

STATE OF MICHIGAN  
IN THE SUPREME COURT

DEAN McMASTER,

Plaintiff-Appellant,

Supreme Court Case No. 162076

Court of Appeals Case No. 339271  
(post-remand)

Oakland Circuit Case No.  
15-147414-NO  
Hon. Cheryl Matthews

v

DTE ELECTRIC COMPANY,

Defendant-Appellee,

and

FERROUS PROCESSING AND  
TRADING CO.,

Defendant.

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# EXHIBIT 1

**In the Matter of:**  
Dean McMaster v. DTE Electric Company and  
Ferrous Processing and Trading Company

**Transcript of:**  
Dean McMaster

May 17, 2016  
Volume: 1



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STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DEAN McMASTER,  
Plaintiff,

vs. Case No. 15-147414-NO  
Hon. Cheryl Matthews

DTE ELECTRIC COMPANY and FERROUS  
PROCESSING AND TRADING COMPANY,  
d/b/a FERROUS PROCESSING & TRADING CO.,  
Jointly and Severally,  
Defendants.

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Deposition of DEAN McMASTER  
Taken at 33900 Schoolcraft Road  
Livonia, Michigan  
Commencing at 10:22 a.m.  
Tuesday, May 17, 2016  
Before Denise M. Kizy, RPR, CRR, CSR-2466

Page 3

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8 Ferrous Processing and Trading Company  
9 d/b/a Ferrous Processing & Trading Co.  
10  
11  
12  
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Page 2

1 APPEARANCES:  
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19  
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Page 6	1 DEPOSITION EXHIBIT 29 - Photograph 64 2 DEPOSITION EXHIBIT 30 - P&T Leasing Company, 108 3 Roll Off Safe Operating Procedure 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 8	1 them, we're going to assume that you understood the 2 questions; okay? 3 A. Okay. 4 Q. Thank you. 5 Would you state your full name for the 6 record, please. 7 A. Dean Michael McMaster. 8 Q. And what is your age? 9 A. Fifty-one. 10 Q. And do you still live at the same address indicated in 11 your answer to interrogatories? 12 A. Yes. 13 Q. And that being 7226 Wildcat Road in Crowell, 14 Michigan? 15 A. Yep. Yes. 16 Q. That is also the place of your business, McMaster 17 Trucking? 18 A. Yep. Yes. 19 Q. And is that still a viable operation? 20 A. No. 21 Q. You're not operating? 22 A. No. 23 Q. Are you driving a truck? 24 A. I drive a truck, yes. 25 Q. But not -- McMaster has gone out of business, so to

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1 speak?  
2 A. Yes.  
3 Q. Was it a corporation?  
4 A. Yes.  
5 Q. And did you close up the corporation officially or  
6 not?  
7 A. No.  
8 Q. Okay. But you are back to work at P&T?  
9 A. Yes.  
10 Q. And what are you doing there?  
11 A. Hauling scrap.  
12 Q. Like you were doing on the day of the accident?  
13 A. Yes.  
14 Q. And when did you return to P&T?  
15 A. A month ago. On the 7th I think last month.  
16 Q. The 7th of April?  
17 A. Yeah.  
18 Q. Okay. And are you working full time?  
19 A. Yes.  
20 Q. And did P&T accommodate you in some way with equipment  
21 or job duties because of your accident?  
22 A. No. I mean I drive their truck, but --  
23 Q. Right. Was there any special modifications to the  
24 truck is what I'm asking you?  
25 A. No.

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1 Q. I thought I saw something in some records that they  
2 would give you electric controls or something. It  
3 sounded like something different than the manual.  
4 A. If I had to tarp, they would put an electric tarp on,  
5 but I haven't had to tarp, so...  
6 Q. Okay. Are you still hauling scrap from the same  
7 locations as you did previously?  
8 A. Some, yes.  
9 Q. Have you been back to the Belle River Plant at DTE --  
10 A. No.  
11 Q. -- since this accident?  
12 A. No.  
13 Q. But, anyway, you said you're working full time?  
14 A. Yes.  
15 Q. At the same rate of pay?  
16 A. Yes.  
17 Q. Which was what, 16 or \$17 an hour?  
18 A. Sixteen.  
19 Q. And are you still receiving workers' compensation  
20 benefits?  
21 A. Yes.  
22 Q. We'll get to that later as to when and for how long.  
23 Now I want to first focus on the date of  
24 the accident.  
25 You arrived at the Belle River Plant in

Page 11

1 order to pick up scrap from the DTE facility there;  
2 correct?  
3 A. Yes.  
4 Q. And do you recall that you arrived there about 5:45  
5 a.m. on the date of this accident?  
6 A. Yeah. Yes.  
7 Q. The date of the accident, October 14th, 2014?  
8 A. Sounds right.  
9 Q. Does that sound right?  
10 A. Yes.  
11 Q. And when you arrived at the Belle River Plant you  
12 picked up this roll-off container and put it onto your  
13 flatbed; is that right?  
14 A. Yep, on my trailer, yes.  
15 Q. And you left DTE's Belle River Power Plant around  
16 6:12; does that sound right?  
17 A. Yes.  
18 Q. The container was already loaded; wasn't it?  
19 A. Correct.  
20 Q. In other words, you didn't see any loading going on  
21 that day?  
22 A. No.  
23 Q. No you did not; right?  
24 A. No, I did not.  
25 Q. Okay. And then you arrived at the Ferrous yard about

Page 12

1 7:36 in the morning?  
2 A. Yes.  
3 Q. Does that sound about right?  
4 A. About right, yeah.  
5 Q. For that I am relying upon some photographs that we  
6 marked here in advance.  
7 I'm going to show you what's marked as  
8 Exhibit Number 11, and do you see that it has a date  
9 of 10-14 ---I'm sorry, October 14, 2014?  
10 A. Right.  
11 Q. And it has a time 7:36:17, I believe is what I'm  
12 looking at.  
13 A. Yeah, this one says 16.  
14 Q. Okay. We'll kind of work off the same one. They're  
15 similar, but those photographs show about 7:36 in the  
16 morning; correct?  
17 A. Correct.  
18 Q. Now you're aware from your previous trips there, and  
19 your trip there that day, that they do take a  
20 photograph of the contents of the roll-off container  
21 when you arrived?  
22 A. Correct.  
23 Q. And actually one of the first things that happens once  
24 you pull in the yard, you pull over to the scale and  
25 that's where they take the photograph; right?

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1 A. Correct.  
2 Q. So that kind of tells about what time you arrived  
3 there; doesn't it?  
4 A. Exactly, yes.  
5 Q. And you see that I marked a number of photographs that  
6 we're going to go through here today, but you can see  
7 that these are marked Exhibit Number 11 and Exhibit  
8 Number 12?  
9 A. Correct.  
10 Q. The court reporter will put in your name and the date  
11 of this deposition probably when we have a break here  
12 some point today --  
13 A. Okay.  
14 Q. -- so that we'll know that these are for your  
15 deposition, so when we ever look at a record and we  
16 ever talk about Exhibit 11 or 12, we'll know exactly  
17 what we're talking about; okay?  
18 A. Okay.  
19 Q. Was this situation where you went into the Belle River  
20 Plant, picked up the roll-off container, put it on the  
21 flatbed trailer, and then left in about -- it looks  
22 like about 30 minutes, is that the normal routine?  
23 A. Yes, for that plant.  
24 Q. Okay. Others might be different?  
25 A. Right.

Page 14

1 Q. And other plants, you mean other plants other than  
2 DTE; right?  
3 A. Right. Correct. Every place is different.  
4 Q. Okay. And then I've looked at some records that said  
5 that Star Ambulance -- I'm sorry, first of all, the  
6 Oakland County Sheriff's Department, there was a  
7 dispatch around 7:53 a.m., and then I have a record  
8 saying that there was -- you arrived at the emergency  
9 room about 8:15 a.m.  
10 Does the time sound about right? I know  
11 you weren't watching on your watch.  
12 A. It could be correct, yeah.  
13 Q. Did you observe how the materials were loaded in the  
14 roll-off container before leaving the DTE site?  
15 A. Yes.  
16 Q. And how did you observe it?  
17 A. The pipe in the back by the door that took my leg.  
18 Q. Okay. How did you see that before you left the  
19 premises?  
20 A. I climbed up and looked in the box.  
21 Q. In other words, there's a ladder on the roll-off  
22 container --  
23 A. Exactly.  
24 Q. -- that you can climb up and look inside?  
25 A. Right.

Page 15

1 Q. And what's your reason for doing that?  
2 A. To see how it's loaded, and then if I have to tarp it,  
3 what's heavy, what ain't, if I might have to tarp it  
4 or not, and that box had heavy stuff in it, so I  
5 didn't tarp it.  
6 Q. What's the distinction between using a tarp or not  
7 using a tarp?  
8 A. If it's light and you think it's going to blow out,  
9 you tarp it so it doesn't hit somebody or what have  
10 you.  
11 Q. Right. Okay. But when you have some heavier material  
12 that's not going to blow out with the wind, your  
13 experience is you don't have to tarp it?  
14 A. Exactly, as long as it's below the top rail of the  
15 box.  
16 Q. And the materials in this container were below the top  
17 of the sides of the box; right?  
18 A. Correct.  
19 Q. And we can see from Exhibit Number 13 that I have in  
20 front of me right now that's a photograph of the  
21 contents of the roll-off container; is that correct?  
22 A. Looks like it to me.  
23 Q. Okay. Because we see a date on it, stamped on it,  
24 October 10th --  
25 A. -- 14. 10-14-14.

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1 Q. Yep, October 14, 2014; right?  
2 A. Right.  
3 Q. And this photograph was taken by Acuity, which is the  
4 workers' compensation carrier, and I say that --  
5 actually maybe I jumped ahead. Let's do it this way,  
6 not to confuse things.  
7 This one I know was taken by Acuity. It  
8 says right there, Workers' Compensation Carrier. You  
9 know they came out that day to investigate and take  
10 photographs; is that right?  
11 A. I have no idea.  
12 Q. Okay. But have you seen photographs of the contents  
13 of the container before today?  
14 A. No.  
15 Q. Do you recognize the contents of that container from  
16 you having observed it the day of the accident?  
17 A. Yes.  
18 Q. Okay. So now we're talking about Exhibit Number 1,  
19 the photo exhibit showing the contents of that  
20 roll-off container; correct?  
21 A. Correct.  
22 Q. And that shows us then that the materials in there are  
23 not the type of materials that are going to blow away  
24 in the wind as you're going down the roadway?  
25 A. No.

Page 17

1 Q. They will not; correct?  
2 A. No, they won't.  
3 Q. So when you went up the ladder and you saw that --  
4 what did you call it, a pipe?  
5 A. Pipe. Right.  
6 Q. And the pipe was blue; correct?  
7 A. Correct.  
8 Q. And that pipe is identified in Exhibit 3 today?  
9 A. Correct.  
10 Q. Laying on the ground outside of the roll-off  
11 container; is that right?  
12 A. That's right.  
13 Q. And you said you saw that pipe in the roll-off  
14 container before you left the DTE facility?  
15 A. Correct.  
16 Q. And where was it within the container?  
17 A. In the very back up against the back door.  
18 Q. And did that cause you any concern at that time?  
19 A. No.  
20 Q. Was it loaded the way it's supposed to be loaded?  
21 A. I don't think so.  
22 Q. And why not?  
23 A. Because it was loaded to where it could roll out. The  
24 door was open.  
25 Q. Okay. Was it laying horizontal -- I'm sorry.

Page 18

1 Was it laying parallel to the door?  
2 A. Yes.  
3 Q. So it was not laying perpendicular to the door; in  
4 other words, it was laying crosswise the same way that  
5 the door opens?  
6 A. Correct.  
7 MR. WEGLARZ: Form objection. I just want  
8 to make sure I'm following what we're parallel to.  
9 MR. YOUNG: Right. The back door of the  
10 container is what I'm trying to get at.  
11 Let's do it this way:  
12 John, why don't we use the photograph that  
13 you have. I think it's going to be more clear.  
14 BY MR. YOUNG:  
15 Q. I'm going to show you another copy of the photograph  
16 that I showed you from Exhibit Number 12, and ask you  
17 if you can see that pipe laying against the back door?  
18 A. Right there.  
19 Q. Right. And from your understanding of the roll-off  
20 container, is this the back door of the roll-off  
21 container?  
22 A. The back door is right here.  
23 Q. This is the back door?  
24 A. No, right here on the side is the back door. That's  
25 the scale.

Page 19

1 Q. Oh, okay. We didn't see the scale.  
2 MR. YOUNG: So, you know what, this is more  
3 clear than the copy that I had. So, Denise, I want to  
4 substitute Exhibit 12, here.  
5 (Brief delay.)  
6 BY MR. YOUNG:  
7 Q. So, Mr. McMaster, what I'd like you to do to kind of  
8 help us out here on this exhibit is could you take the  
9 pen and kind of do an arrow off so that we can  
10 describe where the pipe is, and then where the scale  
11 is and where the back door is.  
12 A. This is the pipe, back door.  
13 Q. Okay. So let's go a little bit further. Just label  
14 them right on it what they are.  
15 A. I'm not sure where -- that line.  
16 Q. What's that line, the yellow line?  
17 A. Yeah, there's a scale right here parallel with that  
18 yellow line.  
19 Q. Okay. So the yellow line means what?  
20 A. It's the edge of the scale.  
21 Q. Okay. Can we just write that in there then, "edge of  
22 scale"? E-d-g-e.  
23 A. Edge of scale.  
24 Q. Okay. Great. Thanks.  
25 Did you say anything about that pipe being

Page 20

1 against the back door?  
2 A. Not that I remember.  
3 Q. Okay. Did you do anything about the pipe being  
4 against the back door?  
5 A. No.  
6 Q. You would expect from your experience as a truck  
7 driver to have material against the back door of the  
8 roll-off container; correct?  
9 A. Correct.  
10 Q. And so that's no surprise that there's going to be  
11 material at the back door of the container?  
12 A. Right.  
13 Q. Okay. Are you aware of any rules or standards in how  
14 the roll-off container should be loaded with scrap  
15 metal?  
16 A. No.  
17 Q. Are you aware of any rules that apply to a loader of  
18 scrap metal into a container?  
19 A. No.  
20 Q. So do you know if the scrap metal that was loaded in  
21 the roll-off container was loaded properly or not?  
22 A. I have no idea.  
23 Q. You're not aware of anything that DTE did wrong in  
24 loading the scrap into that roll-off container; is  
25 that right?

Page 21

1 A. You're correct.  
2 Q. As an experienced driver -- and actually maybe I  
3 should not jump ahead. Let's just go through this a  
4 little bit.  
5 What has been your experience in operating  
6 a tractor/trailer carrying a roll-off container?  
7 That's a lot of words. Do you know what I mean?  
8 A. What's been my experience?  
9 Q. Yes. How long have you been doing it?  
10 A. Prior to that about a year and a half.  
11 Q. Okay. So that means that you had not carried roll-off  
12 containers before you joined P&T?  
13 A. Correct.  
14 Q. You were a truck driver for Red D Transport?  
15 A. Correct.  
16 Q. O&I Transport?  
17 A. Correct.  
18 Q. Driving tractor/trailers; am I right?  
19 A. You're right.  
20 Q. But in their business you didn't carry on your trailer  
21 the roll-off containers; right?  
22 A. Correct.  
23 Q. And as a driver were you aware that scrap metal will  
24 shift after it's loaded into the roll-off container?  
25 A. Yes.

Page 22

1 Q. And were you aware that the load will shift when  
2 you're loading the container onto the trailer?  
3 A. Correct.  
4 Q. And are you aware that the load can shift during  
5 transport down the roadway?  
6 A. Yep.  
7 Q. And from the Belle River Power Plant in -- I think  
8 it's in East China, Michigan.  
9 A. Correct.  
10 Q. From there to Ferrous, about what's the distance  
11 approximately?  
12 A. Hour, hour and 15 minutes, 60 miles, estimating.  
13 Q. Yeah.  
14 Did you check that load at any time during  
15 that transport?  
16 A. No.  
17 Q. Are you supposed to?  
18 A. Not that I'm aware of.  
19 Q. You did check the load before you left --  
20 A. Before I left.  
21 Q. -- DTE?  
22 A. Yep.  
23 Q. And did you check that load after the roll-off  
24 container was put onto the flatbed trailer or before  
25 it was put on?

Page 23

1 A. Before.  
2 Q. Did you check it after you put it on the trailer?  
3 A. No.  
4 Q. Let me just make sure.  
5 Did you check the roll-off container after  
6 you loaded the roll-off container onto the flatbed  
7 trailer?  
8 A. No.  
9 Q. Okay. And I using the right terms? Is it a flatbed  
10 trailer?  
11 A. Well, it's a -- basically, yeah. I mean it's a  
12 roll-off trailer.  
13 Q. Is that what they call it?  
14 A. You know, yeah, that's what I call it.  
15 Q. Okay. Well, I'm just --  
16 A. It's basically flatbed, but I mean it's a roll-off.  
17 Q. Okay. And is it called a roll-off container because  
18 you have special equipment on the trailer in order to  
19 load the roll-off container onto it?  
20 A. Yes.  
21 Q. Okay. So maybe you can educate us a little bit here.  
22 I'm going to show you what's been marked as  
23 Exhibit Number 4 for today's deposition, and that is a  
24 photograph of the tractor and trailer and roll-off  
25 container that you had and were operating the day of

Page 24

1 the accident; correct?  
2 A. Correct.  
3 Q. And so the tractor is owned by P&T; correct?  
4 A. Correct.  
5 Q. And we can see that the blue tractor has the writing  
6 on what we call the cab there, right, or tractor?  
7 A. Tractor, right.  
8 Q. And it says it's owned by P&T of Marlette; right?  
9 A. P&T Leasing, yep.  
10 Q. And we see in the photograph you're looking at the red  
11 roll-off container on top of the roll-off trailer;  
12 right?  
13 A. Correct.  
14 Q. So in this photograph this cable, or what it looks  
15 like, what is that?  
16 A. That's tarp on.  
17 Q. Okay. And do we see above it that's where the tarp  
18 is?  
19 A. That's the tarp system.  
20 Q. So the tarp system is actually between the tractor and  
21 the trailer?  
22 A. It's on the trailer.  
23 Q. It's on the trailer, installed on the trailer?  
24 A. Correct.  
25 Q. And so if you are going to cover that roll-off

Page 25

1 container with a tarp, how do you do it?  
2 A. Hydraulic lever.  
3 Q. And do we see that in the photograph?  
4 A. Not on this, no.  
5 Q. I want to show you Exhibit Number 6.  
6 Is the hydraulic lever depicted there?  
7 A. Yes.  
8 Q. Can you point it out?  
9 A. Right here.  
10 Q. Can you, again, take an arrow and just put and label  
11 it "hydraulic lever" I think you said. H-y-d-r-a --  
12 A. I'm not a good speller.  
13 Q. I'll help you and the court reporter will correct me.  
14 A. Lever, L-e --  
15 Q. -- v-e-r.  
16 A. For tarp.  
17 Q. Right. Great. Thanks. This is where we get educated  
18 about what you do in your business.  
19 A. Okay.  
20 Q. I'm jumping ahead to Exhibit Number 19. It's a  
21 photograph of a roll-off container.  
22 Do you see that?  
23 A. Yes.  
24 Q. Do you know whether or not that was the same roll-off  
25 container that you had on your truck?

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1 A. No, that's not the same one.  
2 Q. You know that?  
3 A. Mm-hmm.  
4 Q. Okay. How do you know that?  
5 MR. WEGLARZ: Is that a yes?  
6 MR. YOUNG: Yes. Thank you.  
7 THE WITNESS: That's a yes.  
8 BY MR. YOUNG:  
9 Q. Mr. McMaster, every now and then you may do what  
10 everybody does in their normal conversation, saying  
11 something like mm-hmm or uh-uh, and when you do that  
12 one of us will try to remind you so the court reporter  
13 can accurately take down what your answer is, yes or  
14 no or whatever the case may be; okay?  
15 A. Okay.  
16 Q. How do you know that's not the roll-off container that  
17 was --  
18 A. It's not the same one in the picture.  
19 Q. Okay. You can tell that?  
20 A. Yeah.  
21 Q. How can you tell that?  
22 A. Well, we've got GFM only and that one don't. This one  
23 doesn't have it on there.  
24 Q. So here's another exhibit -- another photograph marked  
25 as Exhibit 5. It shows the back of the roll-off

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1 container that is on your trailer; right?  
2 A. Correct.  
3 Q. And actually right now I'm not sure who took these  
4 photographs. I thought it was the workers'  
5 compensation carrier, but it may be somebody else.  
6 Exhibit Number 19 I'm talking about right now.  
7 But that roll-off container, that red one  
8 that we're looking at in Exhibit Number 5 that was on  
9 your trailer, that's owned by Ferrous; right?  
10 A. Correct.  
11 Q. And you know that for some reason?  
12 A. Right.  
13 Q. How do you know that?  
14 A. Because that's who I was picking up for.  
15 Q. Okay. Now when you arrived at the Ferrous facility,  
16 did you check the load in the roll-off container?  
17 A. No.  
18 Q. Are you supposed to?  
19 A. No.  
20 Q. You would be able to; correct? You would be able to  
21 inspect the load on the roll-off?  
22 A. If need be.  
23 Q. For example, could do the same thing you did at the  
24 DTE facility, you could climb up the ladder on the  
25 roll-off container and look in and see what's what?

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1 A. Correct.  
2 Q. Now are you aware as far as transporting cargo like  
3 this that it's the driver's responsibility to secure  
4 the cargo?  
5 MR. WEGLARZ: Form objection, but go ahead.  
6 You can answer.  
7 THE WITNESS: I had the container secured  
8 to the trailer.  
9 BY MR. YOUNG:  
10 Q. Okay. So let's just walk through that a little bit.  
11 You secured the roll-off container onto the  
12 trailer itself; correct?  
13 A. Correct.  
14 Q. And you did that by some type of a tie-down assembly?  
15 A. Straps.  
16 Q. Can you explain that, what it is, how you do it?  
17 A. You hook them on the rail of the box and you tighten  
18 them down with a binder pipe.  
19 Q. And the straps are made out of what?  
20 A. Nylon.  
21 Q. And do you see the straps in the photograph that you  
22 have in front of you?  
23 A. Yep. Right there. That big hook.  
24 Q. This right here?  
25 A. Right here. Where's that pencil? Right here.

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1 Q. Okay. So, again, can you just label that so that we  
2 know?  
3 A. And there's one right here.  
4 Q. Great.  
5 A. Tie-down. Is that t-i-d?  
6 Q. T-i-e --  
7 A. Yeah, t-i-e and then down.  
8 Q. D-o-w-n.  
9 A. D-o-w-n, that's what I got, tie-down, and they're on  
10 both sides.  
11 Q. And you have right now labeled the tie-downs from one  
12 side of the roll-off container or trailer -- actually  
13 trailer; right?  
14 A. Correct.  
15 Q. So they're tied down to the trailer and then you tie  
16 them into the roll-off container?  
17 A. Correct.  
18 Q. In order to secure it?  
19 A. Correct.  
20 Q. Now is there more than one set on each side of the  
21 back of the trailer; in other words, are there any on  
22 the front part of the trailer?  
23 A. Just where the box goes in there's like a hook up  
24 there.  
25 Q. Okay. So that's another securing device?

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1 A. Right.  
2 Q. Right?  
3 A. Correct.  
4 Q. And mechanically how does this happen? How do you get  
5 that trailer onto -- how do you get the roll-off  
6 container onto the trailer?  
7 A. Hydraulics.  
8 Q. Okay. A different hydraulic switch than we talked  
9 about earlier?  
10 A. Correct.  
11 Q. Is that visible in either one of these photographs?  
12 A. Yep, right here.  
13 Q. Okay. Can we do the same thing then and label that?  
14 A. Boom.  
15 Q. In your terminology what does boom mean?  
16 A. That's the -- let's look at another picture.  
17 Q. Well, we got more pictures.  
18 A. Well, it's going to operate this hydraulics cylinder  
19 right here. There's one on each side, and actually  
20 that's the boom. This is part of it, this right here.  
21 That all rolls up.  
22 Q. Okay. So let's use this then. This is Exhibit 5  
23 there. Can you just label the boom that you just  
24 referred to? Maybe put it down there, label it so we  
25 can see it.

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1 A. It's really hard to say that. It should be up -- you  
2 know, it raises up.  
3 Q. Right, but we can kind of see that this looks like a  
4 lifting device here.  
5 A. Right. Well, this is part of it that goes all the  
6 way.  
7 Q. Right. Okay. And so I think we were operating before  
8 off of Exhibit Number 6, and you put down this is the  
9 hydraulic lever for boom, which is different than the  
10 hydraulic lever for the tarp that you've now labeled  
11 on Exhibit Number 6.  
12 So when you go to pick this roll-off  
13 container up at the DTE facility, I imagine you back  
14 your trailer right up to where that roll-off container  
15 is situated?  
16 A. Correct.  
17 Q. And then you begin your process of loading the  
18 roll-off container onto the trailer?  
19 A. Correct.  
20 Q. Can you just explain in words how you do it? What do  
21 you do?  
22 A. That particular day I drop-boxed. I unloaded an empty  
23 box, backed up to the full box, hooked the cable, and  
24 pulled it onto my trailer.  
25 Q. Somewhat like a tow truck driver that's going to put a

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1 vehicle onto his flatbed to take it to a repair  
2 facility?  
3 A. Similar.  
4 Q. Same concept?  
5 A. Similar, yes.  
6 Q. Okay. The tractor is a Kenworth tractor it looks  
7 like?  
8 A. Correct.  
9 Q. You can see that on Exhibit Number 4, too, I'm looking  
10 at.  
11 And it's a diesel tractor?  
12 A. Yes.  
13 Q. Are you aware of any -- strike that.  
14 The cargo that you were carrying in the  
15 roll-off container, do you know that to be described  
16 as bulk cargo?  
17 A. I've never heard of it being called that.  
18 Q. Okay. As a truck driver, is there a difference in  
19 your mind of the type of material that you're carrying  
20 in a container that you have a tarp other than  
21 material such as the scrap metal you had in this  
22 roll-off container? Is there a difference in your  
23 mind of how you describe those as to whether -- I'm  
24 using the term bulk cargo, but is there a way you  
25 describe it differently other than you said you just

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1 have to make sure things don't fly out on the roadway?  
2 A. That's pretty much it, you know, and you got to use  
3 your own determination, you know.  
4 Q. Okay.  
5 A. If you think it's heavy enough and it's below the top  
6 rail then, you know, but if you don't feel  
7 comfortable, you tarp it.  
8 Q. And is that pretty much an individual decision?  
9 A. I believe so.  
10 Q. For the driver?  
11 A. Right. You make your determination.  
12 Q. Okay. So it's the driver's judgment then; right?  
13 A. Correct.  
14 Q. And if you had any question about whether you're  
15 supposed to tarp the material in a container such as  
16 the roll-off container, would you direct that question  
17 to somebody at P&T?  
18 A. As far as tarping it.  
19 Q. Yeah.  
20 A. I would tarp it. If I felt it needed to be tarped, I  
21 would tarp it.  
22 Q. My question was if you had any question about whether  
23 it should be tarped, would you contact anyone or would  
24 you --  
25 A. Oh, no.

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1 Q. -- just make your judgment call?  
2 A. I would make my own judgment.  
3 Q. Okay. I think we already talked about that container  
4 was not completely full; right?  
5 A. I don't think we said anything about being full.  
6 Q. Well, I thought we looked at a photograph earlier.  
7 A. It had material in it.  
8 Q. Right. Looking at Exhibit Number 1, it looks like  
9 that container is not full. Do you agree?  
10 A. Well, I think it's full.  
11 Q. Okay. It's not up to the top of the side rails of the  
12 container, though; is it?  
13 A. No.  
14 Q. And you think it's full because why?  
15 A. Well, rule of thumb is it falls below the top rail.  
16 Q. And is it below the top rail?  
17 A. In my eyes, yes.  
18 Q. Is that because you don't want to have anything near  
19 the top rail that might become dislodged somehow in  
20 transit?  
21 A. Correct.  
22 Q. Or in loading it onto the trailer?  
23 A. Correct.  
24 Q. So as a driver, you would expect that after you looked  
25 at the contents of that roll-off container, that once

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1 you loaded it onto the trailer and/or during transport  
2 you would expect those materials to shift; correct?  
3 A. Some cases, yes.  
4 Q. In this case you would expect that; right?  
5 A. Not with it being as heavy as they are.  
6 Q. Okay. It wouldn't be a surprise to you that some of  
7 the equipment would shift especially when you're  
8 loading the roll-off container onto the trailer?  
9 A. Right.  
10 MR. WEGLARZ: Asked and answered.  
11 Go ahead.  
12 BY MR. YOUNG:  
13 Q. And because when you're loading that roll-off  
14 container onto the trailer, the roll-off container is  
15 positioned at an angle to go up onto the trailer?  
16 A. Correct.  
17 Q. And the contents are going to naturally go to the back  
18 of the roll-off container because it's the bottom  
19 going onto the trailer?  
20 A. It could.  
21 Q. Well, they almost always would; wouldn't they?  
22 A. Not necessarily.  
23 Q. You mean -- well, what do you mean by that?  
24 What would be the exception that where the  
25 contents of the roll-off container would not go toward

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1 the back door of the container as you're angling it up  
2 to get onto the trailer bed?  
3 A. The length and the way things are locked in there. If  
4 this was loaded all in the front and nothing in the  
5 back, it would slide.  
6 Q. Slide which way?  
7 A. To the back.  
8 Q. Okay.  
9 A. But this is fully loaded front to back.  
10 Q. Okay. So even with that situation, loading front to  
11 back, still when the angle of the roll-off container  
12 is the back is down and the front is up as you're  
13 putting it onto the trailer, don't you expect the  
14 contents to go toward the back of the roll-off  
15 container toward the door?  
16 MR. WEGLARZ: Asked and answered, but go  
17 ahead.  
18 THE WITNESS: If there was nothing in the  
19 back, yes.  
20 BY MR. YOUNG:  
21 Q. Even if there was something in the back, wouldn't you  
22 still expect some of the material to go back toward  
23 the back of the trailer, maybe on top of whatever is  
24 on the floor of the trailer?  
25 MR. WEGLARZ: Form; go ahead.

