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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

RAUL CAMACHO, an individual by and
through his Guardian Ad Litem, LUCIA R.
MATURRANO; and LUCIA R.
MATURRANO, and individual,

Plaintiffs,

vs.

JLG INDUSTRIES, INC.; SUNBELT
RENTALS, INC.; and DOES 1 to 50, inclusive,

Defendants.

) Case No.: 30-2017-00902499-CU-PO-CJC
) [Complaint filed: Feb. 9, 2017]
) [Assigned to The Hon. Robert Moss,
) Dept. C14]

) **DEFENDANT JLG INDUSTRIES, INC.'S
) NOTICE OF MOTION AND MOTION FOR
) DIRECTED VERDICT**

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TO THE COURT, ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

COMES NOW Defendant, Cross-Complainant and Cross-Defendant, JLG INDUSTRIES, INC., and hereby moves this court, for a directed verdict pursuant to Civil Procedure Code section 630(a) as to Mr. Camacho's claims for strict liability and negligent failure to warn, negligent failure to retrofit, and strict liability design defect and negligent design. As explained below, there is no substantial evidence to support these claims.

For these reasons, this Court is respectfully requested to grant the subject motion.

Respectfully submitted,
ZINDER & KOCH



DATED: September 14, 2021

BY: _____
Jeffrey E. Zinder, Esq.
Defendant, Cross-Complainant and
Cross-Defendant, **JLG INDUSTRIES, INC.**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Defendant JLG Industries, Inc. moves for a directed verdict pursuant to Civil Procedure Code
4 section 630(a) as to Mr. Camacho’s claims for strict liability and negligent failure to warn, negligent
5 failure to retrofit, and strict liability design defect and negligent design. As explained below, there is
6 no substantial evidence to support these claims.

7 **First**, JLG is entitled to a directed verdict on Mr. Camacho’s claims for strict liability and
8 negligent failure to warn because (i) JLG had no duty to provide different or additional warnings, (ii)
9 there is no substantial evidence that the warnings and instructions that JLG did provide
10 were inadequate or insufficient in any way, and (iii) there is no substantial evidence that any
11 inadequacy or insufficiency in JLG’s warnings and instructions was a substantial factor in causing
12 Mr. Camacho’s accident and resulting injury.

13 **Second**, JLG is entitled to a directed verdict on Mr. Camacho’s claim for negligent failure to
14 retrofit because there is no substantial evidence that (i) JLG became aware that the JLG model 1930ES
15 scissor lift was dangerous or likely to be dangerous after the product was sold, and (ii) a reasonable
16 manufacturer under the same or similar circumstances would have retrofitted the scissor lift.

17 **Third**, JLG is entitled to a directed verdict on Mr. Camacho’s strict liability design defect and
18 negligent design claims because there is no substantial evidence that a defect in the chain-closure
19 system of the JLG model 1930ES scissor lift caused Mr. Camacho’s accident and resulting injury.
20 Instead, the undisputed evidence shows that the safety chain was not latched across the entrance of
21 the scissor lift when Mr. Camacho fell. That being so, a defect in the chain-closure system could not
22 have caused his accident and injury.

23 **Fourth**, to the extent Mr. Camacho’s strict liability design defect claim is premised on the
24 consumer expectations test, JLG is entitled to a directed verdict on that claim for the additional
25 reasons that the consumer expectations test does not apply under the facts and circumstances of this
26 case and, even if it did apply, there is no substantial evidence that the chain-closure system is defective
27 under that test.
28

1 *Fifth*, JLG is entitled to a directed verdict on Mr. Camacho’s negligent design claim because
2 there is no substantial evidence that JLG acted unreasonably in designing the chain-closure system.

3 **II. LEGAL STANDARD.**

4 A court may grant a directed verdict when, “disregarding conflicting evidence and giving to
5 plaintiff’s evidence all the value to which it is legally entitled, herein indulging in every legitimate
6 inference which may be drawn from that evidence, the result is a determination that there is no
7 evidence of sufficient substantiality to support a verdict in favor of plaintiff if such a verdict were
8 given.” *Estate of Lances*, 216 Cal. 397, 400 (1932); *see also Magic Kitchen LLC v. Good Things Int’l*
9 *Ltd.*, 153 Cal. App. 4th 1144, 1154 (2007); *Howard v. Owens Corning*, 72 Cal. App. 4th 621, 632
10 (1999). Stated differently, a directed verdict is proper when “no other reasonable conclusion is
11 legally deducible from the evidence, and . . . any other holding would be so lacking in evidentiary
12 support that a reviewing court would be impelled to reverse it on appeal, or the trial court to set it
13 aside as a matter of law.” *Estate of Lances*, 216 Cal. at 400.

14 To avoid a directed verdict, a plaintiff must present more than a “mere scintilla of evidence”
15 to support his claims. *Wolf v. Walt Disney Pictures & Television*, 162 Cal. App. 4th 1107, 1119–20
16 (2008) (internal quotation marks omitted). Instead, there must be “substantial evidence . . . that would
17 tend to prove each of the elements of the plaintiff’s case.” *Id.* at 1119 (citing *Heller v. Pillsbury*
18 *Madison & Sutro*, 50 Cal. App. 4th 1367, 1393 (1996)); *accord Nally v. Grace Community Church*,
19 47 Cal. 3d 278, 291 (1988). Further, to constitute substantial evidence, any inference supporting a
20 plaintiff’s case must be reasonable and capable of logically being drawn from the facts proved. *See*
21 *Evid. Code* § 600(b); *Dimond v. Caterpillar Tractor Co.*, 65 Cal. App. 3d 173, 181 (1976). Inferences
22 that are speculative or conjectural are insufficient to defeat a motion for directed verdict. *See Dimond*,
23 65 Cal. App. 3d at 181–82.

24 Applying these principles, the Court should direct a verdict for JLG on all of Mr. Camacho’s
25 claims, including his claims for strict liability and negligent failure to warn, negligent failure to
26 retrofit, and strict liability design defect and negligent design.

27 ///

28 ///

1 **III. JLG IS ENTITLED TO A DIRECTED VERDICT ON MR. CAMACHO’S STRICT**
2 **LIABILITIES AND NEGLIGENT FAILURE-TO-WARN CLAIMS.**

3 Mr. Camacho asserts claims for strict liability and negligent failure to warn. To prevail on his
4 strict liability claim, Mr. Camacho must prove, inter alia, that (a) ordinary consumers of the JLG
5 model 1930ES scissor lift would not have recognized the scissor lift’s potential risks; (b) JLG failed
6 to adequately warn or instruct of the potential risks; and (c) the lack of sufficient warnings or
7 instructions was a substantial factor in causing Mr. Camacho’s injury. *See* CACI 1205. Similarly, to
8 prevail on his negligence claim, Mr. Camacho must prove that (i) users of the scissor lift would not
9 realize the danger posed by the product; (ii) JLG failed to adequately warn of the danger or instruct
10 on the safe use of the product; and (iii) JLG’s failure to warn or instruct was a substantial factor in
11 causing Mr. Camacho’s injury. *See* CACI 1222. As explained below, there is *no* substantial evidence
12 to support these essential elements of Mr. Camacho’s failure-to-warn claims. Accordingly, JLG is
13 entitled to a directed verdict on those claims.

14 **A. There Is No Dispute that JLG Warned about the Risk of Falling, Instructed on**
15 **the Need to Properly Latch the Safety Chain, and Recommended the Use of**
16 **Personal Fall-Protection Equipment.**

17 There is no dispute that JLG warned about the risk of falling from the JLG model 1930ES
18 scissor lift and that falling could result in serious injury or death. Indeed, the undisputed evidence
19 shows that the lift contained a nine inch by seven and one-half inch (9” x 7.5”) placard located near
20 the operator’s control box. *See* 8-31-21 (a.m.) Tr. at 1076:20–1078:10 (Testimony of Mr. Forgas);
21 *see also* 8-30-21 (p.m.) Tr. at 951:9–952:2 (same).¹ That placard specifically warned that “[f]alling
22 from the platform could cause death or serious injury.” Ex. B (Trial Ex. 92) at 11.

23 In addition, there is no dispute that JLG instructed users of the scissor lift to latch the safety
24 chain across the entrance of the lift before using it. Indeed, the placard located near the operator’s
25 control box instructed the user to “[e]nsure entrance area is properly closed” and advised that “[a]ll

26
27
28 ¹ All cited excerpts to trial testimony are included in Exhibit A to the accompanying Declaration of
Jeffrey E. Zinder.

1 guard rails must be properly installed during operation.” 8-31-21 (a.m.) Tr. at 1077:18–26
2 (Testimony of Mr. Forgas); Ex. B (Trial Ex. 92) at 11. Multiple on-board safety manuals also
3 instructed users of the scissor lift about the need to latch the safety chain across the entrance of the
4 lift. In particular, JLG’s on-board Operation and Safety Manual instructed, “Prior to operation, ensure
5 all gates and rails are fastened and secured in their proper position.” 8-31-21 (p.m.) Tr. at 1159:15–
6 1160:5 (Testimony of Mr. Forgas); Ex. C (Trial Ex. 119) at 1–4. The on-board AEM safety manual
7 also instructed, “Make certain that all . . . entry chains are in place and secured before raising the
8 platform.” 8-31-21 (p.m.) Tr. at 1173:19–1174:7 (Testimony of Mr. Forgas); Ex. D (Trial Ex. 120)
9 at 20.

10 Further, there is no dispute that JLG recommended in its on-board Operation and Safety
11 Manual that all occupants of the scissor lift wear a full body harness with a lanyard attached to an
12 authorized anchorage point while operating the machine. *See* 8-31-21 (a.m.) Tr. at 1062:18–24,
13 1063:16–26, 1065:11–15 (Testimony of Mr. Forgas); Ex. C (Trial Ex. 119) at 1–4. In addition, there
14 is no dispute that the scissor lift contained two anchorage points to which users may connect personal
15 fall-protection equipment and that near each anchorage point is a decal depicting the connection of
16 such equipment. *See* 8-31-21 (a.m.) Tr. at 1062:25–1063:1 (Testimony of Mr. Forgas); 9-7-21 (p.m.)
17 Tr. at 1491:24–1492:20 (Testimony of Mr. Figueroa); 9-13-21 (a.m.) Tr. at 1859:3–11 (Testimony of
18 Mr. Smith); Exs. E & F (Trial Exs. 121 & 122).

19 **B. JLG Had No Duty to Provide Different or Additional Warnings or Instructions.**

20 To the extent Plaintiffs contend that JLG had a duty to provide different or additional warnings
21 or instructions, JLG is entitled to a directed verdict on Mr. Camacho’s failure-to-warn claims because
22 JLG had no such duty.

23 Under California law, there is no duty to warn about open and obvious risks. *See, e.g.,*
24 *Johnson v. Am. Standard, Inc.*, 43 Cal. 4th 56, 67 (2008) (“[T]here is no need to warn of known risks
25 under either a negligence or strict liability theory.”); *Chavez v. Glock, Inc.*, 207 Cal. App. 4th 1283,
26 1304 (2012) (“There is no duty to warn of known risks or obvious dangers.”); *Holmes v. J.C. Penney*
27 *Co.*, 133 Cal. App. 3d 216, 220 (1982) (holding that CO2 cartridges were not defective on ground
28 they did not bear a warning that others could be harmed if the cartridges are used to power pellet

1 guns, reasoning that the potentiality for harm is “obvious”); *Bojorquez v. House of Toys, Inc.*, 62 Cal.
2 App. 3d 930, 933–34 (1976) (explaining that “the seller does not need to add a warning when the
3 danger, or potentiality of danger is generally known and recognized,” and holding that distributors
4 and retailers did not need to warn that slingshots can be dangerous and deadly) (internal quotation
5 marks omitted). The obvious danger rule “is an objective test, and the courts do not inquire into the
6 user’s subjective knowledge in such a case.” *Johnson*, 43 Cal. 4th at 71; *see also Solen v. Singer*, 89
7 Cal. App. 2d 708, 714 (1949) (“[T]here is no obligation . . . to give warning of an obvious danger or
8 one which should have been perceived by the invitee[.]”).

9 Plaintiffs’ human factors expert Dr. Vredenburg conceded that the risk of falling from height
10 is open and obvious. *See* 9-1-21 (a.m.) Tr. at 1258:20–21 (“So if you’re up in the air, then the hazard
11 of falling is open and obvious.”). Based on Dr. Vredenburg’s concession, JLG had no duty to
12 provide additional or different warnings concerning the potential risk of falling from the lift.

13 In addition, the undisputed evidence shows that AGS supervisor Robert Gillett trained Mr.
14 Camacho and his co-worker, Tito Figueroa, on use of the safety chain the day before Mr. Camacho’s
15 accident. According to Mr. Gillette, he showed Messrs. Camacho and Figueroa how to latch the
16 safety chain, instructed them that the safety chain “had to be latched at all times,” and had them
17 demonstrate that they could physically latch the chain. 9-8-21 (a.m.) Tr. at 1605:20–1606:9; *see also*
18 *id.* at 1646:21–1647:9. Mr. Gillette also informed Messrs. Camacho and Figueroa that safety
19 harnesses were available on the job site if they wanted to use them. *See id.* at 1591:13–1592:4.
20 According to Mr. Gillette, Mr. Camacho indicated that he understood the training and instructions
21 provided to him. *See id.* at 1644:5–14. Similarly, Mr. Figueroa testified that he understood that the
22 safety chain had to be properly latched across the entrance of the scissor lift and that safety harnesses
23 were available on the job site. *See* 9-7-21 (p.m.) Tr. at 1454:5–14, 1478:19–1479:19, 1480:15–20.

24 Because Messrs. Camacho and Figueroa knew about the need to properly latch the safety
25 chain before using the lift and knew that safety harnesses were available for use on the job site, JLG
26 had no duty to provide any additional instructions to them about the need to latch the chain or about
27 the use of personal fall protection equipment. *See, e.g., Johnson*, 43 Cal. 4th at 67 (“[T]here is no
28 need to warn of known risks under either a negligence or strict liability theory.”); *Chavez*, 207 Cal.

1 App. 4th at 1304 (“[t]here is no duty to warn of known risks”); *see also Plenger v. ALZA Corp.*, 11
2 Cal. App. 4th 349, 361–62 (1992) (“We are aware of no authority which requires a manufacturer to
3 warn of a risk which is readily known and apparent to the consumer . . .”).

4 **C. There Is No Substantial Evidence that JLG Failed to Provide Adequate Warnings**
5 **or Instructions.**

6 In addition, there is no substantial evidence that the warnings and instructions provided by
7 JLG were in any way inadequate or insufficient.

8 **1. There is no substantial evidence that JLG failed to provide adequate**
9 **warnings about the potential risk of falling.**

10 As explained, the undisputed evidence shows that JLG explicitly warned about a risk of falling
11 from the JLG model 1930ES scissor lift and that falling may result in serious injury or death.
12 Plaintiffs did not present *any* evidence, let alone substantial evidence, that that warning was in any
13 way insufficient to warn Mr. Camacho that falling from the scissor lift could result in serious injury.
14 Nor could Plaintiffs present any such evidence given Dr. Vredenburg’s concession that the risk of
15 falling is open and obvious. *See, e.g., Chavez*, 207 Cal. App. 4th at 1304 (“There is no duty to warn
16 of known risks or obvious dangers.”).

17 **2. There is no substantial evidence that JLG failed to provide adequate**
18 **warnings and instructions concerning closure of the safety chain.**

19 As noted, the undisputed evidence demonstrates that the JLG model 1930ES scissor lift
20 included an on-product placard and on-board safety manuals that explicitly instructed users of the
21 scissor lift to latch the safety chain across the lift’s entrance before elevating the lift to height.

22 Significantly, Plaintiffs presented *no* evidence that the *content* of those instructions was in any
23 way insufficient to warn users of the JLG model 1930ES scissor lift, including Mr. Camacho, about
24 the need to properly latch the safety chain across the entrance of the scissor lift. Further, the content
25 of the instructions was adequate as a matter of law because the instructions directly warned “in plain
26 and explicit terms” that the entrance area needed to be properly closed before using the scissor lift.
27 *Kearl v. Lederle Labs*, 172 Cal. App. 3d 812, 834 (1985) (reversing jury verdict in favor of plaintiff
28 and holding that defendant’s warning was adequate as a matter of law because it expressly warned of

1 the alleged risk); *see also Plenger*, 11 Cal. App. 4th at 361–62 (granting summary judgment where
2 labeling warned about specific harm alleged by plaintiffs); *Temple v. Velcro USA, Inc.*, 148 Cal. App.
3 3d 1090, 1095 (1983) (holding that warning concerning danger of operating hot air balloon was
4 adequate as a matter of law because it was clear, understandable, and unambiguous); *Groll v. Shell*
5 *Oil Co.*, 148 Cal. App. 3d 444, 449–50 (1983) (affirming grant of nonsuit where manufacturer’s
6 warnings were adequate as a matter of law).

7 Instead, the testimony of Plaintiffs’ human factors expert Dr. Vredenburgh was limited to the
8 *location* of the on-product placard. In particular, Dr. Vredenburgh testified that the American
9 National Standards Institute (“ANSI”) A535.3-2007 standard requires that a warning be located “as
10 close as possible” to the “hazard.” 9-1-21 (a.m.) Tr. at 1257:2–22. Based on that standard, Dr.
11 Vredenburgh testified merely that she would “expect” a placard to be located “at the entrance” of the
12 scissor lift. *Id.* at 1257:23–1258:6.

13 Dr. Vredenburgh, however, did *not* testify that the location of the placard on the scissor lift
14 actually violated the ANSI A535.3-2007 standard. *See id.* Nor did she testify that the location of the
15 placard was in any way insufficient to warn Mr. Camacho or Mr. Figueroa, who, as the operator, was
16 in charge of the platform and ensuring that the safety chain was properly latched. *See* 8-30-21 (p.m.)
17 Tr. at 952:3–25 (Testimony of Mr. Forgas); *see also* 9-1-21 (a.m.) Tr. at 1267:20–1268:8
18 (Testimony of Dr. Vredenburgh). Further, the undisputed evidence establishes that the placard was
19 in the direct line of sight of anyone entering the scissor lift. Indeed, Stephen Forgas, JLG’s former
20 Director of Product Safety and Reliability, testified that the placard is “staring you right in the face
21 whenever you get in the lift.” 8-31-21 (a.m.) Tr. at 1077:18–1078:8. Similarly, Dr. Vredenburgh
22 acknowledged that the placard is conspicuous and that everybody can see it. *See* 9-1-21 (a.m.) Tr.

23 Based on the foregoing, there is no substantial evidence that JLG failed to provide adequate
24 warnings or instructions about the need to latch the safety chain across the entrance of the scissor lift.
25 *See, e.g., Kearl*, 172 Cal. App. 3d at 834; *Temple*, 148 Cal. App. 3d at 1095.

26 ///

27 ///

28 ///

1 **3. There is no substantial evidence that JLG failed to provide adequate**
2 **warnings or instructions about the use of personal fall protection.**

3 As explained, it is undisputed that JLG recommended the use of personal fall protection in the
4 form of a full body harness and lanyard attached to an authorized anchorage point on the lift. It is
5 also undisputed that the lift contained two anchorage points to which users may attach personal fall-
6 protection equipment and that a decal was located near each anchorage point containing a pictogram
7 depicting the connection of such equipment.

8 While Plaintiffs criticize JLG for recommending rather than requiring the use of personal fall-
9 protection equipment in the on-board Operation and Safety Manual, they did *not* present any evidence
10 establishing that JLG’s recommendation was in any way deficient to alert users of the scissor lift that
11 the use of personal fall protection was a means of protecting against the opening and obvious risk of
12 falling. To be sure, Dr. Vredenburgh testified that based on a letter that JLG sent to some customers
13 concerning the use of personal fall protection equipment, unspecified scissor-lift users “appeared” to
14 be confused about whether JLG’s recommendation constituted a requirement. 9-1-21 (a.m.) Tr. at
15 1251:4–1253:2. But her testimony does not support a reasonable inference that *anyone* was confused
16 about the fact that the use of personal fall protection was a recommended means of protecting against
17 the risk of falling. In addition, Plaintiffs did not present any evidence that JLG violated a standard of
18 care by recommending rather than requiring the use of personal fall-protection equipment. Dr.
19 Vredenburgh did not offer any such affirmative opinion, nor did any of Plaintiffs’ other witnesses. In
20 fact, Plaintiffs’ engineering expert, Kevin Smith, testified that he is not aware of any scissor lift
21 manufacturer in 2008 that mandated the use of personal fall protection equipment, nor is he aware of
22 any scissor lift manufacturer other than JLG that recommended its use. *See* 9-13-21 (a.m.) Tr. at
23 1871:2–23.

24 Further, while Dr. Vredenburgh insisted that she was unable to interpret the on-product decal
25 with the pictogram, she acknowledged that “it doesn’t matter what I think” and that “[i]t’s what do
26 the users understand.” 9-1-31 (a.m.) Tr. at 1277:9–1279:11; *see also* *Valentine v. Baxter Healthcare*
27 *Corp.*, 68 Cal. App. 4th 1467, 1481 (1999) (explaining that to prevail on a failure-to-warn claim, a
28 plaintiff must show that an “ordinary” users of the product would not have recognized the risk). Dr.

1 Vredenburg did *not* purport to offer *any* opinion as to how ordinary users of the scissor lift would
2 interpret the decal, however. In fact, the only evidence of how an ordinary user of the scissor lift
3 would interpret the decal came from Mr. Figueroa, who was the operator of the lift at the time of Mr.
4 Camacho’s accident. He interpreted the decal to mean “you have to wear a harness, and then you
5 have to secure the harness to that [*i.e.*, the anchorage point].” 9-7-21 (p.m.) Tr. at 1489:16, 1491:24
6 –1492:20 & Exs. E & F (Trial Exs. 121, 122).

7 Based on the foregoing, there is no substantial evidence that JLG’s recommendation and
8 instructions concerning the use of personal fall-protection equipment were in any way inadequate or
9 insufficient.

10 **D. There Is No Substantial Evidence that Any Failure by JLG to Provide Adequate**
11 **Warnings or Instructions Caused Mr. Camacho’s Injury.**

12 Even if there were some evidence that JLG’s warnings and instructions were inadequate or
13 insufficient in some manner, JLG is *still* entitled to a directed verdict on Mr. Camacho’s failure-to-
14 warn claims because Plaintiffs have presented *no* substantial evidence of causation.

15 There “is no requirement” under California law “that a manufacturer must give a warning
16 which could not possibly be effective in lessening the plaintiff’s risk of harm.” *Rosburg v. Minnesota*
17 *Mining & Mfg. Co.*, 181 Cal. App. 3d 726, 735 (1986). Accordingly, in cases involving alleged
18 failures to warn, causation *cannot* be established in the absence of evidence that the plaintiff or his
19 proxy read and relied on the allegedly inadequate warning. *See, e.g., Ramirez v. Plough, Inc.*, 6 Cal.
20 4th 539, 555 (1993) (affirming grant of summary judgment for manufacturer where plaintiff’s mother
21 did not read product labeling, reasoning “there is no conceivable causal connection between the
22 representations or omissions that accompanied the product and plaintiff’s injury”); *Conte v. Wyeth,*
23 *Inc.*, 168 Cal. App. 4th 89, 112 (2008) (holding “[t]here can be no proximate cause” in the absence
24 of evidence that prescribing physician read and relied on allegedly inadequate warnings); *see also*
25 *Motus v. Pfizer Inc.*, 358 F.3d 659, 661 (9th Cir. 2004) (holding that plaintiff failed to establish
26 allegedly inadequate warnings caused her husband’s suicide where prescribing physician did not read
27 warnings); *M.G. v. Bodum USA, Inc.*, 2021 WL 718839, at *21 (N.D. Cal. Feb. 24, 2021) (holding
28 that allegedly inadequate warning could not have caused plaintiff’s injury where there was no

1 evidence in the record that plaintiff or her parents read the warnings); *Monigan v. Nat'l Presto Indus.,*
2 *Inc.*, 2013 WL 6662319, at *4 (N.D. Cal. Dec. 17, 2013) (same, where plaintiff would not have seen
3 the allegedly inadequate warnings since it was too dark); *Altman v. HO Sports Co.*, 821 F. Supp. 2d
4 1178, 1190 (E.D. Cal. 2011) (“Any shortcomings in the Atlas Boot’s warnings, either in the warning
5 on the Atlas Boot itself or the warning in the Owner’s Manual, do not matter because Altman never
6 read them.”); *Motus v. Pfizer Inc.*, 196 F. Supp. 2d 984, 986, 996 (C.D. Cal. 2001) (holding that
7 alleged inadequate warning could not have caused plaintiff’s injury where plaintiff presented no
8 evidence that prescribing physician relied on manufacturer’s warnings).

9 Here, there is *no* evidence that Mr. Camacho read or relied on *any* of the on-product warnings
10 or on-board safety manuals. While Mr. Figueroa testified that he “thinks” he understood that there
11 were certain decals and placards on the scissor lift that provided a summary of certain instructions
12 (*see* 9-7-21 (p.m.) Tr. at 1479:20–23), there is no evidence that he actually read or relied on any of
13 that information before Mr. Camacho’s accident. Further, Mr. Figueroa testified that he does not
14 remember having read the on-board Operation and Safety Manual. *See* 9-7-21 (p.m.) Tr. at 1455:20–
15 26. For his part, Mr. Gillette testified that he did not read JLG’s Operation and Safety Manual. *See*
16 9-8-21 (a.m.) Tr. at 1608:19–21 (Q: “The JLG manual, the Operator’s manual that comes with the
17 scissor lift, have you read it before?” A: “No.”). Not surprisingly, he did not know that JLG requires
18 scissor lift operators to read the manual, and he did not instruct Messrs. Camacho or Figueroa to read
19 it. *See id.* at 1609:6–11, 1613:20–22. Mr. Gillette also testified that during his training of Messrs.
20 Camacho and Figueroa the day before the accident, he did not alert them to the placards, decals, and
21 warning labels on the scissor lift. *See id.* at 1603:22–26.

22 Under these circumstances, even if there were substantial evidence that JLG’s warnings or
23 instructions were inadequate or insufficient—and there is none—“there is no conceivable causal
24 connection” between any failure to warn and Mr. Camacho’s accident and resulting injury. *Ramirez,*
25 6 Cal. 4th at 555. Accordingly, JLG is entitled to a directed verdict on Mr. Camacho’s failure to warn
26 claims.

27 Moreover, there can be no causal link between an alleged failure to warn and a plaintiff’s
28 injury when the evidence shows that the plaintiff knew about the risk. *See Rosburg*, 181 Cal. App.

1 3d at 735 (“We note the existence of an additional problem concerning plaintiff’s complaints about
2 the adequacy of the warning: plaintiff’s physician already knew of the danger of spontaneous
3 deflations. Accepting this, we perceive that no harm could have been caused by failure to warn of a
4 risk already know.”); *see also Plummer v. Lederle Labs.*, 819 F.2d 349, 359 (2d Cir. 1987)
5 (reaffirming that under California law, no harm can be caused by “failure to warn of a risk already
6 known”) (internal quotation marks omitted); *Huntman v. Danek Med., Inc.*, 1998 WL 663362, at *5
7 (S.D. Cal. July 24, 1998) (“[T]he adequacy of the warnings is immaterial where the doctor knows of
8 the specific risks.”).

9 As explained, the undisputed evidence shows that Mr. Gillett instructed Messrs. Camacho and
10 Figueroa that the safety chain had to be latched at all times, had them demonstrate that they could
11 physically latch the chain, and informed them that safety harnesses were available on the job site if
12 they wanted to use them. Because Messrs. Camacho and Figueroa knew about the need to properly
13 latch the safety chain before using the lift and knew that safety harnesses were available for use on
14 the job site, any alleged inadequacy in JLG’s warnings did not cause Mr. Camacho’s accident and
15 resulting injury.

16 **IV. JLG IS ENTITLED TO A DIRECTED VERDICT ON MR. CAMACHO’S CLAIM**
17 **FOR NEGLIGENT FAILURE TO RETROFIT.**

18 To prevail on a negligent failure-to-retrofit claim, Mr. Camacho must present substantial
19 evidence establishing, inter alia, that JLG knew or reasonably should have known that the JLG model
20 1930ES scissor lift was dangerous or likely to be dangerous when used in a reasonably foreseeable
21 manner; that JLG became aware of this defect after the product was sold; and that a reasonable
22 manufacturer under the same or similar circumstances would have retrofitted the product. *See CACI*
23 *1223*; *see also* 9-8-21 (a.m.) Tr. at 1708:7–21 (reference by Mr. Poulter to elements of failure-to-
24 retrofit claim). JLG is entitled to a directed verdict on this claim for two reasons.

25 First, JLG manufactured and sold the subject JLG model 1930ES scissor lift to Pacific High
26 Reach & Equipment Services, Inc. in March 2008. *See* 8-31-21 (p.m.) Tr. at 1151:6–1152:1. There
27 is no substantial evidence, however, that *after* selling the scissor lift in March 2008, JLG became
28 aware that the lift was dangerous or likely to be dangerous when used in a reasonably foreseeable

1 manner. Indeed, Plaintiffs presented *no* evidence that JLG knew or should have known that *anyone*
2 other than Mr. Camacho has fallen off a JLG model 1930ES scissor lift that was equipped with a
3 safety chain.

4 Consistent with Plaintiffs' failure of proof, Mr. Forgas, JLG's former Director of Product
5 Safety and Reliability, testified that in the approximately 30 years that the JLG model 1930ES scissor
6 lift has been on the market, he has not been made aware of a single person other than Mr. Camacho
7 who claims to have fallen out of a 1930ES scissor lift with a chain-closure system. *See id.* at 1177:9–
8 21 (Q: “And in the almost 30 years since the 1930 ES scissor lift has gone to market, have you been
9 made aware of any other claims of a person falling out of a 1930 ES involving a chain through the
10 entrance?” A: “No, sir.”). Data maintained by JLG confirms that since 2010, the company has not
11 been put on notice of a single such incident. *See id.* at 1176:10–26 (Q: “And based upon that data,
12 has JLG been put on notice of a single person claiming to have fallen through the entrance of a 1930
13 ES scissor lift with a chain?” A: “None other than the one involved in this case.”). While Mr. Forgas
14 testified that not all accidents are reported to JLG (*see id.* at 1188:11–13), the fact remains that there
15 is *no* evidence in the record of any unreported instance of someone falling off a JLG model 1930ES
16 scissor lift equipped with a safety chain.

17 In *Lunghi v. Clark Equipment Co.*, 153 Cal. App. 3d 485 (1984), the court held that the trial
18 court erred in failing to instruct the jury on negligence because the plaintiffs had presented evidence
19 that would support a negligent failure-to-retrofit claim. According to the court, the manufacturer
20 discovered “dangerous propensities of the machine . . . after the machine had been on the market for
21 awhile.” *Id.* at 494. The manufacturer’s “knowledge of the injuries” caused by its product triggered
22 a duty to conduct an adequate retrofit campaign. *Id.*

23 This case is nothing like *Lunghi*. There is no evidence that after it manufactured and sold the
24 subject scissor lift in 2008, JLG became aware of any “dangerous propensities” of the chain-closure
25 system that resulted in injury to anyone.

26 The fact that an ANSI subcommittee at some point began exploring harmonization of the
27 A92.6 standard with the ISO and EN280 standards, which did not permit use of safety chains, does
28 *not* constitute substantial evidence that JLG became aware after it manufactured and sold the subject

1 scissor lift that the chain-closure system was dangerous or likely to be dangerous when used in a
2 reasonably foreseeable manner. As Mr. Forgas confirmed, the purpose of harmonization was to
3 facilitate the manufacturing process and the sale of a single product around the world. *See* 8-31-21
4 (a.m.) Tr. at 1039:14–26. Harmonization was *not* intended to address an identified safety issue
5 concerning the chain-closure system. *See id.* at 1041:20–1042:8; *see also id.* at 1035:23–1036:3.

6 Similarly, the fact that JLG manufactured the 1930ES scissor lift with a self-closing gate as
7 early as 2003 does *not* constitute substantial evidence that JLG became aware after it manufactured
8 and sold the subject scissor lift in 2008 that the chain-closure system was dangerous or likely to be
9 dangerous when used in a reasonably foreseeable manner. To the extent Plaintiffs contend that JLG
10 was aware before 2008 that the chain-closure system was dangerous and that a self-closing gate was
11 a safer alternative, Mr. Camacho’s claim is for negligent design, *not* negligent failure to retrofit. *See,*
12 *e.g., Merrill v. Navegar, Inc.*, 26 Cal. 4th 465, 479 (2001) (explaining that “the test for negligent
13 design involves a balancing of the likelihood of harm to be expected from a machine with a given
14 design and the gravity of harm if it happens against the burden of the precaution which would be
15 effective to avoid the harm”) (internal quotation marks omitted).

16 In short, a negligent failure-to-retrofit claim lies only when post-sale evidence demonstrates
17 that a manufacturer became aware that its product was dangerous or likely to be dangerous when used
18 in a reasonably foreseeable manner. *See CACI 1223; see also Lunghi*, 153 Cal. App. 3d at 494.
19 Because Plaintiffs presented no post-sale evidence that would trigger a duty to retrofit, JLG is entitled
20 to a directed verdict on Mr. Camacho’s failure-to-retrofit claim.

21 Second, Plaintiffs presented no substantial evidence that a reasonable manufacturer under the
22 same or similar circumstances would have retrofitted the subject scissor lift. To address the potential
23 risk of falling while working at height, JLG designed the 1930ES with a safety chain that is supposed
24 to be latched across the entrance of the scissor lift. *See* 8-31-21 Tr. (a.m.) at 994:17 (Testimony of
25 Mr. Forgas). JLG’s chain-closure system complied with the ANSI A92.6-2006 standard, and the
26 strength of the safety chain exceeded that standard. *See id.* at 1029:18–1030:12 (same); 8-31-21
27 (p.m.) Tr. at 1132:9–19 (same). Further, there is no evidence that between 2008, when JLG
28 manufactured and sold the subject scissor lift, and 2015, when Mr. Camacho fell from the lift, the

1 standard of care among scissor-lift manufacturers was to retrofit safety-chain equipped scissor lifts
2 with self-closing gates. On the contrary, the undisputed evidence establishes that in 2008, the
3 domestic competitors of JLG manufactured similar scissor lifts with safety chains. *See* 8-31-21 (p.m.)
4 Tr. at 1178:3–11 (Testimony of Mr. Forgas); 9-13-21 (a.m.) at 1865:2–11 (Testimony of Mr. Smith).
5 Further, Plaintiffs’ engineering expert, Mr. Smith, acknowledged that even today, there are
6 “thousands upon thousands” of chain-equipped, 19-foot scissor lifts from multiple different
7 manufacturers other than JLG in the United States marketplace. 9-13-21 (a.m.) Tr. at 1849:18–26.
8 Under these circumstances, there is no basis to conclude that JLG acted unreasonably by not
9 retrofitting the subject scissor lift with a self-closing gate.

10 Further, as explained, JLG sold the lift to Pacific Heights in March 2008. There is no evidence
11 in the record establishing that JLG knew Sunbelt acquired ownership of the subject scissor lift or
12 when it acquired ownership of it. Accordingly, there is no substantial evidence that JLG even had
13 the ability to locate and retrofit the subject lift. Under these circumstances, it cannot be said that JLG
14 failed to act reasonably. *See, e.g., Robertson v. Wentz*, 187 Cal. App. 3d 1281, 1291 (1986) (holding
15 that mother could not be held responsible for negligent safeguarding of firearms where she “lacked
16 the opportunity to observe and exercise control” over son’s behavior).

17 **V. JLG IS ENTITLED TO A DIRECTED VERDICT ON MR. CAMACHO’S STRICT**
18 **LIABILITY DESIGN DEFECT AND NEGLIGENT DESIGN CLAIMS BECAUSE**
19 **THERE IS NO SUBSTANTIAL EVIDENCE OF CAUSATION.**

20 Mr. Camacho asserts claims for strict liability design defect and negligent design based on an
21 alleged defect in the chain-closure system of the JLG model 1930ES scissor lift. *See* 8-31-21 (a.m.)
22 Tr. at 998:18–20 (Mr. Poulter: “[T]he allegations in this case for the last five years have been that
23 the product was defective because of the chain[.]”). To prevail on these claims, Mr. Camacho bears
24 the burden of proving that a defect in the scissor lift’s chain-closure system caused his accident and
25 resulting injury. *See, e.g., Merrill*, 26 Cal. 4th at 479 (“[U]nder either a negligence or a strict liability
26 theory of products liability, to recover from a manufacturer, a plaintiff must prove that a defect caused
27 injury.”); *Barker v. Lull Eng’g Co.*, 20 Cal. 3d 413 (1978) (reaffirming that a plaintiff satisfies his
28 burden of proof in the design defect context “when he proves the existence of a ‘defect’ and that such

1 defect was a proximate cause of his injuries”); *Stephen v. Ford Motor, Co.*, 134 Cal. App. 4th 1363,
2 1373 (2005) (“A product liability case must be based on substantial evidence establishing both the
3 defect and causation . . .”). As explained below, there is *no* substantial evidence that a defect in the
4 chain-closure system of the JLG model 1930ES scissor lift caused Mr. Camacho’s accident and
5 resulting injury. Accordingly, JLG is entitled to a directed verdict on Mr. Camacho’s strict liability
6 design defect and negligent design claims.

7 **A. The Undisputed Evidence Shows the Safety Chain Was Not Properly Latched**
8 **across the Entrance of the Scissor Lift when Mr. Camacho Fell.**

9 Plaintiffs have abandoned any argument that the safety chain was latched across the entrance
10 of the scissor lift when Mr. Camacho fell. *See* Joint List of Stipulated Facts and Uncontroverted
11 Issues at 2 (stipulating that Plaintiffs will not argue that the safety chain was properly latched).
12 Consistent with that stipulation, there is *no* evidence, let alone substantial evidence, that the safety
13 chain was latched across the lift’s entrance when Mr. Camacho fell. On the contrary, the un-
14 contradicted evidence points in exactly the opposite direction—namely, that the safety chain was *not*
15 latched.

