THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY CIRCUIT COURT
Roger M. Young, Sr., Circuit Court Judge

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SC Court of Appeals

Civil Action Nos.: 14-CP-08-1231, 14-CP-08-1232
Appellate Case No.: 2016-000521

Estate of John Fortney, Deceased,
By His Duly Appointed Personal
Representative, Constance S. Fortney,..... Appellant,

v.

Berkeley Electric Cooperative,.....Respondent.

AND

John Steven Robinson,.....Appellant,

v.

Berkeley Electric Cooperative,.....Respondent.

RECORD ON APPEAL
Volume 3 of 4

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Q. Your opinion that the line was constructed properly depends on the linemen doing inspections when they're working around those power lines, right?

A. It would depend on the lineman who constructs it to begin with. I guess that's where you start.

Q. You're saying that there weren't any problems in 2003 'cause they were out there, so it must have been fine then. But to know that, to rely on that, you have to be relying on the fact the linemen are doing inspections when they're out there on those maintenance records, correct?

A. Correct.

Q. Okay.

A. So that would be Nick van Allen. You were referring to Rico Harrell, so I think you need to ask Nick van Allen what his experience is, whether or not he did that same type of work.

Q. Sure. And you spoke to Isaiah Ward?

A. Yes.

Q. And Isaiah Ward, you asked him, Hey, did you build that line to spec?

A. No. I told Isaiah, I wanted to make sure that he remembered that -- I said, I think I remember you, and I think we had this conversation before, but Pope just asked me to call you and make sure that I have an

understanding of what you did.

And he said, Yeah. I've been doing this 30 years. I know what I'm doing. I can eyeball this thing. I would know if it had that much sag. I would notice it if I had built it that way. I wouldn't have built it that way.

That's what he's going to testify to, as I understand it.

Q. So, in other words, you asked him if he built it to the specs, and he said, Yeah, that's the way I do it?

A. Yes.

Q. And he's relying on his memory from a line he constructed 22 years ago, right?

A. Well, I think he's relying on his methodology and he had been doing this for so long. I mean, I think you're suggesting that maybe one out of every 10,000 lines he builds he just ignores the right height. Again, you would have to ask him, and I guess the weight of that goes to his credibility.

Q. So I guess your opinion is not really that the line was constructed properly, it is that the usual practice of the Berkeley Electric linemen is to construct power lines properly. Is that a better way to state your opinion?

A. Correct, that we have a very standard arrangement

of 35-foot poles and that clearance requirement that they are trying to achieve, and, more in particular, the NESC the 18 and a half, is more than achievable with that pole height.

Q. And in your file, I happened to notice, Mr. Jackson, that there was a blank pleading in here called Defendant's Answers to Plaintiff's Four Supplemental Interrogatories, and what it is, it has the question and the answer to it is blank, and that was in your file. Do you recall that?

A. No.

Q. Because then I have the completed version here, with the answer filled in, and this would seem to indicate that Mr. Johnson had sent you our request in saying how high did the power line have to be? That's what we were asking, how high does the power line have to be?

The answer is blank and it's in your file, and then we see it was filled in. I asked you in your deposition, were you aware that Mr. Johnson had pled 14 feet 5 inches as what the National Electric Safety Code applied to the line on this day, April 23rd, 2008? Did you even know he wrote that?

A. I don't recall it, but I know you asked me questions about whether that was spaces or ways for

pedestrians only, and I said that certainly could be argued.

Q. I asked you very specifically in your deposition, did you know that Pope had claimed required height for this line on this day was 14 feet, 5 inches, and you told me in your deposition, No.

Is that the truth?

A. I guess so. At the time, maybe I didn't know that.

Q. Is it possible that you told him 18 and a half and he didn't like that answer and chose his own?

A. No. We had discussed -- I said, From everything I'm seeing, this could be argued as spaces and ways accessible to pedestrians only. That would be one of those things, and that would be 14 and a half feet.

Q. You could make an argument to that effect?

A. Yeah. Everything I saw didn't suggest there was going to be machinery out there. It's not a road. I think certainly it could be argued that things have changed over the years. I don't know what it was when the line got put in, but when I was out there, I didn't see any machinery. All I say saw was a big, vacant piece of land.

Q. But that's not one of the -- I believe your conversation with the judge here today was 18 and a half

feet, right?

A. Well, that would be the worst case scenario. Again, I still don't have any evidence that it's definitively spaces and ways, but I don't have any evidence that it's not.

Q. You just can't say either way, fair to say?

A. Correct.

Q. And if we assume that the line was actually built to what the height they said it was, to 24 feet, right? And we know that the line measured about 17 feet on this day, right?

A. Well, I know some other measurements by other people are higher than that, so it's that plus -- in that area.

Q. I'm saying about. We can round it to about seven-foot difference, right?

A. Seven, maybe six plus, something, because there was some other measurements with the line higher in the OSHA report.

Q. And I asked you in your deposition, why was it hanging seven feet or -- let me back up for a moment.

What exactly is your opinion as to why the line was as low as it was on this day? Is it because something hit it and pulled it down that far?

A. It's what it looks like to me, yes, sir.

Q. And I asked you in your deposition, how far did something hitting it cause it to sag? And I believe you told me seven feet, about seven feet. Do you recall that?

A. No, but if that's what I testified to, that's fine.

Q. And is it safe to assume that you just simply subtracted 17 from 24 to get that number?

A. Yes.

Q. Started at 24, it ended around 17. You just subtracted those two numbers, right?

A. Correct.

Q. But leaning poles could be a reason that a power line is sagging, right?

A. Yes.

Q. But you were out there twice, weren't you?

A. Yes.

Q. And you didn't take any measurements of the poles at that time, did you?

A. What do you mean, measurements?

Q. If the poles were leaning, you didn't take a measurement of how they were leaning and say, This accounted for this much sag.

You didn't do that kind of calculation, did you?

A. You can't do that unless you know where the poles

are to begin with because normal pole construction you skew them out some, and you string it in. So if they're skewed out more than normal, you could still impact it, have the poles move forward, create a lot of sag. The poles could be perfectly vertical or just slightly leaning inwards, so until you know what the angle of both poles is prior to the incident, you can't make that calculation.

Q. So you're not saying today, to a reasonable degree of engineering certainty, that the leaning poles were the cause that the line was hanging too low, are you?

A. That would be my opinion. I mean, I see two conductors, both phase and neutral, with distortion that I can't explain without having impact, and I do know that impact causes poles to lean. It's just a natural consequence of it.

Q. Did whatever hit it cause the line to stretch also, the steel reinforced aluminum line?

A. It would be minimal. Steel doesn't have a high co-efficient of elasticity.

Q. So the big thing would have to be the angle of the poles to cause it to sag seven feet under what it was originally supposedly put up at, right?

A. Pole movement, I would say, yeah, or line slippage off of an insulator.

Q. And that's a calculation people can do, right? They can look at poles. They can look at how much they're leaning, and they can calculate how much sag that creates. They can look at that and take those measurements, right?

A. Well, you don't take the measurements. You have to start out with a known. If you're going to calculate that, you have to start off with a known separation, and then you have to know how much the separation changes.

Q. Well, if you assume the poles were put up straight, can't you go out there and look at the poles and tell how much they're leaning and measure it?

A. What you don't understand, I can't assume the poles are straight. Normally, when you have a span, they'll kind of pull them out a little bit, knowing tension is going to pull them in.

So depending on how much those poles were not plumb to start out with, you can't go out and measure the angle that they are today and have any clue of how much they've moved.

Q. Let me maybe ask the question a better way. You don't have any specific evidence, measurements, anything, that would prove that the reason the line is hanging seven feet below what it was originally installed at was because of the leaning poles. You don't have any of

that, do you?

A. All I have is a damaged conductor that I have no explanation for other than being impacted by something, and impact causes excessive tension and excessive tension will cause poles to lean.

Q. Is that a yes to my question, that you don't have any measurements, any pictures, any sort of documented evidence that would tell us the reason the line is sagging this much from what it was originally put up at is because of the leaning poles? You don't have that, do you?

A. I already told you, I can't get it because I don't know where the poles were to begin with. I can tell you the line appears to be impacted.

Q. I'm just looking for a straight yes or a no. I mean, you're free to answer your answers, but I'm trying to get it clear, what your testimony is, so we can move through faster, okay?

THE COURT: You've asked about three times, and he's told you about three times. He can't tell you that, so move on to something else.

MR. SMITH: Yes, sir.

BY MR. SMITH:

Q. It would take a lineman about five minutes to measure a line with a measuring stick; is that fair?

A. Probably assuming he had one on his truck.

Q. Would you agree with me that both trained and untrained people would have difficulty judging the height of a power line when standing on the ground?

A. Well, depends on how trained you are. Linemen, if they do it every day, I think they can tell the difference in sag. I don't think anybody can look at a line and say, That line is 19 feet, 6 inches above grade. The change of sag, I think trained people can tell.

Q. So do you agree or disagree with that, that both trained and untrained people would have difficulty judging the height of a power line from standing on the ground?

A. Yes, I just said that. You can't say 19 feet, 6 inches. It's a relative understanding.

Q. I got you. You would need a reference point to do that, true?

A. To have an exact quantitative measurement?

Q. Yeah, or get it within five feet or whatever. I mean, you would need a reference point to do that, right?

A. If you want to know exactly how high a line is at any particular location along the line, you would measure it. That would be the way to do it.

Q. It terms of a visual inspection to be able to accurately judge the height of a power line from standing

on the ground, you would need reference points. Now, these are your words I'm using, okay?

A. That's what I just said, changes in sag. Your reference points would be your attachment heights, okay? And if you're accustomed to looking at a line with a 300 foot span and you see a certain amount of sag, there's no one, no one I know of, that can say, There is six foot of sag in there, or there is six-and-a-half feet, or whatever, but extreme changes, I think, can be observed.

Q. And I believe -- I don't know if this was done before we took your deposition, but Rico Harrell testified, looking at a line he can't tell whether it's 15, 16, 17, 18, 19, or even 20 feet high. Is that the difficulty you're describing, the range?

MR. JOHNSON: Objection, Your Honor. It's not in the record.

THE WITNESS: I don't know what Rico Harrell can do. I've never read a deposition of him, and I've never met the man.

BY MR. SMITH:

Q. Would that be consistent with the type of difficulty you're describing for trained and untrained people?

A. I don't know how trained he is compared to -- there may be other linemen with 30 years' experience that

can do it a lot better. I don't know. I don't know what his experience is, how trained he is, whether he wears glasses or doesn't wear glasses. I don't know anything about Rico Harrell.

Q. The question was trained and untrained people?

A. Certainly untrained people would have -- some could, maybe, but when you say trained, I don't know what you mean by trained. There's different levels of experience.

Q. I got you. I'm going to say it in a different way. I think that both trained and untrained people can have difficulty determining the height without a reference point. Would you agree with that statement exactly as written?

A. I just told you that. Yes. The specific height, you're absolutely right.

Q. Is it true you would have the same difficulty as someone who maybe doesn't look at power lines a lot?

A. You're right. I couldn't go out and look at a line and say, That line is 19 feet, 6 inches above the dirt. I can't do it.

Q. But if you have a frame of reference, it becomes much easier, true?

A. That's true.

Q. But if you're talking about looking up into a blue

sky, that can be a challenge, yes?

A. Absolutely. If you get directly beneath a line into a blue sky, you just don't have a frame of reference.

Q. Or even where the line is in front of you and you're looking at the line up in the air and there's a blue sky behind, you don't say you have to be directly under it to have that problem, right?

A. Well, that's the worst case scenario, but, again, if you have a something behind them, let's say a building, and you have a frame of reference, that helps you.

Q. This isn't anything new. The difficulty that trained and untrained people, including yourself, would have in judging the height of a power line while standing on the ground, is this new information? Is this -- have you known this for a long time?

A. Well, that's what I'm saying. I don't anybody, unless you're a really special person, that can look at a line and tell you the specific height.

Q. My question, though, is this isn't something you've learned in the last few weeks. This something you've known for years and years and years and years, right?

A. Like I said, I don't think anybody could give you

a specific height of the line. I don't know of anybody in my experience.

Q. I got that, but my question is, how long have we known that? Because my next question is going to be, is that something Berkeley Electric should have known, that trained and untrained people, including yourself, are going to have difficulty judging a power line when standing on the ground because when there is a blue sky and no reference points, that becomes a challenge?

Is that something Berkeley Electric should know? Has that knowledge been around long enough for them to know?

A. I would say most linemen would say if all I've got is blue sky, I wouldn't be able to quantify the exact height of the line. I don't think any lineman will tell you that.

Q. Clarification. I'm not talking about the lineman. I'm talking about the executives, the people in charge, the people setting the policy, setting the training, doing these things. Has that information been around long enough so that they should know it?

A. I would say yeah. I think anybody knows you can't look at a line and know exactly how high it is. I don't think anybody could say they could, or should.

Q. We went over in your deposition this last safety

rule.

A. Number three?

Q. Yes. A power company must tell the truth about its compliance with electrical safety laws when reporting to the government to prevent injury to people or death by electrocution.

You said, I don't know. Do you remember that?

A. I don't remember the question, but --

Q. Do I need to grab it or --

A. No. If you said that was my testimony, that's fine. I think maybe we discussed the fact that in different venues they may or may not have to comply, and then especially to the federal government, if you're referring to US.

Q. All I'm talking about is do they have to tell the truth to the federal government? And your answer before was, I don't know.

A. I don't know. I said there could be variables in there. I don't know.

Q. Got you. And since the provision about inspections is contained within the National Electric Safety Code, would you say the inspections that the National Electric Safety Code mentions would include part of that, meaning determine if the line meets the National Electric Safety Code?

Can you infer that because the inspection is contained in the National Electric Safety Code?

A. That's what I said. That's part of Rule 214, is it first requires you to inspect, as experience has shown to be necessary, on a periodic basis, and then it says if you do find a defect, then you're required to correct it.

Q. And the defect you were talking about was the low-hanging line below the table, right?

A. In this particular matter, there could be any number of defects. That's not the only thing you're looking for.

Q. Right, but that's one of the things they're required to look for. Does the line height meet the requirements of the National Electric Safety Code?

A. That would be an objective, yes.

Q. Okay. And if we -- and that's also in the federal regulations, right? Inspections and tests must include a determination of whether a facility complies with National Electric Safety Code? It's also there, right?

A. It just invokes the National Electric Safety Code as a standard, yes.

Q. But the National Electric Safety Code itself requires that the inspections include a determination as to whether or not the line is at code, right?

A. Whether or not there's a detectible defect, yes.

Q. And, Mr. Jackson, we went over this discovery response in your deposition as well, and we said, Please state when the power line which is the subject of the plaintiff's complaint was last inspected prior to April 23rd, 2008 for National Electric Safety Code compliance and what items were inspected at that time, and you reviewed this answer.

It says, The line in question has never been inspected for National Electric Safety Code compliance; however, it was part of a pole inspection conducted in 2002.

Do you remember us going over that?

A. No, but if you say so.

Q. Is it true if you take that sentence verbatim as to what it says, or how it's written, that is a violation of Section 214 of the National Electric Safety Code, true?

A. Whoever wrote that, you would have to ask what they meant by it. The way it's written, it does not tell me what they're doing in terms of vertical clearance. I'm actually looking for that.

Q. That's not the same answer you gave me before.

A. Tell me what I said before, because I don't remember.

Q. All right.

Yes: Okay. If a power company has never inspected an overhead power line for compliance with the National Electric Safety Code, are they violating the rules of the National Electric Safety Code?

Well --

THE COURT: Are you just reading something? What is it?

MR. SMITH: I'm sorry. Page 104.

THE COURT: Of what?

MR. SMITH: His deposition.

MR. JOHNSON: Which one?

MR. SMITH: The first one.

THE COURT: Is this something different than what he just said?

MR. SMITH: Well, he said if you take it verbatim, then that's a conflict with Rule 214, and that was my question.

BY MR. SMITH:

Q. If you take this verbatim, is that a conflict, a violation of Rule 214, if you take it as exactly what it says?

A. I would say yes, there's a problem with that.

Q. Tell me what -- if you agree with this. The term, or I think you called it a phrase: All overhead power lines patrolled annually, does that mean that there is

some form of inspection on all lines on an annual basis?

A. Say that again.

Q. All right. The phrase, all overhead power lines patrolled annually --

A. Uh-huh.

Q. -- does that mean to you there is some form of an inspection on an annual basis to all lines?

A. That's what it sounds like.

Q. Okay. You know, based on the description that Mr. Johnson just gave you, that that's not happening at Berkeley Electric, right? Some form of inspection on all lines on an annual basis, you know that's not happening, right?

A. They have a rotating inspection program, as I understand it.

Q. You know that's not happening, that all lines are going through some sort of an inspection on an annual basis. You know that's not happening, right?

A. I believe that's true.

Q. And that's never happened, as far back as you can -- it's never happened at Berkeley Electric, true?

A. I don't know what their current practices are, but at the point in time I gave that answer, I wasn't aware of all lines, every line, being patrolled.

Q. And all the people you spoke to and all the

documents that we've reviewed and all the research you've done and everything you've done over the last six or seven years in this case, you haven't been presented with one single piece of evidence that suggests to you that some form of an inspection is happening to all lines on an annual basis; is that fair?

A. Not that I recall. I don't think I had that, no.

Q. Mr. Jackson, what is the Touchstone Energy Group?

A. It's a conglomerate, I believe, of power companies.

Q. Is Berkeley Electric a member of the Touchstone Energy Group?

A. That, I can't answer.

Q. Mr. Jackson, I'm going to hand you a set of documents. The first couple pages are the web site of Berkeley Electric Cooperative. We're going to turn to the second page here, and does it say as a part of Touchstone Energy, Berkeley Electric has a competitive advantage. It not only lets its customer know we're a preferred energy provider maintaining high standards and strong ties to the community, but it also allows Berkeley Electric to draw on the pooled resources of hundreds of other companies.

Does that tell you whether or not Berkeley Electric is a member of the Touchstone Energy?

A. It sounds like it may just be an association group. I'm not sure exactly what Touchstone Energy was because I didn't know there were hundreds all in one group, so --

Q. And I want to ask you about a couple other members of Touchstone Energy Group.

THE COURT: What is the relevance? He doesn't understand what the Touchstone Energy Group is, so why are we asking him about it?

MR. SMITH: Well, Your Honor, we have heard from witnesses so far that Berkeley Electric's doing what everybody else is doing, and I'm going to question this witness about what some of the other co-members of the Touchstone Energy Group are doing with regards to their inspection program.

THE COURT: Well, I'm not sure what Touchstone Energy Group is, but why don't you just ask him what other co-ops are doing. Touchstone Energy Group, he doesn't know what it is. I don't know what it is. I've heard the word in radio ads, and it sounds like they offer you rebates on hot water heaters or something.

I don't have any idea what it is. He's the expert. He doesn't have any idea what it is. So if that's where you want to go, why don't you ask him about other co-ops.

MR. SMITH: We can ask him about Touchstone because it's on Berkeley Electric's web site. The title is What is Touchstone Energy? I believe it describes what it is right there.

THE COURT: You can ask him, but he's already said he doesn't know what it is, so --

BY MR. SMITH:

Q. Is the Touchstone Energy Group a nationwide alliance of local consumer owned electric cooperatives committed to providing high standards of service to customers, large and small?

A. Sounds like that's what you just read, and I guess the word is alliance I was looking for. I don't know if it's a group. Maybe it's an alliance of some sort. I don't know what the alliance is. I don't know what that encompasses.

Q. From what you know about Touchstone Energy, would it be fair to say there are 600 -- or more than 688 member cooperatives nationwide?

THE COURT: You just handed him that paper. He doesn't know anything about it. He's already said that.

BY MR. SMITH:

Q. The Great River Cooperative, does the Great River Cooperative inspect lines six times by air each year and

once by ground? Do you know that?

A. I have no idea. It's a transmission company. It might.

Q. And Hawkeye, do you know whether or not their inspection program consists of inspecting the entire system annually?

A. Don't know. Don't know who Hawkeye is, where they are.

Q. I think you're going to answer I don't know for most of these, so I'm going to pause.

MR. JOHNSON: What was that? I couldn't hear you. Sorry.

BY MR. SMITH:

Q. I assume the rest of these answers I'm going to ask you about -- you don't know who is in Touchstone, do you?

A. No, sir, I don't. You said there was 650 in an alliance, I believe is what you read.

Q. All right. Let me just review these few notes right here.

A. Yes, sir.

Q. Safety rule number two, I think we discussed that with regard with regard to the National Electric Safety Code, the fact that inspections are required per the National Electric Safety Code?

A. Rule 214, I believe it's item two or three, it says as experience has shown to be necessary.

Q. And I think you just testified that part of that inspection should include a height determination to make sure it's to code?

A. Part of that is, yes. They're inspected to find out if there is any observable defects.

Q. And the reason that they're doing that inspection, or one of the reasons they're doing that inspection, is to prevent people from being electrocuted or injured?

A. Not necessarily, no. I mean, you can have a defect that doesn't have anything to do with injuring people.

Q. You mean in the inspections that linemen are doing for code compliance and height, that doesn't have anything to do with safety?

A. Well, it's a safety code. I mean, the whole idea is it's a national consensus standard for safety, but there's a lot of things you're inspecting for that could be a defect that has nothing to do with preventing injury to people or death by electrocution.

Q. But if it's a defect involving the height of the line, that is one that could lead to injury to people or death by electrocution, right?

A. Oh, for instance, you know, if a cross-arm broke

and it's hanging within the height of a person walking, certainly, but a minor defect a little bit under code doesn't pose an imminent danger to life or property, so you've got to make a judgment call as to the nature of the defect and what potential hazard it may or may not pose.

MR. SMITH: Thank you.

THE WITNESS: Thank you.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q. Do you work with any number of electric cooperatives?

A. Yes. I've been working, investigating incidents and accidents for cooperatives over all the country.

Q. And have you been able to hear and see what other cooperatives do in connection with inspection of their lines?

A. Yes. Their total inspections go on a rotating basis, some as low as five years, some as much as ten years, but generally five to eight sounds like the norm.

So if it was a 10-year cycle, it would be 10 percent of your system every year. If it was 5, it would be 20 percent of your system every year.

Q. Is the Berkeley system of inspection and

patrolling the lines consistent or inconsistent with what other electric cooperatives are doing?

A. My understanding it is, in terms of their total system inspection.

Q. It is what?

A. Consistent.

Q. You were asked about the web page for Berkeley Electric Cooperative. I want to read you something and see if you can identify it as being part of the web page.

Working near power lines: Take extra care when working near overhead power lines. Maintain a safe distance of ten feet or more from overhead power lines. If you need to be closer, contact your local Berkeley Electric Cooperative office for more information on the safe limits of approach. Be careful with ladders, cranes, and diggers.

Do you know as to whether that's on the Berkeley web page?

A. I don't know. I haven't seen it. It's consistent with the OSHA standards, so --

MR. JOHNSON: Thank you.

MR. SMITH: No questions.

THE COURT: You can step down.

THE WITNESS: Thank you, sir.

THE COURT: All right. It's 4:00. What is

the deal on your other witnesses?

MR. JOHNSON: We have a witness here, another live witness, and I would like to take it.

THE COURT: Who is it?

MR. JOHNSON: Tim Kulp.

MR. SMITH: Your Honor, we're not going to see him on any discovery pleading anywhere listed as any expert witness to give any opinion testimony at all.

THE COURT: Was he a witness there that day?

MR. JOHNSON: No. He wasn't a witness to that.

THE COURT: What is he going to testify to?

MR. JOHNSON: He's going to testify to the likely -- that if John Fortney came to him with the criminal charge he was facing at the time of his death, what would he advise him regarding his prospects -- regarding the charge? In other words, I'm going to ask him, when you were representing --

THE COURT: You know, Tim's been practicing law longer than I've been practicing law, but I would tell -- if he went to a CLE, like I go to CLEs and I tell people, young lawyers, if you can tell a client what his sentence will be, you are a fool for a lawyer, and you are malpracticing.

Because I have those people that absolutely

tell people what their sentence will be if they go in front of a judge and plead guilty, and then they have to hire somebody else to come back on a PCR and say, My lawyer malpracticed because he told me I was going to get this as my sentence.

I don't know what Tim's going to say, but I'll bet you Tim is not going to say he told that guy what his sentence was going to be.

MR. JOHNSON: He ain't going to say that. He's going to say if you go to trial and you're convicted, you're going to look at a sentence that would range from here to there.

THE COURT: Couldn't you just tell me what he got charged with? And I could tell you that maybe off the top of my head. I haven't memorized the whole sentencing code, but I don't need Tim Kulp to tell me that.

MR. SMITH: This is not in the record.

MR. JOHNSON: I know you may take the position I know as much or more than Tim does.

THE COURT: Tim probably knows more than I do, I'll grant you that.

MR. JOHNSON: So I lined him up to testify.

THE COURT: As to what this guy's possible sentence could be?

MR. JOHNSON: Yes, if he tried it or if he pled it, and I think --

THE COURT: He still couldn't tell you what his sentence could be. He could tell you what he could possibly get, and if he pled -- depends on what he pled to.

MR. SMITH: Your Honor, he didn't plead.

MR. JOHNSON: I agree, Your Honor.

THE COURT: So what's the point of that in this regard? I mean, the guy's deceased.

MR. JOHNSON: The point of it is this: We got two beneficiaries who are saying what they lost and what would happen in the future and all that, and to the extent he was convicted and in jail, it would interfere with contact with him, because he's in jail. So that's the whole point of it. If you know that and will address it --

THE COURT: I've been a judge now for 20 years, 12 doing this, and I know what happens to people that get convicted and go to jail. I've been at every level of security of prison in this state, so I even know what goes on inside of them. I went to visit those, so --

MR. JOHNSON: Well, if you'll take notice of the solicitor's file and what's disclosed there and let

me take three minutes to proffer his testimony, we'll have it done.

THE COURT: As long as you're going to proffer, put it on. I'm just missing the point of his testimony.

MR. SMITH: Your Honor, these were pending charges.

THE COURT: It's taking longer -- if you want to get Tim to come on to say what his possible sentence would be, it's taking longer in this conversation to get that out of him. I'm not sure it's the most productive line of evidence that you have got in your case, but it's your case. I'll let you put it on, so --

TIMOTHY CLAY KULP,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Mr. Kulp, are you a licensed attorney?

A. I am.

Q. How long have you been a member of the bar?

A. Since 1978.

Q. Do you have and have a private practice?

A. I do.

Q. And what is the focus of your practice?

A. I'm one of six Board-certified criminal trial advocates in the state who are allowed to hold themselves out as specialists, and I pay the extra money and have since 1999.

Q. At my request, did you look at the solicitor's file involving John Fortney?

A. I did.

Q. And have you had an opportunity to review it?

A. I have.

Q. As a -- does the defendant in a criminal case have the right to require the production of the solicitor's file?

A. Yes.

Q. And what was Mr. Fortney charged with?

MR. SMITH: Your Honor, this is not an expert. He's not relying on things normally relied on in the field. This is hearsay evidence.

THE COURT: I'm baffled by this line of questioning. I assume you're putting him on to say what are the range of sentences he faced for what he was charged with. Neither Mr. Kulp nor I would be able to tell you what he would be able to plead to.

There are so many variables that he couldn't possibly answer that. I couldn't possibly answer that. If he was made an offer, then he could testify as to what

that sentence range would be to the crime that he was offered to plead to; otherwise, it's simply on what he either got arrested or indicted for.

BY MR. JOHNSON:

Q. What was he charged with?

A. He was charged with criminal domestic violence, what we call HAN, of a high and aggravated nature.

Q. And what sort of sentence does it carry?

A. Until the recent amendment of that statute, the sentence carried a mandatory minimum of -- if convicted, of one year and a maximum of ten years.

Q. And did you -- well, let me ask you this: Do you have clients who come to you to represent them in criminal matters and you then conduct an examination who asks you what is the range of what's going to happen to me if I plead or if I try the case?

A. Every one of them.

Q. And do you try to provide them with an answer or provide them a range of sentence?

A. I do.

Q. And -- now, had John Fortney come to you with the charges, the charge he was facing and asked you that, what would your opinion be? What would you tell him?

MR. SMITH: Your Honor, I object for speculation and improper opinion.

THE COURT: Well, criminal domestic violence, CDVHAN, at that time he could tell what the sentence was at that time, possible sentence; 2008, I don't remember. It's changed since then, but he could testify to what the possible sentence was in 2008 that he faced if he was convicted or pled guilty to CDVHAN.

BY MR. JOHNSON:

Q. Could you answer that?

A. It was -- and I double-checked, but it was at that time it was a minimum mandatory of one year in the penitentiary, with a maximum sentence of ten years in the penitentiary.

Q. And based upon your review of the solicitor's file, what would you tell him about the range of sentences?

MR. SMITH: Your Honor, that's my objection.

THE COURT: He just did. One to ten.

MR. JOHNSON: I'm trying to find out or have him testify as to what he would tell the client, his client, if they were facing the same charge as John Fortney was and the same evidence that was in the solicitor's file.

THE COURT: And he just told you he got charged with CDVHAN, one to ten. Mr. Kulp couldn't tell you whether or not he had would get the minimum or the

maximum.

MR. JOHNSON: I'm asking what he would tell the client, not whether -- you know --

THE COURT: First of all, it wasn't his client, right? Mr. Fortney, was he your client?

THE WITNESS: No, sir, Your Honor.

THE COURT: Okay. So how could he tell him anything -- how could he answer this question with anything other than, I would tell him he would get one to ten years?

MR. JOHNSON: Can I ask him what he would tell him?

THE COURT: What you would tell him?

THE WITNESS: I would tell him that as a -- as a person charged with an offense which provided for a minimum mandatory period of time in prison, that it would be very important, unless he wanted to go to prison, to figure out a way to avoid that one-year mandatory minimum, if possible.

BY MR. JOHNSON:

Q. And if that was not possible, what would you tell him?

A. That it would be best to minimize his exposure and find some means and method of doing that, exposure to a sentence, a higher sentence.

Q. And what sentence was he exposed to?

A. Well, as His Honor said, I mean, it's multifactorial, but he could -- and it depends on the Court, the facts and circumstances of the case, whether or not he had any prior record, but if he -- in the jurisdiction, but, you know, I would tell him that if he went in and pled guilty, or was found guilty, that he could potentially get as high as ten years, whether he would -- if found guilty or pled guilty, he would get at least the minimum mandatory of one year, which there was no suspension of -- where probation could be granted.

Q. What factors did you see in the solicitor's file that might be the basis for a sentence of ten years?

THE COURT: I'm not going to let him answer that, and here's why: What's in the solicitor's office file is one thing. What is said by victims and other witnesses and all that has a lot of impact on it, so different things appear in the solicitor's office at different times, and there's absolutely no way on God's green earth that Mr. Kulp or anyone could say how this case would result other than if he pled or got convicted he would go to jail for one to ten years on a CDVHAN.

It's pure speculation, and I'm missing the point of the whole exercise, to be honest with you, but that's all I'm going to allow him to testify to.

MR. JOHNSON: Thank you. You can step down.

THE WITNESS: All right. Thank you.

MR. SMITH: That testimony from Mr. Kulp, was that a proffer?

THE COURT: That was a proffer for whatever it was worth. All right. We'll start back up at 9:30 tomorrow morning, and hopefully finish.

MR. SMITH: Your Honor, can we ask who the witnesses are for tomorrow?

THE COURT: You said just two you got left, right? However many he's got left.

MR. JOHNSON: We have two experts --

THE COURT: Who are they?

MR. JOHNSON: Ken Keberle and Thomas Markel; Matthew Bryan. We have Clayson, Mr. Clayson; we have Mr. Richardson, if we can get him here; we have Mr. Wilks on the OSHA violation. We have Ms. Renee Brunnmeier; we have Susan Mascari, Lisa Boisvert. We have Deputy Musgrave. We have, potentially, Nick van Allen, and we have possibly John Hall.

MR. SMITH: Your Honor, maybe we can address this Mascari and Boisvert and Musgrave. They were referenced in the file from the solicitor and are proposed witnesses to the assault between Mr. Fortney and Ms. Winterroth.

And what he's attempting to do is prove to Your Honor that he would have been convicted, so he would have gone to jail, and that's the purpose of the testimony from Mascari, Boisvert, and Deputy Musgrave.

Your Honor, I don't see how any of that is relevant. We just let him do this proffer and this exercise. At the very least, that stuff is cumulative, but it's certainly irrelevant. If it is relevant, Your Honor, I don't even know what to say about it. It's fulfilling my forewarning that the defense is going to trash the plaintiff, and that's what this is about.

MR. JOHNSON: Your Honor, they're taking a big swing at my clients, and we believe that that information is relevant to a Court who would say perhaps Fortney would go to jail five years, or Tim Kulp would have said a range he would have gone to jail, but the damages are the loss the beneficiary suffered, and if the man's in jail, they would not have a normal relationship with him, for however long that would be. And so --

THE COURT: They could still visit him.

MR. JOHNSON: They could visit him, but it would be different than having him there every day, down the street -- I mean, they want to put it in that he was this great guy who told inappropriate jokes.

All we're trying to do is put in information

that shows who we really think he was, which was an abuser of women, a violent guy with a bad temper, who had not had ongoing contact with at least one daughter for whatever she said, ten, twelve, fifteen years.

THE COURT: Have you got any authority for this line of questioning? Aside from the fact I'm not sure it's going to accomplish what you want to accomplish, being the fact finder in this case, and if we get to the point where liability is established and we do that, you know, that's the kind of thing I would tell you, if you're talking to a solicitor, be careful what you ask for. You might get it.

That sort of thing can backfire on you, and if your thrust of it is he was a sorry SOB, and you shouldn't give him much, then that's your case. I don't know that you need to have me tell them -- it's kind of like that line of questioning with Tim Kulp right there. I don't want to conduct a mini trial on a CDV incident here, and if it's just that one incident, well, that's one thing. I don't know how it's going to come out, but I have to have everybody that was there and other witnesses, and, you know, man, those things are complicated, every single one of them.

And you want me to try a mini CDV trial and figure out how much time I would give him and, Go, well,

he's a bad person and you shouldn't give him much money. I've never heard of anybody trying to do that, so maybe you can come up with it overnight and think about if that's really what you want to do, and if you do want to do it, how about providing me with some authority on you being able to do that?

MR. JOHNSON: If I can get it, I'll have it in the morning.

THE COURT: Okay.

MR. JOHNSON: I'll look.

MR. SMITH: Do you want to hear or address the ex-wife, Ms. Brunnmeier? He's proposing to put her on tomorrow.

THE COURT: What's the point of his ex-wife testifying?

MR. JOHNSON: She's going to talk about who he was and things he did and his having given up his parental rights to the child they had and he was a drug abuser, an abuser of women, this was a guy that had cocaine in his system at the time of the accident. He wants to make him out to be a wonderful, funny, good guy --

THE COURT: It's the relationship between he and his daughters, which I didn't hear anything about him beating his children, and it sounded like -- as I said,

when the one young lady was testifying -- relationships are complicated, and I suppose if there is one thing I've learned about doing this job, man, I don't even know what normal is.

People have all kinds of relationships and how it takes people to get through life and how they end up interacting with children, and, you know, former spouses and love affairs that went bad years ago that resulted in children, I mean --

MR. JOHNSON: I didn't say you're going to agree with us.

THE COURT: I'm kind of throwing it out -- are you sure you really want to do this line of questioning? I'm kind of telling you I'm not impressed with that line of questioning, and this is a nonjury trial. If you want to put it in, why don't you just sleep on that overnight? Because I'm telling you, I'm not really impressed with that kind of testimony, I'll be honest with you.

MR. JOHNSON: Well, Your Honor, I appreciate your candor.

THE COURT: Okay.

MR. JOHNSON: And I guess --

THE COURT: I know what Ralph King Anderson says of the elements, and the loss of society, these

young girls had a different relationship with their dad than their mothers did. That's the bottom line, but their mothers aren't statutory beneficiaries, so just to have an ex-wife come in and testify about what a, you know, bad guy he was, in her opinion, well, first of all, she's an ex-wife.

And, you know, I mean, I'm a nice guy, and my ex-wife, I'm sure -- we had a good divorce and we are grownups and everything, but I don't know that I would want her coming in and testifying against me. I don't expect her to come in and say, you know, whatever -- you know where I'm going on this.

The point is, I don't expect an ex-wife to come in and say he was a great guy. I expect an ex-wife who had some issues to come in and say he wasn't a great guy, but that's got nothing to do with his relationships with his daughters.

MR. JOHNSON: Your Honor, I believe that what a person has done is the best evidence of what they would do in the future.

THE COURT: If you've got any evidence that he, you know, beat his daughters, you know, then let's talk about that, but these are things that you say all happened with people other than his daughters.

His daughters came up. They talked about the

relationship. It wasn't normal, especially with the one young lady who hadn't seen her dad or hadn't met him until she was, what, 15 years old or something like that? You go, Well, I wish it could have been better. It sounds like she wishes it could have been better, but I don't know what purpose is served by having an ex-wife come in and trash him. I really don't know what the purpose of that is.

MR. SMITH: Your Honor, I will represent that she has testified that she never saw any personal interaction between John and Emma or John and Gina.

MR. JOHNSON: What I recall her testimony being, in part, things that she learned John did with his two daughters when she came to South Carolina with her child for the funeral, and they --

THE COURT: Why didn't you ask them about that? If he, quote, end quote, did something, you could have asked them about that. I don't know what you're referring to.

MR. JOHNSON: Well, let me look back at her deposition and give due consideration. I mean, I understand what you're saying. I do think, for example, loss of companionship, which is one of the elements, well, there's a difference if you're in jail at the level you can have companionship versus not being in jail.

THE COURT: That's common sense. I totally get that. I don't need to be educated on that. It's nothing new.

MR. SMITH: We would also address maybe the cumulative experts on tent -- proper tent setup? We have three experts. He wants to -- he gave me a designation -- oh, is this Markel? Oh, this was Tharpe.

Oh, there were three tent safety experts, or tent setup experts, that he has named in this case, one of which we deposed, and he has a document dated October 7, 2013, which he has handed to me today for the first time, which lists page and line number of portions of that deposition he wants to publish to the Court.

He also wants to cover another tent safety guy, Thomas Markel. He also wants to call another guy, Ken Keberle, and I will tell you the affidavits from these three gentlemen are word for word the same.

THE COURT: Well, it shouldn't take that long then.

MR. JOHNSON: Thank you.

THE COURT: What can I say? If he feels like, you know, he needs to hit me over the head three times, then he'll call all three of them.

MR. SMITH: All right. I understand, Your Honor.

THE COURT: All right. Anything else?
MR. SMITH: No, sir.
THE COURT: All right. See y'all at 9:30.
(Recess taken.)
(October 2, 2015.)
THE COURT: Okay. We got everybody here?

KEN KEBERLE,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. State your name and age for the record.

A. Ken Keberle, age 55.

Q. Mr. Keberle, where are you physically?

A. Physical location is Tempe, Arizona.

Q. Now, have you been retained as an expert on behalf of Berkeley Electric Co-op?

A. Yes, sir.

Q. And what is your area of expertise?

A. Event safety.

Q. And what do you mean by event safety?

A. My job, my professional career, for the last ten years has been in the area of special event safety and compliance, design, installation, training of temporary structures and power distribution, et cetera.

Q. Are you knowledgeable in the OSHA regulations as it relates to tent safety or workplace safety?

A. Yes, sir.

Q. Tell me how many -- well, do you have a college degree?

A. Yes, sir. I have a degree from Northern Arizona in Flagstaff, Arizona, and I'm an OSHA certified outreach trainer.

MR. JOHNSON: Your Honor, we would offer this witness as an expert in safety compliance and education of special event and temporary structure industry.

THE COURT: Any objection, or do you wish to voir dire?

MR. GOULD: I would just object because in the designation, Your Honor, it says expertise in proper installation of tents, and now it sounds like we're expanding what his expertise field is. That's my only objection.

THE WITNESS: Okay. My --

THE COURT: Sometimes these things are just -- they're all saying the same thing. I don't know what the difference is between what he said and what you said he's an expert in.

MR. JOHNSON: Well, let me offer him as an expert in the field of tent safety.

THE COURT: I don't know what the difference is between what you're saying he must have gotten designated as in pretrial or something, but they all sound kind of like the same thing. He's an expert.

BY MR. JOHNSON:

Q. What did you do in order to be able to give opinions in this case?

A. For several years, I was the chair for the code and training division, or code and safety committee, for tent rental of the Industrial Fabrics Association International, taught tent school for several years with Top Tech in South Carolina, also helped develop the first tent training program for the IFAI, Industrial Fabrics Association International. And we conducted tent training in California, Florida, Tennessee, South Carolina, and, I guess, a few other states along the path; also spoke on tent safety at trade shows and technical seminars around the country.

Q. And tell us what opinions you formed regarding the facts of this case.

A. Well, regulation of the ten-foot rule on clearance for power lines was violated.

Q. And tell us what the ten-foot rule is and what it says.

A. The ten-foot rule in federal OSHA alliances,

that's the minimum safe approach distance to any uninsulated power line.

Q. And do you have an opinion to a reasonable degree of certainty as to whether had that rule been followed, this accident could have been avoided?

A. Yes. It would have been avoided had the tent not come in contact -- if that ten-foot rule had not been violated.

Q. What should an employer who operates a tent rental business do in terms of workplace safety to avoid an accident like this? What are the steps they should go through?

A. First is understanding and training that there is the ten-foot rule. Again, ten foot is the minimum safe approach distance. Never get within that ten-foot clearance zone, using spotters, training employees of the hazards, and communication on the job site.

Q. What is a site survey?

A. Site survey is prior to the installation of any tents or temporary structure, a manager or someone designated by the company goes on to the site and actually does a physical walk-through. You see all the hazards associated with it, all the features of the site, whether they be approaches for vehicles, underground utilities, surface utilities, overhead utilities, weather

alignment, trees, et cetera.

The site survey is pretty much to let you identify all the hazards which are what we call up, down, and all around.

Q. And if there are hazards such as a low-hanging electric line, what should the tent company do?

A. Well, the steps involved with a site survey generally accepted in industry is: One, they're noted, communicated from whoever does the site survey through a written form to the operations people who then pass that on to the installers.

The installers need to have the site survey with them, understand the site survey, and then the hazards are noted and how they're to be avoided.

Q. Had that been done in this case, do you have an opinion to a reasonable degree of certainty as to whether the accident could have been avoided?

A. The site survey, whether or not it was done, the communication did not occur to let the installers get within the ten-foot exclusion area.

Q. And, finally, do you have an opinion to a reasonable degree of certainty as to the proximate cause of this accident?

A. The tent structure came in contact with the power line.

Q. But in terms of the ten-foot rule, does that apply applicable to the proximate cause of the accident?

A. Yes.

MR. JOHNSON: Thank you. Would you answer any questions the plaintiffs' lawyers have.

THE COURT: Who's going to cross?

MR. GOULD: No questions, Your Honor.

THE COURT: All right. I have a question. This is the judge.

THE WITNESS: Yes, sir.

THE COURT: These rules, the ten-foot rule, does it apply to temporary jobs, like the one in question here, or does it only apply to permanent organizations, or operations?

Because I'm gathering this was a fundraiser by some people that put it together, and it was done in a place that doesn't normally hold events like this, so I don't know. Do these rules apply to everything or is it just permanent jobs?

THE WITNESS: No, it applies in all situations. The nature of the special event industry is whatever site you're given by the customer, you adapt and operate safely within that site.

OSHA does not -- the regulations, whether they're state or federal, do not differentiate between

the type of structure. It refers more to the activity that's being held on that site.

THE COURT: Okay. Does anybody have any questions they want to ask him based on what I asked? Mr. Johnson?

MR. JOHNSON: No, sir, none from me.

THE COURT: Anything from the plaintiff?

CROSS-EXAMINATION

BY MR. GOULD:

Q. Good morning, Mr. Keberle. Can you hear me?

A. Yes, sir.

Q. Can you describe for us what the terrain was like out on this farm where these men were working? Was it flat? Was it hilly? I mean, what was the terrain, as you understand it?

A. Essentially flat, with some rolling configurations near as I can tell from the photographs.

Q. And was one of those rolling portions around the power line?

A. General, yeah.

Q. And, based on your review of the records, what's your understanding as far as how high the tent was lifted?

A. It was lifted tall enough to bring the top peak within the contact of the power line.

Q. But do you know how high the tent was lifted, Mr. Keberle?

A. Between -- well, depending on which version you're at, between four to six inches and a foot.

Q. And based on your review of the record, do you know how high the line was?

A. It varies over the length of it because of the sag in the line.

Q. Do you know how high the line was at the point of contact?

A. Let me review the record. I believe it was 17.6.

Q. Okay.

MR. GOULD: No further questions, Your Honor.

THE COURT: Okay.

MR. JOHNSON: Could I ask one question?

THE COURT: Sure.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q. Mr. Keberle, wasn't 17.6 the sag at the mid-span, not the point of contact?

A. I believe it was the point of contact.

MR. JOHNSON: Thank you.

THE COURT: All right. Anything else for this witness?

MR. JOHNSON: Nothing. Thank you for making

yourself available.

THE COURT: All right.

THE WITNESS: Thank you very much.

MR. JOHNSON: We'll call Tom Markel.

MR. GOULD: Your Honor, I just renew our motion from yesterday. In the interest of time, especially since we're only going to be here till noon, we have, what, two more of these tent experts where I imagine, based on their designations, they're going to say the exact same thing, exact questions, exact answers and exact cross and we can expedite this today --

THE COURT: Well, that didn't take all that long, but are the other witnesses going to offer anything new?

MR. JOHNSON: No, sir. They're going to say essentially the same thing, and I have this other witness, and I'm now going to put in the deposition of the third witness.

THE COURT: Okay. Well, let's just -- they've got them available, and let's just go right on through. He was actually correct yesterday when he said it wouldn't take ten minutes.

MR. JOHNSON: Are you ready, Mr. Markel?

THOMAS ORIN MARKEL,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

THE COURT: All right. Go ahead, Mr. Johnson.

BY MR. JOHNSON:

Q. Would you state your name and age for the record.

A. My name is Thomas Orin, O-r-i-n, Markel, M-a-r-k-e-l, age 59.

Q. Where are you physically located, Mr. Markel?

A. I'm currently in my office of my company at 71 Park Street, Buffalo, New York 14201.

Q. Mr. Markel, were you retained as an expert witness on behalf of Berkeley Electric Cooperative?

A. Yes, I was. You'll have to speak a little louder.

Q. And have you looked at records relating to the accident in this case?

A. Yes, I have.

Q. Before we talk about your opinions, what is your educational background?

A. Well, I graduated high school here in Buffalo at Kenmore West. I went to college at the University of Denver. I have been in the tent rental business for 16, 17 years, party rental business for about 38. I have been a licensed electrician. I also have been taught to do mechanical drafting, old school, as well as the new

CAD type of drawing.

I've worked at -- my father's family was in the electric heat manufacturing business, and I worked in that business for a while too, as well as the one that I've been working in and on now, which is in the display and party rental business.

Q. Do you have expertise in tent safety?

A. Yes, I do.

Q. And tell me your background.

A. Well, certainly I investigated before I got into the tent rental business, and I have been working within the industry. I'm a member of the American Rental Association, the Mid-Atlantic Tent Renters Association, and the Industrial Fabrics Association Tent Rental Division. I've worked in the code committee in the -- what we call TRD, Tent Rental Division. I'm currently on the steering committee, and I share the co-committee right currently.

I'm also interfaced with the International Code Council on building and fire codes concerning tents, and I'm also a member and interface with the National Fire Protection Association, the FPA, on behalf of the industry as well, and some of these studies that have been conducted by the Tent Rental Division, I have been a member of the direct committee working over that, so that

was staking and ballasting studies that we conducted.

Q. Are you knowledgeable and do you have expertise in the OSHA regulations as it relates to the tent industry?

A. Well, as the tent industry goes through our OSHA regulations for clearance as well as National Electric Code 70(e) for keeping clearance from power lines and utilizing power in different structures.

MR. JOHNSON: Your Honor, I'd offer Mr. Markel as an expert in tent safety.

MR. GOULD: No objection.

THE COURT: All right.

BY MR. JOHNSON:

Q. Do you have an opinion to a reasonable degree of certainty as to what was the proximate cause of the accident in this case?

A. Well, in studying all the depositions that I was given and photographic evidence, my opinion was that the accident was fully preventible if the party planner and the tent rental company and the workers for the tent rental company had been trained, or realized that they were close to a power line, too close to a power line, and that if they didn't walk the tent into it or near it, this accident wouldn't have happened.

Q. And is there any regulation that would apply as to what is too close?

A. Well, there's two regulations: There's the OSHA regulation that you need a limit of ten feet clearance from a power line if you're an unauthorized or uneducated type of person, that you haven't had training to work around power lines. There's also the National Electric Code, Article 70(e), that also gives a requirement that unauthorized people working around power lines should maintain a minimum of -- I'm sorry, not unauthorized, unqualified people should keep a minimum of ten foot of distance from any power line.

Q. What steps should the rental company have taken regarding this work to avoid the accident?

A. Well, it sounds like at the beginning they took the steps. They had done some type of site review, and they had decided where to install the tents, but where this thing failed, it seemed, is that the planner changed his mind as to where he wanted a tent, and he went and picked up this 20-by-20 push up frame tent, push pole frame tent, and walked it -- which is not uncommon. A lot of people do that, move those tents around, but they walked it, and without realizing -- or they actually realized they were kind of close to the power line, but they picked it up and walked it even closer to the power line.

And they basically should have -- you know,

situational presence, they should have realized between the planner and the tent rental company personnel that they should have stayed clear of that power line.

Q. And how far clear of it should they have stayed?

A. Well, definitely the peak of that tent should have been at least ten feet away. The tent, the specifics of the physics -- the physical nature of the tent would be that the tent, sitting on the ground, the sides of the tent, the perimeter of the tent, or the eave, would have enough clearance, but the center pole that was pushing up the fabric, if that didn't stay ten feet away from the power line, then you were in violation of both OSHA and 70(e).

MR. JOHNSON: Thank you. Would you answer any questions the plaintiffs' attorney has.

CROSS-EXAMINATION

BY MR. GOULD:

Q. Good morning, Mr. Markel. Can you hear me all right?

A. I've got my volume cranked full, so I don't know if you can turn up the volume on your --

Q. I don't have a microphone. I'll just step closer.

A. Okay.

Q. Now, you're aware you're not the only tent expert that was hired by Berkeley Electric in this case, true?

A. Yes.

Q. All right. One of their tent experts just testified before you, and his name is Ken Keberle. Have you ever met him or heard of him?

A. I know him very well.

Q. Would you agree with Mr. Keberle that the point of contact was 17 feet, 6 inches?

A. I would have to have more information on that. I'm not sure what the 17 feet, 6 inches --

Q. Would you agree with Mr. Keberle when he testified that the height of the power line at the point of contact was 17 feet, 6 inches?

A. I would have to see information that would verify that that was the height.

Q. Would you agree with Mr. Keberle's testimony that the men lifted the line between four to six inches and one foot?

A. They could lift it even higher than that off the ground, the tent and the tent legs, so it could be six inches, it could be a foot, foot and a half.

Q. And what are you relying on? Can you prove that?

A. Well, I can prove -- not prove it, but I've moved a similar type of tent around multiple times in my business, and when people grab it, you know, it's anywhere -- it could be anywhere from six inches to a

foot and a half on height, based on where the legs are from the ground.

Q. So you're not relying on anything in this case?

A. I don't have anything specifically in this case, no.

Q. Do you consider yourself a visual perception expert?

A. You would have to define the terms. I guess not.

MR. GOULD: No further questions, Your Honor.

MR. JOHNSON: No further questions, Your Honor.

THE COURT: All right. Thank you. Okay. You got any more witnesses you're going to call?

MR. JOHNSON: Yes, sir.

THE COURT: Who's next?

MR. JOHNSON: Matthew Bryan, Your Honor.

MATTHEW BRYAN,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Mr. Bryan, how old are you?

A. Thirty-five.

Q. Where do you reside?

A. Ruffin.

Q. Do you assess Berkeley Electric Cooperative in filing any RUS form 300s?

A. Yes, sir.

Q. Before I ask you about any of your work there, where are you currently employed?

A. Coastal Electric Cooperative in Walterboro.

Q. And what is your position and responsibilities?

A. Supervisor of engineering.

Q. Did you at one time work for the engineering firm known as McCall-Thomas?

A. Yes, sir.

Q. What is your education?

A. A BS in electrical engineering from Clemson.

Q. And what year did you get that?

A. 2002.

Q. And take me through your employment history to bring us current.

A. I went to work at McCall-Thomas right out of school, doing system planning work, some assisting with GAS and GPS field inventories and things of that sort.

Q. And when did you leave McCall-Thomas?

A. August of 2010 and that's when I went to work at Coastal.

Q. And you've worked at Coastal ever since?

A. Yes, sir.

Q. Are you a licensed professional engineer?
A. Yes, sir.
Q. And what is the area of your engineering degree?
A. Electrical engineering.
Q. Now, did some of your duties at McCall-Thomas involve assisting Berkeley Electric and other cooperatives in the RUS-300 process?
A. Yes, sir.
Q. How many cooperatives did you assist in filing RUS-300s?
A. I'd say eight to ten, maybe, in some form or fashion.
Q. I want to show you Plaintiff's Exhibit 1 and refer you to the 2005 form, and can you look and tell me if you signed off on that form?
A. Yes, sir.
Q. And did you participate in the rating process?
A. That's correct, yes, sir.
Q. And then in 2008, did you help or assist in the writing process?
A. I did.
Q. Did you sign the 2008 form?
A. I did not.
Q. And why did you sign it in 2005, not sign it in 2008?

A. I'm not sure. There was a change in the RUS general field representative between 2005 and 2008, and the rep that was current in 2008 had requested all co-ops, that even though we were involved, a representative of the co-op actually signed off on this form.

Q. Is that what occurred in 2008?

A. Yes, sir.

Q. And who signed it in 2008?

A. Tim Mobley.

Q. Now, explain to me what the process was in assisting Berkeley with RUS-300s.

A. My company would -- they would call us and want us to come in and do an O&M survey.

Q. What is an O&M survey?

MR. SMITH: Your Honor, I'm going to go ahead and place a running objection to any hearsay that may come out during this testimony. I got a feeling -- I think that was he got the call and what they wanted, so I'm going to object for hearsay.

THE COURT: Well, I guess I need to know why you're offering the information, or the testimony, to determine if it's hearsay.

What are you asking him?

