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LUNDY LAW, LLP **Civil Administration**
By: L. LEONARD LUNDY **K. VERRATTI**
Identification No.: 09895
1635 Market Street, 19th Floor
Philadelphia, PA 19103
(215) 567-3000

SALTZ, MONGELUZZI, BARRETT & BENDESKY, P.C.
BY: ROBERT J. MONGELUZZI/ANDREW R. DUFFY/
JEFFREY P. GOODMAN/ E. DOUGLAS DISANDRO, JR.
IDENTIFICATION NO.: 36283/77121/309433/316834
1650 MARKET STREET
52ND FLOOR
PHILADELPHIA, PA 19103
(215) 496-8282
Attorneys for Plaintiffs

<p>LEON OATES, An Incapacitated Person, By Kenae Oates, Guardian</p> <p style="text-align: right;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>MALVERN PREP SCHOOL & THE FRIENDS OF HAVERFORD SCHOOL, <i>et al.</i></p> <p style="text-align: right;"><i>Defendants.</i></p>	<p>PHILADELPHIA COUNTY COURT OF COMMON PLEAS TRIAL DIVISION</p> <p>FEBRUARY TERM, 2016</p> <p>NO. 01795</p>
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<p>LEON OATES, An Incapacitated Person, By Kenae Oates, Guardian, and KENYATTA OATES</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>MALVERN PREPARATORY SCHOOL & FRIENDS OF HAVERFORD ROWING, JOINT VENTURE A/K/A AND/OR D/B/A MALVERN PREPARATORY SCHOOL & THE HAVERFORD SCHOOL, <i>et al.</i></p> <p style="text-align: right;"><i>Defendants.</i></p>	<p>PHILADELPHIA COUNTY COURT OF COMMON PLEAS TRIAL DIVISION</p> <p>AUGUST TERM, 2016</p> <p>NO. 02036 – <i>Lead Case</i></p>
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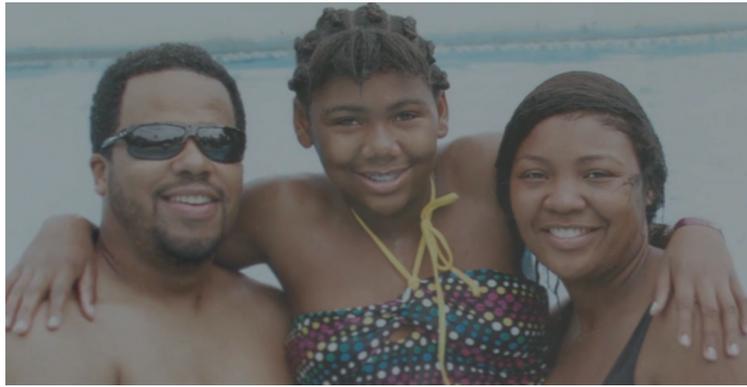
<p>LEON OATES, An Incapacitated Person, By Kenae Oates, Guardian, and KENYATTA OATES</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>NOLEN COMPANIES, LLC, et al.</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>PHILADELPHIA COUNTY COURT OF COMMON PLEAS TRIAL DIVISION</p> <p>AUGUST TERM, 2016</p> <p>NO. 02978</p>
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PLAINTIFFS’ PRETRIAL CONFERENCE MEMORANDUM

Plaintiffs, Leon Oates, An Incapacitated Person, By Kenae Oates, Guardian, and Kenyatta Oates, by and through their attorneys, Saltz, Mongeluzzi, Barrett & Bendesky, P.C. and Lundy Law, LLP, hereby submit this Pretrial Memorandum in anticipation of the Pretrial Conference to be held before the Honorable Denis P. Cohen on September 4, 2018, at 2:00 p.m.

I. INTRODUCTION

This case stems from a preventable construction fall accident that left Plaintiff, Leon Oates, utterly and completely devastated with a catastrophic brain injury that stole his ability to walk, communicate, and perform even the most basic activities of daily living. He requires twenty-four seven medical care, much of which is provided by his wife, Kenyatta Oates, a registered nurse, and his twenty-year-old daughter, Kenae Oates. Leon’s wife and daughter are incredible people who have put their own hopes and dreams on hold to adapt to their “new normal” which demands they be available to provide constant care to their husband and father. Kenyatta, pursuing a master’s degree in nursing at the time of this tragedy, and Kenae, who had hopes of going off to college, both pushed their own plans to the side to ensure they can provide the best care possible to Leon. They cling to the joyous memories they have and hold dear but have come to grips with the crushing realization that Leon will ***never*** be the same husband and father they once knew. This is a complete family tragedy.



More tragically, this horrible accident was entirely preventable but for the complete and utter failures of each of the parties responsible for overseeing and ensuring site safety on the construction project. The record is replete with devastating admissions of “inexcusable” conduct, blatant violations of contractual promises, and concessions that defendants “utterly failed” Plaintiff in each and every way conceivable. Defendants know they cannot credibly blame Mr. Oates, so they will aggressively blame each other for the indefensible failures that caused his fall. The jury will quickly understand that liability is a foregone conclusion and that the damages Mr. Oates and his family suffered are beyond devastating, leaving Defendants exposed to a verdict where Plaintiffs will present economic damages in excess of \$26,217,062, which will only be multiplied after the jury accounts for the unimaginable existence that Leon and his family will face on a daily basis for the next three decades. The only questions will be how the jury apportions fault between Defendants and how many tens of millions of dollars it awards Plaintiffs. With only \$24 million in total insurance coverage for all Defendants, allowing this case to go to trial would be a bet-the-company proposition.

II. STATEMENT OF FACTS

On August 22, 2014, forty-one-year-old Plaintiff, Leon Oates’, life was catastrophically and permanently altered when his body crashed through a drop-tile ceiling on the Conshohocken Rowing Center construction project and violently smashed into concrete stairs sixteen feet below, tumbling

down the steps an additional fourteen excruciating feet before his unconscious body finally and mercifully came to its ultimate resting place at the bottom of the staircase. Before this accident took place, C. Raymond Davis requested that Budget Maintenance send somebody out to perform last-second fire caulking of a fire sprinkler pipe penetration above the drop-tile ceiling on the project in anticipation of an upcoming inspection by the fire marshal. Budget sent out Plaintiff, an employee of Incorporated Services. As a result of the horrible fall, Plaintiff sustained catastrophic and incapacitating brain injuries which have left him to live out his normal life expectancy in a semi-conscious, infant-like state, entirely unable to walk, communicate, or care for himself.

This accident was entirely preventable but for a complete and inexcusable lack of regard for safety on the construction project from (1) C. Raymond Davis & Sons, Inc. (hereinafter “CRD”), the project’s general contractor, (2) Budget Maintenance Construction Services (hereinafter “Budget”), the subcontractor hired to perform the last-second caulking at issue, and (3) Accelerated Fire Protection, Inc. (hereinafter “AFP”), the subcontractor which initially failed and later refused to complete the fire caulking work it was contractually required to perform. As a result of Defendants’ collective and individual failures, Plaintiff was sent above the drop-tile ceiling without proper fall protection and ultimately sustained the utterly devastating injuries at issue.

1. The rush to finish the Conshohocken Rowing Center project

On May 9, 2013, CRD entered into a contract to serve as the general contractor for the construction project known as the “Conshohocken Rowing Center”, located at 307 Washington Street, Conshohocken, PA 19428. *See* AIA Standard Form Agreement, attached hereto as **Exhibit “A”**. CRD was responsible for the construction of the “11,000 square foot 2 story block and frame building . . . [f]or housing rowing clubs from Haverford Friends School, Malvern Prep School, and the Borough of Conshohocken”. CRD Site Specific Safety Plan, attached hereto as **Exhibit “B”**, at p. 8. In carrying out the construction project, CRD entered into the following relevant subcontract agreements:

- On June 12, 2013, CRD entered into an agreement with AFP, which entity was to install the rowing center’s fire suppression system. *See* Subcontract Agreement with AFP, attached hereto as **Exhibit “C”**. The subcontract with AFP specifically provided that “Fire Caulking and Sealing penetrations for your own work included”. Ex. C, AFP Subcontract, at p. 2.
- On November 18, 2013, CRD entered into an agreement with McNally Construction, LLC, for certain waterproofing work on the project. *See* Subcontract Agreement with McNally Construction, LLC, attached hereto as **Exhibit “D”**.
- On April 14, 2014, CRD entered into an agreement with Budget, for other waterproofing work on the project. *See* Subcontract Agreement with Budget, attached hereto as **Exhibit “E”**. It was specifically noted that Budget was “to complete the work originally contracted with McNally Construction, LLC dated 11/18/13”.¹ Ex. E, Budget Subcontract, at p. 2.

Discovery in this case has revealed that the Conshohocken Boathouse Project was required to be completed by the end of August, 2014. However, CRD fell behind schedule and requested an extension beyond the original contract scope. Meeting minutes for the project confirm that, in the weeks leading up to the tragedy at issue, CRD’s request for an extension was discussed but not granted. As of July 21, 2014, CRD’s request was pending and awaiting approval from the Owner of the project:

30.2	CRD is still planning on being completed by the end of August. CRD’s request for time extension beyond the original contract scope was briefly discussed but not agreement has been made yet.	CRD
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Meeting Minutes of 7/21/14, attached hereto as **Exhibit “F”**, at p. 4. The request was again discussed during the next meeting on August 4, 2014:

30.2	CRD is still planning on being completed by the end of August. CRD’s request for time extension beyond the original contract scope was briefly discussed but not agreement has been made yet.	CRD, Malvern
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Meeting Minutes of 8/4/14, attached hereto as **Exhibit “H”**, at p. 4. By August 11, 2014, CRD was fully facing the reality that the project would not be done in time, prompting a more frantic assertion

¹ After execution of the McNally Construction, LLC subcontract, attached hereto as **Exhibit “D”**, but before execution of the Budget subcontract, attached hereto as **Exhibit “E”**, Budget “absorbed” McNally Construction, purchasing “all of [McNally Construction’s] equipment, material, and manpower”. Deposition of Sean McNally, attached hereto as **Exhibit “G”**, at pp. 20:8-21:3. Mr. McNally became an employee of Budget at that time, serving as Budget’s project manager on the Boathouse project. *See* Ex. G, McNally Deposition, at p. 20:12-22; 22:20-24.

that “CRD *needs an official decision very soon* from the Owner regarding their request for a time extension”:

30.2	CRD is still planning on being completed by the end of August. CRD's request for time extension beyond the original contract scope was briefly discussed but not agreement has been made yet. 8/6/14: Tony reiterated that CRD needs an official decision very soon from the Owner regarding their request for a time extension and additional labor on account of soil and winter weather delays.	CRD, Malvern
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Meeting Minutes of 8/11/14, attached hereto as **Exhibit “I”**, at p. 3. By August 20, 2014, just two days before Plaintiff’s tragic fall, CRD had yet to be granted the extension it so desperately sought:

30.2	CRD is still planning on being completed by the end of August. CRD's request for time extension beyond the original contract scope was briefly discussed but not agreement has been made yet. 8/6/14: Tony reiterated that CRD needs an official decision very soon from the Owner regarding their request for a time extension and additional labor on account of soil and winter weather delays. 8/20/14: Tony and	CRD, Malvern
	Paul to meet after the meeting today to discuss.	

Meeting Minutes of 8/20/14, attached hereto as **Exhibit “J”**, at pp. 2-3.

While CRD was pleading with the Owner for more time to complete the project, its workers onsite were frantically attempting to complete all punch list items necessary to pass an upcoming fire marshal inspection and to obtain a Certificate of Occupancy. On August 15, 2014, Eric Billstone, filling in for the CRD superintendent who was on vacation, e-mailed Sean McNally, project manager from Budget, asking for a “crew” to help them “get wrapped up at the Conshohocken Rowing Center”. See Billstone e-mail of August 15, 2014, attached hereto as **Exhibit “K”**. This request specifically included “some areas around some piping above ceiling that need to get caulked on the fire wall before the fire Marshall [sic] can do his inspection”:

From: Eric Billstone <ericbillstone@craymondDavis.com>
Sent: Friday, August 15, 2014 11:03 AM
To: Sean McNally
Cc: Tony Massimo; Claude Shelton
Subject: Conshohocken Rowing

Sean,

We are trying to get wrapped up at the Conshohocken Rowing Club and are looking for your crew.

