

1996

Michael Erhart v. Waste Management of Utah, Inc. : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 960506-CA

UTAH COURT OF APPEALS

MICHAEL ERHART,

Plaintiff and Appellant,

v.

**WASTE MANAGEMENT OF UTAH,
INC.,**

Defendant and Appellee.

Case No. 960506-CA

Argument Priority No. 15

BRIEF OF THE APPELLANT

Appeal from an Order Granting Defendant's Motion for Summary
Judgment in the Third Judicial District Court in and for Salt Lake County,
State of Utah, the Honorable David S. Young, Judge.

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FILED

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COURT OF APPEALS

UTAH COURT OF APPEALS

MICHAEL ERHART,

Plaintiff and Appellant,

v.

**WASTE MANAGEMENT OF UTAH,
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UTAH COURT OF APPEALS

MICHAEL ERHART,

Plaintiff and Appellant,

v.

**WASTE MANAGEMENT OF UTAH,
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Defendant and Appellee.

Case No. 960506-CA

Argument Priority No. 15

BRIEF OF THE APPELLANT

JURISDICTIONAL STATEMENT

The Court of Appeals has appellate jurisdiction in this matter pursuant to Utah Code Ann. § 78-2a-3(2)(j) (1953), as amended, which confers appellate jurisdiction in this Court over cases transferred to the Court of Appeals from the Supreme Court. The Supreme Court of Utah poured-over this case to the Court of Appeals on July 31, 1996. This appeal is taken from the final judgment and Order of the Third Judicial District Court of Salt Lake County, State of Utah, the Honorable David S. Young, Judge, presiding.

ISSUES PRESENTED FOR REVIEW

The following issues are presented for review in this brief:

1. Did the trial court commit reversible error when it granted Defendant's Motion for Summary Judgment?
 - a. Did the trial court properly conclude as a matter of law that there were no disputed issues of material fact such that Plaintiff presented no evidence upon which a jury could conclude that the Plaintiff received his injuries in the area where repairs had been performed some months prior to his accident?
 - b. Did the trial court properly determine as a matter of law that the evidence was insufficient to allow a reasonable jury to conclude that Plaintiff's injuries were caused by defects or dangerous conditions which Defendant created, or of which Defendant was aware, and which Defendant should reasonably foresee would expose others to an unreasonable risk of harm?

STANDARDS OF REVIEW

Summary judgment is proper only when no genuine issues of material fact remain and the moving party is entitled to judgment as a matter of law. Utah R.Civ.P. 56(c); Higgins v. Salt Lake County, 855 P.2d 231, 235 (Utah 1993). Because the appellate court resolves only legal issues on appeal from a summary judgment, the appellate court does not defer to the trial court's rulings. Ferree v. State, 784 P.2d 149, 151 (Utah 1989); accord Higgins, 855 P.2d at 235. "We determine only whether the trial court erred in

applying the governing law and whether the trial court correctly held that there were no disputed issues of material fact.” Ferree, 784 P.2d at 151 (citing Bushnell Real Estate, Inc. v. Nielson, 672 P.2d 746, 749 (Utah 1983); Bowen v. Riverton City, 656 P.2d 434, 436 (Utah 1982)).

“Summary judgment allows the parties to pierce the pleadings to determine whether a material issue of fact exists that must be resolved by the fact finder.” Lamb v. B & B Amusements Corp., 869 P.2d 926, 928 (Utah 1993) (citing Reagan Outdoor Advertising, Inc. v. Lundgren, 692 P.2d 776, 779 (Utah 1984); Webster v. Sill, 675 P.2d 1170, 1172 (Utah 1983)). In accordance with this rule, “[t]he party moving for summary judgment must establish a right to judgment based on the applicable law as applied to an *undisputed* material issue of fact. A party opposing the motion is required only to show that there is a material issue of fact.” Id. (emphasis added) (citations omitted).

Moreover, as to questions concerning material issues of fact, “[a]ffidavits and depositions submitted in support of and in opposition to a motion for summary judgment may be used only to determine whether a material issue of fact exists, not to determine whether one party’s case is less persuasive than another’s or is not likely to succeed in a trial on the merits.” Id. Accordingly, “[b]ecause this is an appeal from a summary judgment, the appellate court must review the factual submissions to the trial court in a light most favorable to finding a material issue of fact.” Versluis v. Guaranty National Cos., 842 P.2d 865, 867 (Utah 1992) (citing King v. Searle Pharmaceuticals, Inc., 832 P.2d 858 (Utah 1992)). “A genuine issue of fact exists where, on the basis of the facts in the

record, reasonable minds could differ” on any material issue. Jackson v. Dabney, 645 P.2d 613, 615 (Utah 1982).

STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS

Any statutes, rules, and constitutional provisions relevant to the disposition of this appeal are set forth in the text of this brief.

STATEMENT OF THE CASE

On or about April 28, 1992, Plaintiff and Appellant Michael Erhart was injured while removing furniture and equipment from a trailer leased by his employer, The Industrial Company (“TIC”), from Modulaire, a related company of Defendant Waste Management of Utah, Inc. (“Waste Management”)

Plaintiff Michael Erhart filed a Complaint against Waste Management in the Third Judicial District Court of Salt Lake County on July 29, 1994. (R. 1-7) Following discovery, Defendant filed a Motion for Summary Judgment. (R. 58-59) Upon oral argument and at the conclusion of the hearing on the Motion, the trial court granted Defendant’s Motion, determining as a matter of law that there were no genuine issues of material fact in dispute. (R. 214) The court issued an Order on May 16, 1996 granting Defendant’s Motion for Summary Judgment and finding that Plaintiff presented no evidence upon which a jury could conclude that Plaintiff received his injuries in the area where repairs had been performed some months prior to the accident. (R. 165) The court ruled that without other evidence of what the defect consisted of, when it arose, or

when it reasonably would have been discovered, summary judgment for the Defendant was proper. (R. 166) This appeal followed.

FACTS

Viewed in the light most favorable to the Plaintiff, as required by the standard of review, the facts of this case are as follows:

Defendant Waste Management is in part the business of leasing mobile trailers to construction companies for such on-site use as offices and storage facilities. (R. 61) On July 6, 1990, TIC leased from Modulaire, a related company of Defendant Waste Management, a double-wide mobile field office for use on the fourth line expansion project at Kennecott Copper's concentrate facility near Copperton, Utah . (R. 113) Waste Management did not manufacture the subject trailer. Instead it was manufactured by an unrelated company, Advanced Modular Manufacturing, not a party to this lawsuit or appeal. (R. 61) (Deposition of Jerry Bryant, p. 7, attached as Addendum C)

Before the trailer was taken to the site where TIC used it, the trailer was inspected by Advanced Modular. (R. 61) (Deposition of Jerry Bryant, p. 11, attached as Addendum C) Once the trailer arrived on site it was again inspected . (R. 61, 98) (Deposition of Jerry Bryant, p. 11, attached as Addendum C) Upon taking possession of the trailer, TIC proceeded to install walls to create individual office space and modified the floor plan configuration to suit its own needs. (R. 63) (Deposition of Danny Piva, p. 13, attached as Addendum D)

Despite the several inspections performed by Modulaire prior to TIC taking possession of the trailer, TIC noted several problems with the trailer, including problems with floors, ceiling tiles and doors. (Deposition of Danny Piva, p. 23, 29, attached as Addendum D) Modulaire performed the requested repair work through a service company. (Deposition of Danny Piva, p. 23, attached as Addendum D) Sometime around February or March 1992, TIC noted some water damage to the floor area around the front door of the trailer. TIC made several calls to Modulaire to have the floor repaired. (Deposition of Danny Piva, p. 24, attached as Addendum D) Someone not associated with TIC came on at least two occasions and made the requested repairs, which consisted of crawling under the trailer in the front door area and installing new support members, new subfloor material and replacing floor tile. (Deposition of Danny Piva, p. 24, attached as Addendum D; Deposition of Richard Young, p. 38-40, attached as Addendum E)

Approaching the end of April, 1992, TIC began demobilizing the trailer because its work at Kennecott was coming to an end. (R. 64) (Deposition of Richard Young, p. 10, attached as Addendum E) This demobilization included removing the walls TIC had installed to create office space. (R. 64) On April 28, 1992, Plaintiff Michael Erhart was involved in the demobilization process, moving boxes, supplies and furniture out of the trailer. (Deposition of Michael Erhart, p. 37, attached as Addendum F) As he walked in the area near the front door carrying heavy boxes, Michael Erhart's leg fell through the floor of the trailer, causing him to sustain serious bodily injuries. (Deposition of Michael

Erhart, p. 38, attached as Addendum F) Following this incident, several individuals saw a hole in the floor of the trailer. (Deposition of Michael Erhart, p. 40, attached as Addendum F; Deposition of Richard Young, p. 22-23, attached as Addendum E; Deposition of Janae Young, p. 18, 32, attached as Addendum G) Several witnesses recall seeing a piece of plywood or other material that had been placed on the floor so as to cover the hole and prevent others from falling in. (Deposition of Cheryl Piva, p. 20, attached as Addendum H; Deposition of Richard Young, p. 25-26, attached as Addendum E; Deposition of Michael Erhart, p. 46-47, attached as Addendum F)

Notwithstanding these eyewitness accounts of the incident, Modulaire asserts that there was no damage noted to the floor of the trailer during an inspection the day following the incident. (Deposition of Jerry Bryant, p. 13-15, attached as Addendum C)

The exact location where Plaintiff's leg fell through the floor is in dispute. During Plaintiff's deposition he was asked to identify by marking on a diagram of the trailer the location where the floor allegedly failed and he fell through it. (Deposition of Michael Erhart, p. 38, attached as Addendum F) Plaintiff responded by making a circle on the diagram and by saying, "It was somewhere in this area. I can't be exactly sure because it's been a long time." (Addendum F) Plaintiff was also asked, "Now the area that you circled seems, in most part, to be contained within the area where the roll-up door room was." Plaintiff responded, "Yeah. It was somewhere in this vicinity. I couldn't pinpoint the exact place at this time." (Deposition of Michael Erhart, p. 45, attached as Addendum F)

When asked where Plaintiff was when Plaintiff was injured, Richard Young, a co-worker also present during the incident, initially responded by marking a diagram of the trailer in an area very close to the threshold of the overhead door. (Deposition of Richard Young, p. 17-20, attached as Addendum E) When told that there was some discrepancy between where he had placed the location of the accident and where Michael Erhart placed the accident, Richard Young stated, "Well, now I think about it, he might have been a little bit farther back. I was thinking it was -- it wasn't quite to the door." "He was probably about -- trying to remember. We were walking up. He was probably -- I'd put him at first close to the threshold, now I think, more of a -- he's probably about two and a half feet away from the threshold." (Deposition of Richard Young, p. 19-20, attached as Addendum E) Other witnesses place Michael Erhart in approximate locations around the area of the overhead door.

During the course of discovery, Counsel for both parties accompanied Ronald L. Larsen, President and former General Manager of Advanced Modular Manufacturing, the manufacturer of the subject trailer, on an inspection of the trailer. (R. 148-151) (Affidavit of Ronald L. Larsen, attached as Addendum I) As part of the inspection, Mr. Larsen specifically looked at the area near the front door where repairs had been made approximately one to two months prior to Plaintiff's alleged accident. (R. 149) Mr. Larsen stated that the area that had been repaired extends no further than 18 inches in from the outside wall of the trailer. This area of repair ran approximately 12 to 16 feet lengthwise with the trailer and involved replacing strips of plywood 18 inches wide in 8

foot pieces. (R. 149) The seams outlining the boundary between the repair and the original flooring material are easily identified by blocking along those seams. (R. 149) The area of the repair was easily located and was easily visible from underneath the trailer. (R. 149) The remainder of the undercarriage of the trailer is absolutely devoid of any repair or any damage that would even be associated with Plaintiff's alleged incident as he described it. (R. 150)

SUMMARY OF THE ARGUMENT

The trial court erroneously granted Defendant's Motion for Summary Judgment when it concluded that Plaintiff presented no evidence upon which a jury could conclude that the Plaintiff received his injuries in the area where repairs had been performed some months prior to the accident. Either Plaintiff fell through a hole in the floor of the trailer or he did not. Defendant's witness, Ronald Larsen, testified that the only area of the entire trailer where repairs had been made extended 18 inches from the wall and threshold of the doors for a distance of 12 to 16 feet lengthwise. There was no evidence of any other damage or repair to any other part of the trailer. The logical conclusion, viewed in the light most favorable to Plaintiff, is that Plaintiff fell through the floor in the area of the repairs. Such a conclusion is exactly opposite of the trial courts decision.

Additionally, whether Defendant had notice that a dangerous condition existed with the floor of the trailer is a question of fact for the jury and is not appropriate for the trial court to decide in summary judgment.

ARGUMENT

POINT I

THE TRIAL COURT INCORRECTLY RULED AS A MATTER OF LAW THAT THERE WERE NO DISPUTED ISSUES OF MATERIAL FACT.

Following oral argument and hearing on Defendant's Motion for Summary Judgment, the trial court concluded that Plaintiff presented no evidence upon which a jury could conclude that the Plaintiff received his injuries in the area where repairs had been performed some months prior to his accident. (R. 165) Such a conclusion is clearly erroneous and contrary to the evidence.

