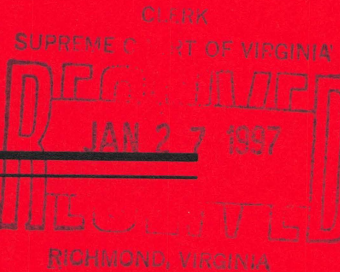


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IN THE

# Supreme Court of Virginia

AT RICHMOND

RECORD NO. 961851

HOPE GRIFFIN,

*Appellant,*

v.

SPACEMAKERS, INC.,  
T/A RICHMOND CLARKLIFT,

*Appellee.*

---

JOINT APPENDIX

---

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND  
JOHN MARSHALL COURTS BUILDING

HOPE GRIFFIN,  
Plaintiff,

v.

Case No. 19-2725-1

SPACE MAKER SYSTEMS OF MD., INC. t/a  
RICHMOND CLARKLIFT CO.

Serve: Miles Cary, Jr.  
9100 Arboretum Parkway  
Richmond (Chesterfield County), Virginia

**Motion for Judgment**

Plaintiff, Hope Griffin (Griffin), by counsel, for her motion for judgment against, defendant, Space Maker Systems of Md., Inc. t/a Richmond Clarklift Co. (Richmond Clarklift), states as follows:

1. At all times relevant to this motion for judgment Richmond Clarklift was a Virginia corporation. Prior to and on November 1, 1993, Richmond Clarklift's corporate name was The Space Maker Group, Inc. t/a Richmond Clarklift Co.

2. Prior to November 1, 1993, at the request of Stanley Hardware Division (Stanley), Richmond Clarklift serviced and reconditioned a Clarklift lift truck, model TW-25, serial number TW 25-145-2067, hereinafter referred to as "the lift truck," owned by Stanley.

3. Prior to November 1, 1993, Richmond Clarklift negligently serviced and reconditioned the lift truck.

4. On November 1, 1993, an employee of Stanley was operating the lift truck at Stanley's warehouse at 5700 South Laburnum Avenue, Richmond, Virginia, where Griffin was employed.

1 Filed in the Clerk's Office this 23rd day of Oct, 1995  
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5. At the same time and place the negligence of Richmond Clarklift proximately caused the operator to lose control of the lift truck and the lift truck to strike Griffin.

6. As a direct and proximate result of the negligence of Richmond Clarklift, Griffin suffered and will suffer in the future severe injuries, physical and mental pain and suffering, and Griffin was otherwise injured.

5. As a direct and proximate result of the negligence of Richmond Clarklift, Griffin has incurred and will incur in the future expenses for medical and doctors bills in an effort to be cured of her injuries and be relieved of her pain and suffering, Griffin has lost and will lose in the future income from being unable to work at her occupation, Griffin has lost earning capacity, and Griffin has suffered other damages.

Wherefore, plaintiff, Hope Griffin, by counsel, demands judgment against defendant, Space Maker Systems of Md., Inc. t/a Richmond Clarklift Co., in sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) plus her costs and interest.

Plaintiff demands trial by jury.

Hope Griffin

By:

  
Counsel

Louis D. Snesil  
Va. State Bar No. 23047  
McDonald & Snesil, P.C.  
3805 Cutshaw Avenue, suite 414  
Richmond, VA 23230  
(804) 359-4446

1 VIRGINIA:

2

3 IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

4 JOHN MARSHALL COURTS BUILDING

5

6 HOPE GRIFFIN

7

8 vs.

Case No. LA 2725-1

9

10 SPACEMAKER SYSTEMS OF MARYLAND, INC., t/a

11 RICHMOND CLARKLIFT COMPANY

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15

16 Complete transcript of the testimony and other  
17 incidents in the above, when heard on June 10, 1996  
18 before the Honorable Theodore J. Markow, Judge.

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24 CAPITOL REPORTING, INC.

25 (804) 788-4917

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NOTE: Following motions, jury  
selection, and opening statements, the testimony  
in the trial of the matter begins as follows:

THE COURT: All right, who is the first  
witness, sir?

MR. SNESIL: Darryl Lewis.

DARRYL RAY LEWIS, having previously been  
duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. SNESIL:

Q Mr. Lewis, tell the jury your full name,  
please.

A Darryl Ray Lewis.

Q How old are you?

A 32 -- 31 rather actually.

Q You a little nervous?

A Well, yeah, I never know my age.

Q Where do you live?

A 7800 Varina Chase Drive.

1 Q Is that in Richmond area?

2 A In Varina.

3 Q How much education do you have?

4 A I have--

5

6 THE COURT: Is he going qualified  
7 aspect?

8 MR. SNESIL: No, sir.

9

10 Q Let's go on to something else. By whom  
11 are you employed?

12 A Stanley Hardware.

13 Q What's your job?

14 A I'm an electrical engineer and safety  
15 coordinator.

16 Q How long have you been employed by  
17 Stanley Hardware?

18 A Over five years.

19 Q As of November 1st, 1993 when this  
20 incident happened, what was your position with Stanley  
21 Hardware at that time?

22 A I had recently assumed a new position at  
23 that time which was electrical engineering technician and a  
24 safety coordinator at that time.

25 Q How recent was that related to the



1 November 1st, 1993 incident?

2 A About 30 days prior.

3 Q I want you, if you would, briefly to  
4 describe the Stanley Hardware facility. Where is it?

5 A Stanley is located at the corner of  
6 Charles City Road and Laburnum, I mean Darbytown which is  
7 on the east side of Richmond close to the airport.

8 Q How big is it? What are the dimensions  
9 of that facility?

10 A It's about 460 by 670 feet in diameter.

11 Q That's the building itself?

12 A That's the overall building.

13 Q Briefly summarize what sort of activity  
14 Stanley Hardware conducts at that location.

15 A We manufacture consumer hardware, gate  
16 hinges, reinforcement of brackets, things consumers would  
17 buy at Home Depot and K-Mart.

18 Q It manufactures those hardware?

19 A That's correct.

20 Q Is it also a warehouse facility?

21 A Yes. We have about 80,000 square feet  
22 of warehouse distribution area.

23 Q How big is the manufacturing area in  
24 comparison to that?

25 A In comparison about three and a half

1 times that size.

2 Q Let's talk about the history of this  
3 particular forklift and how it came to Stanley. Could you  
4 briefly describe to the jury how this forklift came to be  
5 owned by Stanley Hardware?

6 A Yes. Stanley acquired another company  
7 named Ideal Securities some months prior to, well, about  
8 six months prior to this incident, and in that acquisition  
9 we purchased five of their forklifts, and in the interim of  
10 accepting the forklifts they were sent to Richmond  
11 Clarklift to be reconditioned prior to coming to our  
12 facility.

13 Q Were these five forklifts then assigned  
14 to Stanley Hardware warehouse where you work?

15 A They were assigned to the manufacturing  
16 area which is just behind the warehouse, yes.

17 Q Where you work?

18 A Yes.

19 Q Did Stanley decide to have them serviced  
20 before placing them into use?

21 A That's correct.

22 Q Did they send them out to Richmond  
23 Clarklift?

24

25 THE COURT: That's been asked and

1                   answered, Mr. Snésil.

2                   MR. SNESIL: I'm sorry.

3

4                   Q           Mr. Lewis, are you familiar with the  
5 means by which Stanley Hardware documents the purchase of  
6 services and goods and so forth?

7                   A           Yes.

8

9                   MR. SNESIL: If Your Honor please, can I  
10 approach the witness or have the bailiff  
11 approach?

12                  MR. THOMPSON: If Your Honor please,  
13 that instrument is not a contract between--

14                  THE COURT: What's the objection? He  
15 hasn't moved anything in yet. He is trying to  
16 lay a foundation, isn't he?

17                  MR. THOMPSON: I think the contract is  
18 not one to be performed on or that the  
19 performance of which is at issue.

20                  THE COURT: Why don't we see what he  
21 wants to do? Maybe he is going to -- I haven't  
22 heard anything yet. There is no question. Why  
23 don't we wait to get to it before we do  
24 something?

25                  MR. THOMPSON: All right.

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Q Mr. Lewis, is that a, could you just help the jury in general terms what type document that is? Do you recognize it?

A Yeah. This is a purchase order contract from Stanley Hardware to another agency which was providing the service or vendor.

Q Is that the type of purchase order Stanley Hardware uses to purchase goods and services?

A Yes.

Q This particular purchase order, was that involved in the forklift which we have come here to talk about today? Do you recognize it as that?

A Yes.

Q Was that purchase order sent to Richmond Clarklift at the time that Richmond Clarklift ordered the service of this -- pardon me, let me start over.

A They would have been mailed a copy of this.

Q All right. Was that purchase order sent to Richmond Clarklift at the time of the service of this forklift?

A Yes.

MR. SNESIL: Your Honor, I move this in

1 evidence as Plaintiff's Number 1.

2 MR. THOMPSON: There isn't any product  
3 in this litigation, well, this is not the proper  
4 measure of any obligation on the part of the  
5 defendant, in other words, not a contract case.  
6 Perhaps it's harmless to know what work was  
7 ordered, so I withdrew my objection.

8 THE COURT: Let me have it, sir. This  
9 will be Plaintiff's Exhibit Number 1.

10

11 NOTE: A purchase order is  
12 marked as Plaintiff's Exhibit Number 1.

13

14 THE COURT: Go ahead.

15

16 Q Mr. Lewis, what was your understanding  
17 about what Richmond Clarklift was suppose to do with these  
18 five fork lifts including the one we are here to talk  
19 about?

20 A It was my understanding they were to be  
21 reconditioned to bring them up to a good performance, a  
22 safe performance level before they were introduced in our  
23 manufacturing area.

24 Q Did you trust Richmond Clarklift to do a  
25 professional job in reconditioning these forklifts?

1                   A           Certainly.

2                   Q           Now this was done in the spring of 1993  
3       where that work was done at Richmond Clarklift, is that  
4       right?

5                   A           Right.

6                   Q           Do you recall when those forklifts were  
7       returned to Stanley Manufacturing Division at Stanley  
8       Hardware?

9                   A           I recall the period but I couldn't tell  
10      you exactly the day or anything.

11                  Q           You recall they were returned?

12                  A           Sure, yeah.

13                  Q           Did you feel it was necessary to do a  
14      reinspection of those forklifts immediately after they were  
15      returned from Richmond Clarklift from reconditioning?

16                  A           No. I relied on their professionalism  
17      to take care of that.

18                  Q           Let's talk about the use of those  
19      forklift, pardon me, this one forklift prior to November  
20      1st, 1993. Was it used often, was it used occasionally?  
21      Could you describe that?

22                  A           It was used occasionally in like that  
23      there were five of those trucks in that area, so they were  
24      used fairly randomly and infrequently because it was an  
25      abundance of vehicles for the people in that area.



1 Q What do you mean the area?

2 A Well, the manufacturing plant as we just  
3 spoke is large, and this is a small division of the plant,  
4 if you will, that's really sectioned off and independent of  
5 the rest of the manufacturing plant, and while the area of  
6 the plant was only about one tenth of the manufacturing  
7 area, it had almost half as many fork trucks for the whole  
8 plant, so there were greatly more fork trucks in that area  
9 than the other manufacturing areas.

10 Q How many forklifts did the Stanley  
11 manufacturing warehouse use at this period of time?

12 A Well, after receiving these five, that  
13 made a total of 12, so there were 7 in the entire rest of  
14 the manufacturing, 90 percent.

15 Q Did the warehouse portion of the Stanley  
16 facility, is that set up on a separate basis?

17 A You are saying warehouse. I assume you  
18 mean the area where the accident took place.

19 Q No, sir, the distribution part of  
20 Stanley warehouse.

21 A Distribution area is actually different  
22 management. They have their own forklifts, and I'm not  
23 referring to any of those.

24 Q Now prior to November 1st, 1993, were  
25 any problems brought to your attention with brakes on this

1       forklift?

2                   A           No.

3                   Q           Were any problems brought to your  
4       attention concerning the deadman's function of this seat?

5                   A           No.

6                   Q           Were any problems brought to your  
7       attention concerning the accelerator concerning the  
8       forklift?

9                   A           No.

10                  Q           Were you the person to whom such  
11       complaints would have been brought in the normal course of  
12       business?

13                  A           Sure.

14                  Q           Mr. Lewis, are you qualified, do you  
15       have any training to service forklifts?

16                  A           No.

17                  Q           Does anyone employed by Stanley have any  
18       training to service forklifts?

19                  A           No, we don't consider our technicians  
20       qualified for forklifts.

21                  Q           When you say technicians, what type and  
22       what do they do?

23                  A           We have mechanics, machinists,  
24       electricians, and electric technicians. They are qualified  
25       on our machinery but we don't allow them, they have no

1       desire to work on forklifts.

2                   Q               When a problem concerning maintenance,  
3       when a problem comes up, what does Stanley warehouse do  
4       with it?

5                   A               It's typically brought to my attention.  
6       If I can't make it to the vehicle directly I may send a  
7       maintenance person to similarly find out if it's an  
8       operational problem to make sure they are not overlooking  
9       something, and as long as it's nothing operational. If it  
10      is operational we call on our service provider to repair  
11      the vehicle.

12                  Q               What do you mean service provider?

13                  A               Whoever we have a contract with at the  
14      time to come in and service them on a periodic basis.

15                  Q               You mean outside forklift mechanic type?

16                  A               Correct.

17                  Q               Does Stanley then rely on outside  
18      mechanics to do its service for forklifts?

19                  A               Yes.

20                  Q               Mr. Lewis, to your knowledge did anyone  
21      at Stanley prior to November 1st, 1993, ever remove the  
22      panel which covers the foot brake linkage and inspect it?

23                  A               No.

24                  Q               Did they ever remove the floor panel to  
25      look at the accelerator linkage underneath and hoses that

1 run underneath there?

2 A No, they wouldn't have any reason to.

3 Q Mr. Lewis, let me shift your attention  
4 to the events of November 1st, 1993, okay? Did you learn  
5 of Hope's injury while you were there that day?

6 A Yeah. I was located in the office, and  
7 notice was brought to the office of the injury, accident.

8 Q Where did this occur?

9 A The scene was in our, was located at a  
10 zed industries packaging machine which is inside our screen  
11 and storm department.

12 Q What is a ZED machine?

13 A Packaging machine that cards the  
14 products that you see hanging on display at a K-Mart or  
15 Lowe's where it has a Stanley yellow card and the product  
16 is adhered to with plastic over the face.

17

18 MR. SNESIL: May I approach the witness,  
19 Your Honor?

20 THE COURT: Go ahead, sir.

21 MR. THOMPSON: No objection, Your Honor.

22

23 Q Mr. Lewis, I have handed you a  
24 photograph. Is that an accurate depiction of what the ZED  
25 machine looked like as of November 1st, 1993?

1                   A               Yes. This shows the load section of the  
2 machine.

3

4                   MR. SNESIL: I move that be admitted as  
5 Plaintiff's Exhibit Number 2.

6                   THE COURT: Is it relevant?

7                   MR. SNESIL: Yes, sir.

8

9                   Q               Is that--

10                  A               This is the scene of the accident, yes.

11                  Q               All right, let me see it.

12

13                  THE COURT: All right, Plaintiff's  
14 Exhibit 2.

15

16                  NOTE: A photograph is marked as  
17 Plaintiff's Exhibit Number 2.

18

19                  THE COURT: Go ahead.

20

21                  Q               When you arrived on the scene, was that  
22 soon after Hope's injury that had occurred?

23                  A               Within five minutes.

24                  Q               Did you notice any marks on the floor or  
25 anything where the incident occurred?

1           A           Yes. There was a tire mark in the  
2 matting on the side of the machine where she had been  
3 injured, and the matting had been, was indicating wear as  
4 if a tire were digging into the mat.

5           Q           Did you have occasion to inspect the  
6 forklift itself?

7           A           I'm sorry?

8           Q           Did you inspect the forklift itself?

9           A           I did, well, immediately went to check  
10 on Hope's condition. I saw that EMS was in process, they  
11 were actually coming to the scene. The vehicle had been  
12 immobilized at the end of this machine, and at that time I  
13 started questioning what happened, and when they told me  
14 things that had happened with the forklift I started to  
15 investigate the forklift itself.

16          Q           Did you look at the hoses beneath the  
17 floor panel next to the accelerator?

18          A           Yes.

19

20                   MR. SNESIL: May I approach the witness?

21

22          Q           Mr. Lewis, I have handed you a  
23 photograph. Do you recognize what that photograph  
24 displays?

25          A           Yes. This is the hoses adjacent to the



1        accelerator linkage.

2                    Q            Is that the condition how it looked at  
3        the time right after this incident on November 1st, 1993?

4                    A            Well, not completely. It shows the  
5        deterioration or the wear or abrasion I should say against  
6        the hose, but here they, the two hoses are fastened  
7        together with a belt, and what I recall from the  
8        investigation, the hoses were loose in that same proximity.  
9        They were loose. They weren't attached together with the  
10       belt.

11                   Q            Other than that, that is a display how  
12       the hoses looked?

13                   A            Yes.

14

15                   MR. SNESIL: Your Honor, I ask that be  
16       admitted as Plaintiff's Exhibit Number 3.

17                   THE COURT: Any objection?

18                   MR. THOMPSON: I'd like to see it. No  
19       objection, Your Honor.

20                   THE COURT: All right, Plaintiff's 3.

21

22                   NOTE: A photograph is marked  
23       as Plaintiff's Exhibit Number 3.

24

25                   Q            Mr. Lewis, did you notice anything

1 unusual about that hose that was near the accelerator  
2 pedal?

3

4 MR. THOMPSON: I'm sorry, I didn't hear  
5 the question.

6 MR. SNESIL: I asked if there was  
7 anything unusual about that hose near the  
8 accelerator pedal.

9 MR. THOMPSON: If Your Honor, please, I  
10 think he said he had never been in there before,  
11 so I don't think he'd be able to say whether  
12 there is anything unusual or not.

13 MR. SNESIL: If Your Honor pleases, I  
14 think there was something that was fairly obvious  
15 to an observer. I'd like him to report what he  
16 saw about that hose.

17 THE COURT: How can it be obvious to an  
18 observer who had no idea what's there?  
19 Everything is unusual I guess if you had never  
20 seen it before. Ask a different question. What  
21 did he observe, he can tell that.

22

23 Q Did you open up the floor panel next to  
24 the accelerator?

25 A Well, I had the mechanic remove the

1 plates and we observed the status of the accelerator and  
2 the brakes.

3 Q What else did you notice?

4 A We found, as the picture depicts, the  
5 hose had some abrasion and had some loose debris from that  
6 in the area, and Tom Sabel (phonetic), the manufacturing  
7 engineer, was focusing on that, and he had pressed the  
8 accelerator prior to going underneath the plate, he pressed  
9 the accelerator. When he did, it released, came back to  
10 its normal position. That's when we realized we needed to  
11 look further to find out what was causing the accelerator  
12 to be obstructed or sticking, if you will.

13 So when we removed the plate to  
14 investigate that, the hose and the abrasion and the  
15 proximity of the abrasion of the hose to linkage was  
16 apparent that's what was causing it to be held in the  
17 downward or forward position.

18 Q Mr. Lewis, you just identified -- did  
19 those hoses look to be life size or approximately?

20 A Pretty close.

21 Q Mr. Lewis, did you have occasion to look  
22 at the seat and the seat operated deadman switch?

23 A Yes.

24

25 MR. SNESIL: If Your Honor please,

1                   could I approach the witness again?

2                   THE COURT: All right, sir.

3                   MR. THOMPSON: I'd like to ask him when  
4                   that was taken.

5

6                   Q           Mr. Lewis, was there anything that drew  
7                   your attention to the seat and seat switch?

8                   A           Yes, it was. While I was investigating  
9                   the accident and the actions that took place, I was told  
10                  that after the operator--

11

12                  MR. THOMPSON: If Your Honor please, I  
13                  object to hearsay.

14                  THE COURT: Don't tell us what somebody  
15                  else told you, sir.

16

17                  Q           Did you have a reason to inspect the  
18                  seat switch?

19                  A           It was told the operator--

20

21                  THE COURT: Don't tell us what somebody  
22                  told you. If you can't tell why you checked the  
23                  seat other than what somebody told you, you can't  
24                  answer that.

25                  MR. SNESIL: Did he have a reason to

1 look?

2 THE COURT: That's obviously from  
3 hearsay.

4

5 Q You did look at the seat switch,  
6 correct?

7 A I investigated the seat switch to  
8 determine if there was in fact a kill switch.

9 Q Okay.

10 A And when I investigated it I found that  
11 the switch did exist and that it was adjusted such that it  
12 could not have worked.

13 Q Let's talk about the kill switch. What  
14 do you mean by kill switch?

15

16 MR. THOMPSON: Excuse me, I don't  
17 believe it has been established that this witness  
18 is an expert in forklift operation. As a matter  
19 of fact I think he rather discounted that, and so  
20 to have him state an opinion whether this was in  
21 a position it could work or didn't work, this is  
22 something.

23 THE COURT: That isn't the question.  
24 The question is what is a kill switch.

25 MR. THOMPSON: Well, no.

1 THE COURT: He's given that answer  
2 already. You didn't object to that.

3 MR. THOMPSON: I think this, I think he  
4 has not been established to be an expert.

5 THE COURT: No doubt about that. I'm  
6 not going to let him give opinion testimony. He  
7 can describe what a kill switch is.

8 MR. THOMPSON: Yes, he can describe what  
9 it looked like.

10 THE COURT: Or what it does.

11 MR. THOMPSON: I think if he is an  
12 engineer he can, sure, but to give an opinion  
13 whether it is in working order or not--

14 THE COURT: Does it take an engineer to  
15 describe what a kill switch does?

16 MR. THOMPSON: I'll go along with that.

17 THE COURT: Yeah, I agree. Every  
18 lawnmower has one I would assume.

19 MR. THOMPSON: I imagine that is one of  
20 my propositions.

21 THE COURT: Thank you, sir. Go ahead.

22

23 Q Mr. Lewis, tell us please in simple  
24 terms what that kill switch does?

25 A The kill switch monitors the seat



1 position, and when the seat does not have someone sitting  
2 on it, when it is not depressed it opens up the electrical  
3 circuit such that the vehicle cannot function, so in fact  
4 it de-energizes or stops the vehicle from motion.

5 Q Did you check to see whether that kill  
6 switch was working on that particular day when you  
7 inspected it?

8  
9 THE COURT: That's the question he  
10 objects to.

11 MR. THOMPSON: This is.

12 THE COURT: Why can't he testify about  
13 that?

14 MR. SNESIL: He is an electrician.

15 THE COURT: He says he knows nothing  
16 about how these things work. They hire somebody  
17 to come in and fix them if they have something  
18 wrong with them. That's your foundation, isn't  
19 it?

20 MR. SNESIL: My foundation is this is  
21 the man who is in charge of safety at the plant  
22 and electrical technician.

23 THE COURT: No, I don't think you laid  
24 the foundation, Mr. Snasil. If you want to lay  
25 more foundation, maybe he can do it, but at this

1 point he's professed he knows nothing about how  
2 to repair these things, and I assume the  
3 implication is he doesn't know how they work.

4

5 Q Mr. Lewis, are you familiar with the  
6 operation of electrical switches?

7 A Yes.

8 Q Are you familiar with the operation of  
9 kill switches on mechanical devices?

10 A Yes.

11 Q Are you familiar with how this  
12 particular kill switch operates?

13 A Yes.

14 Q Did you examine the kill switch on  
15 November 1st, 1993?

16 A Yes, I checked its mechanical actuation  
17 and used a multimeter to determine if the switch itself was  
18 changed its state.

19 Q Can you identify the photograph in your  
20 lap?

21 A Yes. This is a photograph of the  
22 switch, the kill switch in question, and the actuator as it  
23 adjusts or as it approaches the cam and which would cause a  
24 switch to change state.

25 Q Is that the condition of the switch with

1 everything around it on the day when you examined it  
2 November 1st, 1993 immediately after this incident?

3 A Yes.

4 Q Is that accurately displayed in this  
5 picture?

6 A Yes.

7

8 MR. SNESIL: I move that as a  
9 plaintiff's exhibit.

10 THE COURT: Any objection?

11 MR. THOMPSON: No.

12 THE COURT: All right, let me have it,  
13 sir. This will be Plaintiff's Exhibit Number 4.

14

15 NOTE: A photograph is marked as  
16 Plaintiff's Exhibit Number 4.

17

18 MR. SNESIL: If Your Honor please, if I  
19 could hand that exhibit back to the witness.

20

21 Q Mr. Lewis, did you check -- how is that  
22 kill switch attached to the vehicle?

23 A It has a mounting bracket that is  
24 attached to the frame with two quarter inch bolts.

25 Q Did you check to see whether it was

1       tightly mounted to the vehicle?

2                   A           Yes, I did. I grabbed the bracket to  
3       see if it had worked itself loose, and it was in fact very  
4       tight.

5                   Q           Did you check to see whether or not the  
6       switch could possibly be thrown by the action of the seat  
7       at that time?

8

9                   MR. THOMPSON: If Your Honor please, the  
10       experts designated by the plaintiff are Charles  
11       Crim and Dwayne Owen, and Mr. Lewis of course is  
12       an engineer but he has not been listed as a  
13       person who would describe the operation or  
14       misoperation of this particular vehicle.

15                  THE COURT: Can he describe what he saw?

16                  MR. THOMPSON: Certainly. But that  
17       question had to do with his opinion concerning  
18       what was wrong with it.

19                  THE COURT: Stick to what he saw and  
20       observed and tested.

21                  MR. SNESIL: I shall. Mr. Thompson of  
22       course listed Mr. Lewis as one of his expert  
23       witnesses.

24                  THE COURT: Mr. Thompson's expert, not  
25       yours.

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Q Mr. Lewis, when you observed that switch on November 1st, 1993, could the seat mechanism which is suppose to throw that switch, could it reach the switch where it was bolted in place?

MR. THOMPSON: Isn't that a matter of opinion as to how it operates? I object. That's within the expertise of someone who works.

THE COURT: That's a question of measurements, isn't it?

MR. THOMPSON: Beg your pardon?

THE COURT: That's a question of measurements.

MR. THOMPSON: If it's a matter of proximity, I think he can say that.

THE COURT: I think he can say that. Ask him that question rather than a conclusion.

Q Was the seat switch near enough to the actuator on the seat itself such that that actuator could reach the switch?

A It did not press against the, it did not change the location of the switch as its target was moved in either direction.

1                   Q           Did you call Richmond Clarklift after  
2   this incident?

3                   A           Yes.

4                   Q           Did you have a mechanic come out and  
5   take a look at this machine with you?

6                   A           Yes.

7                   Q           Did you point out to that mechanic what  
8   you found?

9                   A           Yes.

10                  Q           Was that forklift picked up by Richmond  
11   Clarklift the next day?

12                  A           Yes, it was.

13                  Q           Taken back to their shop?

14                  A           Uh-huh.

15                  Q           Was that a yes?

16                  A           Yes.

17                  Q           Aside from removing the floor panel to  
18   look at the machine under the accelerator and aside from  
19   looking at the seat switch, did you alter a forklift in any  
20   way from the condition you found it after it struck Hope  
21   Griffin?

22                  A           No. I was very careful not to make any  
23   changes whatsoever to the current status of the vehicle.

24                  Q           Are you aware of anyone else at Stanley  
25   changing the condition of that vehicle?



1                   A            No. I was very adamant at the scene  
2                   that we were simply observing the machine. We were trying  
3                   to maintain the integrity.

4                   Q            Mr. Lewis, I'm going to hand you -- if I  
5                   might approach the witness?

6

7                   THE COURT: Show it to Mr. Thompson.

8

9                   Q            Mr. Lewis, do you recognize that  
10                  document?

11                  A            Yes. This is a letter from Richmond  
12                  Clarklift to myself indicating what they found to be, what  
13                  they recommend to be, service be performed on the vehicle  
14                  after the accident.

15                  Q            Does that include -- what's the date on  
16                  that letter?

17                  A            November 8, '93.

18                  Q            Who is it signed by?

19                  A            Peter Muller, service manager.

20                  Q            Did you receive this letter on or about  
21                  November 8, 1993?

22                  A            Yes.

23

24                               MR. SNESIL: Your Honor, I move this be  
25                               admitted as plaintiff's next exhibit.

1                   MR. THOMPSON: I don't have any  
2                   objection.

3                   THE COURT: All right.

4  
5                   NOTE: A letter is marked as  
6                   Plaintiff's Exhibit Number 5.

7  
8                   MR. SNESIL: If Your Honor please, I'd  
9                   like to hand that exhibit back.

10                  THE COURT: Go ahead.

11  
12                 Q           Mr. Lewis, item number 3 on that letter  
13                 which is just admitted talks about adjusting the seat  
14                 switch assembly, do you see that?

15                 A           Yes.

16                 Q           Did you authorize that work or any of  
17                 the work to be done by Richmond Clarklift at any time?

18                 A           No. We thought it would be best to  
19                 wait.

20                 Q           How long did Richmond Clarklift have  
21                 that forklift after this incident, approximately?

22                 A           I don't know. It was over a month. It  
23                 was some time.

24                 Q           Was it after, however long Richmond  
25                 Clarklift had it, did they return it to Stanley warehouse?

1                   A            Yes, it's returned there now.

2                   Q            Has it been able to be moved since its  
3    return to Stanley warehouse?

4                   A            No. It was never placed into service.  
5    It's been locked and tagged.

6                   Q            What do you mean it's been locked and  
7    tagged?

8                   A            Well, lock out is a safety OSHA  
9    requirement meaning that you put a device over the power  
10   supply meaning the battery for that particular vehicle and  
11   put a padlock on it whereas one person holds the vehicle  
12   and doesn't allow anyone to operate the vehicle and tag  
13   about why it's locked out and saying it caused an accident  
14   and is not to be operated.

15

16                               MR. SNESIL: Your Honor, may I approach  
17   the witness?

18                               THE COURT: Go ahead.

19                               MR. THOMPSON: I object to this.

20                               THE COURT: See if he can lay a  
21   foundation.

22                               MR. THOMPSON: It doesn't go to anything  
23   to help the jury decide anything they have got to  
24   decide, doesn't go to any issues, this lockout  
25   business.

1                   THE COURT: I haven't heard his  
2 question, but if I hear something different than  
3 where I think you are going, what is the  
4 relevance?

5                   MR. SNESIL: I'd like the jury to have a  
6 view of the forklift.

7                   THE COURT: You sure you have other  
8 pictures for that?

9                   MR. SNESIL: I'd like them to see the  
10 condition it was maintained in.

11                  THE COURT: At best it's cumulative and  
12 not relevant anyway.

13                  MR. SNESIL: I think it helps the jury  
14 to see the forklift.

15                  THE COURT: What is the relevance?

16                  MR. SNESIL: There are certain  
17 components--

18                  THE COURT: You don't have other  
19 pictures of the forklift besides this one?

20                  MR. SNESIL: That is the only one that  
21 shows these components.

22                  THE COURT: I'm not going to let this  
23 in. I sustain your objection.

24                  MR. SNESIL: Please note my exception to  
25 that.

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Q Mr. Lewis, did you, after this forklift was returned to you, take another look at the seat switch assembly?

