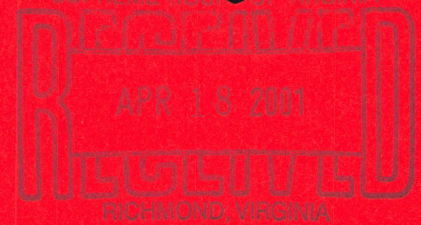


262VA641

In The
Supreme Court of Virginia

RECORD NO. 002735



ROBERT BOSLEY
and
W.B. MEREDITH, II, INC.,

Appellants,

v.

MICHAEL A. SHEPHERD,

Appellee.

APPENDIX – VOLUME IV OF V

Fay F. Spence
ROBEY, SPENCE & DRASH
999 Waterside Drive
Suite 1630
Norfolk, Virginia 23510
(757) 624-9673 - Telephone
(757) 624-9725 - Facsimile

Counsel for Appellants

Blair E. Smircina
Richard F. Aufenger
KALFUS & NACHMAN, P.C.
870 North Military Highway
Suite 300
Norfolk, Virginia 23541
(757) 461-4900 - Telephone
(757) 461-1518 - Facsimile

Counsel for Appellee

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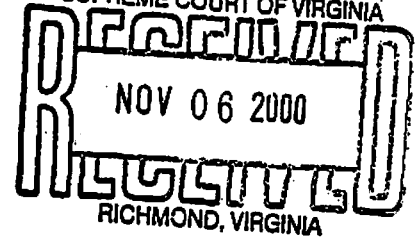
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CERTIFIED ORIGINAL

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

CLERK
SUPREME COURT OF VIRGINIA



MICHAEL A. SHEPHERD,

Plaintiff,

v.

W. B. MEREDITH, II, INC.,

et al.,

Defendants.

LAW NO.

CL98-2952

TRANSCRIPT OF PROCEEDINGS

Virginia Beach, Virginia

July 24, 2000

DAY 5

Before:

THE HONORABLE A. BONWILL SHOCKLEY, Judge,

and a Jury

TAYLOE ASSOCIATES, INC.

Registered Professional Reporters

FILED

Telephone: (757) 461-1984

SEP 5 2000

Norfolk, Virginia

1 **Appearances:**

2 **On behalf of the Plaintiff:**

3 **BLAIR E. SMIRCINA, ESQUIRE**

4 **RICHARD F. AUFENGER, III, ESQUIRE**

5 **Kalfus & Nachman, P.C.**

6 **870 North Military Highway, Suite 300**

7 **Post Office Box 12889**

8 **Norfolk, Virginia 23541-0889**

9 **(757) 461-4900**

10 **On behalf of W. B. Meredith, II, Inc.:**

11 **FAY F. SPENCE, ESQUIRE**

12 **Robey, Spence & Drash**

13 **Dominion Tower, Suite 1630**

14 **999 Waterside Drive**

15 **Norfolk, Virginia 23510**

16 **(757) 624-9649**

17 **On behalf of Atlantic Welding & Fabrication:**

18 **JOHN S. NORRIS, JR., ESQUIRE**

19 **Norris & St. Clair, P.C.**

20 **440 Viking Drive, Suite 230**

21 **Virginia Beach, Virginia 23452-7308**

22 **(757) 498-7700**

23 **Also Present: Michael Shepherd, Margaret**

24 **Davis, Robert Bosley, and Scott Doverspike**

25

I N D E X

WITNESS

4	ON BEHALF OF ATLANTIC:	Dir.	Cro.	Red.	Rec.
5	W. Eubanks	877	881	--	--
6	S. Doverspike	885	948	989	992
7	P. Godfrey	998	1020	1033	1035
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9	G. Slater (Deposition read)	1078	--	--	--
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11	R. Leland (Voir Dire)	1109	--	--	--
12	R. Leland	1119	1140	1155	--

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21	13	Photograph	941
22	14	Photograph	941
23	15	Photograph	941
24	16	Photograph	1079

* * *

1 that's a particularly good thing for anybody at this
2 point. Having said that, anybody have anything
3 else? We sort of concluded Friday with your
4 presentations to me and sent me home with my
5 computer over the weekend and some research.

6 Mr. Norris?

7 MR. NORRIS: I have a witness issue, but
8 I would like to await the Court's ruling until I
9 bring it up.

10 THE COURT: I thank you for the cases and
11 I assume everybody else had a chance to go through
12 those over the weekend. The main part, and I know
13 each defendant made an argument and I believe
14 several of the defense arguments or the reasons for
15 the defense's request for me to strike the
16 plaintiff's evidence at this point were overlapped.
17 Some of them were unique to Mr. Norris' client as
18 the sub-subcontractor as opposed to arguments made
19 by the general contractor, but I think when I make
20 my comments it will become clear what evidence
21 applied to which.

22 There were several cases cited and I
23 guess one of my first -- one of my first efforts was
24 to read the cases and try to make some sense out of
25 them because at first blush there seemed to be a

1 real difference between Ritter and was it
2 Morrison-Knudsen. The Morrison-Knudsen case talked
3 about the need to establish a duty and I believe
4 that was the one where the Supreme Court made the
5 comment, again, assuming that there was no expert
6 testimony needed they still needed some testimony to
7 establish a standard of care. That was the one with
8 the steps and the landing or the rushing versus the
9 not rushing and the condition of the steps.
10 Basically what they said in that case is we're not
11 going to decide it needed to be expert testimony but
12 somebody needed to talk about what the standard of
13 care was, and just to say it would be better or
14 preferential to have the stairs rougher was not
15 enough to let it go to the jury, that they had
16 established the duty. The plaintiff hadn't
17 established the duty at that point in time.

18 In the Ritter case the Court talks about
19 the general common law duty to guard against a
20 hazardous situation. I think what they accepted in
21 that point was that there was, and that was the case
22 with the equipment across the railroad tracks, that
23 they accepted that there was a standard that there
24 not be a hazardous situation created on a work
25 site.

1 Now, that brings us to the evidence that
2 we have in this case and the evidence comes by way
3 of a couple of things. One is the plaintiff's
4 expert, and the plaintiff's expert in my mind seems
5 to have framed the issue a little bit differently
6 than Mr. Norris would want the Court to frame it.
7 The expert testified about the OSHA regulations and
8 the national standard and that those regulations
9 were adopted in Virginia and that those regulations
10 present a minimum standard in Virginia and go on to
11 say, and I can understand from defense's point of
12 view that they may not agree with this, they may not
13 like it, but nonetheless the expert testified that
14 Atlantic violated the standards by not securing the
15 beam in the area or making notice of that and that
16 they created the hazard and thereby had a duty to --
17 it seems to me this case in regards to both
18 defendants really boils down to a failure to mark or
19 make plain that there's a hazard out there.

20 I don't think anybody testified that that
21 beam had to be secured by any particular method.
22 That wasn't the issue. Basically there was no
23 testimony really from the plaintiff that was
24 persuasive that it was tacked. That's not the
25 issue. I think that the plaintiff's evidence at

1 best shows that it wasn't tacked. If it wasn't
2 tacked it needed to be marked, and that's basically
3 what the expert said and the expert said that the
4 general contractor had duties that they couldn't
5 delegate to make sure that it was marked but that
6 the subcontractor, sub-subcontractor as the creator
7 of the hazard, had the duty to make sure it was
8 marked, either do it themselves or tell the general
9 contractor that it should have been marked.

10 With that evidence, and I can go through
11 the testimony of the individual witnesses what
12 Mr. McGowan said, what Mr. Hewitt said. Those
13 really become a question of fact and I would assume
14 when we get into the plaintiff's case there may be
15 more of a question of fact after hearing the defense
16 testimony that was then created in the plaintiff's
17 testimony and the plaintiff's witnesses' testimony.
18 Their testimony was that they were given permission
19 I think to remove the cables and that they pointed
20 out where they were going to remove the cables.

21 So I think all of that and as we all know
22 in the light most favorable to the plaintiff at this
23 point in time gets the plaintiff past a motion to
24 strike as to either one of the defendants. The
25 other arguments that were made regarding the

1 contributory negligence and whether there was
2 contributory negligence as a matter of law, again,
3 at this stage of the proceedings I don't believe
4 there is sufficient evidence of contributory
5 negligence to create a jury issue. There isn't for
6 me to rule as a matter of law that there was
7 contributory negligence.

8 The intervening cause is sort of an
9 interesting point at this stage of the proceedings
10 because it's really the defendants' burden to prove
11 that there was a superseding intervening cause. I'm
12 not saying they can't do it with the plaintiff's
13 evidence. I guess since they have the burden, you
14 look at it in the light most favorable to the
15 defendants in this instance and at best -- the
16 definition and in looking through the cases of the
17 superseding intervening cause is that there is
18 evidence that the -- let me get my quote. There is
19 a long line of cases and I wrote down a couple of
20 cites, but the superseding cause must so entirely
21 supersede the operation that it would happen without
22 any contributory negligence on the part of in this
23 case the plaintiff, and I guess that came out of 235
24 Va. 380, citing 231 Va. 124. One of them is
25 Blankenship Oil.

1 I doubt that there is much argument about
2 what the definition is. Superseding cause must
3 entirely supersede defendant's negligence. It alone
4 produces the injury, and I think at best at this
5 stage of the proceeding there is testimony that the
6 plaintiff might have been looking off in another
7 direction and that alone could have caused the
8 accident. I don't think they have a superseding
9 cause. At best he contributed. Once he contributes
10 the way I'm reading the cases is that that's not
11 enough for a superseding intervening cause. It's
12 got to be but for that cause it couldn't, wouldn't
13 have happened. I don't think at this stage that's
14 what the evidence at best for the defense shows.

15 So for all of those reasons, I'm not
16 making any rulings as a matter of law at this point
17 in time and the case is going to go on if the
18 defense is ready. Mr. Norris -- I'll note
19 everybody's objections to that for all the reasons
20 that everybody already said on the record.

21 MS. SPENCE: Thank you, Your Honor.

22 MR. NORRIS: I'm ready to go with one
23 potential problem. One of my witnesses I subpoenaed
24 is Gary Godfrey. He was the foreman on the job. We
25 asked him to be here Friday at 3:00 not knowing

* * *

* * *

Doverspike - Direct

885

1 there were two of us that actually responded, me and
2 Mr. DeHart. I don't know if Mr. DeHart did the
3 report or if I did the report to be honest.

4 Q. You don't have any reason to disagree
5 with what Mr. DeHart put in that report if he did?

6 A. Not at all.

7 MR. AUFENGER: Thank you very much.

8 THE COURT: Any redirect?

9 MR. NORRIS: No, ma'am.

10 THE COURT: Mr. Eubanks is excused?

11 MR. NORRIS: Yes, he is. I would like to
12 call Mr. Doverspike.

13 SCOTT DOVERSPIKE, called as a witness by
14 and on behalf of Atlantic Welding, having been first
15 duly sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. NORRIS:

18 Q. Tell us your name, sir.

19 A. My name is Scott Doverspike.

20 Q. Mr. Doverspike, how are you employed?

21 A. Through Atlantic Welding, president of
22 Atlantic Welding.

23 Q. What's the full name of Atlantic?

24 A. Atlantic Welding & Fabricating.

25 Q. How long have you been the president of

1 that company?

2 A. Over ten years.

3 Q. What does that company do?

4 A. We do exclusive steel erection.

5 Q. For what kinds of structures?

6 A. Structural steel.

7 Q. Commercial or residential or what?

8 A. Strictly commercial. There's a case we
9 may do -- put a beam on a house or something but
10 it's really not that often. So it's strictly
11 commercial.

12 Q. How long have you been in the steel
13 erection business from beginning to end?

14 A. Over ten years.

15 Q. What type of steel erection work have you
16 done?

17 A. We do multistory buildings, office
18 buildings. We do warehouses. We even do what's
19 called a pre-engineered building where the -- it's a
20 lighter type building, but we really don't do
21 anything over like four stories tall. Because of
22 the type of equipment that I do have, it kind of
23 limits me in that aspect.

24 Q. How many buildings do you think you've
25 been involved in the construction of as a steel

1 erector?

2 A. Three hundred.

3 Q. How many of those buildings have involved
4 the use of girts?

5 A. Over 150.

6 Q. Do you have personal experience actually
7 installing steel members including girts?

8 A. Yes, I do.

9 Q. Have you welded? Do you know how to
10 weld?

11 A. Yes, I do.

12 Q. Tell us a little bit about your welding
13 experience.

14 A. I started out in Pittsburgh. That's
15 where I'm from, Pittsburgh. I started out in a
16 vocational program while I was still in high school
17 and incorporated in that vocational program I was
18 going to school half a day and then I would go to
19 like a fabrication shop where I started welding.
20 From there I went to United States Steel which is
21 American Bridge and I went into their welding
22 program and then I went -- I was promoted to a
23 fabricator and then I was involved with assembling
24 of the bridges but it was strictly in the shop at
25 that point.

1 Q. What does a fabricator do?

2 A. He makes all the pieces in the shop. He
3 makes all the pieces in the shop and once they are
4 welded and complete and painted if they do get
5 painted, then they are sent out to the field to be
6 erected.

7 Q. How long did you stay with U.S. Steel?

8 A. I was there about two and a half years
9 and then up in Pittsburgh the union is pretty
10 strong. They have a problem with the union up
11 there.

12 Q. Just tell us how long you were there.

13 A. Over two and a half years.

14 Q. Where did you go next?

15 A. I moved down south. I was offered a job
16 at Vepco Power Plant and I was doing welding at a
17 shutdown.

18 Q. Where was that power plant?

19 A. It's in Chesapeake.

20 Q. The welding I assume involved steel
21 members?

22 A. Yes, it did.

23 Q. What year was that?

24 A. That was right around '82.

25 Q. How long did you stay with Vepco?

1 A. It was just during that shutdown, so it
2 was about a year.

3 Q. What did you do after that?

4 A. I found positions in the shipyard.

5 Q. Doing what?

6 A. Welding.

7 Q. Which shipyard?

8 A. Colonna's Shipyard and Allied Repair.

9 Q. What kind of welding were you doing?

10 A. It was repair. They do a lot of
11 renovations to ships, tugs. Whatever needed done
12 they would assign the work that day.

13 Q. How long did you do that?

14 A. About three years.

15 Q. And then what year is that now?

16 A. We are right into about '84, '85.

17 Q. And what did you do next?

18 A. Then I found a job at Globe Iron
19 Construction.

20 Q. What is Globe Iron Construction?

21 A. Globe Iron is a fabricator. They do
22 similar to what United States Steel did. They
23 fabricate the pieces and get everything ready to go
24 out to the field to be erected.

25 Q. What was your job with Globe?

1 A. I wore a lot of hats there. I first
2 started out as a welder. I was doing nothing but
3 strictly welding. Then I was promoted to a fitter.

4 Q. What is a fitter?

5 A. He takes the steel members. Say you have
6 a beam and then you have to put all the detail work
7 on it, clips, the stuff that is going to connect to
8 it or if you need to weld shear connector plates
9 that will attach to other pieces once you get it
10 re-erected.

11 Q. How long were you a fitter?

12 A. About eight months.

13 Q. What did you do next?

14 A. Then I was promoted to welding
15 superintendent. There was a position for a welding
16 superintendent with my experience and what I did. I
17 had -- I had control over all the welders in that
18 shop. I gave them duties, reviewed their work. I
19 did maintenance on the machines. If there was any
20 problems with their welding, I would mark up their
21 welds, correct them.

22 Q. Would you inspect their work for quality
23 control?

24 A. Yes.

25 Q. Would you inspect their work for

1 compliance with plans and specifications?

2 A. Absolutely.

3 Q. How about safety, did you have any
4 responsibilities in the field of safety?

5 A. Yes, I did. I had to make sure that they
6 have their personal protective equipment on and it
7 was functional.

8 Q. How about safety for other workers, did
9 you have responsibility in that area?

10 A. For --

11 Q. As to one worker toward another?

12 A. No.

13 Q. Making sure one worker's work didn't
14 injure some other worker?

15 A. No, sir.

16 Q. How long were you a superintendent?

17 A. About a year and a half.

18 Q. What did you do next?

19 A. Again, with Globe Iron I was promoted to
20 quality assurance where I reviewed everybody's work,
21 the fitters' work, the welders' work and then I had
22 to take -- I had to certify with American Welding
23 Society.

24 Q. What is American Welders Society?

25 A. American Welding Society sets the codes

1 and standards for welding so they have to have codes
2 and parameters for all the welders to go by so you
3 have a similar product no matter where you are at.

4 Q. And you had to be certified by them.
5 What did that involve?

6 A. It involved taking a test through my work
7 there at Globe Iron and then you had to be
8 knowledgeable of all the books within the industry
9 and then I went out to Richmond and took a written
10 test.

11 Q. Did you pass your test?

12 A. Yes.

13 Q. So you became certified?

14 A. Yes.

15 Q. How long then did you serve as a quality
16 assurance representative?

17 A. A couple of years.

18 Q. What year are we at now?

19 A. We are getting up close to like '89, '90,
20 because at that time I was doing part-time work like
21 steel erection and it was starting to impact my
22 duties at Globe Iron so at that time I had to leave
23 Globe and start just concentrating on my own
24 business. It wasn't fair.

25 Q. So you started your own business which

1 was Atlantic Welding & Fabricating?

2 A. That's correct.

3 Q. Sometime around 1990?

4 A. Right.

5 Q. How big was your business when you
6 started it?

7 A. Small, not that I'm not big now. It was
8 just two to three guys.

9 Q. How much business does your company do
10 today? How many jobs have you-all done in the last
11 year?

12 A. We do close to maybe 50 jobs, 30 jobs.
13 It depends on the size of the jobs because we do
14 schools. Schools are pretty lengthy. We just did
15 two school schools this year at Bowers Hill and
16 Bayside Elementary. Schools last four months and
17 they impact the schedule a lot because of manpower.

18 Q. Do you have experience for doing work for
19 the government?

20 A. Yes.

21 Q. Do you have experience doing work for the
22 Department of the Navy?

23 A. Yes.

24 Q. Tell us about your experience at Atlantic
25 Welding doing work for the Department of the Navy?

1 A. We've done a lot of Navy projects here at
2 Oceana, Dam Neck, Little Creek NOB. We've done work
3 on all their projects and we haven't had any
4 problems.

5 Q. Prior to November of 1996 had you had
6 experience doing work for the Navy?

7 A. Oh, yes.

8 Q. How many jobs prior to November of '96
9 had you done for the Navy?

10 A. Just off the top of my head we probably
11 do 20 jobs a year no matter what Navy facility it's
12 on, but with the Navy.

13 Q. Now, you mentioned some standards that
14 you had to be certified in. Are there other
15 industry standards affecting steelwork that you are
16 familiar with?

17 A. Yes, there is.

18 Q. Tell us about that.

19 A. A code that's incorporated into a lot of
20 the specs that it kind of gives us a standard to go
21 by, it let's us know what the contractor expects of
22 us, is AISC.

23 Q. What is AISC?

24 A. American Institute of Steel Construction.

25 Q. And what are they? What is that?

1 A. It's a book that goes through -- it's
2 pretty lengthy and involved -- it goes through the
3 engineering aspect of it and it gives you
4 calculations on stresses and then it goes into field
5 applications, what's expected of the erector in the
6 field, what's expected of the general contractor.
7 It gives you some parameters -- it lets everybody
8 know what is expected of them. Nobody is pointing
9 the finger, this is your job, that's your job. It
10 lets everybody know where they are at and what they
11 are supposed to do.

12 Q. Have you personally had experience
13 welding on steel girts?

14 A. Yes, I have.

15 Q. Have you personally had experience
16 placing them and aligning them?

17 A. Yes.

18 Q. Have you had personal experience placing
19 a spot or a tack weld on girts?

20 A. Yes.

21 Q. Have you had personal experience doing
22 permanent welds on girts?

23 A. Yes.

24 Q. Are you familiar with the process from
25 start to finish of placing horizontal steel girts

1 within a structure?

2 A. Yes.

3 Q. How much experience have you had with
4 that?

5 A. A lot. I do it -- even today I do it. I
6 just don't ride around in the truck. I do it. Do
7 you want a number, sir?

8 Q. Well, how --

9 A. It's part of my everyday job. I did it
10 Saturday at Norfolk Academy.

11 Q. Are you familiar with reviewing plans and
12 specifications for steelwork?

13 A. Yes, I am. That's part of my job because
14 I estimate and while I'm estimating I have to review
15 the specs to see what's going to be expected of me.

16 Q. Are you familiar with the practice of
17 bidding on jobs?

18 A. Absolutely.

19 Q. And using plans and specifications to bid
20 jobs?

21 A. Yes.

22 Q. Do you have knowledge of the means and
23 methods used by other steel contractors in Virginia
24 generally and Tidewater, Virginia for the erection
25 of steel?

1 A. Yes, I do.

2 Q. How have you acquired that knowledge?

3 A. It's something that's on the drawings and
4 it's a standard practice that we all do.

5 Q. Do you ever observe your competitors
6 erecting steel?

7 A. Yes, I have.

8 Q. Do you ever observe your competitors
9 erecting horizontal steel girts?

10 A. Yes, I have.

11 Q. Are you familiar with the methods
12 utilized as of November 1996 by other steel
13 contractors in Virginia erecting, aligning, placing
14 and welding horizontal steel girts?

15 A. Yes.

16 MR. NORRIS: Your Honor, I would like to
17 offer Mr. Doverspike as an expert in the fields of
18 welding, steel erection, standards in the industry
19 for the placement and setting of horizontal steel
20 girts, industry standards and Naval plans and
21 specifications.

22 MR. SMIRCINA: No questions.

23 MR. AUFENGER: Reserve the right to
24 examine him.

25 THE COURT: To cross-examine him,

1 certainly.

2 BY MR. NORRIS:

3 Q. Mr. Doverspike, what's this?

4 A. Big stack of specs.

5 Q. For what?

6 A. For a Navy project.

7 Q. Which Navy project?

8 A. SOF Building.

9 Q. Is that where Mr. Shepherd got hurt?

10 A. Yes, it is.

11 Q. When did you first see those
12 specifications?

13 A. Prior to bidding the job.

14 Q. How did you acquire knowledge of this
15 job?

16 A. I have customers that approach me,
17 fabricators. They approach me and say, "Here,
18 Scott. We want you to bid on this job. Here's the
19 plans and specs." They give me a scope of work of
20 what I'll be responsible to erect, what I won't
21 erect, what they'll furnish and they also give me
22 weights of the project. Weights are really
23 important for what I use to come up with my price
24 along with what's going to be required of me on the
25 specs.

1 Q. In addition to specifications, what else
2 are you provided in order to prepare your bid for
3 project?

4 A. Plans.

5 Q. Do you recognize what these documents
6 are?

7 A. Yes, they are.

8 Q. What are they?

9 A. Those are SOF drawings.

10 Q. Do they include the drawings for the
11 steelwork?

12 A. Yes, they do.

13 Q. And when you prepared your bid did you
14 review both the plans and the specifications for the
15 job?

16 A. Absolutely.

17 Q. And did the specifications have a
18 specific section for just steelwork?

19 A. Yes.

20 Q. Are you familiar with the drawings and
21 the specifications for the means and methods to
22 erect the steel for the Dam Neck project where the
23 plaintiff was hurt?

24 A. Yes.

25 Q. Who approached you about bidding this

1 work on this job?

2 A. Virginia Carolina Steel. They are a
3 fabricator.

4 Q. Did you ever enter into any written
5 contract with Virginia Carolina Steel?

6 A. No, I have not. We just did work on a
7 verbal means.

8 Q. Did you ever enter into any written
9 contract with W. B. Meredith?

10 A. No, sir.

11 Q. Did you ever enter into any written
12 contract with this job with the United States Navy?

13 A. No, sir.

14 Q. Now, included in the specifications for
15 the job is there a particular provision which
16 incorporates certain steel construction standards?

17 A. Yes. It mentions it over a dozen times.
18 It mentions AISC. You can go through the specs in
19 Section 5, usually where the metal section is, and
20 if you go through there it mentions AISC, American
21 Code of Standard Practice, at least a dozen times.

22 Q. I show you now, is this a portion of the
23 specifications for this Dam Neck job?

24 A. Yes, it is.

25 Q. And does that portion of the

1 specifications incorporate certain of these AISC
2 standards?

3 A. Yeah. Especially the steel buildings and
4 bridges.

5 Q. And what is that AISC section number?

6 A. A-303.

7 MR. NORRIS: Your Honor, we would offer
8 this as our next exhibit.

9 THE COURT: Number 9.

10 MR. AUFENGER: I would ask -- that starts
11 out with Page 1 and on the back is Page 2. If it's
12 not lengthy, we would ask that the whole document
13 come into evidence.

14 MR. NORRIS: This is the whole document.
15 It is extremely lengthy and the plaintiffs offered a
16 couple of pages of the Safety Manual without
17 introducing the whole document.

18 MR. AUFENGER: If we could see that for a
19 minute.

20 MR. NORRIS: You don't have your own copy
21 of the contract?

22 MR. AUFENGER: If we could see that,
23 please.

24 MR. NORRIS: I have tabs here with my own
25 internal work.

1 THE COURT: I think they want to see
2 where in particular this came from. On the bottom
3 it says Section 05120, Page 1. Is that a subsection
4 of the contract?

5 THE WITNESS: There's a six or seven
6 digit code.

7 THE COURT: I think that's what they
8 wanted to see. You are just trying to satisfy
9 yourself where it came from?

10 MR. AUFENGER: Yes.

11 THE COURT: If you want to step up here.

12 MR. AUFENGER: What section is that?

13 THE WITNESS: Section 5, structural
14 steel.

15 MR. AUFENGER: Section 5 is how long in
16 pages?

17 THE WITNESS: It goes up to 15 pages.

18 MR. AUFENGER: If I can look briefly at
19 those 15 pages.

20 BY MR. NORRIS:

21 Q. Mr. Doverspike, when you reviewed the
22 plans and the specifications, including the steel
23 erection portion of the specifications, did you
24 prepare a bid to do work on the project?

25 A. Yes, I did.

1 Q. What did the work -- what was the scope
2 of the work for you for this project in general
3 terms?

4 A. In general it's erection of the
5 structural part of the building. What they would do
6 is they would list things that they were going to
7 erect like the columns, say these are columns around
8 the building and then you would tie them in with
9 beams and make a box. Once you have a box then you
10 start setting floor joists and then you put deck
11 over top of it and then you go up another floor.
12 You do the same thing, tie those columns in with
13 beams and you create a box. You do the same thing.
14 It requires bridging in there to make it stiff, not
15 to get chatty, and then you put deck on top of
16 that. Once that's complete, once you have a box and
17 it's solid, then you start doing the finishing
18 touches around the exterior.

19 Q. What are some of the finishing touches?

20 A. It may be soffit, girts that we would
21 place for attachment either of siding, precast,
22 brick.

23 Q. Now, when you are reviewing the scope of
24 the work to prepare your bid, do you determine the
25 amount of labor you are going to need?

1 A. Yes.

2 Q. And you determine the amount of equipment
3 you are going to need?

4 A. Right.

5 Q. And would your equipment include whatever
6 vehicles you used to off-load the steel and to set
7 the steel?

8 A. That's correct.

9 Q. Do you also take into account the work
10 which other trades will be performing before and
11 after you?

12 A. No, sir.

13 Q. In a job is there a certain sequencing of
14 work?

15 A. Yes, there is.

16 Q. Tell us a little bit about how the
17 sequencing of work affects your activities?

18 A. It affects it a lot. Prior to me even
19 being allowed to come on the site they have to put
20 in foundations which all my steel attaches to. They
21 will dig ditches and they will fill them up with
22 concrete and in the concrete they put anchor bolts
23 which my columns will stand on. I'll bolt them down
24 and once I get all my columns up -- and I'm
25 repeating myself -- then I'll start tying them in.

1 Q. Do you have any control on the location
2 of the anchoring for your columns?

3 A. No, I don't. That's something we have a
4 problem with, anchor bolts, because if those anchor
5 bolts aren't directly in line -- I'm required by
6 that code, the AISC code, to give a plumb building
7 and a straight building. I'm required. That's in
8 the documents. If those anchor bolts are out a
9 little bit, it creates hardship on me because then I
10 have to do whatever it takes to get the building
11 straight. In placing anchor bolts in concrete you
12 are placing these anchor bolts in wet concrete and
13 they are going to move around a little bit. You
14 know what wet concrete is like. For them to be
15 exactly straight, they are going to deviate just a
16 little bit.

17 Q. Mr. Doverspike, what is a girt?

18 A. A girt is a horizontal tube, member.

19 Q. Made of steel?

20 A. Made of steel going in between two
21 columns.

22 Q. And what is its function?

23 A. To support the exterior.

24 Q. Is it a load-bearing member?

25 A. No, it isn't because it just supports the

1 exterior to attach to.

2 Q. On this job, what exterior were girts
3 intended to support?

4 A. Precast.

5 Q. What is precast?

6 A. Precast is concrete. To give you an
7 example, it's like -- say if you take a section of
8 sidewalk and stand it up on end, that's similar to
9 what they were hanging on the exterior but it's a
10 lot more elaborate.

11 Q. Was the placement of the precast part of
12 your contract?

13 A. No, sir.

14 Q. So another contractor was setting the
15 precast on your girts?

16 A. Right.

17 Q. So did there have to be a coordination
18 between your work and the work of the precast
19 contractor?

20 A. Yeah. We was given a start point, a
21 point of the building and that would correlate with
22 what precast they had on site. Because it was so
23 bulky, the precast was so bulky, they came on these
24 big trailers. Whatever precast they had on the
25 trailers, that's where we would start our work and

1 start working around the building.

2 Q. Did you for this trial review the portion
3 of the plans and specifications that direct in
4 particular to the placement of the girts?

5 A. Yes.

6 Q. What are the dimensions of the girts on
7 this job?

8 A. Eight-by-eight.

9 Q. So, in other words, it's eight inches
10 high and eight inch deep; is that right?

11 A. Right. They varied a little bit in
12 thickness but that was incorporated to carry -- so
13 there is some portion of the plan that calls for
14 half inch, nine-sixteenths thickness, so some varied
15 in thickness.

16 Q. Who fabricated the girts?

17 A. Virginia Carolina Steel.

18 Q. How did you get them on site?

19 A. A tractor-trailer brought them in and I
20 off-loaded them with a forklift.

21 Q. What were the length of the girts?

22 A. 29-4, and they would --

23 Q. Does 29-4 mean 29 feet, four inches?

24 A. Yes, it does.

25 Q. You were in the middle of your answer?

1 A. They all have numbers on them because
2 they are all designated to go in a certain position
3 or certain place on the building.

4 Q. And do you know what they weighed?

5 A. Over 1,700 pounds, around there.

6 Q. How did the girts get from the trailer
7 that brought them to you to the building?

8 A. Forklift.

9 Q. I want you to go through with the jury
10 how plans and the specifications called for the
11 girts to be moved from the forklift to the final
12 placement if you can go through that step by step.

13 A. The plans and specs didn't call for any
14 particular sequence. If it's not called for in the
15 plans or specs, then I do it the most economical and
16 efficient way available to me.

17 Q. And do you also do it in accordance with
18 the standards that are applicable in the area for
19 steel contractors?

20 A. Absolutely.

21 Q. Now, what is this item I'm holding in my
22 hand?

23 A. Angle iron.

24 Q. What role did this have in respect to the
25 placement of the girts on this job?

1 A. That was designed to weld -- that comes
2 on the column already and that carries the tube,
3 girt.

4 Q. We mentioned column. What is the column?

5 A. The column is the vertical column that
6 supports these girts.

7 Q. Here is a photograph. Just so we all
8 know where are the columns that the girt that fell
9 on the date of the accident located?

10 A. Right here and right here (indicating).

11 Q. And we are pointing to the two vertical
12 members on Plaintiff's Exhibit 10. Does this
13 picture show this angle in relation to a column?