A fundamental factual question in this matter is whether Plaintiff in fact fell through the floor of the trailer, and if so, the location of the resulting hole. This fundamental factual issue remains in dispute. Defendant asserts that there was no damage noted to the floor of the trailer during an inspection the day following the incident. (R. 64) Defendant even represented to the trial court during oral argument on the Motion for Summary Judgment that the trailer was recovered by Modulaire approximately two days after the Plaintiff's accident and there was no notation of any problems with the floor and no holes noted on the return inspection. (R. 183) Nevertheless, several other witnesses testified that they either saw Plaintiff's leg fall through the floor, that they saw the hole in the floor immediately following the incident, and/or that they saw a piece of plywood or other material covering the hole in the floor so as to prevent others from falling in the

hole.

Defendant introduced the Affidavit of Ronald L. Larsen, President and former General Manager of Advanced Modular Manufacturing, the manufacturer of the subject trailer, who performed an inspection of the trailer in the presence of Counsel. Mr. Larsen testified that he was able to easily identify the location where obvious repairs had been made to the floor of the trailer. These repairs extended no further than 18 inches in from the outside wall of the trailer and ran approximately 12 to 16 feet lengthwise. The seams outlining the boundary between the repair and the original flooring material were easily identified by blocking along those seams. Importantly, Mr. Larsen testified that the remainder of the undercarriage of the trailer is absolutely devoid of any repair or any damage whatsoever.

By the testimony of Defendant's witness, Ronald Larsen, Plaintiff either did not fall through the floor of the trailer, or he fell through in the location of the repair, 18 inches out from the threshold of the doors. Factually, it necessarily must be one or the other. The fact that there is no evidence of any damage or repair to any other location of the undercarriage of the trailer except in the area 18 inches out from the wall of the trailer extending 12 to 16 feet lengthwise necessarily means that if Plaintiff fell through the floor of the trailer, he fell through at the location of the repairs. This logical conclusion is exactly opposite of what the trial court ruled when it concluded that Plaintiff presented no evidence upon which a jury could conclude that the Plaintiff received his injuries in the area where repairs had been performed some months prior to his accident.

What the trial court failed to consider was whether the repairs identified by Mr. Larsen represent the repairs made several months prior to Plaintiff's incident at the insistence of TIC or whether the repairs identified by Mr. Larsen represent repairs made to the hole in the floor caused by Plaintiff falling through. Either way, a reasonable jury could conclude that Plaintiff received his injuries in the area of the repair and the trial court's ruling was improper. Applying the appropriate standard of review, this Court must find the factual submissions to the trial court in a light most favorable to finding a material issue of fact. Because the evidence tends to show Plaintiff received his injuries in the area of the repair, summary judgment was improper.

POINT II

THE TRIAL COURT INCORRECTLY RULED AS A MATTER OF LAW THAT A JURY COULD NOT CONCLUDE THAT THE DEFENDANT HAD NOTICE OF A DEFECTIVE CONDITION.

In granting Defendant's Motion for Summary Judgment the trial court necessarily determined as a matter of law that the evidence was insufficient to allow a reasonable jury to conclude that Plaintiff's injuries were caused by defects or dangerous conditions which Defendant created, or of which Defendant was aware, and which Defendant should reasonably foresee would expose others to an unreasonable risk of harm.

Concerning a landlord's duty of care, the Utah appellate courts have made it clear that a landlord is bound by the usual standard of exercising ordinary prudence and care to see that premises he leases are

reasonably safe and suitable for intended uses, [and] that under appropriate circumstances he may be held liable for injuries caused by any defects or dangerous conditions which he created, or of which he was aware, and which he should reasonably foresee would expose others to an unreasonable risk of harm.

Gregory v. Fourthrow Investments, Ltd., 754 P.2d 89, 91 (Utah App. 1988) (quoting Stephenson v. Warner, 581 P.2d 567, 568 (Utah 1978)). A landlord is not an insurer of the safety of his tenants, and merely because an injury results from a defect does not automatically create liability. Williams v. Melby, 699 P.2d 723, 727 (Utah 1985). The plaintiff must demonstrate that defendant knew, or in the exercise of ordinary care should have known, that a dangerous condition existed and that sufficient time had elapsed to take corrective action. Martin v. Safeway Stores, Inc., 565 P.2d 1139, 1140-41 (Utah 1977).

TIC called Modulaire in February or March, 1992 and requested repairs to the floor of the trailer due to water damage as a result of faulty seals around the doors. Someone not associated with TIC came to the trailer and performed some repairs in the area of the front door. Such repairs included installing new support members, new subfloor material and replacing floor tile. By calling and requesting that Modulaire come and repair the water damage to the floor of the trailer, TIC placed Defendant on notice that a dangerous condition existed with the floor in the area of the front door. TIC responded to the call and made some repairs. A factual question still exists as to the nature and extent of these repairs.

Whether Defendant had actual or constructive notice of dangerous conditions with the floor of the trailer is a question of fact for the jury. Ohlson v. Safeway Stores, Inc., 568 P.2d 753, 755 (Utah 1977); Pollari v. Salt Lake City, 176 P.2d 111, 116 (Utah 1947). Plaintiff has demonstrated that Defendant knew, or in the exercise of ordinary care should have known, that a dangerous condition existed and that sufficient time had elapsed to take corrective action. The Utah Supreme Court has noted that “[a]s a general proposition, summary judgment is inappropriate to resolve a negligence claim on its merits, and should be employed ‘only in the most clear-cut case.’” Schreiter v. Wasatch Manor, Inc., 871 P.2d 570, 575 (Utah App. 1994), *cert. denied*, 879 P.2d 266 (Utah 1994) (quoting Ingram v. Salt Lake City, 733 P.2d 126, 126 (Utah 1987)(per curiam), *cert. denied*, 789 P.2d 33 (Utah 1990)). Further, “[o]f particular concern is the precept that ‘[o]rdinarily, whether a defendant has breached the required standard of care is a question of fact for the jury.’” Id. at 575 (quoting Jackson v. Dabney, 645 P.2d 613, 615 (Utah 1982)). Accordingly, summary judgment is improper unless the standard of care can be determined as a matter of law, “and reasonable minds could reach but one conclusion as to the defendant’s negligence under the circumstances.” Id. “Summary judgment should be granted with great caution in negligence cases.” Doe v. Doe, 878 P.2d 1161, 1162 (Utah App. 1994) (quoting Apache Tank Lines inc. v. Cheney, 706 P.2d 614, 615 (Utah 1985)).

The particular standard of care that Defendant owed Plaintiff cannot be determined as a matter of law, because “[t]he care to be exercised in any particular case depends

upon the circumstances of that case and on the extent of foreseeable danger involved and must be determined as a question of fact.” Schreiter at 575 (quoting DCR, Inc. v. Peak Alarm Co., 663 P.2d 433 (Utah 1983)). Accordingly, whether Defendant breached the required standard of care is a question of fact for the jury and cannot be appropriately decided in summary judgment.

Plaintiff has presented sufficient evidence to allow a reasonable jury to conclude that Defendant had actual or constructive notice that a dangerous condition existed as to the floor of the trailer. This evidence demonstrates that Plaintiff’s injury occurred in the area where Defendant had made repairs to the floor of the trailer. Nevertheless, whether Defendant had such notice is a question of fact for the jury. Ohlson, *supra*; Pollari, *supra*. The trial court invaded the province of jury when it decided this question and granted summary judgment.

CONCLUSION

The trial court erroneously granted Defendant’s Motion for Summary Judgment when it concluded that Plaintiff presented no evidence upon which a jury could conclude that the Plaintiff received his injuries in the area where repairs had been performed some months prior to the accident. Viewed in the light most favorable to Plaintiff, the evidence clearly shows that Plaintiff fell through the floor in the area of the repairs. Such a logical conclusion is exactly opposite of the trial court’s ruling.

Additionally, whether Defendant had notice that a dangerous condition existed

with the floor of the trailer is a question of fact for the jury and is not appropriate for the trial court to decide in summary judgment.

Wherefore, Plaintiff respectfully requests this Court to reverse the trial court's Order granting summary judgment and remand to allow Plaintiff to present his case on the merits to the jury.

Dated this 3 day of Oct., 1996.

Respectfully submitted,

PARKER, McKEOWN & McCONKIE:



James W. McConkie
Attorney for Plaintiff and Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and forgoing BRIEF OF THE APPELLANT was either hand delivered or mailed by United States Mail, postage prepaid, this 3 day of Oct., 1996, to the following:

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Daniel L. Steele
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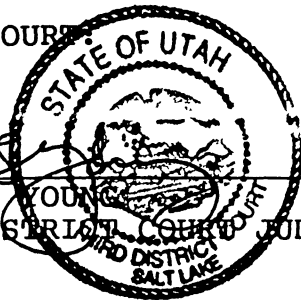
James W. McConkie
Attorney for Plaintiff and Appellant

ADDENDUM A


would reasonably have been discovered, summary judgment for the defendant was proper.

DATED this 16th day of May, 1996.

BY THE COURT


DAVID S. YOUNG
THIRD DISTRICT COURT JUDGE


APPROVED AS TO FORM AND CONTENT:



JAMES W. McCONKIE
Attorney for Plaintiff

94-523D
ERHART\ORDER

ADDENDUM B

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'96 MAY 24 PM 12 28

THIRD DISTRICT COURT

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Suzanne Carlson
DEPUTY CLERK

**IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

MICHAEL ERHART,

Plaintiff and Appellant

vs.

**WASTE MANAGEMENT OF UTAH,
INC.,**

Defendant and Appellee

NOTICE OF APPEAL

Civil No. 940904775 PI

Judge David S. Young

Plaintiff and Appellant Michael Erhart, by and through counsel, James W. McConkie of Parker, McKeown & McConkie, and pursuant to Rules 3 and 4 of the Utah Rules of Appellate Procedure, hereby tenders the appropriate filing fee and the required bond for costs on appeal and gives notice that he appeals to the Utah Supreme Court the final judgment and Order Granting Defendant's Motion for Summary Judgment entered on May 16, 1996 by the Honorable Judge David S. Young, Third Judicial District Court in and for Salt Lake County, State of Utah.

000167

DATED this 24 day of May, 1996.

Respectfully submitted,

PARKER, McKEOWN & McCONKIE:



James W. McConkie
Attorneys for Plaintiff and Appellant
Michael Erhart

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of this NOTICE OF APPEAL was mailed,
postage pre-paid, on this 24 day of May, 1996 to:

Scott W. Christensen
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Attorneys for Defendant and Appellee
4 Triad Center, Suite 500
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Salt Lake City, Utah 84110-2970



ADDENDUM C

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

* * *

MICHAEL ERHART,)	
PLAINTIFF,	)	CASE NO. 93090822 PI
VS.	)	DEPOSITION OF:
WASTE TECH/MODULAR AIR,	)	JERRY BRYANT
DEFENDANT.	)	JUDGE DAVID S. YOUNG

* * *

BE IT REMEMBERED THAT ON THE 16TH DAY OF MARCH, 1994, THE DEPOSITION OF JERRY BRYANT, PRODUCED AS A WITNESS HEREIN AT THE INSTANCE OF THE PLAINTIFF HEREIN, IN THE ABOVE-ENTITLED ACTION NOW PENDING IN THE ABOVE-NAMED COURT, WAS TAKEN BEFORE DAWN M. DAVIS, A CERTIFIED SHORTHAND REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF UTAH, COMMENCING AT THE HOUR OF 1:10 P.M. OF SAID DAY AT THE OFFICE OF PARKER, MCKEOWN AND MCCONKIE, 4001 SOUTH 700 EAST, SUITE 500, SALT LAKE CITY, UTAH.

THAT SAID DEPOSITION WAS TAKEN PURSUANT TO NOTICE.

* * *

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1 NUMBER OF DIFFERENT PEOPLE? IS THAT THE PRIMARY BUSINESS
2 YOU ARE IN?
3 A YES.
4 Q SO YOU KIND OF SPECIALIZE IN ONE TRAILER, I
5 GUESS IS WHAT I AM ASKING, ONE TYPE OF TRAILER WHICH
6 WOULD BE CONSTRUCTION SITE OFFICE TYPE ARRANGEMENTS?
7 A CORRECT, IN VARYING SIZES.
8 Q IS THIS ONE OF THE BIGGER ONES OR ONE OF THE
9 LITTLER ONES?
10 A OH, I WOULD SAY ABOUT MIDDLE OF THE ROAD.
11 Q DO YOU MAKE THESE OFFICES YOURSELF? DO YOU
12 MANUFACTURE THEM?
13 A WE DID IN -- UP TO 1987 AND WE HAVE THEM
14 MANUFACTURED NOW BY A COUPLE OF OUTSIDE MANUFACTURERS.
15 Q THE ONE WE ARE TALKING ABOUT THAT WAS INVOLVED
16 IN THIS ACCIDENT; WAS THAT ONE THAT YOU MANUFACTURED?
17 A I DON'T BELIEVE SO. I THINK IT WAS
18 MANUFACTURED BY ADVANCED MODULAR.
19 Q COULD YOU TELL ME HOW I COULD GET IN TOUCH
20 WITH THEM, WHERE THEY ARE LOCATED? DO YOU KNOW THEIR
21 PHONE NUMBER?
22 A THEY ARE LOCATED IN BLUFFDALE. I DON'T KNOW
23 THE ADDRESS. TELEPHONE NUMBER IS 571-9841.
24 Q SO THIS PARTICULAR TRAILER YOU BELIEVE WAS
25 PURCHASED FROM ADVANCED MODULAR?