We have ceiling tile going up inside and there is control joints and some areas around some piping above ceiling that need to get caulked on the fire wall before the fire Marshall can do his inspection.

Ex. K, Billstone e-mail of August 15, 2014. Jonathan Jones, Jr., “Operations Manager/Project Manager” for Budget, replied to this e-mail, accepting the request and indicating he would send a crew out to the site early the following week:

From: Jonathan D. Jones
Sent: Friday, August 15, 2014 11:21 AM
To: 'ericbillstone@craymondDavis.com'
Cc: budgetoperations
Subject: Conshohocken Rowing

Eric,

Sean is away until Monday. I will try to get a crew there Monday but if we cant we will be there Tuesday. We will make sure we are wrapped up before your cleaners come on Thursday. I will have Sean reach out to you Monday.

Jones e-mail of August 15, 2014, attached hereto as **Exhibit “L”**. Thereafter, Budget sent a crew to the project to start the caulking work at issue. On August 18, 2014, Claude Shelton, CRD’s superintendent who had by then returned from vacation, made a request that Budget prioritize “fire caulking that needs to be done above ceiling upstairs”. Shelton e-mail of August 18, 2014, attached hereto as **Exhibit “M”**. Mr. Shelton stressed that the fire caulking of a sprinkler pipe penetration above the ceiling was “more important so we can close up the ceiling”:

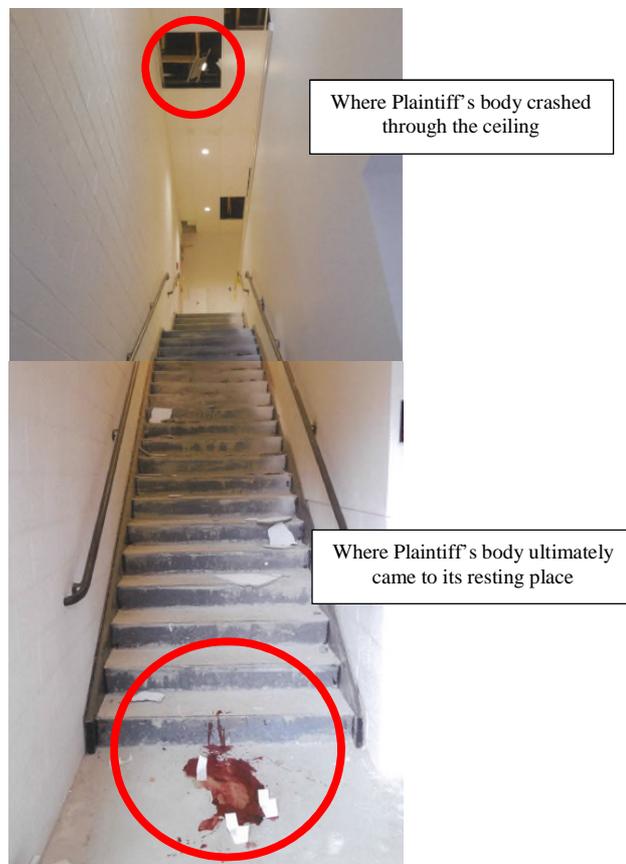
From: Claude Shelton <claudeshelton@craymondDavis.com>
Sent: Monday, August 18, 2014 7:56 AM
To: Sean McNally; Eric Billstone; Bill Obrien
Cc: Tony Massimo
Subject: RE: Conshohocken Rowing Caulk

Thanks Sean. I have your guys started on the interior, however, we have some fire caulking that needs to be done above ceiling upstairs that is more important so we can close up the ceiling. Your guys did not come with any but said a guy could go out and get some. They are waiting for you to call. Please let us know asap.

Ex. M, Shelton e-mail of August 18, 2014. As Budget did not have the manpower to complete this request, it sent Leon Oates, an employee of Incorporated Services, Inc., to the project four days later to perform the last-second caulking on behalf of Budget. Tragically, as he attempted to fire caulk the penetration at issue, he was caused to fall, sustaining the catastrophic traumatic brain injuries which have left him totally incapacitated.

2. Plaintiff's catastrophic and easily-preventable fall

From the moment that Leon Oates set foot on the Conshohocken Rowing Center project on August 22, 2014, he was failed in every way imaginable by each of the parties that could have prevented this tragic accident. Upon arriving at the construction project, Mr. Oates was blindly sent above the drop-tile ceiling to perform the fire caulking at issue. Moments later, his life, and the lives of those closest to him, were forever tragically altered when his body came crashing through the ceiling and smashed into the concrete stairs below.



Working nearby, Robert Irving, an employee of AFP, heard what he described as a “violent” noise:

Q: Let's go to the day of the accident. How did you first learn, through your senses, that something was up?

A: A loud noise.

Q: Describe the noise for us.

A: Violent.

Q: What did it sound like?

A: Crashing.

Q: What did you do when you heard the violent crashing sound?

A: I was working with John. We both looked at each other with the, What the heck is that? And we walked over and we opened up the door.

Deposition of Robert Irving, attached hereto as **Exhibit “N”**, at p. 42:10-24. Mr. Irving’s co-worker, Jonathan Keller, recalled hearing two distinct noises – the sound of Mr. Oates crashing through the ceiling and the sickening thud of his body slamming into the steps:

Q: All right. So Mr. Irving testified that, at first he said that he heard one sound, a violent crash, he said, and then I took him through the police report, which was the day of and he had told the police that he heard one crashing sound and then a thud. Did you hear two sounds also?

A: Not to my memory; just the crash and, I guess, I did hear the sound of a thud, a body, hitting the ground, but I didn't identify it at the time as that.

Q: So you did hear two things happen; one was a violent crash and then one was a thud that you identified as a body.

A: Yeah.

Deposition of Jonathan Keller, attached hereto as **Exhibit “O”**, at pp. 62:9-24.

Responding to the “violent” noise, Mr. Irving came upon a scene which is still difficult for him to describe, years later:

Q: Was his body contorted in any way that you knew wasn't normal?

A: Yes.

Q: Where was his body contorted where you knew it wasn't normal?

A: That's just an overall statement. When you see a human in the shape – I don't really, can't say that his knee was near his something or whatever. **It is just – I**

don't know. I've never seen anything like it before. I was shook up. I could tell the man was hurt.

Ex. N, Irving deposition, at pp. 44:21-45:9 (emphasis added). Mr. Keller also continues to be haunted by memories of coming upon the body of Mr. Oates that morning:

Q: And you will see in Irving 2, can you show me -- are you able to hold it up to the camera and show us how Mr. Oates' body was positioned?

A: **Yeah, something like -- I haven't been able to forget, no matter how hard I tried.** His face was right in this area face down and his body was up the stairs. His feet were probably -- I remember him to be sort of a tall man. I think his feet were probably not in the picture.

Ex. O, Keller deposition, at p. 65:11-21 (emphasis added). Mr. Keller and Mr. Irving stayed with Leon's unconscious body, desperately trying to talk him into holding on until first responders arrived:

Q: When you first saw him what did you do?

A: I told him that we're going to help him.

Q: You literally said to Mr. Oates?

A: I got down on my knee and I said, We're going to help you, dude. He didn't respond, but I talked to him for a little bit. Help is on the way.

Ex. N, Irving deposition, at p. 50:10-19. From the scene, Mr. Oates was intubated and medevacked to the Hospital of the University of Pennsylvania, where he was immediately admitted in-patient for his devastating injuries.

Tragically, all parties have admitted and agreed that there was one way to safely perform the caulking work above the ceiling while fall protected -- by erecting a scaffold in the staircase:

Q: So he told you that erecting a working platform, which we know in the industry as a scaffolding, would have been the best way to go about it to protect him from the fall?

A: Correct.

Ex. G, McNally deposition, at p. 132:7-12. Mr. Shelton agreed with Budget's project manager:

Q: So what I'm asking you, sir, is in looking back, the safest way for Mr. Oates to have performed this work would have been to erect a scaffolding just like the electricians had, just like the carpenters had, that would allow Mr. Oates to be fall protected and perform his work hazard free; correct?

[Objection omitted]

A: Correct.

Deposition of Claude Shelton, attached hereto as **Exhibit "P"**, at pp. 36:16-37:3. As alluded to above, the investigation into this tragedy revealed that other trades working at heights in the subject stairwell were provided with a scaffolding system to enable them to safely perform their work:

Q: So just to summarize, you recall a meeting with Mr. Shelton, where he told you that C. Raymond Davis will be erecting a scaffolding in the stairwell, which we have identified as the stairwell where you eventually found Mr. Oates after he fell, and that stairwell is erected, and you were able to perform all of your scope of work that you had to in that stairwell, and when you did so, you performed it safely and fall-protected; correct?

[Objection omitted]

A: Correct.

....

Q: How long before you found Mr. Oates on August 22nd did you perform work being fall-protected on a scaffolding in that stairwell?

A: That would probably have been roughly a week to two weeks beforehand.

Q: And do you have any idea, was that scaffolding specifically erected by C. Raymond Davis in that stairwell for the electricians' use only, or was that up for the use of multiple trades?

A: That was up for the use of multiple trades.

Q: Who – did the painters use it?

A: The painters used it. I am almost certain that the ceiling grid people used that.

Q: By ceiling grid, you mean the people who installed the drop ceiling?

A: Yes, they had to have used it, the painters used it, we used it. I don't think there was anybody else that would have used that, because through that space there, I

don't believe there was any data wires, I don't believe there was any fire alarm that was ran through there, so I believe that would have been it as far as contractors on that scaffolding.

Deposition of Shane Collins, attached hereto as **Exhibit "Q"**, at pp. 25:8-26:16. In fact, it became apparent Plaintiff was the only worker who was not provided with this absolutely critical safety measure:

Q: Is it your understanding, from being on this site, that Mr. Oates was the only worker that ever had to work above that stairwell that was not provided the scaffolding in order to keep him safe and fall-protected?

[Objection omitted]

A: As far as my understanding, yes.

Q: *So everybody else that worked in this job on that stairwell was fall-protected, except for Mr. Oates?*

A: *Yes.*

Ex. Q, Collins deposition, at p. 29:7-20 (emphasis added).

CRD does not dispute the fact that scaffolding could have been erected in stairwell:

Q: So nobody from C. Raymond Davis is going to dispute the fact that a scaffolding could have been erected in the stairwell; correct?

A: Correct.

Ex. P, Shelton deposition, at p. 34:5-9. Unfortunately, however, CRD and Budget, already behind schedule and getting pressure to obtain a Certificate of Occupancy, chose to prioritize speed over safety, attempting to cut corners by not taking the time to properly erect scaffolding, sending Leon Oates above the drop-tile ceiling without the fall protection he so desperately needed.

3. The un-caulked sprinkler pipe penetration

Leon Oates should have never been sent above the drop-tile ceiling to perform the work at issue. AFP, which was contractually obligated to perform the fire caulking, (1) should have performed

the caulking when the penetration was made, or (2) should have sent its own employee to finish the job it started. David Frail, operations manager for AFP, confirmed as much:

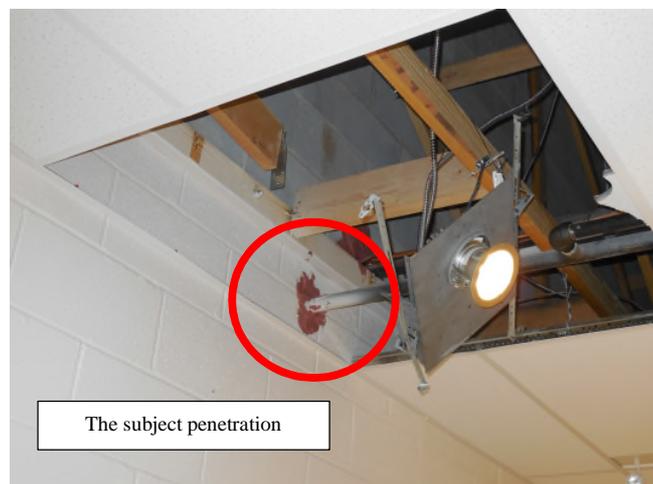
Q: So somebody from Accelerated should have been up there performing the fire caulking; not Mr. Oates; correct?