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1 THE WITNESS: Possibly, yes.  
2 BY MR. YOUNG:  
3 Q. Okay. Do you know what the angle is of the roll-off  
4 container as you put it onto the trailer?  
5 A. No.  
6 Q. Any estimate?  
7 A. Probably 35, 40 degrees.  
8 Q. Once you arrived at Ferrous, I believe you said you  
9 did not get up to inspect the contents of the roll-off  
10 container; right?  
11 A. No.  
12 Q. Do you know if anyone else did?  
13 A. Dave, the road inspector, he might have climbed the  
14 ladder to look in there, because they have a ladder  
15 where they can climb up to look, but I can't say for  
16 sure if he did or not.  
17 Q. Okay. Now you had made other trips to the Belle River  
18 Power Plant to pick up scrap metal to deliver it to  
19 Ferrous in the past; is that correct?  
20 A. Correct.  
21 Q. Do you recall whether you made any other trips that  
22 same month, October 2014?  
23 A. I can't remember.  
24 Q. Okay. Do you know how many times you've made the trip  
25 to pick up a container at Belle River and take it to

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1 Ferrous?  
2 A. At least a dozen.  
3 Q. During the year and a half that you worked at P&T?  
4 A. Right. Correct.  
5 Q. And was it always the same type of cargo?  
6 A. Not always.  
7 Q. Am I using the right term by using the term "cargo"?  
8 A. I think so.  
9 Q. Okay. Would you use some other term --  
10 A. No.  
11 Q. -- because I'm comfortable with?  
12 A. Basically it is cargo.  
13 Q. Okay. So other times the cargo, if it's not the scrap  
14 metal, what else would it be from Belle River?  
15 A. It's all scrap metal.  
16 Q. Okay.  
17 A. I consider it all scrap metal, but there's  
18 different -- they got different things that they use,  
19 words, you know, Ferrous does.  
20 Q. Okay. For example, ferrous, do you know what ferrous  
21 metal is?  
22 A. What it is?  
23 Q. Yes.  
24 A. Scrap yard.  
25 Q. No, I mean -- I know that's the plant. I'm talking

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1 the type of metal, ferrous metal, do you know what  
2 that is?  
3 A. Yeah, it's aluminum. Nonferrous would be aluminum.  
4 Q. Or is it iron?  
5 A. Or iron. It could be either or.  
6 Q. And if it's not a ferrous metal, what is it, if you  
7 know? It's not my job. I don't work in metals.  
8 Is there some different type of metal other  
9 than ferrous metal?  
10 A. Steel.  
11 Q. Okay. When -- well, let's go back.  
12 You say sometimes the cargo from the Belle  
13 River Power Plant could be different than what you had  
14 on your load this particular day of the accident; is  
15 that right?  
16 A. Well, I'm not sure how to word that. I mean it's all  
17 scrap, but it could be small pieces, the big pieces,  
18 the equipment they threw away.  
19 Q. Okay. And if it was different type of equipment that  
20 DTE was throwing away, it might go in a different part  
21 of the Ferrous yard?  
22 A. Correct.  
23 Q. And do you know that the 12 times that you estimate  
24 that you were at the Belle River Plant was the  
25 roll-off container loaded the same way each time?

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1 A. No.  
2 Q. It was loaded differently?  
3 A. Just however they dump it in.  
4 Q. Well, how was it different on any occasion than this  
5 load from the day of the accident?  
6 MR. WEGLARZ: Form objection.  
7 Go ahead and answer if you can answer.  
8 BY MR. YOUNG:  
9 Q. Do you know what I'm asking you?  
10 A. I'm not real hundred percent sure what you're asking  
11 me, but I mean if you're saying does it look like  
12 that, the whole time?  
13 Q. No. I'm asking you if the loading was the same each  
14 time?  
15 A. Well, that I don't know because I wasn't there to see  
16 them load it.  
17 Q. Okay. Let's do it this way:  
18 Don't you take a look at the load each time  
19 before you're going to leave the DTE premises?  
20 A. Correct.  
21 Q. Okay.  
22 A. Before I load the can, the container.  
23 Q. I'm sorry?  
24 A. Before I load the container I looked in it.  
25 Q. Okay. And what I'm asking you is is the loading by

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1 DTE of the roll-off containers essentially the same  
2 each time?  
3 A. Yeah. Okay. Now, yes.  
4 Q. There wasn't anything different about this particular  
5 load?  
6 A. No. Now that's why I said I didn't understand the  
7 question.  
8 Q. Yeah. Good reminder. If you don't understand, I'm  
9 not trying to trick you. I'm just trying to  
10 communicate.  
11 So if you don't understand what I'm asking  
12 you, if I'm using the wrong term, we'll use your term,  
13 such as if you're not happy with cargo we'll use a  
14 different term; okay?  
15 A. Okay.  
16 Q. You're not aware of any contract between DTE and your  
17 employer, P&T, to haul scrap; correct?  
18 A. Correct.  
19 Q. And does P&T operate interstate, between states?  
20 A. Yes.  
21 Q. So they're an interstate carrier as well as an  
22 intrastate, meaning within the state, carrier?  
23 A. They are now, yes.  
24 Q. Were they at the time of this incident?  
25 A. No.

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1 Q. That changed at some point in time?  
2 A. Yes.  
3 Q. And do you know when?  
4 A. No, that I don't know.  
5 Q. Do you know why?  
6 A. For a different company.  
7 Q. They were hauling for somebody else?  
8 A. Correct.  
9 Q. Who is that that they haul for now?  
10 A. Well, they have RJ Torching, they got a truck there.  
11 Q. And where are they out of?  
12 A. Flint.  
13 Q. But where do they travel out of state?  
14 A. To Indiana.  
15 Q. And you used to work in Indiana; right?  
16 A. Oh, I've been there many times.  
17 Q. That blue pipe that we saw in the photograph, that's  
18 not the best picture.  
19 This is kind of a close-up, Exhibit Number  
20 7. Do you know how much that pipe weighed by chance?  
21 A. No.  
22 Q. Do you know of anyone that has tried to weigh that  
23 piece of pipe?  
24 A. No.  
25 Q. Do you know whether that blue pipe moved within the

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1 container when you loaded the container onto the  
2 roll-off trailer?  
3 A. No.  
4 Q. Do you know whether that blue pipe moved or shifted  
5 during transit the 60 miles approximately from Belle  
6 River to Ferrous?  
7 A. No.  
8 Q. I kind of asked you this somewhat before, but are you  
9 aware of any law that says how one of these roll-off  
10 containers is to be loaded?  
11 A. No.  
12 Q. You told me about approximately 12 times you picked up  
13 a load at the DTE facility at Belle River Power Plant;  
14 correct?  
15 A. Correct.  
16 Q. And on those 12 occasions did you take that scrap  
17 metal to Ferrous?  
18 A. Correct.  
19 Q. Was there any other location where you would take  
20 scrap metal other than Ferrous from Belle River Power  
21 Plant?  
22 A. No.  
23 Q. Did you ever pick up any scrap material or other  
24 material at any other DTE facility other than Belle  
25 River?

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1 A. Yes.  
2 Q. Whereabouts?  
3 A. St. Clair.  
4 Q. St. Clair Power Plant?  
5 A. Yes.  
6 Q. Was it pretty much the same type of operation?  
7 A. Yes.  
8 Q. In other words, you go in, you either drop off an  
9 empty container, but at least you pick up a container  
10 that they say is ready to be transported to Ferrous?  
11 A. Correct.  
12 Q. And how many times do you think you did that going  
13 from the St. Clair facility for DTE to Ferrous?  
14 A. At least 20, maybe more.  
15 Q. And what experience do you have in hauling roll-off  
16 containers with scrap material other than about 20  
17 times from the St. Clair facility for DTE and other  
18 than about the 12 times from Belle River to Ferrous?  
19 A. The year and a half I've done it.  
20 Q. Is that all that you did during your course of work at  
21 P&T?  
22 A. Yes.  
23 Q. Always operated a --  
24 A. Scrap container.  
25 Q. -- scrap container?

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1                    So you did that every day?  
2    A. Yes.  
3    Q. Five days a week?  
4    A. Yes.  
5    Q. Can you give me an idea of some of the other  
6    locations, other plants that you went to?  
7    A. As far as power plants?  
8    Q. No, any type of facility where you'd pick up scrap  
9    metal.  
10   A. Horizon Steel. Various scrap yards.  
11   Q. You mean you'd pick up from scrap yards?  
12   A. Yes.  
13   Q. And then do what with it?  
14   A. Take it back to Ferrous.  
15   Q. Okay.  
16   A. I'm just trying to -- there's a bunch of different  
17   ones they go to.  
18   Q. And is the operation pretty much the same: You go in,  
19   you pick up a roll-off container with scrap metal?  
20   A. Yes.  
21   Q. Put it on the trailer and transport it to Ferrous?  
22   A. Correct.  
23   Q. So you went to Ferrous then many, many, many times?  
24   A. Yes.  
25   Q. Over a year and a half?

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1    A. Yes.  
2    Q. That explains why you would know who Dave is, right,  
3    at Ferrous?  
4    A. Right.  
5    Q. Okay. Did you receive any training in the Motor  
6    Carrier -- Federal Motor Carrier Safety Regulations  
7    from P&T Leasing?  
8    A. No.  
9    Q. Were you aware that the Michigan Motor Carrier rules  
10   follow the Federal Motor Carrier rules?  
11   A. I believe so.  
12   Q. Did you have a written job description at P&T?  
13   A. Not that I recall.  
14   Q. And for what period of time have you been employed as  
15   a truck driver, total period experience?  
16   A. Prior to the accident?  
17   Q. Yes.  
18   A. About 27 years.  
19   Q. And you've been hauling containers for a year and a  
20   half?  
21   A. Correct.  
22   Q. And did you attend a truck driving school?  
23   A. Yes.  
24   Q. And where was that?  
25   A. Coldwater, Michigan.

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1    Q. And that's -- is it American Trucking?  
2    A. Truck Driving, yep. Yes.  
3    Q. And 1987, is that when you attended that school?  
4    A. Sounds correct.  
5    Q. And what's involved in that training there? How long  
6    does it last? What number of days or weeks or  
7    whatever?  
8    A. I believe it was two weeks.  
9    Q. Okay. And what does the training consist of?  
10   A. Learning how to drive.  
11   Q. A diesel tractor?  
12   A. Diesel tractor, yes.  
13   Q. Okay. Did you also learn how to --  
14   A. Inspect it.  
15   Q. Okay. What does the inspection involve?  
16   A. You walk around, check tires, brakes, lights, turn  
17   signals, brake lights, your basic.  
18   Q. And that's before you take it out on the road; right?  
19   A. Correct.  
20   Q. And then do you learn something about the trailers,  
21   too, at that school or not?  
22   A. Just the length in turning them, getting them around  
23   corners.  
24   Q. Okay. So that's probably part of the training,  
25   learning how to drive a tractor; right?

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1    A. Correct.  
2    Q. And then learning how to drive with a trailer  
3    attached, and about how to turn and stop and brake and  
4    all that?  
5    A. Correct.  
6    Q. And is that like hands-on training? Are you in a  
7    truck and someone is with you?  
8    A. Correct.  
9    Q. Like a supervisor or something?  
10   A. A teacher.  
11   Q. And is there classroom training as well?  
12   A. I believe there was, and -- well, in my case I had  
13   book work prior to all that.  
14   Q. And what do you mean by that?  
15   A. I had to do a whole bunch of questions and answers and  
16   stuff. I do remember that. It was a long time ago.  
17   Q. I understand it was, but I'm just trying to get in  
18   general what the training was.  
19                    So you mean you had to read some materials,  
20   and then when you tested on them in some way?  
21   A. I don't remember.  
22   Q. Okay. Part of the training for a truck driver is to  
23   become familiar with the Federal Motor Carrier  
24   regulations; right?  
25   A. Yes.

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1 Q. And so you were provided with a copy of those  
2 regulations for you to review; right?  
3 A. Correct.  
4 Q. Now were you given those regulations at the time of  
5 your training in 1987 from that American Truck Driving  
6 School?  
7 A. I would believe so.  
8 Q. Okay. But after that you worked at O&I Transport;  
9 correct?  
10 A. Long after that.  
11 Q. Long after that?  
12 A. Long after that.  
13 Q. Maybe I'm jumping ahead, but when you worked at one of  
14 these other trucking companies, don't they have you  
15 sign off that you have received a copy of the  
16 Department of Transportation regulations, and that you  
17 have read them and you're familiar with them, or  
18 something like that?  
19 A. Well, I don't remember.  
20 Q. Okay. It was a long time ago, so...  
21 A. Yeah.  
22 Q. Did you ever have any follow-up training after the  
23 training at American Truck Driving in 1987?  
24 A. No.  
25 Q. What training did you receive, if any, for loading

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1 roll-off containers?  
2 A. My nephew.  
3 Q. Your nephew is Robert?  
4 A. Correct.  
5 Q. McMaster?  
6 A. Correct.  
7 Q. And that was then obviously at P&T?  
8 A. Correct.  
9 Q. And what training did Robert give you?  
10 A. Showed me what has to be done.  
11 Q. And can you just describe for me what it was that he  
12 described for you what has to be done?  
13 A. Basically we got the load, we'd go to the place, we  
14 would set the container down, pick up the loaded  
15 container, and then go back to Ferrous.  
16 Q. Okay. So, in other words, it was exactly what you  
17 were doing this day?  
18 A. Exactly.  
19 Q. And do you remember what facility it was that Robert  
20 took you to in the training that you had?  
21 A. Pontiac.  
22 Q. Pontiac what?  
23 A. Plant. The Ferrous plant.  
24 Q. Yeah, but what was the facility where you picked up a  
25 load?

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1 A. Oh, various places. I don't remember where.  
2 Q. And how many different days or trips was it that  
3 Robert was with you and showed you how to do it?  
4 A. One day.  
5 Q. And was he the driver or were you the driver?  
6 A. We both did.  
7 Q. And went to different locations?  
8 A. Right.  
9 Q. Do you remember how many locations that day?  
10 A. I'd say at least four or five.  
11 Q. And is that kind of typical, you can do four to five  
12 locations in a day?  
13 A. Correct.  
14 Q. Is there any way to secure the cargo in the roll-off  
15 container itself?  
16 A. No.  
17 Q. There's no tie-down assembly in that roll-off  
18 container?  
19 A. Inside the box?  
20 Q. Yes.  
21 A. No.  
22 Q. Was there any problems or defects with the container  
23 itself that you were aware of?  
24 A. Not that I was aware of.  
25 Q. What I'd like to do now is kind of walk through the

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1 day, that day.  
2 Do you remember what time you got up in the  
3 morning that day?  
4 A. Probably four a.m.  
5 Q. Okay. And did you have to go to P&T to pick up a  
6 tractor/trailer or did you have that at your home?  
7 A. I had that at home.  
8 Q. Okay. And then what's the approximate distance from  
9 your home to Belle River?  
10 A. Thirty, 35 miles, estimated.  
11 Q. Yeah, right.  
12 And then can you tell me what you recall  
13 about when you arrived at the Belle River Plant, you  
14 know, who you see, if anyone, and what happens?  
15 A. I arrived, walked into the guard shack, told them what  
16 I was there for, and I think he looked at my driver's  
17 license, and they opened the gate up and I knew where  
18 the box was, container, and I drove to the container,  
19 got next to it, dropped the empty box next to it,  
20 looked in the one I was going to pick up to see what  
21 material was in it, then I backed my truck up to it,  
22 pull it onto the trailer, secure it, drive back to the  
23 guard shack and get a gate pass to leave.  
24 Q. A gate pass to leave?  
25 A. Well, there's a ticket they -- with the container

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1 numbers on it.  
2 Q. Okay.  
3 A. What I dropped off and what I picked up.  
4 Q. Okay.  
5 A. And then they let me go and I drove to Ferrous.  
6 Q. And before we leave the DTE facility, other than the  
7 guard in the guard shack, did you have any  
8 conversation with anyone?  
9 A. No.  
10 Q. And is that typical?  
11 A. Yes.  
12 Q. Once they see you're there for a purpose and they kind  
13 of let you in, you do your thing and you leave?  
14 A. Correct.  
15 Q. Without any conversation?  
16 A. Correct.  
17 Q. Okay. And you said you knew where the roll-off  
18 container was because it's usually in the same spot?  
19 A. Correct.  
20 Q. And so you know from your past experience where to go  
21 to get it?  
22 A. Right.  
23 Q. Okay. And then you drive to Ferrous?  
24 A. Correct.  
25 Q. And then so what happens at Ferrous? What do you

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1 recall about what you did that day?  
2 A. Pulled on the scale, clocked --  
3 Q. First of all, isn't there a security gate at Ferrous?  
4 A. Well, yeah, you go through security.  
5 Q. So it's the same thing, you got to check in with the  
6 guard shack?  
7 A. If it's after hours, yes.  
8 Q. How about if it's not?  
9 A. If it's not, we just drive by them.  
10 Q. Because they probably figure they've seen you enough  
11 that they know what you're there for?  
12 A. Right. Well, if it's after hours they give you a  
13 scale thing that you got to scale yourself in and out  
14 and all that when you fill out a ticket, but during  
15 hours we just drive to the scale.  
16 Q. And was this during hours when you arrived there that  
17 day?  
18 A. I believe so.  
19 Q. Because we talked about you arrived about 7:36.  
20 A. Right. I wouldn't have done it -- I don't believe I  
21 would have done an after hours ticket on that load.  
22 Q. Okay. So you pull up to the scale, then what?  
23 A. Take your time ticket and paperwork up to the lady in  
24 the scale house.  
25 Q. What's the time ticket?

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1 A. What I fill out from Ferrous.  
2 Q. Okay.  
3 A. Or Kee Container or what have you.  
4 Q. And you take it where?  
5 A. Up to the lady in the scale house and you give it to  
6 her, you know. It has your -- it's got your run  
7 number on it, and your box numbers, and where it's  
8 from and all that.  
9 Q. Okay. And so do we see like a box number? Box  
10 number, you mean Ferrous box?  
11 A. They're a container number, yeah. I seen it. It's  
12 right there.  
13 Q. So we're looking at Exhibit Number 6, and apparently  
14 you can see something that I'm having a hard time  
15 seeing.  
16 A. There's a number right there. That tells you the  
17 number of the container. Then there's a white sticker  
18 on the side right here that's got a bar code on it,  
19 because we had a handheld so you can zap it in.  
20 Q. Okay. What side of the container should it be on?  
21 I'm having trouble finding --  
22 A. It's in the front and side usually.  
23 Q. So, anyway, on Exhibit Number 12 you can see that  
24 there is a number on that roll-off container?  
25 A. Right.

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1 Q. But you can't read it, right, because it's kind of  
2 faint?  
3 A. Well, it looks to me like 6E --  
4 Q. Okay.  
5 A. -- but it is faint.  
6 Q. And then there's some other writing on that roll-off  
7 container.  
8 How about photograph 4, does that help at  
9 all as far as what the number of the box is?  
10 A. Not the number of the box. It's got FPT on it,  
11 though.  
12 Q. What does that mean?  
13 A. Ferrous Processing & Trade.  
14 Q. And that's in this photograph?  
15 A. Right there, big white sticker.  
16 Q. Okay. That's photograph number 4 then; right?  
17 A. Right.  
18 Q. How about this photograph, Exhibit 3, something like  
19 copper, Cooper?  
20 A. Copper.  
21 Q. Copper?  
22 A. Somebody at a different place put that on there.  
23 Q. Okay.  
24 A. That's got nothing to do with.  
25 Q. It doesn't describe the load at all?

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1 A. No, no.  
2 Q. Okay. So you take your time ticket and your paperwork  
3 up to the lady in the scale house?  
4 A. Correct.  
5 Q. You said something about the box, and -- giving her  
6 the box number I think is what you said.  
7 A. It's on the time ticket.  
8 Q. And then what happens?  
9 A. Then I go back down and get in my truck, drive back to  
10 the inspection area, and then the person on the road  
11 which was Dave would tell me where to take the  
12 material.  
13 Q. And is that based on Dave looking at the contents of  
14 the roll-off container?  
15 A. Usually, yes.  
16 Q. And then the normal process once you go to that  
17 location that he -- that they, Ferrous, directs you  
18 to, what happens next normally?  
19 A. Normally then you open -- you get it ready, you open  
20 it up, and you dump it.  
21 Q. And you said you get it ready, you open it up, and  
22 then you dump it.  
23 What do you do to get it ready and then  
24 open it?  
25 A. You unsecure the can from the trailer. You slide it

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1 to the back.  
2 Q. You unsecure the roll-off container?  
3 A. Right, with the nylon straps that we talked about  
4 earlier.  
5 Q. Okay. And after you take off the nylon scraps?  
6 A. Straps.  
7 Q. Straps, straps, yeah. Thank you.  
8 After you take off the nylon straps, do you  
9 then actuate the hydraulic device in order to lower  
10 the roll-off container off the trailer?  
11 A. Correct.  
12 Q. And is there any -- normally, is there anyone that's  
13 assisting you in doing this?  
14 A. No, I do it myself.  
15 Q. Okay. And then once you lower the roll-off container  
16 off the trailer and onto the ground --  
17 A. You don't do that.  
18 Q. I'm sorry, then I jumped ahead.  
19 A. Yeah, you jumped.  
20 You roll it to the back and then you open  
21 the door.  
22 Q. While the container is still on the trailer?  
23 A. Correct.  
24 Q. Okay. What's the purpose of opening the door while  
25 it's on the trailer?

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1 A. So you can dump it.  
2 Q. Okay. All right. Thank you. It does make sense.  
3 Okay. So you open up the door for the  
4 roll-off container while it's still on the trailer  
5 bed?  
6 A. Correct.  
7 Q. But the straps have been removed?  
8 A. Removed.  
9 Q. And then what? Then you operate the hydraulic device?  
10 A. Then you walk to the front and you dump it. You pull  
11 your levers and make it go up and dump out, just like  
12 a dump truck.  
13 Q. Right. What's the process for opening the door?  
14 A. To let the stuff out of the trailer, the container.  
15 Q. Yes. Is there a procedure?  
16 A. Pretty standard. You undo the chain and you take the  
17 safety chain off.  
18 Q. Is that the same thing?  
19 A. No. There's the safety chain right here, this one  
20 hanging.  
21 Q. Okay.  
22 A. This is the tie-down chain right there.  
23 Q. That we're looking at Exhibit Number 5 here?  
24 A. Right. That's the safety chain.  
25 Q. So can we do the same thing then so we understand our

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1 terms? Can we just again take some arrows for the  
2 safety chain and put it down over there?  
3 It's not really working; is it?  
4 A. No.  
5 Q. Do you want to use mine? Want to try mine?  
6 A. S-a --  
7 Q. -- f-e-t-y.  
8 A. Chain, c-h-i-n-g?  
9 Q. A-i-n.  
10 A. Oh. A-i-n.  
11 Q. And then the other chain that you referred to, can we  
12 also take it over here so it's clear and label  
13 whatever that --  
14 A. I don't know. We'd actually call that a lock chain I  
15 guess.  
16 Q. Okay. Learning all kinds of things here today.  
17 A. There's a lot of different things.  
18 Q. Materials, yeah.  
19 And it might be obvious, but is this the  
20 door of the roll-off container?  
21 A. Correct.  
22 Q. And that door opens in what way?  
23 A. To the passenger side.  
24 Q. It slides then?  
25 A. No, it's on hinges.

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1 Q. Okay. And so it opens -- if you're looking at the  
2 back of the truck it opens from the left to the right?  
3 A. Yeah, driver side to the passenger side.  
4 Q. Okay. Is there any more, though, to the procedure of  
5 opening that door to the roll-off container while it's  
6 on the trailer bed?  
7 A. I ain't sure what you -- right here on the side  
8 there's a piece of metal arm.  
9 Q. Okay.  
10 A. That's a latch system --  
11 Q. Okay.  
12 A. -- which goes into these pins there on the door.  
13 Q. Okay.  
14 A. And once you push that up it releases it.  
15 Q. Like the hinge on a door?  
16 A. Not so much like a hinge on a door, but like a door  
17 handle.  
18 Q. Okay.  
19 A. It unlatches it.  
20 Q. Okay. So you have to --  
21 A. Push the bar up.  
22 Q. In order to release the door from the hinges?  
23 A. Correct.  
24 Q. And that's when you can then open up that door?  
25 A. Correct.

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1 Q. And is there a procedure where you're supposed to be  
2 situated when you open up that back door of the  
3 roll-off container?  
4 A. Common sense you stand to the side.  
5 Q. Which side?  
6 A. The side you're on when you open it.  
7 Q. And would that be on the driver's side or the  
8 passenger side?  
9 A. On the driver side.  
10 Q. And why would that be common sense?  
11 A. Because you can't swing it from the other side when  
12 it's got to go around that way, and then you wait for  
13 it to pop if something falls out.  
14 Q. What if something does fall out?  
15 A. Then you're out of the way, you know, because you're  
16 standing here and the door is here, and you're out of  
17 the way if it pops open. You're not going to be hit  
18 by the door or anything falling off the back because  
19 you're on the side of it.  
20 Q. Maybe I'm not following this.  
21 When you open up the door, are you walking  
22 the door to the passenger side?  
23 A. When you open it, but not when you unlatch it.  
24 Q. When you unlatch it you have to be at the corner of  
25 the back of the truck on the driver's side?

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1 A. Right.  
2 Q. And then you --  
3 A. -- unlatch it.  
4 Q. The door swings open?  
5 A. It can. Every one is different.  
6 Q. Okay. How about this one, can you tell by looking at  
7 the photograph?  
8 A. That one probably popped open a little bit and then  
9 nothing fell out, and then I walked it all the way  
10 around to the passenger side.  
11 Q. And when you walk it around to the passenger side what  
12 do you do with that door? Do you secure it somehow?  
13 A. Yeah. On the passenger side there's a chain hook that  
14 you can hook that safety chain into to hold the door  
15 open.  
16 Q. Okay. Is that it?  
17 A. That's the driver's side there.  
18 Q. Okay. Still driver's side?  
19 A. Still driver's side, yep. That's all the mechanism --  
20 they're showing in that picture looks to me how the  
21 door is shut and latched.  
22 Q. Okay. Does this one help?  
23 A. That right here. There's a chain hook right here, the  
24 end of the chain.  
25 Q. Oh, there's a hook to put a chain onto?

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1 A. Correct.  
2 MARKED FOR IDENTIFICATION:  
3 DEPOSITION EXHIBIT 29  
4 11:41 a.m.  
5 Q. So now we've marked that one Exhibit Number 29. I'll  
6 give you my pen. Can you just circle that, and,  
7 again, maybe draw it up here with an arrow and then  
8 label it?  
9 A. What kind of word would you want me to put on there?  
10 Q. Well, isn't it --  
11 A. It's a chain hook.  
12 Q. -- a hook for the chain?  
13 Or chain hook, yeah, chain hook.  
14 A. Put in here probably to hold door open.  
15 Q. Yeah. Okay. Thank you. Good.  
16 Now had you followed that procedure on the  
17 day of this incident?  
18 A. Yes.  
19 Q. You had opened the door, you swung the door open to  
20 the passenger side?  
21 A. Correct.  
22 Q. And had you hooked it, too?  
23 A. Correct.  
24 Q. And when you opened up the door did any material fall  
25 out of the roll-off container?

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1 A. No.  
2 Q. Okay. And were you in the position -- were you in the  
3 same approximate location where the accident  
4 eventually happened?  
5 A. My body?  
6 Q. No, no, the roll-off container in the trailer.  
7 A. Yeah, that's exactly where it was at when the accident  
8 happened.  
9 Q. Okay. So you open up the door of the roll-off  
10 container, you latch it onto the hook --  
11 A. Correct.  
12 Q. -- with a chain, nothing has moved out of the roll-off  
13 container?  
14 A. Correct.  
15 Q. And then what happens?  
16 A. Then Steve and Dave and myself, yeah, I think that was  
17 all of it, we stood behind it, quite a ways behind it  
18 looking in the box, the container, to determine where  
19 to dump it, and as we just figured out where to dump  
20 it, I was walking towards my truck and I heard my name  
21 being hollered.  
22 Q. Okay. Just a second here.  
23 And who hollered your name?  
24 A. Steve.  
25 Q. And what did he holler?

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1 A. Dean.  
2 Q. And why?  
3 MR. WEGLARZ: Objection.  
4 If you can answer, go ahead.  
5 BY MR. YOUNG:  
6 Q. If you know why. What was he hollering at you for?  
7 A. At that point in time I had no idea.  
8 Q. Okay. And then what happened?  
9 A. And then my leg got cut off.  
10 Q. You said you were walking toward the truck. For what  
11 reason?  
12 A. To go to the controls. Oh, no, actually we was going  
13 to move it to the P&S spot, so I was going to go and  
14 shut everything down and then drive it to the P&S  
15 area.  
16 Q. What's P&S?  
17 A. It's like the I-beams.  
18 Q. What does P&S stand for?  
19 A. Got me. I have no idea.  
20 Q. Anyway, it's a certain location in the Ferrous yard --  
21 A. Correct.  
22 Q. -- for a certain type of material?  
23 So does that mean that you were going to  
24 unhook the chain, close the door, chain it up again,  
25 and get in your truck and move it to another location?

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1 A. No. It means I was going up to -- I was going to shut  
2 my hydraulics off.  
3 Q. Were you going to move your tractor/trailer or not?  
4 A. Eventually I was, yes.  
5 Q. Okay. So first you have to shut off the hydraulics?  
6 A. I was going to, yes.  
7 Q. So maybe I jumped the gun again, but were you then --  
8 after you shut off the hydraulics, were you then going  
9 to close up the door to that container?  
10 A. That was in my mind, yes. I never got that far.  
11 Q. Right. But was the intention that you were going to  
12 move your tractor/trailer to a different location in  
13 the yard?  
14 A. Correct.  
15 Q. Do you know how far away it was approximately?  
16 A. Not very far. I can't tell you distance on that.  
17 Q. Okay. Why didn't Dave know, for example -- strike  
18 that.  
19 I thought you said that you had been  
20 directed to go to the location where your tractor  
21 trailer is in the photographs?  
22 A. I was.  
23 Q. In order to dump your load?  
24 A. Correct.  
25 Q. What's the reason for the change in location since

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1 Dave had already looked at it, at the load; right?  
2 MR. O'SHEA: I'm just going to object to  
3 the form because I think he said he doesn't know if  
4 Dave looked at the load.  
5 BY MR. YOUNG:  
6 Q. Let me go back.  
7 I'm just trying to figure this out because  
8 you know what's in the roll-off container?  
9 A. Correct.  
10 Q. And somebody at Ferrous had looked at the contents of  
11 the roll-off container; didn't they?  
12 A. Correct.  
13 Q. At the scale, for example?  
14 A. No. At the back Dave -- the area, this area, is a  
15 sort area.  
16 Q. Okay.  
17 A. Which means there's all different kinds of material in  
18 the box that go to different parts of the plant, and  
19 when the door was open I'm going to have to say that  
20 he was unsure, and that's when Steve come over and we  
21 seen all the I-beams in there and figured it was --  
22 the I-beams were the majority of the load in there  
23 which these are I-beams here.  
24 Q. That's what I thought you were probably referring to.  
25 A. And that's the majority of the load, which is a P&S,

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1 and that's why they changed their mind, because most  
2 of your power plant loads has got big ball bearings  
3 that they call them in there, and they can't go  
4 through the shredder, so they got to go through a sort  
5 area, which is this area here, to have everything  
6 picked out so it doesn't go through their shredder.  
7 Q. Just so we're clear if somebody ever reads your  
8 deposition transcript, this area that you're talking  
9 about is the area where your tractor/trailer was as  
10 depicted in Exhibit Number 29; right?  
11 A. Correct. Which is sort area.  
12 Q. Yeah.  
13 Did you ever learn from anyone why Steve  
14 hollered to you?  
15 A. At that point, no.  
16 Q. How about since then?  
17 A. Yeah, that pipe moved and started rolling out. I  
18 think that was his way of telling me get out of the  
19 way.  
20 Q. Okay. Whichever photograph is going to be best --  
21 actually can we use one of these photographs to show  
22 where you and Dave and Steve were standing? Do any of  
23 those show the location?  
24 A. As we was looking in the box?  
25 Q. Yeah, yeah.

