

NO. 16-000711-CV

BAILI RHODES

Plaintiff,

v.

ARMADILLO ELEVATOR
COMPANY, INC.

Defendant.

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IN THE 725th DISTRICT COURT

IN AND FOR

TRAVIS COUNTY

STATE OF LONE STAR

Prepared by:

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**NATIONAL TRIAL COMPETITION
BAILI RHODES v. ARMADILLO ELEVATOR CO.**

STATEMENT OF FACTS

This is a wrongful death action filed by Baili Rhodes against Armadillo Elevator Co., a private corporation, as a result of the electrocution death of her husband, Rocky Rhodes while Mr. Rhodes was sampling grain on top of a grain car at the request of Armadillo Elevator. The grain car had been filled with grain from an elevator belonging to Armadillo Elevator, and was located on a railroad track belonging to Pretorius Railway and Brew Company. The railroad tracks were inside an easement belonging to Pretorius that bisected the premises of Armadillo Elevator. Mr. Rhodes was killed when the 10 foot long brass grain probe he was using came into contact with a power line belonging to Big State Power Company. The power line served the various buildings and premises of Armadillo Elevator, and traversed the railroad tracks perpendicularly to the tracks. Although the NESC requires power lines traversing railroad tracks to be at least 26 feet above the tracks, the line in question was measured the day of the accident and found to be 24 feet 2 inches above the track.

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PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE COURT:

COMES NOW, Plaintiff Baili Rhodes and files this Original Complaint against Thomas Thompson.

I.
GENERAL ALLEGATIONS

1. This is an action for damages within the jurisdictional limits of this Court.
2. Plaintiff is Baili Rhodes, the surviving wife of Rocky Rhodes, deceased. Plaintiff is a resident of Travis County, Lone Star.
3. Armadillo Elevator Company, Inc. is a private for profit incorporated business with its principal place of business in Round Rock, Travis County, Lone Star. Its agent for service of process is the rapidly aging Chris Kitchel, its president, who may be served with process in this matter at 452 Candy Lane, Clackamas, Lone Star.

II.
COUNT 1 – NEGLIGENCE

4. On June 16, 2015, Rocky Rhodes was engaged in the process of taking grain samples from a train car belonging to Pretorius Railway and Brew Company (“Pretorius”), on premises belonging to Armadillo Elevator Company, while working as an independent contractor for Austin Grain Sampling Company. At the time and on the occasion in question, the train car was parked directly below a power line owned and/or installed by Big State Power Company. The power line was in such proximity to the train car that it presented a dangerous and hazardous condition to anyone working on top of the train car. The grain sampling probe being used by Rocky Rhodes came into contact with a power line, causing Rocky Rhodes’s death.
5. Armadillo Elevator Company owned the premises in question, and owed a duty to Rocky Rhodes to warn of the dangerous condition on the premises or to make the premises safe. Armadillo Elevator Company knew that train cars would be parked on tracks that were directly below the power line in question, knew that such train cars would be sampled, and knew that the power line was of such height that a person working on top of a train car with a grain sampling probe was exposed to the danger of electrocution.
6. Armadillo Elevator Company failed to perform a hazard analysis regarding the location in question.
7. Armadillo Elevator Company failed to warn Rocky Rhodes of the danger presented by the power line or to make the premises safe.

8. Armadillo Elevator Company failed to notify Big State Power Company that Rocky Rhodes would be within 6 feet of the power line, and failed to request that Big State Power Company either de-energize the line, temporarily raise the line or place temporary guards on the line.
9. Armadillo Elevator Company is liable for the death of Rocky Rhodes under theories of negligence and premises liability, for its failure to perform a hazard analysis regarding the location in question, for its failure to warn Rocky Rhodes of the dangers he might encounter at the location, and for its failure to make such location safe.
10. As a result of the negligence of Armadillo Elevator Company, which caused Rocky Rhodes's death, Plaintiff Baili Rhodes has suffered the loss of the value of Rocky Rhodes's earnings for the balance of his lifetime and the loss of Rocky Rhodes's services, care, love, affection, and consortium, which were of great value to her. Plaintiff Baili Rhodes has further suffered grief and loss of companionship.
11. Accordingly, Plaintiff demands Judgment against Armadillo Elevator Company in an amount in excess of \$10,000, interest, and costs, including reasonable attorney fees, and all other relief deemed just and equitable by this Court.

III.
JURY DEMAND

12. Plaintiff hereby requests trial by jury.

IV.
PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Defendant be cited to answer and appear, and that upon final hearing the Plaintiff have judgment for damages, pre-judgment and post-judgment interest as allowed by law, costs of suit and such other and further relief, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully Submitted,

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By: /s/ Rodney Acker (electronically filed)
Rodney Acker
Lone Star State Bar No. 1075896324

NO. 16-000711-CV

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IN THE 725th DISTRICT COURT

IN AND FOR

TRAVIS COUNTY

STATE OF LONE STAR

DEFENDANT’S ORIGINAL ANSWER

TO THE HONORABLE COURT:

COMES NOW, Defendant Armadillo Elevator Company and files this its Original Answer in response to the Original Complaint filed by Plaintiff.

**I.
ANSWER TO PLAINTIFF’S ALLEGATIONS**

1. Defendant admits the allegations contained in Paragraph 1 of Plaintiff’s Original Complaint.
2. Defendant admits the allegations contained in Paragraph 2 of Plaintiff’s Original Complaint.
3. Defendant denies that Chris Kitchel is rapidly aging, but admits that Chris Kitchel is gracefully aging. Defendant admits the remaining allegations contained in Paragraph 3 of Plaintiff’s Original Complaint.
4. Defendant is without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 4 of Plaintiff’s Original Complaint, and therefore denies same.

5. Defendant admits that it owns the premises on which the accident in question took place, but denies all the remaining allegations contained in Paragraph 5 of Plaintiff's Original Complaint.
6. Defendant denies the allegations contained in Paragraph 6 of Plaintiff's Original Complaint.
7. Defendant denies the allegations contained in Paragraph 7 of Plaintiff's Original Complaint.
8. Defendant denies the allegations contained in Paragraph 8 of Plaintiff's Original Complaint.
9. Defendant denies the allegations contained in Paragraph 9 of Plaintiff's Original Complaint.
10. Defendant denies the allegations contained in Paragraph 10 of Plaintiff's Original Complaint.
11. Defendant denies the allegations contained in Paragraph 11 of Plaintiff's Original Complaint.
12. Defendant welcomes a trial by jury and accordingly independently demands a trial by jury.
13. Defendant denies the allegations contained in the "Prayer" of Plaintiff's Original Complaint.

II.
AFFIRMATIVE DEFENSES

14. Without waiver of the foregoing but in addition thereto, Defendant invokes the affirmative defense of comparative negligence. Plaintiff's decedent was negligent in his failure to keep a proper lookout, failure to do a site hazard analysis before beginning the

work at issue, and failure to notify Big State Power Company that he would be within 6 feet of the power line, and failure to request that Big State Power Company either de-energize the line, temporarily raise the line or place temporary guards on the line.

15. Without waiver of the foregoing but in addition thereto, Defendant alleges that the accident in question and Mr. Rhodes's death were caused in whole or in part by the acts of one or more third parties. Specifically:

a. Big State Power Company erected the power line in question at a height that violated the National Electrical Safety Code, which violation was a direct and proximate cause of the accident; and

b. Pretorius Railway and Brew Company knew or should have known of the dangerous condition of the power line but failed to make its premises safe or warn Rhodes of the dangers presented by the power line, which caused the accident in question.

16. Pursuant to Lone Star Civil Remedies Code Section 69.082, Defendant designates Big State Power Company and Pretorius Railway and Brew Company as responsible third parties and requests the Court to submit to the jury the issue of their respective questions of fault and the percentage by which the fault of each such party, separately or in combination, caused or contributed to cause the unfortunate and untimely death of Rocky Rhodes.

III.
PRAYER

WHEREFORE, Defendant requests that upon final trial that Defendant have judgment that Plaintiff take nothing by her suit, that Defendant be discharged from any and all liability, that Defendant recover court costs and for such other and further relief, at law or in equity, general or special, to which Defendant may show itself justly entitled.

Respectfully submitted,

LAW OFFICES OF DAVID KITNER
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P.O. Box 15008
Armadillo, Lone Star 76707
(512) 831-7364
(512) 832-2628 FAX
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By: /s/ [electronically signed and filed]
David Kitner
State Bar No. 1588324

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Original Answer has been electronically filed and served to Rodney Acker on this 1st day of December , 2015.

By: /s/ [electronically signed]
David Kitner, Himself

WITNESSES

Plaintiff

1. Baili Rhodes (must be female)
2. Kim Williams (may be either male or female)

Defendant

3. Chris Kitchel (may be either male or female)
 4. C.B. Jones (may be either male or female)
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EXHIBITS:

1. Armadillo Police Investigation Report
2. Grain Sampling Sheet
3. Photo of Big State measurement
4. Photo of grain probe
5. Photo of grain car
6. Photo of Pretorius measuring height of grain car
7. Armadillo Police personal property list
8. Diagram of Armadillo Elevator premises
9. Photo of power line over rail car
10. Report of measurement of power line
11. Sampling Instructions of Austin Grain Sampling Company
12. Photo of tracks
13. Photo of gap between cars
14. Grain loading ticket UP93022
15. Grain loading ticket
16. Photo of loading platform
17. Photo of arc marks

18. Photo of probe
 19. Sworn Statement of Alexander Bell
 20. Sworn Statement of Joe Longley
 21. Sworn Statement of Mike Gershon
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STIPULATIONS AS TO EVIDENTIARY MATTERS
Procedural Matters

1. Federal Rules of Civil Procedure and Federal Rules of Evidence apply.
2. All witnesses called to testify who have identified the parties, other individuals, or tangible evidence in depositions or prior testimony will, if asked, identify the same at trial.
3. Each witness who gave a deposition agreed under oath at the outset of his or her deposition to give a full and complete description of all material events that occurred and to correct the deposition for inaccuracies and completeness before signing the deposition.
4. All depositions were signed under oath.
5. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury that a signature appearing on a deposition does not comport with signatures or initials located on an exhibit.
6. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.
7. This competition does not permit a listed witness, while testifying, to "invent" an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that "invented" individual.