1 RESPONSIBILITY AS LONG AS THE CUSTOMER LET'S ME KNOW THAT
2 THERE ARE SOME DEFICIENCIES.

3 Q NOW BEFORE YOU LEASED THE TRAILER WE ARE
4 TALKING ABOUT IN QUESTION, DO YOU HAVE ANY REASON TO
5 BELIEVE THAT IT WASN'T IN GOOD CONDITION?

6 A NO.

7 Q I PRESUME THAT YOU WOULD PROBABLY SEND SOMEONE
8 OUT TO INSPECT IT AND LOOK AT IT.

9 A THE UNIT IS IN MY YARD BEFORE IT'S LEASED.

10 Q RIGHT, THAT'S IN YOUR YARD, AND I PRESUME
11 BEFORE YOU LEASE IT SOMEONE GOES THROUGH AND CHECKS IT
12 OUT, IS THAT RIGHT?

13 A CORRECT.

14 Q DO YOU KNOW WHO CHECKED THIS PARTICULAR --

15 A THE LIKELIHOOD IS PROBABLY MY OPERATIONS
16 MANAGER, KEN RICHE, R-I-C-H-E.

17 Q DOES HE HAVE A CHECK LIST THAT HE USES OR DOES
18 HE JUST KIND OF LOOK AT IT AND COME BACK AND SAY IT'S
19 OKAY TO GO OUT?

20 A HE HAS A CHECK LIST THAT HE USES ONCE IT'S
21 ARRIVED ON-SITE AND IT IS INSPECTED AND APPROVED BY THE
22 CLIENT. MOST GENERALLY WHEN HE IS DOING IT -- AN
23 INSPECTION AT OUR FACILITY -- HE IS JUST DOING VISUAL.

24 Q IF I UNDERSTOOD YOU CORRECTLY, AT SOME POINT
25 THE PERSON WHO LEASED THIS CAME ON SITE, LOOKED AT THE

1 TRAILER, PROBABLY SAID IT WAS OKAY. DID THEY GO THROUGH
2 A CHECK LIST AT THAT TIME?

3 A NOT ON OUR SITE. THEY DID AT THEIR SITE, ONCE
4 IT WAS SET UP.

5 Q IF I WANTED TO SEE THAT DOCUMENT DO YOU HAVE A
6 COPY OF IT IN YOUR FILES SOMEWHERE?

7 A WE PROBABLY DO.

8 Q COULD YOU FIND IT AND GET ME A XEROX COPY OF
9 THAT?

10 WOULD THAT BE ALL RIGHT, BOB?

11 MR. HENDERSON: YES, ASSUMING IT EXISTS AT
12 THIS POINT IN TIME.

13 MR. MCCONKIE: YEAH, IF IT DOES.

14 Q DO YOU HAVE ANY REASON TO BELIEVE IT WOULDN'T
15 EXIST?

16 A NO. I WOULD HAVE TO CHECK THE FILE.

17 Q JUST TO GIVE ME AN IDEA; WHAT KINDS OF THINGS
18 WOULD BE ON THAT CHECK LIST?

19 A GENERALLY AESTHETICS, DAMAGES, ELECTRICAL,
20 MAKING SURE THAT THE ELECTRICAL IS ALL FUNCTIONING
21 PROPERLY, ANY MECHANICAL SYSTEM IS FUNCTIONING PROPERLY.
22 AGAIN, NORMALLY AESTHETIC REQUIREMENTS AS WELL AS
23 STRUCTURAL REQUIREMENTS.

24 Q HAVE YOU HAD A CHANCE TO REVIEW THAT DOCUMENT
25 PRIOR TO THE DEPOSITION?

1 A NO, I HAVEN'T.

2 Q SO I TAKE IT FROM THAT THAT YOU COULDN'T TELL
3 ME WHETHER THE TRAILER WAS IN GOOD CONDITION BECAUSE YOU
4 HAD LOOKED AT SOME DOCUMENTS, YOU WOULD ASSUME IT WAS AT
5 THAT POINT, IS THAT RIGHT?

6 A CORRECT.

7 Q I AM ASSUMING ALSO THAT IF THERE WAS DAMAGE
8 THAT YOU PROBABLY WOULDN'T LEASE IT AS A MATTER OF
9 BUSINESS POLICY

10 A THAT'S CORRECT.

11 MR. HENDERSON: NOT TO MENTION THE LESSEE
12 WOULDN'T BE REAL HAPPY WITH IT.

13 THE WITNESS: WOULDN'T ACCEPT IT.

14 MR. MCCONKIE: YEAH, THAT'S TRUE.

15 Q IN THIS PARTICULAR CASE WHAT HAPPENED,
16 ACCORDING TO MY CLIENT, IS THAT HE IS IN THIS TRAILER AND
17 IS CARRYING A BOX AND THE FLOOR COLLAPSES. NOW HAVE YOU
18 HAD AN OPPORTUNITY TO INVESTIGATE THAT OR LOOK INTO THAT
19 TO SEE IF YOU COULD DRAW ANY CONCLUSIONS AS TO WHAT IN
20 THE WORLD HAPPENED?

21 A I HAD SOME OPPORTUNITY AND THROUGH MY
22 INSPECTION WAS ABLE TO DETERMINE THERE WAS NO HOLE OR
23 ANYTHING IN THE FLOOR.

24 Q SO YOU WENT AND LOOKED AT THIS TRAILER AT SOME
25 POINT AFTER THE TIME OF THE ALLEGED ACCIDENT, IS THAT

1 RIGHT?

2 A WELL, WE DO AN INSPECTION WHEN THE UNIT COMES
3 BACK AS WELL AND IF THERE WAS ANY DAMAGES TO THE
4 EQUIPMENT WE WILL CHARGE THE CUSTOMER FOR THOSE DAMAGES.

5 Q DID YOU PERSONALLY EXAMINE THE UNIT?

6 A I DIDN'T.

7 Q BUT YOU TALKED TO SOMEBODY THAT DID PROBABLY?

8 A YES.

9 Q YOU PROBABLY SAID, "LOOK, SOMEBODY CLAIMS
10 THERE HAS BEEN AN ACCIDENT, LOOK AROUND AND SEE IF YOU
11 CAN FIND A HOLE IN THE FLOOR" OR SOMETHING LIKE THAT?

12 A NO, BECAUSE I DIDN'T GET NOTICE OF THIS UNTIL
13 ABOUT THREE MONTHS AGO.

14 Q WHO LOOKED AT IT TO SEE IF THERE WAS ANY
15 DAMAGE?

16 A KEN RICHE DID THE INSPECTION WITH T.I.C. ON
17 THE OUTBOUND, WHEN IT WAS COMING BACK.

18 Q DID YOU TALK TO KEN RICHE ABOUT IT?

19 A I DID.

20 Q WHAT DID HE TELL YOU?

21 A INDICATED THAT THERE WAS NO DAMAGES. WE HAVE
22 -- I DID LOOK THROUGH THE FILE AND IDENTIFIED A -- WHERE
23 WE WOULD CHARGE THE CUSTOMER FOR ANY DAMAGES AND THERE
24 WAS NO DAMAGES CHARGED TO THE CUSTOMER.

25 Q DO YOU HAPPEN TO KNOW IF THIS WAS THE ONLY

1 TRAILER ON THE SITE OR WAS THERE ANOTHER TRAILER THAT MY
2 CLIENT COULD HAVE MIXED UP --

3 A OH, THERE WAS PROBABLY -- THIS WAS THE FOURTH
4 LINE EXPANSION I BELIEVE IS WHAT THEY CALLED IT AT
5 KENNECOTT AND I WOULD HAVE TO ASSUME THERE WAS PROBABLY A
6 TOTAL OF 30, OR 40 OR 50 TRAILERS UP THERE.

7 Q SO I TAKE IT THAT YOUR BELIEF, BASED UPON YOUR
8 INVESTIGATION, IS THAT THIS COULD NOT BE THE TRAILER THAT
9 MY CLIENT'S FOOT WENT THROUGH.

10 A CORRECT.

11 Q DID YOU ASK KEN TO DETERMINE WHETHER OR NOT
12 THE TRAILER HAD BEEN REPAIRED PRIOR TO THE TIME IT CAME
13 BACK TO YOU?

14 A I DID NOT.

15 Q IS THAT THE KIND --

16 A THE UNIT RETURNED THE DAY AFTER THE ALLEGED
17 ACCIDENT.

18 Q SO IT DOESN'T LOOK LIKE THERE WOULD BE A LOT
19 OF TIME TO REPAIR IT.

20 A NO. ONE DAY.

21 Q DID YOU LEASE MORE THAN ONE TRAILER TO T.I.C.?

22 A T.I.C. IS A PRETTY COMMON CUSTOMER FOR US, BUT
23 ON THAT PARTICULAR PROJECT I'M NOT SURE HOW MANY WE HAD
24 LEASED TO THEM. THIS, TO MY RECOLLECTION, WAS THE ONLY
25 ONE. THERE MAY HAVE BEEN A LITTLE SMALL ONE UP THERE.

ADDENDUM D

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

-oOo-

MICHAEL ERHART,)	
)	
Plaintiff,	)	Deposition of:
)	
-v-)	DANNY RAY PIVA
)	
WASTE MANAGEMENT OF UTAH, INC.,)	No. 940904775 PI
)	
Defendant,)	Judge Young

-oOo-

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Be it remembered that on the 21st day of
September, 1995, the deposition of DANNY RAY PIVA
was taken pursuant to notice, commencing at 10:10
a.m. of said day at the offices of Hanson, Epperson
& Smith, P.C., Attorneys at Law, 4 Triad Center,
Suite 500, Salt Lake City, Utah, before Lisa M.
D'Elia, a Certified Shorthand Reporter and Notary
Public in and for the State of Utah.



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1 service or ask what the problem is, try to help
2 resolve it.

3 Q. Did TIC perform any maintenance itself on
4 those structures?

5 A. Some. We did a little. I think we had to
6 make them...

7 Q. Were there any modifications done for your
8 specific purposes to any of these pieces of leased
9 equipment while you were there?

10 A. Yes.

11 Q. Such as what?

12 A. Well, the doublewide, which I assume is
13 the one you are talking about, we had -- we put up
14 some separation walls to create offices, individual
15 offices, and to make some privacy.

16 Q. Would that have been TIC personnel who did
17 that or did you lease that out to some third party?

18 A. This was TIC personnel that put this up.

19 Q. Any other modifications or maintenance
20 that you guys would have done routinely?

21 A. No.

22 Q. If there were problems with any of this
23 equipment, let's say an electrical problem in a
24 trailer, the lights didn't work, how would you
25 routinely have handled that?

1 during the time that you were using the facilities
2 while the project was up and going, correct?

3 A. Correct.

4 Q. Were these the same walls that were
5 removed by TIC personnel as part of the
6 demobilization?

7 A. Correct.

8 Q. Where was your office located?

9 A. (Indicating)

10 Q. Your office, you pointed. Why don't you
11 label your office, if you would, please.

12 A. (Complies)

13 Q. Okay. Now, during the time that you were
14 in this trailer as your office, did you ever notice
15 any problems with the structure that you requested
16 corrections or changes to be made?

17 A. Yes. We had to try to get them in order.
18 The trailer, when we first got it, we had -- you know,
19 we had a lot of just cosmetic work done, floors,
20 ceiling tiles, when we first received the trailer and
21 throughout the building. We had work done on all of
22 the doors. They were not real solid on their hinges,
23 so we had the doors all reworked. This work was done
24 by the service company through the owner. And then
25 toward the end of the job, and it was several months

1 before the end, but it was toward the end of the
2 project, the front door, this -- I don't know if you
3 want to note that, but this was considered the front
4 door (indicating).

5 Q. Why don't you go ahead and label that.

6 A. (Complies)

7 Q. You can do it outside the structure if
8 that helps.

9 A. (Complies) At the front door there was
10 some water damage. The seal didn't make a good seal
11 and there was water damage there, and we called and I
12 can remember that we called several times. I didn't
13 make the calls, but we called to have that floor
14 repaired. It took at least two tries to get it to
15 where we were satisfied with what was done.

16 Q. Were you present when the repairs were
17 done?

18 A. I was on site. I was there. I was
19 (indicating).

20 Q. So you were coming in and out of that
21 front door, you could see what they were doing?

22 A. Yeah, basically. The work was done from
23 the bottom and I didn't crawl under there, but...

24 Q. So somebody came in and did some repair
25 work underneath the front door?

1 A. Correct.

2 Q. Do you understand what had been done?

3 A. They just put some new support.

4 Engineering, they put a support beam or 2 X 4 or
5 something under there and then put a new piece of
6 flooring chipboard or whatever.

7 Q. Plywood perhaps?

8 A. Plywood or chipboard. Then they replaced
9 the tile.

10 Q. Do you recall when that was?

11 A. Not exactly.

12 Q. Just give me your best approximation.

13 A. It was -- I mean, we had the trailer there
14 for two winters. I think it was the second winter,
15 second fall, winter, spring, some time. During the
16 rainy part of the year.

