gilbane?</p> <p>4 A. Construction management firm.</p> <p>5 Q. Prior to being employed by Gilbane who</p> <p>6 were you employed by?</p> <p>7 A. Lend Lease.</p> <p>8 Q. For what years were you employed by</p> <p>9 Lend Lease?</p> <p>10 A. 2004 through 2015.</p> <p>11 Q. Were you employed by Lend Lease on</p> <p>12 January 13, 2014?</p> <p>13 A. Yes.</p> <p>14 Q. What was your capacity or title of</p> <p>15 employment at that time?</p> <p>16 A. My title, my job title?</p> <p>17 Q. Yes.</p> <p>18 A. Senior superintendent.</p> <p>19 Q. Generally speaking what were your</p> <p>20 duties with Lend Lease as a senior</p> <p>21 superintendent?</p> <p>22 A. Overseeing the work areas.</p> <p>23 Q. Can you be any more specific?</p> <p>24 A. In charge of certain areas of the</p> <p>25 construction of the building.</p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 10</p> <p>1 Solter 10</p> <p>2 Q. Were you involved in a project at 50</p> <p>3 UN Plaza in January of 2014?</p> <p>4 A. Yes.</p> <p>5 Q. What was your involvement in that</p> <p>6 project?</p> <p>7 A. Overseeing the area of the lobby,</p> <p>8 outside first floor and amenity space</p> <p>9 construction.</p> <p>10 Q. This was on behalf of Lend Lease?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know who the owner was of that</p> <p>13 job site?</p> <p>14 A. No.</p> <p>15 Q. What was Lend Lease's position at that</p> <p>16 job site?</p> <p>17 A. Oversee the management of the</p> <p>18 construction of the building.</p> <p>19 Q. Were they the general contractor?</p> <p>20 A. I am not sure if that is how it was</p> <p>21 listed or not.</p> <p>22 Q. Were they the construction manager for</p> <p>23 the project?</p> <p>24 A. Yes.</p> <p>25 Q. Were you involved in any of the</p>	<p style="text-align: right;">Page 12</p> <p>1 Solter 12</p> <p>2 A. Yes.</p> <p>3 Q. Was that the name of the owner of the</p> <p>4 job site that you were working on in January of</p> <p>5 2014?</p> <p>6 A. I am not sure if they are the owner.</p> <p>7 Q. Do you know what, if any, role</p> <p>8 G-Z/10UNP Realty had at that job site?</p> <p>9 A. No.</p> <p>10 Q. Were you at the job site on any type</p> <p>11 of regular basis, either weekly, daily or</p> <p>12 otherwise?</p> <p>13 A. Weekly -- I am sorry, daily, I am</p> <p>14 sorry.</p> <p>15 Q. Back in January of 2014 did you have</p> <p>16 hours and days that you would generally spend at</p> <p>17 that job site?</p> <p>18 A. Monday through Friday approximately</p> <p>19 6:00 in the morning until 4:30 in the afternoon.</p> <p>20 Q. Can you give me an idea of what you</p> <p>21 would do there on a day-to-day basis in January</p> <p>22 of 2014?</p> <p>23 A. Oversee the different contractors in</p> <p>24 the areas that I would cover to make sure that</p> <p>25 placement of construction is in order, that each</p>
<p style="text-align: right;">Page 11</p> <p>1 Solter 11</p> <p>2 contracts between Lend Lease and the owner of</p> <p>3 the job site?</p> <p>4 A. No.</p> <p>5 Q. Were you involved in any of the</p> <p>6 contracts between Lend Lease and any</p> <p>7 subcontractors?</p> <p>8 A. How do you mean involved?</p> <p>9 Q. Were you involved in any of the</p> <p>10 contract processes?</p> <p>11 A. No.</p> <p>12 Q. Did you review any contracts between</p> <p>13 Lend Lease and Coordinated Metals, Inc.?</p> <p>14 A. Yes.</p> <p>15 Q. For what purpose did you review</p> <p>16 contracts between Lend Lease and Coordinated</p> <p>17 Metals, Inc.?</p> <p>18 A. Just to read through exactly what they</p> <p>19 owed to build or construct.</p> <p>20 Q. So, was looking at those contracts</p> <p>21 with regard to the construction plans part of</p> <p>22 it?</p> <p>23 A. Yes.</p> <p>24 Q. Does the name G-Z/10UNP Realty, LLC</p> <p>25 sound familiar to you?</p>	<p style="text-align: right;">Page 13</p> <p>1 Solter 13</p> <p>2 trade would go in at their assigned times to</p> <p>3 construct the building, in addition, if there</p> <p>4 was any design issues that prohibited a trade</p> <p>5 from installing the construction, would work</p> <p>6 with my PM to work with the design team to come</p> <p>7 up with solutions.</p> <p>8 Q. What is your highest level of</p> <p>9 education?</p> <p>10 A. College, BS degree in environmental</p> <p>11 science.</p> <p>12 Q. Do you have any certifications as part</p> <p>13 of your -- in your area of job practice?</p> <p>14 A. At the time I had an OSHA 10 and a</p> <p>15 scaffold, use of scaffold four hours.</p> <p>16 Q. Did your position have anything to do</p> <p>17 with regard to safety at the job site?</p> <p>18 A. Each superintendent should oversee</p> <p>19 somewhat of safety but I was not directly in</p> <p>20 charge of safety.</p> <p>21 Q. Do you know who was overseeing safety</p> <p>22 at that job site?</p> <p>23 A. I can't think of the gentleman's last</p> <p>24 name. The site safety manager was Lenny but I</p> <p>25 am not sure if he was actually there that day.</p>

4 (Pages 10 to 13)

Page 14	Page 16
<p>1 Solter 14</p> <p>2 Q. Do you know who Lenny was employed by?</p> <p>3 A. Lend Lease.</p> <p>4 Q. To your knowledge, was a company</p> <p>5 called Coordinated Metals, Inc. a contractor at</p> <p>6 that job site?</p> <p>7 A. Yes.</p> <p>8 Q. What was your understanding of the</p> <p>9 work that was being performed by Coordinated</p> <p>10 Metals, Inc.?</p> <p>11 A. To place the first floor storefront.</p> <p>12 Q. What type of building was being</p> <p>13 constructed there?</p> <p>14 A. A residential.</p> <p>15 Q. Can you give me an idea of the size?</p> <p>16 A. What do you mean?</p> <p>17 Q. How many stories, feet?</p> <p>18 A. It was about 50-story building.</p> <p>19 Q. Fifty?</p> <p>20 A. Yes.</p> <p>21 Q. All residential?</p> <p>22 A. First floor had some commercial space.</p> <p>23 Q. Was this a new construction?</p> <p>24 A. Yes.</p> <p>25 Q. Did you have a contact person that you</p>	<p>1 Solter 16</p> <p>2 A. Yes.</p> <p>3 Q. Do you know who Guy was?</p> <p>4 A. He was Gary's boss who only visited</p> <p>5 the site every so often.</p> <p>6 Q. He wasn't there on a daily basis?</p> <p>7 A. No.</p> <p>8 Q. How do you know that he was Gary's</p> <p>9 boss?</p> <p>10 A. Things that were discussed as far as</p> <p>11 the changes or deliveries and so forth were</p> <p>12 scheduled through Gary and any issues that came</p> <p>13 up as far as design had to be handled Gary would</p> <p>14 speak with Guy.</p> <p>15 Q. Did you ever speak with Guy directly?</p> <p>16 A. Yes.</p> <p>17 Q. For what reasons would you speak with</p> <p>18 Guy directly?</p> <p>19 A. Schedule, going over issues that</p> <p>20 discussed.</p> <p>21 Q. What types of matters, if any, would</p> <p>22 you speak with Guy about that you would not</p> <p>23 speak with Gary about?</p> <p>24 A. The same.</p> <p>25 Q. Did you know who the president of CMI</p>
Page 15	Page 17
<p>1 Solter 15</p> <p>2 would deal with on a daily basis from</p> <p>3 Coordinated Metals?</p> <p>4 A. Yes.</p> <p>5 Q. Who was that?</p> <p>6 A. Gary.</p> <p>7 Q. Gary Harrigan?</p> <p>8 A. That's correct.</p> <p>9 Q. What was your understanding of his</p> <p>10 position at the job site?</p> <p>11 A. Foreman.</p> <p>12 Q. Did you know of any of the other</p> <p>13 workers at Coordinated Metals that were present</p> <p>14 on a regular basis in January of 2013?</p> <p>15 A. Yes.</p> <p>16 Q. Who?</p> <p>17 A. Richie.</p> <p>18 Q. Do you know Richie's last name?</p> <p>19 A. No.</p> <p>20 Q. Do you know what his position was?</p> <p>21 A. He was one of the workers.</p> <p>22 Q. Anyone else?</p> <p>23 A. It escapes my memory.</p> <p>24 Q. Did you ever deal with someone named</p> <p>25 Guy?</p>	<p>1 Solter 17</p> <p>2 was back in January of 2014?</p> <p>3 A. Frank was it Grippy.</p> <p>4 Q. Did you ever deal with Frank Grippy?</p> <p>5 A. No.</p> <p>6 Q. Did you ever direct Gary Harrigan's</p> <p>7 work at any time prior to and including January</p> <p>8 13, 2014?</p> <p>9 A. What do you mean by direct?</p> <p>10 Q. Tell him what to do?</p> <p>11 A. No.</p> <p>12 Q. To your knowledge, did anyone from</p> <p>13 Lend Lease ever tell Gary Harrigan what to do</p> <p>14 with regard to his work as of January 13, 2014?</p> <p>15 MR. BECKERMAN: Just note my</p> <p>16 objection to form.</p> <p>17 A. I am having problems with telling him</p> <p>18 what to do though because his work is his</p> <p>19 contract to complete. We schedule how he was</p> <p>20 going to fit in between trade contractors, so I</p> <p>21 don't actually tell him to go up and put that</p> <p>22 bolt in, I am not that type of foreman, all I do</p> <p>23 is work with him to schedule space available to</p> <p>24 him. That is why I am having issues with your</p> <p>25 question.</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 Solter 18</p> <p>2 Q. So, I want to be clear by as far as</p> <p>3 what I mean by my question. As far as directing</p> <p>4 work I am talking about saying Gary, go move</p> <p>5 this here, go put that in here, do this, don't</p> <p>6 do that as far as actual work during the process</p> <p>7 of his workday?</p> <p>8 A. No.</p> <p>9 Q. So, you never directed his work in</p> <p>10 that manner?</p> <p>11 A. No.</p> <p>12 Q. Are you aware of anyone from Lend</p> <p>13 Lease who did direct his work in that manner?</p> <p>14 A. No.</p> <p>15 Q. Specifically did you ever tell Gary</p> <p>16 what, if anything, to do or not to do with</p> <p>17 regard to an operation of a scissor lift?</p> <p>18 A. No.</p> <p>19 Q. To your knowledge, did anyone from</p> <p>20 Lend Lease tell Gary what to do or not to do</p> <p>21 specifically with the operation of the scissor</p> <p>22 lift?</p> <p>23 A. No.</p> <p>24 Q. Can you tell me what the approximate</p> <p>25 start date was for this project? Can you give</p>	<p style="text-align: right;">Page 20</p> <p>1 Solter 20</p> <p>2 operating the scissor lift?</p> <p>3 A. Yes.</p> <p>4 Q. On how many occasions did you see Gary</p> <p>5 Harrigan operating the scissor lift?</p> <p>6 A. I couldn't give you a number.</p> <p>7 Q. In any of those times when you</p> <p>8 observed him operating the scissor lift were you</p> <p>9 in close proximity to him in the lift?</p> <p>10 A. Yes.</p> <p>11 Q. Did you ever observe him to be doing</p> <p>12 anything improper with regard to the operation</p> <p>13 of the scissor lift?</p> <p>14 A. Not that I remember.</p> <p>15 Q. Did you ever mention anything to Gary</p> <p>16 Harrigan about the way that he was operating the</p> <p>17 scissor lift?</p> <p>18 A. Not that I remember.</p> <p>19 Q. Do you have training in the operation</p> <p>20 of scissor lifts?</p> <p>21 A. Yes.</p> <p>22 Q. Have you been certified to operate a</p> <p>23 scissor lift?</p> <p>24 A. Yes.</p> <p>25 Q. When were you last certified?</p>
<p style="text-align: right;">Page 19</p> <p>1 Solter 19</p> <p>2 me a month or a year or a season in a year?</p> <p>3 A. I only came to the project about a</p> <p>4 year before that time, so I am not sure when it</p> <p>5 eventually started.</p> <p>6 Q. You came sometime in 2013?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know when the project ended?</p> <p>9 A. No. I left before the project ended.</p> <p>10 Q. To your knowledge, has it been</p> <p>11 completed since you left?</p> <p>12 A. I am not sure.</p> <p>13 Q. When did you leave?</p> <p>14 A. I don't remember.</p> <p>15 Q. Was it sometime in 2015?</p> <p>16 A. I don't remember.</p> <p>17 Q. Were you aware that Coordinated</p> <p>18 Metals, Inc., I am going to refer to them from</p> <p>19 now on as CMI, had a scissor lift on location of</p> <p>20 the project site in January of 2014?</p> <p>21 A. Yes.</p> <p>22 Q. Did you ever see any of CMI's</p> <p>23 employees operating the scissor lift?</p> <p>24 A. Yes.</p> <p>25 Q. Did you ever see Gary Harrigan</p>	<p style="text-align: right;">Page 21</p> <p>1 Solter 21</p> <p>2 A. I don't remember the date.</p> <p>3 Q. Who were you certified by?</p> <p>4 A. United Rentals.</p> <p>5 Q. Do you know if Gary Harrigan was</p> <p>6 certified to operate the scissor lift that he</p> <p>7 was using at the job site?</p> <p>8 A. No.</p> <p>9 Q. Did you have any expectation --</p> <p>10 MR. BECKERMAN: Was that no, you</p> <p>11 don't know or no, he didn't.</p> <p>12 A. No, I don't know.</p> <p>13 Q. Did you have an expectation as to</p> <p>14 whether or not Gary Harrigan was supposed to be</p> <p>15 certified prior to using a scissor lift at the</p> <p>16 job site?</p> <p>17 A. Say that again.</p> <p>18 Q. Did you have an expectation as to</p> <p>19 whether Gary Harrigan was supposed to be</p> <p>20 certified to use the scissor lift prior to using</p> <p>21 it at the job site?</p> <p>22 MR. BECKERMAN: Just note my</p> <p>23 objection.</p> <p>24 A. I would say yes.</p> <p>25 Q. What was your expectation?</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 22</p> <p>1 Solter 22</p> <p>2 A. That he should have training before</p> <p>3 using the lift.</p> <p>4 Q. In addition to training was it your</p> <p>5 expectation that he would have actually been</p> <p>6 certified by a third party in how to use that</p> <p>7 scissor lift?</p> <p>8 MR. BECKERMAN: Just note my</p> <p>9 objection.</p> <p>10 A. No, not certain.</p> <p>11 Q. Did you independently take any steps</p> <p>12 to determine whether or not Gary Harrigan or any</p> <p>13 of the other employees of CMI at the job site</p> <p>14 had been certified in the use of a scissor lift?</p> <p>15 A. No.</p> <p>16 Q. Was that part of your job to take any</p> <p>17 steps to determine if CMI employees were</p> <p>18 certified to use a scissor lift?</p> <p>19 A. No.</p> <p>20 Q. To your knowledge, was it the</p> <p>21 obligation of the site safety manager Lenny to</p> <p>22 determine whether CMI's employees were certified</p> <p>23 to use a scissor lift?</p> <p>24 A. I am not certain.</p> <p>25 Q. Do you know who, if anyone's,</p>	<p style="text-align: right;">Page 24</p> <p>1 Solter 24</p> <p>2 was delivered to CMI at the job site?</p> <p>3 A. I was on site the day that they were</p> <p>4 delivered.</p> <p>5 Q. Do you recall which company made that</p> <p>6 delivery?</p> <p>7 A. United Rentals.</p> <p>8 Q. Did you actually see that lift being</p> <p>9 delivered onto the site by United Rentals?</p> <p>10 A. No.</p> <p>11 Q. Did you see who delivered it at any</p> <p>12 time on behalf of United Rentals, for example,</p> <p>13 one guy, a team, more than one person?</p> <p>14 A. No.</p> <p>15 Q. To your knowledge, did anyone on</p> <p>16 behalf of United Rentals familiarize any of</p> <p>17 CMI's employees with the use of the scissor lift</p> <p>18 when it was delivered?</p> <p>19 MR. KOCHMAN: Objection to the</p> <p>20 form.</p> <p>21 A. I am not certain.</p> <p>22 Q. To your knowledge, did anyone from</p> <p>23 United Rentals ever train any CMI employees in</p> <p>24 any manner on how to use the scissor lift?</p> <p>25 A. I am not certain.</p>
<p style="text-align: right;">Page 23</p> <p>1 Solter 23</p> <p>2 obligation it was to ensure that Gary Harrigan</p> <p>3 was certified to use the scissor lift at the job</p> <p>4 site?</p> <p>5 A. I am not certain.</p> <p>6 Q. Did you have an understanding within</p> <p>7 the construction industry as to who would</p> <p>8 generally certify operators of aerial lifts, be</p> <p>9 it their employers or the rental company or some</p> <p>10 other entity?</p> <p>11 MR. KOCHMAN: Objection to form.</p> <p>12 MR. BECKERMAN: Join.</p> <p>13 A. I am not certain.</p> <p>14 Q. Did Lend Lease take any role in</p> <p>15 training any of CMI's employees?</p> <p>16 A. No.</p> <p>17 Q. Did Lend Lease have any type of</p> <p>18 scissor lift training program available to its</p> <p>19 CMI employees?</p> <p>20 A. I am not certain.</p> <p>21 Q. Was CMI required to provide Lend Lease</p> <p>22 copies of its employees' certifications for</p> <p>23 operating scissors lifts?</p> <p>24 A. I am not certain.</p> <p>25 Q. Were you present when a scissor lift</p>	<p style="text-align: right;">Page 25</p> <p>1 Solter 25</p> <p>2 Q. Do you know if Gary Harrigan was ever</p> <p>3 trained on the specific scissor lift that was</p> <p>4 delivered by United Rental to the job site?</p> <p>5 A. I am not certain.</p> <p>6 Q. Do you know if Gary Harrigan was</p> <p>7 familiarized with the use of the specific</p> <p>8 scissor lift that was delivered to the job site</p> <p>9 by United Rentals?</p> <p>10 A. I am not certain.</p> <p>11 Q. Were you present on the day that Gary</p> <p>12 Harrigan had an accident at the job site?</p> <p>13 A. Yes.</p> <p>14 Q. Did you actually see the accident</p> <p>15 occur?</p> <p>16 A. No.</p> <p>17 Q. Did you see Gary Harrigan working that</p> <p>18 day prior to the happening of the accident?</p> <p>19 A. I saw him.</p> <p>20 Q. What did you observe him doing that</p> <p>21 day if you recall prior to the accident?</p> <p>22 A. We were in a meeting downstairs.</p> <p>23 Q. When you say we, who are you referring</p> <p>24 to?</p> <p>25 A. A PM, Gary, and the inspector.</p>

Page 26	Page 28
<p>1 Solter 26</p> <p>2 Q. Who was the PM?</p> <p>3 A. Preston Roberts.</p> <p>4 Q. Who was Preston Roberts employed by?</p> <p>5 A. Lend Lease.</p> <p>6 Q. The inspector you referred to, who was</p> <p>7 that?</p> <p>8 A. Christine, Kristen.</p> <p>9 Q. Do you know her last name?</p> <p>10 A. No.</p> <p>11 Q. Does Malone sound right?</p> <p>12 A. Yes, with IBA.</p> <p>13 Q. What company was that?</p> <p>14 A. IBA.</p> <p>15 Q. The letters IBA?</p> <p>16 A. That's correct.</p> <p>17 Q. Do you know what that IBA stands for?</p> <p>18 A. No.</p> <p>19 Q. What was their function at the job</p> <p>20 site, IBA?</p> <p>21 A. Inspect and sign off of the insulation</p> <p>22 of the curtain wall and also the storefront, the</p> <p>23 building envelope.</p> <p>24 Q. Do you know who hired IBA to come to</p> <p>25 the job site?</p>	<p>1 Solter 28</p> <p>2 permission.</p> <p>3 Q. Did Kristen Malone ever complain to</p> <p>4 you about Gary Harrigan prior to the happening</p> <p>5 of the accident?</p> <p>6 A. No.</p> <p>7 Q. Did anyone ever complain to you about</p> <p>8 Gary Harrigan prior to the happening of the</p> <p>9 accident?</p> <p>10 A. No.</p> <p>11 Q. Did you have any opinion as to the</p> <p>12 type of worker that Gary Harrigan was based on</p> <p>13 your observations of him?</p> <p>14 MR. BECKERMAN: Just note my</p> <p>15 objection.</p> <p>16 A. What is the question?</p> <p>17 Q. Did you form an opinion as to the type</p> <p>18 of worker Gary Harrigan was based on your</p> <p>19 observations and interactions with him?</p> <p>20 MR. BECKERMAN: Same objection.</p> <p>21 A. I still don't understand your</p> <p>22 question.</p> <p>23 Q. Did you form an opinion as to whether</p> <p>24 he was a good worker, a diligent worker, a bad</p> <p>25 worker, any opinion whatsoever based on your</p>
Page 27	Page 29
<p>1 Solter 27</p> <p>2 A. I believe the owner.</p> <p>3 Q. To your knowledge, did Lend Lease have</p> <p>4 any contracts with IBA?</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. Had you seen Kristen Malone at the job</p> <p>7 site prior to the date of the accident?</p> <p>8 A. Yes.</p> <p>9 Q. On how many such occasions</p> <p>10 approximately?</p> <p>11 A. She was the inspector for IBA on site</p> <p>12 so.</p> <p>13 Q. Was she there on a regular basis?</p> <p>14 A. Yes.</p> <p>15 Q. Would it be for several weeks prior to</p> <p>16 the accident?</p> <p>17 A. More than that.</p> <p>18 Q. Several months prior to the accident?</p> <p>19 A. I would think so, yes.</p> <p>20 Q. Do you know if she had the authority</p> <p>21 to direct the work of Gary Harrigan and his</p> <p>22 co-workers? By direct it's in the way I spoke</p> <p>23 of earlier, tell him to do something or not to</p> <p>24 do something as part of their work?</p> <p>25 A. No. She does not have that</p>	<p>1 Solter 29</p> <p>2 interactions with him at the job site?</p> <p>3 MR. BECKERMAN: Note my objection.</p> <p>4 A. I would say he is a good worker.</p> <p>5 Q. To your knowledge, did he follow</p> <p>6 directions that he was given?</p> <p>7 A. By who?</p> <p>8 Q. By anyone.</p> <p>9 A. To my knowledge, yes.</p> <p>10 Q. To your knowledge, did he comply with</p> <p>11 all of the rules of the workplace?</p> <p>12 A. Yes.</p> <p>13 MR. BECKERMAN: Note my objection.</p> <p>14 Q. When did you first learn of the</p> <p>15 happening of the accident?</p> <p>16 A. A few minutes after the accident</p> <p>17 happened I guess or at some point after the</p> <p>18 accident it came over the radio that there was</p> <p>19 an accident.</p> <p>20 Q. Do you know where you were when you</p> <p>21 heard it over the radio?</p> <p>22 A. I was downstairs in the PM's office.</p> <p>23 Q. Where was the PM's office in the</p> <p>24 vicinity of where the accident occurred?</p> <p>25 A. One level below.</p>

<p style="text-align: right;">Page 30</p> <p>1 Solter 30</p> <p>2 Q. What, if anything, did you learn upon</p> <p>3 learning of the accident coming over the radio?</p> <p>4 A. Exited the staircase that was on the</p> <p>5 west side, it would only go from the lower floor</p> <p>6 up to that first floor area, the courtyard area.</p> <p>7 Seeing that Gary was being taken care of by</p> <p>8 other people, I ran out onto the street to flag</p> <p>9 down medical people.</p> <p>10 Q. Do you recall what was said over the</p> <p>11 radio to inform you or to inform anyone of the</p> <p>12 accident?</p> <p>13 A. No.</p> <p>14 Q. What did you observe as far as the</p> <p>15 happening of an accident when you got to the</p> <p>16 location?</p> <p>17 A. I just ran past it at the time.</p> <p>18 People were around, individuals clearing the</p> <p>19 area trying to get to the people and as I ran</p> <p>20 past, I just saw that.</p> <p>21 Q. Did you speak with anybody that day</p> <p>22 about what transpired as far as the accident?</p> <p>23 A. Yes.</p> <p>24 Q. Who did you speak with?</p> <p>25 A. Most people on the site.</p>	<p style="text-align: right;">Page 32</p> <p>1 Solter 32</p> <p>2 A. No.</p> <p>3 Q. When you say somebody working with</p> <p>4 him, are you referring to medical personnel?</p> <p>5 A. No, on-site people.</p> <p>6 Q. Did you say anything to Gary?</p> <p>7 A. No.</p> <p>8 Q. Did he say anything to you?</p> <p>9 A. No.</p> <p>10 Q. Did you overhear what was being said</p> <p>11 when you saw him there?</p> <p>12 A. No.</p> <p>13 Q. Did anyone tell you specifically what</p> <p>14 happened as far as the accident?</p> <p>15 A. No.</p> <p>16 Q. Did you undertake any type of</p> <p>17 investigation to determine what did occur?</p> <p>18 A. No.</p> <p>19 Q. Did anyone within Lend Lease take on</p> <p>20 the responsibility of attempting to determine</p> <p>21 what was the cause of the accident?</p> <p>22 A. We had a roundtable about the accident</p> <p>23 itself, no understanding of what exactly</p> <p>24 happened.</p> <p>25 Q. Who had the roundtable?</p>
<p style="text-align: right;">Page 31</p> <p>1 Solter 31</p> <p>2 Q. What, if anything, did those people</p> <p>3 tell you about what happened?</p> <p>4 A. I don't understand your question.</p> <p>5 Q. Who do you recall speaking with about</p> <p>6 what happened?</p> <p>7 A. No one directly I recall but many</p> <p>8 people we spoke about things.</p> <p>9 Q. Did you speak with Gary at the</p> <p>10 accident scene?</p> <p>11 A. No.</p> <p>12 Q. Did you observe Gary from the time you</p> <p>13 learned about the accident until the time he was</p> <p>14 taken away from the location of the accident?</p> <p>15 A. Yes.</p> <p>16 Q. Tell me what you said to him and what</p> <p>17 he said to you, if anything?</p> <p>18 A. You said observed?</p> <p>19 Q. Yes.</p> <p>20 A. I am sorry, I didn't speak to him, I</p> <p>21 observed.</p> <p>22 Q. What did you observe?</p> <p>23 A. As I was running past I saw him</p> <p>24 sitting down, somebody working with him.</p> <p>25 Q. Do you know who was with him?</p>	<p style="text-align: right;">Page 33</p> <p>1 Solter 33</p> <p>2 A. The supers on the job and the PM's</p> <p>3 just to go over what happened.</p> <p>4 Q. Was it just Lend Lease personnel at</p> <p>5 the roundtable?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall what, if anything, was</p> <p>8 said at the roundtable?</p> <p>9 A. Yes.</p> <p>10 Q. Can you tell me what you recall?</p> <p>11 A. Just that the lift went over and the</p> <p>12 injuries and how people looked when they left</p> <p>13 the job site.</p> <p>14 Q. Was there a discussion about why the</p> <p>15 lift went over?</p> <p>16 A. Yes.</p> <p>17 Q. Can you tell me what you recall about</p> <p>18 that discussion?</p> <p>19 A. Just that the lift must have been in</p> <p>20 the up position and fell over because it was</p> <p>21 already in the upward position.</p> <p>22 Q. Was there any discussion as to whether</p> <p>23 or not Gary Harrigan was at fault in causing the</p> <p>24 accident?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 34</p> <p>1 Solter 34</p> <p>2 Q. Did Lenny as the site safety manager</p> <p>3 conduct any investigation to your knowledge?</p> <p>4 A. I don't know that.</p> <p>5 Q. Did you review any Lend Lease reports</p> <p>6 of the accident prior to today?</p> <p>7 A. No.</p> <p>8 Q. Have you ever seen any accident</p> <p>9 reports at all regarding the happening of this</p> <p>10 accident?</p> <p>11 A. What do you mean by accident reports?</p> <p>12 Q. Any reports that were generated as a</p> <p>13 result of the happening of this accident?</p> <p>14 A. Not that I remember.</p> <p>15 Q. Did you speak with anyone at CMI at</p> <p>16 any time about the happening of this accident?</p> <p>17 A. Yes.</p> <p>18 Q. Who did you speak with?</p> <p>19 A. Just the workers on the job.</p> <p>20 Q. Can you tell me who, which ones?</p> <p>21 A. Again, Richie who had taken over as</p> <p>22 foreman after Gary had left.</p> <p>23 Q. Anyone other than Richie?</p> <p>24 A. Not that I remember.</p> <p>25 Q. Did you speak with Richie about the</p>	<p style="text-align: right;">Page 36</p> <p>1 Solter 36</p> <p>2 Q. Did she come back to work at that job</p> <p>3 site?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know approximately how long</p> <p>6 after the happening of the accident she returned</p> <p>7 to work?</p> <p>8 A. From my memory about a month after or</p> <p>9 so but I am not certain as to the date.</p> <p>10 Q. Did you ever speak with her</p> <p>11 specifically about why the lift tipped over?</p> <p>12 A. No.</p> <p>13 Q. To your knowledge, has anyone at Lend</p> <p>14 Lease made any determinations as to the cause of</p> <p>15 the accident?</p> <p>16 A. I don't have any knowledge of that.</p> <p>17 Q. To your knowledge, has anybody outside</p> <p>18 of Lend Lease that was part of the project come</p> <p>19 to any conclusions as to why the lift tipped</p> <p>20 over?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. Are you aware of any witnesses to the</p> <p>23 happening of the accident?</p> <p>24 A. No.</p> <p>25 Q. I am going to hand you what we have</p>
<p style="text-align: right;">Page 35</p> <p>1 Solter 35</p> <p>2 happening of the accident?</p> <p>3 A. Yes.</p> <p>4 Q. Can you tell me what you discussed</p> <p>5 with Richie?</p> <p>6 A. Again, the same situation as far as</p> <p>7 that the lift must have been in the up position</p> <p>8 and fell over but no -- we all didn't have any</p> <p>9 idea of what exactly had happened.</p> <p>10 Q. Anything else that you recall</p> <p>11 discussing with Richie, either you saying to him</p> <p>12 or Richie saying to you about the happening of</p> <p>13 the accident?</p> <p>14 A. No.</p> <p>15 Q. Did you speak with Guy from CMI about</p> <p>16 the accident?</p> <p>17 A. I don't remember.</p> <p>18 Q. Did you speak with Frank from CMI</p> <p>19 about the accident?</p> <p>20 A. No.</p> <p>21 Q. Did you ever speak with Kristen Malone</p> <p>22 about the happening of the accident?</p> <p>23 A. Just when she came back to work but</p> <p>24 not specifically about the accident but just how</p> <p>25 she was doing.</p>	<p style="text-align: right;">Page 37</p> <p>1 Solter 37</p> <p>2 marked as Plaintiff's Exhibit 1 for</p> <p>3 Identification and it is a printout of some of</p> <p>4 the pages of the contract between Lend Lease and</p> <p>5 CMI.</p> <p>6 Just let the record reflect these are</p> <p>7 printouts of some pages from the contract that</p> <p>8 were disclosed by counsel for Lend Lease. The</p> <p>9 contract itself with exhibits is about 347 or so</p> <p>10 pages, so instead of bringing that all here, I</p> <p>11 just printed a couple of sections out.</p> <p>12 So, the first section I have handed</p> <p>13 this witness has been marked as Plaintiff's</p> <p>14 Exhibit 1 for Identification. The first page is</p> <p>15 trade contract. I would ask you to turn to the</p> <p>16 second page which lists the construction manager</p> <p>17 at the top, do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Does that indicate to you that Lend</p> <p>20 Lease (US) Construction, LMB, Inc. was the</p> <p>21 construction manager of this project?</p> <p>22 A. Yes.</p> <p>23 Q. And that this was a contract with</p> <p>24 Coordinated Metals, Inc.?</p> <p>25 A. Yes.</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 Solter 38</p> <p>2 Q. Have you ever seen this part of the</p> <p>3 contract prior to today?</p> <p>4 A. I am going to say yes.</p> <p>5 Q. Under the contract price does that</p> <p>6 appear accurate that CMI was to be paid</p> <p>7 \$5,213,500 for their involvement in this</p> <p>8 project?</p> <p>9 A. Are you asking me based on what I see</p> <p>10 in front of me?</p> <p>11 Q. Yes. That seems accurate?</p> <p>12 A. Yes.</p> <p>13 Q. I would ask you to turn two pages over</p> <p>14 to page 14 and I just want to draw your</p> <p>15 attention to the couple of sections in the</p> <p>16 contract. The top left is section 15.16. Do</p> <p>17 you see that one there?</p> <p>18 A. Yes.</p> <p>19 Q. Could you just slowly read that so</p> <p>20 that our court reporter can take that down into</p> <p>21 the record, please?</p> <p>22 MR. BECKERMAN: Note my objection.</p> <p>23 A. Contractor must have a site -- I'm</p> <p>24 sorry, a safety orientation program for all of</p> <p>25 its new project workers. Documents of this</p>	<p style="text-align: right;">Page 40</p> <p>1 Solter 40</p> <p>2 Q. Was a representative of CMI at those</p> <p>3 meetings?</p> <p>4 A. Not every week but most weeks.</p> <p>5 Q. Who would generally be the</p> <p>6 representative from CMI at those safety</p> <p>7 meetings?</p> <p>8 A. Gary.</p> <p>9 Q. Were those meetings taken down in any</p> <p>10 type of minutes?</p> <p>11 A. Yes.</p> <p>12 Q. Were those minutes provided to anyone</p> <p>13 at Lend Lease?</p> <p>14 A. It was Lend Lease's meeting. It was</p> <p>15 their minutes.</p> <p>16 Q. To your knowledge, did Lend Lease</p> <p>17 maintain the minutes of these safety meetings?</p> <p>18 A. Yes.</p> <p>19 Q. Who were the representatives of Lend</p> <p>20 Lease that would generally attend these safety</p> <p>21 meetings?</p> <p>22 A. The superintendents.</p> <p>23 Q. So, other than yourself who else would</p> <p>24 be there?</p> <p>25 A. Henry Marina.</p>
<p style="text-align: right;">Page 39</p> <p>1 Solter 39</p> <p>2 orientation is required for the project. Weekly</p> <p>3 safety meeting with the workers of the</p> <p>4 contractor and its subcontractors of any tier</p> <p>5 are also required with evidence of the meeting.</p> <p>6 Results being supplied to construction manager.</p> <p>7 Q. What is your understanding of what</p> <p>8 that is referencing with regard to evidence of</p> <p>9 the meeting being supplied to the construction</p> <p>10 manager?</p> <p>11 MR. BECKERMAN: Just note my</p> <p>12 objection.</p> <p>13 A. That any individual who comes on the</p> <p>14 project has to go through the site safety</p> <p>15 orientation.</p> <p>16 Q. To your knowledge, was CMI and its</p> <p>17 employees part of the site safety orientation?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know if there were weekly</p> <p>20 safety meetings held with CMI?</p> <p>21 A. The foremen's meeting is a combination</p> <p>22 of the safety meeting also, so, yes.</p> <p>23 Q. Did you participate in any weekly</p> <p>24 safety meetings at the job site?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 41</p> <p>1 Solter 41</p> <p>2 Q. Anyone else?</p> <p>3 A. Lenny the safety person. Alex was</p> <p>4 another super on the project.</p> <p>5 Q. Alex?</p> <p>6 A. Yes. I can't think of his last name.</p> <p>7 Carmine.</p> <p>8 Q. Anyone else?</p> <p>9 A. Steve Nash Weber.</p> <p>10 Q. Is that one person, Steve Nash Weber?</p> <p>11 A. That's correct.</p> <p>12 Q. Mr. Nash Weber is employed by Lend</p> <p>13 Lease?</p> <p>14 A. All of those are superintendents with</p> <p>15 Lend Lease.</p> <p>16 Mike Malone.</p> <p>17 Q. Anybody else?</p> <p>18 A. That is all.</p> <p>19 Q. Which trades would generally attend</p> <p>20 those meetings?</p> <p>21 A. Each subcontractor was supposed to</p> <p>22 send one individual.</p> <p>23 Q. Do you know how many subs were on the</p> <p>24 job in January of 2014?</p> <p>25 A. No.</p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 Solter 42</p> <p>2 Q. Can you approximate, was it two, was</p> <p>3 it ten, anything like that?</p> <p>4 A. Probably 13, 14.</p> <p>5 Q. I would like to draw your attention to</p> <p>6 section 15.20. If you would be kind enough to</p> <p>7 read that as well, please.</p> <p>8 A. Powered cranes, hoists, aerial</p> <p>9 platforms and scissor lifts provided by</p> <p>10 contractor must have a competent driver that is</p> <p>11 certified by a qualified third party.</p> <p>12 Additionally, the above items must be certified</p> <p>13 by a qualified third party as safe to use.</p> <p>14 MR. BECKERMAN: Note my objection.</p> <p>15 Q. Do you know what this means when it</p> <p>16 refers to a qualified third party?</p> <p>17 A. No.</p> <p>18 Q. Can you turn the page to page 16, 6.0?</p> <p>19 It says accident/claims reporting procedures</p> <p>20 overview, do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know if any of the individuals</p> <p>23 listed here were contacted about the happening</p> <p>24 of Gary Harrigan's accident?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 44</p> <p>1 Solter 44</p> <p>2 accident?</p> <p>3 A. No.</p> <p>4 Q. Do you know if Ted Xenakis spoke with</p> <p>5 anybody at CMI?</p> <p>6 A. No, I don't know.</p> <p>7 Q. Have you ever seen any paperwork</p> <p>8 generated by Ted Xenakis as a result of Gary</p> <p>9 Harrigan's accident?</p> <p>10 A. Not that I remember.</p> <p>11 Q. Have you ever seen any paperwork sent</p> <p>12 to Ted Xenakis as a result of the happening of</p> <p>13 this accident?</p> <p>14 A. Not that I remember.</p> <p>15 Q. Turning along you will see there is an</p> <p>16 Exhibit O entitled project safety and fire</p> <p>17 prevention orientation, do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Have you ever seen this form that is</p> <p>20 on the next page that starts at the bottom? It</p> <p>21 says page one of nine. Have you ever seen that</p> <p>22 prior to today?</p> <p>23 A. Yes.</p> <p>24 Q. Are you aware that CMI was required to</p> <p>25 fill out this form and send it in to Lend Lease?</p>
<p style="text-align: right;">Page 43</p> <p>1 Solter 43</p> <p>2 Q. Who was contacted?</p> <p>3 A. Ted Xenakis.</p> <p>4 Q. Do you know Ted Xenakis' position with</p> <p>5 Lend Lease?</p> <p>6 A. No.</p> <p>7 Q. How do you know he was contacted as a</p> <p>8 result of Gary's accident?</p> <p>9 A. He had contacted me and visited the</p> <p>10 site.</p> <p>11 Q. When did he visit the site?</p> <p>12 A. I am not certain if it was the day of</p> <p>13 the accident or the day after.</p> <p>14 Q. What was your understanding of his</p> <p>15 position in general that he was coming to the</p> <p>16 site following the accident?</p> <p>17 A. I didn't understand. His position was</p> <p>18 overseeing claims for the company.</p> <p>19 Q. Did you have any specific discussions</p> <p>20 with Ted Xenakis about the happening of this</p> <p>21 accident?</p> <p>22 A. Not that I remember.</p> <p>23 Q. Do you know who, if anyone, Ted</p> <p>24 Xenakis spoke with when he came to the job site</p> <p>25 specifically with regard to the happening of the</p>	<p style="text-align: right;">Page 45</p> <p>1 Solter 45</p> <p>2 MR. BECKERMAN: Note my objection.</p> <p>3 A. No, I am not aware of that.</p> <p>4 Q. Have you ever seen this form in a</p> <p>5 filled-out version by CMI?</p> <p>6 A. Not that I am -- not that I can</p> <p>7 remember, no, but this is filled out by the</p> <p>8 individual. You're referencing the company.</p> <p>9 Q. Have you ever seen this filled out by</p> <p>10 any employees of CMI?</p> <p>11 A. Not that I remember but, again, this</p> <p>12 is filled out by employees that come to work</p> <p>13 under different subcontractors to do the job, so</p> <p>14 I am not trying to be combative in that regard</p> <p>15 but you're saying if I remember this being</p> <p>16 filled out by somebody on the job, I don't</p> <p>17 remember that this is filled out by individuals</p> <p>18 that come to work on the project. That is part</p> <p>19 of their orientation.</p> <p>20 Q. It's your understanding this is filled</p> <p>21 out and then given to Lend Lease?</p> <p>22 A. Yes.</p> <p>23 Q. Was it part of your duties to review</p> <p>24 this paperwork submitted by workers at the site?</p> <p>25 A. No.</p>