A Yes.

MR. SNESIL: May I approach the witness again, Your Honor?

THE COURT: All right.

MR. THOMPSON: May I see the first one, the first picture? I have no objection.

Q Mr. Lewis, is that what the seat switch assembly looked like upon its return to Stanley Hardware?

A Yes.

MR. THOMPSON: What did you say, when?

MR. SNESIL: May I repeat?

THE COURT: Go ahead.

MR. SNESIL: I said upon its return to Stanley Hardware.

I move that that be admitted as Plaintiff's Number 6, I believe.

THE COURT: Let me have it, sir.

MR. THOMPSON: What number is that?

1 THE COURT: 6.

2

3 NOTE: A photo is marked as Plaintiff's  
4 Exhibit Number 6.

5

6 MR. SNESIL: If I could return that to  
7 the witness.

8

9 Q Mr. Lewis, looking at Plaintiff's Number  
10 6, is the seat switch bracket bolted in the same position  
11 it was when you saw it on November 1st, 1993?

12 A No. The switch and bracket has been  
13 moved closer to the target or the seat adjustment itself.

14 Q How can you tell?

15 A It's apparent now the bracket has slots  
16 to allow for that adjustment of the switch which was not  
17 noticeable at all before.

18 Q Is there anything else that tells you  
19 the seat switch has been moved?

20 A The nuts that hold it securely in place  
21 are also, have lost all their paint for the most part.  
22 They had a fresh coat of paint on them prior.

23 Q Who painted those bolts prior?

24 A Well, it was basically oversprayed where  
25 the vehicle was painted at Richmond Clarklift.

1 Q Upon its reconditioning?

2 A Yes.

3

4 MR. SNESIL: I have no further questions  
5 at this time.

6 THE COURT: Cross-examination?

7

8

9 CROSS-EXAMINATION

10 BY MR. THOMPSON:

11 Q Good morning, Mr. Lewis.

12 A Good morning.

13 Q I see that you have a motto on the back  
14 of your shirt. Would you, what does that say?

15 A It says "Safety Is For Life".

16 Q That's your job, isn't it?

17 A That's correct.

18 Q And to prepare for it, I believe you  
19 went to engineering school, did you?

20 A Yes, I did.

21 Q Do you have a degree?

22 A I have a degree in electronic  
23 engineering and degree in instrumentation engineering.

24 Q And you have the curiosity of an  
25 engineer about what makes things work, don't you?

1                   A               Yes.

2                   Q               All right. And however, the work that  
3 is done there by you at Stanley does not include the heavy  
4 maintenance of the forklifts?

5                   A               That's correct.

6                   Q               Now you have electricians and mechanics  
7 and a number of forklifts, but if you have some big jobs  
8 you send them out?

9                   A               That is correct.

10                  Q               You do not do that on site. However, if  
11 it's a little job or adjustment or something like that,  
12 your people can do that, can't they?

13                  A               I don't know of making any adjustments,  
14 even to, or certainly adjusting the brakes, we have always  
15 sent that out.

16                  Q               I see. However, there are many people  
17 there on premises who have the ability to do these things,  
18 don't they?

19                  A               Yes, they probably have the ability,  
20 yeah.

21                  Q               I see. Now you said you had you thought  
22 maybe 12 forklifts in the manufacturing division?

23                  A               (Witness nods head)

24                  Q               How many would there be over in the  
25 warehouse at the same location?



1 A In the area of the accident?

2 Q No, no.

3 A I'm sorry.

4 Q The whole plant.

5 A The distribution area which is again  
6 management, basically considered a different plant, but  
7 they have, I'm not sure, at least six or eight probably  
8 there as well.

9 Q So the use of forklifts is an integral  
10 part of the work that Stanley does at this location I  
11 gather?

12 A Yes.

13 Q And you have a lot of them?

14 A Yes, I guess relative.

15 Q And it is of acute concern to you, isn't  
16 it, Mr. Lewis, that these machines are used safely?

17 A Yes.

18 Q Are you interested for Stanley to see  
19 that Stanley's employees have a safe place to work?

20 A Yes.

21 Q And a part of your concern is to keep  
22 these forklifts in proper safe operation?

23 A Yes.

24 Q Are you familiar with the fact that this  
25 was a machine that, the one that hit Hope, that this is a

1 machine that if it's in proper operation when you take your  
2 weight off the seat, the machine will stop, will it not?

3 A Yes, I'm aware of this machine has a--

4 Q And how do you require, is it the policy  
5 of Stanley to have its forklift operators to be  
6 knowledgeable in the safety features of the forklifts?

7 A Yes.

8 Q Do you let just anybody drive a  
9 forklift?

10 A No.

11 Q Does the forklift driver have to  
12 qualify?

13 A Yes, they have training.

14 Q What provision have you made for  
15 qualifying, that is not you, but Stanley, what does Stanley  
16 do before they let somebody operate the forklift?

17 A We have a training session which  
18 includes, which may be multiple sessions before they  
19 qualify, but it includes a video, one of several videos  
20 which displays the proper operation, inspection, and use of  
21 the vehicle and dangers associated with the vehicle, then  
22 they have to do a performance test where they operate the  
23 vehicle with supervision until they can display a safe  
24 operation of the vehicle.

25 Q You have a little school on premises

1       then I gather?

2                   A               That's correct. We set up cones. They  
3       drive through cones, pick up pallets, varied performance  
4       basis.

5                   Q               This is to inculcate into the operators  
6       knowledge and ability to safely operate these machines?

7                   A               That's correct.

8                   Q               Are they taught or does the company have  
9       a requirement that each machine be determined to be safe by  
10      the operator before the operator uses it?

11                  A               Yes.

12                  Q               How often is the operator suppose to  
13      employ those tests?

14                  A               It's prior to each shift in our  
15      facility.

16                  Q               And if it has not been used before on  
17      that shift, would it have to be examined or rather checked  
18      by the operator before the operator uses it?

19                  A               Yes.

20                  Q               Is this every shift?

21                  A               Well, it is now.

22                  Q               I mean then, all right.

23                  A               Then I think it was more known to check  
24      it once per day because that was what the training alluded  
25      to.

1                   Q           And how is the operator taught to check  
2   the proper operation of the seat kill switch?

3  
4                   MR. SNESIL:  If Your Honor please, I  
5                   object.  I think we are getting into an area  
6                   where this is not relevant, internal rules of the  
7                   company are not relevant.  Also it's intended to  
8                   establish standard of care, also standard of care  
9                   for a reasonably prudent person, so I object to  
10                  his testimony.

11                  MR. THOMPSON:  It goes to causation,  
12                  Your Honor.

13                  THE COURT:  All right, go ahead.  I  
14                  overrule.

15  
16                  Q           How is the operator suppose to check the  
17   operation of the seat kill switch?

18                  A           They remove their weight from the seat  
19   and try to operate it to see if anything functions at all.

20                  Q           If the operator is, depresses the  
21   accelerator to make the machine move and then stands up,  
22   and if the machine, that is takes her weight off the seat,  
23   then if the machine stops then, that is if the electric  
24   current is cut off, then the machine is working properly in  
25   that respect, isn't it?

1                   A           That's true.

2                   Q           And also taking your seat off of, taking  
3           your weight off the seat has the effect of releasing that  
4           spring loaded bar that you see there in the picture, and  
5           besides cutting the electricity off that runs the machine,  
6           that would allow the parking brake to go on, would it not,  
7           in proper operation?

8                   A           Yes.

9                   Q           And this is also tested by taking your  
10          weight off the seat?

11                  A           Yes.

12                  Q           And seeing, while moving, if it stops  
13          the machine?

14                  A           Yes.

15                  Q           That's a simple test that anyone who is  
16          trained to operate the machine can perform, isn't it?

17                  A           Yeah, it's simple. It is, it's  
18          difficult physically in a sense trying to stand up and  
19          operate the machine. Certainly someone could feel  
20          uncomfortable if they perform it because you don't feel in  
21          control if you stand up.

22                  Q           This is necessary for the safety of the  
23          operator and the people who are immediately around the  
24          operator?

25                  A           Yes.

1 Q That's why you are required, isn't it?

2 A Yes.

3 Q Now, are the operators there at Stanley  
4 at that time, were they trained to, a method for checking  
5 to see whether the foot brake worked?

6 A Yes.

7 Q How does an operator check the operation  
8 of the foot brake?

9 A Well, the operators are required to do a  
10 series of checks. Part of that is operational in nature,  
11 meaning that you have to operate the vehicle, and in doing  
12 so they would cause the vehicle to go forward or reverse a  
13 couple, three four miles an hour and depress the brake and  
14 make sure they have safe braking.

15 Q All right. Now that foot brake I  
16 believe does two things, does it not in proper operation?  
17 The way it is designed and if it is properly operated, when  
18 you apply the foot brake there is a cam which moves and  
19 disengages the electricity through a microswitch?

20 A That is correct.

21 Q And it has a secondary operation that it  
22 actually the brake pad's against a moving shaft or whatever  
23 it is, and then in that manner creates a friction which has  
24 a braking action which stops the movement of the machine?

25 A Right.

1                   Q           Does those two things. And all of the  
2 operators at Stanley in the school you have there of  
3 teaching them how to operate the machine safely, they are  
4 taught to check the machine for proper operation of the  
5 foot brake before they use the machine, are they not?

6                   A           Yes.

7                   Q           And I gather that if you were to sit in  
8 the seat with your weight on the seat so as to satisfy the  
9 parking brake and the electric disconnect switch under that  
10 seat, and if you were to depress the accelerator to call  
11 for power, that with the machine moving you could then put  
12 your foot on the brake and test the electric disconnect  
13 action of the foot brake which would stop the machine, and  
14 by pressing down you could actuate the friction brake to  
15 stop the machine and thereby know that is working?

16                  A           Sure.

17

18                               MR. SNESIL: Objection. I think it is  
19 more than a question. Second of all I think he  
20 is requesting an opinion that requires expertise.

21                               THE COURT: I think that is right. I  
22 sustain the objection.

23                               MR. THOMPSON: Judge, I'm, I don't--

24                               THE COURT: He made the same objection  
25 you did, Mr. Thompson. I'm being consistent. I

1                   sustained yours, I sustained his.

2                   MR. THOMPSON: I have qualified him  
3 then, Judge.

4                   THE COURT: Then you exceeded the scope  
5 of direct.

6                   MR. THOMPSON: I was wondering if I  
7 could do this because we don't want to deplete  
8 the people. We had an understanding, if it is  
9 agreeable with the court, as counsel did when the  
10 witness is on the stand, we could ask our  
11 questions then let them go without having them  
12 come back.

13                  THE COURT: Have you talked that over  
14 with Mr. Snesil?

15                  MR. THOMPSON: I understood that it was  
16 okay with you. Is that all right?

17                  THE COURT: Do you have any objection to  
18 his putting his part of the case on through this  
19 witness while he's got him on the stand here now?

20                  MR. SNESIL: No, Your Honor, I don't  
21 have an objection.

22                  THE COURT: All right, go ahead then.

23

24                  Q           Now is it your understanding that  
25 Stephanie Ghee was the operator of this forklift the day



1 accident occurred?

2 A Yes.

3 Q Had she been certified, had she been  
4 through the school?

5 A Yes, she was certified.

6 Q Now after the accident occurred, I  
7 understand that you opened up the machine and you took out  
8 the floor in front of the driver's seat where the driver's  
9 feet are and you looked under there and you found that the  
10 accelerator had been rubbing against some hoses under  
11 there?

12 A Yes.

13 Q Now is this the sort of thing that you  
14 would like to have fixed if you were to know that that was  
15 happening? Is it dangerous in other words to operate?

16 A Oh, absolutely.

17 Q All right. And do you have to, do you  
18 have to rely upon its operators to report defects in the  
19 machines?

20 A Yes.

21 Q They are the ones who use the machine?

22 A Yes, we have safety rules.

23 Q You don't use them yourself, do you?

24 A No.

25 Q Personally you don't drive them?

1                   A           No, I don't.

2                   Q           Now if Stephanie Ghee followed her  
3 training on the day this accident occurred, would she have  
4 performed the checks that you described?

5                   A           Yes.

6                   Q           Was that a requirement by Stanley of her  
7 employment?

8                   A           Yes.

9                   Q           After the accident, did you check the  
10 operation of the seat safety switch, the kill, the deadman  
11 switch, whatever you call it?

12                  A           Yes.

13                  Q           You found that was not in proper  
14 operation?

15                  A           Right, I found it did not work, function  
16 properly.

17                  Q           And the reason it wasn't functioning  
18 properly was because of an adjustment to the cam that  
19 should strike the switch but did not strike it?

20                  A           That's correct.

21                  Q           And that is simply a matter of moving  
22 the switch over and in the slots and then tightening back  
23 up again once the switch has been far enough to strike the  
24 cam?

25

1 MR. SNESIL: Your Honor --

2

3 Q Is that what you found?

4

5 THE COURT: You are leading the witness.

6 MR. SNESIL: This is his examination.

7 THE COURT: I agree. Sustained.

8 MR. THOMPSON: Yeah, that's right.

9

10 Q Was the cam switch, the seat switch,  
11 kill switch, that switch under the seat the one suppose to  
12 stop the machine after you take your weight off the seat?  
13 Afterwards did you determine that it was working or not  
14 working?

15 A I determined that it was not  
16 functioning.

17 Q All right. Was the foot brake  
18 functioning or not functioning?

19 A We did not operate the vehicle so I  
20 couldn't determine if it was actually functioning or not.

21 Q You recall, I believe, do you recall  
22 that you have given the parties access to, the parties to  
23 this case, access to the machine?

24 A I'm not sure if I understand the  
25 question.

1                   Q           Have I been over there?

2                   A           Yes.

3                   Q           All right. And has Mr. Snesil been over

4           to Stanley?

5                   A           Yes.

6                   Q           And more recently was Mr. Snesil present

7           at Stanley with you taking video pictures of the operation

8           of the machine?

9                   A           Yes.

10                  Q           And this is the first time the machine

11           has actually been operated since November 1, 1993, the time

12           of the accident, wasn't it?

13                  A           That's correct.

14                  Q           Did, did you, did they request you to

15           charge the batteries?

16                  A           Yes.

17                  Q           And did they test the machine in your

18           presence?

19                  A           Yes, they did.

20                  Q           And did they take videos of the, their

21           testing of the machine?

22                  A           I believe so, yes.

23                  Q           What? You believe so? Did they have a

24           camera?

25                  A           I can't be positive he actually had a

1 camera in record mode, but yes, the person was there with a  
2 camera while we were doing that.

3 Q Did they check the operation of the, on  
4 that occasion, did they check the operation of the seat  
5 switch?

6 A Yes.

7 Q Did the seat switch operate or not?

8 A It did operate properly at that time.

9 Q All right. Now did the, did the parking  
10 brake which has two features, did the parking brake, did  
11 they test the parking brake in your presence?

12 A Yes.

13 Q All right. Now did the parking brake,  
14 the foot brake, I'm sorry, parking brake is under the seat,  
15 isn't it?

16 A Right, yes.

17 Q The foot brake is the one you put your  
18 foot on?

19 A Right.

20 Q Operator puts the foot on. Did the  
21 electric disconnect switch part of the foot brake actuate,  
22 did that work to cut the electricity off when they tested  
23 it over there that day?

24 A No.

25 Q Did the friction brake, foot brake work

1       when they tested it that day?

2                   A           Yes.

3                   Q           If the seat brake, either the parking  
4       brake or the kill switch, electric disconnect under the  
5       switch is reported by an operator to be not operational or  
6       out of adjustment, is that a condition which would call for  
7       you to take a machine out of service?

8                   A           Absolutely.

9                   Q           What would you do about it?

10                  A           We would lock the machine out and call  
11       whoever the service provider is to repair it.

12                  Q           This was a Clark machine, you would have  
13       called Clarklift, I guess?

14                  A           That's correct. We have separate  
15       contracts for different trucks.

16                  Q           Similarly if the foot brake disconnect  
17       switch or the friction brake was out of order and reported  
18       so by an employee, should the employee, and if it is  
19       reported to you, would you then take the machine out of  
20       service and call Clarklift?

21                  A           Yeah. The operator would not know if  
22       the switch is working or not, but yes, if -- it's  
23       commonplace that brakes wear, and as soon as they bring it  
24       to my attention the brakes are worn and it's not stopping  
25       effectively, they would bring it to my attention and we'd

1       have it repaired outside.

2                   Q           Both of these circumstances you would  
3       take the machine out of service for what reason?

4                   A           Because of safety of it endangering  
5       anyone in this area.

6                   Q           I see. If the conditions that you found  
7       to exist with this machine after the accident had been  
8       known before the accident, was this machine one which would  
9       have been in operation at the time?

10                  A           No.

11                  Q           Why?

12                  A           Well, having learned after the fact the  
13       seat switch was not working properly or the brake switch  
14       not working properly, the machine certainly was subject to  
15       cause bodily injury.

16                  Q           Given that the accelerator switch is  
17       down and the machine is in reverse and the foot brake is  
18       applied and the foot brake is working properly, would the  
19       machine stop?

20                  A           Well, you are asking about this  
21       particular vehicle.

22                  Q           I'm talking about the way it works. You  
23       told me if you apply, if you have your accelerator such  
24       that the machine is operating calling for power, the  
25       electricity is on because the accelerator is down?

1                   A           Uh-huh.

2                   Q           If you hit the foot brake will it stop  
3 the machine?

4                   A           It's suppose to stop the machine. It  
5 should deenergize the power that's applied as a result of  
6 pressing the accelerator pedal and additionally causing the  
7 drum brakes to stop the load.

8                   Q           With the accelerator depressed and the  
9 operator bails out, leaves the machine, what happens if the  
10 switch is in, seat switch is in proper operation?

11                  A           If the seat switch is in proper  
12 operation regardless of whether the accelerator is stuck  
13 down in this case or not, the vehicle should stop.

14                  Q           In the teaching of these operators, is  
15 bailing out of the machine, jumping off of the machine and  
16 leaving it at the mercy of everyone still around it, is  
17 this something that is approached in the teaching or are  
18 you taught against it?

19                  A           It is actually taught against it.

20                  Q           You are suppose to stay with the machine  
21 and operate it?

22                  A           That's right. It has safety rails and  
23 guards.

24                  Q           With the accelerator depressed and  
25 machine in reverse, gear shift lever in reverse, what



1 happens when the gear shift lever gets put into neutral?

2 A Power is no longer transferred to the  
3 drive train. The vehicle should stop or at least go to a  
4 coast without power.

5 Q That cuts the power off and the machine  
6 stops?

7 A That's right.

8 Q With the accelerator depressed and the  
9 machine in reverse, if the key switch is turned off, does  
10 that turn off the electricity and stop the machine?

11 A Yes.

12 Q Is it true that number five, the machine  
13 had been in operation since it had been delivered by  
14 Clarklift to Stanley back in the end of March?

15 A Yes.

16 Q And presumably it would have been used  
17 on many days?

18 A Yes.

19 Q Between then and November?

20 A Sure.

21 Q And the machine would have been subject  
22 to many times testing for safety and operation of all  
23 safety equipment by the employees of Stanley?

24 A Yes.

25 Q And during any of that time, that is

1 from April to November 1st when Hope got hurt, you were  
2 never informed by anyone there was anything wrong with this  
3 machine?

4 A That's correct.

5 Q And had you been, you would have called  
6 Clarklift and gotten it fixed?

7

8 MR. SNESIL: Asked and answered.

9 THE COURT: I agree. Sustained.

10

11 Q In the course of your job, have you made  
12 an observation that the employees be aware that there is  
13 something wrong with the machine from time to time, but due  
14 to the urgency of the business or the desire to get the job  
15 done they will go ahead and use it, have you seen that  
16 happen?

17

18 MR. SNESIL: I object. That opinion is  
19 not relevant.

20 THE COURT: I agree. Sustained.

21 MR. THOMPSON: Thank you, Mr. Lewis.

22 THE COURT: All right, redirect?

23

24

25

1

2

REDIRECT EXAMINATION

3

BY MR. SNESIL:

4

Q

Mr. Lewis, are all the forklifts at

5

Stanley sit down variety?

6

A

No, they are not.

7

Q

So some of them the operators use

8

standing up?

9

A

Yes, some of them are very different,

10

stand up type.

11

Q

Do all the ones with a seat switch at

12

Stanley, do they have seat switches in them that stop the

13

machine if the operator stands up?

14

A

No. In fact some of the Clarks that

15

appear to be identical to this one does not have a seat

16

switch.

17

Q

I see. Now can you testify with

18

certainty that any particular operator was instructed to

19

test that seat switch prior to November 1st, 1993?

20

A

No, I cannot because I wasn't in the

21

position and I wasn't, I wasn't a part of that training at

22

the time.

23

Q

All right. So prior to 19, prior to

24

November 1st, '93, did you know whether any particular

25

operator had been trained to inspect the seat switch to

1       make sure that it turned the machine off and stopped it?

2                   A               No, I could not attest to that.

3                   Q               As far as this operation of the brake  
4       and the electric cut off function, do you know whether any  
5       operators in Stanley were trained to test that electric cut  
6       off switch in particular to the brake function?

7                   A               No.

8                   Q               You are certain?

9                   A               Yes.

10                  Q               Assuming the accelerator was stuck down,  
11       that electric cut off switch didn't operate to turn the  
12       drive wheels, would it make the vehicle harder to stop?

13                  A               Absolutely.

14                  Q               Why is that?

15                  A               Well, if you can imagine trying to stop  
16       your car normally by removing your foot from the  
17       accelerator and pressing the brake and trying to imagine  
18       holding the accelerator down and pressing the brake, it is  
19       very similar if not even more exaggerated in this case.

20                  Q               Now prior to November 1st, 1993, how  
21       often were the operators suppose to do their safety checks?

22                  A               That was daily.

23                  Q               So if an operator came on say second  
24       shift or he thought someone else operated that vehicle  
25       earlier, was he charged with doing a safety check on that

1 vehicle?

2 A No.

3 Q Mr. Thompson mentioned to you several  
4 means of stopping the machine, in other wordss turning the  
5 ignition off or throwing it into neutral. Do you know  
6 whether Stephanie Ghee who is the operator of the vehicle  
7 on November 1st 1993, do you know if she had time to do any  
8 of those things at that time?

9

10 MR. THOMPSON: He shouldn't be allowed  
11 to speculate about that. There's no way he could  
12 know.

13 THE COURT: That is hearsay, is it not?

14 MR. SNESIL: Asking if he has knowledge.

15 THE COURT: How could he? He's not an  
16 eye witness, is he?

17 MR. SNESIL: No, he's not.

18 THE COURT: Have to be hearsay. I  
19 sustain the objection.

20

21 Q Mr. Lewis, would you tell us what your  
22 understanding was of the operators of forklifts at Stanley  
23 were suppose to do prior to November 1st, 1993 in regard to  
24 doing once a day inspection?

25 A Well, the training in fact is the law

1     that at that time you were suppose to actually inspect the  
2     vehicle after its use at the end of the shift. This time  
3     the law says, it was later I determined that OSHA requires  
4     you to check it at the end of each shift, but which it  
5     changed it, but at that time the training was to inspect it  
6     after the shift was over.

7                   Q           What I'm asking, what exactly was  
8     inspection suppose to encompass?

9                   A           They were to do operational checks to  
10    make sure that it was operating, brakes work, accelerator  
11    working. They were to check the structure of the vehicle  
12    to make sure the safety cage was intact, wasn't bent or  
13    damaged or caused any sharp edges, visual inspection of the  
14    drive rollers and the wheels to make sure there is nothing  
15    obvious bent up or damaged to the vehicle, and the horn.  
16    Some of the obvious items.

17                  Q           When you refer to brakes, you are  
18    talking about foot brake?

19                  A           That's correct.

20                  Q           How were they suppose to test the foot  
21    brake?

22                  A           Operate the vehicle at a very slow  
23    speed, apply the brake to make sure the vehicle did stop at  
24    a safe distance.

25                  Q           Would the operator be able to tell

1       whether that electric cutoff switch attached to the foot  
2       brake, whether that was working?

3               A               No, not the switch.  If in fact the  
4       accelerator was stuck and they applied it, they would know  
5       it, but to say that the kill switch, because what happens  
6       when you remove your foot from the accelerator, you are  
7       doing the same thing that the kill switch under the brake  
8       is doing, you are taking energy from the motor.  So by  
9       removing your foot from the accelerator, depressing the  
10      brake, it would be transparent.  You wouldn't know if that  
11      switch was working or not.

12             Q               Did you expect your operators to remove  
13      the floor panel and inspect the accelerator linkage  
14      underneath or hoses?

15             A               No.

16             Q               Were they forbidden from doing that?

17             A               Yes.

18  
19                               MR. SNESIL:  Thank you.

20                           THE COURT:  All right, may the witness  
21      be --

22

23

24

25

1

2

RE CROSS-EXAMINATION

3

BY MR. THOMPSON:

4

Q

5

6

7

8

9

10

11

12

You spoke about safety checks by the operator at least once a shift, and at the time the operator would first operate it during the day. Was there also a rule at Stanley at the time that during the day or during operation, if an employee would find that, detect a, detect through use of the machine during the shift that there was something wrong with the machine and it wasn't working properly, what then was the process? What would happen?

13

A

14

15

16

They were, and they did in fact commonly bring that information to myself or someone in authority to decide the vehicle, whether the vehicle should be used or not.

17

Q

18

A

19

20

And what action would you have taken? If it was of a safety nature we would certainly prohibit use of the machine until it was fixed.

21

MR. THOMPSON: Thank you.

22

23

THE COURT: All right, sir, you may step down. May he be excused?

24

MR. SNESIL: Yes, Your Honor.

25

THE COURT: You are free to leave if you



1           like. It is now ten of 1:00. It is time to break  
2           for lunch. Stand in recess, come back at 2:00  
3           o'clock. Remember, don't discuss the case during  
4           any break, all right? See you after lunch.

5

6                         NOTE: A luncheon recess is taken.

7

8                         MR. SNESIL: We have a stipulation.

9                         THE COURT: Make it to the jury.

10                        MR. SNESIL: I want to make sure we are  
11           straight on the stipulation. I have a video  
12           theat runs two minutes. It was shot within days  
13           of Richmond forklift. I'm going to see if Mr.  
14           Thompson agrees.

15                        MR. THOMPSON: I don't object. There  
16           was a screen on the front. It had something that  
17           shouldn't come in that he's deleted, so I'm not  
18           objecting. That's all he's deleted.

19                        THE COURT: Let's go ahead.

20                        MR. THOMPSON: May I say this, is that  
21           mike on? The people back here tell me they  
22           cannot hear me.

23                        THE COURT: I can't either, Mr.  
24           Thompson. I don't know if it is on or not. You  
25           are very soft spoken. I don't know if it's on.

1 MR. THOMPSON: I'll try to do better.

2 THE COURT: Get it closer to you, pick  
3 it up.

4 MR. THOMPSON: I'm having trouble  
5 hearing him.

6 THE COURT: Pick it up. It's a clip on  
7 it I think. Clip it to your coats.

8 MR. THOMPSON: I'll wear it, thank you.

9 THE COURT: How long a cord?

10 MR. SNESIL: Just for the record, Your  
11 Honor, on this video the audio is also deleted  
12 off of it.

13 THE COURT: That video is not going to  
14 be part of the record.

15 MR. SNESIL: I'd like it admitted into  
16 the record.

17 THE COURT: I don't want that to clutter  
18 up the court's file. You can describe it and  
19 place on the record what it shows.

20 MR. SNESIL: If the Court would note my  
21 objection to that.

22 At this time, Members of the Jury, there  
23 is a stipulation between myself and Mr. Thompson.  
24 You are about to see a videotape. That videotape  
25 was shot within days of the incident shortly

1 after the incident which occurred on November  
2 1st, 1993. It was shot at the Richmond Clarklift  
3 dealership and repair facility and it displays  
4 the forklift we have been talking about.

5 THE COURT: All right, turn it on.

6

7 NOTE: At this point a videotape is  
8 played with audio deleted to the jury.

9

10 THE COURT: All right, who is your next  
11 witness?

12 MR. SNESIL: Plaintiff calls as adverse  
13 witness Jerald LaMaskin.

14 THE COURT: Come forward, sir, and we'll  
15 swear you in.

16

17

18 JERALD HOWARD LAMASKIN, having  
19 previously been duly sworn, testifies as follows:

20

21 DIRECT EXAMINATION

22 BY MR. SNESIL:

23 Q Mr. LaMaskin, tell us your full name,  
24 please?

25 A Jerald Howard LaMaskin.

1                   Q           Mr. LaMaskin, you have earned, pardon  
2           me, you have owned Richmond Clarklift dealership for 26  
3           years, haven't you?

4                   A           Yes.

5                   Q           Richmond Clarklift holds itself out as  
6           doing the repair of forklifts, does it not?

7                   A           Yes, sir, qualified.

8                   Q           You don't hold yourself out as experts  
9           in that field?

10                  A           Don't think we use that term.

11                  Q           But you are expert in the repair of  
12           forklifts?

13                  A           It's a matter of semantics. I don't  
14           know what expert means, but we are very qualified.

15                  Q           Do you invite the public trust in  
16           repairing and professional skill in repairing forklifts?

17                  A           Of course.

18                  Q           Stanley asked you to service five  
19           forklifts which they purchased, isn't that correct?

20                  A           Yes, sir.

21                  Q           They had you to recondition them to a  
22           level of dependability, did they not?

23                  A           I was not party to that discussion, sir.

24                  Q           You don't deny that was what the request  
25           was?

1                   A            I have no knowledge of the request. I  
2    did not speak to Stanley nor was I any part of it.

3

4                   MR. SNESIL: Could the witness be shown  
5    Plaintiff's Exhibit Number 1?

6                   THE COURT: That speaks for itself.

7                   MR. SNESIL: If Your Honor please --

8                   THE COURT: You asked him what he knew.  
9    The document is in, and it's already in the  
10   record.

11

12                  Q            Mr. LaMaskin, you got a purchase order  
13   from Stanley to do the work before you started working on  
14   it, didn't you?

15                  A            No, sir. That purchase order came after  
16   we did the work. It was a follow-up.

17                  Q            When was it?

18                  A            I don't have it in front of me. I did  
19   not get the purchase order. This was all handled by my  
20   service department and I did not get involved in the whole  
21   subject until after the accident.

22                  Q            You knew those forklifts including this  
23   were suppose to be reconditioned?

24                  A            No, sir, they were in the shop.

25                  Q            So you didn't know that?

1                   A           No, sir.

2                   Q           Did anybody at Richmond Clarklift know  
3   that?

4                   A           My service manager, Peter Muller,  
5   handled all the discussions with Stanley and all the  
6   paperwork with Stanley.