MR. JOHNSON: I'm asking him to describe the

process that Berkeley, with his assistance, went through in completing the RUS form 300.

THE COURT: Okay. You can ask him that.

MR. SMITH: I don't object to anything he says, but I'll object to anything anyone else says.

BY MR. JOHNSON:

Q. You can answer.

THE COURT: Go ahead.

BY MR. JOHNSON:

Q. Do you recall the question?

A. Repeat it.

Q. I was asking you to describe what you did in 2005 to assist in the RUS-300 process.

A. My company would -- or the company I worked for would come in, and we would do a survey of their overhead facilities, subsections, underground facilities just a sample of theirs system in order to write this form 300.

We had field service technicians that would go out and do the work. I would take all of their data, compile it, and put a report together that would include what they found, and we would go through, or I would go through, and fill out this form 300.

Based on that field work and any other information I may get from Berkeley Co-op, once we had that all complete, we would meet with -- myself or somebody from

McCall-Thomas would meet with Berkeley and sit down with the RUS field rep and go over, basically, this form, may look at some other information we had.

We would then take a field visit. It may be half a day, a day, two days, but the RUS rep, typically with the co-op employee, would go and do visual inspection for himself, some overhead, some underground, some substations, and then we would meet back together, myself, Berkeley, the RUS field rep and would take the form I filled out and would go through this form and discuss each one of the areas and kind of jointly come up with ratings that are required for this form.

And once we did that, the appropriate folks would sign off and it would be submitted.

Q. Was that the same process you went through with the other eight or twelve co-ops?

A. Yes, sir. Now, I may have been involved in, you know, different aspects. I may not have -- you know, I can't say that I did the whole project. You know, they may have -- I just can't recall, but I was involved in some way, shape, or form in all of those form 300s, yes.

Q. And did the RUS rep have the authority and the right to change any rating you or Berkeley assigned it?

A. That's correct, and they typically would.

Q. Can you identify any of the changes that might --

and ratings that might have been changed by the RUS guy?

A. No, sir. I can't recall that.

Q. On the form, it requires a rating for transmission lines, doesn't it?

A. Yes, sir.

Q. And does it also have a paragraph, compliance with safety codes, and it's got a clearance?

A. Yes, sir.

Q. And the three was assigned for the clearance, correct?

A. Correct.

Q. And under the ratings system, does that mean satisfactory?

A. Yes.

Q. What was Berkeley's system for inspecting its lines and clearances?

MR. SMITH: Your Honor, I'll object unless this comes from personal knowledge as opposed to hearsay.

THE COURT: Ask him if he knows.

BY MR. JOHNSON:

Q. Did you learn the process that Berkeley Electric followed regarding clearances and inspection of clearances?

MR. SMITH: Pope, maybe you could ask him how he learned, was it from --

MR. JOHNSON: Well, it's a two-step thing.

THE WITNESS: As part of this work, their inspection program, they had a current contract with a company that did pole inspection and treatment, and from what I recall, I believe there was some language in there as to some visual overhead -- I can't remember the exact verbiage.

BY MR. JOHNSON:

Q. I'm going to refer you to Exhibit 5. Do you recognize this as a pole inspection contract?

A. Yes, sir.

Q. And I want to turn to page seven, call your attention to the sentences that are underlined in the middle of the page. Would you read that for the record, please, sir.

A. The contractor shall report any dangerous circumstances to the superintendent immediately. Also, the presence of oil on or around a pole shall be reported to the superintendent immediately.

Q. Is that what you recall?

A. Yes, sir.

Q. Did Berkeley also have its linemen and employees visually inspect when they were out working during the day or night?

A. That's correct, and that is typical of most

utilities, that those employees would -- from job to job.

Q. The RUS bulletin refers to conditions normally needed to justify a rating of three, and they have a provision requiring that all overhead lines be patrolled annually, walking, riding, or aerially, more frequently as experience teaches. Have you seen that language before?

A. Yes, sir.

Q. Are you aware of any cooperative in the state that does a patrolling of the entire system on an annual basis?

A. I am not.

Q. Any of the other eight to 12 cooperatives you assist, do they inspect or patrol their lines of the entire system annually?

A. Not that I was aware of.

Q. Did you tell or discuss with the RUS representative what the Berkeley Electric inspection system was?

A. Sure. We would discuss their maintenance and inspection programs, their monthly substation inspections, all -- basically everything they did we would touch on.

Q. And did the RUS representative have any problem with Berkeley receiving a three on that?

MR. SMITH: Objection, Your Honor. Hearsay.

THE COURT: Sustained, unless you can tell how he knew that.

BY MR. JOHNSON:

Q. Well, had you given them a three?

A. I cannot recall specific ratings, but at the end of the day, the RUS field rep would sign off on this document, agreeing that the joint venture, so to speak, that we would work together on.

Q. Did you misrepresent anything to the RUS representative?

A. No, sir.

Q. Were you present when Berkeley -- did Berkeley misrepresent anything to the RUS representative?

A. Not to my knowledge.

MR. SMITH: Objection. Hearsay.

MR. JOHNSON: Not offering for the truth of the matter asserted.

MR. SMITH: Yes, you are. You're preparing to offer it that they didn't present anything, Pope.

MR. JOHNSON: I'm offering it for the basis of the form they filed.

MR. SMITH: Your Honor, this goes to the misrepresentation issue. He's offering it to prove the truth of the matter that they did not misrepresent. I

don't know of any other way we can take that statement.
BY MR. JOHNSON:
Q. Well, let me ask this: Berkeley, in 2008, signed off on the form itself.
A. Yes, sir.
Q. In the form itself, did Berkeley explain what its inspection process was? And I call your attention to 13(a).
A. Yes, sir.
Q. Do you see that?
A. Yes.
Q. Would you read it for the record.
A. Approximately 10 percent of Berkeley's poles are inspected annually by an outside contractor. Employees are trained to visually inspect the lines in their daily operations. Berkeley is currently in the process of a complete field inventory and GPS of their entire system. Each location on the distribution system will be visited during this project.
Q. And is that consistent with what you understood Berkeley was doing?
A. Yes, sir.
Q. And is that consistent with what other cooperatives do?
A. Correct.

Q. And Coastal, where you work now, does it follow the same inspection system?

A. Pretty similar, yes, sir.

MR. JOHNSON: Thank you. Would you answer any questions the plaintiffs' lawyer may have.

THE WITNESS: Sure.

CROSS-EXAMINATION

BY MR. SMITH:

Q. Good morning, Mr. Bryan.

A. Good morning.

Q. Mr. Bryan, you described a moment ago that a sample of the system was done; is that right?

A. Yes, sir.

Q. And the sample for the system, did that deal with things -- which one did y'all go over, 2005?

A. We did some of both.

Q. This form asks for ratings for voltage regulators sectionalizing equipment, distribution transformers, pad-mounted equipment, kilowatt hour, and demand meter? And I could go on and on, but is it fair to say that many of the items on this RUS-300 form are specific pieces of equipment, attachments to the poles, things like that, true?

A. Sure.

Q. Okay. And that's what the sampling is for,

because you can pick a particular part of the system, and you can go look at those very specific attachments, and that will give you at least some idea of the compliance with these specific items so that you can rate the system, true?

A. True.

Q. But there are other things on the RUS-300 form that deal with the system in total, true?

A. I'm not sure I follow what you're saying.

Q. Distribution lines overhead, inspection, program, and records, correct?

A. Right.

Q. That's dealing with the system as a whole?

A. That's dealing with their inspection of the program, yes.

Q. And would you agree with me that you have to rely upon the information that Berkeley Electric is giving you when you are completing these forms or participating in a process to complete these forms?

A. Yes.

Q. All right. Because you don't work there. You're not with them every day. You need information from them, true?

A. True.

Q. And so the opinions that you have, or the ratings

that you give, those ratings are only as good as the information that Berkeley Electric gives you, true?

A. I guess, and from what we see in the field.

Q. Right. But now we're talking about things involving the system overall, not things you can specifically go and inspect in the field, okay?

A. Okay.

Q. So I'll ask the question again. The opinions you have, or the ratings that you give, those are only as good as the information that Berkeley Electric gives you, right?

THE COURT: Before he answers the question, you objected to Mr. Johnson's asking these same sort of questions on direct. If you want to -- at the time I thought I don't know how you're going to handle the cross-examination, but I'm assuming you're going to be eliciting the same hearsay information.

So I'll just say, you ask the question and he needs to answer it, and that opens the door for Mr. Johnson to ask the exact same questions and elicit hearsay from Berkeley Electric.

I'm just giving you fair warning. It just opens the door wide open that you asked me to shut on direct.

BY MR. SMITH:

Q. I forget where we ended up, but is it fair to say that the information that you put down here, the ratings that you assigned, right, they're only as good as the information you get from Berkeley Electric?

A. Yes.

Q. And if they give you the wrong information, these ratings can be wrong?

A. I guess if they gave me the wrong information. I'm not sure.

Q. All right. Now, let me ask you this: We had an expert witness here for Berkeley Electric, an expert in the National Electric Safety Code, and we specifically asked that witness to define the term -- or tell us what the term means: All overhead lines patrolled annually, okay?

And he told us that that means that there is some form of inspection happening on all lines on an annual basis. Do you agree with how he defines that term?

A. Sure.

MR. JOHNSON: Object to the form, Your Honor. This business of his take on what the expert said could lead to pitting of one expert against another.

MR. SMITH: He's not an expert, for one, Your Honor; and, number two, this is verbatim.

THE COURT: Well, I'm looking at the question

and I don't understand the question, so maybe you can rephrase it.

BY MR. SMITH:

Q. A witness told us, a National Electric Safety Code code witness, hired by them, told us that the term all overhead lines patrolled annually, that means that there is some form of an inspection happening to all lines on an annual basis.

Do you agree with the definition of that term as stated?

MR. JOHNSON: He's asking for an opinion saying the man's not an expert, and he's trying to get an opinion from him.

THE COURT: I'll allow him to ask that.

BY MR. SMITH:

Q. Do you agree with that?

A. Sure.

Q. And he also testified that inspections under the National Electric Safety Code, that inspections have to include a determination of whether or not a power line meets the height requirements of the National Electric Safety Code.

Do you agree that inspections must include a determination of whether or not the line meets the height requirements of the National Electric Safety Code?

A. If that's what you're inspecting for, sure.

Q. All right. You know that Berkeley Electric has never done some form of an inspection on all lines on an annual basis. You know that's true, right?

MR. JOHNSON: How would he know unless it would be hearsay that would tell him?

THE COURT: Overruled. He's signed on the piece of paper.

BY MR. SMITH:

Q. You know they've never done that, right?

A. From what I understand.

Q. Correct?

A. Yes.

Q. Okay. In fact, when we asked them when is the last time this power line was inspected, he told us it's never been inspected for National Electric Safety Code compliance.

MR. JOHNSON: Could counsel read the rest of it?

BY MR. SMITH:

Q. But it was part of a pole inspection in 2002, and you said, From what I understand.

Does that help you? Does that support your opinion that they've never patrolled all their lines annually? Does that confirm that?

A. Yes.

Q. In fact, we spoke to the manager of job training, and he said there are many lines in the Berkeley Electric system that have never, ever been inspected for National Electric Safety Code compliance. Did you know that when you were helping them complete these forms?

A. I can't recall specifically if I was told or not told that information.

Q. That's something you would want to know, isn't it? Is it?

A. Well, that's my personal opinion. That form that we rate, the form 300, and the rating guide that goes with it, that is a guide by which we write these form 300's. That survey isn't intended to be an NESC compliant inspection, so I don't really understand.

Q. I'm asking you, that would have been something you wanted to have known when you were participating in the process of these RUS-300 forms, that many lines in the system, including this one, but many lines in the system have never been inspected for National Electric Safety Code compliance. You would have wanted to know that when you were helping them complete these forms, true?

A. I'm trying to think back to the -- where is that -- it's not here. I can't recall if that form 300 that you're asking me about, is it specifically -- I

don't know that it specifically asks that question.

Q. I'm not asking you about any form in particular. You said that you participated with them for the completion of eight or so RUS-300 forms?

A. Not them.

Q. Oh, I'm sorry. You only participated on this one single, 2005 RUS-300 form; is that what you're saying?

A. I participated in two for Berkeley, that I recall.

Q. Of those two that you participated in, wouldn't you have wanted to know whether or not there are many power lines in the Berkeley Electric system that have never been inspected for National Electric Safety Code compliance? Is that something that you would have wanted to know?

A. Like I said, if it was to rate that form, yes. I can't recall what I needed to know to rate that form. There's many utilities that don't inspect 100 percent of their lines for safety code violations I would be willing to say.

Q. All right. Did you also help in the 2008 one?

A. Yes.

Q. Let me ask you, did you write that description, about the 10 percent of poles?

A. Yes.

Q. You did?

A. Yes.

Q. When you wrote that about employees are trained to visually inspect lines in their daily operations, did you ask the manager of job training whether or not employees are trained to visually inspect lines in their daily operations?

A. No.

MR. SMITH: One moment. Thank you for your time, sir.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q. Mr. Bryan, are you aware that Berkeley builds its lines to exceed the National Electric Safety Code?

A. That's correct.

Q. And, for example, does Coastal build just to the minimum or do they have a procedure of exceeding the clearance requirements?

A. Exceeding. The NESC is just a minimum requirement.

Q. So if you have a line that's built according to standard practice with the standard sag, Berkeley would exceed the minimum requirements of the National Electric Safety Code?

A. I would say they would.

MR. JOHNSON: Thank you.
THE COURT: Recross?
MR. SMITH: No, sir.
THE COURT: You can step down.
MR. JOHNSON: Excuse this witness?
THE COURT: Do you need him anymore?
MR. SMITH: No, sir.
THE COURT: You may go.
All right. Next witness?
MR. SMITH: I wonder if maybe we could get a list for today? We got a list of 14 people, and we're not anywhere near that order. Maybe we can get an expected list?
THE COURT: We got an hour and a half. How many do you think you're going to try to get today and who are they?
MR. JOHNSON: Your Honor, could I take a quick nature break and then answer the question?
THE COURT: Sure. Five minutes. We'll be back.
(Recess taken.)
THE COURT: All right. Mr. Johnson, what's the plan?
MR. JOHNSON: We want to offer two depositions in lieu of the people testifying.

THE COURT: Okay. Who is that of?

MR. JOHNSON: Mr. Clayson.

THE COURT: Okay.

MR. JOHNSON: And Ms. Constance Fortney.

THE COURT: All right.

MR. JOHNSON: And having done that, we have, I think, two witnesses who will be relatively short.

THE COURT: Okay. And who are they?

MR. JOHNSON: Three? They are Isaiah Ward, Nick van Allen --

THE COURT: Well, let's get the first one in.

MR. SMITH: Do you want to be heard now on the submission of the depositions?

THE COURT: No.

MR. SMITH: Okay.

Your Honor, I think he just released Mr. Clayson? Could y'all grab Mr. Clayson? Mr. Clayson is here, and he's wanting to submit his whole deposition. He's here, Your Honor. We'll call him as a rebuttal witness.

THE COURT: Well, who is this?

MR. JOHNSON: This is Mr. Isaiah Ward.

THE COURT: Okay. Have a seat. I assumed you were doing it just to be able to possibly finish today. Anybody that we don't get in the next hour we'll

have to reschedule another day. I don't know what the difference is between what you expect him to say today and what he would say in a deposition, but it made sense to me to just submit a deposition of somebody.

But anybody that we don't get today we'll have to do another day.

MR. JOHNSON: Well, Your Honor, they designated part of the deposition and offered it in evidence, which gives me the right to designate what I want, and I want the rest of it, and they said you didn't have the full picture.

MR. SMITH: Your Honor, in the interest of time, so we can get done today, we'll agree.

THE COURT: Okay. All right.

MR. SMITH: I don't know -- did anyone grab him? Okay. That's fine.

THE COURT: Swear him in.

ISAIAH WARD,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Mr. Ward, were you formerly employed by Berkeley Electric?

A. Yes, sir.

Q. Have you retired?
A. Yes, sir.
Q. When did you retire?
A. I retired last year.
Q. And how many years of service did you have with Berkeley Electric?
A. Forty-one years.
Q. During the course of that time, were you promoted up to the point that you were a crew chief on a crew that built lines?
A. Yes, sir.
Q. And do you recall when you became the crew chief?
A. I became the crew chief around ten years.
Q. After you had been with Berkeley around ten years? You started work at Berkeley what year?
A. Oh, in April 4th, 1973.
Q. The time you were with Berkeley, did it all involve line construction?
A. Yes, sir.
Q. Every day, five days a week?
A. Every day.
Q. Now, were you the crew chief who was in charge of the crew that built the line that is involved in this piece of litigation at Healing Farms Ministry?
A. Yes, I was.

Q. And what sort of pole -- do you recall what sort of pole was used with that line?

A. We used a 35-foot pole.

Q. Did you have a staking sheet?

A. Yes, sir, I did.

Q. Did you build a line according to the staking sheet?

A. Yes, sir, I did.

Q. Can you tell us, do you recall -- do you recall building a line or have any recollection of the details of it?

A. It's been a while since I built that line, but, you know, that line would be basically like any other line I built with the 35-foot pole.

Q. And with the 35-foot pole, what would be the sag in the primary?

A. Primary would be 24 feet. The neutral would be 20 feet, and the primaries would be 24 feet.

Q. And was that standard practice for a pole of that height?

A. Yes, sir. That was -- yes, sir.

Q. This section of line was found to have a sag in the primary on 17 feet and a few inches. Would you have ever left a job with a sag in a primary in that fashion?

A. No, sir. Every job I built, I normally look at

details when I complete that job. I would give that job a look-over to make sure that it's built according to standards.

Q. Did you sag it to 17.6 or 17 plus?

A. That line was sagged actually at 20 feet.

Q. Neutral?

A. To the neutral, and 24 feet to the primary.

Q. Are you sure?

A. I'm positive.

MR. JOHNSON: Thank you. Would you answer any questions counsel has.

CROSS-EXAMINATION

BY MR. SMITH:

Q. Good morning, Mr. Ward.

A. All right, sir.

Q. Thank you for being here. Mr. Ward, do I understand your testimony today that you, in your years of working for Berkeley Electric, that you usually built lines to specs? That was your normal process, true?

A. Yes, sir.

Q. And any measurements that you would have had to do in that process as far as the amount of sag, those would be done by eyeballing?

A. Yes, sir.

Q. You wouldn't be taking specifically measurements;

you would be simply looking at it with your eyes and say, That looks right; that doesn't look right, right?

A. Yes, sir. The staking technician would already do the leg work on it, as far as the measurement, the height, the pole size and everything, and I build it according to that sheet.

Q. To build it according to that sheet, to look at the sag, you would have to eyeball it, right?

A. Yes, sir.

Q. You have no specific memory of building this specific line 22 years ago, do you?

A. It's been a long time, but that line would have been the same as any other line that I constructed.

Q. But my question is, you told Mr. Johnson in -- how many years did you work for Berkeley Electric?

A. Forty-one years.

Q. In those 41 years, you built lines day in and day out, right?

A. Yes, sir.

Q. And you don't remember this one particular span, this particular line, from 22 years ago, do you?

A. That line, like I say, I could very well remember building that line.

Q. How many lines do you think you built in your -- what is it, 47 years?

A. It's not really countable.
Q. Would it be thousands of miles of power lines?
A. Yes.
Q. And there are 330 feet between these poles, do you remember that? Do you know?
A. I don't specifically remember the distance.
Q. But out of thousands of lines, of power lines in the years you worked for Berkeley Electric, you're telling this Court you have specific memory of building this particular span. Is that your testimony?
A. I couldn't say I remember specifically building that line.
Q. All right. Thank you.
A. But, like I said, you know, I got some recollection of that -- of building that line in the area.
Q. Okay. You got an idea of building lines in general, just not this very specific line, right?
A. No.
Q. Okay. You don't know exactly how much line you used in terms of feet and inches, true?
A. Not on distance.
Q. You don't know --
A. I built it by the sheet.
MR. SMITH: That's all the questions I have.

MR. JOHNSON: Nothing further, Your Honor.
THE COURT: You may step down.
MR. JOHNSON: We call Nick van Allen.

NICK VAN ALLEN,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Mr. Van Allen, are you a current employee of Berkeley Electric Cooperative?

A. Yes, sir, I am.

Q. And tell me, if you would, how long have you worked for Berkeley?

A. Almost 22 years.

Q. Was Berkeley your first job out of high school?

A. No, sir.

Q. Tell me what positions you've held at Berkeley.

A. I came in through the apprenticeship program and worked my way up, made first-class lineman in October of '98, and then made crew leader, crew foreman, in 2008 -- it might have been about 2006, I think it was, and then just made Awendaw line superintendent in 2014.

Q. Before you became line superintendent, did your work, your day-to-day work, involve service calls on line construction?

A. Yes, sir.
Q. And are you familiar with what Berkeley's standard practice would be for clearances on a line where there is a 35-foot pole?
A. Yes, sir.
Q. And what does Berkeley build its line to with a 35-foot pole?
A. We have to neutral it up around 20 feet and the primary would be 24, would be 4 feet higher.
Q. Now, did you go to Healing Farm Ministry at some point and do some service work?
A. I went out there and repaired a riser.
Q. I want to show you a document and ask you if you can take a look and tell us when it was and what you did.
MR. SMITH: Pope, can you tell us what he's looking at?
MR. WILLIAMS: It's your worksheet on Healing Farms.
MR. SMITH: Okay. I got it.
THE WITNESS: December 15, 2003, I went out there and replaced -- the riser conduit was busted. I put a new piece of shield over it.
BY MR. JOHNSON:
Q. And was that on a pole?
A. Yes, sir. That would have been on the A5 pole.

Q. And would that have been one of the two poles that is involved -- the span and the line that was involved in this case?

A. Yes, sir.

Q. And did you notice anything unusual or out of the ordinary regarding the line itself?

A. No, sir, I did not.

Q. Had the line been sagging, the primary, down to 17 plus feet, would that have been an unusual sag?

A. Yes, sir, it would have been.

Q. Would you -- do you believe you would have been able to see it, recognize if it was not sagged properly?

A. Yes, sir.

MR. JOHNSON: Thank you. Would you answer any questions counsel has.

CROSS-EXAMINATION

BY MR. SMITH:

Q. Mr. Van Allen, when you went out there in 2003, you didn't notice anything wrong, right?

A. No, sir.

Q. And you didn't go out there at any time over the next five years, between 2003 and 2008?

A. No, sir. Not that I'm aware of.

Q. And you don't have any explanation whatsoever as to how the line that would have -- that should have

started off at 24 feet ended up around 17 feet, do you?

A. No, sir.

MR. SMITH: That's all the questions I have.

MR. JOHNSON: Nothing further, Your Honor.

THE COURT: All right. You can step down.

MR. JOHNSON: We had subpoenaed Anthony Wilks who works for the Department of Labor and Licensing and was involved in OSHA after that, and we got an e-mail saying he wasn't coming because of the emergency. We have his deposition, and I would propose to put his deposition in.

THE COURT: Okay. Do you have any objection to that?

MR. SMITH: No, Your Honor.

THE COURT: All right.

MR. JOHNSON: So here is Constance Fortney's deposition.

MR. SMITH: Your Honor, I would object to Constance Fortney's deposition as to relevance. She's not a beneficiary. The measure of damages is not controlled by Constance Fortney's --

THE COURT: Who is she?

MR. SMITH: She's the personal representative, John's mom, and I would submit her testimony is irrelevant, and, Your Honor, it just goes

again in an attempt to trash the plaintiff. All it is, is, Did you know about this? Did you know about that? It's the same thing you heard from Mr. Johnson yesterday.

MR. JOHNSON: Your Honor, I've been accused of wanting to trash the plaintiff, and I take exception to that. I want the Court to have the full story on who Mr. Fortney was so the Court can consider the impact on the daughters, if you get to that question.

And she testifies about, for example, she never saw her son after 1990, had no contact. She at one time had to require him to move out of the house because he wasn't contributing anything. I think she's acknowledged that he had drug problems. He was -- found cocaine in his system. These are longstanding issues.

THE COURT: Well, I will handle this by the way the chief justice said to handle it. I'll let it in and decide whether or not it deserves any weight.

MR. JOHNSON: Thank you. Do you want to mark them, or how do you want to handle that --

THE COURT: Well, you know, if you've got just a copy of it, you could e-mail to me in a PDF form. That would be the easiest way to read that; otherwise, she's going to have to mark it, leave it with the court reporter, and I would just as soon have a PDF to read that at my leisure. Leave the originals with the court

reporter here.

MR. SMITH: I did understand Mr. Johnson is withdrawing the designations for Mr. Tharpe, the third tent expert?

MR. JOHNSON: I haven't offer him. I'm not going to offer them him.

MR. SMITH: Okay.

MR. JOHNSON: We would like to make a proffer on the altercation and what the two witnesses who were eyewitnesses would say --

THE COURT: Altercation of what?

MR. JOHNSON: Where Mr. Fortney beat one of these girls' mother up.

THE COURT: Tell me what your proffer would show.

MR. JOHNSON: It would show that these two witnesses who we had subpoenaed to be here, Susan Mascari and Lisa Boisvert, they were driving down the road and just happened to see Mr. Fortney hitting his -- hitting Gina's mother in the back of the head.

They stopped, they called 911, I guess. Deputy arrived on the scene. They interviewed Ms. -- the lady, took pictures of her. You'll recall one of these girls said that it broke -- that it broke the jaw. He was arrested and charges were pending at the time of his

death, as testified to by Mr. Kulp.

THE COURT: That's what you want to proffer?

MR. JOHNSON: That's what I want to proffer.

THE COURT: You just did. All right? What else?

MR. JOHNSON: I also want to proffer the deposition of Ms. Brunnmeier.

THE COURT: Who is she?

MR. JOHNSON: She is the ex-wife.

THE COURT: And what is her testimony?

MR. JOHNSON: I was thinking I just would proffer her deposition in the record, and I will do that.

THE COURT: All right.

MR. JOHNSON: And I would ask the Court as part of my proffer to take judicial notice of the solicitor's file and the sheriff's file, and I will file those, or copies, so they will be part of the file in this case.

MR. SMITH: Your Honor, we would object for every grounds possible, relevance --

THE COURT: Well, I know you object to it. It's a proffer.

MR. SMITH: Okay. Sorry.

THE COURT: I would just state the same thing I said, in essence, yesterday. I don't think there is

any way in the world that anybody can tell you what the outcome of any particular criminal case would be, so it would be utter speculation.

I mean, I am presiding over criminal court next week. That's what I did all of last year. I couldn't tell you what any particular case's outcome would be until I, the judge, walk out in the courtroom and hear from everybody, including the victim, and that's when I make my decision as to what the sentence will be.

I don't think there is any judge or any lawyer that could tell you anything different other than what I allowed Mr. Kulp to say yesterday, and that is on a case with a mandatory minimum and a maximum, this is what the minimum and the maximum are, and if that is what he was pleading to or convicted of, that's what he could have possibly have gotten. Anything other than that is pure speculation.

MR. JOHNSON: Your Honor, in putting in the deposition of Mr. Wilks who did the OSHA investigation, we also want to include his report.

THE COURT: Okay. Let me ask a question: OSHA is kind of like -- when I was a kid and went to school, they called the planet Uranous and then they changed it.

MR. SMITH: And I would object to these.

These are -- the OSHA file is second, third, fourth, fifth, sixth and hearsay all over this. Obviously he's not preparing this for litigation in a civil court. I know it's under a proffer, but I would just --

MR. JOHNSON: No, Wilks' is offered into evidence in lieu of his live testimony.

MR. SMITH: His deposition, but if you're now wanting to submit his entire file, it's filed with piles and piles of second and third and fourth-hand hearsay.

MR. JOHNSON: Let me just see what is part of his deposition. If it's part of his deposition, it goes. If it doesn't --

MR. SMITH: It's part of a proffer, right?

THE COURT: Well, you've offered the deposition. You're saying this was included in the deposition, so you would like to have it admitted?

MR. JOHNSON: I think it's -- tell you what: If it's not included, forget about it. If it is part of it, it will be part of it.

THE COURT: All right.

MR. JOHNSON: And I'm offering it as evidence, in lieu of the witness testifying live.

And, finally, Your Honor, we would like to put in the Berkeley Electric Cooperative web page information that contains language about the ten-foot

rule.

MR. SMITH: This is a different web site than what was in place in 2008. What the relevance is, I have no idea.

THE COURT: They probably say, let me guess, they comply with all the rules?

MR. JOHNSON: Almost. We take extra care of equipment working on overhead lines, maintain a safe distance from overhead power lines. If you need to be closer, contact your local Berkeley Electric Cooperative office for more information on safe limits and approach. Be careful with ladders, cranes, and diggers.

MR. SMITH: Could I see the front page?

Your Honor, this is what it looked like when I did it. You're not going to see it anywhere on here.

MR. JOHNSON: When did you do it?

MR. SMITH: Well, as your -- this was a version from 2011, okay? I can tell you it's been changed since 2011.

THE COURT: That's what is on there now?

MR. JOHNSON: That's 2008.

THE COURT: That's what it said in 2008? How can you prove that? The accident happened in 2008, right?

MR. JOHNSON: I would call a witness to prove

it from Berkeley, Your Honor. After it came up yesterday, raised for the first time by counsel, we went and asked to see if we could get a 2008 version, and this is what we were given as a 2008 version. The language is identical to the 2011 on this point. We would be happy to put them both in.

MR. SMITH: We wouldn't object to a proffer.

THE COURT: You can proffer.

MR. JOHNSON: How do we want to mark it, Your Honor?

THE COURT: Okay. You can just have the clerk -- however she's marking them as proffers.

(Defendant's Exhibit Nos. 10 through 15 were marked for identification and admitted into evidence.)

MR. JOHNSON: With that said, we rest.

THE COURT: Do you have anything you would like to rebut, Tom?

MR. KEENAN: If we could have a moment for, not rebuttal, but a motion for directed verdict, which I think will guide the Court to directly what our submission will be and further focus this case, I can do it in three minutes.

THE COURT: Okay. Go ahead.

MR. KEENAN: It goes like this, Judge, and I had the liberty to sit here and kind of let it all soak

in as opposed to be in the line of fire. You know, number one, our case is premised on the fact that this line is in category four, which would have mandated the 18 and a half feet, that is uncontradicted. What is also uncontradicted is that the line on the day in question violated the code and was below reasonable, and we've got this diagram from Berkeley themselves showing exactly what it is. So, clearly, we've established our required negligence that they were unreasonable in letting the line get where it is.

Now, this is where it gets interesting from a legal standpoint. The defense argues comparative negligence, that the men were, either in whole or in part, responsible for their own injuries. Okay? And as I understand it, under South Carolina law, that's an affirmative defense, to which they, if they assert it, carry the burden to prove it, and that burden, of course, is the preponderance. All right?

There's where the major disconnect comes in, because we've heard about the ten-foot rule, but let's look at exactly if we know as a given that the power line on the day in question was this low, all right, then the question on comparative negligence is how high did the pole get? And the uncontradicted evidence from John Robinson is we didn't raise the pole any greater than

between four and six inches.

Now, as Your Honor will soon know when you read the deposition of Clayson, who was outside but we didn't object to his deposition, he says, I don't know how high, but not more than a foot.

Now, here's where the case gets simple. The men clearly -- and we agree we violated the ten-foot rule, but the men did everything they possibly could with that pole, going even up to a foot, but if Berkeley had not violated the law to begin with, they would have been out of harm's way, so therein lies the essential element of their negligence. They have to prove proximate cause, that they, by virtue of their comparative negligence, caused or contributed to that. That's where comparative negligence dries out.

THE COURT: Do I have to ignore the fact that they were inside of ten feet?

MR. KEENAN: What harm did they cause?

THE COURT: They got electrocuted.

MR. KEENAN: Only because of the negligence of Berkeley.

THE COURT: If they would have stayed outside of ten feet, it wouldn't have mattered how high that line is.

MR. KEENAN: I just wanted to give Your Honor

a preview, okay, but we will have the case law. We'll have the analysis.

THE COURT: I thought you were making an argument, not a preview of an argument.

MR. KEENAN: I'm making the argument, but I'm asking the Court to delay it until we brief it for you, and you get to look at the case law and you get to look at the analysis.

THE COURT: I didn't understand what you were saying. You're just giving me a Reader's Digest condensed version?

MR. KEENAN: That's it. And I feel, frankly, we owe it to Pope to do that so at least he doesn't get broad-sided.

THE COURT: I figured that out the first afternoon that's what we were going on.

MR. KEENAN: Oh, you did? Well, it took me to the middle of the week.

THE COURT: That's what it boils down to.

MR. KEENAN: Well, thank you, Your Honor. I appreciate that.

THE COURT: All right. Do you have any motions that you wanted to make for the record at this time? I haven't read some of the evidence which would prevent me from ruling on it, but if you -- go ahead.

MR. JOHNSON: I thought you said we would have 30 days to do --

THE COURT: That is. That's where we were -- that was my next statement. You were asking if you could get a copy of the transcript, or get a transcript, before submitting the proposed orders, and I'm okay with that.

So three weeks after you get a transcript, the 30 days will start then, and then if you would send it to opposing counsel, both sides, at the same time, and then ten days after that, have any rebuttal to that, and then I'll make a ruling.

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: Anything else?

MR. SMITH: So proposed orders within 30 days of receiving the transcript, and then 10 days for rebuttals after we receive each others' copies.

THE COURT: And I know that puts us smack dab in the middle of the holidays with that, and I'm flexible if there's problems. If you set a deadline, then people will work towards it. If you just said no deadline, then they'll never get around to it, so that's what we're aiming for.

All right. Well, if there is nothing else, y'all did a tremendous job. It's been an interesting week, and, you know, sorry for the terrible outcome to

the individuals involved in this case, but we will try to rule as expeditiously as we can, but, lawyers, you guys did a tremendous job. You make a job easier to deal with when you have good lawyers involved.

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(Whereupon, the proceedings were concluded.)

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I, the undersigned Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on September 28, 2015 to October 2, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 3, 2015

Amanda K. Haffenden

Circuit Court Reporter

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	C/A #: 2009-CP-08-2146

Estate of John Fortney, deceased, by his duly appointed Personal Representative Constance Fortney,

Plaintiffs,

v.

Berkeley Electric Cooperative,

Defendant.

COPY

DEPOSITION OF

ANTHONY WILKS

****

Monday, July 16, 2012
10:20 a.m. - 11:02 a.m.

The deposition of ANTHONY WILKS, taken on behalf of the Defendant at the law offices of Johnson & Barnette, LLP, 1230 Richland Street, Columbia, South Carolina, on the 16th day of July, 2012 before Amanda Creel Godfrey, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

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EXHIBITS

Defendant's Exhibit Number One 7
(Copy of LLR File)
Defendant's Exhibit Number Two 25
(CCH OSHA Standards for General Industry)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.

ANTHONY WILKS, having been duly sworn, deposes and testifies as follows:

MR. WILKS - EXAMINATION BY MR. JOHNSON:

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

A: It's Anthony Wilks.

Q: Mr. Wilks, my name is Pope Johnson. I think we've spoken on the phone maybe once --

A: Uh-huh (affirmative response).

Q: -- and met here this morning. I, along with Jack Williams, we represent Berkeley Electric in some litigation arising out of an accident that your department investigated. And I asked you -- I subpoenaed you to come here today to explain what your department did and what it found.

A: Uh-huh (affirmative response).

Q: If during the course of the deposition I ask you a question that you don't understand, will you have me repeat the question?

A: Will do.

Q: Okay. It goes for any lawyer who asks you something. Now, first of all, a little personal information. How old are you?

A: I am 42 years old.

Q: Can you give me a thumbnail sketch of your educational and professional background?

A: I graduated from the University of South Carolina in 1992. I began my working experience at Westinghouse here in Columbia and then on over to Shakespeare Monofilament before landing at the Department of Labor. I started at the Department of Labor in the Bureau of Labor Statistics area. My degree was in statistics so I started in that area.

Q: When did you start there?

A: I started in 1995 at the Department of Labor in labor statistics. And then in October of '96 I began with the OSHA Enforcement area as an industrial hygienist environmental health manager, which I began doing inspections. I did inspections for approximately six years on the health side. Then I moved into being an informal hearing -- informal conference hearing officer. I spent three years there and then I moved into being the compliance manager, wow, August -- this August will be seven years ago, I believe.

Q: Okay. And what are your responsibilities as a compliance officer?

A: Well, I moved in compliance manager seven years ago. As a compliance officer, in which I'm not now, but their job is to conduct -- assign inspections to determine if an employ -- assign safety and health inspections to determine if an employer is in compliance with Occupational Safety and Health Laws and Regulations.

Q: And you present duty and title is?

A: My present duty and title is compliance manager, which pretty much I -- my -- I manage -- my main goal is to manage the day-to-day operations of the enforcement activity for the State of South Carolina, OSHA enforcement activity.

Q: Now, let me ask you, what role does the Department of Labor have regarding OSHA? What is the relationship?

A: Well, the state OSHA program -- the OSHA Act is a federal law. It was a federal law. And part of that OSHA Act it gave the states the opportunity to run their own program. And South Carolina took that opportunity back in 19 -- in 1972.

MR. SMITH: Pope, can I ask you to pause for a second?

A: Uh-huh (affirmative response).

MR. JOHNSON: Yeah.

(Off the Record)

Q: All right. Mr. Wilks, can you explain to me in general terms what the OSHA Act governs and what it does?

A: The OSHA Act -- well, like I said earlier, the OSHA Act is a federal law in which probably gave the states the opportunity to run their own program. And South Carolina chose to run their own program. So South Carolina have their own OSHA Rules and Regulation that we abide by, but the main focus of it is to provide every man and woman a safe working -- safe and healthful working environment.

Q: Does OSHA Standards govern safety related to employer/employee workplace?

A: Yes, sir. Employer/employee relationships in the workplace.

Q: All right. Now, you know we're here today about an accident that occurred on April 23rd, 2008 where two men were electrocuted and two men received electrical burns?

A: Yes. I'm aware of the accident, yes.

Q: Have you had an opportunity to look at your

department's file on that matter and familiarize or refresh your recollection --

A: I did. Yes, I did.

Q: And did I give you a copy of records we produced from your department and ask you to put them in, as best you could, date sequence?

A: Yes, you did.

Q: And are these the records?

A: Yes, the records that you're showing me now.

Q: And do these constitute a true and accurate copy of the department file and record?

A: As far as I know, yes. And what I looked at over the past week, yes.

MR. JOHNSON: I'll mark a copy of that. I'm marking all of the records, Kevin, as Exhibit One.

(Defendant's Exhibit Number One was marked for identification purposes.)

MR. SMITH: Is that the formal 85 page package?

MR. JOHNSON: Yes, as far as I know. It's supposed to be.

A: Uh-huh (affirmative response).

MR. JOHNSON: It's what I emailed you.

MR. SMITH: Okay.

Q: All right. Can you tell me what the department -- sort of walk me through what the department

did and the procedure that was followed in this case leading to the citations that were issued?

A: Okay. Once we received a call or a notification of a workplace fatality, we assigned it to a compliance officer.

Q: Who was that?

A: And the compliance officer assigned was Seth Stoner.

Q: Does he still work for the department?

A: He does not. He no longer works for us.

Q: Do you know how to reach him?

A: I do not have a number to reach him at this time. I do not have a number to reach him, but he works for SCANA or SCE&G, one of those groups.

Q: Okay.

A: Uh-huh (affirmative response).

Q: All right. Excuse me, I interrupted you. You were telling me he was appointed --

A: Yeah.

Q: -- or designated to --

A: Looks like we received a call on April the 23rd concerning a fatality and we began our inspection on April the 24th.

Q: And what generally did the inspection consist

of?

A: The inspection consists of an opening conference with the employer and that's what we informed the employer of the scope of our inspection, explained to them any things that we may need and we talk about what's going to happen during the inspection.

Q: And was the employer Stage Presence Equipment Rentals, LLC?

A: Yes.

Q: All right.

A: And then from there we began the inspection. Usually inspection is a look at the area, look at the equipment that's involved, reviewing any records that may be involved and interviewing any witnesses or other employees. And the records may include any of the employer's safety and health records or any incident -- information about any incidents, any injury and illness records or any type of training they may have.

Q: And from your review of the file in this case, did that occur?

A: Yes.

Q: Now, let me ask you this, is the gentleman who

was doing the inspection, his name again is --

A: Seth Stoner.

Q: Stoner. Did he work under your supervision?

A: He didn't report directly to me. There was another supervisor -- he had another supervisor, but it was under my supervision, yes.

Q: Under your supervision?

A: Yes.

Q: All right. And once he completed his investigation, what's the next step?

A: Once the investigation is completed, once him and his supervisor, they decided on a fatality -- on all fatalities, what they're going to propose that citation is, they must -- they meet with me as the compliance manager and we have a discussion about the facts and the things that they have in place and we decide -- and then a decision is made as to what items will be issued as -- for citations.

Q: And did that occur here?

A: Yes.

Q: You had that meeting?

A: Uh-huh (affirmative response).

Q: Could you tell me what citations were issued

against Stage Presence Equipment Rentals, LLC?
A: There was a citation -- the first citation was for 1910.332(b)(2).
Q: Can you explain that?
A: And that is for the employees were not qualified to work around electrical hazards. They were not trained and familiar with any of the electrical safety work practices. Basically that is a violation of non-qualified individuals working around energized parts.
Q: All right. Let me ask you this, when you use the word citation, what is a citation?
A: A citation is a notification to the employer that you are in violation.
Q: Of an OSHA Regulation?
A: Of an OSHA -- yes. Yes, sir.
Q: Okay. Were there any other -- and what type of violation was it classified as?
A: This was classified as a serious -- the first one was classified as a serious violation.
Q: All right. Now, any other citations?
A: Yes. There was -- the second citation was 1910.335(b) and that is for not having any signs, alerting signs, warning tags, barricades to inform the employees that they're -- the

hazards associated with the overhead energized lines out there.

Q: All right. And how was that violation classified?

A: That was classified as serious also.

Q: What are the classifications for violations?

A: The classifications for violations, there is a willful violation. Then there's serious violations which is serious or repeat serious. And then we have what we consider non-serious violations which we call those other than serious. And willfuls is there where we can show willful intent of a violation. The serious violation, if the hazard, whatever hazard, the type of injury -- whatever injury that we think that will -- it will cause, if it will cause death or serious physical harm, then it's labeled as a serious violation. If it's a -- non-serious violations usually don't cause death or serious physical harm. It could be ranging from anything from a paperwork violation or something like that.

Q: Okay. Were there any other violations or citations?

A: Yes, sir. We had a group violation here,

citation number three was 3a is for 1910.333(c)(3) which was the employees working in the vicinity of overhead power lines within the protective measures or de-energizing or insulating the lines. And then 3b was 1910.333(c)(3)(i)(B), employees working on the ground within a ten foot vicinity of unguarded energized overhead power lines.

Q: Now, when you say you had a group citation, what does that mean?

A: That they are very similar so we group them together to form one violation.

Q: All right. And how was this violation classified?

A: This was classified as serious also.

Q: And any other citations?

A: I believe that was all of them.

Q: Let's see, is this part of the group?

A: 3a and 3b, yes. These are the group.

Q: Oh, okay.

A: 3a and 3b, uh-huh.

Q: Now, what are the purposes of those regulations or safety regulations that you found were violated?

A: Say that again.

MR. SMITH: Objection.

Q: What is the purpose of the safety regulations which were violated, what purpose do they serve?

MR. SMITH: Pope, did y'all note my objection?

A: I didn't. Go ahead.

MR. JOHNSON: Go ahead.

MR. SMITH: That was it, just objection. I just didn't know if you heard me.

MR. JOHNSON: Okay, we got it.

A: The purpose of the citations?

Q: No, no, the regulations.

A: Oh, the purpose of the regulations is for -- it gives the employer the tools -- the purpose of the regulation is to provide a safe and healthy working environment for the employees. And OSHA has put these rules out for the employers and the employees to abide by to make sure that workplace incidents or accidents or injuries or illnesses do not occur on the job site.

Q: You may have answered some of my next question. Who do the regulations apply to? Do they apply to the employer?

A: Well, they apply to the employer. They are for the employer and the employees. The goal is as

the employer you are the one that's in charge of putting it in place for your employees to abide by, but OSHA has some stuff in there that says the employees must do it by, go by, must abide by, but as a way we look at it as is we can't issue the violations to the employees so the violations are issued to the employer.

Q: Now, when you say OSHA has something about it applying to the employer and employee, can you --

A: Yeah.

Q: -- refer me to that?

A: And I don't have it here with me, but if you go back to some parts of the OSHA Act it talks about that for the employers and the employees to abide by these rules and regs.

Q: Is this something you could provide me?

A: I can look it up and see if I can provide it for you, yes.

Q: All right. And so --

A: Uh-huh (affirmative response).

Q: -- although these citations were directed to the employer, Stage Presence Rentals --

A: Uh-huh (affirmative response).

Q: -- Equipment Rentals, LLC, did the employees,

were they in violation as well?

MR. SMITH: Objection.

A: What did he say?

MR. WILLIAMS: His objection, it's just for the record.

A: Okay, I didn't -- we did not find the employees in violation of anything. What we find most the time if we find the employees had some stake in it, we usually go that employee misconduct route.

Q: Let me ask it this way then --

A: Uh-huh (affirmative response).

Q: -- were the employees obligated to comply with the regulation, OSHA Regulation that says you cannot work within a ten foot vicinity of an unguarded, energized overhead power line? In other words, were the employees bound by that regulation?

A: The employees were -- we look at it as from the -- from the OSHA standpoint is we look at it as the employer, what did you provide your employees or knowledge for your employees to know that they should not have been working within that ten foot boundary. We did not -- in this case, we did not find where Stage

Presence Equipment had provided information or -- for their employees not to be within that ten foot range.

Q: All right. My question though is whether or not you cited the employee --

A: Right.

Q: -- for a violation. Is the employee obligated to comply with that provision that says you cannot work within a ten foot vicinity of an unguarded energized overhead power line?

A: Yes, that's the rule, for employees not to be within ten foot of that power line, yes.

Q: And that applies to employers and applies to employees as well?

A: Yeah, uh-huh.

Q: Now, once the citations are issues, do you set a penalty?

A: Yes, we do.

Q: And were penalties in this case set according to what you normally do?

A: Yes.

Q: And then once the penalties and the citations were issued, what happened?

A: Once the penalty -- what happened in this case?

Q: Yes.

A: In this case, once the penalties and citations were issued, it seems like Stage Presence contacted our office. They did not come in for an informal conference, but they were just asking for a penalty reduction and it looks like that was granted to them to help them reduce their penalties so that became a final order for the citations and they paid the penalty and corrected the items.

Q: Now, when you say the final order, can you identify that for me?

A: Yes. Once the --

Q: -- you have it?

A: I don't have it. In your stuff here. And I don't know how the letter states that, but when they --

Q: Is this the employer penalty option?

A: When they entered into the employer penalty option they waive their right to file any protest of all citations in the -- in that. And then they received a reduction in penalty from 5,000 to $2,000 and then they agreed to do that third item.

Q: So, did Stage Presence, by entering into this option, essentially admit that the citations

were appropriate and waive any right to protest it?

A: Well, they accepted the citations but then they also had a waiver down here at the bottom.

Q: Okay.

A: Yeah. It looked like a non-admissions clause.

Q: Okay. So they didn't admit they did something wrong, but they waived the right to protest --

A: That's right.

Q: -- the citation?

A: And they accepted the citations and that they're going to correct.

Q: And what further -- was there anything further done after that occurred?

A: It looks like it was just getting the corrective action and the -- they provided documentation for item number three and they eventually paid the penalty. We set up a penalty payment and they paid the penalty, so that's on top there.

Q: Let me ask you this, looking back at the citations --

A: Uh-huh (affirmative response).

Q: -- had Stage Presence trained it's personnel without familiarity with electrical and

related safety practices, would that have, in your opinion, reduced the risk of the accident occurring?

MR. SMITH: Objection.

A: If Stage Presence had trained their individuals, the individuals would have had a little bit more knowledge about the electrical hazards or been more mindful of the area they were in working near overhead power lines and it may have minimized the incident.

Q: And as I understand it was Stage Presence obligated to train -- by the regulation to train --

A: Right.

Q: -- their people?

A: Yes.

Q: But failed to do so?

A: Correct.

Q: Had Stage Presence put up or ensured that alerting techniques were used to warn and protect employees from hazard due to electric shock, burns, failure of electric parts by putting up safety signs, tags, barricades, attendant, use of attendants and alerting techniques, do you have an opinion as to

whether that would have reduced or made unlikely the accident occurring in this case?

MR. SMITH: Objection.

A: If these items were in place it would have given the employees a warning system to let them know that they were getting close to a danger area and may have prevented the incident from occurring.

Q: All right. If Stage Presence had contacted Berkeley Electric to have the line de-energized or other protective measures put in place before the work started, do you have an opinion as to whether that would have reduced or made unlikely that -- reduced the possibility that an accident would occur or made it unlikely that it would have occurred?

MR. SMITH: Objection.

A: If the power lines had been de-energized it would have -- or insulated or isolated in some way, it would have prevented -- probably, most likely would have prevented it, yeah, for the electrical contact with the tent.

Q: Was Stage Presence, by regulation obligated to do that?

A: They were obligated to either get the lines de-

energized or isolate the lines if you're going to work that close to them.

Q: With respect to the requirement that an employer ensure an unqualified person working on the ground in the vicinity of the electrical lines does not get within the ten foot vicinity of an unguarded energized overhead power line, was Stage Presence required by federal regulation to ensure that that occurred and that they did not work within the ten foot vicinity --

A: Yeah.

Q: -- of an unguarded electrical line?

A: Yes. They --

Q: They were?

A: Yes. And if they were not within ten foot -- I can't say for certainty the lines wouldn't have arced that far, but it most likely wouldn't have.

Q: And were the employees obligated not to, by regulation not to work within the ten foot vicinity of an unguarded energized overhead power line?

A: Yes.

MR. JOHNSON: Anything else?

MR. WILLIAMS: No, I just had a couple of points and you've already covered those.

Q: Thank you, that's all I have.

MR. WILKS - EXAMINATION BY MR. SMITH:

Q: Mr. Wilks, good morning, I'm Kevin Smith.

A: How you doing, Kevin?

Q: I'm doing good, how about you?

A: I'm all right.

Q: Good. Well thanks for being with us this morning. I just have a few questions, okay?

A: Okay.

Q: Let me know if you can't hear me correctly or if it sounds like I'm being cut off.

MR. JOHNSON: Kevin, before you start, can I ask one other question?

MR. SMITH: Sure.

MR. JOHNSON: So he'll remember.

MR. WILKS - CONTINUED EXAMINATION BY MR. JOHNSON:

Q: Did your department do any investigation of Berkeley Electric's role in this accident?

A: No, we did not. It looks like we spoke to Berkeley Electric somewhere along the way, but we did not conduct an investigation of Berkeley Electric.

Q: Were any citations issued to Berkeley Electric?

A: No, not because of this.
Q: All right. Now, did you bring with you the OSHA Standards for General Industry?
A: I did.
Q: And did you -- I've printed out the cover sheet and page 390 and 391. Do those pages contain the ten foot rule, regulation regarding the ten foot rule?
A: That standard that you're looking at is under 269 which is electric power transmission standard and it talks about bringing materials or equipment within then feet of the power line, overhead power line.
Q: Okay.
A: Any energized parts I believe is how it's --
MR. JOHNSON: Kevin, I haven't sent that to you. Do you want me to do that?
MR. SMITH: Yeah. We can just get it. It's just straight out of the OSHA book, right?
MR. JOHNSON: Yeah.
A: Yeah.
MR. SMITH: Just scan it and send it over later, Pope, that'll be fine.
MR. JOHNSON: All right. I'm going to mark it as Exhibit Two.

A: Uh-huh (affirmative response).

MR. SMITH: Sure.

(Defendant's Exhibit Number Two was marked for identification purposes.)

MR. JOHNSON: I'm through, thank you.

MR. SMITH: All right.

MR. WILKS - EXAMINATION BY MR. SMITH:

Q: Mr. Wilks, you are not trained in the National Electric Safety Code, are you?

A: No. I'm not an expert in the National Safety Code, no.

Q: And the fellow that went out to the scene, Seth Stoner, is that his name?

A: Yes.

Q: And is Seth trained in the National Electric Safety Code?

A: And when you talk about training, have we had training on it or we are --

Q: Well, I'll ask you this. Is Seth -- had Seth received training as far as the National Electric Safety Code in terms of the required height for power lines?

A: As far as the required height for power lines, I don't believe so, not from my office.

Q: Okay. In fact, it was not your job or Seth's

job to determine if Berkeley Electric Cooperative played any role in the incident that happened back in 2008, was it?

MR. JOHNSON: Object to the form.

A: No, it was not our role. It was not our role into determining that.

Q: You were simply looking at the role of Stage Presence and it's employees, is that fair to say?

MR. JOHNSON: Object to the form.

A: Stage Presence and employees and -- I don't think it was a multi-employer work site, if any other employers had any role on that work site at the time but I believe it was only Stage Presence.

Q: And I believe that you testified earlier that the employees for Stage Presence and any of the labor companies out there, namely Mr. Keyes, Mr. Fortney, Mr. Robinson and Mr. Clayson, none of them were cited specifically were they?

A: No.

MR. JOHNSON: Object to the form.

A: No, the employees were not cited specifically, no.

Q: And specifically, you just testified that no

employee misconduct was found, that this was more of a mistake by the supervisors and those in charge?

MR. JOHNSON: Object to the form.

A: Yes. There was no employee misconduct found. We found the violations of Stage Presence, the company. And we look at if it's -- whoever was in charge of that site for Stage Presence at that time.

Q: Okay. Give me one second. I need to look through some of these documents. I'm just about done. Is it fair to say that your investigation revealed that OSHA had spoken to some representative of Berkeley Electric Cooperative?

MR. JOHNSON: Object to the form.

A: I don't have that with me, but I believe we -- there were some -- we did speak with someone from Berkeley Electric. If I can look through that file completely I may be able to tell you.

MR. JOHNSON: Kevin, I think the file does reflect that there was some communication.

MR. SMITH: About half way through your stack, Pope, there's a handwritten note and it seems to reference the name and title of Junior James

Elrod. Do you know where that -- can you find that, Pope?

MR. JOHNSON: I'm afraid ours are rearranged differently than yours.

MR. SMITH: All right. Well, let me just ask the question then.

Q: Mr. Wilks, is it more likely than not that Berkeley -- that OSHA or the OSHA representative spoke to some representative from Berkeley Electric about this incident?

A: Yes.