12 (Pages 42 to 45)

<p style="text-align: right;">Page 46</p> <p>1 Solter 46</p> <p>2 Q. Can you turn to page 4 of 9 and there</p> <p>3 is a section entitled scaffolds and lifts. Have</p> <p>4 you ever seen the language in paragraph two in</p> <p>5 that section prior to today?</p> <p>6 A. I don't remember.</p> <p>7 Q. Do you see in the middle of that</p> <p>8 paragraph where it states in bold, quote, all</p> <p>9 persons are required to attend the safety class</p> <p>10 conducted by the lift rental company prior to</p> <p>11 using the lift, quote?</p> <p>12 MR. BECKERMAN: Note my objection.</p> <p>13 A. The question is do I see that now?</p> <p>14 Q. Yes.</p> <p>15 A. Yes, I do.</p> <p>16 Q. Do you know what that is referring to?</p> <p>17 A. No.</p> <p>18 Q. To your knowledge, did Lend Lease have</p> <p>19 an expectation that the lift rental company</p> <p>20 would be providing safety classes?</p> <p>21 MR. KOCHMAN: Objection to form.</p> <p>22 A. Can you say the question again, I am</p> <p>23 sorry?</p> <p>24 Q. To your knowledge, did Lend Lease have</p> <p>25 an expectation that the lift rental company</p>	<p style="text-align: right;">Page 48</p> <p>1 Solter 48</p> <p>2 lifts as part of the workplace where Lend Lease</p> <p>3 was the project manager?</p> <p>4 A. I am not certain.</p> <p>5 Q. Can you turn to page 6 of 9, please?</p> <p>6 Under general safety the first paragraph refers</p> <p>7 to a pre-task plan, do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know what that is?</p> <p>10 A. Contractors are asked to evaluate the</p> <p>11 risks on the project and in that evaluation</p> <p>12 write pre-task plans on how to proceed through</p> <p>13 work to mitigate any hazards.</p> <p>14 Q. Did you ever receive any pre-task</p> <p>15 plans submitted by CMI as part of this job?</p> <p>16 A. I don't recall.</p> <p>17 Q. Would that have been part of your job</p> <p>18 duties to review pre-task plans submitted by CMI</p> <p>19 at this job site?</p> <p>20 A. No.</p> <p>21 Q. Whose responsibility would it have</p> <p>22 been to review that type of document?</p> <p>23 A. The safety person.</p> <p>24 Q. Lenny?</p> <p>25 A. Yes, or thereabouts, that person that</p>
<p style="text-align: right;">Page 47</p> <p>1 Solter 47</p> <p>2 would be providing safety classes to the people</p> <p>3 using the lifts at the job site?</p> <p>4 MR. KOCHMAN: Objection to form.</p> <p>5 A. Not that I can remember.</p> <p>6 Q. Do you know why in Lend Lease's</p> <p>7 paperwork here it has this language requiring</p> <p>8 attendance at a safety class to be conducted by</p> <p>9 the lift rental company?</p> <p>10 MR. BECKERMAN: Note my objection.</p> <p>11 A. No.</p> <p>12 Q. Prior to January of 2014 were you</p> <p>13 aware of lift rental companies providing safety</p> <p>14 classes to workers at a job site where Lend</p> <p>15 Lease was the construction manager?</p> <p>16 MR. BECKERMAN: Can you read that</p> <p>17 back, please?</p> <p>18 (Whereupon, the question was read</p> <p>19 back by the court reporter.)</p> <p>20 MR. KOCHMAN: Objection to form.</p> <p>21 A. At a job site, no.</p> <p>22 MR. ERENBURG: Objection.</p> <p>23 Q. Were you aware of situations where the</p> <p>24 lift rental company would provide safety classes</p> <p>25 off site to workers that would be using aerial</p>	<p style="text-align: right;">Page 49</p> <p>1 Solter 49</p> <p>2 is on the site which Lenny was mostly there.</p> <p>3 Q. Can you turn to the last page of this</p> <p>4 exhibit? It says page eight of nine on the</p> <p>5 bottom and do you see where there is an</p> <p>6 acknowledgement paragraph where it appears that</p> <p>7 it's for the worker to sign and date at the top</p> <p>8 there?</p> <p>9 A. Yes.</p> <p>10 Q. Below that do you see a section where</p> <p>11 it says processing LL use only?</p> <p>12 A. Yes.</p> <p>13 Q. Does the LL there refer to Lend Lease?</p> <p>14 A. Yes.</p> <p>15 Q. To your knowledge, does Lend Lease</p> <p>16 process these papers, is that the purpose of</p> <p>17 that section?</p> <p>18 A. Yes.</p> <p>19 Q. Was that part of your work to process</p> <p>20 these forms?</p> <p>21 A. No.</p> <p>22 Q. Do you know whose responsibility on</p> <p>23 behalf of Lend Lease it was to process these</p> <p>24 forms?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 50</p> <p>1 Solter 50</p> <p>2 Q. Do you see on the bottom where it says</p> <p>3 licenses and certifications verified with a</p> <p>4 question mark?</p> <p>5 A. Yes.</p> <p>6 Q. To your knowledge, was it Lend Lease's</p> <p>7 requirement that licenses and certifications of</p> <p>8 the workers at its job site be verified?</p> <p>9 A. Yes.</p> <p>10 Q. What was your understanding of that</p> <p>11 process?</p> <p>12 A. Whatever licenses were given to us by</p> <p>13 the different tradesmen we would take copies of.</p> <p>14 Q. And do some type of verification?</p> <p>15 A. No background checks, just that their</p> <p>16 ID is up to date, whatever the certification is.</p> <p>17 Q. Is that something that you would do or</p> <p>18 someone else within Lend Lease as far as</p> <p>19 verifying the certifications?</p> <p>20 A. The person giving the orientation.</p> <p>21 Q. Who would that be at Lend Lease, in</p> <p>22 other words, was that one of the safety people?</p> <p>23 A. Yes. The workers would give us their</p> <p>24 licenses that they had, we would verify that</p> <p>25 they are still within the dates of the</p>	<p style="text-align: right;">Page 52</p> <p>1 Solter 52</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. Would someone be allowed to work on</p> <p>4 the job site without that certification?</p> <p>5 A. No.</p> <p>6 Q. If Gary Harrigan did not have that</p> <p>7 certification, would he not be allowed to work</p> <p>8 at the job site?</p> <p>9 A. That is my memory of it.</p> <p>10 Q. Can you turn to the last page of this</p> <p>11 document, page 7 of 8? Do you see where there</p> <p>12 appears to be a signature by Gary Harrigan dated</p> <p>13 September 16, 2013?</p> <p>14 A. Yes.</p> <p>15 Q. In the section below that, processing</p> <p>16 LL use only, do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. This is the same section that we just</p> <p>19 reviewed in the previous exhibit, Plaintiff's</p> <p>20 Exhibit 1, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know why this processing</p> <p>23 section is not checked off or filled out in any</p> <p>24 place by Lend Lease?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 51</p> <p>1 Solter 51</p> <p>2 expiration.</p> <p>3 Q. I am going to hand you what we have</p> <p>4 marked as Plaintiff's Exhibit 3 for</p> <p>5 Identification. It's entitled project safety</p> <p>6 and fire prevention orientation. Have you ever</p> <p>7 seen this type of document before?</p> <p>8 A. Yes.</p> <p>9 Q. Was it part of your job duty to review</p> <p>10 these forms submitted by workers at the job</p> <p>11 site?</p> <p>12 A. No.</p> <p>13 Q. This is the one for Gary Harrigan and</p> <p>14 it has orientation number 935 at the top, do you</p> <p>15 see that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you see in the note section in the</p> <p>18 middle where there is a reference to the</p> <p>19 requirement of taking an OSHA ten-hour class?</p> <p>20 A. Yes.</p> <p>21 Q. Were you aware of that requirement?</p> <p>22 A. Yes.</p> <p>23 Q. To your knowledge, did Gary Harrigan</p> <p>24 indicate that he had a ten-hour OSHA</p> <p>25 certification?</p>	<p style="text-align: right;">Page 53</p> <p>1 Solter 53</p> <p>2 Q. Was it the responsibility of someone</p> <p>3 at Lend Lease to check that Gary Harrigan's</p> <p>4 certifications were verified?</p> <p>5 A. I would say yes.</p> <p>6 Q. Do you know if that was done?</p> <p>7 A. No.</p> <p>8 Q. Does it indicate to you that that was</p> <p>9 not done by looking at this form?</p> <p>10 A. The area in question is not checked</p> <p>11 off.</p> <p>12 Q. By the fact that it's not checked off</p> <p>13 or filled out in any way is that an indication</p> <p>14 that Gary Harrigan's licenses and certification</p> <p>15 were not verified?</p> <p>16 A. No.</p> <p>17 Q. It's not an indication of that?</p> <p>18 A. That is correct.</p> <p>19 Q. Can you tell me if they were verified?</p> <p>20 A. No.</p> <p>21 Q. That would have been Lenny's job or</p> <p>22 someone within safety to make that</p> <p>23 determination?</p> <p>24 A. The person giving the orientation,</p> <p>25 yes.</p>

14 (Pages 50 to 53)

<p style="text-align: right;">Page 54</p> <p>1 Solter 54</p> <p>2 Q. Did you give orientations on behalf of</p> <p>3 Lend Lease back in September of 2013?</p> <p>4 A. Yes.</p> <p>5 Q. Is there a way to determine who would</p> <p>6 have given Gary Harrigan his orientation?</p> <p>7 A. I am not sure.</p> <p>8 Q. Would there be a record within Lend</p> <p>9 Lease showing who was giving orientations in</p> <p>10 September of 2013?</p> <p>11 A. I am not sure.</p> <p>12 Q. I am going to hand you what has been</p> <p>13 marked as Plaintiff's Exhibit 2 for</p> <p>14 Identification. It says Lend Lease on the top,</p> <p>15 Exhibit J, project safety program requirements,</p> <p>16 and can you look at the second page, please? Do</p> <p>17 you see on number two where it talks about a</p> <p>18 subcontractor's site-specific safety plan?</p> <p>19 A. Yes.</p> <p>20 Q. Did you ever review a site-specific</p> <p>21 safety plan submitted by CMI?</p> <p>22 A. I don't remember.</p> <p>23 Q. Was it within your duties to review</p> <p>24 CMI's site-specific safety plan if they had</p> <p>25 submitted one?</p>	<p style="text-align: right;">Page 56</p> <p>1 Solter 56</p> <p>2 A. No.</p> <p>3 Q. Do you know if anybody from CMI</p> <p>4 attended any supervisors' skills workshops as</p> <p>5 far as this project?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. Number seven, the safety leadership</p> <p>8 team/principal's council, do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know what the safety leadership</p> <p>11 team was for this project?</p> <p>12 A. Say the question again, I am sorry.</p> <p>13 Q. Do you know what the safety leadership</p> <p>14 was for this project?</p> <p>15 A. I am not certain.</p> <p>16 Q. Were you part of the safety leadership</p> <p>17 team?</p> <p>18 A. No.</p> <p>19 Q. Do you know what the principal's</p> <p>20 council was for this project?</p> <p>21 A. No, I am not certain.</p> <p>22 Q. Were you part of the principal's</p> <p>23 council?</p> <p>24 A. No.</p> <p>25 Q. Can you turn the page and go to number</p>
<p style="text-align: right;">Page 55</p> <p>1 Solter 55</p> <p>2 A. No.</p> <p>3 Q. Whose duty would that have been within</p> <p>4 Lend Lease?</p> <p>5 A. The safety person.</p> <p>6 Q. Would that be Lenny?</p> <p>7 A. Whoever that safety person was, yes.</p> <p>8 Q. Do you know other than Lenny who would</p> <p>9 be a safety person within Lend Lease?</p> <p>10 A. On this project there was a couple of</p> <p>11 safety personnel who would fill in for Lenny but</p> <p>12 Lenny was the mainstay person on that project.</p> <p>13 Q. If his last name happens to come to</p> <p>14 you while we're here, can you spill it out?</p> <p>15 A. I am trying to think. It starts with</p> <p>16 an O.</p> <p>17 MR. SMILEY: Off the record.</p> <p>18 (Whereupon, a discussion was held</p> <p>19 off the record.)</p> <p>20 Q. Can you turn the page and go to number</p> <p>21 6, please? Do you see where it says</p> <p>22 supervisor's skills workshop?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know what a supervisor's skills</p> <p>25 workshop was for this job project?</p>	<p style="text-align: right;">Page 57</p> <p>1 Solter 57</p> <p>2 15, please? Do you see where it says daily</p> <p>3 coordination meetings?</p> <p>4 A. Yes.</p> <p>5 Q. Are those the meetings that you spoke</p> <p>6 of earlier when you said there were weekly</p> <p>7 safety meetings or is this something different?</p> <p>8 A. No.</p> <p>9 Q. Here on number 15 next to daily</p> <p>10 coordination meetings it indicates that the</p> <p>11 meetings will include a review of the following</p> <p>12 day's activities, review of any high risk works,</p> <p>13 coordinate trades, do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Did you participate in those meetings?</p> <p>16 A. No.</p> <p>17 Q. The meeting that you had with Gary</p> <p>18 Harrigan in attendance on the morning of his</p> <p>19 accident was there a discussion about the work</p> <p>20 that CMI would be performing that day?</p> <p>21 A. Not for the day.</p> <p>22 Q. Was there a discussion of the fact</p> <p>23 that Kristen Malone would need to go up in a</p> <p>24 scissor lift with Gary Harrigan to perform an</p> <p>25 inspection of work?</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 Solter 58</p> <p>2 A. Yes.</p> <p>3 Q. Tell me what you recall about that</p> <p>4 discussion?</p> <p>5 A. There was some type of inspection that</p> <p>6 she needed to have so that their work could</p> <p>7 continue. It was an outstanding item that CMI</p> <p>8 completed and they were going to go up and let</p> <p>9 her review to give the okay in that work being</p> <p>10 complete.</p> <p>11 Q. Was it your understanding that Gary</p> <p>12 Harrigan was permitted to take Kristen Malone up</p> <p>13 in the scissor lift so that she could inspect</p> <p>14 the work?</p> <p>15 A. Yes.</p> <p>16 Q. Was it your understanding that it was</p> <p>17 Gary Harrigan's job to take Kristen Malone up in</p> <p>18 the scissor lift so that Kristen could inspect</p> <p>19 the work?</p> <p>20 A. Yes.</p> <p>21 Q. Did you review the location of where</p> <p>22 the scissor lift was to be placed for them to go</p> <p>23 up and allow Kristen to inspect the work?</p> <p>24 A. No.</p> <p>25 Q. Was there any discussion about how the</p>	<p style="text-align: right;">Page 60</p> <p>1 Solter 60</p> <p>2 MR. SMILEY: For that day.</p> <p>3 A. No.</p> <p>4 Q. No, you didn't go there?</p> <p>5 A. I did not. I did not see that area</p> <p>6 prior to them going up.</p> <p>7 Q. Did you ever yourself inspect the</p> <p>8 condition of the ground in the workplace where</p> <p>9 CMI was utilizing the scissor lift at any time</p> <p>10 prior to January 13, 2014?</p> <p>11 MR. BECKERMAN: Just note my</p> <p>12 objection to form.</p> <p>13 A. Not for the inspection as far as the</p> <p>14 usage but I have seen the ground that they were</p> <p>15 on.</p> <p>16 Q. Can you describe the ground conditions</p> <p>17 for me when you last observed them?</p> <p>18 MR. BECKERMAN: Just note my</p> <p>19 objection to the form.</p> <p>20 A. The last time I observed them before?</p> <p>21 Q. Before his accident.</p> <p>22 A. Well, it was different locations</p> <p>23 throughout the site, mostly concrete.</p> <p>24 Q. Did you ever notice debris on the</p> <p>25 ground?</p>
<p style="text-align: right;">Page 59</p> <p>1 Solter 59</p> <p>2 scissor lift should be placed or should not be</p> <p>3 placed in order to have Kristen Malone inspect</p> <p>4 the work?</p> <p>5 A. No.</p> <p>6 Q. Was there anything else discussed</p> <p>7 about the use of the scissor lift to inspect</p> <p>8 work at that meeting that you recall?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Did you, yourself, go and look at the</p> <p>11 area of where the scissor lift was going to be</p> <p>12 used for the work inspection?</p> <p>13 A. No.</p> <p>14 Q. Had you ever seen the area of where</p> <p>15 the scissor lift was used to do that inspection?</p> <p>16 A. Yes.</p> <p>17 Q. Had you seen the ground area there?</p> <p>18 A. Could you explain?</p> <p>19 Q. Did you see the condition of the</p> <p>20 ground, that being whether or not it was free of</p> <p>21 debris or whether there were any hazard or any</p> <p>22 other things that may have been of interest to</p> <p>23 you with regard to the use of the safety device</p> <p>24 in that area?</p> <p>25 MR. ERENBURG: At which time?</p>	<p style="text-align: right;">Page 61</p> <p>1 Solter 61</p> <p>2 A. Yes.</p> <p>3 Q. Did you ever comment to anybody about</p> <p>4 the fact that you observed debris on the ground?</p> <p>5 A. Yes.</p> <p>6 Q. Who did you comment to?</p> <p>7 A. We would clean the areas before they</p> <p>8 would roll around with the machines.</p> <p>9 Q. To your knowledge, who, if anyone's,</p> <p>10 obligation was it to clear debris from the</p> <p>11 ground in the areas where CMI employees would be</p> <p>12 using scissor lifts?</p> <p>13 A. If it was stored materials and so</p> <p>14 forth, we would have our laborers move it or I</p> <p>15 would move it or we would have the trades who</p> <p>16 stored materials in the way of allowing for the</p> <p>17 scissor lift to be moved around or get to the</p> <p>18 spots where they have to work.</p> <p>19 Q. Did Lend Lease have its own laborers</p> <p>20 at the job site in January of 2014?</p> <p>21 A. Yes.</p> <p>22 Q. Was it part of Lend Lease's laborers'</p> <p>23 duties to clean up the workplace in general?</p> <p>24 A. Yes.</p> <p>25 Q. To your knowledge, was CMI's employees</p>

16 (Pages 58 to 61)

<p style="text-align: right;">Page 62</p> <p style="text-align: center;">Solter 62</p> <p>1 required to do general cleanup of the work area?</p> <p>2 A. Not to my knowledge. A lot of times</p> <p>3 we have contracts that say we have to center</p> <p>4 pile their debris. I am not sure if CMI had</p> <p>5 that in their contract.</p> <p>6 Q. Can you turn to number 20? It's</p> <p>7 entitled weekly safety toolbox talks. Do you</p> <p>8 know if CMI conducted weekly toolbox talks?</p> <p>9 A. I do remember them having toolbox</p> <p>10 talks.</p> <p>11 Q. Is it your understanding that as part</p> <p>12 of the contract they were required to conduct</p> <p>13 and document weekly safety toolbox talks?</p> <p>14 A. Yes.</p> <p>15 Q. In the last sentence in that section</p> <p>16 of number 20 it states, quote, a copy of the</p> <p>17 toolbox talk and attendance record shall be</p> <p>18 submitted to LL weekly, quote, do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know if CMI submitted weekly</p> <p>21 toolbox talks to Lend Lease?</p> <p>22 A. I don't remember on this project.</p> <p>23 Q. Did you ever review any toolbox talks</p> <p>24 that were submitted to Lend Lease by CMI?</p> <p>25</p>	<p style="text-align: right;">Page 64</p> <p style="text-align: center;">Solter 64</p> <p>1 A. I am not certain.</p> <p>2 Q. Was that something that would have</p> <p>3 been someone from safety's department?</p> <p>4 A. I am not certain.</p> <p>5 Q. If you look to subdivision iv, quote,</p> <p>6 the subcontractor shall perform aerial lift</p> <p>7 inspections daily per ANSI and provide</p> <p>8 inspection reports to LL, quote, do you see</p> <p>9 that?</p> <p>10 MR. BECKERMAN: Objection.</p> <p>11 A. Yes.</p> <p>12 Q. Do you know if CMI provided daily</p> <p>13 inspection records of its aerial lifts to Lend</p> <p>14 Lease?</p> <p>15 A. I am not certain.</p> <p>16 Q. Do you know who would be responsible</p> <p>17 at Lend Lease for reviewing these submissions?</p> <p>18 A. No.</p> <p>19 Q. Was that part of your duty?</p> <p>20 A. No.</p> <p>21 Q. Can you turn the page at the top of</p> <p>22 the page, vi, do you see where it says, quote,</p> <p>23 all operators of elevating work platforms must</p> <p>24 have a competent operator certified by a</p> <p>25</p>
<p style="text-align: right;">Page 63</p> <p style="text-align: center;">Solter 63</p> <p>1 A. No.</p> <p>2 Q. Whose duty would it have been to</p> <p>3 review those toolbox talks if CMI did do its</p> <p>4 weekly submission of them?</p> <p>5 A. You go to the safety personnel.</p> <p>6 Q. Can you turn to number 34, please? Do</p> <p>7 you see where it says aerial lifts number 34?</p> <p>8 A. Yes.</p> <p>9 Q. In that subdivision the first small I</p> <p>10 it indicates, quote, equipment shall be designed</p> <p>11 and operated in accordance with all applicable</p> <p>12 standards, including OSHA, ANSI and</p> <p>13 manufacturer's guidelines, do you see that?</p> <p>14 A. Yes.</p> <p>15 MR. BECKERMAN: Note my objection.</p> <p>16 Q. Was it your understanding that CMI was</p> <p>17 responsible for ensuring that the scissor lifts</p> <p>18 at the job site were operated in accordance with</p> <p>19 OSHA and ANSI?</p> <p>20 A. I am not certain.</p> <p>21 Q. Do you know if anyone at Lend Lease</p> <p>22 took any steps to determine whether or not CMI</p> <p>23 was complying with OSHA and ANSI with regard to</p> <p>24 the actions of its employees?</p> <p>25</p>	<p style="text-align: right;">Page 65</p> <p style="text-align: center;">Solter 65</p> <p>1 qualified third party, documentation provided to</p> <p>2 LL, quote, do you see that?</p> <p>3 MR. BECKERMAN: Objection.</p> <p>4 A. Yes.</p> <p>5 Q. Did you ever receive from CMI any</p> <p>6 documentation showing that Gary Harrigan was</p> <p>7 certified by a qualified third party to operate</p> <p>8 a scissor lift?</p> <p>9 A. I have never.</p> <p>10 Q. Do you know if Lend Lease did receive</p> <p>11 any such documentation?</p> <p>12 A. I am not certain.</p> <p>13 Q. Who at Lend Lease would be the person</p> <p>14 to know whether or not they received</p> <p>15 documentation from CMI such as that?</p> <p>16 A. I would think the safety person.</p> <p>17 Q. On the back of this document if you</p> <p>18 turn the page there are several forms. It</p> <p>19 starts page 1 of 5 and it goes through page 5 of</p> <p>20 5. Have you ever seen these forms filled out as</p> <p>21 part of your work with Lend Lease?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know if CMI submitted these</p> <p>24 forms to Lend Lease?</p> <p>25</p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 Solter 66</p> <p>2 A. I don't know.</p> <p>3 Q. Again, would that be someone with</p> <p>4 safety's responsibility to review?</p> <p>5 A. Or the PM.</p> <p>6 Q. Which PM are you referring to?</p> <p>7 A. Preston Roberts.</p> <p>8 Q. If you can look at the last page where</p> <p>9 it says pre-task plan, I think that might have</p> <p>10 been something that was addressed in one of the</p> <p>11 earlier documents we looked at, do you see that</p> <p>12 form?</p> <p>13 A. Yes.</p> <p>14 Q. Did you ever review a pre-task plan</p> <p>15 filled out and received by CMI?</p> <p>16 A. Not that I remember.</p> <p>17 Q. Whose duty would it have been within</p> <p>18 Lend Lease to receive and review a pre-task plan</p> <p>19 submitted by CMI if they did submit it?</p> <p>20 A. The safety person.</p> <p>21 Q. Do you know who the employee</p> <p>22 responsible for safety for Coordinated Metals,</p> <p>23 Inc. was as designated by Coordinated Metals,</p> <p>24 Inc. to Lend Lease?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 68</p> <p>1 Solter 68</p> <p>2 Q. Can you take a look at that, please?</p> <p>3 Now, just for reference this safety manual would</p> <p>4 have been submitted by Coordinated Metals, Inc.</p> <p>5 to Lend Lease; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. If you look at the front of it, I am</p> <p>8 sorry, just keep your spot there, but toward the</p> <p>9 front there is a whole table of contents from</p> <p>10 CMI on their letterhead, do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. If you look at number 21 toward the</p> <p>13 end of the table of contents it lists safety</p> <p>14 coordinator and OSHA-trained personnel, do you</p> <p>15 see that?</p> <p>16 A. Yes.</p> <p>17 Q. So, now, I am going to ask you to turn</p> <p>18 to that page, safety coordinator and</p> <p>19 OSHA-trained personnel. Can you read the first</p> <p>20 paragraph, please?</p> <p>21 MR. BECKERMAN: Just note my</p> <p>22 objection.</p> <p>23 A. The employee responsible for safety</p> <p>24 for Coordinated Metals, Inc. at the job site of</p> <p>25 50 UN Plaza is Mr. Guy Zammit, the field foreman</p>
<p style="text-align: right;">Page 67</p> <p>1 Solter 67</p> <p>2 Q. Do you know who on behalf of</p> <p>3 Coordinated Metals was designated as the person</p> <p>4 who would conduct weekly toolbox talks and</p> <p>5 sign-in sheets?</p> <p>6 A. Yes.</p> <p>7 Q. Who was that?</p> <p>8 A. Gary.</p> <p>9 Q. How do you know that it was Gary who</p> <p>10 was obligated to conduct the weekly toolbox</p> <p>11 talks on behalf of CMI?</p> <p>12 A. As far as that project he was the</p> <p>13 foreman, so he would handle that.</p> <p>14 Q. Sir, I am asking you to take a look at</p> <p>15 what was previously marked as Defendant's</p> <p>16 Exhibit B for Identification on January 25,</p> <p>17 2016. At the top it says Coordinated Metals,</p> <p>18 Inc. and it says safety manual for the 50 UN</p> <p>19 Plaza Project. Can you take a look at that,</p> <p>20 please? I am going to direct your attention to</p> <p>21 a page entitled safety coordinator and OSHA</p> <p>22 trained personnel.</p> <p>23 MR. SMILEY: Off the record.</p> <p>24 (Whereupon, a discussion was held</p> <p>25 off the record.)</p>	<p style="text-align: right;">Page 69</p> <p>1 Solter 69</p> <p>2 for Coordinated Metals, Inc., Mr. Guy Zammit, is</p> <p>3 the field supervisor of all the sites.</p> <p>4 Q. Can you read the next paragraph,</p> <p>5 please?</p> <p>6 A. Mr. Guy Zammit will conduct weekly</p> <p>7 toolbox talks and sign-in sheets will be sent</p> <p>8 via E-mail to Lend Lease Construction. The</p> <p>9 daily pre-task meeting will be conducted on site</p> <p>10 to inform workers of the hazards they face that</p> <p>11 day.</p> <p>12 Q. So, based on CMI's safety submission</p> <p>13 to Lend Lease, it wasn't Gary Harrigan, it was</p> <p>14 Guy Zammit who was in charge to lead the toolbox</p> <p>15 talks; am I correct?</p> <p>16 MR. BECKERMAN: Just note my</p> <p>17 objection.</p> <p>18 A. Say your question again.</p> <p>19 Q. So, according to CMI's safety</p> <p>20 submission to Lend Lease they designated Guy</p> <p>21 Zammit as being the person who would conduct the</p> <p>22 weekly toolbox talks, not Gary Harrigan; is that</p> <p>23 correct?</p> <p>24 MR. BECKERMAN: Note my objection.</p> <p>25 A. I just have a problem with your</p>

<p style="text-align: right;">Page 70</p> <p style="text-align: center;">Solter 70</p> <p>1 questions because you're, basically, stating</p> <p>2 what is read there and asking me to verify.</p> <p>3 Q. Right.</p> <p>4 A. And I would say this was handed in a</p> <p>5 long time before the contract was written, so</p> <p>6 they didn't know the foreman at the time, so all</p> <p>7 companies do this, they submit the person who</p> <p>8 they feel would be assigned to the project but</p> <p>9 Guy is never on one site by himself, so they</p> <p>10 name him as the person to facilitate the</p> <p>11 contract but when the foreman comes on the job,</p> <p>12 the foreman takes over the duties of the on-site</p> <p>13 safety person.</p> <p>14 Q. Can you look at the last paragraph?</p> <p>15 Do you see in that where Coordinated Metals,</p> <p>16 Inc. indicates those employees that have 30</p> <p>17 hours of OSHA certification, do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. They list John Darby, Frank Grippy,</p> <p>20 Guy Zammit and Peter Dursola (phonetic),</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. Gary Harrigan is not listed there as a</p> <p>24 Coordinated Metals employee with 30 hours of</p> <p>25</p>	<p style="text-align: right;">Page 72</p> <p style="text-align: center;">Solter 72</p> <p>1 you designating Gary Harrigan as the foreman or</p> <p>2 as Gary Harrigan being certified?</p> <p>3 A. I don't remember.</p> <p>4 Q. Is that something you would have</p> <p>5 looked for prior to allowing an employee of CMI</p> <p>6 to lead toolbox talks?</p> <p>7 A. Say the question again.</p> <p>8 Q. Is that something that you would have</p> <p>9 required from CMI, anything in writing, with</p> <p>10 regard to who to designate as a foreman or who</p> <p>11 would be taking charge of toolbox talks?</p> <p>12 A. I wouldn't look for it in writing but</p> <p>13 I would look to see who would be designated as</p> <p>14 the foreman. I wasn't sure it was in writing.</p> <p>15 Q. How did you determine who was</p> <p>16 designated as the foreman on the job?</p> <p>17 A. Guy Zammit.</p> <p>18 Q. He told you?</p> <p>19 A. Yes.</p> <p>20 Q. What did he tell you about Gary</p> <p>21 Harrigan?</p> <p>22 A. That he was the acting foreman, person</p> <p>23 to contact.</p> <p>24 Q. Did he say anything else about Gary's</p> <p>25</p>
<p style="text-align: right;">Page 71</p> <p style="text-align: center;">Solter 71</p> <p>1 OSHA training, is he?</p> <p>2 A. No.</p> <p>3 Q. Then if you look further down they</p> <p>4 talk about those individuals with ten hours of</p> <p>5 OSHA certification and they list Paul Santo,</p> <p>6 Remis Alinskas, Frank LaManna, do you see those</p> <p>7 names?</p> <p>8 A. Yes.</p> <p>9 Q. They don't indicate Gary Harrigan on</p> <p>10 any of this paperwork, do they?</p> <p>11 A. No, they don't.</p> <p>12 Q. How did you or anyone at Lend Lease</p> <p>13 know if Gary Harrigan had any of the proper</p> <p>14 training or certifications to conduct weekly</p> <p>15 toolbox talks?</p> <p>16 MR. BECKERMAN: Can you read that</p> <p>17 back, please?</p> <p>18 (Whereupon, the question was read</p> <p>19 back by the court reporter.)</p> <p>20 A. Anyone on the project had to have a</p> <p>21 minimum of ten-hour OSHA and he was deemed to be</p> <p>22 the foreman on the project.</p> <p>23 Q. Was that done in writing at any time</p> <p>24 by CMI where they actually submitted anything to</p> <p>25</p>	<p style="text-align: right;">Page 73</p> <p style="text-align: center;">Solter 73</p> <p>1 experience, training or certifications?</p> <p>2 A. Not that I remember.</p> <p>3 Q. Did you ask for any documentation of</p> <p>4 Gary Harrigan's certifications or training?</p> <p>5 A. Not that I remember.</p> <p>6 Q. Do you know what it means for a</p> <p>7 subcontractor to designate someone as a</p> <p>8 competent person?</p> <p>9 A. Yes.</p> <p>10 Q. What is a competent person</p> <p>11 designation?</p> <p>12 A. It's deemed to be the person that</p> <p>13 would be able to take action if there was an</p> <p>14 issue.</p> <p>15 Q. Do you know who the designated</p> <p>16 competent person was from CMI for this job?</p> <p>17 A. It would be the foreman.</p> <p>18 Q. Did you see in the safety plan where</p> <p>19 the designated competent person from CMI for</p> <p>20 this job site was Guy Zammit?</p> <p>21 A. I don't recall.</p> <p>22 Q. I am going to show you this section of</p> <p>23 the manual where it's entitled competent person</p> <p>24 designation. Have you seen a form like this</p> <p>25</p>