[Objection omitted]

A: Correct.

Deposition of David Frail, attached hereto as **Exhibit "R"**, at p. 61:10-15. Tragically, Plaintiff was ultimately sent above the ceiling because Accelerated Fire Protection wholly ignored its obligation to perform caulking of the penetrations it made while installing the rowing center's fire suppression system and then later refused to complete its contractual obligations when asked to do so by CRD's superintendent.

The penetration Plaintiff was attempting to seal at the time of his fall was created to feed sprinkler piping through the demising wall. This pipe was part of the fire suppression system installed by AFP at the rowing center.



Jonathan Keller, an employee of AFP, confirmed the piping at issue was part of the system he "roughed in", or installed, around July, 2014:

Q: All right. Mr. Keller, I have marked as Keller 2 a picture. I'll represent to you, and you can look at the other pictures that are in front of you that were marked

at Mr. Steve Irving's deposition for context, but I'll represent to you that that is a close-up of the hole in the ceiling through which Mr. Oates fell, and there is a black pipe running through that picture. Do you see that?

A: Yes.

Q: Is that sprinkler piping?

A: Yes.

....

Q: So just a general question: Before Mr. Oates' tragedy you worked in the general area where he fell; correct?

A: Yes.

Q: And the work you did was roughing in the piping; correct?

A: Yes.

....

Q: So are you able to narrow down in what time frame you would have worked in this stairwell area roughing in the piping?

A: Sometime in July.

Ex. O, Keller deposition, at p. 35:2-14; 39:6-12; 41:7-10.

Although AFP indisputably created the penetration for the sprinkler pipe, it did not fire caulk this penetration, in direct violation of the terms of its subcontract agreement. No party denies that the explicit language of the contract between AFP and CRD made AFP responsible for "Fire Caulking and Sealing penetrations" it created on the project:

*Adequate manpower to maintaining job progress is required

*Fire Caulking and Sealing penetrations for your own work included

*Unloading and inventory of materials provided by CRD for your work included

*Scope to include your trade work shown on all documents

Ex. C, AFP Subcontract Agreement, at p. 2. Jason Mullen, president and part owner of AFP, confirmed this requirement:

Q: And then there are clarifications and down in the Clarifications it says: "Fire Caulking and Sealing penetrations for your own work included." So was it

your understanding that fire caulking and sealing of penetrations for the work of Accelerated Fire Protection was included in this contract?

A: Yes.

Deposition of Jason Mullen, attached hereto as **Exhibit “S”**, at p. 11:15-23. Looking specifically to the subject penetration, Mr. Mullen conceded that it should have been sealed by AFP employees:

Q: Okay. But regardless of that time here, regardless of the examples you're giving, it's -- *the fire caulking was within Accelerated's scope of work and at some point an Accelerated employee should have been the one performing that fire caulking, correct?*

[Objection omitted]

A: *That's correct.*

Ex. S, Mullen deposition, at p. 51:9-16 (emphasis added).

Mr. Mullen's admissions at deposition, however, stand in stark contrast to his conduct at the jobsite. Discovery revealed that, after CRD became aware that certain sprinkler pipe penetrations required sealing, Claude Shelton approached Mr. Mullen to demand that AFP fulfill its contractual obligations and seal these penetrations. In response, Mr. Mullen *lied* to Mr. Shelton, stating that the fire caulking was “not in their contract”, and he refused to complete the work AFP previously promised to perform:

Q: So why didn't you go to the Accelerated Fire Protection people and ask them to go perform the fire caulking in their penetrations?

A: I did.

Q: You did?

A: Yes.

Q: And who did you go to?

A: Jason Mullen.

Q: When did you go to Mr. Mullen and ask Mr. Mullen to have the Accelerated Fire Protection people go fire caulk their penetrations?

A: I don't remember. In many cases these different subs would be out. You have a conversation with them while you're walking and whatever. *I asked Jason about caulking, fire caulking. He said it was not in their contract and he was not going to do it.*

....

Q: So Mr. Mullen, the president of Accelerated, gave you false information.

[Objection omitted]

A: I didn't know that at the time.

Q: You do now.

A: Yes.

Q: *And let's call it like we see it. It was false information; correct?*

[Objection omitted]

Q: You have to say "yes" or "no."

A: *Yes.*

Ex. P, Shelton deposition, at pp. 75:13-76:9; 76:16-77 (emphasis added). Due to the AFP president's deceptive conduct, Mr. Shelton was left with no choice but to find someone who would complete the caulking work in AFP's stead. He thereafter reached out to Budget for help in completing the punch list item and Plaintiff was sent to the site where he ultimately sustained the catastrophic injuries at issue.

III. THEORIES OF LIABILITY

1. The admitted "inexcusable" failures of C. Raymond Davis & Sons, Inc.

This terrible incident was entirely preventable, if the entities and people responsible for safe construction practices on this site – the general contractor, CRD, and the subcontractors, Budget and AFP – had fulfilled their fundamental responsibilities to the workers they put at risk. Looking to CRD specifically, Claude Shelton, project superintendent, honestly testified that *CRD failed Mr. Oates in*

every way conceivable. He admitted that, as the general contractor, CRD was responsible for overall site safety and that he, as project superintendent, was responsible for fulfilling that responsibility:

Q: So you have an understanding that when there's a general contractor on the site that general contractors are responsible for overall site safety; correct?

A: Yes.

Q: And the person who the general contractor has put in charge are people like yourself, the project superintendent, to fulfill that responsibility of overall site safety; correct?

A: Yes.

Ex. P, Shelton deposition, at pp. 18:24-19:4.

CRD explicitly assumed this responsibility for overall site safety in the contracts it executed for the rowing center project. The owner's contract assigned CRD control over jobsite safety, CRD was responsible for and was to have control over all construction means and methods on the project, and CRD was responsible for all safety:

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

....

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

General Conditions of the Contract for Construction, attached hereto as **Exhibit “T”**, at p. 12, 27.

CRD agreed to ensure compliance with all requirements of applicable federal, state and local safety regulations and ordinances:

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

Ex. T, General Conditions of the Contract for Construction, at p. 12, 27.

Despite acknowledging CRD’s control over jobsite safety and despite sending Plaintiff above the drop-tile ceiling to perform work at heights greater than six feet, Mr. Shelton failed to speak to Plaintiff about how to safely perform the work. In fact, he never discussed anything regarding safety with Mr. Oates:

Q: So did you at any point after you assigned Mr. Oates the fire caulking, did you at any point talk to him about how he would go about doing that job?

A: I did not.

Q: Did you at any point discuss safety?

A: No.

Ex. P, Shelton deposition, at p. 21:4-11. He failed to have any safety discussions despite an acute awareness of his responsibility, as superintendent, to discuss safety with workers:

Q: As a project superintendent of 16 years, sir, and as you sit here today in hindsight, you know that it was your job responsibility to actually discuss safety with Mr. Oates before he did that work; correct?

[Objection omitted]

A: Yes.

Q: And you failed to do that; correct?

A: We did not have the conversation, correct.

Ex. P, Shelton deposition, at pp. 21:12-22:3. Mr. Shelton also admitted that he was responsible to make sure workers on his construction site were adequately fall protected:

Q: And once a worker has, once you as project superintendent have identified that a worker has to work in an area where he's exposed to falls because he's working over six feet, then you as the project superintendent must make sure that that worker has adequate fall protection; correct?

[Objection omitted]

A: Yes.

Ex. P, Shelton deposition, at p. 23:5-14. Tragically, however, he conceded that he did nothing to ensure that Plaintiff had proper fall protection:

Q: And so not only did you not have any conversations with Mr. Oates about safety at all, but you also did nothing to ensure that Mr. Oates had the proper fall protection when he was doing his work; correct?

[Objection omitted]

A: Yes.

Ex. P, Shelton deposition, at p. 23:16-24. Mr. Shelton admitted that he failed to review the CRD site specific safety plan, including those portions specifically enumerating his safety responsibilities as project superintendent. See Ex. P, Shelton deposition, at p. 155:9-20. Looking back, he honestly admitted that he wished he had read the entire safety manual and familiarized himself with his safety duties:

Q: I mean, the bottom line -- sir, as you sit here today, you are kind of ashamed that you didn't read it in its entirety because you now realize that you should have; right?

[Objection omitted]

A: I wish I had read it more carefully, yes.

Ex. P, Shelton deposition, at p. 160:3-11. He conceded that his failure to read the site specific safety plan was "inexcusable":

Q: And when you say you read some of it but not all of it, you would agree with me that the best way for you to make sure that the site specific safety plan was actually followed and adhered to at this project would be for you to read it, fully understand it, and make sure the subs complied with it?

[Objection omitted]

A: Correct.

Q: Is the project superintendent for the general contractor that has overall site safety responsibility, is there ever an adequate excuse for the project superintendent to not fully read the site specific safety plan for that very project?

[Objection omitted]

A: No.

Q: Looking back, that's inexcusable; correct?

A: Yes.

Ex. P, Shelton deposition, at pp. 149:7-150:7. Kyle Davis, CRD safety director, confirmed that it was, in fact, inexcusable for the project superintendent, as the person tasked with implementing site specific safety measures, to not have reviewed the safety plan:

Q: And he, in fact, he was a very honest guy who said it was inexcusable that he didn't read it. You would agree that it was inexcusable that the project superintendent, that's tasked with the very job of making sure this manual was followed on this job, he should have read it; correct?

A: Yes

Deposition of Kyle Davis, attached hereto as **Exhibit "U"**, at pp. 77:23-78:7. Mr. Shelton's failure to read the site specific safety plan was hardly his only "inexcusable" conduct in failing to carry out his safety responsibilities as project superintendent:

Q: Do you have any excuse for not making sure that Mr. Oates was adequately fall protected when he was performing the fire caulking that you sent him up to do?

[Objection omitted]

A: No.

Q: It was inexcusable in hindsight; correct?

[Objection omitted]

A: Yes.

Ex. P, Shelton deposition, at pp. 24:24-25:13. Mr. Shelton's overwhelmingly obvious incompetence in all things safety was so apparent that he found himself questioning his status with CRD, mid-deposition:

Q: And in failing to do that you violated your own company's safety policies; correct?

[Objection omitted]

A: So where do I stand? I mean . . .

Ex. P, Shelton deposition, at p. 160:3-11. Mr. Shelton, alone, was not to blame. His failures were part of CRD's company-wide policy of wholly failing to take proper steps to promote and advance safety, first by adequately training employees on its own safety manuals:

Q: Did C. Raymond Davis do a good enough job, in your eyes, training you on their safety and health program in this manual?

A: It looks in my case like they didn't.

Ex. P, Shelton deposition, at p. 146:10-15. CRD similarly failed to train its employees on important safety topics such as fall protection:

Q: And you believe that C. Raymond Davis failed to properly train you on adequate fall protection systems; correct?

[Objection omitted]

A: Yes.

Ex. P, Shelton deposition, at p. 172:11-17. In fact, Mr. Shelton was completely unaware of long-standing fall protection safety principles until *after* the tragic accident at issue took place on his watch:

Q: And what you just, again, we appreciate your honesty today, what you very honestly told us was that you learned certain things and principles about fall protection after this fall; correct? That you did not know before this fall.

A: Yes.

Ex. P, Shelton deposition, at p. 172:11-17. Mr. Shelton's ignorance of these standards should come as no surprise where CRD's safety director never even bothered to familiarize himself with OSHA's rules until *after* Plaintiff's fall:

Q: I don't understand what you mean when you say you would have done it in 2014. You did it in May of 2015.

A: Yes.

Q: You didn't take any OSHA, you didn't take any OSHA whatsoever before that date; correct?

A: Correct.

Ex. U, Davis deposition, at p. 27:9-16.

This company-wide culture of lax safety was not lost on CRD's subcontractors working the project. Jonathan Keller testified that basic safety measures, such as the performance of Job Safety Analyses, were "not taken very seriously" on the boathouse project:

Q: So you understand that on certain jobs where you have worked there's a requirement that a Job Safety Analysis be performed to figure out how to do your job safely before you start your work; correct?

A: There are jobs where that's taken very seriously.

Q: Was it taken very seriously on this job?

A: Not to my memory.