8. "Beyond the record" shall not be entertained as an objection. Rather, teams shall use cross-examination as to inferences from material facts pursuant to National Rules VII(4) NTC National 2014 Revised - Page 12 VIII(5). Any party wishing to file a complaint concerning a violation of this rule shall use the procedure found in Rule VIII(4).

9. The Plaintiff and the Defendant must call the two witnesses listed as that party's witnesses on the witness list.

10. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.

11. It is stipulated that no one shall attempt to contact the problem drafter about this problem before the conclusion of the 2018 National Trial Competition Final Round. Contact with the competition officials concerning this problem must be pursuant to the rules of the competition.

12. 2018 is the year in which this case comes to trial.

13. Presentation and argument on pretrial motions shall be limited to a total time of sixteen minutes divided equally between the parties as follows: (1) the Plaintiff shall have four minutes to present any pretrial motions; (2) the Defendant shall have four minutes to respond to the Plaintiff's motion(s); (3) the Defendant shall have four minutes to present any pretrial motions; and (4) the Plaintiff shall have four minutes to respond to the Defendant's motion(s).

14. This competition permits teams to argue additional case law and other relevant authority to support the team's argument on motions and evidentiary issues. However, no additions or deletions are permitted to the provided jury instructions or to the jury verdict form.

Substantive Matters

1. Lone Star Civil Remedies Code Section 69.082 provides as follows:

DESIGNATION OF RESPONSIBLE THIRD PARTY. (a) A defendant may seek to designate a person as a responsible third party by filing a motion for leave to designate that person as a responsible third party. The motion must be filed on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date.

(b) By granting a motion for leave to designate a person as a responsible third party, the person named in the motion is designated as a responsible third party for purposes of this chapter without further action by the court or any party.

(c) The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility, stated in whole numbers, for the following persons with respect to each person's causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these:

- (1) each claimant;
- (2) each defendant;
- (3) each responsible third party who has been designated under this Section.

2. The Court granted Defendant's motion to designate Big State Power Company and Pretorius Railway and Brew Company as responsible third parties. Therefore, Big State Power Company and Pretorius Railway and Brew Company were properly designated as responsible third parties pursuant to Lone Star Civil Remedies Code Section 69.082.

3. Table 232-1 of the National Electrical Safety Code requires open supply conductors over 750 volts to 22,000 volts (phase to ground) to be 26 feet above the track rails of railroads when radially covered with ½" of ice.

4. Lone Star Health & Safety Code § 752.003 provides:

TEMPORARY CLEARANCE OF LINES. (a) A person, firm, corporation, or association responsible for temporary work or a temporary activity or function that would bring or cause a person or material being used by a person to be closer to a high voltage overhead line than six feet must notify the operator of the line at least 48 hours before the work begins.

(b) A person, firm, corporation, or association may not begin the work, activity, or function under this section until the person, firm, corporation, or association responsible for the work, activity, or function and the owner or operator, or both, of the high voltage overhead line have negotiated a satisfactory mutual arrangement to provide temporary de-energization and grounding, temporary relocation or raising of the line, or temporary mechanical barriers to separate and prevent contact between the line and the material or equipment or the person performing the work, activity, or function.

5. 29 CFR 1910.28(b) requires the employer must ensure that each employee on a walking-working surface with an unprotected side or edge that is 4 feet (1.2 m) or more above a lower level is protected from falling by one or more of the following:

(A) Guardrail systems;

(B) Safety net systems; or

(C) Personal fall protection systems, such as personal fall arrest, travel restraint, or positioning systems.

DEPOSITION OF BAILI RHODES
APRIL 12, 2016

1 Q: Please state your name for the record?

2 A: My name is Baili Rhodes.

3 Q: Mrs. Rhodes, are you the surviving spouse of William T. Rhodes?

4 A: Yes, Rocky – we called him Rocky – was my husband.

5 Q: How long were you all married?

6 A: Eighteen good years. Twenty-two in all.

7 Q: Where did you and Mr. Rhodes reside?

8 A: Armadillo, Lone Star.

9 Q: Prior to his death, what did Mr. Rhodes do for a living?

10 A: Mr. Rhodes taught chemistry at the Armadillo High School. And on weekends and in the
11 summers, he was a contract grain sampler, working for Austin Grain Sampling Company.

12 Q: And what do you do for a living, Mrs. Rhodes?

13 A: When our kids were young, I was a stay-at-home wife. As they got older, I have done
14 some contract work for a local CPA. I have an accounting degree that I use sporadically.
15 And from time to time, I would help Rocky with his grain sampling task.

16 Q: What is it that a grain sampler does?

17 A: As the name applies, a grain sampler samples grain. It turns out that grain has to be
18 sampled and certified by a grain sampling laboratory before it can be sold from an
19 elevator to anybody else. Federal regulations say it has to be sampled for quality, weight,
20 moisture and the presence of deleterious substances like rodent feces or bugs.

21 Q: Which part of that work were you and Rocky doing?

1 A: We would actually pull the grain samples from the tops of railcars immediately after they
2 were loaded at an elevator, then send the samples to Austin Grain Sampling.

3 Q: How did you pull these samples?

4 A: We would pull a sample with a specially built grain sampling probe. That's a hollow rod
5 that's made out of brass, 10 feet long, with another hollow brass rod built inside that
6 could turn. The inside rod has slots in it that line up with slots on the outer part of the
7 probe. What you would do is you would shove the probe into the grain at an
8 approximately 10 degree angle, with the outer slots turned upward. When the probe is all
9 the way into the grain, you turn this handle at the top that lines up the interior slots with
10 the ones on the outer part. Grain then flows into the probe, then you twist the knob
11 further and close the slots, then pull the whole thing back out.

12 Q: What do you do then?

13 A: Once you get it out of the grain, you tip it up. There's an open hole at the end of the rod
14 where the grain can flow back out into a grain sampling bag. The grain sampler samples
15 grain from each of three hoppers on each grain car, and pours all of the grain from that
16 car into the same bag. You then seal the bag and put a tag on it indicating what car it
17 came from and sign the tag, then drop it off the top of the car to be picked-up later. After
18 you've got the sample, you apply a little metal seal to the hatches on the car. Then you
19 carefully make your way to the next grain car, just walking along the tops of the car until
20 you've sampled all of them.

21 Q: Can you tell us what Exhibit 4 is?

22 A: Yes, that's a photo of the grain sampling probe that Rocky was using.

23 Q: What happens to the bags after you toss them off the top of the car?

1 A: You go back and pick up the bags and put them in this big mesh bag and drop it off at a
2 storage unit. The grain sampling company would then come pick those up and take them
3 to their lab to be sampled.

4 Q: You say you helped Rocky with some of these tasks from time to time?

5 A: Yes, when I wasn't doing anything else, and when the kids were old enough to make
6 macaroni for themselves, I would go with Rocky to help.

7 Q: Did you actually go up on the grain cars with him?

8 A: Yes, we would go up together. I would go place empty bags along the cars, and he would
9 start sampling. I wasn't strong enough to pull a probe full of grain out of the car, but I
10 could hold the bag for him while he emptied it.

11 Q: How often would you do this?

12 A: Probably half of the time that Rocky sampled cars, I would be right there with him.

13 Q: Can you identify Exhibit 11?

14 A: Yes, I have seen that document before, and I recognize Rocky's signature at the bottom
15 of it. That sure enough is Rocky's signature.

16 Q: Can you tell us what this document is?

17 A: It is entitled Grain Sampling Instructions from Austin Grain Sampling Company.

18 Q: On the second page, the last paragraph, there is a warning about power lines. Did you
19 ever read that before this accident happened?

20 A: No sir, I never read this document before that time.

21 Q: When you first went out with Rocky to help him do this work, did he give you any
22 instructions or warnings?

1 A: Yes, he showed me how the grain probe worked, and he showed me how to step from
2 railroad car to railroad car. He also told me that I needed to be real careful walking
3 along the edge of those rail cars, because they are 15 feet tall and there is a real risk that
4 you can step off of one.

5 Q: Did he ever give you any warning or instructions about working around power lines?

6 A: You know, in the places where I worked with Rocky, we were always out on the spur
7 tracks at the edge of some town, and there were never any power lines around. So, no, he
8 never mentioned power lines to me. He just talked about the danger of walking along the
9 edge of the car.

10 Q: Can you identify Exhibit 5?

11 A: Yes, that is a photograph of the top of one of these grain cars.

12 Q: And where is the walkway on one of these cars?

13 A: The walkway is at the very left edge of the car as you're looking at this photo. In the
14 center of the car you have these hinged lids that open so that you can load them with
15 grain. Those lids are also where you can pull a sample of grain.

16 Q: So where does a grain sampler stand when he is using a grain probe to get a sample?

17 A: She stands on the walkway at the very edge of the railcar.

18 Q: Can you identify Exhibit 6?

19 A: Yes, that's a photograph of a man taking a measurement from the ground to the walkway.

20 Q: Do you know what that measurement was?

21 A: Yes, it was fifteen feet from the ground to the bottom of the walkway.

22 Q: When you're standing on one of these walkways, how far above the walkway is the top
23 of your head?

1 A: That depends on how tall you are.

2 Q: How tall are you?

3 A: I'm 5'8", so the top of my head would be 5 foot 8 inches above the walkway.

4 Q: How tall was Rocky?

5 A: Rocky was 6 foot 1 inches tall, so the top of his head would have been 6 feet 1 inches
6 above the walkway.

7 Q: If the walkway is 15 feet above the ground, and Rocky was 6 feet plus 1 inch, how far
8 above the ground was his head?

9 A: 15 feet plus the 6 feet and an inch, so 21 feet and an inch.

10 Q: Where was Mr. Rhodes when this accident happened?

11 A: He was here in Armadillo, out at Armadillo Elevator Company, which is about half a
12 mile outside the city limits.