14 A. Yes, sir.

15 Q. Locate this angle on the picture,
16 please.

17 A. This would go right here (indicating).

18 Q. Is there another angle on the opposite
19 side of the column?

20 A. Yes, it is.

21 Q. Now, can you explain to the jury the
22 location of the girt in relation to the column when
23 it's placed on the angle?

24 A. When it's placed on the angle it's
25 sitting on top of that clip.

1 Q. Is it flush with the edge of the column?

2 A. When we first put it on it is, but after
3 we go for alignment --

4 Q. What do the plans call as far as call for
5 the relation of the girt to the column?

6 A. They give you a specified dimension where
7 the outside of this column needs to be to the center
8 of the tube.

9 Q. What does cantilevered mean?

10 A. Cantilevered is say this angle is
11 cantilevered, it sticks out over the edge.

12 Q. Were these girts cantilevered under the
13 plans and specifications?

14 A. Yes.

15 Q. How so?

16 A. They were offset just a little bit.

17 Q. Can you be a little more descriptive of
18 how they are to be offset?

19 A. They are offset of this column here.
20 Instead of being centered right on the column, see
21 the clip is offset a little also. This tube comes
22 out a little also.

23 Q. Can you see in this picture where the
24 edge of the girt is beyond the edge of the column?

25 A. Correct.

1 Q. Do you remember what the plans called for
2 for that dimension, how much it was to be beyond the
3 column?

4 A. I believe it was eight and five-eighths.

5 Q. Eight and five-eighths inches?

6 A. Yeah, past the center line.

7 Q. Now, when your forklift takes a girt up
8 to the clip, what process is involved? How many
9 workers do you have involved with that process?

10 A. Just two, two and the forklift operator.
11 We have a guy on each side. He'll be on like a
12 stepladder. He'll be on that side so when the tube
13 comes up there they will be able to place it.

14 Q. How do they place it?

15 A. They'll give the forklift guy directions
16 and he'll place the tube on the clips. Once it's
17 got full bearing, they will instruct the forklift
18 guy to come down and he'll come down with the forks
19 and retract.

20 Q. Why do you not weld that girt at that
21 moment so that it can't be moved once it is lifted
22 by the forklift and placed on the clips?

23 A. Because going back to what we were
24 talking about with the anchor bolts -- say these
25 columns, we call these gray parts columns, all those

1 columns are right down a line. They give you a
2 dimension to come off there. If that tube came off
3 eight inches, great. Knock it out there and tack
4 it. This isn't a perfect world. One column is in a
5 half inch, out a half inch. If I was to pull eight
6 inches off of each column, that wall would look like
7 this (indicating). I take a string line and go out
8 and I pull a string line and knock everything out to
9 that string. Now everything is in line.

10 Q. Does this photograph show a string line?

11 A. Yes, it does.

12 Q. Show us where you see the string line.

13 A. Right across here to the top of the tube
14 (indicating).

15 Q. What does that string line do?

16 A. It creates a straight line for me.

17 Q. From where to where?

18 A. From my two work points.

19 Q. Which are where?

20 A. At the ends of the building.

21 Q. The two columns?

22 A. Right.

23 Q. Once you set the string line, what do you
24 do next?

25 A. Then I'll take that big hammer that they

1 was showing earlier and --

2 Q. What's this?

3 A. It's a maul. It's a ten-pound maul. It
4 just creates so much force, you can whale, whale on
5 that thing and it's just going to go like this
6 (indicating). Every time you crack it as hard as
7 you can, it's going to bump a little bit. It's
8 going to go out to the string. Once it's at the
9 string we put a small tack on it.

10 Q. Why do you have to use a ten-pound maul
11 and hit something as hard as you can?

12 A. Because this tube almost weighs a ton,
13 just the energy that you need to hit that thing, and
14 once we get one end right we have to put a small
15 tack on it because now we go to the other end and
16 start beating on this end. Without a tack on this
17 end, this end is going to vibrate away. I have to
18 keep things within an eighth inch, quarter inch.
19 When I start beat (indicating), once I get
20 everything straight I'll put tacks on it.

21 Q. In addition to lining the girts with
22 columns on either end, did this job call for a row
23 of girts on the same plane?

24 A. Yes.

25 Q. Do the girts -- let's see if we have a

1 picture of that. Now, the girt that was involved in
2 this accident, it went from this column to this
3 column, correct?

4 A. Yes.

5 Q. Is there a girt directly on the same
6 alignment -- what is each one of these spaces from
7 column to column called, is that called a bay?

8 A. Yes.

9 Q. Was there a bay right next to the bay
10 where the girt that was involved in the accident was
11 located?

12 A. Yes.

13 Q. Was there a bay right next to that one?

14 A. Yes.

15 Q. Were there three bays in a row on this
16 particular elevation of the building?

17 A. Yes.

18 Q. Now, the girt that you set, it has to be
19 in alignment with both columns it's sitting on,
20 correct?

21 A. Right.

22 Q. Does it have to align with the girt on
23 the next bay?

24 A. Absolutely.

25 Q. And does it have to align with the girt

1 on the bay beyond that?

2 A. Yes, sir.

3 Q. How do you manage that alignment?

4 A. With the string line.

5 Q. Can you perform any kind of welding until
6 all of the girts on all of the bays on the same
7 plane have been aligned?

8 A. No, I cannot.

9 Q. Why not?

10 A. If I have to make any adjustments I have
11 to go back and burn that weld out, and once you burn
12 that weld out you are inducing a lot of heat into
13 this angle and the tube and when you are washing
14 that weld out -- when I say wash, you get the weld
15 so hot it becomes molten and it drips out. You are
16 inducing heat in that. That affects the structural
17 integrity of the tube. It will make it weak.
18 That's why I just put a tack in it, something that
19 we can grind out and make a little finer adjustment.

20 Q. That tack that you place there while you
21 are performing an alignment, does that have any
22 safety purpose at all?

23 A. No. It just keeps it in place. It keeps
24 it in place prior to welding.

25 Q. What's it meant to prevent, that small

1 weld that you do?

2 A. So when I'm lining the other ends up --
3 say I tack this end and go down to the other end and
4 I'll beat that around, it keeps the vibration from
5 moving it around.

6 Q. Moving it how much?

7 A. Sixteenths.

8 Q. Sixteenths of what?

9 A. An inch.

10 Q. Is it meant to keep the girt from being
11 knocked off the clip?

12 A. No, sir, not collision.

13 Q. Do you see in this photograph the bay
14 next to where the girt was, are there two girts, one
15 on top of the other?

16 A. Yes, sir.

17 Q. And then is there a floor level?

18 A. Right.

19 Q. Do the girts when they are placed one on
20 top of the other have to be aligned vertically?

21 A. Yes, they do.

22 Q. And how do you go through that alignment
23 process?

24 A. We do the same thing with a vertical
25 plumb bob. There's a weight on the end of the

1 string and gravity, you can't beat gravity because
2 it's always plumb. You drop a string from the top
3 floor to the bottom floor, and that lets us know how
4 much to bring it up from that direction.

5 Q. Did the girt that was involved in this
6 accident have another girt that was going to be
7 placed underneath it?

8 A. Not in that bay.

9 Q. By the way did you review the plans and
10 specifications for the area on the second floor of
11 the building where the plaintiff told us he
12 off-loaded some materials?

13 A. Yes, sir.

14 Q. Did the plans and specifications call for
15 any girts to be installed there?

16 A. Right in front. Right there there is no
17 roof. There's a first floor but it comes out like a
18 big porch. There is no roof up above it. Then you
19 go in here, into this area here and then you start
20 your second story. It goes up. This is where the
21 sprinkler guy was putting in his pipes and stuff.
22 The superintendent asked us to leave out that girt
23 right there because that was kind of a loading area.

24 Q. Were there any girts in place where the
25 plaintiff was off-loading materials on the -- the

1 first place on the second floor where he located.

2 Q. On the ground floor but not on the second
3 floor.

4 Q. Now, to get back, even though there
5 wasn't a girt designed to be underneath the one
6 involved in the plaintiff's accident, did that girt
7 still have to be aligned vertically with the floor
8 level?

9 A. Yes.

10 Q. How many of these girts had been
11 installed prior to November 14th of 1996?

12 A. Over 40.

13 Q. What method was used to install all of
14 them prior to November 14th of 1996?

15 A. The same method.

16 Q. And was the work being inspected?

17 A. Every day.

18 Q. By whom?

19 A. The Navy, the general contractor.

20 Q. Did your company ever receive a request
21 or any admonition that you were not installing the
22 girts in a proper manner?

23 A. No, sir.

24 Q. In all of the time that you had installed
25 those 40 girts, had other work people been involved

1 on the site?

2 A. Yes.

3 Q. Other trades?

4 A. Oh, yeah.

5 Q. Had you ever been requested to cordon off
6 any area while you were installing girts?

7 A. No.

8 Q. Did the plans or specifications require
9 you to cordon off areas while you were installing
10 the girts?

11 A. No, sir.

12 Q. Did the plans and specifications require
13 the girts to be bolted in place?

14 A. No, sir.

15 Q. Did the plans and specifications require
16 the girts to be kept in hoists or harnesses?

17 MR. AUFENGER: Judge, if it please the
18 Court, I would object to the leading nature. He can
19 tell us what the plans and specs call for but he is
20 going through each.

21 THE COURT: You are reading through the
22 checklist. Sustained.

23 BY MR. NORRIS:

24 Q. What did the plans and specifications
25 require as far as any type of temporary securing of

1 the girts?

2 A. None.

3 Q. Mr. Doverspike, would it have been
4 feasible for you to have kept the girts in hoists
5 while you were aligning them? Could these girts
6 have even been held in a hoist until finally welded?

7 A. They could, but I would have to have like
8 three cranes or four forklifts on the site just to
9 perform the act which wasn't required by that
10 contract specs.

11 Q. How would that have affected your bid?

12 A. Oh, it would have been astronomical. I
13 guarantee you I wouldn't have gotten the job.

14 Q. Have you ever seen that done by any steel
15 erection contractor anywhere in Virginia?

16 A. No, sir.

17 Q. In all your years of experience?

18 A. No, sir.

19 Q. How do you make a tack or a spot weld?
20 Could you explain for the jury that process?

21 A. What you do is you take a ground clamp
22 and an electrode, you take a ground and you ground
23 it to --

24 Q. Let me ask you to do something with the
25 Court's permission. Can you come down here and use

1 a marker? What I would like you to do for the jury
2 is explain to them what's involved -- what's a
3 better term, spot weld or tack weld?

4 A. Tack weld. That's all right.

5 Q. I want you to explain to the jury what
6 process is involved if you are going to put a spot
7 weld on the connection between a girt and an angle.

8 A. I'm no Picasso. Excuse the art. We'll
9 get the point across. Here is your second floor and
10 this is your column with your anchor bolts and the
11 other column comes from the second floor up and then
12 you have your angle clip.

13 Q. You've just drawn the girt; is that
14 right?

15 A. Correct. Then you have your welding
16 machine.

17 Q. What is a welding machine?

18 A. You have welding machines that create AC
19 and DC voltage. It's a generator that it creates
20 200 to 400 amps depending on what type.

21 Q. Why don't you use the red marker when you
22 are ready to show us the current?

23 A. What we do, you have two leads coming out
24 of here.

25 Q. What's a lead?

1 A. A lead is a welding lead, similar to a
2 jumper cable but it's a lot thicker to handle the
3 amps. This is a negative. That's your negative
4 current. We clamp that to the structure.

5 Q. What is that, is that your ground?

6 A. That's my ground. That goes to the
7 column. Then you have your positive lead. Your
8 positive lead, that's where you have your
9 electrode. Your electrode fits on here. I brought
10 one of those here.

11 Q. What is this?

12 A. That's an electrode.

13 Q. What is an electrode?

14 A. Your electrode is your filler metal.
15 It's surrounded with flux and what that does is that
16 keeps the atmosphere out of your weld because you
17 have contaminants in the air and until the weld gets
18 cold that flux stays on it to keep any impurities
19 out of it. Getting back to our current, our
20 negative current, electricity is going to go to the
21 least resistance possible. Our negative current is
22 going up this way. It gets up to the clip. Then
23 this is our positive lead. There are 200 amps going
24 each way. It's coming here to wherever this
25 electrode tacks. I would tack this right here

1 (indicating).

2 Q. Show me where that is on this sample
3 angle. Is this a section of the girt?

4 A. Yes, it is.

5 Q. Go ahead.

6 A. This is on the column like this, so I
7 would take my electrode. I'll be doing this
8 overhead and I'll put a small tack right there in
9 the center, not necessarily being in the center.
10 I've got the shield on and I can't see anything. I
11 can't see anything until I strike the arc and it
12 lights up. I'm tapping on it and hitting on it. It
13 might be the corner. It might be the center. It's
14 wherever you are hitting. It's not pinpoint
15 accuracy until it lights up and then you put a tack
16 on it.

17 Q. How is that tack formed?

18 A. By the two currents, by the negative and
19 the positive. It's going to follow the path of
20 least resistance. As soon as I arc right here, this
21 tube is covered with paint so there might be a
22 little high spot or something in there. That's not
23 saying it's going to arc right here on the tip.
24 First it might come through on a high spot of the
25 angle and then transfer to my electrode. Does that

1 make sense?

2 Q. What is a high spot? What happens if it
3 comes through on a high spot?

4 A. It will make a little black mark where
5 the current was going through to try to reach to the
6 electrode.

7 Q. I want to show you a picture marked as
8 Plaintiff's Exhibit 15. Do you know what that's a
9 picture of?

10 A. Right. That's a picture of this tube
11 sitting on the clip. It's a high spot on there.
12 What's happening is the current is following the
13 least path of resistance. It hits that tube and
14 then it transfers over to the tip of your electrode.

15 Q. Which one of these marks is a weld?

16 A. This one right here (indicating).

17 Q. Are you sure?

18 A. Positive.

19 Q. How do you know that's a tack weld?

20 A. Because I seen it. That is right there
21 at the tip of the clip.

22 Q. And what is this mark below and to the
23 right of it?

24 A. That is where the path of resistance was
25 least. It's not going to go out here. All right.

1 The current -- while the rod is here, that doesn't
2 mean that's where the first arc is going to come
3 from. That happens all the time.

4 Q. There's another picture. Do you remember
5 seeing this picture which is Plaintiff's Exhibit 14?

6 A. Yes.

7 Q. I don't see a tack.

8 A. There again, it doesn't have to be in the
9 center.

10 Q. Where could it be?

11 A. It could be down here, underneath the
12 dirt.

13 Q. Can you tell from this picture how much
14 of this girt is underneath the dirt?

15 A. No, I can't. It's buried pretty good.

16 Q. Why don't you go ahead and have a seat.

17 At the commencement of this job, Mr. Doverspike, did
18 you have a preconstruction meeting in which a
19 representative of your company met with a
20 representative of the contractor?

21 A. Yes.

22 Q. Who was your representative of that
23 meeting?

24 A. Gary Godfrey.

25 Q. Who is Gary Godfrey?

1 A. He is a foreman.

2 Q. Was he the foreman on this job?

3 A. Yes.

4 Q. And what's the purpose of the
5 preconstruction meeting?

6 A. What we do is we go through the specs of
7 the contract. We take that pile of paper and we
8 start going through it and it identifies methods of
9 erection if it specifies and we go through welding
10 bar joists, decking, roof material.

11 Q. Are you involved with what takes place at
12 that meeting?

13 A. Yes.

14 Q. Did you review with Mr. Godfrey the
15 results of that meeting?

16 A. Yes.

17 Q. And was that meeting documented?

18 A. Yes.

19 Q. I'm putting up on the overhead a
20 document. Do you recognize this document?

21 A. Yes, I do.

22 Q. Is this document the same document as
23 Plaintiff's Exhibit Number 23?

24 A. Yes, sir.

25 Q. What is this document?

1 A. It says what we went over. We went over
2 the drawings and the specs.

3 Q. Is this the document of the
4 preconstruction meeting you just described?

5 A. Yes, it is.

6 Q. What types of things would be reviewed as
7 far as safety requirements?

8 MR. SMIRCINA: Objection, Your Honor. He
9 wasn't at this meeting. This is Peter Godfrey's
10 meeting. He wasn't there. It's hearsay.

11 THE COURT: I think you need to rephrase
12 the question.

13 BY MR. NORRIS:

14 Q. Were you informed of what took place at
15 this meeting?

16 A. Yes.

17 Q. Do you need to know what happens at this
18 meeting in order to coordinate what work is done on
19 the job?

20 A. Yes.

21 Q. Do you need to know of any special
22 requirements that either the government or the
23 general contractor places on you for the performance
24 of the job?

25 A. Yes.

1 Q. As a result of this meeting were any
2 special requirements placed on you for the setting
3 and placing of the steel girts?

4 A. No, sir.

5 Q. Were any special requirements placed on
6 you as far as cordoning off the area of your work?

7 A. No, sir.

8 Q. Who has the authority on the job to
9 cordon off areas of work?

10 A. The general contractor.

11 Q. Do you have the authority or the right to
12 cordon off your work without permission to do so?

13 A. No, sir.

14 Q. Now, do you recognize this book here?

15 A. Yes, sir.

16 Q. What is this book?

17 A. It's an AISC code of standard practice.

18 Q. Is that portion of the book what's been
19 incorporated into --

20 THE COURT: Did we decide what is going
21 to be Defense Exhibit 9?

22 MR. AUFENGER: Defense counsel can
23 introduce the whole thing or the one page.

24 MR. NORRIS: Just that page, Your Honor.

25 THE COURT: All right, that has been

1 marked. That is Number 9 for the defendants.

2 (The document was marked by the Court as
3 Defendants' Exhibit 9, and received into evidence.)

4 BY MR. NORRIS:

5 Q. I think my question was does that book
6 contain the safety requirements in the steel
7 industry that have been incorporated into the
8 contract by Defendants' Exhibit 9?

9 A. Yes.

10 Q. Do those safety regulations or
11 requirements appear in part at Section 7.2?

12 A. It does in the section under "Structural
13 Steel, Buildings and Bridges."

14 Q. Turn to that provision if you would. Do
15 you have it in front of you, Mr. Doverspike?

16 A. Yes.

17 Q. What does Section 7.2 tell the steel
18 erection contractor about safety requirements?

19 A. Kind of in the middle of the paragraph
20 here it says, "The erector provides and installs
21 safety protection required for his own work. Any
22 other protection for other trades" --

23 Q. Any protection?

24 A. "Any protection for other trades not
25 essential to the steel erection activity is the

1 responsibility of the owner."

2 Q. Who was the owner of this project?

3 A. The owner would be the general
4 contractor.

5 Q. Turn to Section 7.10.

6 A. All right.

7 Q. What does 7.10 deal with?

8 A. Temporary floors and handrails for the
9 buildings. It goes on to say, "The erector provides
10 floor coverings, handrails and walkways as provided
11 by law and applicable safety regulations for the
12 protection of his own personnel. As work progresses
13 the erector removes such facilities from units where
14 the erection operations are completed unless other
15 arrangements are included in the contract
16 documents. The owner is responsible for all
17 protection necessary for the work of other trades."

18 Q. Mr. Doverspike, are you familiar with any
19 regulation anywhere that specifically requires you
20 to provide some kind of temporary securing of a girt
21 before final placing?

22 A. No, sir.

23 Q. Are you familiar with any specific
24 regulation anywhere that requires you to cordon off
25 the area you are working while you are placing a

1 steel girt?

2 A. No, sir.

3 Q. Turn to 7.9.1, please. What does 7.9.1
4 deal with?

5 A. Temporary supports of structural steel
6 frames.

7 Q. Does this section require the steel
8 contractor to provide any support to prevent
9 unpredictable loads as those due to tornados,
10 explosion or collision?

11 A. No, sir.

12 Q. How would you describe the contact
13 between the plaintiff's boom and the girt?

14 MR. SMIRCINA: Objection. He didn't
15 witness the contact, Your Honor? How can he
16 possibly say.

17 THE COURT: Overruled.

18 THE WITNESS: Well, it's not seismic,
19 that's an earthquake, and it's not a tornado and
20 that's wind, so it would have to be collision.

21 BY MR. NORRIS:

22 Q. Is a temporary tack weld intended to
23 prevent a collision?

24 A. Oh, no, sir.

25 Q. Did the general contractor issue daily

1 reports concerning the inspection of the work?

2 A. Yes.

3 Q. Did the general contractor ever in any
4 daily production report require you to cordon off
5 areas around the placement of girls?

6 A. No, sir.

7 Q. Did the general contractor in any
8 production report require you to do some type of
9 different temporary securing of the girls before
10 final placement?

11 A. No, sir.

12 Q. Were you ever cited by the Navy, did you
13 ever receive any written citation from the Navy that
14 you were violating any Navy safety or industry
15 regulation concerning your placement of the girls?

16 A. No, sir.

17 Q. Were there safety meetings on this job
18 site from time to time?

19 A. Yes, there were.

20 Q. Let me show you what's been marked as
21 Defendants' Exhibit Number -- it looks like Number 5
22 to me --

23 THE COURT: Actually that's a 1.

24 BY MR. NORRIS:

25 Q. What is that document?

1 A. It's a safety meeting. They call it
2 toolbox meetings. They hold it right there at the
3 site and they gather up all the employees and go
4 through this with them. Once they are done with the
5 meeting everybody signs and acknowledges that they
6 were at the meeting.

7 Q. Did you have a representative present at
8 this meeting?

9 A. Yes, sir.

10 Q. Was a representative of the general
11 contractor present?

12 A. Yes, sir.

13 Q. Was a representative of Wenger Tile
14 present?

15 A. Yes, sir.

16 Q. Who is Wenger Tile, what is their
17 company?

18 A. Their company was installing the studs.
19 It refers in the specs as a cold form steel. It's
20 studs and drywall.

21 Q. Were they installing the material that
22 the plaintiff delivered the day that he got hurt?

23 A. Yes, sir.

24 Q. How long had they been on the job before
25 this accident?

1 A. Quite a while because they were -- the
2 place was full of stud walls. When you tried to go
3 through there, it was a maze of walls and hallways.

4 Q. Were their workers in proximity to your
5 workers while you-all were installing girts?

6 A. Yes.

7 Q. Did they have an opportunity to observe
8 the methods you were utilizing to install the girts?

9 A. Yes, sir.

10 Q. Now, was any mention made at this safety
11 meeting on November 14th, 1996 -- was that the date
12 of the accident?

13 A. Yes.

14 Q. When would this meeting have taken place?

15 A. In the morning.

16 Q. Was any mention made at this meeting that
17 in any way questioned the method your company used
18 to install girts?

19 A. No, sir.

20 Q. Was anything mentioned at this meeting,
21 any complaint or requirement that you cordon off
22 your work?

23 A. No, sir.

24 Q. Now, I want to direct your attention to
25 the day of this incident. What crew did you have on

1 the job site that day?

2 A. I had Mike Caldwell, Mike Cashwell, Frank
3 Brock, Gary Godfrey.

4 Q. You told us Mr. Godfrey was the foreman;
5 is that right?

6 A. Yes, sir.

7 Q. What was Mr. Brock's job that day?

8 A. He was helping placing the girts and
9 tacking. Once he was finished tacking he would
10 resume production welding.

11 Q. Were you familiar with the progress of
12 the work as of that day?

13 A. Yes.

14 Q. How far along were we on the job as of
15 that day?

16 A. We were getting close to wrapping it up.
17 You figure they are putting interior walls in, they
18 are wrapping the exterior, so I'm pretty close to
19 leaving the job, 75 percent to answer your question.

20 Q. Where was the precast contractor in
21 relation to where you-all were on your performance?

22 A. We was on the southeast, so he was on the
23 northeast.

24 Q. Where on this diagram were you performing
25 work on the day of the accident?

1 A. Over here (indicating).

2 Q. You are pointing to the southeast corner
3 of the building?

4 A. Yes.

5 Q. Where was the precast contractor
6 performing his work?

7 A. He was over here (indicating).

8 Q. You are pointing to the northeast corner?

9 A. Yes.

10 Q. Were you sufficiently ahead of the
11 precast contractor?

12 A. Yes.

13 Q. You were on schedule?

14 A. Yes.

15 Q. Now, did you rope or cordon off any of
16 the work you were performing that day?

17 A. No, sir.

18 Q. Why not?

19 A. I'm not allowed to do that. I'm
20 responsible for my employees, the safety of my
21 employees, and that was a safe atmosphere.

22 Q. Did you feel any need to cordon off your
23 work that day?

24 A. No. We've been doing this work for over
25 a month, putting these girts up and coming around.

1 Q. In your 13 years of performing this work,
2 had you ever been required to cordon off an area
3 when you've been installing girts before?

4 A. No, sir.

5 Q. Do you know of any other contractor
6 that's been required to do that?

7 A. No, sir.

8 Q. Mr. Doverspike, did you try to determine
9 whether Atlantic was advised that there was going to
10 be a delivery of drywall that day?

11 A. I tried, but we was never notified.

12 Q. When did you learn that there had been an
13 accident?

14 A. I wasn't on the site, but I was called.

15 Q. Do you remember what time of day it was?

16 A. It was in the afternoon.

17 Q. What did you do?

18 A. I got to the site as soon as I could. It
19 was probably like 15 minutes or so.

20 Q. What did you see when you got to the
21 site?

22 A. I believe they've already taken
23 Mr. Shepherd out, but I had noticed that the girt
24 was laying up against the boom truck.

25 Q. Did you look at the girt?

1 A. Yes.

2 Q. What did you see when you looked at it?

3 A. I seen a black spot and a tack at the
4 top.

5 Q. Did you see that the girt was in the
6 condition that is shown on Plaintiff's Exhibit
7 Number 15?

8 A. Yes.

9 Q. Mr. Doverspike, some witnesses have come
10 in this court and said they were there and they
11 didn't see it. Tell me about security at the site.
12 Describe for the jury what kind of security there
13 was. What kind of facility was this?

14 A. It was a Naval SEAL project where SEALs
15 were exclusive to the base. It was very time taking
16 even for myself to get in if I didn't have the
17 correct ID. I had to wait for somebody to call in.
18 They had cameras. You see them similar to like in
19 retail stores where they have a black dome.

20 Q. Look up in the corner.

21 A. Yeah. It hangs off street poles and they
22 have that all over the building so the security can
23 monitor the job site and keep everybody secure.

24 Q. Mr. Doverspike, did you or anybody from
25 Atlantic manufacture or fake the welds that can be

1 seen on Plaintiff's Exhibit Number 15?

2 MR. AUFENGER: He can't answer that
3 question.

4 THE COURT: He can answer what he knows.
5 I don't know how he knows what anybody else might
6 have done.

7 BY MR. NORRIS:

8 Q. Based on your time -- how long were you
9 on the site?

10 A. I was there until I was asked to leave
11 that evening.

12 Q. When you were asked to leave, was
13 everyone else asked to leave?

14 A. Yes.

15 Q. In all the time you were there, did you
16 manufacture any welds on this beam?

17 A. No. Could you imagine somebody with a
18 welding lead --

19 MR. AUFENGER: Judge.

20 THE COURT: It's all right. It's direct
21 examination. He can answer the question but you can
22 sit down while you are answering the question.

23 THE WITNESS: Getting up on top of the
24 boom truck, striking an arc and this quick flash
25 going off and for nobody to see it, come on.

1 BY MR. NORRIS:

2 Q. Is this the way it looked when you got
3 there?

4 A. Yes.

5 Q. Did you talk to Mr. Brock?

6 A. Yes.

7 Q. Did you ask him what happened?

8 A. Yes.

9 Q. Did he explain to you what he had done
10 with respect to that girl that day?

11 A. Yes.

12 Q. Don't tell me what he said. He'll be
13 here to testify here for himself. Based on what he
14 said, was there anything out of the ordinary that
15 you were able to determine about how that girl had
16 been set?

17 A. No.

18 Q. Did you take photographs when you were
19 there that day of your own?

20 A. Yes.

21 Q. Have we blown up some of the photographs
22 that you took?

23 A. Yes.

24 Q. Can you describe for the jury the
25 relationship between the boom that the plaintiff was

1 operating and I think if the Court would allow me I
2 would like you -- by the way did you take a picture
3 of the beam with the mark on it?

4 A. Yes.

5 Q. Will you come down here and describe for
6 the jury what you saw as far as the location of the
7 boom and where the girt had been sitting if the
8 Court will allow that?

9 THE COURT: Do you want me to number them
10 first? Is there going to be any objection to them?

11 MR. NORRIS: I'm withdrawing one because
12 I think it's duplicative of the tack mark.

13 MR. SMIRCINA: There is one showing a
14 sunny morning with a string line across the vertical
15 columns. I don't think he has authenticated that
16 one because I don't think that's the appearance of
17 those vertical columns with the string line on the
18 date of the accident. However, if he wants to
19 authenticate and say there was a string line out
20 there.

21 MR. NORRIS: I'm going to authenticate
22 the string line.

23 (The photographs were marked by the Court
24 as Defendants' Exhibits 10, 11, 12, 13, 14, and 15,
25 and received into evidence.)

1 BY MR. NORRIS:

2 Q. The string line in the pictures, do you
3 know how that string got there?

4 A. We put it up just because I was concerned
5 why did this girt fall, why was it on the ground,
6 what kind of clearance did he have, so I started
7 doing some minor investigating. We run a string
8 across there and found out exactly where the boom
9 was and what relation to the string and found that
10 the boom had been up past into the string line.

11 Q. Did you or your crew tie that string line
12 up there after the accident happened?

13 A. After, yeah.

14 Q. Mr. Doverspike, let's talk about what we
15 now marked as Defendants' Exhibit 15. You've been
16 in the courtroom for the whole trial, correct?

17 A. Yes, sir.

18 Q. Remember Mr. Seoane telling us that he
19 could tell by looking at this photograph that there
20 is no tack on that angle?

21 A. Yes, sir.

22 Q. Can you tell from looking at this
23 photograph whether or not there's a tack on that
24 angle?

25 A. No, I can't.

1 Q. What would you have to see -- what kind
2 of a mark would the tack leave on the angle?

3 A. It would leave just a dark -- it would
4 leave a small, dark on here, maybe metallic finish.

5 Q. Can you tell from looking at this
6 photograph whether that's there or not?

7 A. No, I can't.

8 Q. What is the height of the angle in
9 relation to the floor?

10 A. It's over nine feet.

11 Q. What's its height in relation to the
12 ground level?

13 A. It would have to be over 20 feet.

14 Q. You told us you ran a string line. Can
15 you see that string line in the photograph marked
16 Defendants' Exhibit 14?

17 A. Yes.

18 Q. Explain for the jury where the boom was
19 in relation to that string line.

20 A. This is the top of the tube and then --

21 Q. What's the height of the tube from top to
22 bottom?

23 A. Eight inches. We had to run it at the
24 top because we couldn't run it at the bottom because
25 it would go over the boom. We had to run it from

1 the top to see how much.

2 Q. How much of the boom was in the eight
3 inches occupied by the girt?

4 A. Fifty percent.

5 Q. Did you take photographs from the inside
6 looking out?

7 A. Yes, sir.

8 Q. Let me show you what's been marked as
9 Defendants' Exhibit 13. What does that photograph
10 show?

11 A. It's showing the boom after the hack of
12 Sheetrock had been off-loaded. He is retracking.

13 Q. Can you tell specially now the relation
14 of the top of the boom to where the girt had been?

15 A. Here's the bottom of it right there. You
16 can see how the boom is already impacted and that's
17 already in the building.

18 Q. Did you take it from side angles as
19 well? Let me show you what's been marked as
20 Defendants' Exhibit 12. Can you show the jury?

21 A. You can see the top of the string line
22 here and if you could kind of put things into scale
23 coming down eight inches where that would bring you,
24 that's a fine line. You really don't have anything
25 to access over here but you can see how the boom is

1 already into the line.