16 Rob Evans, a superintendent with R.D. Olson Construction, the general manager of the Paseo
17 Hotel renovation project, testified concerning the facts and circumstances surrounding Mr.
18 Camacho’s accident. Mr. Evans testified that when he arrived at the scene of the accident, he observed
19 that the safety chain was trapped behind a piece of window glass on the scissor lift and could not be
20 properly latched across the entrance of the lift. *See* 9-1-21 (p.m.) Tr. at 1367:16–22, 1382:23–1384:1.
21 In fact, Mr. Evans confirmed he attempted to but could not unlatch the chain from behind the glass
22 panel. *See id.* at 1384:2–6. Mr. Evans then interviewed Mr. Figueroa, Mr. Camacho’s co-worker and
23 the only eyewitness to the accident, to determine what happened. *See id.* at 1350:13–18, 1351:4–7,
24 1363:9–12, 1364:19–21. Mr. Figueroa told Mr. Evans that the chain was not latched when Mr.
25 Camacho fell, and that Mr. Camacho fell after he stepped outside the scissor lift and onto the piece
26 of sheetrock that was extending past the edge of the lift’s entrance. *See id.* at 1366:12–13, 1381:11–
27 1382:11.

1 At trial, Mr. Figueroa confirmed that the safety chain was not latched across the entrance of
2 the scissor lift when Mr. Camacho fell. See 9-7-21 (p.m.) Tr. at 1486:7–15 (Q: “And you testified
3 that it refreshed your recollection that you told people that the chain was not locked across at the time
4 of the accident; correct?” A: “Well, I do remember that it was not locked on the scissor. That I do
5 remember.” Q: “When you say not locked on the scissor, you mean not latched across the opening
6 as shown in Exhibit 123?” A: “Yes.”). Even Plaintiffs’ engineering expert, Mr. Smith,
7 acknowledged “there is no information to indicate the chain was latched at the time of the fall” and
8 that it is “highly likely” the chain was *not* latched. 9-13-21 (a.m.) Tr. at 1824:16–21.

9 Based on the foregoing, there is no factual dispute that the safety chain was *not* latched across
10 the entrance of the scissor lift when Mr. Camacho fell.

11 **B. Because Mr. Camacho Did Not Use the Safety Chain, a Defect in the Chain-**
12 **Closure System Could Not Have Caused His Accident and Resulting Injury.**

13 For a defect in the chain-closure system to have caused Mr. Camacho’s injury, Mr. Camacho
14 must have used the safety chain. If he did not use the safety chain, then a defect in the chain-closure
15 system obviously could not have caused his injury. This common-sense conclusion is supported by
16 *Visueta v. General Motors Corporation*, 234 Cal. App. 3d 1609 (1991), and *Chavez v. Glock, Inc.*,
17 207 Cal. App. 4th 1283 (2012).

18 In *Visueta*, the plaintiff’s decedent was killed when his car was struck by a truck driven by the
19 defendant. See 234 Cal. App. 3d at 1612. The defendant cross-complained against the manufacturer
20 of the truck, alleging that the parking brake was defectively designed because it was installed in an
21 inaccessible location. See *id.* The undisputed evidence, however, demonstrated that the driver did
22 not attempt to use the parking brake, and the break also was in disrepair and inoperable. See *id.* at
23 1613. On this record, the court held that as a matter of law, the alleged defect in the parking brake’s
24 design could not have caused the accident. See *id.* at 1617.

25 In *Chavez*, the plaintiff was rendered a paraplegic when his child picked up a Glock pistol that
26 the plaintiff had stored under the center console of his truck and accidentally discharged a round into
27 the plaintiff’s back. See 207 Cal. App. 4th at 1292. The plaintiff sued the manufacturer of the pistol,
28 alleging that the pistol was defectively designed because it lacked a safety mechanism to prevent an

1 accidental discharge. *See id.* at 1293. The undisputed evidence demonstrated, however, that the
2 plaintiff always carried and stored a second, Beretta pistol with the manual safety disengaged. *See*
3 *id.* On this record, the court held that as a matter of law, the plaintiff could not prove that the lack of
4 a manual safety device on the Glock pistol proximately caused his injury in light of undisputed
5 evidence that he always carried and stored his Beretta pistol with the manual safety disengaged. *See*
6 *id.* 1305–06.

7 Like in *Visueta* and *Chavez*, there is no evidence that the chain-closure system on the JLG
8 model 1930ES scissor lift caused Mr. Camacho’s accident and resulting injury. On the contrary, the
9 undisputed evidence shows that when Mr. Camacho fell, the safety chain was not properly latched
10 across the entrance of the scissor lift and was therefore rendered inoperable—just like the parking
11 brake in *Visueta* and the manual safety device in *Chavez*.

12 Moreover, Plaintiffs presented *no* substantial evidence that Mr. Camacho would have fallen
13 from the scissor lift had the chain been properly latched. Indeed, Dr. Vredenburgh, Plaintiffs’ human
14 factors expert, acknowledged she had *no* opinion as to whether the safety chain, if properly latched,
15 would prevent someone from falling out of the scissor lift. *See* 9-1-21 (a.m.) Tr. at 1268:9–12 (Q:
16 “And you have no opinion, as to whether or not the chain, if clasped, would prevent someone from
17 falling out of the lift; correct?” A: “Correct.”); *see also id.* at 1271:23–1272:4.

18 Similarly, Plaintiffs’ biomechanics expert, John Brault, did not testify that Mr. Camacho likely
19 would have fallen if the chain had been properly latched across the entrance of the scissor lift. Instead,
20 he confirmed that he was asked to evaluate whether a man of Mr. Camacho’s height and weight “could
21 fit through that gap” between the safety chain and the floor of the scissor lift platform. 9-7-21 (p.m.)
22 Tr. at 1510:25–1511:14. Mr. Brault then speculated that the body of such a man “can just roll
23 through” that gap. *Id.* at 1514:21–1515:7. Significantly, Mr. Brault acknowledged that “I’m not
24 suggesting it’s exactly how it [*i.e.*, the fall] occurred.” *Id.* at 1506:16–1507:10. Mr. Brault also
25 acknowledged that his opinion is based on “lots of unknowns” and that “there’s some assumptions
26 that have to be made,” including the assumption that Mr. Camacho stepped to his left rather than
27 slipped before falling. *Id.* at 1510:15–24, 1513:22–25.

1 Mr. Brault’s testimony does *not* constitute substantial evidence that a defect in the chain-
2 closure system on the JLG model 1930ES scissor lift caused Mr. Camacho’s accident and resulting
3 injury. Indeed, the mere possibility of causation is not enough to support a verdict. *See, e.g., Saelzler*
4 *v. Advanced Grp. 400*, 25 Cal. 4th 763, 775–76 (2001) (holding that expert opinion that plaintiff’s
5 injuries “could have been avoided” if defendants had hired security guards to patrol premises was
6 “entirely speculative,” reasoning that “[a] mere possibility of such causation is not enough” and that
7 “when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly
8 balanced, *it becomes the duty of the court to direct a verdict for the defendant*”) (internal quotation
9 marks omitted; emphasis in original); *Jennings v. Palomar Pomerado Health Sys., Inc.*, 114 Cal. App.
10 4th 1108, 1118–19 (2003) (holding that expert opinion that act “could have been” a cause in fact of
11 plaintiff’s injury was “insufficient to establish causation” and “too conclusory to support a jury
12 verdict”). As this Court itself recognized during the trial, it is “not relevant” whether an event “was
13 possible” because “anything is possible.” 9-1-21 (a.m.) Tr. at 1304:18–26 (sustaining objection to
14 question whether Mr. Camacho could have latched the chain).

15 **C. There Is No Evidence that Human Error Played Any Role in the Failure to Use the**
16 **Safety Chain.**

17 Plaintiffs cannot save Mr. Camacho’s design claims by arguing that the chain-closure system
18 of the JLG model 1930ES scissor lift was defective because it introduced the potential for human
19 error—*i.e.*, an occupant of the scissor lift may forget to latch the safety chain. *See* 8-31-21 (p.m.) Tr.
20 at 1212:16–18 (Mr. Poulter: “The defect claim and theory that we’ve always made in this case is that
21 the chain design introduces human error.”); *see also id.* at 1257:23–25 (Mr. Poulter: “And so the
22 hazard which is, obviously we contend in this case is the chain itself, and the element of human error
23 or forgetting to latch the chain . . .”).

24 This theory of liability would require Plaintiffs to present substantial evidence that the failure
25 of Messrs. Camacho and Figueroa to latch the safety chain was due to human error as opposed to a
26 conscious decision not to latch the chain. But Plaintiffs have presented *no* evidence, let alone
27 substantial evidence, that human error played *any* role in the failure of Messrs. Camacho and Figueroa
28 to latch the safety chain. Nor have Plaintiffs presented any circumstantial evidence from which the

1 jury could reasonably and logically infer that the failure to latch the safety chain was due to human
2 error.

3 Indeed, Mr. Camacho did not testify, and no witness for Plaintiffs testified that he or she
4 interviewed Mr. Camacho about the facts and circumstances of the accident. In addition, Mr.
5 Figueroa did not testify that he forgot to latch the safety chain. Nor did any other witness testify that
6 the reason the safety chain was not latched when Mr. Camacho fell is because Mr. Camacho or Mr.
7 Figueroa forgot to latch it. Under these circumstances, the jury cannot reasonably and logically infer
8 that the failure to latch the safety chain was attributable to human error as opposed to a conscious
9 decision not to latch it. *See, e.g., Newing v. Cheatham*, 15 Cal. 3d 351, 366 (1975) (jury could not
10 reasonably infer that plaintiff’s decedent was put on notice of defendant’s inability to operate plane
11 safely based on evidence showing only that defendant “drank some beer”); *see also People v. Bolton*,
12 23 Cal. 3d 208, 212 (1979) (it is improper to invite jury speculation about evidence not presented at
13 trial); *Malkasian v. Irwin*, 61 Cal. 2d 738, 747 (1964) (it is improper to “invite the jury to speculate
14 as to unsupported inferences”).²

15 Dr. Vredenburgh, Plaintiffs’ human factors expert, testified that “humans make errors” and
16 that “it’s certainly foreseeable” that construction workers “will make an error on the task of closing
17 the chain 100 percent of the time.” 9-1-21 (a.m.) Tr. at 1254:11. While humans can make mistakes,
18 Dr. Vredenburgh’s generic testimony does not provide a reasonable, non-speculative basis for
19 inferring that the failure of Messrs. Camacho and Figueroa to latch the safety chain was attributable
20 to human error. After all, Dr. Vredenburgh herself acknowledged that a worker can “choose to defeat”

21 _____
22 ² This is particularly true given that Messrs. Camacho and Figueroa ignored their employer’s training
23 to use pieces of two-by-fours as dunnage to protect the glass panels that they were installing and
24 instead used a piece of sheetrock for that purpose. *See* 9-8-21 (a.m.) Tr. at 1600:18 –1601:9. Indeed,
25 Mr. Gillette testified that consistent with the custom and practice at AGS, he trained Messrs. Camacho
26 and Figueroa to use two-by-fours as dunnage. *See id.* at 1596:11–1597:2, 1600:18–25, 1602:23–
27 1603:8; *see also* 9-7-21 (p.m.) Tr. at 1483:20–1484:2 (testimony by Mr. Figueroa confirming that Mr.
28 Gillette provided training to use two-by-fours as dunnage). Mr. Gillette also testified that the use of
drywall as dunnage is “not a practice that we at AGS let happen.” 9-8-21 (a.m.) Tr. at 1601:6–13.
Based on the failure of Messrs. Camacho and Figueroa to follow their employer’s training concerning
the use of two-by-fours as dunnage, the jury cannot reasonably and logically infer that their failure to
latch the safety chain was attributable to anything other than a deliberate decision.

1 and “override” the safety mechanism for closing the entrance of a scissor lift. *See id.* at 1296:6–16.
2 For the same reason, evidence that the safety chain was latched on other occasions before Mr.
3 Camacho fell does not support a reasonable and logical inference that the failure to latch the safety
4 chain at the time of the accident was attributable to human error as opposed to a deliberate decision.
5 *See, e.g., Beck Dev. Co. S. Pac. Transp. Co.*, 44 Cal. App. 4th 1160, 1204 (1966) (explaining that any
6 “inference must be a reasonable conclusion from the evidence and cannot be based upon suspicion,
7 imagination, speculation, surmise, conjecture or guesswork”).

8 During Plaintiffs’ case in chief, the Court repeatedly precluded Plaintiffs’ counsel from
9 eliciting speculative testimony about why construction workers sometimes fail to latch the safety
10 chains on scissor lifts. *See* 9-1-21 (p.m.) Tr. at 1399:3–10, 1399:21–1400:7. The Court’s evidentiary
11 rulings were correct, because no witness may speculate about another person’s state of mind. *See,*
12 *e.g., People v. Erickson*, 57 Cal. App. 4th 1391, 1402 (1997) (holding that expert’s testimony
13 concerning appellant’s state of mind was properly excluded); *Gherman v. Colburn*, 72 Cal. App. 3d
14 544, 582 (1977) (testimony “regarding the state of mind of another person” is inadmissible
15 “speculation”). For the same reason, it is wholly improper to invite the jury to speculate about why
16 Messrs. Camacho and Figueroa failed to latch the safety chain before the accident. *See Bolton*, 23
17 Cal. 3d at 212 (1979); *Malkasian*, 61 Cal. 2d at 747; *accord People v. Frierson*, 39 Cal. 3d 803, 814
18 (1985) (“[I]n the absence of any defense evidence relating to defendant’s state of mind the jury was
19 left without any evidentiary basis or legal theory to reject the special circumstances.”).

20 In short, Plaintiffs have presented no evidence, let alone substantial evidence, that Messrs.
21 Camacho and Figueroa failed to latch the safety chain due to human error. Because Plaintiffs have
22 failed to support their theory of design-defect liability, the Court can and should direct a verdict in
23 JLG’s favor on Mr. Camacho’s design claims.

24 ///
25 ///
26 ///
27 ///
28 ///

1 **VI. TO THE EXTENT MR. CAMACHO’S STRICT LIABILITY DESIGN DEFECT**
2 **CLAIM IS BASED ON THE CONSUMER-EXPECTATIONS TEST, JLG IS**
3 **ENTITLED TO A DIRECTED VERDICT BECAUSE THAT TEST DOES NOT**
4 **APPLY AND THERE IS NO SUBSTANTIAL EVIDENCE IN ANY EVENT THAT**
5 **THE CHAIN-CLOSURE SYSTEM IS DEFECTIVE UNDER THAT TEST.**

6 In a strict liability action based on defective design, a product is defective under the consumer-
7 expectations test if it failed to perform as safely as an ordinary consumer would expect when used in
8 an intended or reasonably foreseeable manner. *Barker*, 20 Cal. 3d at 418. To the extent Mr.
9 Camacho’s strict liability design defect claim is premised on the consumer expectations test, JLG is
10 entitled to a directed verdict on that claim because the consumer-expectations test does not apply
11 under the circumstances of this case, and even if it did, there is no substantial evidence that the chain-
12 closure system of the JLG model 1930Es scissor lift was defective under that test.

13 **A. The Consumer-Expectations Test Does Not Apply Here.**

14 The consumer-expectations test is reserved for cases where a product *fails* in some manner.
15 *See, e.g., Soule v. Gen. Motors Corp.*, 8 Cal. 4th 548, 568–69 & n.6 (1994) (explaining that “[t]he
16 crucial question in each individual case is whether the circumstances of the product’s failure permit
17 an inference that the product’s design performed below the legitimate, commonly accepted minimum
18 safety assumptions of its ordinary users”); *McCabe v. Am. Honda Motor Co.*, 100 Cal. App. 4th 1111,
19 1124 (2002) (“The critical question, in assessing the applicability of the consumer expectations test,
20 is not whether the product, when considered in isolation, is beyond the ordinary knowledge of the
21 consumer, but whether the product, *in the context of the facts and circumstances of its failure*, is one
22 about which the ordinary consumers can form minimum safety expectations.”) (emphasis in original);
23 *Morson v. Superior Ct.*, 90 Cal. App. 4th 775, 791 (2001) (explaining that “the focus must be on the
24 circumstances of the product’s failure” and that the consumer expectations test applies “only where
25 the circumstances of the product’s failure are relatively straightforward”); *Pruitt v. Gen. Motors*
26 *Corp.*, 72 Cal. App. 4th 1480, 1484 (1999) (noting that the consumer expectations test is “clearly
27 limited . . . to res ipsa-like cases” where “it makes no difference” why “the product failed”).
28

1 Thus, the consumer-expectations test applies in cases involving product failures such as
2 automobiles that explode while idling at a stoplight or roll over and catch fire in a two-mile-per-hour
3 collision, or airbags that deploy for no apparent reason while one is driving down the road at 65 miles
4 per hour. *See Soule*, 8 Cal. 4th at 566–67 n.3; *Pruitt*, 72 Cal. App. 4th at 1484; *see also Morson*, 90
5 Cal. App. 4th at 792 (reaffirming that the consumer expectations test applies in cases involving
6 “extreme and simple” product failures).

7 Here, there is *no* evidence that the JLG model 1930ES scissor lift failed in *any* respect.
8 Instead, the evidence elicited by Plaintiffs during their case in chief shows that the safety chain was
9 not latched across the entrance of the scissor lift at the time of the accident. While that evidence
10 shows that Messrs. Camacho and Figueroa failed to use an important safety feature of the scissor lift,
11 it does *not* show that the product itself failed. Thus, to the extent Mr. Camacho’s strict liability design
12 defect claim is premised on the consumer-expectations test, JLG is entitled to a directed verdict on
13 that claim for this reason alone.

14 In addition, controlling case law confirms that the consumer expectations test does *not* apply
15 where the “ultimate issue of design defect” calls “for a careful assessment of feasibility, practicality,
16 risk, and benefit.” *Soule*, 8 Cal. 4th at 562; *see also Verrazono v. Gehl Co.*, 50 Cal. App. 5th 636,
17 648 (2020) (same); *Morson*, 90 Cal. App. 4th 775, 793 (2001) (ordinary consumer expectations test
18 not applicable where “expert testimony will be essential to assist the finder of fact in understanding
19 the pros and cons of Plaintiffs’ arguments”); *Pruitt*, 72 Cal. App. 4th at 1483 (holding that the
20 deployment of an airbag is not part of the everyday experience of the consuming public and “[j]urors
21 are in need of expert testimony to evaluate the risks and benefits of the challenged design”).

22 In *Verrazono*, for example, the plaintiff was injured when a forklift he was operating tipped
23 over. *See* 50 Cal. App. 5th at 641. The forklift had a roll over protection system consisting of a steel
24 cage as well as a two-point seatbelt, which OSHA regulations required the operator to wear. *See id.*
25 While the defendant had sold the forklift with a door, it had been removed at some point prior to the
26 accident. *See id.* The plaintiff alleged that the forklift was defective in design because it should have
27 been equipped with a non-removable door and a seatbelt with more than a two-point attachment. *See*
28 *id.* at 642. As the court explained, however, “whether or not the lack of these features constituted a

1 design defect was not an evaluation the jurors were equipped to make in the absence of expert
2 testimony.” *Id.* at 648. Because “the ‘ultimate issue of design defect’ called ‘for a careful assessment
3 of feasibility, practicality, risk, and benefit,’” the court held that the trial court did not err in refusing
4 to instruct on the consumer expectations test. *Id.* (quoting *Soule*, 8 Cal. 4th at 562).

5 Like in *Verrazono*, whether the JLG model 1930ES scissor lift was defective because it
6 included a chain-closure system instead of a self-closing gate is not an evaluation that jurors are
7 equipped to make in the absence of expert testimony. That is why Dr. Vredenburgh, Plaintiffs’ human
8 factors expert, testified that she was asked to evaluate the relative benefits of a chain versus a self-
9 closing gate. *See* 9-1-21 (a.m.) Tr. at 1235:2–6, 1262:14–21. It is also why Kevin Smith, Plaintiffs’
10 engineering expert, testified concerning the purported benefits of a self-closing gate. *See* 9-8-21
11 (p.m.) Tr. at 1746:20–1747:5. Because the ultimate issue of design-defect requires an assessment of
12 risk and benefit, JLG is entitled to a directed verdict on Mr. Camacho’s strict liability design defect
13 claim to the extent it is premised on the consumer-expectations test.

14 **B. There Is No Substantial Evidence that the Scissor Lift Failed to Perform As**
15 **Safely as an Ordinary Consumer Would Expect.**

16 Even if the consumer-expectations test applies, JLG is entitled to a directed verdict because
17 there is no substantial evidence that the JLG model 1930ES scissor lift failed to perform as safely as
18 an ordinary user of the scissor lift would expect.

19 Dr. Vredenburgh testified that the risk of falling from height is open and obvious. *See* 9-1-21
20 (a.m.) Tr. at 1258:20–21 (“So if you’re up in the air, then the hazard of falling is open and obvious.”).
21 The undisputed evidence also shows that the safety chain was not latched across the entrance of the
22 scissor lift at the time of the accident. *See* 9-1-21 (p.m.) Tr. at 1366:12–13 (testimony of Mr. Evans);
23 9-7-21 (p.m.) Tr. at 1485:20–1486:15 (testimony of Mr. Figueroa).

24 Under these circumstances, an ordinary user of the scissor lift would not reasonably expect to
25 be protected from injury. *See, e.g., Soule*, 8 Cal. 4th at 568–69 & n.6 (holding that “the consumer
26 expectations test is appropriate only when the jury, fully apprised of the circumstances of the accident
27 or injury, may conclude that the product’s design failed to perform as safely as the product’s ordinary
28 consumers would expect”); *Verrazono*, 50 Cal. App. 5th at 648 & n.1 (“We also have considerable

1 doubt that reasonable telehandler operators would minimally expect that they would be protected
2 from injury if they operated the forklift on an incline exceeding 10 degrees, with the lift extended,
3 and without wearing the two-point lap belt”); *Chavez*, 207 Cal. App. 4th at 1311–12 (holding that
4 plaintiffs could not proceed under consumer expectations test because jury could not reasonably infer
5 that gun’s performance “did not meet the minimum safety expectations of its ordinary users,”
6 reasoning that while consumers might form minimum safety assumptions concerning handguns, “no
7 reasonable consumer—whether relatively inexperienced with firearms or a seasoned law enforcement
8 officer—would expect an unlockable and loaded weapon, left in ready-to-fire condition in a location
9 accessible to a child or other unauthorized users, not to accidentally discharge”) (internal quotation
10 marks omitted). That is why R.D. Olson supervisor Rob Evans testified that whenever he observes a
11 worker in a scissor lift without the chain latched, he instructs the worker to latch the chain so that he
12 can “go home safely that night just like everybody else.” 9-1-21 (p.m.) Tr. at 1337:11–23.

13 In addition, the undisputed evidence establishes that scissor-lift users do not consider the use
14 of safety chains to pose a safety hazard. For example, Mr. Evans testified that he has used scissor
15 lifts on many occasions; that he often sees 19-foot scissor lifts with safety chains on his job sites; and
16 that, in his opinion, a safety chain does not pose a safety hazard. *See* 9-1-21 (p.m.) Tr. at 1331:25–
17 1332:7, 1391:24–1392:12–14. Similarly, AGS supervisor Robert Gillette testified that he is familiar
18 with and has used scissor lifts hundreds of times; that he trains his employees to latch the safety chain
19 at all times to prevent them from falling out; and that a scissor lift is safe to use if the safety chain is
20 latched. *See* 9-8-21 (a.m.) Tr. at 1572:1–16, 1588:21–24, 1605:20–1606:14, 1612:6–25, 1648:24–
21 1649:4. In addition, Tito Figueroa testified that he understood he needed to latch the safety chain
22 before raising the lift; that the purpose of the safety chain was to keep him safe and inside the lift; and
23 that the purpose of the anchorage point on the scissor lift was for the connection of personal fall-
24 protection equipment. *See* 9-7-21 (p.m.) Tr. at 1482:10–26, 1492:8–20.

25 Based on the foregoing, there is no substantial evidence that the JLG model 1930ES scissor
26 lift is defective under the consumer-expectations test. Accordingly, JLG is entitled to a directed
27 verdict on Mr. Camacho’s strict liability design defect claim to the extent it is based on the consumer-
28 expectations test.

1 **VII. JLG IS ENTITLED TO A DIRECTED VERDICT ON THE NEGLIGENT DESIGN**
2 **CLAIM BECAUSE THERE IS NO SUBSTANTIAL EVIDENCE THAT JLG ACTED**
3 **UNREASONABLY IN DESIGNING THE SUBJECT SCISSOR LIFT WITH A**
4 **SAFETY CHAIN.**

5 To prevail on his negligent design claim, Mr. Camacho must present substantial evidence that
6 JLG failed to use the amount of care in designing the JLG model 1930ES scissor lift that a reasonably
7 careful manufacturer would use in similar circumstances to avoid exposing others to a foreseeable
8 risk of harm. *See* CACI 1221. In determining whether JLG used reasonable care, the jury must
9 consider what JLG knew or should have known about the likelihood and severity of potential harm
10 from the product against the burden of taking safety measures to reduce or avoid the harm. *See id.*
11 Applying this test, Plaintiffs have not presented substantial evidence that JLG acted unreasonably in
12 designing the subject scissor lift with a chain-closure system.

13 To address the potential risk of falling while working at height, JLG designed the 1930ES
14 with a safety chain that is supposed to be latched across the entrance of the scissor lift. *See* 8-31-21
15 Tr. (a.m.) at 994:17 (testimony of Mr. Forgas). JLG's chain-closure system complied with the ANSI
16 A92.6-2006 standard, and the strength of the safety chain exceeded that standard. *See id.* at 1029:18–
17 1030:12 (same); 8-31-21 (p.m.) Tr. at 1132:9–19 (same).

18 Moreover, there is no evidence in the record establishing that when JLG manufactured the
19 subject scissor lift in 2008, it knew or should have known that a safety chain would not be effective
20 at reducing or avoiding the risk of falling, or that a self-closing gate would reduce the risk of falling
21 to a greater extent than a safety chain. As explained, Plaintiffs presented no evidence that anyone
22 other than Mr. Camacho has ever fallen from a 1930ES scissor lift equipped with a safety chain.
23 Similarly, Mr. Forgas, JLG's former Director of Product Safety and Reliability, testified that in the
24 approximately 30 years that the 1930ES scissor lift has been on the market, he has not been made
25 aware of a single such incident.

26 Nor is there any substantial evidence that the standard of care applicable to scissor-lift
27 manufacturers in the United States in 2008 was to manufacture scissor lifts only with self-closing
28 gates and not also with safety chains. In fact, the undisputed evidence establishes that in 2008, the

1 domestic competitors of JLG manufactured similar scissor lifts with safety chains. *See* 8-31-21 (p.m.)
2 Tr. at 1178:3–11 (Testimony of Mr. Forgas); 9-13-21 (a.m.) at 1865:2–11 (Testimony of Mr. Smith).

3 While Plaintiffs’ engineering expert, Mr. Smith, testified that, in his view, a self-closing gate
4 with a toe-board is safer than a chain, the relevant inquiry under CACI 1221 is *not* whether a gate
5 with a toe-board is safer than a chain. Instead, the relevant inquiry is whether JLG acted unreasonably
6 in designing the subject scissor lift with a safety chain. There is no substantial evidence that JLG
7 acted unreasonably. The fact that the ISO and EN280 international standards did not permit the use
8 of safety chains in 2008 does *not* establish that JLG knew or should have known at that time that the
9 chain-closure system would be ineffective at reducing or avoiding the risk of falling, or that it would
10 be less effective at reducing or avoiding that risk compared to a self-closing gate. This is particularly
11 true given that the ANSI A92.6-2006 standard expressly permitted the use of safety chains, and that
12 Plaintiffs have presented no evidence that anyone other than Mr. Camacho has ever fallen from a JLG
13 model 1930ES scissor lift equipped with a safety chain.

14 Finally, Plaintiffs’ design-defect theory is premised on the assumption that a self-closing gate
15 with a toe-board is safer than a chain because the gate is supposed to close automatically. *See* 9-8-21
16 (p.m.) Tr. at 1731:3–18 (testimony of Mr. Smith). But the undisputed evidence establishes that a gate
17 will *not* self-close in the absence of proper maintenance, nor will it self-close if objects on the platform
18 floor block it or it is otherwise held or tied open.³ *See* 8-31-21 (a.m.) Tr. at 1022:9–21, 1023:23–
19 1024:1 (testimony of Mr. Forgas); 8-31-21 (p.m.) Tr. at 1184:7–1185:3 (same); 9-13-21 (a.m.) Tr. at
20 1865:20–1867:6, 1868:1–13 (testimony from Mr. Smith acknowledging that “you can intentionally
21 bypass the gate” and “there’s all sorts of ways to defeat safety devices”). Under these circumstances,
22

23 _____
24 ³ In fact, the only evidence in this case of a person other than Mr. Camacho falling from a scissor lift
25 involves a lift with a self-closing gate that was intentionally tied open. *See* 9-1-21 (a.m.) Tr. at
26 1295:20–1296:5 (testimony of Dr. Vredenburg). Further, Plaintiffs’ engineering expert, Mr. Smith,
27 acknowledged that if the subject scissor lift from which Mr. Camacho fell had been equipped with a
28 self-closing gate, he does not know whether the gate would have been able to close properly due to
the piece of sheetrock that extended past the entrance of the scissor lift. *See* 9-13-21 (a.m.) Tr. at
1806:23–1807:7. He also acknowledged that the location of the three glass panels at the entrance of
the scissor lift could interfere with a gate’s ability to self-close. *See id.* at 1866:13–1867:26.

1 there is no non-speculative basis for the jury to conclude that a self-closing gate is superior to a safety
2 chain in reducing the risk of falling, or that JLG acted unreasonably in designing the subject scissor
3 lift with a safety chain.
4
5

6 Respectfully submitted,
7 **ZINDER & KOCH**

8 
9

10 DATED: September 14, 2021

BY: _____

11 Jeffrey E. Zinder, Esq.
12 Defendant, Cross-Complainant and
13 Cross-Defendant, **JLG INDUSTRIES, INC.**
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DECLARATION OF JEFFREY E. ZINDER

I, JEFFREY E. ZINDER, Declare:

1. That I am an attorney at law duly licensed to practice before all of the courts of the State of California and am a senior partner of the law firm of Zinder & Koch, attorneys of record for the Defendant herein. That this declaration is based upon my own personal knowledge and if called upon, I could and would competently testify to the matters set forth below.

2. Attached hereto are true and correct copies of the following as referenced as Exhibits in the foregoing Motion for Directed Verdict:

- Exhibit A – All trial excerpts to trial testimony;
- Exhibit B – Trial Exhibit 92 at 11;
- Exhibit C – Trial Exhibit 119 at 1-4;
- Exhibit D – Trial Exhibit 120 at 20;
- Exhibit E- Trial Exhibit 121; and
- Exhibit F- Trial Exhibit 122.

I declare under penalty of perjury under the law of the State of California that the foregoing to be true and correct.

Executed this 14th day of September, 2021 at Stevenson Ranch, California 91381.



BY: _____
JEFFREY E. ZINDER, Declarant

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER
DEPARTMENT C-14

RAUL CAMACHO, AN INDIVIDUAL BY)
AND THROUGH HIS GUARDIAN AD)
LITEM LUCIA R. MATURRANO; AND)
LUCIA R. MATURRANO, AN)
INDIVIDUAL,)
PLAINTIFF,)
VS.)
JLG INDUSTRIES, INC., A)
CALIFORNIA CORPORATION; SUNBELT)
RENTALS, INC., A CALIFORNIA)
CORPORATION; AND DOES 1-50,)
INCLUSIVE,)
DEFENDANT(S) .)

CASE NO.
30-2017-00902499-CU-
PO-CJC

HONORABLE ROBERT J. MOSS, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

AUGUST 30, 2021

AFTERNOON SESSION

APPEARANCES OF COUNSEL:

(CONTINUED ON NEXT PAGE.)

LISA S. ROULY, CRR, RPR, CSR NO. 9524
OFFICIAL COURT REPORTER PRO TEMPORE

1 DIRECT EXAMINATION

2 BY MR. POULTER:

3 Q MR. FORGAS, HOW ARE YOU TODAY, SIR?

4 A DOING WELL, SIR, AND YOU?

5 Q EXCELLENT.

6 WAS THERE ANYTHING IN MR. ZINDER'S OPENING
7 STATEMENT THAT YOU FELT WAS FACTUALLY INACCURATE?

8 A I DON'T BELIEVE SO.

9 Q ONE OF THE THINGS I WROTE DOWN THAT HE
10 MENTIONED IN THE OPENING STATEMENT WAS THAT THERE WAS
11 A DECAL SPECIFICALLY LOCATED AND PLACED ON THE
12 SCISSOR LIFT IN QUESTION THAT WOULD REMIND OR WARN
13 USERS TO LATCH THE CHAIN AT THE MID-RAIL; IS THAT
14 TRUE?

15 A YES, SIR.

16 Q OKAY. AND WHICH DECAL IS THAT THAT
17 SPECIFICALLY WARNS THEM TO LATCH THE CHAIN?

18 A THAT'S A DECAL WE HAVE UP AT THE FRONT OF
19 THE SCISSOR LIFT WHERE THE OPERATOR'S CONTROLS ARE.

20 Q WELL, I'M TALKING ABOUT RIGHT THERE AT THE
21 ENTRANCE POINT. IS THERE A DECAL THERE AT THE
22 ENTRANCE POINT WHERE THE ACTUAL CHAIN IS AT?

23 A NO, NOT WHERE THE CHAIN IS AT, UP BY THE
24 OPERATOR CONTROL STATION.

25 Q AND THE OPERATOR CONTROL STATION IS IT ON
26 THE COMPLETELY OPPOSITE END OF THE LIFT, CORRECT?

1 A IT'S ABOUT 6 FEET FROM THE ENTRANCE, YES,
2 SIR.

3 Q SO THE ACTUAL DECAL AND WARNING THAT JLG
4 PLACED ON THE 1930 ES SCISSOR LIFT THAT WAS MEANT TO
5 WARN A PERSON, TO REMIND THEM TO LATCH THE CHAIN,
6 WASN'T AT THE ENTRANCE POINT WHERE THE CHAIN ACTUALLY
7 WAS; IT WAS ON THE COMPLETE OPPOSITE END OF THE LIFT.

8 A THAT IS WHERE IT'S LOCATED, AND THE
9 OPERATOR WHO'S SUPPOSED TO BE THE PERSON IN CHARGE OF
10 THE OCCUPANTS OF THE PLATFORM.

11 Q GOT IT. AND YOU WERE INTIMATELY INVOLVED
12 IN THE DECISION-MAKING PROCESS OF JLG ON WHICH DECALS
13 TO USE AND WHERE TO PLACE THEM, CORRECT?

14 A YES, SIR, I WAS.

15 Q AND WAS THAT YOUR DECISION?

16 A YES, SIR, AS WELL AS OTHERS IN PRODUCT
17 SAFETY.

18 Q WHY DIDN'T YOU MAKE THE DECISION TO PUT
19 THE DECAL TO REMIND SOMEONE TO LATCH THE CHAIN AT THE
20 ACTUAL ENTRANCE POINT WHERE THAT SPECIFIC FUNCTION IS
21 TO BE TAKING PLACE?

22 A AS I SAID EARLIER, THE OPERATOR'S THE ONE
23 IN CHARGE OF THE PLATFORM AND PEOPLE IN THE PLATFORM,
24 AND THAT'S WHERE THE OPERATOR WILL BE STATIONED WHEN
25 HE'S OPERATING THE JLG SCISSOR LIFT.

26 Q YEAH, BUT THOSE PLATFORMS, THEY HOLD MORE

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
DEPARTMENT C-14

RAUL CAMACHO, AN INDIVIDUAL)
BY AND THROUGH HIS GUARDIAN)
AD LITEM, LUCIA R.)
MATURRANO; AND LUCIA R.)
MATURRANO, AN INDIVIDUAL,)
)
PLAINTIFF(S))
)
VS.) CASE NO. 2017-00902499
)
JLG INDUSTRIES, INC. A)
CALIFORNIA CORPORATION;)
SUNBELT RENTALS, INC. A)
CALIFORNIA CORPORATION; AND)
DOES 1-50, INCLUSIVE,)
CALIFORNIA CORPORATION; AND)
DOES 1 THROUGH 10, INCLUSIVE,)
)
DEFENDANT(S) .)
_____)

THE HONORABLE ROBERT J. MOSS, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

AUGUST 31, 2021

(MORNING SESSION)

APPEARANCES OF COUNSEL ON FOLLOWING PAGE

LISA A. AUGUSTINE, RPR, CSR #10419
OFFICIAL COURT REPORTER PRO TEMPORE

1 SCISSOR-LIFT-TYPE PRODUCTS.

2 THE COURT: MR. FORGAS, WOULD YOU MOVE THAT
3 MICROPHONE THERE AND PULL IT OVER IN FRONT OF YOU SO WE
4 CAN HEAR YOU BETTER.

5 THE WITNESS: HE MOVED IT AWAY FOR OTHER REASONS,
6 BUT WHERE DO YOU THINK, RIGHT THERE?

7 THE COURT: YES.

8 THE WITNESS: SORRY ABOUT THAT.

9 THE COURT: IT'S ALL RIGHT.

10 MR. POULTER: THANK YOU VERY MUCH FOR THAT
11 RESPONSE. I APPRECIATE IT.

12 OF ALL THE TESTING YOU IDENTIFIED, I DID NOT
13 HEAR ANY TESTING THAT WAS SPECIFIC TO FALLS.

14 A SPECIFIC TO FALLS?

15 Q YES, SIR.

16 A WE DO TESTING ON THAT AS WELL.

17 Q OKAY. WHAT DO YOU DO FOR TESTING ON FALLS?

18 A LET'S SEE. SOME OF THE TESTING WE DO ON
19 FALLS IS LIKE THE CHAIN GATE WE TALKED ABOUT IN THIS CASE.
20 WE TEST THAT. I BELIEVE IT'S A 300-POUND PULL TEST IN ANY
21 DIRECTION TO MAKE SURE THAT IT DOES NOT FAIL. WE WOULD DO
22 THAT SAME TESTING FOR A GATE IF THE GATE WAS CHOSEN ON THE
23 PRODUCT. SO THE SAME TEST FOR BOTH OF THOSE.