13 Q: Had he ever sampled grain at Armadillo Elevator before?

14 A: No, that was not his normal place to sample. He had a series of little towns that were up
15 to 50 miles away from Armadillo where he usually went to sample. Armadillo Elevator
16 was a company that one of his friends named Dusty Stockard usually sampled.

17 Q: Why was Rocky sampling at Armadillo Elevator on the day of the accident?

18 A: Dusty had called and said that he was sick, and asked Rocky to run out and sample a
19 hundred grain cars that were sitting on the spur track out there.

20 Q: Did you hear that conversation?

21 A: Yes, we were in his truck at the time and it came over the speaker.

22 Q: Was anything else said about the premises of Armadillo Elevator during that
23 conversation?

1 A: No sir.

2 Q: Did Rocky go out to do the sampling that day?

3 A: Well, he went out that day, but it had just rained and the whole area was muddy, so he
4 decided not to take a risk by sampling that day. With all that mud and all, he might have
5 slipped off the car.

6 Q: So when did he go out?

7 A: He went out the next day, the day of the accident.

8 Q: How long did he stay out there the first day?

9 A: He was only there a few minutes, then he came back to the house.

10 Q: After the accident, did you ever talk to anyone at the Armadillo Police Department about
11 what had happened?

12 A: Yes, there was a police woman at the hospital when I got there. She expressed her
13 condolences, and then she handed me a bag with all of Rocky's personal effects in it.
14 Said she didn't need them as part of the investigation.

15 Q: Were there any headphones or earbuds in that bag of personal effects?

16 A: No. And to my knowledge, Rocky never listened to any kind of music when he was
17 sampling grain.

18 Q: Did Rocky have a set of headphones or earbuds?

19 A: Yes, he had a set of Bluetooth connected wireless earbuds.

20 Q: Where those noise cancelling earbuds?

21 A: Oh goodness no, those noise cancellers are way too expensive.

22 Q: Did he listen to music often?

1 A: Sometimes when we were out in the boonies, he'd listen to a particular song called
2 Armadillo Blues.

3 Q: With headphones or earbuds?

4 A: No, unfortunately over the truck audio system.

5 Q: Can you identify Exhibit 7?

6 A: Yes, that's the list of Rocky's personal effects that the folks at Armadillo Hospital gave
7 me the night I was there.

8 Q: Do you see any headphones or earbuds listed on Exhibit 7?

9 A: No, and they didn't give me any either.

10 Q: Was there anything about this accident that you know, other than what you have
11 described here in your deposition?

12 A: No sir.

**ORAL DEPOSITION OF KIM WILLIAMS
FEBRUARY 4, 2017**

Q: State your name for the record, please.

A: My name is Kim Williams.

Q: Where do you live?

A: I live in Armadillo, Lone Star.

Q: What is your occupation or profession?

A: I am a safety consultant.

Q: How long have you been a safety consultant?

A: About five years now, since I retired from my job with OSHA.

Q: Let's get some of your background. What is your education?

A: I have a degree in industrial safety engineering from Lone Star State University in Loco, over in Childress County.

Q: After you got that degree, what did you do profession wise?

A: I went to work for OSHA as a safety inspector. That is about all you can do with that kind of degree. Other than safety work for companies.

Q: What did your work as a safety inspector for OSHA entail?

A: I would do two things. One, I would go out to companies and do inspections to see if they were committing any OSHA violations. These were usually surprise visits so they wouldn't be scurrying around fixing things that they knew were violations before I got there. If there were any violations, I would tag them with a citation.

Q: What was the second thing that you did?

A: I did accident investigations, at least where there was a fatality or a very serious accident.

Q: Did you have training in accident investigation?

A: Absolutely. OSHA put us through a pretty rigorous 2 month course designed to teach us how to investigate accidents in the work place.

Q: How many years did you work for OSHA before you retired?

A: I worked for OSHA for 25 years, at which point I was qualified to take retirement. I then decided to become a consultant because the money is so much better.

Q: While you were employed at OSHA, how many accidents did you investigate?

A: Oh, my, probably two a month every year, so whatever that works out to mathematically. Six hundred or so.

Q: Did any of those accidents involve electricity?

A: Probably 10 percent of them involved some kind of accident that had to do with electricity.

Q: Have you given testimony in court before?

A: I have testified in dozens of cases, mostly after I retired. OSHA doesn't like for its inspectors to have to testify at trials.

Q: Have you even been disqualified as an expert witness for any reason?

A: No sir.

Q: Were you asked to look into the accident involving Rocky Rhodes that occurred on June 16, 2015?

A: Yes, I was asked to look at that accident and subsequently, to write an expert report and to testify as necessary regarding my opinions.

Q: What did you review in order to perform your work?

A: I reviewed the Armadillo Police Investigation Report, which is identified as Exhibit 1. I looked at all the other exhibits you've given me. And, of course, I went out to the premises and looked at the relationship of everything, and I looked at the tracks. Those tracks are depicted in a photograph that is marked as Exhibit 12. And I read the depositions of Mrs. Rhodes and Chris Kitchel, and the sworn statements that were in the investigation file.

Q: Where is the power line in question in Exhibit 12?

A: You see the big white fertilizer tank on the right? There's a very tall power pole in front of it in the photo. That's one end of the line. The other end is on the other side of all those tracks, in about the center of the photo. It has 3 transformers on it.

Q: Did you form any opinions or conclusions after this investigation?

A: Yes, I reached several opinions. First, it is my opinion that the top of the railcar was, at the time of the accident, properly characterized as a work surface within the meaning of OSHA's rules. Second, it is my opinion that the work surface presented at least two hazards. The first hazard was a fall hazard. The second hazard was an electrocution hazard. Third, I concluded that Armadillo Elevator Company was a controlling employer on this work site, as that term is defined under the OSHA regulations. As such, Armadillo Elevator Company was responsible for ensuring the safety of any workers who were on the site. And finally, I'm of the opinion that Armadillo Elevator Company failed to properly provide for the safety of Mr. Rhodes, and failed to adequately warn him of the danger presented by the power line.

Q: Going back to your first opinion, why do you believe that the walkway of this railcar was a work surface at the time of the accident?

A: From a technical standpoint, a railcar sitting on a railroad track is not governed at all by OSHA, because it is governed by the Federal Railroad Act. However, under the circumstances of this accident, you had a non-railroad employee standing on a surface doing work for the benefit of Armadillo Elevator Company, at the request of Armadillo Elevator Company and with their complete knowledge of his whereabouts. Thus, as to Armadillo Elevator Company it was a work surface.

Q: Why do you conclude that there was a fall hazard related to this work surface?

A: You have seen the photograph which is marked as Exhibit 5. The walkway is about three feet wide and is at the very edge of the railcar. The walkway is fifteen feet above the ground, and there is no fall protection of any kind associated with it. It therefore violates the OSHA Regulations. Outside of OSHA, and just from a common sense safety standpoint, you have a man manipulating a ten foot long, twenty pound brass grain probe in and out of the hoppers of that car while standing on a three foot wide extruded aluminum platform at the very edge of a fifteen foot drop. Even if OSHA didn't say this was a violation, it would be a very dangerous situation.

Q: Why do you say the location presented an electrocution hazard?

A: Let me be very clear about this: If you're on top of a railcar on a spur track where there is no power line, there is no electrocution hazard associated with the top of this railcar. However, here you had a power line crossing perpendicular to the railroad tracks therefore perpendicularly across the top of the railcar. The power line itself crossed at the very end of the railcar where the third hopper was if you are looking from the loading platform. So the presence of the power line created a potential danger.

Q: Can you identify Exhibit 3?

A: Yes, that's a Big State Power Company employee named Mike Gershon measuring the height of the line over the tracks.

Q: How high was this line above the railcar?

A: The power line was 24 feet and 2 inches above the ground, therefore, just over ten feet above the walkway.

Q: Does that represent a violation of the NESC standards?

A: Yes, the line was out of compliance with the NESC. And you should remember that the standard here is 26 feet above the tracks with ½" of ice radially around the line. The accident happened on a 60 degree day with no ice, so the line should have actually been higher than 26 feet. The 26 feet is the minimum clearance with ½" of ice. The day it was measured, the temperature was 61 degrees and there was no ice.

Q: Was the clearance a violation of OSHA standards?

A: Yes, but the OSHA violation only comes in where you put a person on the walkway 15 feet above the ground. OSHA regulations say that you cannot bring a man or material within ten feet of a power line of this type. This was a 13,000 volt phase-to-phase line, and therefore the standard applies. Unless the person was less than 1 foot tall, there would be a violation just having a person walk along the walkway. If you add a 10 foot long brass grain probe into the equation, it becomes possible for him to bring the material within 10 feet of the power line, which would also be an OSHA violation, even if the person was just under 1 foot tall.

Q: Was the power line pretty obvious when you were standing on top of the railcar?

A: Well, the power line was clearly visible to me, but I was looking for it. I knew an accident had happened. I don't know if you would have the same perspective if you were

up there trying not to fall off a three foot wide platform 15 in the air and manipulating your grain probe at the same.

Q: In your opinion, does the railroad share any blame in this accident?

A: No, the railroad built these track years before the power line was put in. It is my understanding that the power line was only placed here three years ago at the request of the Armadillo Elevator Company.

Q: Did the power line serve a large segment of Armadillo?

A: No, this was a little stub power line that came off of the pole on the east side of the track and ran to a pole on the west side of the track. It only served a liquid fertilizer tank belonging to Armadillo Elevator Company.

Q: What is your understanding of who owned the line?

A: Big State Power Company owned the line. Armadillo Elevator Company asked them to put in this little stub line to serve that fertilizer tank.

Q: Does Big State Power Company share any blame in this accident?

A: No; I have read the sworn statement of the Big State Power Company representative. He testified that nobody from Armadillo Elevator Company told him that people would be dancing around on top of these railcars sampling grain. That was material information that would have informed Big State's engineering division as to where to put the line and how high to put it.