Q: And we've got some handwritten notes here from your file indicating next to the title Berkeley Electric, has a name and it says Junior James Elrod. My personal information is that Mr. Elrod is an employee of Berkeley Electric. Would that likely be the person that the OSHA investigator spoke to?

A: If it -- if I had to say, yes. And it looks like he put down manager of job training and loss control right up under it.

Q: That's correct.

A: Yeah. That so --

Q: All right.

A: Junior may be a representative of Berkeley

Electric, but I -- from the way I'm looking at it, but I couldn't tell you 100 percent sure.

Q: Okay. Did OSHA rely on the things that Berkeley Electric had told them?

MR. JOHNSON: Object to the form.

A: I do not -- I cannot tell from his notes about that.

Q: Do you know whether or not OSHA went back to verify any of the information related by Berkeley Electric Cooperative?

A: I cannot tell from his notes how often he went back to Berkeley Electric. I see here under the Berkeley Electric that he got a height of the line and the volts and that -- and the Junior James Elrod name.

Q: And that information was not independently verified by anyone at OSHA was it?

A: No. We have no way of measuring that height or determining the volts of the line. So most likely it came from Berkeley Electric.

Q: And what was the height that Berkeley Electric told OSHA the power line was?

A: Well, the height that's document here on this page is 18 feet 2 inches. Now, I don't know if there's any other measurements anywhere else in

this file, so.

Q: All right. And I seem to recall, I'm having trouble locating it, there was a note in the file that indicated when the employees moved the tent in front of the barn next to the power line, that they were 17 feet away from the power line?

A: In the narrative extended -- it was in the narrative extended. It should be a page that's title narrative extended. It says at the time the guys all put the tent down and repositioned themselves to lift it again and carry the tent in between another tent and the power lines that were approximately 17 feet apart.

Q: Say that again, what -- explain that for me.

A: I can read it again. Explaining it to you may be different. At that time the guys all put the tent down and repositioned themselves to lift it again and carry the tent in between another -- carry the tent between another tent and the power lines that were approximately 17 feet apart.

Q: All right. So what was 17 feet apart? And I see that there under extended now. Was there 17 feet between the tents and the power line or

17 feet between two power lines?
A: They repositioned themselves and began to carry the tent in between -- sounds like it was another -- between another tent and the overhead power lines may have been 17 feet apart.
Q: But you're just not exactly sure whether --
A: Yeah, I couldn't --
Q: -- that's the --
A: Yeah. I couldn't tell you 100 percent sure on that.
Q: Okay. And this is in your narrative or you didn't write this, did you?
A: No, I did not.
Q: And you didn't speak to the people that gave this information or took these measurements, did you?
A: No, I did not.
Q: Okay. Mr. Wilks, have you ever been involved personally in an investigation of an incident similar to this where people or an object came in contact with an overhead power line?
A: You mean as the investigator on it or managing the program?
Q: Either one.

A: We've had other incidents where individuals have contacted overhead power lines, yes.

Q: All right, just a second. All right. I think that's all the questions I have.

MR. WILKS - RE-EXAMINATION BY MR. JOHNSON:

Q: Just a follow up question or two, Mr. Wilks. I understand that an employee may violate an OSHA regulation and your department may chose to issue a citation or chose not to issue the citation even though there's a violation in the regulation. Is that correct?

MR. SMITH: Objection.

A: Could you repeat that again?

Q: Right. Do I understand that an employee may violate a regulation, active violation of the regulation and your department may or may not issue an employee citation for that violation?

A: We do not issue citations to employees. The citations are always issued to the employer. If there's an issue where the employee done something wrong that they were not guided to do as far as the direction of the employer, then the -- we look at the employee misconduct defense and we try to set that up.

Q: Okay. What constitutes employee misconduct?

A: Most of the -- employee misconduct is -- of course an employee actually does something on their own. And we look at what has the employer provided as far as training, knowledge of the hazards and a way of corrective measure to correct it if the employee notice a hazard such as employee discipline or have you -- do you have a disciplinary policy for the employees. So if the employer has all of those set up and then -- there are times that employees will just do things anyway and that's where we look at -- we allow for that employee misconduct defense.

Q: And do you issue a citation in that setting against the employee?

A: No. We do not issue in that set of --

Q: So what you're saying is if you find the employer is complaint with OSHA Regulations and an employee has done something in violation of the regulations, notwithstanding what the employer's done, the employer may have a defense on employee misconduct?

A: Yes.

MR. SMITH: Okay.

Q: And as I understand it, you don't issue

citations to employees?

A: We do not issue the citation to the employees.

MR. SMITH: Objection

Q: Do you issue -- does your department issue citations to employees?

A: No. Our department does not issue citation to the employees.

Q: Good. Thank you.

MR. JOHNSON: Anything else, Kevin?

MR. SMITH: No, that's it.

(There being no further questions, the deposition concluded at 11:02 a.m.)

CERTIFICATE

This is to certify that the deposition of **ANTHONY WILKS**, consisting of Thirty-Four (34) pages, is a true and correct transcript of the testimony given by said deponent after being duly sworn; said deposition was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on August 9, 2012.

Amanda J. Creel-Godfrey
Court Reporter

Notary Public for South Carolina
My Commission Expires: August 17, 2021

STAGE PRESENCE
Equipment Rentals LLC

Site Survey

Event Date 9.1.08 Event Type 11th Annual Summer Event

Client L. Riley, Jr. Contact # contact 795-4386

Venue James Island Venue # 795-4386

Contact Person ~~Joseph Riley, Jr.~~ Melissa Bernhardt Address 330 Riverland Dr. Chas 29412

Stage Presence Regulation

* None Hazards Located

Please indicate hazards below:

Survey performed: 8/25/08

* none located, event has been in same location for 8 years.

Please indicate items required/surveyed on event:

- ✓ 15 Ft Rule
- ✓ Inclement Weather Plan
- n/a Exit Signs Location
- ✓ Power (amount, location)
- ✓ Loc. of Above Ground Lines
- n/a PUPS Locator
- As needed Max. Sustained Winds Permitted
- ✓ Tent Permits
- n/a Generators
- ____ Power Lines

Special Notes (attach venue layout if applicable):

- permanent power associated w/ bathrooms
- company used different rental companies over the years

Stage Presence Representative 8/25/08 Date

DEFENDANT'S EXHIBIT 1 A. Wilkes 7/16/12

August 1, 2008

Mr. Bryan Mahanes
Stage Presence Equipment Rentals, LLC
660 Riveland Dr Unit D
Charleston, SC 29412

Re: Optional Report No. 1489-08

Dear Mr. Mahanes:

During the Informal Conference held on June 30, 2008, you signed an Employer Penalty Option Agreement in order to reduce the fines assessed to your company.

In order to fulfill the requirement of the Employer Penalty Option, you will need to submit documentation stating how and when you complied with Item #3 of this agreement. Please note this is not related to your citation abatement. You may need to review your copy of your EPO agreement.

> Have foreman/manager conduct pre-job hazard assessments for each job, according to employer's new policy, to determine the safety requirements. Submit documentation of one, **and only one**, completed assessment to the South Carolina Office of Occupational Safety and Health by August 1, 2008.

If you do not comply with this requirement, you will not be eligible for the Employer Penalty Option on subsequent inspections.

If you have any questions, please contact me at (803) 896-7665.

Sincerely,

Anthony Wilks
OSHA Compliance Manager

August 1, 2008

Stage Presence Equipment Rentals, LLC
660 Riveland Dr Unit D
Charleston, SC 29412

SITE: 10882 US 17
McClellanville, SC 29458

Re: Optional Report No. 1489-08
Citation No. 01 (Serious)

Dear Sir:

On June 11, 2008, you were cited for alleged violations of Section 41-15-210, South Carolina Code of Laws, 1976, as amended, and proposed assessment of penalties in the amount of $2,000.00.

It was agreed that the penalties in the amount of $2,000.00 would be paid in 4 monthly installment payments. The 1st payment of $500.00 is due on August 1, 2008, and you should make payment in that amount to the Finance Division, South Carolina Department of Labor, Licensing and Regulation by check or money order, mailing same to the above address.

If payment has been submitted please disregard this notice.

Sincerely,

Anthony Wilks
OSHA Compliance Manager

Fax

Name:	Jill
Organization:	LLR - OSHA
Fax:	803-896-7670
Phone:	803-896-7665
From:	Sonya Fowler-Vaughn
Date:	July 15, 2008
Subject:	Stage Presence Equipment Rentals Optional Report No. 1489-08
Pages:	1 including cover

Comments:

Jill,
It was a pleasure speaking with you today. As I stated on the phone we have received the letter that shows the penalty reduction. Could you please set us up on a four month payment plan? Thanks again for all your help with this.

Sonya Fowler-Vaughn
Accounting Department
Stage Presence Equipment Rentals, LLC
660 Riverland Drive
Unit D
Charleston, SC 29412

From the desk of...
Sonya Fowler-Vaughn
Stage Presence Equipment Rentals
Charleston, SC 29412

Office of Occupational Safety and Health
P.O. Box 11329
Columbia, S.C. 29211

Department of Labor, Licensing and Regulation

Citation and Notification of Penalty

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

3. Issuance Date	4. Inspection Number
07/10/2008	311514608
5. Reporting ID 0454510	6. CO/H ID #8210
7. Optional Report No. 1489-08	8. Page No. 1 of

1. Type of Violation(s)	2. Citation Number
Serious	01

10. Inspection Date(s):
04/24/2008 - 05/15/2008

11. Inspection Site:
10882 US 17
McClellanville, SC 29458

Penalties Are Due Within 20 Calendar Days of Receipt of This Notificatio Unless Contested

9. To:
Stage Presence Equipment Rentals, LLC
660 Riveland Dr Unit D
Charleston, SC 29412

This Sectio May Be Detached Before Posting

CITATION ISSUED JUNE 11, 2008 IS AMENDED

THE LAW REQUIRES that a copy of this Citation be posted immediately in a prominent place at or near the location of the violation(s) cited below. This Citation must remain posted until the violations cited below have been corrected, or for 3 working days (excluding weekends and State holidays), whichever is longer.
This Citation describes alleged Occupational Safety and Health violations in accordance with the provisions of Section 41-15-280, South Carolina Code of Laws, 1976, as amended. The penalty(ies) listed are based on these violations. You must correct the violations referred to in this Citation by the dates listed below and pay the penalties proposed, pursuant to the provisions of Section 41-15-300, South Carolina Code of Laws, 1976, as amended, unless within 20 calendar days from your receipt of this citation and penalty you mail a notice of **PROTEST** to the South Carolina Department of Labor, Licensing and Regulation at the address shown above, or request an **INFORMAL** Conference.

12. Item Number	13. Standard, Regulation or Section of the Act Violated	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
		(reducing penalty) Amendment is as set forth below: Due to the implementation of the Employer Penalty Option, the penalty ($5,000.00) is hereby reduced to $2,000.00.		

17. Signature (Compliance Manager)
Anthony Wilks

18. $2,000.00

NOTICE TO EMPLOYEES – The law gives an employee or his representative the opportunity to object to any abatement date set for a violation if he believes the date to be unreasonable. The **PROTEST** must be mailed to the South Carolina Department of Labor, Licensing and Regulation at the address shown above within 20 calendar days of the receipt by the employer of this citation and penalty.

EMPLOYER DISCRIMINATION UNLAWFUL – The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he has been discriminated against may file a complaint no later than 30 days after the discrimination with the South Carolina Department of Labor, Licensing and Regulation at the address shown above.

Total Penalty for This Citation

State Check or Money Order Payable to: "South Carolina" Department of Labor, Licensing and Regulatio

Indicate Inspection Number on Remittance

ITATION AND NOTIFICATION OF PENALTY

CASE FILE COPY

SCOSH-2 (Rev. 1/94)

South Carolina
Department of Labor, Licensing and Regulation

Division of Labor-OSHA

Mark Sanford
Governor

Adrienne Riggins Youmans
Director

Post Office Box 11329
Columbia, SC 29211-1329
Compliance: (803) 896-7665
Standards: (803) 896-7682
Recordkeeping: (803) 896-7661
FAX: (803) 896-7670
www.llr.state.sc.us

July 10,2008

Mr. Bryan Mahanes
Stage Presence Equipment Rentals LLC
660 Riverland Dr Unit D
Charleston SC 29412

RE: Citation No.1(Serious)
Optional Report No.1489-08
Issued Date: June 11,2008

Dear Mr. Mahanes:

In reference to the Informal Conference held on **June 30,2008,** the following decisions are submitted:

(1) Affirmed all citations and penalties.

(2) Implemented the Employers Penalty Option, thereby reducing the penalty to **$2,000.00.**

As explained at the Informal Conference, you have waived your right to protest any of the amended or original portions of the citation and/or penalty.

Sincerely,

Anthony Wilks
OSHA Compliance Manager
AW/jf
Enclosures

TO: Mr. Bryan Mahanes
FROM: Karl Maddox

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
Office of Occupational Safety and Health
P.O. Box 11329
Columbia, SC 29211
(803) 734-9669
FAX: (803) 734-9772

EMPLOYER PENALTY OPTION

In order to effectively promote the health and safety of employees in the state, the South Carolina Department of Labor, Licensing and Regulation's Office of Occupational Safety and Health offers this option for use of money assessed as penalties pursuant to South Carolina Code of Laws, 1976, as amended, §41-15-320. By this option, the employer may waive his right to protest the citation(s) and proposed penalty (ies) within twenty (20) calendar days by signing the following Certificate and by agreeing to the terms of item 3. Following receipt of the Certificate, the South Carolina Department of Labor, Licensing & Regulation's Office of Occupational Safety and Health will issue a revised Notice of Proposed Penalty reflecting a 60 percent reduction in penalty.

CERTIFICATE

Employer: **Stage Presence Equipment Rentals LLC** Optional Report #: 1489-08

Inspection site: **10882 US 17**
McClellanville, SC 29458

By its duly authorized representative or agency does hereby certify:

1. That it waives the right to file any protest to all citations or penalties proposed in the above-captioned case pursuant to South Carolina Rules and Regulations 71-407A.

2. That it has received a Notice of Proposed Penalty in the amount of $5,000.00 and that it will remit to the Occupational Safety and Health Office of the South Carolina Department of Labor, Licensing & Regulation the amount of $2,000.00 upon receipt of a revised Notice of Proposed Penalty in that amount.

3. That it agrees to: **have foreman/manager conduct pre-job hazard assessments for each job, according to employer's new policy, to determine the safety requirements. Submit documentation of one, AND ONLY ONE, completed assessment to South Carolina LLR's Office of Occupational Safety and Health by August 1st, 2008.**

If the employer does not comply with this requirement, he will not be eligible for the Employer Penalty Option on any subsequent inspections.

Stage Presence Equipment Rentals LLC does not admit that it violated the South Carolina Occupational Safety and Health Act (the "Act") (Code Sections 41-15-80 et seq.). Nothing in this agreement, including the agreement itself, its execution, any actions pursuant to this agreement, as well as any resulting final order, is an admission or evidence of any fact or violation of the Act or any comparable federal legislation, other than in the proceeding brought by the State of South Carolina to enforce the Act. Nothing in this agreement pertains to any conditions or practice other than that specifically cited in the citations.

Signature of Authorized Representative

7/3/08
Date

INFORMAL CONFERENCE MEMORANDUM

TO: ASSISTANT DIRECTOR/OSH COMPLIANCE

I/C LOG NO. 343-08

OPT. RPT. NO. 1489-08

1. ASSIGNED TO Maddox DATE 6-16-08 CONTACT Bryan Mahanes
PHONE # 843-442-443X FAX # (815) 425-5621 FOR DISCUSSION Penalty
FIRM NAME Stage Presence Equipment Rentals LLC I/C DATE 6-30-08 TIME ____

2. EMPLOYEE NOTICE ( ) C/A OBTAINED, POSTED AND CLOSE (✓) YES ( ) NO
IF NO, EXPLAIN ____
EPO (✓) FAX (✓) EPO DUE DATE 8-1-08 PROTEST ATTACHED ( )
EMPLOYER INFORMED OF LAST DATE OT PROTEST 7-2-08 WAIVED PROTEST (✓)

3. MANAGEMENT REPRESENTATIVE(S) — TITLE
Bryan Mahanes — Co-owner

4. EMPLOYEE'S REPRESENTATIVE(S) — TITLE

5. ITEM NUMBERS S1, S2, S3a, b
PENALTIES $5,000.00

6. DISCUSSION SUMMARY Receptionist gave fax #. Left message to call back - also left on cell phone. Sent EPO agreement, one co-owner in England - will sign EPO when he receives.
EPO by phone

225-5621

6. CONTD.

7. MAIL I/C RESULTS TO: Bryan Mahanes TITLE: Co-owner
660 Riverland Dr., Unit-D
Charleston SC 29412

8. RESULTS: VACATED CITATION NOS. : _____ PENATIES: _____
REASON: _____
AFFIRMED ALL CITATIONS (✓) YES ( ) NO – ALL PENALTIES (✓) YES ( ) NO

ABATEMENT DATES	AMENDED	ITEMS NOS.	NEW DATES
Item Nos.	New Dates		

PENALTY REDUCTION: VACATED DUE TO FINANCIAL STATUS ( )
VACATED DUE TO OTHER THAN SERIOUS CORRECTED ( )
ITEM NOS. 51, 52, 53a, b
REDUCED BY 60 %) THROUGH EPO FROM $5,000.00 TO $2,000.00

9. OTHER AMENDMENTS: AS FOLLOWS/CLASSIFICATION/TECHNICAL ASSISTANCE GIVEN

10. EMPLOYER INFORMED OF DECISION (X) K Q B. Maddox 7/9/08
Supervisor Signature Date

OFFICE USE
1. DATE REC: 7-9-08 BY: [signature] TYPED: 7-10-08 BY: [signature]
DATE APPROVED AND MAILED: 7/11/08 BY: [signature]
OSHA 166 SUBMITTED – DATE: 7-10-08 BY: [signature]

Rev. 3/2008

Citation Record Update

S. C. Department of Labor, Licensing and Regulation
Office of Occupational Safety and Health

MOD Date	1. Reporting ID	2. Prepared By:	3. Date	4. Inspection Number
7-10-08		J Fleenor		3115.14608

6. Establishment Name: Stage Presence Equipment Rentals LLC

7. CSHO ID

8. Amendment/Informal Settlement Date	9. Contest Date	10. Decision Date	11. Final Order Date
6-30-08			

FTA	Scope			Citation ID			Violation							Abatement/ PPE/Plan/Report						Other Action		Penalty		Disp/ Mod		
12	13	14	15	16.	17.	18.	19	20.	21. Hazard		22.	23.	24.	25	26.	27	28	29	30	31	32.	33	34.	35	36	37	38.
FTA	Entire Inspection	Entire Citation	Entire Item	Citation Number	Item Number	Group (a-z)	Type	Standard	a. Line Number	b. Substance Code	REC	Number Exposed	Number Instances	Contested?	Date	Type	Track?	Completed?	Empr. Contested?	Empe. Contested?	Date	Type	Amount	Contested?	Action	Event	Error
				1	1		C																600				
					2		C																600				
					3		C																800				

1232

*U.S. GPO: 1983-XXX-XXX/XXXXX

MEMORANDUM FOR RECORD

6/17/08

Stage Presence Equipment Rentals LLC

Option Report No 1489-08

Employer Contact Bryan Mahanes

[ ] Penalty not Paid

[ ] Letter of Corrective Action

[X] Other (Request for Informal Conference)

Comments: Wants I/C
Not in EPO ineligibility log 6/17/08 JAF-

Signature Jill Fleenor

DOS H-C-30
(Rev. 3/94)

RETURN THIS FORM TO:

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
OFFICE OF OCCUPATIONAL SAFETY & HEALTH
P O BOX 11329
COLUMBIA, SOUTH CAROLINA 29211
FAX: (803) 896-7670

DATE FORM DUE: 7-14-08 OPTIONAL REPORT NUMBER: 1489-08
THE ALLEGED VIOLATIONS (ITEM NUMBERS LISTED BELOW) THAT WERE OBSERVED ON _____ DURING AN OCCUPATIONAL SAFETY & HEALTH INSPECTION WERE CORRECTED ON THE DATES SHOWN BELOW:

COMPANY: Stage Presence Equipment Rentals LLC

LOCATION: 10880 US 17 McClellanville SC 29458

ITEM NO. FROM CITATION	ABATEMENT DATE	DATE ON WHICH VIOLATION WAS CORRECTED	*DETAILED DESCRIPTION OF HOW VIOLATIONS WERE CORRECTED
3a	6/17/08	6/16/08	1. Instructed manager to identify any overhead power lines on any job site. Set new policy that manager must notify owners of any overhead powerlines. Managers and owners ink contract responsible party who could deenergize power lines that create hazard. 2. Created memo regarding powerlines 3. Will add to training manual.

I attest that the information contained in this document is accurate and that I have informed affected employees and their representatives (where applicable) of abatement for each cited violation.

SIGNATURE: _____

TITLE: _____

DATE: _____

*NOTE: If additional space is needed, please complete the Description on a separate sheet of paper, and attach it to this form.

DOSH-C-15 (revised 7/97)

RETURN THIS FORM TO:

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
OFFICE OF OCCUPATIONAL SAFETY & HEALTH
P O BOX 11329
COLUMBIA, SOUTH CAROLINA 29211
FAX: (803) 896-7670

DATE FORM DUE: _____ **OPTIONAL REPORT NUMBER:** 11106-06
THE ALLEGED VIOLATIONS (ITEM NUMBERS LISTED BELOW) THAT WERE OBSERVED ON _____ **DURING AN OCCUPATIONAL SAFETY & HEALTH INSPECTION WERE CORRECTED ON THE DATES SHOWN BELOW:**

COMPANY: _____

LOCATION: _____

ITEM NO. FROM CITATION	ABATEMENT DATE	DATE ON WHICH VIOLATION WAS CORRECTED	*DETAILED DESCRIPTION OF HOW VIOLATIONS WERE CORRECTED
3b	6/17/08	6/16/08	1. Instructed manager to enforce 15' rule in terms of building events and directing employees.

I attest that the information contained in this document is accurate and that I have informed affected employees and their representatives (where applicable) of abatement for each cited violation.

SIGNATURE: _____

TITLE: _____

DATE: _____

*NOTE: If additional space is needed, please complete the Description on a separate sheet of paper, and attach it to this form.

DOSH-C-15 (revised 7/97)

South Carolina Department of Labor, Licensing and Regulation
Office of Occupational Safety and Health

P.O. Box 11329
Columbia, S.C. 29211

Citation and Notification of Penalty

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

3. Issuance Date	4. Inspection Number
06/11/08	311514608
5. Reporting ID	6. CO/IH ID
0454510	W8210
7. Optional Report No.	8. Page No.
1489-08	1 of 4

1. Type of Violation(s)	2. Citation Number
Serious	01

10. Inspection Date(s): 04/24/08 - 05/15/08

11. Inspection Site: 10882 US 17
McClellanville, SC 29458

Penalties Are Due Within 20 Calendar Days of Receipt of This Notification Unless Contested

9. To:
Stage Presence Equipment Rentals, LLC
660 Riverland Dr., Unit D
Charleston, SC 29412

This Section May Be Detached Before Posting

THE LAW REQUIRES that a copy of this Citation be posted immediately in a prominent place at or near the location of the violation(s) cited below. This Citation must remain posted until the violations cited below have been corrected, or for 3 working days (excluding weekends and State holidays), whichever is longer.
This Citation describes alleged Occupational Safety and Health violations in accordance with the provisions of Section 41-15-280, South Carolina Code of Laws, 1976, as amended. The penalty(ies) listed are based on these violations. You must correct the violations referred to in this Citation by the dates listed below and pay the penalties proposed, pursuant to the provisions of Section 41-15-300, South Carolina Code of Laws, 1976, as amended, unless within 20 calendar days from your receipt of this citation and penalty you mail a notice of **PROTEST** to the South Carolina Department of Labor, Licensing and Regulation at the address shown above, or request an **INFORMAL** Conference.

12. Item Number	13. Standard, Regulation or Section of the Act Violated	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
1	SCRR Chapter 71, 1-1910.332(b)(2):	Failed to have employees who are co[illegible]ed by paragraph (a) of this section but who are not qualified pe[illegible]s trained in and familiar with any electrically related safety practices not specifically addressed by 1910.331 through 1910.335 but which are necessary for their safety, as follows: A. Employees, who were not specifically qualified to work around electrical hazards, were not trained in, and familiar with any electrically related safety practices at the Thorn Hill Farms barn area.	07/14/08	$1500.

17. Signature (Compliance Manager)

NOTICE TO EMPLOYEES – The law gives an em[illegible] representative the opportunity to object to any ab[illegible] set for a violation if he believes the date to be u[illegible] The **PROTEST** must be mailed to the Sou[illegible] Department of Labor, Licensing and Regulation a[illegible] sho[illegible]bove within 20 calendar days of the r[illegible] emp[illegible] of this citation and penalty.

CITATION AND NOTIFICATION OF PENALTY

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

STAGE PRESENCE
EQUIPMENT RENTALS LLC
10882 US 17
MCCLELLANVILLE SC 29458

ORIGINAL
489-08

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Marilyn Hair ☒ Agent ☐ Addres

B. Received by (Printed Name) MARILYN HAIR C. Date of Deliv 6/12/

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchanc
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Transfer from service label)* 7007 2560 0003 1093 8102

PS Form 3811, February [illegible]

South Carolina Department of L[illegible]or, Licensing and Regulation
Office of Occupational Safety and Health

P.O. Box 11329
Columbia, S.C. 29211

Citation and Notification of Penalty

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

3. Issuance Date	4. Inspection Number
06/11/08	311514608
5. Reporting ID: 0454510	6. CO/IH ID: WS210
7. Optional Report No.: 1489-08	8. Page No.: 2 of 4

1. Type of Violation(s)	2. Citation Number
Serious	01

10. Inspection Date(s): 04/24/08 - 05/15/08

11. Inspection Site:
10882 US 17
McClellanville, SC 29458

9. To:
Stage Presence Equipment Rentals, LLC
660 Riverland Dr., Unit D
Charleston, SC 29412

Penalties Are Due Within 20 Calendar Days of Receipt of This Notification Unless Contested

This Section May Be Detached Before Posting

THE LAW REQUIRES that a copy of this Citation be posted immediately in a prominent place at or near the location of the violation(s) cited below. This Citation must remain posted until the violations cited below have been corrected, or for 3 working days (excluding weekends and State holidays), whichever is longer.
This Citation describes alleged Occupational Safety and Health violations in accordance with the provisions of Section 41-15-280, South Carolina Code of Laws, 1976, as amended. The penalty(ies) listed are based on these violations. You must correct the violations referred to in this Citation by the dates listed below and pay the penalties proposed, pursuant to the provisions of Section 41-15-300, South Carolina Code of Laws, 1976, as amended, unless within 20 calendar days from your receipt of this citation and penalty you mail a notice of **PROTEST** to the South Carolina Department of Labor, Licensing and Regulation at the address shown above, or request an **INFORMAL** Conference.

12. Item Number / 13. Standard, Regulation or Section of the Act Violated	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
2 SCRR Chapter 71, 1-1910.356(b):	Failed to ensure the following al[illegible]ing techniques are used to warn and protect employees from ha[illegible]ds which could cause injury due to electric shock, burns, or failure of electric equipment parts: (1) Safety signs and tags. Safety signs, safety symbols, or accident prevention tags shall be used where necessary to warn employees about electrical hazards which may endanger them, as required by 1910.145. (2) Barricades. Barricades shall be used in conjunction with safety signs where it is necessary to prevent or limit employee access to work areas exposing employees to uninsulated energized conductors or circuit parts. Conductive barricades may not be used where they might cause an electrical contact hazard. (3) Attendants. If signs and barricades do not provide sufficient warning and protection from electrical hazards, an attendant shall be stationed to warn and protect employees, as follows: A. Alerting techniques such as signs, warning tags, barricades, or attendants were not provided to warn four employees of electrical hazards associated with overhead energized power lines, at the Thorn Hill Farm barn area.	06/17/08	$1500.

17. Signature (Compliance Manager)

18.

NOTICE TO EMPLOYEES – The law gives an employee or his representative the opportunity to object to any abatement date set for a violation if he believes the date to be unreasonable. The **PROTEST** must be mailed to the South Carolina Department of Labor, Licensing and Regulation at the address sho[illegible]bove within 20 calendar days of the receipt by the emp[illegible]r of this citation and penalty.

EMPLOYER DISCRIMINATION UNLAWFUL – The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he has been discriminated against may file a complaint no later than 30 days after the discrimination with the South Carolina Department of Labor, Licensing and Regulation at the address shown above.

Total Penalty for This Citation

Make Check or Money Order Payable to: "South Carolina" Department of Labor Licensing and Regulati

Indicate Inspection Number on Remittance

CASE FILE COPY

CITATION AND NOTIFICATION OF PENALTY

SCOSH-2 (Rev. 1/94)

South Carolina Department of L[illegible]or, Licensing and Regulation
Office of Occupational Safety and Health

P.O. Box 11329
Columbia, S.C. 29211

Citation and Notification of Penalty

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3. Issuance Date	4. Inspection Number
06/11/08	311514608
5. Reporting ID	6. CO/IH ID
0454510	W8210
7. Optional Report No.	8. Page No.
1489-08	3 of 4

1. Type of Violation(s)	2. Citation Number
Serious	01

10. Inspection Date(s):
04/24/08 - 05/15/08

11. Inspection Site:
10882 US 17
McClellanville, SC 29458

9. To:
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Charleston, SC 29412

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12. Item Number / 13. Standard, Regulation or Section of the Act Violated	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
Sa "T	STANDARDS IN ITEM NO. 3 ARE GROUPED TO FORM ONE VIOLATION"	06/17/08	$2000.
SCER Chapter 71, 1-1910.333(c)(3):	Failed to deenergize and ground overhead lines or provide other protective measures before work is started if work is to be performed near lines. If the lines are to be deenergized, arrangements shall be made with the person or organization that operates or controls the electric circuits involved to deenergize and ground them. If protective measures, such as guarding, isolating, or insulating are provided, these precautions shall prevent employees from contacting such lines directly with any part of their body or indirectly through conductive materials, tools, or equipment. NOTE: The work practices used by qualified persons installing insulating devices on overhead power transmission or distribution lines are covered by 1910.269 of this Part, not by 1910.332 through 1910.335 of this Part. Under paragraph (c)(2) of this section, unqualified persons are prohibited from performing this type of work, as follows:		

17. Signature (Compliance Manager)

18.

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Total Penalty for This Citation

Make Check or Money Order Payable to: "South Carolina" Department of Labor Licensing and Regulation

Indicate Inspection Number on Remittance

CASE FILE COPY

CITATION AND NOTIFICATION OF PENALTY

SCOSH-2 (Rev. 1/94)

South Carolina Department of L[illegible]or, Licensing and Regulation
Office of Occupational Safety and Health

P.O. Box 11329
Columbia, S.C. 29211

Citation and Notification of Penalty

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3. Issuance Date	4. Inspection Number
06/11/08	311514608
5. Reporting ID	6. CO/IH ID
0454510	W8210
7. Optional Report No.	8. Page No.
1489-08	4 of 4

1. Type of Violation(s)	2. Citation Number
Serious	01

10. Inspection Date(s):
04/24/08 - 05/15/08

11. Inspection Site:
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McClellanville, SC 29458

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Charleston, SC 29412

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12. Item Number / 13. Standard, Regulation or Section of the Act Violated	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
A.	Employees working in vicinity of energized overhead power lines had no protective measures, such as de-energized or insulated lines, pro[illegible]ded before work started at the Thorn Hill Farms barn area.		
3b SCHR Chapter 71, 1-1910.333(c)(3)(i)(B):	Failed ensure when an unqualified person is working on the ground in the vicinity of overhead lines, the person may not bring any conductive object closer to unguarded, energized overhead lines than the distances given in paragraph (c)(3)(i)(A) of this section, as follows: Note: For voltages normally encountered with overhead power line, objects which do not have an insulating rating for the voltage involved are considered to be conductive. A. Employees working on the ground within a 10 foot vicinity of unguarded energized overhead power line with conductive metal tent pole at the Thorn Hill Farms barn area.	06/17/08	

17. Signature (Compliance Manager)
Anthony Wilks

18.
$5000.[illegible]

Total Penalty for This Citation

Make Check or Money Order Payable to: "South Carolina" Department of Labor Licensing and Regulati

Indicate Inspection Number on Remittance

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CASE FILE COPY

CITATION AND NOTIFICATION OF PENALTY

SCOSH-2 (Rev. 1/94)

Safety _____ CSHO/IH Name: Stone 3

Health _____ Employer ID (State option) 114-08

Construction X

7. Prep.	8. Travel	9. On Site Activity	11. Report Prep.	12. Other Conf.	13. Litigation	14. Denial
.1	.1	.1	.1	.1	.1	.1
.	10.1	8.2	2.5	1.0	.	.

Explain any excessive time in # 7 8 9 11 12 13 & 14 above:

If no inspection conducted, explain why:

Fatality / Accident

DOSH-C-53

6-37a

Office of Occupational Safety and Health

MOD Date	1. Reporting ID	2. CO/IH ID	3. Case Control Number	4. Inspection Number (Identifies this Inspection)
	454510	W8210	1489-08	311514608

5. Related Activity Activity Satisfied	5.1 Type	Number	Satisfied	5.2 Type	Number	Satisfied	5.3 Type	Number	Satisfied	6. Total Entries
	A	100378231	☐ S ☐ H			☐ S ☐ H			☐ S ☐ H	1

7. Previous Activity
Has there been previous activity at this establishment? ☐ Yes ☐ No If Yes, enter Type Number

8. a. ☐ Change? b. Establishment Name: Stage Presence Equipment Rentals LLC

9. Employer ID (State's option): 114-08

10. a. ☐ Change? b. Site Address (Street, City, State, Zip): 10882 US 17 McClellanville SC 29458

11. City Code: 1580

12. County Code: 019

13. Mailing Address (If different) (Street, City, State, Zip)

14. Telephone Number: 843-225-5631

15. Name of Controlling Corporation, Partner or Owner: Brian Mahanes

16. Telephone Number (Site): —

Ownership 17. a. ☒ Private Sector b. ☐ Local Government c. ☐ State Government d. ☐ Federal Agency/Code

18. Legal Entity (Optional) a. ☐ Corporation b. ☒ Partnership c. ☐ Sole Owner

Inspection Opening 19. Was Advance Notice Given? ☐ Yes ☒ No

20. Opening Conference Date: 4/24/08

Inspection Category 21. Mark "X" in one box ☒ Safety ☐ Health

22. Primary SIC: 7359

23. Secondary SIC a. Guide b. Insp'd

Inspection Type 24. Mark "X" in one box

Unprogrammed
a. ☒ Accident
b. ☐ Complaint
c. ☐ Refferal
d. ☐ Monitoring
e. ☐ Variance
f. ☐ Follow-up
g. ☐ Unprogrammed Related

Programmed
h. ☐ Planned
i. ☐ Programmed Related

25. Inspection Classification (Mark all that apply)
a. Safety Planning Guide: ☒ Manufacturing ☒ Construction ☐ Maritime
b. Health Planning Guide: ☐ Manufacturing ☐ Construction ☐ Maritime
c. ☒ Local Emphasis Program (specify) Work in Close proximity to power lines
d. ☐ National Emphasis Program (specify)
e. ☐ Migrant Farmworker Camp

Employee Information

26. Number of Employees Employed in Establishment	27. Number of Employees Covered by Inspection	28. Number of Employees Controlled by Employer	29. a. ☐ Union b. ☒ Non-Union	30. a. ☐ Employee Exercised Walkaround Privilege? b. ☒ Employee Interviewed? (States Only)
6	6	6		

OSHA-200 Data Copy below the OSHA-200 Log entries for the most current complete year.

31. Year: 32. ☒ Data Not Available

33. LWDI Rate

	Occupational Injury Cases						Occupational Illness Cases											
	(1)	(2)	(3)	(4)	(5)	(6)	(7) (a)	(b)	(c)	(d)	(e)	(f)	(g)	(8)	(9)	(10)	(11)	(12)	(13)
34.																			

Scope of Inspection 35. Scope (Mark "X" in one box) a. ☐ Comprehensive Inspection b. ☒ Partial Inspection c. ☐ Records Only Inspection d. ☐ No Inspection

36. Number of Days Site Visited: 2

Warrant Information 37. Anticipatory Warrant/ Subpoena Served ☐ Yes

38. Date of Denial

39. Date Re-Entered

40. Date Re-Denied

41. Date Re-Entered

42. Optional Information

Type	ID	Value	Type	ID	Value
J	T	C	N		Immlang NO
S	02	WF			

43. Total Entries

Closed Case 44. a. ☐ Close b. ☐ No Citations Issued

45. If no inspection conducted, mark "X" in one box
a. ☐ Establishment Not Found
b. ☐ Employer Out of Business
c ☐ Process To Be Inspected Not Active
d. ☐ Ten or Fewer Employees
e. ☐ Denied Entry
f. ☐ SIC Not on Planning Guide
g. ☐ Worksite Exempt Through Voluntary Program
h. ☐ Non-Exempt Consultation in Progress
i. ☐ Other

46. Closing Conference Date (On Site): 5/15/08

47. CO/IH Signature: Seth Stum Date: 5/30/08

48. Reviewer Signature: John W. Elsayer Date: 6-2-08

CASE FILE COPY

SCDOSH-1 (Rev. 12/94)

S.C. DEPARTMENT OF LABOR, LICENSING & REGULATION
Office of Occupational Safety & Health

NARRATIVE - PART I

1. EMPLOYER	2. INSPECTION NUMBER
Stage Presence Equipment Rentals LLC	311514608

3. CORPORATE OFFICE, HOME OFFICE

Street: 660 Riverland Dr. Unit-D

Mailing Address: —

City: Charleston | State: SC | Zip: 29412 | Telephone:

4. NAMES OF MGMT OFFICIALS	5. WALKAROUND	6. CLOSING CONFERENCE	7. DATE HELD
Bryan Mahanes (co-owner)	(Yes) No	(Yes) No	5-15-08
	Yes No	Yes No	
	Yes No	Yes No	

8. AUTHORIZED REP. OF EMPLOYEES	
Name	Name
Organization & Title / Telephone	Organization & Title / Telephone
Home Address	Home Address
City / State / Zip	City / State / Zip

9. WALKAROUND Yes *No	CLOSING CONFERENCE Yes No	WALKAROUND Yes *No	CLOSING CONFERENCE Yes No

*10. REASON

11. OTHER EMPLOYEES CONTACTED:

Name, Occupation, Affiliation / Home Address / Telephone / Zip Code	Name, Occupation, Affiliation / Home Address / Telephone / Zip Code
Alex Clayson – Foreman/manager Mt. Pleasant SC 29485	Anthony Muscolino – Stagehand Charleston, SC 29412
Kyle Johnson – Stagehand Goose Creek, SC 29445	
Michael Jordan – Stagehand North Charleston, SC 29405	

DOSH-C-1C (Rev. 3/04)

12. LIST NAMES OF SUBCONTRACTORS/PRIMES OR NAME AND ADDRESS OF CREW CHIEF(S):

13. CONSTRUCTION SITES: Thorne Hill Farms

14. TIME LEFT ON JOB: 1½ days

15. PHOTOS: ID# W8210 # OF ROLLS Disk with 114-08

16. CONFINED SPACE ENTRY PROGRAM: Yes No (Not applicable)

17. HAZARD COMMUNICATION PROGRAM: Yes No (N/A)

18. OSHA POSTER: (Yes) No

19. REASON FOR NO INSPECTION: ———

20. ACCOMPANIED ON INSPECTION BY: Joe Owens

21. INJURY AND ILLNESS RECORDS

Reviewed _____ Medical/Exposure Records _____

Not required Gee's

Required but not maintained _____

Information provided by _____

Fire Dept

22. NEAREST MEDICAL FACILITY 3 Miles 5 Minutes

23. FIRST AID SUPPLIES	24. TRAINED PERSONNEL	25. PROVIDED BY
(Yes) No	~~Yes~~ SS (No)	———

26. COMMENTS

27. FOLLOW-UP INSPECTION RECOMMENDED: Yes (No)

28. REASON CO feels ER will Correct violations

NARRATIVE EXTENDED

On April 23rd, 2008, around 4:00 pm employees from Stage Presence Equipment Rentals LLC were finishing with setting up tents and staging them for an event at the Thorn Hill Farm. The crew had been at the site all day setting up various size tents, stages, and dance floors for the event. It was about quitting time and Alex Clayson, the foreman/manager for Stage Presence was asked by Beth Donahue and David Richardson of Memorable Moments (a company the hired to stage all the equipment) to have his guys move the 20x20 tent to a different location. Four guys from Stage Presence Alex Clayson, Dexter Keys, John Robinson, and John Fortney as well as David Richardson all grabbed the 20x20 tent to move it to the new spot. As they all came around the barn tent that was closed to the power line, Alex Clayson identified it and told everyone to watch out for it. At that time the guys all put the tent down, and re-positioned themselves to lift it again and carry the tent in between another tent and the power lines that were approximately 17 feet apart. Again picking up the 20x20 tent to move it all five guys hugged the larger tent to try and avoid the power lines. When they got the tent to where they wanted to be they put it on the ground. They were then instructed to move it once more. This time only four guys picked it up to move it. Alex Clayson, Dexter Keys, John Robinson, and John Fortney, grabbed the tent to move it backwards and they contacted to overhead power line. All men had either electrical burns, or had been electrocuted. Dexter Keys and John Fortney had been electrocuted and Alex Clayson, and John Robinson had severe electrical burns to parts of their bodies. Someone then called 911 and emergency person arrived a short time after. 2 guys were hospitalized and treated and then released the next day which were Alex Clayson and John Robinson, and the other two were dead, John Fortney, and Dexter Keys.

Sequence of Events

CO was contacted at 7:45p.m on April 23rd by Compliance Manager- Anthony Wilkes who gave CO some details involving accident. CO then contacted John Eleazer (supervisor) and let him know about inspection thus far. April 24th CO responded to accident in McClellanville, SC. CO met with farm management as well as labor ready personnel. CO took multiple pictures and got multiple measurements. At 12:30 management from Stage Presence arrived on site and CO opened with Brian Mahanes one of the co-owners of the company, and opened with him as well as explained the scope of the inspection. CO was able to interview multiple employees and witnesses that were on site at time of accident. On Tuesday April 29th CO meet with Charleston Coroner and Charleston County Sheriffs Department to collect information and photographs. CO got in contact with Brian Mahanes and meet with him as well as Alex Clayson who was released form the hospital and CO was able to interview him to find out what he remembered about the accident. After meeting with Supervisor and Compliance Manager, CO determined there would be citations issued. CO called and spoke with Brian Mahanes and closed with him by phone on May 5th 2008.

SOUTH CAROL. A DEPARTMENT OF LABOR, LICE..SING & REGULATION
Office of Occupational Safety and Health
NARRATIVE - PART 2

EVALUATION OF SAFETY AND HEALTH PROGRAM

PROGRAM ELEMENTS	IN PLACE YES NO	EFFECTIVE
1. Mgt. Commitment/Employee Involvement		(Y) N
Clear Policy		
Goals		
Mgt. Commitment		
Employee Involvement		
Responsibility/Accountability		
2. Worksite Analysis		(Y) N
Surveys		
Analyze Facilities/Process/Equip.		
Job Hazard Analysis		
Regular Inspections		
Employee complaints		
Accident Investigation		
Analyze Injury/Illness Trends		
3. Hazard Prevention/Control		
Engineering	✓Working in close proximity to power lines	Y (N)
Disciplinary System		
PPE	✓No signs posted identifying hazards (see ees	
Adm. Controls		
Facility & Equip. Maintenance		
Emergency Plans		
First Aid		
4. Safety & Health Training		Y (N)
Hazard Recognition	✓No ee training for electrical hazards	
Supervisor Responsibilities		
5. Does employer have written S & H Program?	verbal ✓	(Y) N
6. Does the Program Cover:		Y N/A N
Hazard Communication		
Lock out/Tagout		Y N
Hazardous Materials/Emergency Response		Y N
Confined Space Entry		Y N
Chemical Hygiene Plan		Y N
Respiratory Program		Y N

Safety & Health Program evaluated as:

____ Effective X Deficient ____ No Program

Comments: Eval of this site only

DOSH-C-1C(S) 3/94

Industry Code Information

Name of Company Stage Presence Equipment Rentals LLC

CO/IH # W8210 Report # 114-08 Old SIC 7359

New SIC —

Description of Process, Lines of trade, Services, or Activity:

Setting up tents, stage, ~~dance floor~~ dance floor

Enter Principal product, Line of trade, Service, or Activity (Major Work Function):

Equipment rentals company

Information given by:

Name of Company's Representative Bryan Mahanes

Title CO-owner

Phone Number 843-225-5631

Other Comments:

DOSH-C-47

SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING & REGULATION
Office of Occupational Safety Health

OPENING AND CLOSING CONFERENCE SUMMARY

Opening Conference

Identification presented when requested or required. ✓

Purpose and scope of visit was explained. ✓

Review of records. ✓

OSHA materials discussed and/or given to employer. ✓

Furnished copy of complaint (if applicable). N/A

Discussed walkaround procedures including employer/employee representatives, employee interviews. ✓

Determined if there are trade secrets. ✓

Discussed taking of photographs. ✓

Determined if toxic materials are used. ✓

Closing Conference

All apparent violations were discussed. ✓

Abatement period for each violation was discussed. ✓ 3

Citation/penalty may or may not be issued on any or all apparent violations. ✓

Employer must pay penalty within twenty (20) calendar days upon receipt of notification of proposed penalty. ✓

Penalty must be paid even though all violations are corrected. ✓

Employer has twenty (20) calendar days upon receipt of citation/penalty to protest. ✓

If the employer desires a formal hearing before an Occupational Health and Safety Review Board member, he should protest. If an informal discussion is desired with the Compliance Manager, the employer should request an informal conference within five (5) calendar days from receipt of citations.

Employer can request extension of time if violation cannot be corrected within the abatement date. Request for an extension of abatement date must be made within twenty (20) calendar days upon receipt of citation or by filing a petition for modification of abatement with the Compliance Manager no later than the end of the next working day following the date on which correction was to have been completed for the item. ✓

Employer was told that citation must be posted inconspicuous place for three (3) days or until violation is corrected, which ever is period is longer. ✓

Employer was informed that he must notify the Compliance Manager in writing when and how violations have been corrected. ✓

Employer was informed that a follow-up inspection may or may not be conducted. ✓

COMPLAINT-The act prohibits discrimination against employees exercising their rights under the Act. ✓

Employer was informed of penalties for failure to correct all items. ✓

Employer: STAGE PRESENCE EQUIPMENT RENTALS, LLC

Employer's signature: [signature] : CLOSED BY PHONE: 5/15/08

CO signature: Seth Stein Brian Mahanes

Date: 5/15/08

DOSH-C-12

South Carolina Department of Labor, Licensing and Regulation
Office of Occupational Safety and Health

Fatality/Catastrophe Report

Thu May 15, 2008 12:02pm

Reporting ID	0454510	Previous Activity (Type & Number)	0		Event Number	100378231	
Establishment Information	Establishment Name	Stage Presence Equipment Rentals, LLC			Employer ID		
	Site Address	10882 US 17 McClellanville SC 29458			City Code	1580	County Code 019
	Site Phone	(843) 225-5631	Site FAX				
	Event Address (if different)	10882 U.S. 17 McClellanville SC 29458					
Industry & Ownership	Type of Business				Primary SIC	7359	No. of Employees 6
	Ownership	A. Private Sector					
Receipt Information	Reported By			Date	04/23/08	Time	
	Job Title			Telephone			
Employee Representation	Group Name(s):						
Classification	A. Fatality						

Event Description	Event Date	Event Time	Number of Fatalities	Number of Hospitalized Injuries	Number of NonHospitalized Injuries	Number Unaccounted for
	04/23/08	04:00 pm	2	2	0	0
	Type of Event	electrocution(14)				

Preliminary Description

Employees were moving an 18ft tent. The tent came in contact with high voltage power lines.

Deceased: Dexter Kyes-Age:38
John Fortney-Age:47

Injured: Alex Clayson-Age:unknown
John Robinson-Age:unknown

Action	Inspection Planned?	Supervisor(s) Assigned		CSHO(s) Assigned	
	Yes	E5826		W8210	

Strategic Initiatives	
National Emphasis	
Local Emphasis	

Optional Information	Type	ID	Optional Information Value

Comments	

OSHA-36 (Rev. 2/96)

Investigation Summary

S.C. De[partment] of Labor, Licensing, and Regulation
Office [of] Occupational Safety and Health

MOD	Date	1. Reporting ID	2. Summary Number (Identifies This Summary)
		0454510	

3. Related Inspection Numbers	3.1 Type	3.1 Number	3.2 Type	3.2 Number	3.3 Type	3.3 Number	3.4 Type	3.4 Number	4. Total Entries
	1	311514608							

5. Injured/Deceased (Name) / Name Line Number	6. Inspection Number (3.1, 3.2 etc.)	7. Sex	8. Age	9. Injury a. Fatality	9. Injury b. Hospitalized	9. Injury c. Nonhospitalized	10. Nature of Injury	11. Part of Body	12. Source of Injury	13. Event Type	14. Environmental Factor	15. Human Factor	16. Task a. Reg. Assigned	16. Task b. Not Reg. Assigned	17. Substance Code	18. Occupation Code
				Mark "X" in Only One Box									Mark "X" in Only One Box			
1. Dexter Keyes	3.	M	38	x			10	19	15	13	18	01	x			889
2. John Fortney	3.	M	47	x			10	19	15	13	18	01	x			889
3. Alex Clayson	3.	M			x		10	19	15	13	18	01	x			863
4. John Robinson	3	M			x		10	19	15	13	18	01	x			889
5.																
6.																
7.																
8.																
9.																
10.																

19. Type of Event

20. Abstract

After employees finished setting up tents, stages, etc. for an upcoming event, the foreman was asked by management of another company in charge of setting up equipment to be used for the event to move to 20'x20' tent to a different location. EE's #1,#2, #3, and # assisted in moving the tent to where they wanted it moved. As they came around the barn tent, the foreman identified that it was going to be close to an overhead powerline carrying 14,400 volts and instructed everyone to watch out for it. They all repositioned themselve and began to carry the tent in between another tent and the overhead lines, which were about 17' apart. Upon getting close, the four employees picked it up once more to move it backwards, then coming in contact with the overhead line. EE's #1 and #2 were electrocuted, and #EE's #3 and #4 received severe electrical burns and were transported to the hospital.

Case File Page 1 of 1

OSHA - 170 (1/84)

170 Immigrant Language Questionnaire

(Use TypeOver Mode when answering questions)

Name of Injured or Deceased: Dextre Keys / John Fortney [answers apply to both]

2. a. **Did the victim speak a language other than English at the work site?**
   Yes [ ]
   No [X] *If No, Skip to Question 3.*

   b. **What was this language?** _____
   (Example: Korean, Portugese, Spanish, Vietnamese, French, Italian, etc.

   c. **How well did the victim speak English?**

Very well	[ ]
Well	[ ]
Not well	[ ]
Not at all	[ ]

3. **What was the primary language of other workers at the work site?**
   English
   (Example: English, Korean, Portugese, Spanish, Vietnamese, French, Italian, etc.)

4. **What was the primary language of the supervisor(s) at the work site?**
   English
   (Example: English, Korean, Portugese, Spanish, Vietnamese, French, Italian, etc.)

5. **Was the victim Spanish/Hispanic/Latino?**
   Yes [ ]
   No [X]

6. a. **Where was the victim born?**
   [X] United States *If U.S. -> Skip to Question 7*
   [ ] Outside the United States (*print name of foreign country, or Puerto Rico, Guam, etc.*) _____

   b. **When did the victim come to live in the U.S.?**
   Print Year: _____

7. Was the victim a "day laborer"? (Please refer to definition of "day laborer")
   Yes [X] / was - Dexter Keys
   No [ ]

CONSTRUCTION ACCIDENT INFORMATION

Type of Construction:

(A) - New project of new addition
B - Alteration or rehabilitation
C - Maintenance or repair
D - Demolition
E - Other

End-use Type of Construction Site:

A - single family or duplex dwelling
B - multi-family dwelling
C - commercial building
D - manufacturing plant
E - refinery
F - power plant
G - sewer/water treatment plant
(H) - other building - tent installation
I - highway, road, street
J - bridge
K - tower, tank, storage elevator

If a building site, number of stories (in feet) 1 story tents for entertainments

If a non-building structure, height (in feet) 18' high

Project cost:
(A) - under $50,000
B - $50,000 - $250,000
C - $250,000 - $500,000
D - $500,000 - $1,000,000
E - $1,000,000 - $5,000,000
F - $5,000,000 - $20,000,000
G - $20,000,000 and over

OSHA WORKSHEET

CO/IH Nbr. W8210
REPORT Nbr. 114-08
DATE 4/23/08
LOCATION: Thorn Hill Farms Barn Area

Page 1 of 4

PHOTOGRAPH
FRAME NO. Ask with
ROLL NO. 114-08
TRADE SECRET ( )
BRAND —

EQUIP. I. D.: — Serial Nbr. —

DESCRIPTION OF VIOLATION:

VIOLATION EE's not specifically qualified to work around electrical hazards ~~were~~ not trained in, and familiar with any electrically related safety practices.

HOW EMPLOYEES ARE EXPOSED moving tent 20'x20'
NBR. EXPOSED 4 & 1 TITLE 1 foremen/manager
NBR. EXPOSED 3 TITLE 3-stage hands
FREQUENCY Short exposure 5 min (+or-) in 1 day
PROXIMITY within 10 feet of power line with metal poles
MEASUREMENTS 4 ees moving 20x20 - 4 leg pole tent. 1 ee on each leg to pick tent and move it. ER stated they moved tent about 90 yards to get tent in right place for event. Tent measured 20'x20' app. 18 feet tall. ER & EE's moving tent.
SURROUNDING CONDITIONS Grassy dirt surface, dry, sunny
PPE PROVIDED? Y N USED? Y N (N/A) TYPE?
HOW WAS EMPLOYEE EXPOSURE DETERMINED Brian Mahanes - (co-owner)
EMPLOYER/REP STATED We normally CO/IH OBSERVED —
EMPLOYER KNOWLEDGE COMMENTS don't work around power lines.
EMP/REP ACKNOWLEDGED AWARENESS OF CONDITIONS. NAME Brian Mahanes (co-owner)
COMMENT We do not have a training program to warn about electrical hazards
OPEN/OBVIOUS CONDITION X CLOSE SUPERVISION X
CUSTOM & USAGE IN INDUSTRY X
CONDITION CLOSE TO WORKING AREA OF MANAGING AGENT Y
Comment → ~~OTHER~~ We don't do or conduct a hazard analysis of the sites.