24 WE DO TEST WITH -- WHEN YOU WEAR A HARNESS
25 AND LANYARD FOR FALL PROTECTION AND YOU HOOK IT UP TO THE
26 ANCHORAGE POINT LIKE WE RECOMMEND ON THE PRODUCTS, IF

1 A I OR SOMEONE ELSE HAS, YES, SIR.

2 Q AND THOSE WERE IN ACTIVE LITIGATED CASES?

3 A YES, SIR.

4 Q AND SO MANY OF THEM I WOULD IMAGINE WERE
5 FALLS FROM LIFTS; CORRECT?

6 A NOT MANY, NO, SIR.

7 Q OKAY. BUT THERE WERE SOME?

8 A THERE WERE SOME, YES, SIR.

9 Q AND BOTH SCISSOR LIFTS AND BOOM LIFTS;
10 CORRECT?

11 A YES, SIR.

12 Q AND IN THOSE PARTICULAR CASES, DID YOU PULL
13 DOCUMENTS WITH RESPECT TO THE TESTING THAT JLG DID?

14 A I MIGHT HAVE AT SOME POINT IN TIME.

15 Q OKAY. AND DID YOU PRODUCE THOSE IN THOSE
16 CASES?

17 A I DO NOT RECALL.

18 Q YOU UNDERSTAND THAT THE ALLEGATIONS IN THIS
19 CASE FOR THE LAST FIVE YEARS HAVE BEEN THAT THE PRODUCT
20 WAS DEFECTIVE BECAUSE OF THE CHAIN; CORRECT?

21 A YES, SIR.

22 Q AND YOU UNDERSTAND THAT THE ALLEGATIONS IN
23 THIS CASE ARE THAT MR. CAMACHO FELL FROM HEIGHT?

24 A YES, SIR.

25 Q OKAY. AND YOU ALSO UNDERSTAND THAT THE
26 ALLEGATIONS FROM JLG'S POINT OF VIEW IS THAT THEIR PRODUCT

1 Q OKAY. AND HOW HIGH DID THE GATE GO?

2 A I DO NOT KNOW HOW HIGH THE GATE WENT.

3 Q WAS IT HIGHER THAN THE CHAIN?

4 A I DON'T THINK WE TESTED AT THE FAILURE.

5 Q SO ONE OF THE BENEFITS OF THE CHAIN
6 DESIGN -- OR EXCUSE ME. ONE OF THE BENEFITS OF THE GATE
7 DESIGN IS THE FACT THAT IT'S SPRING LOADED; TRUE?

8 A YEAH, SPRING LOADED FOR SELF CLOSING.

9 Q OKAY. AND THE REASON WHY THE BENEFIT OF IT
10 BEING SPRING LOADED IS THAT WHENEVER YOU WALK INTO THE
11 PLATFORM IT JUST AUTOMATICALLY SHUTS BEHIND YOU, RIGHT?

12 A UNLESS YOU HAVE OBJECTS ON THE FLOOR OR
13 BLOCKING THE GATE OR IT BEING HELD OPEN FOR SOME REASON,
14 YES, SIR.

15 Q YEAH, I MEAN, OBVIOUSLY THERE'S AN INFINITE
16 NUMBER OF SCENARIOS THAT SOMEONE CAN ENCOUNTER, BUT
17 INsofar AS SOMEONE JUST WALKING INTO THE PLATFORM, FOR ALL
18 INTENTS AND PURPOSES, THE BENEFIT OF THE SPRING-LOADED
19 FEATURE IS IT CLOSES RIGHT BEHIND YOU; CORRECT?

20 A AS LONG AS IT'S PROPERLY MAINTAINED AND
21 OPERATED PROPERLY, YES.

22 Q THE REASON WHY THAT FEATURE WAS SPECIFICALLY
23 CHOSEN BY JLG WAS TO TAKE THE ELEMENT OF HUMAN DECISION OR
24 HUMAN ERROR OUT OF THE EQUATION; CORRECT?

25 A IT WAS AN OPTION AVAILABLE TO CUSTOMERS TO
26 USE WHETHER THEY WANTED A CHAIN OR GATE.

1 Q I UNDERSTAND THAT. BUT MY QUESTION WAS
2 DIFFERENT. MY QUESTION WAS THE REASON WHY THAT DESIGN
3 DECISION WAS MADE BY THE TEAM OF ENGINEERS AT JLG, ONE WAS
4 FOR SAFETY; CORRECT?

5 A IT WAS SAFETY WHETHER THE CHAIN OR THE GATE
6 WAS USED, EITHER WAY.

7 Q BUT I'M SPEAKING SPECIFIC TO THE CHAIN -- OR
8 EXCUSE ME, TO THE GATE. IT WAS FOR SAFETY; CORRECT?

9 A OUR DECISIONS ARE FOR SAFETY WHEN WE DECIDE
10 ON WHAT TO USE ON OUR PRODUCT.

11 Q AND FOR THE SPRING-LOADED PORTION OF THE
12 FEATURE, THAT WAS DONE TO REMOVE THE POTENTIAL FOR A USER
13 FORGETTING TO LATCH THE CHAIN; WAS IT NOT?

14 A IT DOESN'T REMOVE THE POTENTIAL. IT STILL
15 HAS -- YOU HAVE TO MAKE SURE IT'S CLOSED FOR THE REASONS
16 I'VE SAID BEFORE.

17 Q SURE. AND ASSUMING ALL THINGS TO BE THE
18 SAME THAT IT'S OPERATING PROPERLY, THE SELF-LATCHING GATE
19 AND TOE BOARD IS DESIGNED TO LOCK ITSELF WITHOUT ANY NEED
20 FROM HUMAN INTERACTION; CORRECT?

21 A IF NONE OF THE OTHER THINGS OCCUR, AS WELL
22 AS OTHER THINGS, YES, SIR.

23 Q SO PROBABLY 99 PERCENT OF THE TIME IT'S
24 GOING TO WORK ASSUMING IT'S OPERATING PROPERLY; CORRECT?

25 A IF IT'S OPERATING PROPERLY AND SOMETHING IS
26 NOT BLOCKING THE GATE FROM CLOSING ON ITS OWN AND IT'S

1 PROPERLY MAINTAINED, YES, SIR.

2 Q ANOTHER BENEFIT TO THIS WAS THAT IT WOULD
3 OPEN ONLY INWARD; CORRECT?

4 A THAT IS CORRECT.

5 Q AND THE REASON WHY IT WAS DESIGNED TO ONLY
6 OPEN INWARD WAS IN THE CHANCE THAT IT DIDN'T LOCK INTO
7 PLACE AND SOMEONE, YOU KNOW, DIDN'T CHECK TO MAKE SURE
8 THAT IT WAS LOCKED OR WHATEVER. IF THEY FELL INTO IT, IT
9 WOULD NOT OPEN OUTWARD, MEANING THEY WOULD NOT FALL OUT OF
10 THE LIFT; CORRECT?

11 A YES. IF SOMETHING OR SOMEONE FELL INTO,
12 WHENEVER IT WAS IN THE CLOSED POSITION, THAT'S THE INTENT
13 IS TO MAKE SURE THAT THE GATE DOESN'T SWING OUTWARD AND
14 LET THE PERSON OR OBJECT FALL OUT OF THE PLATFORM. THAT'S
15 THE REASON FOR THAT DESIGN AS FAR AS HOW THE GATE OPENS
16 AND CLOSES.

17 Q AND THIS PART OF THE BOTTOM, THIS TOE BOARD;
18 CORRECT?

19 A YES, SIR.

20 Q TOE BOARDS ARE ON ALL FOUR SIDES OF THE
21 PLATFORM WHEN THIS SPECIFIC DESIGN IS USED; CORRECT?

22 A WHEN THE GATE IS CLOSED, YES, SIR.

23 Q AND ON THE MODEL WITH THE SCISSOR -- OR THE
24 SCISSOR LIFT WITH THE CHAIN, IT DOES NOT HAVE A TOE BOARD
25 ON THE ENTRANCE AND EGRESS AREA; CORRECT?

26 A THAT IS CORRECT. THE ANSI STANDARDS PERMIT

1 PROMOTIONAL MATERIAL?

2 A I BELIEVE SO.

3 MR. POULTER: THANK YOU. YOUR HONOR, AT THIS TIME
4 WE'D MOVE 83 INTO EVIDENCE.

5 MR. LASKEY: NO OBJECTION.

6 THE COURT: ALL RIGHT. 83 IS ADMITTED.

7 MR. POULTER: AND CONSISTENT WITH THE COURT'S
8 ORDER, IT HAS BEEN REDACTED, BUT, ALLEN, IF YOU CAN PLEASE
9 PUBLISH 83 FOR THE JURY.

10 (WHEREUPON EXHIBIT 83 WAS RECEIVED INTO
11 EVIDENCE.)

12 BY MR. POULTER: Q OKAY. SO IT SAYS HERE
13 THE JLG STANDARD SAYS, AS A PROVEN TECHNOLOGY LEADER, JLG
14 IS COMMITTED TO MEETING AND EXCEEDING NEW STANDARDS. OUR
15 R&D TEAM WORKS AROUND THE GLOBE TO DEVELOP, TEST, AND
16 PRODUCE ADVANCED EQUIPMENT THAT IMPROVES JOBSITE SAFETY AT
17 EVERY LEVEL.

18 WITH RESPECT TO THE CHAIN, BACK IN 2007,
19 2008 WHEN THIS PARTICULAR SCISSOR LIFT WAS MANUFACTURED,
20 DID THAT CHAIN MEET OR EXCEED THE ANSI STANDARD AT THAT
21 TIME?

22 A IT MET AND EXCEEDED.

23 Q OKAY. HOW DID IT EXCEED IT?

24 A LIKE I SAID BEFORE ABOUT THE PULL TEST OF
25 300 POUNDS, IT WITHSTOOD THE 300 POUNDS OF PULL ON IT AND
26 DID NOT FAIL. SO IT WOULD WITHSTAND MORE THAN 300 POUNDS,

1 SO IT EXCEEDED THE TEST REQUIREMENT IN THAT REGARD.

2 Q SO INsofar AS JUST THE AMOUNT OF POUNDS IT
3 COULD HOLD, IT EXCEEDED THE STANDARD?

4 A YES, SIR.

5 Q BUT FROM A DESIGN STANDPOINT WHEN YOU'RE
6 LOOKING AT THE ANSI STANDARDS, IT SAYS THAT THE CHAINS
7 COULD HAVE BEEN USED PROVIDED THAT THE ENTRANCE IS 30
8 INCHES OR LESS; CORRECT?

9 A YES, SIR.

10 Q FROM A DESIGN STANDPOINT, JUST USING THE
11 CHAIN, DID THAT EXCEED THE STANDARD AT THAT TIME?

12 A THAT PART MET THE STANDARD.

13 Q DID IT EXCEED IT?

14 A THAT IN AND OF ITSELF, NO. IT JUST MET THE
15 STANDARD, I BELIEVE.

16 Q THE SPRING-LOADED, SELF-LATCHING GATE WITH
17 THE TOE BOARD HAD JLG CHOSE TO, AS THE STANDARD,
18 MANUFACTURE ITS SCISSOR LIFTS WITH THAT SPRING-LOADED,
19 SELF-LATCHING GATE WITH THE TOE BOARD, WOULD THAT HAVE
20 EXCEEDED THE STANDARD AT THAT TIME?

21 A IT WOULD HAVE MET THE STANDARD.

22 Q AND IT WOULD HAVE EXCEEDED IT; CORRECT?

23 A I BELIEVE SO.

24 Q AND JLG MADE THE CHOICE TO MANUFACTURE, IN
25 THE UNITED STATES, SCISSOR LIFTS WITH CHAINS; CORRECT?

26 A WE MADE THE CHOICE AND OUR CUSTOMER MADE

1 A PARDON ME?

2 Q THEY DID NOT PERMIT THE CHAIN BECAUSE IT WAS
3 NOT SAFE; CORRECT?

4 A NO. THAT IS THE CHOICE THEY MADE AS FAR AS
5 WHAT THEY REQUIRED AS FAR AS THE ACCESS OPENING OF A
6 PRODUCT.

7 Q SO SAFETY HAD NOTHING TO DO WITH IT?

8 A AS I SAID BEFORE, SAFETY HAS EVERYTHING TO
9 DO WITH THE INTERNATIONAL STANDARDS AS WELL AS THE
10 AMERICAN NATIONAL STANDARDS INSTITUTE.

11 Q SO YOU WERE SITTING IN THOSE COMMITTEE
12 MEETINGS FOR THE ISO STANDARD. WHAT WERE THEY DISCUSSING
13 IN TERMS OF WHETHER OR NOT A CHAIN WAS GOOD ENOUGH FOR THE
14 PRODUCTS IN THEIR COUNTRIES?

15 A THEY WERE LOOKING AT THE EUROPEAN STANDARD,
16 THE EN280, WE TALKED ABOUT EARLIER.

17 Q AND SO IT WAS JUST THAT BECAUSE EN280 DIDN'T
18 PERMIT CHAINS, THEY SAID WE'RE GOING TO FOLLOW SUIT, THAT
19 WAS THE ONLY CONSIDERATION THAT WAS GIVEN?

20 A SAFETY IS ALWAYS A CONSIDERATION FOR ANY
21 STANDARDS YOU MAKE OR CREATE, BUT IT WAS PART OF THE
22 DECISION-MAKING PROCESS, YES.

23 Q IF THE CHAIN IS JUST AS SAFE AS THE GATE,
24 THEN WHY DID THOSE OTHER STANDARDS AND WHY DO ALL THOSE
25 OTHER COUNTRIES NOT ALLOW THE CHAINS?

26 A IT'S A DECISION MADE BY THE STANDARDS OF

1 COMMITTEES FOR A SAFE PRODUCT, AND IT WAS DECIDED ONE WAY
2 FOR ISO AND EN280 AND ANOTHER WAY FOR THE AMERICAN
3 NATIONAL STANDARDS INSTITUTE.

4 MS. REPORTER: FOR THE AMERICAN WHAT?

5 THE WITNESS: NATIONAL STANDARDS INSTITUTE.

6 SORRY ABOUT THAT.

7 BY MR. POULTER: Q YEAH, BUT YOU WERE ON THE
8 INTERNATIONAL STANDARD COMMITTEE. YOU WERE PART OF THOSE
9 MEETINGS, AND YOU WERE PART OF THAT VOTING PROCESS, WERE
10 YOU NOT?

11 A YES, SIR.

12 Q AND YOU VOTED TO ONLY PERMIT THE
13 SELF-LATCHING GATE WITH THE TOE BOARD?

14 A THAT'S WHAT ENDED UP IN THE STANDARD.

15 Q RIGHT. AND SO I'M ASKING YOU WHAT WERE
16 THE -- WHAT WAS THE DECISION-MAKING PROCESS? WHY WERE YOU
17 IN FAVOR OF AND VOTING FOR SELF-LATCHING GATES AND TOE
18 BOARDS FOR THE ISO COMMITTEES, BUT HERE IN THE AMERICA IN
19 THE ANSI COMMITTEES YOU WERE VOTING FOR THE CHAIN?

20 A WELL, IT WAS MORE A DISCUSSION AS A GROUP.
21 AS FAR AS THE ISO COMMITTEE I'M ON IS TC214, AND THAT IS
22 THE AMERICAN CONTINGENT. SO THE PEOPLE FROM LIKE THE ANSI
23 STANDARD COMMITTEES I'M INVOLVED IN ALSO SOME OF THEM
24 PARTICIPATE IN THAT ISO SETTING, SO IT'S A GROUP THAT IS
25 INVOLVED WITH THAT. AND THEN AS ONE VOTE FROM THE GROUP
26 FOR WHAT WE DO AS FAR AS VOTING ON DIFFERENT THINGS WITH

1 Q AND YOU JUST TESTIFIED THAT AS EARLY AS
2 2006, WHEN THOSE STANDARDS WERE PUT IN PLACE, THE
3 SUBCOMMITTEE VOTING MEMBERS WERE ACTUALLY -- THERE'S
4 BASICALLY RUMBLINGS AMONG THE MEMBERS THAT WE WERE GOING
5 TO START GOING TOWARDS HARMONIZATION; CORRECT?

6 A I DON'T THINK IT OCCURRED THAT EARLY, BUT I
7 DON'T RECALL THE DATE WHEN IT STARTED BEING DISCUSSED.

8 Q SURE. SOMETIME AROUND THAT TIME OR A FEW
9 YEARS AFTER, SUBCOMMITTEE MEMBERS STARTED TALKING ABOUT
10 THE IDEA OF HARMONIZING THE ANSI STANDARDS TO MEET ISO AND
11 TO MEET EN280; CORRECT?

12 A SOMETIME AFTER THAT I THINK, BUT I JUST
13 DON'T RECALL WHEN.

14 Q RIGHT. AND THE PURPOSE OF THE
15 HARMONIZATION, AT LEAST IN PART, WAS THAT YOU WANTED TO
16 HAVE ALL THE STANDARDS THE SAME SO IT COULD FACILITATE
17 TRADE EASILY FOR THE MANUFACTURERS TO BE ABLE TO SELL
18 THEIR PRODUCTS ALL AROUND THE WORLD; CORRECT?

19 A TO SELL PRODUCTS AROUND THE WORLD AS WELL AS
20 MANUFACTURE ONE PRODUCT AROUND THE WORLD INSTEAD OF
21 MANUFACTURING ONE FOR THIS COUNTRY, ONE FOR THIS AREA,
22 ANOTHER ONE FOR THIS AREA AND SO ON AND SO FORTH. IT JUST
23 HELPS WITH THE MANUFACTURING PROCESS.

24 Q GOT IT. AND THAT WOULD HAVE BEEN A BENEFIT
25 TO JLG TO BE ABLE TO MAKE JUST ONE PRODUCT; CORRECT?

26 A FROM A MANUFACTURING STANDPOINT, YES, SIR.

1 AND YOU'RE TRYING TO SEE WHAT CAN WE CHANGE; CORRECT?

2 A WHAT CAN WE CHANGE OR NOT CHANGE, YES.

3 Q AND I BELIEVE IN THE PREAMBLE OF THE ANSI
4 STANDARDS IT SAYS LIKE A PRIMARY -- THE PRIMARY PURPOSE OF
5 THESE STANDARDS IS FOR SAFETY. DID I SAY THAT RIGHT?

6 A YES. AND I'VE SAID THAT BEFORE WHETHER IT'S
7 FOR ANSI OR ANY OTHER STANDARD OUT THERE FOR DESIGNING AND
8 MANUFACTURING PRODUCTS, IT'S SAFETY.

9 Q SO WHEN YOU'RE LOOKING AT -- WHEN YOU'RE
10 LOOKING AT THE ISSUE OF HARMONIZATION AND YOU'RE HAVING
11 THESE MEETINGS, YOU KNOW, RIGHT AFTER THE 2006 ISSUE CAME
12 OUT, YOU'RE LOOKING AT THE SAFETY STANDARDS AND YOU'RE
13 SAYING, IS THERE SOMETHING WE CAN DO MORE ABOUT. CAN WE
14 MAKE THESE SAFER; CORRECT?

15 MR. LASKEY: OBJECTION. MISSTATES FACTS.

16 THE COURT: OVERRULED.

17 THE WITNESS: WHETHER IT'S SAFER OR IT'S SAFE
18 EITHER WAY, SOME OF THE CONSIDERATIONS THAT GO IN WHENEVER
19 YOU LOOK AT THAT TYPE OF THING.

20 BY MR. POULTER: Q AND ONE OF THE
21 PARTICULAR SECTIONS THAT YOU WERE LOOKING AT DISCUSSING
22 FOR HARMONIZATION PURPOSES WAS THE ANSI STANDARD AND THE
23 SECTION THAT PERMITTED THE USE OF CHAINS; CORRECT?

24 A YES. WE LOOKED AT THE WHOLE STANDARD OR
25 STANDARDS AND THAT'S ONE PART OF IT, YES, SIR.

26 Q AND THE DISCUSSIONS PRIOR TO 2015, WHEN MY

1 CLIENT WAS INJURED, THE DISCUSSIONS AMONGST YOURSELVES WAS
2 THAT WE NEED TO CHANGE THE STANDARD?

3 A NOT THAT WE NEED THE STANDARD. WE'RE JUST
4 LOOKING AT -- AND I DON'T THINK 2015 MAY EVEN BE A DATE
5 WHEN WE STARTED THAT. I'M NOT SURE EXACTLY WHAT THAT DATE
6 WAS WHEN WE STARTED TALKING ABOUT THAT PROCESS, BUT I
7 MEAN, YOU'RE LOOKING AT THE STANDARDS FROM ALL
8 PERSPECTIVES AS FAR AS THAT GOES.

9 Q SIR, ISN'T IT TRUE THAT AS EARLY AS
10 JANUARY -- ISN'T IT TRUE THAT AS EARLY AS JANUARY OF 2014,
11 THE MEMBERS OF THE ANSI SUBCOMMITTEE RELEVANT TO THE
12 STANDARDS FOR SCISSOR LIFTS, HAD ALREADY PROVIDED A
13 DRAFT --

14 MR. LASKEY: OBJECTION AS TO TIME, YOUR HONOR.
15 RELEVANCE.

16 THE COURT: LET HIM FINISH HIS QUESTION.

17 BY MR. POULTER: Q ISN'T IT TRUE THAT AS
18 EARLY AS JANUARY OF 2014, THERE WERE ALREADY DRAFTS OF
19 PROPOSED CHANGES TO THE STANDARDS THAT SPECIFICALLY
20 REMOVED THE ALLOWANCE FOR CHAINS AND INCLUDED THE
21 REQUIREMENT FOR A SPRING-LOADED, SELF-LATCHING GATE WITH A
22 TOE BOARD?

23 MR. LASKEY: OBJECTION. RELEVANCE.

24 THE COURT: SUSTAINED.

25 BY MR. POULTER: Q NEVERTHELESS, THE
26 DISCUSSIONS WERE HAPPENING THAT THIS STANDARD NEEDED TO

1 Q AND INSTRUCTIONS SHOULD ALSO BE CLEAR AND
2 UNAMBIGUOUS; CORRECT?

3 A YES, SIR.

4 Q IF THERE ARE INSTRUCTIONS OR WARNINGS THAT
5 ARE GIVEN TO THE END USER OF THESE PRODUCTS AND IT'S
6 AMBIGUOUS OR UNCLEAR AS TO THE MEANING OF IT, YOU KNOW,
7 PEOPLE CAN GET HURT; CORRECT?

8 A PARDON ME?

9 Q PEOPLE CAN GET HURT; CORRECT?

10 A IF WHAT?

11 Q IF THEY -- IF THE INSTRUCTIONS OR THE
12 WARNINGS THAT THEY'RE GIVEN FROM THE MANUFACTURER ARE
13 CLEAR OR AMBIGUOUS?

14 A IF THEY'RE NOT CLEAR YOU'RE SAYING?

15 Q CORRECT. YES, SIR.

16 A IF THEY'RE NOT CLEAR AND THEY'RE AMBIGUOUS,
17 THAT COULD BE THE CASE, YES, SIR.

18 Q AND IN THIS PARTICULAR PAGE OF THE OPERATORS
19 INSTRUCTION IT SAYS, QUOTE, JLG INDUSTRIES, INC.
20 RECOMMENDS THAT ALL PERSONS IN THE PLATFORM WEAR A FULL
21 BODY HARNESS WITH A LANYARD ATTACHED TO AN AUTHORIZED
22 LANYARD ANCHORAGE POINT WHILE OPERATING THIS MACHINE;
23 CORRECT?

24 A YES, SIR.

25 Q AND IT HAS HERE THE DECAL -- I BELIEVE THIS
26 IS THE DECAL THAT'S ON THE ACTUAL LIFT ITSELF; CORRECT?

1 A THE DECAL HAS THAT PICTURE ON IT.

2 Q AND IT'S TRUE THAT AS OF 2006, -7 WHEN
3 THIS -- OR 2008 WHEN THIS LIFT WAS MANUFACTURED, THE ANSI
4 STANDARDS DID NOT REQUIRE A FULL BODY HARNESS AND A
5 LANYARD FOR SCISSOR-LIFT USE; CORRECT?

6 A THERE'S A SECTION IN THERE THAT REQUIRES
7 THAT IF YOU ALLOW THE MACHINE TO BE OPERATED WITH RAILS
8 FOLDED DOWN THAT'S AN OPTION WE HAVE ON SOME OF THE
9 SCISSOR LIFTS WHERE YOU CAN FOLD DOWN THE RAILS, OR IF YOU
10 ALLOW OPERATION IN THAT CONFIGURATION WHERE THE RAILS ARE
11 REMOVED.

12 Q OKAY. SO ABSENT MODIFYING THE PLATFORM, THE
13 ANSI STANDARD IN 2008 WAS THAT IT WAS NOT REQUIRED THAT
14 YOU WEAR A FULL BODY HARNESS AND A LANYARD; CORRECT?

15 A OTHER THAN WHAT I JUST SAID, YES, SIR.

16 Q OKAY. AND THAT WAS ALSO TRUE IN 2015; ANSI
17 DID NOT REQUIRE USERS ON SCISSOR LIFTS TO WEAR A FULL BODY
18 HARNESS AND A LANYARD; CORRECT?

19 A CORRECT.

20 Q SO WHEN WE'RE TALKING ABOUT THESE
21 INSTRUCTIONS, JLG DID STILL RECOMMEND IT, TRUE?

22 A YES, SIR.

23 Q AND, IN FACT, EVEN ON THE PRODUCTS THAT HAD
24 THE SELF-LATCHING GATE WITH THE TOE BOARD, JLG RECOMMENDED
25 WEARING A FULL BODY HARNESS WITH A LANYARD; CORRECT?

26 A YES, SIR.

1 TITO FIGUEROA, THAT ANY TIME YOU STEP ON A LIFT YOU ARE
2 REQUIRED TO WEAR A FULL BODY HARNESS AND LANYARD?

3 A I DON'T RECALL SEEING THAT.

4 Q DID YOU SEE ANY EVIDENCE THAT RAUL CAMACHO
5 IN ANY WAY, SHAPE, OR FORM DISOBEYED HIS BOSS'S OR R.D.
6 OLSON WITH RESPECT TO WEARING OR NOT WEARING A FULL BODY
7 HARNESS AND A LANYARD?

8 A FROM WHAT I'VE SEEN IN THIS CASE, AS FAR AS
9 DEPOSITIONS AND DOCUMENT PRODUCTION, IT DID NOT SEEM LIKE
10 IT, BUT I HAVE NOT -- MAY NOT HAVE SEEN EVERYTHING.

11 Q OKAY. FAIR ENOUGH. AND SO GETTING BACK ON
12 TOPIC WITH THIS SPECIFIC INSTRUCTION IN THE MANUAL, JLG IS
13 RECOMMENDING THAT PEOPLE WEAR THE FALL PROTECTION;
14 CORRECT?

15 A JLG RECOMMENDS THAT, YES, SIR.

16 Q AND AS EARLY AS, I THINK IT WAS, 2007, JLG
17 ACTUALLY STARTED GETTING CALLS FROM CONSTRUCTION
18 COMPANIES, FROM RENTAL COMPANIES, FROM PEOPLE THAT USED
19 THESE SCISSOR LIFTS, AND THEY WERE CONFUSED WHETHER OR
20 NOT, UNDER THE MANUFACTURER'S INSTRUCTIONS, WHETHER FALL
21 PROTECTION WAS REQUIRED. DO YOU REMEMBER THAT?

22 A WE RECEIVED QUESTIONS FROM CUSTOMERS, AND
23 THEY RESPONDED TO THOSE CUSTOMERS.

24 Q AND, IN FACT, IT WAS AT LEAST ENOUGH OF
25 PEOPLE THAT WERE CONFUSED BY THE INSTRUCTION ON -- VERSUS
26 -- RECOMMENDED VERSUS REQUIRED THAT JLG ACTUALLY PUT OUT

1 Q AND WHO'S BRENT HOOVER?

2 A HE USED TO WORK IN PRODUCT SAFETY AT JLG AS
3 WELL.

4 Q AND HE WAS INVOLVED IN THIS PARTICULAR CASE
5 AS WELL AT SOME POINT; CORRECT?

6 A YES, SIR.

7 Q AND MR. HOOVER, HE ALSO NO LONGER WORKS FOR
8 THE COMPANY?

9 A THAT IS CORRECT.

10 Q WHEN'S THE LAST TIME YOU SPOKE TO
11 MR. HOOVER?

12 A IT'S BEEN AWHILE. NOT SURE.

13 Q AND HE LIVES OUT OF STATE, RIGHT?

14 A OUT OF STATE MEANING?

15 Q OUT OF CALIFORNIA?

16 A RIGHT. HE DOES NOT LIVE IN CALIFORNIA.

17 Q DO YOU HAVE ANY IDEA WHETHER OR NOT HE'S
18 GOING TO COME HERE TO TESTIFY?

19 A I DO NOT.

20 Q AND IF YOU COULD LOOK AT EXHIBIT 45 FOR ME,
21 PLEASE. THAT'S ALREADY BEEN ADMITTED INTO EVIDENCE.

22 NOW, THESE ARE THE DESIGN PLANS FOR EVERY
23 DECAL THAT WOULD HAVE BEEN ON THAT LIFT AT THE TIME IT
24 LEFT JLG'S FACTORY; CORRECT?

25 A IT APPEARS THAT MOST, IF NOT ALL, OF THE
26 DECALS THERE.

1 Q WELL, THIS IS WHAT YOU PRODUCED IN DISCOVERY
2 AS BEING ALL THE DECALS ON THE LIFT AT THAT TIME. DO YOU
3 HAVE ANY REASON TO DISPUTE THAT?

4 A I DON'T. I'M JUST FLIPPING THROUGH THEM
5 HERE AND SEEING WHAT'S HERE.

6 Q EARLIER YOU WERE SAYING THAT THERE WAS A
7 DECAL ON THE LIFT THAT REMINDED SOMEONE TO CLOSE THE
8 CHAIN, BUT YOU SAID IT WAS UP BY THE OPERATOR'S BOX. WE
9 TALKED ABOUT THAT YESTERDAY, REMEMBER?

10 A YES, SIR.

11 Q WHICH DECAL WERE YOU REFERRING TO?

12 A WHAT DO YOU WANT, THE JLG NUMBER ON THE
13 BOTTOM?

14 Q SURE. WHATEVER YOU GOT.

15 A I HAVE JLG 001159.

16 Q OKAY. AND YOU SAID THAT -- IF YOU COULD
17 SCROLL TO THAT PAGE, ALLEN.

18 ALL RIGHT. SO RIGHT HERE ON FALLING HAZARD.
19 THIS GUY RIGHT HERE SAYS, ENSURE ENTRANCE IS PROPERLY
20 CLOSED, RIGHT?

21 A ENSURE ENTRANCE AREA IS PROPERLY CLOSED.

22 Q AND THIS PARTICULAR DECAL SAYS THE
23 DIMENSIONS OF IT ARE 9 INCHES BY 7.5 INCHES; CORRECT?

24 A YEAH.

25 Q ABOUT THAT BIG MAYBE?

26 A 9 BY 7.5.

1 Q THAT'S UP AT THE OPERATOR'S BOX?

2 A I BELIEVE OFF TO THE ONE SIDE OF THE
3 OPERATOR'S CONTROL BOX.

4 Q WAS THERE ANYTHING THAT WAS CONSPICUOUS
5 RIGHT AS YOU WALKED INTO THE LIFT THAT WOULD GIVE YOU THAT
6 REMINDER?

7 A THAT DECAL THAT'S STARING YOU RIGHT IN THE
8 FACE WHENEVER YOU GET IN THE LIFT.

9 Q AT THE ENTRANCE POINT?

10 A SIX FEET AWAY.

11 Q MY QUESTION WAS DIFFERENT, SIR. WAS THERE
12 ANYTHING AT THE ENTRANCE POINT ON THOSE SOLID RAILS THAT
13 HAD A REMINDER TO WORKERS TO LATCH THE CHAIN?

14 MR. LASKEY: OBJECTION. ASKED AND ANSWERED FROM
15 YESTERDAY.

16 THE COURT: OVERRULED.

17 THE WITNESS: NOT RIGHT AT THE ENTRANCE AREA, NO,
18 SIR.

19 BY MR. POULTER: Q THIS PARTICULAR DECAL
20 RIGHT HERE, DO YOU HAVE PERSONAL KNOWLEDGE OF WHETHER OR
21 NOT IT WAS ON THE ACTUAL LIFT THAT MR. CAMACHO FELL FROM?

22 A BASED ON THE PHOTOGRAPHS I BELIEVE IT WAS.

23 Q BEAR WITH ME. I'M ALMOST DONE.

24 A COUPLE THINGS I WANT TO COVER WITH YOU,
25 AND I'LL BE DONE.

26 A SURE. NOT A PROBLEM.

1 THE COURT: SUSTAINED. WE'RE HERE TO TALK
2 ABOUT THE ENTRY PLATFORM, RIGHT?

3 MR. LASKEY: WELL, THAT'S PART OF THIS
4 SUBSECTION, YOUR HONOR.

5 THE COURT: WELL, IF IT'S PART OF THIS
6 SUBSECTION, YOU CAN REFER TO THAT.

7 MR. LASKEY: OKAY. THANK YOU.

8 BY MR. LASKEY:

9 Q SPECIFICALLY, MR. FORGAS, SUBPARAGRAPH
10 4.13.2.3, FLEXIBLE MATERIALS, CAN YOU PLEASE TELL US
11 WHAT IS STATED IN THIS SUBSECTION AND WHETHER JLG
12 COMPLIED WITH IT?

13 A YEAH. IT SAYS: FLEXIBLE MATERIALS SUCH
14 AS CABLES, CHAINS AND ROPES SHALL NOT BE USED IN THE
15 GUARDRAIL SYSTEM, EXCEPT THEY MAY BE USED AS A
16 MID-RAIL AT ACCESS OPENINGS 30-INCHES WIDE OR LESS.

17 Q AND, IN FACT, IS THE ACCESS OPENING OF THE
18 1930 ES LESS THAN 30 INCHES?

19 A IT IS.

20 Q AND IF YOU GO DOWN TO THE BOTTOM OF THE
21 PAGE, SECTION 4.13.3, TOE BOARDS.

22 A YES, SIR.

23 Q COULD YOU PLEASE EXPLAIN THIS SUBSECTION?
24 AND ACTUALLY IT CONTINUES ON THE TOP OF THE NEXT
25 PAGE.

26 A YES, SIR. THE TOE BOARDS ARE WHAT WE

1 WHAT IS THIS DOCUMENT CONTAINED IN THE
2 MACHINE HISTORY FILE, MR. FORGAS?

3 A THIS IS -- WHEN WE RECEIVE INFORMATION
4 FROM A CUSTOMER THAT THEY WANT TO PURCHASE A PRODUCT,
5 THIS IS WHAT WE CREATE.

6 Q SO I BELIEVE ONE OF THE ORIGINAL DATES
7 THAT WE SAW -- WE DON'T HAVE TO GO BACK TO IT FROM
8 THE BEGINNING -- WAS THAT THIS WAS MANUFACTURED
9 AROUND MARCH 24TH OF 2008?

10 A I BELIEVE SO. YES, SIR.

11 Q AND DOES THIS SHOW WHEN THE PRODUCT WAS
12 ORDERED BY THE CUSTOMER?

13 A LOOKS LIKE MARCH 18TH, 2008.

14 Q AND WHO WAS THE CUSTOMER THAT ORDERED THIS
15 PARTICULAR MACHINE?

16 A PACIFIC HIGH REACH & EQUIPMENT SERVICES,
17 INCORPORATED.

18 Q AND DOES THE ORDER ACKNOWLEDGMENT CONTAIN
19 A DESCRIPTION OF WHAT PRODUCT THEY ORDERED?

20 A IT DOES.

21 Q THE NEXT DOCUMENT IN LINE IS AN INVOICE?

22 A YES, SIR.

23 Q AND THE INVOICE DATE IS MARCH 25, 2008.
24 WOULD THAT HAVE BEEN THE DATE THAT IT WAS SHIPPED OUT
25 AS WELL?

26 A THAT'S WHAT IT INDICATES ON THE DOCUMENT,

1 YES, SIR.

2 Q AND IF WE GO TO PAGE 33 OF THE PDF,
3 PLEASE.

4 SO I WANT TO TALK TO YOU ABOUT --
5 BOB, WOULD IT BE POSSIBLE TO PUT PAGE 33
6 AND 34 OF THE PDF UP SIDE BY SIDE?

7 SO ONE OF THESE IS DATED MARCH 10, 2008,
8 AND ONE IS DATED MARCH 19, 2008. CAN YOU TELL US,
9 FIRST OF ALL, WHAT IS THIS DOCUMENT? WHAT DOES IT
10 SHOW?

11 A IT'S THE OWNER'S MANUAL PACKING SLIP, AND
12 WE TALKED ABOUT THAT EARLIER ON THE FINAL INSPECTION
13 CHECKLIST, TO MAKE SURE ALL THE MANUALS -- THE PROPER
14 MANUALS WERE ON THE PRODUCT FOR SHIPMENT. SO THIS IS
15 A LIST OF THOSE MANUALS THAT WOULD APPLY.

16 Q OKAY. AND, FOR EXAMPLE, DOES IT CONFIRM
17 THAT THE OPERATION AND SAFETY MANUAL WAS INCLUDED
18 WITH THE MACHINE WHEN IT SHIPPED OUT?

19 MR. POULTER: OBJECTION, YOUR HONOR.
20 RELEVANCE. IT'S NOT A DISPUTED FACT.

21 THE COURT: WELL, IF THAT'S AN AGREED FACT,
22 SUSTAINED.

23 BY MR. LASKEY:

24 Q WHAT WAS THE PUBLICATION DATE OF THE
25 OPERATION AND SAFETY MANUAL THAT WAS SHIPPED OUT WITH
26 THIS MACHINE?

1 AND YOU'RE TALKING ABOUT AVOID ACCUMULATION OF DEBRIS
2 ON PLATFORM DECK. KEEP MUD, OIL, GREASE AND OTHER
3 SLIPPERY SUBSTANCES FROM FOOTWEAR AND PLATFORM DECK.

4 Q IF YOU CAN GO TO THE NEXT PAGE, PLEASE.

5 THIS HAS ALREADY BEEN MARKED AND ACCEPTED
6 SEPARATELY AS A SEPARATE EXHIBIT, BUT WE DIDN'T GO
7 THROUGH THE WHOLE THING. ON THE RIGHT SIDE, YOU'VE
8 ALREADY TALKED ABOUT THE HARNESS AND LANYARD SECTION
9 THERE. LET'S GO ON TO THE BOTTOM PARAGRAPH -- OH,
10 FIRST OF ALL, WITH THE HARNESS AND LANYARD SECTION,
11 IS THAT PICTOGRAM THE SAME ONE THAT'S DEPICTED ON THE
12 MACHINE?

13 A YES, SIR, THAT'S THE ONE I SHOWED EVERYONE
14 ON THE JURY EARLIER TODAY.

15 Q AND IF YOU CAN BLOW UP THE BOTTOM RIGHT
16 PARAGRAPH, WHAT DOES THAT INSTRUCT THE USER,
17 MR. FORGAS?

18 A PRIOR TO OPERATION ENSURE ALL GATES AND
19 RAILS ARE FASTENED AND SECURED IN THEIR PROPER
20 POSITION. IDENTIFY THE DESIGNATED LANYARD ANCHORAGE
21 POINTS AT THE PLATFORM AND SECURELY ATTACH THE
22 LANYARD. ATTACH ONLY ONE LANYARD PER LANYARD
23 ANCHORAGE POINT.