Q: Well, shouldn't Mr. Rhodes be responsible for his own safety?

A: There you go again, trying to blame an employee for an accident that some big company should have avoided. It is my understanding that Mr. Rhodes never worked at any other site that had a power line, and I can tell you that when I was on top of that car looking at

the power line, I was spending three quarters of my time looking at my feet to make sure that I didn't fall off of the railcar. Without any fall protection, it just scared the Aggie right out of me.

Q: I thought you said that you were from Lone Star State University?

A: You're not from around here, are you?

Q: Finally, why is it your opinion that Armadillo Elevator Company was the controlling employer at this work site?

A: Start with the idea that nobody else had any person out there doing any active work. Add to that the notion that Mr. Rhodes was not the employee of anybody out there, he was a contractor. But, he was a contractor who was doing work that everybody out there should have known needed doing. Federal law says that Armadillo Elevator Company can't use its own employees to sample its own grain, which just makes sense. The railroad company didn't have anybody out there. Big State Power Company certainly didn't have anybody stationed there permanently to watch. Armadillo Elevator Company had thirty employees in and around that area all day long, including two employees who are actually up in the loading platform watching Mr. Rhodes do this work from four hundred feet away. They were the ones who had the responsibility for Mr. Rhodes being there in the first place, and they were the owners of the premises, except the tracks themselves. They had the ultimate say so over the premises. They were the controlling employer.

Q: Have you stated all of the opinions and conclusions that you have reached in connection with this action in this deposition?

A: Sure have.

DEPOSITION OF CHRIS KITCHEL
APRIL 27, 2016

- 1 Q: Can you state your name for the record.
- 2 A: Yes, my name is Chris Kitchel.
- 3 Q: Where do you live?
- 4 A: I live in Clackamas, Lone Star.
- 5 Q: Where is that exactly?
- 6 A: It is just outside of Armadillo.
- 7 Q: What is your occupation or profession?
- 8 A: I own and run the Amadillo Elevator Company.
- 9 Q: How long have you owned that elevator company?
- 10 A: It seems like all of my life, which would be seventy-five years. I've actually only owned
- 11 it for forty-five of those.
- 12 Q: What did you do before you owned the elevator?
- 13 A: I was a clerk at a chicken feed store.
- 14 Q: And where was that chicken feed store?
- 15 A: It was in a town in deep East Lone Star called Nameless. The store was the Nameless
- 16 Chicken Feed and Hatchery Store. Went out of business, oddly enough.
- 17 Q: What is your educational background?
- 18 A: I have a degree in astrophysics from Massachusetts Institute of Technology. Never did
- 19 use that degree, obviously.
- 20 Q: Are you familiar with the accident involving Mr. Rhodes that occurred on June 16, 2015?
- 21 A: Yes, I was at the elevator on that day.

1 Q: What were you doing at the time of the accident?

2 A: I was up in an elevated and enclosed platform where we load railcars, right next to one of
3 the main elevators tanks. That elevated platform is about twenty feet above the track, and
4 has all of our automation equipment in it so that we can run the loading operation from
5 there, weigh the grain that goes into the hopper cars and issue a ticket showing how much
6 grain is in each specific car. It's a pretty complicated set of equipment up there.

7 Q: Are there any windows in that loading platform?

8 A: Yes, there are windows that look both ways along the track. We need to see railcars as
9 they are coming in on the spur track and we need to be able to see back the other
10 direction, because we are pushing cars down that way.

11 Q: In terms of loading railcars, how is that done?

12 A: Well, Pretorius Railway & Brew Company is contacted and we ask them to leave the
13 number of cars that we need on the spur track north of the loading platform. So let's say
14 we call Pretorius to order a hundred railcars. Pretorius delivers a hundred cars and spots
15 them on the track north of the loading platform.

16 Q: What happens then?

17 A: Well, we normally use a little push car that we own to separate the cars and then to push
18 groups of three or four of the cars under the loading platform to be loaded. The push car
19 won't handle much more than three or four loaded cars, so we get on the north side of
20 three or four cars, unhook them from the rest, get the push car positioned and then push
21 the cars one at a time on to the loading platform. They get loaded there, a ticket gets
22 issued showing the weight and the car number, and then the push car pushes that group
23 down south along the spur. When we get all of the cars loaded and spotted on the south

1 spur, Pretorius comes back, hooks on to either end and either pushes or pulls them out
2 onto the main track and off into interstate commerce.

3 Q: You said you normally use your own push car to move these railcars; is that what you
4 were doing that day?

5 A: That day we were experimenting with how fast our new loading platform could load cars,
6 so we asked Pretorius to have an engine on hand to push the cars. An engine has a lot
7 more power than our little push car, so while they were there, we were really flying.

8 Q: Why do these railcars have to be sampled?

9 A: Federal law requires us sample the cars after we load them and before we put them into
10 commerce. The sample has to show the quality of the grain in terms of a grade, the
11 moisture in the grain in terms of a percentage, deleterious substances that might be in the
12 grain, and the actual weight per unit of the gain. Sometimes you get wheat that is real
13 plump and fat and weights sixty-two pounds per bushel. A standard bushel is sixty
14 pounds, so it makes a difference in what you are selling. On the other hand, sometimes
15 the wheat is all shriveled up like a Congressman and only weighs fifty-seven pounds per
16 bushel, and you need to know that, too.

17 Q: Who does the grain sampling?

18 A: Well, by law we cannot use our own employees. Kind of like the fox guarding the hen
19 house. So we have to use outside contractors to get that work done. In this case, we use
20 Austin Grain Sampling Company pretty much exclusively.

21 Q: Is Mr. Rhodes somebody that you ever saw out there sampling grain on behalf of Austin
22 Grain Sampling Company?

1 A: No, usually his friend Dusty Stockard was the person who did the grain sampling. I do
2 not know why Mr. Rhodes was out there. We saw him for the first time the day before
3 the accident.

4 Q: Why was Mr. Rhodes out there the day before this accident?

5 A: He came out the day before the accident to sample grain. We had about a hundred cars to
6 load, and we had half of them loaded the day before. He was supposed to sample those
7 first fifty, and we were loading the other ones at the same time. But he came out and
8 looked at the site and told us that he thought it was too muddy, and he might get his boots
9 wet and muddy and slip off the walkway, so he headed to the house.

10 Q: Did he come back the next day?

11 A: Yes, he came back around 1:00 p.m. to sample the cars. By that point, we had about
12 eighty cars loaded and were still loading the other twenty.

13 Q: Where were the cars located that Mr. Rhodes was going to sample?

14 A: Well, if you will look at Exhibit 12, you will see that there are two parallel spur tracks in
15 that area, and we were using both. We had filled up the east spur track with loaded cars,
16 and the west spur track was almost full of loaded cars when he got there. So he started
17 out on the cars on the east side of the track.

18 Q: Did you observe him as he was sampling grain on those cars?

19 A: Yes, we could see down from the loading platform and could see what he was doing. He
20 started at the far south end of those cars and placed grain sampling bags on each one, just
21 walking along the top dropping bags. When he got to the farthest car on the north, he
22 grabbed his grain probe and started back south doing sampling.

23 Q: Did he finish the east line of cars at some point in the afternoon?

1 A: Yes, and then he started on the set on the west side of the spur. We saw him place grain
2 bags starting on the car that farthest to the south and worked back to the north, and then
3 he grabbed his grain probe and started working back south again.

4 Q: Can you identify Exhibit 16?

5 A: Yes, it is a photograph of the loading platform as seen from the spur track that Mr.
6 Rhodes was on when this accident happened.

7 Q: How far away is the loading platform from the power line?

8 A: According to the survey, which is marked as Exhibit 8, it is four-hundred sixty feet.

9 Q: Could you clearly see Mr. Rhodes?

10 A: As clearly as you can see somebody who is a football field and third away from you, yes.

11 Q: Where were you looking when the accident happened?

12 A: I was looking right at him. I had gone to the south window to see where he was because
13 we were pushing cars in his direction, and we wanted to make sure that we didn't bump
14 into the cars that he was sampling. We thought that might knock him off.

15 Q: You say "we were pushing cars;" I thought you said that Pretorius Railway and Brew
16 Company was supplying an engine to push cars that day?

17 A: Yes, they had their engine out there most all day, but at some point they left. I just don't
18 recall when that was. We started pushing cars ourselves after they left. But when I said
19 "we," I was using the editorial form of the pronoun. Us and Pretorius.

20 Q: What did you see at the time of the accident in question?

21 A: Well, I saw him stab the probe down into the hopper, and then I saw him pull it back out
22 and swing it up-side down to empty it. At that point, I saw a bright flash and realized that
23 he had come into contact with that power line.

1 Q: What did you do next?

2 A: We shut down the loading that we were doing and ran down the steps of the loading
3 platform, ran down the railroad track to get to where he was laying next to the track and
4 beside the car.

5 Q: What did you observe about him at that time?

6 A: Well, I observed that he was wearing earbuds, and I noticed that one of them had been
7 knocked loose. I noticed that he had a slight amount of blood coming out of the back of
8 his head. I called 911 right away, and then checked to see if he had a pulse. He didn't
9 seem to have a pulse, but we did some CPR anyway. The ambulance came pretty quick,
10 but the attendants checked him over and said that he was deceased.

11 Q: Did you or anybody employed by you, to your knowledge, remove anything from Mr.
12 Rhodes' body at that time?

13 A: Of course not.

14 Q: You say that you had not seen Mr. Rhodes out there before. When he came out the day
15 before, did you point out the power lines to him?

16 A: No, it never occurred to us that we needed to point out something that is so open and
17 obvious. We figured he was a big boy, and he could take care of himself.

18 Q: Why was this power line there?

19 A: We put in this liquid fertilizer tank three or four years ago. That tank has a big electric
20 pump so we can pump fertilizer out of rail cars on the spur or pump it into trucks that
21 come along the loading area on the other side of it. We had these big electric pumps, we
22 needed power to them, so we asked Big State Power to come put in a line.