7                   Q           Does the term recondition, does that  
8   have a meaning to you?

9                   A           Yes, sir.

10                  Q           As far as forklifts?

11                  A           Uh-huh.

12                  Q           Does that mean putting all the safety  
13   apparatus into correct working order?

14                  A           Yes, sir.

15                  Q           That would include the brakes, deadman  
16   switch, and any defective hoses, right?

17                  A           Means looking at the whole truck and  
18   pointing out anything that was defective and fixing it.

19                  Q           Including the brakes?

20                  A           Including everything, sir.

21                  Q           Deadman switch?

22                  A           Everything.

23                  Q           Defective hoses would be included?

24                  A           Everything.

25                  Q           Mr. LaMaskin, when your shop had the

1 machine, your mechanics used the time sheet, didn't they,  
2 they kept track of their time?

3 A Would you repeat that?

4 Q When that machine was in your shop did  
5 your mechanics keep track of time?

6 A Yes, sir.

7 Q Your shop generated certain records of  
8 that time?

9 A Yes, sir.

10

11 MR. SNESIL: If Your Honor please, may I  
12 approach the witness?

13 THE COURT: All right, sir.

14

15 Q Mr. LaMaskin, you recognize that  
16 document as being a record generated of the time for your  
17 mechanics, each one that worked on this machine?

18 A Yes, sir.

19 Q Now that work started on March 9, 1993  
20 according to that time sheet, right?

21 A Yes, sir.

22 Q And it ended on 4/12/93, about four a  
23 and a half weeks later, is that correct?

24 A That's correct.

25 Q Exactly five different mechanics worked

1       on that off and on during that four and a half week period,  
2       is that correct?

3               A               Yes, sir.

4

5                       MR. SNESIL: I move that be admitted as  
6       plaintiff's next exhibit.

7                       THE COURT: Any objection?

8                       MR. THOMPSON: I think I know which one  
9       it is. No, I think that should come in.

10                      THE COURT: All right.

11                      MR. THOMPSON: May I look at your copy?  
12       There is something written on the bottom that is  
13       not familiar to me. May I just look at it? I  
14       have no objection.

15                      THE COURT: All right.

16

17                      NOTE: A time sheet is marked  
18       as Plaintiff's Exhibit Number 7.

19

20                      Q               Richmond Clarklift trys to document all  
21       the repairs you make?

22                      A               Would you repeat that?

23                      Q               Do you try to document all the repairs  
24       that you do, keep good documents, good records?

25                      A               We keep records. I don't know what one



1 person considers good and one person doesn't, but we keep  
2 time records and we keep a record of the work we did, yes,  
3 sir.

4 Q You keep a record of the work being  
5 done, is that correct?

6 A As it's being done.

7 Q You encourage that be done very  
8 carefully, don't you?

9 A Not necessarily. It's done at some  
10 point during the process of the repair.

11 Q You don't encourage records of repair be  
12 carefully kept and maintained in a customer's file, is that  
13 what you are telling me?

14 A No. I encourage the mechanics write  
15 down what they do and the records be kept, yes, sir.

16 Q A mechanic who had a forklift in there,  
17 should he document repairs called Mechanics Estimate for  
18 that forklift, is that correct?

19 A Should be if there is an estimate given.

20 Q Isn't it true a work order describing  
21 the work or Mechanic's Estimate Sheet would be prepared for  
22 every vehicle in your shop?

23 A Yes, sir.

24 Q On that estimate or work order, that  
25 would describe the nature of the work being performed?

1                   A            Yes, sir.

2                   Q            That would also provide the mechanic a  
3 place to note anything he found as he worked on the  
4 machine, as he worked?

5                   A            On the work order, not the estimate  
6 sheet.

7                   Q            That document, whichever it was, would  
8 also provide a place for final inspection to be noted by  
9 the mechanic, wouldn't it?

10                  A            Work order?

11                  Q            Work order would provide a place final  
12 inspection was noted, correct?

13                  A            They don't generally note it. They make  
14 a final inspection but no one writes down the fact that he  
15 inspected it. When the job is done, somebody, another  
16 mechanic who hasn't worked on the truck inspects the work  
17 that was previously done.

18                  Q            It's not written down anywhere?

19                  A            No, sir, not necessarily, no.

20                  Q            Don't you try to reserve that mechanic's  
21 estimate sheet or work order in the customer's file?

22                  A            We preserve the work order.

23                  Q            In the customer's file?

24                  A            Yes, sir.

25                  Q            It's important that be done to let you

1 know exactly what work was done, correct?

2 A That's correct.

3 Q It's an important document because it  
4 tells what work has been done as the work is being  
5 processed, right?

6 A Yes, among other things. Mechanics are  
7 not as literal as you make it sound. I mean they talk to  
8 themselves and they know what each one of them has done.  
9 Paperwork is not an important item with the mechanics. It  
10 may be with me but it's difficult to get the mechanics to  
11 place as much importance on it as I might do.

12 Q Mr. LaMaskin, that work order or that  
13 Mechanic's Estimate Sheet provides the best document of  
14 what work was ordered, what work was done?

15 A Yes, sir.

16 Q You cannot produce to this court a work  
17 order or estimate sheet of what was done?

18 A You have the work order in your  
19 possession.

20 Q Mr. LaMaskin, the work order you are  
21 talking about in my possession was written after the  
22 machine was serviced by your service department.

23 A We do that many many times. It is very  
24 common.

25 Q You are saying at the beginning of

1 service of this machine, you mean nobody wrote down the  
2 work that was suppose to be done, is that correct?

3 A I believe from other discussions I have  
4 had, Pete Muller, our service manager, wrote down on an  
5 estimate sheet what he wanted the mechanics to do on the  
6 basis of a discussion he had with the people at Stanley.  
7 He gave them the estimate sheet. They would then complete  
8 the work, and then after they finished doing the work, they  
9 would write something down on the work order. They  
10 probably used the estimate sheet to guide them doing their  
11 work.

12 Q So it's your understanding that this  
13 forklift, Mechanic's Estimate Sheet was prepared and  
14 mechanics used it to write down what they were doing?

15 A I have been told that it was in previous  
16 conversations that we had.

17 Q Mr. LaMaskin, where is that document?

18 A I don't know, sir.

19 Q Did you destroy it?

20 A No, sir. I requested Mr. Muller to  
21 search the files for all documents relative to this truck  
22 and he couldn't find it.

23 Q Well, Mr. LaMaskin, because that is  
24 missing we are never going to know what Mr. Muller wrote  
25 down to do?

1                   A           No, sir.

2                   Q           And we won't know which mechanic did  
3 what, will we?

4                   A           We wouldn't know that from the estimate  
5 sheet anyway, sir.

6                   Q           Mr. LaMaskin, forklifts, electric  
7 forklifts, is it fairly commonplace for your customers to  
8 use them 20, 30 hours a week? Is that something that is  
9 done?

10                  A           Some people, yes.

11                  Q           Now this machine, this forklift that we  
12 are here to talk about that was taken to the Richmond  
13 Clarklift dealership, it was taken the next day after Hope  
14 Griffin was injured, right?

15                  A           Yes.

16                  Q           You inspected it within some days of  
17 that, is that right?

18                  A           That day.

19                  Q           That day?

20                  A           The day after the accident upon arrival  
21 at our place of business.

22                  Q           You noticed the defective hydraulic hose  
23 where it had been rubbing on the accelerator?

24                  A           Yes, sir.

25                  Q           And you described that to me in sworn

1     testify prior to this trial there was a one eighth inch  
2     wide groove?

3                   A             That's about how I remember seeing it,  
4     yes.

5                   Q             If I might have one of the exhibits to  
6     ask this witness about.

7                                 Mr. LaMaskin, I hand you a photograph  
8     marked as Plaintiff's Exhibit 3. Do you notice a blemish  
9     or defect in that hose?

10                  A             Yes.

11                  Q             Was that the condition it was in the day  
12     after you inspected it the day after Hope Griffin was  
13     injured?

14                  A             From the angle you have taken it I can't  
15     necessarily say that. I was looking down on the hose and I  
16     was looking at a groove that was worn in the hose  
17     approximately an eighth of an inch wide.

18                  Q             You are telling us then as I understand  
19     it, that photograph does not display the blemish you saw  
20     the next day after this incident?

21                  A             I'm not saying it does or doesn't. I  
22     was concerned about the groove in the hose. I was looking  
23     down from the top and this picture was taken from an angle,  
24     so I was looking down at the groove from a different angle  
25     and there was a groove there.

1 Q Do you notice an abrasion there?

2 A Yes, sir. That's what I'm talking  
3 about.

4 Q Is that what you were talking about?

5

6 MR. SNESIL: May that photograph be  
7 shown to the jury?

8 THE COURT: All right, go ahead.

9 MR. THOMPSON: Would you just hold it up  
10 right where you are so I can see which one it is?

11 THE COURT: Just give him the number.

12 MR. THOMPSON: That's okay. That's all  
13 I need.

14 THE COURT: Go ahead.

15

16 Q Mr. LaMaskin, you told me, did you not,  
17 that that abrasion is a result of many many many months of  
18 use?

19 A I told you that that abrasion did not  
20 happen in one day, that it happened over a period of time,  
21 and it could be several months.

22 Q Mr. LaMaskin, did you not say many many  
23 many months?

24 A If you will look at my correction to the  
25 deposition, sir, I said several months.

1

2

MR. SNESIL: If Your Honor please--

3

4

A It did not happen overnight.

5

6

MR. SNESIL: If Your Honor please, may I  
show the witness the deposition transcript?

7

8

THE COURT: We arguing about many, many,  
many as opposed to several?

9

10

MR. SNESIL: Yes, sir.

11

THE COURT: That's already in. Let's go  
ahead.

12

13

MR. SNESIL: I'd like him to verify the  
transcript sentence.

14

15

THE COURT: What difference does it  
make? He says he made a correction to it. Are  
you impeaching him?

16

17

MR. SNESIL: Yes, sir, I certainly am.

18

THE COURT: You can't qualify to call  
him to impeach him.

19

20

MR. SNESIL: I can impeach the witness  
by prior inconsistent statements.

21

22

THE COURT: What is the difference? He  
hasn't said anything different. We have already  
covered this.

23

24

25



1 MR. SNESIL: Please note my exception.

2 THE COURT: Certainly.

3

4 Q Mr. LaMaskin, assuming a forklift is  
5 used 20 hours per week, 101 hours of use is five weeks,  
6 right?

7 A Assuming -- say that again, please.

8 Q Assuming the forklift is used by the  
9 owner 20 hours per week, that's five weeks of service.  
10 Have I done my arithmetic correctly?

11 A I don't know. I don't have my  
12 calculator. I'll accept what you said.

13 Q If it's used 30 hours a week, it would  
14 be more than three weeks of use?

15

16 THE COURT: Are you testing his math  
17 skills? Come on, Mr. Snasil, you can argue that  
18 to the jury. We don't need him to testify to  
19 that.

20

21 Q Mr. LaMaskin, that abrasion, if it had  
22 been seen when you were working on that machine at Richmond  
23 Clarklift, that would have been a red flag signaling that  
24 hose needed to be replaced, wouldn't it?

25 A Yes, sir.

1 Q It could have been tied down?

2 A No, sir.

3 Q You saying it couldn't have been done?

4 A We would not have done that.

5 Q What would you have done?

6 A If we would have seen the abrasion, we  
7 would have replaced the hose and attempted to reroute it so  
8 that it couldn't have done this. I can't honestly say to  
9 you that we would have tied it down. It's easy to say in  
10 retrospect knowing the accident happened. But federal law  
11 requires that we do not make a modification of a lift truck  
12 that was not there and done by the manufacturer, so if we  
13 tied the hose down arbitrarily and later, because it  
14 couldn't move the way it was suppose to, another accident  
15 happened, we would be liable for making a modification that  
16 affected safety, but I don't think that's the point. We  
17 never got a chance to make that decision. Our people did  
18 not see an abraded hose when they inspected the truck.

19

20 MR. SNESIL: I move to strike that  
21 opinion concerning the law in this case from Mr.  
22 LaMaskin as to what federal law requires.

23 THE COURT: I don't know what federal  
24 law requires and I instruct the jury it may or  
25 may not require it. That's his opinion as to

1                   what it would require and he's explained why they  
2                   do and don't do certain things, and certainly he  
3                   can testify to that.

4

5                   Q           When you inspected that machine on  
6                   November 2, you prepared a handwritten memorandum, didn't  
7                   you?

8                   A           Yes, sir.

9

10                   MR. SNESIL: May I approach the witness?

11                   THE COURT: Yes, sir.

12

13                   Q           That's it, isn't it?

14                   A           Yes, sir.

15                   Q           Second line in your handwriting says tie  
16                   hoses to frame, is that correct?

17                   A           Yes, sir.

18                   Q           That was your thought at the time,  
19                   should be just tied to the frame, right?

20                   A           After the accident happened and I saw  
21                   what happened, I said it would be remiss of us to not try  
22                   to affix these hoses to the frame so that they don't move  
23                   around, and I use the word tied and I use that  
24                   interchangeably with secure. Whether or not we drilled  
25                   holes and mounted a bracket, we did something we would have

1 to figure that out, but there was no place, there was no  
2 way to restrain the hoses provided by the manufacturer of  
3 the lift truck.

4 Q But it was your thought at the time it  
5 should be secured, is that right?

6 A Knowing that the horse was out of the  
7 barn, that the accident happened, certainly.

8 Q That frame part next to the hose could  
9 have been used for that purpose, right?

10 A Not readily. We would have to figure  
11 out how to do it. The frame was about this high. There  
12 was no way to tie the hoses to something this high, but we  
13 would have to tie them, secure them or do something by  
14 maybe drilling a hose -- drilling a hole, taping it,  
15 putting a bracket in or making a hole where we can tie some  
16 tie straps too, but again this was after the accident when  
17 we knew what had happened.

18

19 MR. SNESIL: If Your Honor please, I  
20 move this handwritten memo be admitted.

21 THE COURT: Any objection?

22 MR. THOMPSON: No, Your Honor.

23 THE COURT: This will be Plaintiff's 8.

24

25 NOTE: A handwritten memo is

1                   marked as Plaintiff's Exhibit Number 8.

2

3                   THE COURT: Go ahead, sir.

4                   MR. SNESIL: May I approach the witness,  
5                   Your Honor?

6                   THE COURT: Yes, sir.

7

8                   Q           Mr. LaMaskin, I hand you a copy of an  
9                   invoice you prepared following reconditioning of the  
10                  forklift, is that correct?

11                  A           Yes, sir.

12                  Q           On that invoice on the page that has the  
13                  final total noted, right in the middle you use according to  
14                  this invoice, wire ties which cost 29 cents each?

15                  A           Yes, sir.

16                  Q           I move that be admitted.

17

18                  THE COURT: Any objection?

19

20                  NOTE: A copy of an invoice is marked  
21                  as Plaintiff's Exhibit Number 9.

22

23                  Q           Mr. LaMaskin, when you inspected that  
24                  machine, you did some preliminary test on it, didn't you?

25                  A           Yes, sir, I inspected it twice.

1                   Q           When you tested it at your dealership  
2   within days of this accident, you stood up on the seat and  
3   that parking brake held, didn't it? It stopped the  
4   machine?

5                   A           In about four feet.

6                   Q           So the deadman switch was working at  
7   that time?

8                   A           I only tested it to see that the truck  
9   would stop at that moment. I couldn't do both. I got on  
10  the truck and I drove it and I pressed on the foot brake,  
11  the normal brake, and the truck stopped immediately. I  
12  then went in reverse, accelerated, and pressed on the foot  
13  brake and the truck stopped.

14                  Q           So the foot brake was working?

15                  A           I then went in forward and raised my  
16  body off of the seat and the truck stopped in about four  
17  and a half feet.

18                  Q           Let's talk about the foot brake first.  
19  You pressed on the foot brake and the vehicle stopped?

20                  A           Yes, sir.

21                  Q           You didn't notice anything unusual about  
22  that foot brake, how it felt on your foot?

23                  A           No. I pressed down and it felt like a  
24  foot brake.

25                  Q           Seemed to be normal, the travel that is?

1                   A           Travel?

2                   Q           Travel.

3                   A           I don't know what normal travel is.

4       Some models have more travel than others. Depends on the  
5       master cylinder.

6                   Q           You can't tell stepping on a foot brake  
7       in that machine whether it had normal travel or not?

8                   A           I was only trying to see if the truck  
9       stopped.

10                  Q           Did it feel like to you the return  
11       spring was missing?

12                  A           I didn't check for the return spring  
13       being missing at that time. I just stopped the truck.

14                  Q           You are familiar with operation of a  
15       return spring?

16                  A           Yes, sir, very much.

17                  Q           One could readily feel if it was  
18       missing, couldn't one?

19                  A           No, sir. I was pressing down on it to  
20       stop the truck. When you take your foot off the pedal, the  
21       master cylinder pushes the pedal up a little bit and the  
22       return spring brings it up another five degrees, four  
23       degrees up. So my foot was not on the pedal when the  
24       return spring would be pulling up so I could not feel it.

25                  Q           You couldn't tell whether that spring

1       was there or not?

2                   A           Not at that time during that inspection.

3                   Q           And it didn't appear normal to you  
4       during 26 years?

5                   A           Felt fine.

6                   Q           I'm talking about feel of the brake  
7       pedal.

8                   A           Felt fine, yes, sir, it felt fine. It  
9       stopped.

10                  Q           Did you check the seat cutoff switch,  
11       Mr. LaMaskin?

12                  A           Yes, sir, I did.

13                  Q           That wasn't working?

14                  A           No, sir.

15                  Q           It was bolted down so it couldn't be  
16       working?

17                  A           No, sir, that's incorrect.

18                  Q           So it wasn't bolted down tight, is that  
19       correct?

20                  A           You want me to tell you? You are  
21       telling me.

22                  Q           I'm asking you was the seat switch  
23       bracket bolted down tight--

24                  A           No, sir.

25                  Q           -- so it couldn't possibly function?



1                   A            No, sir.

2                   Q            What was it doing?

3                   A            I got off the truck after the prior  
4 examination and I had someone open up the back end of the  
5 truck so I could gain access to the, what we call the  
6 deadman seat switch. The switch is bolted to a bracket and  
7 the bracket is bolted to the truck. The bracket was  
8 displaced to the left approximately 1/16th of an inch so  
9 that I could see the difference between the paint that was  
10 originally applied in our shop seven months ago and the  
11 mark that was made by the bracket moving, which that's what  
12 caught my eye was the fact that the rust was showing  
13 because the bracket was moving.

14                               I then reached down and was able to  
15 wiggle the bracket. I then tested the arm. There's an arm  
16 that, the switch is vertical and the arm is like this, and  
17 if I may say the microphone here is a cam, when the driver  
18 sits on the truck, the cam moves down so that the arm opens  
19 up like this.

20                               Well, now when he gets off the truck,  
21 the switch closes or I should say the arm closes this way.  
22 Off the truck the whole device was shifted about a 16th of  
23 an inch to the left, and I saw that by the fact that the  
24 paint was displaced. And then I felt the bracket and I  
25 could shift it. It was not loose but it was loose enough

1 to where I could move it with my hands.

2

3 MR. SNESIL: If Your Honor, please,  
4 might I have Plaintiff's Exhibit Number 4, show  
5 it to the witness?

6

7 Q Mr. LaMaskin, I have handed you  
8 Plaintiff's Exhibit 4. Is that not what the seat switch  
9 looked like when you examined it?

10 A No, sir.

11 Q Didn't look like that?

12 A No, sir.

13 Q So you disagree with Mr. Lewis that  
14 isn't what it looked like?

15 A I do. When I got this truck day after  
16 the accident in my shop, I could see rust marks around the  
17 washers that held the bracket, and that's why I wrote down  
18 on the piece of paper that the bracket had to be adjusted.

19 Q In fact you did adjust it while it was  
20 in your shop, is that correct?

21 A Yes, sir, I did. When the customer  
22 asked that the truck be returned to him, I felt as though I  
23 should put it back in working order, that it would be  
24 remiss of me to send the truck back in the condition that I  
25 received it. It was only a matter of seconds to push the

1 bracket back and tighten up on those nuts.

2 Q I'm handing you Exhibit 6.

3 A Okay.

4 Q It again shows that bracket. Is that  
5 not the condition you returned that vehicle to the Stanley  
6 warehouse in?

7 A I don't think that this is the condition  
8 that I returned the vehicle in. There's too many markings  
9 on here. When I saw it there was only one mark showing one  
10 bit of rust and I lined it up exactly the way it would be  
11 if the rust didn't show the way it was painted in our shop.

12 As I'm looking at this thing here I see  
13 several marks on it that would not be there because I  
14 covered them back when I put the switch back where it was  
15 in the first place. It should have been nice and green and  
16 perfect like this. This is how I returned the truck. I  
17 did not return the truck in this condition nor did I return  
18 it with all the paint knocked off of the nuts. All we had  
19 to do was take a wrench and just snug it a little bit.

20 Q Did you return the truck with that seat  
21 switch working or not?

22 A Working.

23 Q But you did not have to move the switch,  
24 did you not?

25 A I moved the bracket. I moved this

1 bracket here over 1/16th of an inch. I moved it to the  
2 right 1/16th of an inch.

3 Q So as I understand you, neither of those  
4 photographs accurately displays that seat bracket and its  
5 adjustment when you returned it to Stanley?

6 A When I returned it to Stanley it looked  
7 like this, everything lined up.

8

9 THE COURT: Everything is what, what  
10 number?

11 THE WITNESS: Number 4.

12

13 Q Mr. LaMaskin, on number 4, it's adjusted  
14 such so that the switch can't possibly work, isn't it?

15 A I don't know, sir. I just put it back  
16 in the original position that it should have been in.

17 Q You don't know whether it can work in  
18 that position or not?

19 A I didn't test it myself, no.

20 Q Mr. LaMaskin--

21 A I tested the seat brake.

22 Q When you stood up on that seat, the  
23 brake--

24 A Yes, sir.

25 Q -- it stopped within four feet?

1                   A           Yes, sir.

2                   Q           Was that a normal function of that seat  
3 break?

4                   A           It could be.

5                   Q           Under what circumstance?

6                   A           The seat brake is like a parking brake  
7 on your car. If you have ever pushed on the pedal to try  
8 to stop your car, parking brake pedal, or pulled on the  
9 handle to stop your car, you know that it doesn't stop with  
10 as much power as if you pressed on your brakes and you used  
11 your normal hydraulic service brakes because the seat pulls  
12 on cables which is the same type of cable that your hand  
13 pulls on, so it is not going to stop on a dime. But it  
14 stopped in four and a half feet.

15                               It could have stopped a little quicker  
16 which is why I said we ought to adjust those cables  
17 tighter. They tend to stretch every time somebody gets on  
18 the truck. It's like pulling your hand brake on, and after  
19 a period of time those cables stretch and they need to be  
20 tightened up.

21                   Q           Mr. LaMaskin, you sent a letter or Mr.  
22 Muller did on Exhibit 5 which I'm handing you now.

23                   A           Yes, sir.

24                   Q           At that time you suggested that Stanley  
25 hardware, they adjust the parking brake, didn't you?

1                   A           Yes, sir.

2                   Q           Because it wasn't adjusted, was it?

3                   A           It was stretched way out of adjustment.

4                   Q           Also in that letter you suggest to them  
5 they fix the deadman switch, isn't that correct?

6                   A           I, this is before I did it. I told them  
7 the switch had to be adjusted into its proper position.

8                   Q           That letter is before you inspected it?

9                   A           No, this is before I touched a switch.

10                  Q           Doesn't the letter suggest to them that  
11 they need for you to fix the deadman switch?

12                  A           Yes, sir.

13                  Q           But you had already done that, hadn't  
14 you?

15                  A           No. I did it after I wrote the letter  
16 when they said to return the truck to them without doing  
17 anything. I said we cannot return the truck without at  
18 least fixing the switch or putting it back where it was.  
19 So I had our mechanics tighten it up. I moved it and asked  
20 somebody to come over with a wrench and tighten it up, but  
21 I didn't mark up that switch the way you have shown in this  
22 Exhibit Number 6. This is not the way the truck was when I  
23 returned it to Stanley, not at all.

24                  Q           Mr. LaMaskin, let me show you another  
25 document.

1

2

MR. THOMPSON: Hold it up, let me see.

3

THE COURT: He'll give it to you.

4

5

Q Mr. LaMaskin, the document I have shown

6

you is a typed memorandum which you had done in your shop

7

to document the inspection which you did immediately after

8

this incident, right?

9

A Yes, sir.

10

Q On the bottom says parking brake not

11

adjusted, does not hold truck when actuated. Did I read

12

that correctly?

13

A Yes, sir.

14

Q Is that correct?

15

A Yes, but you are talking about two

16

different things. May I explain?

17

Q Mr. LaMaskin, the parking brake is not

18

adjusted, does not hold when actuated, that's what it says?

19

A Exactly what it says. When you get off

20

the seat it should keep the truck in the position where it

21

is. It didn't grab hard enough to keep it in that

22

position. You could actually push the truck if you put a

23

lot of pressure on it, push it, move it. But that's not

24

the same as driving it and getting off the seat, jumping

25

off the seat in a dynamic situation. It still grabbed it

1       and it took four feet to slow it down, so we are talking  
2       about two different things.

3                   Q           You don't deny the parking brake is out  
4       of adjustment, do you?

5                   A           I'm saying the parking brake needed  
6       adjustment. It is a normal maintenance item.

7                   Q           I move that in.

8

9                   THE COURT: All right, let me have it.

10       Exhibit 10.

11

12                   NOTE: The above-describe document  
13       is marked as Plaintiff's Exhibit Number 10.

14

15                   MR. SNESIL: May I confer with  
16       co-counsel just a minute?

17                   THE COURT: All right.

18                   MR. SNESIL: I don't have any more  
19       questions right now of this witness.

20                   THE COURT: All right. You have cross?

21

22

23

24

25



1

2

CROSS-EXAMINATION

3

BY MR. THOMPSON:

4

Q

Mr. LaMaskin, I'm going to hand you

5

another photograph. Is this the picture, Mr. LaMaskin,

6

that you said that is not the view that you had of it when

7

you looked at it?

8

A

Yes, that was not the angle I was

9

looking at.

10

Q

Yes, all right.

11

A

I'm not denying this is not the hose.

12

I'm just saying that's not the way it looked to me.

13

Q

Look at that picture, is that the angle?

14

A

Yes, sir.

15

Q

At which you were looking at?

16

A

Yes. I was standing on top looking

17

straight down.

18

Q

So this is the view, the little picture?

19

A

Yes.

20

Q

The one I just handed is the view you

21

had on those hoses?

22

A

Yes, sir.

23

Q

You were looking down you said at a

24

notch?

25

A

Yes, sir.

1                   Q           Which you estimated to be about an  
2 eighth of an inch?

3                   A           You can see it here.

4

5                   THE COURT: You have a softer voice than  
6 Mr. Snasil. Put the thing on so we can all hear  
7 you.

8                   MR. THOMPSON: Thank you for reminding  
9 me.

10

11                  Q           What I said was is the picture, the  
12 little picture, the one I just handed you, is that the view  
13 you got when you described there being a place on the side  
14 of the hose maybe an eighth of an inch?

15                  A           Yes, sir.

16                  Q           I'll put that in evidence.

17

18                  THE COURT: Defendants 1. Any  
19 objection?

20                  MR. SNESIL: No, I don't object to that  
21 picture coming into evidence.

22                  THE COURT: All right.

23

24                  NOTE: A photograph is marked  
25 as Defendant's Exhibit Number 1.

1

2                   Q           There was some testimony you were asked  
3 about some painting done?

4                   A           Yes.

5                   Q           There was some paint sprayed in the  
6 vicinity of the seat switch, the bailout switch--

7                   A           Uh-huh.

8                   Q           -- where you stand up and it's suppose  
9 to stop. Now what I want to ask you is this, when you  
10 first examined this switch in your shop, did it coincide  
11 with the painted area or could you see that it had moved to  
12 expose some of the painted area?

13                  A           When I examined the truck the day after  
14 the accident, the bracket that holds the switch had moved  
15 to the left and exposed unpainted area.

16                  Q           All right.

17                  A           Which is what caught my eye.

18                  Q           In that position which is the position  
19 you, in -- is that the position in which you received the  
20 truck back after the accident?

21                  A           That's how we received the truck after  
22 the accident from Stanley, yes, sir.

23                  Q           As you were checking the adjustment of  
24 that switch, did you move the switch back to the position  
25 where it coincided with the paint?

1                   A           Not at that point in time.

2                   Q           Did you later?

3                   A           About two months later or three months  
4 later when we delivered the truck, when we finally,  
5 everyone looked at it that was involved at the time, and  
6 Stanley had not told us to fix it and it was just sitting  
7 there, we called Stanley and said we would like to get this  
8 truck out of our place and returned to you or fix it, they  
9 said well, we don't want to fix it so return it to us.

10                               I then had our people move the switch,  
11 move the bracket back to the position it would be in if you  
12 couldn't see rust.

13                   Q           Did you match it with paint margins?

14                   A           Yes, sir.

15                   Q           In that position did the switch work?

16                   A           Yes, sir.

17                   Q           When the switch was out of position with  
18 the paint margins, did it work?

19                   A           Not necessarily all the time. It -- not  
20 necessarily all the time. It was loose. So if the seat  
21 cam hit it the wrong way it would move and it wouldn't  
22 trigger the switch.

23                               Another time when the cam came down it  
24 pushed it the other way. Sometimes it did it, sometimes it  
25 didn't, but it was wobbly. It was loose enough to move not

1       terribly but it would move.

2                   Q               These holes that are under these bolts--

3                   A               Yes.

4                   Q               -- are they holes or are they slots?

5                   A               They are slots.

6                   Q               Why are they slots?

7                   A               So that you can adjust the switch so  
8       that it's energized properly about the cam. Different  
9       switches I guess made by different manufacturers might have  
10      a different throw on them, so there is a means there for  
11      adjusting it so that the cam hits it and it cuts on and off  
12      the way it is suppose to.

13                  Q               Why does this switch need adjustment  
14      from time to time? Why wouldn't there be holes instead of  
15      slots?

16                  A               They tend to wear with time. When they  
17      are new you might move the arm this much until it clicks.  
18      As they get old, you might have to move it a little more  
19      before it clicks. That is typical on all types of  
20      equipment that switch has an adjustment to it.

21                  Q               Does it wear as it is used?

22                  A               Yes, sir.

23                  Q               Does it require adjustment from time to  
24      time?

25                  A               Yes. We check them on every p.m.

1  
2  
3  
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MR. THOMPSON: Thank you. That's all I  
have, Your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. SNESIL:

Q When you inspected this vehicle November  
2nd, 1993, you knew Hope Griffin had been hurt?