19 (Pages 70 to 73)

Page 74	Page 76
<p>1 Solter 74</p> <p>2 before today?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Do you see at the bottom there where</p> <p>5 CMI designates Guy Zammit as the competent</p> <p>6 person?</p> <p>7 A. Yes.</p> <p>8 Q. Have you ever seen anywhere where Gary</p> <p>9 Harrigan was designated as a competent person?</p> <p>10 A. Not that I recall.</p> <p>11 Q. To your knowledge, has anyone from</p> <p>12 Lend Lease spoken with anyone at Genie about the</p> <p>13 happening of this accident?</p> <p>14 A. Not that I know.</p> <p>15 Q. To your knowledge, has anyone from</p> <p>16 Lend Lease spoken with anyone at CMI about the</p> <p>17 happening of this accident?</p> <p>18 A. Not that I know of.</p> <p>19 Q. To your knowledge, has anyone at Lend</p> <p>20 Lease spoken with anyone at United Rentals about</p> <p>21 the happening of this accident?</p> <p>22 A. Not that I know of.</p> <p>23 Q. Have you spoken specifically with</p> <p>24 Lenny or any of the safety personnel from Lend</p> <p>25 Lease about the happening of this accident?</p>	<p>1 Solter 76</p> <p>2 photographs, reports or other material in</p> <p>3 preparation for the deposition today?</p> <p>4 A. Yes.</p> <p>5 Q. What did you review?</p> <p>6 A. The orientation.</p> <p>7 MR. ERENBURG: Beforehand I showed</p> <p>8 him that and showed him the pictures that</p> <p>9 were marked at prior depositions.</p> <p>10 Q. Anything else?</p> <p>11 A. No.</p> <p>12 Q. Have you ever spoken with Gary</p> <p>13 Harrigan since the happening of this accident?</p> <p>14 A. Yes.</p> <p>15 Q. When did you speak with him following</p> <p>16 the happening of this accident?</p> <p>17 A. It was definitely a few months after.</p> <p>18 I am not sure of the date. He stopped by the</p> <p>19 job site just to say hello.</p> <p>20 Q. Can you tell me the sum and substance</p> <p>21 of what you spoke with him about?</p> <p>22 A. Just how he is doing and things to</p> <p>23 that effect, nothing about the accident itself.</p> <p>24 Q. What did he tell you about how he was</p> <p>25 doing?</p>
Page 75	Page 77
<p>1 Solter 75</p> <p>2 A. I am sure you must have after the</p> <p>3 accident.</p> <p>4 Q. Anything specific that you recall</p> <p>5 speaking about?</p> <p>6 A. Nothing specific, no.</p> <p>7 Q. Did you ever review any photographs of</p> <p>8 this accident?</p> <p>9 A. Yes.</p> <p>10 Q. When did you review photographs of the</p> <p>11 accident?</p> <p>12 A. After the accident.</p> <p>13 Q. Who were you with when you reviewed</p> <p>14 them?</p> <p>15 A. I don't remember, Lend Lease people.</p> <p>16 Q. For what reason did you review</p> <p>17 photographs of the accident?</p> <p>18 A. Again, lessons learned about what</p> <p>19 happened and possibly things that --</p> <p>20 possibilities, basically.</p> <p>21 Q. What were any of the lessons learned</p> <p>22 as a result of your review of those photographs?</p> <p>23 A. Nothing really came to mind, to my</p> <p>24 mind now. I really don't remember the outcome.</p> <p>25 Q. Did you review any documents,</p>	<p>1 Solter 77</p> <p>2 A. He seemed like he was in good spirits,</p> <p>3 had trouble walking but was in good spirits,</p> <p>4 that he would be back to work at some point and</p> <p>5 had a good sense of will to get back to work.</p> <p>6 Q. Anything else that you recall?</p> <p>7 A. No.</p> <p>8 Q. Did you speak with him again following</p> <p>9 that instance?</p> <p>10 A. No, only that one time.</p> <p>11 MR. SMILEY: Thanks. I have no</p> <p>12 further questions for you.</p> <p>13 MR. BECKERMAN: I have nothing.</p> <p>14 EXAMINATION BY</p> <p>15 MR. WALKER:</p> <p>16 Q. Hi, Mr. Solter. My name is Bob</p> <p>17 Walker. I think we actually met once at the</p> <p>18 scene afterwards. I represent Genie. I just</p> <p>19 have a few questions if I may.</p> <p>20 A. Sure.</p> <p>21 Q. How many total employees did Lend</p> <p>22 Lease have on the job site typically in and</p> <p>23 around the date of the accident?</p> <p>24 A. Maybe a hundred fifty, somewhere</p> <p>25 around there.</p>

20 (Pages 74 to 77)

<p style="text-align: right;">Page 78</p> <p>1 Solter 78</p> <p>2 Q. Could you give me some idea, it</p> <p>3 doesn't have to be by name necessarily but by</p> <p>4 position what was the chain of command?</p> <p>5 A. For?</p> <p>6 Q. For the job site. Like you mentioned</p> <p>7 there was a safety person, a PM, several</p> <p>8 supervisors, how did that all fit in?</p> <p>9 A. There is a PM side and a</p> <p>10 superintendent side, so on both sides -- on the</p> <p>11 superintendent side Henry Marino was the general</p> <p>12 super, then I was the next super in line, after</p> <p>13 that it became other superintendents in their</p> <p>14 areas.</p> <p>15 Q. How did the two lines interact, the</p> <p>16 supers and the PM's, is one above the other or</p> <p>17 co-equal?</p> <p>18 A. Co-existing, basically. PM's oversee</p> <p>19 contracts, oversee design and change orders,</p> <p>20 money end of things, whereas superintendents</p> <p>21 oversee the actual placement of construction and</p> <p>22 overseeing issues to be brought to and in</p> <p>23 conjunction with the PM to find the design</p> <p>24 solution if there is a problem.</p> <p>25 Q. The safety person how does that person</p>	<p style="text-align: right;">Page 80</p> <p>1 Solter 80</p> <p>2 A. I am just not sure who you're</p> <p>3 referring to as the person.</p> <p>4 Q. Well, no, I am not asking you about a</p> <p>5 particular person.</p> <p>6 A. Which company?</p> <p>7 Q. In other words, were there any</p> <p>8 entities that would be present every day no</p> <p>9 matter what?</p> <p>10 A. It would be subcontractors on the</p> <p>11 project and the owner's representative would be</p> <p>12 there every so often, the architect's firm would</p> <p>13 have a representative there every so often or</p> <p>14 the engineering firm or outside third-party</p> <p>15 inspectors.</p> <p>16 Q. Were there any entities that would be</p> <p>17 present every day?</p> <p>18 A. I don't know if it would be every day</p> <p>19 but every so often there would be people on the</p> <p>20 job.</p> <p>21 Q. How about for your company, Lend</p> <p>22 Lease, would somebody be there every day?</p> <p>23 A. Yes, absolutely.</p> <p>24 Q. Did you ever personally use the Genie</p> <p>25 lift that was involved in the accident before</p>
<p style="text-align: right;">Page 79</p> <p>1 Solter 79</p> <p>2 fit in, Lenny?</p> <p>3 A. Pretty much like a third entity to</p> <p>4 make sure that safety is being looked after.</p> <p>5 Q. Are they co-equal with the PM's and</p> <p>6 supers?</p> <p>7 A. Yes.</p> <p>8 Q. Was there a representative from the</p> <p>9 owner present on a daily basis?</p> <p>10 A. He was there a lot. I don't know if</p> <p>11 it would be every day but on the job.</p> <p>12 Q. Other than when subcontractors were</p> <p>13 actually performing the work that they were</p> <p>14 contracted to do, were there any entities that</p> <p>15 had personnel present on the site every day?</p> <p>16 A. Say it one more time.</p> <p>17 Q. I realize that a particular</p> <p>18 subcontractor while they are doing the work may</p> <p>19 have people there every day but were there any</p> <p>20 other entities that would have personnel present</p> <p>21 every day?</p> <p>22 A. Of that given subcontractor?</p> <p>23 Q. No, no, for any other whether it's the</p> <p>24 owner, your company, anybody else that would</p> <p>25 have somebody on the site every day.</p>	<p style="text-align: right;">Page 81</p> <p>1 Solter 81</p> <p>2 the accident?</p> <p>3 A. No.</p> <p>4 Q. You mentioned that you had a</p> <p>5 certification in scissor lifts?</p> <p>6 A. Yes.</p> <p>7 Q. Was that current at the time of this</p> <p>8 accident or something you got afterwards?</p> <p>9 A. It was before I took that training.</p> <p>10 Q. Were you ever particularly</p> <p>11 familiarized with this model lift?</p> <p>12 A. No.</p> <p>13 Q. Forgive me for jumping around. If I</p> <p>14 lose you, just tell me.</p> <p>15 A. That is okay, I will tell you. I am</p> <p>16 kidding.</p> <p>17 Q. No, I want you to.</p> <p>18 A. Yeah.</p> <p>19 Q. You mentioned after the accident you</p> <p>20 heard a call go on the radio, you ran out,</p> <p>21 somebody was already attending to Mr. Harrigan,</p> <p>22 so you went someplace else to flag down the</p> <p>23 ambulance I guess?</p> <p>24 A. That's correct.</p> <p>25 Q. Before you went out, did you make any</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 Solter 82</p> <p>2 observations about the lift?</p> <p>3 A. Yes.</p> <p>4 Q. What did you observe?</p> <p>5 A. Just that it was toward its side but</p> <p>6 on an angle in the air. The topside was in the</p> <p>7 air.</p> <p>8 Q. Was the lift partially extended?</p> <p>9 A. That's correct.</p> <p>10 Q. Do you know how many feet it was</p> <p>11 extended?</p> <p>12 A. No.</p> <p>13 Q. Was there a key or something that you</p> <p>14 used to control the lift?</p> <p>15 A. Typically, yes.</p> <p>16 Q. Was that secured at some point?</p> <p>17 A. I wouldn't know.</p> <p>18 Q. Well, the lift was over in a partially</p> <p>19 extended state on its side. I have seen</p> <p>20 photographs and it was resting on it looks like</p> <p>21 some construction materials or barriers that</p> <p>22 were there. Do you have a recollection of that?</p> <p>23 A. Yes.</p> <p>24 Q. So, it wasn't completely over onto the</p> <p>25 ground, it was at an angle to the ground?</p>	<p style="text-align: right;">Page 84</p> <p>1 Solter 84</p> <p>2 compartment, it was there and somebody brought</p> <p>3 it to you?</p> <p>4 A. Yes.</p> <p>5 Q. Do you remember what it was, if</p> <p>6 anything, specifically you were referencing?</p> <p>7 A. When we had the roundtable discussion,</p> <p>8 we were looking to see how it was to be</p> <p>9 operated.</p> <p>10 Q. Would you be able to tell me who else</p> <p>11 was present at that roundtable?</p> <p>12 A. I am trying to remember. I am going</p> <p>13 to say Lenny, the safety person, Henry Marina.</p> <p>14 I want to say Don Dinardo (phonetic) and that is</p> <p>15 all I can remember.</p> <p>16 Q. Were any of those discussions at the</p> <p>17 roundtable meeting reduced to writing, minutes</p> <p>18 or anything like that?</p> <p>19 A. Not that I remember.</p> <p>20 Q. Do you remember how long the lift</p> <p>21 remained at the scene of the construction site</p> <p>22 before it was removed?</p> <p>23 A. No.</p> <p>24 Q. Was it a matter of several days at</p> <p>25 least?</p>
<p style="text-align: right;">Page 83</p> <p>1 Solter 83</p> <p>2 A. Yes.</p> <p>3 Q. Do you know from what you observed did</p> <p>4 anybody attempt to operate the lift in any way</p> <p>5 after the accident had occurred?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. Did you see anybody do anything to the</p> <p>8 lift that day after the accident happened?</p> <p>9 A. We took the operator's manual out of</p> <p>10 the compartment.</p> <p>11 Q. So, when you say we, who is that?</p> <p>12 A. Someone from Lend Lease. I forget who</p> <p>13 exactly because we wanted to look at it.</p> <p>14 Q. When you went to the operator's</p> <p>15 compartment, the manual was in that compartment</p> <p>16 at that time?</p> <p>17 A. I didn't take it out, so I am not</p> <p>18 sure.</p> <p>19 Q. Do you know who removed it?</p> <p>20 A. Yeah. I can't remember who it was.</p> <p>21 Q. Do you, in fact, recall seeing it?</p> <p>22 A. The manual?</p> <p>23 Q. Yes.</p> <p>24 A. Yes.</p> <p>25 Q. So, whoever took it out of the</p>	<p style="text-align: right;">Page 85</p> <p>1 Solter 85</p> <p>2 A. Yes, because we covered it with</p> <p>3 plastic at someone's direction.</p> <p>4 Q. Other than removing the manual and</p> <p>5 covering it with plastic, do you remember</p> <p>6 anything else with respect to the lift before it</p> <p>7 was removed?</p> <p>8 A. No.</p> <p>9 Q. Did you personally ever make any</p> <p>10 determination after the accident occurred</p> <p>11 whether the lift was still functional?</p> <p>12 A. No.</p> <p>13 Q. Was the control box still present if</p> <p>14 you know?</p> <p>15 A. I don't remember.</p> <p>16 Q. Was there still power to it? Had</p> <p>17 anything been disrupted?</p> <p>18 A. I don't remember. I didn't look at it</p> <p>19 in that way.</p> <p>20 Q. Did you hear anything or see anything</p> <p>21 with respect to the operation of the lift at any</p> <p>22 time after the accident?</p> <p>23 A. No.</p> <p>24 Q. Were you present when the lift was</p> <p>25 removed from the construction site?</p>

22 (Pages 82 to 85)

Page 86			Page 88		
1	Solter	86	1	Solter	88
2	A. No.		2	you want to page through it, go right ahead.	
3	Q. Did your company take any photographs		3	A. Yes.	
4	of the lift or the accident scene before the		4	MR. SMILEY: Can you just reference	
5	lift was removed?		5	the exhibit?	
6	A. I am not certain.		6	MR. WALKER: Exhibit A of 1/25/16,	
7	Q. Did you personally take any photos?		7	January 25, 2016.	
8	A. I don't remember. I must have but I		8	Q. I am going to refer you to this	
9	don't remember.		9	portion of the first page if you can see where I	
10	Q. Was there somebody at Lend Lease back		10	am pointing to. It says all Lend Lease	
11	then who was charged if there is an accident		11	personnel and subcontractor employees must	
12	with an investigatory function?		12	adhere to the following safety rules while	
13	A. I would say yes.		13	working on this project. Do you see where I was	
14	Q. Who would that be even if you don't		14	reading from?	
15	know a name?		15	A. Yes.	
16	A. I would think the site safety manager		16	Q. So, I take it that this orientation	
17	along with the claims department.		17	applies not only to subcontractor's employees	
18	Q. Did you ever see any report prepared		18	but to Lend Lease's own employees?	
19	either by site safety or the claims department		19	A. Yes.	
20	about this accident?		20	Q. If you would go into page four I	
21	A. No.		21	believe it is, there is a heading scaffolds and	
22	Q. Did you prepare anything in writing in		22	lifts and then there is subsections 2 and it	
23	connection with this accident for Lend Lease?		23	indicates, quote, where aerial lifts are to be	
24	A. Not that I remember.		24	used, an assessment of the area needs to be	
25	Q. You were asked a number of questions		25	conducted ahead of time to identify elevation	
Page 87			Page 89		
1	Solter	87	1	Solter	89
2	about requirements in the contract between Lend		2	changes, inclines, openings, et cetera. It goes	
3	Lease and Coordinated Metals, I am not going to		3	on, I just quoted part of it. Was there any	
4	go through all of them, but there were a couple		4	person specifically in the employ of Lend Lease	
5	that required Coordinated Metals to have		5	who was responsible to make sure that that rule	
6	operators who were certified in the operation of		6	was enforced?	
7	aerial lifts, do you recall those questions?		7	A. No.	
8	A. Yes.		8	Q. Reading down in that same section	
9	Q. Was there anybody, to your knowledge,		9	starting on the fourth line a little bit in it	
10	at Lend Lease who had the specific duty to		10	says, quote, all persons are required to attend	
11	assure that those contract requirements were		11	the safety class conducted by the lift rental	
12	fulfilled by the subcontractors?		12	company prior to using the lift, quote. Again,	
13	A. Not that I know.		13	was there anybody in the employ of Lend Lease	
14	Q. You were asked about, I don't know if		14	who had the specific duty to make sure that that	
15	it was this specific copy, we have had that		15	rule was enforced?	
16	marked as Exhibit A before, you mentioned that		16	A. Not that I know of.	
17	that is a document that employees of		17	Q. Do you personally know whether Mr.	
18	subcontractors complete on an individual		18	Harrigan had certification or familiarization	
19	basis --		19	training in connection with the lift that was	
20	A. Yes.		20	involved in the accident? Do you know one way	
21	Q. -- for the orientation?		21	or the other?	
22	A. Yes.		22	A. I don't remember.	
23	Q. We have previously had this marked.		23	Q. Is that something that you would have	
24	Does this appear to be the one that was		24	inquired and with the passage of time you are no	
25	completed by Mr. Harrigan, the plaintiff? If		25	longer sure or you just don't remember one way	

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1 Solter 90</p> <p>2 or the other?</p> <p>3 A. So, what is the question?</p> <p>4 Q. In other words, you said you're not</p> <p>5 sure, is this something that it would have been</p> <p>6 part of your duties to know back then and just</p> <p>7 the passage of time has expired and made it</p> <p>8 difficult --</p> <p>9 A. That is why there are two questions.</p> <p>10 No, I wouldn't ask those people are you</p> <p>11 certified to go on that lift. I just don't</p> <p>12 remember if I ever talked to them about that.</p> <p>13 Q. Do you have any recollection of on the</p> <p>14 date of the accident seeing any type of a ramp</p> <p>15 in the area where the lift accident occurred?</p> <p>16 A. Yes.</p> <p>17 Q. Did you make any note of that before</p> <p>18 the accident or was it after the accident or</p> <p>19 both?</p> <p>20 A. After.</p> <p>21 Q. Had you ever seen that ramp at any</p> <p>22 time before the accident?</p> <p>23 A. No.</p> <p>24 Q. Do you know how that came to be there?</p> <p>25 A. Gary had asked me if it was okay to</p>	<p style="text-align: right;">Page 92</p> <p>1 Solter 92</p> <p>2 Q. Do you know if anybody from your</p> <p>3 company took actual measurements at the scene of</p> <p>4 the wheelbase and where it was in relationship</p> <p>5 to the ramp?</p> <p>6 A. I don't know.</p> <p>7 Q. Do you know of anybody doing that,</p> <p>8 whether it was for your company or not?</p> <p>9 A. There was some engineers that were</p> <p>10 brought out that reviewed the site afterwards.</p> <p>11 Q. When you say engineers were brought</p> <p>12 out, do you know who did that, who brought them</p> <p>13 out?</p> <p>14 A. I am not sure if it was Lend Lease</p> <p>15 representative or companies hired by Lend Lease</p> <p>16 or by the law firms to review the site.</p> <p>17 Q. Do you know the names of any of the</p> <p>18 people?</p> <p>19 A. No, I don't remember, I am sorry.</p> <p>20 MR. WALKER: That is all I have.</p> <p>21 Thank you very much, sir.</p> <p>22 EXAMINATION BY</p> <p>23 MR. KOCHMAN:</p> <p>24 Q. Sir, I am David Kochman. I represent</p> <p>25 United Rentals. I just have a few questions for</p>
<p style="text-align: right;">Page 91</p> <p>1 Solter 91</p> <p>2 place some buildup in that area to gain access</p> <p>3 to that corner on that Friday before the</p> <p>4 accident but I wasn't at work. He had called</p> <p>5 me.</p> <p>6 Q. Was there some sort of an elevation</p> <p>7 difference there that had to be built up?</p> <p>8 A. No -- oh, yes, I am sorry, the</p> <p>9 structure itself had a difference in elevation,</p> <p>10 that's correct.</p> <p>11 Q. Do you know if any portion of the lift</p> <p>12 was on that ramp at the time that the accident</p> <p>13 occurred?</p> <p>14 A. I don't know.</p> <p>15 Q. Did you ever speak to anybody about</p> <p>16 that topic whether any portion of the lift was</p> <p>17 on that ramp?</p> <p>18 A. In factual?</p> <p>19 Q. Yes.</p> <p>20 A. No.</p> <p>21 Q. I am sorry, go ahead.</p> <p>22 A. It was speculative in one of the</p> <p>23 theories about what happened, not if it was</p> <p>24 actually on there or not. There was no way to</p> <p>25 tell.</p>	<p style="text-align: right;">Page 93</p> <p>1 Solter 93</p> <p>2 you just in follow-up.</p> <p>3 You just said a few moments ago that</p> <p>4 Gary Harrigan asked you if it was okay to place</p> <p>5 some buildup or he left you a message?</p> <p>6 A. We spoke on the phone.</p> <p>7 Q. So, what was the sum and substance,</p> <p>8 what did he say and what did you say in</p> <p>9 response?</p> <p>10 A. If it was okay to build up in that</p> <p>11 area because he needed access to that side of</p> <p>12 the building, that corner, and that nobody else</p> <p>13 would be working in that area, that he could do</p> <p>14 this work.</p> <p>15 Q. Did he say that he was going to put a</p> <p>16 piece of plywood in?</p> <p>17 A. Yes.</p> <p>18 Q. What was your response?</p> <p>19 A. That no one would be in that area,</p> <p>20 that he could do that work.</p> <p>21 Q. So, he was asking for your permission</p> <p>22 to do that work?</p> <p>23 A. He was asking that what he would do in</p> <p>24 that work to facilitate that corner. It</p> <p>25 wouldn't be removed in any way because somebody</p>

24 (Pages 90 to 93)

<p style="text-align: right;">Page 94</p> <p>1 Solter 94</p> <p>2 else had some other work coming up down the</p> <p>3 line.</p> <p>4 Q. What was your reaction?</p> <p>5 A. That no one should be in that area.</p> <p>6 Q. Did you approve him to do the work?</p> <p>7 A. I assured him that nobody else would</p> <p>8 be in that area, that he would have to undo his</p> <p>9 work that he did. It wouldn't be a waste of his</p> <p>10 time.</p> <p>11 Q. What was it that you were expecting</p> <p>12 him to do?</p> <p>13 A. He had to build up the elevation so</p> <p>14 that the lift can go in that area.</p> <p>15 Q. Was it acceptable to you, to Lend</p> <p>16 Lease, that he create this buildup that you just</p> <p>17 discussed?</p> <p>18 A. Yes.</p> <p>19 Q. I am going to jump around a little bit</p> <p>20 too.</p> <p>21 A. That is not a problem.</p> <p>22 Q. You had said earlier that you were</p> <p>23 trained by United Rentals to operate some</p> <p>24 scissor lifts. You took a certification course</p> <p>25 of some sort?</p>	<p style="text-align: right;">Page 96</p> <p>1 Solter 96</p> <p>2 February 25, 2014?</p> <p>3 A. Yes.</p> <p>4 Q. Regarding the actual lift involved in</p> <p>5 the accident I know you testified earlier that</p> <p>6 you never operated it but before the accident</p> <p>7 had you ever heard of any problems with that</p> <p>8 lift?</p> <p>9 A. Not to my memory.</p> <p>10 Q. Were you aware of any service done to</p> <p>11 the lift prior to the accident?</p> <p>12 A. I don't know if it was on this machine</p> <p>13 but the service, United Rental Service, had been</p> <p>14 out for CMI's lifts but I am not sure if it was</p> <p>15 this lift or another lift that they had on the</p> <p>16 project.</p> <p>17 Q. Do you know what was done?</p> <p>18 A. I can't remember what it was.</p> <p>19 Q. Did anybody ever make any complaints</p> <p>20 to you about the quality of the United Rental</p> <p>21 service on the lifts?</p> <p>22 A. No, no.</p> <p>23 Q. Prior to the accident did you ever</p> <p>24 have any interaction with anyone from United</p> <p>25 Rentals?</p>
<p style="text-align: right;">Page 95</p> <p>1 Solter 95</p> <p>2 A. Yes.</p> <p>3 Q. When was that?</p> <p>4 A. I am not sure of the date.</p> <p>5 Q. But can you approximate?</p> <p>6 A. I might have the certifications still</p> <p>7 on me, so I might be able to tell you the date.</p> <p>8 2/25/14.</p> <p>9 Q. Where did you take the certification?</p> <p>10 A. At the United Rentals yard.</p> <p>11 Q. Which one?</p> <p>12 A. In Manhattan. I am not sure where it</p> <p>13 was but.</p> <p>14 Q. Were you certified on a particular</p> <p>15 lift?</p> <p>16 A. No.</p> <p>17 Q. What was your certification in? Do</p> <p>18 you have it?</p> <p>19 A. Yes.</p> <p>20 Q. I can take a quick peak if you don't</p> <p>21 mind.</p> <p>22 A. No, not at all (Handing).</p> <p>23 Q. So, is it fair to assume that you</p> <p>24 completed an aerial work platform training</p> <p>25 course regarding scissor and boom lifts on</p>	<p style="text-align: right;">Page 97</p> <p>1 Solter 97</p> <p>2 A. Yes.</p> <p>3 Q. I should say with respect to this job.</p> <p>4 A. When the serviceman came on the job,</p> <p>5 we would direct him toward the sub that he was</p> <p>6 on the site to go -- I remember the serviceman</p> <p>7 coming to the site and I would direct him to CMI</p> <p>8 so he could service the lift.</p> <p>9 Q. Other than directing the serviceman to</p> <p>10 the site did you have any other discussion with</p> <p>11 the United Rentals service person?</p> <p>12 A. Not that I can recall.</p> <p>13 Q. Where is the owner's manual now if you</p> <p>14 know?</p> <p>15 A. I don't know.</p> <p>16 Q. When was the last time you saw the</p> <p>17 owner's manual?</p> <p>18 A. When we were down in the super's</p> <p>19 office in the meeting room that we had in the</p> <p>20 super's office that was one level below the</p> <p>21 first floor.</p> <p>22 Q. The last time you saw the owner's</p> <p>23 manual was in that meeting room?</p> <p>24 A. Yes.</p> <p>25 Q. So, you have no idea where it would</p>

25 (Pages 94 to 97)

Page 98	Page 100
<p>1 Solter 98</p> <p>2 have gone since that time?</p> <p>3 A. No.</p> <p>4 Q. Prior to the accident, to your</p> <p>5 knowledge, did Lend Lease ever arrange for there</p> <p>6 to be a safety training class for any personnel</p> <p>7 who operated scissor lifts on the job site at 50</p> <p>8 UN Plaza?</p> <p>9 A. Not that I know of.</p> <p>10 Q. How about after the accident do you</p> <p>11 know if Lend Lease arranged for any safety</p> <p>12 training?</p> <p>13 MR. ERENBURG: Objection. I don't</p> <p>14 see what this has to do with the</p> <p>15 accident. I mean, it's afterwards, it's</p> <p>16 irrelevant.</p> <p>17 MR. KOCHMAN: It's a discovery</p> <p>18 deposition.</p> <p>19 MR. ERENBURG: Well, I mean,</p> <p>20 obviously, his thing was afterwards as</p> <p>21 you read.</p> <p>22 MR. KOCHMAN: What thing?</p> <p>23 MR. ERENBURG: I mean, his</p> <p>24 certification took place afterwards, so,</p> <p>25 obviously, he met with them after.</p>	<p>1 Solter 100</p> <p>2 EXAMINATION BY</p> <p>3 MR. BECKERMAN:</p> <p>4 Q. Very quickly, are workers at the site</p> <p>5 charged with the responsibility or the duty to</p> <p>6 not operate equipment that they are not</p> <p>7 certified or licensed to operate?</p> <p>8 A. Say that again, I am sorry.</p> <p>9 Q. Are workers at the site charged with</p> <p>10 the responsibility or duty to not operate</p> <p>11 equipment that they are not licensed or</p> <p>12 certified to operate?</p> <p>13 A. No, I am not sure.</p> <p>14 Q. Should workers at the job operate</p> <p>15 equipment that they are not licensed to operate?</p> <p>16 A. No.</p> <p>17 Q. Is it your expectation that the</p> <p>18 workers know that?</p> <p>19 A. Yes.</p> <p>20 Q. That is part of the safety</p> <p>21 orientation, right, they are told they have to</p> <p>22 be properly certified before operating machinery</p> <p>23 or equipment?</p> <p>24 A. Yes.</p> <p>25 Q. Within the subcontractors whose</p>
Page 99	Page 101
<p>1 Solter 99</p> <p>2 A. My training in 2014.</p> <p>3 Q. 2014, the accident was 2015.</p> <p>4 MR. ERENBURG: Wait. When was the</p> <p>5 accident?</p> <p>6 MR. SMILEY: 2014.</p> <p>7 MR. ERENBURG: 2014.</p> <p>8 MR. KOCHMAN: 2014, I am sorry.</p> <p>9 Q. Ms. Malone was doing some sort of</p> <p>10 inspection I believe, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Did CMI need to stop their work until</p> <p>13 she completed this inspection?</p> <p>14 A. No.</p> <p>15 Q. What was the reason for her inspection</p> <p>16 if you know?</p> <p>17 A. To verify their installation and I</p> <p>18 forget exactly what it was but.</p> <p>19 Q. If someone from Lend Lease observed a</p> <p>20 condition that they believed was unsafe on the</p> <p>21 job, did Lend Lease have the power to shut down</p> <p>22 that aspect of the job?</p> <p>23 A. I would say yes.</p> <p>24 MR. KOCHMAN: I have nothing</p> <p>25 further.</p>	<p>1 Solter 101</p> <p>2 responsibility would it be to make sure that the</p> <p>3 workers from the subcontractor don't operate</p> <p>4 machinery that they are not licensed to operate,</p> <p>5 would that be the foreman or somebody else?</p> <p>6 A. I would say the foreman.</p> <p>7 MR. BECKERMAN: I have nothing</p> <p>8 further.</p> <p>9 MR. SMILEY: I just have a few</p> <p>10 follow-ups.</p> <p>11 CONTINUED EXAMINATION BY</p> <p>12 MR. SMILEY:</p> <p>13 Q. You were asked previously about a</p> <p>14 conversation you had with Gary Harrigan where he</p> <p>15 was going to be doing a building up in a certain</p> <p>16 area, do you recall that question?</p> <p>17 A. Yes.</p> <p>18 Q. Was it your understanding that he was</p> <p>19 going to be placing plywood in that area where</p> <p>20 the accident ended up occurring?</p> <p>21 A. Partly.</p> <p>22 Q. What was your understanding as to why</p> <p>23 he was putting the plywood there?</p> <p>24 A. So that the lift could gain access to</p> <p>25 another part of the building.</p>

<p style="text-align: right;">Page 102</p> <p>1 Solter 102</p> <p>2 Q. So, that he could operate the lift</p> <p>3 over that plywood?</p> <p>4 A. Yes.</p> <p>5 Q. Did you have an understanding that he</p> <p>6 would be operating the lift in the vicinity of</p> <p>7 that plywood?</p> <p>8 A. Yes.</p> <p>9 Q. Did you have any discussion with him</p> <p>10 about whether or not he was allowed to operate</p> <p>11 the lift in the vicinity of the plywood?</p> <p>12 A. Say that again.</p> <p>13 Q. Did you have a discussion with him</p> <p>14 about whether or not he would be allowed to</p> <p>15 operate that lift in the vicinity of the</p> <p>16 plywood?</p> <p>17 A. No.</p> <p>18 Q. Did you ever tell him not to operate</p> <p>19 the lift in the vicinity of the plywood?</p> <p>20 A. No.</p> <p>21 Q. Did you know that he would be</p> <p>22 operating the lift in the vicinity of the</p> <p>23 plywood in order to bring Kristen Malone up to</p> <p>24 do her inspection?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 104</p> <p>1 Solter 104</p> <p>2 drive across and extend out further.</p> <p>3 Q. So, he never specifically said to you</p> <p>4 anything about building a ramp, it was just a</p> <p>5 build up to make it flush I take it?</p> <p>6 A. That's correct.</p> <p>7 Q. That was your understanding?</p> <p>8 A. Yes.</p> <p>9 Q. However he was going to accomplish</p> <p>10 that he told you it was for the express purpose</p> <p>11 of driving the lift onto that buildup so that he</p> <p>12 could gain access to another area?</p> <p>13 A. Yes.</p> <p>14 Q. Would that be considered a ramp?</p> <p>15 A. No.</p> <p>16 Q. What is a temporary ramp?</p> <p>17 A. Change from different elevations.</p> <p>18 Q. How would this be different because</p> <p>19 it's maintained in the same elevation?</p> <p>20 A. It was to be brought up to the same</p> <p>21 elevation, that's correct.</p> <p>22 Q. What is the exact title of Lenny? I</p> <p>23 know you have been referring to him as safety,</p> <p>24 safety what?</p> <p>25 A. In New York City it's a requirement to</p>
<p style="text-align: right;">Page 103</p> <p>1 Solter 103</p> <p>2 Q. When you became aware of that, did you</p> <p>3 tell them that they should not be doing the</p> <p>4 inspection using the lift, that it would be in</p> <p>5 the vicinity of that plywood?</p> <p>6 A. No.</p> <p>7 Q. Did you think there was any danger in</p> <p>8 him doing that?</p> <p>9 A. I didn't see the plywood area in the</p> <p>10 way in which it was constructed, so I didn't</p> <p>11 think there was a problem.</p> <p>12 MR. SMILEY: Thank you.</p> <p>13 MR. WALKER: Just a few more if I</p> <p>14 may follow-up.</p> <p>15 CONTINUED EXAMINATION BY</p> <p>16 MR. WALKER:</p> <p>17 Q. Mr. Harrigan when you had this</p> <p>18 telephone call about him building up this ramp</p> <p>19 specifically told you that he wanted to</p> <p>20 construct this so that he could use the ramp to</p> <p>21 drive the lift to gain access to the area?</p> <p>22 A. No, there was no talk about a ramp.</p> <p>23 There was concrete elevation changed from flat</p> <p>24 and step down a foot and a half maybe and he was</p> <p>25 going to build that area up so that he could</p>	<p style="text-align: right;">Page 105</p> <p>1 Solter 105</p> <p>2 have a site safety manager who passes an exam</p> <p>3 and is given either a license or a permit or</p> <p>4 however the City labels it as a site safety</p> <p>5 manager who's tracked by the City and meets the</p> <p>6 qualifications of the City and there is a</p> <p>7 representative for large projects that would</p> <p>8 have to have one of these individuals on the</p> <p>9 job.</p> <p>10 Q. What exactly are the duties of the</p> <p>11 site safety manager?</p> <p>12 A. To protect the public in the eyes of</p> <p>13 the DOB.</p> <p>14 Q. Does it have anything to do with</p> <p>15 construction site safety aside from the public?</p> <p>16 A. Yes.</p> <p>17 Q. What duties does the person have in</p> <p>18 that regard?</p> <p>19 A. To oversee what is being done on the</p> <p>20 site, to make sure that safety precautions are</p> <p>21 taken care of.</p> <p>22 Q. Were there any engineers or</p> <p>23 engineering personnel that were available to</p> <p>24 Lend Lease during the course of this</p> <p>25 construction?</p>

27 (Pages 102 to 105)

<p style="text-align: right;">Page 106</p> <p>1 Solter 106</p> <p>2 A. Yes.</p> <p>3 Q. Any actually in the employ of Lend</p> <p>4 Lease or were these consultants?</p> <p>5 A. Consultants.</p> <p>6 MR. WALKER: That is all I have.</p> <p>7 Thank you, sir.</p> <p>8 MR. BECKERMAN: I have nothing.</p> <p>9 MR. SMILEY: All done, thank you.</p> <p>10 THE WITNESS: No problem.</p> <p>11 MR. ERENBURG: Thank you.</p> <p>12 (Time noted: 5:00 p.m.)</p> <p>13</p> <p>14</p> <p>15 _____</p> <p style="text-align: center;">KENNETH SOLTER</p> <p>16</p> <p>17</p> <p>18 Subscribed and sworn to</p> <p>19 before me this ____ day</p> <p>20 of _____, 2016.</p> <p>21</p> <p>22 _____</p> <p style="text-align: center;">NOTARY PUBLIC</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 108</p> <p>1 Solter 108</p> <p>2 CERTIFICATE</p> <p>3</p> <p>4</p> <p>5 I, MARLEINE LAMEY, a Shorthand</p> <p>6 Reporter and Notary Public of the State of</p> <p>7 New York, do hereby certify:</p> <p>8</p> <p>9 That, KENNETH SOLTER, the witness</p> <p>10 whose examination is hereinbefore set</p> <p>11 forth, was duly sworn, and that such</p> <p>12 examination is a true record of the</p> <p>13 testimony given by such witness.</p> <p>14 I further certify that I am not</p> <p>15 related to any of the parties to this</p> <p>16 action by blood or by marriage; and that I</p> <p>17 am in no way interested in the outcome of</p> <p>18 this matter.</p> <p>19</p> <p>20</p> <p>21</p> <p>22 _____</p> <p style="text-align: center;">MARLEINE LAMEY</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 107</p> <p>1 Solter 107</p> <p>2 I N D E X</p> <p>3 EXAMINATION BY PAGE</p> <p>4 Mr. Smiley 8, 101</p> <p>5 Mr. Walker 77, 103</p> <p>6 Mr. Kochman 92</p> <p>7 Mr. Beckerman 100</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER Index # 60747/2018

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ALEXA BONNES and ARIEL BONNES, as
Co-Administrators of the Estate of KEITH P.
BONNES, Deceased,
Plaintiff,

-against-

LIA BREWSTER REALTY, LLC and BBL CONSTRUCTION
SERVICES, LLC d/b/a BBL ALBANY GROUP V,
Defendants.