Q: Was it even considered at all on this job?

A: Not to my memory at all.

Ex. O, Keller deposition, at p. 54:10-22. CRD did not hold toolbox talks:

Q: Were toolbox talks performed at the Conshohocken Boathouse project?

A: No.

Ex. G, McNally deposition, at p. 70:18-20. Foreman meetings on safety never took place:

Q: You have been working on jobs that hold either foremen's meetings or contractors' meetings; correct?

A: Yes.

Q: And in those meetings those meetings always touch upon safety; correct?

A: Usually, yeah.

....

Q: Sure. Were there any foremen's meetings held on this project?

A: Yeah, not to my knowledge.

Ex. G, McNally deposition, at pp. 71:6-12; 71:19-21. The lack of safety awareness from CRD should not be surprising where Kyle Davis, its "director of safety", also doubled as the company's chief financial officer. One need look no further than the time he devoted to each of these positions to know *exactly* how CRD prioritized money over safety as a company:

Q: So five percent of your time was devoted as director of safety and 95 percent of your time was as the CFO?

A: Yeah.

Ex. U, Davis deposition, at p. 15:7-10.

Ultimately, it was admitted that CRD wholly and unequivocally failed Mr. Oates on the boathouse project, as a result of which he sustained the catastrophic injuries at issue:

Q: You have been very honest this morning from what you know about this accident. You would agree with me that C. Raymond Davis failed their site safety responsibilities as it related to Mr. Oates' fall; correct?

[Objection omitted]

A: Correct.

....

Q: So you would just, you're just able to honestly say today that C. Raymond Davis failed Mr. Oates; correct?

[Objection omitted]

A: Correct.

Ex. P, Shelton deposition, at pp. 38:10-18; 182:19-23.

Plaintiffs have offered the expert report of renowned construction expert, Steven A. Estrin, WSO-CSM/CSSD (SL), CSC, FACFE, who confirmed that CRD did “absolutely nothing to prevent Mr. Oates’ exposure to a fall” and “acted unreasonably under the circumstances and deviated from good and accepted standard industry practices and procedures”:

It is indisputable from the deposition testimony in its entirety of Claude Shelton, “C.R. Davis’” Project Superintendent, that “C.R. Davis” did **absolutely nothing** to prevent Mr. Oates’ exposure to a fall of over fifteen (15’+) feet to a lower level on August 22, 2014, in contravention of the mandates found at §10.1 and §10.2.

That failure was a proximate/root cause of Mr. Oates’ fall to a lower level resulting in his catastrophic injury, in the opinions of Mr. Estrin and Dr. Estrin. As such, they acted **unreasonably under the circumstances and deviated from good and accepted standard industry practices and procedures.**

Report of Stephen A. Estrin, WSO-CSM/CSSD (SL), CSC, FACFE, attached hereto as **Exhibit “V”**, at p. 42.

2. Budget’s blatant ignorance of all things safety

Budget too is responsible for Plaintiff’s devastating injuries. When Sean McNally sent Plaintiff to the rowing center project to perform the fire caulking above the stairwell, Budget assumed responsibility for providing a safe workplace to Leon Oates and thus was required to do so competently. Moreover, in entering into a subcontract with CRD, Budget explicitly agreed to “assume towards the Contractor all of the obligations and responsibilities which the Contractor, by [the Contract Documents], assumes towards the Owner”:

D. Bound to Contract Documents: Subcontractor shall be bound to the Contractor by the terms of this Agreement and of the contract documents between the Owner and the Contractor, and shall assume towards the Contractor all of the obligations and responsibilities which the Contractor, by those documents, assumes towards the Owner. Provided however, that where any provision of the contract documents between the Owner and the Contractor is inconsistent with any provision of this Agreement, this Agreement shall govern.

Ex. E, Budget Subcontract Agreement, at p. 5. The “Contract Documents” were specifically identified in the subcontract to include “the Contract between the Owner and Contractor (General, Special, Supplementary and other conditions)”:

C. Contract Documents: The contract documents for this contract shall consist of this Agreement, the conditions of the Contract between the Owner and Contractor (General, Special, Supplementary and other conditions,) drawings, specifications, and all addenda issued prior to the execution of the Contract between the Owner and the Contractor and all modifications issued subsequent thereto, all of which documents have been made and are available for the inspection by the Subcontractor. No modifications or markups to the face of this subcontract, including strikeouts or interlineations, are valid, effective or enforceable unless initialed and dated by both parties in the margin adjacent to the markup. Commencement of work by Subcontractor constitutes Subcontractor’s consent to all terms and conditions of this subcontract as presented by Contractor.

Ex. E, Budget Subcontract Agreement, at p. 1.

In explicitly assuming the terms of the General Conditions of the Contract for Construction between CRD and the owner of the project, Budget assumed control over jobsite safety and accepted responsibility for “initiating, maintaining and supervising all safety precautions and programs” on the project. Budget promised to “take reasonable precautions for safety of . . . employees on the Work”. Budget also agreed to be responsible for compliance with all requirements of applicable Federal, State and local safety regulations and ordinances:

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor’s Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

Ex. T, General Conditions of the Contract for Construction, at p. 27. Budget agreed to have personnel on site “whose duty shall be the prevention of accidents”:

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor’s organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor’s superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

Ex. T, General Conditions of the Contract for Construction, at p. 28. Budget’s subcontract with CRD further expressly demanded that Budget comply with federal OSHA safety standards:

- C. Government Compliance: Subcontractor shall comply with:
- (1) The Fair Labor Standards Act and all appropriate federal, state, local acts and executive orders concerning wages, hours, methods of payment and non-discriminatory and equal opportunity practices with regard to the hiring and use of labor, both at the construction site and by all material suppliers and subcontractors, including the filing of any and all certificates of compliance required by any governmental agency.
 - (2) Subcontractor shall be responsible for compliance with the Williams-Steiger Occupational Safety and Health Act of 1970, (OSHA), and compliance with all applicable safety rules and regulation, including Contractor’s supplemental instructions during the conduct of Subcontractor’s performance in connection with this project.

Ex. E, Budget Subcontract Agreement, at p. 4.

While Budget will inevitably claim that the work it sent Plaintiff to perform was not within the scope of its subcontract with CRD, the facts and the testimony in this case prove otherwise. As cited above, CRD specifically requested that Budget send a crew out to perform the last-second fire caulking. *See Ex. K*, Billstone e-mail of August 15, 2014. Budget was told that this fire caulking was to be performed above the drop-tile ceiling. *See Ex. M*, Shelton e-mail of August 18, 2014. Mr. McNally specifically admitted Plaintiff was sent to the rowing center to perform this fire caulking at heights greater than six feet:

Q: As the project manager for Budget, were you aware that in order to perform caulking on this project Mr. Oates or any member of his crew would have to eventually work at heights over six feet?

A: Yes.

Ex. G, McNally deposition, at p. 73:19-24. In accepting CRD’s request for workers to perform the fire caulking, Mr. McNally testified that Budget did amend the scope of its contract to assume the fire caulking work:

Q: While the fire caulking was not subject of the written contract, did it become a portion of the scope of Budget when C. Raymond Davis asked them to fire caulk?

[Objections omitted]

A: Did it become part of the contract? I'm sorry. Or part of the scope?

Q: Did it become part of Budget's scope of work?

[Objections omitted]

A: Yeah, I guess at that point once, you know, Budget did it, I guess you could say it became part of the scope.

Ex. G, McNally deposition, at pp. 169-21:-170:17.

After sending Leon Oates to the rowing center project, Budget wholly and completely failed to take any steps to comply with its safety requirements in conjunction with the work it sent him to perform. Budget failed to assign personnel to supervise Mr. Oates at the time of his tragic fall:

Q: From what you told me earlier in the deposition through your honest answers, am I correct in stating that nobody from Budget was out to, in any way, supervise the work of Mr. Oates or Mr. Oates' crew to make sure that they were performing their work safely and in compliance with OSHA; is that correct?

A: Correct.

Ex. G, McNally deposition, at p. 69:4-12. Budget failed to designate personnel "whose duty [was] the prevention of accidents" as required by § 10.2.6 of the General Conditions of the Contract for Construction:

Q: And as project manager on behalf of Budget for this project did you do anything to figure out who from Budget would be fulfilling the safety obligations contained in the general conditions of this contract?

A: No.

[Objection omitted]

Q: Was there anybody selected by Budget for this project whose responsibility would be the prevention of accidents?

A: No.

Ex. G, McNally deposition, at pp. 56:24-57:13. Budget failed to have a competent person on site as required by OSHA:

Q: Did Budget have what you would consider a competent person on site to oversee the safety of the men and women performing the caulking?

A: Not specifically.

Q: You understand from your OSHA 30 training that there is a requirement that a competent person be present when workers are performing work; correct?

A: Yes. Yeah, I'm aware of that at this point, yeah.

Q: And you have no facts or evidence to tell us today that Budget complied with that OSHA requirement; correct?

[Objection omitted]

A: Correct.

Ex. G, McNally deposition, at p. 49:5-20. Budget's project manager failed to discuss fall protection with any workers on site:

Q: And did you have any conversations with the Budget employees about the fall protection systems or what particular fall protection they would have to utilize in order to perform their job at the project?

A: No.

Ex. G, McNally deposition, at p. 77:4-10. This failure constituted a direct and "inexcusable" violation of Budget's contractual obligations:

Q: And you would agree with me, as you agreed before, that in failing to provide adequate and appropriate fall protection for Mr. Oates, that Budget violated this provision of the contract where it says they should have followed OSHA; correct?

[Objection omitted]

A: Correct.

....

Q: And there was no excuse for Budget to not provide Mr. Oates adequate and proper fall protection; correct?

[Objection omitted]

A: Correct.

Ex. G, McNally deposition, at pp. 122:11-18; 123:11-15.

Mr. McNally further admitted that Budget should have assigned supervisory personnel to oversee the work Mr. Oates was performing:

Q: They should have had somebody out supervising the safety of Mr. Oates; correct.

[Objection omitted]

A: Correct.

Q: And they should have had somebody supervising the safety of the other, of other people performing the caulking; correct?

[Objection omitted]

A: Correct.

Ex. G, McNally deposition, at p. 112:19-113:7. He could not dispute that Budget should have taken steps to ensure that all work was performed in compliance with OSHA standards:

Q: So the bottom line is whoever Budget sent out to perform the work, whether it be Mr. Oates, whether it be their own employees, Budget, you know, should have had somebody out there supervising the work to make sure the work was being performed safely, in compliance with OSHA and make sure that nobody gets hurt; correct?

[Objection omitted]

A: Correct.

Ex. G, McNally deposition, at p. 113:9-16.

Ultimately, in the face of Budget's utterly shocking failure to satisfy any of its contractually-required safety mandates, Mr. McNally was honest and openly admitted that which is plainly obvious – Budget did not do anything to fulfill its safety responsibilities on the project:

Q: And you already truthfully explained to us that as far as you know, Budget didn't do anything to fulfill any safety responsibilities on this project; correct?

[Objection omitted]

A: Correct.

Ex. G, McNally deposition, at p. 121:7-13.

In addition to its undeniable failure to have appropriate safety personnel at the rowing center project, Budget wholly failed to comply with its obligation to preplan the work to be performed by Plaintiff and failed to “initiat[e], maintain[] and supervis[e] all safety precautions and programs”, as required by § 10.1 of the General Conditions of the Contract for Construction:

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

Ex. T, General Conditions of the Contract for Construction, at p. 27. Budget's own Safety and Health Manual also purports to emphasize preplanning work to ensure safety, including a stated policy and primary concern to “develop and maintain safe and healthy workplace conditions”:

1. INTRODUCTION

SAFETY AND HEALTH POLICY

It is the policy and primary concern of Budget Maintenance Construction Services, Inc. to develop and maintain safe and healthy workplace conditions for all company employees, company subcontractors, and the general public. This will be accomplished through the application of safety training courses and programs, and through procedures and policies as outlined in this manual.

The company will make every attempt to provide equipment and create conditions that will make for a safe workplace, and safety education shall be provided to all employees as necessary.

The company requires strict compliance with this Safety & Health Manual and established work procedures. Failure on the part of any employee to comply with this policy may result in disciplinary action up to and including termination of employment. In addition, all subcontractors are expected to abide by the provisions of the company Safety & Health Manual.