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1 A. Probably back up in here. You know, take that out of  
2 the equation.  
3 Q. The blue pipe?  
4 A. Right, you know, or back, you know, back up in where  
5 the metal is right up in here.  
6 Q. Let's see. Probably got a better one.  
7 How about this one?  
8 A. Yeah, we was probably standing way up in here. Take  
9 the pipe out of the equation, of course.  
10 Q. Right. Is this a better one to give us the location?  
11 A. That one is just a little closer it looks like.  
12 Q. So this one may be a little bit better because it's a  
13 little further away?  
14 A. Right. We was up in here.  
15 Q. Off the photograph?  
16 A. Off the photograph, yeah. You know, get that pipe out  
17 of there.  
18 Q. Just for the record, again, we're looking at Exhibit  
19 Number 18; correct?  
20 A. Correct.  
21 Q. And that has the blue pipe that eventually causes your  
22 injury; correct?  
23 A. Correct.  
24 Q. And what you're saying is that you and Steve and Dave  
25 were standing off to the -- off the photograph beyond

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1 where the blue pipe is in the lower right-hand corner?  
2 A. Correct.  
3 Q. At that location, if I'm understanding it correctly,  
4 that you're looking at the inside the roll-off  
5 container?  
6 A. Correct.  
7 Q. And about how far away were the three of you?  
8 A. Oh, probably eight feet or more.  
9 Q. And from eight feet or more, can you see inside the  
10 roll-off container?  
11 A. Yeah, you have a picture of it, what we was looking  
12 at. Right there.  
13 Q. So that's Exhibit Number 8?  
14 A. Yep.  
15 Q. Now is that -- that's a photograph of the roll-off  
16 container, which you believe had the contents that you  
17 hauled that day?  
18 A. Correct.  
19 MR. WEGLARZ: Form objection.  
20 Go ahead.  
21 BY MR. YOUNG:  
22 Q. Except for the blue pipe that's not in there; right?  
23 A. That blue pipe is not in that photo, no.  
24 Q. And in this photograph the door for the roll-off  
25 container is obviously open?

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1 A. Correct.  
2 Q. And that's what you and Steve and Dave would be able  
3 to take a look at from eight feet away from the  
4 roll-off container?  
5 A. Correct.  
6 Q. And, therefore, Dave and Steve would be able to see  
7 the I-beams and tell you, okay, we're going to move it  
8 to another area; right?  
9 A. Correct.  
10 Q. Okay. So then can you show me the path that you took  
11 toward the truck in order to shut done the hydraulics  
12 and then eventually get ready to move?  
13 A. Right there at the driver's side, not tight to it, but  
14 away from it, and I was walking towards the cab of the  
15 truck.  
16 Q. Toward where the hydraulics are?  
17 A. Correct.  
18 Q. So looking at this photograph, Exhibit Number 18, do  
19 you know whether that blue pipe rolled off of the  
20 roll-off container from the passenger side toward the  
21 driver side?  
22 A. I don't know.  
23 Q. I'm asking you that because of where the blue pipe is  
24 located in this photograph.  
25 A. Right.

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1 Q. It's on the driver's side of the truck.  
2 A. I mean I'm not physics, so, you know.  
3 Q. Right.  
4 A. But it did roll out of that trailer, that box.  
5 Q. Right. Unfortunately, I have to ask you some  
6 questions that I apologize that I have to ask some of  
7 these questions, okay, but we're just trying to piece  
8 things together here.  
9 So, first of all, do you know whether this  
10 blue pipe is in the location on the ground relative to  
11 the roll-off container of where it landed with the  
12 accident that you were involved in? That's not very  
13 clear; is it?  
14 A. No.  
15 Q. Let me try that again.  
16 I'm trying to find out do you know if that  
17 blue pipe was moved before this photograph was taken?  
18 A. Oh, I would think not, no.  
19 Q. And why would you think not? Why would you think it  
20 had not been moved?  
21 A. Because my blood is still there.  
22 Q. Well, that was the other thing I was going to ask you  
23 about.  
24 Do you believe that's where the injury  
25 actually occurred where the blood is?

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1 A. That's where I landed, yeah.  
2 Q. And so what I'm trying to clarify is do you know  
3 whether you were struck by that blue pipe somewhere  
4 else and you were moved over to this location where  
5 the blood is?  
6 A. No, no. I was walking towards the truck when I heard  
7 my name being hollered and then I was on the ground.  
8 Q. So do you believe that the blood that we see in  
9 Exhibit 18 and Exhibit 2 is where the injury occurred?  
10 A. I would say yes.  
11 Q. Okay. But the blue pipe is a distance away from where  
12 the blood is; do you agree?  
13 A. I agree.  
14 Q. So, again, do you know, I'm just asking do you know,  
15 whether somebody moved that blue pipe out of the way  
16 away from where you might have been where the blood  
17 is?  
18 A. I don't know.  
19 Q. The only people there at that time that you're aware  
20 of were Steve and Dave; right?  
21 A. At the exact time that happened, yeah.  
22 Q. Now had one of them do you know moved away from the  
23 back of the truck before you did?  
24 A. I have no idea. It was all behind me.  
25 Q. Are you aware of a rule that says that the driver of

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1 the truck is always supposed to go around the  
2 passenger side of the truck to the front of the truck  
3 to operate the hydraulics or anything else?  
4 A. No.  
5 Q. You never heard that?  
6 A. No.  
7 Q. You never received that training?  
8 A. No.  
9 Q. Were you ever instructed to stay away from the back of  
10 the roll-off container when the doors opened?  
11 A. Yes.  
12 Q. And who provided you with that training?  
13 A. That's common sense.  
14 Q. And why is it common sense?  
15 A. Why would you want to be in striking distance of  
16 harming your body or whatever, and there you go, too,  
17 you got to keep an eye on your surroundings.  
18 Q. Is it common sense to stay away from the back of the  
19 roll-off container because some object might fall out  
20 and cause injury?  
21 A. I would say yes.  
22 Q. Do you know what distance that blue pipe traveled from  
23 the roll-off container to where it contacted you?  
24 A. No.  
25 Q. Do you know what the dimensions of that blue pipe

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1 were?  
2 A. No.  
3 Q. In other words, I assume you've never measured it,  
4 yourself?  
5 A. No.  
6 Q. I mean do you know if it was three feet long, eight  
7 feet long, anything like that?  
8 A. It was as wide as the box.  
9 Q. And what's the width of the box?  
10 A. Oh, that I don't know. It's less than eight foot  
11 inside.  
12 Q. You said the blue pipe was the width of the box;  
13 right?  
14 A. From what I seen in there, yeah, give or take, you  
15 know, a little bit.  
16 Q. Do you know what caused the blue pipe to move from  
17 inside the roll-off container?  
18 A. No.  
19 Q. How long had the door to the roll-off container been  
20 open?  
21 A. Over five minutes, guesstimation.  
22 Q. Right. I understand you weren't timing it.  
23 A. Right.  
24 Q. Thank you.  
25 Your diesel tractor was running?

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1 A. Correct.  
2 Q. The hydraulics were running? Is that the right term?  
3 A. They were on.  
4 Q. They were on.  
5 Does that generate a noise, those  
6 hydraulics?  
7 A. You could hear the truck running.  
8 Q. I understand you could hear the diesel truck running.  
9 Can you also hear the hydraulics? Is there  
10 a noise associated with that before you use the lever?  
11 A. Not really.  
12 Q. Is there anything else running at that time?  
13 A. In the area?  
14 Q. Yes.  
15 A. I have no idea.  
16 Q. The diesel tractor that was running would cause  
17 vibration; wouldn't it?  
18 A. It can.  
19 Q. And do you know whether there were any other diesel  
20 equipment nearby?  
21 A. I'm sure their equipment was nearby.  
22 Q. Was it running?  
23 A. I have no idea what they was doing.  
24 Q. As you sit here today, can you think of a reason why  
25 that blue pipe would move out of the roll-off

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1 container other than potentially vibration from the  
2 diesel tractor?  
3 MR. WEGLARZ: Form objection, but go ahead.  
4 THE WITNESS: I have no idea why it would  
5 have done what it did.  
6 BY MR. YOUNG:  
7 Q. Is there anything that you learned during your  
8 training to avoid this type of situation, to have a  
9 piece of equipment, material, like that blue pipe fall  
10 off of the roll-off container?  
11 A. No, not that I can remember, other than common sense.  
12 Q. What's the common sense you're referring to?  
13 A. You don't stick under an open door.  
14 Q. You don't stand under an open door?  
15 A. It's common sense.  
16 Q. Would the same thing apply that you shouldn't walk  
17 toward an open door?  
18 A. I didn't walk towards the open door, if that's what  
19 you're recalling.  
20 Q. I thought you said that you -- the container -- I'm  
21 sorry.  
22 The blue pipe came out of the back of the  
23 roll-off container?  
24 A. Right.  
25 Q. You were walking toward the driver side of the truck

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1 in order to shut down the hydraulics?  
2 A. Right. That ain't walking to the open door.  
3 Q. The door is already open?  
4 A. Right.  
5 Q. And do you know, are you able to estimate, how far  
6 away you were from the back of the truck when this  
7 injury occurred?  
8 A. No.  
9 Q. I mean when we're looking at the photographs here --  
10 let's see -- we were using Exhibit 2 and 18. Exhibit  
11 18 looks like -- I mean the blood looks like it's  
12 close to the truck. Do you agree?  
13 A. Yeah, it's there. I mean I don't know how close you  
14 want to be, but --  
15 Q. It looks like it's closer than eight feet, for  
16 example; right?  
17 A. On the side, yeah, on the side it is.  
18 Q. Yes.  
19 You're saying that the blood is to the left  
20 side of the back of the roll-off container?  
21 A. Yep.  
22 Q. Is that right?  
23 A. Yeah.  
24 Q. Now could the accident have been avoided if you would  
25 have walked around the passenger side of the truck to

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1 the front of the truck and to the hydraulics?  
2 MR. WEGLARZ: Form objection.  
3 If you can answer that, go ahead.  
4 THE WITNESS: That I don't -- you know,  
5 because we was talking there, so that option wasn't  
6 available.  
7 BY MR. YOUNG:  
8 Q. Because why?  
9 A. We was talking determining where to dump that load.  
10 Q. I had this photograph upside down, so I want to make  
11 sure I understand this.  
12 You and Steve and Dave were off of Exhibit  
13 Number 2 where the blue pipe is in that corner;  
14 correct?  
15 A. Correct.  
16 Q. And do you know whether Dave and Steve were still  
17 standing in the same area where the three of you were  
18 talking before you started going toward the front of  
19 the truck to where the hydraulics are and before  
20 someone hollered your name?  
21 A. I have no idea.  
22 Q. They may have moved, you don't know?  
23 A. Right.  
24 Q. It appears that the blue pipe came off towards the  
25 driver's side of the back of the roll-off container as

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1       opposed to the passenger side; is that right?  
2    A. I didn't see it come off.  
3    Q. I'm looking at the photograph. It appears that the  
4       blue pipe is toward the driver side at the back of the  
5       box?  
6    A. On the ground, yes. Which way, which side it came out  
7       of the trailer, I have no idea.  
8    Q. And I suppose you don't have any idea why either?  
9    A. No, I have no idea why.  
10   Q. Okay. Now you described what the procedure was.  
11       Before this accident happened, when you  
12       first open up the door for the roll-off container, did  
13       you open it all the way and latch it with the chain on  
14       the hook as you described, or did you open it partway  
15       and look inside to see what the situation was inside  
16       that roll-off container?  
17   A. Open it, open it a little bit, and then wait, make  
18       sure nothing moves, and then I always grab the safety  
19       chain and walk it.  
20   Q. Okay.  
21   A. So you're always that width of that door away from  
22       that chain, away from whatever.  
23   Q. Right. So --  
24   A. That's per my own.  
25   Q. Your own procedure?

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1    A. Right.  
2    Q. And you said you open up the door to the roll-off  
3       container a little bit; right?  
4    A. Right.  
5    Q. What's the distance? What do you do?  
6    A. You push it open. If it rolls easy, you only push it  
7       a little bit, and you look from the side to make sure  
8       nothing is going to fall out, and I always grab the  
9       chain. You know, it could be up to 12 inches. You  
10       know, if nothing falls out, I grab the chain and walk  
11       it, you know, the length of that door and the length  
12       of that chain all the way around, because you don't  
13       know what's going to happen when you get it all the  
14       way opened.  
15   Q. Why is that? Why would it be different when you get  
16       it all the way open?  
17   A. Because you ain't -- I'm not a physics, but, you know,  
18       that's my own opinion is, you know, there can be  
19       something there, and then when you got it all the way  
20       open now it's got full access.  
21       Does that make any sense?  
22   Q. Somewhat, but let me try to understand that because if  
23       I'm understanding what you're saying, you open up the  
24       door initially about 12 inches --  
25   A. Right.

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1    Q. -- because you want to see whether there's going to be  
2       any movement of materials inside that container?  
3    A. Correct.  
4    Q. And when there isn't, then you use that chain and the  
5       door to protect you to walk to the passenger side?  
6    A. The full length of that door.  
7    Q. Right. So you've got the door as your protection;  
8       right?  
9    A. I don't think it would be your protection, but you're  
10       that far away from whatever could fall out.  
11   Q. And, again, I don't do your job, but I'm just thinking  
12       that if the door is in front of you and something  
13       moves, it's going to hit the door most likely; isn't  
14       it?  
15   A. Everything is different.  
16   Q. All right. But then you said when you get it all the  
17       way open is when something might happen?  
18   A. Well, you never know. There could be something on  
19       that edge or what have you, you know, when you open it  
20       up, but in that case of that there was nothing.  
21   Q. But, in any event, if you open up that door all the  
22       way, and you put the chain on the hook, you're to the  
23       passenger side of the roll-off container and you're  
24       protected against anything hitting you?  
25   A. Correct.

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1    Q. Okay.  
2       MR. O'SHEA: Take a break whenever it's  
3       convenient.  
4       MR. YOUNG: Now is good.  
5       MR. WEGLARZ: Yeah, now is good.  
6       (Recess taken at 12:13 p.m.)  
7       (Back on the record at 12:23 p.m.)  
8       MR. YOUNG: Back on the record.  
9    BY MR. YOUNG:  
10   Q. Mr. McMaster, while we have Exhibit Number 8 in front  
11       of us, can you again label the I-beams?  
12       Just draw, for example, and then like we've  
13       done before kind of put it off to the side so we kind  
14       of know what I-beams are.  
15   A. I don't know if I spelled that right.  
16   Q. It should just be I dash b-e-a-m.  
17   A. There's that.  
18   Q. It looks complete.  
19       And then I have Exhibit 2. We've had this  
20       in front of us before, but I just want to ask you.  
21       So we see a bunch of material on the ground  
22       here including the blue pipe, but my question is as  
23       far as you know nothing on -- none of the debris or  
24       material on the ground came from the roll-off  
25       container except for that blue pipe?

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1 A. Correct.  
2 Q. Now I'm looking at Exhibit Number 3, and does that  
3 assist us in showing where you, Dave and Steve were  
4 since now it seems to be a photograph from the  
5 distance, we see the blue pipe, but does that show the  
6 area of where the three of you were standing?  
7 A. Yeah, behind that pipe.  
8 Q. Okay. So the other end of the pipe?  
9 A. Yeah.  
10 Q. Toward the end of the photograph?  
11 A. Right.  
12 Q. The right of the photograph, I should say.  
13 A. Yeah, to the right and behind that pipe.  
14 Q. Okay.  
15 A. We're pretty much back as far as you could go without  
16 climbing up on that stuff.  
17 Q. That material that's on the ground?  
18 A. Right.  
19 Q. So would it be accurate if we were to say you're off  
20 this way or down this way?  
21 A. Probably back here by this wire, behind it back in  
22 there.  
23 Q. Okay. Do you feel comfortable putting that in as the  
24 approximate location?  
25 A. In that area. I'm not comfortable with the -- because

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1 I don't know.  
2 Q. But you're pretty certain that it was on that side of  
3 the truck?  
4 A. Yeah, we're in that area, put it that way.  
5 Q. Are you comfortable if we like draw a circle and say  
6 approximate area where the three of you were standing?  
7 A. I suppose so.  
8 Q. Can we do that then?  
9 A. Yeah.  
10 Q. Just to kind of give us, you know, a reference.  
11 A. It's hard to do with that pen, you know. The pipe  
12 wouldn't be on the ground, so, you know, I'd have to  
13 say like right in there.  
14 Q. Can we just take an arrow and say "area where  
15 standing" or something like that?  
16 A. Is it a-r-i-e?  
17 Q. A-r-e-a.  
18 A. Where standing.  
19 I hope you can read that. I write like a  
20 lawyer.  
21 Q. I can read like a lawyer.  
22 Again, I apologize for asking you some  
23 questions and showing some photographs, but we have  
24 Exhibit Number 9. Can you tell that that is a  
25 photograph of you and being assisted by it looks like

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1 a paramedic and somebody else?  
2 A. Yes.  
3 Q. Again, it's the Waterford paramedic, Exhibit Number  
4 10, Waterford -- we can see -- paramedic that's  
5 assisting you to kind of put a tourniquet on your leg  
6 I believe; right?  
7 A. Mm-hmm.  
8 Q. Right?  
9 A. Correct.  
10 Q. Now Exhibit 13 is a photograph of the contents of the  
11 roll-off container with the door of the container  
12 closed; is that correct?  
13 A. Yes.  
14 Q. And we're looking at -- and the photograph is taken  
15 from like the front of the roll-off container?  
16 A. Correct.  
17 Q. And then Exhibit 14 is a photograph of the rear of the  
18 roll-off container with the door of the roll-off  
19 container open?  
20 A. Correct.  
21 Q. And Exhibit 15 gives us a side view of the roll-off  
22 container and the tarp assembly; right?  
23 A. Correct. Yes.  
24 Q. And Exhibit 7 is a close-up photograph of that blue  
25 pipe?

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1 A. Correct.  
2 Q. You applied for employment at P&T on May 9th, 2013;  
3 right?  
4 A. Sounds right.  
5 Q. Now if you thought that there was some problem with  
6 the contents of the roll-off container when you were  
7 at the DTE Belle River Plant, could you say I'm not  
8 taking that trailer, I'm not taking that roll-off  
9 container?  
10 A. If there was something desperately wrong I think we  
11 can turn it down.  
12 Q. Has that ever happened in your career while you worked  
13 at P&T?  
14 A. I think there was once, maybe twice, because of a box  
15 too heavy.  
16 Q. Okay. Is there a weight limitation for the roll-off  
17 container?  
18 A. Oh, yeah.  
19 Q. What is it?  
20 A. Every one is different, you know. I was good for 127  
21 gross, truck trailer load.  
22 Q. Is that 127,000 pounds?  
23 A. Yep, correct, and some boxes that you could go get  
24 would be more than I could handle or I couldn't even  
25 pick them up.

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1 Q. And if that were the case, how would you know that?  
2 A. Your hydraulics wouldn't do it.  
3 Q. Okay. And if that's the case, would you call for a  
4 different truck?  
5 A. I would call for a no load.  
6 Q. A no load?  
7 A. Because I can't haul it. It's too much.  
8 Q. And when you say you'd call for a no load, who would  
9 you call?  
10 A. Dispatch.  
11 Q. At P&T?  
12 A. At Kee Container.  
13 Q. Where?  
14 A. Kee Container.  
15 Q. What's that?  
16 A. That's the dispatch for Ferrous Metals.  
17 Q. Kee like a key?  
18 A. K-e-e Container.  
19 Q. Okay. Where are they located, do you know?  
20 A. They're down on Six or Seven Mile. I can't remember  
21 the cross street there. Down in that area anyhow.  
22 Q. In Detroit?  
23 A. Yeah.  
24 Q. Okay. And when you call for a no load, what does that  
25 mean?

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1 A. Usually that means that you can't pick it up or you  
2 can't haul it or something. You know, they sent you  
3 there because they don't know -- you know, they don't  
4 know what the box looks like or what's in it, you  
5 know.  
6 Q. And if you did that does the dispatcher then say okay,  
7 go to this different location?  
8 A. Yes. They would take it off your handheld and give  
9 you a no load, and then you would either hopefully  
10 work out if you've got a 60-yard box on that you go to  
11 a place that needs a 60-yard box, or, you know,  
12 something close, you know.  
13 Q. Since you had an empty container, you're going to go  
14 somewhere to drop off the same type of container that  
15 you pick up?  
16 A. Correct.  
17 Q. Okay. And did you have any communication with the  
18 dispatcher the morning of this incident for any  
19 reason?  
20 A. No.  
21 Q. In other words, you have to call them when you're  
22 leaving home and say "I'm on my way to Belle River"?  
23 A. No, no, we have a handheld.  
24 Q. And what do you mean by a handheld? A smart phone?  
25 A. Well, it's a computer I call it, and that's the

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1 purpose of the tag on the side of the box, that you  
2 can scan it and that gives times, tells them what box  
3 I picked up, what time I picked it up.  
4 Q. Okay.  
5 A. And then you push, you know, en route. That means  
6 that you're going -- you know, a thing will come up en  
7 route to Pontiac, FTP Pontiac. Yes. Then you're on  
8 your way.  
9 Q. You called it a computer?  
10 A. I call it handheld.  
11 Q. A handheld.  
12 Does it have a capability for making a  
13 telephone call?  
14 A. Yep.  
15 Q. Okay.  
16 A. Pictures and --  
17 Q. Okay.  
18 A. -- you know, because there has been times I've taken a  
19 picture off of it and it goes right to dispatch.  
20 Q. Is it like the size of a cell phone?  
21 A. No, it's bigger than that.  
22 Q. Like an iPad or like a mini iPad?  
23 A. Probably like this thing in the back of your computer  
24 there, a little bit longer than that.  
25 Q. This one?

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1 A. No, the back of that thing.  
2 Q. Oh, that one?  
3 A. That one right there, yeah, and it's got a screen on  
4 it, numbers.  
5 Q. That's a Stenocast Wireless Realtime is what that is.  
6 A. But, I mean, I'm just talking the size of it. That's  
7 not it.  
8 MR. WEGLARZ: Oh, that.  
9 THE WITNESS: That's not it.  
10 BY MR. YOUNG:  
11 Q. Now does Kee Container -- is that it?  
12 A. Right.  
13 Q. Kee Container, do they keep this record of this  
14 information you transmit on your handheld?  
15 A. I have no idea.  
16 Q. Or do you know if P&T does?  
17 A. I don't -- no, P&T wouldn't have any. It's all  
18 through them.  
19 Q. What's the reason for that communication telling them  
20 you're en route to Ferrous in Pontiac, for example?  
21 A. Times.  
22 Q. What difference does it make? I'm trying to get the  
23 connection. Why is that important?  
24 A. The time?  
25 Q. Yes.

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1 A. They know when I left there, and they'll know when I  
2 got to Ferrous because it changes like a screen on  
3 there.  
4 Q. Okay. Is that for some type of a billing reason?  
5 A. It could be.  
6 Q. Okay. You're not into that part of it?  
7 A. That's got nothing --  
8 Q. Not your job?  
9 A. My theory of the handheld is to do away with the phone  
10 calls.  
11 Q. Okay.  
12 A. Because everything you need -- all your runs are on  
13 that handheld and you basically do everything.  
14 Q. Communicate electronically?  
15 A. Right, with a little pencil thing on there, and you do  
16 all that stuff.  
17 Q. Right. You had a CDL license; correct?  
18 A. Correct.  
19 Q. And when did you get that?  
20 A. Back in the late '80s, '89. Whenever I went to truck  
21 driving school, I had a chauffeur's license and then  
22 mine got grandfathered into CDL.  
23 Q. Okay. I think I asked you this, but did you inspect  
24 that load on the roll-off container at all when you  
25 got to Ferrous?

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1 A. No.  
2 Q. And why not?  
3 A. I'm already to where I got to be.  
4 Q. Okay. Wouldn't you want to take a look to see how the  
5 load may have shifted in the roll-off container based  
6 upon putting it up onto the trailer and then the  
7 transport?  
8 A. Never really a practice.  
9 Q. But isn't it something that a driver would want to do  
10 to see what happened in transit and from elevating the  
11 roll-off container onto the trailer?  
12 A. Not usually.  
13 Q. Do you think that would be a good idea?  
14 A. Not timewise, no, because you're already where you  
15 need to be. You're going to open the door up and  
16 you're going to dump it and it's all going to be, you  
17 know, on the ground regardless.  
18 Q. Now you had talked about common sense and standing  
19 away from the open door of the container; right?  
20 A. Right.  
21 Q. Were you ever taught that there was a danger zone with  
22 the door open and behind the container, the roll-off  
23 container?  
24 A. Physically, no.  
25 Q. But you do agree common sense-wise you want to stay

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1 away from the open door of the roll-off container?  
2 A. Correct.  
3 Q. And you always unload the contents of the container by  
4 dumping the container by raising it in the air; is  
5 that right?  
6 A. Right.  
7 Q. And you didn't do anything to move the cargo from  
8 against the rear door of the container; correct?  
9 A. Correct.  
10 Q. Actually when you opened up the door 12 inches to the  
11 roll-off container, did you see that blue pipe?  
12 A. Yep.  
13 Q. And then when you opened the door all the way and  
14 latched the chain on the hook, you saw the roll-off  
15 container there -- I'm sorry, you saw the blue pipe in  
16 the roll-off container?  
17 A. When I walked back around.  
18 Q. Right. And that blue pipe was laying on the floor of  
19 the roll-off container?  
20 A. Well, it might have been on something, but, yeah, it  
21 was up against that door.  
22 MR. WEGLARZ: You can look at those if you  
23 need to.  
24 MR. YOUNG: Actually, I think --  
25 THE WITNESS: Wherever that open door one

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1 was. Oh, yeah, right here. It was laying right in  
2 here.  
3 BY MR. YOUNG:  
4 Q. Is that the same one?  
5 A. Yeah, it was laying right in here.  
6 Q. And was it laying -- do you know if it was laying flat  
7 on the bed of the trailer or was it angled in some  
8 way?  
9 A. I don't remember. It was probably angled, but it was  
10 right in here, so...  
11 Q. My question was do you know if it was on the bed of  
12 the roll-off container?  
13 A. On the floor?  
14 Q. On the floor, yeah.  
15 A. I can't -- I didn't, you know, really pay that much  
16 attention. It was in the trailer and that's all I  
17 remember.  
18 Q. Okay.  
19 A. What it was on or anything like that, I have no idea.  
20 Q. Well, whether it was on anything other than the floor  
21 of the roll-off container, you don't know; right?  
22 A. Correct.  
23 Q. And do you agree that when you loaded the roll-off  
24 container onto the trailer that the cargo shifted to  
25 the rear?

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1 A. Do I agree with that?  
2 Q. Yeah.  
3 A. There's a lot of different ways to answer that  
4 question.  
5 Q. Okay.  
6 A. You know, you can hear things fall to the back, if  
7 it's going to fall. In that case there on that day I  
8 didn't hear nothing fall to the back, you know, but  
9 that's not saying there's something inside of that  
10 load, small, whatever, could go back.  
11 Q. But, again, common sense, wouldn't you expect some of  
12 the material to roll back toward the back of the  
13 roll-off container as it's being elevated?  
14 A. It could, yes.  
15 Q. Now could you have asked for a grapple or a magnet to  
16 unload the metal from the container?  
17 A. I imagine I probably could have.  
18 Q. And do you know whether Ferrous would have had that  
19 available?  
20 A. Yes, they would have had that available, but that's  
21 not their procedure.  
22 Q. And why did you get out of your truck?  
23 A. At what time? What point?  
24 Q. At the point where -- why were you out of the truck  
25 after you opened the gate and had the hydraulics ready

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1 to go?  
2 A. Why was I out of the truck?  
3 Q. Yes.  
4 A. Because you do everything from the outside of the  
5 truck. You don't do it from the inside.  
6 Q. Okay. There's no controls inside the truck?  
7 A. Other than turning the hydraulics on.  
8 Q. Is the rear of the roll-off container a dangerous area  
9 when it's loaded and the tailgate is open?  
10 A. It all depends on what's in it.  
11 Q. What if it's scrap metal?  
12 A. If there's scrap in it, yes, it could be dangerous.  
13 If it's empty and the door is open then there's  
14 usually no harm.  
15 Q. Right. And you were not aware of that blue pipe  
16 moving at all until the injury -- until the contact  
17 with your body occurred; is that right?  
18 A. Right.  
19 Q. Did you ever hear that one of the other gentleman came  
20 in contact with that blue pipe?  
21 A. When I was in the hospital later on that, you know,  
22 midmorning.  
23 Q. Okay. And who did you hear that from?  
24 A. I think my nephew might have said that or somebody  
25 came and said he got hit by it.

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1 Q. And do you know which one it was?  
2 A. Steve.  
3 Q. And actually do you know if Steve was in the same  
4 hospital?  
5 A. No, he wasn't.  
6 Q. Okay. And you kind of described this, so would you  
7 say that -- first of all, do you know how close you  
8 were to the roll-off container when you were struck by  
9 that blue pipe?  
10 A. No, I don't.  
11 Q. Do you believe it was less than eight feet?  
12 A. Possibly. You know, I didn't measure, so I don't  
13 know.  
14 Q. I use eight feet because you said that you and Steve  
15 and Dave were standing about eight feet away.  
16 A. Yeah, behind it, but you're saying as I walked up.  
17 Q. Right.  
18 A. Is what you're saying.  
19 Q. Yes.  
20 A. I would probably say I was at least eight feet or five  
21 feet. You know, I don't remember my footsteps  
22 exactly.  
23 Q. Right. And did you ever receive training from P&T or  
24 anyone else warning you not to stand near the rear of  
25 the container with loaded scrap and the door open?

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1 A. No.  
2 Q. Did you have any physical limitations on the day of  
3 the accident?  
4 A. No.  
5 Q. Any hearing difficulties?  
6 A. No.  
7 Q. Any visual difficulties?  
8 A. No.  
9 Q. Were you distracted at the time of the accident for  
10 some reason?  
11 A. Not that I recall.  
12 Q. And you certainly knew that that blue pipe was in the  
13 roll-off container; right?  
14 A. Right. Correct.  
15 Q. And you knew that the cargo inside the roll-off  
16 container was not secured in any way; is that right?  
17 A. Correct.  
18 Q. Did you recognize a potential hazard from falling  
19 materials or objects from the roll-off container?  
20 A. Say that again.  
21 Q. Did you recognize a potential hazard from falling  
22 materials or objects from the roll-off container?  
23 MR. WEGLARZ: Form objection.  
24 Go ahead and answer, if you can.  
25 THE WITNESS: I'd say no.