A Yes, sir.

Q You were curious to find out what  
happened?

A Yes, sir.

Q You inspected the vehicle carefully?

A Yes.

Q You saw an eighth inch groove in the  
hose?

A Yes, sir.

Q You knew what happened according to  
those reports was the accelerator was stuck on the hose?

A Uh-huh.

Q Didn't you look at the hose further to  
see whether it had any kind of abrasion on it or any other  
kind of defect?

1                   A               Yes, most definitely.

2                   Q               Did you see the abrasion shown to you on  
3 the photograph which I handed to you earlier?

4                   A               I made, the abrasion made by the pin  
5 that abraded it was the causal part. I don't think we have  
6 difficulty with each other. I don't know what you are  
7 trying to get me to say. There was pin on the accelerator  
8 pedal that abraded the hose. It abraded down to the wire  
9 mesh.

10                  Q               I'm handing you Plaintiff's Exhibit 3.  
11 When you further inspected the hose, is that the abrasion  
12 which you saw?

13                  A               I was looking from the top down. You  
14 are laying on the floor shooting it from the side. I  
15 didn't look at it from this angle. I have no doubt it's  
16 not the same abrasion, I'm not telling you it's different.  
17 I'll telling you I didn't lay on the floor and look at it  
18 sideways. I looked from the top down.

19                  Q               Your testimony is you have to lay on the  
20 floor to look at the hose?

21                  A               Down pretty close to the floor, maybe 18  
22 inches from the floor to see it from an angle. Here is the  
23 accelerator box 18 inches down from the floor. No, I stood  
24 above and looked from the top.

25                  Q               You never looked closer?

1                   A            I didn't look from the side. No, I  
2    didn't. I saw what I needed to see. I saw the accelerator  
3    pedal abraded the hose. I don't see where it's terrible I  
4    didn't pay attention to the other part. I saw what caused  
5    the problem. I'm not giving you an argument or hard time.

6                   Q            Would a video shot from above the  
7    machine show that abrasion as it looks in the photo?

8                   A            No, sir, it would show it differently.

9                   Q            Mr. LaMaskin, was that particular  
10   picture taken from underneath the machine?

11                  A            No, sir, it was taken down low.

12                  Q            From above the machine?

13                  A            Above the floor about 18 inches off the  
14   floor.

15                  Q            So in other words if you kneeled over  
16   the machine, looked at it, you could have seen that view,  
17   right?

18                  A            Kneeling, we are getting picky, I think  
19   kneeling you need to get down on your belly to get your  
20   head 18 inches above the floor. I didn't do that. I stood  
21   over the truck, I kneeled a little bit, bent my knees, I  
22   grabbed the hoses, I pulled them, I saw that the  
23   accelerator pedal spring pin could hit it and I agree the  
24   hoses were abraded by the pin.

25                  Q            You never saw the abrasions there?



1                   A            I never paid attention to that view of  
2    it.

3                   Q            You testified that when you stood up on  
4    the seat, the parking brake stopped the vehicle within four  
5    feet?

6                   A            Yes, sir -- pardon me?

7                   Q            The parking brake seat activated the  
8    brake, stopped the machine four feet more or less?

9                   A            On two occasions.

10                  Q            That means the operator when she, if she  
11   stood up on the seat should have done the same thing?

12                  A            I don't know that.

13                  Q            Do you think it would have gotten out of  
14   adjustment?

15                  A            I wasn't at the accident. I'm saying I  
16   got up off the seat two separate occasions and the truck  
17   stopped in about four, four and a half feet.

18                  Q            One of those occasions was the day of  
19   this incident, is that correct?

20                  A            And one was two weeks ago. I went to  
21   Stanley in the presence of Darryl Lewis, Pete Muller, and a  
22   mechanic, and I held my foot down to the metal and I drove  
23   it forward and I pressed on the brake and it stopped.  
24   Holding my foot down I reversed it, went in reverse, and it  
25   stopped, and still holding my foot down I raised my fanny

1 off the seat and it stopped in about four and a half feet  
2 both occasions separated by months and time.

3 Q So the operator would have had the same  
4 result presumably?

5 A I'm not qualified to say that. I'm  
6 telling what I saw, what I did.

7 Q You went to the Stanley warehouse on May  
8 31st, is that correct?

9 A Yeah. I think that was the date.

10 Q That was after I took your deposition,  
11 is that correct?

12 A Yes, sir.

13

14 MR. SNESIL: I don't have any more  
15 questions for this witness right now.

16 THE COURT: You may step down. Who is  
17 your next witness? Who is your next witness?

18 MR. SNESIL: If Your Honor please, next  
19 witness is Stefanie Ghee.

20

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STEPHANIE GHEE, having previously been  
duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. SNESIL:

Q Miss Ghee, tell us your full name,  
please.

A Stefanie Labonnie Ghee.

Q Where do you live?

A 3510 Chamberlayne Avenue, Apartment K.

Q Are you employed by Stanley Hardware?

A Yes.

Q How long have you been employed by  
Stanley Hardware?

A About five and a half years.

Q Were you -- what do you do for Stanley  
Hardware?

A Machine operator.

Q Do you have occasion to drive a forklift  
now and then?

A Yes.

Q You acquainted with Hope Griffin?

A Excuse me, I didn't hear.

Q Are you acquainted with Hope Griffin?

1 A Yes, I am.

2 Q Did you work with her back in 1993 at  
3 Stanley?

4 A Yes, I did.

5 Q Let's talk about forklift number five--

6 A Okay.

7 Q -- the one that struck Hope Griffin.

8 Had you ever operated that machine prior to November 1st,  
9 1993?

10 A Yes.

11 Q Had you ever experienced any prior  
12 difficulties in operating that machine?

13 A No, I hadn't.

14 Q Had the brake ever failed to work for  
15 you?

16 A No.

17 Q Had the accelerator ever stuck?

18 A No.

19 Q Had you had any problems with this  
20 machine come to your attention in any other way?

21 A No.

22 Q Now let's talk about November 1st, 1993,  
23 okay?

24 A Okay.

25 Q Did you operate the forklift that day?

1                   A            Yes, I did.

2                   Q            All right. Did you operate it prior to  
3 the time it struck Hope Griffin?

4                   A            I'm not sure, but I know I was operating  
5 it that time.

6                   Q            But you're not sure whether you operated  
7 it earlier that day or not?

8                   A            No.

9                   Q            Did you check that machine before you  
10 used it that day?

11                  A            Yes, I checked the basics, what we  
12 usually check.

13                  Q            What are those basics you usually check?

14                  A            Would be the forks, brakes, the  
15 accelerator, and the horn.

16                  Q            Did all those seem to be operating fine?

17                  A            Yes, at that time it did.

18                  Q            You didn't notice any problems?

19                  A            No.

20                  Q            Let's set the stage, if you will, for  
21 what happened with Hope, all right?

22                  A            Okay.

23                  Q            Where were you working, where was she  
24 working?

25                  A            She were all on the ZED.

1 Q What is the ZED?

2 A Packaging machine where you load sheets  
3 on to machine, conveys down, seals it with plastic, goes  
4 out.

5 Q Was Hope working there with you?

6 A Yes.

7 Q Then what happened?

8 A We were about to change over, so I got  
9 on the forklift to go get the product that we needed, and I  
10 had gone around to the back of the ZED, and anyways, I  
11 picked up a pallet.

12 Q With the forklift?

13 A Uh-huh.

14 Q When you picked up that palate, how far  
15 away from Hope were you?

16 A A few feet. I'm not quite sure how  
17 many, but it wasn't very far.

18 Q What did you do after you picked up this  
19 pallet?

20 A When I put it back down to back away,  
21 that's when the forklift just went all out of control.

22 Q Did you start backing away from the  
23 palate?

24 A Yes.

25 Q Did you step on the accelerator?

1 A Yes, I did.

2 Q What happened?

3 A That's when it went out of control. I  
4 tried to stop it, it wouldn't stop.

5 Q Did you try and stop it by using the  
6 brake?

7 A Yes, I did.

8

9 MR. THOMPSON: I object to the leading  
10 nature of the questions.

11 THE COURT: I don't think I remember a  
12 leading one, but to the extent you may in the  
13 future, don't lead her.

14 MR. SNESIL: Yes, sir.

15

16 Q Were you able to stop the machine?

17 A No, I wasn't.

18 Q What efforts did you make to stop the  
19 machine?

20 A Excuse me?

21 Q What did you do to try to stop the  
22 machine?

23 A I kept braking. It wouldn't brake.

24 Q Then what happened?

25 A Okay, I started screaming, telling

1 everyone that I couldn't stop the forklift. When I know  
2 anything it hit Hope.

3 Q We're getting ahead. After you couldn't  
4 stop it, what happened?

5 A Everything just happened so fast, that's  
6 all I can recall.

7 Q What was the result? Did it strike  
8 anybody?

9 A Hope, yes, it did.

10 Q Between the time when you started  
11 backing up and the time it struck Hope, can you estimate  
12 how much time elapsed?

13 A I'm not sure. It might have been a  
14 couple minutes if that long.

15 Q Talking about you started backing up,  
16 then it hit Hope?

17 A Right.

18 Q How long a period of time did it back up  
19 before it struck Hope?

20 A Maybe a minute or so. I'm not sure.

21 Q You backed it up for a whole minute  
22 across the whole floor?

23 A No. I'm saying between the time it went  
24 out of control and it hit her, I'm not really sure, but I  
25 know it wasn't long.



1 Q What happened after it struck Hope?

2 A I put it in, I kept, I couldn't move it.  
3 It wouldn't do anything, so I kept--

4 Q Was it still driving?

5 A The wheels were still spinning, yes, so  
6 I kept putting it in neutral and forward trying to get it  
7 off of her, and I just had to keep playing with it until I  
8 could get it to move, and eventually it did, and after  
9 that--

10 Q Well, what did you do, what did you  
11 manage to do with the gear shift?

12 A I just kept shifting it back and forth.

13 Q What happened? Did you change gears?

14 A Yes.

15 Q Into what?

16 A From neutral to forward.

17 Q Okay. Then what happened?

18 A Eventually it moved.

19 Q Did it start going forward?

20 A Uh-huh, it went forward.

21 Q Then what happened?

22 A I still couldn't stop it. It was just  
23 out of control, it was just zig-zagging.

24 Q What did you do then?

25 A I jumped off.

1 Q Did someone then [pin] itself again?

2 A Yeah, but before then, William Manley I  
3 believe it was and Charles DePriest, they ran behind it and  
4 pulled the, some type of cable I guess loose to stop it.

5 Q Did that stop it from running?

6 A No. Wheels were still turning.

7 Q Okay.

8 A That's when the forklift hit the ZED and  
9 the wheels were still turning.

10 Q Hit the ZED again?

11 A Right.

12 Q Did someone manage to turn it off at  
13 that time?

14 A Yes.

15 Q Can you estimate for us, Ms. Ghee, you  
16 started backing this machine up towards Hope. How far away  
17 from her were you when you started backing towards her?  
18 Were you closer than I am to you right now?

19 A It was a few feet. Might have been this  
20 distance, but it was a few feet, not far.

21

22 MR. SNESIL: If Your Honor please, if  
23 the record could reflect perhaps ten feet between  
24 where I'm standing and Stephanie Ghee is standing.

25 THE COURT: All right.

1                   MR. THOMPSON: I think she said she  
2                   doesn't know.

3                   THE COURT: She's giving an estimate.  
4                   That's all right. Ten feet.

5

6                   Q           Did you see Hope after she was struck?

7                   A           Yes, I did.

8                   Q           Can you estimate how long -- what  
9                   happened to Hope when the machine was against the ZED and  
10                  still driving, you were wrestling with controls?

11                  A           There were people over assisting her.  
12                  She was screaming.

13                  Q           I'm talking about before that when the  
14                  machine was still on her.

15                  A           I didn't hear you.

16                  Q           When you were wrestling with the  
17                  controls trying to get it into forward, was Hope still  
18                  there against the machine? She was up against the  
19                  forklift, between that and the ZED?

20                  A           Right.

21                  Q           How long was she there between the ZED  
22                  and the forklift, do you know?

23                  A           A few seconds. I'm not sure how much  
24                  time.

25                  Q           You did see Hope then after you jumped

1 off and after that forklift came to rest?

2 A Right.

3 Q Could you tell the jury what was going  
4 on then?

5 A She was standing hollering and screaming  
6 because she was in so much pain. She was crying.

7 Q Then what happened?

8 A Then some people came over to assist  
9 her. They called paramedics.

10 Q Let's talk about your training as far as  
11 forklifts at Stanley, okay?

12 A Uh-huh.

13 Q When you learned how to drive a  
14 forklift, did you learn on the type of machine that was  
15 involved in this incident?

16 A Yes.

17 Q That's the type of machine you learned  
18 how to operate initially at Stanley?

19 A We learned on stand ups and sit downs.

20 Q Was this machine even present at Stanley  
21 when you learned how to operate?

22 A This particular sit down wasn't but we  
23 do have sit downs.

24 Q So this wasn't there when you learned?

25 A No.

1                   Q           The sit downs which were there, were you  
2 aware prior to this incident some forklifts have a deadman  
3 switch under the seat, did you know that?

4                   A           I can't recall ever receiving that  
5 knowledge.

6                   Q           Did your pre-use inspection of a  
7 forklift then include the seat switch, the seat brake?

8                   A           I'm not sure.

9  
10                   MR. SNESIL: I don't have any more  
11 questions of this witness now.

12                   THE COURT: All right.  
13 Cross-examination?

14

15

16

17                   CROSS-EXAMINATION

18 BY MR. THOMPSON:

19                   Q           Good afternoon, Ms. Ghee.

20                   A           Hi.

21                   Q           Can you hear me?

22                   A           Uh-huh.

23                   Q           Hear me all right? Did you go to school  
24 to learn how to drive a forklift at Stanley?

25                   A           Yeah, Stanley provided classes for us.

1 Q Who was your instructor? Frank Johnson?  
2 A Jimmy Johnson, James Johnson.  
3 Q James Johnson?  
4 A Uh-huh.  
5 Q James Johnson?  
6 A Uh-huh.  
7 Q And the training consisted of classroom  
8 instruction?  
9 A Right.  
10 Q And practical training in operation of  
11 the machine?  
12 A Right.  
13 Q And they had a video that they showed  
14 you about the importance of safe operation?  
15 A Yes.  
16 Q Protection of people around the  
17 machines?  
18 A Yes.  
19 Q Were you able by virtue of the  
20 instruction that you got, did you feel comfortable  
21 operating number five?  
22 A Yes.  
23 Q Were you instructed in how to check out  
24 your machine before use to make sure that it was safe?  
25 A Yes.

1 Q How long had you been using five?

2 A Since it had been there, but I don't  
3 remember exactly when it came there.

4 Q Months, wasn't it?

5 A Right, yes.

6 Q It came there at the end of March 1993,  
7 I don't think there is any question about that. Does that  
8 coincide with your memory?

9 A I can't recall when it came there.

10 Q All right, you don't know. But you were  
11 thoroughly familiar with that machine and operated it many  
12 times during several times, is that correct?

13 A Yes.

14 Q Did you profit by your training? Did  
15 you exercise the tests and do the tests they asked you to  
16 do?

17 A Yes.

18 Q Did you do that the first time you used  
19 the machine every time?

20 A Yes.

21 Q The beginning of every shift?

22 A Yes.

23 Q You did it that day?

24 A Yes, I did.

25 Q The day of the accident?

1                   A            Yes.

2                   Q            And when did the shift begin that day?

3                   A            Well, the shift begin 6:00 o'clock in  
4 the morning I believe.

5                   Q            What time would that 6:00 a.m. shift  
6 end?

7                   A            2:30.

8                   Q            About what time of day did this accident  
9 happen? 12:00 to 1:00?

10                  A            I'm not sure, but I think it was  
11 somewhere around 1:00. I'm not really sure.

12                  Q            The shift was getting towards the end of  
13 the shift I believe?

14                  A            Yes, it was.

15                  Q            You had used that machine. Had you used  
16 it before that day before the accident?

17                  A            I don't recall whether I had used it  
18 before the accident or not. I could have.

19                  Q            Do you recall before the accident you  
20 used it before the accident, you used it the first time and  
21 did your safety checks, or do you recall you used it before  
22 that day and did your safety checks?

23                  A            I don't recall.

24                  Q            Do you recall doing safety checks?

25                  A            I always do safety checks.



1                   Q           What did you do on November 1st before  
2                   the accident happened by way of ascertaining the seat  
3                   switch was working, the safety switch, the bailout switch,  
4                   the seat safety switch?

5                   A           Okay, the safety I'm not even sure  
6                   whether I ever received any knowledge of the seat safety.  
7                   When I do my checks I check the basics which is the horn,  
8                   the forks, the accelerator, and the brakes.

9                   Q           You mean you didn't even know that it  
10                  had a seat switch in it?

11                  A           I'm not sure if I received that or not.

12                  Q           Did you think this machine was different  
13                  from the others?

14                  A           I don't know if I ever received any  
15                  knowledge about the seats. I'm not sure.

16                  Q           You weren't told anything about the seat  
17                  switch?

18                  A           I can't recall.

19                  Q           You didn't know that if you stood up,  
20                  the seat switch would stop the machine?

21                  A           I don't recall.

22

23                               MR. SNESIL: Asked and answered several  
24                   times.

25                               THE COURT: I think it has. Sustained.

1

2                   Q           Did you know, were you instructed in how  
3 to check to see if the brakes worked?

4                   A           Yes.

5                   Q           What would you do, what was your method,  
6 what was the method you were taught to use to see if the  
7 brakes worked?

8                   A           Press down on them.

9                   Q           What would you do before pressing down  
10 on the brake to tell whether the brake was working or not?

11                  A           That's the only knowledge I have of  
12 telling whether they work or not.

13                  Q           Here's what I mean. In order to check  
14 the brake, foot brake, you have got to have a machine  
15 operating, moving, don't you?

16                  A           Right, exactly.

17                  Q           And the way you move the machine is you  
18 press down on the accelerator?

19                  A           Uh-huh.

20                  Q           Then the machine goes forward?

21                  A           Right.

22                  Q           Or forward or backwards according to  
23 which gear you have got?

24                  A           Uh-huh.

25                  Q           Then when the machine is moving with the

1        accelerator down, you would put on the brake to see if the  
2        brake would cut off the electricity?

3                    A                Yeah.

4                    Q                And stop the machine with the friction  
5        brake, is that right?

6                    A                Right.

7                    Q                Did you check the foot brake on number  
8        five on the day that Hope got hurt?

9                    A                Yes, I did.

10                   Q                Before you used the machine it would  
11       work?

12                   A                Yes.

13                   Q                Now you didn't make any check of a seat  
14       switch brake?

15                   A                I can't recall.

16                   Q                Because you didn't even know it had one?

17                   A                I'm not sure whether I received any  
18       knowledge or not.

19

20                                    MR. SNESIL:    We have been over--

21                                    THE COURT:    We really have, Mr.

22                   Thompson.    Let's move away from that.

23

24                   Q                Let me review with you to your knowledge  
25       about the ways there are to stop the forklift truck.    In

1 addition to what you now know about the seat brake and what  
2 you now know about the foot brake, could you stop the  
3 machine by moving the gear shift lever into neutral?

4 A I have no idea. I'm not sure.

5 Q Did you know the machine had a neutral?

6 A Yes, I knew that.

7 Q Did you know when you put it in neutral  
8 it would stop?

9 A I didn't know what it would do. I was  
10 trying to do anything to get it off her.

11 Q I'm not talking about that. I'm asking  
12 you about the, before the accident did you know you could  
13 stop the machine by putting it in neutral?

14 A No, I did not, because I never tried to  
15 stop it by putting it in neutral.

16 Q Did you know if you switched the switch  
17 into forward it would go forward?

18 A Yes.

19 Q If you switched the switch into reverse  
20 it would go reverse, did you know that?

21 A Yes.

22 Q If you switched it into neutral, did you  
23 know neutral was a position in which it would go neither  
24 forward nor backward?

25 A Right.

1                   Q           Did you know that?

2                   A           Yes.

3                   Q           Did you know if you cut off the switch

4   that the machine would stop?

5                   A           Yes.

6                   Q           So you knew all of those ways to stop

7   the machine, how many? Just two, cut off the switch and

8   put on the brake, are they the only two things that you

9   knew to stop that machine?

10                  A           Yes.

11                  Q           Now when the machine started going

12   backwards, did you try to stop the machine?

13                  A           Yes, I did.

14                  Q           What did you do to try to stop the

15   machine?

16                  A           Applying the brakes.

17                  Q           Did the, you said the brake did not

18   work?

19                  A           No, it did not.

20                  Q           The brake had been checked by you that

21   day and worked earlier?

22                  A           Previously, yes.

23                  Q           Did you think to cut the switch off?

24                  A           No. I panicked.

25                  Q           Now you jumped off of the machine before

1       it hit the ZED machine, didn't you?

2                   A           Yes.

3                   Q           And the machine I believe was in reverse  
4       at that moment, is that correct? The machine was in  
5       reverse at that moment?

6                   A           It went forward.

7                   Q           Beg your pardon?

8                   A           Forward.

9                   Q           Well, the gears worked, both of them,  
10      didn't they? You remember that while the time, around the  
11      time of the accident before, during, and after that, the  
12      machine both went into reverse and it went into forward,  
13      did it not?

14                  A           I know it worked before.

15                  Q           And after somebody put it in forward,  
16      and the machine then came, the forklift then moved away  
17      from the ZED machine. It started moving forward, didn't  
18      it?

19                  A           Yes.

20                  Q           And somebody stopped the machine?

21                  A           Yes.

22                  Q           If a machine needed minor work, there  
23      were people there to accomplish that, were there not?

24                  A           Excuse me?

25                  Q           If the forklift needed something minor

1 done to them, there were mechanics there that would help  
2 you with those, were there not?

3

4 MR. SNESIL: I object to that. I think  
5 that question is too vague to be answered.

6 THE COURT: I agree. Sustained.

7

8 Q Miss Ghee, have you ever reported that  
9 machine out of order in the months that you used it?

10 A No, I never had a problem with it.

11 Q Thank you. That's all I have.

12

13 THE COURT: All right, redirect?

14

15

16

17 REDIRECT EXAMINATION

18 BY MR. SNESIL:

19 Q Miss Ghee, you said that you jumped off  
20 the forklift before it hit the ZED?

21 A Correct.

22 Q Did the machine hit the ZED twice?

23 A Yes. When I finally got it off of Hope,  
24 and, it went down, on down the floor but it didn't go too  
25 far past the ZED. It hit like the front corner.

1 Q Hit the front corner of the ZED?

2 A Right.

3 Q You said you jumped off before you hit.

4 You mean before you hit the ZED the second time you?

5 A Right.

6 Q You don't mean before you hit Hope?

7 A No.

8 Q How did you test the brakes before  
9 operating this machine or any of those Clark machines, how  
10 would you go about testing? Could you just describe it?

11 A First you would have to cut it on.

12 Q Right.

13 A Just like that's the only way you check  
14 the horn to hear it.

15 Q Right.

16 A We were trained to move it just a little  
17 and just apply the brakes, see if they worked, see if the  
18 machine stopped.

19 Q If the machine stopped you considered  
20 the brakes were working okay?

21 A Right.

22 Q Were you aware at that time there was an  
23 electric cutoff switch as part of that braking system that  
24 also could operate?

25 A I can't recall if I had any knowledge.



1                   Q           Were you checking for that as part of  
2                   your normal routine check of this machine?

3                   A           No.

4

5                   MR. SNESIL: I have no further questions  
6                   of this witness.

7                   THE COURT: You may step down.

8                   MR. THOMPSON: May I?

9                   THE COURT: What?

10                  MR. THOMPSON: I have got something I  
11                  need to show her, this picture, get it in by her  
12                  evidence. I forgot to do that. I ask permission  
13                  to do it now.

14                  THE COURT: Go ahead.

15

16

17                  RE CROSS-EXAMINATION

18                  BY MR. THOMPSON:

19                  Q           Ms. Ghee, I hand you a picture. Does  
20                  that picture show the gear shift?

21                  A           Yes, it does. Wait a minute, no. I'm  
22                  sorry, yes, it does.

23                  Q           Okay.

24                  A           Let me see it just a second.

25                  Q           Does it show the switch, on/off switch?

1                   A           Yes.

2                   Q           Is the gear shift shown in the forward  
3 or the reverse or neutral position?

4                   A           I really can't tell in this picture.

5                   Q           All right.

6

7                               MR. THOMPSON: Your Honor, we ask that  
8 this be admitted.

9                               THE COURT: All right, any objection?

10                   MR. SNESIL: I don't have any objection  
11 but I have a follow-up question.

12                               THE COURT: All right, sir.

13

14                               NOTE: A photograph is marked as  
15 Defendant's Exhibit Number 2.

16

17

18 BY MR. SNESIL:

19                   Q           When that machine, after you noticed it  
20 was out of control--

21                   A           Uh-huh.

22                   Q           Did you have time to consider whether to  
23 change the gears or put it in neutral or turn the ignition  
24 key off?

25                   A           I can't recall. I panicked, so I'm not

1     sure.

2

3

MR. SNESIL: That's all I have.

4

5

6

THE COURT: She can be excused? You may  
be excused, free to leave. Stand in recess ten  
minutes.

7

8

She's free to leave, is she not,  
counsel?

9

10

MR. THOMPSON: Yes, you may be excused.

11

MR. SNESIL: I'm not going to call her  
back.

12

13     JURY OUT

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: Clear me up on something. I  
must be the thick one here. We spent a lot of  
time on the deadman switch which is under the  
seat. You get up from the seat and it is suppose  
to cut it off. As I understand it, what happened  
here, this lady, the operator, Ms. Ghee, was  
backing up, lost control, and the vehicle  
immediately pinned the plaintiff up against the  
machine, the ZED machine. She did something,  
whatever, trying, doesn't remember what, but the  
machine then moved away from the plaintiff. It

1 is then that the operator gets up and gets off of  
2 the vehicle, is that right?

3 MR. SNESIL: That's been the testimony.

4 THE COURT: Why are we wasting time  
5 talking about the deadman switch?

6 MR. THOMPSON: Because there are  
7 witnesses that say that she jumped off before it  
8 hit her.

9 THE COURT: I knew there must be  
10 something I missed.

11 MR. THOMPSON: That's right.

12 THE COURT: I hadn't missed it yet. All  
13 right, thank you.

14 Who is the next witness for the  
15 plaintiff?

16 MS. GELLER: Call Dr. Ronald Patterson.

17 THE COURT: Approach the bench.

18

19

20 RONALD H. PATTERSON, having previously  
21 been duly sworn, testifies as follows:

22

23 DIRECT EXAMINATION

24 BY MS. ZELLER:

25 Q Could you state your name, please?



1 individual here going to be used to illustrate  
2 Mr. Owen's testimony, a different video.

3 THE COURT: Pull it up.

4

5

6 CURTISS DWAYNE OWEN, having previously  
7 been duly sworn, testifies as follows:

8

9 DIRECT EXAMINATION

10 BY MR. SNESIL:

11 Q Mr. Owen, tell the jury your full name,  
12 please.

13 A Curtiss Dwayne Owen.

14 Q Could you tell the jury how much formal  
15 education you have had?

16 A Yes. Graduated high school, went to  
17 technical school for automotive and diesel mechanics.

18 Q Where did you go to technical school for  
19 mechanics?

20 A Virginia Beach at Automotive Training  
21 Institute.

22 Q Is that an auto mechanics course?

23 A Yes, it was automotive and heavy trucks  
24 and equipment.

25 Q Was that--

1

2

THE COURT: Pull that closer to you, Mr.

3

Owen.

4

5

Q How long a course of study was that?

6

A 13 months.

7

Q Is that immediately after you finished

8

high school?

9

A Yes, it was.

10

Q Could you describe for us please the

11

types of jobs that you have had since you finished that

12

automotive training school?

13

A Yes. I have been a mechanic for

14

approximately 15 years in different places of employment,

15

worked on forklifts, trucks, and equipment. Supervisor in

16

some of those places.

17

Q How many of, could you tell us just a

18

few of your employers?

19

A Yes. Carter Caterpillar. It's a

20

forklift and heavy equipment dealership. Also Virginia

21

Bearings, it's a Hyster forklift dealership, and I was also

22

a supervisor there, and Concrete Pipe and Products I was a

23

supervisor there in the shop.

24

Q Were all these in the Richmond area?

25

A Yes, they were all in the Richmond area.

1                   Q           Have you also been self-employed as a  
2 mechanic?

3                   A           Yes, I sure have.

4                   Q           At various periods of time?

5                   A           Yes, currently self-employed.

6                   Q           How much work included servicing of  
7 forklifts?

8                   A           Almost all of that work included work,  
9 lift work.

10                  Q           Did you work on all makes and models of  
11 electric forklifts?

12                  A           Yeah, all makes and models.

13

14                               MR. SNESIL: Your Honor, I move this  
15 witness be qualified as an expert to testify  
16 concerning maintenance and service of forklifts  
17 and how a forklift is operated.

18                               THE COURT: Any objection?

19                               MR. THOMPSON: I think it depends upon  
20 the type of questions that are asked.

21                               THE COURT: Always does, but do you have  
22 any objection to him giving opinion testimony  
23 about the maintenance and care of forklifts and  
24 their operation?

25                               MR. THOMPSON: I think under the rules

1                   he can do that. I reserve my objection to  
2                   certain questions however.

3                   THE COURT: All right, sir. He can,  
4                   I'll rule he can give opinion testimony.

5

6                   Q           Mr. Owen, can you just roughly tell us  
7                   how many forklift shops you have worked in in 15 years?

8                   A           I believe about five.

9                   Q           Are you acquainted with the practice of  
10                  forklift service facilities?

11                  A           Yes, sir.

12

13                  MR. SNESIL: I also move that this  
14                  witness be qualified as an expert in the practice  
15                  of forklift facilities.

16                  THE COURT: I don't know what that  
17                  means.

18                  MR. SNESIL: He is familiar with the  
19                  customs and usages in that industry. If Your  
20                  Honor please, we can reserve--

21                  THE COURT: I was going to say I -- ask  
22                  a specific question, then we'll deal with it  
23                  then.

24

25                  Q           Mr. Owen, let me ask you about this



1 matter in particular. Have you reviewed various things in  
2 preparation for coming to testify today?

3 A Yes, I have.

4 Q Have you reviewed service documents for  
5 Richmond Clarklift which were prepared both before this  
6 incident occurred and after the incident occurred?

7 A Yes, I have.

8 Q Have you reviewed photographs and videos  
9 which were made in November of 1993 immediately after this  
10 incident?

11 A Yes, I have.

12 Q Have you reviewed the parts diagram,  
13 service manuals related to this machine?

14 A Yes.

15 Q Have you inspected this machine three  
16 different times at Stanley Hardware?

17 A Yes, I have.

18 Q At your inspection on April -- did you  
19 inspect the machine April 16, '96? Were the photographs  
20 and videos made at that time?