23 Q: Did you have anything to do with the design or specifications of the power line?

1 A: No, we left that to the Big State Power Company engineers.

2 Q: Can you identify Exhibit 3?

3 A: Yes, that is the Big State Power Company engineer measuring the height of the power
4 line after the accident.

5 Q: Do you know what the measurement was?

6 A: Yes, it was twenty six feet.

7 Q: Do you know whether that complied with the relevant codes or standards?

8 A: Beats me, that's not our business.

9 Q: Can you identify Exhibit 9?

10 A: Yes, that's a photo of the power line over the rail car that Rhodes was standing on when
11 he got the probe in it.

12 Q: Can you identify Exhibit 13?

13 A: Yes, that is a photograph taken from on top of the grain car when this accident happened,
14 looking back north. It shows that we left about a fifteen foot gap between the car that Mr.
15 Rhodes was on and the next car closest to the loading platform.

16 Q: Why did you do that?

17 A: Again, we knew he was sampling grain out there, and we wanted to make sure that we
18 didn't bump into the cars that he was sampling and accidently knock him off. We left
19 that gap there, just to remind us not to bump into his car.

20 Q: Can you tell us what Exhibit 14 is?

21 A: This is the grain loading ticket for the car that Mr. Rhodes was on at the time he
22 contacted the power line.

23 Q: Does this exhibit tell us when that car was loaded?

1 A: Yes, it was loaded at 3:32 p.m.

2 Q: And what is Exhibit 15?

3 A; This is the grain loading ticket for the car that was right north of the car Mr. Rhodes was
4 on.

5 Q: What does Exhibit 15 show about when that car was loaded with grain?

6 A: It shows to have been loaded at 3:55 pm.

7 Q: Have you told us everything that you know about this accident during the course of your
8 deposition here?

9 A: Yes, I have.

DEPOSITION OF C.B. JONES
MAY 10, 2017

1 Q: Could you state your name for the record, please?

2 A: My name is C.B. Jones.

3 Q: What do the initials stand for?

4 A: Beats me. My dad was a trucker. Called me "C.B." That handle just stuck.

5 Q: Where do you live?

6 A: I live in Zigzag, Oregon. Named for its paper industry.

7 Q: You're a long way from home.

8 A: You have to be from out-of-town to be a really good expert, and I'm from out-of-state.

9 Q: What is your profession or occupation?

10 A: I am a safety consultant.

11 Q: How long have you been a safety consultant?

12 A: I have been a safety consultant for 15 years, since my retirement from OSHA.

13 Q: And what do you do as a safety consultant?

14 A: My principal function is to go to places of business and inspect them to see if I spot any
15 safety problems, including violations of OSHA standards. My job is basically to prevent
16 accidents first, and second to prevent OSHA citations.

17 Q: How long did you work for OSHA before you became a safety consultant?

18 A: I worked for OSHA for 20 years, then decided that it would be more lucrative to be an
19 expert witness.

20 Q: What did you do for OSHA?

21 A: I started out of as safety inspector, then I moved to regional director, then I moved to
22 Washington, D.C. as a deputy to the administrator of OSHA.

1 Q: What did you do as a safety inspector for OSHA?

2 A: Two things. First, I would go to businesses and do surprise inspections to see if they

3 were violating any standards that I could give them citations for. And second, I

4 investigated the occasional accident that might happen.

5 Q: How many accidents did you investigate for OSHA?

6 A: Probably a dozen or so.

7 Q: As a safety consultant, have you investigated accidents?

8 A: Yes, several, including two electrocution accidents.

9 Q: What are your qualifications to do the work that you do?

10 A: Well, I'm qualified first by experience. As you probably know, OSHA has a pretty

11 extensive training program on how to do investigations, and I had that training twice.

12 Q: What about your educational background?

13 A: Well, yes.

14 Q: Yes meaning what?

15 A: Yes meaning I have an education.

16 Q: Did you get a degree from a university?

17 A: Of course I did. I got a Bachelor of Arts degree in Agricultural Science from the

18 prestigious Lone Star A&M University, then a Masters Degree in Industrial Hygiene, also

19 from Lone Star A&M.

20 Q: Any further education beyond that?

21 A: Why would you need any?

22 Q: Were you asked to look into the accident involving Rocky Rhodes on June 16, 2015?

1 A: Yes, Armadillo Elevator Company asked me to look into the facts and circumstances
2 leading up to the accident, and to determine the identity of the person or persons,
3 company or companies, that might be responsible.

4 Q: What did you review in connection with your assignment?

5 A: I reviewed all of the depositions that have been taken, and I understand mine is the last to
6 be taken. I read and considered the sworn statements. I looked at all the exhibits that were
7 reviewed by the plaintiff's expert. And I paid particular attention to a report from the
8 power company showing the results of their measurement of the line, which is marked as
9 Exhibit 10.

10 Q: Did you come to any opinions or conclusions as a result of your investigation?

11 A: Yes, I came to several conclusions. First, and foremost, this accident was entirely the
12 fault of Rocky Rhodes. He failed to exercise even the slightest care for his own safety.
13 Second, the accident was not the fault of Armadillo Elevator Company. Of all of the
14 parties who had anything to do with this, Armadillo Elevator Company is the least
15 culpable. Third, it is my opinion that Big State Power Company failed to erect this power
16 line at a proper height. It is also my opinion that Pretorius Railway and Brew Company
17 should have identified the height of the power line as a safety hazard over their spur line.
18 Finally, I'm of the opinion that Austin Grain Sampling Company failed to properly train
19 Mr. Rhodes and failed to adequately warn him of the dangers involved here.

20 Q: Did you inspect the premises yourself?

21 A: Yes, I made a site visit and looked at all of the relationships of the facilities and the
22 equipment. And, of course, I looked at the tracks. Those tracks are depicted in a
23 photograph that is marked as Exhibit 12.

1 Q: Going back to your first opinion, why do you say that Mr. Rhodes is responsible for this
2 accident?

3 A: Well, there are 2 or 3 things about that. First, Mr. Rhodes failed to properly do a site
4 hazard analysis before he began the work. If you're going to do work at a location where
5 you have never been before, you really have a duty to yourself and to others to go out
6 there and spot any hazards that might exist. And you do that before you begin the
7 job. You have a much better opportunity to see things than you would when you are
8 actually doing the job. And Mr. Rhodes was out there and had the opportunity to do a site
9 hazard analysis on 2 occasions. He was out there the day before to do this work, and
10 looked around and decided that it was too muddy. He should have done a site hazard
11 analysis at that time, and he should have noticed this power line. Second, when he
12 actually went out there the next day to do the work, he should have looked at the site to
13 make sure that nothing had changed and that there weren't new hazards. If he had done
14 that, he would have spotted the power line and known that it was there.

15 Q: Okay, what else should have Mr. Rhodes have done?

16 A: Lone Star has a fairly typical statute called the Six Foot Rule. That statute simply
17 provides that if you are going to bring a person or material within six feet of a power line
18 with this kind of voltage, then the person responsible for that work should contact the
19 power company and arrange for the line to be de-energized or guarded. He clearly was
20 going to bring his person or material within six feet of the line. I mean, he touched it
21 after all. So, he was responsible for calling the power company and having the line
22 guarded or de-energized.

23 Q: Anything else on Mr. Rhodes' negligence?

1 A: Yes, and perhaps the most important. He was standing on top of a fifteen foot high
2 railcar. The power line was a mere ten feet above his head. It is open. It is obvious. It is
3 hard to miss. He failed to keep a proper lookout while he was up there to make sure that
4 he wasn't about to get into trouble. And if he had seen this open and obvious line, he
5 clearly could have avoided it. And, if he had followed the instructions from his employer,
6 Austin Grain Sampling, he would have avoided this accident. Further, he walked under
7 the same line when he was sampling the cars on the east spur, so he had ample
8 opportunity to look up and be safe.

9 Q: What were the instructions from Austin Grain Sampling?

10 A: Exhibit 11 clearly told Mr. Rhodes to keep his grain probe more than six feet away from
11 power lines. If he had done that, his probe would not have contacted the line.

12 Q: Did you see evidence that the brass grain probe had contacted the power line?

13 A: Yes, there were arc marks clearly evident on the tip of the probe, 14 inches down from the
14 very end, where the pole came into contact with the power line.

15 Q: Can you identify Exhibit 4?

16 A: Yes, that's a photo of the grain probe.

17 Q: Where was the probe at the time this photo was taken?

18 A: It was in the offices of Austin Grain Sampling Company. You can see that it was being
19 inspected under a microscope for arc marks, and that the distance from the tip of the
20 probe to the arc marks was being measured. That was 14 inches, by the way.

21 Q: Can you identify Exhibit 17?

22 A: Yes, that's a close up of one of several arc marks on the probe.

23 Q: Could these marks have been caused by some other accident in the past?

1 A: Not unless somebody else was killed holding this grain probe. And there is no evidence
2 of that.

3 Q: Why do you believe that Armadillo Elevator Grain Company is not at fault at all here?

4 A: Because they had the most passive role of anybody. All Armadillo Elevator Grain
5 Company did was ask Austin Grain Sampling to send somebody out to sample the grain.
6 Armadillo Elevator Grain Company didn't build the tracks, didn't own the railcar, didn't
7 build the power line, didn't train Mr. Rhodes.

8 Q: Why do you say that Big State Power Company had any responsibilities here?

9 A: Several things. First, they built a power line across the railroad track almost two feet
10 below the NESC requirement. That is a bad deal right there.

11 Q: Did Big State Power Company know that people would be standing on railcars under that
12 power line?

13 A: Well, there is no evidence that they actually knew that.

14 Q: If a person was standing under the power line on the railroad tracks, would he be able to
15 bring himself or a ten foot grain probe within ten feet of the line?

16 A: You can do the math just like I can. Of course not.

17 Q: Could the power line have been built to NESC requirements?

18 A: No, the pole on the east, which was a preexisting pole, was only twenty-six feet tall.
19 When you drop a foot down to where the cross arms are, that's only twenty-five feet, so
20 the take off point for this little stub line was below the NESC height. The sag in the line
21 then took the north phase down to 24 feet 2 inches above the spur track.