Employee ~~EMPLOYEE~~ COMMENTS Alex Clayson - (foreman/manager) I saw the power line, I tried to stay away from it. We haven't provided any electrical hazard training for our guys.

EMPLOYEE COMMENTS -
Ay Musolino - (stage hand) We normally don't work around power lines, we have talked about electrical hazards or energized power lines. We have had tent training.

DOSH-C 1A (Rev. 11/93

INIT 8-10

HAZARD: Contact with high voltage line
SEVERITY:
MOST REASONABLY PREDICTABLE INJURY OR ILLNESS Death (electrocution) or serious physical harm (electrical shock)
SEVERITY ASSESSMENT:
HIGH X approx 14,400 volts MEDIUM _____ LOW _____ MINIMAL (O-T-S) _____
PROBABILITY ASSESSMENT: GREATER X LESSER _____

TYPE OF VIOLATION:

( ) Failure to Abate
( ) Imminent Danger
(X) Serious
( ) Serious Grouped
( ) Willful
( ) Repeated Serious
( ) Repeated Other
( ) Other
( ) Other Grouped
( ) De Minimis

Citation No.	Item No.	Instance	Standard violated	Penalty	No. Exposed
	1	A	1910.332(b)(2)	1500	4

No. Instances	REC	Abatement Days	TRK?	Action Date	Type
1	A	30	X		

FAILURE TO ABATE ONLY Citation No. - Item & Instance No.	No. of days over	Additional penalty

AS FOLLOWS:

Employees who were not specifically qualified to work around electrical hazards were not trained in, and familiar with any electrically related safety practices at the Thorn Hill Farms Barn area.

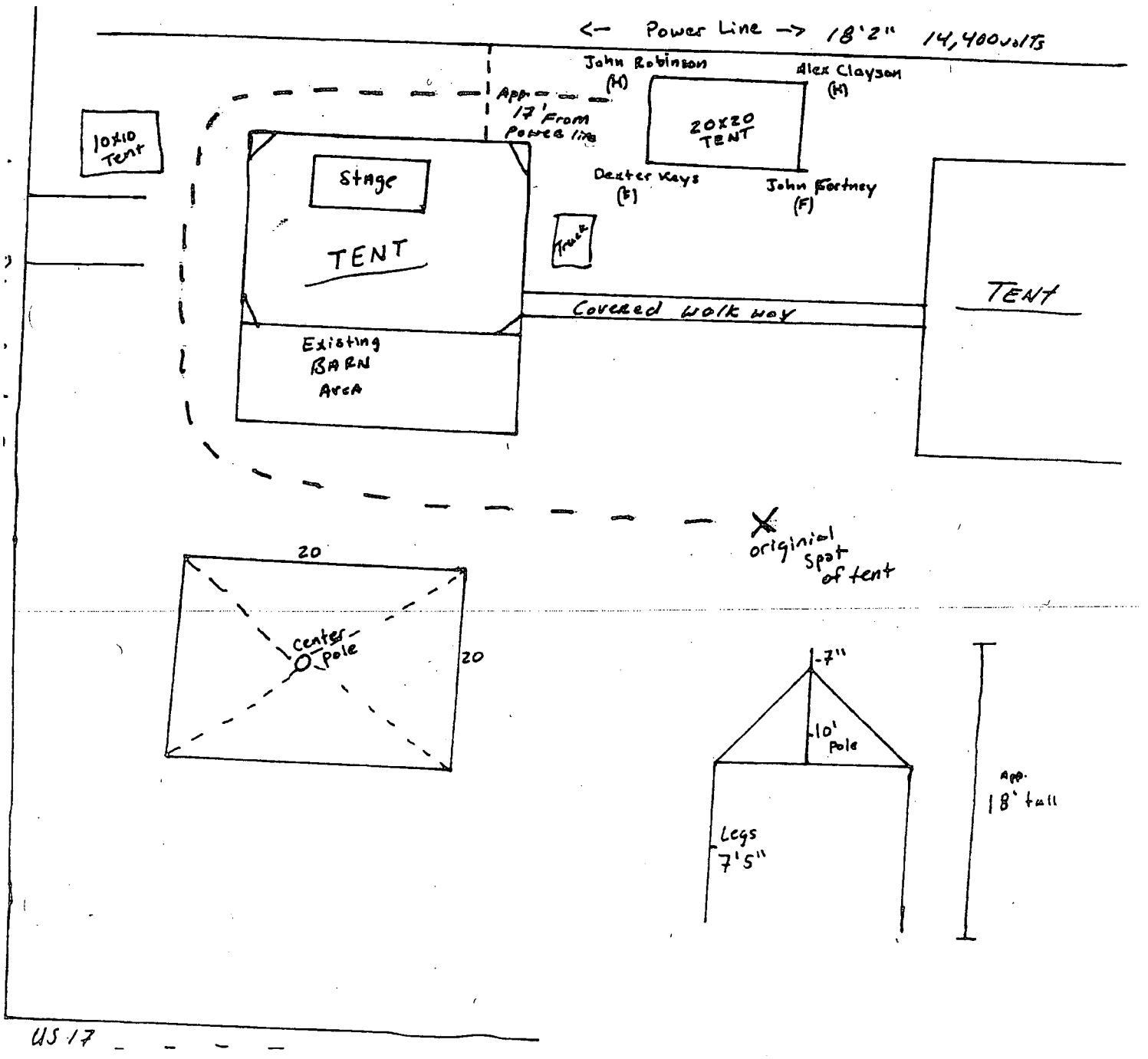
- mess cont. - Tent moved in between an existing barn tent and overhead power line which was app. 17 feet apart. Tent had single pole in middle which helped raise middle of tent and height. Power line was app. 18'2" high per electrical company and was 14,400 volts. Electrical company stated no transformers blew when tent contacted power line. EE stated when they carried the tent the 4 guys lifted it off of the ground app. 6-8 inches high. When ee's were carrying tent they carried it within 10 feet of power line. EE stated he saw power line and explained to other ees to try and stay away as far as possible but when moving tent they still where within 10 feet of line. After moving tent into position, EE's were asked to move it again. Another ee stated the tent pole was app. within 6 inches of the overhead power line. The middle pole of the tent contacted line, which was retractable. Tent was within close proximity to over head power line. overhead power lines were not deenergized nor grounded; the power company was not contacted about guarding, isolating, or insulated. Power company was not contacted to deenergized lines. tent poles were all good ~~like~~ metal material brought into close proximity with over head (10 ft) lines. Alternative measures ~~were~~ were not taken such as signs, arricades or attendants ~~before~~ were not provided to warn ee's of electrical hazards.

(H) Hospitalized

(F) Fatality

Drawing not to Sc

Direction tent was m



OSHA WORKSHEET

CO/IH Nbr. W8210
REPORT Nbr. 114-08
DATE 4/23/08
LOCATION: Thorn Hill Farms Barn Area

Page 2 of 4

PHOTOGRAPH
FRAME NO. Disk with
ROLL NO. 114-08
TRADE SECRET ( )
BRAND —

EQUIP. I. D.: — Serial Nbr. —

DESCRIPTION OF VIOLATION:
VIOLATION Alerting techniques such as signs, warning tags, barricades, or attendants were not provided to warn employees of electrical hazards associated with overhead energized power lines.

HOW EMPLOYEES ARE EXPOSED
NBR. EXPOSED TITLE
NBR. EXPOSED TITLE
FREQUENCY
PROXIMITY
MEASUREMENTS

SURROUNDING CONDITIONS
PPE PROVIDED? Y N USED? Y N N/A TYPE?
HOW WAS EMPLOYEE EXPOSURE DETERMINED
EMPLOYER/REP STATED CO/IH OBSERVED
EMPLOYER KNOWLEDGE COMMENTS
EMP/REP ACKNOWLEDGED AWARENESS OF CONDITIONS. NAME
COMMENT
OPEN/OBVIOUS CONDITION CLOSE SUPERVISION
CUSTOM & USAGE IN INDUSTRY
CONDITION CLOSE TO WORKING AREA OF MANAGING AGENT
OTHER

EMPLOYEE COMMENTS

DOSH-C 1A (Rev. 11/93

HAZARD: Contact with power lines
SEVERITY:
MOST REASONABLY PREDICTABLE INJURY OR ILLNESS Death (electrocution) or serious physical harm (electrical shock)
SEVERITY ASSESSMENT:
HIGH X 14 40 5th MEDIUM _____ LOW _____ MINIMAL (O-T-S) _____
PROBABILITY ASSESSMENT: GREATER X LESSER _____

TYPE OF VIOLATION:

( ) Failure to Abate
( ) Imminent Danger
(X) Serious
( ) Serious Grouped
( ) Willful
( ) Repeated Serious
( ) Repeated Other
( ) Other
( ) Other Grouped
( ) De Minimis

Citation No.	Item No.	Instance	Standard violated * Not on AVR	Penalty	No. Exposed
	~~#~~ 2	A	1910.335(b)	1500	4

No. Instances	REC	Abatement Days	TRK?	Action Date	Type
1	A	~~3~~ 1	X		

FAILURE TO ABATE ONLY — Citation No. - Item & Instance No.	No. of days over	Additional penalty

AS FOLLOWS:

Alerting techniques such as signs, warning tags, barricades, or attendents were not provided to warn 4 employees of electrical hazards associated with overhead energized power lines, at the Thorn Hill Farm Barn area.

IMIS CODE:

OSHA WORKSHEET

CO/IH Nbr. W8210
REPORT Nbr. 114-08
DATE 4/23/08
LOCATION: Thorn Hill Farms Barn Area

Page 3 of 4

PHOTOGRAPH
FRAME NO. Disk with
ROLL NO. 114-08
TRADE SECRET (—)
BRAND —

EQUIP. I. D.: ~ Serial Nbr. —

DESCRIPTION OF VIOLATION:

VIOLATION EE's working in vacinity of overhead powerlines had no protective measures such as de-energized or insulated lines provided before work was started.

HOW EMPLOYEES ARE EXPOSED
NBR. EXPOSED TITLE
NBR. EXPOSED TITLE
FREQUENCY
PROXIMITY
MEASUREMENTS

SURROUNDING CONDITIONS
PPE PROVIDED? Y N USED? Y N N/A TYPE?
HOW WAS EMPLOYEE EXPOSURE DETERMINED
EMPLOYER/REP STATED CO/IH OBSERVED
EMPLOYER KNOWLEDGE COMMENTS
EMP/REP ACKNOWLEDGED AWARENESS OF CONDITIONS. NAME
COMMENT
OPEN/OBVIOUS CONDITION CLOSE SUPERVISION
CUSTOM & USAGE IN INDUSTRY
CONDITION CLOSE TO WORKING AREA OF MANAGING AGENT
OTHER

EMPLOYEE COMMENTS

DOSH-C 1A (Rev. 11/93

IMIS-10

HAZARD: Contact with high voltage lines

SEVERITY:

MOST REASONABLY PREDICTABLE INJURY OR ILLNESS Death (electrocution) or Serious physical harm (electrical shock)

SEVERITY ASSESSMENT:

HIGH X MEDIUM _____ LOW _____ MINIMAL (O-T-S) _____

PROBABILITY ASSESSMENT: GREATER X LESSER _____

TYPE OF VIOLATION:

( ) Failure to Abate
( ) Imminent Danger
( ) Serious
(X) Serious Grouped
( ) Willful
( ) Repeated Serious
( ) Repeated Other
( ) Other
( ) Other Grouped
( ) De Minimis

Citation No.	Item No.	Instance	Standard violated	Penalty	No. Exposed
	3a	A	1910.333(c)(3)	2000	4

No. Instances	REC	Abatement Days	TRK?	Action Date	Type
1	A	1	X		

FAILURE TO ABATE ONLY Citation No. - Item & Instance No.	No. of days over	Additional penalty

AS FOLLOWS:

Employees working in vicinity of energized overhead power lines had NO protective measures such as de-energized or insulated lines provided before work started at the Thorn Hill Farms Barn area.

IMIS CODE:

OSHA WORKSHEET

CO/IH Nbr. W8210
REPORT Nbr. 114-08
DATE 4/23/08
LOCATION: Thorn Hill Farm Barn Area

Page 4 of 4

PHOTOGRAPH
FRAME NO. Disk with
ROLL NO. 114-08
TRADE SECRET —
BRAND —

EQUIP. I. D.: — Serial Nbr. —

DESCRIPTION OF VIOLATION:
VIOLATION EE's working on the ground within a 10 foot vacinity of unguarded energized power lines with conductive metal test pole.

HOW EMPLOYEES ARE EXPOSED
NBR. EXPOSED TITLE
NBR. EXPOSED TITLE
FREQUENCY
PROXIMITY
MEASUREMENTS

SURROUNDING CONDITIONS
PPE PROVIDED? Y N USED? Y N N/A TYPE?
HOW WAS EMPLOYEE EXPOSURE DETERMINED
EMPLOYER/REP STATED CO/IH OBSERVED
EMPLOYER KNOWLEDGE COMMENTS
EMP/REP ACKNOWLEDGED AWARENESS OF CONDITIONS. NAME
COMMENT
OPEN/OBVIOUS CONDITION CLOSE SUPERVISION
CUSTOM & USAGE IN INDUSTRY
CONDITION CLOSE TO WORKING AREA OF MANAGING AGENT
OTHER

EMPLOYEE COMMENTS

DOSH-C 1A (Rev. 11/93

IMIS-10

HAZARD: Contact with high voltage lines

SEVERITY:

MOST REASONABLY PREDICTABLE INJURY OR ILLNESS Death (electrocution) or serious physical harm (electrical shock)

SEVERITY ASSESSMENT:

HPH HIGH X MEDIUM _____ LOW _____ MINIMAL (O-T-S) _____

PROBABILITY ASSESSMENT: GREATER X LESSER _____

TYPE OF VIOLATION:

( ) Failure to Abate
( ) Imminent Danger
( ) Serious
(X) Serious Grouped
( ) Willful
( ) Repeated Serious
( ) Repeated Other
( ) Other
( ) Other Grouped
( ) De Minimis

Citation No.	Item No.	Instance	Standard violated *Not on AVR	Penalty HPH	No. Exposed
	3 b	A	1910.333(c)(3)(i)(B)	—	4

No. Instances	REC	Abatement Days	TRK?	Action Date	Type
1	A	1	X		

FAILURE TO ABATE ONLY	Citation No. - Item & Instance No.	No. of days over	Additional penalty

AS FOLLOWS:

Employees working on the ground within a 10 foot vacinity of un guarded energized overhead power line with conductive metal fent pole at the Thorn Hill Farms Barn area.

IMIS CODE:

PENALTY ASSESSMENT WORKSHEET

1 Item No.	2 Citation Type	3 No. of Inst.	4 Unadjusted Penalty	5 Adjusted Penalty	7 Repe. or Will Factor	8 Proposed Penalty Col. 5 or Col 5 x Col 7
1	S	1	5000	*1500		1500
2a	S	1	5000	~~*1500~~		1500 ~~2000~~
3a	S	1	5000	**2000		2000
3b	S	1	~~5000~~	~~*1500~~		~~1500~~

9. Total 5000

(6) PENALTY ADJUSTMENT FACTORS (Init.)

GOOD FAITH			SIZE				HIS.	TOTAL	
25	15	0	60	40	20	0	10	0	
	X		X				X		85 %

NPH

Date Init. Pen. Remitted
Date Init. Pen. Remitted
Date Add. Pen. Remitted
Amt. Add. Pen. Remitted

SIZE

Employees	% Reduction	
1-25	60	HG = SIZE + HIS. *
26-100	40	
101-250	20	HG HPH = SIZE **
251+	0	

MODIFICATION
(Office Use)

CONSTRUCTION SITE INSPECTION INFORMATION FORM

REPORT # 114

1. COMPANY: Stage Presence Equipment Rentals LLC
2. HOME OFFICE PHONE: 843-225-563
3. SITE NAME: Thorne Hill Farm
4. SITE PHONE:
5. SITE ADDRESS: 10882 US Hwy 17
CITY: McClellanville STATE: SC ZIP: 29458
6. YOUR NAME: Bryan Mahaney (c) 843-442-4430
7. HOME OFFICE ADDRESS: PO BOX: — TITLE: Co-Owner - Partner
CITY: Charleston STREET: 660 Riverland Dr. Unit D
8. CORPORATION __ PARTNERSHIP X SOLE OWNER __ STATE: SC ZIP: 29412
9. NUMBER OF EMPLOYEES ON SITE: 6 NAME:
10. NUMBER OF EMPLOYEES IN COMPANY TOTAL: 6
11. HOW LONG ON SITE SO FAR: 1 day 12. HOW MUCH LONGER EXPECTED: 1½ days
13. NORMAL HOURS/DAY: 14. NORMAL DAYS/WEEK:
15. NATURE OF YOUR WORK ON THIS JOB: Event Materials tent, Stage, dance floor
16a. ARE EMPLOYEES UNIONIZED? X NO __ YES (COMPLETE BACK)
17. ANY TRADE SECRET OPERATIONS ON THIS JOB? X NO __ YES
18. NEAREST MEDICAL FACILITY:
19. DISTANCE TO MEDICAL FACILITY: 20. MINUTES TO MEDICAL FACILITY:
21. FIRST AID SUPPLIES __ NO X YES
22. NAME OF PERSON TRAINED IN FIRST AID: 2 guys
23. ANY INJURIES/ACCIDENTS: —
24. PERSON MAINTAINING OSHA 200 FORM: —
25. OSHA POSTER? __ NO X YES
26. PHONE:
27. DRINKING WATER? __ NO X YES 28. TOILET FACILITY? __ NO __ YES
29. WRITTEN SAFETY AND HEALTH PROGRAM? __ NO X YES verbal
30. HOW INVOLVED IS MANAGEMENT WITH EMPLOYEE SAFETY? ONSITE __ HOME OFFICE __
31. HOW OFTEN DO YOU CHECK JOB SITE FOR SAFETY HAZARDS? __ A __ B __ C
32. HOW OFTEN ARE SAFETY MEETINGS? Bus / Forman 33. WHO CONDUCTS MEETINGS? __DAILY __SOMETIMES __NOT AT ALL
34. ARE EMPLOYEES TRAINED IN JOB RELATED HAZARDS? __ NO __ YES Arise to events
35. HOW ARE SAFETY RULES ENFORCED IN YOUR COMPANY? X VERBAL __WRITTEN __SUSPENSION __FIRE Production meeting Weekly - meetings
36. CONFINED SPACES ON SITE? __ NO X YES Couple warnings
37a. HAZARDOUS MATERIALS (GAS, DIESEL, OXYGEN, ACETYLENE, ETC) ON SITE? __NO __YES (COMPLETE BACK)
38. TRENCHES ON SITE: __ TYPE: COMPETENT PERSON'S NAME:
39. ELECTRICAL POWER: __ PERMANENT __ TEMPORARY __ GENERATOR
40. IF TEMPORARY, WHAT ARE YOU USING? ASSURED EQUIPMENT GROUNDING PROGRAM __ GROUND FAULT CIRCUIT INTERRUPTERS
41. TEMPORARY POWER--RESPONSIBLE CONTRACTOR:
42. BUILDING GUARDRAILS--RESPONSIBLE CONTRACTOR:
43. IS ALL EQUIPMENT (TOOLS, CORDS, ETC) AVAILABLE FOR USE?

CO COMMENTS

25% private homes
75% Commercial - $59
SIC: NIC: 532299
LIC# 100378231

Seth
ms manfile
called and said
FAX's are on
The way to office
Her Number is
321-720-8947

- Brian Hankes -

* Stage Presence: 843-225-5631 - 843-442-4430
Alex Clayson

Maralyn - Farm Manager
843-509-9384

{2- Fatalities
2- Hospitalized}

(Companies involved)
- Snider Event Planning & Stage Presence
→ Brian Hankes

- Time: after 4p.m. 4/23/08

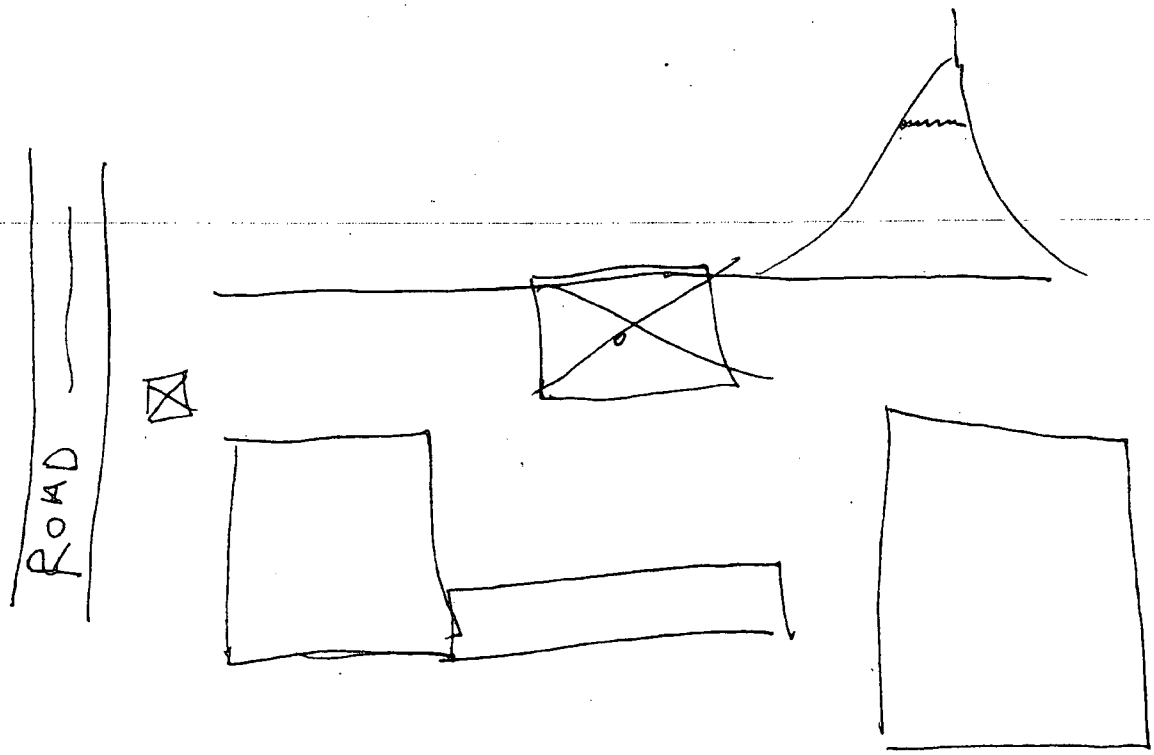
[Berkley Electric Cooperative] → 14,000 volts

Chesterfield County

[Ray Whitaker - Coroner]

Dexter
John
} wore steel toes

- Berkley shut off power & moved tent -



Labor Ready -

Dexter Keyes - Male (Fatality died)

DoB: 6-20-1970 38 years old

Laborer

First work date:

March 13, 2008

P Next to kin: Cousin

843-224-1356

Camilla Keys - (sister

843-873-9206

Contracted out to do: Help (Stage presence)

- video training: OSHA general
- Safety quiz: on book & video

- MR Keyes has previously worked for an event company before, same company (stage presence) week before. Mon, Tues, Wed 14 15 16 - April 2008 Tues. 22nd 28th

Accident occured: Thorne Hill Farm

4/23/08

Before 4.pm.

He was moving an event tent, dry day, grass surface

Was ee aware of how to operate equipment? provided on a

- PPE used: Hard hats, safety glasses depending on job. as job bases.

Supervised by stage presence: (Alex Clayson - Foreman) -

Emergency Contact

Labor Ready -

John Robinson - male (hired)

DOB: 7-21-65

Labor

Worked for since (4-10-08 out branch rivers Ave North Charleston) 14, 15, 16 April 2008

Same training as Dexter

Now Tues Wed. 21, 22, 23 with Stage Presence

Need Safety quiz:

Previous work with event information?

Emergency Contact -

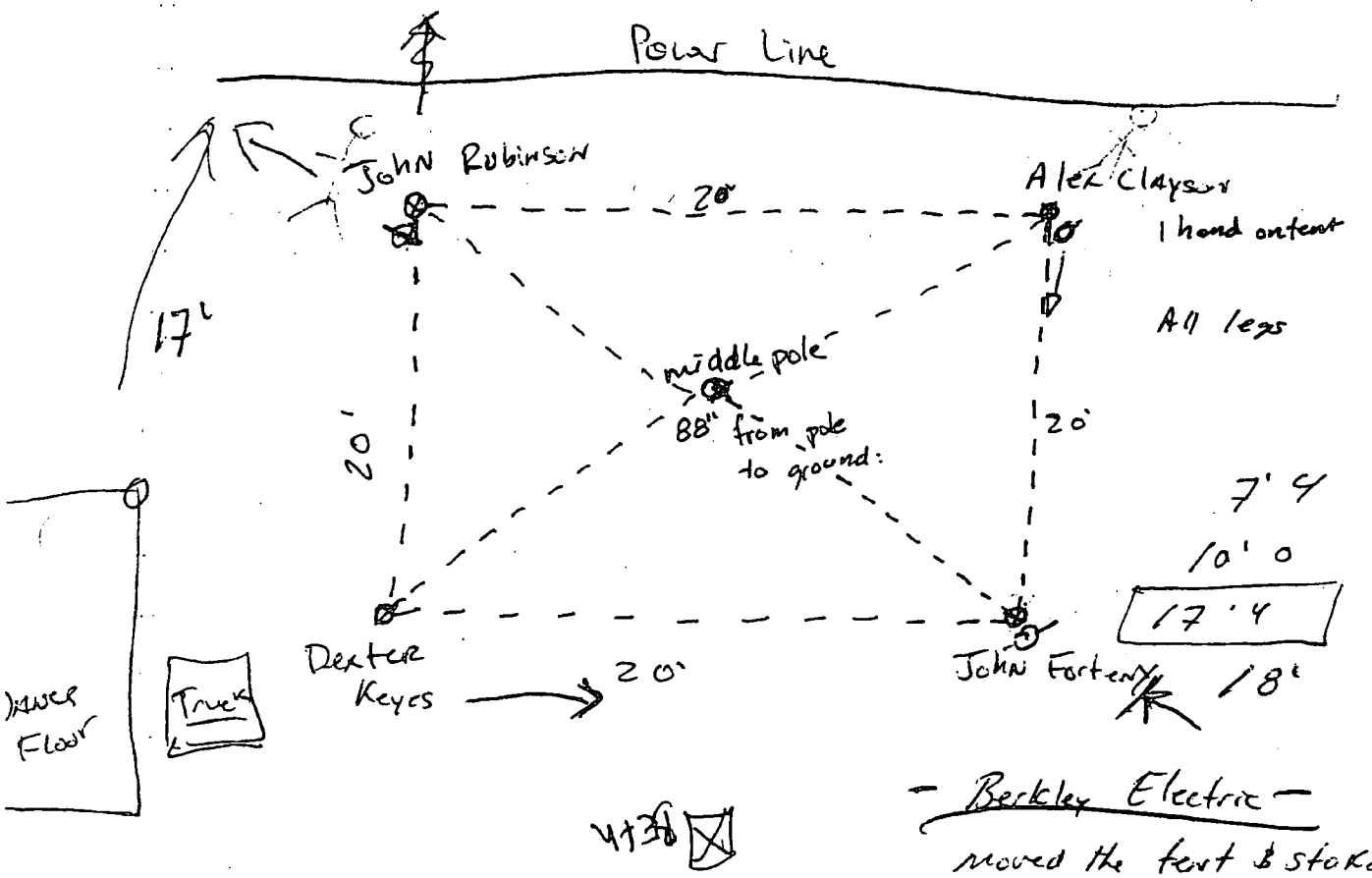
* Next of kin -

Girlfriend - 843-276-6428

- TENT: CANVAS FLAME RESISTANT

MAKE OF POLE:

FIND INFO about POLE COMPANY



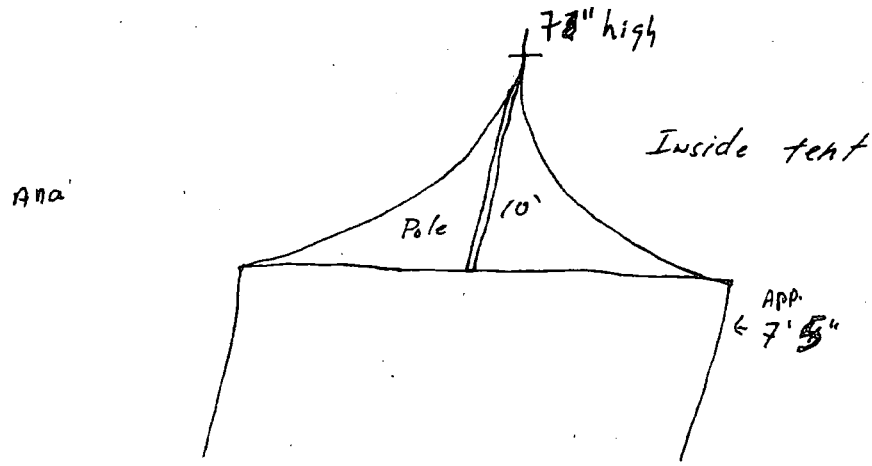
- Beckley Electric -

moved the tent & staked it down.

EVENT PLANNER: BETH

DAVID Richardson

843-



- Stage Presence - Previously with Labor Rudy but 10-99 ec

John Fortney - 47 male a next to kin: wife's sister Karen

843-532-4042

- Brian

Previously worked for us.

We do a site visit. We inspect site

Dave Richardson - planner 843-860-5124 / 843 795-9095

~~Plaques the Gloss~~ Memorable Moments

Beth Donahue (Assist.)

Berkley Electric →

Height of Line: 18' 2"

Volts of Line: → 14,400

call:

Name & Title: Junior Jones

843-729-2324 Elrod

Manager of job training and Loss Control

Were they contacted to shut off or guard lines:

Did they move the tent? - yes -

- No evedence of Contact on Line: or on tent speculate it: Arced
- Bottom Line is nuetral
- Top is hot.
- Didn't create enough volts to blow line.

[Charleston County sheriffs office CCSI]

Line is deenergize still 4/25/08

We could have possible shut off power

Refrigerator running off of Line.

- Sheriffs Detective -
- Mr. Det. Cooke
- 843-202-1700 -

} - Brent Roy -

- Judy Kolepin - Chief Dept. Coroners - 843-746-4030

4050 Bridge View Dr. Suite 500

North Charleston, SC 29405

843-746-4030 (o)

Wed 10:00 a.m.

9:00 a.m.

4050

Questions

- Both guys have exit wounds on feet - Sneakers - John Fortney
  holes in socks & shoes - biker boots
- how high were the poles?
- how high were the hands on the poles?
- Why is there not a burn mark on the pole?
  [Ark or touch wire or pole]

- Berkley Electric -

Least path to ground
Why are there no burns on grass?
Why did the transformer not trip?
What completes the circuit?

69°
93.0

Quinn Patton makes blood vessels pattern - no grain

Alta - outdoor walking shoes - thick rubber heal
J. Robin

Confidential

Confidential

Confidential

Confidential

Seth Stoner

From: Seth Stoner
Sent: Friday, May 30, 2008 8:25 AM
To: Pat Jenkins
Cc: Seth Stoner
Subject: next to kin

Pat,

Sorry that it has taken me so long to get this to you I was also unaware of the time frame; but this is regarding the accident on 4/23/08 In McClellanville, SC.
There were 2 guys killed by electrocution and 2 guys that were hospitalized. The name of the company is Stage Presence. I was not given any addresses for next to kin. I will attach the addresses for the gentlemen.

Dexter Keys - age 38
1902 Carlton St.
North Charleston, SC 29405
next to kin - Don Keys (Cousin) ph. 843.224.1356

John Fortney - age 47
573 Meeting St.
Charleston, SC 29413
next to kin - Karen Hutchison (friend) ph. 843.532.4047

Seth Stoner
struction Compliance Officer I
ce of OSHA
Department of Labor, Licensing, & Regulation

S. C. OCCUPATIONAL SAFETY and HEALTH

CC#_____

P. O. Box 11329
Columbia, S. C. 29211

Date: 4/30/08 1:10

Time: 4/30/12

WITNESS STATEMENT

Place: Store Annex Warehouse

Full name Alex Clayson Age 33 Occupation Manager
Residence Address 66 2382 Mt. Pleasant St. Residence Phone 843-478-0405
Charleston SC 29405
Business Address _____ Business Phone _____
Name and address of person most likely to know your whereabouts should you move: _____

Referring to the Accident which occurred on April 23 19 2008

at about 4:12 A. M/P. M. at or near Barn area

I herewith make the following voluntary statement:

To my Safety we are done. Beth & David are not happy with the 20x20 & 10x10 tent locations. They so they originally had them placed there. They asked us to move the tent. They wanted the tents moved. I noticed the power line and I said to have the tent to try and stay away from the power line. I noticed the tent 3 months prior to the set up. David wanted the tent originally under the power line. As we are hugging the tent side and get the tent into place. David is standing behind the power line and telling us to move the tent backwards. That is when everyone got shocked. Every leg of the tent was off the ground. I barely picked up the tent with one hand when we got shocked. Dexter & John Fortney grabbed the pole with two hands. Site inspections consists of a walk through and placement of where things are going to go. We didn't know what type of line it was telecommunication or electrical. We have had no electrical hazard training to identify hazards. ~~The tents are very hard to move while with the center pole up. So that we have not been trained to move them with it down.~~ We have been trained to set the tent up, move it as is set up, and dismantal it.

I have (read/had read to me) the above and preceding ___ pages and state that the information contained therein is true and correct.

Joe Owens
Witness

Declarant Alex Clayson

Address

Telephone (Office/Home)

Seth Shaw
OSHA Compliance Officer

DOSH-C-4A (rev. 9/93)

CC#_____

S. C. OCCUPATIONAL SAFETY and HEALTH
P. O. Box 11329
Columbia, S. C. 29211

Date: 4/24/08

Time: 1:00

WITNESS STATEMENT

Place: Thurmond

Full name Anthony Musolino Age 24 Occupation Stage hand.
Residence Address 226 Woodland Shores Residence Phone 843-225-5621
Charleston, SC 29412
Business Address _____ Business Phone _____
Name and address of person most likely to know your whereabouts should you move: _____

Referring to the Accident which occurred on 4/23/08 2008

at about 4:00 A. M/P. M at or near Main Area.

I herewith make the following voluntary statement:

I have been with company a little over 2 years. I was putting edging on the dance floor and I heard a loud noise. I looked up and saw the guys on the ground. We ran over and performed cpr for 10-15 seconds. I ran over and pulled Dexter off the pole and started during cpr on Dexter. I continued CPR until EMS arrived. I went & helped out John. ~~the~~ There's no written policy on power lines. Dexter was touching the pole so we pulled him off the pole. The Electric Co. moved the deck after we left. They make us wear leather gloves. Alex is usually organizes the setup. Beth ~~is~~ is the events director and she was pointing where everything goes.

I have (read/had read to me) the above and preceding 1 ***pages and state that the information contained therein is true and correct.***

Witness

Address

Telephone (Office/Home)

OSHA Compliance Officer

Declarant

Page 1 of 1

DOSH-C-4A (rev. 9/93)

CC#_____

S. C. OCCUPATIONAL SAFETY and HEALTH

P. O. Box 11329
Columbia, S. C. 29211

Date: 4/23/08

Time: 12:30

WITNESS STATEMENT

Place: Thorne Hill Farms

Full name Kyle L. Johnson Age 22 Occupation Stage hands

Residence Address 5540 Harbor Lake Dr. Residence Phone 843-460-6591
Apt. G-10 Goose Creek, SC 29445

Business Address _____ Business Phone _____

Name and address of person most likely to know your whereabouts should you move: _____

Referring to the Accident which occurred on 4/23/08 @ 2007

at about 4:10 A. M./P. M. at or near Barn area

I herewith make the following voluntary statement:

I have been with this company 1 1/2 & soon. On or about 4:10 p.m. 4/23/08. Me, AJ, John F. were working on the dance floor we just had to finish putting on the edges we were ready to pack up. Both the event planners wanted us to change the tents to be moved. We were going to pick up the tent and move it. Both was instructing to them to come on in the direction. I was getting some materials out of the truck. and I heard a huge pop like a transformer blowing. I looked and saw the 4 guys fainting and gasping for air. We started doing CPR and trying to revive them. We dragged them away. John Robinson was yelling he couldn't feel his feet. John & Dexter have passed out on him we started on CPR on them. We got on the phone and called 911. Alex or Laurence/someone got shocked to but not as bad. We were out of it. I could feel the heat off the poles. We have never been working around power poles except 1 time. Our site inspection is to tell everyone where all the equipment goes. The tent was touching the ~~tent~~ wires. We haven't had any electrical hazard training. Our training consists of staging equipment, lights, floors. They tell us to be cautious on our truck lifts. When we set up tents we are supposed to stake them down.

I have (read/had read to me) the above and preceding _____ pages and state that the information contained therein is true and correct.

Witness _____

Address _____

Telephone (Office/Home) _____

OSHA Compliance Officer _____

Declarant _____

Page 1 of 1

DOSH-C-4A (rev. 9/93)

CC#_____

S. C. OCCUPATIONAL SAFETY and HEALTH
P. O. Box 11329
Columbia, S. C. 29211

Date: 4/24/08

Time: 1:15

WITNESS STATEMENT

Place: The Hill Fox

Full name Jason Michael Jordan Age 25 Occupation Stagehand
Residence Address 1350 Iroquois St Residence Phone 843-277-0785
N. Charleston, SC 29405
Business Address _____ Business Phone _____
Name and address of person most likely to know your whereabouts should you move: _____

Referring to the Accident which occurred on 4/23 19 2008

at about 4:00 A. M./P. M. at or near Bon Aria

I herewith make the following voluntary statement:

I have been with the company for 3 months. I was in the back of the 24ft truck, and I was straighten up some equipment. I had my back turned and I heard a loud sound. When I looked out, I saw them on the ground. John Robertson was the closest to me so I ran over to him. He was talking about how hot he was. Then I saw John Fortney who was in-coherent so I started CPR. The coordinator handed me his cell phone and I spoke with the dispatched for about 30 seconds while I performed CPR. The Paramedics arrived and I continued to assist until they got the electronic band on him. John Robertson was sit fitted, John Fortney was placed in the ambulance. I have not received any type of electrical training. David is usually the crewleader on-site but he wasn't here yesterday. ~~I have never dealt with any~~ Everyone had leather gloves on except John Robertson who wore cloth gloves with rubber palms.

I have (read/had read to me) the above and preceding 1 pages and state that the information contained therein is true and correct.

Witness

Address

Telephone (Office/Home)

OSHA Compliance Officer

Declarant

Page 1 of 1

DOSH-C-4A (rev. 9/93)

PAGE 1 OF 1

CHARLESTON COUNTY SHERIFF'S OFFICE

STATEMENT

OCA # 2008-009385 DATE 4/23/08

STATEMENT OF RICHARDSON - DAVID JAMES

ADDRESS 1577 FAIRWAY DR. CHARLESTON SC 29412 PHONE # 795-9095

EMPLOYER: SELF EMPLOYED PHONE # 795-7864

RACE: W SEX: M DATE OF BIRTH: 3-8-47 860-5124

Both Wendell and I were discussing the Layout of the 2 small tents for the Healing Team Shrubs scheduled for April 26 (Sat) - We decided that the small tent & medium tent would be better at a different location We informed Calvin Clayton the Mgr of Stage Presents if he would Accommodate us and move the two tents to more at the left side (small) and front (med) tent to create a better entrance. The four Stage Presents guys and I picked up the small tent and moved it to the left side - We then (all four of us) picked up the Med Tent and started moving it around to the right front adjacent to the big tent. We noticed the power line and put the tent down to Adjust our path away from the power line - When we got to location we wanted we put tent down - At that time I let go of tent pole and the other filled the tent angle - When they did the tent tilted and the metal top of the tent hit the power line - The power went thru the Poles and knocked all for dozen - Next the

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Signature

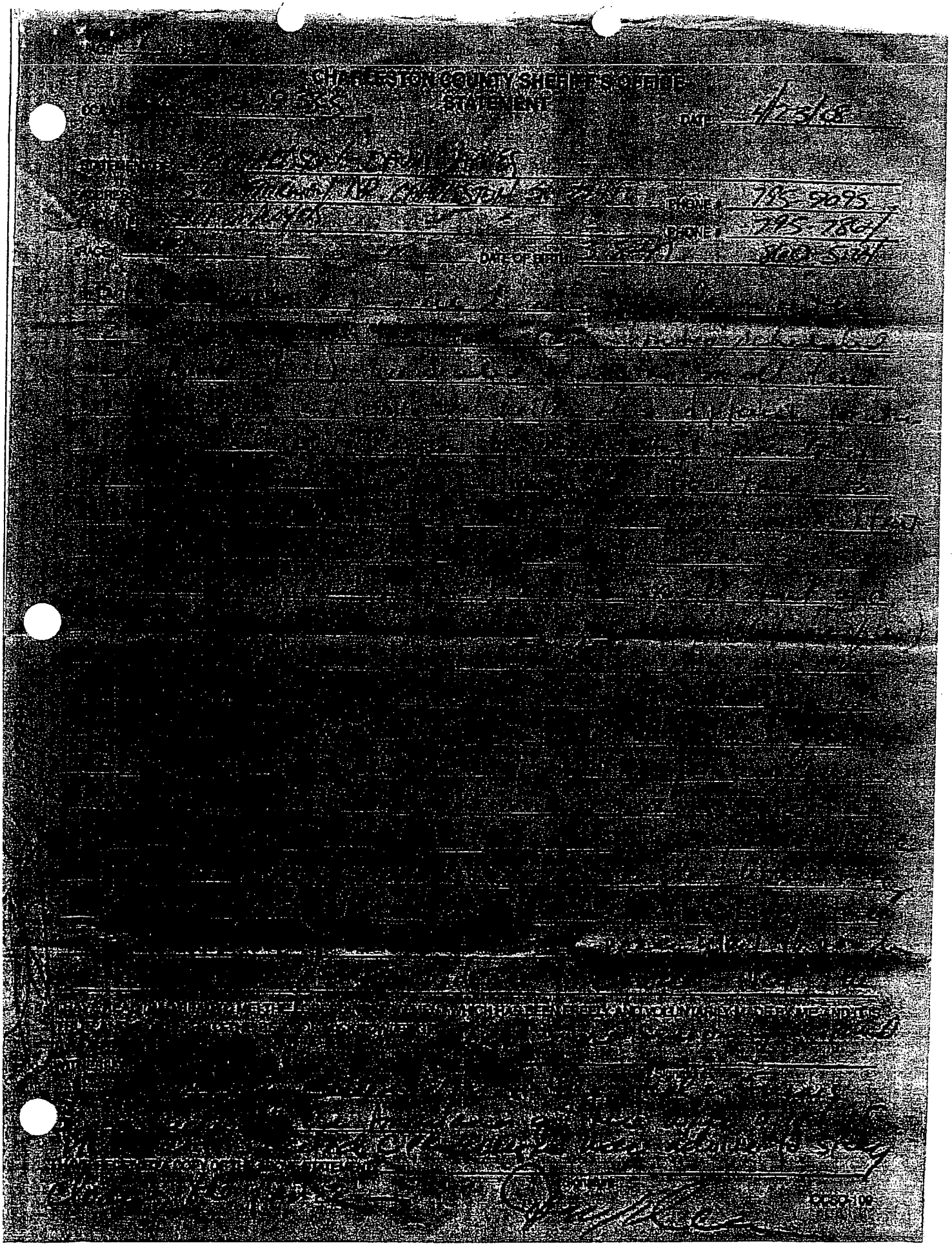
WITNESSES:

I managed to get up. The others were more seriously injured Wendell got up. The others were unconscious 911 and the Healing Team & Kristy - The Ambulances got here & after about 15 Min and started CPR - Police were allowed to stay there by the fence

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT

Signature

CCSO-109



CC# _____

S. C. OCCUPATIONAL SAFETY and HEALTH
P. O. Box 11329
Columbia, S. C. 29211

Date: 4/24/08

Time: 2:55 p.m.

WITNESS STATEMENT

Place: Mt. Pleasant

Full name Beth Donehue Age 30 Occupation Bus. Optmst
Residence Address 1240 Honey Suckle Cove Residence Phone 843-795-9085
Charleston SC 29412
Business Address _____ Business Phone _____
Name and address of person most likely to know your whereabouts should you move: _____

Referring to the Accident which occurred on 4/23 ~~19~~ 2008

at about 4:00 A. M./P. M. at or near Barn Area

I herewith make the following voluntary statement:

David Richardson and 4 guys were moving a 20 x 20 tent to a specific location for the Shoulder Fundraiser. One of the guys noticed that they were getting close to a power line and put the tent down. They readjusted the tent position and continued to take it to the decided location. They got it to the location and set it down. Then the 4 guys nudged it back a bit and the metal tip at the top of the tent hit the power line. All 4 guys fell to the ground. David and I both called 911. Alex Clayson was able to get up, one guy was awake and aware but stayed on the ground & 2 guys remained unconcious.

I have (read/had read to me) the above and preceding _____ pages and state that the information contained therein is true and correct.

Witness

Address

Telephone (Office/Home)

OSHA Compliance Officer

Declarant

Page 1 of 1

DOSH-C-4A (rev. 9/93)

Site: 2952 CHARLESTON
Date: 03/10/2008 5:41:01 AM

Customer Profile

Bill To:

Name: STAGE PRESENCE LLC
Customer #: 4423-2952
Address: 660 RIVERLAND DRIVE.
City: Charleston
State: SC
Zip: 29412
Phone: 843-225-5621
Fax: 815-425-5621
Date Added 05/17/2007
Credit Limit: 2000
Balance: 0.00

First Ticket:	05/18/2007	49829-2952	231.00
Last Ticket:	08/15/2007	50254-2952	68.25
First Invoice:	05/16/2007	36632952	231.00
Last Invoice:	06/22/2007	39162952	68.25
First Payment:	06/11/2007	5856114-1999	231.00
Last Payment:	07/17/2007	5707878-1999	68.25
Last Call Date:			
DUNS #:			
SIC			
Fed ID:	20-8400699		

JOB INFORMATION

Code	Location / Comp Code	Address / Comp Description	Report To / Pay	Bill	Prev Wage
)	660 RIVERLAND DR. UN	Equipment: gloves, boots and rain gear	AJ MUSOLINI		
	8292	STORAGE WAREHOUSE NOC	6.00	10.50	N

Employee Profile

Site 1305
N. Charleston
Date 04/25/2008 11:02:43 AM

Name	DEXTER	KEYES	
Address	1902 CARLTON ST		
City	North Charleston		
State	SC		
Zip	29405-		
Country	USA		
Date Hired	03/10/2008 9:30:17 AM		
Birth Date	06/20/1970		

Phone	843-557-5591
W4 Date	03/10/2008 4:26:58 AM
Car	N
Employee Code	13040-1305
First Work	03/13/2008
Last Work	04/23/2008
Marital Status	S

Don Keyes (cousin)
(843) 224-1356

Employee Profile

Site 1305
N. Charleston
Date 04/25/2008 11:02:26 AM

Name	JOHN ROBINSON
Address	5405 KAY ST Key St.
City	North Charleston
State	SC
Zip	29418-
Country	USA
Date Hired	04/10/2008 6:39:13 AM
Birth Date	07/21/1965

Phone	843-513-8802
W4 Date	04/10/2008 5:23:19 AM
Car	N
Employee Code	13098-1305
First Work	04/10/2008
Last Work	04/23/2008
Marital Status	S

Girlfriend Betty Wilson (843) 276-6428

Site 2952
CHARLESTON
Date 04/25/2008 10:13:35 AM

Employee Profile

Name	JOHN ROBINSON
Address	5405 KAY ST
City	North Charleston
State	SC
Zip	29418-
Country	USA
Date Hired	03/24/2008 9:59:40 AM
Birth Date	07/21/1965

Phone	843-513-8802
W4 Date	03/24/2008 5:39:16 AM
Car	N
Employee Code	6799-2952
First Work	
Last Work	
Marital Status	S

SKILLS

Food Processing	5
Forklift Operator	5
Furniture Mover	4
Inventory / Shipping / Receivi	1
Landscape Maintenance	1
Flagging	1
Heavy Equipment Operation	5
Restaurant	6

Employee Profile

Page 1

Site 1305
N. Charleston
Date 04/25/2008 11:29:39 AM

Name	JOHN	FORTNEY	
Address	573 MEETING ST		
City	Charleston		
State	SC		
Zip	29413-		
Country	USA		
Date Hired	12/11/2007 1:50:57 PM		
Birth Date	08/21/1962		

Phone	843-327-8547
W4 Date	01/15/2008
Car	N
Employee Code	12896-1305
First Work	12/12/2007
Last Work	03/13/2008
Marital Status	S

next of Kin

Karen Hutchinson (Friend)
(843)532-4047

(NOT LABOR READY EMPLOYEE)

Date 04/25/2008
Site 1305
N. Charleston

Work Ticket Register

Customer Name / Date		Job W / C	Rate Pay	Rate Bill	Reg Time Paid	Reg Time Bill	Ovr Time Paid	Ovr Time Bill	Dbl Time Paid	Dbl Time Bill	Tr/Bill	Total	Marg
STAGE PRESENCE					7246-1305								
Work ticket 89089-1305		3 5146	6.25	11.56									
	Ticket Total				29.90	24.90	0.00	0.00	0.00	0.00	$0.00	$287.84	
**********Day Total & Average Margin					29.90	24.90	0.00	0.00	0.00	0.00	$0.00	$287.84	
Date 04/13/2008													
STAGE PRESENCE					7246-1305								
Work ticket 89111-1305		3 5146	6.25	11.56									
NETTLES	SHANE				15.00	15.00	0.00	0.00	0.00	0.00	$0.00	$173.40	
	Ticket Total				15.00	15.00	0.00	0.00	0.00	0.00	$0.00	$173.40	32%
**********Day Total & Average Margin					15.00	15.00	0.00	0.00	0.00	0.00	$0.00	$173.40	32%
Date 04/14/2008													
STAGE PRESENCE					7246-1305								
Work ticket 124-1305		2 5146	6.25	11.56									
KEYES	DEXTER				13.50	13.50	0.00	0.00	0.00	0.00	$0.00	$156.06	
ROBINSON	JOHN				13.50	13.50	0.00	0.00	0.00	0.00	$0.00	$156.06	
FREEMAN	ONTERIO				13.50	13.50	0.00	0.00	0.00	0.00	$0.00	$156.06	
SMITH	RICARDO				13.50	13.50	0.00	0.00	0.00	0.00	$0.00	$156.06	
	Ticket Total				54.00	54.00	0.00	0.00	0.00	0.00	$0.00	$624.24	34%
**********Day Total & Average Margin					54.00	54.00	0.00	0.00	0.00	0.00	$0.00	$624.24	34%
Date 04/15/2008													
STAGE PRESENCE					7246-1305								
Work ticket 89125-1305		2 5146	6.25	11.56									
KEYES	DEXTER				11.15	11.15	0.00	0.00	0.00	0.00	$0.00	$128.89	
ROBINSON	JOHN				11.00	11.00	0.00	0.00	0.00	0.00	$0.00	$127.16	
FREEMAN	ONTERIO				11.00	11.00	0.00	0.00	0.00	0.00	$0.00	$127.16	
SMITH	RICARDO				11.00	11.00	0.00	0.00	0.00	0.00	$0.00	$127.16	
	Ticket Total				44.15	44.15	0.00	0.00	0.00	0.00	$0.00	$510.37	34%
**********Day Total & Average Margin					44.15	44.15	0.00	0.00	0.00	0.00	$0.00	$510.37	34%
Date 04/16/2008													
STAGE PRESENCE					7246-1305								
Work ticket		Job W / C	Rate Pay	Rate Bill									

Date 04/25/2008
Site 1305
N. Charleston

Work Ticket Register

Customer Name / Date			Reg Time Paid	Reg Time Bill	Ovr Time Paid	Ovr Time Bill	Dbl Time Paid	Dbl Time Bill	Tr/Bill	Total	Marg
STAGE PRESENCE											
		7246-1305 Rate Pay / Bill									
Work ticket 89126-1305	Job W / C	2 5146	6.25	11.56							
	Ticket Total		0.00	0.00	0.00	0.00	0.00	0.00	$0.00	$0.00	
89162-1305		2 5146	6.25	11.56							
KEYES	DEXTER		6.00	6.00	0.00	0.00	0.00	0.00	$0.00	$69.36	
ROBINSON	JOHN		6.00	6.00	0.00	0.00	0.00	0.00	$0.00	$69.36	
SMITH	RICARDO		6.00	6.00	0.00	0.00	0.00	0.00	$0.00	$69.36	
NETTLES	SHANE		6.00	6.00	0.00	0.00	0.00	0.00	$0.00	$69.36	
	Ticket Total		24.00	24.00	0.00	0.00	0.00	0.00	$0.00	$277.44	34%
**********Day Total & Average Margin			24.00	24.00	0.00	0.00	0.00	0.00	$0.00	$277.44	27%
Date 04/17/2008											
STAGE PRESENCE											
		7246-1305 Rate Pay / Bill									
Work ticket 89127-1305	Job W / C	2 5146	6.25	11.56							
	Ticket Total		0.00	0.00	0.00	0.00	0.00	0.00	$0.00	$0.00	
**********Day Total & Average Margin			0.00	0.00	0.00	0.00	0.00	0.00	$0.00	$0.00	27%
Date 04/18/2008											
STAGE PRESENCE											
		7246-1305 Rate Pay / Bill									
Work ticket 89128-1305	Job W / C	2 5146	6.25	11.56							
	Ticket Total		0.00	0.00	0.00	0.00	0.00	0.00	$0.00	$0.00	LOSS
**********Day Total & Average Margin			0.00	0.00	0.00	0.00	0.00	0.00	$0.00	$0.00	27%
Date 04/19/2008											
STAGE PRESENCE											
		7246-1305 Rate Pay / Bill									
Work ticket 89177-1305	Job W / C	2 5146	6.25	11.56							
NETTLES	SHANE		7.50	7.50	0.00	0.00	0.00	0.00	$0.00	$86.70	
	Ticket Total		7.50	7.50	0.00	0.00	0.00	0.00	$0.00	$86.70	32%
**********Day Total & Average Margin			7.50	7.50	0.00	0.00	0.00	0.00	$0.00	$86.70	32%
Date 04/20/2008											

Date 04/25/2008
Site 1305
N. Charleston

Work Ticket Register

Customer Name / Date		Job W / C	Rate Pay	Rate Bill	Reg Time Paid	Reg Time Bill	Ovr Time Paid	Ovr Time Bill	Dbl Time Paid	Dbl Time Bill	Tr/Bill	Total	Marg
STAGE PRESENCE		7246-1305											
Work ticket 89178-1305		2 5146	6.25	11.56									
NETTLES	SHANE				4.50	4.50	0.00	0.00	0.00	0.00	$0.00	$52.02	
	Ticket Total				4.50	4.50	0.00	0.00	0.00	0.00	$0.00	$52.02	32%
**********Day Total & Average Margin					4.50	4.50	0.00	0.00	0.00	0.00	$0.00	$52.02	32%
Date 04/21/2008													
STAGE PRESENCE		7246-1305											
Work ticket 89176-1305		2 5146	6.25	11.56									
ROBINSON	JOHN				15.50	15.50	0.00	0.00	0.00	0.00	$0.00	$179.18	
SMITH	RICARDO				15.50	15.50	0.00	0.00	0.00	0.00	$0.00	$179.18	
NETTLES	SHANE				15.50	15.50	0.00	0.00	0.00	0.00	$0.00	$179.18	
	Ticket Total				46.50	46.50	0.00	0.00	0.00	0.00	$0.00	$537.54	32%
**********Day Total & Average Margin					46.50	46.50	0.00	0.00	0.00	0.00	$0.00	$537.54	33%
Date 04/22/2008													
AGE PRESENCE		7246-1305											
Work ticket 89230-1305		2 5146	6.25	11.56									
KEYES	DEXTER				9.00	9.00	0.00	0.00	0.00	0.00	$0.00	$104.04	
ROBINSON	JOHN				9.00	9.00	0.00	0.00	0.00	0.00	$0.00	$104.04	
SMITH	RICARDO				9.00	9.00	0.00	0.00	0.00	0.00	$0.00	$104.04	
NETTLES	SHANE				9.00	9.00	0.00	0.00	0.00	0.00	$0.00	$104.04	
	Ticket Total				36.00	36.00	0.00	0.00	0.00	0.00	$0.00	$416.16	33%
**********Day Total & Average Margin					36.00	36.00	0.00	0.00	0.00	0.00	$0.00	$416.16	33%
Date 04/23/2008													
STAGE PRESENCE		7246-1305											
Work ticket 89253-1305		2 5146	6.25	11.56									
KEYES	DEXTER				8.00	8.00	0.00	0.00	0.00	0.00	$0.00	$92.48	
ROBINSON	JOHN				8.00	8.00	0.00	0.00	0.00	0.00	$0.00	$92.48	
	Ticket Total				16.00	16.00	0.00	0.00	0.00	0.00	$0.00	$184.96	33%
**********Day Total & Average Margin					16.00	16.00	0.00	0.00	0.00	0.00	$0.00	$184.96	33%

LABOR READY

Dependable Temporary Labor

WORK TICKET

OMER CODE	CUSTOMER NAME	DATE	TIME	NUM OF WORKERS	TICKET NUMBER
7245-1305	STAGE PRESENCE	04/23/2008	8 AM	4	89253-1305

ODE	JOB SITE	OTHER
	BRIGADE 91	Breaking down tents / moving tables

RT TO	WORK COMP CODE
ALEX	5146

ACT PHONE #	WORK TICKET COMMENT / PO #
843-478-0405	

4 Hours Free w/ a Valid Business Referral!! Call for Details!!!
843.747.9816

N. Charleston BRANCH
04/22/2008

Printed at: 04/22/2008 06:15:33

EMPLOYEE NAME	CLOCK NUMBER
3040-1305 04/23/2008 EYES, DEXTER	
3098-1305 04/23/2008 OHNSON, JOHN S	

CUSTOMER SHALL PROVIDE SUPERVISION AND TRAINING FOR THE SAFE OPERATION OF ANY EQUIPMENT.