24 Q AND THE FIRST SENTENCE THERE WHERE IT
25 SAYS: PRIOR TO OPERATION, ENSURE ALL GATES AND RAILS
26 ARE FASTENED AND SECURED IN THEIR PROPER POSITION,

1 WOULD THAT INCLUDE THE SAFETY CHAIN ACROSS THE
2 ENTRANCE?

3 A IT DOES, YES, SIR, SIMILAR TO THE DECAL I
4 TALKED ABOUT IN THE PLATFORM, YOU KNOW, THE CONTROL
5 STATION.

6 Q IF WE CAN GO TO THE NEXT PAGE, PLEASE.

7 DOES THE TOP LEFT OF THAT PAGE INCLUDE THE
8 SAME PICTOGRAM THAT'S DEPICTED ON THE LIFT ABOUT FALL
9 HAZARDS?

10 A IT DOES, YES, SIR.

11 Q AND THEN WHAT DOES THE FIRST PARAGRAPH
12 INSTRUCT THE USER?

13 A KEEP BOTH FEET FIRMLY POSITIONED ON THE
14 PLATFORM FLOOR AT ALL TIMES. NEVER POSITION LADDERS,
15 BOXES, STEPS, PLANKS OR SIMILAR ITEMS ON UNIT TO
16 PROVIDE ADDITIONAL REACH FOR ANY PURPOSE.

17 Q IF YOU CAN PLEASE MOVE ON TO --
18 THE COURT: BEFORE YOU DO THAT, MR. LASKEY,
19 LET'S TAKE OUR AFTERNOON RECESS.

20 LADIES AND GENTLEMEN, PLEASE BE BACK AT
21 3:15.

22 COUNSEL, EXHIBITS 86 AND 87 WILL BE 91 AND
23 92.

24 MS. RUBY: RIGHT.

25 MR. POULTER: WE WERE WONDERING ABOUT THAT.

26 (WHEREUPON EXHIBIT 91 AND 92 WERE MARKED FOR

1 OPERATING.

2 Q AND THE LAST SENTENCE OF THE FIRST
3 PARAGRAPH ON THE RIGHT, DOES THAT INSTRUCT THE USER
4 TO READ AND UNDERSTAND ALL MANUALS?

5 A THAT IS CORRECT.

6 Q IF WE COULD GO TO PAGE 5, PLEASE. DOES
7 THIS INSTRUCT THE USER THAT THEY'RE REQUIRED TO READ
8 AND UNDERSTAND THE SAFETY MANUALS?

9 A IT DOES.

10 Q AND WHAT DOES IT INSTRUCT THE USER ON THE
11 RIGHT-HAND SIDE?

12 A REMEMBER THAT YOU ARE THE KEY TO SAFETY.
13 GOOD SAFETY PRACTICES NOT ONLY PROTECT YOU BUT ALSO
14 PROTECT THE PEOPLE AROUND YOU.

15 Q OKAY. IF WE COULD MOVE ON TO PAGE 6,
16 PLEASE.

17 FIRST OF ALL, BOB, IF YOU COULD PLEASE
18 BLOW UP THE SECOND LIFT THERE.

19 DOES THE AEM MANUAL DEPICT A SCISSOR LIFT
20 IN THIS PICTURE?

21 A IT DOES.

22 Q AND IS THAT A SCISSOR LIFT WITH A CHAIN?

23 A YES, SIR.

24 Q AND IF YOU GO TO PAGE 20, PLEASE. THAT
25 WAS PAGE 6.

26 IF YOU COULD GO TO PAGE 20, PLEASE.

1 A OKAY.

2 Q IF YOU LOOK AT THE RIGHT SIDE, PLEASE TELL
3 US WHAT INSTRUCTIONS ARE GIVEN TO THE USER FROM
4 THE -- ON THE FIRST PARAGRAPH ON THE RIGHT.

5 A MAKE CERTAIN THAT ALL HANDRAILS, TOE
6 BOARDS AND GATES AND ENTRY CHAINS ARE IN PLACE AND
7 SECURED BEFORE RAISING THE PLATFORM.

8 Q AND THE NEXT PARAGRAPH, PLEASE.

9 A NEVER ENTER OR EXIT THE MACHINE WHEN
10 ELEVATED UNLESS ALLOWED BY THE MANUFACTURER. FOLLOW
11 ALL MANUFACTURER'S INSTRUCTIONS WHEN ENTERING OR
12 LEAVING AN ELEVATED MACHINE.

13 Q AND THE THIRD PARAGRAPH, PLEASE.

14 A WHEN REQUIRED, WEAR AN APPROVED FALL
15 PROTECTION SYSTEM PER THE MANUFACTURER'S MANUAL,
16 ENSURE THE CONNECTION TO THE PLATFORM IS SECURE.

17 Q AND IF WE CAN GO TO PAGE 29, PLEASE. THE
18 SECOND PARAGRAPH THAT STARTS WITH THE WORD "WARNING."

19 A WARNING: KEEP THE PLATFORM FLOOR CLEAR OF
20 DEBRIS AND LOOSE OBJECTS WHICH MIGHT CAUSE YOU TO
21 SLIP AND COULD RESULT IN DEATH OR SERIOUS INJURY.

22 Q SO ARE THESE INSTRUCTIONS FROM THE AEM
23 MANUAL THAT'S PART OF THE AEM TRADE ASSOCIATION
24 CONSISTENT WITH JLG'S OPERATION AND SAFETY MANUAL?

25 A THEY ARE.

26 MR. LASKEY: YOUR HONOR, I OFFER AS AN EXHIBIT

1 BY MR. LASKEY:

2 Q AND YOU YOURSELF -- LET'S TALK ABOUT YOUR
3 PARTICULAR MEMORY. YOU'VE BEEN WITH JLG OR OSHKOSH
4 SINCE 1988?

5 A YES, SIR.

6 Q AND HAVE YOU BEEN AN ENGINEER WITH PRODUCT
7 SAFETY ALL THAT TIME?

8 A WHETHER IT BE WITH JLG OR OSHKOSH, YES,
9 SIR.

10 Q AND DURING THOSE YEARS WITH PRODUCT SAFETY
11 DIVISIONS WITH JLG AND OSHKOSH, HAS IT BEEN THE
12 COMPANY POLICY TO ASSURE THAT YOU, STEVE FORGAS, ARE
13 MADE AWARE OF EVERY SINGLE NOTICE OF AN ACCIDENT THAT
14 OCCURS INVOLVING A JLG LIFT?

15 A THAT IS CORRECT.

16 Q AND IN THE ALMOST 30 YEARS SINCE THE
17 1930 ES SCISSOR LIFT HAS GONE TO MARKET, HAVE YOU
18 BEEN MADE AWARE OF ANY OTHER CLAIMS OF A PERSON
19 FALLING OUT OF A 1930 ES INVOLVING A CHAIN THROUGH
20 THE ENTRANCE?

21 A NO, SIR.

22 Q LET'S TALK ABOUT YOUR COMPETITION.

23 DO YOU HAVE COMPETITION IN THIS INDUSTRY?

24 A YES, SIR.

25 Q WHAT IS YOUR PRIMARY COMPETITION IN THE
26 SCISSOR LIFT INDUSTRY IN THE UNITED STATES?

1 A I WOULD SAY IT'S PROBABLY SKYJACK AND
2 GENIE.

3 Q AND IN 2008 WHEN THIS MACHINE WAS BUILT,
4 DID GENIE ALSO MANUFACTURE SIMILAR MACHINES WITH
5 SIMILAR SPECIFICATIONS THAT OFFER CHAINS AT THE
6 ENTRANCE?

7 A YES, SIR.

8 Q AND IN 2008 DID SKYJACK ALSO SELL SIMILAR
9 MACHINES WITH SIMILAR SPECIFICATIONS WITH CHAINS AT
10 THE ENTRANCE?

11 A I BELIEVE SO.

12 Q AND, IN FACT, DO YOU STILL COME ACROSS
13 GENIE SCISSOR LIFTS OUT IN THE FIELD TO THIS DAY THAT
14 HAVE CHAINS?

15 A YES, SIR.

16 Q AND DO YOU COME ACROSS SKYJACK SCISSOR
17 LIFTS THAT ARE WORKING OUT IN THE FIELD TO THIS DAY
18 WITH CHAINS?

19 A YES, SIR.

20 Q AND DOES JLG HAVE A NUMBER OF LIFTS THAT
21 ARE -- HAVE BEEN MANUFACTURED WITH CHAINS THAT ARE
22 STILL OUT IN THE FIELD TO THIS DAY?

23 A YES, SIR.

24 Q HOW DID JLG LEARN ABOUT THIS ACCIDENT?
25 I'M SORRY, I DIDN'T MEAN TO SHIFT GEARS SO ABRUPTLY
26 THERE.

1 A WE'D REFER YOU TO A DEALER.

2 Q LET'S FINISH BY TALKING ABOUT PROS AND
3 CONS OF GATES AND CHAINS. AND I BELIEVE YOU ALREADY
4 SAID THAT IT'S A MATTER OF CUSTOMER PREFERENCE AS TO
5 WHICH ONE THEY WANT, CORRECT?

6 A YES, SIR.

7 Q WHAT COULD BE A REASON WHY SOMEBODY
8 DOESN'T WANT A GATE AND WOULD PREFER A CHAIN?

9 MR. POULTER: OBJECTION, YOUR HONOR.
10 FOUNDATION, SPECULATION.

11 THE COURT: OVERRULED.

12 THE WITNESS: AS FAR AS THE GATE GOES, YOU HAVE
13 TO MOVE IT OPEN WITH YOUR HAND AND THEN HAVE IT HELD
14 THERE AS YOU'RE GETTING IN AND OUT OF THE MACHINE,
15 WHICH IS CUMBERSOME AT TIMES TO DO SO WITH THE WAY
16 THAT IT'S SET UP.

17 YOU ALSO HAVE THE ISSUE OF MAINTENANCE ON
18 THE GATE, WHICH I TALKED ABOUT EARLIER, I BELIEVE.
19 YOU HAVE THE HINGES, YOU HAVE THE SPRINGS THAT ARE
20 SELF-CLOSING, YOU HAVE THE MAGNET ON THERE. YOU HAVE
21 TO MAKE SURE THEY'RE ALWAYS WORKING PROPERLY,
22 MAINTAINED PROPERLY. WHEREAS, NO -- AND ALSO AT THE
23 GATE, YOU'RE PUTTING SOMETHING IN THE PLATFORM, A
24 LARGE ITEM INTO THE PLATFORM TO DO YOUR WORK AT
25 ELEVATION WITH THE GATE. THE GATE COULD POSSIBLY,
26 YOU KNOW, NOT CLOSE BECAUSE THAT ITEM IN THE PLATFORM

1 IS BLOCKING THE GATE FROM CLOSING, SO YOU HAVE TO
2 DEAL WITH THAT AS WELL WHEN LOADING THE PRODUCT INTO
3 THE PLATFORM.

4 AS FAR AS THE CHAIN GOES, VERY LOW
5 MAINTENANCE, VERY EASY TO USE, JUST UNLATCH IT TO GET
6 IN AND LATCH IT ONCE YOU'RE IN, AND BOTH OF THOSE
7 ITEMS SERVE THE SAME PURPOSES AS FAR AS PROTECTION OF
8 THE OPENING.

9 MR. LASKEY: THOSE ARE ALL THE QUESTIONS I
10 HAVE, YOUR HONOR.

11 THE COURT: ALL RIGHT. ANY REDIRECT,
12 MR. POULTER?

13 MR. POULTER: YES, YOUR HONOR.

14

15 REDIRECT EXAMINATION

16 MR. POULTER: LET ME JUST PULL UP ONE EXHIBIT.
17 ONE SECOND, YOUR HONOR, PULLING IT UP RIGHT NOW.

18 CAN I SEE THE HDMI CABLE, PLEASE?

19 BY MR. POULTER:

20 Q SO EARLIER TODAY WHEN WE WERE LOOKING AT
21 THE -- EARLIER TODAY WHEN WE WERE LOOKING AT THE
22 MARKETING MATERIAL THAT HAD THE ACTUAL JLG GATE
23 ACCESSORY AUDIT, DO YOU REMEMBER THAT EXHIBIT?

24 A I DO.

25 Q THAT MENTIONED THE VULNERABLE OPENING ON
26 IT?

1 THERE; I WAS TALKING ABOUT WARRANTY CLAIMS. THAT WAS
2 JUST SOMETHING WE DID WHENEVER WE WERE LOOKING AT
3 DESIGNS OF NEW PRODUCTS OR CHANGES TO DESIGNS OF
4 PRODUCTS.

5 Q AND HAVE YOU EVER SEEN A WARRANTY CLAIM
6 OVER A CHAIN?

7 A NOT THAT I RECALL.

8 Q AND YOU SAID THAT ALL ACCIDENTS ARE
9 INVESTIGATED THAT ARE REPORTED TO JLG, CORRECT?

10 A YES, SIR.

11 Q SO YOU DO CONCEDE THAT NOT ALL ACCIDENTS
12 ARE REPORTED TO JLG.

13 A THAT IS TRUE.

14 Q DO YOU HAVE ANY BASIS AND OPINION OR FACT
15 TO GIVE ANY TYPE OF PERCENTAGE ON THE NUMBER OF
16 INCIDENTS THAT ARE ACTUALLY REPORTED TO JLG AND THAT
17 AREN'T? DO YOU HAVE ANY WAY OF KNOWING THAT NUMBER?

18 A NOT FOR SURE, OTHER THAN I'M PRETTY SURE
19 THE MAJORITY THEM ARE REPORTED TO JLG.

20 Q OKAY. AND WHAT'S THE BASIS FOR YOUR
21 TESTIMONY THAT YOU'RE PRETTY SURE THAT ALL ACCIDENTS
22 ARE REPORTED TO JLG?

23 A BECAUSE YOU DON'T HEAR OF MANY ON DOWN THE
24 ROAD AFTER AN ACCIDENT OCCURS. IT'S RARE THAT THAT
25 OCCURS, AND WHENEVER IT DOES OCCUR, IT'S USUALLY
26 THROUGH A LAWSUIT THAT'S FILED.

1 THE COURT: SUSTAINED.

2 BY MR. POULTER:

3 Q YOU ALSO SAID THAT THE LATCH WAS
4 DIFFERENT, CORRECT?

5 A YES, SIR.

6 Q AND YOU UNDERSTAND THAT WE'VE NEVER IN
7 THIS CASE CONTENDED THAT THE LATCH EITHER WAS OR WAS
8 NOT CHAINED -- OR THE CHAIN WAS OR WAS NOT LATCHED.
9 YOU UNDERSTAND THAT, RIGHT?

10 A I'M SORRY, REPEAT THAT.

11 Q YEAH. YOU UNDERSTAND THAT WE'VE NEVER
12 CONTENDED IN THIS CASE THAT THE CHAIN WAS LATCHED OR
13 UNLATCHED AT ANY GIVEN TIME, RIGHT?

14 A I DON'T UNDERSTAND YOUR QUESTION, I'M
15 SORRY.

16 Q THE DEFECT CLAIM AND THEORY THAT WE'VE
17 ALWAYS MADE IN THIS CASE IS THAT THE CHAIN DESIGN
18 INTRODUCES HUMAN ERROR. DO YOU UNDERSTAND THAT?

19 A AS FAR AS YOUR CLAIM GOES?

20 Q YES, SIR.

21 A YES, SIR.

22 Q OKAY. WE'VE NEVER SAID THAT THE CHAIN
23 BROKE IN ANY WAY AND THAT'S WHAT CAUSED RAUL CAMACHO
24 TO FALL, RIGHT?

25 A AS FAR AS I KNOW, YES, SIR.

26 Q OKAY. SO THE FACT THAT THE LATCH MIGHT

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
DEPARTMENT C-14

RAUL CAMACHO, AN INDIVIDUAL)
 BY AND THROUGH HIS GUARDIAN)
 AD LITEM, LUCIA R.)
 MATURRANO; AND LUCIA R.)
 MATURRANO, AN INDIVIDUAL,)
)
 PLAINTIFF(S))
)
 VS.) CASE NO. 2017-00902499
)
 JLG INDUSTRIES, INC. A)
 CALIFORNIA CORPORATION;)
 SUNBELT RENTALS, INC. A)
 CALIFORNIA CORPORATION; AND)
 DOES 1-50, INCLUSIVE,)
 CALIFORNIA CORPORATION; AND)
 DOES 1 THROUGH 10, INCLUSIVE,)
)
 DEFENDANT(S) .)
 _____)

THE HONORABLE ROBERT J. MOSS, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SEPTEMBER 1, 2021

(MORNING SESSION)

APPEARANCES OF COUNSEL ON FOLLOWING PAGE

LISA A. AUGUSTINE, RPR, CSR #10419
OFFICIAL COURT REPORTER PRO TEMPORE

1 A YES.

2 Q AND ALSO WHAT ABOUT ANY TYPE OF COST-BENEFIT
3 ANALYSIS WITH RESPECT TO A BENEFIT VERSUS THE CHAIN VERSUS
4 THE GATE?

5 A YES, I DID EVALUATE THE TWO DIFFERENT MODES
6 OF CLOSURE.

7 Q OKAY. AND SO GENERALLY PLEASE DESCRIBE FOR
8 THE MEMBERS OF THE JURY WHAT MATERIALS YOU WERE PROVIDED,
9 WHAT MATERIALS YOU REVIEWED, AND WHETHER OR NOT THOSE
10 TYPES OF MATERIALS ARE WHAT EXPERTS, SUCH AS YOURSELF,
11 TYPICALLY RELY UPON IN COMING TO OPINIONS IN YOUR FIELD.

12 A SO TYPICALLY WE'RE GIVEN SEVERAL DEPOSITIONS
13 OF THE PEOPLE THAT WERE INVOLVED IN THE INCIDENT AS WELL
14 AS PEOPLE TYPICALLY THAT MAKE UP PRODUCT.

15 IS THAT ME MAKING THAT NOISE?

16 THE COURT: YOU'RE A LITTLE TOO CLOSE.

17 THE WITNESS: OKAY. LET ME TRY AGAIN.

18 THE COURT: SORRY ABOUT THAT. WE USUALLY PUT A
19 FOAM COVER OVER THAT, BUT IN COVID WE DON'T WANT TO DO
20 THAT.

21 THE WITNESS: I AM SO SORRY.

22 THE COURT: ABOUT EIGHT INCHES IS GOOD. TO BE
23 ABOUT EIGHT INCHES AWAY IS BEST.

24 THE WITNESS: IS THAT ABOUT RIGHT?

25 THE COURT: SHOULD BE OKAY.

26 THE WITNESS: ALL RIGHT.

1 THAT.

2 THE WITNESS: PLEASE EXCUSE ME.

3 BY MR. POULTER: Q IT'S OKAY.

4 SO IN THIS PARTICULAR CASE, DID YOU SEE
5 EVIDENCE THAT THE END USERS AND PEOPLE USING THE PRODUCT,
6 SPECIFICALLY THE 1930ES SCISSOR LIFT, WERE CONFUSED BY
7 JLG'S USE AND CHOICE OF THE WORDS RECOMMENDED RATHER THAN
8 REQUIRED?

9 A IT APPEARED TO BE TRUE.

10 Q AND SHOWING YOU HERE EXHIBIT 16. WE'VE
11 SHOWN THIS TO THE JURY IN THIS PARTICULAR CASE, AND WE'VE
12 TALKED ABOUT IT IN THIS TRIAL UP UNTIL THIS POINT, BUT I
13 WANT TO ASK YOU A FEW QUESTIONS ABOUT IT.

14 HERE IN THE TOP PART THIS IS A CLEAR
15 INSTRUCTION FROM JLG SPECIFIC TO THE BOOM LIFTS THAT, HEY,
16 THE ANSI STANDARDS REQUIRE YOU TO WEAR THIS HARNESS AND
17 LANYARD. WE'RE REMINDING YOU OF THAT FACT, CORRECT?

18 MR. ZINDER: OBJECTION, YOUR HONOR. THIS CASE
19 DOES NOT INVOLVE A BOOM LIFT.

20 THE COURT: I COULDN'T HEAR YOUR OBJECTION.

21 MR. ZINDER: THIS CASE DOES NOT INVOLVE A BOOM
22 LIFT. IT'S IRRELEVANT.

23 THE COURT: OVERRULED IN THIS INSTANCE.

24 BY MR. POULTER: Q DO YOU SEE THAT, DR.
25 VREDENBURGH?

26 A YES.

1 Q AND SO HERE THEY CHOSE TO USE THE WORD
2 REQUIRE AND THAT -- WOULD THAT BE SIGNIFICANT FROM A HUMAN
3 FACTORS STANDPOINT INsofar AS INSTRUCTING PEOPLE HOW OR
4 WHAT TO DO?

5 A YES. THERE'S NO AMBIGUITY THAT IT IS
6 REQUIRED.

7 Q AND WHAT WE'RE SEEING HERE AT THE BOTTOM OF
8 IT, THEY THEN DISCUSS HOW THERE ARE NO CURRENT
9 REQUIREMENTS UNDER ANSI, CSA, WHICH IS THE CANADIAN
10 STANDARD, OR OSHA REQUIRING PERSONNEL TO WEAR A FALL
11 PROTECTION DEVICE ON SCISSOR LIFTS OR MAST LIFTS.

12 IT THEN GOES ON TO SAY THAT, YOU KNOW, MANY
13 COMPANIES PRESENTLY REQUIRE THAT FALL PROTECTION BE WORN
14 BUT JLG AND AGAIN THEY USE THE WORD JUST RECOMMENDS THAT A
15 FULL BODY HARNESS BE USED WITH A LANYARD.

16 MY QUESTION TO YOU IS THAT LOOKING AT THE
17 ANSI STANDARD ON -- BASICALLY SAYING YOU NEED TO RELY UPON
18 WHAT THE MANUFACTURER IS DOING OR SAYING, AND THEN WHEN
19 LOOKING IN THE JLG MANUAL AND USING THE WORD RECOMMENDED,
20 DID THIS IN ANY WAY CLARIFY WHAT THEY WERE TRYING TO SAY
21 TO THE END USER ABOUT WHETHER OR NOT A HARNESS AND LANYARD
22 WAS ACTUALLY REQUIRED?

23 MR. ZINDER: OBJECTION, YOUR HONOR. THE DOCUMENT
24 SPEAKS FOR ITSELF.

25 THE COURT: OVERRULED.

26 THE WITNESS: THE DOCUMENT SAYS IT'S RECOMMENDED.

1 IT DOES NOT SAY IT'S REQUIRED. SO IT CLARIFIES THAT THE
2 LANYARD IS NOT REQUIRED FOR THE SCISSOR LIFT.

3 BY MR. POULTER: Q IN YOUR EXPERIENCE, IF
4 YOU HAVE A MANUFACTURER OF A PRODUCT THAT WANTS YOU TO DO
5 SOMETHING, UNEQUIVOCALLY DO SOMETHING WITHOUT ANY
6 QUESTIONS ASKED, DO THEY USE THE WORD REQUIRED?

7 A THEY USE THE WORD REQUIRED AND OFTEN THEY
8 USE THE WORD ALWAYS AS WELL IN BOLD.

9 Q AND ALSO, TOO, THEY CAN USE IT POTENTIALLY
10 IN THE NEGATIVE, RIGHT? THEY CAN PROHIBIT SOMETHING. IN
11 OTHER WORDS, DO NOT GET ON THIS LIFT UNLESS YOU HAVE A
12 HARNESS OR A LANYARD ON; CORRECT?

13 A THEY COULD DO THAT AS WELL.

14 Q HAVE YOU SEEN THAT IN ANY OF YOUR OTHER
15 CASES THAT YOU'VE WORKED ON?

16 A YES, IF IT'S WHAT'S CALLED A PROHIBITION OR
17 DO NOT, THEN USUALLY THE WORDS DO NOT ARE ALL IN CAPS AND
18 BOLD.

19 Q OKAY. AND IN THE COURSE OF YOUR CAREER AS
20 AN EXPERT, I WOULD IMAGINE YOU'VE HAD THE OPPORTUNITY TO
21 TESTIFY ON THE ISSUES THAT ARE CALLED -- BEEN TERMED
22 MISUSE OR FORESEEABLE MISUSE; WOULD YOU AGREE?

23 A YES.

24 Q AND ONE OF THE CONTENTIONS THAT WE MAKE IN
25 THIS CASE IS THAT IF THE JURY FINDS FACTUALLY THAT MR.
26 CAMACHO FAILED TO LATCH THE CHAIN OR THAT MR. TITO

1 FIGUEROA FAILED TO LATCH THE CHAIN PRIOR TO HIS FALLING
2 OUT OF THE LIFT, THAT THAT WOULD BE A FORESEEABLE MISUSE.

3 AND FROM THE PERSPECTIVE OF YOUR FIELD, YOUR
4 CRAFT, WHEN CONSTRUCTION WORKERS ARE CONSTANTLY GETTING IN
5 AND OUT OR DOING A TASK AND DOING ANOTHER TASK, WHAT DOES
6 YOUR BACKGROUND, TRAINING, AND EXPERIENCE TELL YOU ABOUT
7 WHETHER OR NOT SOMEONE IS GOING TO FORGET TO DO EITHER A
8 STEP IN A TASK OR MULTIPLE STEPS IN A TASK THAT THOSE
9 STEPS THAT ARE MISSED ULTIMATELY RESULT IN AN INJURY?

10 A BASED ON MY EXPERIENCE AS WELL AS TEXTBOOKS
11 ON THE AREA, WE'RE PRONE TO ERRORS. HUMANS MAKE ERRORS.
12 THAT'S WHY WE HAVE ALARMS. THAT'S WHY WE HAVE WARNINGS,
13 WE HAVE ALERTS, IS TO REMIND US WHEN WE DO MAKE AN ERROR.
14 SO IT'S CERTAINLY FORESEEABLE THAT THEY WILL MAKE AN ERROR
15 ON THE TASK OF CLOSING THE CHAIN 100 PERCENT OF THE TIME.

16 Q AND HOW DOES THAT -- HOW DOES THAT -- HOW
17 DOES THAT RELATE TO YOUR HAZARD HIERARCHY?

18 A THAT HIERARCHY SAYS THAT IT'S THE BEST WAY
19 TO ADDRESS THAT POSSIBILITY OF ERRORS THROUGH DESIGN. SO
20 IF YOU REMOVE THAT HAZARD OF HAVING TO CLOSE IT 100
21 PERCENT OF THE TIME, THEN THERE IS NO POTENTIAL FOR ERROR.

22 Q AND SO LET ME ASK YOU A QUESTION. HAVE YOU
23 SEEN, IN YOUR CAREER, WHERE THERE'S A HAZARD THAT THEY
24 KNOW EXISTS, THEY BEING THE MANUFACTURER, AND THROUGH THE
25 DESIGN PROCESS THEY WERE ACTUALLY ABLE TO ELIMINATE THE
26 HAZARD?

1 WOULD WANT TO INCREASE THE CONSPICUITY OF IT.

2 Q IN THIS PARTICULAR CASE THERE WAS A -- THERE
3 WAS A PLACARD OR A DECAL, WHATEVER YOU WANT TO CALL IT, ON
4 THE FRONT OF THE PLATFORM NEAR THE CONTROLS THAT HAD A
5 WARNING TO REMEMBER TO LATCH THE GATES OF THE CHAIN
6 WHATEVER THE CASE MAY BE. IN YOUR LINE OF WORK, WOULD YOU
7 EXPECT TO SEE SOMETHING, ESPECIALLY ON A DESIGN THAT HAS A
8 CHAIN, NOT THE SELF-LATCHING GATE WITH TOE BOARD, BUT
9 WOULD YOU EXPECT TO SEE A PLACARD SOMEWHERE ACTUALLY AT
10 WHERE THAT POTENTIAL RISK OR HAZARD IS AT?

11 A YES, PER THE ANSI STANDARD WE TALKED ABOUT
12 EARLIER, LOCATION IS A VERY IMPORTANT ISSUE, AND IT NEEDS
13 TO BE NEAR THE LOCATION OF THE HAZARD.

14 Q AND WHAT DOES THAT STANDARD SPECIFICALLY SAY
15 ABOUT HAVING THE PLACARD OF WHICH YOU'RE WARNING FOR THE
16 HAZARD, CLOSE OR NEXT TO WHERE THAT HAZARD ACTUALLY
17 EXISTS?

18 A IT'S UNDER LOCATION. I'D HAVE TO PULL IT.
19 I DON'T HAVE THE EXACT WORDS MEMORIZED. BUT IT'S UNDER
20 THE HEADING LOCATION AND IT SAYS THAT YOU WANT TO LOCATE
21 AS CLOSE AS POSSIBLE. I THINK THEY USE THE WORD PROXIMITY
22 TO THE HAZARD.

23 Q OKAY. AND SO THE HAZARD WHICH IS, OBVIOUSLY
24 WE CONTEND IN THIS CASE IS THE CHAIN ITSELF, AND THE
25 ELEMENT OF HUMAN ERROR OR FORGETTING TO LATCH THE CHAIN,
26 YOU WOULD EXPECT TO FIND, IN YOUR BACKGROUND, TRAINING,

1 AND EXPERIENCE AND ALSO PER THE ANSI STANDARDS, THAT THERE
2 WOULD BE SOME TYPE OF ON-PRODUCT PLACARD, WARNING, OR
3 LABEL AT THE ENTRANCE GATE OF THAT PARTICULAR PLATFORM
4 WARNING OF THE RISK OF FORGETTING TO LATCH THE CHAIN AND
5 FALLING OUT, CORRECT?

6 A YES.

7 Q I WANT TO TALK TO YOU ABOUT THE CONCEPT OF
8 AN OPEN AND OBVIOUS DANGER. HAVE YOU HEARD THAT TERM
9 BEFORE?

10 A YES.

11 Q AND IT'S BEEN CONTENDED BY JLG IN THIS CASE
12 THAT THE DANGER POSED TO RAUL CAMACHO OF FALLING FROM
13 HEIGHT WAS OPEN AND OBVIOUS. HAVE YOU SEEN THAT TESTIMONY
14 FROM THEIR EXPERTS?

15 A YES.

16 Q AND SO WHAT IS IT, IN YOUR OPINION, THAT
17 EITHER IS OPEN AND OBVIOUS ABOUT WHAT MR. CAMACHO WAS
18 DOING ON THAT PARTICULAR DAY, OR WHAT WASN'T OPEN AND
19 OBVIOUS?

20 A SO IF YOU'RE UP IN THE AIR, THEN THE HAZARD
21 OF FALLING IS OPEN AND OBVIOUS. WHAT'S NOT OPEN AND
22 OBVIOUS IS WHAT THE HARNESS DOES, HOW IT COULD PROTECT
23 YOU, WHERE YOU HAVE TO ATTACH THE HARNESS, WHAT THE CHAIN
24 DOES AND DOESN'T DO, AND HOW TO SAFELY PROTECT YOURSELF
25 FROM THAT FALL HAZARD.

26 Q AND WHAT DO YOU BASE THAT OPINION ON?

1 AND EXPERIENCE AND ALSO PER THE ANSI STANDARDS, THAT THERE
2 WOULD BE SOME TYPE OF ON-PRODUCT PLACARD, WARNING, OR
3 LABEL AT THE ENTRANCE GATE OF THAT PARTICULAR PLATFORM
4 WARNING OF THE RISK OF FORGETTING TO LATCH THE CHAIN AND
5 FALLING OUT, CORRECT?

6 A YES.

7 Q I WANT TO TALK TO YOU ABOUT THE CONCEPT OF
8 AN OPEN AND OBVIOUS DANGER. HAVE YOU HEARD THAT TERM
9 BEFORE?

10 A YES.

11 Q AND IT'S BEEN CONTENDED BY JLG IN THIS CASE
12 THAT THE DANGER POSED TO RAUL CAMACHO OF FALLING FROM
13 HEIGHT WAS OPEN AND OBVIOUS. HAVE YOU SEEN THAT TESTIMONY
14 FROM THEIR EXPERTS?

15 A YES.

16 Q AND SO WHAT IS IT, IN YOUR OPINION, THAT
17 EITHER IS OPEN AND OBVIOUS ABOUT WHAT MR. CAMACHO WAS
18 DOING ON THAT PARTICULAR DAY, OR WHAT WASN'T OPEN AND
19 OBVIOUS?

20 A SO IF YOU'RE UP IN THE AIR, THEN THE HAZARD
21 OF FALLING IS OPEN AND OBVIOUS. WHAT'S NOT OPEN AND
22 OBVIOUS IS WHAT THE HARNESS DOES, HOW IT COULD PROTECT
23 YOU, WHERE YOU HAVE TO ATTACH THE HARNESS, WHAT THE CHAIN
24 DOES AND DOESN'T DO, AND HOW TO SAFELY PROTECT YOURSELF
25 FROM THAT FALL HAZARD.

26 Q AND WHAT DO YOU BASE THAT OPINION ON?

1 AND WINDOWS. THAT'S WHAT HE WAS DOING AS AN OCCUPANT.

2 Q OKAY. AND SO BASED UPON THAT EVIDENCE THAT
3 YOU REVIEWED AND ALSO BASED UPON YOUR BACKGROUND,
4 TRAINING, AND EXPERIENCE, TO A REASONABLE DEGREE OF
5 SCIENTIFIC PROBABILITY, DOES RAUL CAMACHO FALL UNDER THE
6 TERM SOPHISTICATED USER?

7 MR. ZINDER: OBJECTION, YOUR HONOR. OUTSIDE THE
8 SCOPE.

9 THE COURT: OVERRULED.

10 THE WITNESS: I DON'T THINK HE HAD ANY SPECIAL
11 KNOWLEDGE, SKILL, OR ABILITY PERTAINING TO THE LIFT AND
12 THEREFORE HE WAS NOT A SOPHISTICATED USER OF THE LIFT.

13 BY MR. POULTER: Q THANK YOU VERY MUCH.

14 WHEN WE'RE TALKING ABOUT THE BENEFITS OF THE
15 CHAIN VERSUS THE BENEFITS OF THE GATE, THE SPRING-LOADED,
16 SELF-LATCHING GATE WITH TOE BOARD, BASED UPON YOUR
17 BACKGROUND, TRAINING, AND EXPERIENCE AND THE WORK THAT
18 YOU'VE DONE FROM THE HUMAN FACTORS PERSPECTIVE, CAN YOU
19 THINK OF ANY BENEFIT TO THE CHAIN AS OPPOSED TO THE
20 SPRING-LOADED, SELF-LATCHING GATE WITH A TOE BOARD?

21 A NOT IN TERMS OF SAFETY.

22 Q AND ALL OF THE OPINIONS THAT YOU'VE GIVEN
23 HERE TODAY, DO YOU HOLD THOSE OPINIONS TO A REASONABLE
24 DEGREE OF SCIENTIFIC PROBABILITY?

25 A I DO.

26 Q THANK YOU VERY MUCH FOR YOUR TIME. I'LL

1 MAY I, YOUR HONOR?

2 THE COURT: YES.

3 BY MR. ZINDER: Q WHEN MR. RAUL CAMACHO
4 FIRST ARRIVED TO DO WORK AT THE PASEA HOTEL PROJECT, DID
5 HE DEMONSTRATE TO HIS SUPERVISOR, MR. GILLETTE, THAT HE
6 KNEW HOW TO OPERATE THE LIFT?

7 A I DON'T KNOW EXACTLY WHAT HE DEMONSTRATED.

8 Q YOU READ THE DEPOSITION TESTIMONIES, DID YOU
9 NOT?

10 A RIGHT. THERE WAS NOT A LEVEL OF DETAIL THAT
11 I SAW OR THAT I RECALL.

12 Q SO MR. GILLETTE, IF HE TESTIFIED IN HIS
13 DEPOSITION, THAT BOTH RAUL CAMACHO AND TITO FIGUEROA
14 DEMONSTRATED TO HIM FULL CAPABILITIES OF OPERATING THE
15 LIFT, YOU DISAGREE WITH THAT?

16 A NO. I HAVE NO OPINION ABOUT THAT.

17 Q NOW, THE PARTICULAR PLACARD IN THIS CASE AT
18 THE FRONT.

19 CAN YOU SHOW THAT, PLEASE. THERE WE GO.

20 NOW, THAT'S THE ONE WE WERE TALKING ABOUT
21 WITH THE FALL HAZARD AT THE FRONT BY THE OPERATOR;
22 CORRECT?

23 A YES.

24 Q IF WE COULD MAKE IT A LITTLE LARGER SO THE
25 JURY CAN READ IT. THERE YOU GO.

26 AT THE TOP IT SAYS WARNING; CORRECT?

1 A YES.

2 Q CONSPICUOUS IN ORANGE AND BLACK; CORRECT?

3 A YES.

4 Q OKAY. NOT CLOUDED. EVERYBODY CAN SEE IT.
5 CORRECT?

6 A YES.

7 Q OKAY. AND IT HAS SEVERAL HAZARDS TO BE
8 CONCERNED ABOUT, AND ONE IS FALLING HAZARD; CORRECT?

9 A YES.

10 Q AND EVEN IF SOMEBODY CAN'T READ ENGLISH,
11 JUST LOOKING AT THE PICTOGRAM, THAT CONVEYS THAT YOU CAN
12 FALL OUT OF A LIFT; CORRECT?

13 A YES.

14 Q THAT'S THE HAZARD IS FALLING OUT OF THE
15 LIFT; CORRECT?

16 A YES.

17 Q OKAY. NOW THAT IS AT THE FRONT WHERE THE
18 OPERATOR IS; CORRECT?

19 A YES.

20 Q AND THE OPERATOR HAS RESPONSIBILITIES;
21 CORRECT?

22 A YES.

23 Q AND ONE OF THOSE RESPONSIBILITIES IS TO
24 ASSURE ALL GUARDRAILS MUST BE PROPERLY INSTALLED DURING
25 OPERATION.

26 ANOTHER ONE. ENSURE ENTRANCE AREA IS

1 PROPERLY CLOSED. THAT'S A REMINDER TO THE OPERATOR THAT
2 THAT HAS TO BE DONE BEFORE THE LIFT IS RAISED. CORRECT?

3 A YES.

4 Q OKAY. SO THE OPERATOR THEN, IF THERE'S
5 ANOTHER PERSON IN THE LIFT, HE'S IN CHARGE OF LOOKING OVER
6 TO MAKE SURE THAT THE CHAIN, IF IT'S A CHAIN DESIGN, IS
7 CLASPED ACROSS THE ENTRANCE; CORRECT?