22 Q: Exhibit 12 seems to show a really tall pole on the other side of the tracks near the liquid
23 fertilizer tank; wouldn't that have raised the line height enough to comply with the Code?

1 A: The pole on the other side was thirty-five feet, which was plenty tall, but there wasn't
2 enough distance between the short pole and the spur track to make-up that angle. They
3 never could have got it to twenty-six feet over that particular track.

4 Q: Why do you believe Pretorius Railway and Brew Company had responsibility here?

5 A: These are their railroad tracks. The railroad company has an easement upon Armadillo
6 Elevator Company's land, therefore they should have some responsibility to make sure that
7 the area is safe. Besides that, they were out there once a month looking at their main track
8 to see if the rails were messed up or the cross ties were broken or anything like that. It is
9 not too much to ask them to look up as well as looking down. The railroad company had
10 a duty to make sure that their tracks are clear of dangers. This was a danger.

11 Q: Who pushed this car from the loading platform to the place under this power line?

12 A: That's a good question. The railroad company had an engine out there all day, so you'd
13 think Pretorius put the car where it was.

14 Q: Any other opinions that you've formed that you have not told us about in the course of
15 this deposition?

16 A: No, sir.



ARMADILLO POLICE
DEPARTMENT
INCIDENT/OFFENSE REPORT

AGENCY NAME: ARMADILLO POLICE DEPARTMENT

DATE: JUNE 16, 2015 17:32

OFFICER: KIMBERLY CLARK

NARRATIVE DATE: 06/16/15 23:05

NARRATIVE:

On June 16, 2015 at about 17:32 I was dispatched to Armadillo Elevator Company, 600 South Czimskey Street, Armadillo to assist Armadillo EMT with an unresponsive male identified as William T. "Rocky" Rhodes. Upon arrival I observed a male subject lying on his back, partially under a rail car. I observed someone had already started CPR. I assisted EMT with CPR until they loaded Mr. Rhodes into the ambulance. Through more investigation, I made contact with an eye-witness, Chris Kitchel. Kitchel is owner of the premises, Armadillo Elevator Company. Kitchel stated that the deceased was observed standing on rail car UP93022 taking grain samples. Deceased had a 10 foot long brass grain probe in his hand and upon raising the probe from the car it contacted the north phase of the power line above him. Sparks were observed flying from the brass probe and the deceased fell to the ground. Kitchel stated that the deceased was then found laying on his back partially under the rail car in question. Kitchel reported that nothing had been moved at the scene or removed from the body before transport to the hospital. Kitchel stated that the power line was relatively new on the premises and was only used to provide electricity to pumps in a liquid fertilizer tank, and was used maybe 1 time every 2 months. Kitchel stated that Big State Power Company, the owner of the line, had been asked to put a disconnect on the power line so that it could be de-energized when not in use, but the cost was going to be prohibitive, so no disconnect was installed.

I measured the distance from the track to the top of the walkway on rail car UP93022 and found it to be 15.0 feet. A representative of Big State Power Company, one Mike Gershon, arrived at the scene and stated that it was just a matter of time before someone got into the power line above those cars. At my request, Gershon measured the distance from the top of the track to the north phase of the power line and reported that the distance was 24 feet 2 inches. He was unable to state what the required height of the line should be.

The brass probe and two grain sample bags were taken as evidence. Personal effects were released to deceased person's wife.

****NOTHING BELOW THIS LINE****

EXHIBIT 1

Inspected

AUSTIN GRAIN SAMPLING COMPANY, INC.

No. 9918

CERTIFICATE

Sampled
06/17/15

CUSTOMER **ARMADILLO GRAIN COMPANY**

Identification
UP93022

Location
ARMADILLO GRAIN

Grain
WHT

MR _____

Sampler
RHODES/McCARTHY

Inspector

Dockage
N/A

TEMP _____

Test Wt.
61

Damage
NONE

FM

S&B

Protein

Defects
NONE

MOISTURE
09.5 %

Avg. Depth Sampled
8'

Seal Removed
54351

Seal Applied
91487

Grams/Sample

NOTES

Original sample discarded. Resampled after moving car 10 feet north following incident on 6/16/15.

EXHIBIT 2



PAT. NO. US 7,861,659
PAT. NO. US 7,856,931

WARNING

DO NOT APPLY VIBRATOR
TO ANY PART OF CAR BODY
EXCEPT VIBRATOR BRACKETS
ON LOADED CAR ONLY

CLOSE HOPPER BODIES
AND ROOF HATCHES
BEFORE CAR IS MOVED



OPEN HATCH BEFORE
UNLOADING COMPARTMENT

1564 CUFT



2-20-20
Place an approximately 14" from pointed end
of probe.
Taped as Rick Rep Probe 013-0775
Sharp manufacturer
S&S Seaburg
Seaburg
20 springs along full length
Total length = 170 1/8"

EXHIBIT 4



EXHIBIT 5



SPRO
1 30 01
1 00 B 367
1 10 C-4
38 INCH WHE
NO 24 BRAKE
SBRIDGE COM

10-8 H 3 5
8-6 H 15-0

2 IN TREAD
FRONT GUID

33322

EXHIBIT 6



ARMADILLO POLICE
DEPARTMENT
PROPERTY INVENTORY SHEET

AGENCY NAME: ARMADILLO POLICE DEPARTMENT

DATE: JUNE 16, 2015 18:32

OFFICER: CHRIS JENSEN

NARRATIVE DATE: 06/16/15 19:42

THE FOLLOWING ITEMS WERE TAKEN INTO POSSESSION OF THE ARMADILLO POLICE DEPARTMENT AT THE SCENE OF THE INCIDENT ABOVE AND RETURNED TO

BAILI RHODES AT 19:03 ON THE ABOVE DATE AT ARMADILLO HOSPITAL:

1. One pair Wrangler blue jean pants
2. One Dickies work shirt
3. One leather belt
4. One Pittsburgh Penguins cap
5. One Seiko wristwatch
6. One gold wedding band
7. One pair Nike running shoes
8. One pair cotton athletic socks
9. Billfold with following contents:
 - a. \$54 dollars cash
 - b. Visa credit card under name Rocky Rhodes
 - c. Drivers license for Rocky Rhoades
 - d. Social Security card
 - e. Sam's Club membership card
10. Keys and key fob for Toyota Tundra
11. One Bic pen with cap

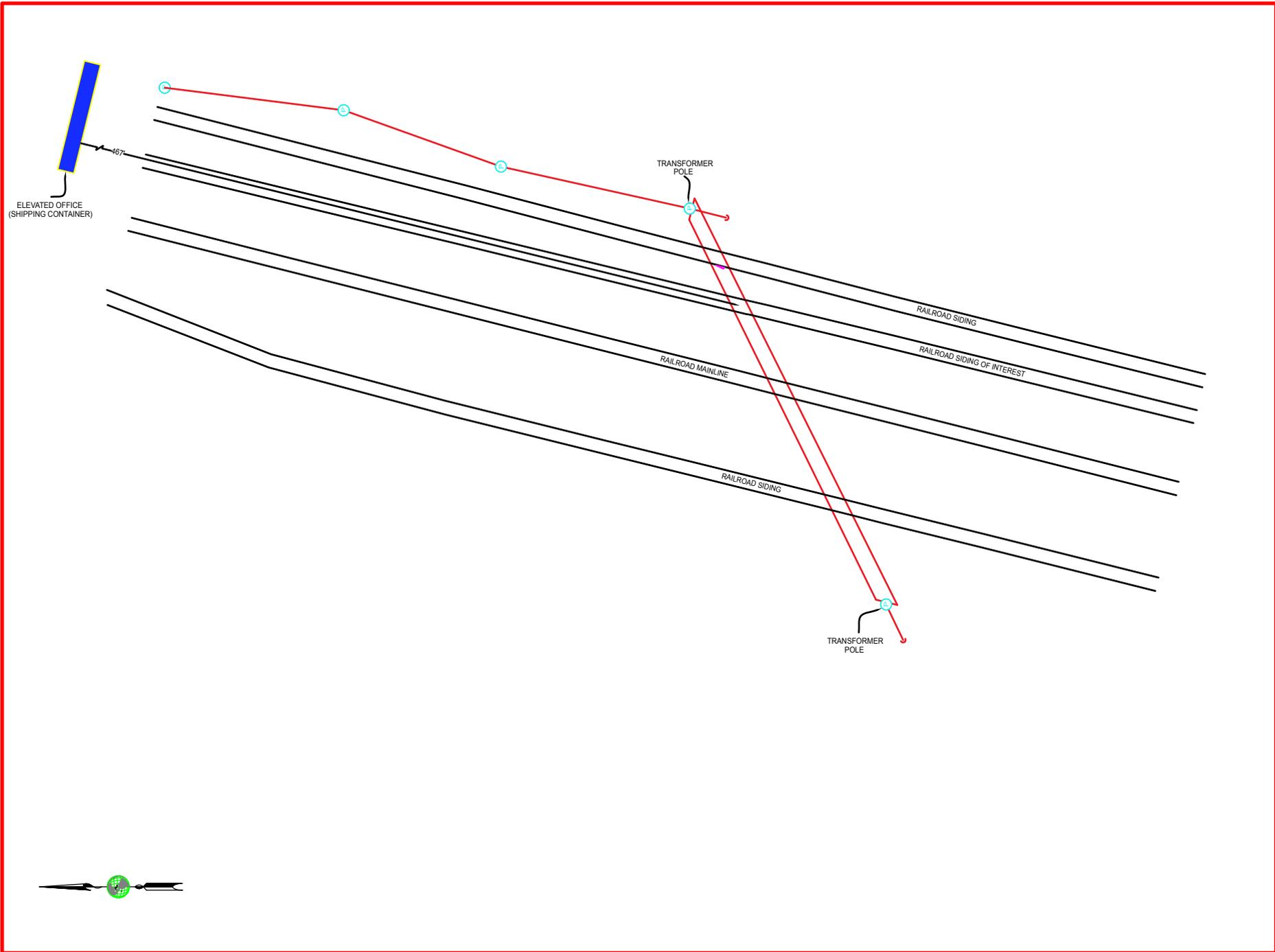
****NOTHING BELOW THIS LINE****

RECEIVED BY

Baili Rhodes

EXHIBIT

7





UP
93022

CAPACITY 5188 CUFT
LD LMT 224200
LT WT 61800

WARNING

WARNING



BUILDING
AMERICA

CHTT
721197

EXHIBIT 9

BIG STATE POWER COMPANY

INCIDENT INVESTIGATION REPORT

DATE: June 19, 2015
LOCATION: 600 South Czimskey Street, Armadillo
LINE: Distribution Segment D34

INVESTIGATION: A line crew was dispatched to the above location to assist Armadillo PD in its investigation of an accident that occurred 06/16/15 involving a contact with the above 7,620 volt phase to ground distribution line, specifically to measure the height of the north phase conductor above the west spur track belonging to Pretorius Railway and Brew Company, on the premises of Armadillo Grain Company. The conductor in question was part of a 3 phase service built in a horizontal configuration with the neutral acting as a shield above the phases. The take off point of the line is a pole with 3 transformers on the east side of the east spur, and the terminal point is a pole west of the main tracks and adjacent to a fertilizer tank.