[redacted]

WAS THE WORK PERFORMED SUBJECT TO PREVAILING WAGE?

☐ YES ☐ NO

DATE	NO. OF WORKERS	TIME NEEDED

Remarks:

PRINT NAME AND TITLE

AUTHORIZED SIGNATURE

Ticket: 89253-1305 REPRINT Page 1 of 1

02 (Rev 10/07) **Total Hours:**

CUSTOMER AGREES TO THE TERMS AND CONDITIONS SET FORTH ON THE REVERSE SIDE HEREOF AND CERTIFIES THAT THE LISTED WORKERS HAVE SATISFACTORILY PERFORMED SERVICE FOR THE HOURS SHOWN.

CONDITIONS OF SERVICE

...e Customer agrees to the following terms and conditions of services rendered by Labor Ready [illegible]

Labor Ready shall be responsible for the payment of all wages, the withholding and payment of all required payroll taxes, and the maintenance o... ...orke... ...compensation insurance as required by state law. Customer shall accurately record all hours worked by Labor Ready workers. Custome... ...rees ... comply with and enforce all applicable employment and labor laws including those related to breaks and meal periods, and la...s regardin... ...ual employment opportunities and the maintenance of fair labor practices. Customer shall defend, indemnify, and hold harmless Labor Ready, it... ...erits, employees and the supplied workers for any and all claims or damages arising out of Customer's violation of employment or labor laws, includin... ...hout limitation Title VII, FLSA, NLRA, or failure to accurately report hours worked. Overtime pay rates are 1.5 times regular pay rates.

Customer acknowledges that worker pay rates have been established pursuant to negotiation between Customer and Labor Ready. Customer agree... ...notify Labor Ready when a supplied worker is performing work subject to the Service Contract Act, Davis Bacon Act, or other similar local, state o... ...leral law related to prevailing or living wages. Customer agrees to defend, indemnify, and hold Labor Ready harmless for any claim for wages ...alties, fines, attorneys' fees, and reasonable profit in the event Customer fails to properly identify prevailing wage work. If the Work Comp... ...de indicated on the front refers to a WRAP code, referring to a controlled insurance program, the Bill Rate does not include any charges related to ...kers' compensation insurance. Customer shall inform Labor Ready of any changes in work assignment.

Customer agrees that Labor Ready workers are under Customer's supervision, direction and control. Customer must determine that workers m... ...skill, competency, license, certification ... requirements necessary to complete specific jobs to Customer's own satisfaction during the first ... ...hour worked. Labor Ready is a provider ... skilled ... is not a general contractor. Customer is responsible to provide ... ...supervision to ensure quality and ... requirements are met ... ees that it will not, without the prior written consent of Labo... ...any ... Ready workers: to ... gerous machinery, mobile ... for excavation more than four feet in depth; for ... ...work ... freight; or as the ... time work upon the navigable waters ... ...ited ... to the U.S. LHWCA, or the Jones Act. Labor Ready worker ... sed with unattended premis... ...ecks ... ables without the prior written permission of Labor Ready. Unless otherwise ... writing, Customer sha... ...ely respo... any background checks or limitations related to the work ...

... Customer ... laws pertaining to ... safety, and shall include Labor Ready workers in Customer's ... ...while ... ...ility and control of Customer, and shall provide personal protective equipment ("PPE") necessary or requ... ...work to be performed. ... dy provides any site-specific PPE, Customer ... must supplied ... ...ht. Customer agrees to provide ... ...ific safety orientation and training ... to the start of work which inclu... ...but limited to: review of the Customer's ... program; on-the-job revi... ...s necessary to perform the job assignments ... ...ner; the use and care of required PPE; identification of hazardous mate... and instructions for the safe use and emergency actio... ...SDS); the proper actions to take in event of emergencies, including exit r... report unsafe conditi... practices; how and when to repor... ...ries, the location of MSDS's, and the location of first aid facilities. Customer agrees to indemnify, defend and hold harmless Labor Ready for claims ...nages or penalties arising out of violations of the Occupational Safety and Health Act of ... any similar state law with respect to workplaces o... ...ipment owned, leased or supervised by Customer and to which workers are assigned. Customer to record workers work related injuries on ...stomer's OSHA Log.

Cus... agrees to defend, indemnify and hold harmless Labor Ready from and against ... liability, caused or alleged to have been caused by ... negligence or other acts or omissions of any Labor Ready worker, including ... but not limited to any claims for bodily injury (and/or death) and/or los... ...se of or damage to property arising out of the use or operations of any vehicle, ... equipment by Labor Ready workers and/or on ...n of or on behalf of any worker brought by virtue of their employment as seaman or ... member of the crew of any vessel. Without limiting the ...going, Customer specifically assumes and agrees to defend, indemnify and hold harmless Labor Ready from any claims for bodily injury (includin... ...ath) or property damage made or caused by Customer or Customer's employees, and Customer agrees to waive any immunity provided by Worker's ...mpensation or other industrial insurance laws. Labor Ready assumes no responsibility for the criminal acts of its workers.

Customer agrees to the terms of NET 7 DAYS FROM DATE OF INVOICE, and understands that unpaid accounts will be considered in default ... ...days, after which a default charge will be imposed at 1 1/2% per month on unpaid balances. (ANNUAL PERCENTAGE RATE OF 18%) ...imum legal interest rate, whichever is lower. Customer agrees to pay the default charge together with reasonable attorney's fees and/or co... ...s. Customer agrees to pay Labor Ready a four (4) hour minimum per employee. Customer's failure to dispute in writing the charges on any ... ...in 14 days of receipt shall constitute irrevocable acceptance of such charges and terms and a waiver of the right to later dispute or rel... ...upon stated on the invoice.

CONDITIONS OF SERVICE

[illegible] the following terms and conditions of service, rendered by Labor Ready now or in the future.

[illegible] the payment of all wages, [illegible] all required payroll taxes, and the [illegible] insurance as required by State law. Customer shall [illegible] workers by Labor Ready [illegible] comply with all insurance, all applicable employment [illegible] and the maintenance of fair labor practices. [illegible] and limitation Title VII, FLSA, NLRA, [illegible]

Customer acknowledges that worker pay rates have been established pursuant to [illegible] Labor Ready when a supplied worker is performing work subject to the Service Contract Act, [illegible] entitled to prevailing or living wages. Customer agrees to defend, [illegible] Labor Ready from any claims [illegible] wages, benefits, attorneys' fees, and reasonable costs in the event Customer fails to properly identify [illegible] involving wage [illegible] Customer agrees to pay Labor Ready a WHAF cost covering [illegible] controlled insurance program, the [illegible] Work Comp [illegible] compensation insurance. Customer shall inform Labor Ready of any changes in work assignments.

Customer agrees that Labor Ready workers are under Customer's [illegible] direction and control. Customer will [illegible] competency, [illegible] certification or other requirements that may be necessary to complete specific [illegible] Labor Ready is a provider of unskilled and semi-skilled labor and is not a general contractor. Customer agrees to provide adequate supervision to ensure quality and timeliness requirements are met. Customer agrees that it will not, without the prior written consent of Labor Ready, allow Labor Ready workers to operate dangerous machinery, mobile equipment or vehicles; [illegible] on ladders or scaffolding over 6 feet in height; or as the member of the crew of any vessel or in [illegible] navigable waters of the United States which might be subject to the U.S. LHWCA, or the Jones Act. Labor Ready workers will not be [illegible] cash, negotiables, or other valuables without the prior written permission of Labor Ready. Unless [illegible] Customer is responsible for any background check obligations related to the worksite.

Customer shall comply with all applicable laws relating to health and safety, and shall provide [illegible] Labor Ready workers, while they are in the care, custody and control of Customer, and shall provide reasonable [illegible] any work to be performed. If Labor Ready provides any site-specific PPE, Customer shall instruct [illegible] equipment. Customer agrees to provide site specific safety orientation and training to all supplied workers [illegible] not limited to: review of the Customer's total safety program; on-the-job review of the practices [illegible] proper use and care of required PPE; identification of hazardous materials involved and [illegible] first aid facilities. Customer agrees to indemnify, defend and hold harmless Labor Ready [illegible] arising out of violations of the Occupational Safety and Health Act of 1970, or any similar state [illegible] to attend any briefing session by Customer and to which workers are assigned. Customer to [illegible]

Customer agrees to defend, indemnify and hold harmless Labor Ready from any claims and [illegible] Labor Ready worker, including but not limited to [illegible] allegedly arising out of the use or operation of any vehicles, machinery or equipment by [illegible] on behalf of any worker brought by virtue of their employment as seaman or as a member of the crew of any vessel. Without limiting the [illegible] Customer agrees to indemnify and hold harmless Labor Ready from any claims made or caused by Customer or Customer's employees, and Customer agrees to waive [illegible] provided by [illegible] Labor Ready assumes no responsibility for the [illegible]

Customer agrees to the terms of NET 7 DAYS FROM DATE OF INVOICE and understands that [illegible] within a default charge will be imposed at 1 1/2% per month on unpaid balances. [illegible] interest rate, whichever is lower. Customer agrees to pay the default charge together [illegible] Customer agrees to pay Labor Ready a four (4) hour minimum per employee. Customer's failure to dispute [illegible] days of receipt shall constitute irrevocable acceptance of such charges and terms and a waiver [illegible] on the invoice.

LABOR READY
Dependable Temporary Labor

PRE-EMPLOYMENT HEALTH AND SAFETY QUIZ ANSWER SHEET

NAME: Dexter Keyes DATE:

Print the letter for the correct answer to each question in the spaces provided below.

Do not write on the test sheets.

1.	B	11.	A
2.	C	12.	A
3.	D	13.	D
4.	D	14.	~~B~~ A
5.	D	15.	D
6.	D	16.	A
7.	B	17.	A
8.	~~B~~ C	18.	A
9.	D	19.	B
10.	D	20.	C

Number of Correct Answers: 20/20 Percentile Score: 100%

This quiz was presented to the applicant in ☑ written ☐ oral format. (check one)

If the quiz is presented in oral format, all questions must be presented to the applicant and the applicant must be given the opportunity to answer. Regardless of the mode of presentation, any questions that are answered incorrectly must be reviewed with the applicant and the applicant must be made aware of the correct answer before being assigned to any job.

Labor Ready (Branch Staff) Applicant

Rev.

LABOR READY
Dependable Temporary Labor

PRE-EMPLOYMENT HEALTH AND SAFETY QUIZ ANSWER SHEET

NAME: John Robinson DATE: 3/24/08

Print the letter for the correct answer to each question in the spaces provided below.

Do not write on the test sheets.

1. B
2. C
3. d
4. ~~A~~ d
5. d
6. d
7. ~~C~~ ~~B~~ A ~~A~~ B
8. ~~A~~ C
9. ~~A~~ ~~C~~ ~~B~~ D
10. ~~A~~ ~~B~~ ~~C~~ D
11. A
12. ~~d~~ ~~b~~ A
13. d
14. ~~b~~ A
15. d
16. ~~d~~ A
17. A
18. A
19. b
20. ~~A~~ C

Number of Correct Answers: 20/20 Percentile Score: 100%

This quiz was presented to the applicant in ☒ written ☐ oral format. (check one)

If the quiz is presented in oral format, all questions must be presented to the applicant and the applicant must be given the opportunity to answer. Regardless of the mode of presentation, any questions that are answered incorrectly must be reviewed with the applicant and the applicant must be made aware of the correct answer before being assigned to any job.

Labor Ready (Branch Staff)

Applicant

Applicant Health and Safety Quiz

INSTRUCTIONS: DO NOT WRITE ON THIS TEST.

WRITE THE CORRECT LETTER (A, B, C, D) ONLY ON YOUR APPLICATION ANSWER SHEET.

1. If you are asked to do a job that you have not been trained to do, you should:
   a) do the job, but be careful
   b) call Labor Ready immediately
   c) do the job and tell Labor Ready at the end of the day
   d) none of the above

2. When are illegal drugs or alcohol permitted at a job site?
   a) you are allowed to work while under the influence of drugs or alcohol
   b) when Labor Ready is informed before dispatch
   c) never
   d) both a and b

3. Who is the person with the most control over your personal safety in the workplace?
   a) the Labor Ready branch manager
   b) OSHA
   c) the site superintendent
   d) YOU

4. Which of the following are steps to proper lifting?
   a) keep your back in a natural position
   b) keep the object close to your body
   c) test the load first by lifting one corner
   d) all of the above

5. Which of the following are types of PPE?
   a) safety glasses
   b) leather gloves
   c) hard toe shoes
   d) all of the above

6. It is o.k. to run a table saw without the blade guard if:
   a) you report it to the site supervisor
   b) you report it to Labor Ready
   c) both a and b
   d) you should never run the saw without the guard

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7. Who should remove the lock out or tag out device from a piece of equipment after repairs are made?
   a) the supervisor
   b) the person that put the lock into position
   c) an OSHA inspector
   d) any available person at the job site

8. Fall protection such as guardrails or fall arresting harnesses must be used when you are working in an elevated area such as a roof that is_____or more feet above the ground or floor.
   a) 3 feet
   b) 10 feet
   c) 6 feet
   d) 5 feet

9. Safe work practices on ladders would include:
   a) inspecting the ladder before using it
   b) making sure to use the locking device on a step ladder
   c) always maintaining 3 points of contact when climbing on the ladder
   d) all of the above

10. You should perform work on a roof only when:
    a) you have received the proper training
    b) proper fall protection is provided
    c) you have been dispatched to do so by Labor Ready
    d) all of the above

11. One of the major concerns in trench work is:
    a) underground power lines
    b) the work is cold and dirty
    c) it is hard to see in the trench
    d) none of the above

12. Some examples of a confined space would include:
    a) silos, manholes, storage tanks
    b) hallways
    c) stadium seats
    d) none of the above

13. Which of the following is a hazard of confined space work?
    a) chemical exposure
    b) low oxygen
    c) fire or explosion
    d) all of the above

14. You should perform confined space or trench work only after:
    a) being dispatched to do so by Labor Ready
    b) being assigned to do so by the site supervisor
    c) being asked by a co-worker
    d) never work in a trench

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15. Chemicals can enter the body by:
    a) breathing the vapors and fumes
    b) absorbing the chemical through the skin
    c) being cut by a contaminated object
    d) all of the above

16. Where can you find the MSDS sheets?
    a) at the site where the substance is being used
    b) at the hardware store
    c) in the library
    d) at OSHA headquarters

17. All containers of hazardous chemicals must be labeled.
    a) true
    b) false

18. One of your roles in an emergency response is to know the location of the first aid kits.
    a) true
    b) false

19. If you are injured on the job:
    a) report the injury to your site supervisor only
    b) report the injury to your site supervisor and to Labor Ready
    c) don't report the injury unless you think it is really serious
    d) don't report the injury until after the shift

20. The symbol below indicates that may be present.
    a) flammable liquids
    b) airplane propellers
    c) blood, needles, and other biohazards
    d) none of the above

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J. Al Cannon, Jr., Esq.
Sheriff, Charleston County

3505 Pinehaven Drive
Charleston Heights, SC 29405-7789

FORENSIC SERVICES FIELD REPORT

Sergeant P.D. McManigal
Supervisor, Crime Scene Unit

3505 Pinehaven Drive
N. Charleston, SC 29405-7789

OCA: 2008-009385B
Page 1 **of** 1
Date: April 23, 2008

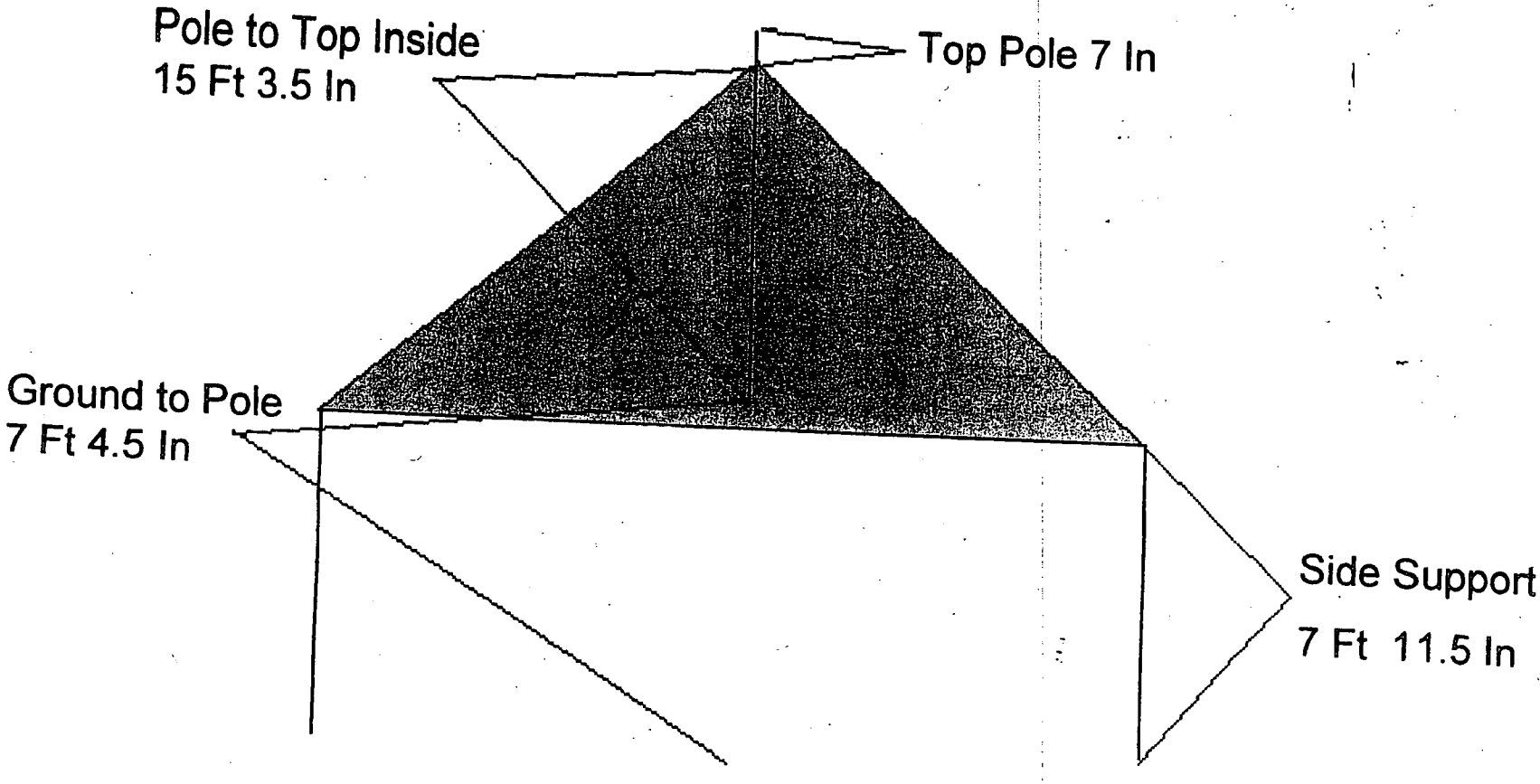
Incident Type: Death Investigation **Location:** 10882 Highway 17 McClellanville SC
Time Notified: 1648 **Time Arrived:** 1740 **Time Completed:** 1930
First Deputy: Dep. Powell **Supervisor:** Sgt. Huffman **Detective:** Det. Colson
Evidence Technician: Inv. B. Roy **Assistant Technician:** N/A
Pathologist: N/A **Coroner:** J. Koelpin
Weather Conditions: Clear 73°
Others at Scene: Dep. Schreffler, Dep. Branham, Det. Cooke
Service Requested: Process Scene **Requested By:** Sgt. Huffman
Evidence Collected: No **Evidence Transported By:** N/A
CRIME SCENE: Photos Taken: Yes **Video Tape:** No
Latent Processing: No **Type of Process:** N/A
Sketch: N/A **By:** N/A **Measurements:** N/A **By:** N/A
Surveillance Video Collected: No **By:** N/A
Other Forensic Tests: N/A

Vehicle #1: N/A
Vehicle #2: N/A
Weapon Type: N/A

NARRATIVE: On April 23, 2008, I responded to 10882 Highway 17 in reference to a death investigation. When I arrived, I observed several large tents erected in a field near a barn. One tent had banner guard around it. Sgt. Huffman advised that the tent was being moved and came into contact with the power line. One person was pronounced dead at the scene. One person was transported by ambulance to East Cooper Hospital and one subject was airlifted to MUSC. I began by taking overall photographs of the area to include the tent. There were two power lines running one above the other from a power pole to a light pole. The bottom line was still in contact with the tent. I was advised that the power had been disconnected by members of Berkeley Electric Cooperative. I observed burn marks to support cables inside the tent that supported the center vertical mast. There were also burn marks in the grass at the foot of two of the poles. There were no burn marks on the top of the center mast and also none on the top wire. I took measurements of the center mast to include the height from the ground. I also measured the distance between the two lines. I then photographed the victim that was still at the scene. The victim was wearing a black with white stripe shirt, camouflaged pants and black boots. The victim was also wearing cut off gloves. There were burn marks on his hands. Charleston County Rescue removed the victim from the scene. No further information.

DISTRIBUTION: Case File **EVIDENCE TECHNICIAN:** Inv. B. Roy

FORM 133

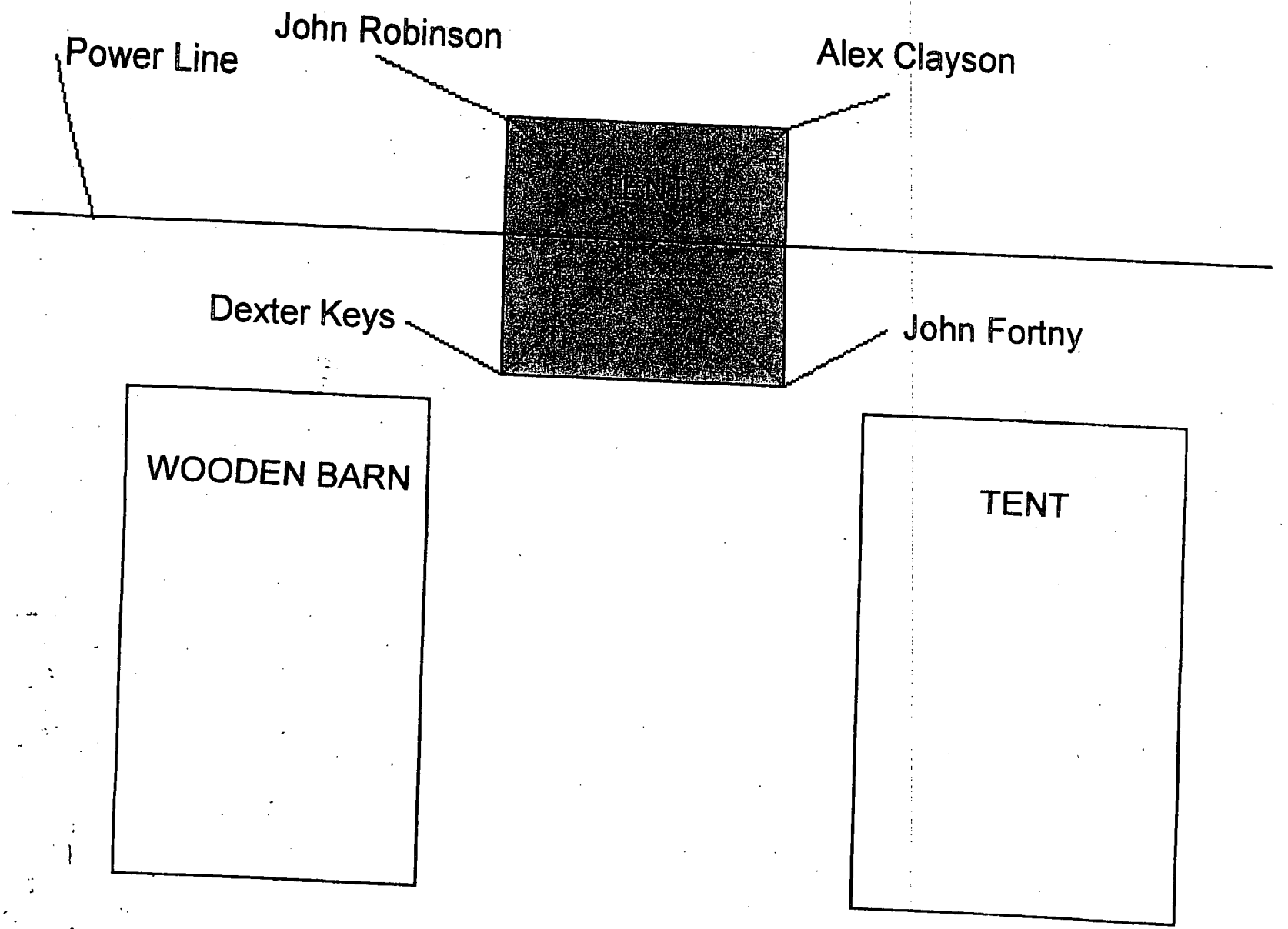


Top Power line to Ground 18 Ft 6 In

Bottom Power Line to Ground 15 Ft 8 In

2008-009385B 0[illegible]/23/08 BMR

1296



2008-009385[illegible] 04/23/08 BMR

1297

Rae H. Wooten, Coroner

Chief Deputy Coroner
Judy Koelpin

Deputy Coroner
Dottie Lindsay
Bobbi Jo O'Neal
Kelly Myers
Brittney Wofford

CHARLESTON COUNTY
SOUTH CAROLINA

OFFICE OF THE CORONER

4050 BRIDGE VIEW DRIVE
SUITE 500, PERIMETER CENTER
NORTH CHARLESTON, SC 29405

PHONE: (843) 746-4030
FAX: (843) 746-4033

April 30, 2008

o: Photograph recipients
om: Charleston County Coroner's Office
e: Autopsy photograph, S.C. Code § 17-5-535

The Coroner's Office conducts independent investigations of deaths in Charleston County, serving as a presentative of the decedents and survivors. The Coroner is respectful of the privacy of all parties involved d very concerned with dissemination of information.

ue to the extremely sensitive nature of photographs that may be contained within a coroner's file, the ro... s Office desires to remind all persons authorized to view photographs or videos of autopsies of their sponsibilities under South Carolina law. S.C. Code § 17-5-535, clearly outlines who is authorized to view topsy photographs and videos and provides that anyone who violates the statute must be fined not less than e thousand dollars nor more than fifty thousand dollars for each violation.

Because of the special nature of OSHA, the Coroner is allowing autopsy photograph to be issued in a dium that can be easily and quickly disseminated via electronic means. As such, it is the policy of the roner's Office to require acknowledgement of the responsibilities of those who are authorized to view opsy photographs and videos by signature.

I, Seth Stone, acknowledge that I have read and understand and will comply h S.C. Code § 17-5-535.

Signature:

Date:

RE: Dexter Keyes
Accident #23
4/23/08 - DOD

S. Code § 17-5-535. **Persons authorized to view photographs or videos of autopsy; training use exception; penalty.**

(A) Photographs, videos, or other visual images and audio recordings of or related to the performance of an autopsy shall only be viewed by or disseminated to:

(1) the coroner or the medical examiner, or both, and their staff;
(2) members of law enforcement agencies, for official use only;
(3) parents of the deceased, surviving spouse, children, guardian, personal representative next of kin, and any other person given permission or authorization to view or possess the visual images by the personal representative of the deceased's estate;
(4) those involved in a judicial or administrative proceeding related to the death of the subject of the photograph, video, other visual image or audio recordings including, but not limited to:
(a) parties to a civil suit arising from, related to, or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings, and the attorneys for the parties and the staff of the attorneys;
(b) a person charged with a crime arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings, and the person's attorney and the staff of the attorney;
(c) staff of the prosecutor's office considering or prosecuting criminal charges arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings;
(d) lay and expert witnesses conferred with, consulted or retained by a party or an attorney considering or involved in a legal or administrative proceeding arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings;
(e) judges and administrative hearing officers, as well as their staff, involved in a judicial or administrative proceeding arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings; and
(f) members of any jury, including grand juries, petit juries and coroner's juries, empanelled to hear or decide any issue arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings;
(5) physicians and other persons consulted by or supervising the physicians or persons who were involved in the performance of the autopsy of the subject of the photograph, video, other visual images, or audio recordings; and
(6) a person who receives such photographs, videos, or other visual images pursuant to a validly issued court order, after notice and opportunity to object are provided to the personal representative of the deceased's estate.

These photographs and videos must be released and disseminated only as authorized by this section.

(B) Notwithstanding the provisions contained in subsection (A), a photograph, video, other visual image of an autopsy, or an audio recording of an autopsy, or a combination of each of these items, after all information immediately identifying the decedent has been redacted and after making facial recognition anonymous to the extent reasonably possible if lawfully obtained or possessed may be used for:

(1) legitimate medical scientific teaching or training purposes;
(2) legitimate teaching or training of law enforcement personnel;
(3) teaching or training of attorneys or other individuals with a professional need to use or understand forensic science or public health;
(4) conferring with medical or scientific experts in the field of forensic science or public health; or
(5) publication in a scientific or medical or legal journal or textbook.

C) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than five housand dollars nor more than fifty thousand dollars. Each violation under this section must be considered a separate ffense.

Rae H. Wooten, Coroner

Chief Deputy Coroner
Judy Koelpin

Deputy Coroner
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NORTH CHARLESTON, SC 29405

PHONE: (843) 746-4030
FAX: (843) 746-4033

April 30, 2008

To: Photograph recipients
From: Charleston County Coroner's Office
Re: Autopsy photograph, S.C. Code § 17-5-535

The Coroner's Office conducts independent investigations of deaths in Charleston County, serving as a representative of the decedents and survivors. The Coroner is respectful of the privacy of all parties involved and very concerned with dissemination of information.

Due to the extremely sensitive nature of photographs that may be contained within a coroner's file, the Coroner's Office desires to remind all persons authorized to view photographs or videos of autopsies of their responsibilities under South Carolina law. S.C. Code § 17-5-535, clearly outlines who is authorized to view autopsy photographs and videos and provides that anyone who violates the statute must be fined not less than five thousand dollars nor more than fifty thousand dollars for each violation.

Because of the special nature of OSHA, the Coroner is allowing autopsy photograph to be issued in a medium that can be easily and quickly disseminated via electronic means. As such, it is the policy of the Coroner's Office to require acknowledgement of the responsibilities of those who are authorized to view autopsy photographs and videos by signature.

I, Seth Stone, acknowledge that I have read and understand and will comply with S.C. Code § 17-5-535.

Signature:

Date:

RE: John W. Fortney
Accident #24
4/23/08

.C. Code § 17-5-535. Persons authorized to view photographs or videos of autopsy; training use xception; penalty.

A) Photographs, videos, or other visual images and audio recordings of or related to the performance of an autopsy shall nly be viewed by or disseminated to:

(1) the coroner or the medical examiner, or both, and their staff;
(2) members of law enforcement agencies, for official use only;
(3) parents of the deceased, surviving spouse, children, guardian, personal representative next of kin, and any other person given permission or authorization to view or possess the visual images by the personal representative of the deceased's estate;
(4) those involved in a judicial or administrative proceeding related to the death of the subject of the photograph, video, other visual image or audio recordings including, but not limited to:
(a) parties to a civil suit arising from, related to, or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings, and the attorneys for the parties and the staff of the attorneys;
(b) a person charged with a crime arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings, and the person's attorney and the staff of the attorney;
(c) staff of the prosecutor's office considering or prosecuting criminal charges arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings;
(d) lay and expert witnesses conferred with, consulted or retained by a party or an attorney considering or involved in a legal or administrative proceeding arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings;
(e) judges and administrative hearing officers, as well as their staff, involved in a judicial or administrative proceeding arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings; and
(f) members of any jury, including grand juries, petit juries and coroner's juries, empanelled to hear or decide any issue arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings;
(5) physicians and other persons consulted by or supervising the physicians or persons who were involved in the performance of the autopsy of the subject of the photograph, video, other visual images, or audio recordings; and
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teaching or training of attorneys or other individuals with a professional need to use or understand forensic ence or public health;
(4) conferring with medical or scientific experts in the field of forensic science or public health; or
(5) publication in a scientific or medical or legal journal or textbook.

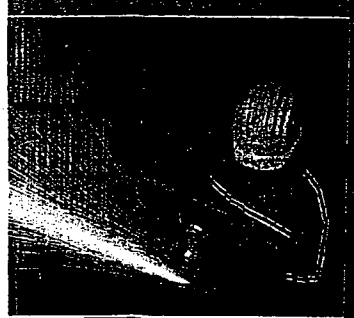
A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than five isand dollars nor more than fifty thousand dollars. Each violation under this section must be considered a separate

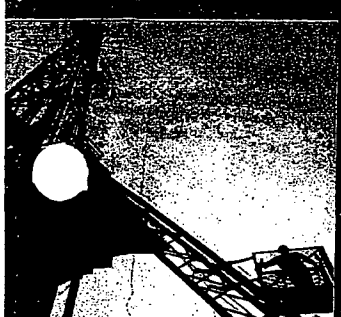
CCH®
OSHA STANDARDS FOR GENERAL INDUSTRY

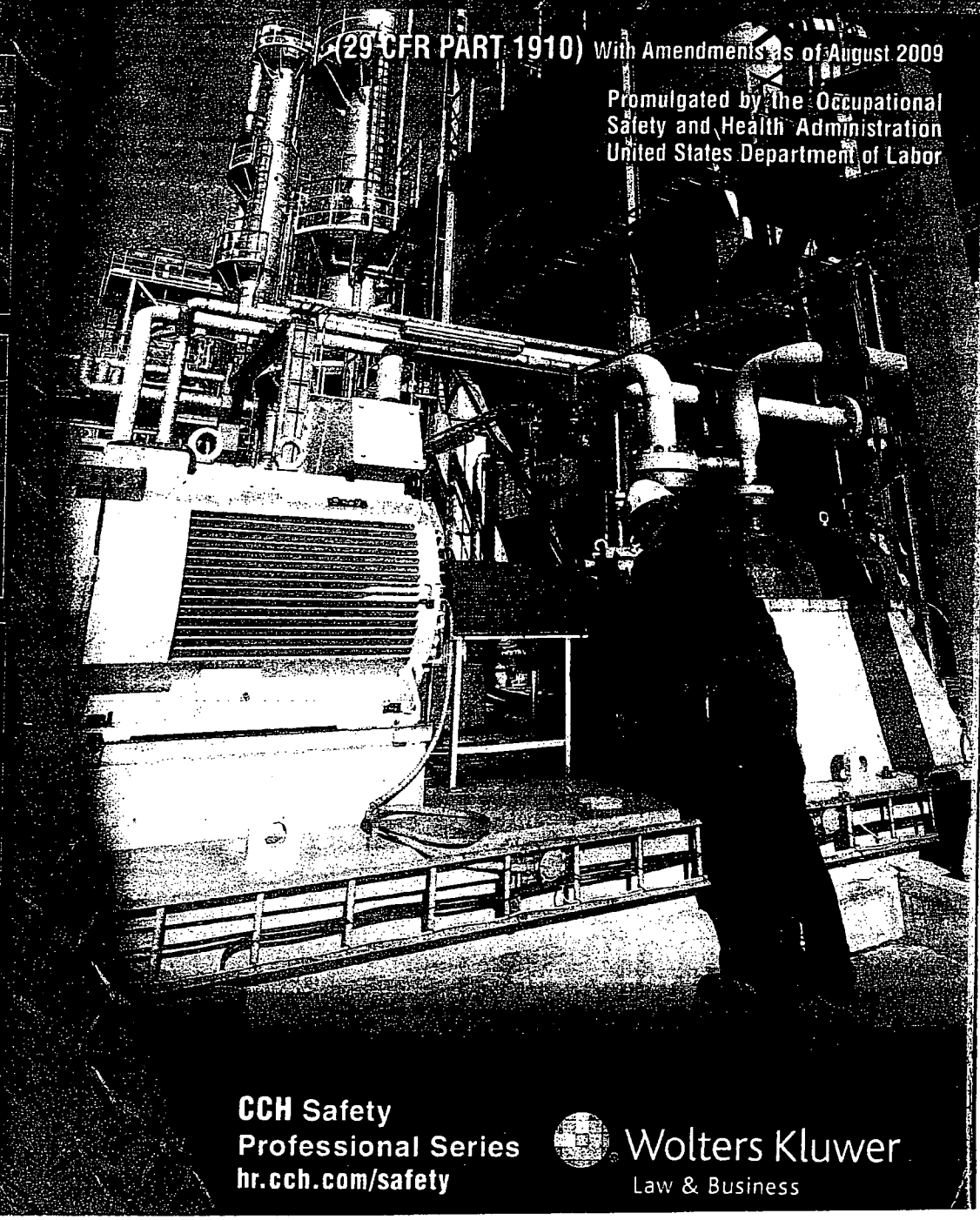
DEFENDANT'S EXHIBIT
2A. Wilks
BSO 7/16/12

(29 CFR PART 1910) With Amendments as of August 2009

Promulgated by the Occupational Safety and Health Administration United States Department of Labor







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1910.269(j)(4)(ii) A hydraulic or pneumatic tool used where it may contact exposed live parts shall be designed and maintained for such use.

1910.269(j)(4)(iii) The hydraulic system supplying a hydraulic tool used where it may contact exposed live parts shall provide protection against loss of insulating value for the voltage involved due to the formation of a partial vacuum in the hydraulic line.

NOTE: Hydraulic lines without check valves having a separation of more than 35 feet (10.7 m) between the oil reservoir and the upper end of the hydraulic system promote the formation of a partial vacuum.

1910.269(j)(4)(iv) A pneumatic tool used on energized electric lines or equipment or used where it may contact exposed live parts shall provide protection against the accumulation of moisture in the air supply.

1910.269(j)(4)(v) Pressure shall be released before connections are broken, unless quick acting, self-closing connectors are used. Hoses may not be kinked.

1910.269(j)(4)(vi) Employees may not use any part of their bodies to locate or attempt to stop a hydraulic leak.

1910.269(j) ***Live-line tools***—(1) *Design of tools.* Live-line tool rods, tubes, and poles shall be designed and constructed to withstand the following minimum tests:

1910.269(j)(1)(i) 100,000 volts per foot (3281 volts per centimeter) of length for 5 minutes if the tool is made of fiberglass-reinforced plastic (FRP), or

1910.269(j)(1)(ii) 75,000 volts per foot (2461 volts per centimeter) of length for 3 minutes if the tool is made of wood, or

1910.269(j)(1)(iii) Other tests that the employer can demonstrate are equivalent.

NOTE: Live-line tools using rod and tube that meet ASTM F711-89, Standard Specification for Fiberglass-Reinforced Plastic (FRP) Rod and Tube Used in Live-Line Tools, conform to paragraph (j)(1)(i) of this section.

1910.269(j)(2) *Condition of tools.* (i) Each live-line tool shall be wiped clean and visually inspected for defects before use each day.

1910.269(j)(2)(ii) If any defect or contamination that could adversely affect the insulating qualities or mechanical integrity of the live-line tool is present after wiping, the tool shall be removed from service and examined and tested according to paragraph (j)(2)(iii) of this section before being returned to service.

1910.269(j)(2)(iii) Live-line tools used for primary employee protection shall be removed from service every 2 years and whenever required under paragraph (j)(2)(ii) of this section for examination, cleaning, repair, and testing as follows:

1910.269(j)(2)(iii)(A) Each tool shall be thoroughly examined for defects.

1910.269(j)(2)(iii)(B) If a defect or contamination that could adversely affect the insulating qualities or mechanical integrity of the live-line tool is found, the tool shall be repaired and refinished or shall be permanently removed from service. If no such defect or contamination is found, the tool shall be cleaned and waxed.

1910.269(j)(2)(iii)(C) The tool shall be tested in accordance with paragraphs (j)(2)(iii)(D) and (j)(2)(iii)(E) of this section under the following conditions:

1910.269(j)(2)(iii)(C)(*1*) After the tool has been repaired or refinished; and

1910.269(j)(2)(iii)(C)(*2*) After the examination if repair or refinishing is not performed, unless the tool is made of FRP rod or foam-filled FRP tube and the employer can demonstrate that the tool has no defects that could cause it to fail in use.

1910.269(j)(2)(iii)(D) The test method used shall be designed to verify the tool's integrity along its entire working length and, if the tool is made of fiberglass-reinforced plastic, its integrity under wet conditions.

1910.269(j)(2)(iii)(E) The voltage applied during the tests shall be as follows:

1910.269(j)(2)(iii)(E)(*1*) 75,000 volts per foot (2461 volts per centimeter) of length for 1 minute if the tool is made of fiberglass, or

1910.269(j)(2)(iii)(E)(*2*) 50,000 volts per foot (1640 volts per centimeter) of length for 1 minute if the tool is made of wood, or

1910.269(j)(2)(iii)(E)(*3*) Other tests that the employer can demonstrate are equivalent.

NOTE: Guidelines for the examination, cleaning, repairing, and in-service testing of live-line tools are contained in the Institute of Electrical and Electronics Engineers Guide for In-Service Maintenance and Electrical Testing of Live-Line Tools, IEEE Std. 978-1984.

1910.269(k) ***Materials handling and storage***—(1) *General.* Material handling and storage shall conform to the requirements of subpart N of this part.

1910.269(k)(2) *Materials storage near energized lines or equipment.* (i) In areas not restricted to qualified persons only, materials or equipment may not be stored closer to energized lines or exposed energized parts of equipment than the following distances plus an amount providing for the maximum sag and side swing of all conductors and providing for the height and movement of material handling equipment:

1910.269(k)(2)(i)(A) For lines and equipment energized at 50 kV or less, the distance is 10 feet (305 cm).

1910.269(k)(2)(i)(B) For lines and equipment energized at more than 50 kV, the distance is 10 feet (305 cm) plus 4 inches (10 cm) for every 10 kV over 50 kV.

1910.269(k)(2)(ii) In areas restricted to qualified employees, material may not be stored within the working space about energized lines or equipment.

NOTE: Requirements for the size of the working space are contained in paragraphs (u)(1) and (v)(3) of this section.

1910.269(l) ***Working on or near exposed energized parts.*** This paragraph applies to work on exposed live parts, or near enough to them, to expose the employee to any hazard they present.

1910.269(l)(1) *General.* Only qualified employees may work on or with exposed energized lines or parts of equipment. Only qualified employees may work in areas containing unguarded, uninsulated energized lines or parts of equipment operating at 50 volts or more. Electric lines and equipment shall be considered and treated as energized unless the provisions of paragraph (d) or paragraph (m) of this section have been followed.

1910.269(l)(1)(i) Except as provided in paragraph (l)(1)(ii) of this section, at least two employees shall be present while the following types of work are being performed:

1910.269(l)(1)(i)(A) Installation, removal, or repair of lines that are energized at more than 600 volts,

1910.269(l)(1)(i)(B) Installation, removal, or repair of deenergized lines if an employee is exposed to contact with other parts energized at more than 600 volts,

1910.269(l)(1)(i)(C) Installation, removal, or repair of equipment, such as transformers, capacitors, and regulators, if an employee is exposed to contact with parts energized at more than 600 volts,

1910.269(l)(1)(i)(D) Work involving the use of mechanical equipment, other than insulated aerial lifts, near parts energized at more than 600 volts, and

1910.269(l)(1)(i)(E) Other work that exposes an employee to electrical hazards greater than or equal to those posed by operations that are specifically listed in paragraphs (l)(1)(i)(A) through (l)(1)(i)(D) of this section.

1910.269(l)(1)(ii) Paragraph (l)(1)(i) of this section does not apply to the following operations:

1910.269(l)(1)(ii)(A) Routine switching of circuits, if the employer can demonstrate that conditions at the site allow this work to be performed safely,

1910.269(l)(1)(ii)(B) Work performed with live-line tools if the employee is positioned so that he or she is neither within reach of nor otherwise exposed to contact with energized parts, and

1910.269(l)(1)(ii)(C) Emergency repairs to the extent necessary to safeguard the general public.

1910.269(l)(2) *Minimum approach distances.* The employer shall ensure that no employee approaches or takes any conductive object closer to exposed energized parts than set forth in Table R-6 through Table R-10, unless:

1910.269(l)(2)(i) The employee is insulated from the energized part (insulating gloves or insulating gloves and sleeves worn in accordance with paragraph (l)(3) of this section are considered insulation of the employee only with regard to the energized part upon which work is being performed), or

1910.269(l)(2)(ii) The energized part is insulated from the employee and from any other conductive object at a different potential, or

1910.269(l)(2)(iii) The employee is insulated from any other exposed conductive object, as during live-line bare-hand work.

NOTE: Paragraphs (u)(5)(i) and (v)(5)(i) of this section contain requirements for the guarding and isolation of live parts. Parts of electric circuits that meet these two provisions are not considered as "exposed" unless a guard is rer or an employee enters the space intended to provide isolation from e parts.

1910.269(l)(3) *Type of insulation.* If the employee is to be insulated from energized parts by the use of insulating gloves (under paragraph (l)(2)(i) of this section), insulating sleeves shall also be used. However, insulating sleeves need not be used under the following conditions:

1910.269(l)(3)(i) If exposed energized parts on which work is not being performed are insulated from the employee and

1910.269(l)(3)(ii) If such insulation is placed from a position not exposing the employee's upper arm to contact with other energized parts.

1910.269(l)(4) *Working position.* The employer shall ensure that each employee, to the extent that other safety-related conditions at the worksite permit, works in a position from which a slip or shock will not bring the employee's body into contact with exposed, uninsulated parts energized at a potential different from the employee.

1910.269(l)(5) *Making connections.* The employer shall ensure that connections are made as follows:

1910.269(l)(5)(i) In connecting deenergized equipment or lines to an energized circuit by means of a conducting wire or device, an employee shall first attach the wire to the deenergized part;

1910.269(l)(5)(ii) When disconnecting equipment or lines from an energized circuit by means of a conducting wire or device, an employee shall remove the source end first; and

1910.269(l)(5)(iii) When lines or equipment are connected to or disconnected from energized circuits, loose conductors shall be kept away from exposed energized parts.

1910.269(l)(6) *Apparel.* (i) When work is performed within reaching distance of exposed energized parts of equipment, the employer shall ensure that ea nployee removes or renders nonconductive all exposed conductive les, such as key or watch chains, rings, or wrist watches or bands, unless such articles do not increase the hazards associated with contact with the energized parts.

1910.269(l)(6)(ii) The employer shall train each employee who is exposed to the hazards of flames or electric arcs in the hazards involved.

1910.269(l)(6)(iii) The employer shall ensure that each employee who is exposed to the hazards of flames or electric arcs does not wear clothing that, when exposed to flames or electric arcs, could increase the extent of injury that would be sustained by the employee.

NOTE: Clothing made from the following types of fabrics, either alone or in blends, is prohibited by this paragraph, unless the employer can demonstrate that the fabric has been treated to withstand the conditions that may be encountered or that the clothing is worn in such a manner as to eliminate the hazard involved: acetate, nylon, polyester, rayon.

1910.269(l)(7) *Fuse handling.* When fuses must be installed or removed with one or both terminals energized at more than 300 volts or with exposed parts energized at more than 50 volts, the employer shall ensure that tools or gloves rated for the voltage are used. When expulsion-type fuses are installed with one or both terminals energized at more than 300 volts, the employer shall ensure that each employee wears eye protection meeting the requirements of subpart I of this part, uses a tool rated for the voltage, and is clear of the exhaust path of the fuse barrel.

1910.269(l)(8) *Covered (noninsulated) conductors.* The requirements of this section which pertain to the hazards of exposed live parts also apply when work is performed in the proximity of covered (noninsulated) wires.

1910.269(l)(9) *Noncurrent-carrying metal parts.* Noncurrent-carrying metal parts of equipment or devices, such as transformer cases and circuit breaker housings, shall be treated as energized at the highest voltage to which they are exposed, unless the employer inspects the installation and determines that these parts are grounded before work is performed.

1910.269(l)(10) *Opening circuits under load.* Devices used to open circuits under load conditions shall be designed to interrupt the current involved.

TABLE R-6—AC LIVE-LINE WORK MINIMUM APPROACH DISTANCE

Nominal voltage in kilovolts phase to phase	Distance: Phase to ground exposure (ft-in)	(m)	Phase to phase exposure (ft-in)	(m)
0.05 to 1.0	(4)	(4)	(4)	(4)
1.1 to 15.0	2-1	0.64	2-2	0.66
15.1 to 36.0	2-4	0.72	2-7	0.77
36.1 to 46.0	2-7	0.77	2-10	0.85
46.1 to 72.5	3-0	0.90	3-6	1.05
72.6 to 121	3-2	0.95	4-3	1.29
138 to 145	3-7	1.09	4-11	1.50
161 to 169	4-0	1.22	5-8	1.71
230 to 242	5-3	1.59	7-6	2.27
345 to 362	8-6	2.59	12-6	3.80
500 to 550	11-3	3.42	18-1	5.50
765 to 800	14-11	4.53	26-0	7.91

NOTE 1: These distances take into consideration the highest switching surge an employee will be exposed to on any system with air as the insulating medium and the maximum voltages shown.

NOTE 2: The clear live-line tool distance shall equal or exceed the values for the indicated voltage ranges.

NOTE 3: See appendix B to this section for information on how the minimum approach distances listed in the tables were derived.

4 Avoid contact.

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF BERKELEY) C/A #: 09-CP-09-2147
09-CP-09-2149

Estate of Dexter Keyes, deceased by his duly appointed Personal Representative, Devante Alston,

Plaintiff,

v.

Berkeley Electric Cooperative,

Defendants.

COPY

DEPOSITION OF

ALEXANDER JAMES CLAYSON

****

Friday, August 26, 2011
9:02 a.m. - 11:16 a.m.

The deposition of ALEXANDER JAMES CLAYSON was taken on behalf of the Defendant at the law offices of William & Haulst, L.L.P., 209 East Main Street, Moncks Corner, South Carolina, on the 26th day of August, 2011 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

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STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby not waived. Signature sheet attached at page 112.

ALEXANDER JAMES CLAYSON, having been duly sworn, deposes and testifies as follows:

MR. CLAYSON - EXAMINATION BY MR. JOHNSON:

Q: Would you state your full name for the record, please?

A: Alexander James Clayson.

Q: Mr. Clayson, we met before. My name's Pope Johnson and I, along with Jack Williams, an attorney here in Moncks Corner, represent Berkeley Electric in the series of suits that have been brought and we're here today in the Keyes case to take your deposition. I'm sure your lawyers have explained the process to you, but if I ask you a question that you don't understand, you should ask me for help in clarifying it rather than turn to your lawyers and communicate with them.

A: (Nods head affirmatively.)