21 A Yes.

22 Q Have you also reviewed Stephanie Gee's  
23 statement as to what happened?

24 A Yes, I did.

25 Q What make is this particular forklift?

1                   A           It's a Clark.

2                   Q           Its approximate age?

3                   A           Approximately 23.

4                   Q           How is it powered?

5                   A           It's electric powered.

6                   Q           Does it have any fuel motor in it?

7                   A           No. It's completely electric.

8                   Q           How many wheels does it have?

9                   A           Three.

10                  Q           Tell which ones drive it, which steer

11                  it.

12                  A           As you sit in the seat there are two

13                  wheels in front. Those are drive wheels. You are sitting

14                  with one wheel behind you which is the steer wheel.

15                  Q           Is there an hour meter on this

16                  particular machine?

17                  A           Yes, it is.

18                  Q           What's that?

19                  A           The hour meter reads the hours that the

20                  machine has been used or it's actually turned on when you

21                  turn the key on and are sitting in the seat.

22                  Q           Does it run every time or all the time

23                  when the operator has the ignition on and is sitting in the

24                  seat?

25                  A           Yes.

1           Q           Are you familiar with the service  
2 interval for this type of electric forklift when it is  
3 suppose to serviced?

4           A           Yes, I am.

5           Q           What is the recommended routine service  
6 interval?

7

8                   MR. THOMPSON: If Your Honor please,  
9 this testimony was not indicated on the Answers  
10 to Interrogatories nor was it given at his  
11 deposition, and nothing in the world was said  
12 about service manuals, and I object to it. This  
13 is a surprise to me.

14                   MR. SNESIL: This man is an expert in  
15 repair and service for forklifts. He's been  
16 asked what the custom is for routine service.

17                   THE COURT: Was it disclosed in the  
18 Answers to Interrogatories?

19                   MR. SNESIL: I didn't disclose every  
20 single thing I thought this man would say but I  
21 disclosed--

22                   THE COURT: Did you have the subject  
23 matter disclosed?

24                   MR. SNESIL: Well, he was going to  
25 testify about the operation and function of this

1                   forklift. He was deposed--

2                   THE COURT: That's different. Let me  
3                   see, have you got the material there, Mr.  
4                   Thompson?

5                   Mr. Snesil, I don't see that topic even  
6                   discussed here.

7                   MR. SNESIL: If Your Honor please, as I  
8                   described, he was going to discuss service of  
9                   this machine in detail. I did not mention every  
10                  single fact he was going to testify to.

11                  THE COURT: You say repair and  
12                  reconditioning. That's how you repair it. You  
13                  don't have anything about maintenance, right?

14                  MR. THOMPSON: What I was objecting to  
15                  was going into the service manuals. Nothing's  
16                  said--

17                  THE COURT: I would think service  
18                  manuals would be necessary to talk about how you  
19                  do these things, wouldn't it? I thought you  
20                  talked about service interval. That was the  
21                  question I thought he last asked.

22                  MR. THOMPSON: I'm not surprised about  
23                  the fact he is familiar with the servicing of  
24                  repair and maintenance of these machines. My  
25                  remark was he asked him what did the service

1 manual provide, and I said he never told me he  
2 was going into anything about service manuals, so  
3 I was objecting going into that because of this  
4 being surprise testimony to me.

5 If he was going to use that he should  
6 have disclosed it, I could have prepared for it.  
7 I object to the reference to service manuals or  
8 what they provide from this particular witness.

9 MR. SNESIL: Based on the objection I'll  
10 rephrase the question.

11 THE COURT: All right.

12

13 Q Mr. Owen, are you familiar with the  
14 custom in the forklift service industry regarding the  
15 service interval for this machine, when it needs preventive  
16 maintenance?

17 A Yes.

18 Q What is that?

19 A 50 to 250 hours based upon operating  
20 conditions of the forklift and usage of the forklift.

21 Q Could you explain that further--

22 A Yes.

23 Q -- about usage of the forklift?

24 A The forklift should be looked at or  
25 maintained based upon the conditions that it works in. If

1 it works in a clean environment you can go towards 250  
2 hours for the service. Service, if it's light usage, not  
3 very punishing, you can steer toward the longer interval  
4 for service. Whereas if you had a very dirty environment  
5 and heavy usage picking up maximum loads constantly, you  
6 would want to look at this machine about every 50 hours or  
7 so.

8 Q Did you look at the environment at  
9 Stanley?

10 A Yes.

11 Q Is it very clean?

12 A Very clean.

13 Q Is it temperature controlled?

14 A Yes.

15 Q Did you look towards loads being towards  
16 the maximum or very light loads?

17 A They are very light loads.

18 Q In your opinion then do you have an  
19 opinion as to what the proper service interval was for the  
20 particular machine under the conditions it was being used?

21 A Yes. It should easily go to 250 hours  
22 before it's maintained.

23 Q Let's talk about your inspection of the  
24 vehicle on April 16, 1996, okay?

25

1 MR. SNESIL: Your Honor, may I speak  
2 with co-counsel a second? I need to pick up  
3 something.

4 May I approach the witness, Your Honor?

5 THE COURT: Go ahead, sir.

6

7 Q Mr. Owen, does that accurately portray  
8 the hour meter of that particular forklift when you  
9 inspected it?

10 A Yes, it does.

11 Q And the reading on that meter is what?

12 A 2366. 2366 hours.

13 Q Did you compare that to the service  
14 document prepared when Richmond Clarklift had that vehicle  
15 in March and April of 1993?

16 A Yes.

17 Q How many hours had elapsed?

18 A Approximately 101.

19

20 MR. SNESIL: I move that be introduced,  
21 Your Honor, as Plaintiff's next exhibit.

22 THE COURT: Since it's already in, why  
23 do we need a photograph? Is that an issue, Mr.  
24 Thompson?

25 MR. THOMPSON: I don't recognize it.

1 THE COURT: I mean is the number of  
2 hours--

3 MR. THOMPSON: I thought it was 105, but  
4 101, 105, I think that's diminimus.

5 THE COURT: All right, so we don't need  
6 a photograph.

7 MR. SNESIL: All right.

8  
9 Q Mr. Owen, how many digits does that  
10 meter have on it?

11 A It's five digits.

12 Q Is one of them 10th of an hour meter?

13 A Yes, it is.

14 Q What happens after it reaches 9,999.9  
15 hours?

16 A It rolls over back to zero.

17 Q If Your Honor please, do you recall  
18 whether there was a video done on the 16th of April when  
19 you inspected the machine?

20 A Yes.

21

22 MR. SNESIL: I have a video I would like  
23 to illustrate Mr. Owen's testimony. I request he  
24 be able to approach the video and point with a  
25 pointer to point out various things.



1                   THE COURT: All right. Step out. You  
2                   have to move to the other side so everybody can  
3                   see here.

4                   Everybody see now?

5  
6                   Q           Mr. Owen, I'm going to show you a brief  
7                   segment of this. When I do, would you please point out the  
8                   accelerator, brake pedal, and floor panel that can be  
9                   removed, okay?

10                  A           This is the floor of the forklift that  
11                  we are working on. This is the seat, this is the seat  
12                  here, this is the floor plate.

13                  Q           Where the pedal--

14                  A           Accelerator pedal is here. Here's the  
15                  brake pedal on one side.

16                  Q           Mr. Owen, could you tell us please what  
17                  happens when the driver steps on the accelerator pedal?  
18                  Just sort of in lay terms, what happens? What does that  
19                  cause?

20                  A           When you step on the accelerator pedal  
21                  the machine would move forward.

22                  Q           Through what mechanism? How is that  
23                  transmitted through the machine?

24                  A           Goes through the linkage. This is a  
25                  picture here of the part of the accelerator linkage, has a

1 switch in here. Soon's you press on your accelerator here,  
2 this moves out and a switch comes out and gives power to  
3 your electric motor which drives the wheels.

4 Q Show us the accelerator assembly.

5 A Accelerator, has his hands on it.

6 Q Your finger is pointing to it?

7 A Yeah. Yes, this is all the accelerator  
8 here.

9 Q Does the pedal sit above approximately  
10 where the man's finger is?

11 A Yes. The pedal is here.

12 Q Has the floor panel been removed?

13 A Yes, the floor panel has been removed.

14 Q As the floor panel is in place, if the  
15 floor panel is in place can we see inside that chamber  
16 there?

17 A No. It's all covered.

18 Q What happens when the operator steps on  
19 the accelerator pedal? Do you -- just go through the  
20 motion the accelerator makes.

21 A When you step on the accelerator pedal,  
22 this part of the linkage goes down, pivots here. This part  
23 of the linkage comes up.

24 Q What happens when it comes up? What  
25 does that do?

1                   A           When it comes up, there is a spring  
2   loaded switch in here which comes out.

3                   Q           When that spring loaded switch comes  
4   out--

5                   A           Your machine rolls.

6                   Q           That's an electric switch?

7                   A           Yes, electric switch.

8                   Q           If you could, what's happening here?

9                   A           He's showing travel of the accelerator  
10   pedal. This is the switch that goes in and out.

11                  Q           Stop it here if you would. Now as you  
12   were observing this machine, did you look at the hose, the  
13   needle where the accelerator pedal is?

14                  A           Yes, I did. These are tilt cylinder  
15   hoses, these are hydraulic hoses underneath the floor  
16   plate. This is a large abrasion in this tilt cylinder hose  
17   that's under the floor.

18                  Q           What is a tilt cylinder hydraulic hose?  
19   Would you enlighten all of us, please?

20                  A           All right. The tilt cylinder hose  
21   delivers hydraulic fluid under pressure to the tilt  
22   cylinder which moves the structure back and forth as you  
23   require with your lever.

24                  Q           As that tilt structure moves back and  
25   forth, does that hose move?

1                   A            Yes. There is some movement in these  
2 hoses here. They move back and forth and bunch up a little  
3 bit up underneath the floor plate.

4                   Q            Now the abrasion which you pointed out,  
5 were you able to determine what caused that abrasion?

6                   A            Yes. This knob on the side of the  
7 accelerator pedal as it travels up and back and forth or up  
8 and down, it's rubbed against this hose and torn the cover  
9 off and also has wear on the end of this part of the  
10 accelerator pedal where it has done numerous times.

11                  Q            Is it possible to tell on this wear  
12 whether that accelerator would be hitting every time, every  
13 other time, every tenth time, is there any way to determine  
14 that?

15                  A            No. It doesn't hit it every time  
16 apparently. It does do it intermittantly, and it's hard to  
17 say how often it does actually brush against it.

18                  Q            Does that hose move around a bit?

19                  A            Yes, because it's under restraint.

20                  Q            Mr. Owen, based on your experience,  
21 well, have you been looking at hydraulic hoses like that  
22 ever since you started being a mechanic?

23                  A            Yes, I have.

24                  Q            And have you seen them in use in  
25 forklifts and other equipment?

1                   A            Yes, I have.

2                   Q            Do you have an opinion as far as the  
3                   time that it took for this accelerator linkage to wear that  
4                   particular abrasion in this hose?

5

6                               MR. THOMPSON: I object to that, Your  
7                   Honor. It's speculation.

8                               MR. SNESIL: Your Honor, I think the  
9                   jury will benefit from his opinion. He has 15  
10                  years experience dealing with these machines,  
11                  these hoses. I think the jury is likely to have  
12                  the type of knowledge in that area and would  
13                  therefore benefit by it.

14                              THE COURT: Why would he have any  
15                  experience as to how long that would take?

16                              MR. SNESIL: Due to his experience as a  
17                  mechanic 15 years, Your Honor.

18                              THE COURT: Would mechanics normally  
19                  observe that type of wear? I mean that's  
20                  unusual, is it not?

21

22                   Q            Mr. Owen, have you observed wear of that  
23                   nature on hydraulic hoses before?

24                   A            Yes, many times.

25                   Q            You find that to be an unusual amount of

1 wear on a hose? You often see that?

2 A Yes.

3

4 THE COURT: Are you saying that's a  
5 normal condition?

6 THE WITNESS: No, that's not a normal  
7 condition, no, sir, that's not what I'm saying.

8 THE COURT: How would you observe things  
9 like that if it's not a regular basis many times  
10 if it's not a normal condition?

11 THE WITNESS; I make repairs to things  
12 like this when I see them.

13 THE COURT: How do you know how long  
14 they, it took to get to that situation?

15 THE WITNESS: I'm familiar with that  
16 type of hose with steel and how, approximately  
17 how long it takes to wear something like that.  
18 It doesn't do it in one swipe. It takes many  
19 swipes to do that, I'm familiar with that.

20 THE COURT: We don't need an expert to  
21 tell us that, but how many times and how long,  
22 how would you know that?

23 THE WITNESS: I can't tell you exactly  
24 the number of times. Just many times.

25 THE COURT: That was the question, was

1           it not?

2                   MR. THOMPSON: That wasn't the question.  
3           I objected to. The question was how long would  
4           it take to do that. I object to that because I  
5           think it's speculative.

6                   THE COURT: I'm going to sustain the  
7           objection.

8  
9           Q           Do you have an opinion as to the time it  
10          took that abrasion to wear? Do you have any opinions the  
11          time it took that abrasion to wear would be more than 101  
12          hours?

13  
14                   MR. THOMPSON: Object to that for the  
15          same reasons we just discussed. There would be  
16          no basis for him to know similarly by looking at  
17          this thing how long it took to occur.

18                   THE COURT: Let me ask you this, Mr.  
19          Snesil, isn't his testimony that the contact with  
20          the, between the hose and the linkage, throttle  
21          linkage, is intermittent, it doesn't happen every  
22          time?

23                   MR. SNESIL: That's been his testimony.

24                   THE COURT: If that's the case, how  
25          could, how could he ever tell how long it would

1 take to wear like that, if it was 100 hours or  
2 150 hours or 10 hours?

3 MR. SNESIL: I agree with Your Honor,  
4 but there is no one to say exactly how long it  
5 took, but as to whether it exceeded 101 hours of  
6 use, I think that this witness is qualified to  
7 answer that question.

8 THE COURT: I sustain the objection.

9 MR. SNESIL: If Your Honor please, I  
10 need to make a proffer.

11 THE COURT: Make that later.

12

13 Q Now Mr. Owen, do you have an opinion as  
14 to whether, what happened to the forklift on November 1st,  
15 1993 when Stephanie Ghee was operating it? Was that related  
16 to the accelerator linkage and the hose?

17 A Yes, it was.

18 Q Can you describe what you believe  
19 happened?

20 A The accelerator was pressed--

21

22 MR. THOMPSON: If Your Honor please, I  
23 think these are matters of common knowledge.  
24 That doesn't take an expert to understand that  
25 this thing got caught under a hose that would



1 stay on, that has been testified to, and I don't  
2 think that this is a matter for expert opinion.

3 MR. SNESIL: It's been agreed that the  
4 accelerator stuck on the hose. I can move to the  
5 next question.

6 MR. THOMPSON: The indication was that  
7 they saw the hose, the accelerator had stuck  
8 under the hose. It was something that was  
9 observed. Your first witness said that.

10 THE COURT: I think we don't need an  
11 expert to do that, Mr. Snesil.

12

13 A What you see here is free movement of  
14 the hoses up underneath the floor plates. This is the  
15 accelerator pedal as it brushes up against the hoses.

16 Q Continue through. What are we looking  
17 at here, Mr. Owen?

18 A Now what you see is the hoses have moved  
19 up underneath the accelerator pedal while it was in the  
20 depressed position and the accelerator can't return. The  
21 machine would still be moving at this point.

22 Q Would the throttle be open in that  
23 position?

24 A Yes, it would.

25 Q Mr. Owen, do you have any opinion as to

1     whether the standard of care for the repair facility  
2     required a reasonably prudent mechanic would inspect the  
3     hoses including the tilt cylinder hose?

4  
5                     MR. THOMPSON: I object, Your Honor. He  
6     has no, he has no basis to know the circumstances  
7     that existed at the time when he was not present,  
8     had nothing to do with the repair, doesn't know  
9     what the condition was at that time and no way  
10    that he can speak to that from a factual basis,  
11    and therefore no reason he could form an opinion  
12    on it.

13                    THE COURT: Wouldn't that depend, Mr.  
14    Snesil, on what the mechanic was asked to do?

15                    MR. SNESIL: No, sir, I think again the  
16    mechanic was asked--

17                    THE COURT: Suppose the mechanic was  
18    asked to fix the horn, that wouldn't be the  
19    standard of care to check the hoses.

20                    MR. SNESIL: May I rephrase the  
21    question?

22                    THE COURT: I think you need to at least  
23    do that.

24  
25                    Q             Mr. Owen, if a mechanic is asked to

1 recondition a forklift, would the standard of care for a  
2 reasonably prudent mechanic require him to inspect the  
3 hoses?

4

5 MR. THOMPSON: I object to this witness  
6 being directed toward a standard of care as if  
7 there was some sort of statutory standard as we  
8 see in other cases and such as that. I think  
9 this is a question for the jury under all of the  
10 factual testimony, and I don't think that is an  
11 appropriate question for this witness and not  
12 appropriate to take opinion testimony on.

13 THE COURT: Overruled.

14

15 Q Will you answer the question?

16 A Repeat the question, please.

17 Q If a forklift mechanic is asked to  
18 recondition a forklift such as this one, does the standard  
19 of care require that that reasonably prudent forklift  
20 mechanic inspect the hoses?

21

22 MR. THOMPSON: I object. Another reason  
23 to give the Court that this--

24 THE COURT: Does he say something  
25 different?

1 MR. THOMPSON: No, it's the same  
2 question, but what I want to do is put another  
3 objection before the Court that there is no  
4 factual basis before the Court as to what was the  
5 condition of what we are looking at here on that  
6 machine when the machine, the forklift was at  
7 Clarklift.

8 THE COURT: That's something you can  
9 argue. That is something you can argue, Mr.  
10 Thompson. It's not going to deal with  
11 admissibility of this question. I'm overruling.

12

13 Q Are you able to recall the question?

14 A Yes. Everything needs to be inspected  
15 on the forklift including the hoses.

16 Q Now if an abrasion such as the one  
17 that's visible here is present, what does the standard of  
18 care require that a mechanic do?

19

20 MR. THOMPSON: That's the same question.

21 THE COURT: Do we need an expert to tell  
22 us that, Mr. Snesil?

23 MR. THOMPSON: Also we don't know the  
24 extent of the abrasion.

25 THE COURT: Of course we don't, but

1                   that's a fact question, but assuming that were  
2                   there, do we need an expert to tell us?

3                   MR. SNESIL: Judging from the tenor of  
4                   the Court's question, I suspect we do not, but I  
5                   would like to get the--

6                   THE COURT: I'm asking you for your  
7                   opinion.

8                   MR. SNESIL: Seems fairly obvious to me.

9                   THE COURT: I don't think we need an  
10                  expert to tell us that.

11

12                  Q           Mr. Owen, does the standard of care  
13                  require that the hose condition seen in this video be  
14                  restrained in its movement?

15

16                  MR. THOMPSON: Your Honor, this witness  
17                  is being asked what does or what does not  
18                  constitute negligence, and there is no factual  
19                  basis for this question; and secondly, no reason  
20                  for him to be in a better position to answer that  
21                  question than any other person. You can't have  
22                  an opinion if you don't know what the facts are.

23                  THE COURT: The fact was if you observe  
24                  that a hose is wearing like this, do you have an  
25                  opinion whether the standard of care would

1 require that the hose be restrained to avoid that  
2 type of abrasion, is that right? Mr. Snasil, is  
3 that not a design question? That's not a repair  
4 standard question.

5 MR. SNESIL: This is not a design  
6 question, this is a question for a mechanic if he  
7 views a 23 year old machine in this condition  
8 what sort of service does the mechanic make on  
9 that machine.

10 MR. THOMPSON: He's seeing this on April  
11 16, 1996, a condition that exists at that time.  
12 Now the question is not what existed at that time  
13 but what existed at the time it was at Clarklift,  
14 and he hasn't said this and you have prevented  
15 him from saying whether he had an opinion if  
16 that's the way it was when it was at Clarklift,  
17 so you are asking him to speak to a situation  
18 that is not material to the case.

19 We all know it is like that on April 16,  
20 and we all know that that needs repair, but  
21 that's not the question in this case. The  
22 question is --

23 THE COURT: We have heard that. You are  
24 repeating yourself.

25 MR. THOMPSON: Am I?

1 THE COURT: Yes, sir.

2 MR. THOMPSON: What did you say?

3 THE COURT: I haven't said anything yet.  
4 I don't need to hear the same thing more than  
5 once from any of you.

6 MR. THOMPSON: All right. Thank you.

7 THE COURT: Mr. Snesil, do you have any  
8 response?

9 MR. SNESIL: Yes, sir. This is not a  
10 design case, it is not a design question, and I'm  
11 not asking Mr. Owen concerning design issues.  
12 I'm asking him what a reasonably prudent mechanic  
13 should do if he encounters this situation 23  
14 years after the manufacture of the machine. I  
15 think he is qualified to answer.

16 THE COURT: I'm going to sustain the  
17 objection.

18

19 Q Mr. Owen, is it feasible to restrain the  
20 hoses any way such that they cannot rub up against the  
21 accelerator?

22 A Yes, is it.

23 Q Describe how it can be done in this  
24 particular forklift.

25 A Take a cable tie or a wire and tie those

1 hoses together against the frame which is running through  
2 the middle of the unit.

3  
4 MR. THOMPSON: Pardon me. This is a  
5 design question. The designer of this  
6 arrangement is not a defendant in the case and he  
7 is talking about how this machine could have been  
8 designed differently so as to avoid that  
9 abrasion, whereas this is not something that the  
10 repairing people had anything to do with so far  
11 as design is concerned. I object to that.

12 MR. SNESIL: Again it is not a design  
13 question, it is a reasonable question for what a  
14 reasonably prudent mechanic--

15 THE COURT: Why isn't that a design  
16 issue? I assume, maybe I'm assuming incorrectly,  
17 you tell me, the way this product was designed,  
18 these hoses are running through here  
19 unrestricted, is that right?

20 MR. THOMPSON: Correct.

21 MR. SNESIL: There's not going to be  
22 testimony as to that point. I don't believe  
23 there is going to be a witness that says he knows  
24 whether or not that can be restrained or not. I  
25 think that is the case.



1                   MR. THOMPSON: We have been on the same  
2 picture of this thing running through there.

3                   THE COURT: What does the shop manual  
4 show?

5                   MR. SNESIL: What I have seen, Your  
6 Honor, is inconclusive as to the nature of any  
7 restraints.

8                   MR. THOMPSON: Silent on that, Your  
9 Honor.

10                  MR. SNESIL: That's why it's a repair  
11 question.

12                  THE COURT: Maybe it is not repair.  
13 Does he know whether this -- well, I'll let him  
14 testify. Go ahead.

15                  MR. SNESIL: I'm getting a little bit  
16 turned around from all these objections.

17                  THE COURT: I think you asked him what a  
18 reasonably prudent mechanic of this type of  
19 equipment restrained the hoses if he observed  
20 this situation, wasn't that the question?

21                  MR. THOMPSON: That was proposed,  
22 actually when this situation was observed a  
23 letter was written.

24                  THE COURT: You are testifying now.  
25 Your objection is overruled. Go ahead.

1 MR. SNESIL: Your Honor, I think it was  
2 about feasibility of restraining the hose.

3 THE COURT: Rephrase the question.  
4

5 Q Is there a means of restraining this  
6 hose such that it cannot rub against this?

7 A Yes.

8 Q How can that be done?

9 A You can take a simple wire tie, tie the  
10 hose together against the frame which runs through the  
11 center of the machine. It's further to your left.

12 Q Mr. Owen, I'm going to ask some  
13 questions about the foot brake. We are going to a  
14 different part of this machine now. Just a few questions,  
15 then we are going to return to the tapes. Maybe if he  
16 could stay where he is?

17 Let's talk about the foot brake, okay?

18 A Okay.  
19

20 MR. THOMPSON: Talk about what?

21 MR. SNESIL: Foot brake.

22 MR. THOMPSON: Thank you.  
23

24 Q Describe what happens in simple terms  
25 when the operator steps on the foot brakes.

1                   A               When the operator steps on the foot  
2       brake, it turns the foot brake shaft which runs to the  
3       collar, and on the shaft there are two arms. One arm is  
4       connected to a brake rod which goes up when you press the  
5       pedal and it applies the brakes. The other arm opposes  
6       this brake arm and pushes down on a switch, electric  
7       switch, which cuts the power off to the motor.

8                   Q               Now did you inspect the brake assembly  
9       on April 16 when you were at the Stanley Hardware facility?

10                  A               Yes, I did.

11                  Q               Did you remove -- is there a cover for  
12       that brake assembly?

13                  A               Yes, it was.

14                  Q               Where is it?

15                  A               On the steering column of the machine.  
16       It's on the very front of the machine.

17                  Q               Could we roll the next segment, please?  
18       Could you point out again where that brake pedal is?

19                  A               This is the brake pedal here. This is  
20       the cover I removed here. This is the brake shaft.

21                  Q               That connects those two pedals?

22                  A               Yes, it does.

23                  Q               When you were at the Stanley facility on  
24       April 16 looking at this machine, did you test the foot  
25       brake cutoff switch that turns off the electric power?

1                   A            Yes, I did.

2                   Q            How did you do it?

3                   A            Pressed on the brake pedal with the  
4 meter connected to the switch. The switch never operated  
5 because nothing ever touched the switch to operate it.

6                   Q            Did you test it with pushing on the  
7 switch with your finger?

8                   A            Yes. I pressed the switch with my  
9 finger and the switch did operate, was in operating  
10 condition.

11                  Q            So why didn't the switch operate when  
12 you stepped on the brake pedal?

13                  A            The brake rod which is attached to the  
14 arm, it runs up in this direction, presses on the master  
15 cylinder. It was adjusted in such a way that it, the shaft  
16 could turn far enough to press the electric switch to cut  
17 the power off to the motor.

18                  Q            When you say it's adjusted, how is it  
19 adjusted? By means of what?

20                  A            By means of a nut and thread rod so it  
21 was locked down.

22                  Q            Could you tell the jury what's happening  
23 here?

24                  A            This is a meter he's pressing on the  
25 brake pedal. It's never, the switch is never operating.

1 Q Why is it operating now?

2 A Because I have my finger on the switch  
3 operating the switch showing that it does work and it's  
4 operational. Again he presses on the brake pedal without  
5 my finger and it never works.

6 Q Did you continue investigating this  
7 brake?

8 A Yes, I did. And it operated again with  
9 my finger and the switch does work.

10 Q What is that?

11 A That's my finger pressing against the  
12 switch.

13 Q Is that the actual electric cutoff  
14 switch?

15 A Yes. This is the cutoff switch that we  
16 are speaking of.

17 Q Are those your meter probes?

18 A Yeah, those are my meter probes. What I  
19 have done here--

20 Q What is that?

21 A This is the bolt that was, this is a  
22 bolt that holds it. This is actually two shafts, one shaft  
23 on this side, one on this side that meet in the center.  
24 This is the arm mechanism we are speaking of. This pin  
25 holds these arms to the shaft. This is just a broken bolt

1       that's shoved down in a hole. I didn't have to take  
2       anything loose. I just pulled this right out of the hole.  
3       That was in the brake shaft.

4               Q               Was that bolt worn?

5               A               Yes, it's worn, and it's also broken off  
6       at the end.

7               Q               How about the hole that it sits in, was  
8       that perfectly shaped?

9               A               No. It was wallowed out in an egg  
10      shape, and the bolt matched the hole.

11              Q              Mr. Owen, do you have an opinion based  
12      on your experience as a mechanic as to how long it took  
13      that bolt to get into that shape?

14

15                              MR. THOMPSON: Objection, Your Honor.  
16              This is invitation to speculate. There is no  
17              basis from which he can answer that question  
18              there except to speculate.

19                              MR. SNESIL: If Your Honor please, I  
20              think his experience as a mechanic is a  
21              sufficient basis.

22                              MR. THOMPSON: I say just because you  
23              are a mechanic you see that a part has some wear  
24              to it, that doesn't give you any basis to say  
25              when that wear started. That would be pure

1 speculation. There has to be some very  
2 sophisticated test involving knowledge of  
3 metallurgy involved, involving the number of  
4 contacts, degree of usage, the forces involved,  
5 the forces caught between the sleeve and the  
6 brake pedal.

7 This bolt has gotten smaller through use  
8 and the hole has gotten larger through use, and  
9 that is a familiar situation, but how long it  
10 takes to happen, for that to happen is something  
11 that there is no reason why this gentleman would  
12 have the slightest basis to answer that question.

13 THE COURT: All right, I sustain the  
14 objection.

15

16 Q Do you have an opinion based on your  
17 experience as to whether the time it took to get in this  
18 condition exceeded 101 service hours?

19

20 MR. THOMPSON: Same question. I'll  
21 object.

22 THE COURT: Yeah, sustained.

23

24 Q Mr. Owen, you testified that this brake  
25 rod was adjusted?

1                   A            Yes, sir. Yes, sir.

2                   Q            Does that adjustment, is that slipping  
3 by itself or did it happen to be like that the last time  
4 the mechanic adjusted it?

5                   A            No. It's locked down by a lock nut.

6                   Q            Do you have an opinion whether this,  
7 when this machine left Virginia Clarklift, the switch, the  
8 electric switch which cuts off the electric motor, could  
9 that possibly have been functioning, assuming no one had  
10 adjusted the brake since it left Virginia Clarklift, do you  
11 have an opinion since it left whether it left Virginia  
12 Clarklift in that condition?

13

14                               MR. THOMPSON: Object. There has been  
15 no testimony of what was the condition of this  
16 particular item while it was at Clarklift, there  
17 has been no basis suggested upon which he could  
18 answer this question other than to speculate.

19                               MR. SNESIL: Your Honor, I think there  
20 is a basis in his testimony already. He has  
21 testified that the brake rod was adjusted, that  
22 it couldn't move by itself, it couldn't slip, it  
23 had to be adjusted by a mechanic. It was  
24 adjusted such that the switch could not possibly  
25 have worked. I asked him assuming that it had



1 not been adjusted since it left Richmond  
2 Clarklift, did it leave in that condition.

3 THE COURT: That is something the jury  
4 can determine without his help.

5 MR. SNESIL: I think his opinion would  
6 be helpful.

7 THE COURT: I sustain the objection.

8

9 Q What is that?

10 A This is the bolt that I pulled out of  
11 the hole. That is the hole that it went in. This holds  
12 the arms to the brake shaft.

13 Q What are we looking at here?

14 A Looking at a lot of wear in the linkage  
15 itself.

16 Q Should those parts move independent of  
17 each other?

18 A No, they should not be moving  
19 independently.

20 Q Should they be locked in place?

21 A Yes. The shafts on the end, they have  
22 like a half moon. As they are brought together, they help  
23 hold each other still, and the shafts are worn to such a  
24 degree that they are actually rolling around on each other,  
25 and this shows that.