2 Q. Did you take it from the opposite angle
3 which is Defendants' Exhibit 11?

4 A. Yes, sir. That gives you even closer
5 perspective. You can see the clip behind here. I
6 know these are different views and you have to make
7 your own decision but that gives you another
8 perspective of how much boom was in the girt.

9 Q. Have you ever heard one of these booms
10 being operated?

11 A. Yes.

12 Q. Have you ever heard them being operated
13 while they are withdrawing from after off-loading
14 materials?

15 A. Yes. It's noisy just like all my welding
16 machines. They sound like ten lawn mowers and you
17 have hydraulic pumps you are activating to push all
18 the hydraulics out here. I have two cranes myself
19 and they are quite noisy.

20 Q. What's the noise level like on the
21 construction site generally?

22 A. Don't plan on playing a radio or
23 nothing. You are not going to hear it. The gas
24 welding machines that I have are gas. It's a
25 two-stroke machine. It's similar to a lawn mower,

1 but if you could imagine maybe putting ten of them
2 together, your worst nightmare on a Saturday
3 morning.

4 Q. Did you also take a picture from the
5 outside looking in, and I'm showing you Defendants'
6 Exhibit Number 10?

7 A. Yes.

8 Q. Unfortunately this is somewhat dark. Can
9 you see the string line on this photograph?

10 A. No, I can't.

11 Q. Go ahead and resume your seat. Now,
12 following the incident did your company receive a
13 letter from the Department of the Navy?

14 A. Yes.

15 Q. What did the letter --

16 A. The letter accused me of negligence
17 referencing the Army Corps.

18 Q. Did the Navy cite specific portions of
19 the Army Corps of Engineers manual that you were
20 alleged to have violated?

21 A. Yes.

22 Q. And were those provisions what I placed
23 on the overhead now, did they relate to these two
24 sections, 27.E.03 and 23.E.04?

25 A. Yes.

1 Q. Do either of those sections apply to
2 girts?

3 A. No. Neither one of them do. They talk
4 about structural shapes. It doesn't even apply to a
5 piece of tube steel.

6 Q. How many jobs that your company has
7 performed which involved horizontal girts involved
8 delivery of materials from other trades?

9 A. They all do.

10 Q. Have you ever had someone knock one of
11 your girts down before this incident?

12 A. No, sir.

13 Q. Do you still do work for W. B. Meredith?

14 A. Yes, I do.

15 Q. Do you still do work for the Navy?

16 A. Yes.

17 Q. Did your company routinely conduct safety
18 meetings of its own?

19 A. Every week.

20 Q. Did you do it on this job?

21 A. Yes.

22 Q. Does your company have its own safety
23 program?

24 A. Yes, they do.

25 Q. Did Mr. Godfrey go through the safety

1 program?

2 A. Yes.

3 Q. Did Mr. Brock?

4 A. Yes.

5 Q. Does your company have a Safety Manual?

6 A. Yes. They are issued it prior to
7 employment.

8 MR. NORRIS: That's all I have of
9 Mr. Doverspike.

10 THE COURT: Anybody like to take a break
11 before we start with cross-examination?

12 (The jury withdrew from the courtroom.)

13 THE COURT: You can step down,
14 Mr. Doverspike, but don't talk about your testimony.

15 (A recess was taken at this time.)

16 (The jury was returned to the courtroom.)

17 CROSS-EXAMINATION

18 BY MR. SMIRCINA:

19 Q. Good morning, Mr. Doverspike.

20 A. Good morning.

21 Q. Mr. Doverspike, is it your position that
22 your workers on this job site were not responsible
23 for the safe execution of their work?

24 A. Oh, yeah. They are safe. They are
25 responsible.

1 Q. Are they required to follow the
2 requirements of the Army Corps of Engineers Safety
3 Manual?

4 MR. NORRIS: Objection, Your Honor.
5 That's asking for a legal conclusion.

6 THE COURT: I think if you rephrase the
7 question, you did inquire about parts of the
8 contract incorporated and things like that. I think
9 if Mr. Smircina rephrases his question he can get
10 there.

11 BY MR. SMIRCINA:

12 Q. In the contract specifications and plans
13 you read, does it make mention of the Army Corps of
14 Engineers Safety Manual?

15 A. Yes.

16 Q. Are your workers obligated to follow its
17 provisions?

18 MR. NORRIS: Objection, Your Honor.

19 THE COURT: By the terms of the
20 contract.

21 BY MR. SMIRCINA:

22 Q. By the terms of the contract are you
23 obligated to follow the --

24 THE COURT: Or the specs or something.

25 MR. NORRIS: Your Honor please, the

1 evidence was he had no contract with them.

2 THE COURT: Then it's specs.

3 MR. NORRIS: Can I approach for a moment,
4 please?

5 THE COURT: I'm going to sustain the
6 objection. Ask the question again.

7 BY MR. SMIRCINA:

8 Q. Do your workers work in compliance with
9 the Army Corps of Engineers Safety Manual?

10 A. It depends with each job what code
11 applies, but generally we go by the specs.

12 Q. On this Navy site were your workers
13 subject to the provisions of the Army Corps of
14 Engineers Safety Manual?

15 MR. NORRIS: Objection, Your Honor.

16 MR. SMIRCINA: Subject to the provisions,
17 not asking for a legal conclusion.

18 MR. NORRIS: He is, Your Honor.

19 THE COURT: Overruled.

20 BY MR. SMIRCINA:

21 Q. Are they?

22 A. We are bound to the specifications.

23 Q. And is the Army --

24 A. The Army Corps is mentioned the specs.

25 Q. You are to follow that?

1 A. Yeah.

2 Q. How about OSHA?

3 A. No, sir.

4 Q. On this job site you are not subject to
5 any provisions of OSHA?

6 A. No, because we are bound to those
7 specifications.

8 Q. So only what's in the specifications do
9 you feel you have an obligation for safety?

10 A. Right. We have guidelines within the
11 company that are incorporated through OSHA.

12 Q. I see.

13 A. There are private jobs and you have
14 commercial government jobs. Some of the private
15 jobs we do incorporate the OSHA regulations.

16 Q. Mr. Norris asked you to read this
17 document earlier. I'll ask you to read it again.
18 It's 7.2, Site Conditions, and you read it out loud
19 earlier. I would like you to read it out loud.
20 That's from the AISC.

21 A. "The erector provides and installs the
22 safety protection required for his own work. Any
23 protection for other trades not essential to the
24 steel erection activity is the responsibility of the
25 owner."

1 Q. So the erector provides and installs the
2 safety protection required for his own work, that
3 includes the erection of this horizontal girt,
4 right?

5 A. Right.

6 Q. It would include the safety and
7 protection required for anybody who could come in
8 contact with that?

9 A. It says my employees. It says the
10 erector provides the safety and protection required
11 for his own work and that means only to your
12 employees.

13 Q. Do you have a duty to be safe?

14 A. To my employees, yes.

15 Q. You only have that duty alone?

16 A. If I was to take on the duty of the
17 drywall, all you guys keep tied off or you guys, the
18 sprinkler guy --

19 Q. But it's the steel erection --

20 A. We are talking exclusively the steel
21 erection.

22 Q. You are responsible for the safety
23 erection of this steel on this job?

24 A. Absolutely.

25 Q. Your company, I mean, not you personally,

1 you weren't working there?

2 A. Yes, sir.

3 Q. Which brings me to an interesting point.
4 You were up on the frame of the structure after the
5 accident that day, right?

6 A. Yes.

7 Q. And you ran a string line and took all
8 these pretty photographs, right?

9 A. Yes, sir.

10 Q. And you, in fact, were so far up you
11 could string the string from vertical column to
12 vertical column?

13 A. Yes.

14 Q. Where is your picture of the brackets?
15 How come you didn't take a picture of the brackets?

16 A. Why?

17 Q. Is that because there wasn't a weld
18 there? You didn't look at the bracket?

19 A. I see the --

20 Q. Would there not be residue on the
21 bracket?

22 A. I'm looking at the tube on the bed and it
23 has this tack on there.

24 Q. We'll get to that. So you went up there
25 and strung a line and you saw no evidence of metal

1 residue on the bracket?

2 A. I didn't look, sir.

3 Q. You didn't look?

4 A. Right.

5 Q. But you were right there?

6 A. That's right. I was right there.

7 Q. Is it safe to say if there had been metal
8 residue from a weld on that bracket, you would have
9 taken a picture?

10 A. No. What was in evidence was the boom
11 sticking up in the girt.

12 Q. But not whether there was any metal
13 residue from the weld on the bracket?

14 A. Right.

15 Q. Let's talk about how it welds. You said
16 that there is a current that is traveling so you are
17 sort of creating a circuit from the pieces of metal,
18 the metal you are grounding and the metal you are
19 welding?

20 A. Yes, sir.

21 Q. There is negative energy coming up part
22 of it that is grounded and positive energy that
23 drops the metal to make the weld?

24 A. Yes, sir.

25 Q. Let me ask you this then: Isn't it just

1 as consistent instead of a high spot on the bracket
2 that as to this piece why can't you just say that he
3 grounded it here and welded it here? Wouldn't two
4 black marks result if they did that?

5 A. You couldn't get a ground in there. You
6 don't ever ground at the work. You ground to the
7 building because you are welding throughout the
8 building.

9 Q. But if he did, if he was just going to
10 strike an arc on this girt and he grounded it there,
11 wouldn't it create a black mark?

12 A. No, sir.

13 Q. Not at all?

14 A. No. That tube when it was sitting up
15 there, the electricity come up through the column
16 and then it came through --

17 Q. You are saying the electricity came when
18 you grounded the vertical structure, when the
19 vertical beam that it came out and that negative
20 energy made that mark?

21 A. Right.

22 Q. If you put the negative pole on the
23 machine there, why wouldn't it make the black mark?

24 A. You could if you wanted to take a
25 piece --

1 Q. So this could have easily been welded on
2 the ground rather than on the bracket, just as
3 likely?

4 A. It could have been.

5 Q. Thank you. Now, you say that, golly,
6 gee, the evidence of the weld on this one must be
7 buried in that dirt?

8 A. Right.

9 Q. You were up on the structure of the
10 building, right?

11 A. Yes.

12 Q. And you run a string line from vertical
13 column to vertical column?

14 A. Right.

15 Q. And you don't take a picture of the
16 brackets? Oh, you don't look at the brackets
17 although they fell off the brackets?

18 A. 10-4.

19 Q. And, of course, your foreman admitted to
20 Manny Seoane that the beam wasn't welded; is that
21 right?

22 MR. NORRIS: Objection, Your Honor.

23 THE COURT: The basis for the objection?

24 MR. NORRIS: There is no evidence yet
25 from Mr. Godfrey that he admitted that to

1 Mr. Seoane.

2 MR. SMIRCINA: Mr. Seoane testified to
3 it.

4 THE COURT: He did. Overruled.

5 BY MR. SMIRCINA:

6 Q. Why would your foreman --

7 MR. NORRIS: That's the basis of the
8 objection. He is asking Mr. Doverspike to testify
9 to why someone else testified something was said to
10 somebody.

11 THE COURT: You are asking a different
12 question than the first one. The first question he
13 can answer. The second question I'm going to
14 sustain the objection.

15 BY MR. SMIRCINA:

16 Q. Isn't it true -- it's your understanding,
17 isn't it, that Mr. Godfrey admitted to Manny Seoane,
18 the Navy technician that came and investigated this
19 accident, that the beam wasn't welded?

20 A. Yes.

21 Q. And you say this weld is in the ground,
22 must be in the ground?

23 A. Must be.

24 Q. It couldn't be not there; it has to be in
25 the ground?

1 A. Who is saying it ain't there? Look at
2 all the abrasions and everything down there. This
3 had an impact also. I'm not saying. I can't see
4 one right there.

5 Q. That mask that they use, doesn't that
6 little glass plate flip up and down?

7 A. Yes, sir.

8 Q. When somebody is going to strike an arc,
9 unless this has been glued shut -- you say it's a
10 very inaccurate science. You are up there on a
11 ladder and you are going to weld this nine feet off
12 the ground, and you say they are kind of stabbing at
13 it because they can't see. Put this on. Flip it
14 up.

15 A. (Witness complied.)

16 Q. You can see?

17 A. Right.

18 Q. Wouldn't you look right before you struck
19 the weld?

20 A. Sure. Then you flip it down. First
21 initial hit doesn't strike an arc, so you keep
22 pecking at it to try to create an arc.

23 Q. And it never creates the arc the first
24 time?

25 A. Look at how much paint is there. Once

1 circuit, once you chip through the paint and then --

2 Q. So your man would be up there standing
3 directly by the bracket that he was welding maybe
4 over his head?

5 A. You are holding onto a stepladder with
6 one hand, you are flipping your lens down. We can
7 put a bull's eye on it.

8 Q. How many times a day do you think your
9 man flips this up?

10 A. Hundreds.

11 Q. You think they get pretty accurate at it?

12 A. You are given a six to eight inch place
13 to start the arc. If you are going to weld it
14 complete, you bring it to the end and create the
15 arc. You don't want to start in the center because
16 you create a crater.

17 Q. You want to get the tack as near as
18 center as possible, don't you?

19 A. A tack is a tack. What you want to do is
20 keep the beam from vibrating before you go to the
21 other end.

22 Q. You want to keep a beam from vibrating so
23 if somebody hits the vertical column that it is
24 semi-affixed to it wouldn't rumble off?

25 A. That tack is not prepared for collision.

1 Q. But you understand there are vibrations
2 on the construction site?

3 A. Which I inflict.

4 Q. And the vibrations of dropping off
5 Sheetrock?

6 A. I am afraid if he dropped 3,000 pounds it
7 would go through the floor.

8 Q. A steel beam could fall through the floor
9 also, right?

10 A. Absolutely. 10-4.

11 Q. Now, you say that although it leaves a
12 big black mark on the beam that there would be
13 hardly any black mark on this bracket, right?

14 A. There would be a mark on it.

15 Q. And wouldn't there be broken metal part
16 of the weld if it had been there?

17 A. There may be. Whatever part -- it
18 usually goes to the weakest part of the tack. If I
19 had more penetration on the -- it's where I induced
20 most of my heat. If I had more penetration on the
21 tube, that's where most of the filler matter would
22 go.

23 Q. Isn't this yellow part on this
24 photograph, isn't that filler metal?

25 A. The filler metal looks more off to the

1 side.

2 Q. I understand. What's the filler metal
3 doing there? Why wouldn't it have burned?

4 A. Burned?

5 Q. This filler metal.

6 A. When it breaks you see a flashy like
7 metallic finish.

8 Q. Part of this broke off, is that what you
9 are saying, the black part of this broke off where
10 this yellow spot is?

11 A. It's right across there. See the little
12 metallic finish there, that's where the tack had
13 broken away from the clip.

14 Q. But none of it would have stayed affixed
15 to the clip or you didn't see any, right?

16 A. Not if somebody hit it.

17 Q. But you were up there stringing a line
18 from vertical column to vertical column and you
19 didn't look at the clip?

20 A. Yeah. I was looking at the boom. I'm
21 looking --

22 Q. So you did not look at the clip to see
23 whether or not there was any evidence of a weld on
24 the bracket?

25 MR. NORRIS: Your Honor, I would like the

1 witness to be able to finish an answer before he is
2 faced with a new one.

3 THE COURT: Let him finish his answer. I
4 realize this is cross-examination, but let him
5 finish his answer.

6 THE WITNESS: You said you were going to
7 be nice, Blair.

8 BY MR. SMIRCINA:

9 Q. I'll be nice enough, I guess. Now, you
10 say you had laid about 40 girts?

11 A. Yes.

12 Q. You say when you put them on the second
13 deck of the structure you have to align two in a row
14 or three in a row?

15 A. Three. That's not etched in stone,
16 whatever we had available to us because the building
17 goes in and out. It's all sawtooth so if we can
18 pick two work points and like do this run and do the
19 vertical and horizontal runs.

20 Q. Let's just -- I just want to make sure I
21 don't misstate what you said. When you were
22 going -- when these girts were to be aligned,
23 assuming they were, you would have done this girt
24 and this girt (indicating); is that right?

25 A. And the following.

1 Q. So three in a row. And you do the top
2 deck before you do the bottom deck. In other words,
3 you have a horizontal alignment and a vertical
4 alignment, right?

5 A. No. It doesn't matter. You have to do
6 these bays in a sequence. It was obvious that the
7 bottom ones had already been tacked and the top ones
8 had been tacked, so we drop back down and do the
9 production welding. See the block here, the masons
10 are getting ready to run the block up around the
11 jambs and it was my direction through Bosley to get
12 this stuff welded up to release the trades for the
13 block masons.

14 Q. Which of your workers told you that they
15 had strung the line and aligned the beams on the
16 second column that day, the horizontal beams on the
17 second bay that day?

18 A. Frank.

19 Q. Frank Brock said they did that. But they
20 didn't put that beam up that day until about 1:00;
21 is that your understanding?

22 A. No. They put it up. They put that up
23 before lunch because that clip wasn't here. When
24 they fabricated the steel, they left a clip off. It
25 was just an error so we had to put the clip on.

1 Otherwise the tube would have already been set. We
2 put the clip on and then we sat the tube that
3 morning.

4 Q. He says at that time they went and did
5 all three of them horizontally; he told you that?

6 A. Yes.

7 Q. And how long does that process take?
8 Seriously how long does it take to do all three bays
9 horizontally and align them?

10 A. It shouldn't take that long, about an
11 hour, hour and a half, if it's just the two of them
12 because that's a lot of beating and banging.

13 Q. Now, you say that they would climb up on
14 this to hit these with a hammer of some sort. Would
15 it be a ten-pound maul or would it be a six-pound
16 maul?

17 A. The bigger the better. The employees are
18 responsible for their own tools. We give them a
19 list of a minimum of what they are supposed to have.

20 Q. Is a six-pound maul made as that one is,
21 only lighter?

22 A. Yes.

23 Q. It has a metal head as opposed to a
24 wooden head?

25 A. No. They all have wooden heads.

1 Q. It seems to me it would be pretty hard to
2 carry a ten-pound maul up a ladder, stand on a
3 ladder and swing and hit with a maul.

4 A. It is hard. That's why there aren't that
5 many ironworkers.

6 Q. That's probably why they don't use a
7 ten-pound maul on the second deck.

8 A. You aren't going to use a framing
9 hammer. You need something substantial to hit it
10 and you need to have some muscle behind it.

11 Q. And it would make a lot of noise when it
12 hit; metal hitting metal would make lots of noise?

13 A. Yes, sir.

14 Q. But the job could be done with a
15 six-pound maul, right?

16 A. No, sir. It could be done, but I give
17 instructions and that would just take too long.

18 Q. So it's your understanding then that the
19 horizontal beams immediately to the west of the bay
20 that fell -- let me get a picture for you. Is it
21 your understanding that these tubes were laid the
22 day before, on the brackets the day before?

23 A. No. I'm interested in particularly that
24 one, but I think all this operation was going on
25 that day.

1 Q. That day?

2 A. That day.

3 Q. If one of your workers comes in and says
4 they laid them before --

5 A. Well, like I say, the building was
6 sawtoothed down toward the other end and where they
7 set them, and Bosley asked us to leave one out in
8 that staging area.

9 Q. If these beams would have been laid the
10 day before, because you do three in a row, they
11 wouldn't have been secured that day?

12 A. No. If we leave everything has to be
13 secured.

14 Q. It's your testimony if they were laid the
15 day before they were secured?

16 A. Right.

17 Q. Is that right? Well, Darrell Ashley
18 testified that he went up there and looked at these
19 beams to the side and he said they weren't welded.

20 A. They weren't welded. They were tacked.

21 Q. He said they weren't tacked, too.

22 A. They were tacked.

23 Q. So he was up on the second deck at the
24 same time you were and he looked at the brackets and
25 you didn't?

1 A. Right.

2 Q. Although your beam had fallen?

3 A. That's right. I'm looking at the steel
4 that I erected is laying on the ground, why did it
5 fall. I am looking at a tack mark on it and this
6 boom that knocked it off.

7 Q. But you don't look at the bracket it was
8 resting on even though you admit there could be and
9 should be metal residue on that bracket?

10 A. Yes, sir.

11 Q. And took no photograph of it but you took
12 plenty of photographs from pretty angles about the
13 boom and arm, didn't you?

14 A. Absolutely.

15 Q. Would you agree that it would be an
16 unacceptable practice in the erection of steel to
17 leave a steel beam unsecured for eight to ten hours?

18 A. As long as I was on the site. It's not
19 an accepted practice to leave something overnight
20 unsecured.

21 Q. What is a suitable length of time you can
22 leave it unsecured before it becomes hazardous?

23 A. As long as I am on the site and I have
24 control over it. Once I leave the site I don't have
25 control over it.

1 Q. You would get control over the site by
2 telling the general contractor that the beam is
3 unsecured, wouldn't you?

4 A. No, sir. That's part of my erection
5 sequence.

6 Q. But when you say control the site, you,
7 of course, mean safety to make sure it's safe?

8 A. For my employees.

9 Q. For your employees only?

10 A. Right.

11 Q. You feel no obligation if you leave a
12 steel beam up for, say, more than 60 seconds to tell
13 the general contractor about it?

14 A. I wouldn't leave a steel beam up. I
15 would bolt it up in place. Tubes I can leave up.
16 Beams require two bolts or ten percent.

17 Q. This thing weighs 1,700 pounds so you can
18 leave an I-beam that weighs 1,500 pounds and have to
19 bolt it in place but you have no obligation to put a
20 1,700 beam and secure it; is that right?

21 A. It's because of the design of the tube.
22 If the engineers knew of a way to -- beams have
23 lateral movement where they can move. Beams can
24 roll over. That's why they are designed with
25 bolts. Tubes are rigid all four sides. They won't

1 roll over.

2 Q. Why would you ever weld it? Why would
3 you weld it?

4 A. Because the engineers have calculated
5 when they put the -- attach the precast to it that
6 tube transfers those loads down those columns we
7 were talking about.

8 Q. So they can support the concrete?

9 MR. NORRIS: He is not letting him finish
10 his answer.

11 THE WITNESS: The tube is designed to
12 transfer the load of that precast down into the
13 columns.

14 BY MR. SMIRCINA:

15 Q. Well, then, if these tubes -- so you say
16 this tube is an inherently stable design?

17 A. Absolutely.

18 Q. Compared to a I-beam?

19 A. Yes, sir.

20 Q. But it can fall, right?

21 A. Yes, sir.

22 Q. And, in fact, you have said that it is
23 your practice to secure it in place immediately upon
24 placement on the brackets; you line them up and
25 place them?

1 A. Yes.

2 Q. Why do you do that?

3 A. To keep them all in a line so we are
4 hitting one end. So when I tack one end and start
5 hitting the other end that it's secure and won't
6 vibrate around. It's intent is not for if a
7 forklift runs into it or if somebody takes maybe a
8 duck lift or something and runs into it, that's not
9 its intent.

10 Q. Were you aware that Mr. Bosley had had no
11 prior experience in the erection of steel in a
12 building of this type? Were you aware of that?

13 A. No, I wasn't.

14 Q. Were you relying on the general
15 contractor to coordinate with you and talk to you
16 before he let anybody come into the area with
17 material equipment near your beams?

18 A. No, sir. Mr. Bosley was aware of our
19 intent and direction that we were working.

20 Q. So if these beams were left unsecured
21 Mr. Bosley would have known about it?

22 A. Yes.

23 Q. Because your foreman, Gary Godfrey, would
24 have told him?

25 A. No, because they do a safety inspection.

1 They do an inspection on the structural steel on the
2 site and they look at things like that. They look
3 at welds, they look at bolts. If I left a bolt out
4 on a beam, Bosley or his QA would bring it to my
5 attention.

6 Q. Are you saying that the safety program of
7 the general contractor has to come and look behind
8 the weld of every one that your welder makes?

9 A. No. The contract specs, what they do is
10 they give a percentage of bolts and welds to be
11 tested. They may say 20 percent and if that 20
12 percent fails then they will be required to do like
13 100 percent of everything.

14 Q. Would you work material handling
15 equipment in an area where you knew a steel tube was
16 20 feet off the ground and unsecured? Would you
17 operate the material handling equipment?

18 MR. NORRIS: Objection, Your Honor.

19 MR. SMIRCINA: He says he operated these
20 forklifts and cranes.

21 THE COURT: You qualified him as an
22 expert. Overruled.

23 BY MR. SMIRCINA:

24 Q. Would you?

25 A. Would I?

1 Q. Would you?

2 A. Repeat the question.

3 Q. If you had known that steel beam was up
4 there unsecured that day, if you had been told would
5 you have tried to off-load drywall?

6 A. No. I would have looked at the opening
7 first.

8 Q. Would you have under any circumstances
9 tried to off-load that drywall?

10 A. No.

11 Q. Why not?

12 A. Because the thing is sitting there and
13 plus the clearance -- that's a judgment call.

14 MR. NORRIS: He is in the middle of an
15 answer.

16 THE COURT: Let him finish, Mr. Smircina.

17 BY MR. SMIRCINA:

18 Q. You say it's a judgment call?

19 A. Yeah. It's a judgment call because he is
20 taking a risk that he doesn't need to take. There
21 is no reason for that.

22 Q. But he doesn't know what that risk is if
23 he doesn't know the beam is unsecured?

24 A. I'll tell you what, if I look and seen
25 people welding things 100 percent plus the fact he

1 has ultraviolet rays, he is trying to operate
2 equipment and has these arc flashes, I'm sure that
3 impairs eye judgment as well. I wasn't there. I
4 can't say.

5 Q. But you would agree with me then that it
6 would be not a risk for him to off-load had the beam
7 been secured?

8 A. Had the beam been secured, looking at it,
9 I don't know if I would take that risk.

10 Q. But he had off-loaded --

11 A. You are asking if I would take that risk,
12 no.

13 Q. And you are not -- your level of
14 experience of boom truck operations certainly isn't
15 ten years' worth?

16 A. No, it isn't, sir. As a matter of fact,
17 I hire union operators. I'm not a crane expert. I
18 hire union operators to drive cranes for me just
19 because of that fact, because of accidents. People
20 that haven't gone through the apprenticeship -- the
21 apprenticeship is very involved and I found out
22 throughout the years that hiring private individuals
23 that they take risks that don't really need to be
24 taken. I have had cranes fall over because of
25 people taking risks that they don't need to take.

1 Q. So in your estimation an unsecured steel
2 beam is not a hazard to others on the job site?

3 A. Yes.

4 Q. That's your opinion that an unsecured --
5 make sure you understood what I was saying.

6 MR. NORRIS: Are you asking about a beam
7 or girt?

8 BY MR. SMIRCINA:

9 Q. An unsecured steel girt, is that a hazard
10 on the job site?

11 A. No, sir.

12 Q. Why not?

13 A. Because it's not going to go anywhere.
14 Where is 1,700 pounds going to go?

15 Q. Down a boom arm?

16 A. Right. Vepco put up light poles. If
17 somebody hits it and knocks it over, is that their
18 fault? That's a bad analogy but we're talking about
19 collision.

20 Q. You brought up what the Navy said in its
21 letter to W. B. Meredith, so I think maybe we should
22 have a look at the letter a little more closely.
23 What do you think? First of all, who signs the
24 letter, do you know that person?

25 A. No, sir.

1 Q. But you understood him to be the officer
2 in charge of construction at Oceana?

3 A. Yes.

4 Q. And the military personnel who ran this
5 job site?

6 A. Right.

7 Q. Who owned this job site? Read the second
8 paragraph, please.

9 A. "We determined that a number of girts, at
10 least three and probably six or more, were laid on
11 their brackets with no tack welds or bolts securing
12 them in place. The girts were between the second
13 floor and roof deck of the structure, approximately
14 20 feet off the ground. This created a serious
15 hazard to all personnel in the immediate vicinity."

16 Q. You can stop. Do you agree with that
17 statement?

18 A. No.

19 Q. No evidence of it?

20 A. No.

21 Q. Read the second paragraph on Page 2.

22 A. "We also note that notwithstanding the
23 risks associated with structural steel erection, no
24 Activity Hazardous Analysis was made or written.
25 This violated Paragraph 01.A.09 of a Safety Manual,

1 which requires that an Activity Hazard Analysis be
2 prepared by the contractor. This was the
3 superintendent's responsibility to enforce the
4 writing, review, and implementation of the Activity
5 Hazard Analysis for structural steel erection."

6 Q. Let's talk about the Activity Hazard
7 Analysis. You know what it is, don't you?

8 A. Yes.

9 Q. Did your company or your workers have any
10 responsibility for the making of an Activity Hazard
11 Analysis before they started to erect the steel?

12 A. We had went through --

13 Q. That wasn't my question. Do they have
14 any responsibility to create or make or write an
15 Activity Hazard Analysis?

16 A. Yes. I didn't have a contract under
17 that, but general contractor supplies those.

18 Q. I see. Read the fourth paragraph.

19 A. "The accident on 14th of November 1996
20 occurred because the man bumped or rammed his
21 loading equipment, a small hydraulic truck-mounted
22 crane, into the unsecured girt. This girt slid down
23 the boom, knocking him to the ground with the
24 resultant injuries to his head, foot and leg. We
25 were extremely fortunate that the heavy girt, an

1 eight-by-eight-by-thirty foot long structural tube,
2 perhaps 2,500 pounds, did not kill the crane
3 operator or anyone else on site. We note your
4 position that even if the girt had been tack welded
5 that crane would have broken the welds. This is
6 speculation because, as you know, the girt had not
7 been tack welded. We will never know if the
8 operator would have felt the resistance that would
9 have been provided had there been a tack weld or if
10 a tack weld would have held against the force
11 utilized by the operator of the boom."

12 Q. Do you disagree with that paragraph, too,
13 don't you?

14 A. Yes, sir.

15 Q. Read the next paragraph.

16 A. "We hold the subcontractor's foreman,
17 Mr. Peter Gary Godfrey, directly responsible for
18 violating accepted steel erection procedures and the
19 rules of the Corps of Engineers Safety Manual.
20 Specifically, leaving large structural members
21 unsecured over the work site on the second story of
22 an open structure could have resulted in fatality
23 and did result in a serious injury. If there was no
24 other way to erect and line up these girts, then
25 working with the superintendent the areas beneath

1 and around the girts should have been cleaned and
2 taped off so that people could not get close to the
3 unsecured girts. This was not done."

4 Q. You disagree with that statement as well,
5 don't you?

6 A. Yes.

7 Q. So the Navy says that the beam wasn't
8 welded and you disagree with that, right?

9 A. Right.

10 Q. And the Navy says that you violated
11 accepted steel erection procedures and the rules of
12 the Corps of Engineers Safety Manual and you
13 disagree with that, too?

14 A. Yes, sir.

15 Q. And you disagree that working with the
16 superintendent you had no obligation to clear off
17 the areas beneath and around the girts or taped off
18 so people couldn't get close to the unsecured girts,
19 you don't have anything to do with that?

20 A. Not with that activity, no, sir.

21 Q. And you disagree that you were obligated
22 to make a Safety Hazard Analysis on this site?

23 A. The general contractor would submit it to
24 me.

25 Q. And what would you do with it once he

1 submitted it to you?

2 A. I would go through and I would list some
3 of the big items that I was going to be erecting
4 like your columns and your beams and joists, metal
5 decking.

6 Q. And you would be looking for what?

7 A. Hazards.

8 Q. Like falling steel?

9 A. You would be looking at erecting steel,
10 the sequence of erecting steel, what hazards, what
11 happened.

12 Q. What's the number one hazard for your
13 workers on the job site? Would that be falling from
14 the building?

15 A. Falling from the building, absolutely.

16 Q. Next would be burning from welding?

17 A. I would say yes.

18 Q. Where does unsecured steel members might
19 fall come into that?

20 A. It comes under the code where it says you
21 are supposed to bolt up ten percent of your beams.

22 Q. So you bolt up an I-beam but you don't,
23 because there isn't a specific rule, have to secure
24 a tube; is that your position?