Q: You understand that?

A: I do.

Q: If we take a break, which if we need a break, we can take one, if you talk to them over the break, I'd be entitled to ask you about it. Do you understand that?

A: I do.

Q: And you should answer all the questions verbally with words rather than nod your head and you should only not answer if they object and instruct you not to answer. Okay?
A: Okay.
Q: Good. Tell me your age.
A: I am 37.
Q: Do you have a Social Security number?
A: I do.
Q: Can you tell me what that is?
A: 654-12-3134.
Q: Where were you born and raised?
A: I was born in England and I was raised in Southern Africa.
Q: And when did you come to America?
A: I came to America 2001.
Q: And what brought you here?
A: My wife-to-be.
Q: Okay. You were going to marry a girl that was an American citizen?
A: Correct.
Q: And did you?
A: I did.
Q: And what's her name?
A: Her name is Holly Elizabeth Faulkner, is her

premarital name.
Q: And where do you and she live?
A: We live in Charleston.
Q: And how long have you lived in Charleston?
A: Since 2001.
Q: Okay. Do you have any family by blood or marriage that live in Berkeley County?
A: No, I don't.
Q: Do you have any family, you or she, by blood or marriage who live in Charleston County?
A: We don't.
Q: What does she do for a living?
A: She has a marketing and P.R. company.
Q: What's the name of that?
A: Flair P.R. and Marketing.
Q: And does she have employees?
A: She doesn't; she has a business partner.
Q: And who is that?
A: Susan O'Sullivan.
Q: All right. And do y'all have children?
A: We do.
Q: What are their names and ages?
A: His name is Noah and he's 17 months old.
Q: Could you tell me your educational background?
A: I have a Master's degree in public

administration and finance for the European Public Administration.

Q: Tell me where you went to school.

A: I went to the university in Liverpool to the University of Liverpool and studied history for four years.

Q: You went to high school where?

A: I went to high school in York.

Q: York, England?

A: England.

Q: And then you went to college?

A: I went to college in Liverpool, University of Liverpool and I stayed --

Q: And you got a degree in what?

A: History.

Q: And then went and got a Master's degree?

A: Then I got a Master's degree in public administration.

Q: All right. And when did you get that?

A: Graduated '98.

Q: All right. Can you tell me -- and did you go directly from high school to college to the Master's program?

A: I went from high school, I took a year off and taught English in Brazil. I went to college.

I went on to Institute of Public Administration after college to do my postgrad and then from -- my postgraduate degree was -- my thesis was based on education and that led me to Japan where I studied some educational systems in Japan and that is where I met my wife-to-be.

Q: All right. Tell me your work history since leaving -- since finishing your studies and your Master's program. And tell me what you did, for how long and what your duties and responsibilities were.

A: My work history essentially began in Japan where I began teaching Business English to a high school; from there, I came to the States.

Q: How long did you do that?

A: About 18 months.

Q: All right.

A: From there, I came to the States and started working in the financial services industry.

Q: All right. For whom and in what position?

A: For the South Carolina Brown Group.

Q: Where are they located and what do they --

A: They're now located in Mount Pleasant. They were located downtown. They were the broker for New England Financial out of Boston and

then they changed to the Principal Financial Group out of Des Moines, Ohio, I believe.

Q: And what did you do for them?

A: I was a 401(k) rep.

Q: Which means what?

A: I would sell and manage client accounts in the qualified retirement plan arena.

Q: And how long did you do that?

A: 2002? Gosh, 2002 until 2007.

Q: All right. When you say you managed the account, you made investment decisions regarding accounts?

A: I made investment decisions regarding the accounts.

Q: And what sort of investment tools were used? I mean, you're talking about stock market? You're talking about bonds? You're talking about mutual funds or what?

A: It was mutual funds.

Q: And what size accounts were you managing?

A: That's my phone, excuse me. I need to switch that off. When you talk about the size of the accounts, what do you mean?

Q: Well, I mean --

A: In terms of participation or in terms of asset

size?
Q: Asset size.
A: (No response.)
Q: I'm sure there's a range, but what was generally the --
A: Under five million.
Q: Okay. And what training did you have for that work to manage accounts five million and under?
A: You have to qualify for licenses, you have to study for your licenses and you have to have continuing education.
Q: And you did all that?
A: I had to do all that, yeah.
Q: What licenses did you obtain?
A: They are NASD licenses.
Q: Right. But what licenses specifically did you obtain?
A: It's Series Six and a 63.
Q: Series Six?
A: And a Series 63.
Q: Issued by whom?
A: The NASD.
Q: Okay. Any other licenses?
A: There was a state license for insurance products.

Q: Did you sell and market insurance products?
A: Initially I did, yes.
Q: Any other licenses?
A: (Shakes head negatively.) Not that I can recall.
Q: All right. And who was your boss?
A: Mace Brown.
Q: Is Mace Brown, as far as you know, still with them?
A: Yes.
Q: Okay. And you did this from 2002 to 2007?
A: Uh-huh (affirmatively responds), yes.
Q: During that period of time, did you have any other employment?
A: I managed the farmers market, Charleston Farmers Market downtown.
Q: And what was your position and responsibility for that?
A: I would organize the vendors, place the vendors, collect payments.
Q: Was that a paid job?
A: It was.
Q: When did you do that -- well, were you full time at your brokerage firm?
A: Yes.

Q: So when did you do your farmers market?
A: It was a Saturday on-site position and then several hours during the week.
Q: Okay. All right. And then why did you leave your brokerage company or financial management company in 2007?
A: To pursue other opportunities.
Q: And did you leave voluntarily?
A: I did.
Q: Did you give up your job at the farmers market at the same time or did you continue that?
A: I think I gave that up prior.
Q: And what other opportunities did you pursue in 2007?
A: I worked with a benefit shop, an employee benefit organization.
Q: Who?
A: Horne Guest.
Q: Where are they located?
A: In Mount Pleasant.
Q: Corn?
A: Horne.
Q: Horne?
A: H-O-R-N-E, Horne Guest.
Q: G-U-E-S-T?

A: G-U-E-S-T, yes.
Q: And what did Horne Guest do?
A: They are an employee benefit.
Q: Which means what?
A: So they provide group health insurance, group benefit plans, group benefits for small to medium to large size employers and ...
Q: What did you do for them?
A: I helped them establish a retirement plan platform.
Q: And how long did you work for Horne Guest?
A: Eighteen months.
Q: So that would put you into 2008?
A: I think we got to back up a year. I think it put me into 2007.

(Mr. Williams enters at 9:12 a.m.)

Q: 2007, okay. And did you work anywhere for anyone else when you were working for Horne Guest?
A: No.
Q: And why did you leave Horne Guest in 2008?
A: To work with Stage Presence.
Q: And why did you decide to go work with Stage Presence?
A: They made me an offer.

Q: And what was the offer?
A: To be their operations and logistics manager.
Q: All right. Did you get any special training at Horne Guest?
A: No.
Q: Did you apply for or obtain any new licenses?
A: No.
Q: Did you have to take any courses or CLE or anything of that nature?
A: No.
Q: All right. Now, Stage Presence, how long did you work for Stage Presence?
A: I'm still working for Stage Presence.
Q: Have you had any employment other than Stage Presence since you went to work with them?
A: No.
Q: So you're full time employed with Stage Presence?
A: I am.
Q: And what's your position?
A: I'm a sales manager.
Q: And you're no longer an operations manager?
A: Well, it's a small company. The parental issue with a small company is that we wear many hats. We take on multiple responsibilities depending

on the season.
Q: Are you still the operations manager?
A: Partly.
Q: Okay. All right. So let's talk about Stage Presence. You started when?
A: I recall around September/October of 2007.
Q: All right. And who hired you?
A: Bryan Mahanes.
Q: And who is Bryan Mahanes?
A: He's one of the owners.
Q: And who are the owners?
A: Bryan Mahanes and Greg Walker.
Q: All right. And what did Stage Presence do when you went to work for them?
A: They were a party rental, event rental company.
Q: Is that what they do currently?
A: Yes.
Q: And how did you come to have contact with these two men such that you would have got an offer to be their operations manager?
A: Bryan Mahanes was a client of mine in my former life with the South Carolina Brown Group.
Q: Okay. And so you knew him?
A: (Nods head affirmatively.)
Q: Did you know the other guy?

A: I didn't.
Q: And when you communicated with him about making you an offer, what did the offer consist of? What he was asking you to do? What was he going to pay you? How was he going to pay you?
A: Bryan asked me to help him as the season -- the busy season was approaching to manage the rentals and the logistics of putting those rentals into events and executing that with success.
Q: Managing the rentals?
A: (Nods head affirmatively.)
Q: Putting what into place?
A: Making sure that, you know, the guys were on time and that the quality of our rental product was really good and that our clients were really happy.
Q: What was the rental product?
A: It could range from just tables and chairs to dance floors to staging to tenting to all of that on a large scale.
Q: Had you ever done this kind of work before?
A: I had worked in events before, yes.
Q: When had you worked in events?
A: During college, summer vacation jobs.

Q: What experience did you have?
A: Wimbledon tennis championships, Cartier polo matches, Paris Air Show.
Q: Okay. Who did you work for in events before you came to America?
A: Town & Country Events.
Q: And who --
A: They're an event management company in England.
Q: You were employed by Town & Country?
A: Yes.
Q: And what was your position? Well, let me ask this. Was all of your event work in England for Town & Country?
A: They changed names. They changed ownership multiple times. So Town & Country to Sodexo to -- I can't remember who else they changed to.
Q: Okay. And what age were you when you were doing this work in England?
A: Nineteen. It began at 19.
Q: And how old were you when that type work stopped?
A: Twenty-four.
Q: And what were your responsibilities with those companies that you worked for from 19 to 24?

A: Security, dishwasher, logistics squad, installation, breakdown crew, corporate hospitality management.

THE WITNESS: I'm going to switch this phone off, excuse me.

Q: All right. Anything else?

A: No.

Q: Were these full-time jobs or part-time summer jobs?

A: Part-time summer jobs.

Q: And which of the summers between 19 and 24 did you do that?

A: All of them.

Q: All of them? And how long would you work in the summer for this company?

A: Six to eight weeks.

Q: And were you an hourly employee?

A: (Nods head affirmatively.) Yes.

Q: Were you ever in a management position?

A: I was in a management position later on.

Q: All right. What was your management position title?

A: I was a suite manager, corporate hospitality suite manager.

Q: And what is a suite manager in --

A: Corporate hospitality suites had events -- would serve hospitality: food, drinks.
Q: Food, drinks. So you were the guy who organized and saw that people got their drinks, food and it was out and that sort of thing.
A: Yeah.
Q: Any other management position?
A: No.
Q: Now, you said you worked security. What was that?
A: That was the first job I had with this company. I was a night guard patrolling the grounds of Wimbledon.
Q: All right. And then you said you were a dishwasher and I gather that's washing dishes.
A: That's definitely washing dishes, lots them.
Q: And then you said you were in logistics. What were you doing with logistics?
A: There was a squad of guys called the "hit squad" and our job was to essentially arrive a couple of weeks before an event, load the event in, you know, bring in whatever was needed for the event, make sure that it was in, loaded in, and then we would -- during the event, we would be there on call at any point to fix anything

that would break or to bring in anything new that was needed. And then at the end of the event, we would load the event out.

Q: You said you also worked installing and breakdown.

A: That's --

Q: Part of the logistics? Part of being on this "hit team"?

A: Yes.

Q: And what was your job on the "hit team"?

A: Anything.

Q: Were you just a worker?

A: Yes.

Q: Whatever was needed.

A: (Nods head affirmatively.)

Q: And what sort of things did you install as a member of the "hit team"?

A: Tables, chairs, flipping spaces, unloading trucks, and taking that merchandise to various parts of the ground.

Q: Tents?

A: No tents.

Q: Did you have any experience with installation and erection of tents while you worked for this company and these companies in England?

A: I did not.
Q: All right. And did you have any experience in erection and installation of tents anywhere prior to going to work at Stage Presence?
A: Did not.
Q: Now, what was your compensation arrangement when you went to work at Stage Presence?
A: Initially, hourly and then it was salaried.
Q: And what was your hourly rate?
A: I think it was 15 dollars.
Q: And for how long were you being paid 15 dollars an hour?
A: Three or four months.
Q: And then when you went to a salary, what did your salary start out at?
A: $38,000 a year.
Q: Do you have any ownership interest in Stage Presence?
A: I don't.
Q: Now, let me ask you this. What training or instructions did you receive once you went to work for Stage Presence?
A: There was no -- there was no training in the sense that there was a class given to us. As the company grew in size, they -- they would

purchase large tents and that tent manufacturer sent one of their reps down to show us.

Q: Between September and October 2007 and the accident in this case that you were in that you know we're here about --

A: (Nods head affirmatively.)

Q: -- what training or instructions, formal training or instructions did you receive as an -- to perform your job as operations manager of Stage Presence?

A: We had a tent rep come down to Daniel Island to show us how to put up this tent.

Q: And who was the tent rep from?

A: His name is Walter Vaughn from TopTec Manufacturers.

Q: Walter?

A: Vaughn.

Q: Vaughn.

A: V-A-U-G-H-N.

Q: And when did -- do you recall approximately when he came down?

A: I don't recall the date, but I know that he came down and he came to an event site and he trained us on how to put this large tent up.

Q: Who all participated in the training?

A: Do you need names?
Q: Yeah.
A: A.J. Musolino, Kyle Johnson, David Ross; that's all I remember.
Q: Were any of the people who were working on the crew that was injured present for this training besides you?
A: No.
Q: And how long did the training last?
A: All day.
Q: And did you learn some things?
A: Absolutely.
Q: Good. And what type tent were you being instructed on, were you working with that day?
A: It was a 40 by 100 Future Trac; it's a TopTec product.
Q: All right. And what type tent was involved in the accident here?
A: It was a different tent. It was a 20 by 20 High Peak Sierra.
Q: And did it come from TopTec?
A: Yes, it did.
Q: Did the instruction that Mr. Vaughn gave, did he tell you that -- what did he tell you about? Was it specific to the tent he was dealing with

or did he teach you about things generally about safety and proper ways to erect tents?

A: Specifically the 40 by 100.

Q: Nothing else?

A: I think -- I think -- I mean, the staking method for a 40 by 100 is the same staking method that can be applied to a 20 by 20 high peak or any tent, for that matter.

Q: All right. And tell me, did he give you any handouts or materials?

A: I can't remember.

Q: Tell me what you remember about the training he gave you and in as much detail as you can.

A: I remember it being all day. I remember it involving the gentleman that I mentioned. He was there all day showing us how to put that large tent up.

Q: Well, you said you learned some things. What did you learn?

A: Familiarity with the hardware, methods to put the skins on the roof of the tent, distinguishing between certain cables ...

Q: Did any of the training include instruction on safety issues?

A: Well, I mean, Walter talked about the necessity

for the cables, for example, on a structure that big was a safety precaution.

Q: Anything else?

A: (Shakes head negatively.)

Q: Did the instruction include instruction that when you go out you're going to erect a tent somewhere that you need to survey where the tent is going to go to ensure that you're not putting it in a place that exposes the crew or the people who are installing it to any hazards or risk of injury?

A: Could you say that again, please?

Q: Did the instruction include instruction that when you go out to put up a tent that the first thing you do is survey the area to look for potential hazards?

A: I don't remember him talking about that.

Q: Had anybody talked to you about that before the accident in this case?

A: I mean, I think it was a common sense -- a common sense behavior. It was a -- I think, you know, when I mean "common sense," if you put a 40 by 100 in a space that can only fit a 30 by 60, you don't need to be told by someone that it's not going to fit. You know that it's

not going to fit in that space. So in that sense you're looking at, is there a enough space to fit this tent. So the day that we were training it was a big, wide open field.

Q: Well, let me ask you about common sense. Is it common sense that before you erect a tent you look around to see that you got room to erect it?

A: (No response.)

Q: And you got adequate space?

A: Right.

Q: Is it common sense that if there are too many trees nearby and you don't have space you shouldn't put it there?

A: Say that again? Is it common sense if ...

Q: There's just trees nearby and you don't have adequate space to erect it safely within the area that you not erect it there.

A: That seems commonsensical to me.

Q: Is it common sense that if where you're erecting it is covered up with overhead electrical lines that you would not want to erect a tent in close proximity to those lines where you could contact them in the erection process?

A: Would make sense.
Q: Had anyone told you that or is that just something you knew by virtue of common sense?
A: Well, after the accident, we were told by OSHA that that's something that we should emphasize and look for.
Q: But before the accident, had anybody told you that or did you just know it by virtue of common sense?
A: I don't remember anyone else telling us that, no.
Q: Okay. So you knew it by virtue of common sense.
A: Right.
Q: I'm curious. Why did you make this career change for a 15-dollar-an-hour job? Was there something going on in your prior work that wasn't working out?
A: There was initially talk about buying in an equity share for this start-up company, Stage Presence. It seemed like a lucrative offer and I spent three or four months working for them to better understand the company and the industry to see if I wanted to take an ownership share. There was talk about

20 percent ownership.
Q: Was that before or after you went to work for them that you spent three or four months looking at the company?
A: It was a discussion that we made before and a discussion that we continued during.
Q: But you declined? Did they ever offer you 20 percent, actually offer to sell it to you?
A: It really wasn't a sale. It was more of an equity, a sweat equity ownership stake.
Q: Did they offer you ultimately that you could get 20 percent based on sweat equity?
A: It was offered.
Q: Did you decline it?
A: I did decline it.
Q: Now, do you recall anything else about the training that Walter Vaughn gave you have before the accident about tent erection?
A: No.
Q: Did you have any other training on the job about tent erection?
A: I mean, the best training is doing and we did a lot of tent erection.
Q: What size tents did y'all have?
A: We had 10 by 10's, 20 by 20's, we had 30-wide

tents and we had 40-wide tents.
Q: Am I correct that the accident in this case occurred on April 23rd, 2008?
A: I believe that's correct.
Q: And you went to work in September or October for this company?
A: Correct.
Q: You said it was the busy season; what did you mean by that?
A: Event rentals follow a cycle of two seasons.
Q: And what are the seasons, generally?
A: Essentially middle of March through middle of July.
Q: Okay.
A: Middle of September through the end of November.
Q: All right. Now, tell me this, between the accident -- your hire date and the accident, how many times had you been involved in the erection of tents?
A: I don't know.
Q: I mean, two to ten, ten to 30, 40, 50 times, more than a hundred?
A: Fifty times would be a good ...
Q: When you went out to the -- was it your

responsibility to take the crew out to the job site and get everything set up?

A: It was event specific.

Q: So some of them you had -- you did it and some of them you didn't.

A: (Nods head affirmatively.)

Q: Is that correct?

A: That's correct.

Q: On the ones that you weren't in charge of the setup, were you often a worker where someone else was in charge?

A: No.

Q: Okay. So the jobs you went to to set up, you were always the man on the scene in charge of the crew doing the work.

A: Not always me. There was David Ross. There was Greg Walker.

Q: But for the jobs you went to, were you the guy in charge?

A: Not always. There was David Ross and Greg Walker.

Q: Well, were you in charge of a number of setups?

A: "In charge" is a -- it means a lot of things to me. "In charge" is dealing with the client relationship; yes, I was in charge of that

frequently. "In charge" of erecting tents, I was in charge of that on occasion. "In charge" of making sure that the quality assurance issues were there, I was in charge of that frequently, yes.

Q: All right. Approximately how many times were you in charge of the actual setup? In other words, were you the guy on the scene, the crew took instructions from you, between when you went to work and when the accident occurred?

A: When Greg Walker or David Ross, I would be the guy to call the shots.

Q: Okay. Help me with an approximate number.

A: Oh. So you want to know how many times was I in charge.

Q: Prior to the accident.

A: Prior to the accident.

Q: Just an approximation.

A: I don't know. It would be very difficult for me to guess a number.

Q: More than ten?

A: More than ten.

Q: More than 20?

A: I don't know if it was more than 20 in terms of being in charge of putting up the tents.

Q: Were you the guy in charge on site the day of the accident?
A: I was for Stage Presence.
Q: All right. And so you had a crew that took instruction from you?
A: I was in charge of my guys.
Q: And who were your guys?
A: Kyle Johnson, A.J. Musolino, Jason, Dexter, and the two Johns.
Q: Had any anybody given you instructions about what you needed to have the crew do, anybody from Stage Presence before you went out there or while you were there?
A: Had anyone from Stage Presence given me direction?
Q: About what you were supposed to do when you got there.
A: (Shakes head negatively.)
Q: No?
A: No. That's a "no."
Q: I mean, she --
A: Absolutely, understand, yeah.
Q: All right. Now, let me ask you this. So there were some jobs during this period between employment and the accident that you were in

charge of the crew and there was some jobs where you worked with other employees who were in charge of the crew.

A: (Nods head affirmatively.)

Q: You mentioned two names.

A: Uh-huh (affirmatively responds).

Q: Is that correct?

A: That's correct.

Q: And on those jobs, some of them involved tent erection, et cetera.

A: Right.

Q: Now, who told you to do the work you did at this job? Who assigned you the responsibility for going out and doing the setup, taking the crew and doing the setup?

A: Well, this was a charity event organized by Memorable Meetings, David Richardson.

Q: Who in your company said, "I need you to go out tomorrow and set up this -- take the crew, take the stuff, take the tents, set it up, erect it, get it set up for the event"?

A: Greg Walker.

Q: And what did he tell you you needed to do?

A: It was a collaborative planning in terms of what Stage Presence is going to be involved in

and my job was to take the lead on that.
Q: All right. And did you talk with anyone at -- what was the company?
A: I think it was called Memorable Meetings.
Q: Memorable Meetings. Did you communicate with anyone from Memorable Meetings before you went out?
A: There was lots of communication with them before we went out. Do you mean like an hour before we left or a day before --
Q: At any time. Did you communicate with anyone at Memorable Meetings?
A: Yes.
Q: You personally?
A: Yes.
Q: Who did you communicate with?
A: David Richardson.
Q: All right. And tell me about your communications.
A: Well, David Richardson contacted us first and during that process of his event being planned out in his mind, with his team, he handed or he brought in -- I can't remember her name, but there is a -- there was an assistant of his or a manager of his that became more heavily

involved in the planning of this event on behalf of Memorable Meetings.

Q: And you dealt with her?

A: I dealt with both of them, yeah.

Q: Can you describe her? Age, sex -- well, you said it's a woman.

A: She was female. I would say mid 30's.

Q: Okay. And so what did the planning involve? Was it "We need this or that from Stage Presence"?

A: It was "We have this idea about this event."

Q: Uh-huh (affirmatively responds).

A: "We think they're going to be this many people." David Richardson was a very experienced event management person. He seemed to have a good idea of what he wanted in terms of the size of his tents and the number of tables and the number of chairs and the type of linens he wanted. He seemed to know exactly what he wanted. With these kind of events, since it was a first-year event his attendance numbers, he couldn't really forecast those, so there was some question about would there be 500, would there be 200, could there be 800 people.

Q: All right. Ultimately, did it result in an order being placed for Stage Presence to provide certain event items, like tents, tables, chairs, whatever?
A: Yes.
Q: And you were the person who at Stage Presence had the primary responsibility for dealing with him and her --
A: Yes.
Q: -- on what they needed and getting what they needed.
A: Yes.
Q: And then you were the primary person who was responsible for getting it there and taking the crew and getting it set up.
A: Yes.
Q: All right. Did you go out to the site before the day of the accident?
A: Yes.
Q: For what purpose?
A: David Richardson asked us to meet him out there to walk through the site.
Q: And did you do that?
A: We did.
Q: So you had an opportunity to see what was

there?
A: We did.
Q: And did you spend some time looking around at what was there and how you might set up?
A: We did.
Q: All right. And then was a formal purchase order submitted or a contract entered into between Stage Presence and somebody for what y'all were doing?
A: An estimate was created.
Q: All right. And was it signed or accepted in writing?
A: I can't remember if it was signed.
Q: All right. What was Stage Presence to provide?
A: Multiple tents, tables, chairs, staging, dance floor, audio and lighting.
Q: All right. How long were you there for that initial inspection or viewing of the site?
A: The initial meeting with David Richardson was on site and we were still in the process of trying to close the sale, so it was -- it was serving two purposes for us. It was, we want to meet this gentlemen, we want to see what he's doing for this event, we want to have a look at the event site, and we want to listen

to his ideas about this event; after which we generated an estimate based on his requests and that's how it went.

Q: How many times did you go to the site before the day of the accident?

A: Once.

Q: Okay. Back to my question. How long were you there when you were at the site?

A: An hour, an hour and 15 minutes.

Q: Did you walk down into the area where the tin building was, the tin shed where you were going to set up tents?

A: There was a lot of discussion about tent placement in that area.

Q: Did you walk down there or ride down there and look around?

A: Yes.

Q: Did you see -- what did you see in the area where the tin shed was?

A: (No response.)

Q: Did you see the shed?

A: We saw the shed.

Q: What else?

A: We saw a basketball court in the distance. We looked at the parking area, potential parking

area and the entrance area for his guests to arrive in. We saw some roads, fencing. We saw the overhead line.

Q: The overhead electrical lines?

A: We assumed it was an electrical line.

Q: Okay. And you saw those and you saw where they were located.

A: Right. We talked about that because David Richardson wanted to put a tent right underneath it.

Q: All right. And tell me about that conversation.

A: (No response.)

Q: Tell me what was said by him and you about the electrical lines and --

A: Well, it wasn't just me. It was David Richardson, Greg Walker, Alex Clayson and if my memory serves me correctly, I think Beth Donehue. Beth Donehue is the girl's name I was trying to recall earlier.

Q: Were y'all down there in the area looking at it when you were talking about it?

A: Yeah.

Q: Tell me what was said by anybody in that conversation.

A: I distinctly remember seeing the electrical line and David Richardson was out in the field and he was thinking about putting a tent in this general vicinity and that the line was directly above. We noticed that and so we made the comment that there was a line above, so we decided to shift that tent well out of the way. When I say "we" decided, it was all agreed upon that the tent couldn't go there; we were going to move it. And this is the largest tent -- if you've seen the pictures of that day, there was an enormous tent out there, big pole tent, 60 by 120 in dimension.

Q: So he wanted --

A: And that was the tent that David initially wanted to place underneath the line.

Q: And who was in the discussion from Stage Presence? You were present.

A: I was present and Greg Walker.

Q: And Greg Walker. And Greg is one of the owners.

A: He is.

Q: And why did y'all not want to put the tent in the area of the electrical lines?

A: Because it would be too close to the electrical

line or could potentially have touched the electrical line and created some problems.

Q: What problems were you worried about it creating if it touched?

A: Electrocution.

Q: And you understand that "electrocution" is death by contact with electricity?

A: I didn't realize that was the specific definition. So then in that case we were worried about being electrified.

Q: And injured by electricity.

A: Injured by electricity.

Q: So you and/or Greg said -- well, did you both say, "We don't need to put it under the electrical lines because we might contact them and have a problem," or words to that effect?

A: Yes.

Q: Now, what was his -- the event -- the Memorable Meetings man's position when you said, "I don't want to put" -- or you and Greg said, "We don't want to put the tent in close proximity to these electrical lines because somebody might get hurt"?

A: What was his reaction?

Q: Yeah.

A: He was in agreement.
Q: Okay. So everybody agreed we don't put a tent, this tent, where it's close enough to get in contact with an electrical line --
A: (Nods head affirmatively.)
Q: -- so we don't have an accident.
A: Right, because all the other tents that were going to be there were going to be positioned nowhere near the electrical line.
Q: Okay.
A: There was multiple tents out on that site and we were not going to place any of those tents, based on his discussion, anywhere near the electrical line. That large tent that we were initially going to be responsible for actually was not our responsibility for the event because we could not provide a big enough tent. So they went to another vendor to provide that specific tent.
Q: And did they put it near the electrical lines?
A: They put it as the pictures state. I mean --
Q: Well, did you consider that too close to the electrical lines?
A: I don't know. I didn't deal with that tent. That wasn't my tent. I was not responsible for

that tent. Another company was responsible for that tent.

Q: I understand that you weren't responsible for it, but did you, based on your experience and what had been said previously, think that it was placed too close to the electrical lines?

A: Well, the tent for the function for the event placed too close? I don't think so and no one else thought so because the event happened and the tent remained exactly where it was.

Q: Okay. All right. Do you recall any other discussion about the electrical lines when you were on site other than what you told me?

A: Yes.

Q: Do you recall anything else y'all did to survey the area to make sure you didn't have injuries and could do your job safely?

A: There was discussion about underground lines, water and electrical.

Q: All right. And what was the discussion?

A: The discussion, the reason that it was brought up was because when stakes -- we have 36-inch stakes, three-foot stakes, and most electrical lines are -- shouldn't be any higher than 18-inches, but our stakes can hit those lines,

so we were aware that there could be some underground penetration of electrical or water lines.

Q: And what did you learn?

A: I can't remember. There was -- I don't -- I don't think there was any electrical lines. I'm not sure if there were water lines.

Q: Let me ask you this. Is it standard practice, common sense, that if you're going to put up these tents that you've got to be concerned about proximity to overhead electrical lines and avoiding contact and you've got to be aware of and avoid contact with underground electrical lines and water lines or other utilities?

A: Since that training with OSHA it is now standard practice. I would distinguish between "common sense" and "standard practice" on those specific issues that you just brought up.

Q: Okay. Let's --

A: I don't think it's common sense for the general layperson to really understand that there's subterranean danger or overhead danger based on just common sense.

Q: I'm not talking --

A: I think in retrospect when you look at this picture and you look at this incident, common sense is an overriding feature of the way that you analyze the facts. But during that time, I think -- you know, after that accident, having the OSHA training, a lot of things seem commonsensical and a lot of things are also identically standard practice, but I think there's a difference between common sense and standard practice. I've got to make that distinction, because you seem to make it appear that "standard practice" and "common sense" are all of a sudden very similar, almost identical way of processing information.

Q: Well, let me ask you this. And we're not talking about the ordinary layman. We're talking about people who are in the business of renting and erecting tents on an ongoing, regular basis.

A: Right.

Q: Okay. And that's what you were doing and that's what your company was doing. Right?

A: Right.

Q: So you had experience and you've been to some training about the proper way to do this so

that nobody got hurt.

MR. CROSLAND: Object to the form.

Q: Correct?

A: Say that again, please.

Q: You had experience as to how to do this so that no one would get hurt.

A: We had experience on putting tents up, yes.

Q: Well, and the experience was how to do it in a way that people didn't get hurt, wasn't it?

A: Our experience of putting tents up, we didn't want -- we don't want people to get hurt.

Q: Okay. Now, let's talk about common sense before the accident occurred.

A: Okay.

Q: Okay. Common sense was, based on experience and training in tent erection was you didn't put -- erect a tent in an area where you would be in such close proximity to an electrical line that you were at risk of contacting it, correct?

A: Right.

Q: Common sense as a tent erector was that if you were going to drive stakes in the ground, you found out where the underground electrical and water lines were so you wouldn't hit them,

correct?

A: That was -- that was a training sensibility.

Q: Yeah.

A: Yeah.

Q: And once you know what you're doing in this line of work, common sense is you find out where those things are so you can avoid them, right?

A: I mean, we put those tents up according to our direction and they were safe.

Q: Common sense was that if you were going to drive stakes in the ground based on your experience and training in the tent erection business that you find out where the underground utilities were before you drove the stakes so you didn't contact any of them, correct?

A: Right.

Q: Now, I want you to walk me through -- well, let me ask you this. Have you told me everything you recall that went on at the site visit before the accident?

A: Yeah.

Q: All right. Now, let's go to -- is the next time you were on site the day the accident

occurred?
A: I believe so, yes.
Q: And what time did you get to the job that day?
A: Early. I want to say 8:30, 9:00 a.m.
Q: And what time was the accident?
A: The end of the day, four o'clock, 4:30.
Q: Okay. Can you kind of walk me through step by step what happened that day on site leading up to the accident in as much detail as you can recall?
A: We arrived on site, my crew, two trucks.
Q: And that's the men you told me previously.
A: Sorry?
Q: Those are the -- the crew consisted of the persons you told me previously.
A: Correct.
Q: You had three guys and yourself.
A: No, I had myself, plus the three guys: John, Dexter and John and Alex, A.J., Kyle and Jason. I had seven.
Q: You had seven.
A: (Nods head affirmatively.)
Q: All right. And then -- all right.
A: So we arrived Beth Donehue and David Richardson were on site already.

Q: Uh-huh (affirmatively responds).
A: We know instantly where the first tent's going to be going because that was a very specific tent, one that was going to become the extension for the barn. And David Richardson and myself and Beth talked about putting that up first and so we began putting that up first, offloading tables and chairs.
We were waiting for the largest tent to be built by the other company before we could place the tables and chairs. We built a stage and a dance floor underneath the barn extension tent, for lack of a better expression.
Q: Yeah.
A: And the Marquee tent, which is the long corridor tent that connects the barn to the largest tent, was one of the last things that was put up because we were still waiting on the other rental company to erect this really, really large tent.
Q: So how many tents did you put up?
A: Stage Presence put up three.
Q: All right. What sizes were they?
A: There was a 10 by 10, a 20 by 20 and a 40 by 35 or a 40 by 20; I can't remember.

Q: And that was to be a cover for a walkway --
A: Oh, no, there were four, excuse me. There was a Marquee. So there was a 9 by 50 Marquee, a 10 by 10, a 20 by 20, and a 40 by 20.
Q: All right. And were all of those put up prior to the accident?
A: All of those were put up in the places that we were told to put them up prior to the accident.
Q: And who told you where to put them?
A: Beth Donehue and David Richardson.
Q: And then had the large tent being -- who was putting up the large tent?
A: You're talking about the really big one out there?
Q: Uh-huh (affirmatively responds).
A: Another rental company.
Q: Do you know who they were?
A: Snyder Rentals.
Q: And were they on site when the accident happened?
A: Yes.
Q: Had they put up their tent when the accident happened?
A: Yeah, it was almost finished.
Q: All right. I want you to take this, if you

would, and sort of sketch out for me -- I guess first start with the shed and what I want to do is find out where everything was put first.

A: (Drawing.) So that's the shed (indicating).

Q: All right. Write "shed" there, if you would.

A: (Witness complies.)

Q: And where is the highway?

A: (Drawing.)

Q: Write "highway."

A: (Witness complies.) So that's the Marquee tent (indicating).

Q: And what's a Marquee tent?

A: It is a walkway tent.

Q: Okay.

A: It is nine-foot wide and ten-foot --

Q: Put "9 by 5."

A: (Witness complies.)

Q: All right. And then ...

A: And then this is the pole tent that another company put up, a 60 by 120. I have no idea of the dimensions.

Q: Is that the Snyder tent?

A: It is.

Q: Okay. So there was a covered walk from the shed to the large Snyder tent.

A: Yes.
Q: All right. And where were the other tents you put up?
A: This is the extension (indicating).
Q: Of the shed?
A: Of the shed.
Q: And that was what size?
A: A 40 by 20 or a 40 by 35; I can't remember.
Q: Okay. And then what else was put up, initially?
A: There was a 20 by 20 right here (indicating) and I want to say there was a -- there was a ditch right here (indicating).
Q: Write "ditch."
A: (Witness complies.) And I want to say there was a -- it was like a little earth bridge, let's say, for people to walk over.
Q: Okay.
A: I want to say there was either a 10 by 10 right here (indicating) or a 10 by 10 right here (indicating). I can't remember where it was.
Q: Write "10 by 10" by both of them and write the word "or" in between.
A: (Witness complies.)
Q: All right. And all of the tents that were put

up other than the large tent were put up by Stage Presence.

A: Yeah. We put up this one, this one, this one and one of these (indicating).

Q: So you put a 40 by 20, a --

A: Nine by --

Q: -- 9 by --

A: 50.

Q: -- 50 and a 10 by 10?

A: And a 20 by 20.

Q: And a 20 by 20. Okay. Where were the electrical lines that were contacted?

A: (Drawing.) Somewhere like that, maybe, yeah.

Q: So when the tents were initially installed or erected, none of them were in close proximity to the electrical lines.

A: Define "close proximity."

Q: Close enough where they could touch or contact.

A: They were not in close proximity.

Q: Within ten feet of any electrical line.

A: Initially, no.

Q: Okay. And by what time had --

MR. JOHNSON: Let's do this. Let's mark this as Exhibit One.

(Defendant's Exhibit Number One was marked for

identification purposes.)

Q: Looking at Exhibit One, by what time of day had this work been completed?

A: 3:30, 3:45.

Q: Okay. And the placement of the tents by you or where they were placed was based upon what?

A: The placement of the tents was based upon our clients, the person that hired us to erect them.

MR. JOHNSON: Jack, could we get a copy of this?

MR. WILLIAMS: We can.

MR. JOHNSON: Or maybe two, if you would.

(Off the Record)

(Defendant's Exhibit Number Two and Three were marked for identification purposes.)

Q: Would you take Exhibit One, the document -- your drawing that we've marked as Exhibit One and -- first of all, do you agree that this is not to scale?

A: Yes.

Q: Okay. Would you write "electrical lines" where you've drawn them in the sketch?

A: (Witness complies.)

Q: All right. I've taken Exhibit One and put another -- made a copy and put an Exhibit Two

sticker on it and the thing I need you to do first is write "electrical lines" on Exhibit Two.

A: (Witness complies.)

Q: Now, was a tent -- any of the tents that were Stage Presence's tents moved after they were erected as shown on Exhibit One and Two?

A: Yes.

Q: All right. Which tent was moved?

A: Two tents were moved.

Q: All right. Which tents?

A: The 10 by 10 --

Q: Yeah.

A: -- was moved and the 20 by 20 was moved.

Q: All right. Now, let's talk about the 20 by 20 and it being moved. What caused it to be moved?

A: The tent was moved because a change of decision was made by David Richardson.

Q: All right. And what change did Mr. Richardson make?

A: His design of -- his layout of the entire event. He was ...

Q: Tell me what Mr. Richardson said to you about moving the tent.

A: He really didn't say anything to me about moving the tent except, "Would you mind moving it?"
Q: Okay. So he asked you to move it.
A: Yep, he asked us to move it.
Q: And did he tell you where he wanted it moved to?
A: He did.
Q: Did he tell you why he wanted it moved?
A: I mean, he didn't say why. I mean, I could guess based on hearing his discussion with Beth Donehue.
Q: What did you hear of his discussion with Beth Donehue?
A: Like I said, he wasn't entirely happy with the initial layout of all of these tents.
Q: So he wasn't satisfied with the layout. And why did he want to move the 20 by 20 tent?
A: I don't know why he wanted it to be moved, but --
Q: You didn't hear in his discussion with Beth?
A: I think it was the layout. It was the layout.
Q: The layout. What was the 20 by 20 to be used for?
A: I don't know.

Q: Did you ever hear him say or anyone say?
A: I think its purpose here was a different purpose to when it was going to be put here (indicating).
Q: And what was the purpose when it was where it was initially?
A: I don't know.
Q: What was its purpose where it was to be moved?
A: A bar.
Q: A bar.
A: It was supposed to be a service bar.
Q: Service bar where people could get drinks.
A: People could get a drink.
Q: All right. Did he tell you where he wanted it moved to?
A: He and Beth did.
Q: All right. And where did he tell you he wanted it moved to?
A: He wanted it to be -- can I show you with a pen?
Q: Yeah.
A: He wanted it to be moved on the other side of the Marquee, to be placed somewhere in this area (indicating).
Q: All right. Draw it in there.

A: (Witness complies.)
Q: Put an "X" and "20 by 20" and let's put a "one" here where it was initially and a "two" where he wanted it moved to.
A: (Witness complies.)
Q: All right. So he asked you to move it to the position you've shown as "two."
A: Yes.
Q: Did you have any problem with that?
A: It is an approximation based on this drawing rather than exact location.
Q: Right. But did you have any problem with moving the tent to where he said he wanted it moved to?
A: Getting it there was -- you know, one of two ways could have been done.
Q: Okay. Other than how you got it there, did you have any trouble -- did you have any concern about where he wanted it placed?
A: I didn't see any concern.
Q: Did you express any concern to him?
A: I was standing here with the tent and looking over at this place where he wanted it to be moved to. I didn't see any concern. I didn't express any concern.

Q: So he asked you to move the tent from position one to position two. You looked and saw where he wanted it to be moved to and said, "Okay, we'll move it"?
A: Yes.
Q: Any more discussion than that about the movement of that tent?
A: Nope.
Q: Okay. And then what did you tell your crew to do?
A: I told, you know, the three guys that were closest to me at that point to undo the ratchet straps and "Let's move this tent."
Q: All right. And who were the three guys closest to you?
A: John Robinson, Dexter Keyes and John Fortney.
Q: Okay. And did they do that?
A: They did.
Q: And what were you telling them to untie?
A: The ratchet straps.
Q: And what are the "ratchet straps"?
A: They are connected to stakes in the ground to prevent the tent from blowing over.
Q: Okay. And describe how this tent is -- how many poles it has and how it's erected.

A: It is a High Peak Sierra tent. It's got four leg poles. It's got eight perimeter poles. It's got a couple of tension cables that crisscross and it's got a high peak pole that's --

Q: All right. And when you say "high peak pole," is that the pole in the middle of the tent that goes up above the --

A: It is.

Q: -- poles on the side?

A: It is.

Q: And walk me through the erection process to erect that tent.

A: You would build the perimeter, a big square, 20 by 20. You would attach the cross cables to the --

Q: When you say you build the perimeter, you mean you drive the stakes?

A: No. You take the perimeter poles --

Q: Okay.

A: -- and there are eight perimeter poles and you connect them. So two perimeter poles per side of the square.

Q: Okay.

A: And in the corner of that square, you have some

fastening holes that the tension cables will --
Q: When you say the perimeter poles, are those poles that go up and support the tent?
A: No, those are the poles that outline the dimensions of the tent.
Q: Okay.
A: And then you would connect the tension cables, the cross of the cables.
Q: To what?
A: To the corners of the perimeter.
Q: Okay.
A: You would roll the skin over that.
Q: Right.
A: And then you would take that high peak pole --
Q: Right.
A: -- and you would place it where it needs to be placed and then you would start adding the legs to the perimeter of that tent.
Q: The poles on the corners.
A: The uprights.
Q: Okay.
A: And then everything needs to be strapped into place with tension straps and then that tent is now up.
Q: How long does it take to put it up with a good

crew?
A: Two guys, it would take 30 minutes.
Q: Okay. And to take it down completely, how long would it take?
A: Fifteen to 20 minutes to take it down.
Q: All right. Let me ask this. How high or what's the length of the poles on the corners of the tents; do you know?
A: The leg poles are you talking about?
Q: Yeah.
A: Eight feet, I believe.
Q: All right. And then the center pole?
A: I don't know that.
Q: Did you know it then?
A: The reason I say I don't know is because there are 50 different poles in our warehouse and they all range in length.
Q: Okay.
A: So if I said I thought that high peak pole was eight feet, I would be comfortable with saying eight feet, but it could be eight-feet, six inches; it could be nine-foot, one inch. I wouldn't be surprised --
Q: The center peak pole is no longer than the corner poles?

A: I don't know. I couldn't accurately say right now. I don't have that specific information. If you were to give me a couple of options, I could probably narrow it down.
Q: Okay. All right. So what -- or you started to tell me what you did to move the tent. You disconnected from the stakes --
A: (Nods head affirmatively.)
Q: -- the tent from the stakes --
A: Right.
Q: -- with you and these three guys.
A: Uh-huh (affirmatively responds).
Q: And then what did you do?
A: I asked everyone to take a leg on the tent.
Q: All right.
A: And then you just pick it up and you walk with that tent.
Q: And when you say "take a leg on the tent," what legs are you talking about?
A: There are four legs on a 20 by 20.
Q: All right. So you had --
A: Four poles each in a corner.
Q: All right.
A: And there were four men.
Q: Right.

A: And I asked each man to take a leg.
Q: All right. And what did you do about the center pole?
A: The center pole stays up by itself with the tension cables that I just talked about.
Q: Oh, okay.
A: So there's just four legs --
Q: All right.
A: -- that are grounded.
Q: And what did you ask the men to do when you say, "Take a leg"? I think I know but tell me.
A: I told them that we had to move this tent and that for them to take a leg, that we were going to pick this tent up and we were going to walk it.
Q: And can you pick the tent up by having four men on each leg and they are lifting up and move the tent that way?
A: Yes.
Q: And can you move it in an erected fashion in that way?
A: Yes.
Q: All right. And where did you -- show me -- draw for me a line showing the path you took, you and the crew.

A: (Witness complies.)
Q: Did you take a leg yourself?
A: I did.
Q: And which leg did you take?
A: (No response.)
Q: Do you remember where the position of the men were?
A: I don't remember accurately where the position of the guys were --
Q: But it was --
A: -- at starting point. I do remember where they were when the accident happened.
Q: All right. Tell me where they were when the accident happened.
A: Tell -- okay. Alex was here (indicating).
Q: All right.
A: John Fortney was here (indicating).
Q: I'll tell you what. Draw an arrow there and put "Alex."
A: (Witness complies.)
Q: All right. Good. Who is that?
A: John Fortney, "J.F."
Q: "J.F." is John Fortney.
A: "J.R." is John Robinson.
Q: That's an "R"?

A: That is my "R," yep.
Q: Give me a little better "R."
A: Okay. "D.K." is Dexter Keyes.
Q: Okay. All right. And that's the position the men were in when the accident happened.
A: Correct.
Q: All right. Now, once you moved it as you've shown over here, was the tent -- did you put the tent down? I say as shown on Exhibit Two, with the "two" by the tent. Did y'all put the tent there?
A: We did.
Q: All right. And did you leave it there?
A: Briefly.
Q: And where was the tent moved after this brief period? When you say "briefly," how long?
A: Ten to 15 seconds.
Q: Okay. After it was there for ten to 15 seconds, did you lift the tent up and move it again?
A: Yes.
Q: And why?
A: We were told by Beth Donehue and David Richardson to move it.
Q: And where were you told to move it?

A: David Richardson was standing here (indicating) and he --
Q: Put a "D.R."
A: (Witness complies.)
Q: Okay.
A: And Beth Donehue was standing there (indicating).
Q: Right.
A: And they asked us to move it back.
Q: Back towards who?
A: Towards David Richardson.
Q: How far did they want you to move it?
A: They said, "A few more feet, please."
Q: A few more feet. All right. And tell me, did you do that, you and the crew do that?
A: We picked up the tent and we heard David say, "Just keep coming back with it, just a little more, just a little more." And I -- you know, I think that was a few feet. I don't think it was any more than ten feet --
Q: Okay.
A: -- before the accident.
Q: Was it as much as ten feet or was it less than?
A: I couldn't say.
Q: What's your best recollection?

A: Oh, my gosh. Six to ten feet at the most.
Q: Okay.
A: That was my best recollection.
Q: All right. Draw and put a number three on Exhibit Two where you moved the tent when it -- when you had the accident, where it was located.
A: (Witness complies.) I mean --
Q: Draw an arrow showing the direction.
A: Yes. (Drawing.) It went right back that way (indicating).
Q: And you think six to ten feet from its position where you put it down the first time.
A: That's my best recollection.
Q: All right. Now, was there any discussion by anyone at any time once you began -- before you moved the tent to the position two or at any time thereafter about the presence of the overhead electrical lines?
A: Yes, there was.
Q: Okay. When do you recall the first discussion?
A: The first discussion was on this corner (indicating).
Q: And that's the --
A: Regarding the moving of this tent? The first

discussion was on this corner (indicating) in terms of observing this line and making sure that everyone was aware that the line was there.

Q: All right. And tell me what the discussion was.

A: I said, "Guys, the line is there. Watch the line. Stop. Let's move away from the line as far to our right as possible," which we did and we moved that tent successfully to the position that we were told to put it in.

Q: All right. Let's put an "X" on your path there at the point where y'all had the first discussion.

A: (Witness complies.)

Q: So you saw the line. You told them, "Let's move away from it," and you moved away from it and then put the tent down the first time.

A: Yes. We came right down the back of this 40 by 20 and put the tent there (indicating).

Q: All right. Any other discussion about the presence of the line, the electrical lines prior to the accident?

A: Any other discussion about the electrical lines prior to the discussion --

Q: Or avoiding the lines.
A: On that particular day?
Q: Uh-huh (affirmatively responds). Did y'all talk about it initially before you moved the --
A: We didn't talk about it initially.
Q: Okay. So the first time would have been where you put an "X" on the path.
A: Right.
Q: And that was something you said.
A: That was something I said.
Q: And then was there any other discussion of trying to see, observe, avoid the electrical line before the accident occurred?
A: Not that I can remember.
Q: Okay. Now, when the tent was put down the first time and then moved towards the line as a result of Mr. Richardson saying "Move towards me" --
A: It was both Mr. Richardson and Beth Donehue.
Q: And Beth Donehue. Were you moving the tent closer to the line?
A: In retrospect? Yes, we were. At the time? It was -- I didn't feel as though we were moving the tent closer to the line.
Q: Well --

A: Had I known that we were moving the tent closer to the line at that time, I wouldn't have moved it.
Q: Well, you knew where the line was, didn't you?
A: When?
Q: When you went out there that day.
A: Yes, I knew that there was a line here.
Q: You knew where the line was from being there the day you went out for your inspection.
A: Right.
Q: You knew that when you moved the tent around to this corner where you had the discussion that says, "Stay away from the line," you moved the tent closer to the shed to get further from the line.
A: Right.
Q: You knew that Mr. Richardson was standing on the other side of the line.
A: I don't know if he was standing on the other side of the line. I don't know if he was standing right underneath the line. I don't know if the line was to his back.
Q: Okay. You knew --
A: This position of where he was is an approximation.

Q: Okay.
A: It looks like on this diagram, Exhibit One, that he's on the other side of the line, but I would not say that he was either on the other side or underneath the line. I'm just positioning him there for the ease of an illustration.
Q: That's fine. You knew that the line was -- that on one side of the tent was the Marquee and on the other side of the tent where you put it down was the line.
A: Right.
Q: You knew you weren't moving the tent toward the Marquee, didn't you?
A: Yes. We knew that we weren't moving the tent towards the Marquee.
Q: You knew after you put it down the first time that you were moving the tent in the direction of where the line was --
A: I didn't know that; otherwise, I wouldn't have moved it.
Q: Well, how could you have not known that you were moving it in the direction of the line if you had moved to the right closer to the shed to avoid the line and now you're moving further

away from the shed?

A: I know that when we were asked to move this tent, we successfully moved it to the initial position. Then we were asked to move it -- and I also know that as soon as we put that tent down and we shook it off, David Richardson and Beth Donehue were still not happy with that position and they asked us to move the tent. And I'm not sure what they saw or how they saw it, but I assumed that because one was in front of me and one was behind me, that their view of the line was -- they would not have guided us into the line. Because I heard them say, "Keep coming back. Keep coming back. Keep coming back," and for them to say that -- I was not looking at David Richardson; I was listening to David Richardson and I assumed that he had full view of the line with his help, Beth Donehue.

Q: Okay.

A: And that was a wrong assumption because we got electrocuted -- well, someone got -- two people got electrocuted and two people got electrified.

Q: Okay. Now, you've said that, but I want to go back to the question I asked you. You were

actually moving the tent the second -- after you put it down initially, you and your crew were moving it in the direction of the line, weren't you?

A: Yes, we were moving in the direction of the line.

Q: You were moving it further away from the shed, weren't you, in the direction of the line?

A: Yes, we were doing that.

Q: And whether you thought about it or didn't think about it or relied upon him, you, in fact, were moving it in the direction of the line that you had just said, "Guys, we need to watch out for."

A: Yes.

Q: All right. Now, let me ask you this. What happened as you and your crew moved it towards the line?

A: We had -- we had barely picked it up. We were shuffling -- I was shuffling backwards, John was shuffling sideways, Dexter was shuffling forwards, John Robinson was shuffling backwards, and I remember hearing a snap, crackle and pop. My feet were very, very hot. I remember thinking, "Oh, my gosh, I think

we've -- I think we've hit the line."
Q: All right. Now, let me ask this. Did you put the tent down any time after you picked it up until the accident occurred?
A: I don't remember doing that, no.
Q: Now, which corner were you on?
A: I was on this corner right here (indicating).
Q: And when you say you were walking backwards, you were walking backwards to the direction in which the tent was being moved?
A: Yes.
Q: You're on the corner -- let me see if I get this picture right. The tent corner is this way (indicating). You can look on either side of where the -- you can look up at the tent and you can turn around and look behind you.
A: Say that again.
Q: You could look on either side. If you looked up, you would look up at the tent. You'd have a corner here and a corner there. And if you turned around, you'd be looking in the direction of the line, wouldn't you?
A: Yes.
Q: So all you really had to do to see where the line was that your crew was working near was

turn -- stand up, turn around and look up.

A: I mean, I can't remember if the line was directly above where you had to look right above or whether it was kind of in my peripheral view ahead. Does that make sense?

Q: Well, even if you were under it, you could have looked to one side of the tent or the other and seen it --

A: And seen it.

Q: -- if you had taken the trouble of putting the tent down, put your head up and look.

A: Right.

Q: And I gather the reason you warned the crew when you made your comment at the corner of the -- before you turned, when you were moving the tent initially to look out for the line, was that you did not want the tent to contact the line and anyone on your crew to get hurt.

A: That's correct.

Q: Now, let me ask this. Did you at that time consider it a safe practice or a hazardous practice to move an erected tent in close proximity to an electrical line where you were at risk of contacting the line?

A: Say that one more time, please.

Q: Did you consider it a safe practice or a hazardous practice to move an erected tent in close proximity of an electrical line where you were at risk of contacting the line?

A: It's very difficult, if you were standing where I was standing when the decision was made, to stand from this perspective and look at that line and figure out intelligently, with experience or without experience, how close that line was. It wasn't until we got to this corner where our perspective, my perspective had changed, and I had said, "Wow, we're a lot closer to this line than I had thought and we need to be safe -- safer."

Q: All right. Listen to my question and we'll get through this quicker. Did you consider it a safe practice or a hazardous practice at that time to move an erected tent in close proximity to an electrical line where it was at risk of contacting the electrical line?

A: Had I known that two guys were going to die, I wouldn't have moved the tent into the electrical line.

Q: Let's try --

A: I just don't think it's as easy as A or B,

black or white with this.

Q: I know this is difficult for you and I understand why. I need an answer to the question, though. At that time did you consider it a safe practice or a hazardous practice to move an erected tent in close proximity to an electrical line where you were at risk of contacting it? Which one was it, safe practice or hazardous practice?

A: Say it again, please.

Q: Okay. I will.

A: It's a difficult issue.