- - - - -x

LIA BREWSTER REALTY, LLC and BBL CONSTRUCTION
SERVICES, LLC d/b/a BBL ALBANY GROUP V,
Third-Party Plaintiffs,
-against-

FREGOSI LANDSCAPING, INC.,
Third-Party Defendants.

- - - - -x

50 Main Street
White Plains, New York
July 25, 2019
10:05 a.m.

EXAMINATION BEFORE TRIAL of BBL
CONSTRUCTION SERVICES, LLC d/b/a BBL ALBANY
GROUP V, one of the Defendants/Third-Party
Plaintiffs in the above-entitled action, by
ARTHUR JAMES MOSHER, held at the above time
and place, taken before Kathleen A. Mancuso,
a Notary Public of the State of New York,
pursuant to Order and Stipulations between
Counsel.

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2

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BY: JUDITH B. AUMAND, ESQ.
File # 103.210

11

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STIPULATIONS

IT IS HEREBY STIPULATED, by and among the
attorneys for the respective parties hereto,
that:

All rights provided by the C.P.L.R., and Part 221 of the Uniform Rules for the Conduct of Depositions, including the right to object to any question, except as to form, or to move to strike any testimony at this examination is reserved; and in addition, the failure to object to any question or to move to strike any testimony at this examination shall not be a bar or waiver to make such motion at, and is reserved to, the trial of this action.

This deposition may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun, but the failure to do so or to return the original of this deposition to counsel, shall not be deemed a waiver of the rights provided by Rule 3116, C.P.L.R., and shall be controlled thereby.

The filing of the original of this deposition is waived.

1 IT IS FURTHER STIPULATED, a copy of this
2 examination shall be furnished to the
3 attorney for the witness being examined
4 without charge.

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Mosher

A R T H U R J A M E S M O S H E R,

the Witness herein, having first been duly
sworn by the Notary Public, was examined and
testified as follows:

EXAMINATION BY MR. SMILEY:

Q. What is your name?

A. Arthur James Mosher.

Q. What is your current address?

A. 260 Morning Sun Drive, Schoharie,
New York 12157.

MR. SMILEY: Good morning,
Mr. Mosher.

THE WITNESS: Good morning.

MR. SMILEY: My name is Andrew
Smiley. I am going to ask you some
questions this morning. If I ask you
anything that does not make sense to you
for any reason at all just say so, and I
will rephrase it and ask it again.

THE WITNESS: Sure.

Q. I ask you to do what you just did,
give a verbal response to my questions as
opposed to a nod or shake of your head so
Ms. Mancuso, our court reporter, can you take

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Mosher

down your responses; all right?

A. Sure.

MR. SMILEY: First I want to say I reviewed the records regarding this accident and I see where you noted that Keith Bonnes was a friend of yours.

THE WITNESS: He was.

MR. SMILEY: My condolences for your loss.

THE WITNESS: Thank you.

Q. I am going to ask you questions today about your knowledge of the project and the accident; all right?

A. Sure.

Q. Are you currently employed?

A. Yes.

Q. Who are you employed by?

A. BBL Construction Services.

Q. In what capacity are you employed by BBL Construction Services?

A. Superintendent.

Q. For how long have you been a superintendent?

THE WITNESS: For BBL?

1 Moshier

2 MR. SMILEY: For BBL.

3 A. Twelve years.

4 Q. Generally speaking, what are your
5 duties as superintendent?

6 A. Scheduling, making sure that the
7 flow of the job is correct, making sure that
8 quality control is there, safety items,
9 day-to-day operations of the job, basically.

10 MR. SMILEY: Please give me your
11 background in the construction industry.
12 By that I mean experience, any training,
13 any course work and schooling as best
14 you can.

15 THE WITNESS: I have been in the
16 construction industry since I was 16
17 years old. That puts it at about almost
18 40 years in the construction industry.
19 I started off as a journeyman carpenter.
20 I've been a superintendent for about 20
21 years. I have been a foreman, promoted
22 many times, run different companies, all
23 facets of construction work I've been
24 involved in. There's not much I don't
25 know about construction.

1 Moshier

2 Q. Are you in a union?

3 A. Previously I was.

4 Q. What union?

5 A. Local 270 out of Albany,
6 carpenters.

7 Q. Can you tell me about any training
8 you received as far as formal training where
9 it resulted in a certificate or card showing
10 you completed the training?

11 A. I have my OSHA 30 course taken care
12 of and forklift training and other trainings
13 of that nature but nothing more than OSHA,
14 basically.

15 Q. I draw your attention to the
16 project that was taking place on
17 October 4, 2017 where Keith Bonnes had his
18 accident. I take it you are familiar with
19 that project?

20 A. Very.

21 Q. Can you tell me, generally, what
22 the project involved?

23 A. The project was a brand new
24 building. It was a demo of an existing
25 building and re-build a new building. It was

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a complicated site. It was on a very large
angle. Brick, concrete and steel building.

Q. This was the Lia Honda dealership
in Brewster?

A. Correct.

Q. Who was the owner of the property
where the project was taking place at that
time?

MS. AUMAND: Objection to form.

You can answer.

A. I'm not really sure. I'm assuming
it's the Lia group.

MS. AUMAND: If you know.

THE WITNESS: I don't know.

MS. AUMAND: Do not guess.

THE WITNESS: I really don't know.

Q. Who was the general contractor for
the project?

MS. AUMAND: Objection to form.

You can answer.

A. BBL Construction Services.

MR. SMILEY: Off the record.

[Discussion held off the record.]

Q. Is BBL Construction Services, LLC

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also known as BBL Albany Group V?

MS. AUMAND: Objection to form.

You can answer.

A. Group V. That's the group that I work for in the BBL world.

Q. To your knowledge was BBL -- if it's okay I will refer to the entity as BBL?

A. Sure.

Q. Was BBL hired by Lia Brewster Realty to oversee this project?

MS. AUMAND: Objection to form.

You can answer.

A. Yes.

MR. SMILEY: I am going to refer to this as the project, if that's okay.

THE WITNESS: Sure.

Q. When did the project commence? By commence I mean breaking ground and really starting physical work. You can approximate.

A. I don't really remember.

Q. Would it have been a year, less or more, prior to the accident?

A. Probably about nine to ten months prior to that. I'm guessing. That would be

1 Moshier

2 about right because we were getting towards
3 the end when this all kind of happened.

4 Q. In October of 2017 did BBL have any
5 subcontractors working on its behalf at the
6 project?

7 THE WITNESS: That was the day of
8 the accident?

9 MR. SMILEY: Yes.

10 A. Yes.

11 Q. Approximately how many
12 subcontractors did BBL have at the project in
13 October of 2017?

14 A. I believe four counting Fregosi.

15 Q. You just mentioned Fregosi. Can
16 you tell me what that company is?

17 A. They're masonry. They're primarily
18 just masonry, block and brick.

19 Q. Was Fregosi a subcontractor
20 employed by BBL for this project?

21 A. Yes.

22 Q. Did you oversee the work of Fregosi
23 in any capacity?

24 MS. AUMAND: Objection to form.

25 You can answer.

1 Moshier

2 A. Yes.

3 Q. Can you tell me what aspects of
4 Fregosi's work you oversaw?

5 MS. AUMAND: Same objection.

6 You can answer.

7 A. All his masonry duties and
8 everything that he did day-to-day, scheduling
9 and everything.

10 Q. Were you at the project site when
11 work was going on there on a daily basis?

12 A. Yes.

13 Q. What was, generally, the schedule
14 of work there? By that I mean weekdays 8:00
15 to 4:00, however you can describe it.

16 A. Generally speaking, weekdays 6:00,
17 6:30 until 4:00 p.m., 4:30 p.m. No
18 Saturdays. No Sundays -- very rarely.

19 Q. You would be there every day on
20 behalf of BBL?

21 A. Correct.

22 Q. Did BBL have any employees, other
23 than yourself, that were there on a regular
24 basis?

25 A. No.

1 Moshier

2 Q. Did you have a shed at the site?

3 A. No. We did two projects there.

4 One was across the street. That was the
5 first service center. I tore down the same
6 building across the street to put the sales.
7 My trailer was located across the street,
8 which was kitty-corner to the site. It was
9 just a matter of keeping it there because it
10 was a flat area, and the other site was a big
11 angle. So it would have been harder to move.
12 So we decided to leave my office on the other
13 side.

14 Q. So you had a trailer that was used
15 as your office on a daily basis at the
16 project site that was just physically located
17 across the street?

18 A. Correct.

19 Q. Let's talk about safety at the
20 project site. Who, if anyone, as far as
21 company or personnel, oversaw the safety of
22 the workers at this project?

23 MS. AUMAND: Objection to form.

24 You can answer.

25 A. I did.

1 Moshier

2 MR. SMILEY: Tell me what your
3 responsibility was with regard to safety
4 of the workers at the project.

5 MS. AUMAND: Objection to form.

6 You can answer.

7 THE WITNESS: My job was,
8 basically, to make sure that the guys
9 were doing everything as safe as I could
10 possibly make it, reminding them every
11 day of the safety problems -- issues
12 that they would have, have a safety
13 meeting once a week. I am particularly
14 mouthy. So I tell them all day long
15 everything they're doing wrong.

16 Q. Would you walk the project site on
17 a daily basis to actually observe all the
18 workers, including those employed by the
19 subcontractors, in the performance of their
20 work?

21 A. All day every day. My office was
22 merely to do my paperwork and have a place to
23 plug in my stuff. That's it.

24 Q. Is it fair to say that throughout
25 the course of the workday you were primarily

1 Moshier
2 physically at the project site walking around
3 observing all the workers, including the
4 subcontractors?

5 MS. AUMAND: Objection to form.

6 You can answer.

7 A. Correct.

8 Q. Did you have the authority to stop
9 a subcontractor's employee from doing
10 something you observed to be unsafe?

11 MS. AUMAND: Objection to form.

12 You can answer.

13 A. Yes.

14 Q. Prior to October 4, 2017 did you
15 ever stop a subcontractor's employee from
16 doing anything at the job site you felt was
17 unsafe?

18 A. Yes.

19 Q. Can you give me any examples of
20 that?

21 A. No. I don't recall.

22 Q. Prior to October 4, 2017 did you
23 observe any Fregosi employees performing
24 their work in an unsafe manner?

25 A. I don't recall any specific

1 Moshier
2 incidents of, necessarily, safety-minded
3 things except for goofy things like bad
4 cords, perhaps, or something of that nature
5 but nothing terrible.

6 Q. What does bad cords mean?

7 A. Lead cords -- frayed cords.
8 Something that doesn't have a ground.
9 Something of that nature, you know.

10 Q. Electrical type items being plugged
11 in?

12 A. It might have been something like
13 that. I think there was -- I do recollect a
14 couple times something like that. Masons are
15 notorious for damaging their cords. It just
16 happens.

17 Q. In addition to having the authority
18 to stop work you felt was unsafe, did you
19 also have the authority to direct and control
20 the method in which the subcontract's
21 employees performed their work?

22 MS. AUMAND: Objection to form.

23 You can answer.

24 A. I would guess so, you know. My job
25 isn't really, necessarily, means and methods

1 Moshier

2 but if it's unsafe I suppose that would be
3 the right thing to do if they were going to
4 do something dumb, yeah.

5 Q. For example, if you saw a
6 subcontract's employee not utilizing his
7 safety device that was provided did you have
8 the authority to direct that person to use
9 the safety device?

10 MS. AUMAND: Objection to form.

11 You can answer.

12 A. Yes.

13 Q. If that person did not use that
14 safety device did you have the authority to
15 stop them from working?

16 MS. AUMAND: Same objection.

17 A. Absolutely.

18 Q. Did you also have the authority to
19 kick them off the job site if you thought
20 they were not performing their work in a safe
21 manner?

22 MS. AUMAND: Objection.

23 A. Absolutely.

24 Q. What is your understanding of the
25 work that was being performed on the morning

1 Moshier
2 of October 4, 2017 by Fregosi?

3 A. I know exactly what they were
4 doing.

5 MR. SMILEY: Tell me what they were
6 doing.

7 THE WITNESS: They were setting up
8 a Hydro Mobile. I'm assuming you guys
9 know what a Hydro Mobile is. If you do
10 not and you would like me to I will
11 elaborate quickly. If not just let me
12 know.

13 MR. SMILEY: Please tell me what a
14 told Hydro Mobile is.

15 THE WITNESS: It's a safer method
16 of doing staging on the exterior of the
17 building. What it is is -- staging is
18 piece by piece. You have cross braces.
19 You have pins. You have feet --
20 leveling feet, and then you tie back
21 certain areas. It's something that
22 we've been doing forever, but the Hydro
23 when you set this up is on two towers
24 that climb, and it's just one big
25 platform. The whole thing climbs up

1 Moshier

2 together. Everything is all self
3 enclosed. You tie it back a couple of
4 places when you're moving up. It just
5 climbs up, and it's very safe. It makes
6 my life exponentially easier because
7 there's very little to look at. The men
8 that are setting it up are always --
9 they have to be registered, licensed and
10 they have to be trained how to put this
11 all together. When they put this thing
12 together it's simple. It's like a big
13 erector set. It is so safe, and it's so
14 easy to operate. It's good. So that's
15 what they were doing that day. They had
16 their tower at about 14 feet. They were
17 on -- I think it was the north side of
18 the building. They were setting up one
19 section. They had two jumps left to do.
20 A jump is a section when you go from one
21 place to the other. They had two jumps
22 to do right in the corner. So they were
23 setting up the north tower. I got there
24 that morning. I don't know if you want
25 me to tell you that part. I don't know

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Mosher

how far you want me to go into detail.

I can tell you the whole shebang-a-bang.

MR. SMILEY: We will go step by
step. The Hydro Mobile, I want to talk
a little bit about that.

THE WITNESS: Sure.

Q. You have to understand that I am
going to ask questions in what we call
layman's terms not being a construction
professional. Is it fair to say the Hydro
Mobile is a platform that workers would use
to conduct work at elevated heights?

A. Correct.

Q. The Hydro Mobile platform had the
ability to go up in height in elevation to
follow the work as the work would increase in
height?

A. Correct.

Q. Generally, is that how the work
would be performed if brick had to be placed
on the outside of the building, that the
lower areas would be bricked in first, then
as they proceeded the work the work would
continue higher and the platform would move

1 Moshier

2 higher as the work progressed upwards?

3 A. That's correct.

4 Q. On the day of the accident the
5 intention was to set up the Hydro Mobile to
6 start the brickwork on that side of the
7 building?

8 A. That's correct.

9 Q. Had any brickwork already started
10 at any level on that side of the building
11 prior to that day?

12 A. I believe they had their lower
13 lead, their hand lead. So that would be as
14 far as they reach, up to about neck level.

15 Q. Five feet high or so?

16 A. Thereabouts, roughly.

17 Q. After getting to a five feet or so
18 level of doing the brickwork on the exterior
19 of the building they would then set up the
20 Hydro Mobile, put it in place to allow them
21 to continue working upwards?

22 A. Correct.

23 Q. Ultimately how high would they have
24 to be to complete the work at the highest
25 point of the building?

1 Moshier

2 THE WITNESS: On the highest point
3 of the building -- the whole entire
4 building or the side they were working
5 on?

6 MR. SMILEY: Let me rephrase it so
7 it is clear for the record.

8 Q. Ultimately how high would they be
9 working on the side of the building where
10 they were setting up on the day of the
11 accident?

12 A. I venture about 28 to 30 feet.

13 Q. Did you know the employees of
14 Fregosi would be working at elevations of 28
15 to 30 as part of this work?

16 A. Certainly.

17 Q. Did you know prior to
18 October 4, 2017 they were going to be setting
19 up the Hydro Mobile on that day?

20 A. I did.

21 Q. Am I correct that was the first day
22 the Hydro Mobile was being set up in that
23 location?

24 A. On that particular jump, I don't
25 think so. I think it was the second day.

1 Moshier

2 They started pecking away at it earlier the
3 day before because we had some earth that we
4 had to take care of.

5 Q. Was the Hydro Mobile used prior to
6 October 3rd of 2017 on other parts of the
7 building?

8 A. Yes. Every part of the building.

9 Q. How many other sides of the
10 building had been completed as far as
11 exterior brickwork prior to October 4, 2017?

12 A. Four-and-a-half -- five-ish because
13 it's a weird shaped building.

14 Q. Was this the last side of the
15 building that needed to be completed as far
16 as exterior brickwork?

17 A. It was a corner -- that one corner.
18 It's approximately 30 feet on the side where
19 the accident happened, and I think about 25
20 feet on the other corner. So they would have
21 set up the other Hydro right in front to meet
22 and go straight up.

23 Q. You said the other Hydro. Were
24 there two Hydros?

25 A. Yes.

1 Moshier

2 Q. Was the other Hydro involved in the
3 accident at all, or was it just this one?

4 A. Just this one. They hadn't got to
5 the second setup yet.

6 Q. Moving forward any references I
7 make to the Hydro please understand I am
8 referring to the Hydro Mobile scaffold
9 involved in this accident; okay?

10 A. Yes.

11 Q. Is it fair to say the majority of
12 the exterior brickwork was completed prior to
13 October 4, 2017?

14 A. That's correct.

15 Q. Prior to October 4, 2017 did you
16 observe employees of Fregosi utilizing the
17 Hydro Mobile to complete their work?

18 A. Yes.

19 Q. Can you give me an approximation of
20 how many days of work you observed employees
21 of Fregosi doing exterior brickwork at an
22 elevation using the Hydro Mobile prior to
23 October 4, 2017?

24 A. Forty-five.

25 Q. What, if any, steps were taken

1 Moshier
2 prior to October 4, 2017 to provide safety
3 protection for the employees of Fregosi when
4 they were working on the Hydro Mobile at
5 elevated heights?

6 THE WITNESS: I guess I'm not
7 understanding the question. Are you
8 referring to what I could have done or
9 what Fregosi should have done?

10 MR. SMILEY: I will rephrase it.

11 Q. When you observed the employees of
12 Fregosi working at an elevated height to do
13 the brickwork prior to October 4, 2017 on
14 those approximate 45 days did you observe
15 them utilizing any safety devices to protect
16 them from height-related hazards?

17 MS. AUMAND: Objection to form.

18 You can answer.

19 A. The only things that are involved
20 in using the Hydro is having the handrails in
21 place. There is a guardrail that goes all
22 the way around on all three sides, the fourth
23 being the front face of the wall, which is
24 protected naturally. Those sections right
25 there are naturally all protected. So there

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wouldn't be anything else to do. The only thing else you have is a gate. That's for loading purposes. So the idea is that when the JCB, which is a forklift, takes up the block and mud. They bring it up there. As soon as it gets up to the gate they open the gate. They push the thing in. They close the gate around it. Take that off. All those things were all in place at all times that I witnessed.

Q. Did you ever observe the employees of Fregosi prior to October 4, 2017 utilizing safety harnesses in the performance of their work on the Hydro Mobile when they were at elevated heights?

A. No. They wouldn't need to.

Q. Did you ever notice whether or not the employees of Fregosi utilized safety nets in the vicinity of the Hydro Mobile when they were working on it at elevated heights?

A. No, sir.

Q. Did you ever have any discussions with anyone employed by or the owner of Fregosi with regard to the use of safety

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devices when Fregosi employees were working
at elevated heights?

MS. AUMAND: Before you answer that
can you read back that question for me?

[Whereupon, at this time, the
requested portion of the record was read
by the court reporter.]

MS. AUMAND: Objection to form.
You can answer.

A. No.

Q. Did you provide any training to any
Fregosi employees?

A. No.

Q. Were you required to provide any
training to any Fregosi employees?

MS. AUMAND: Objection to form.
You can answer.

A. No.

Q. Did you inquire as to whether or
not Fregosi employees had proper training to
perform the work they were doing at the
project?

MS. AUMAND: Objection.
You can answer.

1 Moshier

2 A. Yes.

3 MR. SMILEY: Please tell me what
4 inquiries you made and what you learned
5 with regard to safety training that
6 Fregosi employees received prior to
7 working at the project.

8 THE WITNESS: Keith and his brother
9 were already certificated. I knew that
10 from the distributor that brought the --
11 they rented the Hydro from, and I knew
12 they were certified because I spoke to
13 them. I also saw their cards and
14 probably somewhere I have their cards --
15 took a picture of it. At the same time
16 Joe Fregosi, Junior was certified by
17 them when it was delivered. So he was
18 certified -- going through the
19 certification so that he could set it
20 up. As far as I know, he was all taken
21 care of. They also had a couple of
22 other employees that took the course as
23 well. It's not really a course. It's a
24 training. I should call it that
25 properly.

1 Moshier

2 Q. What you are referring to is a
3 certification specifically for the use of the
4 Hydro Mobile scaffold?

5 A. Correct.

6 Q. Do you have that certification?

7 A. No.

8 Q. Do you know what goes into the
9 training to obtain that certification?

10 A. Yeah, pretty much.

11 Q. Did you observe when Joe Fregosi,
12 Junior received that certification training
13 when the Hydro Mobile was delivered to the
14 project?

15 A. It was a day long thing that goes
16 on. They put it together, and so I was back
17 and forth. I had other things to do than sit
18 there and watch a bunch of masons.

19 Q. Do you know if the topic of safety
20 was addressed as part of the Hydro Mobile
21 training that day?

22 A. I don't know, but I would assume
23 so.

24 Q. Without assuming, do you know
25 whether they specifically talked about

1 Moshier
2 working at elevated heights and safety
3 measures to take?

4 A. I don't know for sure.

5 Q. Do you know if the Hydro Mobile
6 training to obtain that certification is just
7 training on how to assemble and utilize the
8 device?

9 A. I don't know for sure.

10 Q. Other than the certifications you
11 are aware of that Keith, his brother and Joe
12 Fregosi had for the Hydro Mobile, do you know
13 if they had any safety training prior to
14 their work at the project?

15 A. I don't know for sure, but I
16 believe so.

17 Q. What is the basis of your belief?

18 A. Speaking to them and they're very
19 competent men. Keith and his brother are
20 very competent, very smart. They've worked
21 on a lot of large projects that would
22 probably require a lot more training than
23 they needed for what they were doing. So I'm
24 assuming they would. I know you hate that
25 assume word but --

1 Moshier

2 Q. Did you work with Fregosi on
3 projects prior to this one?

4 A. One other one.

5 Q. When was that?

6 A. '16.

7 Q. 2016?

8 A. Yeah. Right across the street.

9 Q. Was that the other building for Lia
10 Brewster Honda?

11 A. That's correct.

12 Q. Prior to that had you ever worked
13 with Keith Bonnes?

14 A. No.

15 Q. When you said you were friends with
16 Keith Bonnes was that strictly a friendship
17 at the worksite, or did you socialize with
18 him outside of the workplace?

19 A. Basically at the workplace.

20 Q. Did you ever socialize with him
21 outside the workplace?

22 A. No.

23 Q. Do you know if the employees of
24 Fregosi ever received safety training
25 specifically with regard to safety hazards

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associated with working at elevated heights?

A. I don't know.

Q. Did you on behalf of BBL ever provide safety training to employees of Fregosi specifically about safety hazards involved when working at elevated heights?

MS. AUMAND: Objection to form.

You can answer.

A. I don't remember completely or any particular instance, but I'm sure I probably have.

Q. Can you tell me what you believe you spoke to them about?

A. Probably make sure that the gate gets closed when they get to elevated heights. There wasn't much else to talk about. I mean the Hydro makes my life so much easier. Making sure nothing falls off the Hydro. That's, pretty much, about it. There's really not much to talk about.

Q. I noticed from some of the records that were produced by the law firm on behalf of BBL the meeting you conducted on October 17, 2017 was entitled "Tie off or die

1 Moshier

2 off." Does that sound familiar?

3 MS. AUMAND: Objection to form.

4 You can answer.

5 A. Yeah. It's a pretty common one.

6 Q. Do you recall having that safety
7 meeting on that subject?

8 A. No.

9 Q. Do you know, generally, from your
10 experience what's discussed during that
11 safety meeting?

12 THE WITNESS: As in?

13 MR. SMILEY: The tie off or die off
14 topic.

15 A. Sure.

16 Q. Can you tell me what you would
17 normally discuss at that safety meeting?

18 A. Anything over eight feet you need
19 to be tied off, that anytime you're working
20 close to a leading edge twelve foot back you
21 need to be tied off, any openings you need to
22 have guardrails or you need to be tied off.
23 I hit all the high points of that nature. We
24 don't have a couple of the other rules like
25 the six-foot rule tie off, ladder. Nobody

1 Moshier
2 requires that. That's probably the high
3 points right there. You must have the chains
4 on your man lifts. If you have a boom lift,
5 snorkel lift, you need to tie off before you
6 start the piece of equipment. You can't even
7 move it without being tied off. That's about
8 it for tying off.

9 Q. When you talk about tying off are
10 you referring to the worker wearing a harness
11 and connecting the lanyard from the harness
12 to a fixed structure and being tied off?

13 A. Fixed structure or the piece of
14 equipment. Depending on what you are doing.

15 Q. Do you recall having any
16 discussions with anybody affiliated with
17 Fregosi about tying off?

18 MS. AUMAND: Objection to form.

19 You can answer.

20 A. Not on the Hydro, no.

21 Q. What about in any other context?

22 A. Yes. They had used -- one of the
23 other contractors -- a snorkel lift one time
24 to cut a piece of steel, and I just made sure
25 they were going to wear their harness and tie

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Mosher

off. They were already ready to do that.

Q. Did BBL provide harnesses to
Fregosi employees?

A. We don't provide them for anybody.

Q. Are the subcontractors required to
provide their own harnesses?

A. That is correct.

Q. If a subcontractor wanted to put in
safety netting is that the obligation of the
subcontractor or BBL to place safety netting
for the subcontractors at the project?

MS. AUMAND: Objection to form.

You can answer.

A. That would be on the subcontractor
unless it was written in the contract, of
course, but, generally speaking, they are
responsible for their own safety.

Q. Prior to October 4, 2017 did you
ever have any problems with Keith Bonnes
where he failed to use safety devices that
were provided to him?

MS. ONDROVIC: Objection to form.

MS. AUMAND: Objection to form.

A. Not that I can recollect.

1 Moshier

2 Q. Did you have any problems with
3 Keith Bonnes as far as the work he performed
4 at the project site prior to October 4, 2017?

5 A. No. I don't think so.

6 Q. Generally, how did you find him to
7 be as far as a worker at the project?

8 A. Good worker. He was a pusher.

9 Q. By that what do you mean?

10 A. Pushed the project along, made sure
11 it was flowing, you know, no hiccups, worked.

12 Q. Going back to the setup of the
13 Hydro Mobile, can you explain to me, to your
14 knowledge, how the Hydro Mobile would be
15 assembled and set up prior to it being used
16 at elevations for work?

17 MS. AUMAND: Generally or at this
18 site?

19 MR. SMILEY: Generally.

20 A. Generally speaking, what you look
21 for is a piece of ground that was stable.
22 You want to make sure it wasn't spongy or
23 anything of that nature. What you do is with
24 a forklift you grab a large section of this
25 Hydro, which is the base section -- it has

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Mosher

two legs that come down with like a
quattropod on both sides that crank down.
You put blocking underneath that. You set
this whole thing on here, and you level that
bottom section. The bottom section is
probably six foot tall. It goes right to the
platform. You level that section all the way
around. You take dimensions of the building
for your footboard where everybody works.

Q. For leveling does the machine auto
level? Otherwise how is it leveled?

A. They do it by hand. As soon as
that part is up now it's just towers that
need to be put on. The towers are five foot
sections of magnesium alluminum, not that
that really matters, and they set inside.
You put them on top of the Hydro. You set
them on top of that, and you bolt them in.
You do both sides. Once you get that in
there you move the machine up. It has these
arms that come up and grab it, then this one
comes up and grabs that [indicating], pulls
it up, then this one grabs it. [Indicating.]
That's how it creeps up with the two arms.

1 Moshier

2 As soon as you get up to the next level you
3 put another on top of that -- of your tower,
4 bolt that in and keep going all the way up.
5 Generally speaking, you do that whole thing
6 all the way up your whole entire jump. The
7 reason being if you got any kind of thing
8 that falls out or anything else you built the
9 whole thing. You don't have to unload it.
10 You just have to bring it down and maybe
11 reset the whole thing. Sometimes it gets too
12 close to the wall. You don't want to be too
13 close to the wall because you could damage
14 it. That's how it goes together. Once
15 that's all done you come down. You set the
16 rest of your stuff. You set your planks out
17 in the front and guard handrails and you're
18 ready to go.

19 Q. I want to talk about the towers for
20 a moment. Am I correct there are two towers,
21 one on each side of the platform?

22 A. One tower on each side.

23 Q. Are the towers built to the highest
24 point the Hydro Mobile is expected to be
25 utilized when it is set up initially, or do

1 Moshier

2 the towers get built higher as the work
3 performed moves higher?

4 MS. AUMAND: Objection to form.

5 You can answer.

6 A. You set -- you put the whole thing
7 together as if you're going to go to the top
8 and do the whole job.

9 Q. How high up, approximately, would
10 the towers have to go to set up the Hydro
11 Mobile before the work would be performed?

12 MS. AUMAND: Objection to form.

13 You can answer.

14 A. You could do it either way but,
15 generally speaking, once again, you go all
16 the way to the top so that it was all set,
17 whatever your highest jump is going to be.

18 Q. On the day of this accident,
19 October 4, 2017, would it be the intention of
20 Fregosi in setting up the Hydro Mobile to be
21 setting both of those towers up to the height
22 of, approximately, 25 to 30 feet before they
23 would start actually using the Hydro Mobile
24 to do the work?

25 MS. AUMAND: Objection to form.

1 Moshier

2 You can answer.

3 A. Yes.

4 Q. In setting up the tower portions is
5 the actual base with the guardrails used as
6 the towers are being erected and increased
7 with height, or is it some other method where
8 the towers are all increased in height first
9 and then the platform with the rails is
10 elevated?

11 THE WITNESS: I guess I
12 misunderstood what you said.

13 MR. SMILEY: Let me rephrase it,
14 please.

15 Q. Are the towers fully erected all
16 the way up to 25 to 30 feet before the
17 platform and the rails start moving up, or is
18 it all done together in some manner?

19 A. That's what I thought you meant.
20 You have to do it all at the same time. You
21 work off that platform as you're putting
22 these together. So the platform crawls up.
23 You add another section, bolt it together.
24 The platform crawls up. Add another section.
25 On and on.

1 Moshier

2 Q. At the time of Mr. Bonnes' accident
3 was the Hydro Mobile completely set up?

4 A. No.

5 Q. What stage was it at at the time
6 Mr. Bonnes had his accident?

7 A. Approximately to the bottom of the
8 deck where the standing surface is -- the
9 main deck. I'd say 12 to 14 feet, and they
10 were adding that next tower section.

11 Q. How high would each section be?

12 A. I think they're five feet. I don't
13 think they're four. I know they're not six.
14 I'm guessing they're five foot sections.

15 Q. Is it fair to say there were
16 probably three sections that were already in
17 place at the time of the accident?

18 A. That's probably about right.

19 Q. Once the Hydro Mobile is fully set
20 up how does the platform raise? Is it
21 manually, is there an electronic device,
22 hydraulics or something else?

23 A. It's a gasoline engine and it's,
24 whatever. It's probably hydraulic to pull
25 the hands up.

1 Moshier

2 Q. How is it controlled? Is there a
3 joystick on the platform or something?

4 A. There's a couple of joysticks on
5 the platform.

6 Q. Do they control the up down
7 movement of it?

8 A. Correct.

9 Q. Are there any ways to move the
10 Hydro Mobile other than vertically up and
11 down?

12 A. No.

13 Q. Other than the railing that comes
14 with the platform of the Hydro Mobile, are
15 there any safety devices you are aware of to
16 protect workers from falling from a height
17 while utilizing the Hydro Mobile?

18 MS. AUMAND: Objection to form. I
19 want to make sure it's a fact question
20 and not an opinion question.

21 MR. SMILEY: A fact question.

22 Q. Other than the railings you
23 described that come with the platform of the
24 Hydro Mobile, did the Hydro Mobile device
25 have any safety features to protect workers

1 Moshier
2 from sustaining injuries as a result of
3 working at a height?

4 MS. AUMAND: Objection to form.

5 You can answer.

6 A. Not in itself, but I do think there
7 are a couple of D-rings you could probably
8 tie it off of. I imagine that's what their
9 intention was.

10 Q. When you refer to a D-ring can you
11 tell me what that is?

12 A. A D-ring is -- in this particular
13 instance it would be a welded connection that
14 goes to the deck of the Hydro Mobile that you
15 can clip off your safety harness to.

16 Q. When you talk about the deck of the
17 Hydro Mobile having a D-ring is that the deck
18 the workers would stand on with the railings
19 around it to perform their work?

20 A. Yes, sir.

21 Q. In theory, if they're working at an
22 elevated height on that deck they could be
23 tied off in a harness to that D-ring on the
24 deck; is that correct?

25 MS. ONDROVIC: Objection.

1 Moshier

2 MS. AUMAND: Objection to form.

3 MR. SMILEY: I will rephrase it.

4 Q. To your knowledge did the Hydro
5 Mobile have one or more D-rings on the
6 platform deck on October 4, 2017?

7 A. I believe it did.

8 Q. How many D-rings did the Hydro
9 Mobile have on the deck?

10 A. I don't know. Probably two that
11 I'm aware of. They could have four. I think
12 I saw two.

13 Q. Where did you observe the two
14 D-rings on the Hydro Mobile?

15 A. In Brewster.

16 MR. SMILEY: Physically on the
17 platform.

18 THE WITNESS: Four exterior
19 corners.

20 Q. Each corner of the platform you
21 believe had a D-ring?

22 A. I believe so. Well, again, I said
23 I believe there were two that I saw, but I'm
24 assuming there would be four because that
25 would just make sense.

1 Moshier

2 Q. The two you saw, where do you
3 recall seeing those?

4 A. Outside of the platform -- outside
5 face.

6 Q. If you are standing on the platform
7 facing the building it would be behind you to
8 each corner?

9 A. Correct.

10 Q. Is it your understanding the reason
11 those D-rings are part of the Hydro Mobile
12 platform is so that workers can tie off a
13 harness to that D-ring?

14 MS. AUMAND: Objection to form.

15 MS. ONDROVIC: Objection.

16 A. I'm going to tell you this. I
17 don't know. I'm assuming so. There's
18 probably other things you can use those for
19 but in my head that's what I see. You can
20 use it to tie down a tarp. If you tarp the
21 whole thing to keep the snow off there could
22 be four placed to do that. I don't know.
23 They look strong enough to me. The point is
24 you don't -- it's irrelevant.

25 MR. SMILEY: You can finish your

1 Moshier

2 answer.

3 THE WITNESS: You don't need to.

4 There's no need to tie off unless you

5 are a sissy because it's safe. It's the

6 safest thing in the word. It's like

7 you're standing right here.

8 [Indicating.] You can't do a Peter Pan.

9 You can't go anywhere. So that's why I
10 said that.

11 MR. SMILEY: I want to go to the
12 morning of October 4, 2017.

13 THE WITNESS: Okay.

14 Q. What time did you get to the
15 project site?

16 A. Probably ten minutes to seven.

17 Q. When you were there did you see any
18 employees of Fregosi?

19 A. Yes.

20 Q. Who did you see?

21 A. I saw Joe Fregosi, Junior and
22 Keith.

23 Q. Prior to October 4, 2017 did you
24 have any problems at the job site with Joe
25 Fregosi, Junior?

1 Moshier

2 MS. ONDROVIC: Objection to form.

3 A. I don't think so. Nothing
4 that's -- I get problems every day, all
5 right. What my job naturally is, you know,
6 sometimes I make people do things they don't
7 want to do. So it's kind of relative. I
8 don't think it is, but you guys might think
9 it is.

10 Q. When I refer to problems -- let me
11 clarify. Did you have any situations with
12 Joe Fregosi where he failed to perform his
13 work in a safe manner?