Construction date: April 12, 2010

Height of east (take off) point pole: 26'3"
Height of west (terminal) pole: 35'6"
Height of north conductor over west spur track: 24'2"

Entered on MobilNet from Unit 254 by Lev Davidovich Bronshtein, Investigator

Austin Grain Sampling Company

To: All Contract Samplers

Date: August 18, 2003

Subject: Sampling Procedures and Safety Rules

Preparing OSR Reports and Sampling Tickets:

1. Be sure to obtain an accurate list of car initials and numbers of cars to be sampled; listing each one on the OSR report; giving one copy to the shipper; keeping one copy for your billing file; placing 2 copies in the top of one of the mesh bags containing samples for that shipper.
2. When filling out the Pink Ticket that goes in the top of the sample bag; be sure to double check the car initial and number; assuring that we have the right sample for each car. Errors cause delays in furnishing shippers with Inspection Certificates and can cause problems!!
3. When you are picking up samples for each car to put into mesh bags; be sure to count the number of samples to be sure you send all of them to us. If you fail to send us all of the samples; it can cause the shipper to miss a sale and possibly cause us to lose a customer!

Sampling the Hopper car:

1. Be sure to protect your grain probe from adverse weather conditions by carrying it inside of plastic tube which will also help keep it from being dented or bent.
2. Periodically you should remove the inner part of the probe and wipe it with a dry cloth; and at the same time carefully clean out any accumulation of dirt/dust from inside the tip of the outer tube. Be sure to take good care of the probe as it cost approximately \$400.
3. You must take one probe sample of grain from each compartment of the cars!! The depth that you probe the ear should be recorded in the appropriate place on the **ticket** and you should probe it as deep as reasonably possible, i.e. preferably 8' to 9' to give a good representative sample.
4. After the probe has been inserted to the proper depth, open the probe until it fills with grain, then close the probe; remove it from the loaded car and place into the plastic bag which is inside the canvas bag. Then place the ticket in the top of the plastic bag and apply a bag-tie closing the canvas bag tight with the draw string.
5. You should attach a TAG to each mesh bag with the shippers name on it!!!

Safety Rules:

1. You should observe good safety practices at all times; do not take any chances; and if you incur injury please be sure to report it to us by phone and confirm it in writing; giving us detailed information: where, when, how.
2. Always wear shoes or work boots which have rubber type soles and heels, to avoid slipping.
3. Always have both hands free when climbing or descending the ladders on rail cars.
4. If the cover doors on the hopper cars are heavy metal, ask the elevator for assistance in Opening and closing them.

5. Be sure that your grain probe does not come closer than 6 feet of any electrical lines at any time. If you notice any situations where this poses a problem; be sure to report it to the loading elevator; report it to us by phone, confirmed in writing with the exact location.

If you have any questions, please feel free to give us a call. Be sure to review this information thoroughly, sign a copy of this letter and return it to us.


Contract Sampler Signature



EXHIBIT 12



EXHIBIT 13

ARMADILLO ELEVATOR COMPANY CERTIFIED WEIGHT CERTIFICATE

DATE: 06/16/2015 15:32:12

TICKET NO: 347

ORDER TYPE: Ship

COMMODITY: Hard Red Winter Wheat

CAR NO: UP93022

NET WEIGHT: 227,364 lb

This certifies that lot or parcel as specified below was weighed under the supervision of Grain Exchange at:

Armadillo Elevator Company
600 S. Czimskey Street
Armadillo, LS 75214

I hereby certify that I am a licensed and sworn weigher, than on the above place the above lots or parcels of grain, this net weight including dockage, if any, of such grain is that stated above.

WEIGHMASTER: /s/ JOHN W. ELLIS

ARMADILLO ELEVATOR COMPANY CERTIFIED WEIGHT CERTIFICATE

DATE: 06/16/2015 15:55:52

TICKET NO: 348

ORDER TYPE: Ship

COMMODITY: Hard Red Winter Wheat

CAR NO: UP83484

NET WEIGHT: 219,956 lb

This certifies that lot or parcel as specified below was weighed under the supervision of Grain Exchange at:

Armadillo Elevator Company
600 S. Czimskey Street
Armadillo, LS 75214

I hereby certify that I am a licensed and sworn weigher, than on the above place the above lots or parcels of grain, this net weight including dockage, if any, of such grain is that stated above.

WEIGHMASTER: /s/ JOHN W. ELLIS

EXHIBIT 15



EXHIBIT 16



EXHIBIT 17



EXHIBIT 18

BAILI RHODES

Plaintiff,

v.

**ARMADILLO ELEVATOR
COMPANY, INC.**

Defendant.

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IN THE 725th DISTRICT COURT

IN AND FOR

TRAVIS COUNTY

STATE OF LONE STAR

SWORN STATEMENT OF ALEXANDER BELL

My name is Alexander Bell. I am the Safety Director for Pretorius Railway and Brew Company. I have been the safety director at that company for the last ten (10) years. Prior to joining Pretorius Railway and Brew Company, I served as Safety Director for Agra Producers Grain Corporation in Plainview, Lone Star.

Pretorius Railway and Brew Company is in the business of, among other things, transportation of grain from local elevator companies to markets, always in states other than Lone Star. As part of the business, Pretorius Railway and Brew Company provides railcars to elevators for the purposes of securing their business for transportation of grain. An elevator company calls our dispatcher, who then determines how many cars are requested and dispatches that number of cars to spur tracks alongside the elevator company's premises. After the railcars are filled with grain and sampled, the elevator company again calls the dispatcher and arranges for a locomotive to come by and bunch the cars back up and transport them to their ultimate market destination. Federal regulations mandate that Pretorius Railway and Brew Company

EXHIBIT 19

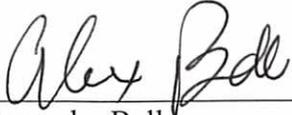
cannot move the grain cars from the spur tracks until the cars have all been sampled by a certified grain sampler and lab reports have been received.

On June 14, 2015, Armadillo Elevator Company contacted our dispatcher and requested the dispatch of one hundred (100) grain cars to its premises in Armadillo, Lone Star. Acting pursuant to that request, an engineer operating one of our locomotives delivered the cars straight way to Armadillo Elevator Company and parked them on a spur track adjacent to the elevator. Typically, Armadillo Elevator Company will use its own push car to maneuverer the railcars around the tracks and load them. On the occasion in question, that is, June 16, 2015, Armadillo Elevator Company requested that we use one of our locomotives to move the cars so that they could load them more quickly. Our engineer and our locomotive stayed on site throughout the day on June 16, 2015 helping move and spot cars so that they could be filled at the loading platform belonging to Armadillo Elevator Company. However, due to strict union regulations, our engineer “timed-out” and had to leave the premises at 3:22 p.m. The engine was removed from the premises, and I do not know what Armadillo Elevator Company did after that to move grain cars. It is my understanding, based on reviewing tickets from the loading platform, that the last grain car moved into place by Pretorius Railway and Brew Company was two cars to the south of the accident car.

As Safety Director of the Pretorius Railway and Brew Company, I frequently inspect tracks belonging to us, including the tracts adjacent to Armadillo Elevator Company. We look at the main line tracks on a weekly basis, and we inspect the spur tracks every month. If I do not personally inspect the tracks, a trained and qualified crew will go inspect both the main and spur tracks on this periodic schedule. Our schedule for inspecting tracks is set forth in a very elemental periodic table posted in our office.

I have personally inspected the spur tracks at Armadillo Elevator Company. Generally, I was there twice a month for the past five (5) years. To my knowledge, I had never observed the power line crossing our tracks at the site of the accident.

FURTHER AFFIANT SAYETH NOT

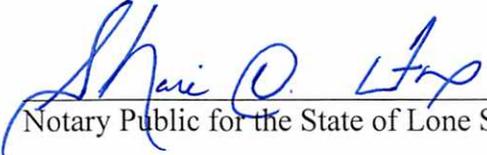


Alexander Bell

STATE OF LONE STAR §
 §
COUNTY OF Travis §

Before me, Shari D. Fox, Notary Public in and for The State of Lone Star, on this day personally appeared Alexander Bell, Affiant, known to me to be the person whose name is subscribed to the above and foregoing Sworn Statement and acknowledged to me that the facts and information stated herein are true and correct.

Subscribed to and sworn to before me, the undersigned authority, on this the 15th day of December, 2016.



Notary Public for the State of Lone Star

BAILI RHODES

Plaintiff,

v.

**ARMADILLO ELEVATOR
COMPANY, INC.**

Defendant.

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IN THE 725th DISTRICT COURT

IN AND FOR

TRAVIS COUNTY

STATE OF LONE STAR

SWORN STATEMENT OF JOE K. LONGLEY

My name is Joe K. Longley. I am over the age of 21 years, I am of sound mind, and I have personal knowledge of the facts in this statement, which are true and correct to my personal knowledge.