Q: At that time did you consider it a safe practice or a hazardous practice to move an erected tent in close proximity to an electrical line where you were at risk of contacting the electrical line with the tent?

A: I mean, I -- it certainly wasn't a safe practice.

Q: Actually it was a hazardous thing to do, wasn't it?

A: Well, I mean, two people got killed and two people were seriously injured. But the reason that I'm here today is because that line was lower than it should have been. That line --

had that line been at the correct height, then this element of hazard may have been prevented, two people may not have died, two people may not have been seriously injured.

Q: Didn't --

A: You know, that line -- electrical line was -- you tell me, that electrical line was below height. It should have been higher than it should have -- was, right? That's a fact.

Q: Sir, today is --

A: I know.

Q: I'm asking questions and --

A: But I'm just saying, your questioning -- line of questioning is somewhat -- I don't -- you know, I know that when we were asked to build this -- to move this tent, we moved it safely and it was put in place where it was. It wasn't until Beth Donehue and David Richardson asked us to move it again that this accident occurred.

Q: Let's try to -- if you'll focus on what I'm asking you, we'll get through it and there'll be a time you can tell your story and that will be another day.

A: Uh-huh (affirmatively responds). Okay.

Q: But if you'll work with me and answer what I ask, we'll get it done. You knew it was hazardous to get too close to the line, didn't you, because you warned the crew at this corner where you put the "X," "Guys, watch out for the line"?
A: (Nods head affirmatively.)
Q: Didn't you?
A: Right. Yes.
Q: And you warned them because you knew it was hazardous to get too close. Correct?
A: Assuming that that was an electrical line, assuming that it was fully energized, assuming that we were as close as we actually were without realizing it, yes.
Q: Okay. And if you weren't sure whether it was an electrical line or that it was energized, what's the safe thing to do?
A: (No response.)
Q: Stay away from it, isn't it?
A: That is definitely a safe ...
Q: And the reason you didn't want to get close was because you didn't want anybody to get hurt.
A: We didn't want anybody to get hurt.
Q: That's the reason why you didn't want to get

the tent too close to it, wasn't it?
A: Yeah, that's the reason.
Q: Now, did you mean for the tent to contact the electrical line?
A: No, I did not mean for the tent to contact the electrical line.
Q: Did you and the crew actually walk the tent into the electrical line?
A: Yes, we did walk the tent into the electrical line.
Q: Okay. Who made a mistake here? Is it your contention that Mr. --
MR. JOHNSON: His name again?
MR. WILLIAMS: Richardson.
Q: -- Richardson, David Richardson, made a mistake by guiding y'all into the line and that this young girl made a mistake by not warning y'all of the line?
A: I don't know, I mean, if they made a mistake. I mean ...
Q: All right. Let me ask you this. Were you responsible for the safety of your crew?
A: I definitely was responsible for my crew.
Q: How close can you put up a tent to an electrical line or move a tent in relation to

an electrical line for it to be done reasonably and safely? How far away do you think you need to be from an electrical line?

A: Well, we follow the OSHA ruling on that and we have a 15-foot rule. So, having been through the training now, we would not go through ...

Q: You wouldn't do this.

A: Well, we would keep away from the line. There's a 15-foot rule, I know.

Q: All right. Before this accident occurred, what was your position about how far away you needed to be with an erected tent from an overhead electrical line?

A: I definitely didn't want to get close to it.

Q: You got to work with me and answer my questions.

A: Tell me the question, sorry, again.

Q: Okay. How close or far away did you think you needed to stay from an overhead electrical line to be safe and have your crew safe --

A: I didn't have a --

Q: -- before the accident?

A: I didn't have -- I don't have a number. I didn't have a number at that point.

Q: Well, would it be more than two feet?

A: I didn't have a number in terms of --
Q: I'm not asking you whether you had a number.
A: -- number of feet away from the line.
Q: But would you think it would be more than two -- would you have wanted to be as close as two feet to an overhead electrical line prior to the accident, have your crew working as close as two feet?
A: No, I would want to be -- knowing what I know now, I would want to be further away.
Q: Not what you know now. I want you to go back. At the time would you have wanted your crew to be working with a tent that was two feet from a high voltage line?
A: I wouldn't have wanted them to be that close.
Q: Five feet?
A: I wouldn't have wanted them to be as close as five feet, either.
Q: Ten?
A: I don't know about ten. I mean ...
Q: Seven?
A: (No response.)
Q: Let me ask you this. Would it have ever been reasonable to have them work in such close proximity that they were at risk of the tent

contacting the line?
A: No.
Q: Were there warnings, any warnings on the tent that y'all were working with and moving that day?
A: Were there any warnings?
Q: Yeah.
A: Any warnings on the tent? I -- the tent has a certificate of flame retardantsy sewn into the skin. And I can't remember if there's anything on that sewn-in flame retardant certificate that mentions anything other than flame retardantsy or ...
Q: Did any of the tents y'all use have any warnings that said, you know, in erecting the tent look out for this or that or look at for overhead electrical lines?
A: Anything in the tent?
Q: Anything on the tent, any warnings. You know how products now come with warnings so --
A: Right. No, there's -- no, there's no warnings.
Q: So there were no warnings on that tent or any of the tents you were erecting that warned about hazards in erecting the tent and avoiding hazards?

A: Right.
Q: When you lift a tent up like you lifted the tent, how high did y'all get it off the ground?
A: (No response.)
Q: When you were moving it closer to the line?
A: I mean, you don't have to lift it much to start walking it. Just above my ankle, halfway up my shin.
Q: Approximately how many inches or feet off the ground?
A: A foot.
Q: A foot off the ground?
A: At the most.
Q: So is that what you recall that y'all lifted it?
A: Yes, you -- yes. It's difficult to walk the tent if everyone's not lifting it at the same height.
Q: But you had it at approximately a foot off the ground when the accident happened.
A: At the most, yeah.
Q: Could you have taken the tent down and re-erected it rather than move it in the position you were moving it erected?
A: We could have taken it down and re-erected it.

Q: Is that a safer way to move a tent?
A: Is it safer to take it down and re-erect it than to pick it up and move it? I don't think there's any difference. It's a matter of, I don't know, opinion.
Q: Would you agree with me that the greater the risk of harm in something the more careful you have to be?
A: Yes.
Q: And I mean, for example, if you're using a chainsaw and you don't handle it right, you can cut your leg off. You've got to be more careful with a chainsaw than a pocket knife that might cut your thumb.
A: That's a good analogy.
Q: If you know that the lines are electrical lines, do you need to avoid contacting with them?
A: Yes.
Q: And did you know that when you did this work? I guess you did know it because you warned your crew to stay away.
A: Did I know specifically that that was an electrical line and fully energized? I didn't know that. I didn't know that that day. We

assumed it --
Q: Right.
A: -- just by --
Q: They were there.
A: -- they were there.
Q: And that's the smart thing to do if you don't know; you assume the worst and stay from it. Correct?
A: Be very careful around it, as careful as you can be.
Q: Well, you stay away from it. Isn't that what you were warning them to do?
A: Yes.
Q: You did the right and sensible thing when you turned the corner and told the guys, "Guys, look out for those electrical lines. We don't want to get in contact -- we don't want to get too near them." Correct?
A: Right. I mean, when we -- I assumed that it was -- it was fully energized and that it was an electrical line and that -- you know, that it was at a safe height. I assumed that. I mean, I didn't know it but I assumed it.
Q: But in any event, you warned them to stay away, which was the right thing to do, wasn't it?

A: That was the right thing to do.
Q: And you warned them because you didn't want the risk of contacting the lines and they being energized. That's why you gave them the warning, wasn't it?
A: Yeah, that's why I gave them the warning.
Q: Now, let me ask you. Tell me, other than give this warning when you turn the corner there and shown on Exhibit Two, what were things that you could have done to avoid the accident involving yourself and your crew?
A: What things would I have done differently?
Q: No, what things could you have done to have avoided the accident?
A: I wouldn't have moved the tent.
Q: Okay. One thing you could have done is not move the tent. What else could you have done?
A: (No response.)
Q: Could you have said, "Before I move the tent, I want to find out whose lines those are and have them come out here and lift them or check them"?
A: Yep, I could have done that.
Q: On these jobs you do, do you ever contact -- well, you told me you contact utility companies

to identify underground utilities, don't you?
A: We contact an organization called "PUPS."
Q: PUPS. And they come out and mark it so you avoid those.
A: (Nods head affirmatively.)
Q: That's standard practice, isn't it?
A: Right.
Q: That was practice before and after this accident, wasn't it, to call PUPS?
A: That is something that we have done, yes, regularly.
Q: But you could have called -- identified whose lines they were, called the Coop before moving the tent and had them come out and either de-energize or move them so you could put the tent wherever the man wanted it.
A: Well, I mean, yeah. Initially, this was the layout (indicating). The tent was supposed to go here (indicating). So when we built the tents, they were all in position. It was a decision that was made late in the day, very quickly, to move the tent.
Q: All right. And sometimes when people make quick decisions, they don't do it as safely as they should.

A: Well, it's not that. It's I don't think we could have got at 4:30 in the afternoon Berkeley Cooperative to come out, de-energize the line, measure for the height and made sure that was safe. At 4:30 in the afternoon, I don't think that could have happened and so --

Q: Well, let me --

A: -- we needed to -- we needed to finish our day.

Q: Well, let me ask you this. The safe thing would have been -- to do would have been to call them. I mean, one of the things you could have done is call them. And if they say, "We can't get there until tomorrow," come back tomorrow and move the tent. That would be the safe thing to do; not just move it and take the chance that you contact something, correct?

A: That seems sensible.

Q: Now, if you had done these things, refused to move, contacted Berkeley Electric, had them come out and de-energize or do something -- and these things are common sense things, aren't they?

A: What things are common sense?

Q: That you could have done to have avoided the accident --

A: I think --
Q: -- just by the exercise of common sense.
A: I don't think they're common sense. I think they're prudent.
Q: Okay, prudent. If you had done those things, we wouldn't be here today, would we?
A: (No response.)
Q: If you had refused to move the tent and said, "No, I don't want to move it over there. It's too close to the lines" --
A: We're here today because the electrical line was too low. That's why I'm here today with my attorneys. We're here today because the electrical line was too low. And had that electrical line not been as low as it was, this may not have happened. That's why I'm here today.
Tell me why you're here today. You're here today to tell me that had I done certain things that this would not have happened. Is that what you're here today to tell me?
Q: I'm --
A: I'm here today to let you know that that line was too low. That's why we're here today.
Q: Are you finished? I don't want to interrupt

you.

A: Yes, I'm finished.

Q: Okay. Now, I want you to work with me and I want you to answer the questions I ask you and that's your responsibility.

A: (Nods head affirmatively.)

Q: Okay. The question I had is that if you had done these things which you said would have been prudent to have done, we wouldn't be here today, would we?

A: Well, hindsight is 20/20, so we're talking with a perspective of hindsight. You know, it's different being, you know, in the trenches, as it were, on the event, on site at the time of this accident. There's a difference in that and us talking about it three years down the road going back.

It's very easy to say, "Had you done this, this and this, the consequence would have been this." Very easy for me to say that and I agree with you. But we're talking about hindsight. But at the time, the perspective was very different. It's very difficult to see a line above a tent.

If you look at some of those pictures, that

tent is touching the -- some pictures show the tent touching. Some pictures show the tent easily clearing. Some pictures show -- there's a whole different range of perspectives. It's very different to get an accurate perspective on the line.

Q: All right.

A: And that's the difference between our conversation now and the actuality of these events on April 23rd, 2008.

Q: Anything else?

A: Do you agree with that?

Q: Anything else you want to say?

A: No.

Q: All right. Listen to my question, please, and try to answer it.

A: Okay.

Q: Had any of these things been done that you said would have been prudent to do, there wouldn't have been an accident, would there?

A: It's difficult for me to agree with that statement.

Q: Well, if you had never moved the tent in the first place -- if you would have refused to move it because it was going to be close to

these lines, there wouldn't have been an accident, would there?

A: There wouldn't have been an accident had I refused to move the tent.

Q: Wouldn't have been two men dead, two men injured, would there?

A: Right.

Q: If you had contacted the Coop and had the Coop come out and check everything before you moved the tent, there wouldn't have been an accident, would there?

A: When you say "check everything," you mean?

Q: Verified, de-energized, whatever the Coop -- de-energized the line so you could move it safely, there wouldn't have been an accident, would there?

A: There wouldn't have been an accident.

Q: Wouldn't have been two dead men and there wouldn't have been two injured men, would there?

A: Right.

Q: Now --

A: But let's continue with that, because had the line been at the correct height, this accident may not have happened, too.

Q: Well, let me ask you this. Let's assume you're right.
A: Let's assume I'm right about what?
Q: That the line was at an improper height.
A: That the line was at an improper height.
Q: Okay. Line's at an improper height.
A: Okay.
Q: Once you've made the decision to move the tent and agreed to move it in close proximity to the line where it was, in close proximity to the line, was there anything --
A: Had I known that it was in close proximity --
Q: Just hear my question.
A: -- I wouldn't have moved it. Again, it's down to perspective. It's --
Q: Just --
A: It's a difficult --
Q: If you'd just listen to my question. Let me get it out and then I'll let you answer it.
A: Okay.
Q: And if you don't answer it, I'll ask it to you again.
A: Okay.
Q: The question is this: Once you made -- assume the line's too low. Once you made the decision

to move the tent and you moved it as you've told me you've described moving it, between the time you made your decision and the accident occurred, was there anything at all that the Coop could have done to have prevented this accident from occurring?

A: I think it would have been really helpful to have had something hanging off this line at some point in the central position that said that this line was energized.

Q: You didn't -- let's try it again.

A: Okay.

Q: Assume you're right, line's too low, violates every principle. It's just too -- you know, it violates the National Electric Safety Code. It's too low and that's the condition it was on the day. Between the time you made your decision to move the tent and the accident occurred, was there anything that the Coop could have done in that time frame that would have avoided the accident or prevented the accident from occurring?

A: I don't know.

Q: Well, the Coop didn't know you were moving the tent, did they?

A: They didn't.
Q: The only person who could have prevented -- assuming the line's too low, the only person who could have prevented the accident from occurring was the guy in charge of the crew who had agreed to move the tent. Correct?
A: I'm not the only one responsible for the death --
Q: If you would just answer my question. The only person who could have prevented the accident, assuming the line is too low, is the person who made the decision and authorized the crew to move it, right?
A: But this may not have happened had the line not been low.
Q: Okay. But let's assume it's low.
A: So that's why it happened, then.
Q: Okay. The question I have is, the only person that -- once the line's low, the only person who could have prevented the accident from occurring with the line being low is the guy who decided to move the tent or authorize the crew to move the tent. If you had said, "I'm not moving it," no accident, correct?
A: If I had said, "We're not moving this tent,"

there wouldn't have been an accident.
Q: Am I correct --
A: But had the line been at the right height, the safe height, and I had still made the decision to move the tent, we still may not have had this accident.
Q: I guess what I'm trying to find out from you is, the only person who could -- assuming the facts are as you say they were, the line's too low, the only person who could have prevented the accident from happening given those circumstances was you by refusing to move the tent.
A: Well, I don't -- that -- no, I am -- I don't agree with that.
Q: Okay.
A: That -- the accident could have not happened if I had not been asked to move the tent. The accident could not have happened had the line been at the correct height.
Q: Well, let me ask you this. You seem to attribute some blame to Mr. Richardson and this young lady from their directing you. Am I reading you right? Do you think that they're at fault?

A: Look, I haven't spoken to David or Beth Donehue since the accident about the accident or about anything related to the accident. I don't know what they're thinking or if they think they're at fault. I --

Q: I'm asking you what you think.

MR. CROSLAND: Let him finish.

A: I know. I know you are.

MR. JOHNSON: I'm just trying to get him focused.

A: I'm focused. It's unfortunate that they asked us to move the tent again and these two -- and, you know, this accident happened.

Q: Well, I think we can all agree on that. But are you saying that they're somehow at fault for guiding you in the direction in a manner in which you contacted the tent?

A: I wish that they hadn't asked us to move the tent.

Q: I mean, but do you think they did something wrong in telling you to keep walking towards the line that caused or contributed to the accident?

A: I think to a certain extent they had a better view of the power line and if that was -- if that is -- if that was true, that their

perspective was better, was clearer, I wish that they could have said something to have stopped us moving the tent into the line.

Q: Were you relying upon them to watch out for your crew contacting the line with the tent as you moved the tent in the direction of the line?

A: (No response.)

Q: Were you trusting and relying upon them?

A: Yes. Yes, I think we were, looking back on it now.

Q: Now, if they had not asked you to move the tent closer to the line, would the accident have occurred?

A: If they had not asked us to -- if they had not asked us to move that tent back would the accident have occurred? The accident would not have occurred if they had not asked us that.

Q: Okay. Now, I asked you earlier about who had responsibility for you and your crew and it was your responsibility, wasn't it? Not David's or the young lady's.

A: It was my responsibility for my crew, yes. But, I mean, David felt an obligation to help us because he moved -- he helped move this

tent.
Q: Let me ask you this. When you moved the tent, was virtually every step you moved it bringing it towards -- that was bringing it towards the line a step closer in proximity to the risk of contacting?
A: (No response.)
Q: In other words, as you walked it around the building, were you getting closer to the line?
A: Yes.
Q: As you moved it the second time when David told you, were you getting closer to the line?
A: Yes.
Q: Each step was closer to the line.
A: Yes.

(Mr. Crosland exits at 11:00 a.m.)

Q: Have you had any communication with anyone other than your attorneys about what happened there at the scene?
A: My wife, her family, my family; Bryan and Greg, the owners of the company.
Q: And what have you told them?
A: My account of what happened.
Q: Have you told them anything different than what you've told me?

A: In terms of what?
Q: How the accident occurred, the events leading up to it, what was said, what was done.
A: I mean, this happened -- this happened three years ago, over three years ago, and it's difficult for me to remember everything that I said. It's difficult to actually remember all of the facts. So have I said different things to them or different things to you? Possibly.
Q: Let me ask you this. Have you ever said or thought or had words to the effect that you should have never moved the tent?

(Mr. Crosland enters at 11:01 a.m.)

A: I've had thoughts and words to the effect that we should have never done this event.
Q: Well, you could have done the event and not moved the tent and you wouldn't have had any problem, correct?
A: We could have done the event and not moved the tent and not had any problem, yes.
Q: But have you ever said to anyone or thought to yourself, "I should have never agreed to move the tent in the first place"?
MR. CROSLAND: Object to the form; compound question.

Q: Well, let me break it down. Have you ever thought to yourself that you should have never moved the tent in the first place?

A: I don't remember thinking that. Is it possible that I thought that? I think it's possible that I thought that.

Q: Well, would you agree that you should have never agreed to move the tent in the first place?

A: Well, we did move the tent and it was moved safely until the very end. So this is what happened. The tent was supposed to be, A, in this position, B, in that position, C, in the next position; that's when the accident happened.

Q: Okay. Well, should you have never moved the tent the second time?

A: I mean, I thought David Richardson and Beth Donehue had a clear perspective on that tent and it was safe to move.

Q: Should you have never agreed to move the tent the second time?

A: I've just answered it. We moved it because I felt like Beth Donehue and David Richardson had a clear sight on the electrical line.

Q: You know that's not what I'm asking you.
A: I'm confused, then. Remind me what you're asking me.
Q: You would agree with me that you should have never moved the tent the second time.
A: I don't agree with that.
Q: And why not?
A: Because I thought David Richardson and Beth Donehue had a clear sight on the line.
Q: Yet you had the responsibility for the safety of your crew.
A: (Nods head affirmatively.)
Q: Correct?
A: I had the responsibility for the safety of my crew.
Q: And you could have looked for yourself and seen what you were doing.
A: I could have looked.
Q: And you knew that you were moving the tent in the direction of the line when you moved it the second time.
A: I didn't know that we were moving it in the direction of the line.
Q: I thought we went through that, that you knew that you were moving it away from --

A: Well, the way that you were doing this right now, yes, I know that. Yes, looking at it today, right now, yes, we were definitely moving in the direction of the line. Had I known that we were moving it into the line at that point, we wouldn't have moved the tent. Had I known that, I wouldn't have moved the tent.

Q: You mentioned earlier your responsibility. Tell me what you see your responsibility in this accident as being and the fact that two men are dead and two men are injured.

A: My responsibility?

Q: Yeah, your fault, how do you weigh that?

A: (No response.)

Q: Well, let's start it this way. Do you agree with me that you bear some of the responsibility for this accident occurring?

A: Honestly, I do feel some responsibility for this accident.

Q: And do you feel that David Richardson has some responsibility for the accident?

A: I think -- I think he does.

Q: Sir, would you agree with me that it's just plain foolish to move an erected tent?

A: I also feel that Berkeley Cooperative has a responsibility, too --
Q: Okay.
A: -- because the line was too low.
Q: All right.
A: And had the line not been too low, this entire accident may have been avoided.
Q: All right. Anything else you want to add?
A: I think -- no.
Q: So you think you bear some responsibility, David Richardson bears some responsibility, and then you --
A: (Nods head affirmatively.)
Q: Is that "yes"? You think you bear some responsibility; is that "yes"?
A: I think I feel responsible for this -- for the death. I feel there's -- I can bear some responsibility for that. I feel David Richardson in a sense can bear some responsibility for that.
Q: All right. And you feel that Berkeley --
A: And I feel that Berkeley Cooperative ...
Q: All right. Let me ask you this. Would you agree that it's just plain foolish to move an erected tent in close proximity to an

electrical line where it's at risk of contacting the line and injuring the people who are moving it?

A: I think if you are absolutely certain that you were in close proximity of an electrical line and you want to move a tent into that close proximity and you're absolutely certain that you are in close proximity, I think that's foolish. I think moving a tent and not understanding the proximity of your tent, I think that is not foolish.

Q: Do you think moving a tent in close proximity to an electrical line where if a mistake is made you're close enough to contact the line and if you contact it, it can result in death or serious injury to the people moving it is reckless behavior?

A: That is assuming that you are -- you fully appreciate and understand how close you are to the line.

Q: And if you get too close to the line, you should stop and warn people to avoid and not -- and move away from the line, correct? That's the safe thing to do.

A: Define "too close."

Q: Well, you perceive you're too close. If you -- regardless whether it's whatever distance this is --
A: But my perception of being too close --
Q: Just let me get --
A: -- and your perception of being too close --
Q: Excuse me.
A: -- are two different things.
Q: She can't get it when we both talk.
A: Okay.
Q: She's got to take it down and you got to let me get my question out --
A: Okay.
Q: -- and I'll do my best not to cut you off. How about that?
A: Okay.
Q: Would you agree with me that if you perceive -- you perceive you're too close, the safe thing to do is to say, "Wait a minute, guys, let's move away and not get too close where we could contact it"? That's the safe thing to do.
A: Right.
Q: Have you talked with anyone at Berkeley Electric about this?
A: (Shakes head negatively.) No, I haven't.

Q: Have you heard anything anyone at Berkeley Electric had to say about it?
A: I haven't. I haven't heard anything from them. I haven't spoken to anyone from there.
Q: Do you feel like you let the crew down in any way?
A: That's a difficult question. I mean -- I mean, two guys died, two guys got seriously injured. I feel as though I was affected. I feel that I -- did I feel as though I let the crew down that day? I feel a big sense of regret about that day.
Q: Did you know Mr. Keyes other than working with him on this job?
A: Dexter had -- Dexter worked for a temporary employee agency and he had -- he had worked with us on other jobs prior to this accident.
Q: Did you know anything about his marital status, his children, any relationships he had with anyone?
A: No.
Q: Did you know his child?
A: I didn't. I don't think I --
Q: Did you have any discussions with him about a child?

A: I can't remember having those discussions with him.
Q: Did you have any personal relation with him outside of work?
A: I didn't.
Q: Had you only been around him a time or two?
A: A few more times than a time or two, I would say.
Q: Okay. But was it just work --
A: It was just work, yes.
Q: Okay. Let me ask you this. If a contractor leaves an open ditch on a job site, can that be a hazard, people falling in or that kind of stuff?
A: If a contractor leaves an open ditch on a job site is that a hazard?
Q: Can it be a hazard, someone might fall in or whatever?
A: If it's a busy area, I mean, yes, it could be a hazard.
Q: If a contractor leaves an open ditch on a job site where you're putting up an event and you see the ditch and you decide you can work close enough to it without falling in and you do so and you fall in anyway, whose fault would you

say that was?
A: I think --
MR. CROSLAND: Object to the form; calls for legal conclusion.
A: I think it's -- I think it's -- it could be the fault of many people.
Q: Well, who are the "many people"?
A: Well --
Q: He leaves the ditch, you see it, you make the decision you can work in close proximity without falling in and you're wrong and you fall in.
A: I think the contractor -- why is the contractor leaving an open ditch on a job site without any warning?
Q: Let's just say he does it negligently. He just digs a big hole.
A: Okay. So he's at fault if he's negligent, right?
Q: Okay.
A: Are we at fault because we build something close by and someone falls in? Probably. Is the person that owns the land who allows us to -- this ditch to occur and the tent to be built close to it? There's some fault there,

too.

MR. JOHNSON: All right. Can we take a break real quick?

(Off the Record)

MR. JOHNSON: We're finished.

MR. CROSLAND: We don't have anything.

(There being no further questions, the deposition concluded at 11:16 a.m.)

SIGNATURE

I have read the foregoing deposition and confirm that it is a true and accurate transcript of my testimony. Any errors I may have noticed have been listed below and returned to the court reporter for checking against the tapes.

_____
ALEXANDER JAMES CLAYSON

Date: _____

Page	Line	Correction	Reason for Change

Re: Keyes, et al v. Berkeley Electric 8.26.2011
nv

CERTIFICATE

This is to certify that the deposition of **ALEXANDER JAMES CLAYSON**, consisting of One Hundred Eleven (111) pages, is a true and correct transcript of the testimony given by said deponent after being duly sworn; said deposition was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on September 7, 2011.

Cassandra E. Vance
Court Reporter

Notary Public for South Carolina
My Commission Expires: February 26, 2018

DEFENDANT'S EXHIBIT
1 - Clayson
8-24-11
PENGAD 800-631-6989

DEFENDANT'S EXHIBIT 1 - Clayson 8-26-11

DEFENDANT'S EXHIBIT 2 - Clayson 8-26-11

DEFENDANT'S (A)
EXHIBIT
1 - Clayson
8-30-11
PENGAD 800-631-6989

DEFENDANT'S (B)
EXHIBIT
3 - Clayson
8-30-11
PENGAD 800-631-6989

1420

SIGNATURE

I have read the foregoing deposition and confirm that it is a true and accurate transcript of my testimony. Any errors I may have noticed have been listed below and returned to the court reporter for checking against the tapes.

ALEXANDER JAMES CLAYSON

Date: 09/23/11

Page	Line	Correction	Reason for Change
13	23	parental to perennial	— wrong word.
22	3	Ross & Rast	— wrong lastname
29	16	" "	" "
29	20	" "	" "
30	11	" "	" "
42	24	Higher to lower	wrong word
58	16	"9 by 5" to "8 by 10"	wrong digit.
83	9	Retardancy	spelling

Corrections are acknowledged and accepted as errors in the transcript.
Cassandra E. Vance, Court Reporter

Re: Keyes, et al v. Berkeley Electric 8.26.2011

nv

SIGNATURE

I have read the foregoing deposition and confirm that it is a true and accurate transcript of my testimony. Any errors I may have noticed have been listed below and returned to the court reporter for checking against the tapes.

_____
ALEXANDER JAMES CLAYSON

Date: _____

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Re: Keyes, et al v. Berkeley Electric 8.26.2011

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_____
ALEXANDER JAMES CLAYSON

Date: _____

Page	Line	Correction	Reason for Change

Re: Keyes, et al v. Berkeley Electric 8.26.2011
nv

September 7, 2011

Malcolm M. Crosland, Jr., Esquire
The Steinberg Law Firm, LLP
61 Broad Street
Charleston, South Carolina 29402

RE: Estate of Dexter Keys, deceased, by his duly appointed Personal Representative, Devante Alston vs. Berkely Electric Cooperative
C/A No. 09-CP-09-2149 & 2147

Dear Mr. Crosland:

Enclosed is a signature sheet and a copy of your client, Alexander Clayson's deposition which was taken August 26, 2011, in the above referenced matter. Please have your client read over the deposition, make any corrections he deems necessary on the signature sheet and sign it.

The signature sheet needs to be returned to me within thirty (30) days of the date of this letter or no later than October 4, 2011, for filing with the original.

Sincerely,

Cassandra E. Vance
Court Reporter

Enclosures

Kevin Smith

From:	Shanna H Saulisbury <shs@williamsandhulst.com>
Sent:	December 14, 2015 5:08 PM
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Subject:	Fortney & Robinson v. Berkeley Electric Cooperative, Inc.
Attachments:	Fortney & Robinson v. Berkeley Electric Cooperative, Inc. -Proposed Final Order.pdf

Daniel:

Attached for Judge Young's review and consideration is Defendant's proposed Order with regard to the above cited actions. Should you have any questions please let us know. Best, Shanna

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE Nos. 14-CP-08-1231, 14-CP-08-1232
Estate of John Fortney, deceased, by his duly appointed Personal Representative Constance S. Fortney, Plaintiff, vs. Berkeley Electric Cooperative, Defendant.	)	**ORDER**
John Steven Robinson, Plaintiff, vs. Berkeley Electric Cooperative, Defendant.	)	Civil Action No.14-CP-08-1230

These actions arise out of an accident that occurred on April 23, 2008 when John Fortney and John Steven Robinson, along with Dexter Keyes and Alexander Clayson, moved a tent they had erected into the primary conductor of a high voltage line of Berkeley Electric Cooperative ("BEC"). The accident happened at a farm operated by Healing Farms Ministries ("Healing Farm"). Healing Farm was having tents erected in preparation for a fund raising event. The event was being promoted and coordinated by Beth Donahue and David Richardson, professional event planners from Memorable Meetings.

John Fortney and John Steven Robinson were part of a four-man crew from Stage Presence. Alex Clayson was the Stage Presence crew leader. At the request of and under the direction of Ms. Donahue and Mr. Richardson, the Stage Presence crew picked up the tent and walked it into BEC's power line. Two of the workers for Stage Presence, John Fortney and Dexter Keyes, were electrocuted. The other two, Alexander Clayson and John Robinson, sustained burns and other physical injuries.

The line was open and obvious. The presence of the line and the dangers it presented were discussed. As the crew moved the tent, Mr. Clayson actually halted work due to his concern about the proximity of the line and the safety of his crew. Despite this, the crew lifted the tent and, at the direction of Ms. Donahue and Mr. Richardson, carried it directly into the line.

PLEADINGS

The plaintiffs claim that the BEC line did not meet the NESC clearance requirements at the time of the accident. The plaintiffs claim that the 1993 NESC required the primary conductor be built with a clearance of 18.5 feet. On April 24, 2008, the clearance of the primary conductor mid span was measured to be 17' 3" by John Hall, a BEC employee. On May 9, 2008, the clearance of the primary conductor mid span was measured to be 16' 11", as measured by Joe Jones, a McCall Thomas engineer who is now deceased. The plaintiffs alleged that the BEC line had a clearance defect at the time of the accident which was the proximate cause of the accident.

The Fortney and Robinson complaints allege causes of action for negligence. Their claims are based upon the same factual allegations:

> 6. The Defendant owed a duty to the public to install its power lines at a minimum safe height as determined by the foreseeable use of the property over which the lines are installed.

7. The Thornhill Farm property over which the Defendant's power line had been installed was cultivated and fallow agricultural land which constitutes "other lands" under the National Electric Safety Code.

8. Upon information and belief, at the time the Defendant installed the power line over the Thornhill Farm property the applicable Code (National Electric Safety Code) promulgated by the Institute of Electrical and Electronics Engineers (IEEE) and adopted by the American National Standards Institute (ANSI) required a minimum safe height of eighteen and one-half (18.5) feet at the power line's lowest point between the adjoining power poles.

9. The Defendant also owed a duty to periodically inspect and to maintain power lines to insure continued compliance with the applicable Code for minimum safe height of the power line after the power line had been installed.

10. At approximately 4:00 o'clock p.m., the Plaintiff and others were being directed by the event coordinator to move a tent to a different location when the tent pole came into contact with the Defendant's power line.

11. The tent pole would not have come into contact with the Defendant's power line if it had been installed and maintained at the minimum safe height required by the applicable code.

Although not pled, the Plaintiffs further asserted that BEC had failed to maintain the proper records and that BEC lied to the federal government in its preparation and filing of the RUS Form 300's.

BEC alleged the defenses of (1) a general denial; (2) comparative negligence; (3) assumption of the risk; and (4) liability, if any, apportioned pursuant to S.C. Code Ann. Section 25-38-15 (2009 Supp.) In particular, BEC asserted that its lines were constructed according to the guidelines established by its lender the Rural Utilities Services ("RUS"), an agency of the Department of Agriculture with a mid-span clearance of 20 feet for the neutral and 24 feet for the primary conductor. BEC asserted that even if there was a clearance defect at the time of the accident, such a clearance defect standing alone would not render BEC liable. BEC maintained that it could only be liable if it caused the defect or knew or should have known of the existence

of the defect and failed to correct it in a timely fashion. BEC asserted that the line was built to exceed the NESC clearance requirement of 18.5 feet. BEC denied that it caused the alleged clearance defect or that it knew or should have known of the defect prior to the accident but failed to correct it. BEC maintained that it complied with the RUS inspection guidelines as approved by RUS representatives involved in preparing and filing the RUS Form 300.

By consent, the actions were tried before me without a jury from September 28, 2015 to October 2, 2015. I find that the actual and proximate cause of the accident was the failure of the plaintiffs and the others involved in moving the tent to comply with the OSHA ten foot rule which requires non-qualified persons (those not qualified to work around high voltage lines) not to work within ten feet of a high voltage line. I find that the plaintiffs have failed to carry their burden of proof that BEC was negligent. I order that judgment be entered in favor of defendant BEC based upon the findings of fact and conclusions of law set forth below.

FINDINGS OF FACT

1. BEC is a member owned, non-profit electric cooperative. BEC currently has some 84,000 members and 5,500 miles of electric line. BEC does not generate electricity. It purchases its power from Central Electric, which buys electricity from Santee Cooper, SCE&G, Duke Power, and Southeastern Power Administration. BEC serves members in three counties.

2. BEC built the line involved in the accident in 1993. The line is a high voltage electric distribution line which carries 14,400 volts.

3. BEC constructs its electrical distribution system to exceed the requirements of the National Electric Safety Code ("NESC").

4. The line in question was designed and built by BEC based upon the guidelines of the Rural Utility Services ("RUS"). RUS, which is part of the Department of Agriculture, is

BEC's lender and provides construction guidelines to electric cooperatives in South Carolina and throughout the United States. Power lines such as the line in question built to RUS guidelines have a neutral conductor with a clearance of 20 feet mid span above ground and a primary conductor with a clearance of 24 feet mid span.

5. The line in question was inspected as part of BEC's pole inspection program in 2002. No clearance defect was noted in that inspection.

6. A component on one of the two poles supporting the line in question was repaired by a BEC lineman in 2003. No clearance defect in the clearance of the line was noted by BEC's lineman.

7. Healing Farms planned to hold a fund raising event on the weekend of April 23, 2008. Volunteers from Memorable Meetings, a local event planning company, were promoting and coordinating the event. Stage Presence was to supply some of the tents for the event.

8. Prior to April 23, 2008, an owner of Stage Presence and Alex Clayson, who was to be the onsite crew leader for Stage Presence, met at the farm with David Richardson and Beth Donahue, professional event coordinators from Memorable Meetings. At that meeting, the participants noted BEC's line and discussed it and the importance of staying away from the line in erecting the tents.

9. On April 23, 2008, Mr. Clayson returned to the farm with John Fortney, John Robinson and Dexter Keyes, the other tent crew members to set up the tents. The tent involved in the accident was a 20' x 20' structure constructed of metal poles covered by fabric. The tent is peaked and has a center spire that extends 17' 9" above the ground. The crew initially set up the tent involved in the accident well away from the BEC line. However, that afternoon, Mr. Richardson asked Mr. Clayson to move the tent and re-position it near the BEC line.

10. The four-man crew did not take the tent down before moving it. Instead, they situated themselves at each corner of the square tent, lifted the supporting poles three to twelve inches off the ground, and then carried the tent in the direction of the BEC line. According to Mr. Clayson, he warned the crew to be careful of the electrical line while moving the tent. Ms. Donahue corroborated his testimony, testifying that she heard something said about the line immediately prior to the accident.

11. The crew initially walked the tent nearer to the BEC line and then set it down. Mr. Richardson asked them to move the tent again. The crew complied, and as they did, they walked part of the tent under the line and the tent's center spire contacted the hot (energized) line. Mr. Fortney and Mr. Keyes were electrocuted. Mr. Clayson and Mr. Robinson suffered burns and other personal injuries.

12. Mr. Clayson, the crew leader, admitted that he bore some responsibility for the accident and death of Mr. Fortney and the injury to Mr. Robinson.

13. No one involved with the event had notified BEC prior to the accident that tents were being erected near the BEC line.

14. No evidence was introduced to establish that BEC had knowledge that the event was taking place or that tents were being moved and placed near the BEC line.

15. No credible evidence was introduced that BEC had caused the line to have excessive sag. There was no evidence that BEC knew or should have known that the vertical clearance was less than 18.5 feet at the time of the accident.

16. After the accident, the line was measured by John Hall, a BEC employee, to be 17' 3" above ground at mid span. The line was measured to be 18' 2" above ground at the point of contact.

17. The accident was investigated by the South Carolina Department of Labor. Mr. Wilkes testified that the OSHA act is a federal law the purpose of which is to provide workers with a safe and healthful working environment. South Carolina administers the OSHA program. Mr. Wilkes testified regarding the OSHA investigation of the April 25, 2008 accident. The following citations were issued to Stage Presence:

1. SCRR Chapter 71, 1-1910.332(b)(2): Failed to have employees who are covered by paragraph (a) of this section but who are not qualified persons trained in and familiar with any electrically related safety practices not specifically addressed by 1910.331 through 1910.335 but which are necessary for their safety, as follows:

   A. Employees, who were not specifically qualified to work around electrical hazards, were not trained in, and familiar with any electrically related safety practices at the Thorn Hill Farms barn area

2. SCRR Chapter 71, 1-1910.335(b): Failed to ensure the following altering techniques are used to warn and protect employees from hazards which could cause injury due to electric shock, burns, or failure of electric equipment parts: (1) safety signs and tag. Safety signs, safety symbols, or accident prevention tags shall be used where necessary to warn employees about electrical hazards which may endanger them, as required by 1910.45. (2) Barricades. Barricades shall be used in conjunction with safety signs where it is necessary to prevent or limit employee access to work areas exposing employees to uninsulated energized conductors or circuit parts. Conductive barricades may not be used where they might cause an electrical contract hazard. (3) Attendants. If signs and barricades do not provide sufficient warning and protection from electrical hazards, an attendant shall be stationed to warn and protect employees as follows;

   A. Altering techniques such as signs, warning tag, barricades, or attendants were not provided to warn four employees of electrical hazards associated with overhead energized power lines, at the Thorn Hill Farm barn area.

3a. SCRR Chapter 71, 11-1910.333(c)(3): Failed to deenergize and ground overhead lines or provide other protective measures before work is started if work is to be performed near lines. If the lines are to be deenergized, arrangements shall be made with the person or organization that operates or controls the electric circuits involved to deenergize and ground them. If protective measures, such as guarding, isolating, or insulating are provided, these precautions shall prevent employees from contacting such lines directly with any part of their body or indirectly through conductive materials, tools, or equipment.

NOTE: The work practices used by qualified persons installing insulating devices on overhead power transmission or distribution lines are covered by 1910.2269 of this Part, not by 1910.332 through 1910.335 of this Part. Under paragraph (c)(2) of this section, unqualified persons are prohibited from performing this type of work, as follows:

A. Employees working in vicinity of energized overhead power lines had no protective measures, such as de-energized or insulated lines, provided before work started at the Thorn Hill Farms barn area.

3b. SCRR Chapter 71, 1-1910.333(c)(3)(1)(b): Failed to ensure when an unqualified person is working on the ground in the vicinity of overhead lines, the person may not bring any conductive object closer to unguarded, energized overhead lines than the distances given in paragraph (c)(3)(i)(A) of this section, as follows: NOTE: For voltages normally encountered with overhead power line, objects which do not have an insulating rating for the voltage involved are considered to be conductive.

A. Employees working on the ground within a 10 foot vicinity of unguarded energized overhead power line with conductive metal tent pole at the Thorn Hill Farms barn area."

18. There was evidence that the line had been hit and damaged at some point in time prior to the accident which could have caused the excess sag in the power line. There was evidence of "penciling" or thinning of the line caused by stretching. There was also evidence that one of the poles had been struck at some point in time.

19. The plaintiffs offered John Dagenhart as their liability expert. Mr. Dagenhart testified that cooperatives such as BEC must construct and maintain its lines such as the line involved with this accident to a height of 18.5 feet high to prevent injuries to people. He testified that BEC had a duty to inspect their lines to ensure they were at code height to prevent injury to people. He also testified that cooperatives must tell the truth when reporting to the federal government. Mr. Dagenhart testified that, in his opinion, the BEC line violated the NESC

clearance requirement and had the line met code clearance requirement of 18.5 feet, the accident would not have occurred. He opined that BEC had made misrepresentations to the federal government in its RUS Form 300 filings. He testified that BEC had failed to inspect its lines.

20. Mr. Dagenhart opined that the line was built improperly in the initial construction and was built with too much sag.

> Q: And do you have an opinion to a reasonable degree of medical certainty as to whether or not the power line was constructed properly?
> A: You know, I really can't come up with any other conclusion that – other than it was just built wrong to begin with.
> Q: And what was it that was wrong?
> A: It had too much sag in it, and, as a consequence, not enough clearance.
> Q: Meaning they used too much line?
> A: In effect, yes." (Transcript p.533, lines 4-14)

However, this was a new opinion provided some three weeks before trial. When his deposition was initially taken in 2012, he had testified that he did not have any opinion as to when the excessive sag occurred or what caused the excessive sag. He was deposed a week before trial regarding his new opinion and several other new opinions. At trial, Mr. Dagenhart admitted that his new opinion that BEC built the line with too much sag was completely different than the opinion he had expressed in his initial deposition in 2012.

At trial, Mr. Dagenhart admitted that his new opinion was completely different from his opinions expressed in his 2012 deposition. Mr. Dagenhart testified as follows:

> Q: Mr. Dagenhart, you gave me one answer two-and-a-half years ago and a completely different answer last week, didn't you, on this point?
> A: I did, yes." (Transcript p.600, lines 7-10)

Mr. Dagenhart changed his testimony regarding whether the line was built properly in the first place between his first deposition and his deposition a week before trial. He admitted that

he had not received any new information that was the basis of his new opinion. In his 2012 deposition testimony, he testified that in all his experience he had never seen a line crew build a line with an improper excessive sag. He said that he stood by that testimony. Mr. Dagenhart's new opinion that the line was improperly sagged when it was built was not only contradicted by his prior sworn testimony but was also contradicted by other credible evidence. Defense expert, Eric Jackson, testified that he had never seen a line constructed with excessive sag. His testimony further established that the difference between a line with BEC's usual 24' clearance and a line with an approximately 17'3" clearance above ground would be readily apparent to experienced linemen. The BEC foreman who had built lines for BEC on a daily basis for some 41 years testified that he had never left a line with too much sag and that he and his crew had built the line properly. The pole inspection crew did not observe excessive sag in the line in 2002. The BEC lineman, Nick Van Allen, who repaired a fixture on one of the poles for the line in 2003 did not report any excessive sag.

21. Mr. Dagenhart was questioned about the OSHA 10 foot rule. He acknowledged that the rule required non-qualified persons (those untrained to work around high voltage) to stay 10 feet away from high voltage lines. Mr. Dagenhart testified that all who were involved in moving the tent had violated the OSHA 10 foot rule and had contributed to the cause of the accident. Mr. Dagenhart also admitted that he had testified in other contact cases that the OSHA rule was a complete defense.

22. Defense expert Eric Jackson is an electrical engineer with expertise in the interpretation of the NESC. He is knowledgeable regarding the maintenance of electric utility systems. Mr. Jackson testified that in his opinion, the proximate cause of the accident was the carelessness of the individuals moving the tent and their failure to comply with the OSHA ten

foot rule. He testified that if the men moving the tent had simply complied with the OSHA ten foot rule, there would have been no accident. He confirmed that the workers and the event coordinators violated the OSHA ten foot rule with respect to the accident. Mr. Jackson also testified that the clearance requirements of the NESC were not even applicable to this accident, because the area where the tents were being erected would be considered a construction zone. He relied upon a prior interpretation of the NESC in forming this opinion. According to Mr. Jackson, the interpretation provided that in a construction zone, the OSHA requirements for work place safety controlled, not the clearance requirements of NESC. Mr. Jackson also relied upon excerpts from the NESC Handbook, Fifth Edition, by Allen Clapp, Mr. Dagenhart's former boss. In his book, Mr. Clapp wrote that operators or erectors of apparatus which have the capability of contacting power lines, have the responsibility to take special care to avoid damaging or otherwise interrupting the service of utility installations. According to Mr. Clapp, employees must be told where lines are located, whether disclosed or concealed, how to avoid the lines, and the consequences of not avoiding lines.

23. In addition thereto, Mr. Jackson testified that the BEC inspection program complied with the requirements of the NESC and RUS guidelines. BEC's inspection program at the time of the accident provided that all of BEC's systems be inspected on an eight year cycle pursuant to a pole inspection contract. The pole inspector was required to report any dangerous conditions on the system. In addition, BEC employees were instructed to look at the BEC lines when going about their normal day's work and to repair or report and then repair any defects noted. Mr. Jackson testified that BEC's inspection program was proper and was consistent with what utilities around the country were doing. He testified that while there was a clearance defect on the line in question at the time of the accident, there was no evidence that BEC had been

made aware of the clearance defect prior to the accident and that BEC had no obligation under the NESC to repair a defect about which the cooperative is not knowledgeable.

24. Mr. Jackson opined to a reasonable degree of engineering certainty that the line was constructed properly in the first place and had the proper clearance at the time of construction. He opined that construction of the line using a 35 foot pole was and is a fairly standard construction. He testified that it was easy to obtain proper clearance. Mr. Jackson had also discussed the construction of the line with some members of the crew who built the line and he confirmed they followed a standard construction practice used in building lines such as the line in question. Mr. Jackson emphasized that if the line had been built with excessive sag, such as the sag that existed on the day of the accident, the improper sag would be readily recognizable to the crew and it would not be something any lineman would have left uncorrected. Finally, Mr. Jackson opined that the line had been hit and damaged and that suggested to him that the clearance of the line had been affected and altered by being hit. Mr. Jackson also testified that the so-called safety rules referred to by the plaintiffs' attorney were not consistent with the language in the NESC.

25. The defense also called two experts in tent safety, Ken Keberle and Thomas Markel. Both witnesses have had lengthy careers involving special event tents and tent safety issues. Both were knowledgeable of the OSHA regulations that related to tent safety or work place safety. Both witnesses testified that in their opinion, the proximate cause of the accident in this case was the violation of the OSHA ten foot rule by the workers, the crew foreman and the event planners, all of whom were involved in moving the tent and contacting the line.

26. Matthew Bryan also testified for the defense. Mr. Bryan is an electrical engineer who worked for McCall Thomas Engineering at the time of the accident. McCall-Thomas

Engineering has supported and assisted electric cooperatives, including BEC, in preparing Form 300s which are reporting forms used by the RUS. Mr. Bryan assisted BEC in completing its RUS Form 300s. Mr. Bryan testified that he also assisted 8 to 10 other electric cooperatives in preparing and submitting RUS Form 300s. He explained that field service technicians from McCall-Thomas would go out and inspect the BEC system. Data from those inspections would be compiled and put into a report. He testified that the RUS representative also would typically go and do a visual inspection himself. According to Mr. Bryan, preparation of a Form 300 was a collaborative process and that the RUS representative could require change in the rating assigned by BEC. Once BEC and the RUS agreed on the ratings, the RUS Form 300 was completed and submitted by BEC.

27. Mr. Bryan confirmed that the BEC inspection program involved use of pole inspectors who were required to report any dangerous circumstances disclosed in their inspection. BEC also required its linemen and employees to visually inspect lines while they were out working in the day or night. Mr. Bryan was asked about the RUS Bulletin which identified the conditions normally needed to justify a rating of 3 and which included a provision that all overhead lines be patrolled annually, by walking, riding or aerially. Mr. Bryan testified that he was not aware of any cooperative in the state that patrolled its entire system on an annual basis. He testified that he told the RUS representative about BEC's inspection program and that the RUS representative with this information agreed with the rating of a 3 regarding BEC's inspection program. He testified that he and BEC had never misrepresented anything to the RUS representative or the federal government. The RUS Form 300 BEC that was submitted in 2008 actually explained and described BEC's inspection process. The 2008 BEC Form 300 stated:

28. BEC also called Isaiah Ward who was the crew chief of the crew who built the

line in question. Mr. Ward testified that he went to work for BEC on April 4, 1973 and that his work had involved line construction every day, five days a week. He testified that he built the line in question in accordance with the RUS guidelines so that the mid span sags would be the neutral at 20 feet and the primary at 24 feet. He testified that was the standard practice for a 35 foot pole. BEC also called Nick Van Allen. Mr. Van Allen had worked for BEC for 22 years. He testified regarding BEC's standard practice for construction and for clearances according to the RUS guidelines. He testified that the lines such as the line in question would have the neutral with clearance of around 20 feet and the primary with clearance of around 24 feet. He testified that had the primary been sagging down to 17 feet or so at the time of construction, it would have been easy to recognize that the line was not sagged properly and correct the sag.

29. Plaintiffs called Ervin Strickland, BEC's former CEO, Tim Mobley, BEC's Vice President of Engineering and Operations, John Villeponteaux, BEC's Manager of Distribution and Operations, and James Elrod, BEC's former Manager of Training and Loss Control. The plaintiffs' attorney sought to have them admit that BEC had made misrepresentations to the federal government in their RUS Form 300 filings. The plaintiffs' attorney premised his questions on Bulletin 1730-1 which contained guidelines related to the electric borrower's operation and maintenance and outlined certain RUS standard practices. Exhibit A to Bulletin 1730-1 is titled "Conditions Normally Needed to Justify a Rating of 3". Page 8, paragraph 3 of Exhibit A provides that "all overhead lines 'including those on private right-of-way' patrolled annually (walking, riding or aerial); more frequently if experience dictates". BEC gave itself a satisfactory rating of 3 on the RUS Form 300 even though BEC did not patrol its entire system annually.

30. The BEC witnesses acknowledged that they had not patrolled all overhead lines

annually. However, the BEC witnesses steadfastly denied that they had made any misrepresentations. They testified that their initial ratings were based on the work of an outside engineering firm, and that ratings were then reviewed with the RUS representative who could require BEC to change any of its ratings. These witnesses confirmed that BEC's inspection program, which entailed the pole inspection on an 8 year cycle and patrolling by linemen in their daily work, satisfied the RUS reviewer and that he had no objection to BEC's rating of 3 regarding its inspection program. As indicated above, the testimony of these witnesses was corroborated by the testimony of Matthew Bryant of McCall-Thomas who had assisted BEC in the preparation and submission of the Form 300's.

31. Plaintiffs offered no counter evidence from any fact witness to support its claim that BEC had made misrepresentations to the RUS or federal government. The plaintiffs did not call any witnesses from the RUS or the federal government to testify that the federal government was misled by BEC's Form 300's. Importantly, there was no testimony or other evidence as to how a different rating on BEC's RUS Form 300s would have prevented the death or injuries in this case. Plaintiffs' liability expert, Mr. Dagenhart, did say that in his opinion BEC had misrepresented its inspection program to the federal government. However, on cross, he admitted that he had no experience with preparing and filing of RUS Form 300's. Mr. Dagenhart was not asked and did not explain how the clearance defect on the line in question would have been discovered by patrolling which could be done by vehicle and aerially. The plaintiffs offered no evidence to establish when annual patrolling should have been done and completed and no evidence to establish whether the clearance defect had developed prior to the inspection date or subsequent thereto. I find that the plaintiffs failed to prove that BEC made misrepresentations to the federal government but, even if BEC did make misrepresentations, the

plaintiffs failed to prove how the misrepresentations were a proximate cause of the accident.

32. Certain BEC's witnesses were questioned regarding the fact that BEC did not record the land use or the NESC clearance requirement on the staking sheet used to construct the line. BEC witnesses were also questioned about the fact that BEC did not measure each line after construction to ensure that the line met the NESC clearance requirement. BEC testified that its lines were constructed to RUS standards and therefor exceeded the NESC clearance requirements. They testified that a line such as the line in question was built using 35 foot poles and because the lines were built pursuant to the RUS guidelines, BEC's lines had a 20 foot mid span clearance for the neutral and a 24 foot mid span clearance for the primary conductor. Plaintiff's expert, Mr. Dagenhart, admitted that he had constructed lines just the way BEC constructed its lines. He admitted that he had not measured the height of lines after construction and that he, like the BEC crew, checked the clearance by "eyeballing" the line.

CONCLUSIONS OF LAW

1. In a negligence action, a plaintiff must show that (1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered an injury or damages. *Moore v. Weinberg*, 681 S.E.2d 875, 383 S.C. 583 (2001).

2. Negligence is not actionable unless it is a proximate cause of the injury. *Bishop v. South Carolina Dept. of Mental Health*, 502 S.E.2d 78, 331 S.C. 79 (1998).

3. Proximate cause is the efficient or direct cause of injury; the thing that brings about the complained of injuries. *McKnight v. South Carolina Dept. of Corrections*, 684 S.E.2d 566, 385 S.C. 380 (2009).

4. A defendant is not liable for an injury from an equipment failure about which the defendant had no notice. See *Grier v. Cornelius*, 247 S.C. 521, 148 S.E.2d 338 (1966) (We have never adopted such a strict position that would make the owner or operator of a motor vehicle an insurer against any and all defects in the vehicle's equipment. We do not think that the Legislature intended the equipment statute to impose liability without fault or make the owner or operator of an automobile an absolute insurer of his brakes. In view of our decisions, a violation of the brake statute is negligence as a matter of law. However, the mere failure of brakes is not a violation of the brake statute as a matter of law.)