25 A. Yes, sir.

1 Q. Peter Godfrey was fired off this job,
2 wasn't he?

3 A. Yeah. After like a week of deliberation
4 he was asked to -- he said it would be better if he
5 left.

6 Q. He got removed by the office of the
7 contractor, right?

8 A. Right.

9 Q. Along with Mr. Bosley, the general
10 contractor's superintendent?

11 A. Right.

12 Q. And the government removed both of them,
13 right, from the job site?

14 A. Just from that job. He went down the
15 street and started working at another project.

16 Q. You were up there later in the afternoon
17 around 5:00 up on the second deck, right; is that
18 correct?

19 A. It was later that day, yes.

20 Q. When you were taking the pictures?

21 A. Right.

22 Q. Isn't it true that you were told by
23 Mr. Steve Taraba to get off the second deck of the
24 building?

25 A. Yeah. He said, "Everybody off. Nobody

1 is allowed to be taking pictures here." Everybody
2 had to leave.

3 Q. Well, then at that point then the whole
4 site of the accident hadn't been secured, had it,
5 because you were up on the second deck?

6 A. No. Down around the boom truck had been
7 secured.

8 Q. But you were allowed -- oh, you were
9 kicked off the site, correct?

10 A. Right.

11 Q. Now, you would have to agree, though, in
12 conclusion that it would be safer if the girt 20
13 feet off the ground weighing 1,700 pounds was tack
14 welded than if it wasn't; wouldn't you agree with
15 that?

16 A. Yes.

17 Q. You would at least agree with that?

18 A. Right.

19 MR. SMIRCINA: I don't have anything
20 further.

21 THE COURT: Ms. Spence?

22 CROSS-EXAMINATION

23 BY MS. SPENCE:

24 Q. Might as well start with that letter
25 while we're still on it. Do you have a copy of the

1 letter, sir?

2 A. No, ma'am.

3 Q. Were there any Government Safety Manual
4 safety violations cited other than Paragraph 27.E.03
5 of the Army Corps Manual?

6 A. No, there wasn't. That's why I was -- I
7 just didn't have a chance. They kept citing this
8 Army Corps and it didn't even apply. This was the
9 closest thing that they could find to a girt. So
10 this is it.

11 Q. Are you aware now that Mr. Shepherd has,
12 in fact, admitted for purposes of this lawsuit that
13 that provision did not apply?

14 A. Yes.

15 Q. Let's look at some other things stated in
16 this letter, first, do you know if Lieutenant
17 Commander Ashe ever even came to the site?

18 A. No. I don't know who he is.

19 Q. He says that Mr. Bosley wasn't present
20 for the prep meeting. Was that true?

21 A. Oh, yes, he was.

22 Q. Mr. Bosley was there?

23 A. Yes.

24 Q. So this was wrong?

25 A. This is wrong. Him and Dennis was both

1 there.

2 Q. And the Navy concluded that it wasn't
3 tack welded?

4 A. Right.

5 Q. And you believe that is wrong?

6 A. Yes, ma'am.

7 Q. This letter also indicates that the
8 drywall subcontractor disregarded Bosley's
9 directions?

10 A. Yeah. I wasn't there but after talking
11 to Bosley, after I got there to find out what
12 exactly happened, that it was a loading spot, the
13 first spot where they loaded because it was so
14 accessible. There was no roof above it and it was
15 really easy to boom in and out and they asked us to
16 leave one girt out so other trades could get
17 materials in the building.

18 Q. And when you are talking about where he
19 asked you to leave a girt out, that was over here in
20 the front?

21 A. Yeah, the area that sticks out. It's
22 only a single floor which allows people to get
23 material in there. It's like a big flat open area
24 and once you go in it does require a girt there but
25 that wasn't in.

1 Q. And that was because this was supposed to
2 be a material loading area?

3 A. Right.

4 Q. This same letter from the Navy because of
5 the alleged Army Corps violation removed Mr. Godfrey
6 and Mr. Bosley not only from this site but from any
7 other contracts at Oceana, didn't it, originally?

8 A. Yeah.

9 Q. And you fought that, didn't you?

10 A. Yes.

11 Q. And you got Mr. Godfrey reinstated?

12 A. Yes.

13 Q. Because they were wrong?

14 A. Right.

15 Q. To your knowledge on the day of the
16 accident Atlantic Welding was the only trade working
17 in that southeast corner of the building; is that
18 correct?

19 A. Yes, ma'am.

20 Q. And that was always the way it was when
21 your crew was working on putting up these girts?

22 A. Yeah. We were kind of an isolated entity
23 with that operation installing the girts and welding
24 them.

25 Q. Do you recall Mr. Bosley discussing with

1 you because of the erection procedure he was going
2 to have only your employees in that area?

3 A. Yes. It was discussed also that day
4 because the block masons were coming around in that
5 sequence also. That's why we were welding down in
6 that area the door jambs and the girts. The block
7 guys would be coming down that way. They put the
8 blocks between the girts and that eventually
9 comes -- the blocks go in two things, the door jambs
10 and that comes right up underneath the girt.

11 Q. Now, you've read the AISC requirements
12 that it is the responsibility of the owner for
13 safety of other trades?

14 A. Yes.

15 Q. Wouldn't the Navy be the owner?

16 A. The Navy is the eventual owner, yes.

17 Q. And how often did the Navy inspect the
18 site?

19 A. Every day.

20 Q. Who did it?

21 A. There's a ROICC officer, I believe
22 Mr. Taraba. If he has -- Mr. Dennis Cullen, he is
23 in charge of quality assurance, he does it if he
24 doesn't.

25 Q. Didn't they both do it?

1 A. Yeah. They did it in conjunction.

2 Q. For people who haven't had experience
3 with welding, when you talk about the current and
4 the arc, what you are talking about is real
5 high-powered electricity?

6 A. Yes.

7 Q. Creates a real bright light?

8 A. Yes.

9 Q. And a lot of heat?

10 A. Very intense.

11 Q. And it melts the metal?

12 A. Yes.

13 Q. It melts the electrode and the metal it
14 is being attached to so that they bond?

15 A. Yes, ma'am.

16 Q. Your welder can't flip that part of his
17 mask up when the arc strikes, can he?

18 A. No. That creates a flashburn. The
19 ultraviolet rays, it goes through your retina and it
20 burns the back of your retina. It's just a short
21 time, like less than two seconds, one, two, boom,
22 you've got a burned retina. It's very important to
23 put that thing on prior to even attempting to strike
24 an arc.

25 Q. How many welding machines were in the

1 southeast corner of the building operating that day?

2 A. Two.

3 Q. And how loud was each machine?

4 A. Real loud. It's really hard to attempt
5 to talk. You really have to holler. For someone to
6 really get your attention, hey, you have to really
7 scream.

8 Q. Can you describe an I-beam or better yet
9 come down and draw one for us?

10 A. An I-beam has a top flange and a bottom
11 flange and a web, a web that connects the two so it
12 looks like that (indicating).

13 Q. Where do the bolts go on an I-beam?

14 A. Typically the bolts go right in the web.

15 Q. Why is that important?

16 A. What that does is you have a shear plate
17 that comes off your columns. What that plate does,
18 any loads put on this beam, those loads are
19 transferred down into the column.

20 Q. What's the stability of an I-beam
21 compared to a square girt?

22 A. The stability isn't as great because you
23 have a lot taller member and you have a top and
24 bottom flange. You don't have the stability because
25 it can roll over.

1 Q. In your experience as a steel erector do
2 you expect a general contractor to be thoroughly
3 familiar with the methods and means of steel
4 erection?

5 A. No. Typically general contractors that I
6 have worked with they are familiar with all of the
7 aspects of putting their building up. They know a
8 little bit about steel erection. They know a little
9 bit about plumbing. They have to know electricity,
10 where to run their conduits. There's a lot of hats
11 he wears because he has to coordinate all this.

12 Q. But he wouldn't know it in the detail
13 that each individual trade would?

14 A. Absolutely. That's why he hires.

15 Q. How was your working relationship with
16 Mr. Bosley?

17 A. Good, real good.

18 Q. And you mentioned you still do work with
19 W. B. Meredith?

20 A. Yeah. I'm working with them right now on
21 a project down at NOB, a renovation to a Naval
22 facility.

23 Q. How would you characterize Meredith's
24 reputation for safety with the Navy?

25 A. Good. He gets a lot of contracts.

1 Q. Was Bosley attentive to safety concerns
2 of your people on this job at Dam Neck?

3 A. Yes.

4 Q. Did he contact you if he had concerns?

5 A. Yes.

6 Q. Do you remember anything specific?

7 A. He may have contacted me on safety, maybe
8 safety belts, the guys -- it's ongoing with myself,
9 it's a discipline problem with guys tying off,
10 taking their lanyard and making sure they were tied
11 off.

12 Q. He wasn't silent letting you know if that
13 wasn't happening?

14 A. No.

15 MS. SPENCE: Thank you, sir. I don't
16 have any other questions.

17 MR. NORRIS: Just a few, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. NORRIS:

20 Q. When you say tying off, you mean the
21 worker ties himself off to some safety cable so the
22 worker won't fall, right?

23 A. Correct.

24 Q. It's not tying off the steel people's
25 beams?

1 A. No.

2 Q. Are you aware of any steel girt weighing
3 over 1,700 pounds falling off of its support
4 brackets falling to the ground or below simply
5 because of a vibration?

6 A. No.

7 Q. Have you ever known that to happen?

8 A. No.

9 Q. Do you think it's possible?

10 A. No.

11 Q. You were asked about the letter that the
12 Navy wrote you and you were asked to read just a
13 portion of the first page, second paragraph but you
14 weren't asked to read the rest of the paragraph.
15 The rest of the paragraph says this placement --

16 MR. SMIRCINA: Is there a question in
17 here?

18 MR. NORRIS: Yes. I'm asking him to read
19 the second sentence.

20 BY MR. NORRIS:

21 Q. What did the letter say that you had
22 violated?

23 A. The government Safety Manual EM3851-1,
24 Paragraph 27.E.03.

25 Q. I want to show you, Mr. Doverspike, a

1 pleading in the Court's file which the plaintiff
2 filed. Read Number 4.

3 A. "Section 27.E.03, the Department of the
4 Army Safety and Health Requirements Manual, 38A-1.1,
5 dated October 1st, 1992, Safety Manual, did not
6 apply to the girt on or about November 14th, 1996."

7 Q. Did the plaintiff admit to that?

8 A. Yes, sir.

9 Q. So what the government said you violated,
10 the plaintiff admits the government is wrong,
11 correct?

12 A. Right.

13 Q. And then you were asked about a portion
14 of the second page, you were asked about whether you
15 filled out an Activity Hazard Analysis?

16 A. Right.

17 Q. Did you think that you were given an
18 Activity Hazard Analysis to fill out?

19 A. No.

20 Q. Do you remember this document?

21 A. Yes, I do.

22 Q. When you answered the question that you
23 provided an Activity Hazard Analysis, what did you
24 have in mind?

25 A. We went through -- that's going through

1 the steps of erection as you are going through the
2 specs and what's expected of me of the specs.

3 Q. Were you ever asked by anybody to fill
4 out a form that looked like that?

5 A. No, sir.

6 Q. Then you were asked about this
7 paragraph. Read the first sentence of this
8 paragraph if you can.

9 A. "The accident on 14 November 1996
10 occurred because the man bumped or rammed his
11 loading equipment."

12 Q. How is the Navy classifying the
13 collision, bumped or what?

14 A. Bumped or rammed.

15 Q. Does the Navy anywhere in here say that
16 the boom just barely brushed up against the girt?

17 A. No, sir.

18 MR. NORRIS: That's all I have, Judge.

19 MR. SMIRCINA: I just have about ten
20 questions.

21 THE COURT: I gave you the opportunity
22 afterwards to recall the witness. I'm going to let
23 him and if you want to end up you are welcome to end
24 up.

1 BY MR. SMIRCINA:

2 Q. Mr. Godfrey wasn't reinstated on this job
3 site, was he?

4 A. No, sir.

5 Q. He wasn't allowed back on this job?

6 A. Right.

7 Q. The code of -- who writes those
8 standards?

9 MR. NORRIS: Beyond the scope of
10 redirect.

11 MR. SMIRCINA: She talked on
12 cross-examination about the standards.

13 MS. SPENCE: No, I didn't. I only asked
14 him about the Army Corps of Engineers.

15 THE COURT: I'm going to let him answer
16 if he knows.

17 THE WITNESS: The Institute of Steel
18 Construction.

19 BY MR. SMIRCINA:

20 Q. That's a bunch of steel erectors?

21 A. No. It's a conglomerate of engineers and
22 people in the construction industry. It's not
23 exclusively set up for steel construction. If you
24 look in here the steel erection is a small portion
25 of it.

1 Q. Who writes the regulations for the steel
2 erectors?

3 A. The Institute.

4 Q. Now, you would say that the general
5 contractor is responsible for the execution of this
6 project for the Navy, right?

7 A. Yes, sir.

8 Q. And when it's done they give it back to
9 the Navy, right?

10 A. Absolutely.

11 Q. Beyond that the Navy says the general
12 runs the show, right? Make sure that I understand
13 correctly, those beams directly to the west of the
14 beams that fell and injured Michael Shepherd, you
15 are saying that those were welded at the time of the
16 incident, right?

17 A. Right.

18 Q. And that they had not been placed -- and
19 that they had been placed that day?

20 A. Right.

21 Q. They had not been placed the previous
22 day?

23 A. Right.

24 Q. Now, isn't the purpose of the Safety
25 Hazard Analysis to make sure the general contractor

1 knows the hazards associated with the steel
2 erection?

3 A. Yeah.

4 Q. Isn't that why they want your company to
5 do the hazard analysis so they know what the hazards
6 are?

7 A. The hazards we went through in the
8 preconstruction meeting with the general contractor
9 and his quality assurance.

10 Q. If you don't write it down and you don't
11 memorialize it, you don't make it that formal, how
12 do you know the general contractor's superintendent
13 fully appreciates the risks involved with your
14 practice?

15 A. I don't understand your question.

16 Q. You just got a bunch of guys talking
17 filling out a little one-line form, "Went over
18 safety requirements," were you there at that
19 meeting?

20 A. Yes.

21 Q. And you went through all the hazards,
22 every hazard?

23 A. That meeting is pretty lengthy. You
24 might think it's a little toolbox meeting. You go
25 through and it's pretty lengthy because they go

1 through the entire Section 5 which deals with the
2 structural steel.

3 Q. And that's where they tell you that you
4 are subject to the provisions of the Army Corps of
5 Engineers Safety Manual, isn't it?

6 A. Right.

7 Q. During the meeting, this preparatory
8 meeting that you had, did you ever tell the general
9 contractor that it was your plan to leave girts
10 unsecured for an extended period of time?

11 A. We went through the sequence of erecting.

12 Q. Did you ever tell him you were going to
13 leave girts unsecured for a period of time?

14 A. Right. It's assumed. You place them up
15 there, you line them up so there is a period of
16 time.

17 Q. But certainly not eight or ten hours?

18 A. No, sir. Like I said, we don't leave it
19 overnight.

20 Q. That would be unacceptable?

21 A. In the standard practice, right.

22 Q. To leave them up overnight?

23 A. Right.

24 Q. Now, the Navy letter says that the
25 operator bumped or rammed. Have you heard any

1 testimony from anybody in here, you've sat through
2 the whole trial, that characterized the contact as
3 being rammed?

4 A. Well, when something is lifted off the
5 clip six or eight inches --

6 Q. Has anyone described it as rammed?

7 THE COURT: He has answered the question
8 and we all sat here and listened to the testimony.
9 Are you finished?

10 MR. SMIRCINA: Just about, ma'am.

11 THE COURT: Let's go.

12 MR. SMIRCINA: I have nothing further.

13 THE COURT: Anything else, Mr. Norris or
14 Ms. Spence?

15 MS. SPENCE: I have one.

16 RECROSS-EXAMINATION

17 BY MS. SPENCE:

18 Q. This is the form for the Activity Hazard
19 Analysis. Did you and your foreman discuss the
20 principal steps involved in steel erection with
21 Mr. Bosley?

22 A. Yes.

23 Q. Did you discuss the potential hazards?

24 A. Yes, we did.

25 Q. Did you discuss controls and safety

1 measures to minimize the hazards?

2 A. Right, because what he does is he gives
3 me a sequence of erection that he wants me to
4 proceed because there are other trades following
5 behind me. The other trades fueling behind me
6 that's a safe activity because he knows that I'm
7 ahead of them.

8 Q. Did you discuss the equipment to be used?

9 A. Yes.

10 Q. Did he ask about inspection of the cranes
11 you were using?

12 A. Yeah. That's a given. Every day.

13 Q. And did he discuss the training and
14 certification of your employees?

15 A. Yes.

16 Q. Would you have discussed anything
17 different if you were writing it down?

18 A. No: You can just pick it apart. You can
19 pick and pick and pick.

20 MS. SPENCE: That's all I have, Your
21 Honor.

22 THE COURT: Mr. Norris?

23 MR. NORRIS: No.

24 THE COURT: You can step down.

25 PETER GARY GODFREY, called as a witness

1 by and on behalf of the Atlantic Welding, having
2 been first duly sworn, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. NORRIS:

6 Q. Tell us your name, sir.

7 A. Peter Godfrey.

8 Q. Mr. Godfrey, where do you work?

9 A. State Welding.

10 Q. Where is State Welding?

11 A. Located in Portsmouth, Virginia.

12 Q. What do you do for State Welding?

13 A. Ironworker foreman.

14 Q. How long have you been with State
15 Welding?

16 A. Approximately five months.

17 Q. Did you used to work for Atlantic Welding
18 & Fabricating?

19 A. Yes, I did.

20 Q. Do you work for them any longer?

21 A. No.

22 Q. When did you last work for them?

23 A. December of '99.

24 Q. Were you working for them on November
25 14th, 1996?

1 A. Yes.

2 Q. As of that date how long had you been in
3 the steel business?

4 A. Since 1978.

5 Q. Starting in 1978 can you tell the jury
6 about your experience in the steel business?

7 A. I started out with prefab buildings,
8 erections, and then --

9 Q. How long did you do that?

10 A. Approximately six years.

11 Q. Where were you doing that?

12 A. Multiple states, here, California, North
13 Carolina.

14 Q. Then what did you do next?

15 A. I took a break, spent six years in the
16 Navy. I then returned to ironwork when I got out in
17 '90.

18 Q. Who did you go to work for in '90?

19 A. I believe it was Kelly Contracting.

20 Q. Where are they?

21 A. They are defunct.

22 Q. Where were they?

23 A. In Virginia Beach.

24 Q. What kind of work were you doing for
25 Virginia Beach?

- 1 A. Structural steel erection.
- 2 Q. How long did you work with Kelly?
- 3 A. A couple of years.
- 4 Q. What did you do next?
- 5 A. Went to another company.
- 6 Q. Do you remember where?
- 7 A. Since 1990 it's all been here.
- 8 Q. All in Virginia Beach?
- 9 A. Yes.
- 10 Q. All in steel erection?
- 11 A. Yes.
- 12 Q. Did your experience in steel erection
- 13 include the setting and placement of steel girts?
- 14 A. Yes.
- 15 Q. Do you know what a steel girt is?
- 16 A. Yes.
- 17 Q. When did you go to work with Atlantic?
- 18 A. I'm not positive of the date.
- 19 Q. Do you remember how long you had been
- 20 working for them when the accident happened?
- 21 A. I believe it was four or five years.
- 22 Q. When you were with Atlantic for those
- 23 four or five years did you have experience with the
- 24 erection, placement of steel girts?
- 25 A. Yes.

1 Q. What was your job title with Atlantic on
2 November 14th, 1996?

3 A. Foreman.

4 Q. Had you had experience with welding
5 techniques for the placement of girts as of that
6 point in time?

7 A. Yes.

8 Q. A lot?

9 A. Yes.

10 Q. Had you had experience with the alignment
11 of girts before final placement?

12 A. Yes.

13 Q. How much?

14 A. Continuous.

15 Q. Have you ever performed a tack weld on a
16 girt?

17 A. Yes.

18 Q. How long had you been a foreman?

19 A. I believe my entire tenure with
20 Atlantic.

21 MR. NORRIS: Your Honor, I've abbreviated
22 somewhat my qualifications, but I would offer
23 Mr. Godfrey as an expert in the placement and
24 alignment of steel girts.

25 MR. SMIRCINA: We have no problem with

1 him being a welder and placement and talking about
2 what he did on that day. As far as placement of
3 erection of steel girts, he does it for a living. I
4 don't know if that qualifies him as an expert.

5 THE COURT: Do you have any objections or
6 questions that you want to ask him?

7 MR. SMIRCINA: No, I don't have any, just
8 the point I made. We can go on.

9 THE COURT: He is qualified in his area
10 of expertise.

11 BY MR. NORRIS:

12 Q. One other question, Mr. Godfrey, in your
13 experience since 1978 are you familiar with how
14 other steel contractors erect and align steel girts
15 here in Virginia Beach and Virginia area in general?

16 A. From my experience working for other
17 companies.

18 Q. When did you first become familiar with
19 the Dam Neck job?

20 A. It was at the very beginning of the job.
21 I unloaded it.

22 Q. Would that have been August of 1996?

23 A. That sounds about right.

24 Q. I show you a document that's marked as
25 Plaintiff's Exhibit 23. Do you recognize that

1 document?

2 A. Yes.

3 Q. I'm putting it up on the overhead,
4 correct?

5 A. Yes.

6 Q. Did you attend the meeting on August
7 12th, 1996?

8 A. Yes.

9 Q. What was the purpose of the meeting and
10 who did you meet with?

11 A. The representatives of Meredith for a
12 preparatory inspection prior to the work proceeding.

13 Q. As of that time were you familiar with
14 the plans for the erection of the steel members for
15 this job?

16 A. Generically.

17 Q. Did your discussions at this meeting
18 include the placement of girts on this job?

19 A. Not specifically, no.

20 Q. Was there any discussion at this meeting
21 requiring you to cordon off or rope off any areas
22 when you were performing your work?

23 A. No.

24 Q. Was there any discussion at this meeting
25 requiring you to use some kind of hoist during the

1 placement of the girts until final welding?

2 A. No.

3 Q. Was there any discussion or requirement
4 at this meeting that the girts be bolted into place
5 before final welding?

6 A. No.

7 Q. Can you tell the jury, and we've heard
8 some already how you go about setting a girt in
9 place from the time it's taken off the forklift to
10 the time of a final weld, what is involved?

11 A. It's raised up to its location. It's set
12 upon the clips that were already installed.

13 Q. And is this one of the clips that would
14 have been installed?

15 A. Correct.

16 Q. Are workers involved when it's set on the
17 clips?

18 A. Yes.

19 Q. What are those workers doing?

20 A. They would place the two ends on the
21 clips and tack weld it.

22 Q. Prior to tacking it what, if anything,
23 has to be done in the way of alignment?

24 A. It needs to be set to its dimension.

25 Q. What does that mean to set it to its

1 dimension?

2 A. According to the plans, the outside
3 dimension versus the center line of the column line,
4 it's for other trades that are going to attach to
5 that.

6 Q. Mr. Godfrey, I'm going to show you a
7 picture that's been marked as Defendants' Exhibit
8 15. Do you see a girt in this photograph?

9 A. Yes.

10 Q. Do you see it resting on a clip?

11 A. Yes.

12 Q. Can you describe to for the jury how it's
13 set in relation to the column?

14 A. Past the outside face.

15 Q. Is there a specific dimension that it's
16 allowed to be past the face of the column?

17 A. Yes.

18 Q. How does the steel worker get it to that
19 location? What tool is used?

20 A. They would have to move it with an
21 eight-pound hammer.

22 Q. Can you identify what this is?

23 A. That's an eight-pound hammer.

24 Q. It's been referred to by someone as ten
25 pound. Do you know which it is?

1 A. It may be. No. I can't see the stamp.

2 Actually it is a ten-pound stamp.

3 Q. Would it matter whether a ten pound or
4 eight pound is used?

5 A. Depends on the man that swung it I
6 suppose.

7 Q. How hard would he have to swing it?

8 A. Fairly hard.

9 Q. Why do you have to swing it fairly hard
10 to move the girt?

11 A. They are quite heavy.

12 Q. Can you tell us a little bit now of --
13 you have a man. Is he on a ladder?

14 A. He would be in this instance.

15 Q. And he is using that maul. Is that
16 called a maul?

17 A. Correct.

18 Q. What does he do with it now in relation
19 to the girt as far as the alignment goes?

20 A. The girt would be sitting full bearing on
21 the clip which would align the outside with the
22 outside of the column.

23 Q. What does full bearing mean?

24 A. It's an eight-inch clip and eight-inch
25 tube, so they are evenly set up. The end result is

1 some of the tube is hanging off the clip, outside
2 center line of the column. He would install his
3 string line across at least two bays.

4 Q. Why would he go across at least two bays?

5 A. Because it doesn't do you any good if
6 this one is straight and this one is straight but
7 they are not straight with each other. You have to
8 span that gap.

9 Q. Why do you want -- are these called bays,
10 the areas between the columns?

11 A. Correct.

12 Q. Why do you need the girts from bay to bay
13 to be straight with one another?

14 A. Because other trades are going to attach
15 to that material.

16 Q. Do you know what was being attached to
17 these girts?

18 A. No, not specifically.

19 Q. How does the string line work? Can you
20 tell us briefly what you do with the string line?

21 A. Put the string line on the two columns
22 that you want to use as work points. You put as a
23 picked dimension from center line and that gives you
24 a point of reference when you move the tube.

25 Q. Once you have the girts or tubes aligned,

1 what happens next?

2 A. Then they are welded.

3 Q. What kind of a weld?

4 A. They are usually just tack welded.

5 Q. What is a tack weld?

6 A. About an inch.

7 Q. What's the purpose of the tack weld once
8 it's placed on the girt?

9 A. To keep that dimension from changing.

10 Q. To keep it from changing from what kind
11 of force?

12 A. Just somebody bumping into it, something,
13 a problem at another point in the building, a
14 backhoe hit the building somewhere else.

15 Q. What kind of movement in terms of
16 distance does the tack weld try and prevent?

17 A. It would be horizontal.

18 Q. Of what distance?

19 A. Of any distance.

20 Q. What is your tolerance on this job?

21 A. For?

22 Q. For your alignment of the girts?

23 A. I couldn't tell you without the prints.

24 Q. Is this tack weld meant to keep the girt
25 from being knocked off the clip?

1 MR. AUFENGER: I object to the leading.

2 You can ask him the purpose of it.

3 THE COURT: Overruled.

4 BY MR. NORRIS:

5 Q. Is the tack supposed to keep the girt
6 from being knocked off the clip?

7 A. Yes.

8 Q. It's supposed to keep it from being
9 knocked off a clip from like a boom?

10 A. No.

11 Q. Were you working this job on the date of
12 the accident?

13 A. Yes.

14 Q. What was your position on the date of the
15 accident?

16 A. Foreman.

17 Q. What was your crew that day?

18 A. I had Frank Brock and Mike Caldwell and
19 Mike Cashwell.

20 Q. What was your activity that particular
21 day?

22 A. We were welding girts, aligning girts,
23 installing safety cables, whatever else came up.

24 Q. Do you remember whether or not the girt
25 that was involved in this accident was placed on the

1 date of the accident?

2 A. No, I don't.

3 Q. Where were you -- let me show you a
4 diagram. Do you recognize this diagram as being --
5 there's another one here. I don't know if this is
6 easier for you.

7 A. Yes.

8 Q. Do you remember what time of day the
9 accident happened roughly? Was it before or after
10 lunch?

11 A. I couldn't tell you.

12 Q. Do you remember where you were when the
13 accident happened?

14 A. I was on the roof.

15 Q. What portion of the building on the roof
16 were you on? Assume the top of the diagram is
17 north.

18 A. That is the main entrance. I was
19 approximately in this area (indicating).

20 Q. Let's show the jury.

21 A. Between column lines three and four.

22 Q. Can you point to it again?

23 A. Approximately here (indicating).

24 Q. Where you were at the time of the
25 accident, could you see the area where the accident

1 happened?

2 A. Not until I came down the ladder.

3 Q. Were you aware on the date of the
4 accident that there was a boom truck off-loading
5 materials in front of the building?

6 A. Yes.

7 Q. When did you first become aware of that?

8 A. They were off-loading in a different
9 area. I knew that.

10 Q. Where were they off-loading when you were
11 aware?

12 A. The truck was parked here and they were
13 loading materials approximately here (indicating).

14 Q. Were there any girls in the way when they
15 were off-loading when you saw them?

16 A. Not to my knowledge.

17 Q. Were you ever aware that they moved their
18 truck to another location to remove materials?

19 A. Not prior to the accident, no.

20 Q. Now, how did you first become aware that
21 an accident had happened?

22 A. I heard it.

23 Q. What did you hear?

24 A. I could hear the girt hit his truck, I
25 assume the bed of the truck.

1 Q. What did you do?

2 A. I was on the ladder at the time. I
3 continued down the ladder. I walked to the edge and
4 looked for the operator. I didn't see him. I
5 yelled down to one of my men to go in the trailer
6 and call.

7 Q. Mr. Godfrey, up until that point in time
8 how many girls had your company installed on the
9 project?

10 A. Quite a few.

11 Q. Was your work subject to inspection?

12 A. Yes.

13 Q. Was it inspected by the general
14 contractor?

15 A. And others.

16 Q. Did the Navy have personnel inspecting
17 work?

18 A. Yes.

19 Q. Did any representative of the general
20 contractor ever indicate that the manner being used
21 to set, align and place girls were inappropriate?

22 A. No.

23 Q. Did any representative from the Navy cite
24 you for any problem in that respect?

25 A. No.

1 Q. Were there safety meetings on the job
2 site?

3 A. Yes.

4 Q. Did you attend safety meetings?

5 A. Yes.

6 Q. Was there a safety meeting the day of the
7 accident?

8 A. I don't know.

9 Q. See if this refreshes your recollection.
10 Let me show you Defendants' Exhibit Number 1. Can
11 you tell if you were at that safety meeting? Do you
12 see your signature?

13 A. No, I don't, not yet. Yes, I do.

14 Q. Was the safety meeting in the morning, do
15 you remember?

16 A. I don't remember.

17 Q. Do you remember at any safety meeting any
18 question arising about the manner in which Atlantic
19 was placing, aligning the girts?

20 A. No.

21 Q. Was any request made of Atlantic at any
22 safety meeting that they should cordon off the area
23 around their work?

24 A. No.

25 Q. Did Atlantic cordon off the area around

1 any of the work when it was setting girts on this
2 job?

3 A. No.

4 Q. Why not?

5 A. It wasn't required.

6 Q. Who would have authority to decide
7 whether and when to cordon off work area on the job?

8 A. I assume it would be a joint between
9 myself and Mr. Bosley if others were going to be
10 working in the same area.

11 Q. Did anybody ever tell you on the date of
12 this accident that anybody was going to be working
13 in the area where this girt was located?

14 A. No.

15 Q. Now, you told us you heard the boom. Did
16 you actually go down to the injured man?

17 A. I went down to the ground. He was
18 already being attended to.

19 Q. Did you ever make any determination or
20 look around or make any of your own investigation as
21 to what might have happened?

22 A. After the fact.

23 Q. I'm going to show you a photograph that's
24 marked Plaintiff's Exhibit 15. Can you identify
25 what's in this photograph?

1 A. It appears to be a girt with burn marks.

2 Q. Do you remember seeing the girt after the
3 accident as it appears in the photograph?

4 A. No, not that day.

5 Q. How about the next day?

6 A. No. I believe it was cordoned off.

7 Q. Did you ever get a look at the girt after
8 the accident to see if it had marks?

9 A. Not personally, no.

10 Q. Did you ever make any of your own
11 examination of the girt or the clips to see if it
12 had been tacked independently of your own?