I am an English teacher at Bootleg High School in Bootleg, Lone Star. I also serve from time to time as a contract grain sampling technician working for Austin Grain Sampling Company. I have been doing that job for several years now. Rocky Rhodes was a fellow teacher and friend of mine, and I am the one who got him involved in sampling grain.

I am the person who trained Rocky on how to do grain sampling. I told Rocky how to carry the brass probe in his pick-up. I taught him where to put it on the first grain car that he could pull it up on top without straining his back. I taught him how to insert the probe at a 10 degree angle, which is slightly less than the Great Pyramid at 51.5 degrees, so that the grain would fill the probe when he opened the slots. I taught him how to open the probe and close it, how to pull the probe back out of the grain and how to dump it into one of the grain sampling bags by turning it upside down and letting the grain flow out of the hole at the end of the probe.

I gave Rocky some safety training as well. I taught him not to sample grain cars if there was a lightning storm going on at the moment. I taught him not to sample grain cars in a rain because rain would get into the grain, and the rain in the grain falls mainly into plain bad technique. I also taught him to be careful while walking on the walkways because if you step off, it was a fifteen foot fall every time. I also taught him not to wear muddy boots when grain sampling because he could fall off the slick aluminum walkways. I taught Rocky how to fill out the paper work, how to put the bags into the larger container and to where to take them to have them picked up. I taught Rocky how to fill out a grain sampling sheet showing which cars he had sampled and how far he had driven in order to get reimbursed for mileage. I also taught Rocky to watch out while he was on top of a car that he did not get into a power line. I taught him that if a power line appeared to be too low over his head, he should avoid sampling that car, and just falsify the paperwork.

When I heard about this horrible accident, I went immediately to the Armadillo Elevator Company and looked at the grain car and the power line. When I climbed up on top of the grain car and walked toward the power line, I could see it easily. It was open and obvious, and it seemed plenty high to me, but I was also watching my feet so that I didn't fall off.

I have never sampled grain at a location that had a power line anywhere close to the spur tracks. I have never sampled grain at Armadillo Elevator Company.

FURTHER AFFIANT SAYETH NOT:



Joe K. Longley

STATE OF LONE STAR §
 §
COUNTY OF Travis §

Before me, Cynthia DeLeon, Notary Public in and for The State of Lone Star, on this day personally appeared Joe K. Longley, Affiant, known to me to be the person whose name is subscribed to the above and foregoing Sworn Statement and acknowledged to me that the facts and information stated herein are true and correct.

Subscribed to and sworn to before me, the undersigned authority, on this the 15th day of November, 2016.



Notary Public for the State of Lone Star

BAILI RHODES

Plaintiff,

v.

**ARMADILLO ELEVATOR
COMPANY, INC.**

Defendant.

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IN THE 725th DISTRICT COURT

IN AND FOR

TRAVIS COUNTY

STATE OF LONE STAR

SWORN STATEMENT OF MIKE GERSHON

My name is Mike Gershon. I am an engineer employed by Big State Power Company. I have been with Big State Power Company for the past 22 years. Prior to joining Big State Power Company, I was a student at Rogue Community College in Dime Box, Lone Star, where I received a degree in electrical engineering.

I am personally familiar with the power line that crosses the railroad tracks at the premises of Armadillo Elevator Company in Armadillo, Lone Star. The elevator company asked Big State to construct that line in 2010 for the purpose of serving its liquid fertilizer tank on the west side of the railroad tracks. I was the engineer for Big State that did the design work on the power line. I was somewhat hampered in the design because the takeoff pole on the east side of the tracks was somewhat short, but Armadillo Elevator Company wanted to keep that pole in place because it had all those transformers on it already. Because the east pole was a little short, I placed a very tall pole on the west side to gain some height on the line. Doing that made the height of the line over the main track sufficient to meet the National Electrical Safety Code requirements. I'm uncertain whether the height over the spur tracks met the Code requirements,

EXHIBIT 21

but it was plenty high as long as no one was walking around on the tops of rail cars under the line. No one at Armadillo Elevator Company told me that people would be on top of the rail cars at that location for any reason.

After the accident, I was asked to obtain a measurement of the height of the conductor that was contacted by Mr. Rhodes' brass pole. I directed an investigator employed by Big State to go to the site and take measurements, including a measurement of the height of the north conductor over the west spur track. I was on location when the measurement was taken, and I verified the measurement as being accurate. The temperature that day was 81 degrees, which was only two degrees cooler than the temperature on the date of the accident. Exhibit 3 is a photograph of me assisting with the measurement of the power line, and Exhibit 10 is a true and accurate copy of the Incident Investigation Report showing the height of the line.

FURTHER AFFIANT SAYETH NOT

Mike Gershon
Mike Gershon

STATE OF LONE STAR §
 §
COUNTY OF Travis §

Before me, _____, Notary Public in and for The State of Lone Star, on this day personally appeared Mike Gershon, Affiant, known to me to be the person whose name is subscribed to the above and foregoing Sworn Statement and acknowledged to me that the facts and information stated herein are true and correct.

Subscribed to and sworn to before me, the undersigned authority, on this the 20 day of January, 2017.

Beth Langwell
Notary Public for the State of Lone Star

NO. 16-000711-CV

BAILI RHODES

Plaintiff,

v.

ARMADILLO ELEVATOR
COMPANY, INC.

Defendant.

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IN THE 725th DISTRICT COURT

IN AND FOR

TRAVIS COUNTY

STATE OF LONE STAR

FINAL JURY INSTRUCTIONS

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to decide the issues, and only those issues, that I submit for determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you to the facts as you find them, from the evidence.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received into evidence, and all facts that may be admitted or agreed to by the parties. In determining the facts, you may draw reasonable inferences from the evidence. You may make deductions and reach conclusions which reason and common sense lead you to draw from the facts shown by the evidence in this case, but you should not speculate on any matters outside the evidence.

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and

opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in light of your own experience and common sense.

The issue for your determination is whether the death of Rocky Rhodes was the result of the negligence, if any, of Armadillo Elevator Company, Inc., or of Pretorius Railway and Brew Company, or of Big State Power Company, or of Mr. Rhodes himself. In that regard, you are instructed that Baili Rhodes has the burden of proof on the negligence claim against Armadillo Elevator Company, meaning that Baili Rhodes must convince you by a preponderance of the evidence that Rocky Rhodes' death was the result of Armadillo Elevator Company's negligence, if any. You are further instructed that Armadillo Elevator Company has the burden of proof on the claim that Rocky Rhodes' death was caused solely or in part by the negligence, if any, of Rocky Rhodes himself, or by the negligence of Pretorius Railway and Brew Company or Big State Power Company or a combination of the negligence, if any, of one or more of those parties, or from some other cause.

With respect to Armadillo Elevator Company and Pretorius Railway and Brew Company, "negligence" means the existence of a condition that posed an unreasonable risk of harm, of which Armadillo Elevator Company or Pretorius Railway and Brew Company had actual knowledge and of which Rocky Rhodes did not have actual knowledge, and that Armadillo Elevator Company or Pretorius Railway and Brew Company failed to either adequately warn Rocky Rhodes of the condition or failed to make the condition reasonably safe. With respect to Rocky Rhodes and Big State Power

Company, you are instructed that the term “negligence” means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

“Ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

“Proximate cause” means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using *ordinary care* would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Answer “Yes” or “No” to all questions unless otherwise instructed. A “Yes” answer must be based on a preponderance of the evidence unless you are otherwise instructed. If you do not find that a preponderance of the evidence supports a “Yes” answer, then answer “No.” The term “preponderance of the evidence” means the greater weight and degree of credible evidence admitted in this case. Whenever a question requires an answer other than “Yes” or “No,” your answer must be based on a preponderance of the evidence unless you are otherwise instructed.

At this point in the trial, you, as jurors, are deciding if Rocky Rhodes’ death was proximately caused, in whole or in part, by the negligence, if any, of Armadillo Elevator Company, Inc., or of Pretorius Railway and Brew Company, or of Big State Power Company, or of Mr. Rhodes himself, or from some other cause. If you find Armadillo

Elevator Company was at fault in whole or in part, you will hear additional argument from the attorneys and you will hear additional witnesses testify concerning damages. Until that time, you are not to concern yourselves with any question of damages. Your verdict must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice, sympathy, or any other sentiment for or against any party. When you retire to the jury room, you should select one of your members to act as foreperson, to preside over your deliberations, and to sign your verdict. You will be given a verdict form, which I shall now read and explain to you.

(READ VERDICT FORM)

When you have agreed on your verdict, the foreperson, acting for the jury, should date and sign the verdict form and return it to the courtroom. You may now retire to consider your verdict.

NO. 16-000711-CV

BAILI RHODES

Plaintiff,

v.

ARMADILLO ELEVATOR
COMPANY, INC.

Defendant.

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IN THE 725th DISTRICT COURT

IN AND FOR

TRAVIS COUNTY

STATE OF LONE STAR

JURY QUESTION No. 1

Did the negligence, if any, of the following proximately cause the death of Rocky Rhodes?

Answer "Yes" or "No" for each of the following:

- 1. Armadillo Elevator Company _____
- 2. Big State Power Company _____
- 3. Pretorius Railway & Brew Company _____
- 4. Rocky Rhodes _____

If you have answered “yes” with respect to more than one party in response to Jury Question No. 1, answer the following Jury Question; otherwise, do not answer the following Jury Question.

JURY QUESTION NO. 2

What percentage of the negligence that caused the death of Rocky Rhodes do you find to be attributable to each of those listed below and found by you, in your answer to Jury Question No. 1, to have been negligent?

- 1. Armadillo Elevator Company _____
- 2. Big State Power Company _____
- 3. Pretorius Railway & Brew Company _____
- 4. Rocky Rhodes _____

Total 100%

CERTIFICATE

We the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into Court as our verdict.

Presiding Juror

To be signed by those rendering the verdict if not unanimous.