1                   Q           Does that bolt play a roll in how those  
2 things are moving?

3                   A           Yes, it does.

4                   Q           How would you explain that?

5                   A           The bolt holds the arms on the shaft,  
6 and if the shift is moving and the bolt hasn't taken up the  
7 slack yet, you can theoretically move your brake pedal and  
8 not move your brake linkage, so yes, it does play a part in  
9 that.

10                  Q           What is that bolt suppose to do?

11                  A           It holds the, the bolt that is working  
12 on holds the brake arms, the one that moves up and moves  
13 down, it holds that on the brake shaft.

14                  Q           So the fact that it wasn't bolted in  
15 place, it should have been bolted in place, is that what  
16 you are saying?

17                  A           Yes.

18                  Q           Did that play a role in that motion you  
19 were seeing?

20                  A           Yes, that played a role, yes.

21                  Q           Now Mr. Owen, do you have an opinion as  
22 to whether the brake pedal switch could possibly have  
23 worked on November 1st, 1993?

24

25                               MR. THOMPSON: Just a moment. Whether

1 it could have possibly worked?

2 MR. SNESIL: Yes, sir. If Your Honor  
3 please, the basis of that, it is unchanged  
4 condition as of the time it's inspected. I think  
5 it's established that's the basis of that  
6 question.

7 MR. THOMPSON: I think that is probably  
8 all right.

9 THE COURT: Then no objection, go ahead.

10

11 Q Mr. Owen, could the brake electric  
12 cutoff switch possibly have worked on November 1st, 1993?

13 A No, it could not.

14 Q The reasons are why?

15 A The adjustment of the brake rod was such  
16 that it couldn't, the brake shaft could not rotate and you  
17 touch that switch to cut the motor off.

18 Q Anything else?

19 A The wear in the shafts.

20

21 MR. THOMPSON: If Your Honor please, I  
22 think that has been addressed before.

23 THE COURT: He can answer the question.  
24 If there is anything else he can answer it.

25

1                   Q            You mentioned wear.

2                   A            Wear on the shafts that hampered the  
3       adjustment of the brake rod initially, and also it didn't  
4       have a brake return spring on the brake pedal itself which  
5       would have restored brake height and would, whoever  
6       adjusted it would have been able to adjust it properly.

7                   Q            Normally knowing what you do about  
8       forklifts, would the failure of that switch to have worked,  
9       would that have made it more difficult to stop this  
10      forklift by using the foot brake?

11                  A            Absolutely.

12                  Q            Why is that?

13                  A            Because two things: As you press on the  
14      brake pedal when you are applying the brakes, as long as  
15      there is, the wheels have stopped having power delivered to  
16      them to turn them, they'll stop the machine, you know, in  
17      quite an effective distance. If the motor is still pulling  
18      forward just as if the gas pedal would be stuck in your  
19      car, it's harder to stop your car if there is still motor  
20      or motor torque being delivered to your wheels, so it takes  
21      twice as long to stop the machine, at least twice as long  
22      if the power is not cut from the motor.

23                  Q            Would that be the case if the  
24      accelerator is stuck and the microswitch on the brake  
25      didn't operate?

1                   A           Absolutely.

2                   Q           Do you have an opinion as to whether the  
3           standard of care for a reasonably prudent mechanic would  
4           require complete inspection of the brake mechanism  
5           including what we have been looking at in reconditioned  
6           equipment?

7                   A           Yes.

8  
9                   MR. THOMPSON: Object to that because he  
10           is asking for standard of care obligation of a  
11           mechanic looking at a situation as he has seen it  
12           in 1996, so that has no bearing on the issues in  
13           this case.

14                   THE COURT: Overruled.

15  
16                   Q           Would you answer the question? Should a  
17           reasonably prudent mechanic have inspected the brake system  
18           in reconditioning this forklift, specifically the  
19           components we just looked at?

20                   A           Yes.

21                   Q           Could you describe how that could be  
22           done in the most simple effective manner?

23                   A           You can press on the brake pedal and the  
24           accelerator pedal at the same time. If the machine wants  
25           to continue to pull itself forward or reverse, then that

1 switch is not operating properly.

2 Q Mr. Owen, the deadman's function has  
3 been discussed just briefly. The seat, try to speed it up  
4 a little bit, the seat is spring loaded, is that correct?

5 A Yes, it is.

6 Q It springs up when the operator stands?

7 A Yes.

8 Q What happens?

9 A The mechanical parking brake is applied,  
10 and there's an electric switch which also cuts the power  
11 off to the motor so, you know, it can't be, the accelerator  
12 can't be pressed to move.

13 Q Did you inspect the function of both of  
14 those components on the 1st of April?

15 A Yes, I did.

16 Q What's that?

17 A This is the seat, this is the rod that  
18 actually works the parking brake. If you get off the seat  
19 this rod works the parking brake. This is the switch that  
20 cuts the power off to the motor when somebody is not in the  
21 seat.

22 Q Did you test the function of that switch  
23 when you looked at it?

24 A Yes, I did.

25 Q Was it working?

1                   A               Yes, at that time it was working.

2                   Q               How do you know? Did you test that  
3 electrically?

4                   A               Yes, I did. I tested it with my ohm  
5 meter.

6                   Q               Mr. Owen, I'm going to hand you a  
7 photograph. See if you can identify it for me.

8

9                                   MR. THOMPSON: Has that been made an  
10 exhibit?

11                                  MR. SNESIL: No, similar to one made an  
12 exhibit.

13

14                   Q               Is that the condition the seat switch  
15 was in when you saw it April 16, 1993?

16                   A               Yes.

17                   Q               Did you compare that to the photograph  
18 taken just after this incident?

19                   A               Yes.

20                   Q               Is there any difference in the position  
21 of that seat switch?

22                   A               Yes. The hose on this particular  
23 picture are visible and there's also paint that I don't see  
24 on part of the mechanism where you slide and adjust the  
25 switch, so it's been disturbed since it's been painted.

1

2

MR. SNESIL: Your Honor, I move that be  
entered as an exhibit.

4

THE COURT: Let it in, but we'll mark it  
when I get back up to the bench.

6

7

Q All right, further comment on that  
picture if you could, does that show the seat switch in a  
position where it's being pushed such that it should turn  
the electric current off? You step on it and it throws the  
switch?

12

A In this picture he's showing he's  
stepping down on this which is showing someone in the seat  
which allows current to the motor.

15

Q If someone steps off the seat, what  
happens?

17

A This cam pushes against the roller  
switch here and cuts the power off to the motor.

19

Q Mr. Owen, does the photograph I'm now  
handing you show the brake assembly we have been discussing  
in that electric switch?

22

A Yes, it does.

23

Q Is that the condition it was in on April  
16?

25

A Yes.



1                   Q           This picture I'm showing you now, does  
2   that show the brake assembly that you found?

3                   A           Yes.

4                   Q           Does that accurately show it as it  
5   existed when you looked at it?

6                   A           Yes.

7                   Q           Both of those in?

8

9                   THE COURT: No objection I take it to  
10   any of these?

11                  MR. THOMPSON: May they come in?

12

13                  Q           Mr. Owen, I'm going to hand you  
14   Plaintiff's Exhibit Number 4, photograph of a seat switch.

15                  A           That photograph was taken immediately  
16   after the incident.

17                  Q           Could the seat switch possibly work in  
18   that position?

19                  A           No.

20                  Q           Why not?

21                  A           Because it's not pressed in because of  
22   adjustment of the bracket which it's bolted to, and you see  
23   paint on the nuts and covering the bracket.

24                  Q           Now it's your understanding that  
25   Stephanie Ghee, the machine failed to stop on November 1st

1       1993 after the operator left?

2                   A           Yes.

3                   Q           Is that part of the reason, because that  
4       seat switch--

5

6                               MR. THOMPSON: I think part of the  
7       reason, I mean if he can accept the version he's  
8       been told, that's all right, but I mean he can't  
9       speak to a part of the reason for her actions if  
10      that's what the question is.

11                           MR. SNESIL; If Your Honor please,  
12      there's been testimony this is the condition of  
13      the seat switch immediately after this accident.

14                           MR. THOMPSON: Your question was,  
15      weren't you talking about part of the reason for  
16      her actions?

17                           MR. SNESIL: No.

18                           MR. THOMPSON: Well, I'm sorry, I  
19      misunderstood the question.

20                           THE COURT: Answer the question.

21

22                   Q           Do you have an opinion that was involved  
23      in failure of the machine to stop after Stephanie Ghee  
24      jumped off?

25                   A           Yes.

1 Q Could you explain it to me?

2 A The switch in this position would not  
3 have turned the power off to the motor.

4

5 MR. THOMPSON: Just a moment. Just a  
6 moment, Your Honor. He can't specifically speak  
7 to a situation that occurred prior to his  
8 examination.

9 I'll take my objection back. Let him go  
10 ahead.

11

12 Q Mr. Owen, looking at that photograph, do  
13 you have an opinion as to whether the forklift left  
14 Richmond Clarklift's repair facility in the spring of 1993  
15 in that condition?

16

17 MR. THOMPSON: Objection, Your Honor.  
18 No basis. We are back to the same thing that you  
19 overruled twice. There's no basis upon which he  
20 can, by looking at this picture, say what it was  
21 from three years before the picture was taken.

22 MR. SNESIL: If Your Honor please,  
23 there's been evidence that was the condition it  
24 was in. It was unchanged since that photograph  
25 was taken immediately after the incident. I

1 think based on that photograph and based on what  
2 he knows of the incident, he can give an opinion.

3 THE COURT: You are asking him what the  
4 condition was when the vehicle left the  
5 defendant's facility in April?

6 MR. SNESIL: Based on the condition it  
7 was found to be in November 1st, 1993 and based  
8 on this photograph you can look, see what  
9 condition it is in, I think he is competent to  
10 give his opinion.

11 THE COURT: I sustain the objection.  
12

13 Q Mr. Owen, assuming that that bracket is  
14 firmly bolted into place, just assume that for a minute, do  
15 you have an opinion in that case it left Richmond  
16 Clarklift's facility in that condition?  
17

18 MR. THOMPSON: I object, Your Honor.

19 THE COURT: I'm sorry, if you assume it  
20 was bolted?

21 MR. SNESIL: Firmly bolted in place.

22 THE COURT: When?

23 MR. SNESIL: As of November 1st, 1993  
24 when Mr. Lewis looked at it. There's been  
25 testimony to that effect.

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Q Do you have an opinion whether it was in that condition when it left Richmond Clarklift some six months before?

MR. THOMPSON: No basis he can answer that without speculating.

THE COURT: How could he do that?

MR. SNESIL: I can set it forth. I'm not sure that, the basis is that if it was bolted in place as Mr. Lewis says, that it left the dealership in that condition six months before because there is no testimony it had been otherwise disturbed.

THE COURT: I sustain the objection.

Q Mr. Owen, do you have an opinion as to whether a reasonably prudent mechanic would have checked the operation of the deadman function if a reasonably prudent mechanic were reconditioning this forklift?

A Yes.

Q Would it be very difficult for the mechanic to find either the defect, either the misposition of the switch, would it be difficult to find?

A No, sir.

1

2

MR. THOMPSON: If Your Honor please,

3

these questions are assuming.

4

THE COURT: Assuming what? If it were,

5

it would be easy to find? Right? All right.

6

7

Q Did you check the parking brake operated

8

by the seat when you were there on April 16, 1993?

9

A Yes, I did.

10

Q How did you check it?

11

A I was beginning to look at the machine.

12

I leaned up against the machine. It rolled.

13

Q That's without operating--

14

A It rolled freely.

15

Q Without an operator in the seat, should

16

that parking brake be applied?

17

A No -- yes, the parking brake should be

18

applied. It should be held still.

19

Q Should that be checked in your opinion

20

by a mechanic upon a reconditioning of a forklift?

21

22

MR. THOMPSON: Your Honor please, that

23

question assumes the position it was in Clarklift

24

which is something he doesn't know. He can't

25

answer it by speculation.

1 THE COURT: He can testify as to that.  
2 Overruled.

3  
4 Q Mr. Owen, should the function of the  
5 parking brake connected to the seat be checked by a  
6 mechanic upon reconditioning the forklift?

7 A Absolutely.

8 Q Would it be done by the same means,  
9 standing up?

10 A Yeah, just standing up.

11 Q Mr. Owen --

12

13 MR. SNESIL: If Your Honor please, I'm  
14 finished with the video. I have a few more  
15 questions of him.

16 THE COURT: All right. These  
17 photographs will be marked in the order that they  
18 were presented as Plaintiff's Exhibits 11, 12,  
19 13.

20

21 NOTE: Photographs are marked as  
22 Plaintiff's Exhibit Numbers 11, 12, and 13.

23

24 THE COURT: Go ahead.

25 MR. SNESIL: May I present another

1 document to the witness?

2 THE COURT: Yes.

3

4 Q Mr. Owen, I have handed you a document.

5 Are you familiar with what that is?

6 A Yes, I am.

7 Q Would you tell the jury what that is?

8 A This is the brake lever assembly.

9 Q This the component of the brake we have  
10 been talking about?

11 A Yes.

12 Q Is that the exploded part of it?

13 A Yes, the parts diagram.

14 Q You mentioned the collar that fits over  
15 the shaft. Is that numbered here on this fairly blurry  
16 document?

17 A Yes. It's number 7 I believe it is.

18 Q Is it 7?

19 A Yes.

20 Q Where is the part that has the two arms  
21 that you mentioned?

22 A That's number 12.

23 Q How about the part that is suppose to  
24 fasten down where that broken bolt was?

25 A It's assembly number 13.



1                   Q           Does that in fact describe mechanically  
2   how that machine was made and put together?

3                   A           It says fastener.

4                   Q           Is this an accurate description of parts  
5   of the forklift we have been talking about?

6                   A           Yes, it is, yes.

7                   Q           I move it into evidence.

8

9                   THE COURT: Any objection? Go ahead.

10                  Number 14.

11

12                  NOTE: The above-described document  
13                  is marked as Plaintiff's Exhibit Number 14.

14

15                  Q           Mr. Owen, did you review the documents  
16   that were, well, you already told us you reviewed the  
17   document Richmond Clarklift prepared in servicing the  
18   machine.

19                  A           Yes.

20                  Q           Is it custom in the forklift repair  
21   industry as far as you know to have an estimate sheet of  
22   some kind?

23                  A           Yes.

24                  Q           What is that suppose to do?

25                  A           It's a detailed list. When you pick up

1 a machine and you are about to begin work, you need to know  
2 what you are working on, inspect the machine, find out what  
3 it's problems are.

4 Q Are those recorded on the Mechanic's  
5 Estimate Sheet?

6 A Yes, they are.

7 Q What else is done on the Mechanic's  
8 Estimate Sheet?

9 A List of parts you are going to be  
10 needing. You look for all your safety items, number one,  
11 and things that are unsafe need to be reported to the  
12 customer at that time, tell him he has to make these  
13 repairs, and a list of all the other repairs that go along  
14 with the machine.

15 Q That should be recorded on the estimate  
16 sheet?

17 A Yes, it should always.

18 Q How about any inspections that are done,  
19 should they be recorded on the estimate sheet?

20 A Yes.

21 Q Is the estimate sheet, does that provide  
22 a place for mechanics to either check off what is done or  
23 write down what he is doing?

24 A Yes.

25 Q Does the Mechanic's Estimate Sheet

1 provide a means that mechanics communicate with each other  
2 so in case they are not working on the machine at the same  
3 time?

4 A Yes.

5 Q Is it customary to provide it in the  
6 file for the customer for later use?

7 A Yes.

8 Q Is that an important document?

9 A Yes, it is very important.

10 Q Did you find any paper in the documents  
11 you examined from Richmond Clarklift that you examined in  
12 the spring of 1993?

13 A No, I did not.

14 Q Is there any -- you have examined those  
15 documents thoroughly, have you not?

16 A Yes.

17 Q Did you find any written evidence that  
18 accelerator or any of the hoses were ever inspected?

19

20 MR. THOMPSON: I beg your pardon? May I  
21 have that question again? Did he find any  
22 written evidence--

23 MR. SNESIL: The accelerator or any of  
24 the hoses were inspected.

25

1           A           After November?

2           Q           No, sir, before November.

3           A           No, not before November.

4           Q           Talk about in spring of '93.

5           A           Okay.

6           Q           Did you see any written evidence the  
7 foot brake was ever inspected?

8           A           No.

9           Q           Did you see evidence the deadman's  
10 function of the seat was looked at by anyone?

11          A           No.

12          Q           Mr. Owen, is it the --

13

14                   MR. SNESIL: No more questions of this  
15 witness. I would like to proffer some testimony  
16 into the record at the appropriate time.

17                   THE COURT: We'll do that later.

18

19

20                   CROSS-EXAMINATION

21 BY MR. THOMPSON:

22           Q           Mr. Owen, you have looked at the  
23 documents that Mr. LaMaskin's organization has gone back in  
24 their records for say three or four years ago, and you have  
25 looked at the documents, and you see on these documents

1 exactly who the mechanics were who worked then on this  
2 machine when it was there, didn't you?

3 A Yes.

4 Q They had records of that?

5 A Yes.

6 Q They had records of hours spent by those  
7 men on this machine?

8 A Yes, sir.

9 Q They had a record of the dates on which  
10 those hours were spent?

11 A Yes, sir.

12 Q They had a complete list of the parts  
13 that were put into the machines?

14 A They had a list of the parts, yes.

15 Q So the parts were listed, the mechanics  
16 were listed, and the time and the date the mechanics worked  
17 on the machine, they had a record of all of that?

18 A Yes, that's correct.

19 Q They also had contracts, a written  
20 contract that about \$2500 was going to be spent on these  
21 machines, that they were going to be painted Stanley  
22 colors, it would be turned over to them in operating  
23 condition. They had that, didn't they? Didn't you see  
24 that?

25 A Something similar to that.

1                   Q           All right. Now what is this talk about  
2           there needs to be some more papers? Isn't that sufficient?

3

4                   THE COURT: You need to speak up.

5

6                   Q           What is this talk, what are you saying  
7           that there should be more records here? Why are you saying  
8           that? What more do you want to record?

9                   A           They have no idea, well, me looking at  
10          the documents, I have no idea who worked on what, did the  
11          same person work on the same thing twice, did somebody  
12          expect somebody else to work on an item. It's easily  
13          overlooked if you don't record what the person does.

14                  Q           Is that your criticism? Is that it?

15                  A           I didn't find an estimate listing the  
16          repairs that were needed.

17                  Q           But you understood that the contract  
18          said that they were to look at the machine and determine  
19          what the repairs were that were needed, isn't it true?

20                  A           I understand that.

21                  Q           Isn't that document enough? There was  
22          an agreement, an understanding by word of mouth between  
23          these parties. Why should you say that's not sufficient?

24                  A           How would they know what they are  
25          fixing?

1                   Q           Aren't you complaining there is some  
2                   lack of evidence here that you would like to have so that  
3                   you could perhaps find some sort of blame on these people,  
4                   isn't that what you are talking about?

5

6                   MR. SNESIL: I think he is arguing with  
7                   this man at this point.

8                   THE COURT: Overruled.

9

10                  Q           Let's go on to another subject. You  
11                  have explained at great length I think, have you not, that  
12                  this machine was being operated at Stanley six to seven  
13                  months after it had been at Clarklift in a pretty unsafe  
14                  condition, that's correct isn't it?

15                  A           That's correct.

16                  Q           It was unsafe because, number one, let's  
17                  see your little drawing, the last one you were shown, this  
18                  list of parts here--

19                  A           Yes.

20                  Q           -- showing an exploded view--

21                  A           Uh-huh.

22                  Q           -- of the brake, the foot pedal brake,  
23                  and do you see a spring there?

24                  A           Yes, I do.

25                  Q           That spring is a return spring, isn't

1       it? Isn't that the return spring that would give the brake  
2       pedal we speak of having a pedal in a car--

3               A               Yes.

4               Q               -- that is the same sort of travel of  
5       the brake pedal?

6               A               That's correct.

7               Q               Doesn't that spring, you found that they  
8       were operating it on November 1, 1993, with no return  
9       spring on that brake, that's true, isn't it?

10

11                       MR. SNESIL: I object. I don't think  
12       there's any testimony as to what the condition of  
13       that spring was on November 1st, 1993.

14                       MR. THOMPSON: I withdraw the question.

15                       THE COURT: He's going to withdraw the  
16       question.

17

18               Q               Assuming, assuming that the condition on  
19       November 1, 1993, the date of the accident, the condition  
20       was the same as when you saw it in 1966?

21

22                       THE COURT: '96.

23                       MR. THOMPSON: That's right.

24

25               Q               There's been no change in it, then that



1 machine was being operated without a return spring, wasn't  
2 it?

3 A Yes.

4 Q All right. You have heard, no one has  
5 told you, nobody has hypothesized that there had been any  
6 repairs done while the machine -- repairs done after the  
7 machine, after the accident?

8 A Not on this.

9 Q That's right. And so if the condition  
10 was the same as when you saw it, they were operating it in  
11 a situation where the return spring being absent, then the  
12 cam which would normally shut off the electricity using the  
13 switch and the foot brake would not be able to work because  
14 the cam wouldn't reach that high because of the absence of  
15 the spring, isn't that right?

16

17 MR. SNESIL: I object. He asked the  
18 witness whether any repairs were done, I mean  
19 that he thought, if he knew any repairs were  
20 done. The witness responded yeah, he thought  
21 repairs were done. Now he's asking him to assume  
22 repairs were not done. I don't think there is a  
23 basis for that.

24 THE COURT: Overruled. Go ahead.

25

1                   Q            So you'll be clear on what I'm asking  
2    you--

3                   A            Okay.

4                   Q            -- okay, I'm talking about you saw this  
5    machine in '66, excuse me, '96?

6                   A            Yes, sir.

7                   Q            You found it had no return spring?

8                   A            That's correct.

9                   Q            And if it had no return spring, then the  
10   cam would not go up high enough to reach the switch which  
11   goes on when you applied the brakes, isn't that correct?

12                  A            Let me think about it for a minute. No,  
13   the switch is operated when the cam goes down.

14                  Q            You found there was nothing wrong with  
15   the switch itself? The switch was electrically operating?

16                  A            That's right.

17                  Q            We saw the test when you had the ohm  
18   meter on it, when you would mash the switch with your  
19   finger, you could see electricity was flowing?

20                  A            That's correct.

21                  Q            So what was the matter with the foot  
22   brake? Was that the cam was not reaching the switch?

23                  A            That's correct.

24                  Q            And the cam is held in position in part  
25   by the return spring, isn't it?

1 A No.

2 Q All right, you say it is not?

3 A That's right.

4 Q All right. But the fact is they were  
5 operating it, if there was no difference on November 1st,  
6 '93 than there was when you saw it in 1996, they were  
7 operating it with the cam out of adjustment at least?

8

9 MR. SNESIL: If Your Honor please--

10

11 Q Foot brake cam.

12

13 MR. SNESIL: I don't think that question  
14 made sense. I object in trying to formulate an  
15 answer.

16 THE COURT: If he can't understand that  
17 he can say that.

18

19 A I can't understand the last part of your  
20 question.

21 Q All right. If the machine was in a  
22 condition, if the machine on November 1, 1993, the date of  
23 the accident, was in the same condition that it was on the  
24 date you examined it in 1996, they were operating the  
25 machine on the day of the accident with the cam out of

1 adjustment which would normally have cut off the  
2 electricity when, if she had put on the foot brake?

3 A Yes.

4 Q So they were operating the machine in an  
5 unsafe condition. If it had the same, it was in the same  
6 condition as the day you observed it, they were, on  
7 November 1, 1993, operating the machine in an unsafe  
8 condition?

9 A Unknowingly.

10 Q Another unsafe condition that existed on  
11 November 1, 1993, if the condition was the same as when you  
12 examined it in 1996, if the condition of the seat switch  
13 was the same at that time and the seat switch cam, then  
14 that was in an unsafe condition, wasn't it?

15 A I'm not sure they are trained to detect  
16 that.

17 Q You said that the electric switch, the  
18 seat switch was operative?

19 A Yes.

20 Q But it didn't operate to stop the  
21 machine when you took the weight off the seat because the  
22 cam was out of adjustment and wouldn't reach the switch,  
23 that's correct?

24 A No, that's not what I said.

25 Q You said that it was operating properly?

1                   A            I said the electric switch was operating  
2 properly. The parking brake part of that mechanism was not  
3 operating properly.

4                   Q            Okay. The cam was not set right, that's  
5 an adjustment, isn't it?

6                   A            The switch.

7                   Q            Yes, is an adjustment?

8                   A            That is an adjustment.

9                   Q            They have slots instead of holes?

10                  A            That's correct.

11                  Q            And for that reason, if that's the way  
12 they were operating it on November 1st, they were operating  
13 it in an unsafe condition on that account?

14

15                               MR. SNESIL: If Your Honor please, he  
16 keeps saying that's the way they are operating,  
17 it's not clear what condition of the cam we are  
18 talking about.

19                               MR. THOMPSON: All of these questions  
20 have the same hypothesis.

21                               THE COURT: I think he can answer. Go  
22 ahead.

23

24                  Q            If the condition when Stephanie Ghee was  
25 operating it with respect to the seat switch, the seat

1 switch cam, was the same as when you, there's been no  
2 change made in it between that time and the time that you  
3 saw it in 1996, assume that that condition exists, then  
4 that's an unsafe condition, isn't it?

5 A That's an unsafe condition.

6 Q All right. Now when a machine is being  
7 operated in an unsafe condition, you as a repairman can't  
8 do anything about it unless somebody reports that condition  
9 to you, can you?

10 A That's correct.

11 Q You have a telephone, don't you?

12 A Yes, sir.

13 Q And if somebody calls you up and says  
14 please come work on our machine, it's out of condition,  
15 that's when you go?

16 A That's right.

17 Q So you are reliant on the person who's  
18 operating the machine to call your attention to a defect in  
19 it when it has defects?

20 A When they are apparent.

21 Q Yeah. Well, if they are not apparent to  
22 anybody, well then, you don't get a call I gather?

23 A Right.

24 Q But when they aren't apparent or should  
25 be apparent, that's when you want to get a call so you can

1 go fix it?

2 A That's right.

3 Q But if they, the people who are using  
4 the machine choose to use it in a dangerous condition  
5 without calling you, there is nothing you can do about it,  
6 is there?

7

8 MR. SNESIL: That's assuming facts not  
9 in evidence.

10 THE COURT: Sustained.

11

12 Q All I'm saying is that you don't go from  
13 customer to customer asking them if there's something wrong  
14 with the machine, you rely on them, do you not?

15

16 MR. SNESIL: Objection.

17 THE COURT: Sustained.

18 MR. THOMPSON: That's it. Thank you,  
19 Judge.

20 THE COURT: All right. You have  
21 redirect, Mr. Snesil?

22 MR. SNESIL: Your Honor, I need to make  
23 certain proffers.

24 THE COURT: But do you have any  
25 redirect?

1 THE COURT: -- they cost. These people  
2 have to come back, I assume. Don't you pay him?

3 MR. SNESIL: I'd like to call Mr. Crim.

4 THE COURT: How long will he be?

5 MR. SNESIL: I think brief. 15 minutes  
6 I suspect at most. Can you handle 15 minutes, 20  
7 minutes?

8 THE COURT: Bear with us for this one.  
9 If you would step down, sir, but don't leave.  
10 Just remain out in the hallway.

11

12

13

14 CHARLES C. CRIM, having previously been  
15 duly sworn, testifies as follows:

16

17 DIRECT EXAMINATION

18 BY MR. SNESIL:

19 Q Mr. Crim, tell us your name, please?

20 A Charles C. Crim.

21 Q Where do you live?

22 A I live out in Hanover County near Old  
23 Church.

24 Q What's your educational background?

25 A I graduated from Virginia Military



1 Institute in 1972 with a Bachelor of Science degree in  
2 engineering.

3

4 MR. THOMPSON: I am satisfied that Mr.  
5 Crim has qualifications of a professional  
6 engineer.

7 THE COURT: Can he give opinion  
8 testimony? That would be--

9 MR. THOMPSON: I have to hear the  
10 question.

11 THE COURT: Of course, but he can give  
12 opinions a professional engineer would give. All  
13 right, so qualified.

14

15 Q Mr. Crim, where are you employed now?

16 A I work for Froehling & Robertson,  
17 Incorporated. It's an independent testing laboratory here  
18 in Richmond.

19 Q What kind of work do you specialize in?

20 A I'm senior engineer in charge of the  
21 Failure Analysis Department for the company.

22 Q Does your work at Froehling & Robertson  
23 involve material science?

24 A Yes. I have been working as a materials  
25 engineer in failure analysis for the past 18 years.

1 Q What's a materials engineer?

2 A Materials engineer works with all types  
3 of steels, plastics, woods, all types of materials used for  
4 appliances, buildings. Our company's main thrust is in the  
5 construction and the building industry, but I'm assigned in  
6 the metals and ADT Department, and all my work has to do  
7 with mechanical and electrical failures.

8 Q Did you examine the forklift in question  
9 here on April 16, '93?

10 A Yes, sir, I did.

11 Q Did you also look at the hydraulic hose  
12 near the accelerator which had the abrasion on it?

13 A Yes, sir, I certainly did.

14 Q Tell us briefly what the function of  
15 that hose is.

16 A That hose carries hydraulic fluid to the  
17 tilt cylinder on the lift carriage for this particular  
18 device. It is what they call a medium pressure hose,  
19 operates about 2,250 psi, so it's a lot of pressure.

20 Q In the function of this machine would  
21 that hose move around?

22 A Yes, and it did on that machine I looked  
23 at.

24 Q What causes it to move?

25 A There are several hoses down there and

1     they are bundled and they all go to the tilt cylinder.  
2     Machine movement, as the tilt cylinder operates back about  
3     forth, it stretches and shortens the hose laying underneath  
4     the floor boards of the machine, so it does move  
5     significantly.

6             Q             You know what type of hose that is?

7             A             Yes.    It's an SAE 100 type, R 100 type  
8     AT hose, fairly standard in the industry again for medium  
9     pressure hydraulic pressure operation.

10            Q            What does SAE mean?

11            A            Society of Automotive Engineers.  They  
12     have standards for various products that's standard for  
13     that type of hose.

14            Q            Have you reviewed that standard?

15            A            Yes, I have looked at that.

16            Q            Did you examine the abrasion?

17            A            Yes, I did.

18            Q            Could you briefly describe what you  
19     found?

20            A            The hose has an abraded area on one side  
21     of it that is adjacent to the accelerator pedal linkage.  
22     There is a substantial groove, a deep groove worn through  
23     the outer rubber cover.  The wire reinforcement, this hose  
24     has a single braided layer of wire reinforcement inside the  
25     outer rubber cover.  It had become exposed.  Some strands

1 of that wire reinforcement were broken and have abraded in  
2 two. It has been rubbing. It had not penetrated the inner  
3 core. In other words it had not leaked hydraulic fluid, it  
4 had not at the time I looked at it.