8 A YES.

9 Q OKAY. AND YOU HAVE NO OPINION, AS TO
10 WHETHER OR NOT THE CHAIN, IF CLASPED, WOULD PREVENT
11 SOMEONE FROM FALLING OUT OF THE LIFT; CORRECT?

12 A CORRECT.

13 Q YOU'RE FAMILIAR WITH THE CONCEPTS OF PRIMARY
14 AND SECONDARY PROTECTION?

15 A YES.

16 Q PRIMARY PROTECTION IN THIS CASE ARE THE
17 GUARDRAILS; CORRECT?

18 A YES.

19 Q OKAY. LET ME SHOW YOU A PICTURE THAT WAS IN
20 YOUR FILE SO THE JURY KNOWS WHAT WE'RE TALKING ABOUT
21 BECAUSE THEY STILL HAVEN'T SEEN THE LIFT.

22 YOU WENT DOWN ON INSPECTION; CORRECT?

23 A YES.

24 Q AND AT THAT INSPECTION THE LIFT WAS
25 PRESENTED TO YOU FOR REVIEW AND PHOTOGRAPHING AND THINGS
26 OF THAT NATURE?

1 A YES.

2 Q AND THAT IS PART OF THE COMPLETED PASSIVE
3 GUARDRAIL SYSTEM; CORRECT?

4 A YES.

5 Q OKAY. NOW, YOU SEE AN ATTACHMENT POINT FOR
6 A CHAIN TO CLASP OVER. DO YOU SEE THAT IN THE PICTURE?

7 A I KNOW WHERE IT IS, AND IT'S NOT REAL CLEAR
8 IN THE PICTURE, BUT I DO KNOW WHERE IT IS.

9 Q AND IT'S RIGHT THERE ABOUT HALFWAY UP YOU
10 SEE A LITTLE ATTACHMENT POINT; CORRECT?

11 A YES.

12 Q ALL RIGHT. AND THAT'S WHERE THE CHAIN WOULD
13 GO ACROSS; CORRECT?

14 A YES.

15 Q AND THE CHAIN GOES ACROSS. ONCE IT'S
16 HOOKED, THE WHOLE SYSTEM IS COMPLETE, AND THERE'S NOTHING
17 ELSE FOR THE OCCUPANTS TO DO; CORRECT?

18 A I'M NOT SURE HOW TO ANSWER THAT. THERE'S NO
19 TOE BOARD AND IT MOVES, SO IT'S NOT EXACTLY THE SAME AS
20 THE DOOR WHICH IS RIGID.

21 Q I DIDN'T SAY IT WAS THE SAME.

22 A I GUESS I'M CONFUSED --

23 Q YOU DON'T HAVE AN OPINION AS TO WHETHER OR
24 NOT THE CHAIN, ONCE PUT ACROSS, WOULD EFFECTIVELY PREVENT
25 AN OCCUPANT FROM FALLING OUT. YOU DON'T HAVE AN OPINION
26 IN THAT AREA, DO YOU?

1 MR. POULTER: OBJECTION, YOUR HONOR. ASKED AND
2 ANSWERED.

3 THE COURT: WELL, IT'S CROSS. OVERRULED.

4 THE WITNESS: I DON'T KNOW IF IT WOULD OR NOT.

5 BY MR. ZINDER: Q MATTER OF FACT, IT'S YOUR
6 OPINION THAT THAT ENTRANCE AREA IS EQUALLY DANGEROUS
7 WHETHER A CHAIN IS ACROSS IT OR NOT; CORRECT?

8 A I'M SORRY, CAN YOU SAY THAT AGAIN.

9 Q SURE. THE HAZARD IS FALLING OUT?

10 A RIGHT.

11 Q AND FALLING OUT OF THAT ENTRANCE AREA?

12 A YES.

13 Q AND THAT ENTRANCE AREA IS APPROXIMATELY 27
14 INCHES WIDE BY 42 INCHES HIGH; CORRECT?

15 A YES.

16 Q OKAY. AND IT'S YOUR OPINION THAT WITH THE
17 CHAIN ACROSS, IT MAKES NO DIFFERENCE. IT'S EQUALLY
18 DANGEROUS THAT IT'S COMPLETELY OPEN OR CLOSED WITH A
19 CHAIN. YOU'VE EXPRESSED THAT IN YOUR DEPOSITION. WANT ME
20 TO REMIND YOU?

21 A I DON'T THINK I SAID IT WAS EQUAL. I SAID
22 THAT THE -- I TALKED ABOUT THE EFFECTIVENESS OF THE CHAIN,
23 BUT I DON'T THINK I SAID THAT HAVING NOTHING AND HAVING A
24 CHAIN ARE IDENTICAL.

25 Q NOT IDENTICAL BUT POSES THE SAME LEVEL OF
26 RISK IN YOUR OPINION?

1 THE COURT: YES.

2 MR. ZINDER: THANK YOU, JOANNE.

3 AND WE HAVE THE ACTUAL DECALS ALSO ALREADY
4 INTO EVIDENCE.

5 THE COURT: ALREADY IN EVIDENCE, YES.

6 MR. ZINDER: I'D LIKE TO GET -- THANK YOU.

7 THANK YOU.

8 Q LET'S STICK WITH 97 FOR THE MOMENT.

9 DOCTOR, WOULD YOU AGREE THAT THAT DECAL
10 WOULD SHOW SOMEONE WHERE TO ATTACH THEIR LANYARD?

11 A NO.

12 Q CAN WE -- I DON'T KNOW WHAT NUMBER THIS IS.
13 IT'S LABELED EXHIBIT 87, BUT I DON'T KNOW WHICH ONE IT IS.

14 MAY I, YOUR HONOR?

15 THE COURT: YES.

16 MR. ZINDER: THERE'S MY LIMITATIONS. NOT
17 TECHNICAL AT ALL.

18 THE COURT: LOOKS LIKE THERE'S A GLARE IN THE
19 MIDDLE. THERE YOU GO.

20 MR. ZINDER: EXCELLENT.

21 THE COURT: THERE'S STILL A LITTLE GLARE ON THE
22 LEFT SIDE, BUT AS LONG AS WE UNDERSTAND WHAT THAT IS.
23 IT'S BECAUSE THE DECAL IS BENT, I THINK.

24 MR. ZINDER: I GUESS WE CAN STICK IT TO THE TABLE.

25 THE COURT: NO, THANK YOU.

26 MR. ZINDER: OKAY.

1 Q WHAT DOES THAT CONVEY TO YOU, DOCTOR?

2 A I'M SORRY, WOULD YOU REPEAT THAT.

3 Q WHAT DOES THAT DECAL CONVEY TO YOU WITH ALL
4 OF YOUR TRAINING AND EXPERIENCE, EXPERTISE? WHAT DOES
5 THAT MEAN?

6 A WELL, I'VE ALREADY READ ALL THE DISCOVERY,
7 AND I'M FAMILIAR WITH THE CASE, SO WHAT IT CONVEYS TO ME
8 IS NOT IMPORTANT. WHAT'S IMPORTANT IS TO TEST IT TO MAKE
9 SURE WHAT IT CONVEYS TO THE FORESEEABLE USERS. ALSO, THIS
10 IS ORIENTED HORIZONTAL, AND THE ONE YOU ASKED ME THE
11 QUESTION ABOUT WAS SIDEWAYS. SO --

12 Q YOU WANT IT TURNED THE OTHER WAY? MAYBE IT
13 WILL BE EASIER --

14 A WELL, SHOW -- IF YOU WOULDN'T MIND, PUT THE
15 DEGRADED ONE SIDEWAYS, THE ONE THAT YOU SHOWED ME.

16 Q LET'S JUST STICK WITH THIS ONE FOR THE
17 MOMENT. NOW IT'S SIDEWAYS.

18 A OKAY.

19 Q YOU DON'T THINK THAT THAT SHOWS A PLACE TO
20 ATTACH A LANYARD OFF A PERSON? NO?

21 A NO. I THINK THAT IT WOULD BE REALLY
22 IMPORTANT TO TEST THAT WITH FORESEEABLE USERS THE ANSI
23 STANDARD THAT WE TALKED ABOUT -- EARLIER TALKED ABOUT HOW
24 TO DO THAT, AND GENERALLY PICTORIALS ARE SYMMETRICAL.
25 THEY'RE CLEAR. THEY'RE UNAMBIGUOUS. WHEN IT'S SIDEWAYS,
26 IT'S BASICALLY THREE LINES WITH A HOOK. IT'S NOT REALLY

1 CLEAR.

2 Q DO YOU THINK THAT SHOWS SOMEONE FISHING?

3 A I DON'T KNOW WHAT IT SHOWS, SO IT WOULD BE
4 REALLY --

5 Q OKAY.

6 A I KNOW BECAUSE I'VE READ THIS CASE AND I'M
7 FAMILIAR WITH THIS CASE, BUT IF SOMEONE JUST GAVE THAT TO
8 ME, I DON'T KNOW THAT I COULD INTERPRET WHAT THAT IS. AND
9 AGAIN, IT DOESN'T MATTER WHAT I THINK. IT'S WHAT DO THE
10 USERS UNDERSTAND, AND THAT'S WHY IT'S REALLY IMPORTANT TO
11 TEST IT WITH THE USERS.

12 Q NOW, YOU TALKED ABOUT TESTING DURING THE
13 DESIGN PROCESS OF THIS.

14 YOU CAN TAKE THAT DOWN NOW.

15 YOU'VE TALKED ABOUT TESTING AND THE DESIGN
16 OF THE 1930ES SCISSOR LIFT. WHEN WAS IT DESIGNED? WHAT
17 YEAR?

18 A THAT ONE WAS BUILT IN 2007.

19 Q WHEN WAS THAT 1930ES TYPE OF MACHINE
20 MARKETED BY JLG INDUSTRIES FIRST DESIGNED?

21 A I DON'T REMEMBER THE EXACT YEAR. IT'S IN
22 THE DISCOVERY. IF YOU WANT TO TAKE THE TIME, I CAN FIND
23 IT, BUT I DON'T KNOW THAT OFF THE TOP OF MY HEAD.

24 Q DO YOU HAVE ANY REASON TO DISAGREE WITH THE
25 TESTIMONY THAT THE DESIGN PROCESS OCCURRED IN THE EARLY
26 2000S, 2001, 2002, FIRST WENT TO MARKET IN 2005. DO YOU

1 Q OKAY. SO THE 1930ES WITH THE SPRING-LOADED
2 GATE, THE PERSON LOADING IT, TIED IT OPEN; CORRECT?

3 A ONE PERSON DID THAT, YES, THAT I'M AWARE OF.

4 Q AND HE FELL OUT?

5 A YES.

6 Q OKAY. SO YOU HAVE THAT IN YOUR FILE. DO
7 YOU HAVE ANYBODY IN YOUR FILE WHO DIDN'T LATCH THE CHAIN
8 AND FELL OUT OTHER THAN MR. CAMACHO?

9 A I DO NOT -- AGAIN, WE TALKED ABOUT NEAR
10 MISSES SO WE, IN THE FIELD OF HUMAN FACTORS, WE DON'T WAIT
11 FOR PEOPLE TO DIE AND PEOPLE HAVE A RIGHT TO HAVE THE
12 SELF-CLOSING GATE. WE CAN DEFEAT GUARDS. WE CAN REMOVE A
13 GUARD FROM A SAW, BUT YOU HAVE THE RIGHT TO HAVE THE
14 SELF-CLOSING GATE THERE. AND IF YOU CHOOSE TO DEFEAT IT,
15 THAT'S A CHOICE YOU'RE MAKING, BUT THE PROTECTION WOULD BE
16 THERE IF YOU CHOOSE NOT TO OVERRIDE IT.

17 MR. ZINDER: YOUR HONOR, MOVE TO STRIKE AS
18 NONRESPONSIVE.

19 THE COURT: MOTION TO STRIKE IS DENIED.

20 BY MR. ZINDER: Q WITH YOUR EXPLANATION,
21 DOCTOR, AND I APPRECIATE IT, WAS THERE IN YOUR FILE, OTHER
22 THAN MR. CAMACHO, A DOCUMENTED INCIDENT OF A WORKER
23 FALLING OUT OF A 1930ES SCISSOR LIFT OTHER THAN THE MAN
24 WHO TIED OPEN THE GATE. THAT'S THE ONLY ONE YOU HAVE,
25 RIGHT?

26 A THAT I'M AWARE OF, YES.

1 PLEASE. THANK YOU. LITTLE BIT MORE. THERE YOU GO.

2 OKAY. DO YOU SEE THE PANES OF GLASS,
3 CORRECT, DOCTOR?

4 A YES.

5 Q DO YOU SEE THE CHAIN LATCHED ONTO ITSELF,
6 CORRECT, DOCTOR, AND OPEN IN THE OPEN POSITION?

7 A YES.

8 Q YOU SEE THE PLYWOOD BOARD, GYPSUM, WHATEVER,
9 SHEETROCK ON THE PLATFORM; CORRECT?

10 A YES.

11 Q AND YOU SEE THAT IT'S BROKEN?

12 A YES.

13 Q DID YOU FORM AN OPINION AS TO WHETHER IT WAS
14 BROKEN WHEN MR. CAMACHO FELL OR BEFORE HE FELL?

15 MR. POULTER: OBJECTION, YOUR HONOR. BEYOND THE
16 SCOPE.

17 THE COURT: SUSTAINED.

18 BY MR. ZINDER: Q DOCTOR, DID YOU LOOK AT
19 THESE PICTURES TO DETERMINE WHETHER IT WAS POSSIBLE, GIVEN
20 THE CONFIGURATION SHOWN, FOR MR. CAMACHO TO HAVE LATCHED
21 THE CHAIN ACROSS?

22 MR. POULTER: SAME OBJECTION, YOUR HONOR.

23 THE COURT: IT'S NOT RELEVANT WHETHER IT'S
24 POSSIBLE, SO THAT'S SUSTAINED. DID YOU HEAR ME? I SAID
25 IT'S NOT RELEVANT WHETHER IT WAS POSSIBLE THE WAY YOU
26 PHRASED THE QUESTION. ANYTHING IS POSSIBLE.

1 A YES.

2 Q WHAT'S THAT?

3 A I HAVE OSHA 30.

4 Q OKAY. CAN YOU JUST LET US KNOW WHAT OSHA
5 30 IS?

6 A THAT IS A -- IT'S BASICALLY A 30-HOUR
7 TRAINING CLASS FOR OSHA. WE HAVE OSHA 10, OSHA 30,
8 AND I BELIEVE ONE ABOVE THAT.

9 Q OKAY. AND IT JUST COVERS VARIOUS SAFETY
10 TOPICS?

11 A CORRECT.

12 Q AND ON THE PROJECTS WHERE YOU'RE A
13 SUPERINTENDENT, ARE THERE GENERALLY OTHER
14 SUPERINTENDENTS ALSO ON THAT SAME JOB?

15 A FOR THE SIZE PROJECTS WE DO, YES.

16 Q THE PAS?A HOTEL PROJECT BACK IN 2015, DO
17 YOU RECALL THAT PROJECT?

18 A YES.

19 Q AND YOU WERE A SUPERINTENDENT ON THAT
20 PROJECT?

21 A YES.

22 Q THE -- HAVE YOU EVER RECEIVED ANY TRAINING
23 SPECIFICALLY REGARDING SCISSOR LIFT USE?

24 A NO.

25 Q AND HAVE YOU EVER USED A SCISSOR LIFT --

26 A YEAH.

1 Q I'M SORRY.

2 A YES.

3 Q OKAY. HOW MANY TIMES OVER THE PAST, I
4 GUESS, APPROXIMATELY 30 YEARS HAVE YOU USED SCISSOR
5 LIFTS?

6 A COULDN'T EVEN TELL YOU. AS A WOOD FRAMER,
7 WE USED THEM A LOT FOR WORK DONE UP HIGH.

8 Q AND IS IT YOUR UNDERSTANDING THAT FALL
9 PROTECTION IS NOT REQUIRED ON SCISSOR LIFTS?

10 MR. ZINDER: OBJECTION, YOUR HONOR. VAGUE.

11 THE COURT: I'M SORRY?

12 MR. ZINDER: OBJECTION, YOUR HONOR. VAGUE.

13 THE COURT: OVERRULED. LET ME TAKE THAT BACK.

14 BE MORE SPECIFIC WHEN YOU SAY "FALL
15 PROTECTION."

16 BY MS. RUBY:

17 Q DO YOU BELIEVE THAT PERSONAL FALL
18 PROTECTION EQUIPMENT IS REQUIRED ON SCISSOR LIFTS?

19 A NOT THE -- I BELIEVE IT'S REQUIRED ON THE
20 TERRAIN SCISSOR LIFTS THAT HAVE THE LARGER TIRES THEY
21 USE OUTSIDE. THE SCISSOR LIFTS INSIDE, I DON'T
22 BELIEVE SO.

23 Q OKAY. AND THAT'S BASED ON YOUR EXPERIENCE
24 IN THE FIELD AND USING SCISSOR LIFTS ON PROJECTS,
25 THAT'S YOUR UNDERSTANDING?

26 A YES.

1 Q AND DID MORE THAN ONE OF THE
2 SUBCONTRACTORS USE SCISSOR LIFTS ON THAT PROJECT?

3 A I DO NOT REMEMBER.

4 Q ON JOB SITES, ONE OF THE COMMON ISSUES
5 THAT YOU COME ACROSS WOULD BE WORKERS ON SCISSOR
6 LIFTS WITHOUT THE CHAIN LATCHED, CORRECT?

7 A CORRECT.

8 Q AND THAT'S SOMETHING THAT YOU OBSERVED ON
9 EVERY PROJECT, CORRECT?

10 A CORRECT.

11 Q AND WHEN YOU SEE A WORKER WITH A CHAIN
12 UNLATCHED, WHAT DO YOU DO GENERALLY?

13 A I TELL THAT PERSON TO LATCH IT, I TAKE A
14 PICTURE OF IT, SEND IT TO THEIR FOREMAN.

15 Q OKAY. AND THEN ASK THE FOREMAN TO ADDRESS
16 IT?

17 A YEP.

18 Q AND THE -- DO YOU EVER HAVE A CONVERSATION
19 DIRECTLY WITH THE WORKER?

20 A ABSOLUTELY.

21 Q WHAT DO YOU TELL THEM IN THAT SITUATION?

22 A TELL HIM I WANT HIM TO GO HOME SAFELY THAT
23 NIGHT JUST LIKE EVERYBODY ELSE.

24 Q OKAY. AND THE -- IN THE -- IN ALL YOUR
25 EXPERIENCE IN THE CONSTRUCTION INDUSTRY, HAVE YOU
26 EVER SEEN A SITUATION WHERE A WORKER WAS TRAINED

1 Q AND IF EQUIPMENT WAS INVOLVED, TO DOCUMENT
2 THE EQUIPMENT INVOLVED?

3 A CORRECT.

4 Q AND IN THIS SPECIFIC -- WITH RESPECT TO
5 THIS SPECIFIC INCIDENT, DID YOU DOCUMENT -- OR OBTAIN
6 INFORMATION AS TO ALL THOSE TOPICS?

7 A CAN YOU REPEAT THAT?

8 Q SURE.

9 IN YOUR INVESTIGATION INTO THE INCIDENT
10 INVOLVING MR. CAMACHO, DID YOU ATTEMPT TO OBTAIN
11 INFORMATION REGARDING EACH OF THOSE TOPICS?

12 A YES.

13 Q AND YOU -- DID YOU INTERVIEW WITNESSES?

14 A YES.

15 Q WHO -- WHICH WITNESSES DID YOU INTERVIEW?

16 A THE OTHER GENTLEMAN, I DON'T REMEMBER HIS
17 NAME, WHO WAS IN THE FORKLIFT -- OR THE SCISSOR LIFT,
18 EXCUSE ME, WITH MR. CAMACHO.

19 Q I'M SORRY, CAN YOU SPEAK UP A TINY BIT.
20 THE AIR IS ON.

21 A THE OTHER PERSON THAT WAS IN THE SCISSOR
22 LIFT WITH MR. CAMACHO.

23 Q OKAY. DO YOU KNOW THAT PERSON'S NAME?

24 A I DO NOT REMEMBER.

25 Q HAVE YOU EVER SPOKEN WITH HIM BEFORE?

26 A I COULDN'T TELL YOU. I DON'T KNOW.

1 Q WAS IT YOUR UNDERSTANDING HE WAS AN
2 EMPLOYEE OF AGS?

3 A YES.

4 Q AND WHEN DID YOU INTERVIEW HIM?

5 A SHORTLY AFTER THE ACCIDENT.

6 Q WAS IT THE SAME DAY?

7 A YEP, YES.

8 Q OKAY. DID YOU GIVE HIM A LITTLE BIT OF
9 TIME TO TRY TO CALM DOWN AFTERWARD; DO YOU RECALL?

10 A YES.

11 Q OKAY. AND HE WAS PRETTY UPSET?

12 A EVERYBODY WAS, YES.

13 Q OKAY. HOW DID YOU -- LET'S BACK UP FOR A
14 LITTLE BIT.

15 HOW DID YOU FIRST LEARN THAT THERE HAD
16 BEEN AN INCIDENT ON THE JOB SITE THAT DAY?

17 A I DON'T REMEMBER. I KNOW SOMEBODY SAID
18 THERE WAS AN ACCIDENT ON THE MAIN FLOOR; WE NEED
19 EVERYBODY UP THERE RIGHT NOW. I DON'T REMEMBER IF
20 SOMEBODY TOLD ME THAT FACE TO FACE OR CALLED ME AND
21 TOLD ME. I DON'T REMEMBER. I JUST REMEMBER THERE
22 WAS AN ACCIDENT AND WE ALL NEEDED TO GET UP THERE
23 RIGHT NOW.

24 Q DO YOU RECALL WHERE YOU WERE WHEN YOU
25 HEARD THAT?

26 A NO.

1 IT.

2 A CORRECT. CORRECT.

3 Q AND DO YOU SPEAK SPANISH?

4 A NO.

5 Q ALL RIGHT. THE -- AND YOU DON'T RECALL
6 EXACTLY HOW LONG AFTER THE ACTUAL INCIDENT WAS WHEN
7 YOU INTERVIEWED HIM, CORRECT?

8 A NO.

9 Q WAS -- WELL, I'LL REPRESENT TO YOU THAT
10 THE INDIVIDUAL WHO WAS ON THE LIFT WITH MR. CAMACHO,
11 HIS NAME WAS TITO FIGUEROA.

12 A THAT SOUNDS FAMILIAR, YES.

13 Q OKAY. AND THE -- WHEN YOU CALLED HIM INTO
14 R.D. OLSON'S OFFICE, DID HE APPEAR TO STILL BE PRETTY
15 SHAKEN UP TO YOU?

16 A YES.

17 Q AND THE INFORMATION -- DID YOU DOCUMENT
18 THE INFORMATION THAT HE TOLD YOU IN THE ACCIDENT
19 INVESTIGATION DOCUMENT?

20 A YES.

21 Q DID YOU -- AT THAT POINT HAD YOU TAKEN ANY
22 PHOTOGRAPHS?

23 A I DON'T REMEMBER IF I TOOK THEM BEFORE OR
24 AFTER. I DON'T REMEMBER.

25 Q AT SOME POINT YOU TOOK PHOTOS?

26 A YES.

1 Q BUT YOU DON'T RECALL IF YOU HAD THEM WITH
2 YOU AND YOU WERE SHOWING THEM TO MR. FIGUEROA DURING
3 THAT INTERVIEW?

4 A I DON'T REMEMBER.

5 Q THE -- YOUR PURPOSE OF THE INVESTIGATION
6 WASN'T TO CONCLUDE WHAT THE CAUSE OF THE FALL WAS,
7 CORRECT?

8 A NO.

9 MR. ZINDER: OBJECTION, YOUR HONOR. LEADING.

10 THE COURT: SUSTAINED.

11 BY MS. RUBY:

12 Q WAS THE PURPOSE OF YOUR INVESTIGATION TO
13 CONCLUDE THE CAUSE OF THE FALL?

14 MR. ZINDER: SAME OBJECTION.

15 THE COURT: SUSTAINED.

16 WHAT WAS THE PURPOSE OF YOUR
17 INVESTIGATION?

18 BY MS. RUBY:

19 Q WHAT WAS THE PURPOSE OF YOUR
20 INVESTIGATION?

21 A TO FIND THE FACTS ON WHAT HAPPENED.

22 Q AND THE -- DID YOU TAKE ANY OTHER WITNESS
23 STATEMENTS OTHER THAN MR. FIGUEROA?

24 A I DON'T BELIEVE SO.

25 Q DID YOU INTERVIEW ANYONE ELSE OTHER THAN
26 HIM?

1 A DO WHAT?

2 Q DO YOU RECALL WHAT HE SAID?

3 A HE BENT OVER TO PICK UP THE GLASS FROM THE
4 BOTTOM.

5 Q ANYTHING ELSE THAT YOU RECALL HE SAID?

6 A HE HAD A -- HE HAD A GLASS CUP, AND HE HAD
7 THE CUP CONNECTED TO THE BOTTOM OF THE GLASS, AND HE
8 BENT OVER TO PICK IT UP, AND HE FELL.

9 Q WHAT'S A GLASS CUP?

10 A IT IS A SUCTION DEVICE PEOPLE USE TO MOVE
11 GLASS.

12 Q OKAY. ANYTHING ELSE THAT YOU RECALL
13 MR. FIGUEROA TELLING YOU DURING THAT INTERVIEW?

14 A THE CHAIN WASN'T LOCKED, AND AFTER HE
15 FELL, HE CAME DOWN TO CHECK ON HIM.

16 Q AFTER MR. CAMACHO FELL, MR. FIGUEROA CAME
17 DOWN TO CHECK ON HIM?

18 A CORRECT.

19 Q DO YOU RECALL ANYTHING ELSE THAT HE SAID?

20 A NOT OFFHAND, NO.

21 Q AND DID YOU ASK HIM THE DIRECT QUESTION,
22 WAS THE CHAIN LATCHED AT THE TIME?

23 A YES.

24 Q DID YOU ASK THAT BECAUSE YOU KNEW THAT WAS
25 A COMMON THING THAT WORKERS WOULD FORGET TO DO?

26 MR. ZINDER: OBJECTION, YOUR HONOR. LEADING.

1 THE COURT: SUSTAINED.

2 BY MS. RUBY:

3 Q WHY DID YOU ASK IF THE CHAIN WAS LATCHED
4 OR NOT?

5 A I NEEDED TO SEE IF -- HOW HE FELL OUT OF
6 THE LIFT.

7 Q AND WHY WAS THAT SPECIFIC QUESTION
8 SOMETHING THAT YOU ASKED?

9 A BECAUSE --

10 MR. ZINDER: OBJECTION, YOUR HONOR. ASKED AND
11 ANSWERED.

12 THE COURT: OVERRULED.

13 YOU CAN ANSWER.

14 THE WITNESS: SAY THAT AGAIN, PLEASE.

15 BY MS. RUBY:

16 Q WHY DID YOU THINK TO ASK THAT SPECIFIC
17 QUESTION IN TRYING TO FIGURE OUT HOW HE FELL OUT?

18 A BECAUSE I HAD LOOKED AT THE LIFT AFTER THE
19 ACCIDENT AND KNEW THE CHAIN WAS TRAPPED BEHIND A
20 PIECE OF GLASS. IT COULDN'T BE LOCKED CORRECTLY.
21 AND IN THE BEGINNING, THEY KEPT TELLING ME THAT THE
22 CHAIN WAS LOCKED.

23 Q THAT THE CHAIN WAS LOCKED?

24 A YES.

25 Q WHO WAS TELLING YOU THAT?

26 A IT WAS BEFORE WE GOT INTO THE INTERVIEW

1 MR. ZINDER: I'M SORRY, I DON'T WANT TO YELL.

2 VAGUE AND OVERLY BROAD AS TO WHEN OTHER
3 PICTURES WERE TAKEN.

4 THE COURT: SUSTAINED. WHY DON'T YOU REPHRASE
5 THAT QUESTION. IF YOU WANT.

6 MS. RUBY: YEAH, IT DOESN'T MATTER.

7 BY MS. RUBY:

8 Q OKAY. THE NEXT PHOTOGRAPH, WHAT'S
9 DEPICTED IN IT?

10 A BROKEN SHEETROCK.

11 Q AND DID MR. FIGUEROA TELL YOU DURING YOUR
12 INTERVIEW WHEN THAT SHEETROCK WAS BROKEN?

13 A YES.

14 Q WHAT DID HE SAY?

15 A THE -- MR. CAMACHO HAD -- HE BELIEVED
16 MR. CAMACHO HAD STEPPED ON THE OUTSIDE OF THE LIFT,
17 WHICH BROKE IT RIGHT THERE, AND THAT'S HOW HE FELL.

18 Q THAT WAS DURING THAT INITIAL INTERVIEW
19 THAT YOU HAD WITH MR. FIGUEROA?

20 A I BELIEVE SO.

21 Q THE -- DID MR. FIGUEROA TELL YOU ANYTHING
22 ABOUT -- OR DID HE TELL YOU WHY HE THOUGHT THAT?

23 A HE SAW IT HAPPEN.

24 Q OKAY. MR. FIGUEROA SAID HE ACTUALLY SAW
25 THAT HAPPEN TO YOU?

26 A I BELIEVE SO. HE SAW HIM FALL.

1 Q OKAY. AND HE TOLD YOU THAT HE SAW THE
2 SHEETROCK BREAK?

3 A HE SAID HE SAW HIM STEP OUT ON THE END OF
4 IT, SO I -- I DON'T KNOW IF HE SAID HE SAW IT BREAK,
5 BUT HE SAW HIM STAND ON THE END OF IT, WHICH WOULD
6 HAVE BROKE IT, THE SHEETROCK. LOOKING AT THE PAST
7 PICTURES FROM THE SIDE, THE SHEETROCK EXTENDED PAST
8 THE LIFT MAYBE -- I DON'T KNOW, MAYBE A FOOT.

9 Q AND WAS THAT DURING THE AUDIO-RECORDED
10 CONVERSATION YOU HAD WITH HIM?

11 A I BELIEVE SO.

12 Q IS IT YOUR -- NOW, WOULD YOU CONSIDER A
13 SCISSOR LIFT WITH SHEETROCK EXTENDING OVER THE EDGE
14 OF THE SCISSOR LIFT TO BE A SAFETY ISSUE?

15 A AT THAT TIME, NO, NOT UNTIL THIS, NO.

16 Q OKAY. AND SO AT NO POINT PRIOR TO THE
17 INCIDENT INVOLVING MR. CAMACHO WOULD YOU HAVE
18 CONSIDERED SHEETROCK EXTENDING OFF THE PLATFORM
19 UNBROKEN TO BE A SAFETY ISSUE?

20 A NO.

21 Q THAT'S CORRECT?

22 A CORRECT.

23 Q OKAY. THE -- OKAY, YEAH. LET'S GO TO
24 THIS PHOTOGRAPH. WHAT'S DEPICTED IN THIS PHOTOGRAPH?

25 MS. RUBY: BRIAN, DO HAVE THE NUMBER?

26 THE COURT: WHAT'S THIS PHOTOGRAPH,

1 MR. POULTER?

2 MR. POULTER: YES, SIR. RDO 000425.

3 THE WITNESS: IT'S SHOWING A COUPLE PANES OF
4 GLASS LEANING AGAINST THE LOCKING MECHANISM OF THE
5 CHAIN.

6 BY MS. RUBY:

7 Q AND IS THIS HOW YOU RECALL THE GLASS BEING
8 POSITIONED WHEN YOU SAW IT AT SOME POINT WHEN YOU
9 WENT AND LOOKED AT IT?

10 A YES.

11 Q AND THIS IS THE PHOTOGRAPH THAT LED YOU TO
12 THE OPINION THAT THE CHAIN COULDN'T -- OR THE LATCH
13 COULD NOT BE UNDONE?

14 A CORRECT.

15 Q DID YOU -- WHAT -- JUST SPECIFICALLY WHAT
16 DO YOU MEAN BY THAT?

17 A I DON'T UNDERSTAND THE QUESTION.

18 Q WHY COULD IT NOT BE UNDONE?

19 A THE GLASS IS LEANING UP AGAINST THE
20 LOCKING MECHANISM, WHICH IS TIGHT AGAINST THE METAL
21 HOOK THERE, SO YOU COULDN'T GET THE CHAIN OFF. YOU
22 COULDN'T UNHOOK IT TO HOOK IT TO THE OTHER SIDE.

23 Q WHEN YOU SAY "THE LOCKING MECHANISM," IS
24 THAT SOMETHING DIFFERENT THAN THE LATCH THAT WE SEE
25 HERE?

26 A NO. THE LATCH, THE LOCKING MECHANISM, THE

1 LATCH ON THE CHAIN, YES.

2 Q OKAY. AND THEN DID YOU ACTUALLY TEST IT
3 TO SEE IF YOU COULD UNLATCH IT?

4 A YES.

5 Q AND YOU COULDN'T?

6 A CORRECT.

7 Q MR. GILLETTE NEVER INDICATED TO YOU
8 ANYTHING REGARDING MR. CAMACHO'S TRAINING, DID HE?

9 MR. ZINDER: OBJECTION, YOUR HONOR. HEARSAY.

10 THE COURT: SUSTAINED.

11 BY MS. RUBY:

12 Q THE -- DID YOU EVER GET INFORMATION FROM
13 MR. GILLETTE REGARDING THE INCIDENT?

14 MR. ZINDER: OBJECTION, YOUR HONOR. HEARSAY.

15 THE COURT: HE CAN ANSWER THAT YES OR NO. SHE
16 DIDN'T ASK FOR THE CONTENT.

17 MR. ZINDER: I'M SORRY.

18 THE WITNESS: CAN YOU REPEAT THAT?

19 BY MS. RUBY:

20 Q DID YOU EVER GET ANY INFORMATION DIRECTLY
21 FROM MR. GILLETTE REGARDING THE INCIDENT?

22 A I DON'T BELIEVE SO.

23 Q OKAY. AND DID YOU EVER OBTAIN ANY
24 INFORMATION FROM ANYONE REGARDING MR. CAMACHO'S
25 TRAINING OR LACK THEREOF?

26 MR. ZINDER: OBJECTION, YOUR HONOR. CALLS FOR

1 LET ME ASK IT BETTER. I'M GETTING
2 DISTRACTED BY THE FLASHING WHATEVER. I JUST CATCH IT
3 OUT OF THE PERIPHERY, AND I DON'T KNOW WHAT'S GOING
4 ON. DON'T ASK ME TO DO IT. THAT'S ALL RIGHT. WE'RE
5 ALL IN THIS TOGETHER.

6 MR. EVANS, IF YOU HAD WALKED BY A PART OF
7 THE LOBBY IN THE PAS?A HOTEL AND YOU HAD SEEN A LIFT
8 ELEVATED AT 12 TO 14 FEET AND A PIECE OF SHEETROCK
9 STICKING OUT, SINGLE PIECE, AND TWO PEOPLE IN THE
10 LIFT AND ONE PERSON STANDING NEAR THE EDGE WITH NO
11 MID-RAIL SAFETY CHAIN LATCHED, WOULD THAT BE A SAFETY
12 ISSUE TO YOU?

13 A NO. THE SAFETY ISSUE WOULD BE THE
14 LATCH -- THE CHAIN NOT LOCKED.

15 Q SO THE CHAIN NOT LOCKED. NOW, WHY WOULD
16 THE CHAIN NOT LOCKED BE THE SAFETY ISSUE?

17 A BECAUSE THAT ALLOWS SOMEBODY TO GET
18 INJURED BY FALLING OUT.

19 Q ARE YOU FAMILIAR WITH THE JLG 1930 ES
20 SCISSOR LIFT?

21 A I'VE SEEN A LOT. I COULDN'T TELL YOU --
22 I'VE SEEN A LOT OF THEM. I COULDN'T TELL YOU YES OR
23 NO, REALLY, ON THAT.

24 Q OKAY. YOU'VE SEEN A LOT OF ELECTRIC
25 SCISSOR LIFTS ON JOB SITES?

26 A YES.

1 Q AND A LOT OF THEM OR THE SMALLER ONES, THE
2 19 FOOTERS, CORRECT?

3 A CORRECT.

4 Q AND ALL OF THE 19-FOOTERS, AS YOU
5 UNDERSTAND IT, THEY'RE BASICALLY ALL THE SAME?

6 A FOR THE MOST PART.

7 Q DIFFERENT COLORS, MAYBE?

8 A YEAH, CORRECT.

9 Q AND THEY HAVE CHAINS AT THE ENTRANCE FOR
10 THE MID-RAIL?

11 A SOME HAVE CHAINS AND SOME HAVE A GATE.

12 Q IF YOU SAW ONE WITH A CHAIN FOR THE
13 MID-RAIL, DOES THAT POSE A SAFETY HAZARD?

14 A NO.

15 Q HAVE YOU EVER HEARD OF A WORKER FALLING
16 OUT OF A 19-FOOT SCISSOR LIFT WITH A CHAIN --

17 A NO.

18 Q -- BEING PROPERLY LATCHED?

19 MS. RUBY: YOUR HONOR, OBJECT TO THE EXTENT
20 IT'S NOT LIMITED TO THE 1930 ES.

21 THE COURT: SUSTAINED.

22 BY MR. ZINDER:

23 Q RELATIVE TO A 1930 ES, HAVE YOU EVER HEARD
24 OF A WORKER FALLING OUT OF A SCISSOR LIFT IF THE
25 MID-RAIL SAFETY CHAIN WAS LATCHED, OTHER THAN THIS
26 INCIDENT?

1 CHAIN, TAKE A PICTURE OF THE CORRECTION AND THEN
2 SPEAK WITH THE FOREMAN AFTER THE FACT.

3 Q OKAY. AND ON THE -- IN YOUR EXPERIENCE,
4 WHEN YOU'RE HAVING A CONVERSATION WITH A
5 SUBCONTRACTOR REGARDING A CHAIN THAT'S NOT LATCHED,
6 HAVE YOU -- HAS IT BEEN YOUR IMPRESSION THAT THE
7 WORKER DIDN'T UNDERSTAND THE SIGNIFICANCE OF HAVING A
8 CHAIN LATCHED OR UNLATCHED?