13 A. We could see the clips but we couldn't
14 get to the girt.

15 Q. When you looked at the clips, could you
16 satisfy yourself whether or not it had been tacked?

17 A. Yes. There was a burn mark from the
18 tack.

19 Q. Do you know who Manny Seoane is?

20 A. Yes.

21 Q. Mr. Seoane has told us that you told him
22 that the girt was not tacked. Did you ever tell
23 Manny Seoane that?

24 A. I believe I told him -- the term was
25 welded, and I told him I did not believe it had been

1 welded.

2 Q. What did you mean by that, Mr. Godfrey?

3 A. Meaning that the production welding had
4 not been done.

5 Q. What is production welding?

6 A. That would be the final weld, whatever
7 size is called for in the drawing.

8 Q. Did you mean ever to tell Mr. Seoane that
9 the girt hadn't been tacked prior to the incident?

10 A. No.

11 Q. Do you have an opinion whether the girt
12 was tacked prior to the incident?

13 A. It's my opinion it was.

14 Q. Mr. Godfrey, were the Wenger drywall
15 people on this job for any period of time before the
16 accident happened?

17 A. Yes.

18 Q. Were they working in and around where
19 you-all had been doing your work?

20 A. Yes. They installed their material
21 behind us.

22 Q. Do you know what Mr. Brock had been doing
23 the day of the accident?

24 A. They were welding the tubes.

25 Q. Do you know specifically which tubes he

1 had been working on that day?

2 A. At the time I know that he was underneath
3 the second floor.

4 Q. But did you know what girts he had placed
5 or aligned before the incident happened that day?
6 Were you aware of his actual location and work that
7 day?

8 A. I know they were on that corner of the
9 building is all I know.

10 Q. And they had been doing welding that day?

11 A. Correct.

12 Q. Mr. Godfrey, you know you are under oath
13 today?

14 A. Yes.

15 Q. Did anybody to your knowledge go onto the
16 site after the accident happened and manufacture or
17 fake a weld on the beam?

18 A. No.

19 Q. You are not a party to this suit,
20 correct?

21 A. Not to my knowledge.

22 Q. And you are not an employee anymore of
23 Atlantic Welding & Fabricating?

24 A. No.

25 MR. NORRIS: That's all I have of

1 Mr. Godfrey.

2 THE COURT: Let's take an hour break for
3 lunch. During the break you are allowed to talk but
4 not anything about the case. I would stay away from
5 the lawyers. Ladies and gentlemen, if you want to
6 leave your pads on your seat or in the back. The
7 deputy will meet you downstairs about ten after 2:00
8 and we'll come back up and finish up with this
9 witness.

10 (The jury was excused for a luncheon
11 recess.)

12 MR. NORRIS: For the record, one of the
13 jurors said to me as she walked past, "I'm golfing
14 on Wednesday."

15 (A discussion was held off the record.)

16 MR. NORRIS: I will ask now, perhaps we
17 can stipulate, I have the Virginia Carolina Steel
18 representative who would corroborate that the plans
19 and specifications do not call for any means of
20 temporarily securing the girts before final
21 placement, that the plans and specifications do not
22 require any type of cordoning off of the steel
23 erection work while it's in progress. I think the
24 plaintiff has admitted to that in his requests for
25 admissions.

1 MR. SMIRCINA: Not exactly.

2 MR. AUFENGER: We won't stipulate to any
3 testimony from his steel erection expert.

4 MR. NORRIS: He is not the expert. He is
5 the subcontractor.

6 MR. SMIRCINA: That's not the issue
7 that's going to take a long time. That's five
8 questions, who are you.

9 THE COURT: Did you want them to have the
10 witness testify to that?

11 MR. SMIRCINA: If they want to make the
12 point.

13 THE COURT: Do you want to think about it
14 during lunch?

15 MR. AUFENGER: Yes, ma'am.

16 (A luncheon recess was taken at this
17 time.)

18 (The jury was returned to the courtroom.)

19 CROSS-EXAMINATION

20 BY MR. AUFENGER:

21 Q. Good afternoon, Mr. Godfrey. You were
22 the foreman for Atlantic, for the defendants in this
23 case, on November the 14th, 1996?

24 A. Correct.

25 Q. And you admit, don't you, that Atlantic

1 was required to erect the steel which would include
2 the steel girt in accordance with the Army Corps of
3 Engineers safety provisions?

4 A. Correct.

5 Q. And it's your opinion that an Activity
6 Hazard Analysis was required on this job site
7 regarding the erection of steel, correct?

8 A. Correct.

9 Q. And your recollection was one, in fact,
10 was done; is that right?

11 A. Yes.

12 Q. Did you later learn that what you thought
13 was an Activity Hazard Analysis was, in fact, not
14 that at all but was a preparatory meeting?

15 A. Correct.

16 Q. So you would agree that no Activity
17 Hazard Analysis as you understand what it is today
18 was ever done on this job, correct?

19 A. Not to my knowledge.

20 Q. You've never seen an Activity Hazard
21 Analysis for the erection of steel which would
22 include the girt on this case, have you?

23 A. No.

24 Q. And, in fact, are you aware that it is
25 Mr. Bosley's position as a defendant in this case

1 that no Activity Hazard Analysis was ever done?

2 A. I'm sorry. Say that again.

3 Q. Are you aware that Mr. Bosley's position
4 is that no Activity Hazard Analysis was done in this
5 case?

6 A. No. I was not aware.

7 Q. Were you aware that it was Mr. Bosley's
8 or is his position as a defendant in this case that
9 one was not required?

10 A. No.

11 Q. Now, Atlantic, the steel erectors, did
12 not keep accurate records on the erection of these
13 girts, did they? I'll clarify that for you.
14 Atlantic didn't keep specific records that would
15 state and tell you when each girt was placed and in
16 what order?

17 A. Correct.

18 Q. So as you sit here today there is no
19 record as to when the girts were put up and in what
20 order; is that correct?

21 A. Correct.

22 Q. Now, you of your own knowledge don't know
23 if the girt that struck my client was welded or tack
24 welded or in any way secured, do you, of your own
25 knowledge?

1 A. No.

2 Q. That's because you had never inspected
3 this particular girt, the girt that struck Michael
4 Shepherd, before it hit him, correct?

5 A. Correct.

6 Q. I understood you to testify that you
7 didn't know specifically when the girt that struck
8 Mr. Shepherd was erected; is that correct?

9 A. Correct.

10 Q. So you can't say if it was the day before
11 his injury or the day of his injury; is that
12 correct?

13 A. Correct.

14 Q. Did you ever see that particular girt,
15 the girt that struck Mr. Shepherd, up on its
16 brackets before it hit him?

17 A. Yes.

18 Q. So you can say that?

19 A. Yes.

20 Q. When did you first notice it up on its
21 erection clips?

22 A. During that day.

23 Q. When you say during that day, you mean
24 the day of the accident?

25 A. The day of the accident, yes.

1 Q. You've indicated that it was your
2 procedure to at least line up two girts at a time
3 and then run a string line and then tack weld them;
4 is that correct?

5 A. Correct.

6 Q. Now, on the day before Michael Shepherd
7 was injured, do you know if I may approach, do you
8 know if the two -- let me strike that. Do you know
9 if this girt right here, the one to the immediate
10 left of where the girt was that struck Mr. Shepherd,
11 do you know when that girt was erected?

12 A. No.

13 Q. That girt could have been erected the day
14 before, couldn't it?

15 A. It could have.

16 Q. Now, if that girt had been erected the
17 day before, and let's assume that there is going to
18 be some testimony in this case that that girt was --
19 when I say that girt that's the girt to the left of
20 the girt that struck Mr. Shepherd -- if that girt
21 were erected the day before it wouldn't have been
22 secured before the girt that struck Mr. Shepherd was
23 secured?

24 MR. NORRIS: I'm going to object to the
25 form of the question for several reasons, it's

1 asking the witness to speculate. I'm not sure how
2 the plaintiff is defining the word "secured."
3 Mr. Burg, their expert, could never define for us
4 secured. I think the question is calling for
5 speculation and it's vague.

6 THE COURT: Do you want to clarify that,
7 please?

8 MR. AUFENGER: I would like to try,
9 Judge.

10 BY MR. AUFENGER:

11 Q. Mr. Godfrey, isn't it true that you would
12 tack weld the girt to the immediate left of the girt
13 that struck Mr. Shepherd at the same time?

14 A. Normally, yes.

15 Q. So you wouldn't have tack welded it the
16 day before if you hadn't erected the girt that
17 struck Mr. Shepherd yet, correct?

18 A. Unless it was going to be left overnight.

19 Q. And you don't know if the girt to the
20 immediate left of the girt that struck Mr. Shepherd
21 was tack welded or left overnight, do you?

22 A. No.

23 Q. You never gave any specific instructions
24 for either the girt to the left of the girt that
25 struck Mr. Shepherd to be tack welded or the girt

1 that struck Mr. Shepherd to be tack welded; isn't
2 that true?

3 A. No. That's not true.

4 Q. It's your testimony here today that you
5 specifically told your employees with Atlantic to
6 tack weld the girt that struck Mr. Shepherd?

7 A. All the girts. The procedure is the same
8 for all of them.

9 Q. So you discussed with them the procedure
10 but you didn't specifically tell any employee to
11 tack weld the girt that struck Mr. Shepherd,
12 correct?

13 A. No.

14 Q. You are agreeing with me on that?

15 A. Yes.

16 Q. Is it fair to say that it was not your
17 practice at Atlantic to allow these horizontal girts
18 to remain untack welded for eight and ten hours at a
19 time?

20 A. Correct.

21 Q. So you would disagree with Mr. Brock who
22 was your employee at the time, one of the welders,
23 if he were to come into this courtroom and testify
24 that the girts were allowed to stay up on these
25 clips without being tack welded for eight and ten

1 hours at a time; is that true?

2 A. Not if it was overnight, no.

3 Q. Previously you didn't say if it was
4 overnight. Previously you agreed with me it was not
5 the standard practice to leave them up for eight or
6 ten hours?

7 A. If they are working in that area during
8 that day, if that is their work area, yes.

9 Q. Regarding the second floor, regarding the
10 girt that struck Mr. Shepherd, no employee of
11 Atlantic was working in that area regarding that
12 girt on the second floor when this accident
13 happened; isn't that true?

14 A. Correct.

15 MR. AUFENGER: Let me show you, please --
16 Judge, can I ask you what exhibit number that is?

17 THE COURT: It's 15.

18 BY MR. AUFENGER:

19 Q. I'm showing you Plaintiff's Exhibit
20 Number 15 and you've seen that already in your
21 examination, correct?

22 A. Yes.

23 Q. You can't tell us of your own knowledge
24 whether or not those two burn marks as you indicated
25 were that way immediately after Michael Shepherd was

1 injured, can you?

2 A. No.

3 Q. And you would agree that the girt that
4 injured Michael Shepherd was unattended at the time
5 it struck him; isn't that true?

6 A. Yes.

7 Q. Now, also the United States Government
8 removed you from this job; isn't that true?

9 A. Yes.

10 Q. And are you here today disagreeing with
11 the government that they found three to six other
12 girts similar to the one that struck Mr. Shepherd
13 not tack welded?

14 A. I was not present.

15 Q. So you can't disagree with that, can you?

16 A. No.

17 Q. Now, isn't it true that you told
18 Mr. Seoane, the government safety inspector, that
19 the girt that struck Mr. Shepherd was not welded?

20 A. Correct.

21 Q. And isn't it true that a tack weld is
22 supposed to keep this girt from being knocked off
23 the clips?

24 A. By a reasonable amount of force.

25 Q. That's one of the purposes of tack

1 welding it; isn't that true?

2 A. True.

3 Q. And since you were on top of the roof
4 when this accident happened, you don't know what
5 type of force was used to dislodge this girt from
6 its erection clips; isn't that true?

7 A. No, I don't.

8 Q. You would agree that it's safer for any
9 person in the area of that girt if it were tack
10 welded; isn't that true?

11 A. Correct.

12 Q. Do you know of your own knowledge whether
13 or not Mr. Bosley knew the means and methods of
14 erecting these particular type girts?

15 A. No.

16 Q. So since you answered --

17 MR. NORRIS: Your Honor, does that mean,
18 no, he doesn't know, or no, Mr. Bosley did not
19 know?

20 THE WITNESS: No. I don't know
21 personally of Mr. Bosley's qualifications and his
22 job title.

23 BY MR. AUFENGER:

24 Q. Did you ever tell him specifically the
25 method, the manner of erecting these particular

1 girts were?

2 A. Not that I recall.

3 MR. AUFENGER: Thank you so much.

4 CROSS-EXAMINATION

5 BY MS. SPENCE:

6 Q. In response to Mr. Norris' question
7 earlier you indicated that if a decision to cordon
8 off the area were made it would be made jointly by
9 you and Mr. Bosley, is that correct?

10 A. Pertaining to that area of the work
11 because I had been working there.

12 Q. And you would have only considered it
13 necessary if other trades were working there?

14 A. Correct.

15 Q. Was any other trade working in the
16 southeast corner of the building where your workers
17 were working on November the 14th?

18 A. No.

19 Q. At any time while you were working on
20 girts did Mr. Bosley have other trades working
21 around your welders in the same area?

22 A. No.

23 Q. Mr. Seoane asked you if the girt was
24 welded?

25 A. Correct.

1 Q. What was the final weld size that would
2 have been on this girt?

3 A. I would have to look at the detail to
4 tell you.

5 Q. Would it have been more than a tack?

6 A. Yes.

7 Q. Did Mr. Seoane ever ask you if it was
8 tacked?

9 A. Not that I recall.

10 Q. In your opinion was it tacked?

11 A. When he asked me, I did not know so I was
12 not going to tell him something that I did not know.

13 Q. And since you talked to him have you
14 talked to Mr. Brock?

15 A. At the deposition.

16 Q. Now, the tack that would provide some
17 extra measure of safety, would you anticipate the
18 tack being able to resist the direct impact with the
19 boom?

20 MR. AUFENGER: Judge, he is not an
21 expert. He can't testify to that.

22 MS. SPENCE: He opened the door to that.

23 THE COURT: Overruled.

24 THE WITNESS: No, I would not.

25 MS. SPENCE: Permission to approach.

1 BY MS. SPENCE:

2 Q. When you talk about an Activity Hazard
3 Analysis wasn't done, you mean this form wasn't
4 filled out, right?

5 A. Not that I recall.

6 Q. Did you discuss with Mr. Bosley the
7 principal steps involved in steel erection when you
8 started the job?

9 A. It was not Mr. Bosley but a
10 representative of Meredith.

11 Q. Do you remember speaking to Mr. Cullen?

12 A. I believe it was.

13 Q. Did you analyze the principal steps for
14 hazards that could be anticipated?

15 MR. AUFENGER: Judge, I would object to
16 leading. She can ask what they did.

17 THE COURT: She is on cross-examination.

18 BY MS. SPENCE:

19 Q. Did you analyze each step for potential
20 hazards with Mr. Cullen?

21 A. Not particular each step.

22 Q. The major ones?

23 A. It's more of a generic pattern of
24 speech. It mostly pertains to where we are starting
25 and in which direction we are going for other trades

1 to follow behind and then you generically cover the
2 safety hazards involved, welding, people getting
3 burned, my men, how we are going to be tied off to
4 keep them from falling off the building.

5 Q. And so you discussed how you would
6 minimize of hazards of falling and people getting
7 burned?

8 A. Correct.

9 Q. To your knowledge would anything else
10 have been discussed if the information had been
11 written on this form?

12 A. No.

13 MS. SPENCE: Thank you. I don't have any
14 other questions.

15 REDIRECT EXAMINATION

16 BY MR. NORRIS:

17 Q. Mr. Godfrey, did you keep a daily log for
18 this job?

19 A. The company has one and I had a personal
20 planner that I filled out.

21 Q. I want to show you do you recognize these
22 two sheets?

23 A. Yes.

24 Q. Are those daily logs that you did for
25 this job?

1 A. Yes.

2 Q. Is one for the day before the accident
3 and one the day of the accident?

4 A. Yes.

5 Q. Take a moment to review your comments and
6 I want to see if that log refreshes your
7 recollection when the girt that was involved in this
8 accident would have been set.

9 A. It appears to be the day before.

10 Q. Do you recall that the day before there
11 was a clip missing?

12 A. Yes.

13 Q. Did a clip have to be fabricated and
14 installed on a column?

15 A. Yes.

16 Q. So that wasn't done until the day before
17 the accident, right?

18 A. Correct.

19 Q. So when would the girt have been set
20 where there was a missing clip?

21 A. It would have been the next day.

22 Q. And that would have been the day of the
23 accident?

24 A. Correct.

25 Q. Does your log indicate when that girt or

1 whether that girt was tacked?

2 A. Yes. Set girts and tack weld.

3 MR. NORRIS: That's all I have, Judge.

4 MR. AUFENGER: May I see those, please,
5 John?

6 RECROSS-EXAMINATION

7 BY MR. AUFENGER:

8 Q. Do you know what time of day on November
9 the 14th, 1996, that's the date of this injury, that
10 you filled out this piece of paper?

11 A. It would have been at the end of the day.

12 Q. There is nothing on this other piece of
13 paper, the one that you filled out I'm assuming at
14 the end of the day prior to on 11-13-1996, nothing
15 on the 11-13-96 piece of paper that says that the
16 girt in question was tack welded or not; isn't that
17 true?

18 A. No.

19 Q. But since we had a clip missing at that
20 column, that girt could not have been set?

21 A. It doesn't say that. It just says
22 "missing clip for wall girt." It says "made and
23 installed."

24 Q. It doesn't say whether the girt in
25 question was installed that night or the next day,

1 correct?

2 A. No, it does not.

3 Q. You don't know as you stand here today or
4 sit here today whether or not the girt that struck
5 Mr. Shepherd was erected the day before or the day
6 of his injury; isn't that true?

7 A. No.

8 Q. No, it's true, or no, it isn't true?

9 A. No. I'm not 100 percent.

10 Q. You don't know, correct?

11 A. Correct.

12 MR. AUFENGER: That's all I have. Thank
13 you very much.

14 THE COURT: Anything else from the other
15 side of the room?

16 MR. NORRIS: No, Your Honor.

17 THE COURT: The witness is excused?

18 MR. NORRIS: Yes.

19 THE COURT: Your next witness?

20 MR. NORRIS: Mr. Brock.

21 FRANKIE BROCK, called as a witness by and
22 on behalf of the Atlantic Welding, having been first
23 duly sworn, was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. NORRIS:

1 Q. Tell the jury your name.

2 A. Frankie Lee Brock, 9343 1st View,
3 Norfolk, Virginia.

4 Q. How old are you?

5 A. I am 30 years old.

6 Q. Where do you work?

7 A. Atlantic Welding & Fabrication.

8 Q. What's your job title?

9 A. I'm an ironworker foreman.

10 Q. How long have you been a foreman?

11 A. Four years.

12 Q. How long have you been with Atlantic?

13 A. Seven.

14 Q. That would be since about '93?

15 A. Yes.

16 Q. In November of '96 what was your position
17 with the company?

18 A. I was an ironworker.

19 Q. What's the difference between an
20 ironworker and ironworker foreman?

21 A. A foreman pushes all the guys. He works
22 the erectors, he works with the crane. He overall
23 runs the erection crew. An ironworker, he does the
24 work, he makes the connections, he lands the joists,
25 he spreads the joists.

1 Q. Tell me a little bit about your work
2 experience after high school.

3 A. I joined the Navy. I went in as an E-1.
4 I got out as an E-5, HT2. That means I ran a crew
5 for the shipfitter shop. It was structural erection
6 of ships and repair of ships.

7 Q. Did that involve steelwork?

8 A. Yes, sir.

9 Q. What kind of steelwork?

10 A. It's almost the same as a building except
11 it's a ship. You have structural I-beams you have
12 supports and you do a lot with the cranes and
13 rigging because of the material brought on the ships
14 is steel. All the stuff in the ships is steel or
15 aluminum. It's kind of the same fundamentals.

16 Q. Did you do welding in the Navy?

17 A. Yes, sir. I went to -- the Navy put me
18 through a welding school when I first went in. It
19 had to do with principles of welding and general
20 welder, cutting, pipe fitting, brazing, and some --
21 the safety with Paul that and some damage control
22 stuff. After I was in the Navy for about two years
23 I went to C school. That moves you up to 54. This
24 means you can weld what they call packages. You are
25 a more trained welder for what you do.

1 Q. When did you leave the Navy?

2 A. Like the end of '93, '94, something like
3 that.

4 Q. Honorable discharge?

5 A. Yes, sir.

6 Q. While you were in the Navy did you have
7 some training with the police academy?

8 A. Yes, sir. The Norfolk Police Department
9 and the Navy had a little rift going on so they
10 tried to work that over and took some people out of
11 the Navy and put them through the police academy. I
12 went through a six-month police academy and
13 graduated sixth in my class and worked for the
14 Norfolk Police Department for about two and a half
15 years.

16 Q. What did you do when you finished your
17 Navy duties?

18 A. I came to work for Scott. I could have
19 went through the process to become a police officer
20 but I had been doing that for four years, structural
21 welding stuff like that and they make a lot more
22 money than police officers.

23 Q. Since you've been with Atlantic Welding
24 since '93, have you worked on jobs that involve the
25 placement of steel girts?

1 A. Yes, sir.

2 Q. The jury by now knows what a steel girt
3 is. That's a hollow steel tube; is that right?

4 A. Yes.

5 Q. Are you familiar with the type of girt
6 that was involved in the accident on November 14th,
7 1996?

8 A. Yes, sir.

9 Q. Had you had experience placing those
10 types of steel members before this accident?

11 A. Yes, sir.

12 Q. Tell us about your experience. How much
13 experience have you had?

14 A. I've set those type of girts. I've set
15 other girts. I've worked 30 or 40 jobs setting
16 those type of girts like that and I worked other
17 girts that bolted in, worked other ones like
18 prefab. We landed all those. You land the girt and
19 attach their outer sheathing to the girt.

20 Q. Have you acquired experience tack welding
21 in your years as a welder?

22 A. Yes, sir. They teach you how to tack
23 right in school.

24 Q. How many times do you think you would
25 have put a tack weld on a horizontal member like the

1 girt prior to the date of the accident?

2 A. Prior to the date of the accident,
3 thousands of times. I've tack welded thousands of
4 times.

5 MR. NORRIS: I would like to offer
6 Mr. Brock as an expert in the placement and setting
7 of steel girts and in tack welding.

8 MR. AUFENGER: Subject to cross, Your
9 Honor.

10 THE COURT: Okay.

11 BY MR. NORRIS:

12 Q. Now, Mr. Brock, you got assigned to work
13 on the Dam Neck job; is that right?

14 A. Yes, sir.

15 Q. Was your foreman Gary Godfrey?

16 A. Yes, sir.

17 Q. What were your job duties on that John?

18 A. On that job I was an ironworker. I did
19 what I was directed to do which would be anything
20 from standing the columns to connecting the
21 connections to landing the joists to bolting up,
22 miscellaneous welding, bridging, decking. Whatever
23 was needed for me, that's what I would do.

24 Q. This job involved the placement of girts,
25 correct?

1 A. Yes, sir.

2 Q. How many girls had to be placed on this
3 job?

4 A. I can't remember the exact number but
5 like 80, something like that.

6 Q. On the date of the accident -- did the
7 job begin like late August?

8 A. Yes, sir.

9 Q. In mid November how many girls do you
10 think you placed on this job?

11 A. Fifty or 60.

12 Q. During that time was your work subject to
13 inspection?

14 A. Yes, sir.

15 Q. Who was inspecting your work?

16 A. The general contractor would inspect it
17 and the ROICC officer of the Navy.

18 Q. What is a ROICC officer?

19 A. He is appointed by the Navy, comes out to
20 the job site to make sure you have the right
21 materials, you are doing things safely. He is
22 overall in charge of equipment and stuff like that.
23 If something isn't getting done right, he stops it
24 and makes sure it gets done right.

25 Q. Do you remember how you placed girls and

1 how you aligned them and set them on this job?

2 A. Yes.

3 Q. Did you use the same method on all the
4 girts?

5 A. Yes, sir.

6 Q. From the time you started this work on
7 the job in August until the accident happened in
8 November, had you ever been advised by the general
9 contractor you were doing it incorrectly?

10 A. No.

11 Q. Had you ever been advised you were doing
12 it unsafely?

13 A. No.

14 Q. Had the Navy ever advised you or cited
15 you you had been doing it incorrectly?

16 A. No.

17 Q. Had you ever been cited by the Navy for
18 doing it incorrectly or unsafely?

19 A. No.

20 Q. I want you to walk the jury through -- we
21 heard this already so I think they will be able to
22 follow you -- how you go about placing a steel girt
23 on this job. Let's assume, start with when the girt
24 is on a forklift. What do you do with that girt on
25 a forklift to get it into final placement?

1 A. Placing the girt with the forklift,
2 that's the direction you want?

3 Q. Yes, sir.

4 A. You find the girt that you need. The
5 forklift man would pick it up bring it over, line it
6 up in center.

7 Q. How would you find the one you need? Are
8 they marked?

9 A. Yes.

10 Q. So there's a girt designated for every
11 specific place in the building?

12 A. Yes, sir.

13 Q. So you find that one, the forklift lifts
14 it and what happens?

15 A. He centers it in the bay. There are two
16 ironworkers where the clips are. They are signaling
17 to get it centered, shoot it up, get it above the
18 clips, line it up square. The clips are eight
19 inches or ten inches.

20 Q. Do you see a clip in front of you?

21 A. Yes. It would sit like that. This would
22 be attached to the column. He would bring the tube
23 in, square it up and then they would sit it down on
24 it and the forklift would come down and back out
25 under it.

1 Q. Once the girt is set down on the clips,
2 what do you next do?

3 A. Move on to set the next girt.

4 Q. Why don't you put a weld on the girt and
5 the clip at that point so it can't be moved anymore?

6 A. These girts have precast that are
7 attached to them and precast is the sheathing on the
8 outside of the building and it's very straight, it's
9 cosmetically pleasing. When you stand a building
10 you have one column here, one column here, one
11 column here and one column here. It's steel. These
12 are steel members. This column may be dead plumb,
13 straight up and down. This next column may be a
14 quarter inch out for some reason. The next one may
15 be plumb and the next one may be a quarter out. If
16 you come from the center of this column to the
17 outside measurement of your tube and you welded it
18 up and you moved to this one and came that way,
19 after you were done your tube line would look like
20 this (indicating). It would have minute breaks in
21 it. It would not be straight. You come to this
22 column and take a piece of angle and tack it to the
23 column. You go down to this end and do the same
24 thing.

25 Q. How would you tack it?

1 A. Hold it out to the side and tack it to
2 the flanges of the column.

3 Q. How do you tack it?

4 A. One guy holds it and you put a rod. We
5 use 60-10 in the stinger.

6 Q. What's a 60-10?

7 A. A mucolytic rod.

8 Q. Is it a welding rod?

9 A. Yes. You use it to burn through paint.
10 It's an all-purpose rod. You put it in there and
11 weld it, put a weld on the angle to the back side to
12 hold your angle, to keep your angle from coming
13 loose or moving like this (indicating). Then you
14 find the center of your column. If the front of
15 your tube had to be five inches from the center of
16 the column -- I'm just giving as an example -- you
17 put your string line on out six inches so you can
18 measure one inch from the string line. Now you have
19 a straight line no matter what so when he puts his
20 precast in all of it's going to be straight.

21 Q. How do you get the girt to line up with
22 the string line? Can you push it with your hand?

23 A. No. It weighs entirely too much.

24 Q. Can you take a hammer?

25 A. I take a big hammer, ten-pound

1 sledgehammer.

2 Q. Does this look familiar?

3 A. Yes. That's mine.

4 Q. How hard would you have to hit with this
5 hammer?

6 A. I have to hit it about six times to move
7 it an inch. I'm 185 pounds.

8 Q. Why do you have to hit it so hard?

9 A. Because it's heavy. It's an eight-inch
10 tube. That's eight inches of that steel sitting on
11 this here.

12 Q. What is dead weight?

13 A. Drops. It's dead weight. If your foot
14 was sitting there and you laid it on it, that's
15 1,700 pounds of dead weight on the foot.

16 Q. Was it 1,700 pounds for the weight of the
17 girt?

18 A. I do believe it was 1,700 pounds.

19 Q. You take your mallet or maul and you
20 whack it so that what, both ends are on that string
21 line?

22 A. Yes, so you have your one inch from the
23 string line to the face of the tube.

24 Q. Then what do you do?

25 A. I would tack it to hold my measurement.

1. Q. Do you have to wear a mask when you tack
2 it?

3 A. Yes, sir.

4 Q. Is this the kind of mask you wear?

5 A. Yes, sir.

6 Q. Does the mask have a lense on it?

7 A. Yes. It has a Number 10 lense.

8 Q. What does a Number 10 lense do to your
9 vision?

10 A. You have none.

11 Q. But you can lift it up if you need to
12 see?

13 A. Yes.

14 Q. So can you using the mask show the jury
15 when you have vision and when you don't in the
16 tacking operation?

17 A. You put the tube in there. You hit it,
18 grab your stinger, put your rod in it, put your
19 shield down, flip it up, find what you want to
20 weld. Your welding rod is 12 inches long and you
21 have it in a grip.

22 Q. What's this?

23 A. A welding rod.

24 Q. What is a stinger?

25 A. What holds it. You don't want to hold it

1 because electricity is running through this. When
2 the electricity runs through this, through your lead
3 to your stinger to this, it gets this so hot that it
4 melts the steel and the end of this rod when it
5 happens.

6 Q. Does that make a light?

7 A. Very bright light. It will blind you if
8 you look at it.

9 Q. Are you on a ladder for the girts on the
10 upper level?

11 A. You can stand on a -- you don't want to
12 be standing like this because of all the fire. You
13 want to the more steady, the better your weld.

14 Q. Now you have your mask down?

15 A. You look. Your clip is here, tube is
16 here, and you put the shield down and scratch it.

17 Q. Why do you scratch it?

18 A. It's painted, not raw iron. All this was
19 painted. To get a ground you have to find -- you
20 scratch it or you can poke it and eventually the rod
21 will rub the paint off and it will arc and that's
22 where you put your tack.

23 Q. Does the tack always wind up in the
24 center of the clip?

25 A. No. Some welders don't want you to tack

1 in the center. Some like it on the corners. I
2 cater to them as much as I can but not all the
3 time. I tack it where I can usually get it.

4 Q. Do you tack it sometimes in the very
5 corner?

6 A. Sometimes. Sometimes you can get it in
7 the corner because if you done anything with it the
8 paint is missing off the corner.

9 Q. Do you recognize this as a section of
10 girt?

11 A. Yes, sir.

12 Q. If you were to tack this more on the
13 corner, where would the tack mark be on the girt?

14 A. Here or here (indicating).

15 Q. On the corner?

16 A. Yeah.

17 Q. And if --

18 A. But on the bottom.

19 Q. On the bottom on the corner?

20 A. Yeah.

21 Q. And if you were to tack it more in the
22 center, where would the tack mark be?

23 A. Here.

24 Q. In the center of the girt?

25 A. Yeah. It would be back -- because your

1 clip is like three inches like this. So it would be
2 back like this far (indicating).

3 Q. If the girt broke free of the clip, would
4 there be any evidence of the tack on the face of the
5 clip?

6 A. No. You don't tack it up here. See how
7 this is rolled? There's a gap to fill but even more
8 importantly if I didn't get the measurement right
9 the first time or something changed that doesn't
10 exactly go there or you need to move it out, I would
11 have to burn that tack off. This tube weighs 1,700
12 pounds. Me hitting it trying to get what's left of
13 that tack has to be lifted up. So you put your tack
14 underneath here so you burn it loose and you have
15 free movement of your tube back and forth without
16 having to get over top of what's left.