14 A. No.

15 Q. Did you have any problems with Joe
16 Fregosi, Junior -- I am referring to Joe
17 Fregosi, Junior in both questions --

18 THE WITNESS: Okay.

19 Q. -- where he failed to follow your
20 directions?

21 A. No, not that I'm aware of. If he
22 did it was minor.

23 Q. When you saw Joe Fregosi, Junior
24 and Keith Bonnes that morning were they
25 already working at that time when you first

1 Moshier
2 saw them, or was it prior to their
3 commencement of work?

4 A. They just got up on the Hydro. So
5 they climbed up.

6 Q. What stage of the assembly was the
7 Hydro Mobile at the time you first observed
8 them that morning?

9 THE WITNESS: You want me to
10 describe what I saw?

11 MR. SMILEY: Yes.

12 A. The Hydro was up at, approximately,
13 12 to 14 feet to the deck height. They had a
14 couple of the towers up there sitting on top
15 of the deck. That's where it was at. They
16 had a couple of foot planks out and no
17 handrails -- no guardrails on the outside.

18 Q. Why were there no guardrails around
19 the outside?

20 A. Generally speaking, when you're
21 building scaffolding and we're all in the
22 same agreement that Hydro counts as
23 scaffolding there is no standard for having
24 guardrails or being tied off while you're
25 erecting. Building is a different situation

1 Moshier

2 than working on. To have certain things on
3 there at certain times is sometimes a
4 detriment.

5 Q. When you first observed them
6 working were they -- by they I mean Joe
7 Fregosi Junior and Keith Bonnes -- standing
8 on the platform at an elevation of about 12
9 to 14 feet?

10 MS. AUMAND: Objection to form.

11 A. Yes.

12 Q. When you observed them working that
13 morning on the platform at an elevation of 12
14 to 14 feet were any guardrails in place?

15 MS. AUMAND: Objection to form.

16 You can answer.

17 A. No.

18 Q. When you saw them working at 12 to
19 14 feet that morning on the platform of the
20 Hydro Mobile were either of them wearing a
21 harness?

22 MS. AUMAND: Objection to form.

23 You can answer.

24 A. No.

25 Q. When you saw them working that

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Mosher

morning on the platform at 12 to 14 feet were
there any safety nets in place?

MS. AUMAND: Objection to form.

You can answer.

A. No.

Q. When you saw them working that
morning at 12 to 14 feet on the platform of
the Hydro Mobile did you see any safety
devices in place that would protect them if
they were to fall from the height of 12 to 14
feet?

MS. AUMAND: Objection to form.

You can answer.

A. No.

Q. Seeing that they were working at a
height of 12 to 14 feet without any safety
devices in place to protect them in the event
of a fall did you take any action?

MS. AUMAND: Objection to form.

You can answer.

A. No.

Q. Could you have taken any action at
that time? Could you have done something to
institute some type of safety mechanism to

1 Moshier

2 prevent them from sustaining an injury if
3 they fell 12 to 14 feet?

4 MS. AUMAND: Objection to form.

5 You can answer.

6 A. I think that's a trick question,
7 personally. Yeah, in retrospect.

8 Q. What could you have done in
9 retrospect?

10 MS. AUMAND: Objection to form. In
11 terms of what he could have done I think
12 that goes into calling on an expert's
13 opinion. So in terms of that as a
14 hypothetical I am going to direct him
15 not to answer. If you want to ask him
16 fact questions of what he saw and what
17 he did that's fine.

18 Q. At the time you saw them could you
19 have told them to put the guardrails up?

20 MS. AUMAND: Objection to form.

21 Same objection. I am going to direct
22 him not to answer.

23 MR. SMILEY: You cannot direct him
24 not to answer under the rules.

25 MS. AUMAND: I can when it's

1 Moshier

2 improper insofar as it's going to the
3 heart of the matter and asking him to
4 provide an expert opinion as to what
5 could have been done. He is a fact
6 witness. He is not here as an expert.

7 Q. Let's try it this way. At the time
8 you saw them working at 12 to 14 feet on the
9 platform without any safety devices in place
10 did you have the authority at that time if
11 you chose to do so to tell them to put the
12 guardrails up?

13 MS. AUMAND: Objection to form.

14 You can answer.

15 A. Yes.

16 Q. Did you in fact tell them to put
17 them up?

18 MS. AUMAND: Objection to form.

19 You can answer.

20 A. No.

21 Q. When you saw them at that time
22 working 12 to 14 feet on the elevated
23 platform did you have the authority to tell
24 them to get harnesses and tie of to the
25 D-rings?

1 Moshier

2 MS. AUMAND: Objection form.

3 You can answer.

4 A. Potentially if those D-rings are
5 what they're for. I mean I'm surmising on
6 those D-rings but theoretically, yes.

7 Q. Not theoretically. If at the time
8 you observed them at 12 to 14 feet up on the
9 platform without any safety devices did you
10 have the authority to look at the platform
11 see if there were D-rings that would work for
12 tying off harnesses and tell them to do that?

13 MS. AUMAND: Objection to form.

14 You can answer.

15 A. Yes.

16 Q. Did you take any steps to do that?

17 A. No.

18 Q. At the time they were working at 12
19 to 14 feet on the platform when you observed
20 them without any safety devices did you have
21 the authority to direct them to stop their
22 work?

23 MS. AUMAND: Objection to form.

24 You can answer.

25 A. Yes.

1 Moshier

2 Q. Did you do that?

3 A. No.

4 Q. At the same time did you have the
5 authority to tell them to get some type of
6 safety device to protect them from falls from
7 that elevation?

8 MS. AUMAND: Objection to form.

9 You can answer.

10 A. Sure.

11 Q. Did you tell them to do that?

12 A. No.

13 Q. Did you speak to Joe Fregosi at all
14 that morning on October 4, 2017 before the
15 accident occurred?

16 A. Yes.

17 MR. SMILEY: Tell me the sum and
18 substance of what you spoke to him about
19 that morning? I am talking about Joe
20 Fregosi, Senior.

21 THE WITNESS: Oh, senior. No. I'm
22 sorry. I did not speak to him.

23 Q. How long did you observe them that
24 morning at the 12 to 14 foot height on the
25 platform when they were working to erect the

1 Moshier

2 Hydro Mobile?

3 A. Approximately ten to fourteen
4 minutes.

5 Q. Did you have any conversations with
6 them while they were up there and you
7 observed them at that time?

8 A. Yes.

9 Q. Can you tell me what you recall
10 about the nature of your conversation with
11 them?

12 A. I can.

13 MR. SMILEY: Please do.

14 THE WITNESS: I will. They were
15 setting up that jump, and they told me
16 it was going to be an easy day. "No
17 problems today. We aren't going to load
18 or anything today. We're just going to
19 set up today." I said, "Are you going
20 to set up the front at the same time?"
21 He said, "Yes." I said, "All right. I
22 need to go over to my trailer and get
23 some stuff taken care of, answer some
24 emails. I'll be right back over. I'll
25 grade this front section, get it cleaned

1 Moshier

2 up and flattened, bring some more soil
3 or some dirt over so that you can set
4 this up." He said, "Perfect. That will
5 get us to two o'clock today." That was,
6 pretty much, the whole substance of the
7 conversation.

8 Q. Do you recall you saying anything
9 else to them or Joe Fregosi, Junior or Keith
10 Bonnes saying anything else to you that
11 morning?

12 MS. AUMAND: Objection to form.

13 You can answer.

14 A. Probably the usual stupid
15 pleasantries we do in construction but
16 nothing of any substance.

17 Q. Can you describe for me what you
18 observed Keith Bonnes wearing at that time
19 you observed him that morning?

20 A. I don't remember.

21 Q. Do you know if he had a hardhat on?

22 A. Yes.

23 Q. Did he have any other PPE on?

24 A. No.

25 Q. No goggles or ear protection?

1 Moshier

2 A. No.

3 Q. Were there any other employees of
4 Fregosi at the project that morning when you
5 observed Joe Fregosi, Junior and Keith Bonnes
6 on the platform?

7 A. No. I don't believe so. I think
8 it was just those two.

9 Q. Were any other subcontractors at
10 the job site actively working that morning
11 when you observed for the first time Keith
12 Bonnes and Joe Fregosi, Junior assembling the
13 Hydro Mobile?

14 A. They were there. I don't know if
15 they were physically working. It was early.
16 So they'd be setting up. So they weren't,
17 technically, working.

18 Q. Was any work being performed by the
19 other subcontractors in the vicinity of where
20 Joe Fregosi, Junior and Keith Bonnes were
21 setting up the Hydro Mobile such that you
22 would reasonably believe they could observe
23 them?

24 A. No.

25 Q. After you went back to the trailer

1 Moshier

2 did you have an opportunity to observe Joe
3 Fregosi, Junior and Keith Bonnes assembling
4 the Hydro Mobile further before you learned
5 of an accident?

6 A. No.

7 Q. When was the next time you observed
8 Keith Bonnes after you left to go to your
9 trailer from first observing him on the Hydro
10 Mobile platform that morning?

11 A. One of the employees from the
12 service building that I built where my
13 trailer is located stopped and said, "There
14 is an ambulance over at your job over there."
15 So that's when I went back across.

16 MR. SMILEY: Tell me what you
17 observed when you went across the
18 street.

19 THE WITNESS: The ambulance. I
20 didn't see right away, but I saw the
21 drywall company -- a couple of the guys
22 from the rock company were out. I saw
23 Joe standing there. Once I got a little
24 closer I saw Keith.

25 Q. Where did you observe Keith?

1 Moshier

2 A. He was on the wall side laying on
3 the ground. He wasn't laying. He was on his
4 knees.

5 MR. SMILEY: I know this is hard
6 for you. I know he was your friend. If
7 you want to take a break before we get
8 into this we can. I appreciate you
9 hanging in there with these questions.

10 THE WITNESS: Let's get it done.

11 Q. When you say he was on the wall
12 side was he between the Hydro Mobile device
13 and the wall of the building?

14 A. Yes. The two outriggers were here.
15 [Indicating.] There was a bar right here.
16 [Indicating.] The wall would be here.
17 [Indicating.] He was between the spreader
18 and the wall.

19 Q. For purposes of taking down your
20 description, even though you are showing it
21 to us, can you describe with words what setup
22 you observed of the position of Keith Bonnes
23 as best you can?

24 A. He was between the wall and the
25 outriggers of the Hydro Mobile

1 Moshier
2 approximately -- the outriggers were
3 approximately eight feet away from the wall.
4 Maybe not quite that much but in that
5 vicinity. He was against the wall and kind
6 of leaning on the outrigger base. That's the
7 best I can do.

8 Q. Did he still have his hardhat on
9 when you saw him?

10 A. No.

11 MR. SMILEY: Tell me how he
12 appeared to you, what you observed of
13 him physically.

14 THE WITNESS: Hurt, not
15 talkative -- not very talkative at all
16 but he kept saying, "Just give me a
17 minute. Just give me a minute," which
18 is typical construction talk for I got
19 winded and I don't want the guys to
20 know.

21 Q. What, if anything, did you say to
22 him when you first spoke to him?

23 A. I just asked if he was okay. At
24 first I thought he was going to be okay. He
25 just didn't seem like he was that beat up.

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Mosher

He looked like he was hurt but not beat up
bad, you know. Maybe you don't. I don't
know. I'm just trying to recall. I'm not
freaking out or anything like that. That's
about it, you know. Joe was with him most of
the time. The ambulance was talking to him.
He wasn't really talking. He was talking but
not talking a lot.

Q. Did you ask him what happened?

A. No.

Q. Did you ask Joe Fregosi, Junior
what happened?

MS. AUMAND: Objection to form.

You can answer.

A. Yes.

Q. Did you ask Joe Fregosi, Junior
what happened at the moment you went over
there?

MS. AUMAND: Objection to form.

You can answer.

A. Yes.

Q. What did he say?

MS. AUMAND: Objection to form.

You can answer.

1 Moshier

2 A. He said, "I don't know what
3 happened." Joe was working on the roadside
4 tower. He was going to bolt that one
5 together, which is facing the road. Keith
6 was doing the one back towards the river for
7 purposes of giving that kind of thing. So
8 Joe was facing the road putting the post --
9 the column together, and Keith was going to
10 the back. So he had his back to anything
11 that happened with Keith. This is how he
12 told me the whole story and that he didn't
13 know what happened. All of a sudden he heard
14 clunk and then Keith was on the ground.

15 Q. Did you observe the position of the
16 Hydro Mobile at the time you went over there?

17 MS. AUMAND: Objection to form.

18 You can answer.

19 A. Yes.

20 Q. Can you tell me what phase of
21 assembly it was at? By that I mean the
22 height of the towers, the location of the
23 platform and anything else you can describe.

24 Q. I believe the platform was still at
25 the same location. They had -- Joe -- the

1 Moshier
2 roadside column was standing straight. I
3 don't know if it was bolted completely
4 together or not. I don't really know. I
5 never went up to check because it was
6 irrelevant. The one that Keith was putting
7 on was leaning against the wall like it had
8 fallen over towards where he fell through.
9 That's the only difference I noticed.

10 Q. How high up was the tower Keith was
11 working on at the location where it was
12 leaning up against the building?

13 A. The same. Fourteen -- whatever
14 feet it was. I don't think they went up at
15 all.

16 Q. Was the platform at the same level
17 as the highest point of the tower at that
18 moment?

19 A. As far as it was built, correct.
20 Yes. As far as the tower was built. It
21 wasn't all the way up yet.

22 MR. SMILEY: Let me rephrase it to
23 make sure I am being clear and you are
24 giving an appropriate response.

25 Q. When you went over and you saw

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Mosher

Keith was on the ground right after the accident and you looked at the Hydro Mobile and you saw the tower that Keith was working on was about 12 to 14 feet high and up against the building was the platform up at that same level of where it was leaning against the building or was the platform lowered down to the base or something else?

A. It was still up there.

Q. Was the platform leaning against the building as well or just the tower?

A. Just the tower.

Q. Did you ask anyone else at that time if they observed what happened?

A. Yes.

Q. Who did you ask?

A. I asked the sheetrocker and anyone else that was out there. There were three or four guys. They were all inside. Nobody was outside at all. They were all inside guys. They didn't have any real reason to be outside except to go to their vehicles.

Q. What, if any, other conversations did you have with anyone prior to Keith

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Mosher

Bonnes being taken from the worksite to the hospital?

MS. AUMAND: Objection to form.

You can answer.

A. We had to help the EMTs put Keith on the gurney just because of the situation of where he was at. So we gave them a hand putting him on.

Q. Can you tell me about that? What was done?

A. They kind of maneuvered him around and got him on a board where we just picked him up and got him on the gurney because it was on a steep hill. They were flat but just to get there, you know, it was easier with more manpower.

Q. Who, other than yourself, assisted the EMTs getting him onto the gurney?

A. One of the sheetrockers, Andrew, and -- I don't remember who else.

Q. What company did Andrew work for?

A. Key Interiors.

Q. What is his last name?

A. I can't remember. I can find out.

1 Moshier

2 It's not in my memory.

3 Q. During the time you were assisting
4 getting Keith to the gurney can you describe
5 for me how he was doing?

6 MS. AUMAND: Objection to form.

7 You can answer.

8 Q. They had him strapped in, of
9 course, worried about damage. So they had
10 him strapped in pretty good. When they put
11 him in the back of the ambulance I said,
12 "I'll see you in a couple of hours; right?"
13 He nodded his head. He was expecting just
14 like the rest of us that, yeah, you got
15 banged up. Now you're going to come back
16 with a broken leg or something, and that's
17 going to be the end of it.

18 Q. Did you observe any physical
19 injuries to him?

20 A. No, not really. Nothing I can
21 really think of. He might have had some
22 blood on his head. I can't remember though.
23 I shouldn't even say that because I can't
24 really remember. It wasn't something I was
25 fixating on.

1 Moshier

2 Q. Did he express to you he was in any
3 pain or discomfort at the time you observed
4 him that morning?

5 MS. AUMAND: Objection to form.

6 You can answer.

7 A. He never really said anything.

8 Q. Did he say anything to you about
9 the fall or what he was doing or anything
10 that morning?

11 A. No.

12 Q. Did you ask him any specific
13 questions about what he was doing at the time
14 of the fall?

15 MS. AUMAND: Objection to form.

16 You can answer.

17 A. No.

18 Q. Did you come to learn anything
19 about what he was doing at the time of his
20 fall other than what you told me that you
21 heard from Joe Fregosi, Junior that morning?

22 A. No. That's all. I really didn't
23 get to see much or anything.

24 Q. After Keith was taken from the
25 project site in the ambulance did you have

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Mosher

further conversations with anybody that day
about the happening of the accident?

A. Probably. Basically, just, you
know, the guys kind of nervous and stuff.

Q. Did you speak to Joe Fregosi,
Senior that day?

A. I don't recall. I think I did.
No. I did. I definitely did. Yes.

MR. SMILEY: Tell me what you
recall about that conversation.

MS. AUMAND: Objection to form.
You can answer.

A. He called to tell me that Keith had
passed.

Q. Did you go to the hospital?

A. No.

Q. Did you speak to Joe Fregosi,
Senior about the circumstances of the
accident --

MS. AUMAND: Objection to form.
You can answer.

Q. -- at any time?

A. I probably did.

MR. SMILEY: Tell me what you

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Mosher

recall about the conversation you had
with Joe Fregosi, Senior about the
happening of the accident.

MS. AUMAND: Objection to form.

You can answer.

A. I don't really recollect. I'm sure
I did. I know he was in my trailer and
office talking about it, but I don't really
recall what the substance was.

Q. Did Keith Bonnes fail to follow any
directions that you are aware were given to
him on the day of his accident?

MS. AUMAND: Objection to form.

You can answer.

MS. ONDROVIC: Objection.

THE WITNESS: With regard to?

MR. SMILEY: Anything.

A. Nothing that I can think of.

Q. Did Keith Bonnes do anything that
morning that you observed to be unsafe?

MS. AUMAND: Objection to form.

You can answer.

MS. ONDROVIC: Objection.

A. No, I did not.

1 Moshier

2 Q. No you did not observe him doing
3 anything unsafe?

4 A. Yes. That's what I meant. Thank
5 you.

6 Q. Did you conduct any type of
7 investigation in your capacity as
8 superintendent for BBL of the happening of
9 this accident?

10 A. Not particularly. I mean I asked
11 the questions that I needed to ask to try to
12 ascertain what I could get, but there really
13 wasn't anybody to talk to. Nobody physically
14 saw what actually happened.

15 Q. Was there any dispute that he fell
16 from the height of 12 to 14 feet and that's
17 what happened in the accident?

18 MS. ONDROVIC: Objection to form.

19 MS. AUMAND: Objection form.

20 A. No.

21 Q. Did you take any steps to see
22 whether safety measures needed to be
23 implemented moving forward to prevent a fall
24 like this from happening again at the job
25 site?

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Mosher

MS. AUMAND: Objection to form.

You can answer.

THE WITNESS: Moving forward?

MR. SMILEY: Yes.

A. Yes.

Q. What measures did you determine
needed to be taken moving forward to prevent
this type of accident from happening?

MS. AUMAND: Objection to form.

You can answer.

MS. ONDROVIC: Objection.

A. I think going forward that -- I
have this position coming up right now, as a
matter of fact, and I will make sure that
even though it's not necessary I'm going to
have them have the handrails on. I won't be
able to have the foot planks on. That's
something that is very difficult to do while
you're erecting because that's the part that
scrapes the wall. So you don't put that all
together until afterwards -- until you make
sure you're all the way up and your numbers
are correct, but as a whole I'm going to
require that they put the guardrails on the

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Mosher

three sides. Tying off is not a good answer
I don't think in the stage of erecting.
Again, I'm saying something you do not want
to hear -- "I think" -- but it's not done.
It's not supposed to be done. It's probably
more dangerous than anything else. So
putting the guardrails on I think that would
be enough that would give somebody a little
bit more peace, especially me, because I'm
worse than I've ever been about safety.

Q. Because of this accident?

MS. AUMAND: Objection to form.

You can answer.

A. Oh, yeah. It changed me. I have
always been tough. I'm a very tough super
with safety. I don't let anything go. If I
see it I will say it. I am worse now than
I've ever been.

Q. So you are implementing the use of
the guardrails at all points of assembling
the Hydro Mobile moving forward?

MS. AUMAND: Objection to form.

You can answer.

A. Yes.

1 Moshier

2 Q. Was there any reason why the
3 guardrails could not have been in place at
4 the time of Keith Bonnes' fall to your
5 knowledge?

6 MS. AUMAND: Objection to form.

7 MS. ONDROVIC: Objection.

8 MS. AUMAND: Can I have that
9 question again?

10 [Whereupon, at this time, the
11 requested portion of the record was read
12 by the court reporter.]

13 MS. AUMAND: As to his observations
14 on the site. That's fine.

15 A. They could have put them on. Like
16 I said, I'm going to require it now. My
17 Hydros come on Monday.

18 MR. SMILEY: Please mark these
19 photographs and documents as exhibits.
20 [Indicating.]

21 [Whereupon, at this time, the court
22 reporter marked the above-mentioned
23 photographs and documents for
24 identification as Plaintiffs' Exhibits 1
25 through 5.]

1 Moshier

2 MR. SMILEY: Let's take a short
3 five-minute break.

4 [A recess was taken.]

5 Q. Sir, as part of your investigation
6 of this accident did you take photographs
7 from the date of the accident?

8 A. Yes.

9 Q. I previously handed you a stack of
10 photographs marked as Plaintiffs' Exhibit 1
11 for identification. They appear to have a
12 date time stamp on the bottom on most of
13 them. Did you have an opportunity to look
14 through Plaintiffs' Exhibit 1?

15 A. I did, sir.

16 Q. Are these progress photographs that
17 were taken at the project site?

18 A. Yes, sir.

19 Q. Did you take those photographs?

20 A. Yes.

21 Q. Am I correct, sir, it appears the
22 only photographs that were taken from the
23 date of this accident were several
24 photographs towards the back of this large
25 set?

1 Moshier

2 A. Yes.

3 Q. Can you tell me counting from the
4 back of the stack how many photographs in
5 this packet from the back are from the date
6 of this accident, October 4, 2017?

7 MS. AUMAND: Off the record.

8 [Discussion held off the record.]

9 MR. SMILEY: Please let the record
10 reflect what we just marked as
11 Plaintiffs' Exhibit 1 for identification
12 today is a duplicate copy of Exhibit B
13 to Defendant/Third-Party Plaintiff Lia
14 Brewster and BBL Construction's
15 Supplemental Response to Notice of
16 Discovery and Inspection dated
17 December 27, 2018.

18 A. Thirteen pictures back, I believe.

19 Q. Counting from the back of this
20 stack please go to Photograph 4 -- the fourth
21 one from the back where it shows the top of
22 one of the towers that appears to have
23 markings on the wall insulation; do you see
24 that?

25 A. Yes.

1 Moshier

2 Q. Is that, to your knowledge, the
3 tower Keith Bonnes was in the process of
4 erecting at the time of his accident?

5 A. Yes.

6 Q. The marks on the wall, is it your
7 understanding that the tower fell and
8 contacted the wall in that location where the
9 marks are?

10 A. Yes.

11 Q. Did you come to learn how it was
12 the tower tipped and fell such that it hit
13 the wall?

14 MS. AUMAND: Objection to form.

15 You can answer.

16 A. Not really. I mean I kind of got
17 an idea, but I don't know.

18 Q. What is your understanding, to the
19 best of your knowledge, as to how this
20 happened?

21 MS. AUMAND: Objection to form.

22 You can answer.

23 A. He must have grabbed it while he
24 was falling to keep him from falling.

25 Q. Why is it, if you know, that the

1 Moshier
2 tower would actually fall and not stay erect?

3 MS. AUMAND: Objection to form.

4 You can answer.

5 A. He must not have bolted it. He
6 must not have gotten to the bolting
7 procedure.

8 Q. Go to the next photograph from the
9 back towards the front from that one. It
10 appears on the left-hand side to show a brick
11 wall and on the right-hand side you see a
12 structure. What are we seeing here?

13 A. You're seeing the brick wall of the
14 building that we're erecting and that is the
15 face of the Hydro. The plank on the bottom
16 is the foot plank. That's where the men
17 would stand. These would be continued all
18 the way across the whole length of the Hydro.
19 The men would stand here [indicating], and
20 their products would be up on that platform
21 up on top. The masons' tenders would be up
22 on top. The masons would be on the plank
23 down on the bottom.

24 Q. In this photograph I only see one
25 section with the plank on it. There are not

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Mosher

planks coming along the Hydro towards the
front of this photograph; is that correct?

A. That's correct.

Q. Is there a reason why it is not
completed all the way across the front of the
Hydro?

MS. AUMAND: Objection to form.

You can answer.

A. That would be done after they bring
the Hydro all the way up to keep that margin
in front.

Q. So after the Hydro would be fully
assembled and ready to go up then those
planks would be extended fully across?

A. Yes, sir.

Q. Does this photograph depict the
area where you observed Keith Bonnes when you
came to the scene of his fall?

A. Yes, except for this had been
dropped. [Indicating.] It was up higher.
This deck is down low now.

Q. This deck is not in the position at
the time of the accident as it is shown in
this photograph?

1 Moshier

2 A. Correct.

3 Q. If you go two more photographs
4 closer to the front it appears to be a
5 photograph showing some towers and a
6 platform. Can you tell me what we are
7 looking at?

8 A. This is the lowered Hydro just
9 taking a picture of how it was while it was
10 up there. Nothing in the way of, you know,
11 tripping hazards or anything of that nature.
12 No ice. No snow. No nothing.

13 Q. Is this the Hydro that was involved
14 in Mr. Bonnes' accident?

15 A. Yes.

16 Q. It appears when looking towards the
17 back of this photograph there is a tower
18 section then a small tower section to the
19 right of it; do you see that?

20 A. Yes.

21 Q. The small tower section, is that
22 the type of section you referred to earlier
23 that they'd be assembling to erect the tower?

24 A. Yes, sir.

25 Q. Was that the position of the tower

1 Moshier

2 and the section alongside it at the time of
3 Mr. Bonnes' fall?

4 A. No. I wouldn't think so. I'm
5 guessing -- I'm assuming that's the one that
6 fell over, and they took that one off to
7 lower it. Otherwise it would be dangling up
8 in the air. I'm assuming that's what it was.

9 Q. Based upon who you spoke to and
10 what you observed at the accident location do
11 you believe there was a section of the tower
12 that was not bolted that Mr. Bonnes may have
13 held onto at the time of his fall that came
14 off of the tower and just that section is
15 what hit the wall?

16 MS. AUMAND: Objection to form.

17 You can answer.

18 MS. ONDROVIC: Objection.

19 A. Yes.

20 Q. It would not be the entire tower
21 tilting up against the wall; it would be just
22 that one section that came off?

23 A. Correct.

24 Q. Did you observe that individual
25 section on the ground when you observed

1 Moshier

2 Mr. Bonnes on the ground?

3 A. No.

4 Q. Did you observe that individual
5 section anywhere following the happening of
6 the accident?

7 A. Yes.

8 Q. Where did you first observe that
9 section?

10 A. It was up on top on top of the
11 higher piece here [indicating] leaning
12 against the wall.

13 Q. So part of it was still on the
14 tower below it and part of it was leaning
15 against the wall?

16 A. Yes, sir.

17 Q. Do you have any photographs that
18 depict that?

19 A. I could have sworn I did.

20 MR. SMILEY: Take a moment and look
21 through it and let me know if you do
22 have that or not.

23 [A brief recess was taken.]

24 THE WITNESS: Yes, I do have it.

25 MR. SMILEY: We will mark it

1 Moshier

2 separately.

3 Please mark it as Plaintiffs'
4 Exhibit 1A.

5 [Whereupon, at this time, the court
6 reporter marked the above-mentioned
7 photograph for identification as
8 Plaintiffs' Exhibit 1A.]

9 MR. SMILEY: Mr. Moshier, we are
10 looking at what has been marked as
11 Plaintiffs' Exhibit 1A for
12 identification. Tell me what you
13 observe in this photograph.

14 THE WITNESS: It appears to be a
15 Hydro Mobile that's approximately 12 to
16 14 feet off the ground with one of the
17 towers leaning against the wall clearly
18 unbolted.

19 Q. Was this the position of the
20 platform of the Hydro Mobile at the time of
21 Mr. Bonnes' accident?

22 MS. AUMAND: Objection to form.

23 You can answer.

24 A. Yes.

25 Q. Was there anything that would

1 Moshier
2 protect a worker on this platform from
3 falling between the platform and the wall as
4 you see in this photograph?

5 MS. AUMAND: Objection to form.

6 You can answer.

7 MS. ONDROVIC: Objection.

8 A. Not during the erection process.

9 Q. Can the guardrails be placed on
10 that side of the platform between the work
11 surface of the platform and the space where
12 the wall is on the other side?

13 MS. AUMAND: Objection to form.

14 You can answer.

15 A. I don't believe so. I don't
16 believe there are any pockets to accept
17 railings on the inside of the Mobile, I
18 believe.

19 Q. Do you know any way to provide
20 safety protection for workers when they are
21 on a platform at that height on that edge of
22 the Hydro platform if there is no rail in
23 place?

24 MS. AUMAND: Objection to form.

25 MS. ONDROVIC: Objection.

1 Moshier

2 MS. AUMAND: Can I have that
3 question read back?

4 [Whereupon, at this time, the
5 requested portion of the record was read
6 by the court reporter.]

7 MS. AUMAND: As to his observation
8 he can answer.

9 A. Aside from tying off and making
10 some handmade system, which would not meet
11 any requirements, no.

12 Q. The D-rings you spoke about
13 earlier, would they be on that side of the
14 Hydro platform?

15 A. I think I observed them being on
16 the other side, the outside edge, not the
17 inside.

18 Q. Do you know if they were on the
19 inside as well?

20 A. I don't recall.

21 MR. SMILEY: Please mark this as,
22 Plaintiffs' Exhibit 1B. [Indicating.]

23 [Whereupon, at this time, the court
24 reporter marked the above-mentioned
25 photograph for identification as

1 Moshier

2 Plaintiffs' Exhibit 1B.]

3 Q. Mr. Mosher, we are now looking at
4 what has been marked as Plaintiffs'
5 Exhibit 1B for identification. Does that
6 also show the placement of the Hydro Mobile
7 and the tower of the Hydro Mobile at the time
8 of Mr. Bonnes' accident?

9 MS. AUMAND: Objection to form.

10 You can answer.

11 A. Yes.

12 Q. Did you take this photograph
13 yourself?

14 A. Yes.

15 Q. Was it taken on the date of the
16 accident?

17 A. Yes.

18 MS. SMILEY: Off the record.

19 [Discussion held off the record.]

20 MR. SMILEY: Let the record reflect
21 at the completion of this deposition I
22 will take all the marked exhibits, have
23 them all scanned and email them to
24 counsel for all parties so that we have
25 them all.

1 Moshier

2 MS. AUMAND: For the transcript
3 could we have a list of the exhibits
4 that were marked?

5 THE COURT REPORTER: Yes.

6 MR. SMILEY: I am going to show you
7 a set of photographs that we marked as
8 Plaintiffs' Exhibit 5 for
9 identification. I am representing to
10 you I believe these are photographs that
11 were taken by the police department. I
12 can't guaranty that, but that's my
13 belief.

14 [Mr. Smiley hands exhibit to the
15 Witness.]

16 MR. SMILEY: I ask you to take a
17 look at them.

18 [A brief recess was taken.]

19 Q. Have you ever seen those
20 photographs before?

21 A. I can't say. They all blend
22 together with mine.

23 Q. The photographs in Plaintiffs'
24 Exhibit 5 for identification that show what
25 appears to be a Hydro Mobile device with

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Mosher

towers does that show the Hydro Mobile device
that was involved in Mr. Bonnes' accident?

A. Yes.

Q. Is that in the same location
relative to the project site that it was at
the time of Mr. Bonnes' accident?

A. Yes.

Q. Is the platform in the same
location as it was at the time of Mr. Bonnes'
accident as depicted in this photograph?

THE WITNESS: The height?

MR. SMILEY: Yes.

A. No.

Q. How is it different?

A. It is lowered.

Q. Following the accident was the
platform of the Hydro Mobile lowered at some
point that day?

A. I believe it was that day.

Q. Who lowered it?

A. It would have been Joe. I don't
know how to do it.

Q. Did you ask him to lower it?

A. No.

1 Moshier

2 Q. Do you know how Joe got down to the
3 ground immediately upon the happening of
4 Mr. Bonnes' accident?

5 A. Yes. There is a hatch that goes to
6 a ladderway going down.

7 Q. So he did not need to lower the
8 platform?

9 A. No, sir.

10 Q. He could open the hatch and walk
11 down the ladder?

12 A. Yes.

13 Q. Did you generate an accident report
14 about the happening of this accident?

15 A. Yes.

16 MR. SMILEY: I show you Plaintiffs'
17 Exhibit 2 for identification.

18 [Mr. Smiley hands exhibit to the
19 Witness.]

20 Q. Is that the accident report you
21 filled out as a result of this accident?

22 A. Yes.

23 MR. SMILEY: I ask you to take a
24 moment and read through it. When you
25 are done reading through it let me know

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Mosher

if there is anything you believe needs
to be changed or modified in this
accident report or if it is accurate as
we are looking at it.

MS. AUMAND: Objection to form.

You can answer when you are ready.

[A brief recess was taken.]

THE WITNESS: Okay.

Q. It indicates in your description of
the accident in this report that they were at
approximately 16 feet; do you see that?

A. Yes.

Q. Earlier today you were talking
about 12 to 14 feet. In here you say 16
feet. As you sit here today and having
looked at this report what's your best
estimate of the height Mr. Bonnes fell from
at the time of his accident?

A. Between 12 and 16 feet. I didn't
put a tape on it.

Q. Was the platform in the same
location when you responded to Mr. Bonnes
following his fall as it was when you
observed him on it earlier that morning?

1 Moshier

2 A. I believe so.

3 Q. On your report where it says that
4 photographs were taken the box is checked
5 "yes;" do you see that?

6 A. Yes.

7 Q. Those are the photographs we
8 referenced earlier that were marked as
9 Plaintiffs' Exhibit 1?

10 A. Yes.

11 Q. Other than this form, did you fill
12 out any paperwork specifically in connection
13 with the happening of this accident?

14 A. Not that I can recall. I don't
15 believe so.

16 MR. SMILEY: I would like you to
17 look at Plaintiffs' Exhibit 3 for
18 identification.

19 [Mr. Smiley hands exhibit to the
20 Witness.]

21 MR. SMILEY: Take a moment to look
22 at that and tell me if you ever saw it
23 before.

24 [A brief recess was taken.]

25 THE WITNESS: Yes.

1 Moshier

2 Q. What is it that we are looking at?

3 A. An account of what happened that
4 day by Joe Fregosi.

5 A. Is this a statement from Joe
6 Fregosi that was provided to you in your
7 capacity as superintendent of this site?

8 A. Yes.

9 Q. Did you ask him to write out a
10 statement as to what happened and give it to
11 you?

12 A. I don't recall.

13 Q. Do you know how this came to be?

14 A. I can't really remember. I wish I
15 could. I'm sorry.

16 Q. Did you review this statement when
17 Mr. Fregosi provided it to you?

18 A. I don't recall. I would assume I
19 did.

20 Q. Is this something you keep as part
21 of the job file?

22 A. Probably.

23 MR. SMILEY: I ask you to look at
24 Plaintiffs' Exhibit 4 for
25 identification.

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Mosher

[Mr. Smiley hands exhibit to the
Witness.]

[A brief recess was taken.]

Q. Have you seen that before?

A. Yes.

Q. When did you see it prior to today?

A. I don't remember when it was.
Somewhere after the accident.

Q. What is your understanding of what
this is that we are looking at?

A. Just a small statement from Joe
about what happened.

Q. To your knowledge is this from Joe,
Junior or Joe, Senior?

A. I believe it was from Joe, Senior.

Q. Did you request an accident report
from Fregosi Landscaping as part of your
investigation of the happening of this
accident?

A. Yes.

Q. Is this what Fregosi provided to
you?

A. Yes.

Q. Other than Plaintiffs' Exhibit 3

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Mosher

and Plaintiffs' Exhibit 4 for identification,
did you receive any written statements or
documents submitted by Fregosi Landscaping
specifically in connection with this
accident?

A. Not that I'm aware of, no. I don't
believe so. Certainly nothing I can put my
finger on.

Q. Did the police respond to the
scene?

A. Yes.

Q. Did you speak to the police?

A. Yes.

Q. Was it state police?

A. No. I think it was Brewster PD.

Q. When did they respond to the scene?

A. Very quickly.

Q. Did you speak to them that day?

A. Yes.

Q. Did you give a written statement to
them?

A. No, I did not.

Q. Can you tell me in sum and
substance what was asked of you and what you

1 Moshier

2 said to the police?