Budget Safety and Health Manual, attached hereto as **Exhibit “W”**, at p. 4; *see also* deposition of Jonathan D. Jones, attached hereto as **Exhibit “X”**, at pp. 101:21-102:2 (confirming that Budget manual emphasizes need to preplan safety). Mr. Jones admitting that failing to plan safety is “unacceptable”:

Q: What Mr. McNally should have done, as soon as Budget was requested to send a man over to do fire caulking, was to actually talk to Mr. Oates about what was going to be done and how he was going to go about doing it safely; correct?

A: Correct.

Q: And that's how safe projects function. You have to discuss safety and preplanning; correct?

A: Correct.

Q: A lack of planning of safety means no planning of safety; correct?

A: Correct.

Q: And that's unacceptable from a construction site safety standpoint; correct?

A: Correct.

Ex. X, Jones deposition, at pp. 68:17-69:10. Mr. Jones also conceded that, by definition, preplanning requires action be taken *prior* to the happening of an accident:

Q: Okay. No. So logically they have to preplan and develop the safety well before and hopefully in prevention of an accident; correct?

A: Yes.

Ex. X, Jones deposition, at p. 77:13-17. Ultimately, Mr. Jones admitted that Mr. McNally should have preplanned safety but failed to do so:

Q: So in a safe construction project the project manager on behalf of Budget for those projects where Budget is involved should, you agree with me, preplan the safety; correct?

A: Correct.

Q: And you agree with me that Mr. McNally did not do that on this project; right?

A: Correct.

Ex. X, Jones deposition, at p. 158:7-16. To distill Budget's utter and complete safety ineptitude into one concise series of questions and answers, one need only review the following testimony:

Q: And you told us honestly earlier that Budget did not do anything to oversee safety on this site; correct?

[Objection omitted]

A: Correct.

Q: So you would agree with me that as far as Article 10, Budget did nothing to fulfill their safety responsibilities that were set out in the general conditions of the contract; correct?

[Objection omitted]

A: Correct.

Q: *In fact, Budget just utterly failed to do anything related to safety on this project; correct?*

[Objection omitted]

A: *Correct.*

Ex. G, McNally deposition, at pp. 126:13-127:8 (emphasis added). As a result of its complete ignorance of all things safety, Budget did not properly preplan safety and did not discuss fall protection with Leon prior to sending him to the site, despite Budget's knowledge that Plaintiff would be working above the drop-tile ceiling at heights greater than six feet:

Q: As the project manager for Budget, were you aware that in order to perform caulking on this project Mr. Oates or any member of his crew would have to eventually work at heights over six feet?

A: Yes.

....

Q: And did you talk with Mr. Oates or anybody from his crew about fall protection in any way?

A: Not to my recollection.

Ex. G, McNally deposition, at pp. 73:19-24; 74:2-5. Budget admits that the rowing center contract it executed and its own safety manual demanded that it take action to preplan how to perform work in a safe fashion. Budget cannot deny that, before sending Plaintiff to the project site to perform the fire caulking, it should have done something to preplan the work. Budget admits that it “utterly failed” to do anything related to safety on the project, let alone to properly preplan the work it sent Plaintiff to perform.

Mr. Estrin’s above-referenced report highlights Budget’s failures, as does the report of Richard D. Hislop, PE, CSP. Mr. Estrin confirmed that Budget did “absolutely nothing to comply with either their contractual obligations, responsibilities for jobsite/worker safety . . . and/or their compliance with the corporate Safety and Health Policy”. He concluded that Budget also “acted unreasonably under the circumstances and deviated from good and accepted standard industry practices and procedures”:

The testimonies of Messrs. McNally and Jones establish indisputably that “Budget” did absolutely nothing to comply with either their contractual obligations, responsibilities for jobsite/worker safety, specifically the fall prevention of Leon Oates on August 22, 2014 and/or their compliance with their corporate Safety And Health Policy set forth in their Safety And Health Manual. Those failures were a proximate/root cause of Mr. Oates’ fall to a lower level accident and catastrophic injury, in the opinions of Mr. Estrin and Dr. Estrin. As such, they acted unreasonably under the circumstances and deviated from good and accepted industry practices and procedures.

Ex. V, Estrin Report, at p. 66. Mr. Hislop was similarly critical of Budget, concluding it “violated its contractual safety obligations, project safety rules, OSHA, construction industry standards and acted unreasonably”:

Summary – Budget was responsible for the safety of the individuals engaged in performing work within Budget’s scope of work with C. Raymond Davis & Sons at the Conshohocken Rowing Center project site. Mr. McNally and Budget failed to implement a work planning and safety oversight process for the work performed within its scope of work. Mr. McNally also failed to ensure workers executing the work Budget was asked to perform were trained to recognize the safety hazards associated with the work they were assigned to perform. Budget violated its contractual safety obligations, project safety rules, OSHA, construction industry standards and acted unreasonably. Budget’s failures were a factual cause of Mr. Oates’ fall and resulting injuries.

Report of Richard D. Hislop, PE, CSP, attached hereto as **Exhibit “Y”**, at p. 7.

3. AFP’s failure and refusal to comply with its obligation to fire caulk the subject penetration

AFP too bears responsibility for Plaintiff’s catastrophic injuries. As cited above, AFP entered into a contract to install the fire suppression system at the rowing center project. See Ex. C, AFP Subcontract Agreement. There is no dispute that, as part of the contractual promises it made, AFP was required to fire caulk and seal its own penetrations:

Q: And then there are clarifications and down in the Clarifications it says: “Fire Caulking and Sealing penetrations for your own work included.” So was it your understanding that fire caulking and sealing of penetrations for the work of Accelerated Fire Protection was included in this contract?

A: Yes.

Ex. S, Mullen deposition, at p. 11:15-23; see also Ex. E, AFP Subcontract Agreement, at p. 2. It similarly cannot be denied that AFP wholly failed to fulfill its contractual obligation to fire caulk, which work should have been performed by AFP employees:

Q: Okay. But regardless of that time here, regardless of the examples you're giving, it's -- the fire caulking was within Accelerated's scope of work and at some point an Accelerated employee should have been the one performing that fire caulking, correct?

[Objection omitted]

A: That's correct.

Ex. S, Mullen deposition, at p. 51:9-16 (emphasis added). As a direct result of AFP’s failure, Plaintiff was exposed to the harm which ultimately resulted in his catastrophic injuries. To his credit, AFP’s

operations manager conceded that Plaintiff should have never been the one asked to perform the fire caulking, admitting that AFP's own employee should have been sent above the drop-tile ceiling:

Q: So somebody from Accelerated should have been up there performing the fire caulking; not Mr. Oates; correct?

[Objection omitted]

A: Correct.

Ex. R, Frail deposition, at p. 61:10-15. Plaintiff was, however, sent up to attempt the fire caulking and was sent to do so as a direct result of Mr. Mullen's blatant misrepresentation to Mr. Shelton that the fire caulking was not in AFP's contract, and his subsequent refusal to complete the work AFP previously promised to perform:

Q: So why didn't you go to the Accelerated Fire Protection people and ask them to go perform the fire caulking in their penetrations?

A: I did.

Q: You did?

A: Yes.

Q: And who did you go to?

A: Jason Mullen.

Q: When did you go to Mr. Mullen and ask Mr. Mullen to have the Accelerated Fire Protection people go fire caulk their penetrations?

A: I don't remember. In many cases these different subs would be out. You have a conversation with them while you're walking and whatever. **I asked Jason about caulking, fire caulking. He said it was not in their contract and he was not going to do it.**

....

Q: So Mr. Mullen, the president of Accelerated, gave you false information.

[Objection omitted]

A: I didn't know that at the time.

Q: You do now.

A: Yes.

Q: *And let's call it like we see it. It was false information; correct?*

[Objection omitted]

Q: You have to say “yes” or “no.”

A: Yes.

Ex. P, Shelton deposition, at pp. 75:13-76:9; 76:16-77 (emphasis added). It was as a direct and foreseeable result of AFP’s misconduct that Plaintiff was even sent to the work site in the first place.

Moreover, in entering into a subcontract with CRD, AFP explicitly agreed to “provide all supervision, labor, materials, fasteners and equipment to provide Fire Suppression System at the Conshohocken Rowing Center Project”:

- D. Subcontractor’s Work: Provide all supervision, labor, materials, fasteners and equipment to provide Fire Suppression System _____ at the Conshohocken Rowing Center Project. Work is per the intent of the plans and specifications and addenda provided by Blackney Hayes Architects, Momenee Associates and the project’s associated professionals. Responsible for work complete except for the following specific exclusions:

Ex. C, AFP Subcontract Agreement, at p. 2.

In promising to perform this work, which included “Fire Caulking and Sealing penetrations”, AFP, like Budget, agreed to “assume towards the Contractor all of the obligations and responsibilities which the Contractor, by [the Contract Documents], assumes towards the Owner”:

- D. Bound to Contract Documents: Subcontractor shall be bound to the Contractor by the terms of this Agreement and of the contract documents between the Owner and the Contractor, and shall assume towards the Contractor all of the obligations and responsibilities which the Contractor, by those documents, assumes towards the Owner. Provided however, that where any provision of the contract documents between the Owner and the Contractor is inconsistent with any provision of this Agreement, this Agreement shall govern.

Ex. C, AFP Subcontract Agreement, at p. 5. In explicitly assuming the terms of the General Conditions of the Contract for Construction between CRD and the owner of the project, AFP assumed control over jobsite safety and accepted responsibility for “initiating, maintaining and supervising all safety

precautions and programs” on the project. AFP promised to “take reasonable precautions for safety of . . . employees on the Work”. AFP also agreed to be responsible for compliance with all requirements of applicable Federal, State and local safety regulations and ordinances. See Ex. T, General Conditions of the Contract for Construction, at p. 27. AFP agreed to have personnel on site “whose duty shall be the prevention of accidents”. Ex. T, General Conditions of the Contract for Construction, at p. 28. AFP’s subcontract with CRD further expressly demanded that AFP comply with federal OSHA safety standards. Ex. C, AFP Subcontract Agreement, at p. 4.

Mr. Estrin’s report was similarly critical of AFP, concluding that it failed to properly consider safety on the rowing center project, which failures were the “proximate/root cause of Mr. Oates’ accident and catastrophic injury”. Ex. V, Estrin report, at p. 62. Mr. Estrin confirmed that AFP failed to comply with “their contractual obligation/responsibility to have fire caulked all of their sprinkler penetrations” and concluded that AFP “deviated from good and accepted construction safety management practices and procedures, as well as acting unreasonably under the circumstances”:

Therefore, it is Mr. Estrin’s and Dr. Estrin’s opinions, to a reasonable degree of construction safety management certainty, that “AFP’s failure to have complied with their contractual obligation/responsibility to have fire caulked all of their sprinkler piping penetrations, was a proximate/root cause of Mr. Oates’ accident and catastrophic injury on August 22, 2014.

As such, they deviated from good and accepted construction safety management practices and procedures, as well as acting unreasonably under the circumstances.

Ex. V, Estrin report, at p. 62.

AFP has attempted to defend its actions by claiming that no site safety responsibilities were delegated from CRD to AFP. However, as cited above, this position is utterly baseless as the project documents establish the opposite – AFP expressly made the above-cited promises with respect to work at the site. In fact, the only contractually-imposed duty to safely perform fire caulking rests with AFP, which unequivocally and undeniably failed to comply with all obligations imposed by that contract.