17 Q. You've set the girt, you whacked it with
18 the maul, you used your string line, you put a tack
19 weld on it. What's the purpose of the tack weld?

20 A. To keep me from losing my measurement.

21 Q. How much measurement are you worried
22 about losing?

23 A. With the precast it's not flat on the
24 back. It's not like this is flat. They pour it and
25 it has embeds in the back. If the precast guy has

1 his embed out a quarter inch and I have my tube off
2 a quarter inch, now that spot is off a half inch.
3 So you have to be deadline on it, zero tolerance.
4 So you worry about an eighth inch on it.

5 Q. So you've put a tack on it. Is that tack
6 meant to hold that girt in place no matter what?

7 A. No, sir.

8 Q. What's it meant -- what kind of movement
9 is it meant to prevent?

10 A. It's meant to prevent -- I set the very
11 first one on the left side of the column. Now I'm
12 working on the right-hand side of the column. I
13 smack that tube. That tube deviates, vibration.
14 It's not going to cause this tube to jump off the
15 clip but it may cause it to turn just a little bit
16 and then I didn't know it and I weld it and then I
17 have to come back and cut it loose and try to get it
18 straight.

19 Q. Have you ever known of any vibration
20 forceful enough to knock a 1,700 pound girt off a
21 clip?

22 A. No. Vibration happens like anything.
23 You can stand a column in the air and the wind blows
24 it and you have to retighten your anchor bolts. I
25 may lose my measure by a sixteenth or an eighth an

1 inch and it's just no good.

2 Q. Just so we're all sure, hold your fingers
3 together about how much measurement that you want to
4 preserve.

5 A. You can't see an eighth inch from over
6 here (indicating).

7 Q. Now, is that tack weld meant to keep that
8 girt from being knocked off the clip?

9 A. No. No, sir.

10 Q. Does that tack weld have any safety
11 purpose at all?

12 A. No, sir. The tack weld is to hold your
13 measurement.

14 Q. Now you've tack welded the girt. Do you
15 have to do something with the girts either next to
16 it or below it?

17 A. Yeah. I had to go to the next girt like
18 you have one here and number two. I had to go to
19 number two. If that was on the first floor then I
20 have to go to second floor and do number three and
21 number four and number five.

22 Q. When is the girt ready for the final
23 production weld?

24 A. When you have the whole line straight.

25 Q. Were there any requirements of you to do

1 anything other than the tack weld to keep that girt
2 from moving until you put a final weld on it?

3 A. No, sir. If it would have been a
4 connection, if they would have been meant to be
5 connected when they sent it out, it would have bolts
6 through it and my clip would have holes in it and I
7 would put two nuts and washers to hold it in place.
8 To achieve that now would mean I would have to put
9 six inches of weld on this tube as soon as I landed
10 it because that's what they regulate that one 325
11 bolt. There would have been two bolts in here and
12 that would have been six inches of weld.

13 Q. Were these girts designed to accept
14 bolts?

15 A. No, sir.

16 Q. If you had put six inches of weld on the
17 girt before you achieved your final alignment and
18 you had to move it a sixteenth of an inch, what
19 would you have had to have done?

20 A. I would have to burn it all loose.

21 Q. And what would that do to the girt and
22 clip?

23 A. I would have to do base metal repair to
24 the girt and replace the clip so I would have to
25 figure out a way to support the girt in the air.

1 Q. Could the job be done like that?

2 A. No.

3 Q. Has any job you've ever worked in all of
4 your experience in placing girls ever been done that
5 way?

6 A. No.

7 Q. Now, I want to direct your attention to
8 the day of the accident. Do you know what day this
9 accident happened on?

10 A. I know it happened in November. I'm not
11 sure of the date.

12 Q. I want you to assume it happened November
13 14th, 1996. Do you remember the girl that fell that
14 day?

15 A. Yes.

16 Q. Do you remember when you set that girl?

17 A. I either set it the day before or that
18 morning. I can't remember which one. I believe we
19 set it that morning.

20 Q. Do you remember that there was a clip
21 missing from the column where that girl sat?

22 A. Yeah. That's the reason it wasn't set
23 with all the rest of them.

24 Q. Do you remember that that's the reason
25 you couldn't set it the day before?

1 A. We put that clip on the day before and I
2 think we set the tube the next day. We had Mike out
3 there.

4 Q. Did you go through the procedure that you
5 described for us thus far?

6 A. Yes, sir.

7 Q. Now, did you tack it?

8 A. Yes. I tacked it.

9 Q. You are under oath today, Mr. Brock?

10 A. Yes.

11 Q. Are you sure you tacked the girt that
12 fell?

13 A. Yes. I'm positive I tacked it.

14 Q. Why are you positive?

15 A. Because I put the tack there. It was
16 me. I tacked it. I tacked it that day because I
17 strung that whole line, that whole corner of the
18 building.

19 Q. Did you tack both ends?

20 A. Yes, I did.

21 Q. Mr. Brock, have you seen the pictures of
22 the girls?

23 A. I've seen some.

24 Q. Do you remember seeing this one, this is
25 Plaintiff's Exhibit 15?

1 A. Yes.

2 Q. Is there a tack on that picture?

3 A. Yeah. That's a tack.

4 Q. Where is the tack?

5 A. The tack is right here (indicating).

6 Q. What's the brown spot below and to the
7 right of it?

8 A. This right here?

9 Q. Yes.

10 A. Remember when I tell you it's painted
11 sometimes there's a burr on it, a burr or bare spot,
12 and when you strike your arc electricity travels and
13 finds the fastest ground and that's where it popped
14 out.

15 Q. Are you sure that's a tack weld on there?

16 A. Yes. That's a tack.

17 Q. This is a picture of the other end of the
18 girt. Where is the tack weld on the other end of
19 the girt?

20 A. More than likely considering you can't
21 see it anywhere else, it's in the dirt.

22 Q. How much of this girt surface would have
23 been under the ground in that picture?

24 A. (Witness indicating.)

25 Q. Is that more than enough room for there

1 to have been a tack?

2 A. Yes.

3 Q. Mr. Brock, did you or anybody to your
4 knowledge from Atlantic go on to the site after the
5 accident happened and fake this weld?

6 A. No, sir. I don't know if you-all are
7 familiar with the government, but that's SEAL Team 6
8 compound on Dam Neck. That's a locked-down base.
9 After 3:00 p.m. you are not getting in and before
10 7:00 you are not getting in there.

11 Q. When did this condition exist on this
12 beam?

13 A. From the moment I tacked it.

14 Q. What were you doing when the accident
15 happened?

16 A. I was production welding tubes on the
17 first floor above the galvanized headers.

18 Q. Will you be able to show us where you
19 were on this picture?

20 A. Yes.

21 Q. Tell the jury where you were when the
22 accident happened.

23 A. I was right there (indicating).

24 Q. What height were you off the ground?

25 A. Four feet.

1 Q. What were you doing?

2 A. I was welding of -- after you set these,
3 you have to weld the bottom 100 percent and you have
4 to put another angle across the top and weld it.

5 Q. What were you doing? Were you doing
6 that?

7 A. Yes. I was working around here doing
8 that at this time.

9 Q. On the first floor?

10 A. Yes.

11 Q. This boom truck is right in front of you,
12 isn't it, Mr. Brock?

13 A. It would be right behind me.

14 Q. Did you ever see it before the accident
15 happened?

16 A. No.

17 Q. Why not?

18 A. Because I -- we got machines sitting back
19 over here.

20 Q. What kinds of machines?

21 A. They are welding machines, diesel
22 machines, they make a lot of noise. They are really
23 loud and that's why I didn't hear it and I had my
24 shield on with my hard hat and that's why I didn't
25 see it.

1 Q. How long had you been welding before the
2 accident happened?

3 A. I had been there that -- I had been there
4 since after lunch because we had done the tube
5 before that. We were moving down to the next.

6 Q. Were you ever aware of that boom truck
7 setting up out in front of you?

8 A. No. Last time I saw the boom truck it
9 was sitting on the southwest corner.

10 Q. How did you become aware that the
11 accident happened?

12 A. I heard the tube hit the bed of his
13 truck.

14 Q. What did you do?

15 A. I continued to weld for about 20 or 30
16 seconds. I thought that -- on the construction a
17 lot of times the dump trucks back in full of
18 material and they raise the bed and they slam back
19 and it makes the same sound.

20 Q. You were unaware of an accident?

21 A. I raised my lid to check my weld and I
22 heard somebody yelling "Man down," and I turned
23 around and ran around the corner and Mr. Shepherd
24 was on the ground on his elbows and had sand on his
25 face.

1 Q. Somebody has testified today that he was
2 not awake at that point in time. Could you tell
3 whether or not Mr. Shepherd was awake when you first
4 came up to him?

5 A. I couldn't tell that he was coherent or
6 nothing like that. I didn't talk to him. He was on
7 his elbows and had sand on his face because I turned
8 to holler to go to the superintendent's trailer and
9 the superintendent came out and then he went back
10 in.

11 Q. Was he making any noises?

12 A. I think he was moaning and groaning.

13 Q. Did you take a look at the girt that fell
14 and hit him?

15 A. No.

16 Q. Did you check out the relationship of his
17 boom to where the girt had been?

18 A. Yes.

19 Q. Can you tell from any of these pictures
20 where the girt was in relation to where the boom had
21 been before the boom was -- before the beam was
22 moved? Let me start over. Could you tell where the
23 girt had been in relation to the boom before the
24 girt had been moved?

25 A. I don't understand the question.

1 Q. Where was the boom in relation to the
2 girt that was moved?

3 A. See the clips? You can basically see
4 where it's at now. That's your clip, that's your
5 clip, that's his boom.

6 Q. Where was it in relation to --

7 A. He is into the tube.

8 Q. When did you leave the scene?

9 A. When did I leave the scene?

10 Q. Yes, sir, the area of the accident?

11 A. Right off the bat.

12 Q. Why did you leave?

13 A. To make room for the medical personnel.

14 Q. Was the area secured by the Navy?

15 A. Yes.

16 Q. In what way?

17 A. They cordoned it all off and told us not
18 to get over there.

19 Q. Mr. Brock, can you tell by looking at
20 this picture whether there is remnants of a tack
21 weld on that clip? Can you tell just by looking at
22 it?

23 A. No.

24 Q. Did anybody from the Navy ask you whether
25 you had tacked that girt?

1 A. No. I never talked to anybody from the
2 Navy. Nobody ever interviewed me.

3 MR. NORRIS: That's all I have of the
4 witness, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. AUFENGER:

7 Q. Mr. Brock, at the time of this injury you
8 were an ironworker for Atlantic, correct?

9 A. Yes.

10 Q. You weren't a foreman then?

11 A. No, sir.

12 Q. And you are still working for Atlantic
13 and that's where you get your paycheck, correct?

14 A. Yes.

15 Q. And you don't know when this girt, the
16 girt that injured Mr. Shepherd, was erected, do
17 you? You don't know if it was the day before or the
18 day of?

19 A. I'm pretty sure it was that morning but I
20 just -- I can't say, yeah, that was the time. I'm
21 pretty sure that's where we was at that morning.

22 Q. I'm going to show you Plaintiff's --
23 well, this Exhibit Number 4 -- do you see this girt
24 here, the one to the left of the girt that struck
25 Mr. Shepherd?

1 A. Yes.

2 Q. Is it your testimony that was put up the
3 evening before?

4 A. Yeah.

5 Q. The answer is yes?

6 A. Yes.

7 Q. And it's your testimony that you believe
8 the girt that struck Mr. Shepherd was put up the
9 morning of?

10 A. Yes.

11 Q. Would it be fair to say that this girt
12 you said was put up the evening before wouldn't have
13 been tack welded and would have stayed overnight not
14 tack welded?

15 MR. NORRIS: I'm going to object to the
16 relevance of the question. I don't know what the
17 answer is going to be but what difference does it
18 make what was done with the girt to the left?

19 MR. AUFENGER: The relevance is --

20 MR. NORRIS: Can we approach, Judge,
21 because this sounds like an argument?

22 THE COURT: You asked him a question. I
23 guess he is going to try to answer it for you.

24 (A conference was held at the bench.)

25 THE COURT: You can answer the question.

1 BY MR. AUFENGER:

2 Q. Do you understand the question?

3 A. No. One more time.

4 Q. You've testified that this girt, the girt
5 to the left of the girt that struck Mr. Shepherd,
6 you've testified that as to that girt to the left
7 that it was put up overnight, correct, the night
8 before, day before, correct?

9 A. Yeah. I guess it could have been set
10 that day.

11 Q. Hold on now. You told me when I asked
12 you a few minutes ago whether or not this girt was
13 put up the day before and you said yes.

14 A. It could have been, yes.

15 Q. Could have been is different than was.
16 Are you telling this Court and jury could have been
17 or are you telling them the truth and what you
18 remember?

19 A. I'm telling them what I remember.

20 Q. And you remember that this girt, the one
21 to the left, was put up the evening before,
22 correct?

23 MR. NORRIS: Your Honor, that's not what
24 the witness just said.

25 MR. AUFENGER: The day before.

1 THE COURT: He is on cross-examination.

2 THE WITNESS: I think it was set.

3 BY MR. AUFENGER:

4 Q. You think it was put on its clips the day
5 before, right?

6 A. I don't know if it was the day before.
7 I'm thinking that it was set. The one we set was
8 missing a clip. That's how I know that it was the
9 one we set that day.

10 Q. But it's my understanding that you would
11 have secured the girt to the left and the girt that
12 struck Mr. Shepherd at the same time, correct?

13 A. Yes, would have.

14 Q. So if the girt on the left had been put
15 up the day before you would have left it unsecured
16 all night, correct, because you are telling us that
17 you secured the girt that struck Mr. Shepherd the
18 day of; isn't that true?

19 A. We set a few tubes on that side the day
20 of. That's what the forklift was doing there, the
21 day of.

22 Q. So are you telling us the girt to the
23 left was put up the day of or the day before?

24 A. No.

25 Q. Or you just don't know?

1 A. It could have been set up the day before
2 or it could have been set up that day.

3 Q. So it's fair to say you don't know which
4 one it was; is that correct?

5 A. That's fair. I don't know if it got set
6 that day or the day before.

7 Q. Now, is it your testimony that you tack
8 welded the girt that struck Mr. Shepherd on the
9 morning of his injury?

10 A. Yes. I think it was right before lunch.

11 Q. And you would have put a one inch weld on
12 it?

13 A. No. I probably put half inch tack.

14 Q. And you would agree that if the girt that
15 struck Mr. Shepherd had been tack welded before his
16 injury that the erection clips would have had
17 evidence of tack weld or residue on those clips;
18 isn't that true?

19 A. Yes. There would have been something.

20 Q. You haven't seen any photographs showing
21 any evidence of tack weld to those two erection
22 clips that were holding up the girt, have you?

23 A. No. I haven't seen any photos of those
24 clips.

25 Q. Did you know that Mr. Doverspike took

1 photographs up on the second floor?

2 A. Yes.

3 Q. Now, isn't it true that when you were
4 trying to tack weld the girts on this particular job
5 you were trying to tack weld them in the center of
6 the erection clip; isn't that true?

7 A. No.

8 Q. You weren't trying to do that?

9 A. No.

10 Q. If Mr. Doverspike were to have testified
11 that when you are tack welding you are trying to get
12 it in the center, would you disagree with that?

13 A. I wouldn't disagree with it. I would say
14 he didn't tack weld those.

15 Q. But isn't that your general procedure, to
16 try to tack them in the middle?

17 A. It depends on who you are working for.

18 Q. On this particular job, I see one tack in
19 the middle that you are claiming is a tack?

20 A. Yes.

21 Q. And you are saying the other tack would
22 be covered in the dirt?

23 A. Yeah.

24 Q. Is that what you are saying?

25 A. Yes.

1 Q. Were you going back and forth?

2 A. You put on this welding shield and you
3 hold that clip and you put it in the center every
4 time.

5 Q. Before you started to tack weld you had
6 the helmet up, didn't you?

7 A. I had the lense up and looked.

8 Q. And you were very close to the proximity,
9 weren't you?

10 A. Yes.

11 Q. And it was right in front of you, wasn't
12 it?

13 A. Yes.

14 Q. So with your eyes closed you kind of hit
15 it right in the middle?

16 A. You hit it right in the middle and
17 there's paint there and it doesn't do what you want
18 to. Then you do like this here and it fires off and
19 you (indicating) --

20 Q. You seem to be hitting it in the middle?

21 A. Yeah. I'm hitting in the middle. See
22 this paint.

23 Q. Show them again.

24 A. You put the shield on and you can hit
25 right here. We'll spin it like this. It doesn't

1 sit like this, but I put my shield on and put your
2 shield down and start hitting and scratching.

3 Q. And you are scratching in the middle,
4 aren't you?

5 A. I'm scratching all over and eventually
6 you get the paint to rub off, and that's where you
7 fire up and that's where you tack.

8 Q. Have a seat, please.. Isn't it true when
9 you were erecting these girts -- and you erected a
10 bunch of them around the building, correct?

11 A. Yes.

12 Q. Isn't it true that you were leaving them
13 up for eight and ten hours at a time before you tack
14 welded them?

15 A. Could have been.

16 Q. Could have been, or yes, that's what you
17 were doing? Would you like me to read the
18 deposition?

19 A. Yeah. It could have been.

20 Q. Do you think that was safe to leave these
21 girts up for eight to ten hours?

22 A. Yes, I do.

23 Q. If others have testified that it was not
24 safe, would you disagree with that?

25 A. Yes, I would.

1 Q. Do you know that Mr. Godfrey, your
2 foreman on this job, was removed by the Navy,
3 correct?

4 A. Yes, I do.

5 Q. And you disagree with the government
6 safety inspector that this particular girt, the girt
7 that struck Mr. Shepherd, wasn't tack welded?

8 A. He says it wasn't?

9 Q. Correct.

10 A. Yes. I do disagree with him.

11 Q. Would you agree that regarding this
12 particular girt and any of the girts on the job that
13 they would be more safe and more secure if they were
14 tack welded, correct?

15 A. Apparently not.

16 Q. So you wouldn't agree with that?

17 A. No. One of them came off the building.

18 Q. So it's your testimony they wouldn't be
19 more secure or more safe if they were tack welded?

20 A. Tack welded or welded?

21 Q. Tack welded.

22 A. I can say I didn't see where it would
23 make that big a difference. If there had been
24 machinery or something running up there on those
25 things, they might have been safer tacked, but

1 considering they are 1,700 pounds and a ten-inch
2 clip, you are not going to knock them off no matter
3 how hard you try.

4 Q. Now, you indicated that after you heard a
5 crash and you believed that was when the girt struck
6 the truck, correct?

7 A. Yes.

8 Q. That you waited some 30 seconds before
9 you came over?

10 A. Yeah, about 20 or 30 seconds. I finished
11 my head I was running.

12 Q. Is it your testimony under oath that you
13 were the first person to get over to Mr. Shepherd?

14 A. I didn't get to Mr. Shepherd. I was
15 probably about the first person that saw
16 Mr. Shepherd.

17 Q. You didn't go over to him?

18 A. No. I seen him hurt. I turned to go to
19 the superintendent's office and I think the
20 superintendent was coming out, maybe calling. He
21 might have already called.

22 Q. At the same time that you got over to
23 Mr. Shepherd or saw Mr. Shepherd you saw the
24 superintendent coming, Mr. Bosley?

25 A. Yes.

1 Q. Do you know who told Mr. Bosley?

2 A. No. He may have looked out the door when
3 he heard the boom. I don't know what he did.

4 Q. If it took some time for Mr. Bosley to
5 realize this happened before he came out the door,
6 it would have been the same amount of time that it
7 took you to get over to Mr. Shepherd, correct? Let
8 me rephrase it. You recognize Mr. Bosley, don't
9 you?

10 A. Yes.

11 Q. When you saw him, what was he doing?

12 A. He came out of the trailer.

13 Q. How?

14 A. In a rather hurry.

15 Q. Where was the trailer? You saw him come
16 out of the trailer?

17 A. Yes.

18 Q. Where was the trailer in relation to
19 Michael Shepherd?

20 A. Up from his truck a little bit.

21 Q. Can you tell me a distance, can you use
22 something in the courtroom or do you have to go
23 beyond the courtroom where the trailer was?

24 A. He was no less than ten feet from me.

25 Q. Who was no less than ten feet from you,

1 Mr. Shepherd?

2 A. The truck was about ten or 15 feet. I
3 don't know. The trailer is probably 25, 35 feet
4 from the building.

5 Q. It's your testimony that Mr. Bosley's
6 trailer, the trailer you saw him come out of, was
7 about 25 feet from the truck, correct?

8 A. Twenty-five or 30 feet.

9 Q. Fair to say about the distance from where
10 you are to the back of the courtroom?

11 A. Maybe a little further.

12 Q. When you first saw Mr. Shepherd you saw
13 Mr. Bosley coming out of the doors of that trailer?

14 A. Yeah. He was coming out of the trailer
15 maybe a little further out of the trailer.

16 Q. Did you see him in a golf cart?

17 A. No.

18 Q. You saw him because he was very close, he
19 was coming over to where this happened?

20 A. Yeah.

21 Q. And you were welding underneath the first
22 floor, correct?

23 A. Yes.

24 MR. AUFENGER: That's all I have.

25 CROSS-EXAMINATION

1 BY MS. SPENCE:

2 Q. You mentioned that a ROICC officer was
3 responsible for checking up on procedures and safety
4 and material and workmanship?

5 A. Yes.

6 Q. Who was that officer on this job?

7 A. Manny.

8 Q. Steve Taraba?

9 A. I'm not sure of his name. If he is the
10 ROICC officer.

11 Q. You are talking about the CON rep, right?

12 A. Yes.

13 Q. How often would he inspect the work?

14 A. He is out there every day.

15 Q. Did Mr. Taraba or anyone with the Navy or
16 the ROICC office ever complain to you or to anyone
17 at Atlantic Welding to your knowledge regarding the
18 girt erection procedures that you-all were using?

19 A. No, never. No.

20 Q. Have you seen Mr. Shepherd since the
21 accident?

22 A. Yes.

23 Q. How recently?

24 A. Two weeks ago.

25 Q. Where did you see him?

1 A. Mariner's Mart. It's a condo at Great
2 Neck and Shore Drive.

3 Q. What was he doing?

4 A. He was working for a drywall company. He
5 passed me going up a set of stairs.

6 Q. He was going up the stairs?

7 A. Yes.

8 Q. Did he have any problem that you noticed?

9 A. No.

10 Q. I don't have any questions.

11 A. He beat me up the steps.

12 Q. He beat you up the steps?

13 A. He beat me up the steps.

14 MS. SPENCE: I don't have any other
15 questions.

16 CROSS-EXAMINATION

17 BY MR. AUFENGER:

18 Q. When you saw Mr. Shepherd two weeks ago
19 he was walking up the steps; is that what you are
20 telling us?

21 A. Yes.

22 Q. And you said that there was no complaint
23 as you know of regarding your steel erection before
24 this injury, isn't that true, no complaint by the
25 Navy?

1 A. No. There was none that I know of of how
2 we erected the girts I think was the question.

3 Q. There was no complaint before the injury
4 as to how you were erecting the girts, correct?

5 A. Correct.

6 Q. You heard there was complaint afterwards;
7 isn't that true?

8 MR. NORRIS: Objection, Your Honor,
9 complaints after the accident.

10 THE COURT: Other than what we know about
11 from the letter?

12 MR. AUFENGER: Yes, ma'am.

13 BY MR. AUFENGER:

14 Q. You know there were complaints about the
15 manner which you were erecting the girt that were
16 made after Mr. Shepherd was injured; isn't that
17 true?

18 A. I don't know what you are talking about.

19 Q. You know Mr. Godfrey was removed off the
20 job?

21 A. Yeah, but that's standard. If you are an
22 ironworker and the boom collapses on the crane and
23 you are the foreman you get removed from the job.
24 It's not placing blame. It's just standard.

25 Q. It's your opinion the Navy didn't say it

1 was his fault; they just took him off the job as a
2 matter of course?

3 A. That's standard if you want to check it.

4 THE COURT: Anything else from anybody?
5 This witness is excused?

6 MR. NORRIS: Yes, ma'am.

7 THE COURT: We did get word from the
8 juror. She is fine. She had a cut on her leg and
9 they took her in. She is fine. The baby is fine,
10 precaution more than anything else.

11 MR. NORRIS: It would be my intention at
12 this point to read the deposition to the jury of
13 Mr. Slater.

14 THE COURT: So that everybody
15 understands, are we going to file the deposition or
16 do you want -- we'll file the deposition. When was
17 this taken?

18 MR. NORRIS: The deposition was taken at
19 my office on June 16th, 2000 at 3:30 p.m.

20 THE COURT: And he was under oath and
21 everyone was present to ask her questions and the
22 testimony should be taken as if he was here in court
23 and I assume he is unavailable today.

24 (The deposition of Mr. Gregory Slater was
25 read at this time.)

1 THE COURT: Are these the photographs
2 that were blown up?

3 MR. NORRIS: These are the photographs
4 from which some of the blowups have been made. We
5 don't have blowups of every one of the photographs.

6 THE COURT: I assume you want me to mark
7 the photographs as the next defendants' exhibit
8 which would be Number 16?

9 MR. NORRIS: Yes, as a collective
10 exhibit.

11 THE COURT: Somebody needs to file that
12 deposition at some point.

13 (The photographs were marked by the Court
14 as Defendants' Exhibit 16, and received into
15 evidence.)

16 THE COURT: Let's take a stretch, ladies
17 and gentlemen, if you want to step in the back.

18 (The jury withdrew from the courtroom.)

19 (A recess was taken at this time.)

20 (The jury was returned to the courtroom.)

21 THE COURT: Mr. Norris, your next
22 witness?

23 MR. NORRIS: Mr. Shelton, please.

24 EDWIN SHELTON, called as a witness by and
25 on behalf of the Atlantic Welding, having been first

1 duly sworn, was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. NORRIS:

4 Q. Tell us who you are.

5 A. Edwin W. Shelton.

6 Q. Mr. Shelton, where do you live?

7 A. I live in Smithfield, Virginia.

8 Q. How are you employed?

9 A. I am the owner of Virginia Steel,
10 Incorporated.

11 Q. We've heard the name Virginia Carolina
12 Steel. Is Virginia Steel different from Virginia
13 Carolina Steel?

14 A. Yes, sir.

15 Q. Where is Virginia Steel's office
16 located?

17 A. Smithfield, Virginia.

18 Q. Are you a competitor of Atlantic Welding
19 & Fabricating?

20 A. Yes.

21 Q. How long have you been the president of
22 Virginia Steel?

23 A. Since 1981.

24 Q. Mr. Shelton, will you tell the jury a
25 little bit about your experience in the steel

1 industry starting maybe with your earliest steel
2 related job?

3 A. My father started this business in 1959
4 and I've been with him since we started, worked
5 outside for about ten years.

6 Q. Doing what kind of work outside?

7 A. I was doing steel erection.

8 Q. What kinds of steel erection work?

9 A. Erecting metal buildings, steel framed
10 buildings, steel stairs, that type of thing.

11 Q. Did any of your erection experience
12 involve girts?

13 A. Yes.

14 Q. Do you know what a steel girt is?

15 A. Yes.

16 Q. Do you see in front of you a section of a
17 steel girt?

18 A. Yes.

19 Q. What kind of experience did you have with
20 the placement of steel girts?

21 A. We've erected steel girts on a lot of
22 buildings.

23 Q. Have you ever performed tack weld on
24 steel girts?

25 A. Yes.

- 1 Q. Do you know what they look like?
- 2 A. Yes.
- 3 Q. Do you know how to place them?
- 4 A. Yes.
- 5 Q. After you were in the field for about ten
- 6 years, what did you do next?
- 7 A. I went in the office after that.
- 8 Q. What kind of things did you do in the
- 9 office?
- 10 A. I started training for estimating and job
- 11 coordination.
- 12 Q. As an estimator did you have to be
- 13 familiar with plans and specifications?
- 14 A. Yes.
- 15 Q. Do you have experience reading steel
- 16 erection plans?
- 17 A. Yes.
- 18 Q. And reading steel specifications?
- 19 A. Yes.
- 20 Q. How much experience have you had in both
- 21 of those areas?
- 22 A. Been involved in it since '81.
- 23 Q. On a continual basis?
- 24 A. Yes.
- 25 Q. Other than an estimator what other kind

1 of work did you do for your father's company? Were
2 you involved in fabrication at all?

3 A. Yes. We had a fabrication and erection
4 business for up until about six years ago at which
5 time we closed the fab shop and I'm strictly a steel
6 erector at this point.

7 Q. What kind of experience did you have in
8 fabrication? Did you ever fabricate steel girts?

9 A. Not fabricationwise. I was out in the
10 field most of the time.

11 Q. Are you familiar with the Dam Neck job? .

12 A. Through the documents that I read, yes.

13 Q. Had you had experience with jobs of a
14 similar nature in your past?

15 A. Yes.

16 Q. Experience?

17 A. Yes.

18 Q. Including the erection of girts?

19 A. Yes.

20 Q. And the alignment of girts?

21 A. Yes.

22 Q. Are you familiar with the standards that
23 apply to steel erection contractors in Virginia for
24 jobs of that type?

25 A. Would you repeat that?

1 Q. Are you familiar with how other steel
2 contractors do that kind of work? Have you ever
3 observed work done by your competitors?

4 A. Yes.

5 Q. As far as the placement and alignment of
6 girts?

7 A. Yes.

8 Q. So you are familiar with what's standard
9 in this area for that kind of work?

10 A. Yes.

11 Q. Did you review the plans and
12 specifications for the Dam Neck job?

13 A. Yes. I reviewed the erection drawing and
14 details.

15 Q. Have you reviewed the photographs of the
16 conditions at the site after the accident itself?

17 A. Yes.

18 Q. Have you reviewed deposition transcripts
19 of the various witnesses the case?

20 A. Yes, depositions from Mr. Bosley and
21 Mr. Godfrey.

22 MR. NORRIS: I would offer Mr. Shelton as
23 an expert in the field of steel erection.

24 THE COURT: Any voir dire questions?

25 MR. AUFENGER: No, Your Honor.

1 THE COURT: Qualified.

2 BY MR. NORRIS:

3 Q. Do you do this kind of thing on any
4 regular basis, Mr. Shelton, sitting in courtrooms
5 testifying?

6 A. Have not for quite a while.

7 Q. Is pretty much steel erection a full-time
8 job for you?

9 A. Full time.

10 Q. Is that how you make your livelihood?

11 A. Yes.

12 Q. Did you in addition to looking at
13 photographs and reading documents and depositions
14 did you interview Mr. Doverspike?

15 A. I talked with Mr. Doverspike once.

16 Q. Did you ask him about the scope of the
17 work on the Dam Neck project?

18 A. Yes.

19 Q. Have you been able to form an opinion
20 whether Atlantic complied with the plans and
21 specifications for this job for the erection of the
22 girts?

23 A. Yes. I feel that they were complying
24 with the plans and specifications.

25 Q. Did the plans and specifications require

1 these girts to be bolted into place at any time?

2 A. There was no detail on the drawings
3 showing a bolted connection.

4 Q. Did the plans or specs require these
5 girts to remain in some type of a hoist until they
6 were permanently welded in place?

7 A. There is nothing written that would
8 signify that.

9 Q. Are you familiar with the procedure that
10 was actually employed by Atlantic to set a line and
11 weld these girts?

12 A. Per the documents that I was furnished,
13 yes.

14 Q. What's your understanding of how that
15 procedure went?

16 A. The procedure was that the girts would be
17 flown into place, set on the erection clips. Then
18 they had to be aligned with the string line before
19 they were permanently welded.