3 MS. AUMAND: Objection to form.

4 You can answer.

5 A. Basically, they asked what happened
6 and that was about the extent of it, just a
7 short brief statement. I hate to say it, but
8 it's kind of self-explanatory.

9 Q. Did you observe the police taking
10 photographs?

11 A. No. They might have, but I don't
12 recall that. They could very well have.
13 There were a lot of things short circuiting
14 that morning. That's all I got to tell you.

15 Q. Did you provide any documents to
16 the police?

17 A. No.

18 Q. Do you know if the police
19 interviewed anybody at the scene of the
20 accident?

21 A. I don't know. They probably asked
22 a couple of the guys that were milling
23 around.

24 Q. Did you have any further
25 communication with the police department

1 Moshier

2 after that morning in connection with the
3 happening of this accident?

4 A. I don't think so. They might have
5 stopped over and asked to talk. They were
6 pretty friendly with us.

7 Q. Do you know who the police officers
8 were that responded?

9 A. Just by sight.

10 Q. Did anyone from OSHA respond to the
11 project site as a result of this accident?

12 A. Yes.

13 Q. How many individuals on behalf of
14 OSHA came to the project site?

15 A. I believe it was two.

16 Q. When did they come to the site?

17 A. I can't remember if it was the same
18 day or the next day. I truly can't remember.

19 Q. If I were to tell you documents
20 from OSHA indicate the following day on
21 October 5, 2017 they came to the site would
22 that refresh your recollection?

23 A. Yeah, as much as it can.

24 MR. SMILEY: Please tell me what
25 you recall about meeting with OSHA at

1 Moshier

2 the project site.

3 MS. AUMAND: Objection to form.

4 You can answer.

5 THE WITNESS: They asked me what I
6 witnessed and what I saw. They took
7 some photographs. They looked around.
8 That was about it. I really didn't have
9 much to give them. I wasn't there.

10 Q. Did Joe Fregosi, Senior come to the
11 job site that day when OSHA was there?

12 A. I don't recall seeing Senior there.

13 Q. Do you ever recall meeting with
14 representatives of OSHA while Joe Fregosi,
15 Senior was in attendance?

16 A. I don't recall. They might very
17 well have, but I don't remember.

18 Q. In a document that I have from OSHA
19 it indicates interviews were conducted at the
20 site trailer with BBL Constructions Services
21 and Fregosi Landscaping; do you recall that?

22 A. Now I do.

23 MR. SMILEY: Tell me what you
24 recall about that.

25 THE WITNESS: That's all I

1 Moshier

2 remember.

3 Q. Was Joe, Senior there at that time?

4 A. I can't remember. I really can't.

5 I want to say yes, but I don't recall.

6 Q. It indicates in the OSHA documents
7 that the general contractor, BBL Construction
8 Services, provided information that they
9 obtained during their preliminary
10 investigation. Do you recall providing any
11 information to OSHA?

12 A. The only thing I remember would be
13 a statement. That would be it that I
14 remember.

15 Q. Did representatives from OSHA
16 indicate to you they believed there were any
17 safety violations in connection with this
18 accident?

19 MS. AUMAND: Objection to form.

20 You can answer.

21 MS. ONDROVIC: Objection.

22 A. No.

23 Q. Did they ask you any specific
24 questions about what, if any, safety devices
25 were in place at the time of the accident?

1 Moshier

2 MS. AUMAND: Objection to form.

3 You can answer.

4 A. I don't really recall, but I would
5 assume they probably did.

6 Q. Do you know if OSHA issued any
7 citations to Fregosi Landscaping in
8 connection with the happening of this
9 accident?

10 MS. ONDROVIC: Objection.

11 MS. AUMAND: Objection to form.

12 You can answer.

13 A. I do not know.

14 Q. Did you ever attend any conferences
15 in connection with any OSHA investigations
16 into the happening of this accident?

17 A. No.

18 Q. Following that October 5th meeting
19 at the project site with OSHA did you have
20 any communication with representatives of
21 OSHA thereafter?

22 A. I don't think so.

23 Q. Did any entities investigate the
24 happening of this accident other than the
25 Brewster police and OSHA to your knowledge?

1 Moshier

2 A. Not to my knowledge.

3 Q. Other than yourself on behalf of
4 BBL, the police and OSHA, are you aware of
5 anyone investigating any of the circumstances
6 in connection with the happening of
7 Mr. Bonnes' accident?

8 A. I'm not aware of any.

9 Q. Since October 5th have you had any
10 conversations with anyone from Fregosi about
11 the happening of this accident?

12 A. Casually like guy to guy kind of
13 thing most likely. I mean they needed to
14 finish our project. So the guys were back.
15 So I'm sure we shared the same disbelief as
16 what we're going through right now but
17 nothing more than that.

18 Q. Did you have any conversations with
19 Joe Fregosi, Senior or Joe Fregosi, Junior
20 about implementing safety features, such as
21 guardrails on the Hydro Mobile device, for
22 the work proceeding forward?

23 MS. ONDROVIC: Objection.

24 MS. AUMAND: Objection to form.

25 You can answer.

1 Moshier

2 A. No.

3 Q. Is there a reason why you did not
4 speak to them about that?

5 MS. AUMAND: Objection to form.

6 You can answer.

7 A. No particular reason. It seemed --
8 I guess it seemed a little irrelevant. It
9 seemed like you do the right thing and you
10 try to do something more now that you have
11 something like this in your life. I don't
12 know that there's anything I'm going to be
13 able to teach than what they've already
14 learned.

15 Q. I know you previously testified
16 that moving forward you are insisting that
17 the guardrails be put up during the erection
18 phase of the Hydro Mobile; is that correct?

19 MS. AUMAND: Objection to form.

20 You can answer.

21 A. Yes.

22 Q. Did you have a conversation about
23 that with anyone at Fregosi?

24 MS. AUMAND: Objection to form.

25 You can answer.

1 Moshier

2 A. Probably not.

3 Q. Is that something you plan to have
4 if you were to see them on site?

5 MS. ONDROVIC: Objection.

6 MS. AUMAND: Objection to form.

7 You can answer.

8 THE WITNESS: With Fregosi?

9 MR. SMILEY: Yes.

10 A. Certainly. It will be instituted
11 the rest of my life.

12 Q. Did this project complete already?

13 A. Yes.

14 Q. When did it complete?

15 A. November of that same year I
16 believe it was. We were, pretty much, at the
17 end. November or December thereabouts.

18 Q. Going back for a moment. You
19 mentioned sometimes items needed to be
20 secured on the platform of the Hydro Mobile;
21 is that correct?

22 A. Yeah, they could. Sure.

23 Q. How would items be secured?

24 A. Well, the old-fashioned way. You
25 put a tarp on top of it and you weigh it down

1 Moshier
2 with a couple of bricks or whatever you are
3 working with. That's about it.

4 Q. For what reason would you want to
5 secure materials or items on the Hydro Mobile
6 platform?

7 A. It might not be necessary to
8 secure-secure. That could have been the
9 wrong word. More like if you have dry mortar
10 and you don't want it to get wet or your
11 brick you don't want to get wet. You don't
12 want it to get wet in the evening time
13 because it's harder to lay. So you want to
14 keep it as dry as possible. So just covering
15 it is what I meant, not so much securing it.

16 Q. You are not referring to any
17 concerns about materials falling off the
18 platform; you are talking about just covering
19 materials?

20 A. Covering materials primarily. I
21 mean you're always worried about something
22 falling off but, you know, it's part of good
23 housekeeping.

24 Q. What housekeeping measures are
25 taken to keep items from falling off the

1 Moshier

2 Hydro Mobile scaffold?

3 A. Keep them down and stacked
4 correctly is really the biggest thing you
5 have to do.

6 Q. Were you involved in signing any
7 documents or contracts on behalf of BBL?

8 A. No.

9 Q. Did you have any employees at the
10 project site from BBL around the time of this
11 accident?

12 A. No, just me. One man. One job.

13 Q. Do you know how many employees
14 Fregosi employed at the time of the accident?

15 A. I don't. Ten -- twelve, maybe.

16 Q. Were Keith Bonnes and Joe Fregosi,
17 Junior the only two Fregosi representatives
18 at the job site on the date of the accident?

19 A. Yes.

20 Q. Are you familiar with the term
21 within the industry called "competent
22 person"?

23 A. Yes.

24 Q. What does that mean?

25 A. The competent person is the person

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Mosher

that oversees all the safety of a particular item, especially when it comes to staging and for mobiles and that type of thing. They're the guy that's going to oversee everything and be responsible.

Q. Did Fregosi have a competent person at the job site on October 4, 2017?

A. Yes.

Q. Who was it?

A. It was Keith.

Q. What is your understanding of how he was designated as the competent person?

A. Besides him telling me, it was Joe, Senior.

Q. To your knowledge did Keith Bonnes have more experience than Joe, Junior?

MS. AUMAND: Objection to form.

You can answer.

MS. ONDROVIC: Objection.

A. Yes, without a shadow of a doubt.

Q. What's your basis for saying that?

A. Age.

MR. SMILEY: I thank you for your time today. Again, my condolences for

1 Moshier

2 the loss of your friend.

3 THE WITNESS: Thank you.

4 EXAMINATION BY MS. ONDROVIC:

5 MS. ONDROVIC: Good afternoon,
6 Mr. Moshier. My name is Karen Ondrovic.
7 I represent Fregosi Landscaping in this
8 litigation. My condolences. I am sorry
9 we have to put you through this. I
10 don't have too many questions. Same
11 instructions. If I ask you anything
12 that you do not understand please let me
13 know, and I will rephrase it for you.

14 THE WITNESS: Sure.

15 Q. You testified earlier in response
16 to questioning by Plaintiffs' attorney that
17 you held a safety meeting about tie off or
18 die off I think was the name of that meeting
19 after this accident. Do you recall that
20 testimony?

21 A. Yes.

22 Q. The instructions and the
23 information that you were providing at that
24 safety meeting, was that in relation to Hydro
25 Mobile scaffolds?

1 Moshier

2 A. I believe it was anything of any
3 height. Nothing in particular.

4 Q. With regard to tying off are you
5 referring to utilizing a harness and a
6 lanyard?

7 A. That's correct.

8 Q. As part of your OSHA 30 training
9 did you have any training in the use of
10 safety devices as it pertains to a Hydro
11 Mobile scaffold?

12 A. No.

13 Q. Am I correct you did not take the
14 Hydro Mobile scaffold course that Mr. Bonnes
15 took?

16 A. That is correct.

17 Q. Do you know when in relation to
18 this project Mr. Bonnes had taken that Hydro
19 Mobile scaffold course?

20 Q. I'm not aware of when his was done,
21 but it was done prior to when our project
22 started.

23 Q. At this Brewster Honda project was
24 it only Joe Fregosi, Junior who received the
25 training, or were there other Fregosi

1 Moshier

2 employees?

3 A. There was at least one other one.
4 I can't think of his name, but there might
5 have been two. There certainly was one other
6 one.

7 Q. Do you have an understanding as to
8 whether or not that training included
9 instructions on the erection of the Hydro
10 Mobile scaffold?

11 A. It was certainly on erection.

12 Q. Was it also on the use of it?

13 A. And the use of it.

14 Q. Were you present for any portion of
15 that training?

16 A. Probably inadvertently.

17 Q. Were you ever present when there
18 was any training with regard to the use, if
19 any, of safety devices with the Hydro Mobile?

20 A. No.

21 Q. Am I correct that you considered
22 the railings that go around the three sides
23 of the Hydro Mobile scaffold to be safety
24 devices?

25 A. Yes.

1 Moshier

2 Q. The fourth side of the Hydro Mobile
3 device would be the side that faces the
4 structure or the building; correct?

5 A. Correct.

6 Q. That side, as I understand your
7 testimony, would not have a guardrail in
8 place at any point in time during the use or
9 construction; is that correct?

10 A. Correct.

11 Q. Why is that?

12 A. Because your foot planks would be
13 down on the bottom section and you'd be
14 within six inches away from the wall. So you
15 can't fall inside. Both ends will have a
16 guardrail -- on both ends. So you can't
17 Peter Pan off either side. That would be it.

18 Q. What about, for lack of a better
19 word, the long side of the Hydro Mobile
20 scaffold? Did that have a guardrail? In
21 other words, if there were four sides to the
22 Hydro Mobile -- there are the two sides,
23 right and left and the front side and the
24 side that I will call the back that faces the
25 building. Which of those sides would have a

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Mosher

guardrail in place when the Hydro Mobile
scaffold was completely erected?

A. All three sides.

Q. So right, left and the front?

A. And the back.

Q. We will call it the back. That was
the side that faced the street as you
referred to earlier?

A. No.

Q. Where did that side face at the
Brewster site?

A. That would be facing north. It was
oriented east and west.

Q. The side that was closest to the
building, even upon erection -- complete
erection of the Hydro Mobile, would that side
have a guardrail of any kind?

THE WITNESS: Which one is that?

MS. ONDROVIC: The side facing the
building.

A. No.

Q. When the Hydro Mobile scaffold was
initially put in place in the location where
this accident occurred were there any

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Mosher

instructions given to Fregosi by the
manufacturer as to where you set that up in
relation to the building, if you know?

MS. AUMAND: Objection to form.

You can answer.

THE WITNESS: So how far away?

MS. ONDROVIC: Yes.

A. Yes.

Q. What were the instructions about
how far away from the structure it should be
placed?

A. Well, there's a tolerance because
your planks are a certain size. You have two
foot planks that have to go down, and you
have the end of the foot plank rest. So I
don't know what that dimension is, then you
need to keep that six inches away from the
wall. So I'm going to put -- well, you don't
want me to guess.

Q. Can you give me an approximation as
to how far away from the building at Lia
Brewster this structure was built?

A. Approximately 28 to 30 inches.

Q. Is that the distance the main

1 Moshier

2 platform was from the building or are you
3 including planks?

4 A. This would be the main platform
5 where everything is on top. The foot planks
6 are about 28 to 30 inches away.

7 Q. Just so the record is clear, can
8 you explain to me the process of -- after the
9 platform is fully installed at that point in
10 time planks and outriggers or -- I don't know
11 what you call them -- they are put in place
12 to get closer to the building; correct?

13 A. Correct.

14 Q. Can you explain that process for
15 me?

16 A. Once the platform is completely
17 erected and you have your towers going up you
18 lower the whole platform again, then you put
19 on -- you extend your outriggers. They're
20 built into the Hydro. You pull them out.
21 You tighten up the bolts and lay your planks
22 on top, install your two end brackets and
23 you're ready to go.

24 Q. Is it your understanding the
25 process of installing the outriggers and the

1 Moshier

2 planks is done only after the entire Hydro
3 Mobile scaffold and platform is completely
4 built?

5 A. Correct.

6 Q. Why is that?

7 A. That's good practice.

8 Q. Is there a reason that the planks
9 and outriggers are not installed as the tower
10 is built upwards?

11 A. Yes, there is. If the tower is
12 leaning at all you will start scratching the
13 building or you will be too close.

14 Q. The 28 to 30 inches you told me
15 about earlier, that would be the ultimate
16 distance from the end of the plank and
17 outrigger to the building; correct?

18 A. That's my approximation.

19 Q. Your understanding then when the
20 masons were actually installing the brick
21 facade they would be working off of those
22 planks and outriggers; correct?

23 A. Yes.

24 Q. When Mr. Bonnes' accident occurred
25 were there any outriggers or planks installed

1 Moshier

2 on that Hydro Mobile scaffold?

3 A. I don't recall. My mind is a
4 little fuzzy on that. I thought there was
5 one plank sitting out there, but I'm not 100
6 percent sure. I'm starting to question
7 myself about that a little bit.

8 Q. I am going to show you what was
9 previously marked as Plaintiffs' Exhibit 1B,
10 which I think you previously said was the way
11 the Hydro Mobile looked including the tipped
12 tower after the accident; correct?

13 [Ms. Ondrovic hands exhibit to the
14 Witness.]

15 A. Correct.

16 Q. Does that photograph show an
17 outrigger and plank in place?

18 A. No.

19 Q. What we see as we're looking up is
20 simply what you have called the platform?

21 A. Right.

22 Q. The basic platform itself, can you
23 tell me the dimensions of it?

24 A. No, I cannot. I can guess.

25 MS. ONDROVIC: I do not want you to

1 Moshier

2 guess.

3 Q. At the time Mr. Bonnes' accident
4 occurred do you know the distance between the
5 ends of that platform and the building
6 structure itself?

7 THE WITNESS: The end of the
8 platform to the wall?

9 MS. ONDROVIC: Yes.

10 A. It was probably -- if my 28 to 30
11 inches is correct, that would give you
12 another six inches, because there's six
13 inches back to the foil base. You have
14 two-inch dead air space, then you have a
15 brick. So that would account for six more
16 inches. That puts you at about three feet to
17 the foil face.

18 Q. To your knowledge was the distance
19 between the edge of the platform and the
20 building structure at the time of Mr. Bonnes'
21 accident uniform throughout the entirety of
22 that Hydro Mobile scaffold?

23 A. I believe so, yes.

24 Q. That building in that particular
25 area was a flat surface?

1 Moshier

2 A. Yes.

3 Q. There were no jut-outs or anything?

4 A. No.

5 Q. As part of your OSHA 30 is there
6 training on the use of Hydro Mobile
7 scaffolds?

8 A. No. It's very specialized.

9 Q. Have you ever used a Hydro Mobile
10 scaffold?

11 THE WITNESS: Personally used it or
12 had it on my job?

13 MS. ONDROVIC: Yes.

14 A. I never personally used it.

15 Q. Did Fregosi Landscaping utilize a
16 Hydro Mobile scaffold on the job across the
17 street?

18 A. No.

19 Q. Was this the first time, as far as
20 you know, at the Honda project that Fregosi
21 used a Hydro Mobile?

22 A. I don't know.

23 Q. To your knowledge was it a
24 requirement in the contract that they use a
25 Hydro Mobile scaffold at this location?

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Mosher

MS. AUMAND: Objection to form.

You can answer.

A. Not at all. It was way better.

Q. In your mind the Hydro Mobile scaffold is a safer method of scaffold?

A. Yes, very much so.

Q. At any point in time from when Mr. Bonnes had his accident to the point where you took photographs after his accident were any changes or additions or modifications made to that Hydro Mobile scaffold in the interim?

THE WITNESS: I don't know what you mean.

Q. In other words, did Joe Fregosi, Junior and other employees continue to erect that Hydro Mobile scaffold?

THE WITNESS: That day or later on?

MS. ONDROVIC: That day.

A. I think Joe put a couple of things on there because that's what confuses me every time we talk about that plank because there's clearly another photo in that same timeframe -- there's a plank there -- and

1 Moshier
2 that's where it throws me off. They would be
3 the only ones that would be on that. No
4 other trades are allowed on it.

5 Q. You talked earlier about guardrails
6 that would have been ultimately constructed
7 on the two sides and the back of the Hydro
8 Mobile. Can you describe what those
9 guardrails looked like?

10 A. Made of metal, welded together and
11 they are able to take a force of 500 pounds.

12 Q. What is the height of those
13 guardrails?

14 A. Four feet. There's an intermediate
15 as well.

16 Q. Other than the day of the training
17 of Joe Fregosi, Junior and whoever else was
18 trained from Fregosi, was a representative of
19 the scaffold erection company or the scaffold
20 company itself ever present on your job site?

21 THE WITNESS: I missed a part. In
22 general or on that day?

23 MS. ONDROVIC: At any point in
24 time.

25 Q. In addition to the day they did the

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Mosher

training was any representative from the
scaffold company present at other times?

A. I want to say yes.

Q. Do you know the name of the
company?

A. I do not.

Q. Do you know the name of the person
who was at the site?

A. I don't. I'd recognize it, but I
don't have anything to do with it. It's just
a rental company.

Q. Do you know who gave the training
for the erection and use, whether it was the
rental company or the manufacturer?

A. I believe it was the rental
company. It was their rep.

Q. At any point in time after the
initial instructions about how to erect and
use the Hydro Mobile scaffold can you think
of any specific instances where you saw that
scaffold company back on site?

A. No, I can't.

Q. Do you know whether they were on
site for a fact?

1 Moshier

2 A. I want to say they were but for no
3 particular reason.

4 Q. If they were on site, the scaffold
5 rent company, would you have noted it on your
6 daily log?

7 A. Probably not.

8 Q. As you sit here today do you have
9 any recollection as to why they were back on
10 site?

11 A. I don't.

12 Q. Do you know whether the scaffold
13 company ever came back to inspect to make
14 certain that the scaffold was being used
15 properly?

16 A. I don't know.

17 MS. ONDROVIC: Please mark this as
18 Plaintiffs' Exhibit 1C.

19 [Whereupon, at this time, the court
20 reporter marked the above-mentioned
21 photograph for identification as
22 Plaintiffs' Exhibit 1C.]

23 MS. ONDROVIC: Mr. Moshier, I am
24 showing you a photograph that has been
25 marked as Plaintiffs Exhibit 1C for

1 Moshier

2 identification.

3 [Ms. Ondrovic hands exhibit to the
4 Witness.]

5 Q. Do you recognize that photograph?

6 A. Yes.

7 Q. That's included in the packet of
8 photographs, just for the record, that you
9 had previously taken at the job site;
10 correct?

11 A. Correct.

12 Q. Is this a photograph that was taken
13 on the date of the accident?

14 A. I don't remember.

15 Q. Previously you were able to
16 identify for Mr. Smiley photographs that were
17 taken on the date of the accident; correct?

18 A. Yes. Some of them I could. This
19 one I'm just fuzzy on this timeframe. This
20 is what's screwing me up about that plank. I
21 don't really remember. If I said something
22 different I might have been wrong.

23 Q. There is no date stamp on the
24 actual photographs; correct?

25 A. Right.

1 Moshier

2 Q. I do not see a date stamp. I'm not
3 missing it?

4 A. No.

5 Q. How did you take these photographs,
6 with a cell phone?

7 A. No. I probably took it with my
8 iPad.

9 Q. Do you still have the actual
10 photographs on your iPad?

11 A. I probably do. Actually, I don't
12 because this goes --

13 Q. Into your system?

14 A. Right.

15 Q. The photograph you are looking at
16 that we marked as Plaintiffs' Exhibit 1C, do
17 you know whether that photograph was taken
18 before the date of the accident, on the date
19 of the accident or after the date of the
20 accident?

21 A. It could have been later on that
22 day or after the accident. It wasn't prior
23 to the accident. This was after. This was
24 at that same location.

25 Q. In this particular photograph do

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Mosher

you see there is at least one set of
outriggers and one plank in place?

A. I do.

Q. Earlier when you said you were
confused about whether there were outriggers
installed is that because of this photograph?

A. It is.

MR. ONDROVIC: I am going to show
you what was previously marked as
Plaintiffs' Exhibit 5, which are
photographs Mr. Smiley believes were
taken by the police.

[Ms. Ondrovic hands exhibit to the
Witness.]

Q. Were the police there only on the
day of the accident, or did they come back on
other occasions to perform any investigations
with regard to Mr. Bonnes' accident?

A. I don't remember anytime they came
back.

MS. ONDROVIC: Please mark these
photographs as Plaintiffs' Exhibits 5A,
5B, 5C, 5D, 5E and 5F. [Indicating.]

[Whereupon, at this time, the court

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Mosher
reporter marked the above-mentioned
photographs for identification as
Plaintiffs' Exhibits 5A, 5B, 5C, 5D, 5E
and 5F.]

MS. ONDROVIC: I show you
photographs that we have taken out of
Plaintiffs' Exhibit 5, which Mr. Smiley
believes were taken by the police. We
have marked them as Plaintiffs'
Exhibits 5A through 5F.

[Ms. Ondrovic hands exhibits to the
Witness.]

Q. Let's start with Plaintiffs'
Exhibit 5A. Do you recognize it to be the
area where Mr. Bonnes was working at the time
of his fall?

A. Yes.

Q. Is that the Hydro Mobile scaffold
we have been talking about?

A. Yes.

Q. Is that the way the Hydro Mobile
scaffold looked on the date of this accident?

A. No.

Q. How is it different?

1 Moshier

2 A. It's lowered.

3 Q. Other than being lowered, is that,
4 generally, the stage, for lack of a better
5 word, the Hydro Mobile scaffold was in at the
6 time of this accident?

7 A. I don't believe so.

8 Q. What is a different about it?

9 A. The guardrail is on.

10 Q. So the white and yellow portions --

11 A. Silver.

12 Q. -- silver and yellow portions of
13 the photograph depicting guardrails?

14 A. Yes.

15 Q. Your testimony is those guardrails
16 were not on at the time of his accident?

17 A. Right.

18 Q. Do you know when those guardrails
19 were installed?

20 A. It must have been when they were
21 down.

22 Q. When what was down?

23 A. When this was brought down.

24 Q. How long after the accident were
25 the police there?

1 Moshier

2 A. They were two seconds away.

3 Q. Minutes?

4 A. Yes.

5 Q. Were the police already there when
6 you arrived?

7 A. I think they were there.

8 Q. Did the police remain at the scene
9 when Mr. Bonnes was taken in the ambulance?

10 A. I don't recall. Probably so, but I
11 don't recall.

12 Q. Do you remember whether the police
13 left with the ambulance or they remained?

14 A. I think they remained.

15 Q. Do you know how long they remained?

16 A. No.

17 Q. When you learned of the accident
18 and came to the job site how long did you
19 remain at the job site after Mr. Bonnes had
20 fallen?

21 A. All day, but I probably went back
22 to my trailer to start the paperwork but all
23 day.

24 Q. Do you know how long immediately
25 after you learned of the accident and went to

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Mosher

the site you remained at that point in time
before leaving for the first time?

A. No. I don't recall.

Q. By the time you left the job site
the ambulance had left and police had left;
is that what you are telling me?

A. Yeah. If that was the question
originally I didn't get what you were getting
at. When everybody was gone. I wouldn't
have left.

Q. While you were present at the job
site after Mr. Bonnes fell did you observe
anyone from the job site -- Fregosi or
otherwise -- installing the guardrails that
are depicted in Plaintiffs' Exhibit 5A?

A. No.

Q. Do you know when they were
installed?

A. I do not.

Q. Is it your testimony that none of
the guardrails that are depicted in all of
those photographs in front of you --
Plaintiffs' Exhibits 5A through 5F -- were
installed and in place at the time of

1 Moshier

2 Mr. Bonnes' accident?

3 A. To my knowledge I don't believe
4 they were. This is all recollection. That's
5 that.

6 Q. If they were not there when you
7 arrived at --

8 A. I don't believe they were there.

9 MS. ONDROVIC: Let me finish my
10 question.

11 Q. When you arrived first thing that
12 morning at around 7:00 a.m. do you have a
13 specific recollection of whether or not that
14 Hydro Mobile scaffold had those guardrails in
15 place at that time?

16 A. It is my recollection a 7:00 a.m.
17 there was nothing on the top of that staging.
18 The only thing I said was that that extra
19 pick plank that was out there, that foot
20 plank, I could not recall whether that was
21 there or not. That's because I got screwed
22 up because of the pictures.

23 Q. Between the time you first came to
24 the job site around 7:00 and you observed Joe
25 and Keith for around ten to fourteen minutes

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Mosher

you then went to your trailer; correct?

A. Yes.

Q. How long were you at your trailer?
Was it until you were notified of the
accident?

A. Yes.

Q. What time did the accident occur?

A. I put down I think it was 7:35,
somewhere right around there. So prior to
that it was probably right around that
time -- 25 -- 28, somewhere around there.

Q. Between the time you were at your
trailer and the point you came back to the
accident site do you know whether or not the
guardrails that are shown in those
photographs were installed?

A. No. They couldn't have been.

Q. Why is that?

A. Because I don't believe when I came
back they were on when it was in the air.

Q. So is it your testimony those
guardrails were installed after Mr. Bonnes'
accident?

A. Yes.

1 Moshier

2 Q. What's that based upon?

3 A. Just my recollection of what
4 happened that day.

5 Q. You do not recall seeing anyone
6 install them?

7 A. No.

8 Q. You agree with me those photographs
9 show guardrails on three sides of the Hydro
10 Mobile scaffold; correct?

11 A. Correct.

12 Q. We believe those photographs were
13 taken by the police. Are you aware of who
14 took those photographs?

15 A. No but I hear it's the police.

16 Q. You did not take those, the ones
17 you are looking at in front of you,
18 Plaintiffs' Exhibits 5A through 5F?

19 A. I could have because they all look
20 the same. If I'm being told they're not,
21 they're not. They all look the same.

22 Q. There is no guardrail in place on
23 the side of the Hydro Mobile scaffold in any
24 of those photographs that is closest to the
25 building structure; am I correct?

1 Moshier

2 A. That's correct.

3 Q. At any point in time would
4 guardrails like the ones shown in those
5 photographs, Plaintiffs' Exhibits 5A through
6 5F, be installed on that side of the
7 building?

8 A. No.

9 Q. What is your understanding about
10 which side of the scaffold Mr. Bonnes fell
11 off of?

12 A. The side that would never have a
13 guardrail between the building and the Hydro
14 Mobile.

15 Q. The things you called D-rings
16 before; do you recall that?

17 A. Yes.

18 Q. Can you describe what those are for
19 me?

20 A. They are a metal letter "D" shaped
21 item that flips back and forth that has the
22 ability to be able to be tied to or clipped
23 to.

24 Q. As you sit here today do you have
25 any knowledge as to whether or not the

1 Moshier

2 D-rings you recall observing on the back side
3 of the Hydro Mobile scaffold that we are
4 talking about today were specifically for
5 tying off the scaffold --

6 A. I don't know.

7 Q. -- tying off harnesses?

8 A. I don't know. I just can't say.

9 Q. Were you present at the job site
10 when this Hydro Mobile scaffold had been
11 erected in other locations of the building?

12 A. Yes.

13 Q. When it was erected in other
14 locations was that, generally, done by Joe,
15 Junior and Keith Bonnes?

16 A. Among other ones, yeah. Keith's
17 brother. There's a few other ones that had
18 the ability. You can have other people
19 working on them as long as you have a
20 certified guy working with you.

21 Q. Keith's brother was who? What is
22 his name?

23 A. I can't remember.

24 Q. Was he an employee of Fregosi?

25 A. Yes.

1 Moshier

2 Q. It is your understanding Keith
3 Bonnes was the competent person for this job?

4 A. Yes.

5 Q. When you observed the Hydro Mobile
6 scaffold being erected in other locations at
7 the Lia Brewster site did you observe any
8 Fregosi employees wearing a harness and
9 lanyard?

10 A. No.

11 Q. When it was erected in other areas
12 did you ever observe any portion of the
13 guardrails being installed before the actual
14 structure itself was complete?

15 A. I can't say. It might have been a
16 mix of both.

17 Q. You testified earlier about the use
18 of harnesses and lanyards when erecting a
19 scaffold. Based upon your OSHA training is
20 there a difference in the use of harnesses
21 and lanyards for the erection process versus
22 the use of the scaffold?

23 MS. AUMAND: Objection to form.

24 You can answer.

25 A. During the erection process you

1 Moshier
2 don't have to be tied off. There's a lot of
3 safety precautions that kind of go out the
4 window because it makes it more dangerous
5 than actually doing the job. So it's a
6 different animal altogether.

7 Q. Is that an OSHA training piece of
8 information?

9 A. That's correct.

10 Q. In your capacity as superintendent
11 did you have any hard and fast rules for the
12 use of harnesses and lanyards during the
13 erection process of a scaffold?

14 MS. AUMAND: Objection to form.

15 You can answer.

16 A. No.

17 Q. If I use the word "discretionary"
18 would that be an appropriate way to describe
19 whether a harness and lanyard was required
20 during the erection process?

21 MS. AUMAND: Objection to form.

22 You can answer.

23 A. That's probably not a bad word.

24 Q. Do you have any specific training
25 with regard to whether or not a harness and

1 Moshier

2 lanyard is necessary when constructing a
3 Hydro Mobile scaffold?

4 A. I do not.

5 Q. Do you know whether Keith Bonnes or
6 Joe Fregosi, Junior or any of the people who
7 were trained by the scaffold rental company
8 were instructed as to whether they needed to
9 use a harness and lanyard or any other safety
10 device when erecting the scaffold?

11 A. I wouldn't know.

12 Q. Did you have any conversations
13 after Mr. Bonnes' accident with anyone about
14 that issue, whether there had been training
15 on that?

16 A. No, not to my recollection. There
17 wouldn't be any need to because what we were
18 doing was perfectly normal. It's been done
19 this way forever. There's nothing new.

20 Q. By that you mean not using
21 harnesses was normal when erecting?

22 A. Yeah, because it is not required.

23 Q. Previously we had spoken about
24 this, but I do not think the photograph was
25 marked. Plaintiffs' Exhibit 5C, do you see

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Mosher
those marks in the insulation?
A. Yes.
Q. Is that the marks you believe were
caused by the tower falling against it?
A. Yes.
MS. ONDROVIC: That is all I have.
Thank you.

[Time Noted: 12:30 p.m.]

ARTHUR JAMES MOSHER

Subscribed and sworn to
before me this day
of 2019.

Notary Public

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CERTIFICATION

I, Kathleen A. Mancuso, a Notary Public
for and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me; and
that the within transcript is a true record
of the testimony given by said witness.

I further certify that I am not related
to any of the parties to this action by blood
or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 25th day of July, 2019.

A handwritten signature in cursive script, reading "Kathleen A. Mancuso", written over a horizontal line.

KATHLEEN A. MANCUSO

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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ALEXA BONNES and ARIEL BONNES, as
Co-Administrators of the Estate of KEITH P.
BONNES, Deceased,

Plaintiffs,

- against - Index No. 60747/2018

LIA BREWSTER REALTY, LLC and BBL CONSTRUCTION
SERVICES, LLC d/b/a BBL ALBANY GROUP V.,

Defendants.

-----x

LIA BREWSTER REALTY, LLC and BBL CONSTRUCTION
SERVICES, LLC d/b/a BBL ALBANY GROUP V.,

Third-party Plaintiffs,

- against -

FREGOSI LANDSCAPING, INC.,

Third-Party Defendant.

-----x

September 25, 2019

11:20 a.m.

EXAMINATION BEFORE TRIAL of JOSEPH FREGOSI, a
witness on behalf of the Third-Party
Defendant herein, taken pursuant to Order, and
held at the offices of Dietz Reporting, 50 Main
Street, White Plains, New York, before April
Pearl, a Court Reporter and Notary Public of the
State of New York.

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1 IT IS HEREBY STIPULATED by and between
2 the attorneys for the respective parties hereto,
3 that: All rights provided by the C.P.L.R., and
4 Part 221 of the Uniform Rules for the Conduct of
5 Depositions, including the right to object to any
6 question, except as to form, or to move to strike
7 any testimony at this examination is reserved; and
8 in addition, the failure to object to any question
9 or to move to strike any testimony at this
10 examination shall not be a bar or waiver to make
11 such motion at, and is reserved to, the trial of
12 this action. This deposition may be sworn to by
13 the witness being examined before a Notary Public
14 other than the Notary Public before whom this
15 examination was begun, but the failure to do so or
16 to return the original of this deposition to
17 counsel shall not be deemed a waiver of the rights
18 provided by Rules 3116 of the C.P.L.R., and shall
19 be controlled thereby. The filing of the original
20 of this deposition is waived.

21 IT IS FURTHER STIPULATED, that a copy
22 of this examination shall be furnished to the
23 attorney for the witness being examined without
24 charge.

25

1 JOSEPH FREGOSI,

2 having been first duly sworn by the
3 Notary Public (April Pearl), and
4 stating his business address as 82
5 Anton Drive, Carmel, New York 10512,
6 was examined and testified as follows:
7
8

9 (Plaintiffs' Exhibit 1, MULTI-PAGE
10 DOCUMENT REGARDING OSHA, marked for
11 identification.)
12

13 EXAMINATION

14 BY MR. SMILEY:

15 Q. Good morning, Mr. Fregosi. My name is
16 Andrew Smiley. I'm going to ask you some
17 questions today. I'd ask, first of all, that you
18 please give a verbal response to all of my
19 questions, as opposed to a nod or shake of the
20 head so that our court reporter can get everything
21 down. Okay?

22 A. No problem.

23 Q. All right. Please keep your voice up
24 so we all can hear you. And please let me know if
25 you need to take a break for any reason, and I'll

1 be happy to accommodate you. All right?

2 A. Okay.

3 Q. Prior to attending this deposition,
4 did you review any documents or photographs in
5 preparation for this deposition?

6 A. Documents, yes. Photos, no.

7 Q. What documents did you review to
8 prepare for this deposition?

9 A. Some of the OSHA violations.

10 Q. Okay. Any other documents that you
11 reviewed?

12 A. No.

13 Q. All right. Did you have any
14 discussions with your son regarding his testimony
15 at a deposition in this case prior to today?