17 MR. CHRISTENSEN: Can we go off the record
18 for just a minute? I need to get something to show
19 you.

20 (Off the record.)

21 (Deposition Exhibit Number 2 marked for
22 identification.)

23 Q. (BY MR. CHRISTENSEN) Mr. Piva, we have
24 had an opportunity to go out to that doublewide
25 trailer and to -- I refer to it as an opportunity --

1 in front of the door that you made reference to as far
2 as requiring or requesting that some repairs be done,
3 were you aware of any other problems, other than the
4 cosmetics initially and the door hinges, the interior
5 door hinges?

6 A. Not structurally.

7 Q. So other than this area in the front door,
8 were you aware of any problems in the floor of the
9 trailer?

10 A. Again, not structurally. Cosmetic, yeah,
11 but structurally, I was not aware of any other damage
12 or problems.

13 Q. When you say cosmetically, what do you
14 mean?

15 A. Replacing a tile that had -- that had
16 pulled up.

17 Q. The flooring tile?

18 A. Yeah.

19 Q. The linoleum tile?

20 A. The linoleum.

21 Q. Did you ever hear of anyone else in that
22 doublewide that complained of problems, structural
23 problems with the floor?

24 A. No. Just the front door.

25 Q. And if we exclude that, you are not aware

ADDENDUM E

-ooo-

Judge Young

-ooo-

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1 A. It was basically I had a guy over me and
2 then I did at different times had guys working under
3 me, working for TIC.

4 Q. Who was your primary supervisor when you
5 were working at TIC?

6 A. Dean White.

7 Q. Where did Michael Erhart fit into that
8 category, was he a --

9 A. No.

10 Q. Did you ever supervise him, did he ever
11 supervise you?

12 A. No. He was under the millwright crew.

13 Q. So he was --

14 A. Alls I was doing was assigned to keep
15 their vehicles running.

16 Q. So you never even worked with him, then?

17 A. No. Well, I guess when we demobed, when
18 we demobed, then the two of us were assigned to demob
19 together. It wasn't a matter of whose it was, just we
20 were equal then.

21 Q. When you say demob, is that the
22 demobilization?

23 A. That's what we were doing when this
24 accident happened, was we were sending the equipment
25 to the next job.

1 A. As far as what happened?

2 Q. Just your memories of the day in general.
3 Are they clear, are they fairly cloudy or what?

4 A. They're -- well, they're kind of clear.

5 Q. I admit it was over three years ago,
6 almost three and a half years ago.

7 A. Yeah. Just come in that morning and just
8 started loading and stuff and we chose the trailer to
9 do first because it was still kind of cool that time
10 of the year, so we was unloading the trailer and we
11 was working on getting the books and stuff out of the
12 trailer and then taking them down to the big semi-
13 trailers.

14 Q. Okay. Do you recall what time of the day
15 it was when Mr. Erhart was hurt?

16 A. Seems like it was before lunch. I can't
17 remember right off. It was just either right before
18 or right after lunch.

19 Q. And where were you when he was hurt?

20 A. Probably just a couple of feet in front of
21 him, or in back of him, I mean. I'm sorry.

22 (Deposition Exhibits 1 and 2 marked for
23 identification.)

24 Q. (BY MR. CHRISTENSEN) Now, Mr. Young, let
25 me show you what has been marked Exhibit 2 to your

1 deposition. Exhibit 2 to your deposition is basically
2 a clear floor plan similar to Exhibit 1 to Dan Piva's
3 deposition.

4 A. Okay.

5 Q. It doesn't have, however, the walls which
6 I understand had been removed from the time the
7 accident happened?

8 A. Yeah, they had been removed. The trailer
9 was --

10 Q. Can you mark for me on Exhibit 2 to your
11 deposition where you were when Mr. Erhart was injured?

12 A. Right here, about right in this area about
13 right there (indicating).

14 Q. And would you put your initials by that so
15 we know where you are?

16 A. (Complies)

17 Q. You put R.Y., Richard Young, your
18 initials, right?

19 A. Yes.

20 Q. What direction were you traveling at that
21 point?

22 A. I was traveling what I'd recollect is
23 northwest.

24 Q. Well, why don't you say where were you
25 headed to inside the trailer?

1 A. Where was I heading to? We were headed
2 for this door (indicating).

3 Q. And "this door" is the overhead door?

4 A. Yes.

5 Q. Where was Mr. Erhart at that point?

6 A. He was about right there (indicating).

7 Q. Okay. And would you put his initials,
8 M.E., by that?

9 A. (Complies)

10 Q. Let me show you what has been marked as
11 Exhibit 1 to your deposition. Let me represent to you
12 that that is a similar kind of diagram as filled in by
13 Mr. Erhart, and in that area he circled the
14 approximate area that he thought he was in when the
15 accident occurred. Do you see that circle there in
16 the upper left-hand corner?

17 A. Uh-huh (affirmative).

18 Q. I guess it would be the upper right-hand
19 corner of the picture, or the exhibit. That appears
20 to be a little different than where you drew Mr.
21 Erhart.

22 A. Yeah.

23 Q. How clear is your memory as to where the
24 accident occurred?

25 A. (Pause)

1 Q. The reason I'm asking that, there is
2 obviously some discrepancy between where you place the
3 accident and where Mr. Erhart put the accident, and
4 I'm just wondering how confident you are in the
5 location that you have marked on your exhibit?

6 A. Well, now I think about it, he might have
7 been a little bit farther back. I was thinking it was
8 -- it wasn't quite to the door. Now --

9 Q. When you say not quite to the door, that
10 may mean different things to different people.

11 A. I wouldn't put him right there, but I
12 would put him more -- now that I'm thinking, I would
13 put him more back here (indicating).

14 Q. Will you mark on Exhibit 1 to your
15 deposition where you think he was?

16 A. Okay. (Complies)

17 Q. Okay.

18 A. This ain't, you know...

19 Q. Yes. So go ahead and put his initials
20 there.

21 A. Okay. (Complies)

22 Q. Now you have marked on Exhibit 1 to your
23 deposition, which is a copy of Exhibit 1 to Michael
24 Erhart's deposition, where you think he was; is that
25 right?

1 A. Yeah.

2 Q. Okay. Now, you're more familiar with the
3 interior of that trailer than I am. The place that
4 you have identified him on Exhibit 1 to your
5 deposition, how far away from that overhead door would
6 you place that?

7 A. He was probably about -- trying to
8 remember. We were walking up. He was probably -- I'd
9 put him at first close to the threshold, now I think,
10 more of a -- he's probably about two and a half feet
11 away from the threshold.

12 Q. Okay. And you were right behind him?

13 A. Yeah.

14 Q. Can I take my pen back?

15 A. Oh, yeah.

16 Q. Can you describe for me what happened?

17 A. We were just carrying some books, boxes,
18 probably about 30 inch, 28, 30 inches long, probably
19 about 24 inches wide.

20 Q. What were they full of?

21 A. Just office manuals relating to the job,
22 what took place day by day type stuff at the job.

23 Q. Do you know about how much they weighed?

24 A. Oh, we were probably packing right around
25 60 pounds.

1 Q. And what did you see?

2 A. He was just walking ahead of me and then
3 all of a sudden his right foot went down and then I
4 seen him -- he had done a real hard twist to the right
5 and then the books hit the ground.

6 Q. When you say you saw his foot go down, can
7 you describe that in more detail? Did it go through
8 the floor?

9 A. Yeah, it went through the floor. It was
10 just one of those deals that you just all of a sudden
11 catch, you know, because you're walking along, kind of
12 just making sure you're equal distance, not running
13 into each other, but not really paying attention
14 exactly, but he just -- when he went down, then the
15 next thing I knew he was about to his kneecap and he
16 spun.

17 Q. So you think he went down through the
18 floor to his knee?

19 A. About his knee, yeah. It was right below
20 his knee, you know, before his kneecap.

21 Q. Before, you mean below his kneecap?

22 A. Yeah.

23 Q. And did you hear anything?

24 A. Just him cuss.

25 Q. Did you hear the floor give way? Did you

1 hear anything tear away?

2 A. No, no, other than, you know, probably a
3 little bit of cracking noise while he was going
4 through. But as far as any warnings, no.

5 Q. What happened to him next?

6 A. Just that we got him out of the hole and I
7 asked him if he was okay and he said, yeah, I'm okay,
8 I feel good, and I says, okay, then we just kind of
9 marked the hole, kind of taped it off a little bit,
10 taped it off and then finished loading the truck and
11 we went down and went to work.

12 Q. Can you describe for me the hole? How big
13 was it, what did it look like?

14 A. It was probably about a foot and a half
15 long and probably, oh, probably five, six inches
16 wide.

17 Q. Could you tell what the flooring material
18 underneath it was; was it particle board or was it
19 plywood?

20 A. It was plywood, because when he come back
21 up, it was kind of splintered like.

22 Q. Particle board, when that breaks, it kind
23 of crumbles and breaks, right?

24 A. Yeah.

25 Q. So it wasn't particle board, it was

1 actually plywood underneath?

2 A. Yeah, if I remember right, because when we
3 pulled his foot back up there was, you know, your
4 splinter stuff that was around his -- it wasn't a
5 straight break off, the particle board.

6 Q. Did you look down through the hole?

7 A. Yeah.

8 Q. What could you see, anything?

9 A. Just the ground, rocks.

10 Q. So you could actually see through to the
11 ground?

12 A. Yeah.

13 Q. You said after you pulled his foot out of
14 the hole, you taped it up. What did you mean by that?

15 A. Well, we just put a couple of like make do
16 stands and just seems like we did take some flagging
17 and flag it off so that we wouldn't -- us or somebody
18 else wouldn't walk into it.

19 Q. Who else was there at the time that
20 happened?

21 A. There was my wife and -- which is Janae
22 Young, and Linnae Jolley and Cheryl Piva.

23 Q. Did you speak with any of them about the
24 hole or the accident?

25 A. Yeah.

1 Q. Who did you talk to?

2 A. All of them. They kind of questioned,
3 they kind of questioned the next day about it being he
4 wasn't able come to get out of his truck that night,
5 he claims, and wasn't able to come up to the job
6 site. So, anyway, they just kind of questioned it and
7 I just kind of told them, you know, he spun pretty
8 hard and let them know that a lot of times a back
9 injury like that, you can hurt your back and you don't
10 feel anything till you kind of sit down and let it
11 lock up on you.

12 Q. At the time that he actually hurt himself,
13 did you talk with any of the people that were there
14 about that, about the hole, or did you say, look out,
15 watch out for this thing, you know, be careful?

16 A. We did do that. We told them, you know,
17 the hole was there, made it known the hole was there.

18 Q. And you recall speaking with each of them
19 about that?

20 A. Yeah.

21 Q. As a result of his foot going through that
22 floor, did you report that to anybody at TIC, make
23 kind of a formal report?

24 A. No. We just verbally told Dan Piva about
25 it.

1 Q. When did you tell Dan that?

2 A. It seems like he come back to the job site
3 that evening.

4 Q. Did you show Dan Piva the hole?

5 A. Well, I think he just seen it. We were
6 down at the trailer doing -- loading other stuff into
7 the semitrailers.

8 Q. And were there still some stands taped off
9 around this hole at that point?

10 A. There should have been, yeah.

11 Q. Do you remember whether they were or
12 weren't?

13 A. I can't remember. It just seems like in
14 my mind that we did do it, but I can't remember if we
15 did do it for sure.

16 Q. Somebody has mentioned something about
17 putting a piece of plywood or something over the
18 hole. Do you remember that happening?

19 A. I think -- I think Mike did lay a piece of
20 plywood down over the hole.

21 Q. Do you know who might have done that?

22 A. Mike.

23 Q. Mr. Erhart himself?

24 A. Yeah. I'm just trying to remember on
25 the -- because I know it's so critical on job sites to

1 flag things, and I can't remember if that's where we
2 did some flagging or not, but I've flagged so many
3 holes, I can't remember.

4 Q. Are you confident there was a hole in the
5 floor?

6 A. Oh, yeah, I'm confident there was a hole
7 in the floor, but I just can't recollect how we went
8 about covering it, whether we done the flagging off
9 bit, or I do remember, now that you mentioned it, I
10 think Mike did throw a piece of plywood on the floor
11 on the hole.

12 Q. During the time that you were there on the
13 job site, were you ever in any other trailers that TIC
14 had on site?

15 A. Yeah.

16 Q. Are you familiar with any others that had
17 any kind of a similar configuration?

18 A. No. They just had a smaller singlewide
19 trailer.

20 Q. You're not aware of any other
21 doublewides --

22 A. Not on that job.

23 Q. -- that TIC had?

24 A. Not on that job site, no.

25 Q. About how far away from Mr. Erhart were

1 MR. McCONKIE: Let me just look at one
2 thing here.

3 Q. (BY MR. McCONKIE) Were you aware of the
4 fact that anybody had repaired those floors prior to
5 the time of the accident?

6 A. They did have a guy in there and repaired
7 the floor at the -- referred to as the front door.

8 Q. How do you know that?

9 A. Because I went up to the trailer to
10 conduct my -- see, I had an office up there where I
11 had done my phone calls and kept track of my records
12 at, and when I went up there he was repairing the
13 floor.