20 Q. Do you know how steelworkers normally
21 align girts in alignment with a string line?

22 A. Well, you can do it with a sledgehammer
23 what you have in your hand. In this case with a
24 tube of this size it would require something like
25 that.

1 Q. Why would you require something like this
2 to align a steel girt? Do you know how long the
3 girts were?

4 A. They were 30 feet long.

5 Q. Do you know how much they weighed?

6 A. Approximately seven or 800 pounds.

7 Q. Seven or 17?

8 A. Seven to 800 pound.

9 Q. Why would you need something like this to
10 align them?

11 A. It would be physically impossible for the
12 guy to move them to line them up without having
13 something to exert force against them.

14 Q. What is your understanding of what was
15 done after they were aligned?

16 A. After they were aligned then they were
17 tack welded.

18 Q. What's a tack weld?

19 A. Tack weld is maybe a small quarter to
20 half inch weld that's temporary until the permanent
21 welding is taking place.

22 Q. What's the purpose of a tack weld?

23 A. It's to hold the alignment after they are
24 aligned.

25 Q. Is a tack weld intended to prevent a girt

1 from being knocked off of its clips?

2 A. No. It's not a safety measure.

3 Q. Then after the tack weld what is a
4 permanent weld? What does that consist of?

5 A. That would be according to what size weld
6 and type of weld the drawings call for. It could be
7 a full weld or it could be three inches every 12 or
8 something like that.

9 Q. Do you have an opinion whether that
10 procedure that you've outlined complies with the
11 standards in the steel erection industry here in
12 Virginia Beach and Virginia generally? In other
13 words, is that how it's done in the steel industry
14 here in our area?

15 A. That's how we would perform the
16 procedure, yes, sir.

17 Q. Was there any requirement in the plans or
18 specifications that the area where this work was
19 being performed be roped off or cordoned off?

20 A. Normally it's not specified on the
21 drawings.

22 Q. Would there be anything about industry
23 standards that would have required at to rope off or
24 cordon off the area when they were sitting the
25 girls?

1 A. As steel erectors we don't normally make
2 that call.

3 Q. Who would make that call?

4 A. In our case normally the general
5 contractor or his safety people would probably tell
6 us whether we had to cordon off the area.

7 Q. Now you said you've seen some photographs
8 in this case. Mr. Shelton, I'm going to show you a
9 blowup which is marked Plaintiff's Exhibit 15. Have
10 you seen that photograph before?

11 A. Yes.

12 Q. Do you have an opinion what that
13 photograph shows?

14 A. It appears to be a tack weld.

15 Q. Why do you say it's a tack weld?

16 A. Well, I could tell from the burn mark on
17 it.

18 Q. Let's turn the picture so the jury can
19 see it. You just mentioned a burn mark?

20 A. A burn mark at this point and the clip at
21 which this was bearing on was a three by three clip
22 similar to this which was welded to the column and
23 if you will notice it would be sitting against the
24 column like this. This would be bearing on this so
25 the tack weld would have had to have been here.

1 This looks about three inches from the end.

2 Q. There's another mark on this photograph.
3 Do you see that second mark?

4 A. Yes.

5 Q. Do you have any opinion what that mark
6 is?

7 A. That looks like just a burn mark.
8 Sometimes when you are striking, your arc weld will
9 ground out and cause a burn mark.

10 Q. Would it make any difference to you,
11 Mr. Shelton, from a safety standpoint whether or not
12 there was a tack weld in place just prior to this
13 accident?

14 A. Well, I would not leave a member like
15 this in an overnight situation. It would have to be
16 tack welded before I left it during the day.

17 Q. What if the girt was set just before
18 lunchtime the date of the accident, would it make
19 any difference to you then if there had been any
20 tack weld in place from a safety standpoint?

21 A. If it's during the workday and we are on
22 the job, it possibly could be left untacked until
23 the alignment is complete.

24 Q. You mentioned standards in the industry
25 Mr. Shelton. Are you familiar with the American

1 Institute of Steel Construction?

2 A. Yes.

3 Q. What is that group?

4 A. That's the group that sets standards for
5 building construction for steel buildings.

6 Q. Are you familiar with Article 7.9.1 of
7 the AISC standards?

8 A. Yes.

9 Q. What does that speak to?

10 A. Speaking to temporary supports and guys
11 and braces.

12 Q. Under those guidelines is a tack weld
13 intended to prevent the effects of a collision with
14 the steel member?

15 A. No.

16 Q. Who has responsibility on the job site to
17 oversee the delivery of materials as far as the
18 timing of the delivery and the location of the
19 delivery?

20 A. I would think that the superintendent
21 probably has the ultimate say-so.

22 Q. When you say superintendent, who does he
23 work for?

24 A. The general contractor.

25 Q. Would the steel erection contractor have

1 any control over that?

2 A. Not over other people's materials.

3 Q. Are you aware of any situation where a
4 girt of this size and weight has been caused to fall
5 off of the angles it was sitting on by some kind of
6 a vibration?

7 A. I've never had the problem.

8 Q. Based on your review of the documents and
9 the photographs and your interviews, do you have any
10 opinion whether Atlantic or its employees failed to
11 meet the standards of the steel erection industry
12 for the work it was given to do?

13 A. As I see it they were performing the
14 procedure as it was detailed and would be standard
15 in erection procedures.

16 MR. NORRIS: That's all I have of this
17 witness.

18 CROSS-EXAMINATION

19 BY MR. AUFENGER:

20 Q. Mr. Shelton, you had two years in college
21 and that was in accounting, correct?

22 A. Correct.

23 Q. You don't have any certificates or
24 diplomas in the field in the field of steel
25 erection, do you?

1 A. No.

2 Q. You are not a member of any steel
3 erection organization or society, are you?

4 A. No.

5 Q. And the last 30 years of your business
6 life you've basically been on the business side of
7 steel erection; isn't that correct?

8 A. As far as daily performance, yes.

9 Q. And as doing the business side you are
10 basically doing the bidding and the coordinating of
11 the jobs in your office, correct?

12 A. Not just in the office. Some of that
13 involves going to the field.

14 Q. But I'm talking generally you are in the
15 office coordinating and bidding; isn't that true?

16 A. Probably about 70-30 situation.

17 Q. You don't have any formal training or
18 schooling in the area of steel erection; isn't that
19 true?

20 A. Just on-the-job training.

21 Q. Now you were hired by Mr. Norris to be a
22 expert for Atlantic, correct?

23 A. Yes.

24 Q. You are being paid by him, correct?

25 A. Yes.

1 Q. And you have reviewed as you indicated
2 certain documents; is that correct?

3 A. Yes.

4 Q. Those documents were the documents that
5 Mr. Norris gave you, correct?

6 A. Right.

7 Q. You are not saying you reviewed all the
8 documents in this case you just reviewed the ones
9 Mr. Norris gave you, correct?

10 A. True.

11 Q. It's my understanding when he questioned
12 you as to what depositions you reviewed you
13 indicated you reviewed the deposition of Mr. Godfrey
14 and Mr. Bosley; is that correct?

15 A. Yes.

16 Q. Do you know if you reviewed the complete
17 deposition of those two individuals or was it just
18 excerpts?

19 A. I read the whole deposition that was in
20 the documents that he gave me.

21 Q. Do you know if it was the whole
22 deposition or was it just the documents?

23 A. I couldn't say.

24 Q. Did Mr. Norris send you a copy of the
25 contract between the government and Meredith to

1 review?

2 A. No.

3 Q. Did you know that that document required
4 the general contractor to follow the Army Corps of
5 Engineers Safety Manual?

6 A. I know that it does, but I did not read
7 that document.

8 Q. But you knew it did anyway; is that
9 correct?

10 A. Yes.

11 Q. And it's also correct that Atlantic, the
12 steel erectors, were required to follow the Army
13 Corps of Engineers Safety Manual on this particular
14 job; isn't that true?

15 A. Yes, sir.

16 Q. Thank you. You don't consider yourself
17 to be a safety expert in the field of steel
18 erection, do you?

19 A. No, sir.

20 Q. Is it not true of your own personal
21 knowledge that you do not know whether the safe
22 steel erection procedures were followed regarding
23 the erection of this steel by Atlantic?

24 A. I was not on the job site.

25 Q. I take it that you did not review the

1 depositions of Mr. Burg, the safety expert from
2 Chicago; is that correct?

3 A. No.

4 Q. And you did not review the depositions of
5 Mr. Seoane, the government safety engineer; is that
6 correct?

7 A. There was correspondence in the documents
8 that I had from Manny Seoane.

9 Q. You read a letter that he wrote?

10 A. Yes.

11 Q. But you did not read his deposition,
12 correct?

13 A. I never saw that.

14 Q. Is it fair to say you also didn't read
15 the deposition of Mr. McGowen, Mr. Ashley and
16 Mr. Shepherd in forming your opinions here today;
17 that's fair to say?

18 A. There were the interviews at the job site
19 from two gentlemen that were witnesses on the site
20 that was in my documents.

21 Q. But those things that I just listed to
22 you, you did not review, correct?

23 A. No.

24 Q. Did the documents that you reviewed
25 indicate that Mr. Seoane, the government safety

1 engineer, found no evidence of tack weld on the girt
2 or the clips regarding the girt that struck
3 Mr. Shepherd?

4 A. That was in his letter.

5 Q. So you knew that; you knew he did not
6 find any evidence of tack weld on either the girt or
7 the clips?

8 A. Yes.

9 Q. You do agree that if, in fact, this
10 particular girt, the girt that injured Mr. Shepherd,
11 had been tack welded there would have been evidence
12 of it, there would have been tack residue on the
13 erection clips, correct?

14 A. Should have been.

15 Q. Now, Mr. Shelton, when you were following
16 the specifications in a contract for the erection of
17 steel on a particular project, and let me say
18 specifically as to the erection of steel regarding
19 this particular girt, do you follow any safety
20 measures for the safety of anyone on the job site?

21 A. No. We would not make any preparations
22 to protect anybody below us because in the steel
23 erection there should be nobody below us.

24 Q. So my understanding is when you erect
25 this girt and when you erect the other steel you

1 take no precautions for the safety of anyone other
2 than your employees; is that correct?

3 A. That's what we're required.

4 Q. The answer is you don't take any
5 precautions, correct?

6 A. Correct.

7 Q. I understood you to say that if this
8 particular girt or any other girts on this job site
9 were left overnight they would be required to be
10 tack welded; isn't that true?

11 A. Should have been been.

12 Q. And if they weren't tack welded, they
13 should have been secured?

14 A. Should have been secured.

15 Q. They can be secured without it costing
16 thousands of dollars; isn't that true?

17 A. Could have been clamped off or some other
18 way.

19 Q. If you are going to leave them for an
20 extended period of time -- when you are going to
21 leave the girts for an extended period of time,
22 certainly if it's going to be left overnight, you
23 could clamp them and should clamp them or weld them;
24 isn't that true?

25 A. It would be impossible to align them if

1 you clamped them down. You need to have them loose
2 so you can align them, do a string line.

3 Q. Can't you tie them down and the next day
4 when you go to align them untie them?

5 A. That's what I said. I wouldn't leave
6 them overnight, but during the workday it wouldn't
7 be -- it wouldn't be necessary to clamp them down
8 while you were in the process of alignment.

9 Q. You wouldn't leave them for eight and ten
10 hours at a time on a job site unattended, would you?

11 A. If it's done during the workday, it's
12 possible.

13 Q. What if you were just going to put them
14 up there and go to another site and work in another
15 area for eight or ten hours, that wouldn't be
16 reasonable, would it?

17 A. If I were in the process of erecting
18 girts, it's possible that you can set a series of
19 girts and you may drop to another level and set
20 another series before you weld them all.

21 Q. And you take no precautions if that were
22 to occur for the safety of others; is that what you
23 are telling us here today?

24 A. No. We would not take any particular
25 precautions to protect anybody below us. Normally

1 each sub is responsible for their own safety.

2 Q. Would you expect the general contractor
3 in this case the superintendent to know that these
4 girts were unattended for eight and ten hours at a
5 time?

6 A. Well, I would say that the superintendent
7 would have the ultimate responsibility as far as
8 anybody being underneath and with schedules we work
9 under pretty stringent schedules in the steel
10 erection industry and a lot of times there are other
11 trades below us.

12 Q. When you indicate that if it's going to
13 be -- if the girt is going to be left -- let me
14 rephrase that. Don't you agree that it's common
15 practice for a boom truck to off-load material under
16 a girt after it's been secured?

17 A. Not with the steel erection going on.

18 Q. Whose responsibility is it, the ultimate
19 responsibility to see that the off-loading of
20 material is not done in the area where the steel
21 erection is being done?

22 A. That would probably have to come from the
23 general contractor's people.

24 Q. That would be the superintendent?

25 A. Yes.

1 Q. And it's your belief that it's not the
2 steel erector's job to take precautions to prevent
3 injury to deliverymen; is that correct?

4 A. We are not required.

5 Q. And so you don't do it; is that right?

6 A. Right.

7 Q. Don't you agree that it was the steel
8 erector's job to perform an Activity Hazard Analysis
9 regarding the erection of steel?

10 A. If it's required by the government agency
11 that he is working for. It's different on different
12 bays it seems like.

13 Q. Do you know if on this job pursuant to
14 the contract a job hazard analysis or an Activity
15 Hazard Analysis was required?

16 A. I do not know for sure.

17 Q. Those documents weren't provided to you?

18 A. There was mention of a hazard analysis I
19 think in Lieutenant Commander Ashe's letter.

20 Q. So based on that it's your understanding
21 that an Activity Hazard Analysis regarding the
22 erection of steel was required on this job; is that
23 correct?

24 A. According to that letter.

25 Q. You don't have any reason to disagree

1 with that, do you?

2 A. No.

3 Q. Are you aware that one was not done on
4 this job?

5 A. No.

6 Q. You are not aware one was done on this
7 job, are you?

8 A. No.

9 Q. You don't know one way or the other; is
10 that correct?

11 A. No.

12 Q. Isn't it true that after you tack weld
13 the girt that it's more safe than before you tack
14 weld it when you are talking about the life of
15 others on the job site?

16 A. I couldn't answer that for sure.

17 Q. Regarding the tack welding, the burn
18 marks, those two burn marks that you've indicated
19 you saw in Plaintiff's Exhibit Number 15 those two
20 burn marks could have been put on that girt while
21 the girt was on the ground or leaning up against the
22 truck; isn't that true?

23 A. I guess it could have been.

24 Q. And of your own knowledge you don't know
25 whether or not this girt that injured Mr. Shepherd

1 was tack welded or secured in any way at the time
2 that it injured him; isn't that correct?

3 A. I did not physically look at it.

4 MR. AUFENGER: Thank you very much.

5 CROSS-EXAMINATION

6 BY MS. SPENCE:

7 Q. Good afternoon, sir. You are familiar
8 with Activity Hazard Analyses, right?

9 A. Yes.

10 Q. It's referenced in the Army Corps of
11 Engineers manual?

12 A. Right.

13 Q. In spite of that reference not all Navy
14 bases require one; is that correct?

15 A. Most of the Navy bases do. Some of the
16 other bases I have worked without providing one.

17 Q. 95 percent of your work is military,
18 isn't it?

19 A. At the present time.

20 Q. You indicated that the general is
21 responsible for scheduling the different trades?

22 A. Correct.

23 Q. Are you aware that no other trades were
24 scheduled to be working where Atlantic was working
25 on the day of this accident?

1 A. No. I'm not aware.

2 Q. Not aware one way or the other?

3 A. No.

4 Q. Are you aware of information that the
5 material delivery had been instructed to be
6 somewhere else?

7 A. Yes. There was mention in the documents
8 that it was supposed to be unloaded on the first
9 floor at another location.

10 Q. If a superintendent gives instructions on
11 where a delivery is to be made and sees that the
12 delivery is being made there, do you expect the
13 superintendent to stay out there the entire time to
14 make sure he doesn't move?

15 A. Probably not in most cases.

16 MS. SPENCE: That's all I have.

17 REDIRECT EXAMINATION

18 BY MR. NORRIS:

19 Q. Mr. Shelton, if an Activity Hazard
20 Analysis is required, it's required by a specific
21 contract provision, is it not?

22 A. Yes.

23 Q. These documents I gave you to review do
24 you recall whether or not Atlantic Welding & Fab had
25 a specific written contract with anybody?

1 A. A written contract?

2 Q. Yes, sir. Do you recall seeing one?

3 A. I did not see a contract, no.

4 Q. Do you recall that actually they were a
5 sub-subcontractor to Virginia Carolina Steel?

6 A. Yes. I knew that.

7 Q. I think you were asked whether Atlantic
8 was required to follow the safety requirements. In
9 your opinion did Atlantic follow all required safety
10 requirements in this job?

11 A. From the documents I read the procedure
12 that they followed is what as a steel erector we
13 would follow. I was not physically at the site to
14 observe everything.

15 MR. NORRIS: That's all I have.

16 MR. AUFENGER: Just one question --

17 THE COURT: No, Mr. Aufenger. I am going
18 to draw the line today. You are excused. Your next
19 witness?

20 MR. SMIRCINA: May I be heard about this
21 witness what I anticipate certain testimony may be
22 because it was a subject for a motion for limine?
23 It will be three or four minutes at the most.

24 THE COURT: Do we want him in here and
25 want him sworn? Did you need to find out anything?

* * *

1 and on behalf of the Plaintiff, having been first
2 duly sworn, was examined and testified as follows:

3 DIRECT EXAMINATION (Voir Dire)

4 BY MR. SMIRCINA:

5 Q. State your name.

6 A. Richard Leland.

7 Q. What's your educational background and
8 what do you do for a living?

9 A. My educational background, high school
10 graduate, graduate Iowa State University of
11 Engineering, graduate of University of Iowa with a
12 Master's in business. Currently employed by
13 Tidewater Crane & Rigging as a senior vice
14 president.

15 Q. What does a senior vice president do?

16 A. I oversee the contractual end of our
17 business, the contracts we do, troubleshooting,
18 anything else they need me.

19 Q. It's fair to say you are on the business
20 end of the deal rather than the performance end of
21 the deal?

22 A. It's all a matter of how you look at it.
23 You could say that some of my time is taken up in
24 contracts and things of that nature. I am
25 responsible for all the field operations.

1 Q. What do you know about the operation of
2 cranes?

3 A. I'm quite familiar with the operation of
4 cranes. I've been in the construction industry for
5 about 28 years. I've been in the field and been
6 around cranes the entire time.

7 Q. Have you operated cranes?

8 A. Yes.

9 Q. What type of cranes and for how long?

10 A. Really haven't operated them on a daily
11 basis. I have gotten in and become familiar with
12 them early days in the construction. I operated
13 eight and a half ton to 35-ton cranes. I've been
14 around everything up to 300 ton, hydraulics,
15 conventionals, every type of crane.

16 Q. What kind of crane operations does your
17 business perform?

18 A. We on a day-to-day basis have what you
19 call taxi crane business where we provide crane
20 service to customers on an as-needed or wanted
21 basis.

22 Q. You mean you rent cranes out?

23 A. That's correct.

24 Q. Do you employ any operators of cranes
25 yourselves?

1 A. Yes, we do. We employ over 20 crane
2 operators.

3 Q. Are you familiar with how the
4 particular -- let me ask you this: Does your
5 company do any material handling off-loading on
6 construction sites? Do any of your crane operators
7 do that?

8 A. Material handling is primarily what they
9 do.

10 Q. What kind of crane do you have that is
11 remotely similar to the one Michael Shepherd was
12 operating?

13 A. Palfinger 52000.

14 Q. As to the crane Michael Shepherd was
15 operating, are you familiar with the controls of the
16 crane?

17 A. The exact controls, I would have to say
18 no.

19 Q. Do you know what the levers do on the
20 control panel?

21 A. The levers operate all the different
22 functions and like any other crane when you let go
23 they go back to neutral and stop.

24 Q. Do you have any idea what the required
25 level of clearance is to off-load Sheetrock at a

1 construction site?

2 A. There would be -- what you can do is
3 would it be safe and prudent. It would be a matter
4 of what clearance the operator feels he would need
5 in order to get in. He would know the controls in
6 the crane, how touchy they are, how well he can
7 control it and use his judgment as to determine what
8 clearance he would need. That would be within the
9 operator's prerogative.

10 MR. SMIRCINA: That's all the questions I
11 have, Your Honor.

12 THE COURT: Any objections?

13 MR. SMIRCINA: Yeah, I do. I don't think
14 he has any idea of what -- he is going to say it's
15 all up to the operator. If he looks in there and
16 he's done it before and he thinks he can do it he
17 should do it, and if he doesn't he shouldn't do it
18 and if something happens it's his fault. That's not
19 proper expert testimony.

20 THE COURT: What are the nature of his
21 opinions?

22 MR. NORRIS: We provided all this in our
23 discovery responses. He is going to offer opinions
24 in two areas. He wasn't asked but he will testify
25 that he trains boom operators and he is going to

1 testify that if there was only three to four inches
2 of clearance in this case that would have been
3 either too small of an area, not enough clearance or
4 the boom operator should have been paying close
5 attention to the spotter to avoid collision, that
6 the standards in the crane operation industry are
7 that you are supposed to inspect an area, make sure
8 it's safe to operate your boom, that you should not
9 come into contact with any obstructions, that if you
10 do come into contact with obstructions it's either
11 because you didn't have enough clearance or you
12 weren't properly watching your spotter and that if
13 unloading couldn't have been done without hitting an
14 obstruction then it shouldn't have been unloaded
15 there.

16 MR. SMIRCINA: I quote from the
17 disclosure --

18 THE COURT: If that's the nature of the
19 testimony and the answers, then it isn't anything I
20 haven't heard before in this courtroom. I'm going
21 to overrule the objection. You can cross-examine
22 him on the basis for his opinions and I'm assuming
23 he is going to roughly testify within the bounds of
24 what we've talked about?

25 MR. NORRIS: Yes. In an abundance of

1 caution, if you want to instruct this witness that
2 he is not to say something.

3 THE COURT: On the ultimate issue, I know
4 it seems like we do legally some strange things but
5 they are going to ask you don't talk about anybody's
6 negligence. If somebody did something below a
7 particular standard, just word it that way, that
8 they didn't comply with the standards, that this is
9 the way that it should have been done and this is
10 the way it was done and it's not according to a
11 standard. Don't use the word "negligence."

12 THE WITNESS: I understand that.

13 THE COURT: That is for the jury to
14 determine because obviously we're hearing different
15 standards from different sides of the room, so the
16 jury is going to be the one that is going to decide
17 which is the appropriate one and if what they did by
18 violating it was negligence. That's what they need
19 to decide.

20 MR. NORRIS: May I make one other comment
21 under the Statute 8.01-401.3, "Experts may offer
22 opinions on the ultimate issue in a case when those
23 opinions would be helpful to a jury." Now, this
24 isn't a red light/green light case. This is
25 off-loading 3,000 pounds of drywall with a

1 sophisticated boom truck. I think this is a case
2 where an expert --

3 THE COURT: He is not going to use the
4 word "negligence" in my courtroom. He can say it's
5 below the standard and you can argue that below the
6 standard is negligent by the instructions that are
7 given.

8 MR. NORRIS: Can he use the word
9 "careless"?

10 THE COURT: If he wants to use the word
11 "careless" that's fine. We all know that those of
12 us that do it in our business negligence is a term
13 of art and we're not -- I'm not going to let him go
14 that far in this case.

15 MR. NORRIS: Ma'am, he hasn't been asked
16 questions. He is also going to be offering opinions
17 on the forces that can be exerted by the boom on the
18 girt.

19 THE COURT: I assume in his background I
20 heard engineering there?

21 MR. NORRIS: That's correct.

22 THE COURT: Have you had training as an
23 engineer?

24 THE WITNESS: Yes. I'm a registered
25 engineer in the State of New York and State of

1 Virginia.

2 THE COURT: Do you have any questions
3 about that?

4 MR. SMIRCINA: No, I don't. There is one
5 more issue concerning the OSHA regulation which is
6 only a proposed regulation which dealt with the
7 erection of steel.

8 MR. NORRIS: I'm not going to ask him
9 about any proposed OSHA regulations.

10 MR. SMIRCINA: Or any other OSHA
11 regulations since none have been the basis for his
12 opinions.

13 MR. NORRIS: You talked OSHA regulations
14 until you were blue in the face. Mr. Burg didn't
15 speak --

16 MR. SMIRCINA: That his opinion.

17 THE COURT: I assume that the question
18 was asked, the basis of the expert witness'
19 testimony?

20 MR. NORRIS: Your Honor, we did two
21 things. Mr. Leland was subject to a deposition. We
22 amended our expert disclosure. So the plaintiff is
23 100 percent on notice that his opinions will be
24 consistent with those expressed in his deposition.

25 THE COURT: Was that done in the

1 transcript of the deposition?

2 MS. SPENCE: It was done in supplemental
3 answers to interrogatories, and, in fact, for
4 defendants Meredith and Bosley before the deposition
5 I indicated any opinions expressed in the
6 deposition.

7 MR. SMIRCINA: 1926.756 which he
8 testified in his deposition is a proposed
9 regulation. That is the only regulation that we
10 ever talked about that this man is going to give an
11 opinion about.

12 THE COURT: It was discussed at the
13 deposition?

14 MR. SMIRCINA: It was discussed and said
15 it was proposed. Mr. Leland said it must have been
16 the one in 1996 but nothing was ever relied upon or
17 disclosed to us about that. In addition, it has
18 nothing to do with boom crane operation. It has to
19 do with steel erection, cranes involved in the
20 erection of structural steel. I recognize that is
21 something you can properly cross-examine upon, but
22 we were not disclosed and he should have done it.
23 They can look on Page 24, middle of the page,
24 proposed.

25 MS. SPENCE: Your Honor, starting on Page

1 23 he testified that he was relying on memory when
2 he gave his opinions but then went specifically and
3 looked up the erection regulations and that there
4 was a code section prior to the proposed one with
5 similar language, not exactly the same but the same
6 gist and that's what he was relying on.

7 THE COURT: Then that's what he can rely
8 on today.

9 (The jury was returned to the courtroom.)

10 RICHARD LELAND, called as a witness by
11 and on behalf of the Atlantic Welding, having been
12 first duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. NORRIS:

16 Q. Tell us your name, sir.

17 A. My name is Richard Leland.

18 Q. How are you employed?

19 A. I am the senior vice president of
20 Tidewater Crane & Rigging here in Virginia Beach.

21 Q. How long have you been with Tidewater
22 Crane & Rigging?

23 A. Since its inception. I believe that was
24 1987.

25 Q. What does Tidewater Crane & Rigging do?

1 A. We are what you would consider a full
2 line industrial contractor. We do ironwork,
3 millwright work if you are familiar with those
4 trades. We have equipment rental side of our
5 business where we work cranes, operate and maintain
6 or we rent the cranes if someone just wants the
7 crane. We have manlifts and other type of
8 equipment.

9 Q. Mr. Leland, let's start back with your
10 post-high school education. How have you been
11 educated beyond high school?

12 A. I have a Bachelor's degree in civil
13 engineering from Iowa State University and a
14 Master's in business from the University of Iowa.

15 Q. Are you a licensed engineer?

16 A. I am licensed engineer in the State of
17 Virginia and the State of New York.

18 Q. When you completed your Master's degree
19 where did you go to work?

20 A. After that point in time I went to work
21 for a company called Winkelman Utilities in
22 Syracuse, New York.

23 Q. What did you do for them?

24 A. I was a project engineer at that time for
25 two or three years until that business folded when

1 the energy crisis came up and after that I went to
2 work for a company called Syracuse Rigging.

3 Q. What did Winkelman do, what was its
4 business?

5 A. D. W. Winkelman was a general contractor
6 with road buildings, did underground utilities
7 construction.

8 Q. Did you have exposure to use of booms or
9 cranes with Winkelman?

10 A. Limited with Winkelman to side booms, but
11 when I was with Syracuse Rigging from that point on
12 in my career I've been working around cranes on
13 almost a daily basis.

14 Q. How long were you with Syracuse Rigging?

15 A. I would almost have to look at my resume.

16 Q. You may.

17 A. I would have started after Winkelman
18 Utilities which would have been somewhere around
19 1975, 1976 and I worked with them until there was a
20 name change. They moved the company here, called
21 S. R. International, worked with them until 1987.

22 Q. When did you come to the Virginia Beach
23 area?

24 A. Around '75.

25 Q. And you were with the Syracuse company

1 but the name changed?

2 A. That's correct.

3 Q. Tell the jury about your experience with
4 cranes or boom trucks or that type of equipment
5 while you were with Syracuse and its successor
6 company.

7 A. Syracuse Rigging was a similar company to
8 Tidewater Crane & Rigging where our primary business
9 was doing heavy equipment, moving, lifting, things
10 of that nature. We used cranes to erect steel,
11 cranes to erect precast, cranes to handle major
12 pieces of equipment that had to be put into
13 buildings, things of that nature, lot of rigging on
14 a daily basis.

15 Q. Did you acquire any personal experience
16 operating boom trucks or cranes during that time
17 frame?

18 A. Yes, I did. For a while we had a
19 nonunion operation that was going on, and at that
20 point in time as well as overseeing the work in the
21 field I had the opportunity to operate the cranes
22 when we needed them to be used.

23 Q. And did your operation ever include
24 off-loading materials?

25 A. It would have been handling of steel and

1 concrete products, yes.

2 Q. Now, when did you go to Tidewater then,
3 what year?

4 A. I believe that was 1987 when the company
5 was formed.

6 Q. Tell the jury how your duties with that
7 company has evolved through the present time.

8 A. The owner of Tidewater Crane & Rigging
9 was a minority owner in the predecessor company,
10 Syracuse Rigging, later S. R. International. When
11 he chose to form the new company, I made the
12 decision to go with him rather than stay with the
13 other owner. At that point in time we were doing
14 similar type work. I was involved in field
15 operations, did such things as convert a power plan
16 from oil fire back to coal fire operations, did a
17 lot of work around the various industrial plants
18 here around the community.

19 Q. In the course of your employment with
20 Tidewater Crane & Rigging, have you had experience
21 training boom truck operators?

22 A. All of our crane operators that we employ
23 at this point in time are union operators from Local
24 147. Associated with that I have served on the
25 apprenticeship board for the operating engineers and

1 the management team for training all of the young
2 men, young women who choose to come into the
3 industry as operators. The majority of that
4 training is crane operators and have a duty as a
5 trustee on that to oversee those operations.

6 Q. Are you familiar with the type of boom
7 truck that was being operated by the plaintiff in
8 this case when he was hurt?

9 A. Yes, I am, not that particular model.
10 The ones that I have worked around recently has been
11 a Palfinger, but I am familiar with that type of
12 crane and controls.

13 Q. Did you review technical information on
14 what type of boom truck it was and what type of boom
15 it was to familiarize yourself with it?

16 A. Yes.

17 Q. And are you familiar with regulations
18 promulgated within the industry on the safe
19 operation of the boom truck of that type?

20 A. Yes. Industry standard and government
21 standards as well.

22 Q. Do you have experience calculating as an
23 engineer the amounts of loads and forces that must
24 be exerted to cause structures to move certain
25 distances given certain weights?

1 A. Yes, I do.

2 Q. Do you have any experience being on or
3 around construction projects?

4 A. Yes.

5 Q. And the use of booms on and around
6 construction projects?

7 A. Yes.

8 Q. Do you have experience with the role of
9 spotters in assisting with boom operations and
10 off-loading operations?

11 A. Yes.

12 Q. And do you have experience being on or
13 around construction projects that involve steel
14 erection?

15 A. Yes.

16 Q. Now, is your livelihood dependent in any
17 way on testifying in cases?

18 A. No, it's not.

19 Q. Have you ever done this before?

20 A. First time.

21 MR. NORRIS: Your Honor, I would offer
22 Mr. Leland as an expert as an engineer and in the
23 operation of booms and boom trucks.