16 A. Yes.

17 Q. Can you tell me the sum and substance
18 of those conversations?

19 A. I just asked him, you know, how it
20 went, you know. And he basically said, you know,
21 everything that happened on the job that day he
22 answered.

23 Q. Okay. Anything else that you
24 specifically spoke about?

25 A. No.

1 Q. Did you have any discussions with Jim
2 Mosher prior to the deposition today, since he was
3 deposed in this case?

4 A. No.

5 Q. Are you currently employed?

6 A. Yes.

7 Q. Who are you employed by?

8 A. Self, Fregosi Landscaping.

9 Q. Is Fregosi Landscaping a corporation?

10 A. Yes.

11 Q. When was it incorporated?

12 A. 2001.

13 Q. Who are the officers of Fregosi
14 Landscaping?

15 A. Sole, me.

16 Q. Are you the sole owner of the company?

17 A. Yes.

18 Q. Is it a private company?

19 A. Yes.

20 Q. Currently, how many employees does
21 Fregosi Landscaping have?

22 A. At this time?

23 Q. Yes.

24 A. Five.

25 Q. Does that include you, sir?

1 A. No.

2 Q. What is your title with the company?

3 A. President.

4 Q. What is the business of Fregosi
5 Landscaping?

6 A. Masonry work.

7 Q. And the address you gave just earlier
8 of 82 Anton Drive, that is your office address?

9 A. Yes.

10 Q. Was Keith Bonnes an employee of
11 Fregosi Landscaping on October 4, 2017?

12 A. Yes.

13 Q. What was his position with the
14 company?

15 A. Foreman.

16 Q. Generally speaking, what were his job
17 duties as of October 4, 2017, as a foreman for
18 Fregosi Landscaping?

19 A. Erecting a scaffold.

20 Q. Were those his duties in general
21 throughout the year of 2017, to erect scaffolds,
22 or was that just his duty on October 4, 2017?

23 A. On and off.

24 Q. Okay. Other than erecting scaffolds
25 for Fregosi Landscaping, did Keith Bonnes have any

1 other job duties as foreman for Fregosi
2 Landscaping in the year 2017 prior to his death?

3 A. Yes. He was certified to run a lull.

4 Q. A lull?

5 A. Yes.

6 Q. How do you spell that?

7 A. L-U-L-L.

8 Q. What is a lull?

9 A. It is a high lift that you drive.

10 Q. Okay.

11 A. He was certified for that also.

12 Q. Okay. Other than doing work in
13 erecting scaffolding and operating a lull, did
14 Keith Bonnes do anything else as an employee on
15 behalf of Fregosi Landscaping?

16 A. Masonry.

17 Q. What type of masonry?

18 A. Brick and block.

19 Q. Did he have any other job duties on
20 behalf of Fregosi Landscaping as of the time of
21 his death, other than what you already described?

22 A. No.

23 Q. How long was he employed with Fregosi
24 Landscaping?

25 A. He was on and off, probably, for six

1 years.

2 Q. When he was employed, was that as a
3 full-time employee?

4 A. Yes.

5 Q. What was his salary at the time of his
6 death?

7 A. It ranged. On a full week, it would
8 be -- it all depends on the job, if it was a
9 prevailing rate job or if it was private job, it
10 would fluctuate from 300 a day to 500 a day.

11 Q. And how was he paid?

12 A. By check.

13 Q. Did you issue W-2s for him?

14 A. Yes.

15 Q. Did Fregosi Landscaping provide any
16 healthcare benefits to Keith Bonnes?

17 A. No.

18 Q. Were any benefits provided to Keith
19 Bonnes other than his salary?

20 A. No.

21 Q. Prior to October 4, 2017, did Keith
22 Bonnes ever receive any safety training directly
23 from Fregosi Landscaping or its representatives?

24 A. No. He already had his OSHA 30. He
25 had his certified scaffolding. He was certified

1 for everything.

2 Q. Specifically, did Fregosi Landscaping
3 provide any safety training to Keith Bonnes at any
4 time during his employment with Fregosi
5 Landscaping?

6 A. Gang box talks.

7 Q. Game box talks?

8 A. Or they call them tool box talks.

9 MS. ONDROVIC: Gang, like in gang.

10 MR. SMILEY: Oh, gang box. Okay.

11 Q. Who on behalf of Fregosi Landscaping
12 provided the gang box talks?

13 A. BBL.

14 Q. Did any employees of Fregosi
15 Landscaping, including yourself, ever provide any
16 safety training to Keith Bonnes prior to October
17 4, 2017?

18 A. No.

19 Q. Has Fregosi Landscaping ever
20 implemented any type of safety training program
21 for its employees?

22 MS. ONDROVIC: Just over objection to
23 form, you can answer.

24 A. Yeah. When guys needed OSHA 10s or
25 OSHA 30s, they would, you know, go online and take

1 their course.

2 Q. Specifically within Fregosi
3 Landscaping, as opposed to an employee going
4 online to take a course, was any safety training
5 program implemented?

6 A. No.

7 Q. Did you take any steps to confirm
8 what, if any, certifications Keith Bonnes
9 maintained as of October 4, 2017?

10 A. Yes.

11 Q. Did you keep copies of those
12 certifications on file?

13 A. Yes.

14 Q. What certifications did Keith Bonnes
15 have as of October 4, 2017?

16 A. I believe he had his OSHA 10, 30,
17 certified scaffold certification, lull
18 certification.

19 Q. Anything else?

20 A. Not that I know of.

21 Q. Do you still have copies of those
22 certifications on file?

23 A. Yes. I believe the court has that.

24 Q. If you haven't done so already, I just
25 ask that you make those available to your

1 attorney, Ms. Ondrovic.

2 A. Yep.

3 MR. SMILEY: Can you just index that
4 for me, so we can make a request.

5

6 DOCUMENT/INFORMATION REQUESTED

7

8 MS. ONDROVIC: Andrew, I think you
9 have that.

10 MR. SMILEY: All I have is the one
11 thing, the one card showing Hydro Mobile
12 scaffolding.

13 MS. ONDROVIC: So what are you looking
14 for; his OSHA 10 and OSHA 30?

15 MR. SMILEY: Yeah, whatever other
16 certifications he says he has. Yep.

17

18 BY MR. SMILEY:

19 Q. What is your background, if any, in
20 safety in the field of construction work?

21 MS. ONDROVIC: Objection to form.

22 You can answer.

23 A. Okay. On other jobs besides this,
24 yes, we do have our tool box meetings. BBL took
25 care of that on this, the Honda dealership.

1 Q. I'm asking, sir, about you
2 specifically. Are you trained in any safety
3 aspects of construction work?

4 A. Just, I'd have to say, school-wise
5 yeah, I do have my OSHA 30 and stuff like that.
6 Me, myself, as being a trainer, no.

7 Q. Okay. When did you get your OSHA 30
8 certification?

9 A. I don't recall.

10 Q. To your knowledge, does that have to
11 be renewed?

12 A. Excuse me?

13 Q. To your knowledge, does that have to
14 be renewed? In other words, does it expire where
15 you have to go and retake it?

16 A. They recommend that you take a
17 fresh-up course every five years.

18 Q. When is the last time you took an OSHA
19 course?

20 A. Ten years ago.

21 Q. Since taking that OSHA course ten
22 years ago, have you, yourself, gone for any type
23 of safety training?

24 A. No.

25 Q. Do you have any certifications with

1 regard to scaffolds?

2 A. No.

3 Q. Other than the OSHA 30, have you ever
4 received any other certifications in the field of
5 construction work?

6 A. No.

7 Q. On October 4, 2017, were you familiar
8 with any laws in the State of New York
9 specifically that addressed the issue of safety
10 requirements for laborers working at heights?

11 MS. AUMAND: Objection to form.

12 MS. ONDROVIC: I'm going to object to
13 the form.

14 You can answer. If you can, you can
15 answer.

16 A. Yes.

17 Q. What laws were you aware of, as of
18 October 4, 2017, that specifically addressed the
19 safety of workers working at heights?

20 MS. ONDROVIC: Again, same objection.

21 You can answer.

22 MS. AUMAND: Join.

23 A. Safety harnesses.

24 Q. Anything else?

25 A. Guard rails.

1 Q. Anything else?

2 A. Not that I recall.

3 Q. And when you say "safety harnesses"
4 and "guard rails," what is your understanding of
5 what, if any, requirements there are for workers
6 to use safety harnesses or guard rails as of
7 October 4, 2017?

8 MS. ONDROVIC: Same objection to the
9 form.

10 MS. AUMAND: Join.

11 Q. You can answer.

12 MS. ONDROVIC: Just so we know, this
13 witness is here as a fact witness. So the
14 way you are asking the question, in my
15 mind, is almost asking him his expert
16 opinion in the field, which is not what he
17 is here for. He is here as a fact witness.

18 I would just ask you to rephrase the
19 question as more of a layperson question.
20 If you want to ask him his understanding
21 about the use of lanyards or guard rails,
22 that is fine.

23 But you are asking him his opinion
24 about the laws, and he is not here to give
25 you his opinion as to the law, nor will I

1 allow him to give you such an opinion.

2 So if you can rephrase it, I'll allow
3 him to answer it, but you are asking him
4 now to, basically, interpret or give you
5 his opinion about what laws might apply.
6 He is here as a fact witness.

7 MR. SMILEY: I respectfully disagree.
8 He was Mr. Bonnes's employer, and as such,
9 he certainly has obligations as his
10 employer. And I'm asking him his knowledge
11 of what those obligations were.

12 MS. ONDROVIC: That is a different
13 question. You are asking him about laws.
14 Your specific question talks about what
15 law. And laws and an analysis and
16 interpretation of laws is an expert -- an
17 expert subject, not this lay witness's
18 subject.

19 If you want to ask him, as his
20 employer, if he was, you know, generally
21 aware of, you know, any type of safety
22 protocol or equipment that could or would
23 be used by his employees that work at an
24 elevated height, but when you talk about
25 laws, his answer -- he is not even giving

1 you the laws. He is, basically, giving you
2 the layman's version.

3 But I'm not going to allow him to
4 continue answering questions about laws.
5 If you want to rephrase it, you can.
6 Otherwise, we'll have to mark it for a
7 ruling.

8 MR. SMILEY: He previously said that
9 he was familiar with laws. So I'm allowed
10 to ask him what he was familiar with. That
11 is what I'm asking.

12 So you made your objection. And I ask
13 you to please let me continue with my
14 questions.

15

16 BY MR. SMILEY:

17 Q. Sir, what, if any, requirements were
18 you aware of with regard to your employees
19 utilizing safety harnesses or guard rails as of
20 October 4, 2017?

21 MS. ONDROVIC: Objection to form.

22 But you can answer that question.

23 A. I had safety harnesses on the job.

24 They were in the gang box.

25 Q. Did you have an understanding as to

1 when your employees were required to use safety
2 harnesses?

3 MS. ONDROVIC: Object to form.

4 You can answer.

5 MS. AUMAND: Same.

6 A. That was their -- I guess, when they
7 felt that they were at risk, they should put them
8 on.

9 Q. Did you personally have any
10 understanding, other than what you just said, as
11 to under what circumstances your employees were
12 required to wear safety harnesses?

13 MS. ONDROVIC: Objection to form.

14 You can answer.

15 MS. AUMAND: Same.

16 A. Can you --

17 Q. Yes. In your prior answer, you said
18 that if the employees felt they were at risk, then
19 they should wear a safety harness; is that
20 correct?

21 A. Correct.

22 Q. Other than leaving it to the employee
23 to determine when they were at risk, did you,
24 yourself, as of October 4, 2017, have an
25 understanding as to when, if at all, one of your

1 employees was required to wear a safety harnesses?

2 A. I wasn't on the job that day.

3 Q. Did you ever tell Keith Bonnes under
4 what circumstances he was required to wear a
5 safety harness?

6 A. That was his own discretion.

7 Q. Did you ever tell Keith Bonnes under
8 what circumstances he was required to wear a
9 safety harness?

10 MS. ONDROVIC: Objection to form.

11 You can answer.

12 A. Yes.

13 Q. When did you tell Keith Bonnes that he
14 was required to wear a safety harness?

15 A. I don't remember.

16 Q. Under what circumstances are you aware
17 of that Keith Bonnes, as an employee of your
18 company, would be required to wear a safety
19 harness?

20 MS. ONDROVIC: Same objection to form.

21 You can answer.

22 A. Repeat that.

23 Q. Under what circumstances, if any, are
24 you aware of, where Keith Bonnes, as an employee
25 of your company, would have been required to wear

1 a safety harness?

2 MS. ONDROVIC: Same objection.

3 A. Like I said, it's at his direction to
4 use a safety harness.

5 Q. Other than at his discretion, I'm
6 asking if you are aware of under what
7 circumstances Keith Bonnes would be required to
8 wear a safety harness?

9 A. If I was on the job and he did not
10 have a safety harness on, I would have said
11 something.

12 Q. Under what circumstances would you say
13 something if you saw him on the job without a
14 safety harness?

15 A. I'd tell him to put one on.

16 Q. Sir, my question is under what
17 circumstances; what type of work what he have to
18 be doing where you would say he would be required
19 to wear a safety harness?

20 A. Whenever he is at some type of
21 elevation at a height, that is required.

22 Q. All right. Am I understanding you
23 that it is a requirement for all of your employees
24 to wear a safety harness whenever they are working
25 at any elevation or height?

1 A. No.

2 MS. ONDROVIC: Objection to form.

3 Q. So can you tell me under what
4 circumstances, if any, your employees, as of
5 October 4, 2017, were required to wear safety
6 harnesses?

7 MS. ONDROVIC: Objection.

8 A. You are mind boggling me with all of
9 this. It's, basically, you are saying the same
10 thing to me over and over and over again. I don't
11 know what you are getting at.

12 Q. Okay. I'll try to rephrase it.

13 Did you, as of October 4, 2017, the
14 day of Keith Bonnes's accident, did you by that
15 point ever learn if there was ever a specific
16 situation that would require one of your workers
17 for wear a safety harness?

18 A. No.

19 MS. ONDROVIC: Just note my objection
20 to the form of the question.

21 Q. Is it fair to say that you never told
22 Keith Bonnes that there were certain circumstances
23 that he must wear a safety harness?

24 MS. ONDROVIC: Object to the form. He
25 already answered that.

1 You can answer.

2 A. Can you please repeat it.

3 MS. ONDROVIC: Why don't you have her
4 read it back.

5
6 (The court reporter read back
7 requested portion of the transcript.)

8
9 A. Is it fair?

10 Q. Yeah.

11 A. He has -- you know, is it fair to wear
12 a safety harness; this is what you are getting at?

13 Q. No, sir.

14 MS. ONDROVIC: If you don't understand
15 his question, you have to just tell him
16 rather than ask him a question.

17 THE WITNESS: I'm trying to see where
18 it's going here.

19 MS. ONDROVIC: I know.

20 Q. Let me try to help.

21 I understand from your previous
22 answers that you leave it to the discretion of
23 Keith Bonnes to wear a safety harness when he felt
24 it was necessary; is that correct?

25 A. Yes.

1 MS. ONDROVIC: Objection to form.

2 Q. Other than leaving it to his
3 discretion, did you, as his employer, ever tell
4 him specific instances when you would want him to
5 wear a safety harness, or did you always just
6 leave it up to him to decide?

7 MS. ONDROVIC: Object to form.

8 A. I left it up to him.

9 Q. Was there ever a time, including as of
10 October 4, 2017, that you told him to wear a
11 safety harness, and he refused to do so?

12 A. No.

13 Q. Other than safety harnesses and guard
14 rails, are you aware of any other safety devices
15 that could be used by laborers working at
16 elevations to prevent them from injuries from
17 falls?

18 A. No.

19 Q. Did you ever require Keith Bonnes to
20 attend a specific safety training program?

21 A. No.

22 Q. On October 4, 2017, was Keith Bonnes
23 working as an employee of Fregosi Landscaping,
24 Inc. at Lia Honda in Brewster?

25 A. Yes.

1 Q. Who was his supervisor, if anyone,
2 from Fregosi Landscaping on that day?

3 A. Himself.

4 Q. Did he have a supervisor?

5 A. Well, I'm his boss. I am his
6 supervisor, yes, but I was not on the site that
7 day.

8 Q. Okay. Do you know -- withdrawn.

9 Did you know, prior to the start of
10 work on October 4, 2017, what work Keith Bonnes
11 was to be performing at that job site that day?

12 A. Erecting a scaffold.

13 Q. Did you know, prior to October 4,
14 2017, that Keith Bonnes was going to be erecting a
15 scaffold on October 4, 2017?

16 A. Yes.

17 Q. What was your understanding of the
18 type of scaffold he was going to be erecting?

19 A. Hydro Mobile.

20 Q. Do you know whether he was going to be
21 working at heights or elevations above the ground
22 as part of erecting that scaffolding on October 4,
23 2017?

24 A. Yes.

25 Q. How high did you have reason to

1 believe Keith Bonnes would be working above the
2 ground on October 4, 2017?

3 MS. ONDROVIC: Object to form.

4 You can answer.

5 A. Probably 40 feet.

6 Q. Okay. Knowing that he was going to be
7 working 40 feet above the ground on October 4,
8 2017, did you have any discussions with him about
9 using fall protection?

10 A. No.

11 Q. Were you at the job site on October 4,
12 2017?

13 A. No.

14 Q. Where were you that day?

15 A. I was in Elmsford.

16 Q. Did you speak with Keith Bonnes at any
17 time on October 4, 2017?

18 A. No.

19 Q. Who, if anyone, was Keith Bonnes
20 working with at the job site on October 4, 2017,
21 from Fregosi Landscaping?

22 A. Joseph, Jr.

23 Q. Is Joseph, Jr. your son?

24 A. Yes.

25 Q. Other than Keith Bonnes and Joseph,

1 Jr., were any other employees from Fregosi
2 Landscaping working at the job site that day?

3 A. No.

4 Q. Was Keith Bonnes in a supervisory
5 position to Joseph, Jr. at the job site that day?

6 A. Yes.

7 Q. Did you have any discussions with
8 Joseph, Jr. that day prior to Keith Bonnes's
9 accident?

10 A. Prior?

11 Q. Prior, before.

12 A. Before the accident happened?

13 Q. Yes, sir.

14 A. No.

15 Q. Okay. Did Joseph, Jr. live with you
16 on October 4, 2017?

17 A. No.

18 Q. Did you or anyone on behalf of Fregosi
19 Landscaping provide Keith Bonnes with any fall
20 protection for his work at Lia Honda in Brewster
21 on October 4, 2017?

22 A. Yes.

23 Q. What fall protection did you provide
24 him with?

25 A. Safety harness.

1 Q. When did you provide him with the
2 safety harness?

3 A. When we started the job.

4 Q. When was that?

5 A. I'd say it was the end of July,
6 beginning of August.

7 Q. Did you provide Joseph, Jr. with a
8 safety harness at the same time that you provided
9 Keith Bonnes with one?

10 A. Yes.

11 Q. Where were they supposed to maintain
12 the safety harnesses throughout the course of this
13 project?

14 A. In the gang box.

15 Q. Where was the gang box located?

16 A. Inside the building.

17 Q. At Lia Brewster?

18 A. Yes.

19 Q. Were any other safety devices provided
20 to them at the start of the project?

21 A. Yes.

22 Q. What other safety devices?

23 A. Safety glasses, hard hats.

24 Q. Okay. Anything else?

25 A. What do you call it. They are like

1 shirts, shirts you put on.

2 Q. Like, a vest?

3 A. Like, a vest, yes. I'm, like,
4 dumfounded here.

5 Q. Did you personally hand Keith Bonnes
6 and Joseph, Jr. their safety harnesses at the
7 start of their job there?

8 MS. ONDROVIC: Object to form.
9 You can answer.

10 A. No.

11 Q. Who provided it to them?

12 A. I did.

13 Q. When did you provide it to them?

14 A. When we started the job.

15 Q. How did you give it to them, if you
16 personally did not hand it to them?

17 A. In the gang box.

18 Q. You left it in the gang box for them?

19 A. Yes.

20 Q. Did you give Keith Bonnes any
21 instructions as to when you wanted him to wear the
22 safety harness at the time that you put it in the
23 gang box?

24 A. No.

25 Q. Is it fair to say you just put it in

1 the gang box and left it there for him if he
2 wanted to use it?

3 A. No.

4 MS. ONDROVIC: Object to the form.
5 You can answer.

6 Q. Did you tell him you were leaving it
7 in the gang box?

8 A. Everybody knew it was in the gang box.

9 Q. How?

10 A. How? Because everybody's tools were
11 the gang box that they use.

12 Q. So did you have an expectation that he
13 would see it in the gang box?

14 A. He knew it was there.

15 Q. Did you have discussions with Keith
16 Bonnes having anything to do with the safety
17 harness in the gang box from the start of the job
18 project up until the date of his accident?

19 A. What do you mean by "discussion"?

20 Q. Did you talk about it at all,
21 something like, hey, I put the safety harness in
22 there for you, if you need it?

23 A. Yes.

24 Q. Or did you say something like, I want
25 you to use this under certain situations?

1 A. Yes.

2 Q. Tell me what you recall, please,
3 saying to Keith Bonnes about the safety harness
4 that was placed in the gang box.

5 A. Keith, they are in the gang box. When
6 you need it, you use it.

7 Q. Anything else?

8 A. No.

9 Q. Did you ever see Keith Bonnes using a
10 safety harness on that job site?

11 A. Yes.

12 Q. When was the last time you saw him
13 using one?

14 A. When he was on the scissor lift.

15 Q. Do you know the date or approximate
16 month of that?

17 A. No. August, September, October, all
18 through that period that we were on the job.

19 Q. Okay. Did you ever see Joseph, Jr.
20 wearing a harness?

21 A. Yes.

22 Q. Was there ever a time that you saw
23 them not wearing a harness at this job site and
24 told them they should be using it?

25 A. No, because James from BBL was on the

1 site and made sure everything was in safety
2 protocol.

3 Q. What was your understanding of James's
4 role at the job site?

5 A. Supervisor.

6 Q. Is James also the person we know as
7 Jim Mosher?

8 A. Yes.

9 Q. Who was in charge of safety of Keith
10 Bonnes at this job site on October 4, 2017?

11 MS. AUMAND: Form.

12 MS. ONDROVIC: Note an objection to
13 form.

14 You can answer.

15 A. Who was --

16 Q. In charge of safety at the job site?

17 A. James.

18 Q. When did you first learn that Keith
19 Bonnes had had an accident at work?

20 A. Time-wise, I don't know. Roughly, I
21 think the accident happened at 9. As soon as my
22 son helped to get him into the ambulance, my son
23 called me. 9:30, maybe.

24 Q. As best as you can recall, what did
25 your son say to you had happened when he called

1 you?

2 A. He said Keith took a fall. He is
3 okay. He is talking. He has a cut on his head,
4 and we got the ambulance here.

5 Q. Okay.

6 A. I said, great. Keep me posted. Go to
7 the hospital. Let me know what's going on.

8 Q. Okay. What, if anything, did you do
9 upon receiving that phone call and learning of
10 Keith Bonnes's accident?

11 A. Prior?

12 MS. ONDROVIC: No, when you learned.
13 When you heard.

14 A. When I heard?

15 Q. Yes, sir.

16 A. I decided that I should go to the
17 hospital and meet him.

18 Q. Okay.

19 A. Because it was a head injury.

20 Q. Okay.

21 A. So I told the guys on the other job
22 that I'm leaving and going to see how Keith is
23 doing on the job -- at the hospital.

24 Q. Were you on another job site with
25 other workers in Elmsford at the time you received

1 this call?

2 A. Yes.

3 Q. Did you go to the hospital?

4 A. Yes.

5 Q. Do you know what hospital it was?

6 A. Danbury.

7 Q. What time do you recall arriving at
8 the hospital? And you can approximate.

9 A. 10:30.

10 Q. Did you see Keith Bonnes when you got
11 there?

12 A. He was already passed.

13 Q. Okay. I understand you were friends.
14 I'm sorry for your loss.

15 Who did you observe when you arrived
16 at the hospital that you knew?

17 A. My son and Mary.

18 Q. Who is Mary?

19 A. Fiance.

20 Q. Did you know Mary prior to October 4,
21 2017?

22 A. Yes.

23 Q. Did you have the opportunity to spend
24 time with Keith and Mary in a social situation
25 prior to his death?

1 A. Yes.

2 Q. Can you tell me, generally, the extent
3 of closeness of the relationship you had socially
4 with Keith Bonnes prior to his death?

5 A. Yeah. We had parties at his house and
6 my house. We were fishing and hunting buddies.

7 Q. How often would you socialize with
8 Keith outside of the workplace on a weekly or
9 monthly basis?

10 A. It was every other day.

11 Q. You were very close friends?

12 A. Yes.

13 Q. When you were at the hospital, did you
14 have conversations with your son or anybody else
15 specifically about the circumstances of Keith's
16 fall?

17 A. I don't remember.

18 Q. When you were at the hospital, did you
19 learn of any injuries that Keith sustained as a
20 result of the fall that may have contributed to
21 his death?

22 A. Internal bleeding.

23 Q. Did you speak with any of the doctors
24 there?

25 A. No.

1 Q. Who did you learn that he sustained
2 internal bleeding from?

3 A. My son.

4 Q. Other than your son and Mary, did you
5 speak with anybody else while you were at the
6 hospital on October 4, 2017?

7 A. His two other brothers, his mother.

8 Q. Generally, what was the sum and
9 substance of the conversations that you had with
10 his brothers and his mother?

11 A. I don't remember.

12 Q. How long were you at the hospital for?

13 A. Until about 4:00 in the afternoon.

14 Q. What were you doing there from the
15 time you arrived, which you said, I believe, was
16 10:30, until 4:00 in the afternoon?

17 A. I don't know. Everybody was in shock.

18 Q. Do you recall anything that transpired
19 during those approximately six hours?

20 A. No.

21 Q. Where did you go upon departing the
22 hospital?

23 A. Home.

24 Q. Before you got home, did you have any
25 conversations with Jim Mosher?

1 A. When the accident happened, yes.

2 Q. When did you first hear from Jim
3 Mosher?

4 A. About the same time my son called,
5 about 9:30.

6 Q. Did Jim call you, or did you call him?

7 A. He called me.

8 Q. Can you tell me what the sum and
9 substance of that conversation was?

10 A. That Keith went into cardiac arrest in
11 the ambulance, because he was talking to the state
12 trooper who was doing a report.

13 Q. Did Jim speak with you about the
14 circumstances of the fall during that
15 conversation?

16 A. No.

17 Q. Did you ask any questions about how it
18 was that he fell?

19 A. No.

20 Q. At any time prior to arriving home on
21 October 4, 2017, after being at the hospital, did
22 you ask anybody if he was wearing a harness?

23 A. No.

24 Q. From the time you got home that day
25 after the hospital until the next day, did you

1 have any conversations with anybody in connection
2 with this accident?

3 A. OSHA.

4 Q. When did you first speak with anyone
5 from OSHA on October 4, 2017?

6 A. It was probably about 11:00.

7 Q. In the evening?

8 A. No, in the morning.

9 Q. On the day of the accident?

10 A. Day after.

11 Q. Okay. Right now, sir, I'm asking
12 still on the day of the accident. Other than what
13 you have already told me who you spoke with, being
14 the family members at the hospital, the phone
15 calls from your son and from Jim Mosher, did you
16 speak with anybody else that day specifically
17 about the happening of Keith's accident or death?

18 A. No.

19 Q. Did you go to the job site where the
20 accident occurred at any time on October 4, 2017?

21 A. No.

22 Q. Did you give your son or anybody else
23 instructions about what, if anything, to do with
24 the mobile scaffold on October 4, 2017, after
25 learning of the accident?

1 A. No.

2 Q. Do you know if the position of the
3 mobile scaffold changed at all from how it was at
4 the time of Keith's fall until you arrived at the
5 scene on the next day?

6 A. No.

7 Q. Okay. Did you have any further
8 conversations with Jim Mosher on the day of the
9 accident after that first phone call?

10 A. No.

11 Q. The next day, October 5, 2017, you
12 received a phone call from someone from OSHA at
13 about 11 a.m.?

14 A. No. I received a phone call from Jim
15 saying that OSHA was on the site and if I could
16 come.

17 Q. Okay. Was that call from Jim at about
18 11 a.m. on October 5th the first interaction you
19 had with anybody regarding the accident of Keith's
20 from the day before?

21 A. Yeah, we spoke about it.

22 Q. Prior to 11 a.m. on October 5th, did
23 you speak with anybody else about the accident?

24 A. No.

25 Q. Where were you at the time you

1 received Jim Mosher's call?

2 A. I was home.

3 Q. In response to Jim's call, did you go
4 to the job site?

5 A. Yes.

6 Q. Who did you meet with upon arrival at
7 the job site?

8 A. Jim, Jim's boss and two OSHA
9 representatives. And I called my son, and he met
10 us there.

11 Q. Was your son supposed to be working at
12 the job site that day?

13 A. There was nobody working that day.

14 Q. Did you cancel work that day as a
15 result of Keith's accident?

16 A. A week.

17 Q. When you say you cancelled, did you
18 cancel all of your company's work for a week?

19 A. Yep.

20 Q. Please tell me, as best you can
21 recall, what occurred upon your arrival on the job
22 site on October 5, 2017.

23 A. I went directly to the trailer.

24 Q. Whose trailer?

25 A. BBL's.

1 Q. Is that where you saw Jim Mosher, his
2 boss and the two OSHA reps?

3 A. Yes.

4 Q. And what occurred while you were at
5 the trailer?

6 A. Talked about the accident.

7 Q. Were you asked questions?

8 A. I believe so. And I'm still in a fog
9 from, you know, that whole week.

10 Q. Okay.

11 A. But I remember writing some type of
12 letter with OSHA that day on what happened.
13 Basically, my son did most of it, because he was
14 there.

15 Q. All right. Do you recall being asked
16 specific questions from either of the two OSHA
17 representatives?

18 A. That day was a blur for me. I'm
19 sorry.

20 Q. Do you recall any conversations that
21 took place in that trailer either that you were
22 involved in or not involved in but present for,
23 with Jim, his boss and the two OSHA reps that day?

24 A. Yes.

25 Q. Tell me what you recall, please.

1 A. I recall going in there, everybody
2 being upset. And I don't remember exactly what we
3 talked about or what happened that day. I was
4 delusional.

5 Q. Okay. Did you go to the location of
6 Keith's fall from the scaffold prior to going to
7 the trailer that day?

8 A. No.

9 Q. Did you go to the location of Keith's
10 fall from the scaffold after the meeting in the
11 trailer that day?

12 A. Yes.

13 Q. Who did you go with?

14 A. OSHA representatives, everybody that
15 was in the trailer.

16 Q. Okay. And tell me what, if anything,
17 you recall taking place when you arrived at the
18 location of the scaffold where Keith had his fall.

19 A. Believe it or not, I walked there, I
20 seen some blood, and I walked out. I couldn't
21 handle it.

22 Q. Where did you see blood?

23 A. At the bottom of the scaffold, and
24 hair.

25 Q. And hair?

1 A. (Nodding head.)

2 Q. Do you recall saying anything to
3 anybody there before walking out?

4 A. No.

5 Q. Did you return back while they were
6 all there at some point that day?

7 A. No.

8 Q. Did you take notice of the position of
9 the scaffold before you left?

10 A. No.

11 Q. When you were there on October 5th, do
12 you know if the position of the scaffold, as it
13 was when you were there on October 5th, was in the
14 same position it was in at the time of Keith
15 Bonnes's fall?

16 A. I have no idea.

17 Q. Did you take any pictures on October
18 5th?

19 A. No.

20 Q. Are you aware of any pictures or
21 videos taken of the scaffold, as it appeared,
22 either on the date of the accident or the day
23 after the accident?

24 A. No.

25 Q. Have you ever seen photos of the

1 position of the scaffold as it was at the time of
2 the accident?

3 MS. AUMAND: Form.

4 I just put an objection on the record.
5 You can answer.

6 A. Not that I recall.

7 Q. Sir, I have provided you and your
8 counsel with a packet of documents that I marked
9 as Plaintiffs' Exhibit 1, which is a package
10 regarding the U.S. Department of Labor's
11 involvement in this accident. It's dated April
12 29, 2019, and it's a cover letter to my paralegal,
13 Madeline Sullivan. And I'm going to ask you some
14 questions based on some of the information
15 contained therein. So please keep that in front
16 of you. Okay.

17 MS. ONDROVIC: Just note a continuing
18 objection for the record, any questions
19 that counsel plans to ask about any OSHA
20 investigation that took place following the
21 accident. That is a continuing objection
22 because I don't want to keep interrupting.

23 MR. SMILEY: Thank you. We'll note
24 there is a continuing objection.

25 Q. Sir, I'd ask you to turn to the fifth

1 page of this package, which is entitled "Citation
2 and Notification of Penalty." It says Department
3 of Labor at the top. At the bottom it says page 1
4 of 9. Do you have that page in front of you?

5 A. Yes.

6 Q. Do you see where this document is
7 addressed to Fregosi Landscaping at 82 Anton
8 Drive?

9 A. Yes.

10 Q. Did you receive this somehow to your
11 company?

12 A. I would imagine so.

13 Q. You will see that it's a nine-page
14 document. I ask you to just take a look through
15 the nine pages, and tell me if it refreshes your
16 recollection as to whether or not you received
17 these nine pages prior to today in connection with
18 the accident of Keith Bonnes.

19 A. Yes.

20 Q. And upon receiving this package from
21 the Department of Labor, what, if any, action did
22 you take in response?

23 A. I remember us going back and forth
24 with them hitting me with citations. And I would
25 give them the information that I had, and they

1 would come back with other citations. And it just
2 kept coming, an ongoing thing with them.

3 Q. Do you currently have in your
4 possession any paperwork from OSHA that you
5 received from them in connection with Keith
6 Bonnes's accident?

7 A. Do I have any paperwork?

8 Q. Yes, sir, like the papers we're
9 looking at now.

10 A. Yes.

11 Q. Do you have any of this type of
12 paperwork?

13 A. Yes.

14 Q. What paperwork do you have from OSHA
15 in connection with this accident?

16 A. I gave everything to my
17 representative.

18 MR. SMILEY: Can we go off the record
19 for a moment, please.

20
21 (Discussion held off the record.)

22
23 MR. SMILEY: We've previously
24 requested and renew our request to please
25 be provided with any OSHA documents that

1 were in the possession of this witness.

2

3 DOCUMENT/INFORMATION REQUESTED

4

5 BY MR. SMILEY:

6 Q. Do you recall what that paperwork was
7 that you provided to your attorney?

8 A. No.

9 Q. On the first page, where it says
10 "Citation and Notification of Penalty," see at the
11 bottom where it says "informal conference"?

12 A. Yes.

13 Q. Did you attend any type of conference,
14 either in person or by phone, with any
15 representatives of OSHA in connection with this
16 matter?

17 A. Yes.

18 Q. Was it in person or by phone?

19 A. By phone.

20 Q. When did that phone call take place?

21 A. I don't remember.

22 Q. Was there one phone call or more than
23 one phone call?

24 A. More than one.

25 Q. Approximately how many phone calls did

1 you have with a representative of OSHA in
2 connection with this matter?

3 A. I don't recall.

4 Q. Would it have been more than three
5 phone calls?

6 A. Yes.

7 Q. Would it have been more than five
8 phone calls?

9 A. Yes.

10 Q. Would it have been more than ten phone
11 calls?

12 A. No.

13 Q. Did these phone calls occur throughout
14 the month of October or beyond October?

15 A. Beyond.

16 Q. Approximately what time period did
17 these phone calls take place during?

18 A. What time?

19 Q. Yeah. If you can tell me, like, the
20 month. Was it from October of 2017 to December of
21 2017? Did they continue into 2018?

22 A. Right here on the front page, it says
23 2/26/18. So it had to start there.

24 Q. Okay. Do you know, after 2/26/18, for
25 how long you continued to have ongoing discussions

1 by phone with anybody from OSHA?

2 A. Had to be a year.

3 Q. A year?

4 A. Yeah.

5 Q. Was it always the same representative
6 from OSHA that you spoke with, or was it different
7 individuals?

8 A. Different.

9 Q. Did you retain an attorney to assist
10 you in your interaction with OSHA in connection
11 with this accident?

12 A. No.

13 Q. Did anyone other than yourself
14 interact with representatives of OSHA in
15 connection with this accident?

16 A. No.

17 Q. Do you recall being asked during any
18 of these phone conversations if you had provided
19 safety training to Keith Bonnes?

20 A. I don't recall.

21 Q. Do you recall being asked if Keith
22 Bonnes was using any type of fall protection at
23 the time of his accident?

24 A. I don't recall.

25 Q. I'd ask you to look at Citation 1,

1 Item 1. It's page 6 of 9 of this document. Do
2 you see where it says, under Citation 1, Item 1,
3 quote, The employer did not provide fall
4 protection for employees erecting or dismantling
5 supporting scaffolds, close quote?