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1 BY MR. YOUNG:  
2 Q. Do you know how this accident could have been avoided?  
3 A. I don't really know how to answer that. I mean how it  
4 would have been avoided, probably if I didn't go get  
5 it then I wouldn't be sitting here.  
6 Q. In other words, if you hadn't walked toward the truck  
7 in order to turn off the hydraulics, it wouldn't have  
8 happened; is that what you're saying?  
9 A. It could have not happened, right, or, you know, if  
10 they would have just let me do my thing and not decide  
11 to go to P&S pile, I probably could have -- I'd have  
12 been up there and it would have been dumped. You  
13 know, I mean minutes or seconds, they all count.  
14 Q. Could barriers been placed between the objects in the  
15 container and yourself in order to avoid the accident?  
16 A. Could they have been?  
17 Q. Yes.  
18 A. I don't see that happening.  
19 Q. Why. Because of a time factor or --  
20 A. Oh, yeah. For them to go get something to put there,  
21 I don't think that would have happened.  
22 Q. But if there was some type of a barrier, it could  
23 avoid contact by an object inside the roll-off  
24 container and your body?  
25 A. I would imagine.

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1 MR. WEGLARZ: Form objection.  
2 BY MR. YOUNG:  
3 Q. And could the accident have been avoided if you had a  
4 further distance away from the open door of the  
5 container?  
6 A. I would imagine.  
7 You know, how do you determine how far is  
8 too far and how close is too close?  
9 Q. Right. Have you ever received any training about how  
10 far is far enough and how close is too close?  
11 A. No.  
12 Q. Did you work with a daily checklist of things that you  
13 should do in transporting and unloading the scrap  
14 material?  
15 A. Just all pretty well every load was -- you know, you  
16 put it on, you strap it down, you haul it to where you  
17 got to be, you unstrap it. You know, it's the same  
18 routine no matter who you haul it for.  
19 Q. Right. So no daily checklist, it's kind of like the  
20 same routine every time?  
21 A. As far as loading and unloading, yes.  
22 Q. And when you mention the term loading, do you ever  
23 load a roll-off container yourself?  
24 A. The material?  
25 Q. Yes.

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1 A. No, no.  
2 Q. So when you're saying loading/unloading, you're  
3 talking about loading the roll-off container onto the  
4 trailer bed?  
5 A. Correct.  
6 Q. Okay. And when you opened up the door of the roll-off  
7 container about 12 inches to look inside, were you  
8 looking to see if that cargo was stable?  
9 A. That's what I was looking for, to make sure --  
10 Q. And making --  
11 A. To make sure it didn't shift.  
12 Q. Exactly. Didn't mean to cut you off there.  
13 And if you saw material shifting, or that  
14 it had shifted or might fall out, you could just shut  
15 the door again?  
16 A. That's a -- that question right there, that could go  
17 either way. You could pull it shut, or if it's too  
18 heavy it's going to fling the door wide open all by  
19 itself. So that can go either way.  
20 Q. Okay.  
21 A. Does that make any sense to you?  
22 Q. Somewhat.  
23 A. You know, I mean, because if that pipe would have  
24 rolled out onto that door, I couldn't hold it, you  
25 know.

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1 Q. Okay. Yes, that makes sense. Depending on how heavy  
2 it was?  
3 A. Right.  
4 Q. And if you would have climbed up the ladder to look  
5 inside of the roll-off container, is that going to  
6 give you any different view than what you have at the  
7 back of the trailer after you open the door 12 inches?  
8 Do you see what I mean? Are you going to see anything  
9 about movement of --  
10 A. All you're going to see is the top. You ain't seeing  
11 what's on the bottom.  
12 Q. Right. Okay. Now this accident was investigated by  
13 MIOSHA, do you know that?  
14 A. I do now, yes.  
15 Q. Okay. So they took these photographs. I'm just going  
16 to ask you about them a little bit because you already  
17 said that these photographs that are beginning with  
18 Exhibit Number 20 are not the roll-off container that  
19 you had on the -- on your tractor/trailer at the time;  
20 right?  
21 A. Right.  
22 Q. Okay. So can you maybe just describe what we see in  
23 this Exhibit 20?  
24 A. The latching/locking system, and the back door, the  
25 side of the trailer, the can.

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1 Q. Okay. So maybe, again, if you could, can you just  
2 label this so that when we look at it another time  
3 we'll know?  
4 So the back door and then --  
5 A. And then there's the tie-down or chain.  
6 Q. Yep.  
7 A. C-h --  
8 Q. C-h-a-i-n, chain.  
9 And then does this photograph show that  
10 lever that you have to pull up to unlatch?  
11 A. No.  
12 Q. Okay.  
13 A. Oh, yeah, it does, right here, this handle.  
14 This lever?  
15 Q. Lever, yeah, that's good.  
16 A. Or handle. I guess you would call it a lever. That's  
17 l-e-v --  
18 Q. -- e-r.  
19 A. E-r.  
20 Q. So Exhibit 20 shows I guess we'll just call it like a  
21 sample roll-off container; correct?  
22 A. Correct.  
23 Q. It shows the left side of the back door of the  
24 container?  
25 A. Correct.

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1 Q. And then the left side of the container?  
2 A. Correct.  
3 Q. Okay. What does Exhibit 21 show?  
4 A. The locking mechanism for the door.  
5 Q. Okay. Just label that, locking mechanism for the  
6 door.  
7 A. How do you spell mechanism?  
8 Q. M-e-c-h-a-n-i-s-m. For the door. Thank you.  
9 Exhibit 22 shows the complete back door of  
10 a roll-off container; right?  
11 A. Correct.  
12 Q. What do we have in the middle of that back door,  
13 what's that called?  
14 A. That's chain binder, or actually ratchet binder.  
15 Q. Okay. What does a ratchet binder do?  
16 A. That will tighten up.  
17 Q. Okay. It tightens up what, the door?  
18 A. This particular box is a sealed box, and there's  
19 another chain here that comes up and hooks to that  
20 then.  
21 Q. Okay.  
22 A. There's a seal on that door, which this one don't  
23 have, and that's where so liquid don't leak out of the  
24 box.  
25 Q. Oh, okay.

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1 A. And that's why you got it tight here by this chain on  
2 the side, and then they tighten down on that one  
3 there. Some of them has got two of them back there.  
4 Q. So this Exhibit 22 has nothing to do with it; right?  
5 A. No. That's just a back door with a chain binder.  
6 Q. Okay. Can we just right on here "chain binder" so  
7 that we will know what that is and then we'll  
8 just ignore it.  
9 A. I spelled that wrong.  
10 Q. Chain, c-h-a-i-n, and then binder, b-i-n-d-e-r.  
11 A. I wish I was a better speller.  
12 Q. Well, that's all right.  
13 How about Exhibit 24?  
14 A. They're showing safety chain hook I guess you'd call  
15 it.  
16 Q. Okay. But can you tell by just looking at this  
17 whether this is one of the sealed type of containers?  
18 A. That's the same box, yeah.  
19 Q. It is the same as this?  
20 A. Yes.  
21 Q. Same one.  
22 A. That's the same one, too.  
23 Q. Okay. We'll skip over that one.  
24 Are you aware of any rules that apply to  
25 you as a driver of a tractor/trailer carrying a

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1 roll-off container and scrap metal?  
2 A. Any rules?  
3 Q. Yes.  
4 A. No.  
5 Q. Were you aware that P&T Leasing was cited by MIOSHA  
6 for some violations?  
7 A. I learned that later.  
8 Q. Okay.  
9 A. What, I don't know.  
10 Q. Okay. And when you returned to work about April 7th,  
11 did you learn of any new procedures that P&T had in  
12 place as a result of the investigation by MIOSHA?  
13 A. No, nothing was ever said.  
14 MARKED FOR IDENTIFICATION:  
15 DEPOSITION EXHIBIT 30  
16 1:00 p.m.  
17 Q. I'm going to show you what's been marked as Exhibit  
18 Number 30 entitled P&T Leasing Company Roll Off Safe  
19 Operating Procedure.  
20 Have you ever seen that document since you  
21 returned to work?  
22 A. No.  
23 Q. And you see there are certain procedures there listed,  
24 and my question is had you ever seen written  
25 procedures like that before or when you worked at P&T

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1 Leasing for a year and a half before this accident?  
2 A. No.  
3 Q. Now the person that trained you at P&T Leasing, was it  
4 Robert McMaster?  
5 A. Yeah, that's his name, but I don't know if -- he  
6 showed me what to do. I guess if you want to consider  
7 that training then, yeah.  
8 Q. Well, let me ask it a different way.  
9 When you hired in at P&T Leasing, did you  
10 have a supervisor you reported to?  
11 A. I guess you'd call Robert, my nephew, you know, but I  
12 don't know if he -- you know, he's just a driver  
13 showing me what -- you know, how to do the roll-off.  
14 Q. Did any other driver --  
15 A. No.  
16 Q. -- show you what to do?  
17 A. No, no.  
18 Q. What's Robert's age?  
19 A. Thirty-two, I believe.  
20 Q. Do you know how long he had been with P&T?  
21 A. Prior to that?  
22 Q. Yes.  
23 A. I think he's been there about 10 years.  
24 Q. Now this Roll Off Safe Operating Procedure says that:  
25 "The following standards must be applied

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1 when performing the task of unloading any  
2 vehicle."  
3 One of the things it has is:  
4 "Truck engine must be switched off, keys  
5 removed from the ignition and the truck be made  
6 fundamentally stable."  
7 Does that make sense to you?  
8 A. No.  
9 Q. And why not?  
10 A. To unload it, the box? How are you going to run your  
11 hydraulics? I could see if you was in a steel mill,  
12 and, you know, the crane was doing all the work, yeah.  
13 Q. Okay. And then another procedure that they have is:  
14 "The following checklist must be completed  
15 before unloading any freight."  
16 Have you ever seen a checklist?  
17 A. No.  
18 Q. Even since you returned to work?  
19 A. No, never, never.  
20 Q. And they say:  
21 "The following checklist must be completed  
22 before unloading any freight.  
23 1. Has any freight moved in transit?"  
24 The only way you're going to know that is  
25 if you look at the cargo before opening the door to

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1 the roll-off container; right?  
2 A. Possibly.  
3 Q. Next:  
4 "Are all items effectively secured in  
5 roll-off bin?"  
6 A. I'm just laughing at the question. I ain't laughing  
7 at you.  
8 Q. I understand that.  
9 A. How would you do that when there ain't no securement  
10 in the box?  
11 Q. That was going to be my next question: How can you do  
12 that?  
13 A. Right.  
14 Q. And next:  
15 "Are top-loaded items stable?"  
16 How are you going to determine that?  
17 A. I don't know.  
18 Q. Next:  
19 "Could any freight move or become unstable  
20 if the load restraint devices were removed?"  
21 A. See, I don't know that that's pertaining to a  
22 container.  
23 Q. Well, it says Roll Off Safe Operating Procedure.  
24 A. I guess I've never seen it, so I don't know.  
25 Q. Okay.

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1 A. This is the first time since you showed it to me.  
2 Q. Let me ask you this:  
3 When you opened up the door to the roll-off  
4 container about 12 inches, you didn't see anything  
5 that appeared to be hazardous?  
6 A. No.  
7 Q. When you opened up the door to the roll-off container  
8 all the way and chained on the hook, you didn't  
9 observe any danger?  
10 A. No.  
11 Q. On this procedure from P&T, Exhibit 30, says:  
12 "The following actions must be followed  
13 before and during the handling of roll-off  
14 equipment."  
15 And one of them is:  
16 "Do not stand or move through the area  
17 where the unit is operating."  
18 Do you know what unit they're talking  
19 about?  
20 A. I haven't got a clue.  
21 Q. And next:  
22 "Be sure area is clear of people before  
23 operating roll-off."  
24 Do you know what area they're talking  
25 about, how big of an area?

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1 A. I have no idea.  
2 Q. Another one for roll-off operating instructions:  
3 "Put the transmission in neutral and engage  
4 the PTO."  
5 What's the PTO?  
6 A. Hydraulics.  
7 Q. What does PTO stand for?  
8 A. Power takeoff.  
9 Q. Okay. Put the transmission in neutral, that means the  
10 driver has to be in the truck; right?  
11 A. No. The truck could be in neutral when you get out of  
12 the truck.  
13 Q. Okay.  
14 A. If it's running, it can't be in gear.  
15 Q. Okay. Yeah.  
16 Are you aware that P&T Leasing expects  
17 employees to unlatch the door from the side, and then  
18 walk around the semi to the other side to pull the  
19 door open so that the door protects the driver from  
20 any falling metal?  
21 A. No.  
22 Q. Do you agree that every load is different, but all  
23 loads shift because when they initially load the  
24 dumpster it must be picked up on an angle before  
25 coming back level on the trailer bed?

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1 A. I can agree with that.  
2 Q. Do you agree that when the dumpster is angled the  
3 loads usually shift toward the door?  
4 A. I agree with that.  
5 Q. And do you agree that when a driver looks at his load  
6 and sees scrap against the door, he will have the  
7 grappler crane come over to the truck to open the door  
8 for him?  
9 A. I'm not aware of that.  
10 Q. And in order to see the scrap against the door the  
11 driver either has to open it the 12 inches like you  
12 indicated to see that there is material against the  
13 door, or climb up the ladder on the roll-off container  
14 to look inside to see that there is material against  
15 the door; right?  
16 A. Pretty much, yes.  
17 Q. Have you ever asked a crane operator to use the crane  
18 to open the door --  
19 A. Yes.  
20 Q. -- of a roll-off container?  
21 A. Yes.  
22 Q. And what were the circumstances for that?  
23 A. The door is too heavy to push open.  
24 Q. Now another description is you open the roll-off  
25 container door two inches to look at the load inside.

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1 Is that your procedure or is it the 12  
2 inches?  
3 A. Every one -- whatever -- however it opens. So I don't  
4 have a tape measure to measure it, so I have no idea.  
5 Q. If you open it two inches, are you able to look inside  
6 enough?  
7 A. You could see in there a little bit, you know, but  
8 there you go again; every one is different.  
9 Q. Do you agree that no one should ever stand behind the  
10 open door of the roll-off container?  
11 A. Yeah. Yes.  
12 Q. How about this procedure, do you agree with this  
13 procedure:  
14 Unstrap the trailer, undo the chain binder  
15 that holds the door shut, then use a pry bar to  
16 slightly open the door to look at the position of the  
17 load?  
18 A. You have to do that sometimes. Different boxes is  
19 different things. There's no two alike.  
20 Q. Even with the scrap metal, isn't that always pretty  
21 much alike?  
22 A. Scrap metal is scrap metal. I'm talking about --  
23 that's talking about the door.  
24 Q. Okay. Now when you were -- before this accident, you  
25 were operating McMaster Trucking. That was an S

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1 corporation; correct?  
2 A. Correct.  
3 Q. And you filed separate tax returns under McMaster  
4 Trucking?  
5 A. We just kept the corporation. We didn't -- I don't  
6 know how the tax lady did that. You'd have to talk to  
7 her.  
8 Q. Okay. Well, my understanding is that you and your  
9 wife filed joint returns as individuals, and then you  
10 also had tax returns filed on behalf of McMaster  
11 Trucking, Inc.?  
12 A. Most likely, yeah.  
13 Q. You don't know for sure?  
14 A. I don't deal with that part, so --  
15 Q. So you let somebody else handle that?  
16 A. Yeah. Well, I have an account -- our tax lady does  
17 all that, so...  
18 Q. Okay. Do you have any idea what your lost income has  
19 been as a result of this accident?  
20 A. A number, I can't give it to you.  
21 Q. Would you rely upon the tax -- your accountant to give  
22 us that information, your tax person?  
23 A. I don't know if she could or not, you know, because I  
24 get paid by the hour.  
25 Q. Right. Maybe to kind of simplify this, so you weren't

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1 getting paid by the hour during the time that you  
2 weren't working from the time the of the accident  
3 until April 7th, 2016; correct?  
4 A. Rephrase that again.  
5 Q. You were not -- from the time of the accident until  
6 you just went back April 7th, you were not working?  
7 A. No.  
8 Q. No, you were not?  
9 A. No, I was not working.  
10 Q. Thank you.  
11 You did get some workers' compensation  
12 benefits?  
13 A. I got workmen's comp, correct.  
14 Q. And do you know that workers' compensation benefits  
15 started the day that you had the amputation? Do you  
16 know that or not?  
17 A. I knew it started when I went to the hospital. What  
18 particular day, I don't know.  
19 Q. And do you know that those benefits are to continue  
20 for a period of time?  
21 A. Right. I know that. Yes.  
22 Q. Do you know when they're scheduled to end?  
23 A. 216 weeks.  
24 Q. Right.  
25 A. What day they're going to end, I couldn't tell you.

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1 Q. Do you know how many weeks have gone by already?  
2 A. Weeks, no. Months, about 19 months.  
3 Q. 216 weeks; right?  
4 A. That's what the tax lady told -- or the insurance lady  
5 told me.  
6 Q. Right. So I think I saw something that said you've  
7 been paid for 76 weeks.  
8 A. Possible, yeah.  
9 Q. Now you referred to Dave at Ferrous.  
10 Do you know his name to be Dave Wise?  
11 A. I never knew his last name, but that does sound  
12 familiar.  
13 Q. Okay. So I'm looking at part of the MIOSHA  
14 investigation, and they said that there was another  
15 person there at Ferrous, Bob Szczesny.  
16 Do you know who Bob is?  
17 A. I don't know who Bob would be. I mean everybody has  
18 got a nickname around there, so which one Bob is, I  
19 don't know. Do they got a nickname on there?  
20 Q. No.  
21 A. Okay.  
22 Q. Anyway, from interviewing those people at Ferrous, it  
23 said all four people approached the open door to  
24 observe a load. They stepped within five feet of the  
25 open door and observed the load for approximately 30

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1 seconds and when a metal pipe fell.  
2 Does that sound right to you, about five  
3 feet away from the open door?  
4 A. I have no idea on that one, on that part. All I know  
5 is what I told you earlier.  
6 Q. Okay.  
7 A. Didn't measure.  
8 Q. Right. But does it sound right that it --  
9 A. I'm trying to think of who the fourth person is, this  
10 Bob.  
11 Q. Let's see here.  
12 A. Unless he walked up afterwards.  
13 Q. In any event, they estimated the pipe to be about six  
14 feet long and 18 inches in diameter.  
15 Any way that sounds about right or wrong to  
16 you?  
17 A. Looking at the pictures, probably close, in that area.  
18 Q. What's the height of the roll-off container?  
19 A. Which one?  
20 Q. The one that was on your trailer.  
21 A. Five feet tall maybe.  
22 Q. Five feet?  
23 A. Maybe four feet. I didn't measure it. I don't know.  
24 Q. Well, don't they have standard dimensions?  
25 A. They got yardage.

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1 Q. Right. So I heard it was a 40-yard roll-off  
2 container?  
3 A. I don't think that one. I don't know who told you  
4 that, but according to that number, that 6F. That's a  
5 60 yard.  
6 Q. Is that what that means?  
7 A. That's a yardage, yeah.  
8 Q. Okay. 6F is six yards?  
9 A. Or 6E, whatever is on the front of that box.  
10 Q. Okay. And if it is a 60-yard, do you know what that  
11 means as far as the height of the roll-off container?  
12 A. Four to five feet tall, but then you got high side and  
13 you got low side. You got all different sizes.  
14 Q. And if it's a 40-yard, what do you think the height  
15 is?  
16 A. It could be four feet tall, too, and it could be five  
17 or six feet tall.  
18 Q. Okay.  
19 A. That one that was in the picture that wasn't on my  
20 trailer, that one is five or six or seven feet tall.  
21 Probably six feet tall.  
22 Q. The sealed container one?  
23 A. Yeah. You know, that was a 40-yard box.  
24 Q. Now during the MIOSHA investigation they conclude that  
25 employees are exposed to falling metal scrap from

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1 roll-off dumpsters on the back of semis while opening  
2 the dumpster door and after while inspecting loads.  
3 Do you agree that that's a danger that  
4 drivers are exposed to?  
5 A. Oh, yeah, all drivers are exposed to that.  
6 Q. And when inspecting the loads, according to this  
7 MIOSHA investigation, employees approach open door to  
8 within three feet of the dumpster.  
9 Would you agree with that?  
10 A. I don't -- no. I don't agree with that.  
11 Q. Do you agree that employees place hand on dumpster  
12 door to pull it open and are exposed to metal scrap  
13 falling from the load onto their feet and legs?  
14 A. I don't know how to answer that one.  
15 Q. Okay. Do you agree with this: That drivers stand  
16 behind the door of the roll-off container and open it  
17 by pulling so that the door is always between the  
18 driver and the load?  
19 A. That's what I did.  
20 Q. And do you agree that it's typical to have random  
21 steel fall from the back of the dumpsters, but the  
22 door is open so there is no danger?  
23 MR. WEGLARZ: Form objection.  
24 Go ahead and answer if you can answer.  
25 THE WITNESS: Want to read that again.

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1 BY MR. YOUNG:  
2 Q. Let's break it down.  
3 Do you agree that it's typical to have  
4 random steel or scrap metal fall from the back of the  
5 dumpster or roll-off container?  
6 A. After the door is open?  
7 Q. Yes.  
8 A. Yeah. Yes.  
9 Q. Do you agree that this was a freak accident?  
10 MR. WEGLARZ: Form objection.  
11 Go ahead and answer, if you can answer.  
12 THE WITNESS: I don't -- I can't answer it.  
13 BY MR. YOUNG:  
14 Q. Do you agree that there were no particular procedures  
15 set up by P&T for approaching and opening the roll-off  
16 dumpster holding the metal scrap?  
17 A. I don't agree and I don't disagree.  
18 Q. Do you agree that you were the person most  
19 knowledgeable about the contents of the roll-off  
20 container when you took it to Ferrous?  
21 MR. WEGLARZ: Form objection. Go ahead. I  
22 think it calls for speculation, too.  
23 Go ahead and answer if you can answer.  
24 THE WITNESS: Being the most knowledge  
25 prior to getting there or after it was done?

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1 BY MR. YOUNG:  
2 Q. When you got to Ferrous, that you were the one most  
3 knowledgeable about the contents of the roll-off  
4 container?  
5 MR. WEGLARZ: Same objection; calls for  
6 speculation.  
7 THE WITNESS: I would say yeah, because I  
8 knew that was all in there.  
9 BY MR. YOUNG:  
10 Q. Right.  
11 A. Before I got there.  
12 Q. Right. And then once you got to Ferrous, you're the  
13 one that opened the door to the container so you would  
14 have the best view of what's inside?  
15 A. Right, so we could all see inside.  
16 Q. Now did you have a prescription for Chantix,  
17 C-h-a-n-t-i-x?  
18 A. Zantac, heartburn? I take heartburn medicine, Zantac,  
19 and then the Prilosec.  
20 Q. Okay. When you were in the hospital following the  
21 accident you requested, according to the record, a  
22 refill of Chantix, C-h-a-n-t-i-x, and that was in  
23 November of 2014.  
24 A. I don't remember. A request for Zantac?  
25 Q. A request for a refill of Chantix.

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1 A. See, I'm not sure. I'm not a medicine person, so I  
2 don't know what.  
3 Q. Let's do it this way:  
4 At the time of this accident, what type of  
5 medications were you taking?  
6 A. I took a Prilosec and I took a baby aspirin, and that  
7 was it.  
8 Q. So the name Chantix, that's not familiar to you?  
9 A. No, unless it's some kind of heartburn medicine.  
10 Q. Okay. Do you think you were taking some type of  
11 heartburn medicine?  
12 A. In the hospital?  
13 Q. No, before this.  
14 A. Oh, I knew I was before that, but there's different  
15 over-the-counter kinds and Zantac -- or Zan --  
16 Chantix.  
17 A. That charts with a C; right?  
18 Q. Yes.  
19 A. No, Zantac.  
20 Q. What's the Prilosec for?  
21 A. Heartburn.  
22 Q. And the baby aspirin was what?  
23 A. Just a common thing I've been taking for many years.  
24 Q. You know what, maybe I pronounced that wrong. I see  
25 another description for Chantix, C-h-a-n-t-r-i-x.

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1 A. And what it is, I don't know or even what it does.  
2 Q. Okay. Deborah McMaster is your wife; correct?  
3 A. Right.  
4 Q. Have you spoken to anyone at P&T about this accident  
5 since it occurred?  
6 A. There's been talk about it, about how bad it was that  
7 happened.  
8 Q. Other than the injury and the unfortunate thing that  
9 had happened, was there any discussion at P&T with you  
10 about the procedure, or maybe the procedure should  
11 have been different, anything like that?  
12 A. Not that I recall.  
13 Q. Anything like a learning lesson, for example, that  
14 might have been discussed?  
15 A. No, not really.  
16 Q. Okay.  
17 A. I imagine they probably do things differently now  
18 since it happened to me, you know, but I can't say for  
19 sure.  
20 Q. So that was actually going to be my next question.  
21 At P&T do they have, like they do at some  
22 entities, safety meetings to go over things, and, you  
23 know, learn to avoid dangers and to operate safely?  
24 A. If they do, they hadn't when I've been there.  
25 Q. At P&T are you pretty much independent as truckers?

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1 A. For the most part, yes.  
2 Q. Kind of you get your assignment, you go do your  
3 assignments, and then you go home?  
4 A. Pretty much, yes.  
5 Q. Did you pretty much keep the truck at your home?  
6 A. It depended on if I was going to load out of Port  
7 Huron, Belle River area. You know, if I was loading  
8 at other areas I would leave it at their shop.  
9 Q. Okay. And the shop for P&T is how far from your home?  
10 A. Oh, from my house?  
11 Q. Yes.  
12 A. Thirty-one miles.  
13 MR. WEGLARZ: I'm going to take a  
14 two-minute break?  
15 MR. YOUNG: Okay.  
16 (Recess taken at 1:29 p.m.)  
17 (Back on the record at 1:33 p.m.)  
18 BY MR. YOUNG:  
19 Q. Mr. McMaster, I'm looking at some records from Acuity,  
20 and it appears that you had gross wages of \$31,341 for  
21 the year 2013.  
22 Does that sound right?  
23 A. Possible.  
24 Q. And it was \$38,652.85 for the year 2014.  
25 Does that sound about right?

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1 A. About right, yeah.  
2 Q. May 2013 is when you started at P&T.  
3 You had been hauling for Red D before that?  
4 A. Before that, yep.  
5 Q. And then your amputation was about eight to nine  
6 inches below the knee; is that correct?  
7 A. At the start, yes.  
8 Q. Did that change?  
9 A. Yeah, they took more off.  
10 Q. Okay. You mean above the knee or below the knee?  
11 A. Below.  
12 Q. Okay. And then you were fitted with a prosthetic  
13 device?  
14 A. Correct.  
15 Q. How is that working for you?  
16 A. I guess the best it's ever going to be. It ain't fun.  
17 Q. And then various entities provided equipment for you  
18 like a rental hospital bed, a bed over the table, a  
19 bedside commode, and a padded tub transfer bench for  
20 when you were rehabilitating there at home?  
21 A. Correct.  
22 Q. And you were discharged home November 6th of 2014.  
23 Does that sound about right?  
24 A. About right.  
25 Q. And a permanent ramp was built onto your home in order

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1 to access it with probably a wheelchair I presume?  
2 A. Correct.  
3 Q. And you had skilled nursing at home to monitor your  
4 wound care; is that right?  
5 A. Yes.  
6 Q. And to help you remain in high spirits is what I have  
7 here.  
8 Does that sound about right?  
9 A. About right, yes.  
10 Q. And then your wife also provided some attendant care?  
11 A. Yes.  
12 Q. And was paid I believe \$12 an hour for that?  
13 A. Right.  
14 Q. And then there was modifications at your home I'm  
15 seeing for about \$20,000.  
16 Does that sound right?  
17 A. Dollar amount I have no idea, but, yes, I did home  
18 renovation.  
19 Q. And are you currently seeing a doctor?  
20 A. Yeah.  
21 Q. Which one?  
22 A. Doctor Seidel, and then I also see Doctor Mullally.  
23 He's my main doctor, or my family doctor, I should  
24 say.  
25 Q. Okay. Just for like checkups and things?

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1 A. For checkups, yep.  
2 Q. And how about Doctor --  
3 A. Doctor Seidel is a pain management doctor.  
4 Q. And are you taking anything for pain management  
5 currently?  
6 A. I take Gabapentin.  
7 Q. Say it again.  
8 A. Gabapentin.  
9 Q. Okay.  
10 A. That's a nerve pain is what he told me.  
11 Q. Okay. And how often do you take that?  
12 A. Three times a day.  
13 Q. And is it effective?  
14 A. Seems to be, you know, but that would be one thing I  
15 will be weaning off of eventually.  
16 Q. So some of the modifications to your home included the  
17 bathroom, flooring repair and door widening, probably  
18 to accommodate a wheelchair?  
19 A. Correct.  
20 Q. Have you been hospitalized for any reason since you  
21 were discharged on about November 6th, 2014?  
22 A. No.  
23 Q. Okay. I'm seeing here from the Michigan Department of  
24 Licensing and Regulatory Affairs that you are due 215  
25 weeks for the specific loss of your left leg.

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1 That was your understanding?  
2 A. Yep.  
3 Q. And --  
4 A. That says 15?  
5 Q. 215 is what I have.  
6 A. Okay. 216 weeks is what I thought she said.  
7 Q. Okay. All of your medical expenses have been paid for  
8 by your workers' compensation carrier for P&T; right?  
9 A. For my leg, yes.  
10 Q. Right. Do you have any other -- other than your lost  
11 wages, do you have any other expenses that you  
12 incurred as a result of this injury?  
13 A. Not that I -- nothing out of the ordinary.  
14 Q. So you've already kind of said whatever amounts were  
15 paid you don't really know, so we can just rely upon  
16 whatever the records show us for the expenses that  
17 have been paid; right?  
18 MR. WEGLARZ: For Acuity?  
19 THE WITNESS: For Acuity?  
20 BY MR. YOUNG:  
21 Q. For Acuity, yeah.  
22 A. Yeah.  
23 Q. Now apparently you were provided with an all-terrain  
24 vehicle?  
25 A. Yep. Yes.

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1 Q. That Acuity either -- it was a used ATV; right?  
2 A. Correct.  
3 Q. That they paid for?  
4 A. Correct.  
5 Q. \$8,500; does that sound right?  
6 A. Correct.  
7 Q. And that was for the purpose of allowing you mobility  
8 around your property?  
9 A. Correct.  
10 Q. So you must have a lot of property?  
11 A. My in-laws, they live right on the same. There's 160  
12 acres.  
13 Q. Okay.  
14 A. That's not mine, but --  
15 Q. Right, but it's for your use?  
16 A. Right.  
17 Q. You can use it?  
18 A. Correct.  
19 Q. And I see here a record that you received a letter  
20 informing you that you had been receiving workers'  
21 compensation wage loss benefits in the amount of  
22 \$781.56 per week.  
23 Does that sound right to you?  
24 A. The number is, but I received a letter?  
25 Q. Right.