14 Q. Did you see someone repairing the floor?

15 A. Yes.

16 Q. And do you know who it was that was
17 repairing the floor?

18 A. No, I don't know. Just some somebody
19 from -- you know, it wasn't with TIC repairing the
20 floor, it was somebody with the trailer company.

21 Q. And how did you know that, that it was
22 somebody from the trailer company?

23 A. I don't know. I shouldn't say trailer
24 company. But I know it was outside TIC spectrum.

25 Q. Can you place that in time for me? About

1 when did you see this, the month or was it --

2 A. It was probably -- it was still cold out.
3 It was probably right around the first of March.

4 Q. And can you remember where he was
5 repairing the floor on that diagram?

6 A. Yeah. It -- he was just repairing it
7 there at the front, what they referred to as the front
8 door right here, and he was just right in this area
9 working and I seen him (indicating).

10 Q. Could you --

11 A. He was rebuilding it.

12 Q. Could you just put an R there for repair
13 where you remember seeing him?

14 MR. CHRISTENSEN: On Exhibit 2.

15 THE WITNESS: On Exhibit 2.

16 Q. (BY MR. McCONKIE) Thanks.

17 Did you talk to him at all?

18 A. I don't recall talking to him.

19 Q. So you just saw him as you went in?

20 A. Yeah.

21 Q. Did you see what he was doing? Could you
22 describe that for us, if you have any recollection of
23 what --

24 A. Well --

25 Q. -- what he was doing?

1 A. He had the tile pieces out and he was --
2 had the tile pieces out and he done some repair as far
3 as restructuring the floor and then I seen him putting
4 the tile pieces back in.

5 Q. How do you know he was -- you said he was
6 restructuring the floor. What do you mean by that?

7 A. Well, he was putting some new board in
8 there.

9 Q. What kind of board did you see him putting
10 in?

11 A. I can't remember that.

12 Q. When he was putting the board in, was it
13 out when you came by or did you see it?

14 A. Yeah, it was out because I had to go
15 around to the other door and use the other door.

16 Q. So the board was out. Could you look down
17 through?

18 A. I don't know. I just... Like I say, I
19 come in through the other door, which you can see
20 directly to the other door, and I come up the stairs
21 first and then you could see he was working, so then I
22 come around and used the other door.

23 Q. Okay. Do you remember any other repairs
24 that you saw on the floor of that trailer at any other
25 time other than the one you just told us about?

NOTES:

WINDOWS: THERMOPANE
EXTERIOR DOORS: HOLLOW CORE STEEL
WITH CLOSERS AND
PANIC HARDWARE

INTERIOR DOORS: HOLLOW CORE LEGACY

WIRING IN CONDUIT.
WIRING TO MEET UBC CODES

30 LB/FT² ROOF

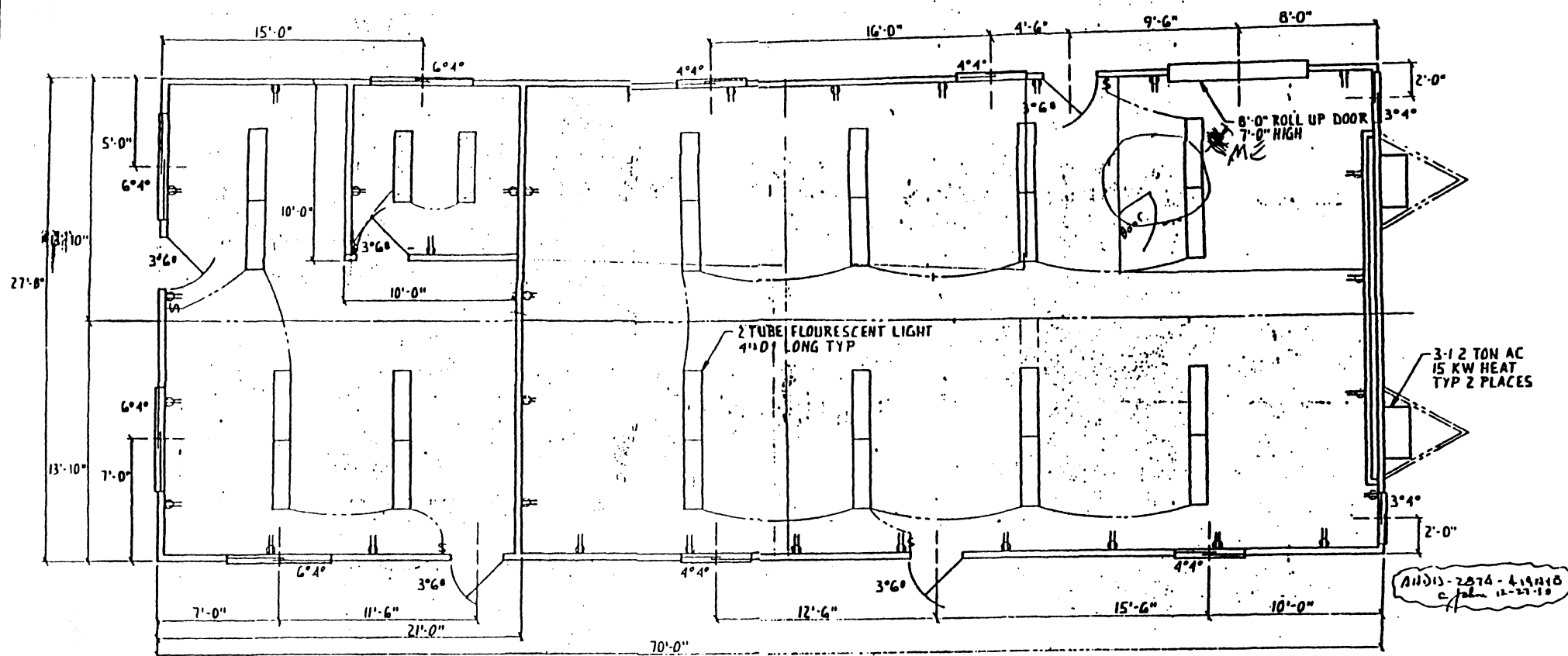
50 LB/FT² FLOOR

25 LB/FT² WIND

B-2 OCCUPANCY

EXHIBIT

#1 - Erhart



FLOOR PLAN

**DEPOSITION
EXHIBIT**

R. Young

ADVANCED MODULAR MFG.

644 W. 14600 S. BLUFFDALE, UTAH 84065

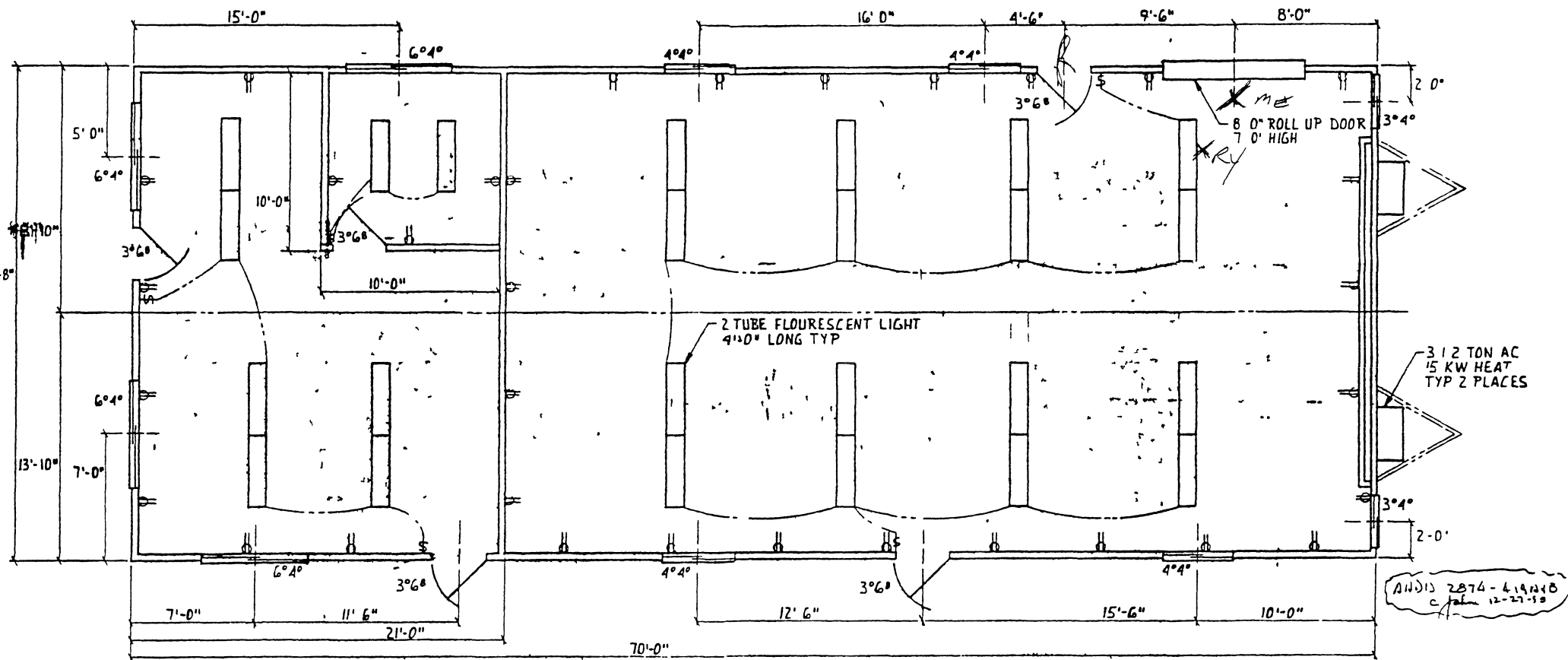
MODULAIRE-NAVY FALLON, NEVADA

28' x 70' · 4
FLOOR PLAN

MARK JAHNE

SCALE: 1/4" = 12"





FLOOR PLAN

DEPOSITION
EXHIBIT
2
A. Young

ADVANCED MODULAR MFG.

644 W 14600 S BLUFFDALE UTAH 84065

MODULAIRE-NAVY FALLON, NEVADA

28' X 70'
FLOOR PLAN

MARK JAHNE
SCALE 1/4" = 12'
B-17-B6 SHEET 1
OF 2



ADDENDUM F

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

* * *

MICHAEL ERHART,)	
PLAINTIFF,	)	CASE NO. 940904775 PI
VS.	)	DEPOSITION OF:
WASTE MANAGEMENT OF UTAH, INC.,	)	MICHAEL ERHART
DEFENDANT.	)	JUDGE DAVID S. YOUNG

* * *

BE IT REMEMBERED THAT ON THE 19TH DAY OF DECEMBER, 1994, THE DEPOSITION OF MICHAEL ERHART, PRODUCED AS A WITNESS HEREIN AT THE INSTANCE OF THE DEFENDANT HEREIN, IN THE ABOVE-ENTITLED ACTION NOW PENDING IN THE ABOVE-NAMED COURT, WAS TAKEN BEFORE DAWN M. DAVIS, A CERTIFIED SHORTHAND REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF UTAH, COMMENCING AT THE HOUR OF 10:35 A.M. OF SAID DAY AT THE OFFICE OF HANSON, EPPERSON AND SMITH, 4 TRIAD CENTER, SUITE 500, SALT LAKE CITY, UTAH.

THAT SAID DEPOSITION WAS TAKEN PURSUANT TO NOTICE.

* * *



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1 WALKING THROUGH THERE WERE YOU CARRYING ITEMS?

2 A YEAH, WE CARRIED BOXES AND STUFF. MOSTLY WE
3 WENT -- WHEN WE WERE CARRYING THE BOXES WE WOULD GO
4 THROUGH THE ROLL-UP DOOR BECAUSE WE WOULD HAVE TO PACK
5 THEM UP TO THE DOOR.

6 Q DURING ANY TIME THAT YOU WERE CARRYING THINGS
7 IN THAT AREA, SAY A FEW FEET IN FROM THE DOOR THAT'S
8 SHOWN ON THE UPPER PORTION OF EXHIBIT 1, DID YOU EVER
9 NOTICE ANY PROBLEMS WITH THE FLOOR, CREAKING, OR GROANING
10 OR FEELING LIKE IT WAS GIVING WAY?

11 A I COULDN'T TELL YOU. I WOULDN'T REMEMBER THAT
12 IF IT DID.

13 Q WHAT TIME DID YOU ARRIVE AT WORK ON THE
14 MORNING OF THE ACCIDENT?

15 A SEVEN.

16 Q WHAT DID YOU DO FROM THAT POINT UNTIL THE TIME
17 OF THE FALL?

18 A JUST MOVING THE BOXES AND WE WERE -- WAS JUST
19 READY TO FINISH UP THE LAST OF THE BOXES.

20 Q WHAT TIME OF DAY DID THE FALL OCCUR?

21 A ABOUT 9 O'CLOCK IN THE MORNING.

22 Q IN THE TWO HOURS BEFORE THEN YOU HAD SPENT THE
23 DAY EMPTYING OUT BOXES, SUPPLIES AND FURNITURE FROM THIS
24 VERY TRAILER?