4. Defendants are jointly liable for their collective failures in causing the construction sequencing issues which ultimately caused Plaintiff's fall

Beyond their admitted and inexcusable failures to comply with contractual and assumed responsibilities on the project, Defendants are jointly liable for their shared failure to ensure that the Conshohocken Rowing Center construction project proceeded in proper sequence. "Construction sequencing" is a term of art for the concept that, logically speaking, tasks must be chronologically completed on a construction project in a specific order to ensure the project continues in an efficient and, more importantly, a safe fashion. See Ex. G, McNally deposition, at p. 233:8-13 (confirming construction sequencing "is a term of art in the construction industry that pretty much dictates how the construction of the structure will go"). Mr. Estrin noted that Defendants' failure to "properly coordinate and sequence the fire suppression work" directly contributed to Plaintiff's tragic fall:

CONCLUSIONS

It is inexcusable for a construction laborer, Leon Oates, to have been made to fire caulk the piping penetrations of the demising walls made by the Fire Suppression Subcontractor, "AFP", without a means/method of fall prevention/ protection on August 22, 2014 in the "attic" of the Rowing Center, because the GC, "C.R. Davis", failed to properly coordinate and sequence the fire suppression work by "AFP" so that the fire caulking of the sprinkler piping was done by "AFP" prior to the installation of the suspended ceiling. Further, both "C.R. Davis" and "AFP" failed to understand "AFP's" Scope of Work which mandated that they fire caulk all of their penetrations and "Budget" failed to inspect the work site when requested to perform work, fire caulking, beyond their contractual Scope of Work for general caulking, to identify existing and predictable fall hazards and to have provided for the provision of the necessary fall prevention/protection means/ methods for Mr. Oates.

Ex. V, Estrin Report, at p. 95. As a result of AFP's failure and later refusal to fire caulk its penetrations when they were made, as opposed to during the rush for a Certificate of Occupancy, the sequence of the project was thrown off entirely. Due to the last-second nature of the request, proper safety measures were not put in place for Mr. Oates and he was not fall protected when he went above the

drop-tile ceiling. Mr. McNally confirmed the significant role that improper “construction sequencing” played in the events at issue:

Q: And in construction sequencing, things are done in a way, in an order, that makes the most common sense, makes – it follows the specifications and architectural drawings and follows the shop drawings; correct?

[Objection omitted]

A: Yes.

....

Q: And was the sending of Leon Oates up near completion of this building, when the drop ceiling was already in place, when there was no longer scaffolding in place when we will find out in this case that the painters and a company named Paramount had scaffolding in this very stairwell, do you deem that a failure of construction sequencing, meaning that **whatever Leon went up to do that day should have been done by somebody else before at the appropriate time and not Leon at the time that he was asked to do it?**

[Objection omitted]

A: **Yeah.**

Ex. G, McNally deposition, at pp. 233:18-234:18 (emphasis added). Mr. Shelton also confirmed that, due to AFP’s initial failure to fire caulk, the work was performed out of sequence:

Q: So sending Mr. Oates up towards the end of this project to do fire caulking, that was out of sequence; correct? Meaning that the contractors who actually made the penetrations were the ones who were supposed to fire caulk the penetrations.

A: That's what I felt, yes.

Ex. P, Shelton deposition, at pp. 194:20-195:3.

The improper sequencing, in conjunction with Defendants’ joint ignorance of all things safety, led Mr. Estrin to the inescapable and inexcusable conclusion that “[t]his accident was **designed into the Project from its onset**”:

In the instance of Mr. Oates' accident on August 22, 2014, it was an accident waiting to happen as a result of a lack of jobsite/worker safety, construction laborer accident prevention safety management at all levels of responsibility, "C.R. Davis", "AFP" "Budget" and Incorporated Services. This accident was designed into the Project from its onset.

Ex. V, Estrin report, at p. 99.

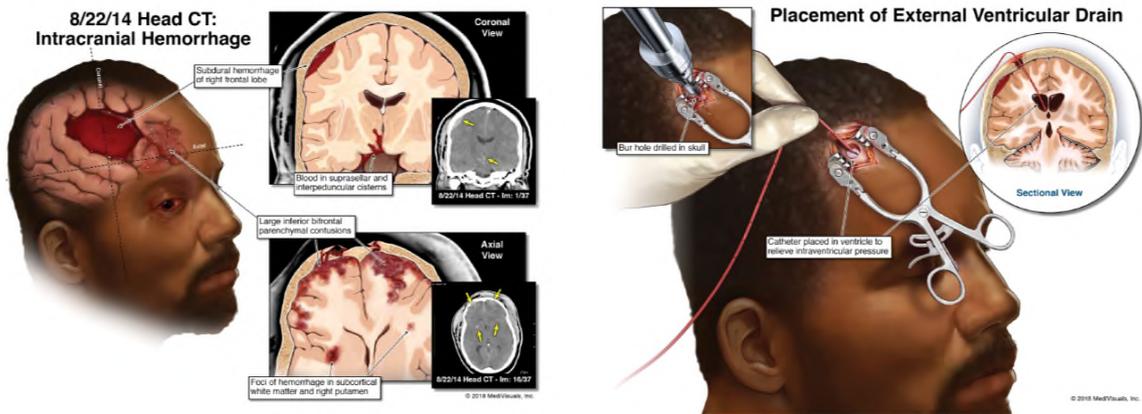
IV. DAMAGES

1. Non-Economic Damages

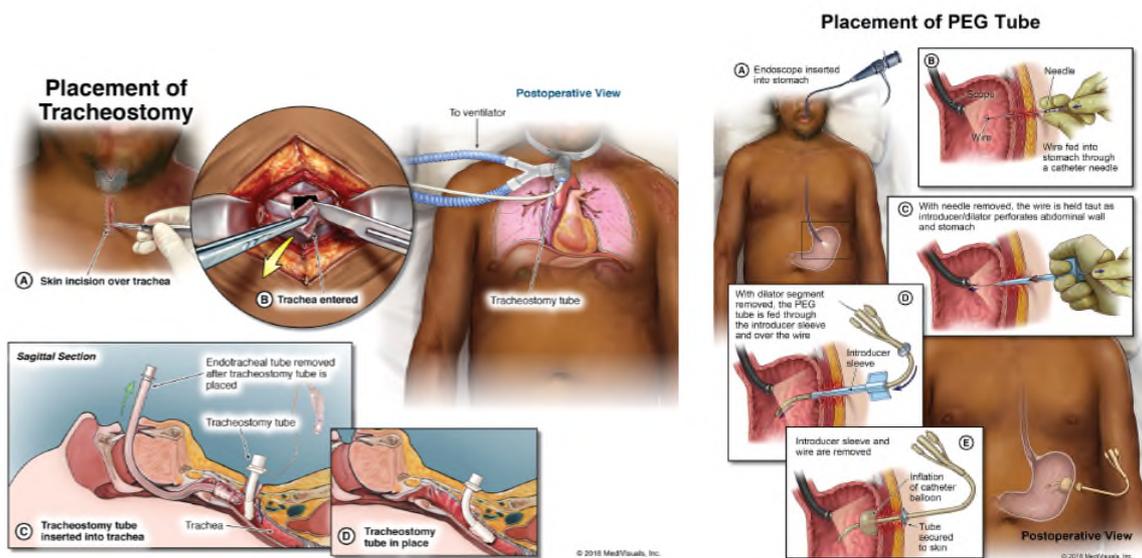
i. Physical Injuries

Before August 22, 2014, Leon Oates was a hardworking and energetic man who loved spending time with his wife and daughter and who enjoyed life. He had just started running his own business and had great enthusiasm and high hopes for his work. He was just forty-one years old when he suffered this massive traumatic brain injury. Now, he lives his life in a minimally conscious state, requiring twenty-four hour care from his wife, daughter, and health care professionals. Words cannot begin to do justice to describe the unimaginable severity of Leon's injuries and the effect they have had on the lives of his loved ones.

From the scene of the accident, Leon was medevacked to the University of Pennsylvania Hospital as a Level 1 trauma victim. He was admitted with a Glasgow Coma Scale of 3, with imaging showing diffuse subarachnoid hemorrhage and mid-brain hemorrhage. He was also found to have sustained multiple cranial and systemic fractures. Neurosurgery determined that operative intervention might put Leon at serious risk due to his multiple skull fractures. Therefore, due to the severity of the injury, it was decided that it would be better to place Leon with an external ventricular drain to allow monitoring and control of the intracranial pressure.



On August 29, 2014, Leon underwent an open tracheostomy with a non-fenestrated Shiley and percutaneous gastrostomy tube placement.



Thereafter, Leon remained at the University of Pennsylvania until he was transferred to Moss Rehabilitation on September 17, 2014. From September 2014, until the end April 2015, Mr. Oates was in and out of multiple in-patient facilities, including Moss Rehabilitation and Chapel Manor Nursing Home, for intensive treatment of his devastating injuries. During that time he also spent time in-patient at HUP and Einstein Medical Center, first for surgical treatment of the wrist fracture sustained in the fall, then for treatment of tonic-clonic seizure activity. By May 2015,

Plaintiff was discharged home where he continued to receive physical, occupational, and speech therapy.

Now that he is home, Leon's recovery has not become any less difficult. He is at risk for aspiration pneumonia, pressure ulcers, contractures, bladder dysfunction, constipation, hydrocephalus, heterotopic ossification, neuro-endocrine derangements, sleep apnea, mood disorder, pain, and gastroesophageal reflux disease. Since being home, Leon has experienced additional seizure activity, warranting yet another in-patient hospitalization. It was determined that he also sustained a hip fracture in the accident, warranting another hospital stay and surgical procedure. His prognosis is poor and he has likely plateaued at this point according to his treating physicians.

Dr. Guy W. Fried is the Chief Medical Officer at Magee Rehabilitation Hospital, a Professor at the Thomas Jefferson University Department of Rehabilitation Medicine, the Co-Associate Director for Ongoing Care at the Regional Spinal Cord Injury Center of the Delaware Valley, and the Medical Director of the Spinal Cord Injury Unit, the Brain Injury Rehabilitation Unity, the Clinical Laboratory and Out Patient Services at Magee Rehabilitation Hospital. Dr. Fried had the opportunity to review all of Leon's medical records and the reports of his treating physicians, and he evaluated Leon at Magee Rehabilitation Hospital. It is Dr. Fried's professional expert opinion that Mr. Oates' devastating injuries are permanent. *See* Expert Report of Guy W. Fried, M.D., attached hereto as **Exhibit "Z"**. Dr. Fried noted "all the activities that defined [Leon], including being able to work, do anything for pleasure, or anything with independence are all gone" and opined that "he will never be independent". Ex. Z, Fried report, at p. 11. Dr. Fried ultimately concluded as follows: "This is an absolutely devastating injury which is serious and permanent and it is my expectation is that he will remain like this forever. **I do not expect that he ever will recover enough to become independent at anything**". Ex. Z, Fried report, at p. 11 (emphasis added). Penn neurologist,

Ramon Diaz-Arrastia, M.D., Ph.D., also reviewed the medical records and evaluated Leon, confirming the utterly devastating nature of the injuries. He noted that Leon “remains severely disabled and dependent on his wife or other caregivers for all of his activities of daily living and self-care”. Expert report of Ramon Diaz-Arrastia, M.D., Ph.D., attached hereto as **Exhibit “AA”**, at p. 2. He opined that “while some improvement may be possible even years after a TBI, it is probable any such improvement will be marginal and Mr. Oates and his family should expect that the current level of disability will be permanent”. Ex. AA, Diaz-Arrastia report, at p. 2. Defendants will be held liable for the unimaginable existence that Leon now lives as a result of their negligence.

ii. *Past and Future Pain and Suffering*

Leon was just forty-one years old at the time of his life-changing accident. He fell sixteen feet, smashing his head into the concrete staircase, tumbling down the steps an additional fourteen excruciating feet. He had severe bleeding and massive swelling in his brain. Doctors literally had to drill into his skull to monitor the overwhelming intracranial pressure. His injuries were so severe that doctors were scared to perform surgery. He initially remained in the hospital for two months and thereafter returned for four subsequent admissions. He remained in in-patient care for eight months and has been under constant medical surveillance for nearly four years. Leon has already experienced more pain in the last four years than most people experience in a lifetime and his suffering is not even close to coming to an end. Tragically, we know that Leon is able to experience pain and communicates this to his team of caregivers, typically by “storming”, like when his doctors recently discovered his hip fracture when Leon expressed the pain to them. He will suffer from his permanent and severe injuries for the rest of his life expectancy, which will span more than three decades. The economic damages pale in comparison to Leon’s past and future pain and suffering.

iii. *Past and Future Loss of Life's Pleasures*

These are the reasons we live. Everything that Leon enjoyed has been taken from him. Before the accident, Leon was a hardworking and energetic man who loved spending time with his wife and daughter and who enjoyed life. Now, Leon requires assistance for each and every task of daily living.