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1 A. I probably did if that's what they do.  
2 Q. Somebody, either you or your wife I believe, asked  
3 them for that record for some reason, and they sent  
4 you a letter saying this is what we're paying you.  
5 A. It might have been my -- it was that lady that watches  
6 over me there.  
7 Q. Is her name Debbie also?  
8 A. Yeah. She's a --  
9 Q. She's like a health care --  
10 A. Yeah.  
11 Q. She's a -- here, let me find out who she is.  
12 MR. WEGLARZ: Case manager?  
13 BY MR. YOUNG:  
14 Q. Case manager. Thank you.  
15 A. Case manager, exactly, yeah.  
16 Q. Is she still working with you?  
17 A. When I go to these appointments, yep, she'll appear,  
18 but, yeah, that dollar amount, that's what I get a  
19 week.  
20 Q. Okay. And that was since the injury that occurred  
21 October 14, 2014?  
22 A. Correct.  
23 Q. So when you returned to P&T Leasing, were you provided  
24 with any medical restrictions by any doctor?  
25 A. Yeah, Doctor Seidel, no climbing, no walking and

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1 scaffolds. What he meant by climbing was like ladders  
2 or scaffolding.  
3 Q. Would that restriction, though, prevent you from  
4 climbing up the ladder to a roll-off container?  
5 A. I don't believe so because I can just grab it and look  
6 up, so you're not really climbing. Step on the bottom  
7 lip of the can and you can look in, so...  
8 Q. Because if it's four or five feet high you can step on  
9 the first step?  
10 A. Right, yep.  
11 Q. Okay. And you can do that what, with your other leg?  
12 A. Yeah, with my right leg, yep.  
13 Q. Okay. Is there climbing involved to get into the  
14 tractor?  
15 A. Yep, steps, but you got hand -- there's two steps, but  
16 you got handrails to hold onto.  
17 Q. Okay. So as far as you understood, that was not on a  
18 restriction from Doctor Seidel?  
19 A. Correct. Just getting up on scaffolding and climbing  
20 open ladders.  
21 Q. Right.  
22 But are you on any light-duty restriction  
23 at P&T?  
24 A. No.  
25 Q. And who is Phil at P&T?

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1 A. He's the boss.  
2 Q. And so he's the one you report to?  
3 A. Yeah, in most cases, yes.  
4 Q. Let's see here. That medication you mentioned is  
5 Gabapentin?  
6 A. Gabapentin, yes.  
7 Q. G-a-b-a-p-e-n-t-i-n, and that's for -- that's to  
8 prevent a seizure?  
9 A. No. I was told nerve pain.  
10 Q. Okay. Now as a result of this injury that you  
11 sustained, were there any family problems that you  
12 had?  
13 A. No.  
14 Q. Everything between you and your wife are okay?  
15 A. Right.  
16 Q. Good to hear.  
17 A. That woman did a lot for me.  
18 Q. It sounds like it from some of the records I've  
19 reviewed.  
20 A. Mm-hmm.  
21 Q. And she worked as a hairdresser; right?  
22 A. Correct.  
23 Q. And then she worked -- did she do some work for  
24 McMaster Trucking, though, too?  
25 A. McMaster Trucking was just a tax -- you know, when I

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1 was owner/operator I never actually hauled under --  
2 Q. Under that name?  
3 A. McMaster, you know.  
4 Q. Right. Okay. So it was just set up for your  
5 business?  
6 A. Correct.  
7 Q. And she never worked for P&T; did she?  
8 A. No.  
9 Q. And when you went -- were going back to work at P&T,  
10 did you have to take a driving lesson?  
11 A. No.  
12 Q. Your driver's license had been --  
13 A. Oh, I had to do a -- now that you mention that, I had  
14 to do a thing for an amputee, a medical waiver --  
15 Q. Okay.  
16 A. -- with the State of Michigan.  
17 Q. Okay. So what does that mean?  
18 A. That gives me -- I guess for being an amputee or  
19 any -- for any limb or whatever, you have to get  
20 qualified, so I had to do -- I had to have like a  
21 work -- what is that? Work eval done, a work  
22 evaluation actually done.  
23 Q. Okay.  
24 A. I had to do road -- you know, I'd take him for a ride  
25 in the truck and all that, and then we had to send all

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1 kinds of documentation to Sergeant Austin in Lansing  
2 for the State Police, then he determined if I was  
3 eligible for that.  
4 Q. Okay. So you obtained a Department of Transportation  
5 physical for your medical waiver?  
6 A. Right.  
7 Q. Right?  
8 A. Yep.  
9 Q. And then you did this driving testing --  
10 A. Yep.  
11 Q. -- in order to get that waiver; right?  
12 A. Right.  
13 Q. Sorry, I should know this. I should know this, but  
14 was it your left leg or right leg?  
15 A. My left leg.  
16 Q. So the right leg is available for operating a vehicle  
17 such as an accelerator and the brake?  
18 A. Yep. Correct.  
19 Q. And then I see here that you purchased a new pair of  
20 work boots?  
21 A. Yep.  
22 Q. Replaced the ones that were cut off at the time of the  
23 accident?  
24 A. Correct.  
25 Q. And that was for the purpose of -- that was for the

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1 purpose of going back to work at P&T?  
2 A. Correct.  
3 Q. And so was getting the Department of Transportation  
4 physical for the medical waiver?  
5 A. Correct.  
6 Q. And so was doing the driving record testing with the  
7 Secretary of State in order to go back to work at P&T?  
8 A. Well, it wasn't Secretary of State. It was a work  
9 eval.  
10 Q. Okay. But the Secretary of State --  
11 A. He had to write a letter -- I mean the insurance, you  
12 know, took care of -- he's the same person that did  
13 the home -- you know, for my home eval and property  
14 eval, and he did the eval for me to drive, and then he  
15 had to write up a documentation and all that. We had  
16 to send it in to Sergeant Austin.  
17 Q. And then I'm seeing a record April 7th, 2016, which is  
18 the date I believe you said you went back to work?  
19 A. Right in that area.  
20 Q. Right in that time?  
21 A. Yep.  
22 Q. It says the 76 weeks out of 215 weeks have been paid  
23 and 139 weeks remain.  
24 Sound about right?  
25 A. Sound about right.

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1 Q. Now there were some photographs, which I didn't bring  
2 with me, that were in the records from Acuity, the  
3 workers' compensation carrier. The photographs showed  
4 some ice and snow, and there was like four of them,  
5 but this accident we see from photographs here,  
6 there's no ice or snow in the area where this accident  
7 happened; right?  
8 A. Correct.  
9 Q. So I think they must have just been put into the wrong  
10 file, so I just kind of ignored them, but I'm just  
11 bringing it up.  
12 You're not aware of any ice and snow  
13 photographs that relate to this?  
14 A. No. These are the first photos I've seen.  
15 Q. Oh, okay.  
16 Now I see another record here that you got  
17 stuck on a cart on your property after a power outage  
18 in December of 2014?  
19 A. Yep.  
20 Q. What's that about?  
21 A. Driving on my little -- my mom, you know, had one of  
22 those little three-roll carts, battery-operated carts,  
23 and I was driving it out to the pole to hook a  
24 generator up.  
25 Q. So it's not the ATV?

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1 A. No, no, this was prior, before that, before the ATV  
2 came in.  
3 Q. Oh, it's before you got the ATV?  
4 A. Yep.  
5 Q. After the accident?  
6 A. But after the accident, right.  
7 Q. Because it says December 2014.  
8 A. Right. I said my mom loaned me her little three-wheel  
9 buggy, battery-operated cart.  
10 Q. Okay. So you were hospitalized at Pontiac Osteopathic  
11 Hospital initially; correct?  
12 A. McLaren.  
13 Q. McLaren it's called now, yes.  
14 A. Yep.  
15 Q. And then eventually you went to Beaumont?  
16 A. I went there for blood work and a couple things, not  
17 to stay.  
18 Q. Right.  
19 Are you a smoker?  
20 A. Used to be.  
21 Q. When did you stop?  
22 A. Day of my accident.  
23 Q. 10-14-14?  
24 A. That's what I got.  
25 Q. Anyway, October 14, 2014 you're saying?

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1 A. Correct.  
2 Q. And that was probably recommended to you by some  
3 doctor?  
4 A. They all told me to quit smoking. That was already  
5 done. Twenty-one days in the hospital without one, I  
6 guess you might as well quit.  
7 Q. I guess that's the time to do it.  
8 Is that what it was, twenty-one days?  
9 A. Yeah, 21 days I recall.  
10 MR. WEGLARZ: So is that why you had the  
11 Chantix -- Chantrix, to stop smoking?  
12 THE WITNESS: Maybe that's what that was  
13 for.  
14 BY MR. YOUNG:  
15 Q. Maybe, but the only thing -- what I asked you about is  
16 there was, according to the records, a request for  
17 refilling a prescription. So that's why I was asking  
18 if you had --  
19 A. If that was for the stop smoking, I probably did.  
20 Q. Well, did you try to stop smoking before the accident?  
21 A. I don't believe so. I don't remember.  
22 Q. Okay.  
23 A. I always quit smoking in between them, you know.  
24 Q. Yeah, right, like everyone else?  
25 A. Yeah.

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1 Q. But did you ever take any medication to stop smoking  
2 before the accident that you can recall?  
3 A. No, I don't remember that.  
4 Q. Okay. So physically how do you think that you're  
5 doing currently?  
6 A. You know, having one leg gone, I think I'm doing  
7 pretty good. I'm getting around, you know, but my  
8 life changed.  
9 Q. I'm sorry?  
10 A. I say my life changed, though.  
11 Q. And how did it change?  
12 A. You know, with just everyday duties.  
13 Q. For example?  
14 A. Going to the bathroom, taking a shower, going to bed  
15 at night.  
16 Q. And by that do you mean that there are additional  
17 steps that you have to take?  
18 A. Oh, absolutely.  
19 Q. Because of the injury?  
20 A. Yep.  
21 Q. Such as what? I don't want it to be too detailed, but  
22 for example?  
23 A. Well, you know, you got to go from one chair to  
24 another to go back to wash your liner off, wash your  
25 leg off. You know, you got to do different things to

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1 get into the shower. You know, you just can't walk  
2 in, you know.  
3 Q. Right, right. Did they accommodate you with like a  
4 seat in the shower?  
5 A. Yeah, that was one thing they wanted, and they also  
6 made it so it's wheelchair -- if I had to go in a  
7 wheelchair I could get in.  
8 Q. Other than that type of stuff for showering or  
9 bathing, cleansing, et cetera, any other ways that  
10 your life changed as a result of the injury?  
11 A. Just walking and doing things. You know, you got to  
12 always watch what you're doing, you know, always --  
13 you know --  
14 Q. Probably be careful of the surface?  
15 A. I mean just getting down on one knee is hard to do  
16 anymore.  
17 Q. Right.  
18 A. Getting down on the floor to play with my  
19 granddaughter, you know.  
20 Q. Yeah. How many grandchildren do you have?  
21 A. I got one and I got one on the way.  
22 Q. How old is your granddaughter?  
23 A. Now she's three.  
24 Q. And you have two children of your own; right?  
25 A. Right.

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1 Q. What are their ages?  
2 A. Nineteen and 25.  
3 Q. Okay. Does the 19-year-old still live at home?  
4 A. Correct.  
5 Q. How about the 25-year-old?  
6 A. He's married on his own.  
7 Q. Anything else that you're restricted from doing other  
8 than you know, the bathing, showering type of thing,  
9 and not being able to get down on one knee, anything  
10 else you're restricted from?  
11 A. There's probably numerous things. I just can't -- you  
12 know, unless you do it.  
13 Q. Right. So do you have a limitation on the distance  
14 you can walk?  
15 A. No, not really. I mean until it hurts, then you stop.  
16 Q. And do you know what that distance is?  
17 A. Every day is different, you know. Every day is  
18 different with this. You know, it's all brand new.  
19 Q. Sometimes you could maybe just walk a block and  
20 sometimes a mile?  
21 A. Right. Sometimes I can walk the whole mall.  
22 Sometimes I can only get halfway through it, you know,  
23 for example.  
24 Q. Yeah, right. Do you ever have any -- strike that.  
25 Let me ask you this:

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1 How do you think you're doing  
2 psychologically as a result of the accident, and now  
3 this much time since this accident of October 14,  
4 2014?  
5 A. I'm okay.  
6 Q. Good to hear.  
7 Do you ever have any type of flashbacks or  
8 nightmares about the incident?  
9 A. Occasionally I think about it, you know.  
10 Q. Are they just in passing, you just let it go?  
11 A. Yeah, I pretty much let it go. I keep things to  
12 myself.  
13 Q. Are you treating with any type of a psychiatrist or  
14 psychologist?  
15 A. No.  
16 Q. Have you at all since this accident?  
17 A. No.  
18 Q. Do you have any difficulty sitting for long periods of  
19 time like the torture I put you through today?  
20 A. There's two ways you can answer that, I guess.  
21 Q. I guess I should take out the editorial part of it.  
22 Do you have any trouble sitting for a long  
23 period of time?  
24 A. No. I'm used to that.  
25 Q. Okay. We've been here now about four hours.

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1 A. Right.  
2 Q. And you're okay?  
3 A. Seem to be.  
4 Q. Okay. Good.  
5 A. I mean other than I have to go to the bathroom pretty  
6 soon.  
7 Q. Okay. That's normal for all of us, and we'll take a  
8 break here in just a couple minutes I believe.  
9 You had been smoking two packs of  
10 cigarettes a day; is that right?  
11 A. For a long time.  
12 Q. Before this accident?  
13 A. Yep.  
14 Q. For how many years?  
15 A. Oh, God, long.  
16 Q. But now you're able to stand and you're able to reach  
17 for an object in the cupboard or on a table; is that  
18 right?  
19 A. With my leg on. I could before, too.  
20 Q. Yeah.  
21 And you've received some therapy for  
22 balance?  
23 A. In the hospital they did a -- you know, whatever you  
24 call it, before I got out. They had me --  
25 Q. Rehabilitation?

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1 A. Yeah. They had me doing different things in there to  
2 see if I could do it, and I did it.  
3 Q. And you also learned how to self-propel on a  
4 wheelchair?  
5 A. Right.  
6 Q. Now do you use a wheelchair now at all?  
7 A. Nightly.  
8 Q. So just around the house?  
9 A. Right.  
10 Q. You mean like when you're in for the night and just --  
11 A. Before I go to bed, you know, I can't walk back to my  
12 bathroom to wash my liner. I got to roll back there  
13 and wash my liner, and take care of my leg, and get  
14 everything ready to go to bed.  
15 Q. And when you were in the hospital you were using a  
16 walker for a while; right?  
17 A. Correct.  
18 Q. Do you use a walker anymore at home?  
19 A. When I get in the shower. That's something I'll never  
20 let go I don't think.  
21 Q. A walker?  
22 A. Yeah. I'll always have one of them the rest of my  
23 life.  
24 Q. And do you feel motivated to be back to P&T working as  
25 a truck driver?

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1 A. Yeah.  
2 Q. Since you're there it appears you must have been  
3 motivated to get there?  
4 A. Right, you know, it's my nature.  
5 Q. Right.  
6 A. You know.  
7 Q. To be working?  
8 A. To work, right.  
9 Q. And do you plan to continue working there for the  
10 foreseeable future?  
11 A. I was hoping to retire from there, so, yes.  
12 Q. Okay. So you're 51?  
13 A. I'll be 52 this year.  
14 Q. Okay. And what age would you look forward to  
15 retirement?  
16 A. Seventy-five.  
17 Q. Really?  
18 A. Yeah. When my Social Security thing would kick in  
19 according to my letter.  
20 Q. Okay.  
21 A. Or, no, 65, I'm sorry.  
22 Q. Yeah, 65?  
23 A. Did I say 75?  
24 Q. Yeah, you said 75.  
25 MR. WEGLARZ: Trust me, by the time you're

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1 65, it will be 75.  
2 MR. YOUNG: Yeah, right.  
3 BY MR. YOUNG:  
4 Q. So, anyway, as far as what I know, 65 is like the  
5 normal retirement age. So that's --  
6 A. I mean I plan on, you know, retiring normal.  
7 Q. Yeah, around 65?  
8 A. Right.  
9 Q. All right. Thank you very much. I believe that's all  
10 the questions I have. Mr. O'Shea may have some for  
11 you.  
12 MR. O'SHEA: I do.  
13 Do you want to take a break?  
14 THE WITNESS: Yes.  
15 (Recess taken at 2:02 p.m.)  
16 (Back on the record at 2:09 p.m.)  
17 EXAMINATION  
18 BY MR. O'SHEA:  
19 Q. Mr. McMaster, my name is John O'Shea. We met earlier.  
20 I represent Ferrous Processing and Trading. I'm going  
21 to ask you some questions. Hopefully I won't be  
22 repetitive, and I can promise you I will not be as  
23 long as Mr. Young, but that's because he went first  
24 and he has to do all the questions, so I'm just  
25 filling in the gaps. So I will be shorter, I promise

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1 you.  
2 Have you been back to FPT since the  
3 accident?  
4 A. Yes.  
5 Q. In a work capacity?  
6 A. Yes.  
7 Q. Okay. When did you first go back there? You mean  
8 within the last month?  
9 A. Yes, within the last month, yes.  
10 Q. And are you back picking up at DTE?  
11 A. No.  
12 Q. How many times have been back to FTP since the  
13 accident?  
14 A. Thirty, 40.  
15 Q. Are you back there several times a day?  
16 A. Yes.  
17 Q. Do you dump anywhere else other than Ferrous?  
18 A. No, just Ferrous.  
19 Q. Okay. And Ferrous has other yards.  
20 Have you ever dumped anywhere other than  
21 the Pontiac yard?  
22 A. Before my accident, yes.  
23 Q. Okay. Let's take it post-accident.  
24 Since your accident, and your return to  
25 work in April of 2016, have you dumped at any Ferrous

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1 yard other than the Pontiac yard?  
2 A. No.  
3 Q. Since you have been back to the Ferrous yard, have you  
4 had any discussions with anyone at Ferrous regarding  
5 your accident?  
6 A. No.  
7 Q. Has anyone said "welcome back" or "good to see you,"  
8 anything like that?  
9 A. Yeah, they're happy to see me back.  
10 Q. But did you talk to anyone about how the accident  
11 happened, the lawsuit, anything like that?  
12 A. No. Not -- no.  
13 Q. And are you doing pretty much the same thing now that  
14 you were doing before your accident at Ferrous?  
15 A. I'm doing smaller boxes. I got an account, the  
16 Brooklyn account, that I'm doing because they're small  
17 boxes.  
18 Q. What size are the boxes?  
19 A. 30-yard.  
20 Q. Same procedure with opening them up and swinging the  
21 door --  
22 A. Yep, all that.  
23 Q. -- and all that stuff you told Mr. Young about?  
24 A. Yep.  
25 MR. YOUNG: Just for clarification, when

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1 you say boxes you mean roll-off containers?  
2 THE WITNESS: Roll-off container, yeah. We  
3 call it boxes. They got a lot of different  
4 terminology for that.  
5 MR. YOUNG: Okay.  
6 BY MR. O'SHEA:  
7 Q. So you're following pretty much the same procedure of  
8 pulling in and pushing the box back and then opening  
9 it up, and opening it up two to 12 inches, seeing if  
10 anything falls out, sliding the door open?  
11 A. All the stuff that I'm hauling now, you know it's  
12 going to fall out, so you open it up and stand back.  
13 Q. Okay. What are you hauling now?  
14 A. It's the Brooklyn account, which would be like clutch  
15 disc. Well, they're just actually -- they're plates,  
16 and then they got what they call alloy metal and  
17 carbon metal.  
18 Q. So material is coming out when you open up?  
19 A. Right, on them, yep. Ninety percent of the time, yes.  
20 Q. Have you adopted any different procedure since you  
21 came back than you were doing before the accident?  
22 A. Uh-huh. Yes.  
23 Q. What?  
24 A. Make sure you walk around, and if I open up that door  
25 I walk around the front of the truck, because I can't

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1 walk like I used to, and I can't run.  
2 Q. Prior to the accident, did you dump at Ferrous Pontiac  
3 for other customers other than DTE?  
4 A. Yes.  
5 Q. And how often would you be at Ferrous' Pontiac yard in  
6 a given week before the accident?  
7 A. How many times?  
8 Q. Yes.  
9 A. Twenty, 25.  
10 Q. Okay. Three or four times a day, five times a day  
11 sometimes?  
12 A. Yeah, correct.  
13 Q. So the DTE pickup was just a portion of your work and  
14 your coming to Ferrous' Pontiac yard?  
15 A. Correct.  
16 Q. So fair to say you had been at Ferrous' Pontiac yard  
17 before your accident hundreds of times?  
18 A. A lot of times.  
19 Q. I mean would it be fair to say hundreds?  
20 A. Hundreds, yes.  
21 Q. And what other FPT yards did you go to other than  
22 Pontiac?  
23 A. John Kronk, Schlafer, and SLC.  
24 Q. Would that be far less frequent than the Pontiac yard?  
25 A. Yeah, those are -- out of those three the most I went

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1 to was SLC.  
2 Q. And would that be dependent on the customer where your  
3 pickup is?  
4 A. The material.  
5 Q. The material?  
6 A. Right.  
7 Q. So you would agree with me that on the day of your  
8 accident and before, you were very familiar with the  
9 Ferrous yard at Pontiac?  
10 A. I was familiar with it?  
11 Q. Yes.  
12 A. Correct.  
13 Q. Very familiar with their procedures as well?  
14 A. Correct.  
15 Q. Familiar generally with the personnel?  
16 A. Correct.  
17 Q. And you had an understanding that they had different  
18 dumping areas; correct?  
19 A. Correct.  
20 Q. What did you understand were the different dumping  
21 areas?  
22 A. Different materials.  
23 Q. How many different areas did they have?  
24 A. Well, you got a shred area, you got a baler area, you  
25 got number one shred area, you got P&S area, you got a

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1 sort area, you got busheling areas. You know, there's  
2 quite a few different areas, and I'm sure I'm  
3 forgetting one somewhere.  
4 Q. And your accident happened at the sort area?  
5 A. At the sort area, correct.  
6 Q. But prior to the accident there were times where you  
7 would go to a pile, open up the door, and a  
8 determination would be made that you should go to a  
9 different pile; correct?  
10 A. Not usually.  
11 Q. But it happened?  
12 A. It did happen, yes.  
13 Q. And you understood that was a possibility; correct?  
14 A. Correct.  
15 Q. And --  
16 A. But not on a DTE load. Usually that was always a sort  
17 load.  
18 Q. Okay. But this one was different because of the  
19 I-beams?  
20 A. Correct.  
21 Q. Did you know prior to transporting that load to  
22 Ferrous that day that I-beams would not go to the sort  
23 pile?  
24 A. If there was enough of them.  
25 Q. Did you know where the I-beams would go?

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1 A. P&S.  
2 Q. Could you -- okay. So you knew that if you had --  
3 strike that.  
4 If you knew -- well, strike that.  
5 Did you know there was the amount of  
6 I-beams in this load when you first looked at it at  
7 DTE?  
8 A. No.  
9 Q. Okay. If you had known what the load was by now  
10 looking -- we've seen the pictures and we've seen what  
11 the load was. Would you have known that would have  
12 been generally an I-beam load that would have gone to  
13 P&S?  
14 A. Yeah, if I had known those was in there, and I would  
15 have told Dave that, "Hey, there's a lot of beams."  
16 You know, if it would have been an after hours load, I  
17 would have dumped it in the sort pile.  
18 Q. Based on what you knew at the time?  
19 A. Right. Correct.  
20 Q. But based on what you found out after by opening the  
21 door and seeing a whole load, would you have concluded  
22 that was a P&S dump?  
23 A. Well, it was during business hours. I'm letting them  
24 determine.  
25 Q. Okay. Would you have told Dave Wise, if you had

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1 known, "Hey I have a lot of I-beams, just wanted to  
2 let you know"?  
3 A. If I had known, I probably in conversation would have  
4 said that.  
5 Q. Because you realized and you knew from your experience  
6 that they may have wanted you to go to the P&S pile;  
7 correct?  
8 A. Like on my experience the majority, you know, if  
9 there's more -- you know, if there's 75 percent  
10 I-beams, well, you know, it's easier to have the  
11 majority there then haul it over there. It's easier  
12 for them to take the other stuff out.  
13 Q. But if you had known what the load was in its entirety  
14 you would have mentioned it, told Dave Wise that  
15 because he may have directed you to the P&S pile?  
16 A. May have, correct.  
17 Q. Because you understood the different types of loads go  
18 to different piles at Ferrous?  
19 A. Correct.  
20 Q. And was there a decision made as to where you were  
21 going to take this load on the day of your accident?  
22 A. Before my leg got cut off, yeah, when we was there in  
23 this sort area.  
24 Q. Was it going to go to P&S?  
25 A. Yes. Steve, he's the manager now up there, he said,

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1 "Hey, let's take that over to the P&S pile," and  
2 that's when it all happened.  
3 Q. And given your understanding of what the load was at  
4 that time, were you surprised by that decision?  
5 A. I wasn't sure, you know, because it could go either  
6 way.  
7 Q. Okay. So you weren't surprised that they said --  
8 A. Right.  
9 Q. -- send it to the P&S, and you wouldn't have been  
10 surprised if they said keep it here?  
11 A. Right.  
12 Q. And this was not the first time you were being told as  
13 a driver for P&T at Ferrous to go to a different pile  
14 and dump; would that be fair?  
15 A. I believe that would be fair, yeah.  
16 Q. In fact, didn't you make a joke when you were told to  
17 go to the sort pile -- or the P&S pile, didn't you  
18 make a joke like give me 10 bucks or give me five  
19 bucks to move that?  
20 A. I don't remember if I did or not. We all joke around  
21 up there, so that's keeping the spirits high.  
22 Q. Now when you came into the Ferrous yard that day, the  
23 day of the accident, do you recall any conversations  
24 you had with the scale operator?  
25 A. No, not really.

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1 Q. If I understood your testimony, you proceed from the  
2 scale to the inspection area where Mr. Wise was?  
3 A. Correct.  
4 Q. Do you recall any conversations with Mr. Wise at the  
5 inspection area?  
6 A. I'm sure we talked, but about what I can't tell you,  
7 you know. I'm sure I told him where it came from and  
8 what it was and all that, and I don't even remember if  
9 he got up on the ladder and looked because, like I  
10 say, in most case scenario power plant load goes to  
11 the sort area.  
12 Q. And does your paperwork that you give to the scale  
13 house indicate that it's coming from DTE?  
14 A. On that time ticket, yes.  
15 Q. So is it fair for me to conclude or summarize it by  
16 saying you don't recall any specific conversations you  
17 had with Mr. Wise at the inspection area?  
18 A. No, nothing about that, no.  
19 Q. And is it fair to say that you can't tell me one way  
20 or another whether Mr. Wise got up on that load and  
21 looked inside?  
22 A. Correct.  
23 Q. Okay. How far away is the sort area from the  
24 inspection area?  
25 A. Oh, I would say probably four or five truck lengths,

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1 not far.  
2 Q. Was any other truck dumping at the time you came in?  
3 A. No.  
4 Q. Was there any other truck at the sort area?  
5 A. No.  
6 Q. Was there any other truck dumping anywhere else that  
7 you could see?  
8 A. Possibly.  
9 Q. Did you see any?  
10 A. I didn't see any, no, but I mean there could have been  
11 on the back side of the pile. I don't know.  
12 Q. You didn't see?  
13 A. No.  
14 Q. And this was early in the morning; correct?  
15 A. Correct.  
16 Q. And did you see any cranes operating there?  
17 A. Not that I remember.  
18 Q. Do you know if the shredder was operating?  
19 A. I couldn't even tell you that.  
20 Q. Okay. So you proceed to the sort area; right?  
21 A. Correct.  
22 Q. Okay. You back into the pile?  
23 A. Correct.  
24 Q. All right. Do you then push your load back before you  
25 open it?

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1 A. Yeah. You get out and undo the straps.  
2 Q. Undo the straps?  
3 A. Then you get it to the back of the trailer, and then  
4 you open your door.  
5 Q. And so it's at a point where you can then just raise  
6 it?  
7 A. Correct.  
8 Q. I think you testified your best estimate was that this  
9 door was open about five minutes or so before this  
10 pipe fell?  
11 A. It was open awhile, yeah.  
12 Q. Could it have been longer than five minutes? I saw  
13 some estimates. Ten minutes? Could it have been  
14 longer?  
15 A. It could have been. I can't -- you know, like I say,  
16 you know, I know it was open for five minutes at  
17 least.  
18 Q. Could it have been 10 minutes?  
19 A. Possible. I don't know.  
20 Q. The hundreds of times you've been at Ferrous dumping  
21 before this accident, can you give me an estimate of  
22 how often when you opened the back door some material  
23 would come out?  
24 A. Probably five, 10 percent.  
25 Q. And of that five to 10 percent of times, can you tell

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1 me what percentage of those instances occurred right  
2 when you popped the door as opposed to when you  
3 actually opened the whole door?  
4 A. I would say probably 90 percent of the time, it  
5 happened right prior to opening the door, and  
6 sometimes it would push the door open.  
7 Q. Okay. So of the five to 10 percent of the time where  
8 material came out, 90 percent of that would come out  
9 right when you popped the door?  
10 A. Right.  
11 Q. So it was sitting right against the door?  
12 A. Right.  
13 Q. And then the other estimated 10 percent would be as  
14 you're opening that door?  
15 A. Right.  
16 Q. And you understand obviously opening that door that  
17 material can come out?  
18 A. Correct.  
19 Q. Now have you ever had a situation where the door was  
20 open for several minutes and scrap came out?  
21 A. No, not really.  
22 Q. And that's what happened in this case, right, it was  
23 open at least five minutes?  
24 A. Correct.  
25 Q. So this was the first time you had ever seen anything

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1 like this?  
2 A. Right.  
3 Q. You know what, I think in response to Mr. Young's  
4 questions you said you know that you're not supposed  
5 to stand behind an open door of scrap metal; correct?  
6 A. Correct.  
7 Q. And the reason is because something could fall; right?  
8 A. Right.  
9 Q. It's common sense?  
10 A. Common sense.  
11 Q. Okay. And I think you testified earlier, and I wrote  
12 down what you had said specifically, when you were  
13 standing looking at the load with the Ferrous  
14 employees to determine where to bring the load, you  
15 stood something to the effect of "as far as we could  
16 go"?  
17 A. Correct.  
18 Q. Okay.  
19 A. Where we felt safe.  
20 Q. So when you were standing with the Ferrous employees  
21 looking at that load, you felt you were in a safe  
22 place?  
23 A. Correct.  
24 Q. And really you didn't even have to be there; did you?  
25 I mean Ferrous was determining where that load was

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1 going.  
2 A. I had to know where it was going. They were talking  
3 to me.  
4 Q. Right, but you didn't have to be standing with them,  
5 you could have stood where you wanted; right?  
6 A. I probably could have, yeah.  
7 Q. But, in any event, where you were standing with the  
8 Ferrous employees you felt safe?  
9 A. Correct.  
10 Q. You felt out of harm's way?  
11 A. Correct.  
12 Q. And you would never have let any Ferrous employee make  
13 you stand in a position or in an area where you felt  
14 unsafe?  
15 A. Oh, no.  
16 Q. They could never say, "Hey, come over here." You'd  
17 say, "You're nuts, I'm not standing there."  
18 A. That's right.  
19 Q. In Exhibit Number 3, you drew a circle saying --  
20 you've got circles where you were standing?  
21 A. We was back in that area, yes.  
22 Q. In that area, right, and you couldn't be specific  
23 because of the pipe and everything; right?  
24 A. Correct.  
25 Q. Okay. My question was -- I can't tell from the

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1 angle -- if I'm looking at the back of the truck,  
2 okay, you know, the width of the back of the box, if  
3 you will, are you within that if you're drawing, you  
4 know, parallel lines back or you to the left of that?  
5 A. We would be to the left a little bit.  
6 Q. Okay. So you're not even behind the truck?  
7 A. We're not directly behind it, no.  
8 Q. And so you're --  
9 A. I mean it only takes a second to scan and see what's  
10 in that box to determine, and I think that's what  
11 Steve and Dave did.  
12 Q. How long did it take them to make a decision?  
13 A. Not very long.  
14 Q. Less than 30 seconds?  
15 A. Probably 30, yeah, seconds, a minute, you know.  
16 Q. So you're standing with the FTP people at least eight  
17 feet back?  
18 A. All of that.  
19 Q. Okay. Maybe more?  
20 A. I don't think it would be much more, but it could have  
21 been. Well, it could have been 10 foot. However far  
22 we could get back without climbing up on the pile.  
23 Q. And you're in a position where you think you're safe?  
24 A. Correct.  
25 Q. And you're out of harm's way?