25 A YEAH.

1 Q DO YOU RECALL WHAT YOU WERE DOING AT THE TIME
2 THAT YOU FELL?

3 A I WAS WALKING FROM DOWN HERE SOMEWHERE.

4 Q IN THE AREA WHERE THE TWO OFFICES HAD BEEN?

5 A RIGHT, TO TAKE SOME BOXES TO THE TRUCK. AND I
6 GOT RIGHT AROUND TO THIS POINT HERE, SOMEWHERE IN THIS
7 POINT IN THE TRAILER, AND FELL IN. THE FLOOR GIVE OUT OR
8 WHATEVER. MY LEG WENT THROUGH THE FLOOR.

9 Q NOW WERE YOU HEADING TOWARDS THE DOOR OR WERE
10 YOU HEADING TOWARDS THE ROLL-UP DOOR?

11 A WELL, THIS PARTITION WALL WAS GONE.

12 Q WHAT I AM SAYING IS --

13 A I WAS HEADING TO GO TO THE ROLL-UP DOOR.

14 Q SO YOU WEREN'T PLANNING ON EXITING THE TRAILER
15 FROM THE NORMAL OPEN DOOR, YOU WERE GOING TO GO TO THE
16 ROLL-UP DOOR THAT WAS CLOSER TO THE FRONT?

17 A RIGHT.

18 Q NOW IS IT POSSIBLE FOR YOU ON THIS DIAGRAM --
19 WHAT I WOULD LIKE, IS WITH AS MUCH PRECISION AS YOU CAN
20 RECALL, I WOULD LIKE YOU TO PLACE WHERE IT WAS THAT THE
21 FLOOR ALLEGEDLY FAILED AND YOU FELL THROUGH IT.

22 A IT WAS SOMEWHERE IN THIS AREA. I CAN'T BE
23 EXACTLY SURE BECAUSE IT'S BEEN A LONG TIME.

24 Q I UNDERSTAND.

25 A BUT IT WAS IN THIS AREA HERE.

1 Q YOU HAVE DRAWN A CIRCLE AND IT APPEARS TO BE
2 -- THESE RECTANGULAR BOXES, AS I UNDERSTAND THEM, ARE
3 FLUORESCENT LIGHT FIXTURES.

4 A RIGHT, THEY ARE.

5 Q SO SOMEWHERE JUST TO THE LEFT OF THE UPPER
6 RIGHTMOST LIGHT FIXTURE IS WHERE YOU THINK THAT THE FALL
7 OCCURRED?

8 A YEAH, SOMEWHERE IN THAT VICINITY.

9 Q NOW WHAT I WOULD LIKE YOU TO DO IS DESCRIBE
10 FOR ME IN AS MUCH DETAIL AS YOU CAN WHAT HAPPENED AS YOU
11 WERE WALKING. AS YOU GOT INTO THAT AREA THAT YOU HAVE
12 CIRCLED, WHAT WAS THE FIRST INDICATION TO YOU THAT THERE
13 WAS A PROBLEM?

14 A WHEN I FLIPPED OVER BACKWARDS.

15 Q DID YOU HEAR ANYTHING BEFORE THE FLOOR GAVE
16 WAY?

17 A NO.

18 Q DID YOU FEEL ANYTHING BEFORE THE FLOOR GAVE
19 WAY?

20 A NO.

21 Q CAN YOU DESCRIBE FOR ME EXACTLY WHAT HAPPENED?

22 A I HAD TWO SMALL BOXES, MAYBE 40 POUNDS IN
23 WEIGHT; IF NOT, I AM NOT EXACTLY SURE HOW MUCH THEY WERE.
24 THEY WEREN'T VERY HEAVY. BUT I WAS WALKING TO THE
25 ROLL-UP DOOR AND MY LEG WENT THROUGH THE FLOOR AND I

1 TWISTED OVER BACKWARDS.

2 Q WAS IT YOUR RIGHT LEG OR YOUR LEFT LEG?

3 A MY RIGHT LEG.

4 Q HOW FAR DOWN DID YOUR FOOT AND LEG GO?

5 A I CAUGHT MYSELF JUST BEFORE MY HIP.

6 Q SO YOU WENT BASICALLY TO YOUR HIP?

7 A YEAH.

8 Q NOW WHAT KIND OF COVERINGS WERE THERE ON THE

9 FLOORS IN THAT AREA?

10 A IT WAS TILE AND LINOLEUM. SOMETHING. TILE.

11 Q ASPHALT TILE OR LINOLEUM?

12 A I AM PRETTY SURE IT WAS TILE BECAUSE LINOLEUM

13 WOULD HAVE BEEN SOLID.

14 Q SO THERE WERE ASPHALT TILES ON THE FLOOR. HOW

15 BIG OF A HOLE WAS CREATED WHEN YOUR FOOT AND LEG WENT

16 THROUGH?

17 A PROBABLY EIGHT TO TEN INCHES IN DIAMETER.

18 Q AS YOU STARTED TO GO DOWN DID YOU DROP THE

19 BOXES?

20 A YEAH.

21 Q YOU SAY YOU CAUGHT YOURSELF JUST BEFORE YOUR

22 HIP. WHAT DID YOU CATCH YOURSELF WITH?

23 A I PUT MY RIGHT HAND DOWN TO THE FLOOR.

24 Q WERE YOU WEARING GLOVES OR ANYTHING?

25 A NO, I DON'T THINK SO.

1 Q YOU CAUGHT YOURSELF AS YOU WENT DOWN WITH YOUR
2 RIGHT HAND. WHAT HAPPENED NEXT?

3 A I JUST PULLED MYSELF BACK UP OUT OF THE FLOOR.

4 Q DID YOUR BUTTOCKS END UP ACTUALLY STRIKING THE
5 ACTUAL FLOOR OF THE TRAILER?

6 A YEAH, I THINK SO. I JUST NEVER WENT DOWN ON
7 MY BACK.

8 Q DID YOUR FOOT GO FAR ENOUGH THROUGH THE FLOOR
9 THAT IT STRUCK ANYTHING UNDERNEATH?

10 A I DON'T REMEMBER.

11 Q SO YOU ENDED UP SITTING DOWN ON YOUR BUTTOCKS
12 AND CATCHING YOURSELF WITH YOUR RIGHT HAND?

13 A PRETTY MUCH.

14 Q YOU PULLED YOURSELF BACK UP, PULLED YOUR FOOT
15 OUT THROUGH THE FLOOR?

16 A YES.

17 Q DID YOU TAKE A LOOK AT THE HOLE AT THAT POINT?

18 A YEAH. I WAS AMAZED THAT I HAD FELL THROUGH
19 THE HOLE IN THE FLOOR.

20 Q I NEED YOU TO DESCRIBE FOR ME IN AS MUCH
21 DETAIL AS YOU CAN RECALL WHAT THE HOLE LOOKED LIKE.

22 A JUST A HOLE. I COULDN'T REALLY TELL YOU. IT
23 LOOKED LIKE A CAVED-IN HOLE.

24 Q WAS THE FLOORING MATERIAL UNDERNEATH THE TILE
25 -- WAS THAT A PARTICLE BOARD, OR A PLYWOOD OR COULD YOU

1 TELL?

2 A I DIDN'T EVEN PAY MUCH ATTENTION TO IT AT THE

3 TIME.

4 Q DID YOU LOOK IN ANY EFFORT TO TRY TO FIND OUT

5 WHY IT GAVE WAY? DID IT LOOK LIKE THERE WAS WATER DAMAGE

6 OR ANY KIND OF --

7 A NO, I DIDN'T.

8 Q WAS THERE ANYONE ELSE IN THE TRAILER AT THE

9 TIME WITH YOU?

10 A YEAH.

11 Q WHO WAS THAT?

12 A LENAE. GEES, I DON'T RECALL HER LAST NAME. I

13 THINK WE GOT IT DOWN.

14 Q LENAE?

15 A LENAE JOLLY.

16 Q WHERE WAS SHE AT THE TIME YOU FELL?

17 A THEY WAS ALL ON -- I GUESS THEY WOULD BE ON

18 THE BOTTOM-HAND SIDE OF THE TRAILER OF THIS BLUEPRINT

19 TALKING.

20 Q THERE WAS NOTHING THERE THAT WOULD HAVE

21 PREVENTED THEM FROM SEEING YOU AND WHAT YOU WERE DOING?

22 A NO. IT WAS AN OPEN TRAILER.

23 Q ANYBODY ELSE OTHER THAN LENAЕ THAT WAS IN THE

24 TRAILER WITH YOU?

25 A RICHARD YOUNG AND HIS WIFE. I DON'T REMEMBER

1 HER FIRST NAME. MRS. YOUNG.

2 Q WHERE WERE THEY LOCATED?

3 A RICHARD WAS IN THE BACK OF THE PICKUP WAITING
4 FOR ME.

5 Q WHERE WAS HIS WIFE?

6 A SHE WAS OVER TALKING WITH LENAЕ.

7 Q DID YOU SPEAK WITH EITHER OF THEM AFTER THE
8 ACCIDENT?

9 A YEAH.

10 Q DO YOU RECALL WHAT THAT CONVERSATION CONSISTED
11 OF?

12 A I WORKED WITH RICHARD FOR EIGHT MONTHS OUT
13 THERE AT CLIVE SO I TALKED TO HIM ON A NUMBER OF
14 OCCASIONS.

15 Q I AM TALKING ABOUT DID YOU SPEAK WITH HIM THAT
16 MORNING AFTER YOU FELL THROUGH.

17 A OH, YEAH. I WORKED WITH HIM THE REST OF THE
18 DAY. IT WAS SOME -- WE MADE AN ACCIDENT REPORT OUT AND
19 STUFF. I TOLD DAN PIVA. CHERYL PIVA WAS IN THE OFFICE
20 AT THAT TIME.

21 Q CHERYL WAS THERE IN THE TRAILER TOO?

22 A YES.

23 MR. MCCONKIE: WHAT WAS HER LAST NAME?

24 THE WITNESS: PIVA, P-I-V-A.

25 Q (BY MR. CHRISTENSEN) WHERE WAS DAN?

1 A DAN WAS OUT OF THE TRAILER. HE WAS UP TO THE
2 U E & C OFFICES AT THE TIME. I DON'T REMEMBER.

3 Q WAS CHERYL ANYWHERE IN THE IMMEDIATE VICINITY
4 WHEN YOU FELL?

5 A YEAH. ALL THREE OF THEM GIRLS WAS IN THE
6 FRONT OF THE OFFICE TRAILER.

7 Q DID YOU MAKE A COMMOTION WHEN YOU FELL?

8 A YEAH.

9 Q DID ANYBODY COME OVER TO HELP YOU?

10 A YEAH. RICHARD JUMPED OUT OF THE TRUCK TO HELP
11 ME GET UP.

12 Q DID HE TAKE A LOOK AT THE HOLE?

13 A I WOULD IMAGINE HE DID, BUT I COULDN'T TELL
14 YOU FOR SURE.

15 Q YOU DON'T RECALL HIM BEING THERE AND LOOKING
16 IN THERE AND SAYING, "GEE, I WONDER HOW THIS HAPPENED" OR
17 ANYTHING LIKE THAT?

18 A NO.

19 Q DID ANYBODY MENTION TO YOU AT THAT POINT THAT
20 THEY HAD HAD PROBLEMS WITH THE FLOOR?

21 A I DON'T RECALL IF THEY DID OR NOT.

22 Q WHEN DID YOU FIRST HEAR THAT THERE HAD BEEN
23 SOME PREVIOUS PROBLEMS WITH THE FLOOR?

24 A IT WAS PROBABLY A COUPLE DAYS LATER.

25 Q THAT WAS FROM SUE LILYBLAD?

1 A YEAH.

2 Q NOW THE AREA THAT YOU CIRCLED SEEMS, IN MOST
3 PART, TO BE CONTAINED WITHIN THE AREA WHERE THE ROLL-UP
4 DOOR ROOM WAS.