5. South Carolina does not recognize the doctrine of *res ipsa loquitur*. See also *Fletcher v. Medical University of South Carolina*, 390 S.C. 458, 702 S.E.2d 372 (2012) (However, South Carolina does not recognize the doctrine of *res ipsa loquitur*. *Snow v. City of Columbia*, 305 S.C. 544, 555 n.7, 409 S.E.2d 797, 803 n.7 (Ct. App. 1991) ("In an action for negligence, the plaintiff must prove by direct or circumstantial evidence that the defendant did not exercise reasonable care. South Carolina's rejection of *res ipsa loquitur* is consistent with its general adherence to fault based liability in tort.))

6. John Fortney and John Robinson are as a matter of law charged with the knowledge that contact with a wire charged with electric current is attendant with danger. *Priest v. Brown*, 302 S.C. 4405, 396 S.E.2d 638 (1990). John Fortney and John Robinson are presumed to know the law and are therefore charged with knowledge of the OSHA ten foot rule. *Ahrens v. The State of South Carolina*, 392 S.C. 340, 709 S.E.2d 54 (2011).

7. Mr. Fortney and Mr. Robinson violated the OSHA ten (10) foot rule as did Mr. Clayson, the crew chief, and as did Mr. Richardson and Ms. Donahue. The OSHA ten (10) foot rule is found in 29 CFR 1910.333(c).

8. The direct and efficient cause of the accident was Mr. Fortney and Mr. Robinson's failure to stay clear of the power line by at least 10 feet. The line presented an open and obvious danger. Ignoring this clear risk, they lifted a tent off the ground and walked that unwieldy metal framework directly into the high voltage power line.

9. The negligence of Alex Clayson, the crew leader for Stage Presence, was also a proximate cause of the accident. Indeed, Mr. Clayson admitted that he bears responsibility for the accident. He had noted and discussed the danger presented by line with party planners and the crew prior to the accident. He knew that they were close to the line and actually halted the move briefly because he was worried about the line, and then inexplicably the crew proceeded through the 10 foot danger zone and towards the obvious hazard with disastrous results.

10. The negligence of David Richardson and Beth Donahue was also a cause of this accident. They were aware of the danger presented by the powerline and Mr. Richardson had previously discussed that danger with Mr. Clayson, but inexplicably directed the crew to move the tent directly into the 10 foot danger zone and into the power line.

11. The fact that the power line was found to be hanging 5- 7 inches below the 18' 6'' NESC mandated height does not excuse the violations of the 10 foot rule by the Plaintiffs and the other responsible individuals. The accident would have been avoided if they had simply complied with the OSHA ten foot rule.

12. Plaintiffs failed to produce any credible evidence that BEC constructed the line in violation of RUS guidelines or NESC rules or with too much sag. Plaintiffs' claim that the line was built with too much sag is not based on credible testimony and is flatly contradicted by credible testimony.

13. The plaintiffs have failed to prove that BEC construction crew caused the line to

have too much sag when the line was built. The only evidence that BEC caused the line to have too much sag came from the plaintiffs' liability expert, Mr. Dagenhart. He testified that BEC built the line with too much sag. However, I do not find his testimony to be credible on this issue. Mr. Dagenhart was deposed in 2012. At that time he testified that he had no opinion as to when or what had caused the line to have too much sag. He also testified that he had never seen a construction crew build a line with too much sag. His new opinion that BEC had built the line with too much sag was in direct contradiction with his 2012 deposition testimony. At trial, he admitted that he had not received any new information that had caused him to change his testimony. Mr. Dagenhart's new opinion that the BEC construction crew had built the line with too much sag was also contradicted by other evidence which I find to be credible. Mr. Jackson testified, as Mr. Dagenhart had, that he had never seen a construction crew leave a line with too much sag in it. He testified that if the line was to have been constructed with clearances of 20 feet for the neutral and 24 feet for the primary conductor but was sagged as the line was sagging on the day of the accident, the improper sag would have been obvious to any line construction crew and would not have been left in that fashion. The line was inspected in 2002 as part of the program inspection and no clearance defect was noted. A component of one of the two poles for the line in question was repaired by a lineman in 2003 and no clearance defect was noted by the BEC lineman. The crew chief and a member of the crew both testified that they built the line according to the RUS specifications with clearances of 20 feet and 24 feet. I decline to give weight to the new opinion expressed by Mr. Dagenhart. I find his testimony that BEC had improperly built the line with too much sag is not credible.

14. BEC is not liable as a result of its alleged failure to inspect the line in question for compliance with the clearance requirements of the National Electric Safety Code. The line was

inspected in 2002-2003 as part of a pole inspection program based on an eight year cycle. Mr. Dagenhart testified that an eight year cycle was reasonable. By contract, the contractor was to inspect and report any dangerous circumstances. No report was made of any defect or dangerous circumstances with the line in question. NESC does not state how an inspection should be made. Instead, it states that the lines be inspection as experience dictates. BEC's linemen and employees are instructed to look for hazards as they ride about during the day. I find that the evidence establishes that BEC's inspection program was consistent with what other cooperatives do.

15. I find that BEC's inspection program complied with RUS inspection requirements. No evidence was introduced to support Plaintiffs' contention that BEC's alleged failure. if any, to comply with NESC inspection requirements was a proximate cause of this unfortunate accident.

16. The plaintiffs did not offer any credible evidence of how, when or what caused the line to be out clearance. While failure to inspect an electrical line can be evidence of negligence, there must still be evidence to establish that the negligence was the proximate cause of the accident and injuries. First, there must be proof of when the inspection should have taken place but was not done. Second, there must be proof the defect in the line existed at the time of inspection should have been performed and could have been discovered. In other words, if the inspection should have taken place in January 2008 and the clearance defect did not occur until February 2008, there could be no liability for failure to inspect. Here, there is no proof of either and the plaintiffs have failed to prove a claim based upon failure to inspect. The plaintiffs have the burden of proof on all the elements of a negligence cause of action. In the absence of proof as to when, why and what caused the excessive sag in clearance, an award based upon the failure

to inspect would be purely speculative and improper.

17. The Plaintiffs questioned one or more of BEC's employees or former employees regarding BEC's alleged failure to maintain records. The BEC employees who were asked about BEC's record retention denied that BEC had failed to keep proper records. However, even if BEC failed to maintain proper records, there is no evidence that the failure to keep records was somehow a proximate cause of the accident.

18. I find that the plaintiffs failed to prove that BEC provided false information to the federal government in its preparation and filing of the RUS Form 300's but even if BEC had provided false information, the plaintiffs failed to prove how that was a proximate cause of the accident in this case. The plaintiffs' attorney questioned the BEC witnesses at length, attempting to prove that BEC had provided false information to the federal government in failing to disclose that it did not patrol its entire system annually by walking, riding or aerially. The instructions for completing the RUS Form 300's includes a reference to patrolling the entire system annually, either walking, riding or aerially, the instructions do not mandate that the electrical cooperative patrol its entire system annually. Instead, the instructions state that such patrolling is one of the conditions normally necessary for a rating of 3. The plaintiffs offered no evidence from any representative of the RUS or federal government that they had been misled by the manner in which BEC rated itself on the Form 300. BEC offered evidence from Mr. Bryant that BEC had disclosed that it did not patrol its system annually and that the RUS representative had no objection to BEC having given itself a rating of 3. The plaintiffs offered no factual evidence to contradict the testimony of the BEC employees or former employees regarding the Form 300. The plaintiffs failed to prove that BEC lied or misrepresented to the RUS or any other governmental entity. However, if the plaintiffs had proved that BEC had somehow

misrepresented its procedures in completing the RUS Form 300, this would not establish any liability on the part of BEC. The plaintiffs failed to offer any evidence that the accident would have been avoided if BEC had patrolled its entire system annually. Specifically, the plaintiffs offered no evidence that the clearance defect would have existed at the time the line was patrolled or that the clearance defect would most likely existed and have been discovered by patrolling in a vehicle or aerial which are two of the three acceptable methods of patrolling.

19. I find that the plaintiffs have not proved that BEC knew or should have known of the clearance defect.

20. Since I have found that the plaintiffs have failed to prove their case and that judgment should be entered in favor of the defendant, it is unnecessary for me to address the testimony of Mr. Robinson or the daughters of Mr. Fortney.

IT IS ORDERED that judgment be entered in favor of the defendant.

AND IT IS SO ORDERED.

_____

The Honorable Roger M. Young, Sr.
Circuit Court Judge

_____, South Carolina

_____, 2015

Kevin Smith

From: Pope Johnson <pope@popejohnsonlaw.com>
Sent: December 29, 2015 2:16 PM
To: ryounglc@sccourts.org
Cc: John B Williams (jbw@williamsandhulst.com); Jary Hulst (jjh@williamsandhulst.com); Kevin Smith; dkeenan@keenanlawfirm.com; Andrew Gould (agould@keenanlawfirm.com) (agould@keenanlawfirm.com)
Subject: 14CP081231 and 14CP081232 Fortney/Robinson v. Berkeley Electric Cooperative
Attachments: Order Final Version 3.docx; Plaintiffs Proposed Order with Defendant's Comments Dec 29 2015.docx

Dear Judge, attached is the defendant's revised order and the defendant's analysis of the plaintiffs' proposed order. Please let me know if anything further is needed. Do you want a copy of the transcript? If so, let me know and I will make arrangements to have a copy made.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
Estate of John Fortney, deceased, by his duly appointed Personal Representative Constance S. Fortney, Plaintiff, vs. Berkeley Electric Cooperative, Defendant.	)	C/A Nos. 14-CP-08-1231, 14-CP-08-1232 **ORDER**
John Steven Robinson, Plaintiff, vs. Berkeley Electric Cooperative, Defendant.	)	Civil Action No.14-CP-08-1230

These actions arise out of an accident that occurred on April 23, 2008 when John Fortney and John Steven Robinson, along with Dexter Keyes and Alexander Clayson, moved a tent they had erected into the primary conductor of a high voltage line of Berkeley Electric Cooperative ("BEC"). The accident happened at a farm operated by Healing Farms Ministries ("Healing Farm"). Healing Farm was having tents erected in preparation for a fund raising event. The event was being promoted and coordinated by Beth Donahue and David Richardson, professional event planners from Memorable Meetings.

John Fortney and John Steven Robinson were part of a four-man crew from Stage Presence. Alexander Clayson was the Stage Presence crew leader. At the request of and under the direction of Ms. Donahue and Mr. Richardson, the Stage Presence crew picked up the tent

and walked it into BEC's power line. Two of the workers for Stage Presence, John Fortney and Dexter Keyes, were electrocuted. The other two, Alexander Clayson and John Robinson, sustained burns and other physical injuries.

The line was open and obvious. The presence of the line and the dangers it presented were discussed. As the crew moved the tent, Mr. Clayson actually halted work due to his concern about the proximity of the line and the safety of his crew. Despite this, the crew lifted the tent and, at the direction of Ms. Donahue and Mr. Richardson, carried it directly into the line.

PLEADINGS

The plaintiffs claim that the BEC line did not meet the NESC clearance requirements at the time of the accident. The plaintiffs claim that the 1993 NESC required the primary conductor to be built with a clearance of 18.5 feet. The accident occurred on April 23, 2008. On April 24, 2008, the clearance of the primary conductor at the point of contact was measured to be 18' 2" at the point of contact by John Hall, a BEC employee. On May 9, 2008, the clearance of the primary conductor mid span was measured to be 16' 11", as measured by Joe Jones, a McCall Thomas engineer who is now deceased. The plaintiffs alleged that the BEC line had a clearance defect at the time of the accident which was the proximate cause of the accident.

The Fortney and Robinson complaints allege causes of action for negligence. Their claims are based upon the same factual allegations:

> 6. The Defendant owed a duty to the public to install its power lines at a minimum safe height as determined by the foreseeable use of the property over which the lines are installed.
>
> 7. The Thornhill Farm property over which the Defendant's power line had been installed was cultivated and fallow agricultural land which constitutes "other lands" under the National Electric Safety Code.
>
> 8. Upon information and belief, at the time the Defendant installed the power line over the Thornhill Farm property the applicable Code (National Electric Safety Code) promulgated by the Institute of Electrical and Electronics

Engineers (IEEE) and adopted by the American National Standards Institute (ANSI) required a minimum safe height of eighteen and one-half (18.5) feet at the power line's lowest point between the adjoining power poles.

9. The Defendant also owed a duty to periodically inspect and to maintain power lines to insure continued compliance with the applicable Code for minimum safe height of the power line after the power line had been installed.

10. At approximately 4:00 o'clock p.m., the Plaintiff and others were being directed by the event coordinator to move a tent to a different location when the tent pole came into contact with the Defendant's power line.

11. The tent pole would not have come into contact with the Defendant's power line if it had been installed and maintained at the minimum safe height required by the applicable code.

Although not pled, the Plaintiffs further asserted that BEC had failed to maintain the proper records and that BEC lied to the federal government in its preparation and filing of the RUS Form 300's.

BEC alleged the defenses of (1) a general denial; (2) comparative negligence; (3) assumption of the risk; and (4) liability, if any, apportioned pursuant to S.C. Code Ann. Section 25-38-15 (2009 Supp.) In particular, BEC asserted that its lines were constructed according to the guidelines established by its lender the Rural Utilities Services ("RUS"), an agency of the Department of Agriculture with a mid-span clearance of 20 feet for the neutral and 24 feet for the primary conductor. BEC asserted that even if there was a clearance defect at the time of the accident, such a clearance defect standing alone would not render BEC liable. BEC maintained that it could only be liable if it caused the defect or knew or should have known of the existence of the defect and failed to correct it in a timely fashion. BEC asserted that the line was built to exceed the NESC clearance requirement of 18.5 feet. BEC denied that it caused the alleged clearance defect or that it knew or should have known of the defect prior to the accident but

failed to correct it. BEC maintained that it complied with the RUS inspection guidelines as approved by RUS representatives involved in preparing and filing the RUS Form 300.

By consent, the actions were tried before me without a jury from September 28, 2015 to October 2, 2015. I find that the actual and proximate cause of the accident was the failure of the plaintiffs and the others involved in moving the tent to comply with the OSHA ten foot rule which requires non-qualified persons (those not qualified to work around high voltage lines) not to work within ten feet of a high voltage line. I find that the plaintiffs have failed to carry their burden of proof that any act or omission on the part of BEC was a proximate cause of the accident. I order that judgment be entered in favor of defendant BEC based upon the findings of fact and conclusions of law set forth below.

FINDINGS OF FACT

1. BEC is a member owned, non-profit electric cooperative. BEC currently has some 84,000 members and 5,500 miles of electric line. BEC does not generate electricity. It purchases its power from Central Electric, which buys electricity from Santee Cooper, SCE&G, Duke Power, and Southeastern Power Administration. BEC serves members in three counties. (Strickland, Tp. 113, line 11 to Tp. 115, line 1)

2. BEC built the line involved in the accident in 1993. The line is a high voltage electric distribution line which carries 14,400 volts .

3. BEC constructs its electrical distribution system to exceed the requirements of the National Electric Safety Code ("NESC"). (Mobley Tp. 201, line 25 to Tp. 202, line 17. The stated purpose of the NESC is:

> "A: The purpose of these rules is a practical safeguarding of persons during the installation, operation, or maintenance of electric supply and communication lines and associated equipment. These rules contain basic provisions that are considered necessary for the safety of employees and the public under the

specified conditions. The code is not intended as a design specification or as an instruction manual." (Mobley Tp. 183, lines 13-21)

4. The line in question was designed and built by BEC based upon the guidelines of the Rural Utility Services ("RUS"). (Mobley Tp. 202, lines 6-12) RUS, which is part of the Department of Agriculture, is BEC's lender and provides construction guidelines to electric cooperatives in South Carolina and throughout the United States. Power lines such as the line in question which are built to RUS guidelines have a neutral conductor with a clearance of 20 feet mid span above ground and a primary conductor with a clearance of 24 feet mid span. (Mobley Tp. 186, line 21 to Tp. 191, line 4)

5. The line in question was inspected as part of BEC's pole inspection program in 2002. No clearance defect was noted in that inspection. (Mobley Tp. 192, lines 1-6)

6. A component on one of the two poles supporting the line in question was repaired by a BEC lineman, Nick Van Allen, in 2003. No clearance defect in the clearance of the line was noted by Mr. Van Allen. (Van Allen Tp. 880, line 2 to Tp. 881, line 13)

7. Healing Farms planned to hold a fund raising event on the weekend of April 23, 2008. Volunteers from Memorable Meetings, a local event planning company, were promoting and coordinating the event. Stage Presence was to supply some of the tents for the event.

8. Prior to April 23, 2008, an owner of Stage Presence and Alexander Clayson, who was to be the onsite crew leader for Stage Presence, met at the farm with David Richardson and Beth Donahue, professional event coordinators from Memorable Meetings. (Clayson Depo. p.477, line 7-19). At that meeting, the participants noted BEC's line and discussed it and the importance of staying away from the line in erecting the tents. (Clayson Depo. p.37, line 45 to p.41, line 9.)

9. On April 23, 2008, Mr. Clayson returned to the farm with John Fortney, John Robinson and Dexter Keyes, the other tent crew members to set up the tents. The tent involved in the accident was a 20' x 20' High Peak Sierra structure constructed of metal poles covered by fabric. (Clayson Depo. p.22., line 17-20). The tent is peaked and has a center spire that extends 17' 9" above the ground. The crew initially set up the tent involved in the accident well away from the BEC line. (Clayson Depo. p.52, lines 11-19) However, that afternoon, Mr. Richardson asked Mr. Clayson to move the tent and re-position it near the BEC line. (Clayson Depo. p.54, line 15 to p.55, line 25)

10. The four-man crew did not take the tent down before moving it. Instead, they situated themselves at each corner of the square tent, lifted the supporting poles three to six inches off the ground, and then carried the tent in the direction of the BEC line. (Clayson Depo. p.62, lines 5-25) According to Mr. Clayson, he warned the crew to be careful of the electrical line while moving the tent. (Clayson Depo. p.67, line 15 to p.73, line 15; Clayson Depo. p.78, line 2 to p.80, line 2) Ms. Donahue corroborated his testimony, testifying that she heard something said about the line immediately prior to the accident.

11. The crew initially walked the tent nearer to the BEC line and then set it down. (Clayson Depo. p.65, lines 7-14) Mr. Richardson asked them to move the tent again. (Clayson Depo. p.65, lines 15-24) The crew complied and moved the tent closer to BEC's line. As they did, they walked part of the tent under the line and the tent's center spire contacted the hot (energized) line. Mr. Fortney and Mr. Keyes were electrocuted. Mr. Clayson and Mr. Robinson suffered burns and other personal injuries.

12. Mr. Clayson, the crew leader, admitted that he bore some responsibility for the accident and death of Mr. Fortney and the injury to Mr. Robinson. (Clayson Depo. p.104, lines 16-20)

13. No one involved with the event had notified BEC prior to the accident that tents were being erected near the BEC line.

14. No evidence was introduced to establish that BEC had knowledge that the event was taking place or that tents were being moved and placed near the BEC line.

15. No credible evidence was introduced that BEC had caused the line to have excessive sag. There was no evidence that BEC knew or should have known that the vertical clearance was less than 18.5 feet at the time of the accident.

16. After the accident, the line was measured by John Hall, a BEC employee to be 18' 2" above ground at the point of contact.

17. The accident was investigated by the South Carolina Department of Labor. Mr. Wilkes testified that the OSHA act is a federal law the purpose of which is to provide workers with a safe and healthful working environment. South Carolina administers the OSHA program. Mr. Wilkes testified regarding the OSHA investigation of the April 25, 2008 accident. The following citations were issued to Stage Presence:

1. SCRR Chapter 71, 1-1910.332(b)(2): Failed to have employees who are covered by paragraph (a) of this section but who are not qualified persons trained in and familiar with any electrically related safety practices not specifically addressed by 1910.331 through 1910.335 but which are necessary for their safety, as follows:

   A. Employees, who were not specifically qualified to work around electrical hazards, were not trained in, and familiar with any electrically related safety practices at the Thorn Hill Farms barn area

2. SCRR Chapter 71, 1-1910.335(b): Failed to ensure the following altering techniques are used to warn and protect employees from hazards which could cause injury due to electric shock, burns, or failure of electric equipment parts: (1) safety signs and tag. Safety signs, safety symbols, or accident prevention tags shall be used where necessary to warn employees about electrical hazards which may endanger them, as required by 1910.45. (2) Barricades. Barricades shall be used in conjunction with safety signs where it is necessary to prevent or limit employee access to work areas exposing employees to uninsulated energized conductors or circuit parts. Conductive barricades may not be used where they

might cause an electrical contract hazard. (3) Attendants. If signs and barricades do not provide sufficient warning and protection from electrical hazards, an attendant shall be stationed to warn and protect employees as follows;

A. Altering techniques such as signs, warning tag, barricades, or attendants were not provided to warn four employees of electrical hazards associated with overhead energized power lines, at the Thorn Hill Farm barn area.

3a. SCRR Chapter 71, 11-1910.333(c)(3): Failed to deenergize and ground overhead lines or provide other protective measures before work is started if work is to be performed near lines. If the lines are to be deenergized, arrangements shall be made with the person or organization that operates or controls the electric circuits involved to deenergize and ground them. If protective measures, such as guarding, isolating, or insulating are provided, these precautions shall prevent employees from contacting such lines directly with any part of their body or indirectly through conductive materials, tools, or equipment. NOTE: The work practices used by qualified persons installing insulating devices on overhead power transmission or distribution lines are covered by 1910.2269 of this Part, not by 1910.332 through 1910.335 of this Part. Under paragraph (c)(2) of this section, unqualified persons are prohibited from performing this type of work, as follows:

A. Employees working in vicinity of energized overhead power lines had no protective measures, such as de-energized or insulated lines, provided before work started at the Thorn Hill Farms barn area.

3b. SCRR Chapter 71, 1-1910.333(c)(3)(1)(b): Failed to ensure when an unqualified person is working on the ground in the vicinity of overhead lines, the person may not bring any conductive object closer to unguarded, energized overhead lines than the distances given in paragraph (c)(3)(i)(A) of this section, as follows: NOTE: For voltages normally encountered with overhead power line, objects which do not have an insulating rating for the voltage involved are considered to be conductive.

A. Employees working on the ground within a 10 foot vicinity of unguarded energized overhead power line with conductive metal tent pole at the Thorn Hill Farms barn area."

Mr. Wilks testified as to the purpose of the OSHA regulations.

"Q: What is the purpose of the safety regulations which were violated, what purpose do they serve?

Objections omitted.
A: The purpose of the citations?
Q: No, no, the regulations.
A: Oh, the purpose of the regulations is for – it gives the employer the tools – the purpose of the regulation is to provide a safe and healthy working environment for the employees. And OSHA has put these rule3s out for the employers and the employees to abide by to make sure that workplace incidents or accidents or injuries or illnesses do not occur on the job site." (Wilks Depo. p.14, lines 2-4 and lines 11-20)

18. There was evidence that the line had been hit and damaged at some point in time prior to the accident which could have caused the excess sag in the power line. There was also evidence that one of the poles had been struck at some point in time.

19. The plaintiffs offered John Dagenhart as their liability expert. Mr. Dagenhart testified that cooperatives such as BEC must construct and maintain its lines such as the line involved with this accident to a height of 18.5 feet high to prevent injuries to people. He testified that BEC had a duty to inspect their lines to ensure they were at code height to prevent injury to people. He also testified that cooperatives must tell the truth when reporting to the federal government. (Dagenhart Tp.499, line 3 to Tp.500, line 14) Mr. Dagenhart testified that, in his opinion, the BEC line violated the NESC clearance requirement and had the line met code clearance requirement of 18.5 feet, the accident would not have occurred. (Dagenhart Tp.507, lines 10-18) He opined that BEC had made misrepresentations to the federal government in its RUS Form 300 filings. He testified that BEC had failed to inspect its lines and violated the record keeping requirements. (Dagenhart Tp.507, line 24 to Tp.508, line 16)

20. Mr. Dagenhart opined that the line was built improperly in the initial construction and was built with too much sag.

Q: And do you have an opinion to a reasonable degree of medical certainty as to whether or not the power line was constructed properly?
A: You know, I really can't come up with any other conclusion that – other than it was just built wrong to begin with.

Q: And what was it that was wrong?
A: It had too much sag in it, and, as a consequence, not enough clearance.
Q: Meaning they used too much line?
A: In effect, yes." (Transcript p.533, lines 4-14)

However, this was a new opinion provided some three weeks before trial. When his deposition was initially taken in 2012, he had testified that he did not have any opinion as to when the excessive sag occurred or what caused the excessive sag. (Dagenhart Tp.533, line 24 to Tp.595, line 5; Dagenhart Tp.597, line 13) He was deposed a week before trial regarding his new opinion and several other new opinions. At trial, Mr. Dagenhart testified as follows:

Q: Mr. Dagenhart, you gave me one answer two-and-a-half years ago and a completely different answer last week, didn't you, on this point?
A: I did, yes." (Tp. 600, lines 7-10)

Mr. Dagenhart changed his testimony regarding whether the line was built properly in the first place between his first deposition and his deposition a week before trial. (Dagenhart Tp.596, L.14 to Tp.597, L.6). He admitted that he had not received any new information that was the basis of his new opinion. (Dagenhart Tp.595, lines 1-17 to Tp.596, lines 20-23). In his 2012 deposition testimony, he testified that in all his experience he had never seen a line crew build a line with an improper excessive sag. He said that he stood by that testimony, but he inconsistently maintained that the BEC crew had done so here. Mr. Dagenhart's new opinion that the line was improperly sagged when it was built was not only contradicted by his sworn testimony but was also contradicted by other credible evidence. Defense expert, Eric Jackson, testified that he had never seen a line constructed with excessive sag. His testimony further established that the difference between a line with BEC's usual 24' clearance and a line with an approximately 18'2" clearance above ground would be readily apparent to experienced linemen. The BEC foreman who had built lines for BEC on a daily basis for some 41 years testified that

he had never left a line with too much sag and that he and his crew had built the line properly. (Ward Tp. 874, line 3 to Tp. 876, line 8) The pole inspection crew did not observe excessive sag in the line in 2002. The BEC lineman, Nick Van Allen, who repaired a fixture on one of the poles for the line in 2003, did not notice anything unusual or out of the ordinary about the sag of the line. (Van Allen Tp. 880, line 20 to Tp. 881, line 13)

21. Mr. Dagenhart was questioned about the OSHA 10 foot rule. He acknowledged that the rule required non-qualified persons (those untrained to work around high voltage) to stay 10 feet away from high voltage lines. Mr. Dagenhart testified that all who were involved in moving the tent had violated the OSHA 10 foot rule and had contributed to the cause of the accident. Mr. Dagenhart also admitted that he had testified in other contact cases that the OSHA rule was a complete defense. (Dagenhart Tp. 616, line 11 to Tp. 618, line 20)

22. Defense expert Eric Jackson is an electrical engineer with expertise in the interpretation of the NESC. He is knowledgeable regarding the maintenance of electric utility systems. (Jackson Tp. 753, line 2 to Tp. 754, line 18) Mr. Jackson testified that in his opinion, the proximate cause of the accident was the carelessness of the individuals moving the tent and their failure to comply with the OSHA ten foot rule. (Jackson Tp. 755, line 18 to Tp. 756, line 24) He testified that if the men moving the tent had simply complied with the OSHA ten foot rule, there would have been no accident. (Jackson Tp. 756, lines 6-9) He confirmed that the workers and the event coordinators violated the OSHA ten foot rule with respect to the accident. (Jackson Tp. 755, line 18 to Tp. 756, line 24) Mr. Jackson also testified that the clearance requirements of the NESC were not even applicable to this accident, because the area where the tents were being erected would be considered a construction zone and OSHA rules would control. He relied upon a prior interpretation of the NESC in forming this opinion. (Jackson Tp. 758, lines 2-25) According to Mr. Jackson, the interpretation provided that in a construction

zone, the OSHA requirements for work place safety controlled, not the clearance requirements of NESC. Mr. Jackson also relied upon excerpts from the NESC Handbook, Fifth Edition, by Allen Clapp, Mr. Dagenhart's former boss. In his book, Mr. Clapp wrote that operators or erectors of apparatus which have the capability of contacting power lines, have the responsibility to take special care to avoid damaging or otherwise interrupting the service of utility installations. According to Mr. Clapp, employees must be told where lines are located, whether disclosed or concealed, how to avoid the lines, and the consequences of not avoiding lines. (Jackson Tp. 759, lines 3-14; Jackson Tp. 764, line 13 to Tp. 766, line 20)

23. The NESC states that the lines must be inspected but does not spell out how or when inspections are to be done. Inspections are to be done based upon the cooperative's experience. Mr. Dagenhart admitted that the BEC inspection program complied with and satisfied the requirements of the NESC in terms of the intervals for the inspections.

> Q: And if the line were built in 1993 and there was an inspection of the line, a pole inspection that included an inspection, things you inspected in September of 2002, would that be a proper interval for inspection? Your answer?
> A: Yes.
> Q: Now, you say that wouldn't be a proper interval?
> A: No.
> Q: So you're not changing that testimony?
> A: No, I'm not changing that." (Dagenhart Tp.604, lines 7-16)

BEC's inspection program at the time of the accident provided that all of BEC's systems be inspected on an eight year cycle pursuant to a pole inspection contract. The pole inspector was required to report any dangerous conditions on the system. In addition, BEC employees were instructed to look at BEC lines when going about their normal day's work and to repair or report and then repair any defects noted. Mr. Jackson also testified that BEC's inspection program was proper and was consistent with what utilities around the country were doing. He testified that while there was a clearance defect on the line in question at the time of the accident,

there was no evidence that BEC had been made aware of the clearance defect prior to the accident and that BEC had no obligation under the NESC to repair a defect about which BEC was not knowledgeable. (Jackson Tp. 769, line 11 to Tp. 770, line 14)

24. Mr. Jackson opined to a reasonable degree of engineering certainty that the line was constructed properly in the first place and had the proper clearance at the time of construction. He opined that construction of the line using a 35 foot pole was and is a fairly standard construction. He testified that it was easy to obtain proper clearance. Mr. Jackson had also discussed the construction of the line with some members of the crew who built the line and he confirmed they followed a standard construction practice used in building lines such as the line in question. (Jackson Tp. 770, line 15 to Tp. 771, line 25; Jackson Tp. 778, lines 9-17) Mr. Jackson emphasized that if the line had been built with excessive sag, such as the sag that existed on the day of the accident, the improper sag would be readily recognizable to the crew and it would not be something any lineman would have left uncorrected. (Jackson Tp. 778, lines 4-24) Finally, Mr. Jackson opined that the line had been hit and damaged and that suggested to him that the clearance of the line had been affected and altered by being hit. (Jackson Tp. 779, lines 1-11) Mr. Jackson also testified that the so-called safety rules crafted by the plaintiffs' attorney were not consistent with the language in the NESC. (Jackson Tp. 779, line 12 to Tp. 780, line 6)

25. BEC also called two experts in tent safety, Ken Keberle and Thomas Markel. Both witnesses have had lengthy careers involving special event tents and tent safety issues. Both were knowledgeable of the OSHA regulations that related to tent safety or work place safety. Both witnesses testified that in their opinion, the proximate cause of the accident in this case was the violation of the OSHA ten foot rule by the workers, the crew foreman and the event planners, all of whom were involved in moving the tent and contacting the line. (Keberle Tp. 836, line 12 to Tp. 841, line 3; Markel Tp. 845, line 6 to Tp. 849, line 13)

26. Matthew Bryan also testified for BEC. Mr. Bryan is an electrical engineer who worked for McCall Thomas Engineering at the time of the accident. (Bryan Tp. 852, lines 1-25) McCall-Thomas Engineering has supported and assisted electric cooperatives, including BEC, in preparing Form 300s which are reporting forms used by the RUS. Mr. Bryan assisted BEC in completing its RUS Form 300s. Mr. Bryan testified that he also assisted 8 to 10 other electric cooperatives in preparing and submitting RUS Form 300s. (Bryan Tp. 853, lines 1-21) He explained that field service technicians from McCall-Thomas would go out and inspect the BEC system. Data from those inspections would be compiled and put into a report. (Bryan Tp. 855, line 12 to Tp. 856, line 14) He testified that the RUS representative also would typically go and do a visual inspection himself. According to Mr. Bryan, preparation of a Form 300 was a collaborative process and that the RUS representative could require change in the rating assigned by BEC. (Bryan Tp. 856, lines 13-24) Once BEC and the RUS agreed on the ratings, the RUS Form 300 was completed and submitted by BEC.

27. Mr. Bryan confirmed that the BEC inspection program involved use of pole inspectors who were required to report any dangerous circumstances disclosed in their inspection. BEC also required its linemen and employees to visually inspect lines while they were out working in the day or night. (Bryan Tp. 858, line 9 to Tp. 859, line 1) Mr. Bryan was asked about the RUS Bulletin which identified the conditions normally needed to justify a rating of 3 and which included a provision that all overhead lines be patrolled annually, by walking, riding or aerially. Mr. Bryan testified that he was not aware of any cooperative in the state that patrolled its entire system on an annual basis. (Bryan Tp. 859, lines 9-15) He testified that he told the RUS representative about BEC's inspection program and that the RUS representative with this information agreed with the rating of a 3 regarding BEC's inspection program. (Bryan Tp. 859, line 17 to Tp. 860, line 12) He testified that he and BEC had never misrepresented

anything to the RUS representative or the federal government. Mr. Dagenhart admitted that the RUS Form 300 that BEC submitted in 2008 actually explained and described BEC's inspection process. (Dagenhart Tp. 588, line 20 to Tp. 591, line 4)

28. BEC also called Isaiah Ward who was the crew chief of the crew who built the line in question. Mr. Ward testified that he went to work for BEC on April 4, 1973 and that his work had involved line construction every day, five days a week. He testified that he built the line in question in accordance with the RUS guidelines so that the mid span sags would be the neutral at 20 feet and the primary at 24 feet. He testified that was the standard practice for a 35 foot pole. (Ward Tp. 873, line 23 to Tp. 876, line 11) BEC also called Nick Van Allen. Mr. Van Allen had worked for BEC for 22 years. He testified regarding BEC's standard practice for construction and for clearances according to the RUS guidelines. He testified that the lines such as the line in question would have the neutral with clearance of around 20 feet and the primary with clearance of around 24 feet. He testified that had the primary been sagging down to 18'2" or so at the time of construction, it would have been easy to recognize that the line was not sagged properly and to correct the sag. (Van Allen Tp. 879, line 9 to Tp. 881, line 13)

29. Plaintiffs called Ervin Strickland, BEC's former CEO, Tim Mobley, BEC's Vice President of Engineering and Operations, John Villeponteaux, BEC's Manager of Distribution and Operations, and James Elrod, BEC's former Manager of Training and Loss Control. The plaintiffs' attorney sought to have them admit that BEC had made misrepresentations to the federal government in their RUS Form 300 filings. The plaintiffs' attorney premised his questions on Bulletin 1730-1 which contained guidelines related to the electric borrower's operation and maintenance and outlined certain RUS standard practices. Exhibit A to Bulletin 1730-1 is titled "Conditions Normally Needed to Justify a Rating of 3". Page 8, paragraph 3 of Exhibit A provides that "all overhead lines 'including those on private right-of-way' patrolled

annually (walking, riding or aerial); more frequently if experience dictates". BEC gave itself a satisfactory rating of 3 on the RUS Form 300 even though BEC did not patrol its entire system annually.

30. The BEC witnesses acknowledged that they had not patrolled all overhead lines annually. However, the BEC witnesses steadfastly denied that they had made any misrepresentations. They testified that their initial ratings were based on the work of an outside engineering firm, and that ratings were then reviewed with the RUS representative who could require BEC to change any of its ratings. These witnesses confirmed that BEC's inspection program, which entailed the pole inspection on an 8 year cycle and patrolling by linemen in their daily work, satisfied the RUS reviewer and that he had no objection to BEC's rating of 3 regarding its inspection program. As indicated above, the testimony of these witnesses was corroborated by the testimony of Matthew Bryant of McCall-Thomas who had assisted BEC in the preparation and submission of the Form 300's.

31. Plaintiffs offered no counter evidence from any fact witness to support its claim that BEC had made misrepresentations to the RUS or the federal government. The plaintiffs did not call any witnesses from the RUS or the federal government to testify that the federal government was misled by BEC's Form 300's. Importantly, there was no testimony or other evidence as to how a different rating on BEC's RUS Form 300s would have prevented the death or injuries in this case. Plaintiffs' liability expert, Mr. Dagenhart, did say that in his opinion BEC had misrepresented its inspection program to the federal government. However, on cross, he admitted that he had no experience with preparing and filing of RUS Form 300's. Mr. Dagenhart was not asked and did not explain how the clearance defect on the line in question would have been discovered by patrolling which could be done by vehicle and aerially. The plaintiffs offered no evidence to establish when annual patrolling should have been done and completed

and no evidence to establish whether the clearance defect had developed prior to the inspection date or subsequent thereto. I find that the plaintiffs failed to prove that BEC made misrepresentations to the federal government but, even if BEC did make misrepresentations, the plaintiffs failed to prove how the misrepresentations were a proximate cause of the accident.

32. Certain BEC witnesses were questioned regarding the fact that BEC did not record the land use or the NESC clearance requirement on the staking sheet used to construct the line. BEC witnesses were also questioned about the fact that BEC did not measure each line after construction to ensure that the line met the NESC clearance requirement. BEC testified that its lines were constructed to RUS standards and therefore exceeded the NESC clearance requirements. They testified that a line such as the line in question was built using 35 foot poles and because the lines were built pursuant to the RUS guidelines, BEC's lines had a 20 foot mid span clearance for the neutral and a 24 foot mid span clearance for the primary conductor. Plaintiff's expert, Mr. Dagenhart, admitted that he had constructed lines just the way BEC constructed its lines. He admitted that he had not measured the height of lines after construction and that he, like the BEC crew, checked the clearance by "eyeballing" the line. (Dagenhart Tp. 612, line 7 to Tp. 614, line 10)

CONCLUSIONS OF LAW

1. In a negligence action, a plaintiff must show that (1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered an injury or damages. *Moore v. Weinberg,* 383 S.C. 583, 681 S.E.2d 875 (2001).

2. Negligence is not actionable unless it is a proximate cause of the injury. *Bishop v. South Carolina Dept. of Mental Health,* 331 S.C. 79, 502 S.E.2d 78 (1998).

3. Proximate cause is the efficient or direct cause of injury; the thing that brings about the complained of injuries. *McKnight v. South Carolina Dept. of Corrections,* 385 S.C. 380, 684 S.E.2d 566 (2009).

4. A defendant is not liable for an injury from an equipment failure about which the defendant had no notice. See *Grier v. Cornelius*, 247 S.C. 521, 148 S.E.2d 338 (1966) (We have never adopted such a strict position that would make the owner or operator of a motor vehicle an insurer against any and all defects in the vehicle's equipment. We do not think that the Legislature intended the equipment statute to impose liability without fault or make the owner or operator of an automobile an absolute insurer of his brakes. In view of our decisions, a violation of the brake statute is negligence as a matter of law. However, the mere failure of brakes is not a violation of the brake statute as a matter of law.)

5. South Carolina does not recognize the doctrine of *res ipsa loquitur*. See also *Fletcher v. Medical University of South Carolina,* 390 S.C. 458, 702 S.E.2d 372 (2012) (However, South Carolina does not recognize the doctrine of *res ipsa loquitur*. *Snow v. City of Columbia*, 305 S.C. 544, 555 n.7, 409 S.E.2d 797, 803 n.7 (Ct. App. 1991) ("In an action for negligence, the plaintiff must prove by direct or circumstantial evidence that the defendant did not exercise reasonable care. South Carolina's rejection of *res ipsa loquitur* is consistent with its general adherence to fault based liability in tort.))

6. John Fortney and John Robinson are as a matter of law charged with the knowledge that contact with a wire charged with electric current is attendant with danger. *Priest v. Brown,* 302 S.C. 4405, 396 S.E.2d 638 (1990). John Fortney and John Robinson are presumed to know the law and are therefore charged with knowledge of the OSHA ten foot rule. *Ahrens v. The State of South Carolina,* 392 S.C. 340, 709 S.E.2d 54 (2011).

7. Mr. Fortney and Mr. Robinson violated the OSHA ten (10) foot rule as did Mr.

Clayson, the crew chief, and as did Mr. Richardson and Ms. Donahue. The OSHA ten (10) foot rule is found in 29 CFR 1910.333(c).

8. The direct and efficient cause of the accident was Mr. Fortney and Mr. Robinson's failure to stay clear of the power line by at least 10 feet. The line presented an open and obvious danger. Ignoring this clear risk, they lifted a tent off the ground and walked that unwieldy metal framework directly into the high voltage power line.

9. The negligence of Alexander Clayson, the crew leader for Stage Presence, was also a proximate cause of the accident. Indeed, Mr. Clayson admitted that he bears responsibility for the accident. He had noted and discussed the danger presented by the line with party planners and the crew prior to the accident. He knew that they were close to the line and actually halted the move briefly because he was worried about the line, and then inexplicably the crew proceeded through the 10 foot danger zone and towards the obvious hazard with disastrous results.

10. The negligence of David Richardson and Beth Donahue was also a proximate cause of this accident. They were aware of the danger presented by the power line and Mr. Richardson had previously discussed that danger with Mr. Clayson, but inexplicably directed the crew to move the tent directly into the 10 foot danger zone and into the power line.

11. The fact that the power line was found to be hanging a few inches below the 18' 6'' NESC mandated height does not excuse the violations of the 10 foot rule by the Plaintiffs and the other responsible individuals. The accident would have been avoided if they had simply complied with the OSHA ten foot rule.

12. Plaintiffs failed to produce any credible evidence that BEC constructed the line in violation of RUS guidelines or NESC rules or with too much sag. Plaintiffs' claim that the line was built with too much sag is not based on credible testimony and is flatly contradicted by

credible testimony.

13. The plaintiffs have failed to prove that BEC construction crew caused the line to have too much sag when the line was built. The only evidence that BEC caused the line to have too much sag came from the plaintiffs' liability expert, Mr. Dagenhart. He testified that BEC built the line with too much sag. However, I do not find his testimony to be credible on this issue. Mr. Dagenhart was deposed in 2012. At that time he testified that he had no opinion as to when or what had caused the line to have too much sag. He also testified that he had never seen a construction crew build a line with too much sag. His new opinion that BEC had built the line with too much sag was in direct contradiction with his 2012 deposition testimony. At trial, he admitted that he had not received any new information that had caused him to change his testimony. Mr. Dagenhart's new opinion that the BEC construction crew had built the line with too much sag was also contradicted by other evidence which I find to be credible. Mr. Jackson testified, as Mr. Dagenhart had, that he had never seen a construction crew leave a line with too much sag in it. He testified that if the line was to have been constructed with clearances of 20 feet for the neutral and 24 feet for the primary conductor but was sagged as the line was sagging on the day of the accident, the improper sag would have been obvious to any line construction crew and would not have been left in that fashion. The line was inspected in 2002 as part of the program inspection and no clearance defect was noted. A component of one of the two poles for the line in question was repaired by a lineman in 2003 and no clearance defect was noted by the BEC lineman. The crew chief and a member of the crew both testified that they built the line according to the RUS specifications with clearances of 20 feet and 24 feet. I decline to give weight to the new opinion expressed by Mr. Dagenhart. I find his testimony that BEC had improperly built the line with too much sag is not credible.

14. BEC is not liable as a result of its alleged failure to inspect the line in question for

compliance with the clearance requirements of the National Electric Safety Code. Mr. Dagenhart admitted that the NESC did not provide any specific method or schedule for inspection to be done.

> "Q: Does the Code of Federal Regulations that you're looking at describe how the inspection is to be done?
> A: No." (Tp.571, lines 7-9).

> "Q: Show me the language.
> A: It says, lines and equipment shall be inspected at such intervals as experience has shown to be necessary. (Tp.574, lines 16-18).

> Q: Name me one electrical co-op in the whole country that is doing something different than what Berkeley says it does in terms of construction of line to exceed code requirement and inspections which are the pole inspections and the patrolling by their employees.
> A: I can't give you a particular co-op in that respect." (Tp.585, line 23 to Tp.586, line 4).

The line was inspected in 2002-2003 as part of a pole inspection program based on an eight year cycle. The plaintiff's expert, Mr. Dagenhart testified that an eight year cycle was reasonable. By contract, the contractor was to inspect and report any dangerous circumstances. No report was made of any defect or dangerous circumstances with the line in question. NESC does not state how an inspection should be made. Instead, it states that the lines be inspected as experience dictates. BEC's linemen and employees are instructed to look for hazards as they ride about during the day. The evidence establishes that BEC's inspection program was consistent with what other cooperatives do. (Bryan Tp. 857, line 21 to Tp. 861, line 25)

15. I find that BEC's inspection program complied with RUS inspection requirements. No evidence was introduced to support Plaintiffs' contention that BEC's alleged failure, if any, to comply with NESC inspection requirements was a proximate cause of this unfortunate accident.

16. The plaintiffs did not offer any credible evidence of how, when or what caused

the line to be out clearance. While failure to inspect an electrical line can be evidence of negligence, there must still be evidence to establish that the negligence was the proximate cause of the accident and injuries. First, there must be proof of when the inspection should have taken place but was not done. Second, there must be proof the defect in the line existed at the time of inspection should have been performed and could have been discovered. In other words, if the inspection should have taken place in January 2008 and the clearance defect did not occur until February 2008, there could be no liability for failure to inspect. Here, there is no proof of either and the plaintiffs have failed to prove a claim based upon failure to inspect. The plaintiffs have the burden of proof on all the elements of a negligence cause of action. In the absence of proof as to when, why and what caused the excessive sag in clearance, an award based upon the failure to inspect would be purely speculative and improper.

17. The Plaintiffs questioned one or more of BEC's employees or former employees regarding BEC's alleged failure to maintain records. The BEC employees who were asked about BEC's record retention denied that BEC had failed to keep proper records. However, even if BEC failed to maintain proper records, there is no evidence that the failure to keep records was somehow a proximate cause of the accident.

18. I find that the plaintiffs failed to prove that BEC provided false information to the federal government in its preparation and filing of the RUS Form 300's but even if BEC had provided false information, the plaintiffs failed to prove how that was a proximate cause of the accident in this case. The plaintiffs' attorney questioned the BEC witnesses at length, attempting to prove that BEC had provided false information to the federal government in failing to disclose that it did not patrol its entire system annually by walking, riding or aerially. The instructions for completing the RUS Form 300's includes a reference to patrolling the entire system annually, either walking, riding or aerially, the instructions do not mandate that the electrical cooperative

patrol its entire system annually. Instead, the instructions state that such patrolling is one of the conditions normally necessary for a rating of 3. The plaintiffs offered no evidence from any representative of the RUS or federal government that they had been misled by the manner in which BEC rated itself on the Form 300. Mr. Dagenhart, plaintiff's liability expert offered his opinion that BEC had lied to the government in its Form 300's. However, Mr. Dagenhart admitted that he had no experience with the Form 300 process.

> "Q: What experience have you had in filing RUS-300s?
> A: I have not.
> Q: Have you ever met with a co-op and represented them in trying to comply with RUS-300?
> A: No.
> Q: Have you participated in any meetings with RUS officials regarding RUS form 300s?
> A: No." (Tp.562, lines 8-15).

BEC offered evidence from Mr. Bryant that BEC had disclosed that it did not patrol its system annually and that the RUS representative had no objection to BEC having given itself a rating of 3. The plaintiffs offered no factual evidence to contradict the testimony of the BEC employees or former employees regarding the Form 300. The plaintiffs failed to prove that BEC lied or misrepresented to the RUS or any other governmental entity. However, if the plaintiffs had proved that BEC had somehow misrepresented its procedures in completing the RUS Form 300, this would not establish any liability on the part of BEC. The plaintiffs failed to offer any evidence that the accident would have been avoided if BEC had patrolled its entire system annually. Specifically, the plaintiffs offered no evidence that the clearance defect would have existed at the time the line was patrolled or that the clearance defect would most likely existed and have been discovered by patrolling in a vehicle or aerially which are two of the three acceptable methods of patrolling.

19. I find that the plaintiffs have not proved that BEC knew or should have known of

the clearance defect.

20. I recognize that my decision set forth above may be appealed. If my decision is appealed and if it is reversed, this action may be remanded for trial. The accident occurred on April 23, 2008 and, for reasons unknown to me, the case was not tried until some seven (7) years later. The trial took almost a full week and was obviously expensive for the parties. In an effort to avoid the necessity of a second trial, I find that it is appropriate to make further findings based on the assumption that my rulings as set forth above are reversed and the issue of negligence and comparative negligence would have to be determined. In that event, I find that the plaintiffs' negligence is greater to any negligence on the part of the defendant and therefore the plaintiffs are not entitled to recover. If it is assumed that the line was built with excessive sag and as a result, BEC was negligent, the negligence of the plaintiffs far outweighs the negligence of the defendant. The line was open and obvious. The hazard was recognized and discussed. The clearance at the point of contact was 18.2 inches which was only a few inches less than the 18.5 inch NESC clearance requirement. Although the plaintiffs' complain that BEC's line was a few inches too low, the plaintiffs violated the OSHA ten (10) foot rule. Mr. Fortney and Mr. Robinson, in violation of the OSHA 10 foot rule, proceeded to do the very thing that the law says they should not do. They walked the tent under the line to the point that contact was made between the tent's center point and the BEC line. There is absolutely no evidence to show that BEC had any notice that tents were being set up near or under BEC's lines. As a result, only the plaintiffs and the others involved in moving the tent could have avoided the accident. All they would have had to have done was comply with the OSHA ten (10) foot rule. They failed to do so. They violated the OSHA ten foot rule. The very kind of accident that the OSHA ten (10) foot rule was designed to prevent occurred. The negligence of the plaintiffs was greater than any negligence on the part of BEC. The plaintiffs are not entitled to recover against BEC.

21. Since I have found that the plaintiffs have failed to prove their case and that judgment should be entered in favor of the defendant, it is unnecessary to address the testimony of Mr. Robinson or the daughters of Mr. Fortney or their alleged damages.

IT IS ORDERED that judgment be entered in favor of the defendant.

AND IT IS SO ORDERED.

_____

The Honorable Roger M. Young, Sr.
Presiding Judge, Ninth Judicial Circuit

Dated: _____, 2016
_____, South Carolina

Kevin Smith

From: Kevin Smith
Sent: December 29, 2015 4:05 PM
To: ryounglc@sccourts.org
Cc: John B Williams (jbw@williamsandhulst.com); Jary Hulst (jjh@williamsandhulst.com); dkeenan@keenanlawfirm.com; Andrew Gould (agould@keenanlawfirm.com) (agould@keenanlawfirm.com); Allan Galbraith; 'Pope Johnson'
Subject: RE: 14CP081231 and 14CP081232 Fortney/Robinson v. Berkeley Electric Cooperative

Importance: High

Daniel, I believe we need a conference with Judge Young. Pope is introducing new evidence that was not submitted at trial and his proposed order is loaded with hearsay testimony. Also, we already submitted proposed orders. With his email today, Pope has submitted a new one. He had weeks to respond to ours, yet we are just getting his today. I would ask that Judge Young hold off on reviewing these until we've had a chance to be heard.

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From: Pope Johnson [mailto:pope@popejohnsonlaw.com]
Sent: December 29, 2015 2:16 PM
To: ryounglc@sccourts.org
Cc: John B Williams (jbw@williamsandhulst.com); Jary Hulst (jjh@williamsandhulst.com); Kevin Smith; dkeenan@keenanlawfirm.com; Andrew Gould (agould@keenanlawfirm.com) (agould@keenanlawfirm.com)
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Dear Judge, attached is the defendant's revised order and the defendant's analysis of the plaintiffs' proposed order. Please let me know if anything further is needed. Do you want a copy of the transcript? If so, let me know and I will make arrangements to have a copy made.

Pope D. Johnson, III
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Kevin Smith

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Subject: RE: 14CP081231 and 14CP081232 Fortney/Robinson v. Berkeley Electric Cooperative

Mr. Smith,

You may address your concerns and/or opposition in writing for Judge Young's consideration.

Sincerely,

Daniel P. Ranaldo
Law Clerk to The Honorable Roger M. Young, Sr.

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Subject: RE: 14CP081231 and 14CP081232 Fortney/Robinson v. Berkeley Electric Cooperative

Daniel, Pope is misrepresenting Judge Young's instructions when he wrote, "I understood that we would [have] 10 days to respond to the plaintiffs' order and submit a revised order if we choose to do so. "
Our instructions were to submit proposed orders within 30 days of receiving the transcript and we would have 10 days to respond to each other's orders.

Hearing Transcript, Page 893:
THE COURT: ... So three weeks after you get a transcript, the 30 days will start then, and then if you would send it to opposing counsel, both sides, at the same time, and then ten days after that, have any rebuttal to that, and then I'll make a ruling.

Judge Young's instructions were clear and did not allow for "revised orders" on the same day rebuttals to orders were due. How are we supposed to file a rebuttal to a revised order handed in the day rebuttals were due? Pope knows these were not the instructions. This is an ambush and a purposeful violation of Judge Young's instructions.

Pope has also introduced a book written by Don Keenan in his rebuttal to our order with references to Mr. Keenan's law firm's website. Neither that book nor his website would not have been admissible in trial and his attempt to introduce them in his rebuttal is completely improper.

Pope has introduced new portions of the Code of Federal Regulations in his rebuttal to our order that were not discussed in trial. Therefore, none of the expert witnesses had a chance to testify about them. His attempt to get them in through the backdoor of his rebuttal is improper.

Pope has introduced information about Berkeley Electric in his rebuttal to our order that was not in evidence. This again is totally improper.

Lastly, there is so much hearsay in his proposed order that I received yesterday, I cannot begin to reference all of it now. And, since I just received his order less than 24 hours ago, I am not prepared to respond to it in full. I will say that his additional findings of fact should the case get reversed is quite strange and loaded with statements that are simply not true. (conclusion of law 20). Pope switches the height at the midspan of the line with the height at the point of contact and tries to make the case that it was only a few inches low. Pope has been involved in this case for 7 years. He knows the measurements his own client made. His order is full of things like this. I trust Judge Young won't fall for it.

Here is what I propose. Judge Young reviews both parties proposed orders without rebuttals. Pope is the one that asked for the rebuttals in the first place. Pope purposely violated his clear instructions and has left us in a position where we probably need to file a string of motions at this point. This will only delay a ruling even further and open the door to more of this back and forth. I trust Judge Young will ignore hearsay testimony that was objected to and sustained at trial, as well as the hearsay testimony from the depositions Pope submitted. Please advise if this is acceptable.

Kevin B. Smith