Leon has missed and will continue to miss all of the irreplaceable moments and memories of watching his daughter grow from a teenager into adulthood. He will never walk Kenae down the aisle. He is unable to attend any of the social and family functions that he once did. He missed the chance to spend the last few years of life with his mother, who sadly passed away this year. Everything that he used to look forward to is now gone. His dreams are shattered. He is alive, but cannot live and is solely dependent on those who used to be dependent on him.

iv. *Embarrassment and Humiliation*

Leon's devastating injuries, constant pain, and complete loss of independence are beyond embarrassing and humiliating. He is a forty-four-year-old man who is incontinent and requires twenty-four hour care from his wife, daughter, and professional caregivers. He will forever be confined to a hospital bed and wheelchair. He will never live independently again. Leon Oates

currently spends each and every day in the most embarrassing and humiliating state. This preventable accident took everything away from a once active and hardworking man. Now, he has to live every day, unable to care for himself or do anything for himself. Defendants will pay for this utter humiliation.

v. *Loss of Consortium*

Kenyatta Oates has her own significant claim in this case. Kenyatta has stood faithfully and loyally by Leon's side since the beginning, which no spouse can ever begin to imagine. Not only has Kenyatta stood by Leon, she has also devoted her life to taking care of him. Before this accident, Kenyatta, a registered nurse, would spend her days taking care of traumatically brain injured patients, and be able to come home to spend time with Leon, who would cook dinner, take her out, and otherwise provide companionship. Now, Kenyatta finds herself living a groundhog day type of existence – taking care of traumatically brain injured patients at work then coming home to take care of her traumatically brain injured husband at home. She is given no reprieve, she gets no break, she is overwhelmed. To say that Kenyatta takes phenomenal care of Leon is an understatement. She is the essential cog in Leon's care team, which includes professional caregivers. Kenyatta has been forced to take on all of the household responsibilities that the two of them once shared and has shouldered the financial burden of providing for their family all on her own. She no longer has a social life with her husband and the two have been completely unable to engage in any intimacy since the accident.

Leon is helpless and relies on Kenyatta in all aspects of life. Kenyatta is forced to see the man she loves more than anything in the worst imaginable condition on a daily basis. Instead of feeling sorry for herself, she has stepped up and has done everything humanly possible to help her husband. The jury will compensate Kenyatta for sticking with her husband, in sickness and in health, in a situation where many would have fled.

2. Economic Damages

In total, Plaintiffs will place \$26,217,062 on the board in economic damages in this case. This amount will only be multiplied after the jury accounts for the unimaginable existence that Leon and his family will have to face on a daily basis for the next three-plus decades.

i. Past Medical Expenses/Workers' Compensation Lien

A Workers' Compensation lien has been asserted in this matter and exists in the amount of \$1,691,406.55, which is subject to increase. As of July 9, 2018, the lien the amount was \$1,691,406.55, representing \$1,491,703.21 in paid medical bills, to date, and \$199,703.34 in indemnity payments. Plaintiffs have requested an updated formal lien amount and will provide the ledger to counsel upon their receipt of same.

ii. Future Medical Care

Leon's injuries will require future medical care for the remainder of his life, which is expected to span an additional 34.2 years. Leon will continue to require ongoing care, including close medical surveillance, therapeutic modalities, case management, medical equipment, medications, medical supplies, attendant care and/or facility care, transportation and home care modifications. Kimberly Kushner, MSN, RN, CRNP, CNLCP, a certified life care planner and rehabilitative nurse, reviewed the extensive medical records detailing Leon's past treatment and future prognosis. Ms. Kushner prepared a Life Care Plan that describes the ongoing treatment and care that Leon will require for the rest of his life. Without considering inflation, Ms. Kushner estimates that these future costs of medical care will range from \$12,655,72 to \$17,765,536. *See* Life Care Plan of Kimberly Kushner, MSN, RN, CRNP, CNCLP, attached hereto as **Exhibit "BB"**, at pp. 12-13. Dr. Fried related all of Leon's injuries to the accident and he agrees that the costs set forth in Ms. Kushner's Life Care Plan are reasonable and necessary for Leon's care and are directly related to his fall. *See* Supplemental Expert Report Guy W. Fried, M.D., attached hereto as **Exhibit "CC"**, at p.1.

Using Nurse Kushner's estimate, economist Andrew C. Verzilli, M.B.A., applied a conservative inflation rate of 1.5% to demonstrate that Leon's true future medical costs range from \$16,159,925 to \$22,773,689. See Economist Report of Andrew C. Verzilli, MBA, attached hereto as **Exhibit "DD"**, at p. 5.

iii. Wage Loss

At the time that everything was taken from him, Leon was a hardworking forty-one-year-old man, husband and father. Before this accident, Leon ran the Incorporated Services business and was excited about the prospects of the company. He had an annual earnings capacity of \$62,760.00. See Vocational Report of Stephen Gumerman, PhD., LPC, attached hereto as **Exhibit "EE"**, at p. 5. Leon is now permanently disabled, both physically and mentally, and he will never work again. Plaintiffs' economic expert calculated a range of scenarios, assuming retirement at age 67, and both with and without future growth. Totaling the past and future loss in earning capacity, Mr. Verzilli opined that Leon's loss ranges from \$1,600,380 to \$1,751,967. See Ex. DD, Verzilli Report, at p. 5.

iv. Conclusion – Economic Damages

As cited above, Plaintiffs will present the jury with economic damages of \$19,451,711.55 to \$26,217,062.55. This amount will only be multiplied after the jury accounts for the unimaginable existence that Leon and his family will face on a daily basis for the next three-plus decades.

V. PLAINTIFFS' WITNESS LIST

1. Kenyatta Oates (Plaintiff),
2. Kenae Oates (daughter/guardian),
3. Robert S. Irving (as on cross),
4. Jonathan J. Keller (as on cross),
5. Sean M. McNally (as on cross),
6. Shane Collins (as on cross),
7. Eric D. Billstone (as on cross),
8. Craig Hoffman (as on cross),
9. Jason Mullen (as on cross),
10. David Frail (as on cross),
11. Claude Shelton (as on cross),
12. Kyle Davis (as on cross),

13. Mark Davis (as on cross),
14. T. Raymond Davis (as on cross),
15. Tony Massimo (as on cross),
16. Jonathan D. Jones, "Jonathan Jones, Jr.", (as on cross),
17. Jonathan Jones, "Jonathan Jones, Sr." (as on cross),
18. John Allen (as on cross),
19. Bob Edleman (as on cross),
20. Defendants' witness who have been deposed (as on cross),
21. Tamera "Tammy" Hoffman,
22. Tameka Moore,
23. Rosetta Jackson,
24. Bill Oates,
25. Shawn Mays,
26. Pam Mays,
27. John Creedon,
28. Officer Steve Vallone,
29. Sergeant Shane Murray,
30. Stephen A. Estrin, WSO-CSM/CSSD (SL), CSC, FACFE, Stephen A. Estrin & Co., 2113 S. Tamiami Trail Osprey, FL 34229,
31. Richard D. Hislop, PE, CSP, Safety and Health Consultants, 3024 American Saddler, 3024 American Saddler Drive, Park City, Utah 84060,
32. Guy Fried, M.D., Magee Rehabilitation Hospital, 1513 Race Street, Philadelphia, PA, 19102,
33. Ramon R. Diaz-Arrastia, M.D., Penn Medicine, 51 North 39th Street, Philadelphia, PA 19104,
34. Kimberly Kushner, RN, MSN, CRNP, CNLCP, AMR Nurse Consultants, Inc., 704 Lakeside Drive Southampton, PA 18966,
35. Steven Gumerman, Ph.D., 1646 Fawn Lane, Huntingdon Valley, PA 19006,
36. Andrew C. Verzilli, MBA, 411 North Broad Street, Lansdale, PA 19446,
37. Grant T. Liu, M.D., Penn Medicine, Neuroscience Center, 3400 Civic Center Boulevard, 2nd Floor Perlman Center, Philadelphia, PA 19104,
38. Samuel Romirowsky, Ph.D., Omega Professional Center, F-52 Omega Drive, Newark, DE 19713,
39. Michael J. McCabe, Jr., Ph.D., DABT, Robson Forensic, 111 S. Independence Mall East, Suite 1000, Philadelphia, PA 19106
40. Records Custodian, VMSC of Lower Merion and Narberth,
41. Records Custodian, Pennstar,
42. Records Custodian, Hospital of the University of Pennsylvania/Penn Medicine,
43. Records Custodian, Moss Rehabilitation Hospital,
44. Records Custodian, Albert Einstein Health Network,
45. Records Custodian, Drucker Brain Institute,
46. Records Custodian, Dr. Michael Marino,
47. Records Custodian, Einstein Ophthalmology Associates,
48. Records Custodian, Madhura A. Tamhankar, M.D.,
49. Records Custodian, Chapel Manor,
50. Records Custodian, Dr. Hye Hwang,
51. Records Custodian, Bayada Home Health Care,

52. Records Custodian, Centrix Home Health,
53. Records Custodian, Presbyterian Medical Center,
54. Records Custodian, Thomas Jefferson University Hospital,
55. Records Custodian, Crown Drugs,
56. Records Custodian, Personal Support Medical Supplies,
57. Medical Billing Custodian of all medical providers,
58. Corporate Designee for C. Raymond Davis & Sons, Inc.,
59. Corporate Designee for Budget Maintenance, Inc.,
60. Corporate Designee for Budget Maintenance Concrete Services, Inc.,
61. Corporate Designee for Budget Maintenance Industrial Services, Inc.,
62. Corporate Designee for Budget Maintenance Building Services, Inc.,
63. Corporate Designee for Budget Maintenance Construction Services, Inc.,
64. Corporate Designee for Budget Maintenance Construction Services,
65. Corporate Designee for Accelerated Fire Protection, Inc.,
66. All treating doctors and nurses,
67. Any person properly named, mentioned or identified in any Pretrial Statement filed by any other party to this action and any supplements thereto,
68. Any person properly named, mentioned or identified in any discovery, including Interrogatories, Request for Production or depositions taken in this case,
69. Any person properly named, mentioned or identified in any documentation or pleading filed of record in this case, and
70. Any person necessary for impeachment or rebuttal purposes based upon testimony introduced at trial.

Plaintiffs reserve the right to supplement this list upon reasonable notice to Defendants, and reserve the rights to call all witnesses identified by Defendants.

VI. PLAINTIFFS' EXHIBIT LIST

1. AIA Standard Form Agreement for the Project,
2. General Conditions of the Contract for Construction for the Project,
3. All contracts executed for the Project,
4. CRD Subcontract Agreement with AFP,
5. CRD Subcontract Agreement with Budget,
6. CRD Subcontract Agreement with McNally Construction, LLC,
7. All CRD Subcontract Agreements for the Project,
8. All Project Meeting Minutes,
9. CRD Safety & Health Program,
10. CRD Site Specific Safety Plan & Orientation,
11. Budget Safety and Health Manual,
12. AFP Injury & Illness Prevention Program for Construction,
13. All CRD Daily Reports for the Project,
14. All CRD Super's Daily Quality Walk reports for the Project,
15. All CRD Three Week Construction Schedules for the Project,
16. All CRD Job Site Safety Audits for the Project,
17. All Budget Purchase Orders for the Project,