5 A YEAH. IT WAS SOMEWHERE IN THIS VICINITY. I
6 COULDN'T PINPOINT THE EXACT PLACE AT THIS TIME.

7 Q DO YOU KNOW IF ANYBODY TOOK ANY PICTURES OF
8 THE HOLE?

9 A I DON'T KNOW IF THEY DID OR NOT. IF ANYBODY
10 DID IT WOULD HAVE BEEN SOMEBODY FROM U E & C.

11 Q WHO IS THAT?

12 A THEY WERE THE CONSTRUCTION COORDINATORS.

13 Q WHAT DOES THAT STAND FOR?

14 A I'M NOT SURE.

15 Q THEY WERE THE CONSTRUCTION COORDINATOR?

16 A YEAH.

17 Q WHEN WERE THEY NOTIFIED OF THIS ACCIDENT?

18 A THE NEXT DAY.

19 Q DID YOU FILL OUT AN ACCIDENT REPORT THAT DAY,
20 THE 28TH?

21 A NO, I DIDN'T.

22 Q WHAT DID YOU DO FOR THE REST OF THE DAY?

23 A I DON'T REMEMBER. I JUST -- I KNOW I DROVE
24 THE TRUCK AROUND WITH RICHARD IN THE YARD AND STUFF.

25 Q DID YOU CONTINUE TO -- I'M SORRY, I DIDN'T

1 MEAN TO INTERRUPT YOU.

2 A SHIPPING LOADS OUT.

3 Q DID YOU CONTINUE TO FINISH EMPTYING THE

4 TRAILER?

5 A YEAH. WE WAS JUST ABOUT DONE AT THAT TIME.

6 Q AS I UNDERSTAND IT, THERE WOULD HAVE BEEN

7 RICHARD YOUNG AND HIS WIFE, LENAE JOLLY, CHERYL PIVA AND

8 YOU.

9 A RIGHT.

10 Q WERE THERE ANY OTHER EMPLOYEES, WHETHER THEY

11 WERE TIC EMPLOYEES, OR U E & C EMPLOYEES OR KENNECOTT

12 EMPLOYEES, THAT WERE IN THE IMMEDIATE AREA WHEN YOU FELL?

13 A NO.

14 Q WHAT DID YOU GUYS DO FOR THE REST OF THE DAY

15 WHEN YOU WERE EMPTYING THE TRAILER AS FAR AS THAT HOLE?

16 DID YOU MARK IT? DID YOU COVER IT? DID YOU DO ANYTHING

17 TO THE HOLE?

18 A COVERED IT UP SO NO ONE ELSE WOULD FALL

19 THROUGH IT.

20 Q WHAT DID YOU COVER IT UP WITH?

21 A A PIECE OF PLYWOOD.

22 Q DID YOU LAY IT DOWN IN PLACE?

23 A NO.

24 Q YOU JUST LAID A PIECE OF PLYWOOD OVER THE TOP

25 OF IT?

1 A YEAH.

2 Q DID YOU TALK TO DAN PIVA THAT DAY AND TELL HIM
3 ABOUT THE ACCIDENT?

4 A YEAH. HE WAS SUPPOSED TO FILL OUT AN ACCIDENT
5 REPORT THAT DAY AND HE FAILED TO DO SO.

6 Q DO YOU KNOW WHETHER DAN CAME IN AND TOOK A
7 LOOK AT THE HOLE?

8 A I DON'T KNOW IF HE DID OR NOT. I DIDN'T KNOW
9 I WAS HURT THAT BAD AT THAT TIME. I THOUGHT I HAD JUST
10 PULLED A MUSCLE OR SOMETHING.

11 Q WHEN YOU ACTUALLY WENT DOWN WHAT DID YOU THINK
12 HAD BEEN HURT?

13 A I THOUGHT I JUST PULLED A MUSCLE IN MY BACK
14 FROM TWISTING IT.

15 Q SO WHEN YOU WENT DOWN YOU TWISTED SOME TOO?

16 A YEAH. THAT'S HOW I INJURED MY BACK, WAS FROM
17 THE TWIST.

18 Q HAD YOU HAD ANY PRIOR PROBLEMS WITH YOUR BACK
19 BEFOREHAND?

20 A NO.

21 Q NOTHING THAT EVER REQUIRED YOU TO SEE A
22 DOCTOR?

23 A NO.

24 Q NEVER PULLED ANY MUSCLES IN YOUR BACK BEFORE,
25 STRAINED YOUR BACK LIFTING?

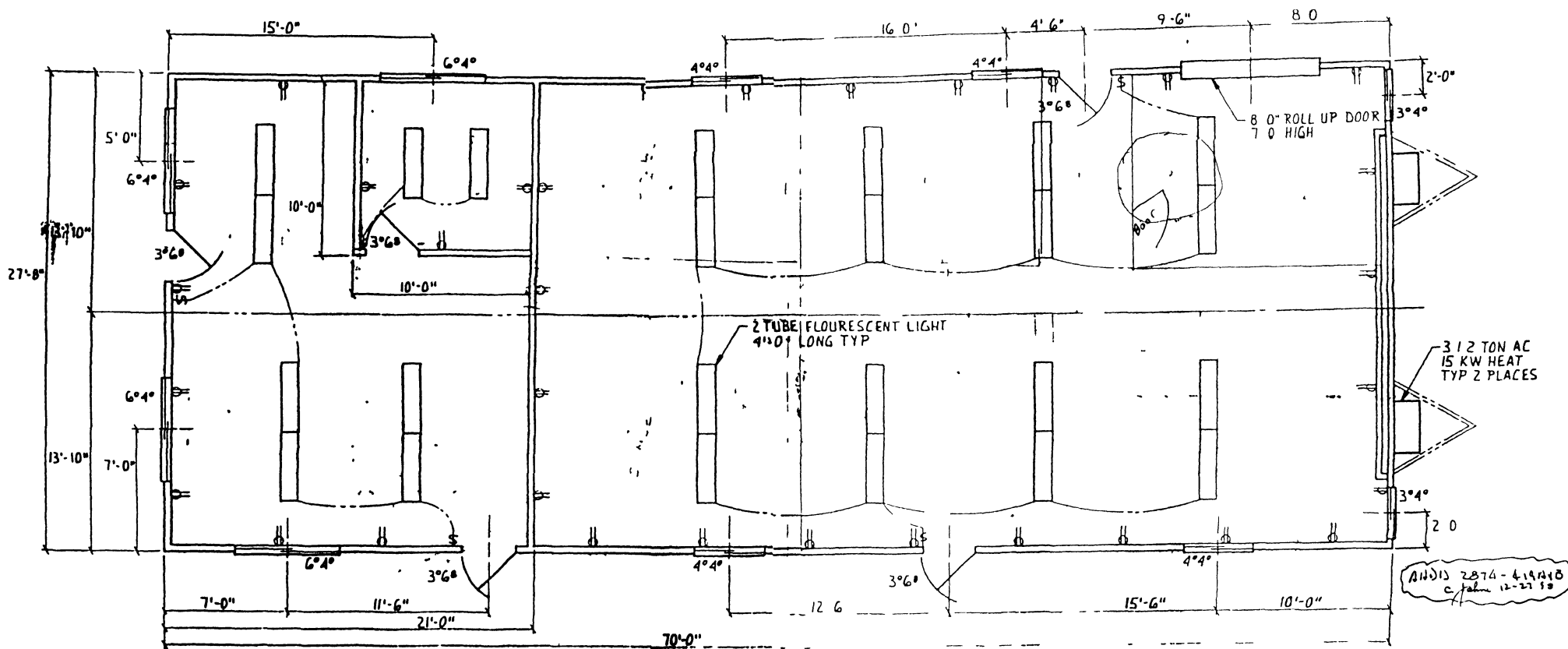
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WIRING IN CONDUIT
WIRING TO MEET UBC CODES
30 LB/FT² ROOF
50 LB/FT² FLOOR
25 LB/FT² WIND
B-2 OCCUPANCY

EXHIBIT

#1 - Erhart



FLOOR PLAN

ADVANCED MODULAR MFG.

644 W 14600 S BLUFFDALE, UTAH 84065

MODULAIRE-NAVY FALLON, NEVADA

28 X 70'
FLOOR PLAN

MARK JAHNE
SCALE: 1/4" = 12'
8-17-86
SHEET 1
OF 2



ADDENDUM G

-ooo-

Judge Young

- o O o -

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1 with me... Oh, I don't know. I thought I was alone
2 over here at the desk, but maybe -- but there was all
3 of us were there at the time it happened, but where we
4 all -- I know I was sitting at the desk, but I don't
5 know if Cheryl and Linnae -- it seemed to me like they
6 were up here doing some cleaning and some different
7 things.

8 Q. Okay. Let me show you what is marked
9 Exhibit 1 to Cheryl Piva's deposition. Ms. Piva
10 placed herself at a desk basically just in from the
11 overhead door against the wall. If you are looking at
12 the front of the trailer, it would be the right-hand
13 wall. If the overhead door is on the left-hand wall,
14 she placed herself at a desk facing to the right at
15 the time of the accident. Now, I'm not trying to sway
16 your opinion or get you to change or do anything. I'm
17 just trying to tell you that's where other people have
18 placed themselves --

19 A. Okay.

20 Q. -- at the time of the accident.

21 A. Well, then she could have been because,
22 like I said, we were all working in there. I thought
23 I was -- because I had kind of my papers were strung
24 because I had that whole corner. I thought I was
25 alone in this corner (indicating).

1 Q. Okay.

2 A. In the corner because I was -- because I
3 was filing and so I had -- there was all the reports.
4 I had all the reports strung behind me and around. I
5 don't remember her being -- I thought she was in front
6 of me, like up more towards here, but she would
7 remember where she was better, so I could be wrong.

8 Q. Okay.

9 A. It's been a -- I didn't...

10 Q. I appreciate that. Did you have an
11 unobstructed view to the area where Mr. Erhart fell?

12 A. Yes.

13 Q. Did you see him fall?

14 A. I turned -- I heard him. I didn't -- he
15 was already through the floor by the time I turned,
16 because I was -- my side was to him, so as he went
17 through the floor, I turned and...

18 Q. Okay.

19 A. And just seen it then.

20 Q. What did you hear that caused you to turn
21 and look at him?

22 A. Oh, boy.

23 Q. Did you hear the sound of boxes drop? Did
24 you hear the sound of wood breaking? Did you hear a
25 cry, you know, someone yell or say something?

1 A. Well, I think he yelled out. See, I don't
2 remember if he dropped everything. They were carrying
3 books or boxes or something and I don't remember.
4 I've been trying to think back and I just know that he
5 was still standing when I seen him.

6 Q. Okay.

7 A. And I just heard the noise. I don't
8 know. It was just probably all at once the floor and
9 I don't remember if he dropped...

10 Q. That's fine. If you don't remember,
11 that's the only accurate answer, and I would just as
12 soon you tell us that rather than try to guess as to
13 what it might have been. Does that make sense?

14 A. Yeah. Because it just didn't seem like a
15 big deal to me at the time. It was just funny. We
16 were more or less laughing, you know.

17 Q. When you said you turned and saw him and
18 he was still up, can you describe for me how he was?

19 A. Well, he wasn't standing fully. It
20 just -- kind of his foot just kind of -- he was kind
21 of bent, from what I can remember, just kind of more
22 bent over type, you know.

23 Q. Could you see both of his feet at that
24 point? In other words, was one foot down through the
25 floor, or do you recall that?

1 A. I don't recall. I'm not much help.

2 Q. What did you do when you saw him there?
3 Did you go over to investigate?

4 A. We just got up, yeah. We walked over to
5 him and there's just a hole in the floor. I mean, we
6 just, yeah...

7 Q. Who was with you when you went over to
8 look at it?

9 A. It was -- well, Rich was there and me and
10 Cheryl. I don't remember. I think Linnae was too.
11 I'm not real positive. I can't...

12 Q. And what did you see when you went over
13 there as far as the floor was concerned?

14 A. He just went through it. I mean, there
15 was just a hole. I mean, I don't even know what was
16 underneath it. It was just the floor was broke.

17 Q. How big of a hole was it?

18 A. Oh, just...

19 Q. Let's use this exhibit, Exhibit 1 to your
20 deposition, as an example. Was the hole as big or
21 bigger than that paper?

22 A. Well, yeah. Yeah. It broke. I better
23 say I don't know.

24 Q. Okay.

25 A. I really don't remember how big it was. I

1 just know that the floor broke and he -- I mean, he
2 just went through the floor. I mean, I don't know how
3 big. I really...

4 Q. Do you know how far he went through the
5 floor, from what you saw?

6 A. Just maybe down to his midway, probably,
7 because he was -- when I seen him, he was more bent
8 over, so it probably come to mid-calf, you know.

9 Q. Mid-calf?

10 A. Yeah. That's my estimate of it.

11 Q. Okay. Aside from how large the hole was,
12 can you describe it for me in any other way, what the
13 edges were like, what you could see as you looked down
14 through the hole, if you did, anything like that?

15 A. Oh, you know, I can see -- I can't see the
16 hole -- I can't -- I just -- I can't really remember
17 how big it was or what it was, linoleum or if it was
18 board. I think it was linoleum and board and they
19 were split, but I'm not -- I didn't...

20 Q. As you sit here, were the edges jagged or
21 could you tell whether it was like particle board that
22 had broken or whether it was plywood?

23 A. I don't know.

24 Q. Okay.

25 A. It was just a hole. I mean, I don't know

1 any information about this accident other than Cheryl
2 and Dan Piva, Linnae Jolley, you, your husband and
3 Michael Erhart?

4 A. No, because, I mean, they had workers in
5 there all the time, so...

6 Q. When was the last time you were in that
7 trailer after the accident?

8 A. Oh, the next day would have been the
9 29th. We finished up, so we were there one more day.

10 Q. Were you present when anyone came to pick
11 up the trailer?

12 A. Let's see. No. I was at the house
13 working. Yeah.

14 MR. CHRISTENSEN: That's all the questions
15 I have. Thank you

16 EXAMINATION

17 BY MR. McCONKIE:

18 Q. Let me just talk to you a second about the
19 hole, okay?

20 A. Okay.

21 Q. You did not see the accident; is that
22 correct?

23 A. I seen him after he was already through
24 the floor.

25 Q. And your recollection is that he was down

1 to about mid-calf; is that right?

2 A. That's what I'm -- yeah. That's what
3 I'm...

4 Q. And so could it have been, did you notice
5 at that point whether he was moving up out of the hole
6 when you noticed how far down he was?