24 THE COURT: Any other questions?

25 MR. SMIRCINA: Subject to

1 cross-examination if you would, please.

2 THE COURT: All right.

3 BY MR. NORRIS:

4 Q. Now, Mr. Leland, what information
5 information were you given to review to help you
6 form opinions in this case?

7 A. Initially I was given Michael Shepherd's
8 deposition and some pictures and other things to
9 look at and asked to comment on those. Subsequent
10 to that I took a look at some of the industry
11 standards that were around, tried to do a little bit
12 of research in OSHA and what the requirements were
13 there and also took a look at the maintenance
14 records and things of that nature on this particular
15 crane.

16 Q. Were you given some information on what
17 Mr. Shepherd was trying to do at the time of his
18 injury?

19 A. Yes, I was. I was told that he was
20 trying to unload drywall and set it into the
21 building.

22 Q. Were you shown photographs depicting the
23 scene where the accident happened?

24 A. Yes. There was approximately a half a
25 dozen photographs?

1 A. Yes.

2 Q. And did the photographs include the
3 position of the boom and the fork of the boom in
4 relation to the steel member that hurt Mr. Shepherd?

5 A. Yes. I saw the photographs that were
6 taken.

7 Q. And were you given information about how
8 much clearance Mr. Shepherd had to off-load the
9 material in relation to the boom and the floor?

10 A. Initially I was asked to evaluate what
11 type of clearance would be required in that case. I
12 was not given any specific clearances initially.

13 Q. Subsequently were you told what type of
14 clearance Mr. Shepherd may have had at the time?

15 A. After that different people mentioned as
16 little as one inch and as much as six inches I was
17 told.

18 Q. Do you have an opinion as to what
19 standard, if any, exists in this area for a boom
20 operator to safely off-load materials, what amount
21 of clearance would be expected?

22 A. It's possible to unload and put materials
23 in where there is virtually no clearance, but in
24 those situations extreme care has to be taken not to
25 bring the load or the boom into contact with any of

1 the surrounding structures.

2 Q. When a boom operator is off-loading
3 materials -- by the way were you aware of what
4 Mr. Shepherd was off-loading at the time?

5 A. I was told he was off-loading hacks of
6 Sheetrock.

7 Q. Do you have some sense of the weight of
8 the hacks of Sheetrock?

9 A. Depending how many pieces on there I
10 would assume somewhere between 2,500 and 4,000
11 pounds.

12 Q. Were you aware whether or not
13 Mr. Shepherd had a spotter available to him?

14 A. No, I wasn't. I wasn't told until later
15 on that he did have someone spotting the load for
16 him.

17 Q. You are now aware there was a spotter
18 involved?

19 A. Yes.

20 Q. What is the role of a spotter during an
21 off-loading operation?

22 A. When he would come into play would be
23 when there is a situation where there is either a
24 blind spot where the operator couldn't see what was
25 going on, there would be obstructions not clearly

1 visible to the operator or when the operator would
2 feel like he just needs another set of eyes just to
3 make sure everything is done in a safe and prudent
4 manner.

5 Q. Were you also given access if I can
6 approach to a document which is now labeled
7 Defendants' Exhibit 6 which is the manual
8 promulgated by Mr. Shepherd's employer on the
9 operation of a crane?

10 A. Yes, I was.

11 Q. Would you turn to Page 6 of that manual?
12 Does the manual indicate certain precautions or care
13 that should be taken by the operator of the boom?

14 A. Yes, it does, under Section 4.

15 Q. And look at 4.B.2 if you would. What
16 does the manual provide as far as obstructions?

17 A. "Load boom and other parts of the crane
18 do not contact any obstruction."

19 Q. Does that requirement in the Tidewater
20 Interior Products Manual comply with the standard in
21 this industry in this area?

22 A. Yes, it does.

23 Q. Is that standard promulgated in any
24 fashion by other similar kinds of manuals or
25 publications?

1 A. Define your word.

2 Q. Are there other written standards about
3 whether a boom should come into contact with
4 materials in the crane industry?

5 A. Yes, there are.

6 Q. What kind of standards have been
7 promulgated in that respect?

8 A. There have been management teams that
9 have gotten together. One of the foremost ones
10 would be the Exxon manual that's been prepared.
11 It's been distributed widely by organizations such
12 as the Specialized Carriers & Riggers Association
13 who have undertaken to develop independently of them
14 an operator qualification and certification program
15 that is recognized by OSHA.

16 Q. And what do those standards indicate
17 about whether a boom operator should come into
18 contact with a structure while he is off-loading his
19 material?

20 A. They all clearly state that you should
21 not.

22 Q. Now, let me go back to where we were a
23 moment ago about one to six inches of clearance. Is
24 one to six inches of clearance sufficient clearance
25 to perform the operation that Mr. Shepherd was

1 attempting to perform at the time and place in
2 question?

3 A. Taking reasonable care, yes.

4 Q. What reasonable care should have been
5 taken by Mr. Shepherd at that time?

6 A. I would see that as his judgment. If he
7 felt like he could not see the obstructions, see the
8 load, determine exactly where the floor was, at that
9 point in time he would have someone assist him in
10 that unloading operation.

11 Q. Assuming he had a spotter up on the
12 second floor with him, what, if any, attention
13 should Mr. Shepherd be paying to the spotter?

14 A. He should have been aware and conscious
15 of his presence and given him instructions on what
16 he wanted him to watch out for and observe while he
17 was doing the unloading.

18 Q. What obligations does a boom operator
19 have before he gets in the boom to begin this
20 off-loading process?

21 A. He should generally familiarize himself
22 with the area, look for any problems that may
23 exist. One of the primary ones they always talk
24 about are overhead obstructions such as power
25 lines. Look to make sure there are no fresh

1 excavations where the crane might tip. If the
2 ground is soft, take additional precautions and put
3 down wood to stabilize his outriggers. Take a look
4 at the area where he is going to be unloaded, make
5 sure he can do the task he has been called upon to
6 do in a safe and prudent manner.

7 Q. Does he have an obligation to make an
8 inquiry of other workers in the area,
9 superintendents or foremen in the area about which
10 he is off-loading.

11 Q. If he had any question in his mind, I
12 would say yes. If he felt like there wasn't any
13 reason not to, I would say no.

14 Q. Now, the spotter, does the spotter have
15 signals available to him to inform the boom operator
16 there is a problem and that he should stop?

17 A. Yes, he does.

18 Q. If the spotter gives such a signal, can
19 the boom operator immediately stop the movement of
20 the boom?

21 A. He can depending on the piece of
22 equipment he is operating. There may be a little
23 bit of residual travel once he lets go of any lever
24 that he is operating at that point in time, any
25 function he is controlling. The crane could

1 continue slightly after that point in time.

2 Q. Speaking to the boom that was being used
3 by Mr. Shepherd, are you familiar with the boom that
4 he was actually using from the pictures and the
5 maintenance information?

6 A. Yes.

7 Q. Would Mr. Shepherd have had a means of
8 stopping the boom if his spotter had given him a
9 stop signal?

10 A. If he would let go of the control levers,
11 the crane would come to a complete stop.

12 Q. At my request did you perform some
13 calculations on what amount of force would have been
14 necessary to move the girt in question by the boom?

15 A. Yes. Initially I didn't see the picture
16 of the tube steel member with the weld on it and I
17 just had information that it had been tack welded,
18 so I did some preliminary calculations just to see
19 what kind of force would be required to knock the
20 member off if it were welded in place.

21 Q. Have you since though seen a picture
22 which is now marked Plaintiff's Exhibit 15 showing
23 what witnesses have testified to be a tack weld on
24 the end of the girt?

25 A. Yes, I have.

1 Q. And have you performed calculations based
2 on whether there was one such weld or two such welds
3 on the girt and how much force would have been
4 needed to move the girt?

5 A. Yes, I did.

6 Q. I want you to come on down here and we'll
7 put some paper up on the easel. Now, I know you
8 initially did some calculations but I want you to
9 because of time limitations and -- I want you to
10 tell us about your calculations based on the
11 assumptions of the size of the weld as depicted in
12 the photographs. Have you done some calculations?
13 What size weld did you assume from these
14 photographs?

15 A. When I looked at this particular
16 photograph, it appeared to me that weld was
17 somewhere in the neighborhood of a quarter inch
18 diameter.

19 Q. As an engineer what do you go about doing
20 to determine what it would take to move the girt if
21 it had a weld like that?

22 A. Well, that particular member and the lug
23 that it were welded to, the structural strength of
24 that would be the determining factor because the
25 welding rod that's used to weld them together is

1 stronger than the base materials themselves. For
2 evaluation purposes you use the strength of the base
3 metals.

4 Q. Because that is the weaker part?

5 A. Right.

6 Q. This is a more conservative calculation?

7 A. Yes. This would be an A36 steel.

8 Q. What does that mean?

9 A. That's the industry nomenclature for that
10 particular steel. That particular steel would have
11 a yield point of 36,000 pounds. Yield point means
12 the point at which the force were put on the steel,
13 let's say you are pulling on a piece of it at which
14 point that force, it would not return to its
15 original state once you let go of it, but although
16 the yield on that is 36,000, the minimum ultimate is
17 58,000 pounds per square inch. So that would mean a
18 weld that were one inch by one inch would be able to
19 withstand 58,000 pounds before it failed completely,
20 before it tore apart from the base metal. In this
21 case if you are looking -- that would be our basis
22 of it. If you look at a weld that is a quarter inch
23 in diameter, then you have to figure out the area of
24 that. You have the radius of the diameter divided
25 by two, squared, times pi which is just a constant.

1 So you can figure out the area. We are looking at a
2 weld in this case that would be round. It would be
3 a quarter inch across. A weld of that size when you
4 calculate it out, one weld would be able to
5 withstand 2,847 pounds.

6 Q. Before what?

7 A. Before it would fail completely.

8 Q. So is that another way of saying at least
9 that much force would be needed to break one of
10 these welds?

11 A. To break a one-quarter inch diameter
12 weld, correct.

13 Q. Are you familiar with what amount of
14 force this particular boom can exert?

15 A. I haven't looked at the actual load
16 tables on it. I looked at some manufacturer's
17 data. Depending on the radius that crane is
18 operating, it's more than capable of breaking that
19 loose.

20 Q. Now, what type of information would an
21 engineer have to have to be able to tell this jury
22 how much of a weld would have been necessary to
23 prevent this boom truck from dislodging it on the
24 date of the accident?

25 A. Well, you would have needed to originally

1 know for sure what the size of the welds were. You
2 would need to know the exact location of the boom
3 truck so you can determine the angle of contact that
4 the boom has with the member. You would need to
5 know the location along the member where the boom
6 were because if the boom were right in the middle it
7 would take more load than it would be if it were
8 closer to one end. You would need to know if the
9 boom were in contact with the member before it
10 started to actually put a load on the member,
11 whether it came in contact in essence in a smooth
12 way or whether it impacted the member.

13 Q. Would you need to know the angle of the
14 boom?

15 A. Yes.

16 Q. Would you need to know the duration of
17 the contact?

18 A. Duration wouldn't be as important as the
19 other variables.

20 Q. Does anybody know those things about this
21 incident?

22 A. They have not been presented to me, no.

23 Q. Would it be possible for you or any
24 engineer to say how much weld Atlantic would have
25 had to put on that girt to prevent this boom from

1 knocking it down that day?

2 A. The only thing you could do is say you
3 would have to have enough weld on it to where it
4 could resist whatever the maximum force that boom
5 truck could exert on the member.

6 Q. If one witness testified that that boom
7 could exert between 6,000 and 9,000 pounds of force;
8 does that sound right to you?

9 A. Yes, it does.

10 Q. You would have to have an extremely
11 extensive weld, would you not?

12 A. More than you would normally put on there
13 for safe working conditions on a job site.

14 Q. Now, I want you to assume for a moment
15 that the testimony has been that the spotter for
16 Mr. Shepherd was talking to other individuals and
17 did not see the girt move from the angle until it
18 had moved six inches because his attention was
19 diverted and I want you to assume further that
20 Mr. Shepherd has testified that he was looking down
21 toward the floor and not at the spotter and not at
22 the girt where it met the boom until his spotter
23 yelled down to him calling his attention to it. Do
24 you have an opinion whether those actions or
25 inactions met the standards for the safe operation

1 of a boom?

2 A. It would be my opinion that the spotter
3 was not doing what he was supposed to be doing at
4 that point in time. The operator watching the load
5 may have been appropriate if the spotter's job were
6 to watch the contact with the boom and the steel to
7 make sure there it wasn't any problem with that.
8 But I don't believe the spotter based on those
9 conditions was doing his job. He should not have
10 been talking. He should have been watching what was
11 going on.

12 Q. How would your opinion be affected by the
13 fact there might have been three or four inches of
14 clearance as opposed to a foot of clearance? How
15 does that impact the need for the boom operator and
16 the spotter to pay close attention?

17 A. The closer the distance is the less space
18 you have, the more attentive you have to be to what
19 you are doing.

20 Q. Based on your review of the photographs
21 in this case and the testimony you have reviewed,
22 did you form an opinion whether the boom operator in
23 this case was meeting the standards in the industry
24 at the time?

25 A. I don't believe that the crew was.

1 MR. NORRIS: That's all I have for
2 Mr. Leland.

3 CROSS-EXAMINATION

4 BY MR. SMIRCINA:

5 Q. Mr. Leland, you say you are familiar with
6 the controls of how to operate this boom crane that
7 Mr. Shepherd was operating?

8 A. I am familiar with controls in hydraulic
9 cranes. I said exactly which lever does what I
10 wouldn't be absolutely confident that I would know
11 that.

12 Q. I have Plaintiff's Exhibit 7. Can you
13 see that? Do you know what this lever does?

14 A. Those are two joystick controls on that
15 crane that operate the various functions. What each
16 one of them does is not relevant to whether you are
17 in control of the crane or not and --

18 Q. Not what I am asking. Do you know which
19 one of the two is damaged?

20 A. No.

21 Q. Do you know which one of the two operates
22 the secondary arm of the boom?

23 A. No.

24 Q. Do you know which one of those joysticks
25 actually if it is damaged what would happen to the

1 secondary arm of the boom?

2 A. If it were damaged, it's no telling what
3 would happen. It would depend on the damage done to
4 it.

5 Q. If I told you the testimony had been
6 rendered saying that this joystick had been damaged
7 and that it controlled the raising and the lowering
8 of the secondary boom arm, the boom arm that people
9 say it came in contact with the girt, would that
10 have an effect on the secondary arm if it were
11 damaged?

12 A. Before the fact?

13 Q. No, in the collision?

14 A. It could not have been damaged when the
15 contact was made with the girt. It would have been
16 damaged after that time when the member fell on it.

17 Q. If the member fell on it and damaged it,
18 wouldn't it raise the secondary arm of the boom?

19 A. Possible.

20 Q. Move it into the area that might have
21 been otherwise occupied by the girt?

22 A. That's possible.

23 Q. So this -- let's get a better picture of
24 this. Let's use Mr. Norris' picture. So if the
25 testimony is that this joystick was damaged by being

1 pushed down and to the right by the steel girt
2 falling and that when you move it that way that the
3 secondary boom arm, the part that came in contact
4 with the girt, raises. That has been the
5 testimony.

6 MR. NORRIS: I know the jury are the
7 ultimate deciders of the testimony. I don't recall
8 that specific testimony.

9 MR. SMIRCINA: I know you wouldn't, but
10 it was so testified by Allen Walker and Michael
11 Shepherd.

12 THE COURT: I'll take him at his word for
13 it.

14 MR. NORRIS: But the witness is also
15 being asked to speculate. He said it is possible.

16 THE COURT: It's cross-examination.
17 BY MR. SMIRCINA:

18 Q. So in effect the secondary arm of the
19 boom crane if this joystick was damaged by the
20 impact with the steel girt could have been raised?

21 A. That's correct.

22 Q. Far beyond the point where it would have
23 been when it was being operated immediately prior to
24 the collision with the girt?

25 A. That is correct.

1 Q. I have another question for you about
2 this. Here is a picture showing what Mr. Norris'
3 witnesses have said showing the secondary arm in the
4 space occupied by the girt but the forks on the
5 floor. How would Michael Shepherd if this were the
6 true position of the secondary arm and the forks
7 ever have gotten into that space?

8 A. You are looking at something that is
9 three-dimensional and asking me to evaluate it on a
10 two-dimensional. I can't do it with that
11 information.

12 Q. The witnesses have testified that this
13 boom arm, the secondary boom arm controlled by that
14 right-hand joystick that was damaged in the
15 collision, was in the space occupied by the girt.
16 Let's assume that's true. Let's assume that the
17 forks were on the floor. How would Michael Shepherd
18 ever have gotten that load in there at all if this
19 was the normal positioning and functioning of the
20 boom crane prior to the impact?

21 A. I don't have an answer for you.

22 Q. Let's talk about your calculations again
23 for a brief period of time. At your deposition you
24 were testifying there was 2,800 pounds of force
25 needed to be required to break a quarter-inch weld

1 on this steel; is that what you are saying?

2 A. Well, I didn't say that at deposition.
3 What I did, I just said that now. If we have a
4 quarter-inch round weld, one would need roughly
5 2,847 pounds to break it.

6 Q. But you never looked at the weld, did
7 you?

8 A. I never saw the member itself, no. All I
9 have seen is pictures.

10 Q. So this is nothing but a speculation by
11 you as to the size of the weld and the type of the
12 metal that was used to make the weld?

13 A. That's correct. By looking at the
14 pictures it does not appear that the weld was much
15 different in size than that.

16 Q. Suppose the beam is only tacked on one
17 end, how much force would be required to break that
18 weld?

19 A. It may be very little. It can be as
20 little as ten percent of the weight of the member
21 itself if the boom came into contact with it at an
22 angle where it actually skidded off the loads.

23 Q. Let me ask you this: This girt weighed
24 1,720 pounds. Let's just assume that. Do you mean
25 if some force is applied to a square inch of that

1 girt, 170 pounds, that it will dislodge that girt,
2 it will break that weld?

3 A. If it were only welded at one end and the
4 load were applied at the opposite end of the member
5 it could be as little as that, correct.

6 Q. But we don't know where the weld was
7 applied. Suppose it was midway through, how much
8 force is necessary?

9 A. It would be more than that but you would
10 have to know all of the specifics, the angle of
11 contact and everything else, to determine that.

12 Q. So really there is absolutely no way to
13 know how much force would be required to break any
14 weld, even if one existed on this girt really?

15 A. Not without having all of the particulars
16 that you need to determine it, that's correct.

17 Q. Such as the angle -- the exact angle
18 which you don't know, the exact angle the boom arm
19 struck the beam which you don't know?

20 A. That's correct.

21 Q. The power of the crane itself, where on
22 the girt it's hit; is that correct?

23 A. The position, that's correct.

24 Q. One of your crane operators is on a
25 construction site and is told by the superintendent

1 or reasonably relies on the superintendent that he
2 can off-load at a particular spot. Would you have
3 any reason for your crane operator to make an
4 independent investigation as to whether a particular
5 steel beam was welded into position?

6 A. He has the responsibility to observe the
7 site and determine for himself whether to proceed
8 with any lift. All of our crane operators have that
9 instruction to make a personal evaluation. If they
10 don't feel it's safe or there is something
11 unreasonable, they need to let us know and we'll
12 take a look at it.

13 Q. Is there a better source of opinion as to
14 whether something is able to be off-loaded in a
15 particular area than the word of the superintendent?

16 A. You would normally assume that that is
17 fine.

18 Q. If the superintendent says, "Take the
19 safety cable down. Just put it back," and you took
20 that to mean he says we can off-load there, you
21 would think your crane operator working for your
22 company would have no obligation to do any
23 independent investigation of the security of the
24 beam?

25 A. That would probably be as far as he would

1 normally go, yes.

2 Q. So there is nothing unreasonable about
3 that behavior or beneath the standard of care
4 required of a crane operator in this area; isn't
5 that right?

6 A. Correct.

7 Q. You said the crew, the crew violated the
8 standard of care. How did Michael Shepherd violate
9 the standard of care?

10 A. Well, if he had a spotter working for
11 him, he should have been also paying attention to
12 that spotter while he is watching the load. If he
13 noticed the spotter is not doing his duty in
14 observing whatever needed to be done then the
15 operator should have at that point in time yelled to
16 the spotter or contacted him some other way and say,
17 "Hey, pay attention to what you are doing."

18 Q. Now, you say you handle in your business
19 steel and concrete products. That means you haul
20 them and set them at construction sites?

21 A. Yes, we do.

22 Q. And your cranes are 12 and a half tons to
23 300 tons; isn't that correct?

24 A. Correct.

25 Q. And Mr. Shepherd's crane is what, a four

1 and a half ton crane?

2 A. Somewhere in that neighborhood.

3 Q. So it's one-third the dimensions of the
4 cranes your people routinely operate?

5 A. Dimensionally it's not much different.

6 Q. Power?

7 A. As far as the capacity of the crane
8 itself, it's less than most of ours, that is
9 correct.

10 Q. Now, would you expect the force of the
11 boom arm hitting the steel girt enough to dislodge a
12 weld if one was there to make any noise?

13 A. If it came into contact with it abruptly
14 it would. If it just came into contact with it very
15 slowly, then no.

16 Q. No metal hitting metal making noise? So
17 if I take this, you would hear nothing?

18 A. You wouldn't hear that over the noise of
19 the engine of the crane.

20 Q. But if it came into contact with it
21 abruptly, abruptly enough to lift it off its
22 brackets, wouldn't you expect to hear noise?

23 A. It's speculation whether it was abrupt or
24 not. If it actually came into contact with it
25 abrupt, yes, you would hear noise and I would expect

1 the spotter heard the noise.

2 Q. But all the witnesses have testified as
3 to the way the contact was made between the boom arm
4 and steel beam as a brushing, so that you would
5 assume would be silent, right?

6 A. Or very soft, yes, similar to what you
7 just did.

8 Q. And so that degree of contact in your
9 opinion could not or should not have been able to
10 break a weld, a beam that was welded at both ends?

11 A. Again, if it were welded securely at both
12 ends, if it were just a brushing as you described
13 it, which would be going across it, possibly not,
14 but if it's coming up into contact with it from
15 underneath and continues to exert the force the boom
16 is capable of exerting it could break the welds
17 loose.

18 Q. So you don't think a brushing could break
19 the welds?

20 A. I said if it's just sweeping across it.
21 If it's not exerting force then it's not going to
22 break welds. If it's exerting force there is a
23 possibility of breaking welds.

24 Q. Suppose the beam isn't welded at all, how
25 much force is necessary to dislodge it off its

1 brackets?

2 A. My best estimate would be ten percent of
3 the weight of the girt, maybe 170 to 200 pounds.

4 Q. So 170 pounds of force. I weigh 230
5 pounds. If I press against that beam I can dislodge
6 it?

7 A. If you pushed against it, yes.

8 Q. So it's not hammering it with a
9 sledgehammer that can dislodge it; it's 170 pounds
10 of force properly applied in a significant fashion?

11 A. Yes.

12 Q. And that would dislodge this girt?

13 A. If it were not welded at all, yes.

14 Q. Wouldn't you expect contact more than a
15 brushing to be felt in the controls by the operator?

16 A. No.

17 Q. Why not?

18 A. You are dealing with an hydraulic crane.
19 If you are just putting the force on there and you
20 are anywhere within your normal realm of working you
21 are not going to notice the engine bog down. You
22 are not going to notice the pump. You are moving
23 very slow and methodical to try to get in a tight
24 spot. I don't think you would notice that. That's
25 one of the reasons you have a spotter helping you.

1 Q. This is for any type of contact between
2 the boom arm and beam or the brushing contact we
3 were talking about?

4 A. Anything other than impact I'm not sure
5 you would recognize it.

6 Q. Impact meaning bam?

7 A. Hitting it.

8 Q. And such an impact of course would make
9 significant noise?

10 A. You would expect it to, yes.

11 Q. If all the witnesses said that there was
12 no noise, you wouldn't expect the impact to be
13 significant as you have described it?

14 A. No. I think you are kind of turning my
15 words here a little bit.

16 Q. Am I mischaracterizing you?

17 A. I said a brushing, is it applying force
18 or not applying force? When I think about brushing
19 that's something just sweeping across it, basically
20 just touching it and then going away from the member
21 itself. We are talking here about coming up
22 underneath the member. I'm not sure -- to me that's
23 not brushing.

24 Q. If it's described as brushing and
25 everyone says it that way, you have no reason to

1 disbelieve that their brushing means the same as you
2 just described; isn't that correct?

3 A. Brushing would be to come in contact with
4 something and immediately out of contact with it
5 again in my viewpoint.

6 Q. And in any event if the beam is not
7 welded, it would only take 180 pounds of force
8 exerted by this boom arm to dislodge it?

9 A. Somewhere in that neighborhood, yes.

10 Q. Part of what you decide in determining
11 whether somebody exercises reasonable judgment in
12 the operation of the crane would be whether they can
13 see the various obstacles they have to go through
14 with the boom arm; wouldn't that be true?

15 A. I'm not quite sure I understand your
16 question.

17 Q. You are saying Michael Shepherd behaved
18 unreasonably because there are only three or four
19 inches of clearance and it's not enough and all this
20 stuff. But if he can see everything that is going
21 on and he can see the concrete floor and the beam,
22 is there anything unreasonable about that?

23 A. No, there isn't.

24 Q. And that's what he should do?

25 A. That's his judgment call.

1 MR. SMIRCINA: I don't have anything
2 further.

3 CROSS-EXAMINATION

4 BY MS. SPENCE:

5 Q. Good afternoon, sir. If I understand
6 what you are saying correctly, the boom can come up
7 slowly and steadily without making a noise and lift
8 the beam?

9 A. Yes, it could.

10 Q. And it could exert as much force as the
11 crane is capable of lifting?

12 A. At whatever radius it made contact with
13 the girt, that is correct.

14 Q. So the noise of the impact would come
15 from the speed of the impact, not from the force
16 being exerted by the crane?

17 A. You are correct.

18 Q. Let me ask you, sir, if the crane
19 operator sees a welder 20 feet in front of him
20 welding a girt, would in your opinion that give him
21 a reason to question if the other girts are welded?

22 A. He might speculate in his mind whether
23 this is an active erection site or whether the work
24 has been completed, but, again, that's speculation
25 on my part.

1 Q. Would that be a reason for him to check
2 or ask questions before making his off-load?

3 A. Yes, it might be.

4 Q. Mr. Leland, I want you to assume that the
5 crane operator had already off-loaded at least once
6 into the same area without having an accident.
7 Assume, however, that his hydraulic hose came in
8 contact with the girt at that time. Would that have
9 any effect on what he and/or his spotter should do
10 before the next off-load?

11 A. If they knew there was contact made, they
12 should take a look and make sure that no damage to
13 either the structure or the equipment was present
14 before they continued.

15 Q. And should they do anything different for
16 the next off-load?

17 A. I would say they just be a little more
18 cautious to make sure they didn't come into contact
19 with it.

20 Q. So if the spotter didn't even tell the
21 operator that contact had been made, would the
22 spotter have been doing his job?

23 A. He in my opinion should have mentioned
24 something to the operator that "We were a little too
25 close on that. We need to be a little more

1 careful."

2 Q. And if a crane operator is off-loading
3 material and can see what he is doing, would you
4 expect him to see the moment his boom comes in
5 contact with the structure?

6 A. He should be able to determine that, yes,
7 or else he needs another set of eyes to observe that
8 for him.

9 Q. And if he doesn't see that then is he not
10 properly looking where he should be looking?

11 A. Well, maybe not properly looking. He may
12 not be capable of actually determining that from
13 where he is at, his angle, line of sight, things of
14 that nature, depth perception all come into play.
15 He may not be able to determine that from where he
16 is at.

17 Q. If his testimony is that he can see it,
18 then would he be doing what he should be doing if he
19 didn't see it?

20 A. Then he should not be making contact with
21 any of the members if he can see it.

22 MS. SPENCE: That's all I have.

23 REDIRECT EXAMINATION

24 BY MR. NORRIS:

25 Q. I have a few more. You were asked some

1 questions about the position of the boom and the
2 fork in the photograph after the incident happened
3 and the damaged joystick?

4 A. Yes.

5 Q. You were asked to speculate whether the
6 damage to the joystick caused this boom and forklift
7 to change its position, do you recall?

8 A. Whether that would be possible, that's
9 correct.

10 Q. And you said it was possible that when
11 the joystick was damaged, maybe it caused the boom
12 to actually go up higher?

13 A. Yes.

14 Q. Is it possible it caused it to go lower?

15 A. Yes.

16 Q. So it might have been that this boom was
17 even higher up on the girt before the incident
18 happened?

19 A. That could be a possibility.

20 Q. Would a boom like this have foot pedals?

21 A. Some of them are so equipped.

22 Q. Can you tell from the photographs whether
23 this had foot pedals?

24 A. Yes, it does.

25 Q. And what would happen to the operation of

1 the boom if the foot pedal were released?

2 A. It would stop.

3 Q. So if Mr. Shepherd jumped off the boom to
4 avoid the beam and his foot left that foot pedal
5 what would happen to the boom?

6 A. It would stop.

7 Q. Would any movement of the joystick
8 without the foot pedal pressed change the movement
9 of the boom?

10 A. Either the foot pedals or the joystick
11 can operate the machine independently.

12 Q. You were asked how this fork could have
13 gotten in if the girt were here. Isn't there a
14 knuckle joint where the fork can be rotated up and
15 down?

16 A. On the crane itself. I'm not sure about
17 the forks. I can't observe that close enough to
18 tell.

19 Q. So on the movement in, this boom could
20 have been in a lower trajectory in relation to the
21 girt?

22 A. That is possible.

23 Q. It could have been raised on the movement
24 out to come into contact with the girt on the
25 movement out?

1 A. That is possible.

2 Q. I think the jury may have a
3 misunderstanding about the 170 pounds of force or
4 180 pounds of force. I am 180 pounds -- I wish I
5 were 180 pounds. I should be 180 pounds, close --
6 are you saying if I stood underneath a 1,700 pound
7 girt and did that, I could lift it up (indicating)?

8 A. No. I'm only saying sliding it off the
9 lug. If you applied a force on it and it weren't
10 welded you could push it off. That would be the
11 coefficient of friction that you would expect to be
12 able to move a piece that heavy.

13 Q. Mr. Smircina said assume every witness
14 testified it was brushed. Assume that's not true.
15 Assume the spotter testified that the boom lifted
16 the girt, that the girt teetered on top of the boom
17 before it slid down the boom. Assume that the
18 person closest to it testified to that. Now, does
19 that sound to you like 170 pounds of force being
20 exerted?

21 A. No, it doesn't.

22 Q. A lot more than that, right?

23 A. At least the weight of the member itself.

24 Q. So at least 1,700 pound of force would
25 have been necessary to lift the boom up and teeter

1 it, correct?

2 A. That is correct.

3 Q. And that is more than enough to break the
4 quarter inch tack weld, right?

5 A. 1,700 pounds is just enough to lift the
6 member itself. Then you have the strength of the
7 weld itself so you would be looking at around 4,000
8 pounds or more.

9 Q. And if there were welds at both ends you
10 would need even more force than that to break it?

11 A. That is correct.

12 Q. Which this boom was certainly capable of
13 exerting?

14 A. Yes.

15 MR. NORRIS: That's all I have.

16 THE COURT: And the witness is excused.

17 Thank you, sir. We are all excused for the
18 evening. 9:30, ladies and gentlemen, and the deputy
19 will take your pads from you and have a nice
20 evening.

21 (The jury was excused for the day.)

22 (The proceedings were adjourned at 5:45
23 p.m., to reconvene July 25, 2000, at 9:30 a.m.)
24
25