6 A. Yes.

7 Q. Did you have any discussions with the
8 representatives of OSHA about this specific
9 citation?

10 A. Yes.

11 Q. Did you dispute whether or not Keith
12 Bonnes had fall protection at the time of his
13 accident on October 4, 2017?

14 MS. ONDROVIC: Object to form.

15 You can answer.

16 A. Yes.

17 Q. How did you dispute that?

18 A. Over the phone.

19 Q. Okay. What did you say to dispute
20 whether or not he had fall protection at the time
21 of his accident?

22 A. I told them it was in the gang box.

23 Q. Other than telling them that the
24 safety harness was in the gang box, did you tell
25 them whether or not he had any fall protection

1 with him actually at the time of his fall?

2 MS. ONDROVIC: I'm going to note an
3 objection. I don't know what you mean by
4 "with him."

5 But you can answer.

6 MS. AUMAND: Same objection.

7 MR. SMILEY: Let me rephrase.

8 Q. Did you dispute whether or not Keith
9 Bonnes was using any fall protection at the time
10 of his fall on October 4, 2017?

11 A. No.

12 MS. ONDROVIC: Object to form.

13 MS. AUMAND: Form.

14 Q. Do you have any reason to dispute
15 OSHA's determination that Keith Bonnes was not
16 utilizing any fall protection at the time of his
17 accident on October 4, 2017?

18 MS. ONDROVIC: I'm going to object to
19 form and object that that's not what this
20 states.

21 But over that objection, you can
22 answer.

23 MS. AUMAND: Join.

24 A. Re --

25 Q. Do you have any reason to dispute the

1 assertion that Keith Bonnes was not utilizing any
2 fall protection at the time of his fall on October
3 4, 2017?

4 A. No.

5 MS. ONDROVIC: Note an objection to
6 form and to foundation, but you can answer.

7 MS. AUMAND: Form.

8 A. I said no.

9 Q. Okay. Do you see, on the citation
10 under Paragraph A, where in the last sentence it
11 refers to the use of a, quote, conventional fall
12 protection system, close quote? Do you see that
13 phrase?

14 A. Yes.

15 Q. Do you know what a conventional fall
16 protection system is?

17 MS. ONDROVIC: Note an objection.

18 You can answer.

19 A. No.

20 Q. I'd like you to turn to the next page,
21 please, where it says Citation 1, Item 2. Do you
22 see that?

23 A. Yep.

24 Q. Do you see in the first paragraph
25 where it states that the employer -- quote, the

1 employer did not have each employee who performs
2 work while on a scaffold trained by a person
3 qualified in the subject matter to recognize the
4 hazards associated with the type of scaffold being
5 used and to understand the procedures to control
6 or minimize those hazards, close quote?

7 A. That's bull.

8 MS. ONDROVIC: Wait. He didn't ask a
9 question. He just asked if you see that.

10 A. Yes.

11 Q. Did you dispute the contention in that
12 citation that I just read in your discussions with
13 OSHA?

14 A. Yes.

15 Q. And what was the basis of disputing
16 this contention by OSHA in this citation?

17 A. He was certified.

18 Q. What was he certified for?

19 A. Erecting and dismantling a scaffold.

20 MS. ONDROVIC: Just so the record is
21 clear, when you say "he," who do you mean?

22 THE WITNESS: Keith.

23 Q. Do you know if Keith Bonnes, as part
24 of that certification, was provided any specific
25 training on recognizing the hazards associated

1 with using that type of scaffold?

2 A. He was a certified scaffold person.

3 Q. My specific question, sir, is whether
4 or not you know, as part of that certification, if
5 he was provided with specific training to
6 recognize the hazards associated with using that
7 type of scaffold?

8 A. Yes.

9 MS. ONDROVIC: Object to form.

10 Go ahead.

11 A. Yes.

12 Q. What is your understanding of the
13 training he received about those hazards?

14 A. He was a certified scaffold erector
15 that was trained and certified.

16 Q. Okay. Did you ever take the program
17 that he took to get that certification to use the
18 scaffold?

19 A. No.

20 Q. Did you ever see any materials that
21 were provided during that certification?

22 A. Materials meaning?

23 Q. Documents, handouts, paperwork.

24 A. Yes, I did.

25 Q. Did you ever see anything,

1 specifically as part of that certification, that
2 addressed recognizing hazards in using that type
3 of scaffolding?

4 A. No.

5 Q. Do you have any independent knowledge
6 as to whether, as part of that certification
7 program, the subject of identifying hazards while
8 using scaffolding was addressed in that
9 certification?

10 A. No.

11 Q. I'd like you to look at Subparagraph
12 (a) of this Citation 1, Item 2. And do you see at
13 the bottom of that paragraph where it says, quote,
14 The employer did not develop and implement a
15 training program for all employees on the
16 recognition, evaluation and control of hazards
17 associated with scaffolding operations, including
18 but not limited to fall hazards, close quote. Do
19 you see that?

20 A. Uh-huh.

21 Q. You just have to say yes.

22 A. Yes.

23 Q. Did you dispute in your interactions
24 with OSHA their assertion in this citation that
25 your company did not develop and implement such a

1 training program?

2 MS. ONDROVIC: Object to form.

3 You can answer.

4 A. Yes.

5 Q. How did you dispute that?

6 A. How?

7 Q. Yes, sir.

8 A. Because he was already a certified
9 qualified scaffold erector.

10 Q. Did you provide OSHA with any evidence
11 to support whether or not your company
12 specifically developed or implemented a training
13 program?

14 MS. ONDROVIC: Note my objection.

15 You can answer.

16 A. No.

17 Q. Am I correct, sir, that Fregosi
18 Landscaping, Inc., at no time as of October 4,
19 2017, developed or implemented any type of
20 training program for its employees on the
21 recognition, evaluation and control of hazards
22 associated with scaffolding operations, including
23 but not limited to fall hazards?

24 MS. ONDROVIC: Just note an objection
25 to the form, and other than what he has

1 already testified to, he can answer.

2 A. Can you repeat that.

3 MS. ONDROVIC: Why don't you have her
4 read it back because when he repeats it, he
5 changes it. Have her read it back.

6
7 (The court reporter read back
8 requested portion of the transcript.)

9
10 A. No.

11 Q. No, you didn't, and yes, I am correct?

12 MS. ONDROVIC: Note an objection. No,
13 he is not going to answer that. It's a
14 leading question. I'm objecting to form.
15 You have his answer.

16 Q. Your answer was no. My question was
17 am I correct?

18 MS. ONDROVIC: Note an objection.

19 Q. I just want to be clear. Am I correct
20 that Fregosi did not implement such a program?

21 MS. ONDROVIC: Objection to form.

22 Asked and answer. He already answered it.
23 He told you no.

24 Q. I'm not correct? I just want to make
25 sure.

1 MS. ONDROVIC: What part of it did you
2 not understand. He answered your question.
3 Now you are putting another leading
4 question onto your leading question to ask
5 if you are correct. He already answered
6 your question.

7 MR. SMILEY: I just want to make sure
8 I understood the answer.

9 MS. ONDROVIC: You know, Court
10 Reporter, why don't you read back
11 Mr. Smiley's question, and then Mr. Fregosi
12 can answer it again.

13 MR. SMILEY: I don't need a read back.
14 I know what the question was, and I know
15 what the answer was.

16 MS. ONDROVIC: Well, then what do you
17 need to know. You are asking him if he is
18 correct. You are asking him the same
19 question, in a leading form no less.

20 MR. SMILEY: All right.

21
22 BY MR. SMILEY:

23 Q. Sir, did Fregosi Landscaping, prior to
24 October 4, 2017, develop and implement a training
25 program for its employees to recognize hazards

1 associated with scaffolding operations, including
2 but not limited to fall hazards?

3 MS. ONDROVIC: Objection to form.

4 Objection; misleading. Objection; asked
5 and answered.

6 But you can answer it again.

7 A. No.

8 Q. I'd like you to turn to the first page
9 after page 9 of 9. At the top of the page, it
10 says "inspection narrative." Have you ever seen
11 that document that you are looking at before
12 today?

13 A. No, I don't recall this.

14 Q. Okay. Were you aware, prior to today,
15 that OSHA was claiming that the employees of your
16 company, meaning Keith Bonnes and Joe Fregosi,
17 Jr., were not protected from falls by a
18 conventional fall protection system at the time of
19 Keith's accident?

20 MS. ONDROVIC: Note my objection as to
21 form.

22 You can answer it.

23 A. Would you repeat this.

24 MR. SMILEY: You can read it back.

25

1 (The court reporter read back
2 requested portion of the transcript.)

3
4 A. No.

5 Q. You were not aware?

6 A. (Shaking head.)

7 Q. Can you turn to the next page, please.
8 Do you see the section where it talks about walk
9 around notes? Does this refresh your recollection
10 any more about the time you spent at the site with
11 the OSHA representatives the day after the
12 accident?

13 A. It's a blur to me.

14 Q. Do you recall any conversations on
15 October 5, 2017, with OSHA representatives where
16 they asked whether or not the scaffold had been
17 altered in its position from the day before when
18 the accident occurred?

19 A. I don't recall.

20 Q. Do you know if, in fact, the scaffold,
21 as it existed at the time of Keith's accident, had
22 been altered by the time that you arrived there?

23 A. I don't know.

24 Q. Did you ever learn that a mast section
25 of the scaffold had dislodged and was leaning up

1 against the structure of the building?

2 MS. ONDROVIC: Objection to form.

3 You can answer.

4 MS. AUMAND: Same.

5 A. Yes.

6 Q. How did you learn about that?

7 A. I believe there were some pictures.

8 Q. Okay. And you have seen pictures of
9 the mast section dislodged and leaning up against
10 the building?

11 MS. ONDROVIC: Objection to form.

12 You can answer.

13 MS. AUMAND: Same.

14 A. Yes.

15 Q. When did you see those photographs?

16 A. I don't recall.

17 Q. Who provided those photographs to you?

18 A. I believe OSHA did.

19 Q. Were you asked any questions about it?

20 A. No.

21 Q. Did you speak with your son about the
22 fact that there was a mast section leaning up
23 against the wall?

24 MS. AUMAND: Form.

25 A. Yes.

1 Q. And tell me what you said to him and
2 what he said to you about that, please.

3 A. He told me when he seen that, Keith
4 wasn't there, he seen a piece of the tower leaning
5 against the wall.

6 Q. Do you know who, if anyone, removed
7 that piece of the tower from the wall?

8 A. My son may have. I don't know. Maybe
9 it was a hazard where he was worried about maybe
10 it was going to fall down maybe on top of Keith.
11 So he might have moved it. I don't know. I don't
12 recall.

13 Q. Did you ever ask your son if he moved
14 it or who moved it?

15 A. No.

16 Q. Did you ever ask your son specifically
17 how the accident occurred?

18 A. He don't know.

19 Q. Did you ever ask your son if he was
20 wearing fall protection at the time of Keith's
21 fall?

22 A. He didn't need it.

23 Q. My specific question was: Did you
24 ever ask your son whether or not he was wearing
25 fall protection at the time of Keith's fall?

1 A. No.

2 Q. Do you know if he was wearing it or
3 not?

4 A. No.

5 MS. ONDROVIC: Object to form.

6 Q. As far as you are aware, was he not
7 wearing a harness at the time of Keith's fall?

8 MS. ONDROVIC: Object to form.

9 You can answer.

10 A. No, he was not wearing a harness.

11 Q. How do you know that?

12 A. He told me.

13 Q. Did he tell you if Keith was wearing a
14 harness?

15 A. Yes. Keith was not wearing a harness.

16 Q. Did you ask him if any of the guard
17 rails were placed at the time of Keith's fall?

18 A. No.

19 Q. Do you know if the guard rails were
20 placed at the time of Keith's fall on the
21 scaffolding?

22 A. No.

23 Q. Did you ever ask Jim Mosher if he
24 observed whether or not the guard rails were in
25 place at the time of Keith's fall?

1 MS. AUMAND: Form.

2 Q. You can answer.

3 A. No.

4 Q. Can you turn the page to the next
5 page, please. I direct your attention to the
6 middle where it says "closing conference." Do you
7 see that, sir?

8 A. Yes.

9 Q. Do you recall attending a closing
10 conference with OSHA, either in person or by
11 phone, in this matter?

12 A. By phone.

13 Q. Can you tell me when that occurred?

14 A. I don't recall.

15 Q. Do you know the approximate month or
16 year?

17 A. Might have been the beginning of '19.

18 Q. Do you know who you spoke with in that
19 closing conference?

20 A. No.

21 Q. Do you see on this page, sir, where
22 there are boxes checked indicating, for example,
23 "gave copy employer rights." Do you see that?

24 A. Yes.

25 Q. Did OSHA give you a document, that you

1 are aware of, regarding your rights as an employer
2 in connection with this?

3 A. Yes.

4 Q. Do you still have a copy of that?

5 A. I believe so.

6 Q. Did you give that to your attorney?

7 A. I don't know.

8 Q. I'd ask you to check, and if you have
9 that, to please give it to your attorney, and
10 we'll request it from her.

11 A. Okay.

12

13 DOCUMENT/INFORMATION REQUESTED

14

15 Q. Do you see where it says "reviewed
16 hazards and standards" in the boxes checked?

17 A. Uh-huh.

18 Q. Do you recall reviewing hazards and
19 standards at the time of the closing conference
20 with OSHA?

21 A. No.

22 Q. Do you see where it talks about that
23 they offered abatement assistance?

24 A. Yes.

25 Q. Do you have a recollection of speaking

1 with anyone at OSHA about abatement assistance?

2 A. No.

3 Q. Do you see where it says "discussed
4 consultation programs"?

5 A. Yes.

6 Q. Do you recall having a conversation
7 with anyone from OSHA at any time about a
8 consultation program?

9 A. No.

10 Q. Do you see below where it says
11 "closing conference notes"?

12 A. Yes.

13 Q. And it references a closing conference
14 by phone was attempted on November 17, 2017, and
15 November 20, 2017?

16 A. I see where it says conference notes.

17 MS. ONDROVIC: It's here.

18 A. Oh, it's down here. Yes, I do.

19 Q. Do you have a recollection of any
20 individuals from OSHA leaving messages on your
21 office machine that you did not return?

22 MS. ONDROVIC: Objection to form.

23 You can answer.

24 A. No.

25 Q. I'd like you to turn to -- let me

1 count the pages for you -- four more pages beyond
2 there, sir, where it's entitled United States of
3 America.

4 A. Yes.

5 Q. Can you turn to the next page, please,
6 from what you have in front of you. Do you have a
7 document in front of you that says "Order
8 approving settlement"?

9 A. Yes.

10 Q. Did you reach an agreement where you
11 settled the claims being brought against you from
12 the United States Department of Labor?

13 A. Yes.

14 Q. Did you do that on your own or with
15 the assistance of counsel?

16 A. My own.

17 Q. Was that done in person or by phone?

18 A. By phone.

19 Q. Did you ever appear in person in
20 connection with OSHA's involvement and
21 investigation of this accident, other than when
22 you showed up at the trailer on October 5, 2017?

23 A. No.

24 Q. Everything else was by phone?

25 A. (Nodding head.)

1 Q. You have to say yes.

2 A. Yes.

3 Q. Do you see, sir, under the section
4 where it says "Order approving settlement," it
5 says, quote, Respondent is OSHRC, Docket Number
6 18-045, by a letter dated March 14, 2018,
7 contested the citation issued to it by complainant
8 on February 26, 2018, close quote?

9 Do you see that, sir?

10 A. Yes.

11 Q. Did you ever send a letter to OSHA or
12 OSHA's representatives where you contested the
13 citations that they issued to you?

14 A. I believe I never sent them a letter,
15 which I know I never sent them a letter. Okay.
16 They might have sent me something, that I filled
17 it out and sent it back to them.

18 Q. Did you ever fill out any
19 documentation where you contested the citations?

20 A. Their documentation.

21 Q. What information did you place on the
22 documentation where you contested the citations?

23 A. I don't recall.

24 Q. Did you keep a copy of anything that
25 you sent to OSHA in connection with their

1 investigation of this accident?

2 A. Verbally speaking to them?

3 Q. No, sir. Any of the documents that
4 you may have filled out and signed and/or sent to
5 OSHA, did you maintain and keep copies of any such
6 documents?

7 A. I don't recall.

8 Q. If you did have copies, would you know
9 where to look for them in a particular place?

10 A. Yes.

11 MR. SMILEY: I'd ask that you please
12 do so, and let your attorney know if you do
13 have anything. Okay?

14 A. Okay.

15

16 DOCUMENT/INFORMATION REQUESTED

17

18 Q. I'd like you to turn now three pages
19 further, where it says stipulated settlement
20 agreement. Do you see that?

21 A. Yes.

22 Q. Do you recall entering into a
23 stipulated settlement agreement with OSHA in
24 connection with this accident?

25 A. Yes.

1 Q. Can you turn to the next page, please.
2 Did you agree, as it's indicated on this
3 settlement agreement document, to pay a penalty
4 with regard to Citation Number 1, Item Number 1 in
5 the amount of \$2,161.90?

6 A. Yes.

7 Q. And did you agree, as part of this
8 settlement, to pay a penalty in connection with
9 Citation Number 1, Item Number 2 in the amount of
10 \$2,161.90?

11 A. Yes.

12 Q. Did you agree to pay a total sum in
13 penalties, as a result of the citations issued in
14 connection with Keith Bonnes's accident, in the
15 sum of \$4,323.80?

16 A. Yes.

17 Q. It indicates on Item Number 2 on this
18 page that respondent, quote, has agreed to utilize
19 New York Consultation Services within one year of
20 signing this settlement agreement, close quote.
21 Do you see that?

22 A. Yes.

23 Q. Has your company utilized any New York
24 Consultation Services, as referenced in this
25 settlement agreement?

1 A. No.

2 Q. Is there a reason that you have not
3 utilized such services?

4 A. Yes, because I was just totally done
5 going back and forth with them, and I would have
6 fought them on them citations, but I just had it.
7 I was totally drained, and I'm still drained. And
8 I'd just rather pay it and get them off my back.

9 Q. Are you aware, sir, that as per this
10 settlement agreement, you've agreed to engage this
11 consultation service?

12 MS. ONDROVIC: Note my objection;
13 relevancy, form.

14 You can answer.

15 A. No.

16 Q. Can you turn to the last page of this
17 settlement agreement, where it has the name of
18 your company, Fregosi Landscaping, Inc. and your
19 name below it.

20 A. Yes.

21 Q. Is that, in fact, your signature?

22 A. Yes.

23 Q. And did you freely and voluntarily and
24 knowingly sign off on this three-page settlement
25 agreement with the United States Department of

1 Labor?

2 MS. ONDROVIC: Note an objection to
3 form. I don't know what you mean by
4 "knowingly."

5 But you can answer. Did you sign
6 this?

7 THE WITNESS: Yes.

8 Q. Did you pay the penalties, as
9 indicated in here?

10 A. Not yet.

11 Q. Have you paid any portion of the
12 penalties, as indicated in here?

13 A. Yes.

14 Q. Do you intend on paying all of the
15 penalties at some point?

16 A. Yes.

17 Q. Did you sign all of this paperwork via
18 mail or email or fax, or did you appear someplace
19 in person to sign it?

20 A. I believe it was by fax.

21 Q. Okay. Since the signing of the
22 settlement agreement, have you received any
23 additional communication by phone or paperwork
24 from OSHA in connection with this investigation?

25 A. Yes.

1 Q. What have you received from them since
2 signing off on the settlement agreement?

3 A. The paperwork that you needed looking
4 for that letter.

5 Q. When you say "the paperwork that you
6 needed," you were looking at your attorney. What
7 paperwork were you referring to?

8 A. Basically, what you have here.

9 Q. My question, sir, --

10 THE WITNESS: What did I send you last
11 night, the last documents I sent you.

12 MS. ONDROVIC: The documents you sent
13 me were Keith's certification and -- his
14 scaffold certification and just the
15 citations.

16 THE WITNESS: Okay.

17 MS. ONDROVIC: But he is asking you,
18 did OSHA send you something else.

19 MR. SMILEY: I'll reask the question.

20

21 BY MR. SMILEY:

22 Q. Since you signed off on the settlement
23 where you agreed to pay the penalty, that we just
24 looked at, since that time, did you receive any
25 additional communication from OSHA up until today,

1 either by phone call or by paperwork that they
2 sent or faxed or mailed to you?

3 A. I don't know which way to go with
4 this.

5 MS. ONDROVIC: If you don't understand
6 it, just tell him you don't understand.

7 A. Not to my knowledge.

8 Q. Have you received anything from OSHA
9 in the way of follow up to confirm whether or not
10 you obtained the consultation services, as
11 indicated in the settlement agreement?

12 A. No.

13 Q. Have you gotten any follow-up type
14 inquiries from OSHA to determine whether or not
15 you have complied with the settlement agreement?

16 A. No.

17 Q. Were you interviewed by any
18 representatives of the New York State Police about
19 the happening of this accident?

20 A. No.

21 Q. I'm handing you what was previously
22 marked on July 25, 2019, as Plaintiffs' Exhibit
23 1-B. Have you ever seen that photograph before?

24 A. No.

25 Q. I want you to assume, for purposes of

1 my question, that Jim Mosher testified that he
2 took this photograph and that it depicts the
3 position of the scaffold as it was at the time of
4 Keith Bonnes's fall. Assuming what I just told
5 you, do you have any independent reason to dispute
6 that this photograph depicts that?

7 MS. AUMAND: Objection to form.

8 MS. ONDROVIC: Wait. I'm going to
9 object. What do you want him to answer?
10 You want him to answer whether Jim took the
11 photo and it accurately depicts something
12 you haven't established he saw? He is not
13 going to answer that question.

14 Q. Do you have any reason, as you sit
15 here today, to dispute this photograph in front of
16 you that has been marked as Plaintiffs' Exhibit
17 1-B from July 25, 2019, accurately reflects the
18 positioning of the Hydro Mobile scaffold at the
19 time that Keith Bonnes fell from it?

20 MS. AUMAND: Form.

21 MS. ONDROVIC: I am going to note my
22 objection to the form.

23 He wants to know if you know whether
24 this photo is the way the scaffold looked
25 when Keith fell.

1 MR. SMILEY: That's not my question.

2 MS. ONDROVIC: Yes, it is. He wasn't
3 there. So I don't know what you are asking
4 him.

5 MR. SMILEY: My question was pretty
6 clear. I'll say it again.

7

8 BY MR. SMILEY:

9 Q. My question is, sir, as you sit here
10 today, do you have any reason to dispute that this
11 photograph fairly and accurately depicts the
12 depiction of the scaffold at the time that Keith
13 Bonnes fell from it?

14 MS. AUMAND: Form.

15 MS. ONDROVIC: Objection to form.
16 You can answer, if you can.

17 A. I have no objection.

18 Q. Have you ever seen this photograph
19 prior to today, Plaintiffs' Exhibit 1-B from July
20 25th?

21 MS. ONDROVIC: Asked and answered.
22 You can answer it again.

23 A. No.

24 Q. I'm handing you what was previously
25 marked as Plaintiffs' Exhibit 4 from July 25,

1 2019. It says Fregosi Landscaping at the top of
2 it. I ask you to take a moment and look at that,
3 and let me know if you recognize that.

4 A. Yes.

5 Q. What do you recognize that to be?

6 A. My handwriting.

7 Q. And was this an accident report that
8 you generated following the happening of Keith
9 Bonnes's accident?

10 A. With OSHA, yes.

11 Q. Why did you prepare this accident
12 report?

13 A. They asked for it.

14 Q. When you say "they," you mean OSHA
15 asked you for an accident report?

16 A. Yes.

17 Q. And in response to that, you prepared
18 and provided this to OSHA?

19 A. Yep, on the 5th.

20 Q. On October 5th?

21 A. (Nodding head.)

22 Q. Did you give this to them when you
23 were at the trailer at the job site?

24 A. Yes. We wrote it right in front of
25 them.

1 Q. Okay. On this accident report, you
2 indicate that Keith Bonnes fell about 15 feet off
3 a Hydro Mobile scaffolding and onto the ground; is
4 that correct, sir?

5 A. Yes.

6 Q. Where did you obtain that information
7 from?

8 A. My son.

9 Q. Okay. Is there anything that you wish
10 to modify or change that is contained within this
11 accident report?

12 A. No.

13 Q. I'm handling you what was previously
14 marked Plaintiffs' Exhibit 3 for identification,
15 July 25, 2019. I ask if you recognize that
16 document, sir.

17 A. Yes.

18 Q. What do you recognize that document to
19 be?

20 A. My son's handwriting.

21 Q. Does your handwriting appear anywhere
22 on this?

23 A. No.

24 Q. Have you ever seen Plaintiffs' Exhibit
25 3 prior to today?

1 A. Yes.

2 Q. When was it that you last saw this
3 document?

4 A. October 5th.

5 Q. What were the circumstances upon which
6 you saw this document previously?

7 A. What were the circumstances?

8 Q. Yeah. In other words, was this in the
9 trailer --

10 A. Yes.

11 Q. -- being written?

12 A. Yes, in front of OSHA, same as the
13 other letter.

14 Q. Got it. So your son wrote this out
15 around the same time that you wrote out the
16 accident report in front of OSHA; is that correct?

17 A. Yes.

18 Q. To your knowledge, did you or your son
19 or anyone else from Fregosi Landscaping fill out
20 any paperwork in connection with the happening of
21 this accident that we haven't looked at already
22 today?

23 A. No.

24 Q. Do you know who the owner was of the
25 project?

1 A. No.

2 Q. Do you know who the general contractor
3 was?

4 MS. AUMAND: Form.

5 A. BBL.

6 Q. Did Fregosi Landscaping have a
7 contract with BBL for the work being performed?

8 A. Yes.

9 Q. Did Fregosi have any of its own
10 subcontractors at this job site?

11 A. No.

12 Q. Have you had conversations with anyone
13 specifically regarding the happening of this
14 accident, other than what we've spoke about today
15 at this deposition?

16 A. No.

17 MR. SMILEY: Sir, I thank you for your
18 time. I may have some follow-up questions
19 after Ms. Aumand asks you. I am going to
20 reserve my right to a continued deposition
21 of you upon resolution of whether or not
22 there are any additional documents that you
23 may have filled out for OSHA in connection
24 with this case. If there are, I may need
25 to address that again. So I'm just

1 reserving my right as to that.

2 Other than that, I have nothing
3 further. Thank you.

4 THE WITNESS: Okay.

5

6 EXAMINATION

7 BY MS. AUMAND:

8 Q. Hello, Mr. Fregosi. My name is Judi
9 Aumand. I'm representing Lia Honda and BBL in
10 this case.

11 Before we get going, do you need a
12 break?

13 A. No. I just want to get this over
14 with.

15 Q. I don't blame you. So I'll be quick,
16 I promise.

17 MS. AUMAND: Ms. Stenographer, can I
18 have this marked, please.

19

20 (Defendants' Exhibit A, MULTI-PAGE
21 DOCUMENT ENTITLED SUBCONTRACT
22 AGREEMENT, marked for
23 identification.)

24

25 Q. Mr. Fregosi, can you take time to look

1 through that, but I'm going to have some pretty
2 specific questions about the document that's in
3 front of you. We had it marked with today's date,
4 Defendants' Exhibit A.

5 Can you tell me what that is?

6 Excuse me. Let me ask you this: Have
7 you ever seen that document before today?

8 A. Yes.

9 Q. Okay. And what is it?

10 A. It's a contract.

11 Q. Is that the contract that you referred
12 to earlier between Fregosi and BBL?

13 A. Yes.

14 Q. And was that the contract for the job
15 that we've been discussing here today?

16 A. Yes.

17 Q. And was that contract in effect during
18 the project that we were here to discuss today?

19 A. Yes.

20 Q. And in terms of the scope of work in
21 that contract, was Mr. Bonnes working for Fregosi
22 under that scope of work for that contract?

23 A. Yes.

24 Q. And was he doing that work at the time
25 of his accident?

1 A. Yes.

2 Q. There are some initials at the bottom
3 of the page there, sir. Do you recognize those
4 initials?

5 A. They are mine.

6 Q. Okay. Would it be yours that is next
7 to the term subcontractor?

8 A. Yes.

9 Q. Okay. And in that document, sir, on
10 the first page we see your initials, and then on
11 each subsequent page as I'm flipping, do you
12 continue to see your initials appear for
13 subcontractor?

14 A. Correct.

15 Q. Okay. And at the -- there is a
16 signature block in this contract as well that
17 we're looking at right now; fair? Yep, you are
18 pointing to a signature.

19 A. Yep.

20 Q. So we have "Accepted by Fregosi
21 Landscaping," with the business address that you
22 previously provided, 82 Anton Drive, Carmel, New
23 York, and there is a signature. Is that your
24 signature, sir?

25 A. Yes.

1 Q. And you signed that as the president
2 of Fregosi Landscaping?

3 A. Yes.

4 Q. And as president of Fregosi
5 Landscaping, did you have authority to enter into
6 contracts on behalf of Fregosi Landscaping?

7 A. Yes.

8 Q. The certifications that you were
9 talking about previously with Mr. Bonnes, you had
10 mentioned scaffolding. Is it generically
11 scaffolding, is it Hydro Mobile scaffolding,
12 something else?

13 A. Hydro Mobile.

14 Q. And I think you said that he worked on
15 and off for Fregosi Landscaping for six years; did
16 I get you right?

17 A. Yes.

18 Q. Okay. And in that time -- well,
19 excuse me.

20 When he first came to you, did he
21 already have that certification?

22 A. Yes.

23 Q. So consistently, for the time he
24 worked for you on and off for six years, he had
25 that certification?

1 A. Yes.

2 Q. Did your son, Joseph Fregosi, Jr.,
3 have the Hydro Mobile scaffolding certification at
4 the time of this accident?

5 A. No.

6 Q. Was he doing anything to obtain that
7 certification?

8 A. On-the-job training.

9 Q. Who was giving him that on-the-job
10 training?

11 A. Keith.

12 Q. So Keith Bonnes was giving him
13 certification training?

14 A. (Nodding head.)

15 Q. Yes?

16 A. Yes.

17 Q. Okay. In terms of this accident
18 happening, any information that you have about how
19 it happened, how did you get that information? Is
20 it through your son, through other conversations?

21 A. My son.

22 Q. As far as you know, did anyone
23 actually see Mr. Bonnes fall?

24 A. No.

25 Q. And you had told us, on the site that

1 day was Keith and your son. When workers would go
2 to the site for Fregosi Landscaping, who gave them
3 their direction of what they would be doing that
4 day?

5 A. My son or Keith.

6 Q. Between your son and Keith, who was
7 the supervisor?

8 A. My son.

9 Q. Okay. Was Keith the supervisor for
10 your son?

11 MS. ONDROVIC: Object to form.

12 Q. Or the other way around?

13 A. Are you talking about certification
14 for the scaffolding or --

15 Q. Sorry. For Fregosi Landscaping going
16 to work, who was the foreman on the job site?

17 A. Both of them.

18 Q. Okay. The gang box, where was that
19 located on the site?

20 A. Inside.

21 Q. Inside the building that was being
22 built?

23 A. Yes.

24 Q. When the workday started, did Fregosi
25 Landscaping have access to the inside of the

1 building?

2 A. Yes.

3 Q. And did Keith and your son have access
4 to the Fregosi Landscaping gang box?

5 A. Yes.

6 Q. Was it kept locked in any manner?

7 A. Yes.

8 Q. Who had the key to the lock or the
9 combination or whatever it was?

10 A. Both of them.

11 Q. Were any safety harnesses ever removed
12 from the gang box from the time the job started
13 until the time the accident occurred?

14 A. No.

15 MS. ONDROVIC: Objection. What do you
16 mean "removed"? Removed from the site?

17 MS. AUMAND: Removed from the site.
18 Thank you for the clarification.

19 Q. As in, taken out from the gang box and
20 removed from the site.

21 A. No.

22 Q. Okay. Any time they were taken out of
23 the gang box, as far as you know, it was because
24 they were being used?

25 A. Correct.

1 Q. And as far as you know, on the day of
2 the accident, were there safety harnesses in the
3 gang box available for use?

4 A. Yes.

5 Q. Sir, do you have any certification in
6 Hydro Mobile scaffolding?

7 A. No.

8 Q. Do you have any understanding as to
9 the process by which a Hydro Mobile scaffold is
10 erected?

11 A. Yes.

12 Q. What is your understanding?

13 A. Start from the bottom and work up.

14 Q. How did you get that understanding?
15 Is it just by watching guys on the job and seeing
16 what is obviously happening?

17 A. It's years being on the job. I was
18 brought up in diapers, and so has my son.

19 Q. Okay. So sorry if it seems obvious.
20 No specific training you have ever had as to step
21 by step how to erect the scaffold; is that fair?

22 A. Being a certified trainer, no.

23 Q. Okay.

24 A. Okay. Watching and understanding,
25 yes.

1 Q. So in terms of watching and
2 understanding, you say you work from the bottom
3 up, can you just be a little bit more specific as
4 to what you are saying.

5 A. Well, you start with the outriggers
6 that open up on the bottom. Okay. You have two
7 of those, and then you start putting the towers
8 up. And as you are putting the towers up, you put
9 the main plank where the materials go. And then
10 you start going up. And as you are going up, you
11 add towers, and you just start adding towers.

12 Q. The main plank where you said the
13 materials go, would that be also a platform where
14 the workers are standing?

15 A. Yes.

16 Q. And on the outriggers, were there any
17 other planks?

18 A. The day of the accident?

19 Q. As far as you know, as Hydro Mobile
20 lifts are being erected, are there any planks
21 placed on the outriggers?

22 A. Yes.

23 Q. And in terms of guard rails, are there
24 guard rails, generally, on Hydro Mobile scaffolds?

25 A. Yes.

1 Q. Did you ever watch Mr. Bonnes erect a
2 Hydro Mobile scaffold?

3 A. Yes.

4 Q. How many times would you say?

5 A. Probably ten times.

6

7 Q. And as you have seen him erect Hydro
8 Mobile scaffolds, have you made any observations
9 as to guard rails on the scaffold?

10 MS. ONDROVIC: Note my objection.

11 You can answer.

12 A. Yes.

13 Q. What would you see?

14 A. Guard rails.

15 Q. And were they up and in position when
16 you would see Mr. Bonnes ten times erecting these?

17 A. Yes.

18 Q. Do you have any understanding as to
19 whether workers need to wear fall protection
20 erecting a Hydro Mobile scaffold?

21 MS. ONDROVIC: Note my objection.

22 A. No.

23 Q. It was a bad question on my part. So
24 I'll rephrase the question.

25 When you would see Mr. Bonnes erecting

1 Hydro Mobile scaffolds in the past, would you ever
2 see him wear fall protection?

3 A. No.

4 Q. And did he ever discuss with you why
5 he would not wear fall protection?

6 A. No.

7 MS. AUMAND: I'm just going through my
8 notes. I don't think I have anything
9 further.

10

11 FURTHER EXAMINATION

12 BY MR. SMILEY:

13 Q. Sir, in the instances where you say
14 that you previously saw Mr. Bonnes on a Hydro
15 Mobile scaffold without fall protection, did you
16 ever tell him to use fall protection?

17 MS. ONDROVIC: I'm going to object.
18 That is a mischaracterization. She asked
19 when erecting the scaffold.

20 MR. SMILEY: All right.

21 Q. In those instances when you saw
22 Mr. Bonnes erecting a scaffold without fall
23 protection, did you tell him that he should have
24 fall protection?

25 A. No.

1 MS. ONDROVIC: Object to form.

2 You can answer.

3 MS. AUMAND: Form.

4 MR. SMILEY: Thank you. I have
5 nothing further, subject to my reservation
6 of rights, as I said earlier.

7 MS. AUMAND: Nothing further. Thank
8 you.

9

10

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13 (Time noted: 12:59 p.m.)

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1 STATE OF NEW YORK)
2 ss:
3 COUNTY OF)
4
5

6 I, JOSEPH FREGOSI, hereby certify that
7 I have read the pages of the foregoing testimony
8 of this deposition and hereby certify it to be a
9 true and correct record.
10
11
12

13 -----
14 JOSEPH FREGOSI
15

16 Subscribed and sworn to before me
17 this day of , 20 .
18
19

20 -----
21 Notary Public
22
23
24
25

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A	MULTI-PAGE DOCUMENT ENTITLED SUBCONTRACT AGREEMENT (Exhibits retained by counsel.)	80

C E R T I F I C A T I O N

STATE OF NEW YORK)

ss:

COUNTY OF WESTCHESTER)

I, APRIL PEARL, Court Reporter and
Notary Public within and for the County of
Westchester, State of New York, do hereby certify:

That I reported the proceedings that
are hereinbefore set forth, and that such
transcript is a true and accurate record of said
proceedings.

AND, I further certify that I am not
related to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

APRIL PEARL

Court Reporter

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