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1 A. Correct.  
2 Q. And you're a little bit off to the side?  
3 A. Correct.  
4 Q. So you're not even behind the truck; right?  
5 A. Right.  
6 Q. Okay. And is that the only area that you were  
7 standing with these Ferrous employees at any time  
8 while your truck is in the sort area?  
9 A. Yeah, that's it.  
10 Q. So they come over and they're standing there and you  
11 join them; is that how it happened?  
12 A. They walked over, Dave, and then Steve showed up as  
13 I'm coming back around from opening up the door, and  
14 that's when we determined, you know, after that, you  
15 know, he was like, "Hey, let's take that over to the  
16 sort -- or the P&S area."  
17 Q. So as you testified in response to Mr. Young's  
18 question, you open the door by swinging the door open  
19 and latching it to the passenger side of the box?  
20 A. Correct.  
21 Q. When you're doing that, are the Ferrous employees  
22 already in this area that you're talking about, eight  
23 feet away?  
24 A. I don't -- I don't think so. I think they're on there  
25 way to it.

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1 Q. Did they eventually get to that spot before you got  
2 there?  
3 A. I don't remember.  
4 Q. Okay. In other words, what I'm asking is did you join  
5 them where they were standing? Did you walk together?  
6 Do you remember how that happened?  
7 A. No, we all kind of met up in the back together, you  
8 know. I mean I'm doing my job and they're figuring it  
9 out, you know, and we all meet up.  
10 Q. After you latched the door on the passenger side, did  
11 you walk back behind the truck or did you go around  
12 the front?  
13 A. Behind it.  
14 Q. So you walked essentially across the back of the  
15 truck?  
16 A. Out as far as I was when I was before. I don't never  
17 walk directly behind it.  
18 Q. Because of the potential danger?  
19 A. Right.  
20 Q. So you're on the passenger side, you're going to walk  
21 basically through the entire back of the truck to  
22 where you're standing in Exhibit Number 3?  
23 A. Right, to talk to Steve and Dave.  
24 Q. And you swing wide so you avoid any potential falling  
25 out?

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1 A. Correct.  
2 Q. And then you join the Ferrous people at the spot  
3 you've marked on Exhibit 3?  
4 A. In that area.  
5 Q. Right, which you think is safe?  
6 A. Right.  
7 Q. Okay. Now are you standing with the Ferrous people in  
8 any position at any time in this sort area other than  
9 the area you marked on Exhibit 3?  
10 A. I don't believe so.  
11 Q. Okay. So the only area that you were standing with  
12 any Ferrous employee at the sort pile was in an area  
13 you felt was safe from the load?  
14 A. Right, while I was with them.  
15 Q. Yeah, that's right. The only area was in that area  
16 you've marked as Exhibit 3?  
17 A. Somewhere in that vicinity, yes.  
18 Q. Right, which you thought was a safe area?  
19 A. I thought so.  
20 Q. Okay. And then you testified you got hit after you  
21 left that area and was walking toward the front of  
22 your truck?  
23 A. Was walking up there, yep.  
24 Q. So you were walking closer to the back of the truck?  
25 A. I imagine I walked up to walk up the side of it. How

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1 far away from it, I don't know.  
2 Q. But my point is from where you're standing with the  
3 Ferrous people to where you end up getting hit, you  
4 have walked closer to the truck?  
5 A. Yes.  
6 Q. And closer to the open scrap area?  
7 A. Yes.  
8 Q. And closer to the open load; right?  
9 A. Yes.  
10 Q. And if we look at this picture, Exhibit Number 5, you  
11 had testified earlier that you believe where the blood  
12 is is where you were injured; correct?  
13 A. Yep. I would have to say yes, because I remember  
14 falling backwards.  
15 Q. Okay. You did fall backwards?  
16 A. Right.  
17 Q. Okay.  
18 A. Then I tried to stand up and I couldn't.  
19 Q. Do you recall where you were facing when you got hit?  
20 A. The front of the truck.  
21 Q. So you were walking toward the front of the truck?  
22 A. Right, and everything -- when that pipe hit me  
23 everything was behind me and all I heard them yell is  
24 my name.  
25 Q. And it hit your left leg?

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1 A. In my left leg.  
2 Q. Behind it?  
3 A. On the back, yep.  
4 Q. In the back of the knee essentially?  
5 A. Well, behind in the back of my leg.  
6 Q. Okay. Just below the knee or above the knee?  
7 A. I had a pair of Wellington boots on. It was about an  
8 inch above that. They took off more than they wanted  
9 to on my leg.  
10 Q. So it was lower than the knee?  
11 A. Right.  
12 Q. It was lower than the amputation?  
13 A. It was -- yeah, correct.  
14 Q. So you're walking straight ahead at or near this area  
15 where the blood is?  
16 A. Correct.  
17 Q. Okay. Now you would agree with me, Mr. McMaster, that  
18 you could have swung wider if you had wanted to?  
19 A. If you would have thought about it and not think  
20 something is going to fall out, yes.  
21 Q. I mean you could have gone further away from the  
22 truck?  
23 A. Right. If I had known that pipe was going to come out  
24 and grab me, I could have walked a long ways away from  
25 it, but I don't know.

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1 Q. You could have done that; you chose the path you  
2 walked?  
3 A. Correct.  
4 Q. And you could tell, you would agree with me in Exhibit  
5 5, you could have walked further away from the truck  
6 if you wanted to?  
7 A. Correct.  
8 Q. Right?  
9 A. Correct. Yes.  
10 Q. So it appears from Exhibit 5 at least that you are  
11 still again outside of the back of the truck from the  
12 standpoint of the width of the box; would that be  
13 fair?  
14 A. I'm quite a ways from it, I would say.  
15 Q. Do you understand what I'm saying? I'm saying outside  
16 of the --  
17 A. I believe I'm just past it, the back of that box.  
18 Q. You think you're in front of the end? That's a bad  
19 question.  
20 MR. YOUNG: Agreed.  
21 MR. O'SHEA: We can all stipulate.  
22 THE WITNESS: Here's the back of the box.  
23 I'm just ahead of it.  
24 BY MR. O'SHEA:  
25 Q. Okay. So Exhibit 18, you're saying that the blood

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1 stains are in front of the back of the box?  
2 A. I would think so if you come over on an angle this way  
3 or right at it.  
4 Q. And do you have any estimate as to how the distance  
5 between tires of the truck and the blood stain as we  
6 can see in Exhibit 5?  
7 A. I have no idea how far that would be, no.  
8 Q. Do you recall when the load was open seeing the blue  
9 pipe?  
10 A. Yep. Yes.  
11 Q. Was there any indication that it was unsteady in any  
12 way?  
13 A. No.  
14 Q. Was there any indication that the load was in any way  
15 unsteady?  
16 A. No.  
17 Q. Would there have been any -- did you see any evidence  
18 that would have led you or anyone from Ferrous to  
19 believe that that pipe posed a danger or was going to  
20 fall?  
21 A. No.  
22 Q. And you don't know why it fell?  
23 A. I have no idea why.  
24 Q. And, yet, as you testified, even though you had no  
25 indication, you were still taking precautions as a

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1 seasoned driver not to put yourself in harm's way  
2 because you never know what can happen?  
3 A. Correct.  
4 Q. Do you recall any discussions you had with the Ferrous  
5 employees at the sort pile?  
6 A. Just determining where to put it.  
7 Q. Do you recall any specific comments made by anybody?  
8 A. As far as the load went?  
9 Q. Yes. As far as anything went.  
10 A. No, not really, just, you know, figured out seeing all  
11 them I-beams in there and we decided to go there. I  
12 shouldn't say we. Steve decided.  
13 Q. Okay. And Steve said you're going to the P&S pile?  
14 A. Yes, you should put it in the P&S, yeah.  
15 Q. Do you recall any other conversations other than just  
16 generally, "Here's what we're going to do, we're going  
17 to dump it"?  
18 A. No. Pretty much that was about it, you know, other  
19 than maybe joking around a little bit with one  
20 another, you know.  
21 Q. And I believe you testified in response to Mr. Young's  
22 questions you were going to go to your truck, turn off  
23 the hydraulics and then put the back back on?  
24 A. Put the door back on, yes. Yeah, I don't think you  
25 would want to drive around the plant with an open door

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1 with a load in it.  
2 Q. I show you what's been marked as Exhibit 12. That's  
3 the two pictures of the load coming across the scale.  
4 Do you see that? Do you see the pipe?  
5 A. Yep.  
6 Q. Is that -- do you recall seeing -- you recall seeing  
7 the pipe at DTE?  
8 A. Correct.  
9 Q. Is that in pretty much the same position can you tell?  
10 A. Yep. Right there.  
11 Q. In the same position?  
12 A. In the same position, yes, sir.  
13 Q. Okay. Do you know whether it was against the door?  
14 A. When I left DTE, I believe it was.  
15 Q. Can you tell from that picture whether or not this --  
16 whether the pipe was on the floor or not?  
17 A. No.  
18 Q. Okay. You don't know whether it was on anything or  
19 not? You don't know whether it was on any other  
20 material or not?  
21 A. That I -- it probably was, but I can't say for sure.  
22 Q. Do you have an estimate as to how high off the ground  
23 the pipe was when you saw it at the sort pile?  
24 MR. YOUNG: Off the bed of the trailer you  
25 mean?

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1 MR. O'SHEA: Off the ground, that's it.  
2 THE WITNESS: What is it, ground or bed?  
3 BY MR. O'SHEA:  
4 Q. Off the ground.  
5 MR. YOUNG: Oh, okay.  
6 BY MR. O'SHEA:  
7 Q. You're looking at this pile. You're looking at the  
8 open load. Do you have an estimate as to how high off  
9 the ground that pipe was?  
10 A. I would say six feet.  
11 Q. Do you know how tall the bed of your truck is?  
12 A. Right about that with that can on there, around six  
13 feet.  
14 Q. Not counting the can.  
15 A. Oh, you're talking about the stinger?  
16 Q. Not counting the can.  
17 A. That stinger is probably five-and-a-half feet off the  
18 ground. I mean I never really measured it to know.  
19 MR. YOUNG: Is the stinger the trailer?  
20 THE WITNESS: Well, that's that boom, we  
21 call it the stinger, that goes up in the air.  
22 MR. YOUNG: Okay.  
23 BY MR. O'SHEA:  
24 Q. I think this is obvious, but I'll say it, ask the  
25 question.

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1 You were injured as you testified in  
2 Exhibit 18. If you were standing in the area that you  
3 were standing with the Ferrous people, you would not  
4 have been hit; correct?  
5 A. Most likely not, no.  
6 Q. Do you recall any conversations with any Ferrous  
7 employees after you got hit?  
8 A. After I got hit? Just them coming to see me in the  
9 hospital, you know, and say "hang in there."  
10 Q. Did you visit FTP after the accident?  
11 A. After I got released from the hospital, yeah.  
12 Q. You went up there, okay.  
13 A. Went up there because the one operator gave me his  
14 belt to put around my leg, and we went back there,  
15 and, you know, I told him thanks for helping me.  
16 Q. Do you believe the Ferrous employees saved your life?  
17 A. Yes.  
18 Q. You told them that, right, that you were grateful?  
19 A. Well, I appreciated it.  
20 Q. You told them that you were grateful?  
21 A. Exactly, yeah.  
22 Q. I think you already testified in response to Mr.  
23 Young's questions, but you don't know whether the pipe  
24 as in these pictures we see was the actual landing  
25 spot after it hit you, you don't know whether it was

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1 moved?  
2 A. I have no idea.  
3 Q. Do you know whether the truck was moved?  
4 A. From that picture right there?  
5 Q. Either Exhibit 5 or Exhibit 18, do you know if that's  
6 where the truck actually was when --  
7 A. That's where it was sitting when I got hit by that  
8 pipe, yes.  
9 Q. Okay.  
10 A. I don't think my -- my nephew told tell me that they  
11 didn't move that pipe until later -- or that truck  
12 until later on that afternoon when they was doing  
13 investigations.  
14 Q. So you're not sure that that was the actual resting  
15 place of the pipe, but you are testifying --  
16 A. I'm pretty sure --  
17 Q. -- that's where the truck was?  
18 A. I'm pretty sure that's where the truck was. So, you  
19 know, I can't see them moving it with the cones and  
20 the yellow tape.  
21 Q. No one ever told you that it was moved?  
22 A. Otherwise, no.  
23 Q. And would you agree with me, Mr. McMaster, that you  
24 didn't need anyone from Ferrous to tell you not to  
25 stand behind the truck and to warn you about any

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1 danger of potentially falling scrap; right?  
2 A. Them themselves telling me that?  
3 Q. No. You didn't need them to tell you that, you knew  
4 that?  
5 A. No, no, I didn't need them to tell me that.  
6 Q. You sued my client, Ferrous?  
7 A. Right.  
8 Q. What did they do?  
9 A. I don't know how to answer that.  
10 Q. Can you tell me anything that any of those Ferrous  
11 guys at the sort pile did wrong that day?  
12 MR. WEGLARZ: I'll object to the question.  
13 I think that's an ultimate issue, but go ahead and  
14 answer if you can answer.  
15 THE WITNESS: I don't know. I can't -- I  
16 can't answer it.  
17 BY MR. O'SHEA:  
18 Q. Okay. Well, I'm just here to ask you.  
19 So I mean can you tell me anything as you  
20 sit hire? Can you identify anything that anyone at  
21 Ferrous did wrong that day?  
22 MR. WEGLARZ: Same objection.  
23 Go ahead and answer, if you can answer.  
24 THE WITNESS: I don't think nobody did  
25 anything wrong because nobody knows what was going to

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1 happen.  
2 BY MR. O'SHEA:  
3 Q. Nobody could see that one coming?  
4 A. No, no.  
5 Q. Back to Mr. Young's question, it was a freak accident?  
6 A. Possibly, yeah, I mean.  
7 MR. WEGLARZ: Form objection. I don't know  
8 what "freak" means.  
9 BY MR. O'SHEA:  
10 Q. Did you in any way foresee the possibility that that  
11 pipe was going to fall and hit you?  
12 A. No. No.  
13 Q. If you had even had a hint that that was a problem or  
14 a potential issue or potentially happening, you would  
15 have been nowhere near where you were when you got  
16 hit; right?  
17 A. No, I wouldn't have been.  
18 Q. You would have been much further away from the truck?  
19 A. Correct.  
20 Q. I don't have any other questions.  
21 Thank you, sir.  
22 A. You're welcome.  
23 RE-EXAMINATION  
24 BY MR. YOUNG:  
25 Q. I have just a few follow-up questions.

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1 Do you have a memory of the positioning of  
2 the blue pipe when you looked at it in the roll-off  
3 container at DTE before you left there?  
4 A. I just know it was up against the back door.  
5 Q. But do you know whether it was flat on the bottom bed  
6 of the box or whether it was laying upright?  
7 A. I don't know.  
8 Q. Same question from Exhibit Number 12. Can you tell  
9 from looking at that photograph whether that blue pipe  
10 is laying flat on the bed of the box or whether it's  
11 laying upright?  
12 MR. WEGLARZ: Okay. Hold it. I want to  
13 make sure I understand the question.  
14 What do you mean by upright? Like  
15 vertical?  
16 MR. YOUNG: On an angle.  
17 MR. WEGLARZ: Standing straight up?  
18 MR. YOUNG: Well, or some angle of some  
19 degree.  
20 MR. WEGLARZ: Do you understand what he's  
21 getting at?  
22 THE WITNESS: It was laying down or  
23 standing up?  
24 BY MR. YOUNG:  
25 Q. Yeah. Looking at my pen, do you know if it was laying

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1 flat like that or was it at some angle inside the box?  
2 I'm asking you from the photograph can you tell?  
3 A. I can't tell, no.  
4 Q. Okay.  
5 A. It looks flat to me.  
6 Q. It did to me. That's why I'm asking.  
7 At the time of this accident, you had  
8 control of the tractor that you were operating; right?  
9 A. Correct.  
10 Q. You had control of the trailer?  
11 A. Correct.  
12 Q. You had control of the contents of the roll-off  
13 container until you dumped it on the ground; right?  
14 A. Well, I had no control of what's in the box, you know.  
15 Let's rephrase the question here.  
16 Q. Okay. Since you had not unloaded the material in the  
17 box to Ferrous yet, it was within your possession and  
18 control?  
19 A. Yes.  
20 Q. If I understand the process, once you dump it it's  
21 theirs and you're gone; right?  
22 A. Yep. Yes.  
23 Q. So one thing I'm having a little trouble with as we've  
24 been sitting here today is why you would not have  
25 heard that blue pipe falling from the roll-off

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1 container, do you know?  
2 A. I heard him yelling my name.  
3 Q. I know that, but they --  
4 A. As far as that, I didn't hear nothing.  
5 Q. And so do you know whether or not the roll-off -- I'm  
6 sorry.  
7 Do you know whether the blue pipe falling  
8 from the roll-off container made any type of a noise?  
9 A. I'm sure it probably did when it hit the ground.  
10 Q. How about before it hit the ground?  
11 A. Nope. All I heard was my name.  
12 Q. And then, secondly, since we've gone through where  
13 you're situated in reference to the back of the  
14 roll-off container, and now I understand a little bit  
15 better that the blue pipe hits the back of your left  
16 leg --  
17 A. Correct.  
18 Q. -- can you tell me why you would not have seen that  
19 blue pipe falling in your peripheral vision to your  
20 right?  
21 A. Because I probably already passed the container.  
22 Q. You think that your body --  
23 A. Is already by it.  
24 Q. -- is physically beyond the container?  
25 A. Correct, because otherwise you would probably see

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1 that.  
2 Q. And since the -- well, let me ask you this:  
3 Do you know if that pipe landed on the  
4 ground and bounced in any direction?  
5 A. I have no idea.  
6 Q. Because as you're walking toward where the hydraulics  
7 are on the driver's side of the truck, your right leg  
8 is closer to the truck than your left leg is?  
9 A. Correct.  
10 Q. Is it true that you could have walked from the safe  
11 area where you were standing with the Ferrous  
12 employees around the passenger side of the truck,  
13 around the front of the truck to where the hydraulics  
14 were, and waited for them to give you the signal go to  
15 the P&S area?  
16 A. That question I can't answer.  
17 Q. Well, it is possible; right?  
18 A. It could have been possible, yeah, but then I think  
19 you're going to be more in harm's way by walking back  
20 behind it than you would have been if you just walked  
21 up the side of it.  
22 Q. And when you say the side of it, do you mean the  
23 driver's side?  
24 A. The driver's side, because you're already closest to  
25 that side versus walking back around, you know, that

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1 could have rolled over and killed me.  
2 Q. So the only question I have is there's no reason for  
3 you to be where Steve is for Steve to determine where  
4 you're going to take the load; right?  
5 A. Yeah, we was talking.  
6 Q. I know.  
7 A. So --  
8 Q. I know you were talking, but --  
9 A. To determine where to put it.  
10 Q. But Steve could have said -- made his 30-second  
11 determination, say it's the P&S area, you could have  
12 been standing near the driver's door of the tractor  
13 and said, "Okay, ready to go"?  
14 A. I probably could have been, but I don't see that  
15 happening. I mean, you know, I wouldn't be able to  
16 hear him say it, not with the truck running.  
17 Q. Why wouldn't you be able to hear him say it?  
18 A. If I'm at the truck and he's at the back back there  
19 where he was, that's quite a distance.  
20 Q. What is the distance?  
21 A. I'd say 75 feet, maybe 80 feet, from the front of my  
22 truck to that pile back there.  
23 Q. And was there any noise going on that would have  
24 drowned out the "Hey, Dean"?  
25 A. My truck.

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1 Q. And you answered one of Mr. O'Shea's questions. He  
2 asked you, "Have you ever had the situation where the  
3 door opened and no items fell out immediately, but  
4 after a while items fell out?"  
5 Are you following my question?  
6 A. I've had that like with automobiles, but the plastic  
7 will fall.  
8 Q. Okay. After the door has been open up for a while?  
9 A. Yep. For whatever length the time it is to walk  
10 around, walk back, to walk back up.  
11 Q. But the door of the container is open?  
12 A. At that point in time, yeah.  
13 Q. And did you ever figure out why those plastic  
14 materials would fall out of that container?  
15 A. No. I don't know.  
16 Q. Do you think it could have been due to the vibration  
17 from the diesel truck running?  
18 A. I don't know. I mean I can't answer that part being  
19 it's on rubber.  
20 Q. It's on what?  
21 A. Rubber tires.  
22 Q. Now I also heard you say in answer to some of  
23 Mr. O'Shea's questions that you fell backwards?  
24 A. Mm-hmm.  
25 MR. WEGLARZ: Is that a yes?

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1 THE WITNESS: Yes.  
2 BY MR. YOUNG:  
3 Q. Which means that your body would have been at least  
4 toward the front of the truck as where we see the  
5 blood?  
6 A. I'm not following what you're trying to get at.  
7 Q. Your body when you were hit by the blue pipe would  
8 have been at least to the front of where the blood is  
9 since you fell backwards?  
10 A. Behind it.  
11 MR. WEGLARZ: I guess it's all relative.  
12 THE WITNESS: Right.  
13 BY MR. YOUNG:  
14 Q. Let's see. Maybe if we use this.  
15 It seems to me from your description that  
16 you're at least at this location where the blood is  
17 when you're hit by the blue pipe on the back of your  
18 left leg.  
19 A. Right.  
20 Q. And then you fall backwards?  
21 A. Backwards.  
22 Q. Toward where the blue pipe is?  
23 A. Correct.  
24 Q. In reference to the bottom of the photograph in  
25 Exhibit 18; right?

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1 A. Correct.  
2 Q. Okay.  
3 A. But you was saying forward.  
4 Q. Like Todd said, I guess it is all relative.  
5 And then lastly, I believe, do you know  
6 whether that pipe rolled off of the roll-off  
7 container?  
8 A. Do I know if it rolled off?  
9 Q. Right.  
10 A. Yes.  
11 Q. Okay. I'm using the word and asking the question with  
12 a particular reference to the word "roll."  
13 A. Well, let's not go with roll. Let's say it fell off.  
14 Q. Because you don't know if it rolled off?  
15 A. I don't know if it rolled off. It fell off the  
16 trailer -- container.  
17 Q. And do you know of any way that that blue pipe could  
18 have been positioned in the back of the trailer so  
19 that it wouldn't fall out of the trailer as it did?  
20 A. If I was loading it, I would have loaded it parallel  
21 with the trailer.  
22 Q. Parallel to the sides of the trailer?  
23 A. Parallel, the long ways.  
24 Q. And why do you say that?  
25 A. Because then it ain't going to roll.

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1 Q. Well, since we don't know whether it rolled --  
2 A. Or fell. It wouldn't have fell out.  
3 Q. Even if it was loaded parallel to the sides of the  
4 trailer, once you loaded it on the angle onto the bed  
5 of the trailer, that is still going to -- that is  
6 still going to go toward the back door of the trailer;  
7 right?  
8 MR. WEGLARZ: Form objection.  
9 THE WITNESS: Possible, yes.  
10 BY MR. YOUNG:  
11 Q. Have you ever loaded a roll-off container?  
12 A. No.  
13 Q. You said if you were going to load it, that's the way  
14 you would load it?  
15 A. I would load it parallel.  
16 Q. And you say that based upon what, training or  
17 experience?  
18 A. No, just other boxes in general that I picked up that  
19 that's how they load them that way.  
20 Q. Couldn't that roll -- I'm sorry.  
21 Couldn't that blue pipe have served as like  
22 a barrier across the width of the roll-off container  
23 for the other items that are positioned in front of  
24 it?  
25 A. I don't believe so.

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1 MR. WEGLARZ: Form objection.  
2 THE WITNESS: I don't believe so.  
3 BY MR. YOUNG:  
4 Q. And why do you not believe so?  
5 A. Because I'm -- I don't know, but I would have to think  
6 that was the last thing that was ever put in that can.  
7 Q. And why do you say that?  
8 A. Well, I would have to assume, I mean, because it could  
9 have been some other stuff up there, but why wouldn't  
10 they --  
11 MR. WEGLARZ: Robert, are you saying that  
12 was the last thing put in or are you guessing? I  
13 don't want you to --  
14 THE WITNESS: I can't guess. I mean I  
15 don't know.  
16 BY MR. YOUNG:  
17 Q. Because it seems to me --  
18 A. Anything could have been put in there last.  
19 Q. Yeah, it seems like the top materials in that  
20 container would have been put in there last.  
21 A. Right.  
22 Q. That's all the questions I have for you then.  
23 EXAMINATION  
24 BY MR. WEGLARZ:  
25 Q. I've got a question or two.

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1 Mr. McMaster, have you ever hauled pipes  
2 similar to the pipe that struck you in this accident  
3 before the date of this accident?  
4 A. Yes.  
5 Q. Okay. And where did you -- what yards or where did  
6 you pick those pipes up from?  
7 A. Various parts. I picked them up at DTE St. Clair. I  
8 picked them up at DTE Belle River. I picked them up  
9 at different yards.  
10 Q. And on those prior occasions, how were those pipes  
11 loaded in your container?  
12 A. Parallel with the side of the box.  
13 Q. Okay. And on this date you picked up a pipe. That  
14 wasn't unusual to you; correct?  
15 A. Correct.  
16 Q. But the way that it was loaded, that was different;  
17 correct?  
18 A. Correct.  
19 Q. And that it was parallel to the back door of the  
20 container rather than being parallel to the side of  
21 the container; correct?  
22 A. Correct.  
23 Q. And on those other -- by the way, how many times would  
24 you say you picked up containers that would have pipes  
25 in it similar to the pipe here?