7 A. Well, let me think this out. We're
8 sitting when working and all of a sudden there is a
9 crash and he -- I think he was kind of back, like I
10 think he just kind of -- you know how when you just
11 kind of -- it takes you off guard, just it seems
12 like -- it seems like it was just quick, I mean, and
13 then he just had to -- he was probably coming up,
14 yeah. He was probably getting up out of it.

15 Q. Do you have a recollection of actually
16 looking down in the hole, or is that vague?

17 A. It's really vague. I know that we went
18 over there, but I -- I don't -- I'm not seeing the
19 hole. I'm not... I'm just not. I mean, we just...

20 Q. That's fine. And I just want to make sure
21 that -- I think what both counsel and I want, if you
22 don't remember, it's fine, and that's why we are just
23 asking. If it is vague, it's fine. I mean, this was
24 a long time ago.

25 A. Yeah. I didn't...

1 Q. So don't feel the need to remember, you
2 know, to guess at anything because you don't need to.

3 So do you have a specific recollection of
4 looking down in the hole or not?

5 A. Oh, I'm sure I had to have looked down
6 because we were -- I know I must have, but I don't
7 remember, you know.

8 Q. You can't remember what you saw; is that
9 correct?

10 A. Yeah. Yeah. I'm not real clear of what
11 was there.

12 MR. McCONKIE: That's all I have, Scott.
13 Do you have anything else?

14 FURTHER EXAMINATION

15 BY MR. CHRISTENSEN:

16 Q. As I understand the sequence that you
17 again just described for Mr. McConkie, you were
18 working at your desk, you heard some noise, some
19 commotion?

20 A. Yeah. Yeah.

21 Q. And then you immediately turned and had a
22 clear view of Mr. Erhart?

23 A. Yes.

24 Q. At that point do you remember which foot
25 was down in the hole?

1 A. Oh, no. I don't.

2 Q. Okay. But he had one foot in the hole.
3 Was he still standing on the other foot?

4 A. Yeah, he was. Well, he was...

5 Q. Is that fair? One foot was standing on
6 the floor and the other foot was mid-calf coming up
7 out of the hole? Is that correct? You're not --

8 A. I don't know. Oh....

9 Q. Let me ask it another way, then. I
10 appreciate your laboring over this and trying to be as
11 accurate and as honest as you can. Did you ever see
12 Mr. Erhart down on the ground, anything other than on
13 his feet? Was he seated on the ground?

14 A. No, no, he didn't -- my recollection he
15 did not fall all the way. He was standing.

16 Q. So he was not on his buttocks on the
17 ground?

18 A. No.

19 Q. So when you saw him immediately after
20 hearing the noise, just whatever time it took to bang,
21 here the noise and turn to him, he was on his feet?

22 A. Yeah, he was, but he was stooped.

23 Q. Sure.

24 A. I mean, he wasn't standing straight up.

25 It was kind of like a -- from my recollection, I don't

1 know.

2 Q. Sure.

3 A. You know, what everybody else says, but I
4 didn't see him on the ground. That's what I remember.

5 MR. CHRISTENSEN: That's all the questions
6 I have.

7 **FURTHER EXAMINATION**

8 **BY MR. McCONKIE:**

9 Q. I have a couple more. Is there any
10 question in your mind that his foot went through the
11 floor?

12 A. Yeah, he went through the floor. There
13 wasn't a hole there before.

14 Q. So there is no question his foot went
15 through the floor and there is no question you saw a
16 hole there; is that right?

17 A. Yeah.

18 Q. And there is no question that he went down
19 at least up to his mid-calf, at least that's what it
20 looked like when you first saw him?

21 A. Yeah. Yeah.

22 Q. Was his body covering up your view of how
23 far his leg was down in the hole?

24 A. I think I was -- looked more at the top of
25 him than I was focusing on -- when I turned around

1 because, see, I was sitting. I think that's why I'm
2 not real clear, because he had boxes or books and I'm
3 not even sure if he dropped them. I just know it was
4 -- we got up. It was so fast. You know, it was a
5 quick thing. It wasn't -- and he got -- I mean, we
6 kind of were...

7 Q. So you remember he was hunched over?

8 A. Yeah. Yes, I just remember him hunched.

9 Q. So he wasn't standing up straight when you
10 turned around and saw him; is that right?

11 A. He was kind of, yeah, it -- he was just
12 kind of -- I think he still had the boxes because I
13 think that's why I was thinking he was hunched,
14 because you know how you're holding something and you
15 just kind of -- and he just kind of got up out of the
16 way, and I think we must have looked at the floor. We
17 were kind of -- you know, it was kind of more funny to
18 us at the time. I mean, not -- you know what I mean?
19 Like... I don't know.

20 MR. McCONKIE: Okay. I'm finished, if you
21 are.

22 MR. CHRISTENSEN: I am. No other
23 questions.

24

25 (Whereupon, the deposition was concluded

ADDENDUM H

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-v-

Judge Young

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1 Q. Okay.

2 A. Okay. So I was over here at the desk
3 (indicating).

4 Q. Would you label that as a desk?

5 A. (Complies)

6 Q. And you had your back to the roll-up door?

7 A. That's right.

8 Q. Do you know where Mr. Erhart was coming
9 from?

10 A. No. But he was facing towards that door,
11 walking out that way.

12 Q. Now, what did you hear; do you recall?

13 A. I don't remember hearing anything. They
14 just said something -- Rich was there, also, with
15 Mike, and they just said whatever and I turned around
16 and then that's when I saw Mike, that he had -- his
17 left leg had stepped into, you know, the floor had
18 kind of broken through or...

19 Q. Let me ask you some questions about that,
20 if I could. Was it someone's voice that alerted you
21 to the fact that Mr. Erhart was down?

22 A. Yes.

23 Q. So you didn't hear any cracking noise or
24 anything like the floor giving way?

25 A. No.

1 Q. When you turned around, what direction was
2 Mr. Erhart facing on the ground?

3 A. He wasn't on the ground.

4 Q. Wasn't he?

5 A. No.

6 Q. Okay.

7 A. As I remember it, he -- his -- his body
8 was still upright.

9 Q. Okay.

10 A. And, you know, the one -- the left leg, he
11 had stepped down a little bit and it had given, but by
12 that time he had pulled it back up, and he was still
13 facing going out of the trailer.

14 Q. When you turned around, when you first saw
15 him, was he standing on both feet?

16 A. Yes.

17 Q. And both feet were then above or on the
18 surface of the floor?

19 A. Right.

20 Q. What did you do next?

21 A. We asked him if he was okay.

22 Q. Would you use this red pen and mark, if
23 you can, your best memory as to where Mr. Erhart was
24 standing when you first turned around and saw him?

25 A. (Complies)

1 Q. Okay. You have drawn a stick figure that
2 shows the approximate location where he was standing?

3 A. Right.

4 Q. Would you label that Erhart?
5 E-r-h-a-r-t.

6 A. (Complies)

7 Q. Okay. Thank you.

8 Did you go to him to see what was wrong?

9 A. I can't remember. I don't think so.
10 Because I -- we asked the other people that were
11 around, we all said are you okay. He said yes. We
12 all kind of laughed because it was -- we just, are you
13 okay, and he said yeah, and then he went about his
14 business.

15 Q. Did you go to the area where he had fallen
16 to see what the floor was like?

17 A. I'm sure I did, but I cannot remember it
18 now.

19 Q. Do you remember there being a hole where
20 you could look down and see the ground underneath?

21 A. I don't remember. Like I said, I'm sure
22 that we all looked at it because it's just something
23 that you would do.

24 Q. Sure.

25 A. But I can't remember now.

1 Q. Did you hear anything? I understand that
2 he was carrying some boxes at the time this happened,
3 some boxes with paper. Did you hear those drop?

4 A. I can't remember.

5 Q. I'm just wondering, and I'll be candid
6 with you, Mr. Erhart has testified that when he fell,
7 he fell through and up to his hip in the hole and I'm
8 wondering if when you saw him, was he in that position
9 where his leg was down through the hole?

10 A. I know that he said -- I've heard that
11 before through the years. I mean, this has been going
12 on for --

13 Q. Yes, I appreciate that.

14 A. -- years. I don't remember it that way.

15 Q. Okay. So someone said what happened, you
16 turned around and at that point he was standing up on
17 the floor?

18 A. Right.

19 Q. On both feet?

20 A. Because to my recollection he never went
21 that far down. His leg never went that far down into
22 the -- whatever that happened. You know, he must have
23 known, felt it give and jerked it back or something
24 like that, because it never went up to the hip like
25 that.

1 Q. Not that you ever saw?

2 A. That's right. Not that I remember.

3 Q. As you had been in this trailer for what,
4 a year, two years?

5 A. Approximately.

6 Q. Had you ever been in the area where you
7 saw Mr. Erhart at the time that he claims to have
8 fallen?

9 A. Oh, many times.

10 Q. In all that time you were there, did you
11 ever feel anything unsteady at all about the floor?

12 A. No.

13 Q. Had you ever heard of anyone in the office
14 complain about any problems with the floor in that
15 area?

16 A. No.

17 Q. After the accident, within the next day or
18 so, were you in that area yourself again?

19 A. I'm sure I was.

20 Q. Did anyone take any steps to protect that
21 area where he fell?

22 A. All I can remember is that we -- someone
23 put a board over it.

24 Q. Was it particle board, sheetrock, plywood,
25 something like that?

1 A. Something like that. A piece of particle
2 board, plywood.

3 Q. I understand those typically come in a
4 four foot by eight foot section. Did they put a full
5 section there?

6 A. I can't remember.

7 Q. Okay. I told you I would ask you a lot of
8 detailed questions. I apologize if it appears I'm
9 belaboring the issue, but we just need to try to find
10 out as much information as we can.

11 Did you walk over that sheetrock or
12 plywood or whatever it was?

13 A. I don't know. I think that I tried to go
14 around it.

15 Q. Did you talk with anyone who claims to
16 have seen Mr. Erhart fall?

17 A. No.

18 Q. So when you say everybody asked him what
19 happened, that would have been Linnae Jolley?

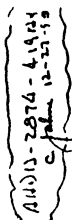
20 A. Right.

21 Q. And Mr. Young, Mike Young?

22 A. Rich Young.

23 Q. No, Rich Young?

24 A. He was there, but I can't remember where
25 he was.



ADVANCED MODULAR MFG.

644 W. 14600 S. BLUFFDALE, UTAH 84065

MODULAIRE-NAVY FALLON, NEVADA

28° X 70'	MARK JAHNE
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SCALE: 1/4" = 12"

1333HS	78-61-8
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2 of 2

2 of 2

**DEPOSITION
EXHIBIT**

C. Piva

ADDENDUM I

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY,
STATE OF UTAH

MICHAEL ERHART,)	
)	
Plaintiff,	)	AFFIDAVIT OF RONALD L.
	)	LARSEN
v.)	
)	
WASTE MANAGEMENT OF UTAH,	)	Civil No. 940904775 PI
INC.,	)	Judge Davis S. Young
)	
Defendant.)	

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Ronald L. Larsen, having been sworn upon oath, swears and states as follows:

1. My name is Ronald L. Larsen, and I am one of the owners of Advanced Modular Manufacturing, located at 644 West 146000 South, Bluffdale, Utah 84065. My phone number is 571-9841.

2. Presently I am the President of the company and in the past have been a General Manager.

3. I have been a General Manager or co-owner in the trailer manufacturing business for over 21 years.

4. Advanced Modular manufactured the trailer involved in this lawsuit.

5. I am intimately familiar with the design, construction and materials utilized in the manufacture of the trailer. Recently, I inspected the trailer along with counsel for Defendant, Waste Management, and counsel for Plaintiff.

6. As part of my inspection I specifically looked at the area near the door where repairs had been effectuated approximately one to two months before Plaintiff's alleged accident.

7. I got underneath the trailer and inspected the area that had been repaired. The area of the repair extends no further than 18 inches in from the outside wall of the trailer. This area of repair ran approximately 12 to 16 feet lengthwise with the trailer and involved replacing strips of plywood 18 inches wide in 8 foot pieces.

8. The seams outlining the boundary between the repair and the original flooring material are also easily identified by blocking along those seams.

9. The area of the repair was easily located and was easily visible from underneath the trailer.

10. I also inspected the floor joists and the metal I-beams that run width wise and lengthwise under the trailer respectively. It is clear that the area of Plaintiff's alleged accident, based on his own description, occurred approximately 6 to 8 feet in from the wall. This would place the area of

Plaintiff's alleged incident, even at a conservative guess, at least 5 feet in from the outermost area of the repair.

11. The area of the repair is separated from the area of Plaintiff's alleged accident by a metal I-beam frame member which runs lengthwise. There are furthermore floor joists running width wise, spaced every 16 inches. The remainder of the undercarriage of the trailer including the area where Plaintiff is alleged to have fallen through the floor is absolutely devoid of any repair or any damage that would even be associated with Plaintiff's alleged incident as he described it.

12. I saw no evidence of water damage or damage to any of the undercarriage of the trailer in the area where Plaintiff's accident was alleged to have occurred during my inspection of the trailer.


DATED this 26th day of February, 1996.


RONALD L. LARSON

SUBSCRIBED AND SWORN to before me on this 27th day of
February, 1996.

My Commission expires:

March 1, 1997


NOTARY

Residing: Salt Lake County

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