9 MR. ZINDER: OBJECTION. SPECULATION, LEADING.

10 THE COURT: SUSTAINED.

11 BY MS. RUBY:

12 Q THE -- YOU'VE HAD -- OR HAVE YOU HAD
13 OCCASION WHERE YOU'VE HAD TO EXPLAIN TO A WORKER WHY
14 THEY SHOULD HAVE THE CHAIN LATCHED ON A SCISSOR LIFT?

15 MR. ZINDER: OBJECTION, YOUR HONOR. LEADING,
16 OVERLY BROAD.

17 THE COURT: OVERRULED.

18 THE WITNESS: EXPLAIN WHY? CAN YOU CLARIFY THE
19 QUESTION, PLEASE?

20 BY MS. RUBY:

21 Q SURE. WHEN YOU -- ON THOSE OCCASIONS
22 WHERE YOU'VE PERSONALLY ADDRESSED THE FACT THAT A
23 CHAIN WASN'T LATCHED ON A SCISSOR LIFT, DID YOU TELL
24 THE WORKER EVER -- OR DID YOU EVER TELL THE WORKER
25 WHY THEY SHOULD LATCH THE SAFETY CHAIN?

26 A IN REFERENCE TO CONSTRUCTION SAFETY

1 STANDARDS, YES.

2 Q OKAY. AND WAS YOUR EXPERIENCE THAT
3 WORKERS SOMETIMES THOUGHT THE IMPORTANCE OF LATCHING
4 THE CHAIN WAS MINIMAL?

5 MR. ZINDER: OBJECTION, YOUR HONOR. CALLS FOR
6 SPECULATION AS PHRASED.

7 THE COURT: SUSTAINED.

8 BY MS. RUBY:

9 Q THE PAS?A HOTEL PROJECT, ON MULTIPLE
10 OCCASIONS YOU OBSERVED SCISSOR LIFTS WITH MISSING
11 CHAINS -- MISSING CHAINS, CORRECT?

12 MR. ZINDER: OBJECTION, YOUR HONOR. VAGUE, NOT
13 LIMITED TO 1930, NOT LIMITED AS TO TIME.

14 THE COURT: SUSTAINED.

15 BY MS. RUBY:

16 Q DO YOU RECALL SEEING SCISSOR LIFTS ON THE
17 PAS?A HOTEL PROJECT WITH MISSING CHAINS?

18 MR. ZINDER: OBJECTION, YOUR HONOR. NOT
19 LIMITED TO 1930 SCISSOR LIFT BY JLG.

20 THE COURT: SUSTAINED.

21 BY MS. RUBY:

22 Q THE -- ON OCCASIONS WHERE YOU'VE SEEN A
23 SCISSOR LIFT WITH A MISSING CHAIN, WHAT HAVE YOU DONE
24 IN RESPONSE --

25 MR. ZINDER: I'M SORRY, MS. RUBY. I APOLOGIZE.
26 OBJECTION, YOUR HONOR, AS PHRASED

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
DEPARTMENT C-14

RAUL CAMACHO, AN INDIVIDUAL)
 BY AND THROUGH HIS GUARDIAN)
 AD LITEM, LUCIA R.)
 MATURRANO; AND LUCIA R.)
 MATURRANO, AN INDIVIDUAL,)
)
 PLAINTIFF(S))
)
 VS.) CASE NO. 2017-00902499
)
 JLG INDUSTRIES, INC. A)
 CALIFORNIA CORPORATION;)
 SUNBELT RENTALS, INC. A)
 CALIFORNIA CORPORATION; AND)
 DOES 1-50, INCLUSIVE,)
 CALIFORNIA CORPORATION; AND)
 DOES 1 THROUGH 10, INCLUSIVE,)
)
 DEFENDANT(S) .)
 _____)

THE HONORABLE ROBERT J. MOSS, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SEPTEMBER 7, 2021

(AFTERNOON SESSION)

APPEARANCES OF COUNSEL ON FOLLOWING PAGE

LISA A. AUGUSTINE, RPR, CSR #10419
OFFICIAL COURT REPORTER PRO TEMPORE

1 TRAINING WITH MR. GILLETTE, DID
2 HE SHOW YOU SAFETY DECALS ON
3 THE SCISSOR LIFT?

4 "ANSWER: I DON'T RECALL."

5 Q AND YOU UNDERSTAND WHAT PERSONAL FALL
6 PROTECTION IS, YES, SIR?

7 A THAT'S IN REGARDS TO THE HARNESS AND HOW TO
8 OPERATE THE SCISSOR.

9 Q THE HARNESS AND LANYARD, YES, SIR?

10 A YES, I REMEMBER THAT.

11 Q AND YOU KNEW THAT THEY WERE AVAILABLE ON THE
12 JOB SITE BUT THAT THEY WERE NOT REQUIRED, TRUE?

13 A YES.

14 Q AND, IN FACT, IT WAS MR. GILLETTE DURING
15 THAT TRAINING IS THE PERSON WHO INFORMED YOU THAT THE
16 HARNESSES WERE AVAILABLE IF YOU WANTED TO USE IT, BUT THAT
17 THEY WERE NOT REQUIRED ON THE JOB SITE; TRUE?

18 A I DO NOT UNDERSTAND THAT QUESTION. HOW IS
19 THAT?

20 Q YES, SIR. I'LL REASK IT FOR YOU.

21 THE QUESTION WAS: ON THE TRAINING ON
22 DECEMBER 7TH, 2015, THE DAY BEFORE THE FALL, IT WAS
23 ACTUALLY MR. GILLETTE, THE SUPERVISOR WHO CONDUCTED YOUR
24 TRAINING, WHO INFORMED YOU THAT THE FALL PROTECTION, THE
25 HARNESS, WAS AVAILABLE FOR USE BUT THAT IT WAS NOT
26 REQUIRED ON THAT SPECIFIC JOB SITE; TRUE?

1 A I DO NOT REMEMBER HIM SAYING THAT.

2 MR. POULTER: PERMISSION TO READ FROM VOLUME 1
3 DEPOSITION OF TITO FIGUEROA PAGE 44, LINES 21 THROUGH 24.

4 MR. ZINDER: NO OBJECTION, YOUR HONOR.

5 MR. POULTER: (READING)

6 "QUESTION: BUT IN NEITHER EVENT
7 MR. GILLETTE NEVER INFORMED YOU,
8 DURING THE TRAINING, THAT YOU
9 WERE SUPPOSED TO WEAR A HARNESS;
10 IS THAT RIGHT?

11 "ANSWER: YES."

12 A LIKE I SAID, I DO NOT REMEMBER.

13 Q THAT'S OKAY. THAT'S FINE.

14 SIR, YOU UNDERSTOOD THAT PRIOR TO OPERATING
15 THAT SCISSOR LIFT, THE OPERATOR OF THE MACHINE, BEING YOU,
16 IS NOT PERMITTED TO ACCEPT OPERATING RESPONSIBILITY UNTIL
17 THE FULL MANUAL HAS BEEN READ; TRUE?

18 THE INTERPRETER: THE LAST PART OF YOUR QUESTION
19 "UNTIL THE FULL."

20 MR. POULTER: MANUAL. THE OPERATOR'S MANUAL.

21 THE INTERPRETER: THANK YOU.

22 THE WITNESS: YES.

23 BY MR. POULTER: Q AND YOU DID, IN FACT,
24 READ THE MANUAL BEFORE YOU OPERATED THE SCISSOR LIFT;
25 CORRECT?

26 A I DO NOT REMEMBER IF I READ IT ON THAT DAY.

1 FIGUEROA.

2 MR. ZINDER: ARE YOU OKAY TO PROCEED, MR.
3 FIGUEROA?

4 THE WITNESS: YES.

5 MR. ZINDER: THANK YOU. I APPRECIATE IT VERY
6 MUCH.

7 CROSS-EXAMINATION

8 BY MR. ZINDER: Q SIR, DURING THE TRAINING,
9 LET'S GO BACK TO THAT. THAT WAS THE FIRST TIME YOU MET
10 MR. CAMACHO, CORRECT?

11 A I DO NOT REMEMBER IF IT WAS AT THE TRAINING.

12 Q DO YOU HAVE ANY RECOLLECTION OF MEETING HIM
13 BEFORE?

14 A IN REALITY, I DO NOT REMEMBER.

15 Q MR. FIGUEROA, WERE YOU PRESENT WHILE MR.
16 GILLETTE WAS MAKING HIS EXPLANATIONS OF THE SAFETY
17 FEATURES OF THE SCISSOR LIFT TO BOTH YOU AND RAUL CAMACHO?

18 A YES.

19 Q AND MR. GILLETTE SPOKE TO BOTH OF YOU IN
20 ENGLISH?

21 A YES.

22 Q HE ALSO USED HIS HAND TO POINT OUT CERTAIN
23 FEATURES OF THE LIFT, CORRECT, USING HIS FINGERS?

24 A I DO NOT REMEMBER.

25 Q DURING THE TIME THAT MR. GILLETTE WAS
26 TRAINING BOTH YOU AND MR. CAMACHO, HE WAS ESSENTIALLY

1 GOING OVER THE FEATURES THAT YOU ALREADY KNEW; CORRECT?

2 A YES.

3 Q AND HE WAS GOING OVER THE FEATURES AT THE
4 SAME TIME WITH YOU AND MR. CAMACHO?

5 A YES.

6 Q AND THE PRIMARY FEATURES THAT YOU REMEMBER
7 HIM GOING OVER WAS THE FACT THAT THE SAFETY CHAIN HAD TO
8 BE LATCHED EVERY TIME BEFORE THE LIFT WAS RAISED; CORRECT?

9 A YES.

10 Q AND HE ALSO TOLD YOU THAT AS THE OPERATOR,
11 IT WAS YOUR RESPONSIBILITY TO ASSURE THAT AFTER MR.
12 CAMACHO GOT ON THE LIFT, BEFORE YOU RAISED IT, THAT THE
13 CHAIN WAS ACROSS THE ENTRANCE; CORRECT?

14 A YES, BUT THAT WAS IF I WAS BY MYSELF.

15 Q DID HE TELL YOU THAT IT WAS YOUR
16 RESPONSIBILITY AS THE OPERATOR, ALONG WITH YOUR PASSENGER,
17 TO MAKE SURE THAT THE CHAIN WAS LATCHED BEFORE YOU RAISED
18 THE LIFT?

19 A CORRECT.

20 Q AND YOU UNDERSTOOD THAT THERE WERE CERTAIN
21 DECALS AND PLACARDS ON THE LIFT THAT GAVE YOU A SUMMARY OF
22 CERTAIN INSTRUCTIONS; CORRECT?

23 A I THINK SO.

24 Q I KNOW IT'S HARD FOR YOU TO REMEMBER THAT
25 TIME, AND I APPRECIATE THAT. SO I'LL TRY TO MAKE IT AS
26 EASY AS I CAN, SIR.

1 A YES.

2 Q BEFORE WE GET INTO THE PLACARDS AND THE
3 WARNINGS, LET ME SHOW EXHIBIT 29-1.

4 CAN WE SHARE THAT SCREEN, PLEASE.

5 MR. FIGUEROA, DO YOU RECOGNIZE THIS AS A
6 PICTURE OF THE SCISSOR LIFT AFTER YOU LOWERED IT, AFTER
7 MR. CAMACHO FELL OUT; CORRECT?

8 A WHAT WAS THE QUESTION AGAIN?

9 Q IS THAT HOW THE LIFT LOOKED AFTER YOU
10 LOWERED IT TO CHECK ON MR. CAMACHO?

11 A I THINK SO.

12 Q AND I'D LIKE YOU TO LOOK AT THE WATER
13 BOTTLE. DO YOU SEE THE WATER BOTTLE?

14 A YES.

15 Q AND YOU SEE THE HANDLE STICKING OUT FROM THE
16 RAIL NEXT TO THE WATER BOTTLE?

17 A YES.

18 Q AND YOU KNEW THAT WAS A POINT FOR THE
19 ATTACHMENT OF A LANYARD AND HARNESS; CORRECT?

20 A YES.

21 THE COURT: LET'S TAKE OUR AFTERNOON RECESS. BE
22 BACK, PLEASE, AT 3:15.

23 (AFTERNOON RECESS.)

24 THE COURT: ALL RIGHT. ONCE AGAIN WE'RE BACK ON
25 THE RECORD IN CAMACHO VERSUS JLG INDUSTRIES.

26 AND MR. FIGUEROA, SIR, YOU'RE STILL UNDER

1 GOING OVER THE FEATURES THAT YOU ALREADY KNEW; CORRECT?

2 A YES.

3 Q AND HE WAS GOING OVER THE FEATURES AT THE
4 SAME TIME WITH YOU AND MR. CAMACHO?

5 A YES.

6 Q AND THE PRIMARY FEATURES THAT YOU REMEMBER
7 HIM GOING OVER WAS THE FACT THAT THE SAFETY CHAIN HAD TO
8 BE LATCHED EVERY TIME BEFORE THE LIFT WAS RAISED; CORRECT?

9 A YES.

10 Q AND HE ALSO TOLD YOU THAT AS THE OPERATOR,
11 IT WAS YOUR RESPONSIBILITY TO ASSURE THAT AFTER MR.
12 CAMACHO GOT ON THE LIFT, BEFORE YOU RAISED IT, THAT THE
13 CHAIN WAS ACROSS THE ENTRANCE; CORRECT?

14 A YES, BUT THAT WAS IF I WAS BY MYSELF.

15 Q DID HE TELL YOU THAT IT WAS YOUR
16 RESPONSIBILITY AS THE OPERATOR, ALONG WITH YOUR PASSENGER,
17 TO MAKE SURE THAT THE CHAIN WAS LATCHED BEFORE YOU RAISED
18 THE LIFT?

19 A CORRECT.

20 Q AND YOU UNDERSTOOD THAT THERE WERE CERTAIN
21 DECALS AND PLACARDS ON THE LIFT THAT GAVE YOU A SUMMARY OF
22 CERTAIN INSTRUCTIONS; CORRECT?

23 A I THINK SO.

24 Q I KNOW IT'S HARD FOR YOU TO REMEMBER THAT
25 TIME, AND I APPRECIATE THAT. SO I'LL TRY TO MAKE IT AS
26 EASY AS I CAN, SIR.

1 A I DON'T KNOW IF THIS IS THE EXACT LIFT BUT,
2 YEAH, IT'S SIMILAR.

3 Q IT LOOKS LIKE THE LIFT YOU WERE USING ON THE
4 DAY OF THE ACCIDENT; IS THAT CORRECT?

5 A YES.

6 Q AND THIS IS THE KIND OF SCISSOR LIFT YOU
7 WOULD USE MANY TIMES BEFORE IN YOUR WORK AS AN INSTALLER
8 FOR OTHER COMPANIES; CORRECT?

9 A YES.

10 Q THANK YOU. IT'S MY UNDERSTANDING THAT THE
11 CHAIN THAT WE SEE ACROSS AT MID POINT, THAT'S THE MID RAIL
12 SAFETY CHAIN THAT HAS TO BE LATCHED ACROSS THAT OPENING
13 EACH TIME BEFORE THE LIFT IS RAISED; IS THAT CORRECT?

14 A CORRECT.

15 Q AND EVEN THOUGH YOU KNEW THAT THAT NEEDED TO
16 BE DONE, MR. GILLETTE REMINDED YOU, DURING THE TRAINING OF
17 BOTH YOU AND MR. CAMACHO, THAT THAT CHAIN NEEDED TO BE
18 LATCHED EACH TIME BEFORE THE LIFT WAS RAISED; CORRECT?

19 A YES.

20 Q AND THAT CHAIN WAS THERE FOR YOUR SAFETY AND
21 SECURITY; CORRECT?

22 A YES.

23 Q AND IT WAS EXPLAINED THAT THIS WILL KEEP YOU
24 FROM FALLING OUT OF THE LIFT IF YOU CHAIN IT CORRECTLY
25 ACROSS; CORRECT?

26 A YES.

1 Q NOW, WHEN YOU GOT -- WHEN YOU WANT TO GET
2 INTO THE LIFT AND LOAD IT WITH THINGS LIKE GLASS PANELS,
3 YOU HAVE TO TAKE THAT CHAIN AND UNLATCH IT; CORRECT?

4 A YES.

5 Q AND WHEN LOOKING AT THIS PICTURE 123, THE
6 END THAT YOU WOULD UNLATCH IS THE END ON THE RIGHT SIDE OF
7 THE PICTURE THAT HAS A CLASP THAT YOU MOVE IN AND OUT AND
8 YOU TAKE THE CHAIN OFF; CORRECT?

9 A YES.

10 Q AND IT WAS YOUR CUSTOM AND PRACTICE THAT
11 WHEN YOU UNLATCH THE CHAIN, YOU WOULD THEN TAKE IT OVER TO
12 THE WHAT WOULD BE LEFT SIDE AND LATCH IT ONTO THE FIXATION
13 POINT SO THAT THE CHAIN HANGS DOWN BUT DOESN'T INTERFERE
14 WITH YOUR LOADING; CORRECT?

15 A YES.

16 Q AND YOU FOLLOWED THAT CUSTOM AND PRACTICE
17 WHILE WORKING AT THE AGS CONSTRUCTION SITE AT THE PASEA
18 HOTEL ON DECEMBER 7TH AND DECEMBER 8TH; CORRECT?

19 A YES.

20 Q NOW, THE SHEETROCK OR DRYWALL THAT WE SAW IN
21 THE PRIOR PICTURE --

22 IF WE COULD PUT THAT BACK UP, PLEASE --
23 EXHIBIT 27-1, I BELIEVE, YOUR HONOR -- 29-1.

24 THAT WAS NOT THE WAY MR. GILLETTE TRAINED
25 YOU AT THE PASEA HOTEL JOB SITE AS TO HOW TO CUSHION THE
26 GLASS. HE TOLD YOU TO USE 2X4S ONE IN EACH END OF THE

1 GLASS; CORRECT?

2 A YES.

3 Q AND YOU DON'T KNOW HOW IT WAS THAT THIS
4 SHEETROCK OR DRYWALL CAME TO BE ON THE PLATFORM FLOOR; IS
5 THAT CORRECT?

6 A IN REALITY, I DO NOT REMEMBER.

7 Q WHEN YOU FIRST GAVE YOUR DEPOSITION IN THIS
8 CASE, THE DEPOSITION WAS TAKEN IN OCTOBER OF 2018. THAT
9 HAD BEEN ABOUT FIVE YEARS SINCE THE ACCIDENT; CORRECT?
10 I'M SORRY, THREE YEARS. PUBLIC SCHOOL.

11 A IN REALITY, I DO NOT REMEMBER HOW LONG HAD
12 -- HOW LONG IT HAD GONE BY OR TIME HAD GONE BY.

13 Q PERFECTLY FINE.

14 A BECAUSE TO BE VERY HONEST WITH YOU, IF YOU
15 HAD NOT MENTIONED THAT THE ACCIDENT OCCURRED IN 2015, I
16 WOULD HAVE NOT EVEN REMEMBERED THAT.

17 Q I UNDERSTAND FOR A VARIETY OF REASONS YOU
18 WANT TO BLOCK IT OUT OF YOUR MEMORY.

19 A YES.

20 Q ON THE DAY OF THE ACCIDENT, THE AFTERNOON,
21 YOU GAVE A STATEMENT TO THE PEOPLE FROM R.D. OLSON;
22 CORRECT?

23 THE INTERPRETER: THE PEOPLE FROM WHERE, COUNSEL?

24 MR. ZINDER: THE PEOPLE FROM R.D. OLSON.

25 THE INTERPRETER: THANK YOU.

26 MR. ZINDER: YOU'RE WELCOME, SIR.

1 THE WITNESS: YES. IN REALITY, THERE WERE SO MANY
2 THINGS I SAID THAT I DON'T EVEN KNOW HOW I SAID THOSE
3 THINGS BECAUSE I HAD NO IDEA.

4 BY MR. ZINDER: Q MR. ROB EVANS FROM R.D.
5 OLSON HAS TESTIFIED THAT HE TOOK A STATEMENT FROM YOU JUST
6 A FEW HOURS AFTER THE ACCIDENT. DO YOU HAVE ANY REASON TO
7 DOUBT THAT?

8 A I REALLY DO NOT REMEMBER. ON THAT DAY I WAS
9 IN SO BAD A SHAPE THAT I COULDN'T EVEN DRIVE BACK TO MY
10 HOUSE. SOMEBODY ELSE HAD TO DRIVE ME HOME. IN REALITY, I
11 DO NOT REMEMBER.

12 Q IN YOUR DEPOSITION TAKEN IN THIS MATTER THAT
13 MR. POULTER HAS BEEN READING TO YOU, OCTOBER 2ND, 2018,
14 YOU DIDN'T RECALL WHETHER THE CHAIN WAS LATCHED OR
15 UNLATCHED; WAS THAT RIGHT?

16 A I TRULY DO NOT REMEMBER.

17 Q IT'S OKAY. IT'S BEEN READ INTO THE RECORD.
18 I'M NOT GOING TO GO THROUGH IT AGAIN WITH YOU.

19 A OKAY.

20 Q THEREAFTER YOU WERE PLAYED AN AUDIOTAPE IN
21 JANUARY OF 2020 TO HELP REFRESH YOUR RECOLLECTION IN THE
22 OFFICES OF YOUR ATTORNEY FOR AGS, MR. ROBERT JUSKY. DO
23 YOU REMEMBER LISTENING TO THAT TAPE?

24 A YES.

25 Q ACTUALLY THE DATE OF THAT DEPOSITION WAS
26 JULY 15TH, 2020.

1 A WELL, I DO NOT RECALL THE DATE, BUT I DO
2 REMEMBER WHEN THAT HAPPENED. IT WAS BEFORE I CAME TO
3 HOUSTON.

4 Q AND YOU LISTENED TO THE TAPE TO HELP REFRESH
5 YOUR RECOLLECTION; CORRECT?

6 A YES.

7 Q AND YOU TESTIFIED THAT IT REFRESHED YOUR
8 RECOLLECTION THAT YOU TOLD PEOPLE THAT THE CHAIN WAS NOT
9 LOCKED ACROSS AT THE TIME OF THE ACCIDENT; CORRECT?

10 A WELL, I DO REMEMBER THAT IT WAS NOT LOCKED
11 ON THE SCISSOR. THAT I DO REMEMBER.

12 Q WHEN YOU SAY NOT LOCKED ON THE SCISSOR, YOU
13 MEAN NOT LATCHED ACROSS THE OPENING AS SHOWN IN EXHIBIT
14 123?

15 A YES.

16 Q AND WHEN YOU WERE INTERVIEWED, ALTHOUGH
17 THERE WAS AN INTERPRETER THERE, YOU ACTUALLY ANSWERED THE
18 QUESTION OF THE CHAIN LOCK IN ENGLISH BECAUSE YOU DO SPEAK
19 SOME ENGLISH, DO YOU NOT?

20 A YES, I UNDERSTAND A LOT. THAT'S TRUE.

21 Q WOULD IT BE FAIR TO SAY THAT YOU CAN
22 UNDERSTAND AND READ ENGLISH TO YOURSELF MORE SO THAN YOU
23 CAN SPEAK ENGLISH CORRECTLY IN YOUR OPINION?

24 A IN MY OPINION -- IN MY OPINION, YES, I
25 UNDERSTAND IT, BUT I DO NOT SPEAK IT.

26 Q AND YOU CAN READ IT?

1 Q AND WHEN WE GO DOWN TO THE BULLET POINT
2 THAT'S HIGHLIGHTED, READ IT TO YOURSELF, PLEASE.

3 A (READING).

4 Q THAT'S OKAY. THAT'S PERFECTLY FINE, MR.
5 FIGUEROA. I WANTED YOU TO READ IT TO YOURSELF. I'LL READ
6 IT TO YOU AND ASK IF YOUR UNDERSTANDING IS THE SAME AS MY
7 READING TO MAKE IT GO FASTER FOR YOU, SIR. IS THAT OKAY
8 WITH YOU, SIR?

9 A YES.

10 Q SO WHEN I READ IT TO MYSELF IT SAID, "READ,
11 UNDERSTAND, AND OBEY ALL DANGERS, WARNINGS, CAUTIONS, AND
12 OPERATING INSTRUCTIONS ON THE MACHINE AND IN THIS MANUAL."

13 WHEN YOU READ IT TO YOURSELF, SIR, IS THAT
14 HOW YOU UNDERSTOOD IT?

15 A YES.

16 Q I'D LIKE TO SHOW HIM PAGE 1-4, PLEASE.
17 THIRD BULLET POINT DOWN FROM SAFETY PRECAUTIONS. ENLARGE
18 THAT, PLEASE. THANK YOU.

19 MR. FIGUEROA, SIR, PLEASE JUST READ THAT TO
20 YOURSELF FOR A MOMENT. YOU DON'T HAVE TO VERBALIZE IT.

21 A OKAY.

22 Q WHEN I READ IT TO MYSELF, I UNDERSTAND IT TO
23 MEAN, "WHEN TWO OR MORE PERSONS ARE IN THE PLATFORM, THE
24 OPERATOR SHALL BE RESPONSIBLE FOR ALL MACHINE OPERATIONS."

25 IS THAT WHAT YOU UNDERSTOOD, SIR?

26 A YES.

1 BODY HARNESS WITH A LANYARD ATTACHED TO AN AUTHORIZED
2 LANYARD ANCHORAGE POINT WHILE OPERATING THIS MACHINE."

3 IS THAT THE WAY YOU UNDERSTOOD IT, SIR?

4 A WELL, I DON'T KNOW IF THAT'S THE WAY I
5 UNDERSTOOD IT, BUT THEY WOULD EXPLAIN IT TO US, AND THAT'S
6 HOW I WOULD COME INTO SOME KNOWLEDGE OF IT.

7 Q OKAY.

8 I'D LIKE TO READ FROM HIS DEPOSITION, YOUR
9 HONOR, PAGE 155, LINES 5 THROUGH 11.

10 MR. POULTER: NO OBJECTION, YOUR HONOR.

11 THE COURT: GO AHEAD.

12 MR. ZINDER: (READING).

13 "QUESTION: SURE. WHAT IS YOUR
14 UNDERSTANDING OF WHAT THAT
15 SENTENCE MEANS?

16 "ANSWER: THAT YOU ALWAYS HAVE
17 TO HAVE YOUR HARNESS ON IN
18 ORDER TO ELEVATE IT AND TO
19 OPERATE IT.

20 "QUESTION: AND IT NEEDS TO BE
21 CONNECTED TO AN ANCHORAGE POINT
22 ON THE LIFT?

23 "ANSWER: CORRECT."

24 Q AND, SIR, YOU SEE A PICTURE IN THERE?

25 A YES.

26 Q AND WHAT DOES THAT PICTURE MEAN TO YOU?

1 A THAT MEANS THAT YOU HAVE TO WEAR A HARNESS,
2 AND THEN YOU HAVE TO SECURE THE HARNESS TO THAT JUST LIKE
3 I MENTIONED BEFORE.

4 Q I'M GOING TO SHOW YOU PICTURE 121, SIR.
5 WE'LL SHARE THE SCREEN. DO YOU SEE THAT PICTURE ON THE
6 SCREEN, SIR?

7 A YES.

8 Q AND DO YOU SEE AN ATTACHMENT POINT JUST
9 ABOVE THE PICTURE?

10 A CORRECT.

11 Q AND YOU WOULD KNOW THEN THAT THIS IS THE
12 PLACE WHERE YOU ATTACH YOUR LANYARD TO THE HARNESS THAT
13 YOU'RE WEARING; IS THAT CORRECT, SIR?

14 A YES.

15 Q I'M GOING TO SHOW YOU ONE OTHER PICTURE,
16 SIR. IT'S BEEN MARKED AS EXHIBIT 121.

17 YOUR HONOR, THE PRIOR ONE WAS 122.

18 SIR, DOES THAT SHOW YOU THE SAME PICTURE AND
19 WHERE TO ATTACH YOUR LANYARD ON THE LIFT?

20 A YES.

21 Q NOW, YOU TESTIFIED EARLIER, WHEN MR. POULTER
22 WAS QUESTIONING YOU, THAT THE THREE PANELS OF GLASS ON
23 THIS LAST TIME YOU USED THE LIFT, YOU WERE THE PERSON THAT
24 LOADED THEM ONTO THE LIFT BY YOURSELF; IS THAT CORRECT?

25 THE INTERPRETER: SORRY, COUNSEL, WILL YOU PLEASE
26 REPEAT THAT AGAIN FOR ME.

1 NEXT IN LINE.

2 THE COURT: YOU HAVE TO MARK IT AND PUT A COPY OF
3 IT ON A DRIVE THAT WILL GO IN THE COURT'S FILE.

4 MR. POULTER: YES, SIR. WHAT IS THE NEXT IN LINE,
5 MADAM CLERK?

6 THE CLERK: 124.

7 MR. POULTER: ALL RIGHT. SO ANIMATION NUMBER 1
8 WILL BE 124.

9 (WHEREUPON EXHIBIT 124 WAS MARKED FOR
10 IDENTIFICATION.)

11 BY MR. POULTER: Q SO THIS RIGHT HERE, THIS
12 WAS THE DEMONSTRATIVE ANIMATION THAT YOU HELPED PUT
13 TOGETHER WITH MR. SIMACEK AND MR. LANDERVILLE; CORRECT?

14 A YES.

15 Q AND TO BE CLEAR, WE'RE NOT INTENDING THIS TO
16 BE WHAT WE THINK 100 PERCENT WITHOUT A QUESTION HAPPENED,
17 TRUE?

18 A CORRECT.

19 Q AND WHY IS THAT?

20 A BECAUSE THERE'S LOTS OF UNKNOWNNS. I KNOW
21 MR. FIGUEROA WAS IN THE SCISSOR LIFT, BUT HE WASN'T
22 WATCHING MR. CAMACHO THE WHOLE TIME, AND THERE WAS NO ONE
23 ELSE THAT WITNESSED IT. SO THERE'S SOME ASSUMPTIONS THAT
24 HAVE TO BE MADE.

25 Q UNDERSTOOD. AND THROUGH THE COURSE OF
26 TAKING THE DEPOSITIONS OF THE DEFENSE EXPERTS IN THIS

1 CASE, WHICH YOU ALSO READ, DID YOU SEE EVIDENCE WHERE IT
2 WAS THEIR OPINION OR THEIR CONTENTION THAT THE CHAIN THAT
3 WE SEE HERE IN 124 PROVIDED THE SAME OR EQUIVALENT FALL
4 PROTECTION AS A SELF-LATCHING GATE WITH A TOE BOARD, DO
5 YOU REMEMBER THAT?

6 A YEAH, I READ THAT.

7 Q AND SO AT THAT POINT IN TIME WE ASKED YOU TO
8 CONDUCT A BIOMECHANICAL ANALYSIS BASED ON THE FACTS, THE
9 DIMENSIONS OF MR. CAMACHO, HEIGHT, WEIGHT, THE DIMENSIONS
10 OF THE EXEMPLAR LIFT THAT WERE LASER SCANNED TO DETERMINE
11 WHETHER OR NOT A MAN OF HIS SIZE DOING THE MOTIONS THAT WE
12 KNOW THROUGH THE TESTIMONY COULD FIT THROUGH THAT GAP,
13 TRUE?

14 A RIGHT.

15 Q AND WE ALSO DID TWO DIFFERENT DEMONSTRATIVE
16 ANIMATIONS. THIS ONE HAS THE SHEETROCK EXTENDED OUT PAST
17 THE PLATFORM; CORRECT?

18 A YES.

19 Q AND THE NEXT ONE WE DID REPRESENTATIVE OF IT
20 BEING BROKEN; CORRECT?

21 A THAT'S RIGHT.

22 Q AND WHY DID YOU DO IT THAT WAY?

23 A JUST TO SHOW THAT IT DOESN'T MAKE A
24 DIFFERENCE ONE WAY OR THE OTHER.

25 Q ALL RIGHT. LET'S GO AHEAD AND PLAY IT. I
26 MIGHT PLAY IT A COUPLE TIMES BECAUSE IT'S FAIRLY SHORT.

1 THAT THE HEIGHT THAT WE SEE HERE NOW OF THE SCISSOR LIFT
2 IS WHAT?

3 A THE HEIGHT OF THE PLATFORM THEY PUT IT AT
4 LIKE 8.5 FEET. I KNOW THERE WAS SOME ESTIMATES FROM MR.
5 FIGUEROA THAT IT WAS AT 12 FEET, BUT THEY PUT IT AT 8.5
6 FOR WHATEVER REASON. THE HEIGHT OF IT, TO ME, DOESN'T
7 MATTER.

8 Q AND WE SEE HERE, WHEN WE KEEP GOING IN THE
9 FRAME, THAT RIGHT THERE WE SEE A SLIGHT LEFT STEP DEPICTED
10 BY MR. CAMACHO; CORRECT?

11 A YEAH. MR. CAMACHO IS ON THE LEFT AND IN
12 ORDER FOR -- IF THE SHEETROCK WAS NOT BROKEN BEFORE HE
13 FELL OUT, THEN THE MOST LIKELY SCENARIO IS HE STEPPED TO
14 THE LEFT WITH HIS LEFT FOOT PERHAPS ADJUSTING HIS POSTURE
15 AS HE LIFTED OR PERHAPS THERE WAS SOME FORCE THAT NUDGED
16 HIM TO THE LEFT BECAUSE REMEMBER HE'S HOLDING A 60-POUND
17 WINDOW WITH ANOTHER PERSON TO HIS RIGHT, AND IF THAT
18 PERSON TO HIS RIGHT MOVES A LITTLE BIT, MR. CAMACHO MIGHT
19 HAVE TO ADJUST HIS STANCE. SO THAT JUST SHOWS MR.
20 CAMACHO'S LEFT FOOT STEPPING ONTO THE SHEETROCK, AND THE
21 SHEETROCK BREAKING UNDER SOME PART OF HIS BODY WEIGHT.

22 Q OKAY. AND BASED UPON THE REVIEW OF THE
23 EVIDENCE IN THIS CASE, DID YOU SEE ANY EVIDENCE,
24 WHATSOEVER, THAT MR. CAMACHO SLIPPED?

25 A NO. I ASSUMED HE STEPPED.

26 Q OKAY. NOW, LET'S GO AHEAD AND LOOK TOWARDS

1 THE NEXT DEMONSTRATIVE.

2 WE'LL MARK IT NEXT IN LINE, JUDGE, THAT'S
3 125.

4 THE COURT: YES.

5 (WHEREUPON EXHIBIT 125 WAS MARKED FOR
6 IDENTIFICATION.)

7 BY MR. POULTER: Q AND SO ESSENTIALLY DID
8 YOU KEEP THE BODY MOVEMENTS THE SAME FROM VIDEO TO VIDEO?

9 A FOR THE FIRST TWO, YES.

10 Q AND SO LET'S GO AHEAD AND PLAY THIS ONE
11 FIRST, AND THEN WE'LL ASK YOU SOME QUESTIONS ABOUT IT.

12 SO FROM A BIOMECHANIC STANDPOINT BASED UPON
13 WHAT YOU SAW AND WHAT YOU REVIEWED LOOKING AT THIS STUFF
14 AND BASING IT ON YOUR BACKGROUND, TRAINING, AND
15 EXPERIENCE, WHETHER THE PLATFORM WAS STICKING OUT OR
16 WHETHER IT WAS BROKEN DOWN, DOES IT CHANGE IN ANY WAY THE
17 BODY MOVEMENT OF MR. CAMACHO IN THIS PARTICULAR INSTANCE?

18 A NO. EITHER WAY HIS LEFT FOOT STEPS LEFT, HE
19 LOSES HIS BASE OF SUPPORT ON THE LEFT WHICH CAUSES HIS
20 BODY TO FALL DOWN AND TO THE LEFT.

21 Q AND SO TELL THE JURY A LITTLE BIT ABOUT WHAT
22 YOU DID TO EITHER CONFIRM OR DISPEL IN YOUR MIND THAT A
23 MAN OF MR. CAMACHO'S HEIGHT, WEIGHT, SIZE, COULD FIT
24 THROUGH THAT PORTION OF THE ENTRANCE OF THE SCISSOR LIFT
25 PROVIDED IF THE CHAIN WAS, IN FACT, LATCHED?

26 A WELL, EVERYTHING THERE IS TO SCALE. SO IT'S

1 A RATHER LARGE HOLE UNDER THIS FLEXIBLE CHAIN, AND IF MR.
2 CAMACHO'S LEFT FOOT IS JUST DROPPING OUT FROM UNDERNEATH
3 HIM UNEXPECTEDLY, THAT'S IMPORTANT. IT UNEXPECTEDLY DROPS
4 WHILE HE'S HOLDING HIS HANDS UP ON THIS WINDOW WHICH
5 REDUCES HIS ABILITY TO STOP HIS BODY FROM FALLING BECAUSE
6 HIS HANDS ARE ENGAGED. HIS RIGHT LEG WOULD FLEX OR
7 BASICALLY SQUAT, AND HIS BODY CAN JUST ROLL THROUGH.

8 AND I'VE SEEN SIMILAR FALLS ON SCAFFOLDS.
9 SO IT'S NOT JUST SOME MADE UP CONCEPT. THAT'S A METHOD TO
10 GET THROUGH THERE.

11 Q WHEN YOU SAY YOU'VE SEEN SIMILAR FALLS ON
12 SCAFFOLDS, WHAT DO YOU MEAN?

13 A WELL, I'VE SEEN CASES WHERE --

14 MR. LASKEY: OBJECTION. RELEVANCE, YOUR HONOR.

15 MR. POULTER: FORMS THE BASIS OF HIS OPINION, YOUR
16 HONOR.

17 THE COURT: OVERRULED.

18 THE WITNESS: SO SCAFFOLDS HAVE TO HAVE A TOP RAIL
19 ABOUT THE SAME HEIGHT AS THIS, A MID RAIL, AND THEY'RE
20 SUPPOSED TO HAVE A TOE BOARD AS WELL. AND I'VE SEEN
21 INDIVIDUALS, FOR EXAMPLE, CARRYING LUMBER ON THEIR
22 SHOULDER WITH THE RAILS TO THE RIGHT AND NO TOE BOARD AND
23 A CASE WHERE A GUY JUST STEPPED A LITTLE BIT TOO FAR TO
24 THE RIGHT WHERE THERE WAS NO TOE BOARD, HIS LEG WENT
25 THROUGH, HIS WHOLE BODY WENT THROUGH, AND DOWN HE WENT
26 FOUR STORIES. SO THERE'S A PURPOSE FOR TOE BOARDS, AND

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER
DEPARTMENT C-14

RAUL CAMACHO, AN INDIVIDUAL BY)
AND THROUGH HIS GUARDIAN AD)
LITEM LUCIA R. MATURRANO; AND)
LUCIA R. MATURRANO, AN) CASE NO.
INDIVIDUAL,) 30-2017-00902499-CU-
) PO-CJC
)
PLAINTIFF,)
)
VS.)
)
JLG INDUSTRIES, INC., A)
CALIFORNIA CORPORATION; SUNBELT)
RENTALS, INC., A CALIFORNIA)
CORPORATION; AND DOES 1-50,)
INCLUSIVE,)
)
DEFENDANT(S) .)
_____)

HONORABLE ROBERT J. MOSS, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SEPTEMBER 8, 2021

MORNING SESSION

APPEARANCES OF COUNSEL:

(CONTINUED ON NEXT PAGE.)