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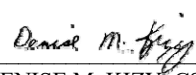
1 A. Number I can't give you, but quite a few.  
2 Q. More than five?  
3 A. More than five.  
4 Q. More than 10?  
5 A. Ten, you know. Could have been 15. You don't know  
6 what's in the bottom.  
7 Q. And did those pipes every fall off the back of the  
8 trailer after you opened the door?  
9 A. No.  
10 Q. They always stayed in there until you finally unloaded  
11 your load; correct?  
12 A. Correct.  
13 MR. YOUNG: I'm just going to object to the  
14 leading.  
15 MR. WEGLARZ: Okay. That's all I have.  
16 Thank you.  
17 RE-EXAMINATION  
18 BY MR. YOUNG:  
19 Q. Very quickly, Mr. McMaster, the responsibility for  
20 that load is the responsibility of the operator of the  
21 tractor/trailer; is that correct?  
22 MR. WEGLARZ: Form objection. Are you  
23 talking about the actual loading of the --  
24 MR. YOUNG: No.  
25 BY MR. YOUNG:


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1 Q. The responsibility for the load once you pick it up at  
2 DTE is your responsibility as the driver of the truck?  
3 MR. WEGLARZ: Form objection.  
4 BY MR. YOUNG:  
5 Q. Is that correct?  
6 MR. WEGLARZ: Go ahead and answer if you  
7 know how to answer that.  
8 THE WITNESS: I think so.  
9 MR. YOUNG: Okay. Thanks.  
10 RE-EXAMINATION  
11 BY MR. WEGLARZ:  
12 Q. I just want to make clear, though, you're not  
13 responsible, though, for the initial loading of that  
14 container?  
15 A. No.  
16 Q. Hold on. Make sure I have nothing else.  
17 That's it. Thank you, Mr. McMaster.  
18 MR. YOUNG: We're all set.  
19 (Deposition concluded at 3:00 p.m.)  
20  
21  
22  
23  
24  
25

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1 CERTIFICATE  
2 STATE OF MICHIGAN  
3 COUNTY OF OAKLAND  
4  
5 I, DENISE M. KIZY, a Notary Public in and  
6 for the above county and state, do hereby certify that  
7 this deposition was taken before me at the time and  
8 place hereinbefore set forth; that the witness was by  
9 me first duly sworn to testify to the truth; that this  
10 is a true, full, and correct transcript of my  
11 stenographic notes so taken; and that I am not  
12 related, nor of counsel, to any party, nor interested  
13 in the event of this cause.  
14  
15  
16  
17  
18  
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21  
22  
23  
24  
25

  
DENISE M. KIZY, CSR-2466, Notary Public  
Oakland County, Michigan  
My commission expires 7-28-2019



# EXHIBIT 2

**Trip Report 153445**

Status:D Type:SW Company:FPT Yard:PON Ready:09/30/14 10:50  
 Entered:09/30/14 10:50 Entered By:COLUCCI, JOE (JCOLUCCI)  
 Changed:10/02/14 13:05 Changed By:P&T, DEAN MCMASTER (2093)  
 Completed:10/02/14 13:05 Completed By:P&T, DEAN MCMASTER (2093) Completed By Driver

Auto Scale Notice Not Sent

Scale Reference Number:0021700473

Account:DETR104496 DE-BELLE RIVER 4505 KING RD ST CLAIR, MI

Contact:NINA BARBER 313-897-0289 Buyer:TONY CORACI

Hauler: PTLEAS4 P&T LEASING COMPANY 4455 VANDYKE, MARLETTE, MI 48453

Open: 07:30 Close: 15:30 Expedite: N Night Run: N

Driver Instructions:

6f3 misc shred across from warehouse--steve brooks 810-326-3261

**Segment 01 - DROP EMPTY**

Status:D Driver: 2093-P&T, DEAN MCMASTER Power Unit Id: 812  
 Orig:(Y) 0021 FPT - PONTIAC 500 COLLIER ROAD PONTIAC, MI 48340  
 Dest:(S) DETR104496 DE-BELLE RIVER 4505 KING RD ST CLAIR, MI  
 Std Stop Time:15 Std Drive Time:83 Std Miles:54.28

**Elapsed Time**

Seg Start:10/02/14 08:57 End:10/02/14 09:55 Duration:00:58

**Drive Time**

Drive Start:10/02/14 08:57 End:10/02/14 09:52 Duration:00:55

**Stop Time**

Stop Start:10/02/14 09:52 End:10/02/14 09:55 Duration:00:03

**Distance**

Power Unit:812 Driver:P&T, DEAN MCMASTER (2093) State:MI USA Start:446306 End:446341 Miles:35  
 Total Miles:35

**Containers**

Container:10/02/14 09:55 Scanned:Y ID:6F45 Type:RO

**Segment 02 - PICKUP FULL**

Status:D Driver: 2093-P&T, DEAN MCMASTER Power Unit Id: 812  
 Orig:(S) DETR104496 DE-BELLE RIVER 4505 KING RD ST CLAIR, MI  
 Dest:(S) DETR104496 DE-BELLE RIVER 4505 KING RD ST CLAIR, MI  
 Std Stop Time:20 Std Drive Time:0 Std Miles:0.00

**Elapsed Time**

Seg Start:10/02/14 09:55 End:10/02/14 10:14 Duration:00:19

**Drive Time**

Drive Start:10/02/14 09:55 End:10/02/14 09:55 Duration:00:00

**Stop Time**

Stop Start:10/02/14 09:55 End:10/02/14 10:14 Duration:00:19

**Distance**

Power Unit:812 Driver:P&T, DEAN MCMASTER (2093) State:MI USA Start:446341 End:446341 Miles:0  
 Total Miles:0

**Containers**

Container:10/02/14 10:14 Scanned:Y ID:6F3 Type:RO  
 Level:FULL

**Segment 03 - RTN TO YARD**

Status:D Driver: 2093-P&T, DEAN MCMASTER Power Unit Id: 812  
 Orig:(S) DETR104496 DE-BELLE RIVER 4505 KING RD ST CLAIR, MI  
 Dest:(Y) 0021 FPT - PONTIAC 500 COLLIER ROAD PONTIAC, MI 48340  
 Std Stop Time:30 Std Drive Time:83 Std Miles:54.28

**Elapsed Time**

Seg Start:10/02/14 10:14 End:10/02/14 13:05 Duration:02:51

**Drive Time**

**Trip Report 157098**

Status:D Type:SW Company:FPT Yard:PON Ready:10/10/14 10:30  
 Entered:10/10/14 10:30 Entered By:COLUCCI, JOE (JCOLUCCI)  
 Changed:10/14/14 17:04 Changed By:SIMPSON, DEE (DSIMPSON)  
 Completed:10/14/14 08:00 Completed By:P&T, DEAN MCMASTER (2093) Completed By Driver

Auto Scale Notice Not Sent

Scale Reference Number:0021701739

Account:DETR104496 DE-BELLE RIVER 4505 KING RD ST CLAIR, MI

Contact:NINA BARBER 313-897-0289 Buyer:TONY CORACI

Hauler: PTLEAS4 P&T LEASING COMPANY 4455 VANDYKE, MARLETTE, MI 48453

Open: 07:30 Close: 15:30 Expedite: N Night Run: N

Driver Instructions:

6F45 SHRED NEAR MAIN WAREHOUSE CALL STEVE 810-326-3261

**Segment 01 - DROP EMPTY**

Status:D Driver: 2093-P&T, DEAN MCMASTER Power Unit Id: 812  
 Orig:(Y) 0021 FPT - PONTIAC 500 COLLIER ROAD PONTIAC, MI 48340  
 Dest:(S) DETR104496 DE-BELLE RIVER 4505 KING RD ST CLAIR, MI  
 Std Stop Time:15 Std Drive Time:83 Std Miles:54.28

**Elapsed Time**

Seg Start:10/14/14 04:31 End:10/14/14 05:50 Duration:01:19

**Drive Time**

Drive Start:10/14/14 04:31 End:10/14/14 05:39 Duration:01:08

**Stop Time**

Stop Start:10/14/14 05:39 End:10/14/14 05:50 Duration:00:11

**Distance**

Power Unit:812 Driver:P&T, DEAN MCMASTER (2093) State:MI USA Start:448491 End:448526 Miles:35  
 Total Miles:35

**Containers**

Container:10/14/14 05:50 Scanned:Y ID:4DS9 Type:YS-40

**Segment 02 - PICKUP FULL**

Status:D Driver: 2093-P&T, DEAN MCMASTER Power Unit Id: 812  
 Orig:(S) DETR104496 DE-BELLE RIVER 4505 KING RD ST CLAIR, MI  
 Dest:(S) DETR104496 DE-BELLE RIVER 4505 KING RD ST CLAIR, MI  
 Std Stop Time:20 Std Drive Time:0 Std Miles:0.00

**Elapsed Time**

Seg Start:10/14/14 05:50 End:10/14/14 06:09 Duration:00:19

**Drive Time**

Drive Start:10/14/14 05:50 End:10/14/14 05:50 Duration:00:00

**Stop Time**

Stop Start:10/14/14 05:50 End:10/14/14 06:09 Duration:00:19

**Distance**

Power Unit:812 Driver:P&T, DEAN MCMASTER (2093) State:MI USA Start:448526 End:448526 Miles:0  
 Total Miles:0

**Containers**

Container:10/14/14 06:09 Scanned:Y ID:6F45 Type:RO  
 Level:FULL

**Segment 03 - RTN TO YARD**

Status:D Driver: 2093-P&T, DEAN MCMASTER Power Unit Id: 812  
 Orig:(S) DETR104496 DE-BELLE RIVER 4505 KING RD ST CLAIR, MI  
 Dest:(Y) 0021 FPT - PONTIAC 500 COLLIER ROAD PONTIAC, MI 48340  
 Std Stop Time:30 Std Drive Time:83 Std Miles:54.28

**Elapsed Time**

Seg Start:10/14/14 06:09 End:10/14/14 08:00 Duration:01:51

**Drive Time**

# EXHIBIT 3

Detroit  
Edison

Visitor Register

7/2021 4:08:01 PM

DE963-5057 5-81 cs

Company Location		Post	Sheet #		PPE	Date				
Belle River Power Plant		MAIN GATE	2 of 3		PPE	10/2/14				
Last Name, First Name	Company	Visit Approved By	Time				Badge No. Issued	HH Y/N	License No.	Security Initial's
			In	Out	In	Out				
1		WHSE	0948	0956			760600 703948			LW
2	Mcmaster, Dean	T. Stanislawski	0951	1016			In: 6F45 Out: 6F3	812		LW
3		WHSE	0953	1005			796462			LW
4		WHSE	1012	1039						LW
5		BRPP - C/I	1025		1105	C/O				LW
6		T. Stanislawski	1046	1113						LW
7		WHSE	1050	1133			797849			LW
8		WHSE	1050	1114						LW
9		T. Kerry	1054	1124						LW
10		T. Kerry	1118	1133						LW
11			C/I	1159	1228	C/O				LW
12		R. Frantz	1202	1216	1455					LW
13		WHSE	1212	1235			801282			LW
14		WHSE	1233	1303						LW
15		M. Lohnsies	1232	1352						LW
16		WHSE	1248	1333			798932			LW
17		WHSE	1249	1256						LW
18		D. Asselin	1255	1413						LW

Detroit  
Edison

Visitor Register

7/2021 4:08:01 PM

DE963-S057 5-81 CS

Company Location		Post	Sheet #				PPE	Date		
Belle River Power Plant		MAIN GATE	1 Of 2				PPE	10-14-14		
Last Name, First Name	Company	Visit Approved By	Time				Badge No. Issued	HH Y/N	License No.	Security Initial's
			In	Out	In	Out				
1	[REDACTED]	BRPP	10/13	0725			58389		[REDACTED]	JK
2	McMaster Dean	Ferrous metals	Cindy Baldwin	0543	0612				812	JK
	[REDACTED]	T. Kerry	0057	1652					[REDACTED]	LW
	[REDACTED]	M. Downs	0701	C/O					[REDACTED]	LW
	[REDACTED]	T. Kerry	0726	0744	0920	0945			[REDACTED]	LW
	[REDACTED]	WHSE	0727	0735	804235	805267 805250	801818 802796	805229 803201	[REDACTED]	LW
	[REDACTED]	WHSE	0804	0814			787275		[REDACTED]	LW
	[REDACTED]	WHSE	0927	0947			805268		[REDACTED]	LW
	[REDACTED]	WHSE	0930	0943			804723 773978	802253	[REDACTED]	LW
	[REDACTED]	WHSE	0948	1003	1014	1038	805245		[REDACTED]	LW
	[REDACTED]	WHSE	1006	1009					[REDACTED]	LW
	[REDACTED]	WHSE	1046	1056			804519		[REDACTED]	LW
	[REDACTED]	T. Kerry	1055	1116					[REDACTED]	LW
	[REDACTED]		1055	1116					[REDACTED]	LW
	[REDACTED]	B. McDiarmid	1055	1245			710657		[REDACTED]	LW
	[REDACTED]	M. Downs	1058	1340					[REDACTED]	LW
	[REDACTED]	T. Kerry	1102	1121	1309	1324			[REDACTED]	LW
	[REDACTED]	WHSE	1122	1125					[REDACTED]	LW

# EXHIBIT 4

MCMASTER v. DTE ELECTRIC COMPANY, ET AL.

LARRY BAAREMAN

October 12, 2016

*Prepared for you by*



**Bingham Farms/Southfield • Grand Rapids**  
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw • Troy

Page 1

1 STATE OF MICHIGAN  
2 IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
3  
4 DEAN McMASTER,  
5 Plaintiff,  
6 vs. Case No. 15-147414-NO  
7 Hon. Cheryl Matthews  
8 DTE ELECTRIC COMPANY and FERROUS  
9 PROCESSING AND TRADING COMPANY,  
10 d/b/a FERROUS PROCESSING & TRADING CO.,  
11 Jointly and Severally,  
12 Defendants.  
13 \_\_\_\_\_/  
14  
15  
16 The Deposition of LARRY BAAREMAN,  
17 Taken at 19390 West Ten Mile Road,  
18 Southfield, Michigan,  
19 Commencing at 12:52 p.m.,  
20 Wednesday, October 12, 2016,  
21 Before Cheri L. Poplin, CSR-5132, RPR, CRR.  
22  
23  
24  
25

Page 2

1 APPEARANCES:  
2  
3 TODD J. WEGLARZ  
4 Fieger, Fieger, Kenney & Harrington, P.C.  
5 19390 West Ten Mile Road  
6 Southfield, Michigan 48075  
7 248.355.5555  
8 t.weglarz@fiegerlaw.com  
9 Appearing on behalf of the Plaintiff.  
10  
11 TIMOTHY YOUNG  
12 Cummings, McClorey, Davis & Acho, P.L.C.  
13 33900 Schoolcraft Road  
14 Livonia, Michigan 48150  
15 734.261.2400  
16 tyoung@cmda-law.com  
17 Appearing on behalf of the Defendant DTE.  
18  
19 JOHN J. O'SHEA  
20 Law Office of John J. O'Shea, P.L.C.  
21 18000 Mack Avenue  
22 Grosse Pointe, Michigan 48230  
23 313.884.2000  
24 oshealaw@att.net  
25 Appearing on behalf of the Defendant Ferrous.

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2  
3 WITNESS PAGE  
4 LARRY BAAREMAN  
5  
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7 EXAMINATION BY MR. O'SHEA 197  
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9 EXHIBITS  
10  
11 EXHIBIT PAGE  
12 (Exhibits 2 - 6 attached to transcript;  
13 Exhibit 1 retained by witness.)  
14  
15 DEPOSITION EXHIBIT 1 4  
16 DEPOSITION EXHIBIT 2 132  
17 DEPOSITION EXHIBIT 3 134  
18 DEPOSITION EXHIBIT 4 148  
19 DEPOSITION EXHIBIT 5 173  
20 DEPOSITION EXHIBIT 6 173  
21  
22  
23  
24  
25

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1 Southfield, Michigan  
2 Wednesday, October 12, 2016  
3 12:52 p.m.  
4  
5 MARKED FOR IDENTIFICATION:  
6 DEPOSITION EXHIBIT 1  
7 12:52 p.m.  
8 LARRY BAAREMAN,  
9 was thereupon called as a witness herein, and after  
10 having first been duly sworn to testify to the truth,  
11 the whole truth and nothing but the truth, was  
12 examined and testified as follows:  
13 MR. YOUNG: Let the record reflect this is  
14 the deposition of Larry Baareman taken pursuant to  
15 notice and agreement of counsel and is to be used for  
16 all purposes in accordance with the Michigan Court  
17 Rules and the Michigan Rules of Evidence.  
18 EXAMINATION  
19 BY MR. YOUNG:  
20 Q. Would you state your full name for the record, please?  
21 A. Yeah. Larry Dale Baareman.  
22 Q. And what is your address?  
23 A. Business address?  
24 Q. Yeah.  
25 A. 2976 Ivanrest, Grandville, Michigan, 49418.

Page 5

1 Q. Is that also your home address?  
2 **A. No.**  
3 Q. And you work at TRTC?  
4 **A. Yes.**  
5 Q. Traffic Reconstruction and Transportation Compliance,  
6 Inc.?  
7 **A. Yes.**  
8 Q. You work there with two other employees?  
9 **A. No. Actually there's four or five there.**  
10 Q. Okay. One of them is Greg Edgcombe?  
11 **A. Yes.**  
12 Q. And apparently his son works there too?  
13 **A. Yes.**  
14 Q. Other than the three of you, who else works there?  
15 **A. We also have a clerical, Brenda Bierens, and we also**  
16 **have an accounting, Bobbi Jo Hill. We have a new guy**  
17 **that came aboard which is Randy Zuiderveen.**  
18 Q. What's his background?  
19 **A. Randy Zuiderveen is a heavy haul expert, load**  
20 **securement on heavy haul transportation related**  
21 **subjects. Teaches state and federal regulations.**  
22 Q. Okay. We marked your binder as Exhibit Number 1. In  
23 the binder there is a copy of the amended notice of  
24 taking your deposition; is that correct?  
25 **A. That is correct.**

Page 6

1 Q. And the binder is all of the materials that you have  
2 gathered or summarized from the depositions that you  
3 have reviewed and other than a few other miscellaneous  
4 materials you have in this red-rope that we have not  
5 identified yet; correct?  
6 **A. Correct.**  
7 Q. And so in compliance with the amended notice of the  
8 deposition notice, did you bring any and all  
9 documents, records, or other tangible things regarding  
10 or touching upon your involvement in this matter?  
11 **A. Yes.**  
12 Q. Including all materials sent to you from any source  
13 and any and all correspondences --  
14 **A. Yes.**  
15 Q. Actually I didn't see any correspondences.  
16 **A. Like cover letters?**  
17 Q. Yes.  
18 **A. Oh, that? No. Counsel has the cover letters that I**  
19 **have.**  
20 MR. WEGLARZ: There is one cover letter in  
21 there and I have it and I think it's work product.  
22 MR. YOUNG: Okay.  
23 BY MR. YOUNG:  
24 Q. And then also did you bring any and all materials that  
25 you believe justify or support your opinions in this

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1 case, including any texts, publications, research  
2 papers, et cetera?  
3 **A. Yes.**  
4 Q. Did you obtain some documents over the Internet?  
5 **A. Yes.**  
6 Q. Including the DTE contractor safety book?  
7 **A. I did not get that over the Internet. That was sent**  
8 **to me.**  
9 Q. Okay. And what about the other stuff about DTE's  
10 recycling with Goodwill Industries?  
11 **A. I did not get that off the Internet. That was sent to**  
12 **me.**  
13 Q. Okay. By Mr. Weglarz presumably; right?  
14 **A. Correct.**  
15 Q. And you also have included there a tab for Rule 26 of  
16 all cases in which you've testified in the past four  
17 years?  
18 **A. Yes.**  
19 Q. And did you include in that tab any and all reports  
20 that you had made in cases identified in that Rule 26  
21 tab?  
22 **A. No.**  
23 Q. Do you have reports for those cases?  
24 **A. Some cases might have a report. Some no report was**  
25 **ever written or authored. Some could still be in**

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1 **litigation yet. But that would be the best answer I**  
2 **have.**  
3 Q. Okay. After looking through that list of cases under  
4 the tab for Rule 26, I didn't see any cases there  
5 involving an electric utility. Have you been involved  
6 in cases involving an electric utility?  
7 **A. Yes. 18 years ago. NIPSCO out of Indiana, northern**  
8 **Indiana. Public Service Commission, I believe.**  
9 Q. So that was a matter that was pending in the Public  
10 Service Commission? Is that what you're saying?  
11 **A. Yeah. I was hired by NIPSCO on a case they had on a**  
12 **fatality with one of their vehicles.**  
13 Q. Okay. What would that have to do with the commission,  
14 though?  
15 **A. I was trying to remember what NIPSCO stood for, and**  
16 **that's what I thought -- it's northern --**  
17 Q. Northern Illinois Public Service Company?  
18 **A. Not Illinois. Indiana.**  
19 Q. Indiana. Northern Indiana Public Service Company?  
20 **A. Yeah. That could be what it is. Yeah. But it was**  
21 **NIPSCO. I remember that.**  
22 Q. And so you were hired by that utility?  
23 **A. Yes.**  
24 Q. And that involved some type of an injury as a result  
25 of a trucking accident?

Page 9

1 A. Yes.  
2 Q. Other than that one case, any other cases that you've  
3 been involved in that involved an electric utility?  
4 A. Not that I know of.  
5 Q. And then you included also in your binder there  
6 that -- we've marked the entire binder as Exhibit  
7 Number 1; correct?  
8 A. Correct.  
9 Q. You included in that binder your billing?  
10 A. Yes.  
11 Q. I did a rough calculation. Is it about \$10,000 so far  
12 that you've billed for review of these materials?  
13 A. I thought it was right around the 7,000 mark, but  
14 maybe my number, my addition was wrong, but I thought  
15 it was seven, 75.  
16 Q. Okay. Also included in the binder there is a copy of  
17 any data or other information that you considered in  
18 forming your opinions; is that right?  
19 A. That's correct.  
20 Q. And also any documentation you rely upon for your  
21 opinions in this case?  
22 A. That is correct.  
23 Q. You also include your curriculum vitae and your fee  
24 schedule; is that right?  
25 A. That is correct.

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1 Q. Did you include any and all training materials used by  
2 you as an instructor relating to the Federal Motor  
3 Carrier Safety Administration?  
4 A. I didn't bring the actual DVD tapes, all that. I gave  
5 you under your -- the best I could at the -- because  
6 this was amended and I got it just at the end of last  
7 week, I believe, or was it the beginning of this week.  
8 You have photocopies of the different documents -- or  
9 excuse me, training aids, DVDs. I can't say it's a  
10 hundred percent of everything we use because there's  
11 20 years worth of stuff we have. However, this is  
12 where the majority of it comes from, so I gave you as  
13 much as I could.  
14 Q. And that's under tab what?  
15 A. That is underneath training information.  
16 Q. Okay. And that training information also includes not  
17 only the Federal Motor Carrier Safety Administration  
18 but state regulation training instruction; correct?  
19 A. Correct.  
20 Q. And also truck driver training instruction and load  
21 securement instruction?  
22 A. Yes.  
23 Q. Okay. Have you ever provided training with respect to  
24 loading, unloading, or hauling scrap metal?  
25 A. Yes. We've done training -- driver evaluations and

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1 training for various companies on the west side of the  
2 state.  
3 Q. Specifically for loading or unloading or hauling scrap  
4 metal?  
5 A. Yeah. When you say loading and unloading, it would be  
6 loading of the container, unloading of the container,  
7 securing the container, operating the hydraulics to  
8 meet federal, state regulations, that type of thing,  
9 and also delivering a container or taking the dumpster  
10 or container, whatever you want to call it, off.  
11 Then -- yeah. Your question was loading and  
12 unloading. So yes.  
13 Q. Yeah. And who have you provided that training for?  
14 A. That would be -- you got Dusty's Recycling in Grand  
15 Rapids, Recycling Concepts, Plummer's, Padnos. I'm  
16 sure as we go through the dep I'll think of more.  
17 There's -- Fleet Compliance Group has a lot of  
18 customers that we do that training for.  
19 Q. Which one? Fleet?  
20 A. Fleet Compliance Group. Another one of my companies.  
21 Q. Can you just identify the contents of the binders that  
22 you have there and then we'll get to what's in the  
23 red-rope?  
24 A. Yeah. I have the deposition notice first, and then I  
25 have my CV, document review list of everything I

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1 received or what I reviewed, my bullet point sheet  
2 which is opinions and basis for opinions, a document  
3 for the approximate weight of the steel pipe.  
4 Q. And let me stop you right there. How did you come up  
5 with those calculations?  
6 A. Well, I didn't come up with the calculations. I went  
7 to my reconstructionist, Greg Edgcombe, and said to  
8 him I have a six-inch -- or excuse me, I have an  
9 approximate six-foot pipe. That's what the testimony  
10 is what the diameter was. One person said it was a  
11 half inch; one said it was a quarter inch. So I said  
12 can you give me a ballpark number of approximate  
13 weight. That doesn't include whatever it's lined with  
14 on the inside or the outside, but the approximate, and  
15 Greg came up with those calculations for me.  
16 Q. While we're on that point, we don't actually know the  
17 length of that pipe, do we?  
18 A. Correct. I have not seen anywhere that anybody  
19 measured it and got an exact length.  
20 Q. Same thing on the weight. We don't know what the  
21 weight of the pipe is?  
22 A. Correct. You would have to know the exact length of  
23 it. Make sure is it a quarter inch or a half inch,  
24 what it's lined with. So you would need more  
25 information. I only did it with the testimony that we

Page 13

1 have, and that's why I used the two different  
2 thicknesses just because it makes a difference.  
3 Q. What difference does it make?  
4 A. Well, the half inch is 500 pounds and the quarter inch  
5 drops it down to two and a half, 250 some pounds. So  
6 it makes a difference by a couple hundred pounds.  
7 Q. Okay. But based on the -- you're using estimates that  
8 you got from different witnesses; correct?  
9 A. Oh, definitely. Yes.  
10 Q. And based upon those estimates of witnesses, the  
11 calculations that your associate, Greg, came up with  
12 was between 250 to 500 pounds?  
13 A. That is correct.  
14 Q. So whenever there was a claim or mention made that the  
15 pipe was a thousand pounds, 1500 pounds, or 2,000  
16 pounds, based upon the information that you're using  
17 and the calculations that Greg gave you, that's wrong?  
18 A. I would say that's correct. Providing that the  
19 information and testimony is accurate on the length of  
20 the pipe, yes. Yes.  
21 Q. Right.  
22 A. If that pipe was longer, it would add additional  
23 weight, but . . .  
24 Q. Right. So you never saw the pipe yourself?  
25 A. That is correct.

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1 Q. When were you retained, by the way?  
2 A. I think I was originally contacted back in March. I  
3 started receiving a lot of stuff in July.  
4 Q. So the answer to my question, then, would be if you  
5 were contacted in March, started receiving stuff in  
6 July, you were retained when?  
7 A. I would say retained back in March. Earlier in the  
8 year, yeah.  
9 Q. 2016; right?  
10 A. Correct.  
11 Q. Okay. And in the file where you have the billings  
12 listed, are they accurate and up-to-date?  
13 A. I would say they're up-to-date. There's additional  
14 billing that has to be done yet of the last few days  
15 working, --  
16 Q. And after today?  
17 A. -- but yeah. I think the last couple two, three days,  
18 but it's current up to just a few days ago, yeah.  
19 Q. Okay. So I had asked you to tell us what's in the  
20 file and I interrupted you on the dimensions for the  
21 pipe.  
22 A. Correct. The next one is photocopies of all the  
23 different types of training.  
24 Q. Okay.  
25 A. Invoicing that I had at current time when I printed

Page 15

1 it. My Rule 26 list. This is a report of injury on  
2 Adamus.  
3 Q. You mean -- on Adamus. Okay. Correct.  
4 A. Yes. This is a copy out of OSHA on OSHA standards and  
5 jurisdiction. Then I have Federal Motor Carrier --  
6 copies of the Federal Motor Carrier regulations.  
7 Q. Let me stop you there for a minute. So with respect  
8 to the loading or unloading, OSHA regulations apply?  
9 A. That is correct.  
10 Q. As far as hauling the load on the highway, Federal  
11 Motor Carrier safety regulations apply?  
12 A. That is correct.  
13 Q. Okay.  
14 A. Then I have the Michigan CDL manual. Just a couple of  
15 pages out of there.  
16 Q. Okay. And for what reason?  
17 A. There was talk on that unloading and transporting and  
18 inspecting the load, so I had what was in the CDL  
19 manual.  
20 Q. Okay.  
21 A. The next few documents I have is Institute of Scrap  
22 Recycling Industries, their safety bulletins.  
23 Q. And are you a member of ISRI?  
24 A. No. I'm not a member of them. Some of my customers  
25 are. Some of that training I've used on behalf of

Page 16

1 them at their place training.  
2 Q. What have you used? Something from the customers  
3 or --  
4 A. Yes.  
5 Q. -- something from ISRI?  
6 A. Like Padnos would have -- I believe Padnos is a member  
7 of ISRI, and they receive training information and  
8 stuff, and then as I come in to do training for them  
9 or toolbox meetings, they will give me information  
10 that they think is pertinent or they want me to  
11 discuss or cover.  
12 Q. Okay. Toolbox meetings. I haven't heard that term  
13 for a while.  
14 A. Yes. Toolbox meetings have been around for years, but  
15 yeah.  
16 Q. Yeah. That means safety meetings; right?  
17 A. Exactly.  
18 Q. On-the-job?  
19 A. Yes. That is correct.  
20 Q. On the day of the job they'd have normally on a  
21 construction site, for example, or maybe even for  
22 trucking they'd have a safety meeting in the morning,  
23 make sure that everyone's going to be operating safely  
24 and know about whatever hazards may exist; right?  
25 A. That is correct.

MCMASTER v. DTE ELECTRIC COMPANY, ET AL.

LARRY BAAREMAN

II

October 20, 2016

*Prepared for you by*



**Bingham Farms/Southfield • Grand Rapids**  
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw • Troy

Page 203

1 STATE OF MICHIGAN  
2 IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
3  
4 DEAN McMASTER,  
5 Plaintiff,  
6 vs. Case No. 15-147414-NO  
7 Hon. Cheryl Matthews  
8 DTE ELECTRIC COMPANY and FERROUS  
9 PROCESSING AND TRADING COMPANY,  
10 d/b/a FERROUS PROCESSING & TRADING CO.,  
11 Jointly and Severally,  
12 Defendants.  
13 \_\_\_\_\_/  
14  
15  
16 The Deposition of LARRY BAAREMAN - Volume 2,  
17 Taken at 19390 West Ten Mile Road,  
18 Southfield, Michigan,  
19 Commencing at 12:38 p.m.,  
20 Thursday, October 20, 2016,  
21 Before Cheri L. Poplin, CSR-5132, RPR, CRR.  
22  
23  
24  
25

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1 Southfield, Michigan  
2 Thursday, October 20, 2016  
3 12:38 p.m.  
4  
5 LARRY BAAREMAN,  
6 was thereupon called as a witness herein, and after  
7 having first been duly sworn to testify to the truth,  
8 the whole truth and nothing but the truth, was  
9 examined and testified as follows:  
10 MR. O'SHEA: Let the record reflect this is  
11 the continued deposition of Larry Baareman taken  
12 pursuant to notice and agreement as to time and place  
13 by counsel in this matter. This deposition is being  
14 taken for all purposes under the Michigan Court Rules  
15 and Michigan Rules of Evidence.  
16 EXAMINATION  
17 BY MR. O'SHEA:  
18 Q. Good afternoon, Mr. Baareman.  
19 A. Good afternoon.  
20 Q. We met the first time. We met again today. My name  
21 is John O'Shea. I represent Ferrous Processing and  
22 Trading, one of the defendants in this case, and I'm  
23 just going to ask you a series of questions about your  
24 qualifications and about your opinions as to my  
25 client. Okay?

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1 referring to the appropriate snippets --  
2 MR. YOUNG: Thank you.  
3 MR. WEGLARZ: -- so that there's a match.  
4 MR. YOUNG: Okay. I'm on the same page  
5 now.  
6 MR. WEGLARZ: All right. Good.  
7 BY MR. WEGLARZ:  
8 Q. All right. And obviously you see where Mr. Wise  
9 testified that he has done that before where he has  
10 identified hazards in a container to request the  
11 assistance of the crane; correct?  
12 **A. Yeah. Page 74, 21 he says that, yes.**  
13 Q. And he says that on one such occasion he realized when  
14 he saw a filing cabinet up against the door of the  
15 container, that was hazardous to him and he requested  
16 that the crane be used to remove the filing cabinet;  
17 correct?  
18 **A. Correct.**  
19 Q. And then on Page 76 Mr. Wise was asked, look, if this  
20 pipe, this pipe meaning the pipe involved in this  
21 incident here, was up against the door, do you think  
22 that would be a hazard where maybe you would call in  
23 the crane or the grap, and his answer was absolutely.  
24 Do you see that?  
25 **A. Yes.**

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1 Q. Okay. So your opinion that he should have identified  
2 this pipe as a hazard and used the crane is also  
3 supported by the very testimony of Mr. Wise himself;  
4 correct?  
5 **A. Correct.**  
6 **MR. O'SHEA: Object to leading nature of**  
7 **the questions.**  
8 BY MR. WEGLARZ:  
9 Q. And do you agree that Ferrous also should have told  
10 Mr. McMaster to not open the door on his container?  
11 **A. Correct.**  
12 Q. Because of the hazard that was in the container, that  
13 being the pipe; correct?  
14 **A. Correct.**  
15 Q. And you would agree that Ferrous should have also made  
16 sure that Mr. McMaster stayed a certain distance away  
17 from the back of the truck to maintain the safety gap;  
18 correct?  
19 MR. O'SHEA: Objection. Leading.  
20 **A. Correct.**  
21 BY MR. WEGLARZ:  
22 Q. And do you recall Mr. Adamus testifying that he  
23 doesn't recall being told or being trained on keeping  
24 any type of a distance away from the back of a truck  
25 with an open container?

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1 **A. That is --**  
2 **MR. O'SHEA: Who is that?**  
3 MR. WEGLARZ: Mr. Adamus.  
4 **A. Correct.**  
5 **MR. O'SHEA: I'll object to that. I don't**  
6 **think that's what he said.**  
7 BY MR. WEGLARZ:  
8 Q. And Mr. Adamus is the general manager or the acting  
9 general manager of the Ferrous yard at this time, and  
10 if he doesn't recall being told or being provided any  
11 distance to keep away from the back of an open  
12 roll-off container, doesn't that suggest to you that  
13 he was inadequately trained on that subject?  
14 **A. That is correct.**  
15 Q. And do you also criticize Ferrous for leaving a  
16 limited amount of space from Mr. McMaster and the  
17 other employees to stand in between the back of the  
18 truck and the yard? You notice that there was a lot  
19 of junk and garbage piled up around Mr. McMaster's  
20 truck?  
21 **A. Yes. On the right-hand side it was -- it's very close**  
22 **to the truck. It kind of went away on an angle. But**  
23 **yes, the truck was too far back in order to be doing**  
24 **this.**  
25 Q. And even directly behind the truck there was very

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1 little clear area to stand in; correct?  
2 **A. That is correct.**  
3 Q. Looks like maybe there's six feet at most; correct?  
4 **A. It's in that area somewhere.**  
5 **MR. O'SHEA: Object to form and foundation**  
6 **and to the new opinions.**  
7 MR. WEGLARZ: I think he's already talked  
8 about that. I'm just clarifying it.  
9 MR. O'SHEA: I don't think so.  
10 BY MR. WEGLARZ:  
11 Q. And earlier you testified that you did receive a DTE  
12 safety manual, correct, that applied to employees and  
13 subcontractor employees?  
14 **A. Yes.**  
15 Q. And I believe you testified that you didn't really  
16 rely on that. Do you recall that?  
17 **A. Yes.**  
18 Q. You would agree, though, that you did at least rely on  
19 that to the extent that it had no policies or  
20 procedures pertaining to the safe loading; correct?  
21 MR. YOUNG: I'm going to object first of  
22 all to leading and secondly to mischaracterizing his  
23 prior testimony.  
24 BY MR. WEGLARZ:  
25 Q. Go ahead. You can answer.