18. All AFP Price Quotes for the Project,
19. All Purchase Orders/Price Quotes for the Project,
20. Eric Billstone e-mail of August 15, 2014, and all related e-mails,
21. Jonathan Jones e-mail of August 15, 2014, and all related e-mails,
22. Claude Shelton e-mail of August 18, 2014, and all related e-mails
23. All e-mails exchanged with regard to the Project,
24. Deposition/Videotaped Deposition of Kenyatta Oates, dated 04/25/18, with exhibits,
25. Deposition/Videotaped Deposition of Kenae Oates, dated 04/25/18, with exhibits,
26. Deposition/Videotaped Deposition of Robert S. Irving, dated 07/27/17, with exhibits,
27. Deposition/Videotaped Deposition of Jonathan J. Keller, dated 07/27/17, with exhibits
28. Deposition/Videotaped Deposition of Sean M. McNally, dated 08/22/17, with exhibits,
29. Deposition/Videotaped Deposition of Shane Collins, dated 10/06/17, with exhibits,
30. Deposition/Videotaped Deposition of Eric D. Billstone, dated 10/11/17, with exhibits,
31. Deposition/Videotaped Deposition of Craig Hoffman, dated 10/12/17, with exhibits,
32. Deposition/Videotaped Deposition of Jason Mullen, dated 11/17/17, with exhibits,
33. Deposition/Videotaped Deposition of David Frail, dated 01/23/18, with exhibits,
34. Deposition/Videotaped Deposition of Claude Shelton, dated 01/31/18, with exhibits,
35. Deposition/Videotaped Deposition of Kyle Davis, dated 01/31/18, with exhibits,
36. Deposition/Videotaped Deposition of Tony Massimo, dated 03/12/18, with exhibits,
37. Deposition/Videotaped Deposition of Jonathan Jones, Jr., dated 04/23/18, with exhibits,
38. Expert report of Stephen A. Estrin, WSO-CSM/CSSD (SL), CSC, FACFE, dated 05/22/18,
39. Rebuttal report of Stephen A. Estrin, WSO-CSM/CSSD (SL), CSC, FACFE, dated 07/02/18,
40. CV of Stephen A. Estrin, WSO-CSM/CSSD (SL), CSC, FACFE,
41. Material referenced or relied upon by Stephen A. Estrin, WSO-CSM/CSSD (SL), CSC, FACFE,
42. Expert report of Richard D. Hislop, PE, CSP, Safety and Health Consultants, dated 06/04/18,
43. CV of Richard D. Hislop, PE, CSP,
44. Material referenced or relied upon by Richard D. Hislop, PE, CSP,
45. Expert report of Guy W. Fried, M.D., dated 02/14/18,
46. Supplemental expert report of Guy W. Fried, M.D., dated 05/10/18,
47. CV of Guy W. Fried, M.D.,
48. Material referenced or relied upon by Guy W. Fried, M.D.,
49. Expert report of Ramon R. Diaz-Arrastia, M.D., dated 05/04/18,

50. CV of Ramon R. Diaz-Arrastia, M.D.,
51. Material referenced or relied upon by Ramon R. Diaz-Arrastia, M.D.,
52. Expert report of Kimberly Kushner, RN, MSN, CRNP, CNLCP, 05/08/18,
53. CV of Kimberly Kushner, RN, MSN, CRNP, CNLCP,
54. Material referenced or relied upon by Kimberly Kushner, RN, MSN, CRNP, CNLCP,
55. Expert report of Steven Gumerman, Ph.D., dated 05/23/18,
56. CV of Steven Gumerman, Ph.D.,
57. Material referenced or relied upon by Steven Gumerman, Ph.D.,
58. Expert report of Andrew C. Verzilli, MBA, dated 05/25/18,
59. CV of Andrew C. Verzilli, MBA,
60. Material referenced or relied upon by Andrew C. Verzilli, MBA,
61. Expert report of Grant T. Liu, M.D., dated 05/22/18,
62. CV of Grant T. Liu, M.D.,
63. Material referenced or relied upon by Grant T. Liu, M.D.,
64. Expert report of Samuel Romirowsky, Ph.D., dated 06/27/18,
65. CV of Samuel Romirowsky, Ph.D.,
66. Material referenced or relied upon by Samuel Romirowsky, Ph.D.,
67. Expert report of Michael J. McCabe, Jr., Ph.D., DABT,
68. CV of Michael J. McCabe, Jr., Ph.D., DABT,
69. Material referenced or relied upon by Michael J. McCabe, Jr., Ph.D., DABT,
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73. Records, Moss Rehabilitation Hospital,
74. Records, Albert Einstein Health Network,
75. Records, Drucker Brain Institute,
76. Records, Dr. Michael Marino,
77. Records, Einstein Ophthalmology Associates,
78. Records, Madhura A. Tamhankar, M.D.,
79. Records, Chapel Manor,
80. Records, Dr. Hye Hwang,
81. Records, Bayada Home Health Care,
82. Records, Centrix Home Health,
83. Records, Presbyterian Medical Center,
84. Records, Thomas Jefferson University Hospital,
85. Records, Crown Drugs,
86. Records, Personal Support Medical Supplies,
87. Radiographs/films/reports,
88. Diagnostic studies,
89. Medical records of all medical providers,
90. Medical billing of all medical providers,
91. Schedule of medical expenses,
92. All Workers' Compensation liens, with supporting documentation,
93. All Medicare liens, with supporting documentation,
94. All DHS liens, with supporting documentation,
95. Documents produced by Defendant, Accelerated Fire Protection, Inc.,

96. Documents produced by Defendant, Millstat, LLC,
97. Documents produced by Defendant, Budget Maintenance, Inc.,
98. Documents produced by Defendant, C. Raymond David & Sons, Inc.,
99. Documents produced by Malvern Preparatory School & Friends of Haverford Rowing Defendants,
100. All Interrogatories addressed to Plaintiffs,
101. All Requests for Production addressed to Plaintiffs,
102. Plaintiffs' Answers to all Interrogatories addressed to Plaintiffs,
103. Plaintiffs' Responses to all Requests for Production addressed to Plaintiffs,
104. All Documents produced by Defendants,
105. All Interrogatory Answers of Defendants to all sets of Plaintiffs' Interrogatories,
106. All Interrogatory Responses of Defendants to all sets of Plaintiffs' Requests for Production,
107. All Requests for Admissions addressed to all Defendants,
108. All Defendants' responses to all Requests for Admissions addressed to all Defendants,
109. Plaintiffs' responses to all Defendants' Requests for Admissions,
110. All documents subpoenaed by Defendants,
111. All pleadings,
112. All documents produced by all parties,
113. All discovery exchanged between all parties,
114. All documents provided by defendants in discovery,
115. All pleadings in the guardianship proceedings instituted on behalf of Plaintiff, Leon Oates,
116. All documents produced in the guardianship proceedings instituted on behalf of Plaintiff, Leon Oates,
117. Transcript in the matter of Leon Oates v. Incorporated Services, of November 6, 2014, with exhibits,
118. Transcript in the matter of Leon Oates v. Incorporated Services, of July 30, 2015, with exhibits,
119. Deposition of Alan I. Roomberg, CPA, of June 10, 2015, with exhibits,
120. All pleadings in the matter of Davis v. Davis, et al., Chester County Court of Common Pleas, Docket Number 2016-09111-CT,
121. All discovery exchanged in the matter of Davis v. Davis, et al., Chester County Court of Common Pleas, Docket Number 2016-09111-CT,
122. All depositions taken in the matter of Davis v. Davis, et al., Chester County Court of Common Pleas, Docket Number 2016-09111-CT,
123. All pleadings in the matter of Davis v. Davis, et al., Chester County Court of Common Pleas, Docket Number 2017-10332-TT,
124. All discovery exchanged in the matter of Davis v. Davis, et al., Chester County Court of Common Pleas, Docket Number 2017-10332-TT,
125. All depositions taken in the matter of Davis v. Davis, et al., Chester County Court of Common Pleas, Docket Number 2017-10332-TT,
126. United States Department of Health and Human Services Vital Statistics of the United States, 2006, Life Tables,
127. All corporate filings and documents with regard to Incorporated Services,
128. Any and all Tax Returns,

129. Wage, benefits and lost earnings documentation of Plaintiff, Leon Oates,
130. Wage, benefits and lost earnings documentation of Plaintiff, Kenyatta Oates,
131. Scholastic Records,
132. Any and all photographs,
133. Any and all News Reports of Accident,
134. Animations of the accident,
135. Reconstructions of the accident,
136. All Statements,
137. All Affidavits,
138. Investigation reports,
139. Schedule of medical expenses,
140. Blow ups and enlargements of various medical records,
141. Blow ups of photographs,
142. Blow ups and enlargements of Plaintiff's injuries,
143. Illustrations of Plaintiff's injuries,
144. Animation of Plaintiff's injuries,
145. Photographs/videotapes,
146. Photographs of accident area,
147. Photographs taken by Craig Hoffman,
148. Photographs taken by OSHA,
149. Day in the Life Video,
150. Police report,
151. OSHA report(s), photographs and videotape,
152. Statements provided to OSHA,
153. Documents from the Borough of Conshohocken,
154. NFPA 13,
155. Any relevant documents discovered between now and the end of trial,
156. Documents, presentations, power points or such exhibits as are used at trial.

Plaintiffs reserve the right to supplement this list upon reasonable notice to Defendants, reserve the rights to use any exhibits identified by Defendants, and reserve the right to identify records and bills for future treatment as exhibits and will provide a copy of same to Defendants.

VII. SETTLEMENT POSTURE

With only \$25 million in insurance coverage for all Defendants, they must decide if they are willing to try this case and risk the economic extinction of their companies. Defendants have to be advising their clients that the verdict potential in this case is \$60 to \$90 million. For a limited time, Plaintiffs demand is \$25 million, which is the total insurance coverage available in this case. Plaintiffs

have served bad faith letters on counsel for Defendants, giving each Defendant a reasonable time frame to offer their policy limits before this offer is withdrawn and Plaintiffs will proceed to trial.

VIII. ESTIMATED TRIAL TIME

Plaintiffs estimate trial will take approximately ten (10) days.

IX. PRETRIAL CONFERENCE EXHIBITS

- Exhibit A: AIA Standard Form Agreement
- Exhibit B: CRD Site Specific Safety
- Exhibit C: Subcontract Agreement with AFP
- Exhibit D: Subcontract Agreement with McNally Construction, LLC
- Exhibit E: Subcontract Agreement with Budget
- Exhibit F: Project Meeting Minutes of 7/21/14
- Exhibit G: Deposition of Sean McNally
- Exhibit H: Project Meeting Minutes of 8/4/14
- Exhibit I: Project Meeting Minutes of 8/11/14
- Exhibit J: Project Meeting Minutes of 8/20/14
- Exhibit K: Billstone e-mail of August 15, 2014
- Exhibit L: Jones e-mail of August 15, 2014
- Exhibit M: Shelton e-mail of August 18, 2014
- Exhibit N: Deposition of Robert Irving
- Exhibit O: Deposition of Jonathan Keller
- Exhibit P: Deposition of Claude Shelton
- Exhibit Q: Deposition of Shane Collins
- Exhibit R: Deposition of David Frail
- Exhibit S: Deposition of Jason Mullen
- Exhibit T: General Conditions of the Contract for Construction
- Exhibit U: Deposition of Kyle Davis
- Exhibit V: Report of Stephen A. Estrin, WSO-CSM/CSSD (SL), CSC, FACFE
- Exhibit W: Supplemental Report of Stephen A. Estrin, WSO-CSM/CSSD (SL), CSC, FACFE
- Exhibit X: Budget Safety and Health Manual
- Exhibit Y: Deposition of Jonathan D. Jones
- Exhibit Z: Report of Richard D. Hislop, PE, CSP
- Exhibit AA: Expert Report of Guy W. Fried, M.D.
- Exhibit BB: Expert report of Ramon Diaz-Arrastia, M.D., Ph.D.
- Exhibit CC: Life Care Plan of Kimberly Kushner, MSN, RN, CRNP, CNCLP
- Exhibit DD: Supplemental Expert Report Guy W. Fried
- Exhibit EE: Economist Report of Andrew C. Verzilli, MBA
- Exhibit FF: Vocational Report of Steven Gumerman, Ph.D., LPC
- Exhibit GG: Expert Report of Samuel Romirowsky, Ph.D.
- Exhibit HH: Toxicologist Report of Michael J. McCabe, Jr., Ph.D., DABT

CERTIFICATE OF SERVICE

I, Andrew R. Duffy, Esquire, hereby certify that a true and correct copy of the within Plaintiffs' Pretrial Conference Memorandum will be served upon all counsel and unrepresented parties by the electronic filing system, or by regular mail if counsel or the unrepresented party does not participate in E-filing, on the date of E-Filing acceptance of the document.

SALTZ, MONGELUZZI, BARRETT & BENDESKY, P.C.

BY: /s/ Andrew R. Duffy
ROBERT J. MONGELUZZI
ANDREW R. DUFFY
JEFFREY P. GOODMAN
E. DOUGLAS DISANDRO, JR.
Attorneys for Plaintiffs

Date: August 20, 2018