LISA S. ROULY, CRR, RPR, CSR NO. 9524
OFFICIAL COURT REPORTER PRO TEMPORE

1 AND ON THE TOPIC OF SCISSOR LIFTS, DO YOU
2 KNOW WHAT A SCISSOR LIFT IS?

3 A CORRECT.

4 Q YOU'RE PRETTY FAMILIAR WITH ONE, I WOULD
5 IMAGINE?

6 A YES, SIR.

7 Q OVER THE COURSE OF YOUR CAREER, HOW MANY
8 TIMES WOULD YOU SAY THAT YOU'VE BEEN ON PROJECTS THAT
9 HAD SCISSOR LIFTS PRESENT?

10 A ALMOST ALL PROJECTS WILL HAVE SCISSOR
11 LIFTS OR BOOM LIFTS.

12 Q AND I WOULD IMAGINE WITH YOUR LINE OF
13 WORK, SPECIFICALLY IN THE LAST TEN YEARS WITH AGS,
14 YOU SEE THEM AND YOU USE THEM A LOT TO GET TO HEIGHTS
15 TO PUT IN THE GLASS, CORRECT?

16 A CORRECT.

17 Q AT AGS, SPECIFIC TO THE PAS?A PROJECT --
18 OR EXCUSE ME, THE PAS?A HOTEL PROJECT, WERE YOU THE
19 PERSON RESPONSIBLE FOR RENTING HEAVY EQUIPMENT ON
20 THAT JOB FOR AGS?

21 A ON THAT PROJECT, I ACTUALLY WOULD CALL
22 INTO OUR OFFICE AND HAVE OUR GIRLS PLACE THE PURCHASE
23 ORDER FOR ANY EQUIPMENT. BUT YES, IT WAS -- I WAS
24 THE ONE THAT DICTATED WHAT EQUIPMENT WE GOT AND WHEN.

25 Q GOT IT.

26 AND WAS THAT CONSISTENT WITH YOUR JOB

1 MR. CAMACHO?

2 A I'M NOT AWARE OF ANY.

3 Q IS THERE -- TO YOUR UNDERSTANDING, IS
4 THERE ANY AGS POLICY THAT EITHER ALLOWS OR PROHIBITS
5 FELLOW AGS EMPLOYEES FROM TRAINING OTHER AGS
6 EMPLOYEES ON THE USE OF AERIAL PLATFORMS WITHOUT THIS
7 TRAIN THE TRAINER TYPE OF CERTIFICATION?

8 A NOT THAT I'M AWARE OF.

9 Q AND OVER THE TEN YEARS THAT YOU'VE WORKED
10 WITH AGS, AND STILL WORK WITH AGS, HOW MANY DIFFERENT
11 WORKERS WOULD YOU SAY THAT YOU'VE GIVEN THE SAME KIND
12 OF 30 ORIENTATION TRAINING THAT YOU GAVE TO TITO AND
13 RAUL?

14 A QUITE A FEW.

15 Q CAN YOU GIVE ME A NUMBER? IS IT 50?

16 A YEAH.

17 Q AND I MEAN, YOU'VE BEEN USING SCISSOR
18 LIFTS, SINCE, WHAT, AROUND 2000, I THINK I SAW IN
19 YOUR DEPOSITION?

20 A YEAH.

21 Q AND HOW MANY TIMES WOULD YOU SAY IN YOUR
22 PROFESSIONAL CAREER YOU HAVE OPERATED, NOT JUST SEEN,
23 BUT OPERATED A SCISSOR LIFT?

24 A IT WOULD BE IN THE HUNDREDS.

25 Q AND SO OBVIOUSLY YOU'RE FAMILIAR WITH
26 THESE TYPES OF HEAVY EQUIPMENT, CORRECT?

1 BY MR. POULTER:

2 Q ALL RIGHT. THEN, FAIR ENOUGH.

3 BUT IN ANY EVENT, AFTER WHATEVER IT WAS
4 YOU GUYS WERE DOING, EITHER YOU IDENTIFIED THAT TITO
5 WAS GOING TO BE THE GUY, OR TITO SPOKE UP AND SAID,
6 I'M MORE EXPERIENCED; LET ME TAKE LEAD. IS THAT
7 ABOUT RIGHT?

8 A CORRECT.

9 Q AND SO YOU WERE SATISFIED THAT IN THIS
10 PARTICULAR TWO-MAN CREW, TITO FIGUEROA WAS GOING TO
11 BE THE GUY CALLING THE SHOTS.

12 A CORRECT.

13 Q YOU ALSO HAD -- I THINK IT WAS PART OF
14 THAT SAME MEETING WHERE THE BOTH OF YOU -- EXCUSE ME,
15 THE THREE OF YOU WENT DOWN TO THE LOCKED EQUIPMENT
16 LOCKER AT AGS AND YOU SHOWED THEM THE HARNESSSES AND
17 THE LANYARDS, CORRECT?

18 A THAT'S WHERE -- AGAIN, WE FIRST MET THERE
19 AT OUR LOCK-UP AREA, AND I SHOWED THEM WHERE THE
20 HARNESSSES WERE AND THAT THEY WERE AVAILABLE TO THEM.
21 AND THEN WE ENDED UP AT THE PODIUM DECK, WHICH IS ONE
22 FLOOR ABOVE, WHERE THE LIFT WAS, AND WE WENT THROUGH
23 THE REST OF THE ORIENTATION, AND THEY SHOWED ME THAT
24 THEY WERE CAPABLE OF DOING THE JOB.

25 Q FANTASTIC.

26 YOU TOLD THEM IN THAT MOMENT THAT, HEY,

1 GUYS, HERE'S THE FALL PROTECTION. IT'S HERE TO USE
2 IT IF YOU WANT TO, BUT WE DON'T REQUIRE IT, AND YOU
3 DON'T HAVE TO.

4 A CORRECT.

5 Q AND IT WAS YOUR UNDERSTANDING AT THAT TIME
6 THAT, WHETHER IT WAS OSHA OR ANSI OR WHATEVER, AGS'S
7 COMPANY RULE OF WEARING HARNESS AND LANYARD ON A
8 SCISSOR LIFT WAS NOT REQUIRED, TRUE?

9 A CORRECT.

10 Q AND JUST TO BE CLEAR, AT ALL TIMES THAT
11 MR. CAMACHO AND MR. FIGUEROA WERE WORKING ON THE
12 SCISSOR LIFT PLATFORM WITH -- WHICH AT A TIME THAT
13 YOU OBSERVED THEM, THEY HAD THEIR HARDHATS ON, RIGHT?

14 A YES.

15 Q IF YOU HAD SEEN THEM WITHOUT THEIR
16 HARDHATS ON, YOU WOULD HAVE PULLED THEM OFF THAT
17 LIFT, RIGHT?

18 A CORRECT.

19 Q ON DECEMBER 7TH, WHEN MR. FIGUEROA AND
20 MR. CAMACHO WERE WORKING TOGETHER, DID YOU PERSONALLY
21 EVER OBSERVE THEM ENGAGING IN HORSEPLAY?

22 A NO.

23 Q DID YOU PERSONALLY EVER ENGAGE -- OR SEE
24 THEM ENGAGING IN BEHAVIOR THAT WAS RECKLESS?

25 A NO.

26 Q DID YOU EVER SEE THEM ENGAGED IN ANY TYPE

1 A YES.

2 Q I WOULD IMAGINE IT DEPENDS ON THE PERSON.

3 A YES.

4 Q AND ON DECEMBER 7TH, DO YOU KNOW HOW MANY
5 PANES OF GLASS THEY WERE SUPPOSED TO DO, NOT HOW MANY
6 THEY DID, BUT HOW MANY YOU WANTED THEM TO DO?

7 A I JUST HAD GIVEN THEM A CERTAIN AREA TO
8 WORK IN. I DIDN'T GIVE THEM A REQUIREMENT THAT THEY
9 HAD TO DO 20 PIECES OR ANYTHING LIKE THAT.

10 Q UNDERSTOOD.

11 YOU'RE FAMILIAR WITH THE TERM "DUNNAGE"?

12 A YES.

13 Q I BELIEVE MR. FIGUEROA ALSO REFERRED TO IT
14 AS CHING, C-H-I-N-G. HAVE YOU EVER HEARD THAT?

15 A NO.

16 Q ALL RIGHT. MAYBE IT'S JUST HIS OWN WORD
17 FOR IT. I DON'T KNOW.

18 BUT DUNNAGE YOU DO KNOW?

19 A YES.

20 Q AND WHAT IS DUNNAGE?

21 A TYPICALLY IT'S BLOCKING THAT YOU CAN SET
22 MATERIAL ON TOP OF.

23 Q AND FROM WHAT I READ IN YOUR DEPOSITION
24 TESTIMONY, KIND OF -- IT WASN'T LIKE A RULE, SO TO
25 SPEAK, BUT WHAT, I GUESS, THE CUSTOM WAS AT AGS AT
26 THE TIME WAS, YOU HAD A BUNCH OF 2 BY 4'S THAT PEOPLE

1 CAN USE TO STACK THEIR PANES OF GLASS ON?

2 A CORRECT.

3 Q AND WHERE WOULD YOU KEEP THOSE AT FOR THE
4 WORKERS THAT WERE WORKING AT HEIGHT DOING THE GLAZING
5 WORK?

6 A CAN YOU ASK THAT AGAIN, PLEASE.

7 Q YES, SIR.

8 WHERE WOULD YOU KEEP THOSE AT SO THEY KNEW
9 WHERE THEY WERE AT, TO GO, SAY, HEY, I'M GOING TO GO
10 GRAB MY MITER SAW AND MY STUFF SO WE CAN GO GET THIS
11 GLAZING DONE. WHERE ARE THE 2 BY 4'S AT?

12 DID YOU KEEP THEM ANYWHERE?

13 A TYPICALLY IN OUR LOCK-UP AREA.

14 Q LOCK-UP AREA, ALL RIGHT.

15 AND IS 2 BY 4 CONSIDERED MATERIAL OR
16 EQUIPMENT?

17 A IT WOULD BE, I GUESS, MATERIAL.

18 Q AND SO -- BUT SPECIFIC TO THE PAS?A HOTEL
19 PROJECT, YOU WOULD PUT THE 2 BY 4'S AND LOCK THEM UP
20 IN THE EQUIPMENT ROOM?

21 A WELL, AGAIN, OUR LOCK-UP IS WHERE WE KEPT
22 ALL OUR TOOLS AND MATERIAL, AND WE WERE ABLE TO LOCK
23 UP OUR FENCED-IN AREA, YES.

24 Q SO IT WAS BOTH TOOLS AND MATERIAL.

25 A CORRECT.

26 THE COURT: LET'S TAKE OUR MORNING RECESS.

1 Q AND SPECIFICALLY WITH RESPECT TO HOW THEY
2 WERE TO PERFORM THEIR JOBS, GLAZING ON THE AERIAL
3 PLATFORMS, WHAT DID YOU TELL THEM?

4 A COULD YOU ASK THAT AGAIN, PLEASE.

5 Q YES, SIR.

6 SPECIFIC TO HOW THEY WERE SUPPOSED TO
7 PERFORM THEIR JOBS, THE GLAZING WORK --

8 A OKAY.

9 Q -- AT HEIGHT ON THE AERIAL PLATFORM, WHAT
10 DID YOU TELL THEM TO DO?

11 A AGAIN, I -- THEY SHOWED ME THAT THEY WERE
12 ABLE TO OPERATE THE LIFT AND THAT THEY WERE ABLE TO
13 HANDLE GLASS CORRECTLY, AND SO I GAVE THEM A LOCATION
14 WHERE THEY WERE SUPPOSED TO INSTALL GLASS AND SHOWED
15 THEM HOW THE GLASS WAS NUMBERED, BECAUSE EACH OPENING
16 VARIES IN SIZE.

17 Q UNDERSTOOD.

18 AND ABOUT -- SPECIFIC TO THE DUNNAGE, WE
19 TALKED ABOUT THE 2 BY 4'S. AM I CORRECT THAT YOU
20 TOLD THEM WHERE THOSE WERE AT AND WHAT THEY WERE FOR?

21 A YES.

22 Q DID YOU GIVE THEM ANY SPECIFIC INSTRUCTION
23 THAT ONLY 2 BY 4'S WERE SUPPOSED TO BE USED FOR
24 DUNNAGE?

25 A I DIDN'T -- NO, I DID NOT.

26 Q IN FACT, THERE ARE OTHER METHODS OF

1 PROTECTING THE GLASS, TRUE?

2 A YES.

3 Q AND ONE OF THOSE METHODS MIGHT BE SOME
4 TYPE OF RUBBER MAT.

5 A CORRECT.

6 Q IN THIS CASE YOU KNOW THAT SHEETROCK WAS
7 USED AS THE DUNNAGE BY TITO AND RAUL. THAT ALSO
8 PROTECTS THE GLASS, TRUE?

9 A CORRECT.

10 Q AND YOU'VE SEEN THAT ON JOB SITES BEFORE,
11 HAVEN'T YOU?

12 A IT'S NOT A PRACTICE THAT WE AT AGS LET
13 HAPPEN.

14 Q OKAY. HAVE YOU SEEN IT BEFORE?

15 A I'VE SEEN IT, DRYWALL ON LIFTS BEFORE,
16 YES.

17 Q AND WHAT IS IT SPECIFIC TO SHEETROCK OR
18 DRYWALL THAT AGS LOOKS AT IT AND SAYS, YOU KNOW WHAT?
19 WE'RE NOT ALLOWING THAT?

20 A IT'S BECAUSE WE LIKE THE USE OF 2 BY 4'S
21 BECAUSE IT'S JUST A BETTER PRACTICE.

22 Q BETTER PRACTICE FOR WHAT REASONS?

23 A BECAUSE IT KEEPS THE GLASS ELEVATED OFF
24 THE FLOOR SO IT'S EASIER TO GET YOUR HANDS UNDERNEATH
25 AND PICK UP THE GLASS IF YOU'RE NOT USING CUPS.

26 Q UNDERSTOOD.

1 SO IT'S MORE SO TO AID THE WORKER TO MAKE
2 THEIR JOB EASIER.

3 A YES.

4 Q BUT IT'S NOT NECESSARILY A SAFETY THING?

5 A NO.

6 Q SO PUTTING ASIDE THE FACT THAT IT MAY NOT
7 BE A PRACTICE THAT AGS UTILIZES, YOU HAVE SEEN
8 SHEETROCK USED AS DUNNAGE BEFORE, TRUE?

9 A CORRECT.

10 Q AND PUTTING ASIDE THE ISSUE OF -- IN THIS
11 CASE WE KNOW THAT IT EITHER WAS EXTENDED OFF OR IT
12 WAS HANGING DOWN. I WANT YOU TO PUT THAT OUT OF YOUR
13 MIND FOR A SECOND. JUST TALKING SPECIFICALLY TO THE
14 PRACTICE OF USING SHEETROCK ON A PLATFORM TO PROTECT
15 THE GLASS WITH GLAZING, WOULD YOU HAVE A PROBLEM WITH
16 THAT?

17 A I DON'T SEE A PROBLEM WITH IT IF IT WAS
18 USED CORRECTLY.

19 Q AND WHEN YOU SAY "USED CORRECTLY," YOU'RE
20 JUST SAYING YOU DON'T LIKE THE FACT THAT IT HUNG OFF
21 THE SIDE OF THE PLATFORM.

22 A CORRECT.

23 Q SO IF WE'RE GOING DOWN HERE -- AND JUST TO
24 KIND OF BOOKEND THAT LINE OF QUESTIONING, AM I
25 CORRECT THAT AT NO POINT IN TIME FROM DECEMBER 7TH TO
26 DECEMBER 8TH DID YOU EVER INSTRUCT TITO FIGUEROA AND

1 RAUL CAMACHO AND YOU SAID, YOU CANNOT USE SHEETROCK
2 OR DRYWALL AS DUNNAGE?

3 A I NEVER TOLD THEM NOT TO USE IT, BUT I DID
4 INSTRUCT THEM TO USE THE 2 BY 4'S.

5 Q RIGHT. BUT WE'VE ALREADY CLARIFIED, YOU
6 DIDN'T SAY, YOU HAVE TO USE THIS; YOU JUST SAID, THIS
7 IS WHAT WE USE, CORRECT?

8 A CORRECT.

9 Q AND IF YOU GO DOWN HERE TO BULLET POINT 3,
10 YOU'LL SEE IT SAYS, QUOTE, "HEED ALL WARNING SIGNS,
11 LABELS AND NOTICES."

12 DO YOU SEE THAT?

13 A YES.

14 Q AND THAT'S JUST KIND OF A GENERAL BLANKET
15 STATEMENT TO WORKERS, LIKE, YOU NEED TO LOOK AROUND,
16 BE AWARE OF YOUR SURROUNDINGS, LOOK AT THE LABELS,
17 LOOK AT THE WARNINGS, LOOK AT THE SIGNS.

18 MR. ZINDER: OBJECTION, YOUR HONOR. LEADING.

19 THE COURT: SUSTAINED.

20 MR. POULTER: SURE.

21 BY MR. POULTER:

22 Q AT ANY POINT IN TIME WHEN YOU WERE GOING
23 THROUGH THE TRAINING WITH TITO FIGUEROA AND RAUL
24 CAMACHO, DID YOU POINT OUT THE PLACARDS AND THE
25 DECALS AND THE WARNING LABELS ON THE LIFT?

26 A NO.

1 THE BOTTOM, IT SAYS "LIFTING"?

2 A YES.

3 Q AND IT SAYS, QUOTE, "WHEN LIFTING HEAVY
4 OBJECTS, GET AS CLOSE TO THE OBJECT AS POSSIBLE AND
5 BEND YOUR KNEES SO YOU CAN USE YOUR LEGS TO LIFT, NOT
6 YOUR BACK." DO YOU SEE THAT?

7 A YES.

8 Q WHAT IS YOUR UNDERSTANDING AS TO WHY
9 THAT'S IMPORTANT?

10 A THAT'S PROPER LIFTING TECHNIQUE.

11 Q SO YOU DON'T HURT YOUR BACK, RIGHT?

12 A CORRECT.

13 Q YOU WANT TO GET AS CLOSE TO WHATEVER
14 YOU'RE LIFTING, GET YOUR HANDS UNDERNEATH IT, BEND
15 WITH YOUR KNEES AND LIFT WITH YOUR LEGS.

16 A CORRECT.

17 Q WHEN YOU WERE GOING THROUGH THE
18 TRAINING -- YOU CAN CLOSE THAT. YOU DON'T HAVE TO
19 HAVE THAT IN FRONT OF YOU.

20 WHEN YOU WERE WALKING THROUGH THE TRAINING
21 PROCESS OF THE LIFT WITH TITO AND RAUL, DID YOU SHOW
22 THEM HOW TO USE THE CHAIN?

23 A YES.

24 Q WHAT DID YOU DO?

25 A I SHOWED THEM HOW TO LATCH THE CHAIN AND
26 TOLD THEM THAT THE CHAIN HAD TO BE LATCHED AT ALL

1 TIMES.

2 Q DID YOU JUST TELL THEM ONCE OR DID YOU
3 TELL THEM 100 TIMES?

4 A ONCE.

5 Q AND I THINK, BASED ON YOUR DEPOSITION
6 TESTIMONY, YOU HAD THEM DEMONSTRATE TO YOU THAT THEY
7 COULD PHYSICALLY DO IT AND THAT THEY -- WHATEVER,
8 RIGHT?

9 A CORRECT.

10 Q AT ANY POINT IN TIME DID YOU EVER HAVE AN
11 UNDERSTANDING OR COULD YOU APPRECIATE WHETHER OR NOT
12 THEY UNDERSTOOD WHAT THE PURPOSE OF THAT WAS? IN
13 OTHER WORDS, SAFETY?

14 A YES, I FEEL THAT THEY UNDERSTOOD THAT.

15 Q YOU REMEMBER GIVING A DEPOSITION IN THIS
16 CASE, CORRECT?

17 A YES.

18 Q AND AT THE DEPOSITION, WE ASKED YOU
19 QUESTIONS AND YOU ANSWERED THEM.

20 A YES.

21 Q AND YOU OBVIOUSLY KNEW THAT YOU WERE UNDER
22 OATH AT THAT TIME, SIMILAR THAT YOU ARE HERE TODAY?

23 A CORRECT.

24 Q DO YOU REMEMBER THE RULES AT THE BEGINNING
25 WHERE IF THERE WAS ANYTHING ABOUT QUESTIONS THAT WERE
26 UNCLEAR, YOU NEEDED TO LET US KNOW AND WE'D REASK

1 "QUESTION: AND THEY, TO YOUR
2 UNDERSTANDING, APPRECIATE THAT THIS WAS
3 A SAFETY FEATURE THAT NEEDED TO BE
4 ENGAGED WHEN THEY WERE INSIDE THE CAGE?

5 "ANSWER: I DON'T KNOW, TO BE
6 HONEST WITH YOU.

7 "QUESTION: IT'S CLEAR IN YOUR
8 MIND, THOUGH, THAT MR. CAMACHO AND
9 MR. FIGUEROA ACKNOWLEDGED THEIR
10 UNDERSTANDING THEY NEEDED TO ENGAGE THIS
11 MID-RAIL CHAIN WHEN THEY WERE INSIDE THE
12 CAGE, CORRECT?

13 "ANSWER: CORRECT."

14 BY MR. POULTER:

15 Q I WANT TO TALK A LITTLE BIT ABOUT THE JLG
16 MANUAL AND IN CONJUNCTION WITH THE FALL PROTECTION,
17 THE HARNESS AND LANYARD, OKAY?

18 A OKAY.

19 Q THE JLG MANUAL, THE OPERATOR'S MANUAL THAT
20 COMES WITH THE SCISSOR LIFT, HAVE YOU READ IT BEFORE?

21 A NO.

22 Q HAVE YOU READ ANY PART OF IT EVER?

23 MR. ZINDER: OBJECTION. OVERLY BROAD AND
24 VAGUE.

25 THE WITNESS: I GLANCED AT IT.

26 THE COURT: JUST A MINUTE. JUST A MINUTE.

1 OVERRULED.

2 BY MR. POULTER:

3 Q GO AHEAD, SIR.

4 A I GLANCED AT IT, BUT I HADN'T READ IT
5 COVER TO COVER.

6 Q DO YOU UNDERSTAND THAT JLG, THE
7 MANUFACTURER, RECOMMEND -- OR NOT RECOMMENDS, THEY
8 REQUIRE THAT OPERATORS WHO WORK ON THOSE LIFTS READ
9 THAT THING COVER TO COVER BEFORE THEY DO IT? DID YOU
10 KNOW THAT?

11 A I WASN'T AWARE OF THAT, NO.

12 Q OKAY. WE TALKED EARLIER ABOUT HOW YOUR
13 UNDERSTANDING AT THE TIME, DECEMBER 7TH, 2015, WAS
14 THAT ANSI AND OSHA DID NOT REQUIRE FALL PROTECTION TO
15 BE USED ON AERIAL LIFTS. DO YOU REMEMBER THAT?

16 A CORRECT.

17 Q WE ALSO TALKED ABOUT HOW THERE MAY BE SOME
18 COMPANY POLICY OR COMPANY RULE, SUCH AS AGS OR EVEN
19 R.D. OLSON, THE GENERAL CONTRACTOR, WHERE IF THEY
20 REQUIRE IT, THEN YOU HAVE TO WEAR IT. REMEMBER THAT?

21 A YES.

22 Q AND IF IT WAS BROUGHT TO YOUR ATTENTION OR
23 THROUGH THE COURSE OF YOUR EMPLOYMENT YOU LEARNED
24 THAT THE JLG MANUAL STATED, "FALL PROTECTION IS
25 REQUIRED WHEN YOU ARE ON OUR AERIAL PLATFORMS," WOULD
26 YOU HAVE REQUIRED TITO FIGUEROA AND RAUL CAMACHO TO

1 RULES.

2 A CORRECT.

3 Q THE RULES THAT ARE INTENDED FOR PEOPLE'S
4 SAFETY, CORRECT?

5 A CORRECT.

6 Q AND HAVE YOU EVER HAD AN OCCASION IN ALL
7 THE YEARS THAT YOU'VE BEEN AN EXECUTIVE PROJECT
8 MANAGER FOR AGS WHERE YOU HAVE SUPERVISED WORKERS UP
9 ON AERIAL SCISSOR LIFTS AND YOU'VE SEEN AND CORRECTED
10 THEM NOT LATCHING THE CHAIN?

11 A YES.

12 Q AND WOULD YOU SAY THAT'S A COMMON
13 OCCURRENCE?

14 A NO.

15 MR. ZINDER: OBJECTION, YOUR HONOR. VAGUE.

16 THE COURT: OVERRULED.

17 BY MR. POULTER:

18 Q GO AHEAD.

19 A NO.

20 Q BUT YOU HAVE SEEN IT?

21 A YES.

22 Q AND IN THE MOMENTS THAT YOU'VE BEEN
23 WALKING THE JOB SITES AND YOU'VE SEEN PEOPLE THAT
24 FORGOT TO LATCH THE CHAIN, WHAT DID YOU DO?

25 A I INSTRUCTED THEM TO LATCH THE CHAIN.

26 Q AND THAT WAS KIND OF THE END OF THE

1 CONVERSATION, RIGHT?

2 A YES.

3 Q I MEAN, UNLESS IT WAS PROBABLY A REPEAT
4 OFFENDER, I WOULD IMAGINE THERE WAS NO DISCIPLINE
5 THAT WAS GIVEN OUT.

6 A NO.

7 Q BECAUSE IN YOUR MIND AT THAT POINT, IT
8 WASN'T ANYTHING INTENTIONAL. IT'S JUST AN ACCIDENT;
9 THEY FORGOT.

10 A CORRECT.

11 Q GOING BACK TO THE MANUALS, YOU UNDERSTAND
12 OR DO YOU UNDERSTAND -- HORRIBLE QUESTION. LET ME
13 WITHDRAW AND REPHRASE.

14 HOW MANY MANUALS WERE ON THAT LIFT THAT
15 TITO AND RAUL WERE WORKING ON; DO YOU KNOW?

16 A ONE THAT I -- MY UNDERSTANDING.

17 Q YOU TESTIFIED THAT YOU DIDN'T READ IT. DO
18 YOU KNOW IF THEY DID?

19 A NOT THAT I'M AWARE OF.

20 Q DID YOU INSTRUCT THEM TO READ THAT COVER
21 TO COVER BEFORE THEY STARTED THEIR WORK?

22 A NO, I DID NOT.

23 Q SO ON DECEMBER 7TH, 2015, WE HAVE
24 CLARIFIED THAT THEY DID, IN FACT, USE THE SCISSOR
25 LIFT AND THEY WERE INSTALLING GLASS. YOU PERSONALLY
26 SAW THIS.

1 Q DO YOU RECALL MR. CAMACHO EVER ASKING YOU
2 TO EXPLAIN IT OR ASKING MR. FIGUEROA TO TRANSLATE
3 WHAT YOU WERE SAYING?

4 A NO.

5 Q DO YOU HAVE ANY DOUBT IN YOUR MIND THAT
6 MR. CAMACHO, FOR THE PURPOSES OF WORKING ON THE
7 SCISSOR LIFT, KNEW, UNDERSTAND AND APPRECIATED ALL OF
8 THE INFORMATION GIVEN TO HIM IN ENGLISH?

9 A YES, I FELT HE UNDERSTOOD.

10 Q AND YOU FELT HE UNDERSTOOD BECAUSE HE TOLD
11 YOU HE UNDERSTOOD?

12 A YES, NOT -- HE GAVE, YOU KNOW, AN
13 INDICATION THAT, YES, HE UNDERSTOOD AND THAT HE
14 DIDN'T HAVE ANY QUESTIONS.

15 Q AND IT WENT EVEN FURTHER. YOU ACTUALLY
16 HAD MR. CAMACHO DEMONSTRATE TO YOU THAT HE KNEW HOW
17 TO OPERATE THE SCISSOR LIFT.

18 A CORRECT.

19 Q AND THAT WAS NOT ON THE PODIUM -- THAT WAS
20 NOT IN THE LOCK-UP AREA BECAUSE THAT'S THE LEVEL
21 BELOW, THE PARKING LOT.

22 A CORRECT.

23 Q OKAY. THAT'S WHERE YOU MET THEM, THAT'S
24 WHERE YOU ORIENTATED THEM, THAT'S WHERE YOU TRAINED
25 THEM, CORRECT?

26 A THAT WAS WHERE PART OF THE ORIENTATION

1 A YES.

2 Q AND HE TOLD YOU HE'D BEEN ON IT MANY TIMES
3 BEFORE?

4 A YES.

5 Q AND HE TOLD YOU THAT HE COULD OPERATE IT
6 CLEARLY?

7 A CORRECT.

8 Q AND THEN YOU HAD HIM, MR. CAMACHO, ON THE
9 PODIUM LEVEL, GET INTO THE 1930 JLG SCISSOR LIFT AND
10 OPERATE IT.

11 A YES, SIR.

12 Q HE WENT FORWARD AND BACKWARDS, CORRECT?

13 A CORRECT, HE SHOWED ME THAT HE WAS CAPABLE
14 OF OPERATING THE EQUIPMENT.

15 Q AND HE WENT UP AND DOWN A LITTLE BIT, NOT
16 FULL EXTENSION, CORRECT?

17 A CORRECT.

18 Q SO YOU KNEW HE KNEW HOW TO OPERATE THE
19 JOYSTICK.

20 A YES, SIR.

21 Q YOU KNEW HE KNEW HOW TO OPERATE THE SAFETY
22 CHAIN BECAUSE YOU SAW HIM UNLATCH IT, GET IN, TURN
23 AROUND, LATCH IT, GO OVER TO THE CONTROLS.

24 A CORRECT.

25 Q OKAY. AND THE NORMAL POSITIONING OF THE
26 SAFETY CHAIN DURING LOADING IS, IT'S ON THE LEFT

1 SIDE, UPRIGHT AND CLIPPED ONTO ITSELF SO IT DOESN'T
2 GET IN THE WAY.

3 A CORRECT.

4 Q OKAY. AND YOU SHOWED THEM THAT THAT'S
5 WHAT YOU WANTED.

6 A I SHOWED THEM -- OR I TOLD THEM THAT THE
7 CHAIN HAD TO BE LATCHED DURING USE. I DIDN'T GIVE
8 THEM INSTRUCTION ON WHAT TO DO WITH THE CHAIN WHILE
9 THEY WERE LOADING THE MACHINE.

10 Q WHEN YOU SAW THEM, HOWEVER, LOAD THE
11 MACHINE -- BECAUSE YOU SAW THEM LOAD IT.

12 A CORRECT.

13 Q THE CHAIN WAS LATCHED ONTO ITSELF,
14 CORRECT?

15 A YES, SIR.

16 Q ON THE LEFT SIDE.

17 A I'M NOT SURE WHICH SIDE, BUT IT WAS
18 LATCHED ONTO ITSELF.

19 Q ALL RIGHT. AND THEN YOU SAW THEM LOAD THE
20 GLASS.

21 A CORRECT.

22 Q OKAY. NOW, THIS GLASS, THE TESTIMONY'S
23 BEEN IT WEIGHS ABOUT 60 POUNDS.

24 A THAT'S ABOUT RIGHT.

25 Q AND HAVE YOU SEEN YOUR GLAZERS LOAD IT --
26 ONE MAN JUST PICK IT UP AND LOAD IT?

1 A TYPICALLY TWO PEOPLE, DUE TO THE SIZE AND
2 THE WEIGHT.

3 Q HAVE YOU SEEN IT LOADED BY ONE MAN?
4 BECAUSE MR. TITO FIGUEROA SAID HE LOADED IT HIMSELF.

5 A IT'S POSSIBLE.

6 Q NOW, I WANT YOU TO TURN TO THE THIRD PAGE
7 OF WHAT HAS NOW BEEN MARKED AS EXHIBIT 127.

8 MR. LASKEY: LET'S PUT IT ON THE SCREEN,
9 PLEASE. IT'S RDO 000367.

10 BY MR. ZINDER:

11 Q OKAY. DO YOU SEE THE TRAINING AREA?

12 A YES.

13 Q AND IT SAYS, "TRAINING FOR EMPLOYEES --"
14 YOU KNEW THAT APPLIED TO YOUR PEOPLE.

15 A CORRECT.

16 Q "-- IS MANDATORY AND WILL BE SPECIFIC TO
17 THE JOB SITE AND REPRESENT THE NATURE OF THE HAZARDS
18 IN THE WORK AREA."

19 CORRECT?

20 A YES.

21 Q AND WORKING ON A SCISSOR LIFT THAT'S
22 ELEVATED, THE HAZARD IS FALLING OUT.

23 A CORRECT.

24 Q AND YOU TRAIN THEM TO USE THE MID-RAIL
25 SAFETY CHAIN TO PREVENT THEM FROM FALLING OUT.

26 A CORRECT.

1 Q AND THAT'S BEEN YOUR EXPERIENCE OVER YOUR
2 ENTIRE CAREER, THAT IF THAT MID-RAIL SAFETY CHAIN IS
3 LATCHED, IT'S SAFE AND NOBODY FALLS OUT.

4 A CORRECT.

5 Q "ALL TRAINING IN THE FALL PROTECTION
6 DEVICE AND PROCEDURE SHALL BE DOCUMENTED AND
7 AVAILABLE FOR REVIEW TO THE R.D. OLSON SUPERINTENDENT
8 AND THE DIRECTOR OF SAFETY AT THE JOB SITE UPON
9 REQUEST."

10 DID YOU DOCUMENT YOUR TRAINING --

11 A NO, SIR.

12 Q -- OF RAUL?

13 A NO, SIR.

14 Q I'M SORRY?

15 A NO, SIR.

16 Q WHY NOT?

17 A I DIDN'T FEEL IT WAS NECESSARY.

18 Q EVEN THOUGH IT'S REQUIRED?

19 A CORRECT.

20 Q PEOPLE CALL THESE --

21 MR. LASKEY: THANK YOU. YOU CAN TAKE THAT
22 DOWN.

23 BY MR. ZINDER:

24 Q PEOPLE CALL THESE LIFTS SCISSOR LIFTS,
25 AERIAL WORK PLATFORMS, MANUFACTURED LIFT SYSTEMS,
26 MOBILE WORK PLATFORMS, CORRECT?

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
DEPARTMENT C-14

RAUL CAMACHO, AN INDIVIDUAL)
 BY AND THROUGH HIS GUARDIAN)
 AD LITEM, LUCIA R.)
 MATURRANO; AND LUCIA R.)
 MATURRANO, AN INDIVIDUAL,)
)
 PLAINTIFF(S))
)
 VS.) CASE NO. 2017-00902499
)
 JLG INDUSTRIES, INC. A)
 CALIFORNIA CORPORATION;)
 SUNBELT RENTALS, INC. A)
 CALIFORNIA CORPORATION; AND)
 DOES 1-50, INCLUSIVE,)
 CALIFORNIA CORPORATION; AND)
 DOES 1 THROUGH 10, INCLUSIVE,)
)
 DEFENDANT(S) .)
 _____)

THE HONORABLE ROBERT J. MOSS, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SEPTEMBER 8, 2021

(AFTERNOON SESSION)

APPEARANCES OF COUNSEL ON FOLLOWING PAGE

LISA A. AUGUSTINE, RPR, CSR #10419
OFFICIAL COURT REPORTER PRO TEMPORE

1

2 MR. POULTER: THANK YOU FOR ACCOMMODATING ME, YOUR
3 HONOR.

4 IN THE HALLWAY, JUST BRIEFLY, WE HAD A
5 CONVERSATION ABOUT WHAT EVIDENCE WE CAN PRESENT WITH OUR
6 EXPERT, MR. SMITH, ON THE ISSUES OF LIABILITY. IN
7 ADDITION TO A WHOLE HOST OF CAUSES OF ACTION, AS HIS HONOR
8 IS AWARE, WE ALSO HAVE A CAUSE OF ACTION FOR NEGLIGENCE
9 RETROFIT. AND UNDER THAT WE HAVE THE BURDEN OF PROOF ON
10 THAT, ONE, THAT JLG MANUFACTURED, DISTRIBUTED, SOLD THE
11 PRODUCT; TWO, THAT JLG KNEW OR REASONABLY SHOULD HAVE
12 KNOWN THAT THE PRODUCT WAS DANGEROUS OR WAS LIKELY TO BE
13 DANGEROUS WHEN USED IN A REASONABLY FORESEEABLE MANNER;
14 THREE, THAT JLG BECAME AWARE OF THIS DEFECT AFTER THE
15 PRODUCT WAS SOLD; FOUR, THAT JLG FAILED TO RECALL,
16 RETROFIT, OR WARN OF THE DANGER OF THE PRODUCT; FIVE, THAT
17 A REASONABLE MANUFACTURER, DISTRIBUTOR, SELLER UNDER THE
18 SAME OR SIMILAR CIRCUMSTANCES WOULD HAVE RECALLED OR
19 RETROFITTED THE PRODUCT; SIX, THAT PLAINTIFF WAS HARMED;
20 AND SEVEN, THAT JLG'S FAILURE TO RECALL, RETROFIT WAS A
21 SUBSTANTIAL FACTOR.

22 WE HAVE EVIDENCE THAT WE ATTEMPTED TO GET
23 IN, THROUGH STEPHEN FORGAS, THAT AS EARLY AS JANUARY OF
24 2014, NOVEMBER OF 2014, STEPHEN FORGAS, HIMSELF, OF JLG,
25 HAD ALREADY SIGNED OFF ON A PROPOSED DRAFT THAT HAD BEEN
26 SUBMITTED TO ANSI TO CHANGE THE STANDARD FROM CHAINS TO

1 THE TOE BOARD?

2 A YES.

3 Q AND WE'RE NOT SAYING THAT HAS TO BE THE
4 END-ALL BE-ALL. I MEAN, THERE ARE OTHER DESIGNS OUT
5 THERE, RIGHT? YOU'VE HEARD OF THE INTERLOCKING DESIGN?