5 Q Did you also find evidence of wear on  
6 the accelerator protrusion?

7 A Yes. The accelerator linkage pedal has  
8 a place for spring attachment on it for a return spring,  
9 and there is, on the side of the link that sticks out, that  
10 is actually wearing this groove in the hose. That stud has  
11 been worn, the corners of it are rounded, it's highly  
12 polished from the abrasion that it has gone through over a  
13 period of time.

14 Q And the hose, I take it your opinion,  
15 rubbed the accelerator?

16 A Yes, yes. Yes, sir.

17 Q Is it possible to know whether that hose  
18 would have rubbed on the accelerator every operation of the  
19 accelerator?

20

21 MR. THOMPSON: I'm sorry, what is the  
22 question?

23 MR. SNESIL: Asked if it is possible to  
24 know whether the hose rubbed on every use of the  
25 accelerator.

1 MR. THOMPSON: Hose rubbed on what?

2 THE COURT: On every movement of the  
3 accelerator, would it rub the hose?

4

5 Q I asked whether it was possible to know  
6 that. Is it possible to know that?

7 A Not in a numerical statistical way.

8 Q I'm saying is it possible to know  
9 whether on every movement of the accelerator it would rub  
10 compared to every other movement or every tenth movement or  
11 whatever, is it possible to know?

12 A It's intermittent. Doesn't rub every  
13 time.

14 Q Not possible to quantify?

15 A No. You cannot know that out of 24  
16 operations it is going to rub 24 times. I doubt it does.

17 Q Is that because the hose moves around?

18 A Yes. Quite a bit of latitude in the  
19 compartment where it is located.

20 Q Based on your experience, scientific  
21 experience as a materials engineer, do you have an opinion  
22 as to whether it took more than 101 hours of use for that  
23 hose to get in the condition in which you found it in on  
24 April 16, 1996?

25

1                   MR. THOMPSON: If Your Honor please, I  
2 expect his answer at this point would be yes or  
3 no. If he says yes, I object to his giving his  
4 opinion.

5                   THE COURT: What's the question again,  
6 Mr. Snésil?

7                   MR. SNESIL: The question, Your Honor,  
8 is whether, based on his experience as a material  
9 scientist, he has on an opinion as to whether it  
10 took more than 101 hours of use for that hose to  
11 get into the condition which he found it in on  
12 April 16, 1996 when he inspected it.

13                  MR. THOMPSON: Your Honor, there is no  
14 quantifying fact which has been advanced which  
15 would allow this gentleman to answer that  
16 question without speculation. He has said that  
17 it is very, it is not possible to quantify the  
18 intermittancy of contact. Now that is only one  
19 fact that he doesn't have. He doesn't have any  
20 of the necessary facts that would enable him to  
21 determine that.

22                  THE COURT: Like what?

23                  MR. THOMPSON: Like the thickness of the  
24 hose, the consistency of the hose, the chemical  
25 composition, the pressure between the hose and

1 the accelerator pedal, the degree of wearing away  
2 of the coating of the hose, the rate of wearing  
3 away of the web, steel web inside, the number of  
4 the, the degree of intermittancy with it being  
5 intermittent and the contact be intermittent,  
6 there's no way he can apply any coefficients of  
7 wear in order to tell how long the wear had gone  
8 on.

9 THE COURT: All right, Mr. Snasil.

10 MR. SNESIL: I think by virtue of his  
11 experience and familiarity with this type of  
12 machinery he is qualified to offer opinion.

13 MR. THOMPSON: He hasn't testified to  
14 any experience in wear in this situation. Even  
15 if he could make, if he could devise a test, the  
16 test would have to be the same under all of the  
17 circumstances in order to even have the test come  
18 in, but he hasn't even mentioned any of the  
19 criteria which would enable him to do this except  
20 that he looked at it. He can't say how long that  
21 wear has been occurring possibly looking at it.  
22 We have cases when -- one that comes to mind of  
23 course, I can go into that.

24 THE COURT: All right, I'm going to  
25 sustain the objection.

40

1

2

Q Do you have experience in looking at these types of hoses before?

4

A I have looked at many hydraulic hoses for a wide variety of types of failures in the lab in the 18 years I have been there, obviously not all hoses are on forklifts, some are on automotive equipment, bulldozers, farm equipment, excavation equipment. Some of the hoses have been in for failures of fittings, failures of the outer covering, hydraulic overload and rupture. I have seen many types and styles of failures, just maybe not a particular piece of equipment, but it's been quite a few over the years.

14

Q Are you familiar with durability of that type of hose?

16

A It's quite durable. That's why it's the type used on a lot of farm machinery and excavation and construction equipment.

19

20

21

MR. SNESIL: Again Your Honor, I have the same question--

22

23

Q -- is whether you have an opinion within a reasonable degree of scientific certainty as to whether the amount of wear that you saw on April 16, '96 exceeded

24

25



1     what would be possible in 101 hours?

2

3                     MR. THOMPSON:   Same objection.

4                     THE COURT:   All right, I'm going to  
5     sustain the objection.

6                     MR. SNESIL:   I don't have any more  
7     testimony for this witness.

8                     THE COURT:   I take it you have no cross,  
9     right?

10                    MR. THOMPSON:   I have to think for just  
11    a moment.

12                    THE COURT:   We'll take care of proffers  
13    after the jury is gone.

14                    MR. THOMPSON:   I have to look at some  
15    notes. I don't expect to take more than a whole  
16    minute. Just a minute.

17                    No questions.

18                    THE COURT:   All right, sit tight, sir.

19                    I'm going to excuse you folks for the  
20    evening. Get back again at 10:00 in the morning,  
21    we'll start then. I expect we should finish  
22    promptly. I don't know when. I never try to  
23    guess that, but I hope it won't be, you won't be  
24    here late tomorrow, okay? We'll stand in recess  
25    until tomorrow morning at 10:00 o'clock.

1 MR. SNESIL: Thank you.

2 THE COURT: Go ahead.

3

4 BY MR. SNESIL: (continuing)

5 Q Mr. Crim, do you have an opinion within  
6 a reasonable degree of scientific certainty as to whether  
7 the wear on the hose you observed April 16, 1996 exceeded  
8 101 hours of use?

9 A Yes, I do have an opinion, sir.

10 Q Tell us, please.

11 A I don't see any way you could get that  
12 much wear in 101 hours of use, you know, given the type of  
13 machine and intermittent use of it if I assume 20 hours of  
14 operation a week.

15 Q Well, 101 hours?

16 A Yeah, I don't see how you would get that  
17 much wear, particularly the wear of the steel core of hose  
18 and wear on brake pedal shaft linkage, I can't see it.

19 Q In your opinion would the hose have  
20 looked substantially like it does on April, when you  
21 inspected it as it looked when it left Richmond Clarklift's  
22 hands 101 hours before?

23 A Yes, I believe it had shown wear and  
24 shown that degree of wear, yes, sir.

25

1                   MR. SNESIL: I don't have any more  
2                   questions for proffer of this witness.

3                   THE COURT: You have any questions?

4

5

6

CROSS-EXAMINATION

7 BY MR. THOMPSON:

8                   Q           You cannot point to any tests to support  
9                   your reasoning as to the time period that it would take to  
10                  produce the wear you saw when you saw this in 1996?

11                  A           No, that is correct. I'm not aware of a  
12                  statistical study or analytical study of that type, that's  
13                  correct.

14                  Q           Hose wear would be very difficult to  
15                  quantify numerically, wouldn't it?

16                  A           It is, it would be imprecise, in most  
17                  situations it would be. You would have to rely on  
18                  experience and observation.

19                  Q           It cannot be stated as fact?

20                  A           It cannot be stated in numerical  
21                  fashion, it would be strictly experience, that's correct.

22                  Q           It's not susceptible to empirical or  
23                  numerical solution?

24                  A           It would be difficult, especially in  
25                  this particular instance because of the likelihood it is

1       intermittent contact, therefore, that would extend the  
2       amount of time that wear would take place, that's correct.

3               Q           You don't have any experience with this  
4       exact situation before?

5               A           Every situation is slightly different.

6               Q           Thank you, sir.

7               A           Yes, sir.

8               Q           Your question was yes or no?

9               A           Yes.

10              Q           You don't have any experience, you do  
11       not have any experience with this exact situation?

12              A           Well, the answer is yes, that I do not.  
13       Every situation is different.

14              Q           Thank you.

15

16                       MR. THOMPSON:   That's all, Your Honor.

17                       MR. SNESIL:   Nothing more to proffer on  
18       this witness.

19                       THE COURT:   You may step down, sir, and  
20       you are free to leave.

21                       MR. SNESIL:   Yes, sir.

22                       THE COURT:   You are free to leave.

23                       MR. SNESIL:   I'm going to offer tomorrow  
24       a portion of Mr. LaMaskin 's deposition.   It  
25       should be very brief also.

1 THE COURT: That's fine, no problem.

2 Let's bring the other gentleman in here, do the  
3 proffer on this. Send him in if you would, Mr.  
4 Crim.

5 THE WITNESS: Yes, sir.

6 THE COURT: Sir, resume the witness  
7 stand, if you would.

8

9

10 CURTISS DWAYNE OWEN, having previously  
11 been duly sworn, resumes the stand and testifies further as  
12 follows:

13

14 DIRECT EXAMINATION

15 BY MR. SNESIL:

16 Q Mr. Owen, do you have an opinion within  
17 a reasonable degree of certainty based on your experience  
18 and work you have done in this case as to whether the wear  
19 of the hose which you observed when you inspected the  
20 machine in 1996 was present when it left the hands of  
21 Richmond Clarklift?

22 A Yes, I do believe it was present at that  
23 time.

24 Q Is it possible to quantify in any  
25 numerical way how, exactly how long that wear took to get

1       there?

2                   A           I believe it took years since the hose  
3       didn't rub the accelerator linkage every single time.

4

5

6                   MR. THOMPSON:   I can't hear.

7

8                   A           I believe that it took years of service  
9       for this hose to get in this condition, and the wear on the  
10      accelerator linkage itself, I believe it took years to get  
11      in this condition.

12                  Q           Do you have an opinion as to whether  
13      that abrasion were visible, that the reasonably prudent  
14      mechanic would be required to address that problem?

15                  A           Yes.

16                  Q           What is that opinion?

17                  A           The hose, first of all the hose should  
18      have been replaced and they should have been tied to the  
19      frame with maybe a cable tied to the frame itself to hold  
20      them away from the accelerator linkage.

21                  Q           Was it feasible to tie that hose with a  
22      cable tie to a frame member?

23                  A           Yes.

24                  Q           Let's assume that abrasion wasn't  
25      visible, was not visible when Richmond Clarklift inspected

1       it. Nonetheless should that bundle of hoses in your  
2       opinion been restrained by a mechanic exercising a  
3       reasonable degree of care in reconditioning the forklift?

4                   A           Yes.

5                   Q           Why is that?

6                   A           All hoses should be grabbed hold of with  
7       your, in hand, see how much they move, see if they can  
8       physically touch something. If so they need to be  
9       restrained.

10                  Q           Why that hose? What's the danger?

11                  A           The danger with that hose is the  
12       accelerator pedal can be held down to the floor if they get  
13       up underneath it.

14                  Q           Do you have an opinion as to whether  
15       that bolt that you observed holding the brake assembly, at  
16       least sitting in the hole with the brake assembly, within a  
17       reasonable degree of certainty, was that hole, brake in  
18       that hole?

19                  A           Yes.

20                  Q           Can you tell how long it had been in  
21       that condition?

22                  A           No, just a long time.

23                  Q           Do you have an opinion within a reason  
24       degree of certainty as to how long it took for the wear  
25       which you have described the way the parts moved

1 independently, how long that took to occur?

2 A The life of the machine.

3

4 THE COURT: What's that?

5

6 A The life of the machine. 23 years.

7 Q Do you have an opinion it obviously left  
8 Richmond Clarklift in that condition?

9 A It's my opinion that it did.

10 Q Mr. Owen, you have said you inspected  
11 the parking brake operated by the seat by pushing on the  
12 machine and it rolled?

13 A Yes.

14 Q You have an opinion how long, whether it  
15 took more than 101 hours to get into that condition?

16 A I believe it had been like that for  
17 quite sometime, longer than 101 hours.

18 Q In your opinion can you estimate how  
19 long it took to get as far out of adjustment such as it was  
20 such that you could just push on it and roll the machine,  
21 is it possible to quantify it?

22 A It is really difficult to but it's not  
23 something that just happened. If it's been inoperative for  
24 a long period of time, it's hard to say how far out of  
25 adjustment it actually was because it didn't work at all.



1                   Q           Is it possible to estimate how long it  
2 got, how long it took to get to the position where it  
3 didn't operate at all?

4                   A           Probably a couple years.

5                   Q           Couple of years of normal use?

6                   A           Yes, of normal use.

7                   Q           In regard to the abrasion in the hose,  
8 do you have an opinion as to whether Richmond Clarklift  
9 exercised care that would be expected of a reasonably  
10 prudent mechanic as far as inspecting it and working on it?

11                  A           Yes.

12                  Q           What's the opinion?

13

14                               MR. THOMPSON: Can't hear you.

15

16                  Q           Do you have an opinion as to whether  
17 Richmond Clarklift exercised reasonable care in the  
18 inspection of hoses and any repairs that were necessary?

19                  A           One more time.

20                  Q           Do you have an opinion within a  
21 reasonable degree of certainty as to whether the exercise  
22 of care by a reasonably prudent mechanic, did Richmond  
23 Clarklift exercise that care that is required by a  
24 reasonably prudent mechanic?

25                  A           No, I don't feel they did.

1                   Q           Just briefly what basis?

2                   A           I base that opinion on the hose, the  
3 wear on the hose that I saw, on all the switches that  
4 weren't working, on the wear in the brake linkage, on all  
5 the things I saw wrong with the machine on my inspection.

6                   Q           Is it your opinion that they failed to  
7 exercise reasonable care on all things you found wrong on  
8 that machine?

9                   A           Yes, sir.

10                  Q           Mr. Owen, is it your opinion that the  
11 seat switch bracket, based on the photographs taken on or  
12 about November 1st, 1993, compared to your observation in  
13 1966 and the photographs that were taken 1996, had been  
14 moved?

15                  A           Yes, it had been.

16                  Q           How could you tell?

17                  A           The paint, first of all the paint was  
18 not on the nuts indicating that a wrench had been on them  
19 or socket. They had been turned. I could also see a slot  
20 in the bracket, and I couldn't see that on the first  
21 pictures that I saw I guess back in November.

22                  Q           On the first pictures that you saw, was  
23 it painted in place?

24                  A           Yes, it was painted in place.

25                  Q           Could you tell anything from the

1 location of the paint on the second photographs?

2 A All the paint had been disturbed.

3 Q Do you have an opinion as of whether on  
4 November 1st, 1993, based on the photograph you saw of the  
5 seat switch taken right afterwards, was it possible that  
6 switch could have worked?

7 A No.

8

9 MR. SNESIL: I think I finished my  
10 proffer with this witness.

11 THE COURT: All right, he can be  
12 excused. You can step down.

13 MR. SNESIL: Thank you, Your Honor.

14 THE COURT: Thank you. All right, we  
15 shall stand in recess until 10:00 o'clock in the  
16 morning.

17

18 NOTE: The trial recesses for the day,  
19 to be resumed on June 11, 1996 at 10:00 a.m. as  
20 follows:

21

22

23

24

25

1 heard I take it?

2 JUROR ROBINSON: Yes, sir.

3 THE COURT: All right, very good. Thank  
4 you.

5 Any problem with that?

6 MR. SNESIL: No, sir.

7 THE COURT: All right, let's proceed.  
8 You all ready?

9 MR. SNESIL: Yes, sir.

10 MR. THOMPSON: Yes, sir.

11 THE COURT: All right, let's bring the  
12 jury back.

13

14 JURY IN

15 THE COURT: All right, Mr. Snesil, who  
16 is your next witness, please?

17 MR. SNESIL: At this time I'd like to  
18 introduce a brief passage of the deposition of  
19 Mr. Jerald LaMaskin.

20 THE COURT: All right. While you get  
21 that ready, let me tell the jury what a  
22 deposition is.

23 If you recall, I told you that there  
24 were certain things you could consider as  
25 evidence, and one of them was a category of

1 evidence, that is called discovery evidence. I  
2 told you I'd explain it if it came up. Among  
3 the, well, start at the beginning.

4 Discovery is a short term for the rules  
5 of discovery that are permitted under the rules  
6 of the Virginia Supreme Court, and under these  
7 rules the parties are able to determine what the  
8 other side's case is all about, what the witness  
9 is going to say and so forth. That's what we  
10 mean by discovery, you can discover what the  
11 other side's case is.

12 Among the devices that are permitted to  
13 do that with is something we call a deposition.  
14 Now a deposition simply is where you get somebody  
15 who knows something about the case, usually in an  
16 office far less formal than here in the  
17 courtroom, the person is placed under oath and is  
18 asked questions, and that question and answer  
19 process is recorded either by a court reporter  
20 such as what we have here or by videotapeing, and  
21 under certain circumstances that may be presented  
22 to you as it was taken down, and what we have  
23 here is the deposition of who?

24 MR. SNESIL: Jerald LaMaskin.

25 MR. THOMPSON: If Your Honor please, Mr.

1 LaMaskin is here and he sits in the position of a  
2 defendant because he is an officer thereof. As I  
3 understand--

4 THE COURT: Let me finish, let me  
5 finish. I haven't finished, Mr. Thompson.

6 MR. THOMPSON: Excuse me.

7 THE COURT: You are to give this  
8 deposition the same weight as if the witness were  
9 here. You don't give it any more or less weight  
10 because of the form in which it is presented.

11 Now I'll hear what Mr. Thompson has to  
12 say. All right, Mr. Thompson.

13 MR. THOMPSON: I thought you thought it  
14 was going to be read in lieu of his testimony.  
15 It is just that they are going to read some  
16 portions of this--

17 THE COURT: I understand.

18 MR. THOMPSON: -- is all I thought they  
19 were going to do.

20 MR. SNESIL: A very brief portion, Your  
21 Honor.

22 THE COURT: All right.

23 MR. SNESIL: Can I tender to the Court  
24 the original deposition?

25 THE COURT: I don't need that. Just

1 read it and the court reporter will make it part  
2 of the record.

3 THE COURT: Go ahead, sir.

4 MR. SNESIL: I'm going to refer you to  
5 page 33 line 13.

6 THE COURT: Yes.

7 MR. SNESIL: Pardon me, line 14.

8  
9 NOTE: Counsel reads from the deposition  
10 of Jerald LaMaskin as follows:  
11

12 EXAMINATION BY MR. SNESIL:

13 Q Looking at the wear on the tilt cylinder  
14 hose--

15 A Yeah.

16

17 MR. THOMPSON: Excuse me, where are you  
18 starting?

19 MR. SNESIL: Page 33 line 14.

20 MR. THOMPSON: Thank you.

21

22 Q Looking at the wear on the tilt cylinder  
23 hose--

24 A Yeah.

25 Q -- can you determine how long it took

1       that wear to get there?

2                   A               Months, many, many--

3

4                   MR. THOMPSON:   Pardon me, Your Honor.

5                   Now this is the same question that was ruled out  
6                   by the two experts for the defendant, and I think  
7                   again that the Court should not allow the jury to  
8                   hear speculation.

9                   MR. SNESIL:   Your Honor, this is a party  
10                  admission, it is also by a man who's been  
11                  designated as an expert by Mr. Thompson.

12                  THE COURT:   But can such a person  
13                  testify --

14                  MR. SNESIL:   If he has admitted this and  
15                  he is a party, yes, sir.

16                  THE COURT:   He can admit elephants fly.  
17                  That doesn't mean they can fly.

18                  MR. SNESIL:   I think in due respect the  
19                  jury should be able to hear this testimony.

20                  THE COURT:   By what party?

21                  MR. SNESIL:   Because it is a party  
22                  admission and--

23                  THE COURT:   I'm saying a party can admit  
24                  elephants fly, does that come in?   Of course not.  
25                  It can't happen.



1                   MR. SNESIL: The rules state that the  
2 deposition of a party can be admitted for any  
3 reason.

4                   THE COURT: Assuming it is an  
5 appropriate piece of evidence. Is he any  
6 differently situated in terms of his ability to  
7 give such an opinion than the another experts?

8                   MR. SNESIL: I don't claim that he has  
9 more expertise than the experts I called to  
10 testify. What I'm simply stating is that  
11 admission of a party is entitled to be brought to  
12 the attention of the jury, because under the  
13 rules the party admission, deposition can be read  
14 to the jury for any reason, and this is a party  
15 admission.

16                  MR. THOMPSON: I would like to show you  
17 something, Your Honor, to consider along with  
18 what has been said.

19                  THE COURT: I'm more concerned with the  
20 authority, Mr. Thompson.

21                  MR. THOMPSON: The next statement is  
22 something you should read. Refer you to the  
23 bottom paragraph.

24                  MR. SNESIL: Your Honor, my response is  
25 Mr. Thompson, if Mr. Thompson wants to read that

1           portion of the deposition into evidence that he  
2           has brought to the Court's attention, he is  
3           entitled to do that.

4                   THE COURT: I'm going to overrule the  
5           objection.

6                   MR. THOMPSON: Note my exception.

7                   THE COURT: Yes, sir.

8                   MR. THOMPSON: On the basis of what was  
9           said in the last paragraph--

10                  THE COURT: All right.

11                  MR. THOMPSON: -- of that page and also  
12           what I said that it is speculation.

13                  THE COURT: Go ahead, sir.

14

15           Q           Page 33 line 14. Looking at the wear on  
16   the tilt cylinder hose--

17           A           Yeah.

18           Q           -- can you determine how long it took  
19   that wear to get there?

20           A           Months, many, many, many months.

21

22                   MR. SNESIL: Thank you. That's all I  
23   have in that regard.

24                   THE COURT: Was that not corrected?

25                   MR. SNESIL: He submitted an errata

1 sheet to the court reporter, yes, sir.

2 THE COURT: Isn't that what you need to  
3 read?

4 MR. SNESIL: If Your Honor please, he  
5 contends that he, that's what he says on the  
6 errata sheet.

7 THE COURT: What he says on the errata  
8 sheet, he had to sign it before it becomes a  
9 record, doesn't it, on a proper deposition or to  
10 submit an errata?

11 MR. SNESIL: Your Honor, it's my  
12 understanding that the witness is entitled to  
13 bring to the attention of the Court to the jury--

14 THE COURT: I don't think so.

15 MR. SNESIL: -- to explain what he  
16 contends he said, but the official record of this  
17 deposition is taken by the court reporter.

18 THE COURT: I don't think that is  
19 correct. The court reporter could be wrong.

20 MR. SNESIL: That is possible, Your  
21 Honor, but that would allow any witness to  
22 rewrite their deposition any way they chose and  
23 say that's the way it has to be read. My  
24 contention is this is the official record and he  
25 can contend to say he said something else if he

1 chooses.

2 THE COURT: Mr. Thompson, you have  
3 anything to read to supplement that or not?

4 MR. THOMPSON: Yeah, Your Honor.

5 THE COURT: Go ahead.

6 MR. THOMPSON: The portion at the, let's  
7 see, page 33 line 22, I want to read just this:  
8 No, it would be just a wild guess.

9 THE COURT: Read the question.

10 MR. THOMPSON: Beg your pardon?

11 THE COURT: What's the question?

12 MR. THOMPSON: The question was the next  
13 question after what he had just said.

14 THE COURT: I know.

15 MR. THOMPSON: The question was the one  
16 put by plaintiff's counsel, and this is the  
17 balance of his answer: How many service hours,  
18 can you estimate it in that way? No. It would  
19 be just a wild guess.

20 THE COURT: That's fine.

21 MR. THOMPSON: That's all I want to  
22 read.

23 THE COURT: All right.

24 MR. SNESIL: If Your Honor please, I  
25 think he needs to read the full question and full

1 answer.

2 THE COURT: I think he did.

3 MR. SNESIL: No, he did not.

4 MR. THOMPSON: I read the portion.

5 THE COURT: You read the full question  
6 and full answer.

7 MR. THOMPSON: How many service hours,  
8 can you estimate in that way? Answer: No.

9 MS. GELLER: (reading answer) No, it  
10 would be just a wild guess, but quite honestly if  
11 you took a piece of hydraulic hose, and I have  
12 got a similar hose here in my parts department,  
13 and took a rounded piece of metal, and you could  
14 have a test lab set it up and have something  
15 flick on it, it could take hundreds if not  
16 thousands of rubbings to rub that hose that deep.  
17 It was rubbed down to the wire blade inside.

18 MR. THOMPSON: Well, Your Honor, I think  
19 (not audible) against Firestone would rule that  
20 part out. That's why I didn't read it, the  
21 requirements concerning tests.

22 THE COURT: Well, it may be, but if you  
23 are going to read a question, you have got to  
24 read it all.

25 MR. THOMPSON: I thought that part was

1                   admissible, part was not. I have done that now.

2                   THE COURT: All right, sir. What else  
3                   do you have, Mr. Snasil?

4                   MR. SNESIL: In that regard nothing,  
5                   sir, except, Your Honor, I would call Hope  
6                   Griffin to the witness stand.

7                   THE COURT: All right, come forward and  
8                   let me swear you in.

9  
10

11

12                   HOPE TAWANDA GRIFFIN, having previously  
13                   been duly sworn, testifies as follows;

14

15                   DIRECT EXAMINATION

16                   BY MS. GELLER:

17                   Q           Good morning.

18                   A           Good morning.

19                   Q           Tell us your name, please.

20                   A           Hope Tawanda Griffin.

21                   Q           Where do you live, Hope?

22                   A           6221 Apartment B, Sign Post Lane,  
23                   Charles City, Virginia.

24                   Q           How old are you?

25                   A           24.

1 VIRGINIA:

2

3 IN THE CIRCUIT COURT OF THE CITY OF RICHMOND  
4 JOHN MARSHALL COURTS BUILDING

5

6 HOPE GRIFFIN

7

8 vs. Case No. LA 2725-1

9

10 SPACEMAKER SYSTEMS OF MARYLAND, INC., t/a  
11 RICHMOND CLARKLIFT COMPANY

12

13

14

15

16 Complete transcript of the testimony and other  
17 incidents in the above, when heard on June 10, 1996  
18 before the Honorable Theodore J. Markow, Judge.

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24 CAPITOL REPORTING, INC.

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APPEARANCES:

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Plaintiff

THOMPSON SMITHERS NEWMAN & WADE

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By: Harry Leigh Thompson, Counsel for the defendant



1  
2                   NOTE: At the conclusion of the  
3 evidence, the following motion is made out of the  
4 presence of the jury:  
5

6                   MR. THOMPSON: The burden is on the  
7 plaintiff, Your Honor, to prove that the  
8 defendant Clarklift in some way was negligent and  
9 that negligence caused the injury to Hope  
10 Griffin. Substantially this means that the  
11 plaintiff has the burden of proving the machine  
12 was in some sort of unsafe condition at the time  
13 that it left the hands of Clarklift.

14                   We know that it left the hands of  
15 Clarklift at the end of March, that it was put  
16 into use, that there were no calls or complaints  
17 about the machine for six and a half to seven  
18 months, that during that time it was wholly  
19 within the possession and control of a nonparty  
20 to this litigation who was Stanley.

21                   Stanley was the owner, Stanley had the  
22 obligation of maintaining the machine, and the  
23 evidence here is that at the time of the accident  
24 the machine was in poor, exceedingly poor  
25 condition, had several things wrong with it which

1           were wear items and which were matters of  
2           adjustment and maintenance and that the machine  
3           had not been maintained during the time.

4                       There is no proof before the Court that  
5           anything happened at Clarklift which caused this  
6           accident. There's been no causal relationship  
7           established and there's been no negligence on the  
8           part of Clarklift established.

9                       The Court correctly sustained my  
10          objection when the plaintiff through two experts  
11          sought to establish that the conditions that were  
12          observed in 1996 when the various inspections at  
13          Stanley, they sought to say that those, in their  
14          opinion, that this condition or the conditions  
15          they then found in 1996 existed for a period  
16          which would take it back to the period when it  
17          was at Clarklift, and the Court wisely excluded  
18          that evidence, and that was as close as the  
19          plaintiff's case came to proving any negligence  
20          or any causation.

21                      So I think, Your Honor, that the state  
22          of the evidence right now is that what has been  
23          proved is that there were maintenance items at  
24          the end of six months, adjustment items, items  
25          that were unsafe at that time and that's all

1           that's been proved, and that the cause of the  
2           accident is perfectly clear and has been proven  
3           by the plaintiff to be a lack of maintenance of  
4           the machine, but even, whether that has been  
5           proved or not, it is up to the plaintiff to come  
6           forth with evidence which incriminates the  
7           defendant as a cause and also to show that the  
8           defendant was negligent.

9           THE COURT: All right, sir.

10          MR. THOMPSON: That hasn't been proven.

11          THE COURT: Mr. Snasil?

12          MR. SNESIL: The reason the Court  
13          sustained the objection, the opinion of experts  
14          concerning amount of wear in the hose, amount of  
15          wear in the brake linkage is because the Court  
16          commented wasn't the jury entitled to infer from  
17          the evidence those defects were present only 101  
18          service hours before or words to that effect.

19                 There is a long long line of Virginia  
20          cases that competent circumstantial evidence of  
21          what the condition of the devices or what a  
22          condition is at one moment which can prove that  
23          it was like that in some time in the past.  
24          Norfolk and Western Railroad Company versus  
25          Crisman, Hall versus Hockaday, Hagan versus

1 Hicks, all of those cases stand for the  
2 proposition that competent circumstantial  
3 evidence that was admitted, the jury is entitled  
4 to look at those photographs, to think about what  
5 they saw in those videos, and decide for  
6 themselves whether that brake mechanism could  
7 have been so worn out in 101 hours of service to  
8 decide for themselves whether that hose possibly  
9 could have had that amount of wear in it with  
10 only 101 hours of use.

11 I would cite the Court to the Norfolk  
12 Western versus Crisman in particular already  
13 which was the case where the Court said it was  
14 competent evidence and sufficient to support a  
15 verdict where after an accident or after an  
16 incident a rusty, the fact that a rail car had  
17 rusted doors and a rusted hinge system, that was  
18 evidence that it was in that condition at the  
19 time that caused this event.

20 So this is the same thing here, it was  
21 returned to Stanley with hidden defects covered  
22 up by panels that Stanley couldn't possibly have  
23 found out having trusted Richmond Clarklift with  
24 the condition.

25 THE COURT: Let me ask you this, Mr.

1           Snesil. I'm not, I guess years ago I read  
2           Crisman, and I don't remember the details, but I  
3           assume the facts as you stated them, when you  
4           have a rust situation, rust is something that I  
5           guess is within the ordinary understanding of  
6           people, that is if you have got a piece of steel  
7           that is exposed to moisture, it will rust, and  
8           then we have some idea, we don't know exactly how  
9           long it takes, but ordinary people have a  
10          knowledge and appreciation of rust and its  
11          property, how long it takes and that type of  
12          thing.

13                       What my problem here is this: A hose  
14          wearing because of something rubbing against it  
15          has, there are several factors that go into how  
16          long that will take to wear down to what we are  
17          talking about. One is the properties of the  
18          metal, that is whether it's hard, soft metal, the  
19          shape of the metal, the composition of the  
20          rubber, what kind of rubber is it, how hard is  
21          it, how soft is it. And I think frankly by  
22          looking at what we have had here, this jury could  
23          probably draw some conclusions based on those  
24          things.

25                       The one factor that nobody has talked

1           about and I don't think could talk about that is  
2           equally critical to that analysis is the pressure  
3           or the, I guess pressure, how hard is this hose  
4           rubbing up against that pedal? Well, that's one.  
5           And then finally is how many times does it have  
6           to move and how many times do you move it say in  
7           a day or hour or whatever. You only have 101  
8           hours.

9                       But do people, as an automobile in  
10           traffic, a taxi cab driver obviously uses his  
11           accelerator a whole lot more than a long distance  
12           truck driver just because one of them keeps a  
13           steady speed, one of them is moving and changing  
14           speed all the time, those two factors, I don't  
15           think anybody could ever talk to, could they?  
16           That would be nothing more than speculation.  
17           Both of them are critical to determine how  
18           quickly this thing would wear, wouldn't they?

19                      MR. SNESIL: It can't be quantified  
20           numerically.

21                      THE COURT: I understand that but I'm  
22           talking about even guessing, a reasonable guess.

23                      MR. SNESIL: Your Honor, I did offer  
24           expert opinion on that which the Court rejected.

25                      THE COURT: I don't think they can do

1           that because neither one of them had any earthly  
2           idea, and in this case it is absolutely  
3           impossible to, from what I have seen, to  
4           determine how hard that hose would move and press  
5           up against the accelerator rod at any particular  
6           time. You can't tell that.

7                   MR. SNESIL: If Your Honor please, the  
8           videos that were shown showed that accelerator  
9           moving, show the hoses --

10                   THE COURT: We know how that moves but  
11           don't know how hard it would move up against it.  
12           Wouldn't you agree with me this, you can take the  
13           accelerator rod and push that hose up against it  
14           with enough pressure that you could probably make  
15           a gouge of this, that looked like this of, with  
16           two or three strokes of the accelerator, two or  
17           three if you pushed hard enough, right?

18                   MR. SNESIL: I can't agree to that  
19           proposition.

20                   THE COURT: Of course it would. And the  
21           converse, if the hose were just barely touching  
22           such that there would be no more than maybe a  
23           micron of the hose width touching the rod, you  
24           wouldn't get this kind of wear, right?

25                   MR. SNESIL: If Your Honor please, the

1 jury saw a video which showed that hose rubbing  
2 as the accelerator moved.

3 THE COURT: Are you telling me the  
4 factor of how hard the hose is pushed up against  
5 the rod is irrelevant?

6 MR. SNESIL: No, sir, I can't say it  
7 isn't relevant but I'm saying the jury can judge  
8 that.

9 THE COURT: How can they judge that?  
10 They must have some powers I don't have because I  
11 looked at it, I don't see any. How hard, could  
12 you tell how hard it was pushed up against the  
13 rod? You could tell they touched it and the rod  
14 moved against it, but doesn't the pressure  
15 between those two, isn't that a critical fact,  
16 not just a fact but a critical fact?

17 MR. SNESIL: It's one factor, Your  
18 Honor, but the jury has heard how this  
19 accelerator operates, they see how the hoses are  
20 flexible, and the film demonstrates for them how  
21 they went back and forth. They can judge  
22 bringing their common sense to this and the video  
23 which they saw approximately how hard that hose  
24 was rubbing, how often perhaps it rubbed judging  
25 from what they heard. They heard that hose



1 connected to moving machinery that would be  
2 moving around. They saw all the mechanical  
3 motions, and from that they should be able to  
4 form a judgment using their common sense as to  
5 how long approximately this thing took to wear,  
6 at least whether or not it was in substantially  
7 the same condition only 101 hours of use before.

8 THE COURT: All right. I'm going to--

9 MR. SNESIL: Your Honor, also the brake  
10 mechanism--

11 THE COURT: I'm sorry, the brake.

12 MR. SNESIL: The brake, brake shaft, we  
13 all saw the video of when the brake shaft was  
14 wobbling all around, two parts wobbling  
15 independent of each other. Again it had a broken  
16 belt holding it together and it had been adjusted  
17 by a bolt which couldn't slip such that it had to  
18 have been out of adjustment the last time it was  
19 in the mechanic shop. There's been testimony  
20 nobody touched that, nobody did any service on it  
21 in 101 hours at Stanley.

22 Mr. Owens testified the thing was  
23 adjusted so it couldn't possibly work. The only  
24 inference the jury can draw from that is it left  
25 the hands of Richmond Clarklift in that

1 condition. I think that's the only reasonable  
2 deduction.

3 THE COURT: Isn't that consistent with  
4 the fact it worked and operated for 101 hours,  
5 moved, stopped, brakes worked?

6 MR. SNESIL: Half of the brakes worked.  
7 Half of the brake, the hydraulic portion, the  
8 part that stops the wheels like in your car, that  
9 worked. What could not possibly have worked was  
10 the electric cutoff switch. That brake pedal is  
11 suppose to cut the power to the electric motor  
12 which makes the forklift go that Mr. Owen  
13 testified to could not possibly have worked  
14 because it was adjusted such that it, the arm on  
15 that shaft just couldn't reach the electric  
16 switch to cut it off, so that couldn't possibly  
17 have worked, and the only inference one can draw  
18 is it left Richmond Clarklift's hands in that  
19 condition.

20 THE COURT: Carry that forward, was that  
21 the cause of this lady's injury or was the  
22 accelerator sticking or both?

23 MR. SNESIL: Both, Your Honor. Not only  
24 that there's been testimony she hit the brakes,  
25 kept, the driver kept driving into her. That's

1           been verified by Mr. Lewis. He found the torn up  
2           mat and so forth, marks on the floor. She  
3           stepped on the brake, it still wouldn't stop it,  
4           kept driving this vehicle, this forklift into  
5           her.

6                   THE COURT: Let me see the instruction,  
7           I'm sorry, not instructions, exhibits.

8                   MR. THOMPSON: What?

9                   THE COURT: Exhibits.

10                  MR. SNESIL: If Your Honor pleases, if I  
11           could suggest that the jury should be allowed to  
12           rule in this situation, and Mr. Thompson can  
13           renew his motion if necessary at this time if  
14           it's giving the Court this much concern.

15                  THE COURT: Counsel, I'm going to  
16           sustain the motion. I do this with great  
17           reluctant but I do not feel the evidence is  
18           adequate to go forward. I seldom do that, but in  
19           this case I think that there would be at most  
20           rank speculation to figure out how long, whether  
21           these conditions existed and whether in fact  
22           Clark breached its contract with Stanley which is  
23           really the question, did they do more or less  
24           than what they were suppose to do, and I don't  
25           think they did, so I'm going to sustain the

1 motion and I'm going to strike the evidence.

2 MR. SNESIL: Please note my objection.

3 THE COURT: Of course. Thank you.

4 Bring the jury in and let's discharge them,  
5 please.

6 MR. THOMPSON: Does the motion stand as  
7 it stands now?

8 THE COURT: Do what?

9 MR. THOMPSON: Have you actually  
10 sustained it?

11 THE COURT: Yes.

12

13 NOTE: The motion is concluded and the  
14 jury is brought back into the courtroom.

15

16

17

18

19 ---Conclusion---

20

21

22

23

24

25

**VIRGINIA:**

*In the Circuit Court of the City of Richmond, John Marshall Courts Building*

HOPE GRIFFIN

Plaintiff

v.

LA 2725

THE SPACE MAKER GROUP, INC.  
t/a RICHMOND CLARKLIFT COMPANY

Defendant

O R D E R

On June 11, 1996, again came the parties, in person and by counsel, and also the jury pursuant to its adjournment of yesterday.

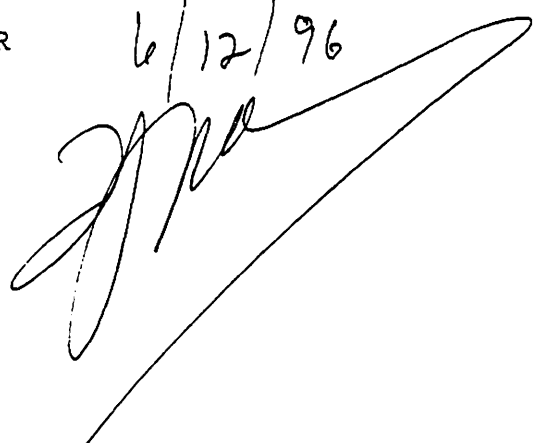
The remainder of the evidence of the plaintiff was presented, and at the conclusion thereof counsel for the defendant moved to strike the evidence of the plaintiff on grounds stated in the record, which motion was sustained, and to which action of the court counsel for the plaintiff objected.

There being no issue of fact to submit to a jury, the court did discharge the jury from further consideration of the case.

It is, therefore, **ORDERED** that the plaintiff shall take nothing and that judgment be entered in favor of the defendant.

Copies of this order were this day mailed to counsel of record.

ENTER

6/12/96  


### **Assignments of Error**

1. The trial court erred in sustaining Clarklift's motion to strike Griffin's evidence at the conclusion of her case and entering judgment for Clarklift.

2. The trial court erred in holding Griffin failed to introduce evidence of negligence and proximate cause sufficient to overcome a motion to strike.

3. The trial court erred in excluding the opinion of Owen that the abrasion caused by the rubbing of the tilt cylinder hose on the accelerator linkage occurred over the course of several years and was present and visible during the reconditioning at Clarklift.

4. The trial court erred in excluding the opinion testimony of Owen that the problems which caused the foot-brake-operated electric cutoff switch to fail--the wear to the shafts, the broken bolt, and the misadjusted brake rod--were present during the reconditioning at Clarklift.

5. The trial court erred in excluding the opinion of Owen that the seat-activated electric cutoff switch was not functioning during the reconditioning at Clarklift.

6. The trial court erred in excluding the opinion of Crim that the abrasion caused by the rubbing of the tilt cylinder hose on the accelerator linkage occurred over the course of several years and was present and visible during the reconditioning at Clarklift.

7. The trial court erred in refusing to allow the impeachment of LeMaskin with a prior inconsistent statement.

PURCHASE ORDER  
STANLEY HARDWARE DIVISION

NEW BRITAIN, CT 06050

ISSUE DATE  
02/1 93

CHANGE DATE

PAGE

REV. #

FREIGHT CODE MESSAGE  
FOB DELIVERED

REFER TO NARRATIVE  
400 BILL SUKEL

BUYER'S NAME AND TELEPHONE  
TQM WRIGHT  
804-222-1833, EXT. 271

NO. 06661 81

MOND CLARK LIFT CO.  
COMMERCE ROAD  
MOND, VA 22331

LEY HARDWARE DIVISION  
MYRTLE STREET  
BRITAIN, CONN. 06053

STANLEY HARDWARE DIVISION  
P.O. BOX 1308 (H)  
NEW BRITAIN, CONN. 06050

SSAGE

STATE TAX 4.5%

STANLEY HARDWARE-RICHMOND PLAN  
5700 SOUTH LABURNUM AVE.  
RICHMOND, VA. 23231

TRUCK NET 30 DAYS RICHMOND VA

QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
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CONFIRMING ORDER - DO NOT DUPLICATE

RICHMOND CLARK LIFT COMPANY  
3203 COMMERCE ROAD  
RICHMOND, VIRGINIA 23234  
804 233 0862  
ATTN: DEVON NEASE

LOT SEE DESCRIPTION BELOW \$2500.00000 \$10000.00  
OUTSIDE SERVICES-MAINTENANCE  
APPROXIMATELY 2500.00 DOLLARS PER UNIT  
WITH A APPROVED VARIANCE OF 15% TO  
RECONDITION FORK TRUCKS TO A LEVEL OF  
DEPENDABILITY. THIS DOES NOT INCLUDE  
THE COST OF NEW BATTERIES IF NEEDED.  
THE WORK IS TO INCLUDE ALL PARTS AND  
LABOR TO COMPLETE THE WORK.  
ANY CHARGES THAT EXCEED THE 15% VARIANCE  
IS TO BE SUBMITTED FOR APPROVAL PRIOR TO  
COMPLETION OF THE JOB.

REQUIRED DELIVERY DATE: 03/01/93

ACCT: 030130 5119 84310 220

REQUISITION/LINE: 51190 0211 88781 70001

REQUESTOR: 400 BILL SUKEL

CONTINUED ON NEXT PAGE

ACKNOWLEDGE THIS ORDER AND ADVISE SHIPPING DATE AT ONCE,  
OTHERWISE NOTED. ORDER MUST BE SHIPPED COMPLETE - NO PARTIALS  
WITHOUT OUR REQUEST AND/OR PERMISSION.

244

01/12/1996 16:25 8042220955

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SUPREME COURT OF VIRGINIA



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CLERK'S OFFICE OF THE  
SUPREME COURT OF VIRGINIA

# The SpaceMaker Group, Inc.

RICHMOND CLARKLIFT CO. POST OFFICE BOX 24388 RICHMOND, VIRGINIA 23224

PHONE 804-233-5456 FAX 804-230-0862

MARYLAND CLARKLIFT CO. 3310 CHILDS STREET BALTIMORE, MARYLAND 21226

PHONE 410-355-1000 FAX 410-355-6046

November 8, 1993

Mr. Darryl Lewis  
The Stanley Works  
Stanley Hardware Facility-Richmond Plant  
5700 South Laburnum Avenue  
Richmond, Virginia 23231

RE: INSPECTION OF CLARK LIFT TRUCK  
MODEL TW-25 S/N TW25-145-2067

Dear Mr. Lewis:

We have inspected the above lift truck which was involved in an accident at your facility on November 1, 1993. The following repairs should be performed prior to putting this truck back in service:

- 1) Replace worn tilt cylinder hose and secure to the frame of the lift truck to prevent the hoses from rubbing on the accelerator linkage.
- 2) Adjust seat-activated parking brake linkage.
- 3) Adjust seat switch assembly so that switch is activated by seat brake cam.
- 4) Lubricate truck.
- 5) Make necessary adjustments to lift chains.

Parts & labor to perform the above repairs will be approximately \$435.00.



**CLARK**

This estimate does not include tax, freight or transportation. A variance of 15% parts and labor may apply after disassembly of components. If required work exceeds the variance, you will be notified prior to our performing such work.

Very truly yours,

RICHMOND CLARKLIFT CO.



Peter Muller  
Service Manager

PM/plp

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CLERK'S OFFICE OF THE  
SUPREME COURT OF VIRGINIA

PHONE 1-800-745-1-5-1067  
METER 2233

40# 163048

WESLEY HARDWARE

CUST# 2232-001

93/03/26	229856	5.00
93/03/26	1318851	5.00
93/04/02	1308074	5.75
93/04/08	48X310LD	26.07
93/04/13	343967	3.00

TOTAL FREIGHT 55.82

WESLEY	SUPPLIER	P.O. NO.	SELL	COST
1229 BROWDER, WESLEY		61986	262.50	175.00
		SUBJECT CHARGES	262.50	

FOR	TICKET CD	REG	O.T.
93/03/09 F CHAVIS	450952 01	.60	
93/03/09 F CHAVIS	450953 01	3.40	
93/03/11 F EVANS, JR.	450622 01	1.50	
93/03/10 F EVANS, JR.	455994 01	2.20	
93/04/06 F BATES, JR.	479602 01	1.50	
93/04/12 F BATES, JR.	479963 01	1.70	
93/04/12 F BATES, JR.	479964 01	3.30	
93/03/24 J GALLAGHER	462294 01	1.80	
93/03/29 J GALLAGHER	462602 01	2.00	
93/03/30 J GALLAGHER	462791 01	.80	
93/04/01 J GALLAGHER	479202 01	.60	
93/04/02 J GALLAGHER	479303 01	.20	
93/04/05 J GALLAGHER	479411 01	1.20	
93/04/05 J GALLAGHER	479412 01	1.60	
93/04/06 J GALLAGHER	479643 01	2.70	
93/04/08 D BARNHOUSE	479793 01	.30	
93/04/08 D BARNHOUSE	479796 01	.50	
TOTAL REGULAR	25.60	1,229.80	277.28
TOTAL OVERTIME	.00	.00	

MECH SUPPLS(7% OF PARTS) \$ 25.00

TOTAL AT STANDARD PRICES \$ 2,852.01

EPA WASTE DISPOSAL CODE (1-9, A-E OR BLANK) 2

DESCRIPTION OF WORK \*TO BE SHOWN ON INVOICE\* G P 1,579.56 57.00%

*We will be  
per Richard*

*Ro*



Stanley Hardware

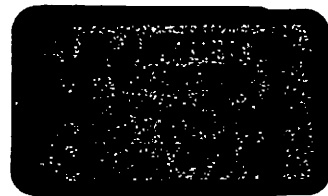
replace belt system  
Tie Hoes to frame

regr. Flat Brake

Adapt. Flat Brake

No Parts Necessary Just Needed Adjustment

Cam Doesn't Appear To Be The Same As  
The Print. But Cost 10¢



# SpaceMaker Group, Inc.

## DIVISION OFFICES

RICHMOND CLARKLIFT CO. P.O. BOX 24388 RICHMOND, VA 23224 (804) 233-8488	MARYLAND CLARKLIFT CO. 3310 CHILDS ST. BALTIMORE, MD 21228 (410) 368-1000
SPACE MAKER SYSTEMS CO. P.O. BOX 24388 RICHMOND, VA 23224 (804) 233-8488	SPACE MAKER SYSTEMS CO. 3310 CHILDS ST. BALTIMORE, MD 21228 (410) 368-1000

S  
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STANLEY HARDWARE-RICHMOND PLT  
5700 S. LABURNAM AVE

RICHMOND

VIRGINIA

STANLEY HARDWARE DIVISION  
195 LAKE STREET  
P.O. BOX 1308  
NEW BRITAIN CONN 06050

2232-001

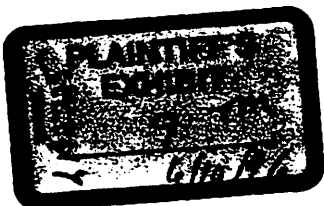
INVOICE DATE	INVOICE NUMBER	PAGE
4/30/93	153992S	

OUR SALES LOCATION RICHMOND CLARKLIFT  
TERMS → NET 10 DAYS NO CASH DISCOUNT

REMIT TO: P.O. BOX 24388  
RICHMOND, VA. 23224-0388

MACHINE SERIAL NO	YOUR ORDER NO.	SHIPPED VIA	DATE OF SALE	OUR ORDER NO.	VENDOR NO.
15-145-2067	02235	CUN98781	4/12/93	W163048	

DESCRIPTION	QUAN.	UNIT PRICE	AMOUNT
REPAIRS PER OUR WORKORDER NUMBER-W163048			
PT2 343937 BRG-BALL	1	73.27	73.27
893802 BRUSH S	2	22.51	45.02
888856 TIP KIT	6	12.29	73.74
909619 SEAL KIT	2	12.67	25.34
913610 BRACKET	1	29.25	29.25
913641 B/U ALAR	1	92.82	92.82
1308074 NUT	5	.51	2.55
1803251 SEAT	1	65.18	65.18
1803253 SILICONE	1	5.46	5.46
1810673 BRUSH K	2	42.88	85.76
2318851 HAND KN9	3	33.68	101.04
2345332 KEYSWITC	1	8.75	8.75
2348904 DECAL	4	4.64	18.56
2349361 DECAL	1	2.61	2.61
2349998 DECAL	1	1.33	1.33
2387649 DECAL	1	1.77	1.77



Seller represents that with respect to the production of the articles and/or the performance of the services covered by this invoice it has fully complied with Section 12(A) of the Fair Labor Standards Act of 1938 as amended.

PARTS ORDERED BUT NOT BILLED ON THIS INVOICE WERE SHIPPED OR BACK-ORDERED AS SHOWN ON OUR SHIPPING ORDER "PACKING SLIP."

253

TOTAL  
AMOUNT



# The Space Maker Group, Inc.

## DIVISION OFFICES

RICHMOND CLARKLIFT CO. P.O. BOX 24388 RICHMOND, VA 23224 (804) 233-8488	MARYLAND CLARKLIFT CO. 3310 CHILDS ST. BALTIMORE, MD 21226 (410) 388-1000
SPACE MAKER SYSTEMS CO. P.O. BOX 24388 RICHMOND, VA 23224 (804) 233-8488	SPACE MAKER SYSTEMS CO. 3310 CHILDS ST. BALTIMORE, MD 21226 (410) 388-1000

SHIP TO

STANLEY HARDWARE-RICHMOND PLT  
5700 S. LABURNAM AVE

RICHMOND

VIRGINIA

STANLEY HARDWARE DIVISION  
195 LAKE STREET  
P.O. BOX 1308  
NEW BRITAIN CONN 06050

2232-001

4/30/93

1539925

PAGE

OUR SALES LOCATION RICHMOND CLARKLIFT  
TERMS → NET 10 DAYS NO CASH DISCOUNT

REMIT TO: P.O. BOX 24388  
RICHMOND, VA. 23224-0388

MACHINE SERIAL NO.	YOUR ORDER NO.	SHIPPED VIA	DATE OF SALE	OUR ORDER NO.	VENDOR NO.
5-145-2067	02265 CUN88781		4/12/93	W163048	

DESCRIPTION	QUAN.	UNIT PRICE	AMOUNT
2394430 SWITCH	1	13.09	13.09
2771995 STROBLIT	1	72.43	72.43
96000406 SCREW	5	.95	4.75
GP308 1" TAPE	1	5.10	5.10
GP315 2" TAPE	2	9.99	19.98
GP6300 CRC 5-56	1	4.07	4.07
GP726123 WIRE TIE	6	.29	1.74
GP730400 16 G WIR	2	4.29	8.58
GP737101 1/4 W/LO	12	.30	3.60
GP7806 FLAT BLA	3	5.79	17.37
GP9098 PRIMER-G	1	56.62	56.62
GP90T4481 QT FL BL	2	17.70	35.40
JM6X24WALK SAFETY W	2	6.33	12.66
L48X31OLD LBR	1	152.38	152.38
SICLSTD-CONT DECAL	1	1.46	1.46
61530-6034 PAINT	1	67.43	67.43
1851218AM TIRE	2	85.39	170.78
			262.50

TOTAL PARTS

1,542.39

SALES TAX 4.50%

25.00

OMING FREIGHT

70.53

E PRESS CHARGE

55.82

WASTE DISPOSAL CHARGE

30.00

LABOR

2.00

1,228.80

Seller represents that with respect to the production of the articles and/or the performance of the services covered by this invoice it has fully complied with Section 12(A) of the Fair Labor Standards Act of 1938 as amended.

PARTS ORDERED BUT NOT BILLED ON THIS INVOICE WERE SHIPPED OR  
BACK-ORDERED AS SHOWN ON OUR SHIPPING ORDER "PACKING SLIP."

2,954.54

TOTAL  
AMOUNT

PRESIDENT  
RICHMOND CLARKLIFT CO.

INITIAL INSPECTION 11/3/93  
CLARK TW-25-TW25-145-2067

WE PICKED UP THE TRUCK FROM STANLEY HARDWARE AND BROUGHT IT TO THE SHOP FOR INSPECTION.

WE FOUND THAT THE PIN THAT HELD THE ACCELERATOR RETURN SPRING HAD RUBBED ON THE TILT CYLINDER HOSE. HOSE WAS WORN THROUGH TO WIRE BRAIDING. TWO TILT CYLINDER HOSES AND ONE LIFT CYLINDER HOSE WERE TIED TOGETHER WITH A RUBBER STRAP BUT NOT SECURED TO THE FRAME. IT APPEARS THAT THE PIN BECAME CAUGHT UNDER THE TILT CYLINDER HOSE CAUSING THE TRUCK TO MAINTAIN SPEED.

WE CHECK THE DEAD MAN SEAT SWITCH. SWITCH OPERATES PROPERLY BUT ARM ON SWITCH DOES NOT ACTUATE PROPERLY AGAINST SEAT BRAKE CAM. HAVE NOT BEEN ABLE TO DETERMINE CAUSE OF PROBLEM. SWITCH AND BRACKET APPEAR TO BE THE CORRECT PARTS, IE, SAME PART NUMBERS AS THE TRUCK LINE CARD CALLS FOR.

PARKING BRAKE NOT ADJUSTED - DOES NOT HOLD TRUCK WHEN ACTUATED.

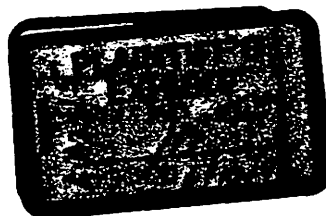
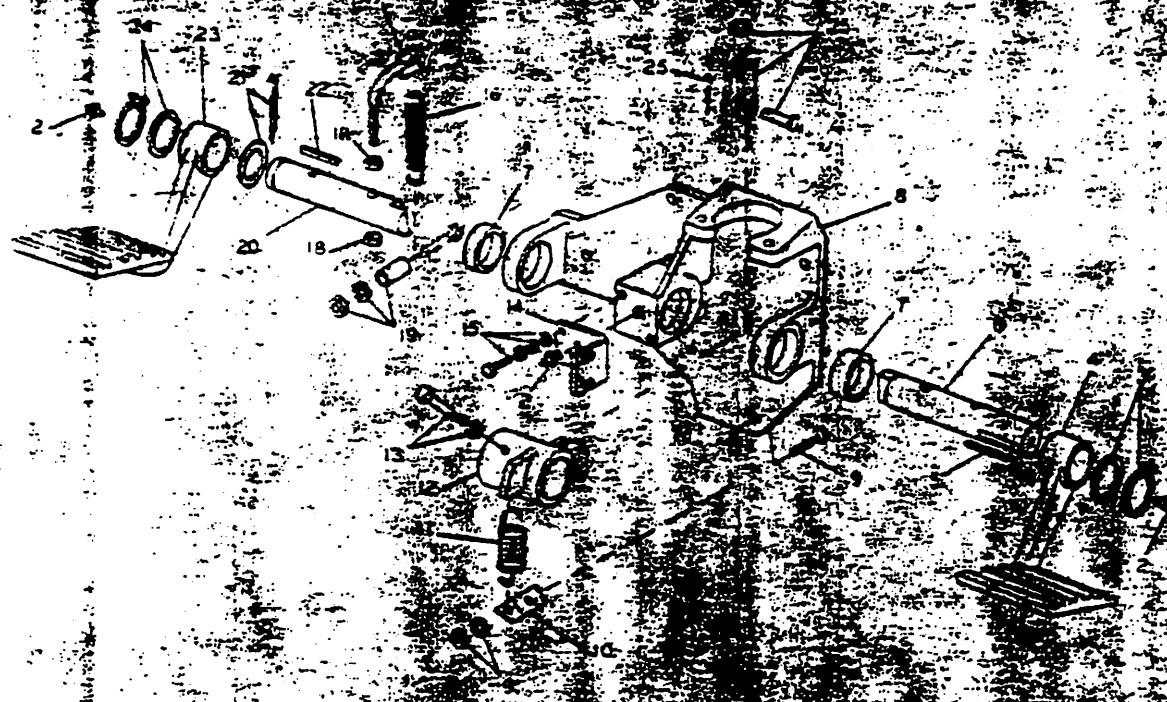


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SUPREME COURT OF VIRGINIA

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SUPREME COURT OF VIRGINIA



BRAKE PEDAL AND LINKAGE

1	FASTENING, LUB. BRAKE PEDAL SHAFT	23:102	14	BRACKET, BRAKE INTERLOCK SWITCH KIT	13:703
2	FASTENER, BRAKE PEDAL	23:145	15	FASTENER, BRAKE INTERLOCK SWITCH BRKT	13:146
3	PEDAL, BRAKE	23:100	16	SPRING, INCHING PEDAL RETURN	23:668
4	KEY, BRAKE PEDAL	23:783	17	ANCHOR, INCHING PEDAL RETURN SPRING	23:782
5	SHAFT, BRAKE PEDAL	23:104	18	FASTENER, INCHING PEDAL RET. SPR. ANCHOR	23:782
6			19		
7	GEARING, BRAKE PEDAL SHAFT	23:784	20	ANCHOR, INCHING PEDAL RET. SPRING	23:559
8	BRACKET, BRAKE PEDAL PIVOT	23:534	21	SHAFT, INCHING PEDAL	23:661
9	FASTENER, BRAKE PEDAL PIVOT BRKT	23:435	22	RETAINER, INCHING PEDAL SHAFT	23:928
10	ANCHOR, BRAKE PEDAL RETURN SPRING	23:176	23	KEY, INCHING BRAKE PEDAL	23:783
11	SPRING, BRAKE PEDAL RETURN	23:136	24	PEDAL, INCHING	23:333
12			25		
13	ARM, BRAKE LEVER	13:107	26	FASTENER, INCHING BRAKE PEDAL	23:786
14	FASTENER, BRAKE LEVER ARM	23:109	27	FASTENER, BRAKE PEDAL TO CYL. PUSH ROD	23:116

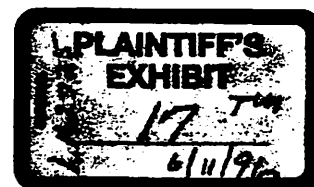
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SUPREME COURT OF VIRGINIA

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SUPREME COURT OF VIRGINIA



# **HOPE GRIFFIN** **LIST OF MEDICAL BILLS**

Modern Medical, Inc. (6/3/94 to 10/27/94)	\$527.70
West Home Health Care (11/4/93)	\$65.00
Virginia Home Medical (11/12/93 to 12/12/93)	\$155.00
JES Transportation 12/2/93 to 12/2/94	\$660.00
MCV Associated Physicians (11/1/93 to 11/10/94)	\$4,892.00
Healthsouth Rehab of Richmond (10/18/94 to 11/29/94)	\$1,105.00
MCV Hospital (11/1/93)	\$13,549.25
MCV Hospital (8/11/94)	\$140.00
MCV Hospital (11/11/93)	\$130.00
Richmond Ambulance Authority 11/4/93, 11/11/93	\$1,334.45
Williamsburg Community Hospital (11/8/93 to 12/3/93)	<u>\$1,206.00</u>
<u>Total</u>	<u>\$23,764.40</u>



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SUPREME COURT OF VIRGINIA