6 A YES, ALTHOUGH IT'S -- I THINK THE ONE THAT'S
7 SPRING-LOADED, AUTOMATICALLY CLOSING, IT'S THE LEAST --
8 YOU KNOW, THE LEAST TO GO WRONG SO TO SPEAK. YOU'RE NOT
9 DEALING WITH ELECTRONICS AND THINGS LIKE THAT. IT'S THE
10 ONE THAT'S THE MOST CONVENIENT. IT'S MAKES A WIDE OPENING
11 FOR YOU TO GET ON, BUT AS SOON AS YOU GET ON, IT CLOSES
12 BEHIND YOU.

13 Q GOT IT.

14 A AND IT MAKES IT OBVIOUS TO YOU WHETHER IT'S
15 OPEN OR NOT.

16 Q RIGHT.

17 A YOU CAN'T FORGET THAT YOU LEFT THE GATE
18 OPEN.

19 Q AND THERE'S ALSO ANOTHER DESIGN WHERE IT
20 WON'T EVEN ENGAGE, AND IT WON'T EVEN GO UP UNTIL IT SENSES
21 THAT THE GATE IS ACTUALLY CLOSED, RIGHT?

22 A THOSE DESIGNS EXIST, YES.

23 Q IT'S LIKE A STOP-START BASICALLY.

24 A IF YOU HAVEN'T CLOSED THAT GATE PROPERLY, IT
25 WON'T LET YOU OPERATE THE LIFT.

26 Q RIGHT. AND THAT'S NOT WHAT WE'RE ARGUING

1 ZEALAND STANDARDS. YEAH, IT WOULD HAVE BEEN BASICALLY
2 ANYWHERE OUT OF THE U.S., CANADA, ET CETERA.

3 Q RIGHT. AND SO SPEAKING OF THE AUSTRALIAN
4 STANDARDS, THEY WERE DATING BACK AS FAR AS -- AUSTRALIAN
5 AND NEW ZEALAND DATING BACK AS FAR AS 2003 AS WELL AND
6 THEY ALSO DIDN'T ALLOW CHAINS?

7 A I BELIEVE YOU'RE CORRECT.

8 Q SO JLG, BECAUSE ANSI SAID SO, FROM 2001 TO
9 2002 UP UNTIL 2008 WHEN THIS PARTICULAR LIFT WAS
10 MANUFACTURED, THEY SAID, WELL, YOU KNOW WHAT, BECAUSE ANSI
11 SAID IT'S OKAY, WE'RE SELLING THIS ONE HERE IN THE UNITED
12 STATES WITH A CHAIN, RIGHT?

13 MR. LASKEY: OBJECTION. CALLS FOR SPECULATION.

14 THE COURT: SUSTAINED.

15 BY MR. POULTER: Q HAVE YOU SEEN ANY
16 EVIDENCE IN THIS CASE THAT THEIR CONTENTION THAT THIS WAS
17 CUSTOMER CHOICE IS ACTUALLY TRUE?

18 MR. LASKEY: OBJECTION. CALLS FOR SPECULATION.

19 THE COURT: SUSTAINED.

20 BY MR. POULTER: Q WHAT IS YOUR OPINION AS
21 TO WHETHER OR NOT A CHAIN IS A SAFE, LESS SAFE, MORE SAFE
22 DESIGN THAN SOMETHING SUCH AS THIS AS A GATE?

23 A IT'S CLEARLY -- A CHAIN WITH NO TOE BOARD
24 WHERE YOU ARE RELYING ON SOMEBODY TO REMEMBER EVERY SINGLE
25 TIME TO PUT ACROSS IS CLEARLY INFERIOR FROM A SAFETY POINT
26 OF VIEW THAN THIS PARTICULAR DESIGN OF THE SWINGING GATE.

1 Q AND EVEN IF WE'RE NOT TALKING ABOUT IT FROM
2 A PERSPECTIVE OF A PERSON FALLING OFF, ANOTHER BENEFIT OF
3 THE TOE BOARD IS TO PREVENT MATERIALS AND TOOLS FROM
4 FALLING OFF, RIGHT?

5 A YES.

6 Q AND SO EVEN TAKING COMPLETELY OUT OF THE
7 EQUATION THE FACT THAT A PERSON, SUCH AS MR. CAMACHO, THE
8 NEXT WORKER, WHOMEVER, MAY FALL OUT OF THE LIFT, THE
9 DESIGN STILL IS UNSAFE FROM THE PERSPECTIVE THAT WITHOUT
10 THAT TOE BOARD AT THE ENTRANCE POINT, MATERIALS, TOOLS,
11 WHATEVER CAN STILL FALL OFF AS HIGH AS 19 FEET AND HIT
12 PEOPLE BELOW, RIGHT?

13 A YES. THE NO TOE BOARD IS UNEXPLAINABLE TO
14 ME ESPECIALLY WHEN YOU HAVE EXAMPLES WHERE IT WILL, OKAY,
15 IF YOU ARE CONCERNED AT ALL ABOUT GETTING INTO THE
16 PLATFORM, AT LEAST MAKE SOMETHING THERE A TOE BOARD OF
17 SOME TYPE.

18 Q AND IN THIS PARTICULAR CASE, IF RAUL CAMACHO
19 HAD BEEN ON A LIFT WITH A GATE AND A TOE BOARD SUCH AS
20 THIS, WOULD HIS FALL HAVE HAPPENED?

21 MR. LASKEY: OBJECTION. FOUNDATION. AND HE HAS
22 NOT GIVEN ACCIDENT RECONSTRUCTION TESTIMONY THAT'S
23 CUMULATIVE.

24 THE COURT: SUSTAINED.

25 MR. POULTER: FAIR ENOUGH.

26 Q SO IN THIS PARTICULAR CASE WE KNOW THAT RAUL

1 PARTICULAR TYPE OF LIFT, DOES THAT IN ANY WAY LIMIT
2 THE UTILITY OR FUNCTION OF THE LIFT?

3 A YOU SAY "IN ANY WAY." ANYTHING YOU HAVE
4 TO DO, YOU KNOW, MAKES YOU HAVE TO DO SOMETHING,
5 WHETHER IT'S CHAIN. BUT FROM A UTILITY STANDPOINT,
6 NO. I THINK IT ENHANCES IT.

7 Q ENHANCES IT FROM, LET'S SAY, PERSPECTIVE
8 OR OTHERWISE?

9 A YEAH, FOR INSTANCE, WITH A SWINGING GATE.
10 AND THE TOE BOARD IS ABOUT A HALF AN INCH; .6 INCHES,
11 I THINK, IS THE MOST YOU CAN HAVE FOR A SPACE BETWEEN
12 THE TOE BOARD AND THE FLOOR, 15 MILLIMETERS. BUT --
13 SO NOW YOU CAN'T EVEN PILE THINGS IN THERE. YOU
14 CAN'T PUT SOMETHING IN THERE THAT'S MORE THAN HALF AN
15 INCH HIGH OR IT WILL PREVENT YOU FROM GETTING IN AND
16 OUT.

17 Q BECAUSE IT WILL OBSTRUCT THE DOOR, IN
18 OTHER WORDS?

19 A IT ACTUALLY HELPS YOU FOLLOW THE RULES TO
20 TRY TO KEEP YOUR, YOU KNOW, THINGS ON THE FLOOR THAT
21 COULD BE A TRIP HAZARD. THEY CERTAINLY CAN'T BE
22 WITHIN THAT SWEEPED AREA OF THE GATE.

23 Q OKAY. AND THE SHEETROCK THAT WE SAW ON
24 SOME OF THE OTHER PHOTOS THAT WERE ON THE ACTUAL
25 LIFT, HAVING LOOKED AT THE EVIDENCE AND ANALYZED IT
26 AND KNOWING THE SPECS OF THIS PARTICULAR GATE, IN

1 YOUR OPINION, WOULD THAT SHEETROCK HAVE BEEN ABLE TO
2 FIT UNDERNEATH THAT TOE BOARD RIGHT THERE?

3 A I CAN'T SAY FOR SURE BECAUSE THERE'S
4 DIFFERENT THICKNESSES OF SHEETROCK, BUT YOUR
5 STANDARD, SAY, HALF-INCH OR 5-INCH SHEETROCK WOULD
6 PROBABLY INTERFERE WITH YOU BEING ABLE TO MOVE THE
7 GATE.

8 Q AND LASTLY, WHAT'S THE BENEFIT OF THE
9 INWARD OPENING FEATURE OF THE GATE AS OPPOSED TO AN
10 OUTWARD OPENING FEATURE?

11 A WELL, THE WHOLE IDEA -- THAT'S PART OF THE
12 AUTOMATIC PROTECTION IT HAS, IS IT HAS A STEEL TAB
13 THERE THAT WON'T LET THE DOOR OPEN OUTWARD. SO
14 ANYONE WHO WERE -- WHO'S ON THE PLATFORM WHO WOULD
15 TRIP OR FALL TOWARDS THAT OPENING, THE GATE WILL NOT
16 OPEN OUTWARD.

17 Q AND THE PURPOSE OR THE BENEFIT OF THIS
18 PARTICULAR DESIGN AS A WHOLE, WHEN LOOKING AT IT
19 LAYING AGAINST THE CHAIN, WHAT ARE THE BENEFITS OR
20 WHAT IS THE PURPOSE FOR WHY THIS PARTICULAR DESIGN IS
21 SUPERIOR TO JUST A CHAIN WITH NO TOE BOARD?

22 A WELL, AS I TESTIFIED BEFORE, THE CHAIN IS
23 OBVIOUSLY -- YOU KNOW, IT'S FLEXIBLE. IT LETS MUCH
24 LARGER OPENINGS EXIST. IT'S SOMETHING THAT YOU HAVE
25 TO REMEMBER.

26 AND I THINK I'VE TESTIFIED BEFORE I'VE

1 Q IN FACT, YOUR UNDERSTANDING IS THAT THEY
2 HAD ACTUALLY BEEN USING AND ATTACHING AND UNATTACHING
3 THE CHAIN EARLIER THAT DAY AND THE DAY BEFORE,
4 CORRECT?

5 A YES. I BELIEVE MR. -- THEY TESTIFIED --
6 OR AT LEAST MR. GILLETTE AND MR. FIGUEROA BOTH, THEY
7 KNEW ABOUT THE CHAIN, AND, IN FACT I BELIEVE THEY
8 SAID EVEN MR. CAMACHO REGULARLY ATTACHED THE CHAIN.

9 Q AND I KNOW YOU HAVE READ THE DEPOSITIONS
10 IN THIS CASE; YOU HEARD THE AUDIO INTERVIEW OF
11 MR. CAMACHO AFTER THE ACCIDENT --

12 THE COURT: YOU SAID "MR. CAMACHO." I THINK
13 YOU MEANT MR. FIGUEROA.

14 MR. LASKEY: I DID. I'M SORRY, YOUR HONOR.
15 BY MR. LASKEY:

16 Q MR. FIGUEROA AFTER THE ACCIDENT.
17 EVERYTHING YOU'VE CONSIDERED, YOU AGREE THAT THERE IS
18 NO INFORMATION TO INDICATE THE CHAIN WAS LATCHED AT
19 THE TIME OF THE FALL, CORRECT?

20 A THAT'S CORRECT. IT'S MY UNDERSTANDING
21 THAT HIGHLY LIKELY IT WAS NOT.

22 Q YOU'VE SHOWN US SOME PICTURES OF A LIFT
23 THAT YOU HAVE IN YOUR SHOP, RIGHT?

24 A YES.

25 Q AND PLAINTIFF'S COUNSEL, THEY BOUGHT THAT
26 LIFT FOR YOU AS PART OF YOUR WORK IN THIS CASE.

1 MR. LASKEY: BOB, IF YOU GO TO PAGE 36 OF THE
2 ANSI STANDARD.

3 BY MR. LASKEY:

4 Q PAGE 36 OF A92.6, THIS GIVES A FEW
5 EXAMPLES OF EQUIPMENT THAT ARE COVERED UNDER THIS
6 STANDARD, CORRECT?

7 A YES.

8 MR. LASKEY: AND, BOB, IF YOU CAN BLOW UP THE
9 ONE ON THE TOP LEFT CORNER.

10 BY MR. LASKEY:

11 Q THE VERY FIRST ONE ON THE TOP LEFT CORNER
12 IS A SCISSOR LIFT, RIGHT?

13 A YES.

14 Q AND THE SCISSOR LIFT HAS A CHAIN AT THE
15 ENTRANCE RATHER THAN A GATE.

16 A THAT'S WHAT IT APPEARS THE SKETCH IS TO
17 SHOW, YES.

18 Q AND YOU KNOW IF THERE ARE THOUSANDS UPON
19 THOUSANDS OF 19-FOOT SCISSOR LIFTS IN THE UNITED
20 STATES MARKETPLACE WITH CHAINS ON THEM, CORRECT?

21 A I WOULD SAY THAT'S TRUE.

22 Q FROM MULTIPLE DIFFERENT MANUFACTURERS
23 OTHER THAN JLG.

24 A THERE ARE OTHER -- YEAH, THERE'S QUITE A
25 FEW MANUFACTURERS OF SCISSOR LIFTS, AND THERE ARE
26 ONES AT THAT TIME WHO WERE USING CHAINS.

1 ANCHORAGE POINTS, BOB.

2 BY MR. LASKEY:

3 Q THE LIFT INVOLVED IN THE ACCIDENTS
4 INCLUDES TWO ANCHORAGE POINTS FOR USERS TO CONNECT
5 THEIR PERSONAL FALL PROTECTION EQUIPMENT, CORRECT?

6 A YES. IF THEY'RE GOING TO USE IT, THERE
7 ARE TWO POINTS FOR THAT.

8 Q AND NEAR BOTH ANCHORAGE POINTS ARE
9 PICTORIALS POINTING OUT THE ANCHORAGE POINT FOR A
10 LANYARD FOR FALL PROTECTION, CORRECT?

11 A YES.

12 MR. LASKEY: AND IF WE COULD PUT UP THE NEXT
13 ONE, BOB, WHICH IS THE ACTUAL PICTORIAL.

14 BY MR. LASKEY:

15 Q YOU AGREE THIS PICTORIAL IS VERY COMMON IN
16 THE SCISSOR LIFT INDUSTRY?

17 A SOMETHING LIKE THAT, YES.

18 MR. LASKEY: YOU CAN PULL IT DOWN. AND COULD
19 YOU PUT THE LAST PHOTO BACK UP?

20 BY MR. LASKEY:

21 Q SO THIS LIFT CONTAINS A TOP RAIL, WHICH IS
22 PART OF THE LIFT SAFETY SYSTEM, CORRECT?

23 A CORRECT. PART OF THE GUARDRAIL SYSTEM,
24 YES.

25 Q AND THE TOP RAIL GOES ALL THE WAY AROUND
26 THE TOP OF THE LIFT'S PLATFORM INCLUDING AT THE

1 A YES.

2 Q OTHER MANUFACTURERS IN THE SCISSOR LIFT
3 INDUSTRY ALSO MANUFACTURED 30-INCH LIFTS WITH CHAINS
4 IN 2008 IN THE UNITED STATES, CORRECT?

5 A YES.

6 Q AND THAT INCLUDES GENIE, FOR EXAMPLE?

7 A YES.

8 Q AND SKYJACK?

9 A I BELIEVE SO, YES.

10 Q THOSE ARE MAJOR MANUFACTURERS?

11 A YES, I THINK THE SJ 3 IS A POPULAR MODEL.

12 Q BACK IN 2008 WHEN THIS LIFT WAS
13 MANUFACTURED, JLG HAD A GATE OPTION FOR PURCHASERS
14 WHO DESIRED TO BUY IT, RIGHT?

15 A ABSOLUTELY, YES. WE ALREADY DISCUSSED
16 THAT, YEAH.

17 Q YEAH, AND YOU WOULD AGREE THAT THE GATE
18 WOULD HAVE TO BE SHUT DURING OPERATIONS?

19 A YEAH. IT SWINGS CLOSED, YES.

20 Q AND IF A USER OR AN OCCUPANT DID NOT
21 ASSURE THAT THE GATE WAS CLOSED, THAT WOULD BE AN
22 INAPPROPRIATE USE OF THE MACHINE, RIGHT?

23 A YES, THAT'S RIGHT.

24 Q AND IN YOUR LONG CAREER, YOU ARE AWARE OF
25 GATES BEING HELD OPEN BY ARTIFICIAL MEANS.

26 A THAT -- THAT CAN HAPPEN, SURE. LIKE IF

1 YOU'RE BY YOURSELF AND YOU'RE LOADING, SOMEBODY MIGHT
2 THROW SOMETHING AROUND IT JUST TO HOLD IT WHILE
3 THEY'RE LOADING SOMETHING. SURE.

4 Q SO THE JLG GATE OPENS --

5 A I MEAN, YOU KNOW YOU'VE DONE IT, BUT,
6 YEAH, IT'S NOT SOMETHING YOU'RE UNINTENTIONALLY
7 DOING; YOU'RE DOING IT ON PURPOSE.

8 Q SO THE JLG GATE OPENS -- IF YOU'RE
9 STANDING FACING THE MACHINE, IT OPENS TO THE LEFT,
10 PARALLEL TO THE LEFT-HAND GUARDRAIL IF YOU'RE LOOKING
11 AT THE ENTRANCE, CORRECT?

12 A YES, INWARD TO THE LEFT.

13 Q IF THIS MACHINE THAT WAS INVOLVED IN THE
14 ACCIDENT HAD BEEN MANUFACTURED SO A GATE WAS
15 INSTALLED ON IT RATHER THAN A CHAIN, THE GATE WOULD
16 HAVE ONLY BEEN ABLE TO CLOSE PROPERLY WITH THESE
17 GLASS PANELS IF THE GLASS PANELS WERE PUSHED IN AT
18 LEAST 2 FEET FURTHER, CORRECT?

19 A ABOUT 2 FEET, YES.

20 MR. POULTER: OBJECTION. FOUNDATION,
21 SPECULATION.

22 THE COURT: OVERRULED.

23 THE WITNESS: I MEAN, ACTUALLY, THE ANSWER'S
24 NO, THAT'S NOT TRUE. I MEAN, YOU CAN PUT THE
25 PANELS -- YOU CAN OPEN THE GATE -- HAVE ONE GUY OPEN
26 THE GATE WHILE YOU PUT THE PANELS IN; YOU CAN PUT THE

1 PANELS IN ON ONE SIDE, CLOSE THE GATE AND THEN PUT
2 THE PANELS ONTO THE OTHER SIDE, SO, YEAH. BUT
3 GENERALLY YOU'RE RIGHT. YOU'RE GOING TO -- ANYTHING
4 THAT'S GOING TO INVAD E THE SWINGING AREA OF THE GATE
5 HAS TO BE CLEAR IN ORDER TO CLOSE THE GATE; THAT'S
6 CORRECT.

7 BY MR. LASKEY:

8 Q AND THAT'S ABOUT AT LEAST 2 FEET FOR THAT
9 GATE TO --

10 A YES.

11 Q -- TO CLEAR INWARD.

12 A YES.

13 MR. LASKEY: AND IF WE CAN PUT UP PHOTO NUMBER
14 4 OF EXHIBIT 29, BOB. IF YOU COULD ZOOM IN ON THE
15 GLASS.

16 BY MR. LASKEY:

17 Q MR. SMITH, WOULD YOU AGREE THAT -- THE WAY
18 THE GLASS IS LEANING ON THE LIFT AND IT'S SITTING
19 NEAR THE ENTRANCE AS DEPICTED IN THE PICTURES, WOULD
20 YOU AGREE THAT A GATE WOULD NOT BE ABLE TO BE CLOSED
21 WITH THE GLASS SITTING LIKE THAT?

22 A IF YOU HAD OPENED THE GATE, PUT THE GLASS
23 UP AGAINST THE GATE IN ORDER TO CLOSE THE GATE,
24 YOU'LL HAVE TO EITHER MOVE THE GLASS FURTHER IN OR
25 JUST PULL OUT THE GLASS SO YOU CAN SWING THE GATE,
26 YOU KNOW, PULL OUT THE GLASS OVER TO THE OTHER SIDE.

1 Q SO WHILE YOU'RE LOADING THE GLASS, SOMEONE
2 WOULD EITHER HAVE TO HOLD THE GATE OPEN THE WHOLE
3 TIME, OR YOU CAN ARTIFICIALLY HOLD THE GATE OPEN BY
4 USING A PIECE OF CARDBOARD OR SOMETHING LIKE THAT UP
5 AGAINST IT, RIGHT?

6 A YOU CAN INTENTIONALLY BYPASS THE GATE,
7 YES.

8 Q THAT WAS THE EXAMPLE YOU GAVE US IN YOUR
9 DEPOSITION. YOU SAID YOU COULD USE A PIECE OF
10 CARDBOARD TO ARTIFICIALLY FORCE THE GATE OPEN, RIGHT?

11 A YEAH. THERE'S ALL SORTS OF WAYS TO DEFEAT
12 SAFETY DEVICES ON -- IF YOU'RE DOING IT ON PURPOSE,
13 YES.

14 Q A WORKER COULD BLOCK THE GATE OPEN SOMEHOW
15 IN ORDER TO LOAD MATERIALS ON.

16 A YES. THERE WOULD BE NOTHING WRONG WITH
17 THAT.

18 Q YEAH. YOU YOURSELF SAID YOU HAVE NO
19 PROBLEM WITH THE WORKERS TAKING A PIECE OF WIRE TO
20 HOLD THE GATE OPEN TO MOVE GLASS IN, RIGHT?

21 A YEAH, I HAVE NO PROBLEM WHEN YOU'RE
22 LOADING TO HOLD THE GATE OPEN, BUT WHEN YOU'RE NOW
23 GOING TO WORK AND GO -- AND ELEVATE WITH IT, YES, I
24 WOULD HAVE A PROBLEM IF YOU DON'T CLOSE IT AFTER
25 THAT.

26 Q SO YOU ENDORSE THEM HOLDING THE GATE OPEN

1 BY MR. LASKEY:

2 Q IN 2008 DID ANY OTHER SCISSOR LIFT
3 MANUFACTURER IN THE UNITED STATES MANDATE PERSONAL
4 FALL PROTECTION WITH USE OF SCISSOR LIFTS?

5 A NOT THAT I KNOW OF.

6 Q AND YOU KNOW OBVIOUSLY THAT JLG
7 RECOMMENDED THE USE OF PERSONAL FALL PROTECTION WITH
8 SCISSOR LIFTS IN 2008?

9 A THERE'S THAT ONE LINE IN THE MANUAL THAT I
10 RECALL SAYING THAT THEY RECOMMEND IT.

11 Q ARE YOU AWARE OF ANY OTHER SCISSOR LIFT
12 MANUFACTURERS IN THE UNITED STATES IN 2008 THAT WENT
13 AS FAR AS JLG RECOMMENDING THAT USERS WEAR PERSONAL
14 FALL PROTECTION?

15 A I DON'T KNOW OF ANY. THAT'S ONE OF THE
16 REASONS WHY PEOPLE DON'T THINK FALL PROTECTION IS
17 NECESSARY ON SCISSOR LIFTS, BECAUSE NO ONE MANDATES
18 IT.

19 Q SO JLG HAS A HIGHER RECOMMENDATION THAN
20 THE REST OF THE INDUSTRY AS FAR AS SAFETY GOES WHEN
21 IT COMES TO PERSONAL FALL PROTECTION?

22 A WELL, THEY HAVE THE WORD "RECOMMEND." I
23 DON'T KNOW ANYONE ELSE WHO DOES THAT.

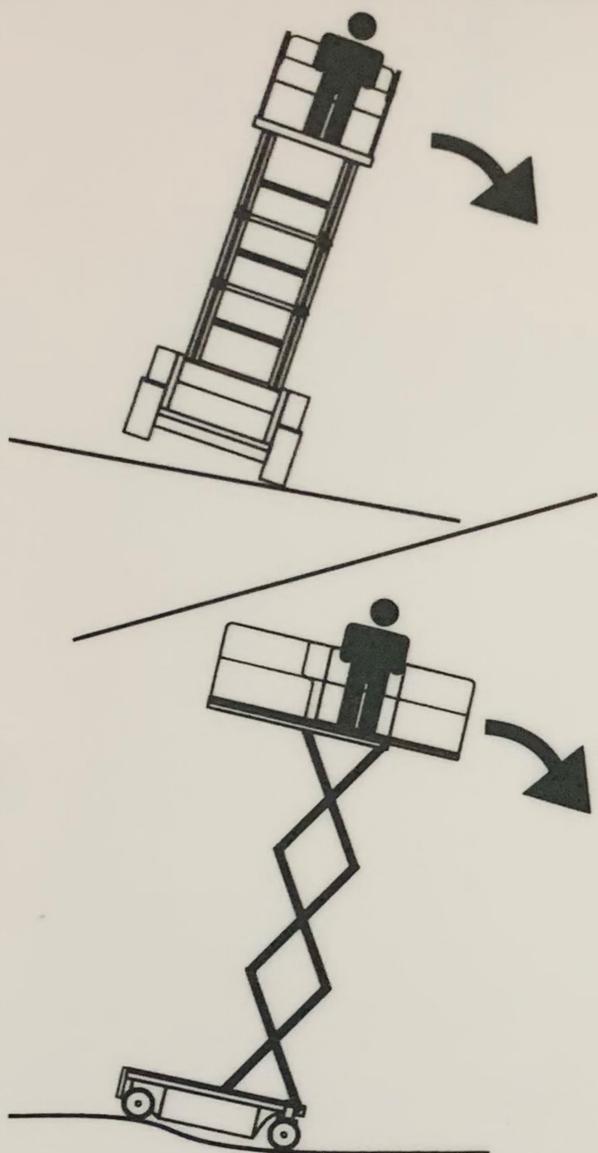
24 Q AND I HAVE SOMETHING TO ASK YOU ABOUT
25 YOUR -- THE END OF YOUR DIRECT EXAMINATION.

26 WERE YOU TRYING TO INSINUATE TO THIS JURY

EXHIBIT B



WARNING



TIP-OVER HAZARD

- Do not exceed platform rated capacity or rated number of people. Evenly distribute load.
- Do not expose platform to high winds or horizontal forces.
- Machine must be on smooth, firm and level surface before elevating platform.
- Do not drive with platform raised, or raise platform when on uneven, sloping or soft surfaces including trucks, trailers, railway cars, floating vessels, scaffolds or similar areas.
- Do not drive near drop offs, holes or other hazards.
- Make sure operating surface will support the machine.
- Make sure all tires are in good condition and air filled tires are properly inflated.
- If required, outriggers or stabilizers shall be extended and properly set.
- Do not carry sheet type materials (i.e. drywall, plywood, roof panels) outdoors or in any windy conditions as they may act as a wind sail.

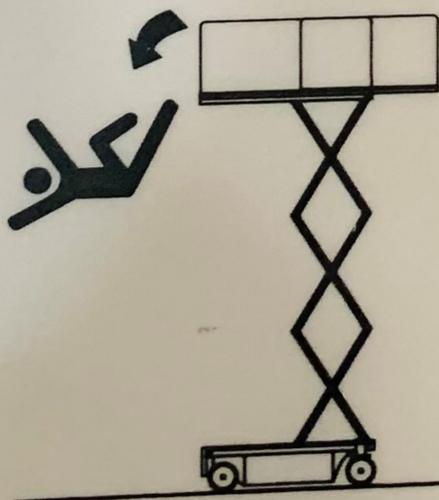
Death or serious injury could occur from a tip-over.



CRUSHING HAZARD

- Always look in the direction of movement.
- Keep clear of obstructions.
- Keep all body parts inside platform during operation.

Failure to follow instructions could result in death or serious injury.



FALLING HAZARD

- Keep both feet on platform floor.
- Do not climb, sit or stand on platform guard rails.
- Ensure entrance area is properly closed.
- Do not use planks, ladders or similar items in platform to get added reach.
- All guard rails must be properly installed during operation.

Falling from platform could cause death or serious injury.

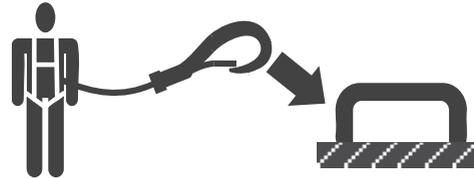
EXHIBIT C

SECTION 1 - SAFETY PRECAUTIONS

- Do not allow personnel to tamper with or operate the machine from the ground with personnel in the platform, except in an emergency.
- Do not carry materials directly on platform railing unless approved by JLG.
- When two or more persons are in the platform, the operator shall be responsible for all machine operations.
- Always ensure that power tools are properly stowed and never left hanging by their cord from the platform work area.
- Do not assist a stuck or disabled machine by pushing or pulling except by pulling at the chassis tie-down lugs.
- Stow scissor arm assembly and shut off all power before leaving machine.

Trip and Fall Hazards

- JLG Industries, Inc. recommends that all persons in the platform wear a full body harness with a lanyard attached to an authorized lanyard anchorage point while operating this machine. For further information regarding fall protection requirements on JLG products, contact JLG Industries, Inc.



- Prior to operation, ensure all gates and rails are fastened and secured in their proper position. Identify the designated lanyard anchorage point(s) at the platform and securely attach the lanyard. Attach only one (1) lanyard per lanyard anchorage point

EXHIBIT D

Start Safely

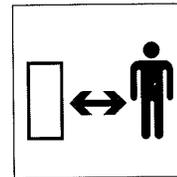
Look Out for Others

Before starting, walk completely around the machine. Make sure no one is under it, on it or close to it. Let other workers and bystanders know you are starting up and don't start until everyone is clear of the machine.

Mount and Dismount Properly

- Make sure the machine is fully lowered.
- Maintain a three point hand/foot contact with the machine. Three point contact is defined as using one hand and two feet or two hands and one foot at any single time.
- Face the machine when either mounting or dismounting.
- Clean your shoes and wipe your hands before climbing on. Use handrails, ladders or steps (as provided) when mounting the platform.
- Never use control levers as a hand hold when climbing on or off. Never step on foot controls when mounting or climbing off.
- Never attempt to mount or dismount a moving machine.
- Never walk or climb the elevating assembly to gain access to an elevated platform (nor do so to leave a platform).

- Make certain that all handrails, toe boards, and gates and entry chains are in place and secured before raising the platform.
- Never enter or exit the machine when elevated unless allowed by the manufacturer. Follow all manufacturer's instructions when entering or leaving an elevated machine.
- When required, wear an approved fall protection system per the manufacturer's manual. Ensure the connection to the platform is secure.



Clear Bystanders



**Maintain
Three Point Contact,
Face Machine**

EXHIBIT E

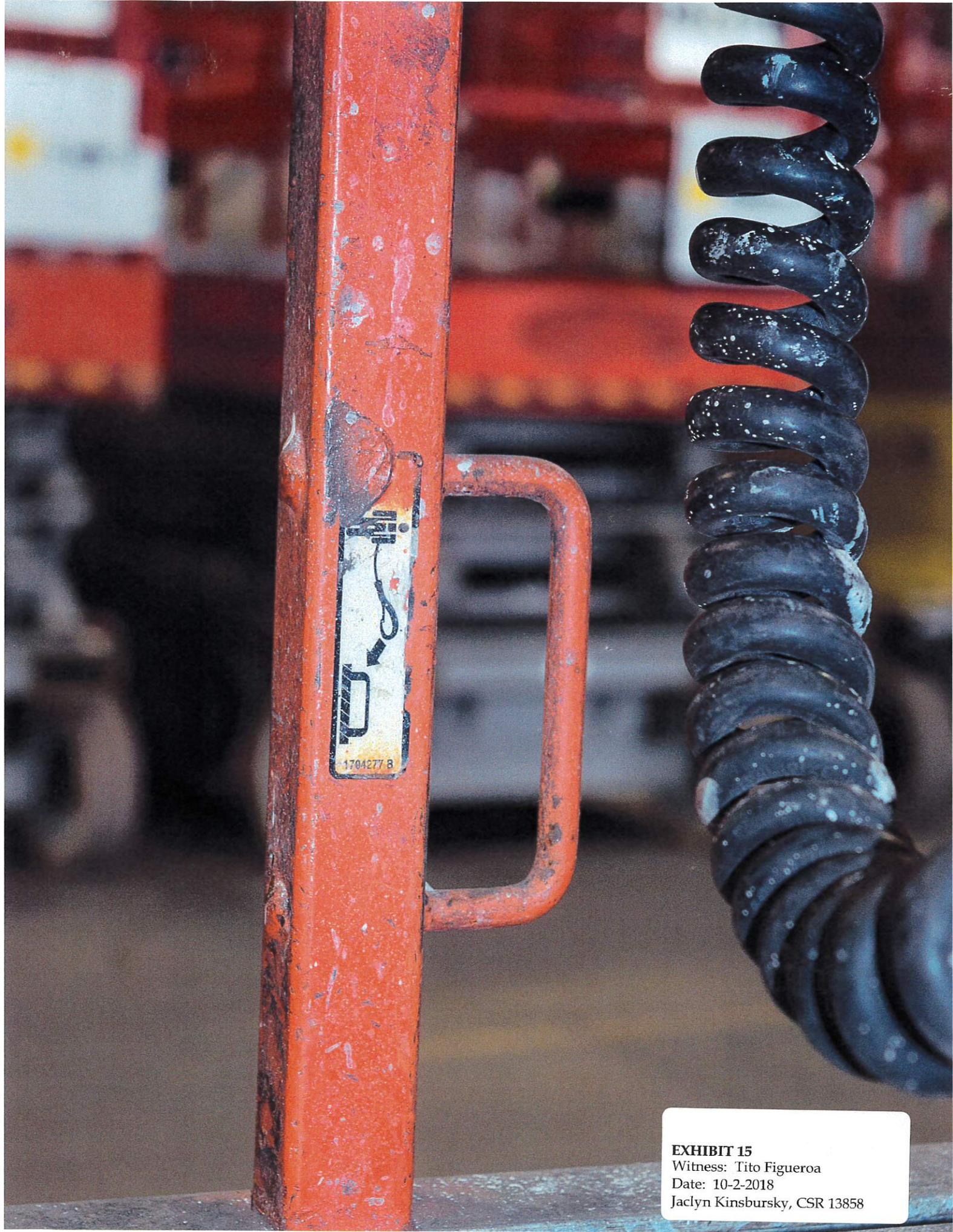


EXHIBIT 15
Witness: Tito Figueroa
Date: 10-2-2018
Jaclyn Kinsbursky, CSR 13858

EXHIBIT F




1704277 8

EXHIBIT 16
Witness: Tito Figueroa
Date: 10-2-2018
Jaclyn Kinsbursky, CSR 13858

PROOF OF SERVICE VIA E-SERVICE

(Pursuant to C.C.P. Section 1010.6)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 25101 The Old Road, Ste. 222, Stevenson Ranch, CA 91381.

On September 15, 2021, I served the foregoing document described as **DEFENDANT JLG INDUSTRIES, INC.'S NOTICE OF MOTION AND MOTION FOR DIRECTED VERDICT**

on all interested parties in this action.

[X] BY ELECTRONIC SERVICE As follows: On the above-mentioned date, from Stevenson Ranch, California, I requested One Legal to e-serve each such document to be transmitted electronically to the party(ies) at the e-mail address(es) indicated below. To the best of my knowledge, the transmission was reported as complete, and no error was reported that the electronic transmission was not completed.

SEE PROOF OF SERVICE LIST

Executed on September 15, 2021, at Stevenson Ranch, CA.

(State) I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

JACQUELINE ZINDER

Type or Print Name

Signature

ZINDER & KOCH
25101 The Old Road, Ste. 222
Stevenson Ranch CA 91381
(818) 760-0100

PROOF OF SERVICE LIST

<p>1 2 3 4 5 6 7 8</p> <p>Emily Ruby, Esq. Greenberg & Ruby Injury Attorneys, APC 6100 Wilshire Blvd., Suite 1170 Los Angeles, CA 90048 (323)782-0500 Fax (323) 782-0543 E-mail: eruby@caltrialpros.com dgreenberg@caltrialpros.com</p> <p><i>Attorney for Plaintiffs, Raul Camacho and Lucia R. Maturano</i></p>	<p>Brian Poulter, Esq. STALWART LAW GROUP 1100 Glendon Ave., Ste. 1840 Los Angeles, CA 91024 (310) 954-2000 Fax (310) 943-0303</p> <p>E-mail: brian@stalwartlaw.com</p> <p><i>Co-Counsel for Plaintiffs, Raul Camacho and Lucia R. Maturano</i></p>
<p>9 10 11 12 13 14 15 16 17</p> <p>Kenneth Kotarski, Esq. George Knopfler, Esq. Jeff Poole, Esq. Hamrick & Evans, LLP 2600 W. Olive Ave. Suite 1020 Burbank, CA 91505 (818) 763-5292 Fax (818) 763-2308 E-Mail: kkotarski@hamricklaw.com gknopfler@hamricklaw.com jpoole@hamricklaw.com</p> <p><i>Attorneys for Defendant, Cross-Complainant and Cross-Defendant, Sunbelt Rentals, Inc.</i></p>	<p>Bryant Blevins, Esq. BUTLER WEIHMÜLLER KATZ CRAIG LLP 80 S. W. 8th Street, Ste. 3300 Miami, FL 33130</p> <p>(305) 416-9998 Fax (310) 371-7242 Email: fblevins@butler.legal amerzina@butler.legal costruszka@butler.legal</p> <p><i>Attorneys for Defendant, Cross-Complainant and Cross-Defendant, Sunbelt Rentals, Inc.</i></p>
<p>18 19 20 21 22 23 24 25</p> <p>H. Brook Laskey, Esq. Stephanie Demers, Esq. McCoy, Leavitt Laskey LLC 317 Commercial St NE, Ste. 200 Albuquerque, NM 87102 (505)246-0455 Fax (262) 522-7020 E-Mail: BLaskey@mlllaw.com sdemers@mlllaw.com</p> <p><i>Attorneys for Defendant, Cross-Complainant and Cross Defendant, JLG Industries, Inc.</i></p>	<p>Robert M. Juskie, Esq. Wingert, Grebing, Brubaker & Juskie LLP 600 W. Broadway, Suite 1200 San Diego, CA 92101 (619) 232-8151 Fax (619) 232-4665 E-mail: rjuskie@wingertlaw.com</p> <p><i>Attorneys for Cross-Defendant, AGS HOTEL CORPORATION</i></p>

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*Attorneys for Defendant, Cross-Complainant and
Cross Defendant, JLG Industries, Inc.*

Courtesy Copy

Joanne Schwartz, Clerk in Dept. C14
ORANGE COUNTY SUP. COURT
E-mail: jschwartz@occourts.org

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