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1 **A. I agree to that, yes.**  
2 Q. And based upon your review of all the records and  
3 materials on this case, you would agree that DTE  
4 assumed the ultimate responsibility for loading this  
5 container; correct?  
6 MR. YOUNG: Same objections. Calls for  
7 speculation. Lack of foundation as to who loaded the  
8 particular pipe as opposed to all the material in the  
9 container.  
10 MR. WEGLARZ: Objection is noted.  
11 BY MR. WEGLARZ:  
12 Q. Go ahead. You can answer.  
13 **A. Yes.**  
14 MR. YOUNG: And leading if I didn't add  
15 that one.  
16 BY MR. WEGLARZ:  
17 Q. And you recall Mr. Bushaw from DTE testifying that he  
18 really had no problem whatsoever with the way that  
19 this pipe was loaded?  
20 **A. That is correct.**  
21 Q. And if Mr. Mr. Bushaw -- and you understand that he  
22 was a supervisor for DTE; correct?  
23 **A. That is correct.**  
24 Q. And if Mr. Bushaw is testifying that he sees no  
25 problem with it whatsoever, doesn't that tell you that

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1 he was also trained inappropriately on the basic  
2 safety loading principles?  
3 MR. YOUNG: I'm going to object to leading.  
4 I'm going to object to mischaracterizing Mr. Bushaw's  
5 testimony since it's an inaccurate quote.  
6 MR. WEGLARZ: Sure.  
7 BY MR. WEGLARZ:  
8 Q. Go ahead.  
9 **A. I agree with that.**  
10 Q. Okay. And you would agree with me that DTE had the  
11 responsibility to make sure that this pipe was loaded  
12 safely into this container; correct?  
13 **A. Correct.**  
14 MR. YOUNG: Objection to leading.  
15 BY MR. WEGLARZ:  
16 Q. And you understand that this pipe was actually loaded  
17 and placed on top of some smaller materials; correct?  
18 MR. YOUNG: I'm going to object. Lack of  
19 foundation, calls for speculation from this witness,  
20 and leading.  
21 MR. WEGLARZ: Sure.  
22 BY MR. WEGLARZ:  
23 Q. Go ahead.  
24 MR. O'SHEA: And he already said he doesn't  
25 know.

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1 BY MR. WEGLARZ:  
2 Q. You can answer.  
3 **A. I don't know if it was loaded onto smaller stuff. I**  
4 **know it was loaded onto something on the right-hand**  
5 **side. It was loaded onto other scrap.**  
6 Q. Which appeared to be some type of I-beams?  
7 **A. Correct. Some type of an I-beam or something.**  
8 Q. And is it your opinion that the pipe being loaded on  
9 top of those other materials, that that presented an  
10 additional hazard to this pipe?  
11 **A. Yes. The --**  
12 MR. YOUNG: Objection. Lack of foundation.  
13 Calls for speculation.  
14 MR. WEGLARZ: Sure.  
15 BY MR. WEGLARZ:  
16 Q. Go ahead.  
17 **A. I said in my first dep and this dep is the angle of**  
18 **the pipe as loaded, being a round object, the**  
19 **right-hand side up in the air, the left-hand side way**  
20 **down, created that hazard, yes.**  
21 Q. And you would agree that when Mr. McMaster was  
22 inspecting that load while at the DTE yard, when he  
23 was looking at the top of that load, he would not be  
24 able to appreciate or see what was underneath that  
25 pipe; correct?

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1 MR. YOUNG: Again, objection. Leading and  
2 lack of foundation. Calls for speculation from this  
3 witness.  
4 MR. WEGLARZ: And I'll give you a  
5 continuing.  
6 MR. YOUNG: Okay. Thank you.  
7 BY MR. WEGLARZ:  
8 Q. Go ahead.  
9 **A. I agree.**  
10 Q. And, in essence, the fact that this pipe was loaded on  
11 top of these other materials which were actually  
12 concealed under the pipe, would you consider that a  
13 latent defect?  
14 MR. YOUNG: Well, I'm going to also add to  
15 the objections before as to this witness for the term  
16 "latent defect" with no foundation to explain that  
17 term.  
18 BY MR. WEGLARZ:  
19 Q. Go ahead. You can answer.  
20 **A. Yeah. It's a -- it's a hidden defect and I agree.**  
21 **What's underneath it, Mr. McMaster would have no idea**  
22 **what's underneath it or what's supporting it.**  
23 Q. Okay. And is it your opinion that this latent defect,  
24 these materials which were underneath this pipe, did  
25 it play a role in this pipe rolling or falling off of

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1 the back of that truck?  
2 MR. YOUNG: Same objections.  
3 **A. I can only say it could have. With the angle that it**  
4 **is and with the right-hand side up in the air and the**  
5 **left-hand side down, it's a round object, it could**  
6 **have, yes.**  
7 BY MR. WEGLARZ:  
8 Q. And because those materials underneath caused it to be  
9 in that particular position, did it make that pipe  
10 more susceptible to rolling or tipping off of the  
11 truck?  
12 MR. YOUNG: Same objections.  
13 **A. In my opinion, I would say yes.**  
14 BY MR. WEGLARZ:  
15 Q. And would DTE have the responsibility to warn  
16 Mr. McMaster of that concealed defect underneath the  
17 pipe?  
18 **A. In my opinion, yes.**  
19 Q. And you've had a chance to look at these scale photos  
20 of the pipe and the container; correct?  
21 **A. Yes.**  
22 Q. And you would agree with me that it certainly appears  
23 in those photos that that pipe is leaning up against  
24 the back door of that container; correct?  
25 **A. Yes.**

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1 MR. YOUNG: Same objections.  
2 **A. It's very close or leaning on the back door, yes.**  
3 BY MR. WEGLARZ:  
4 Q. And you would agree with me that the position of the  
5 pipe that we see in those scale photos is most likely  
6 essentially the same position of that pipe when it was  
7 at the DTE yard; correct?  
8 MR. YOUNG: Same objections.  
9 **A. According to Mr. McMaster's testimony of where he saw**  
10 **it located and then the scale photo, I would agree**  
11 **with that.**  
12 BY MR. WEGLARZ:  
13 Q. Okay. And I believe you made this clear, but I just  
14 want to make sure it's clear on the record. DTE,  
15 which was ultimately responsible for the safe loading  
16 of the pipe in this container, you would agree that  
17 DTE -- strike that. You would agree that this pipe  
18 was unsafely loaded in this container by being loaded  
19 parallel to the back gate; correct?  
20 MR. YOUNG: Same objections.  
21 **A. To the back gate and on other -- other scrap or put in**  
22 **this position or angle, yes.**  
23 BY MR. WEGLARZ:  
24 Q. And being up against the gate as well; correct?  
25 **A. That is correct.**

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1 Q. In fact, the safer way to load it would be to place it  
2 parallel to the length of the container; correct?  
3 **A. Correct.**  
4 Q. And you would agree with me that if this pipe --  
5 MR. YOUNG: Same objections.  
6 BY MR. WEGLARZ:  
7 Q. If this pipe was loaded parallel to the container,  
8 most likely this incident does not happen with  
9 everything else being the same; correct?  
10 **A. Correct.**  
11 MR. WEGLARZ: Those are all the questions I  
12 have. Thank you.  
13 MR. O'SHEA: Tim, can I just take a quick  
14 break before you go?  
15 MR. YOUNG: Sure.  
16 (Recess taken at 3:13 p.m.)  
17 (Back on the record at 3:17 p.m.)  
18 RE-EXAMINATION  
19 BY MR. YOUNG:  
20 Q. All right. Mr. Baareman, I have some additional  
21 questions for you here today.  
22 So, first of all, on the -- you're not  
23 aware of any rule, regulation, standard, or  
24 requirement for DTE to have a policy or procedure for  
25 loading scrap metal into a roll-off container;

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1 correct?  
2 **A. Correct. I haven't seen any policy or procedure.**  
3 **Yes.**  
4 Q. My question was you're not aware of any requirement to  
5 have such a policy or procedure?  
6 **A. Correct.**  
7 Q. In fact, you're aware that there are no rules or  
8 regulations for loading scrap metal into a roll-off  
9 container?  
10 **A. Correct.**  
11 Q. All right. So the reference to the DTE safety book  
12 has no relevance to this case; correct?  
13 **A. No. I disagree with that.**  
14 Q. You do? How?  
15 **A. Yeah. I disagree that on loading policy or shipping**  
16 **policy, they should have some kind of policy in place.**  
17 **In there I'd seen nothing. So when your question was**  
18 **I didn't rely on it, I didn't rely on it because there**  
19 **was nothing in there.**  
20 Q. That wasn't my question. My question was, there is no  
21 rule, requirement, standard, or requirement for DTE to  
22 have a policy or procedure for loading scrap metal  
23 into a roll-off container?  
24 **A. Correct. Not loading scrap metal into a roll-off**  
25 **container. However, if they create a hazard, they**

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1       **should have some kind of policy or procedure on a**  
2       **unique hazard, such as this pipe at the back door.**  
3       Q. And how would DTE know, first of all, about a unique  
4       hazard, this particular pipe?  
5       **A. I would think DTE has been in business long enough to**  
6       **know that a scrap metal bin or container has to be**  
7       **opened by a back door by another individual, and by**  
8       **knowing that, knowing that they're putting things in**  
9       **in random order, which are always put in in random**  
10       **order, that an object such as this blue pipe at the**  
11       **back door could be a potential hazard.**  
12       Q. So you agree that, first of all, that there's no rule,  
13       requirement, regulation, or standard for DTE to have a  
14       policy or procedure for loading scrap metal into a  
15       roll-off container?  
16       **A. I agree with that, yes.**  
17       Q. Okay. But you have a subpart that for DTE in this  
18       particular case that they should have something, some  
19       rule for some unique hazard; right?  
20       **A. I would say there is a rule out there with OSHA's**  
21       **general duty clause that you have to have a work**  
22       **environment that is safe for all employees. So DTE --**  
23       **so there would be a rule under the general duty clause**  
24       **that knowing that this -- this container has to be**  
25       **unloaded somehow, that this hazard of this -- this**

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1       **unique pipe or this -- this pipe at the back door,**  
2       **this six-foot long pipe loaded parallel with the back**  
3       **door, can present a safety hazard to somebody. So**  
4       **under the general duty clause, yes, they would have a**  
5       **requirement.**  
6       Q. Give me the cite for the general duty clause that  
7       you're referring to, please.  
8       **A. Let's see. Section 5-A (1) requires --**  
9       Q. Is that the OSHA or MIOSHA?  
10       **A. I have the OSHA.**  
11       Q. Was it one originally in your binder?  
12       **A. Yes. You have the original one. Under the tab of**  
13       **OSHA. Should be near the top. Federal Motor Carrier**  
14       **is just behind it.**  
15       Q. Okay. That will help. There we go.  
16       **A. It is the top highlighted one, OSHA standards.**  
17       Q. Yep. This Section 5-A (1) of the OSHA act refers to  
18       an employer providing a place of employment that are  
19       free from recognized hazards that are likely to cause  
20       death or serious physical harm to his employees;  
21       correct?  
22       **A. That is correct.**  
23       Q. That applies to DTE as an employer to DTE employees?  
24       **A. Correct.**  
25       Q. Only?

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1       **A. Correct. But under the multi-employer one --**  
2       Q. I'll take care of these one at a time.  
3       **A. Okay.**  
4       MR. WEGLARZ: Well, let him finish his  
5       answer, though.  
6       BY MR. YOUNG:  
7       Q. Well, you can finish your answer. I'm just telling  
8       you we're going to get to that.  
9       **A. Yeah. I applied that also. The general duty clause**  
10       **would also apply to the multi-employer a safe place,**  
11       **and they are the controlling one, so that would be my**  
12       **answer.**  
13       Q. Let's break it down. The language that you pointed to  
14       for your citation does not apply to plaintiff,  
15       Mr. McMaster, at the DTE site; correct?  
16       **A. No. I disagree with that.**  
17       Q. Shall we read the language again?  
18       **A. You can read it as many times as you want. I know**  
19       **what it says.**  
20       Q. Okay. It says the employer's employees in Section  
21       5-A (1) of the OSHA act; correct?  
22       **A. Correct.**  
23       Q. That means not applicable to some other employer's  
24       employees from this language?  
25       MR. WEGLARZ: Form objection.

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1       Go ahead and answer.  
2       **A. I disagree with that. From this language, it says the**  
3       **employer and its employees, and I apply this to the**  
4       **multi-employer.**  
5       BY MR. YOUNG:  
6       Q. The multi-employer is a different cite, a different  
7       section, isn't it?  
8       **A. Yes, it is.**  
9       Q. Okay. So you can't agree with me of what the language  
10       says that it applies to the DTE employees and  
11       applicable for this case, for this section of OSHA to  
12       DTE as the employer?  
13       **A. I actually agreed with you on the last question. I**  
14       **said you're right, that's what it says, but I imply**  
15       **this to the multi-employer.**  
16       Q. Okay. And, secondly, you don't know whether the  
17       person that loaded this particular blue pipe into the  
18       container was a DTE employee; correct?  
19       **A. Correct.**  
20       Q. Third, you do not know what the knowledge of whoever  
21       put the blue pipe in the container was for what's  
22       going to happen with that contents of that container  
23       somewhere down the road; right?  
24       **A. Correct.**  
25       Q. You're not aware of a rule, a regulation, or a

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1 **A. Yes.**  
2 Q. So under that description DTE cannot be considered  
3 within the multi-employer liability rule?  
4 **A. Correct. And I have this under Ferrous. There's the**  
5 **P & T driver and Ferrous at that one location, that**  
6 **one entity, yes. But you're right. DTE, this would**  
7 **not apply to them and it's a different worksite.**  
8 Q. Right. So the definitions under the multi-employer  
9 worksite does not apply to DTE because DTE is not at  
10 the worksite where the injury occurs or where the  
11 hazard existed at that time?  
12 MR. WEGLARZ: Form objection. That's not  
13 what he said. Go ahead.  
14 **A. No. D, under definition, again, I applied this to**  
15 **Ferrous. I did not apply that to DTE.**  
16 BY MR. YOUNG:  
17 Q. I'm expanding it.  
18 **A. Well, you can expand it. My answer is DTE is the**  
19 **employer that caused -- let me go back to the**  
20 **beginning. The creating employer that created the**  
21 **hazardous condition.**  
22 Q. Well, first can you show me anything, any rule that  
23 is -- any rule or regulation or definition or  
24 explanation of the MIOSHA or OSHA multi-employer  
25 liability to say that under the circumstances in this

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1 case, rather than just your opinion, is there  
2 something that you can show me that says yep, here it  
3 is, DTE can be the creating employer even though the  
4 incident and the correcting employer and the  
5 controlling employer are at a different worksite?  
6 MR. WEGLARZ: Other than what he's already  
7 given you in Exhibit 7?  
8 MR. YOUNG: He's given me absolutely  
9 nothing so far, so I'm asking -- we're going to take  
10 care of Exhibit 7 in a minute.  
11 BY MR. YOUNG:  
12 Q. But can you show me anything before we get to -- more  
13 about Exhibit 7?  
14 MR. WEGLARZ: Asked and answered.  
15 Go ahead.  
16 **A. All I have here with me is what's in Exhibit 7. I**  
17 **have nothing else with me.**  
18 BY MR. YOUNG:  
19 Q. Okay. So since you have no authority to issue a  
20 citation and since MIOSHA did not issue a citation for  
21 multi-employer liability, you cannot do so?  
22 **A. I cannot issue a citation for that. I agree.**  
23 Q. Okay. And you said you talked to a representative at  
24 MIOSHA in Lansing?  
25 **A. Yes.**

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1 Q. Did you ask that representative about this case and  
2 this example where you're trying to make DTE fall  
3 within this umbrella of a multi-employer liability  
4 rule?  
5 **A. When I talked to the representative in Lansing, I did**  
6 **not bring up this case name or any parties involved.**  
7 **I said I have a trucking company. They picked up at**  
8 **one location. There was a hazard. It was transported**  
9 **to another location, and that hazard turned into an**  
10 **incident where somebody was injured. In the general**  
11 **industry does the multi-employer apply to this? The**  
12 **answer was yes, I will send it to you by email, and he**  
13 **gave it to me.**  
14 Q. Okay.  
15 **A. That's as much information as I gave him because I**  
16 **would assume, like any other case, everything is**  
17 **confidential, so I did not bring up any details to**  
18 **this case or names in this case.**  
19 Q. What's confidential?  
20 **A. In most cases the information I receive from companies**  
21 **like your policies and procedures or safety things are**  
22 **confidential things, so I do not let any of this out**  
23 **nor do I talk about it.**  
24 Q. Okay. We asked that question to a MIOSHA  
25 representative in Lansing that said this

Page 382

1 multi-employer thing would not apply to DTE since it's  
2 not on the worksite where the incident occurs.  
3 MR. WEGLARZ: Who was the rep?  
4 MR. YOUNG: Todd Strong.  
5 BY MR. YOUNG:  
6 Q. You don't have any reason to disagree with the  
7 information that we obtained, do you?  
8 **A. I can only --**  
9 MR. WEGLARZ: He just testified to the  
10 exact opposite.  
11 **A. I can only tell you the information I received from**  
12 **the gentleman I talked to. I gave you the name. I**  
13 **gotta get it off my email again to give it to you.**  
14 BY MR. YOUNG:  
15 Q. You gave us the name.  
16 **A. Yes. That is the individual I talked to. That's**  
17 **through policies, procedures, training, education**  
18 **department at MIOSHA is the individual I talked with.**  
19 **He told me it would apply to this when I gave him the**  
20 **example of a pickup at one location and it was a**  
21 **creating hazard, it was delivered to another and it**  
22 **turned into an incident. That was the information**  
23 **that was supplied to me, and then he gave me the**  
24 **actual MIOSHA multi-employer document. You**  
25 **received --**

1 CERTIFICATE OF NOTARY  
2 STATE OF MICHIGAN )  
3 ) SS  
4 COUNTY OF WAYNE )  
5

6 I, Cheri L. Poplin, certify that this  
7 deposition was taken before me on the date  
8 hereinbefore set forth; that the foregoing questions  
9 and answers were recorded by me stenographically and  
10 reduced to computer transcription; that this is a  
11 true, full and correct transcript of my stenographic  
12 notes so taken; and that I am not related to, nor of  
13 counsel to either party nor interested in the event of  
14 this cause.  
15  
16  
17



18  
19  
20  
21  
22 Cheri L. Poplin, CSR 5132, RPR, CRR  
23 Notary Public,  
24 Wayne County, Michigan  
25 My Commission expires: August 21, 2019

# EXHIBIT 5

**Michigan Department of Licensing and Regulatory Affairs  
Michigan Occupational Safety and Health Administration (MIOSHA)**

7150 Harris Drive  
P.O. Box 30644  
Lansing MI 48909  
Phone: (517) 322-1831 Fax: (517) 322-6353



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## Citation and Notification of Penalty

**To:**

Ferrous Processing & Trading Co  
and its successors  
500 Collier Rd  
Pontiac, MI 48340

**Inspection Number:** 1005701  
**Inspection Date(s):** 04/01/2015-04/30/2015  
**Issuance Date:** 05/20/2015

**Inspection Site:**

500 Collier Rd  
Pontiac, MI 48340

**Reporting ID:** 0552652  
**CSHO ID:** U3495  
**Optional Report Number:**

**SUMMARY:** An inspection at the site noted above has revealed conditions we believe do not comply with the provisions of the Michigan Occupational Safety and Health Act, Act 154, of the P.A. of 1974, as amended (MIOSHAct). The nature of such alleged violation(s) is described on the citation(s) with reference to the applicable standards, rules, regulations, orders and provisions of the Act. Following is a list of items the employer must consider carefully, to resolve the issues alleged in the citation(s). Following this numbered summary is a more detailed explanation of the requirements.

1. The violation(s) alleged in the citation(s) must be corrected on or before the date(s) shown in the line marked "Date By Which Violation Must Be Abated". If the line is marked "Immediately Upon Receipt," the violation must be corrected on or before the date that the citation is received by the employer. If the violation was corrected during the inspection, the line will be marked "Abated." Correcting a violation does not eliminate the requirement to pay the penalty nor does payment of the penalty negate having to correct the violation.
2. A copy of the citation(s) must be posted at or near the location of the violation(s) for a minimum of 3 days or until the item(s) have been corrected, whichever is later.
3. Documentation of abatement must be provided to the issuing division. Failure to provide such documentation may result in a follow-up inspection.
4. The employer may enter into an informal settlement with the issuing division that can result in up to a 50% reduction in any assessed penalties. The employer should contact the issuing division within 5 workdays upon receiving a citation(s) if interested in an informal settlement.
5. The employer may file a first appeal for modification or dismissal of a citation item and/or any proposed penalty or request an extension of time for abatement. The appeal must be in writing and be postmarked within 15 workdays of receipt (workday is defined below). The first appeal can also result in a penalty reduction of up to 50%. If an appeal is untimely, the citation(s) become a Final Order of the Board of Health and Safety Compliance and Appeals (Board) and is no longer subject to review by the issuing division. An employee or employee representative may appeal abatement dates.
6. Monetary penalties must be paid within 15 workdays of a citation becoming a Final Order of the Board.
7. The employer may file a request for an extension of time to abate a citation(s) that has become a Final Order of the Board. Such a request must be in writing and received or post marked no later than 1 working day following the abatement date.
8. It is unlawful to discriminate against an employee for exercising any of their rights under MIOSHA.

Note: As defined in statutes, "workday" or "working day" means any day other than a Saturday, Sunday, or state legal holiday. The state legal holidays are:

*Closed 7/17/15 mlb*

January 1, New Year's Day  
 The third Monday in January, Martin Luther King, Jr. Day  
 February 12, Lincoln's birthday  
 The third Monday of February, Washington's birthday  
 The last Monday of May, Memorial or Decoration Day  
 July 4 Independence Day  
 The first Monday in September, Labor Day  
 The second Monday in October, Columbus Day  
 November 11, Veterans' Day  
 The fourth Thursday of November, Thanksgiving Day  
 December 25, Christmas Day

Please note whenever January 1; February 12; July 4; November 11; or December 25 fall on a Sunday, the next Monday following is deemed a public holiday (non-working day) for appeal purposes. However, there is no compensating day when one of the five dated holidays falls on a Saturday. Also, when computing the 15 working days, you do not count the date on which it is received; you start with the next working day. Additionally, the count is based on when the citation was received at the employer's location, not when it got to any particular person or office at the employer's location.

**I-CITATIONS:** The nature of the alleged violation(s) is described on the enclosed citation(s). These conditions must be corrected on or before the date(s) shown in the line marked "Date By Which Violation Must Be Abated". The issuing division may be contacted by telephone at the number indicated on the front of the citation for the purpose of discussing any issues related to the inspection or citation(s).

A copy of the citation(s) must be posted at or near the location of the violation for a minimum of 3 days or until the items have been corrected, whichever is later. The MIOShAct provides for civil penalties of up to \$7000 for each violation for failure to comply with posting requirements.

When compliance is achieved, a copy of the citation must be signed and returned to the issuing division along with documentation of abatement.

Documentation of abatement for citation items originally classified as "serious," "repeat," "fail-to-abate," "willful" or "instance-by-instance," require documentation as deemed appropriate by the issuing division. Examples of documentation for these violation classifications are:

- (a) A detailed description of how the violation was abated.
- (b) Work orders or an invoice indicating the corrective work that has been done.
- (c) Photographs of the abated conditions.
- (d) Other forms of conclusive evidence that your employees are no longer exposed to the hazard.

For citation items classified as "other," submitting to the issuing division a signed copy of the citation item indicating the item has been abated is acceptable documentation of abatement. Submitting a document in writing, certifying abatement of the particular citation item is also acceptable for citation items classified as "other."

If the employer does not provide adequate documentation of abatement, a re-inspection may be conducted. Failure to correct an alleged violation within the abatement period may result in new or additional proposed penalties.

Correcting a violation prior to the expiration of the abatement date does not eliminate the requirement to pay the penalty. Payment of the penalty does not eliminate the requirement of correcting the violation.

**II-INFORMAL SETTLEMENT:** In addition to the appeal rights afforded by the MIOShAct, the Michigan Occupational Safety and Health Administration has implemented a program for negotiating informal settlement with the employer. This is a program designed to reach abatement of the hazard at the earliest possible opportunity and reduce the need for formal appeals. The informal settlement can result in a penalty reduction of up to 50% provided the issuing division and the employer agree to a number of specified conditions. These conditions include an agreement by the employer to:

- (a) Not appeal further.
- (b) Abate all items within the abatement period.
- (c) Provide proof of abatement.
- (d) Pay all agreed upon penalties.
- (e) Abide by any other mutually agreed upon actions.

If you are interested in pursuing an informal settlement, you should contact the issuing division within 5 workdays upon receipt of the citation(s), but no later than the 15th workday beyond receipt of the citation(s). If the employer wishes to accept the conditions stated above and the process can be completed within 15 workdays from receipt, then no appeal need be filed.

**III–CITATION APPEAL:** An employer may file a first appeal to the issuing division in writing for modification or dismissal of a citation item and/or any proposed penalty or an extension of time for abatement. The first appeal can also result in a penalty reduction of up to 50% providing the issuing division and the employer agree to the conditions (a) through (e) as stated in Section II, INFORMAL SETTLEMENT (above).

An employee or employee representative may appeal in writing the reasonableness of the abatement date(s). The envelope containing an appeal must be postmarked no later than the 15th workday following receipt of the citation.

If a citation is not appealed within 15 workdays of receipt, then the citation becomes a Final Order of the Board of Health and Safety Compliance and Appeals (Board). Final Order citations are not subject to review by the issuing division unless the Bureau of Hearings establishes good cause for the late appeal.

An appeal must specify the item(s) appealed and that portion of the item (e.g., violation, abatement date, penalty) which is being appealed and include a certification that the appeal has been posted or given to affected employees or their representatives. If the issuing division meets with the employer to discuss an appeal, the issuing division will notify the employee representative and allow attendance at the meeting.

The issuing division will notify an employer of its decision within 15 workdays of the receipt of the employer's written appeal. The decision must be posted at the location of the subject citation.

If an employer, employee or employee representative is not satisfied with this decision then they may file a second appeal. The appeal must be in writing and the envelope containing the second appeal must be postmarked within 15 workdays of the receipt of the issuing division's decision on the first appeal. If the issuing division's decision is not appealed then the citation becomes a Final Order of the Board.

**IV–MONETARY PENALTIES:** Payment must be made within 15 workdays of the date a proposed penalty of a citation becomes a Final Order of the Board. This would be the 30th workday after receipt of each citation item that is not appealed. For payment of a penalty, make a check or money order payable to the "State of Michigan" and remit to the issuing Division at the address shown on the citation. Please record the inspection number, citation and item number on the check, money order or transmittal letter.

**V–EXTENSION OF TIME TO ABATE:** An employer may file a petition for modification of abatement date(s) (PMA) on an item of a citation, which has become a Final Order of the Board. The PMA must be submitted to the issuing division in writing by personal delivery or postmarked no later than one day following the abatement date, and a copy posted near the place the citation was posted. An employer must have made a good faith effort to correct the violation by the abatement date, and has or will not be successful because of factors beyond the employer's reasonable control. A PMA must include:

- (a) Steps taken to achieve compliance.
- (b) The specific additional abatement time necessary.
- (c) The reasons the additional time is needed.
- (d) Available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.
- (e) A certification that a copy of the PMA has been posted for employees at the location of the subject citation.

The posted copy must remain posted for a minimum of 10 workdays.

If the issuing division or affected employees file an objection to the PMA within 10 workdays of the employer's filing date, the Board will schedule a hearing and advise the employer of the date, time, and place of the hearing.

**VI–EMPLOYEE DISCRIMINATION:** Section 65 of the MIOShAct, prohibits discrimination by an employer against an employee for filing a complaint or exercising any rights under the MIOShAct, as amended. If an employee believes that he or she was discharged or otherwise discriminated against as a result of filing a complaint, they may file a complaint with the MIOShA Employee Discrimination Section within 30 days after the violation occurs.

**VII–STATE CONSULTATION EDUCATION AND TRAINING SERVICES:** The MIOShA Consultation Education and Training (CET) Division offers a wide range of services to help businesses with their health and safety practices. CET services include: helping employers create a Safety and Health Management System, seminars and workshops, onsite consultations, hazard surveys, an equipment loan program and information material. The majority of CET services are provided free of charge to Michigan employers and employees. For information on these services, contact the CET Division at (517) 322-1809 or visit their web site at [www.mi.gov/miosha](http://www.mi.gov/miosha).



Michigan Department of Licensing  
and Regulatory Affairs  
7150 Harris Drive,  
P.O. Box 30644  
Lansing MI 48909  
Phone: (517) 322-1831 Fax: (517) 322-6353

Inspection Number: 1005701  
Inspection Date(s): 04/01/2015-04/30/2015  
Issuance Date: 05/20/2015  
Optional Reporting Number:

**Citation and Notification of Penalty**

Company Name: Ferrous Processing & Trading Co  
Inspection Site: 500 Collier Rd, Pontiac, MI 48340

Citation 1 Item 1

Type of Violation: Serious

408.10011(a): GI Part 1, General Provisions

Provide training to each newly assigned employee regarding the operating procedures, hazards, and safeguards of the job.

(Employees were not trained in the safe operating procedures, particular hazards, or appropriate safeguards of approaching opened doors of roll-off dumpsters holding metal scrap in the sorting/dumping area.)

Date By Which Violation Must be Abated:	June 23, 2015
Proposed Penalty:	\$4,500.00

  
Authorized Signature

**ABATED**



Michigan Department of Licensing and Regulatory Affairs  
7150 Harris Drive,  
P.O. Box 30644  
Lansing MI 48909  
Phone: (517) 322-1831 Fax: (517) 322-6353

Inspection Number: 1005701  
Inspection Date: 04/01/2015-04/30/2015  
Issuance Date(s): 05/20/2015  
Optional Reporting Number:

### PROPOSED PENALTY INVOICE

Company Name: Ferrous Processing & Trading Co  
Inspection Site: 500 Collier Rd  
Pontiac, MI 48340

Summary of Penalties for Inspection Number: 1005701

Citation 1 Item 1, Serious	\$4,500.00
<b>TOTAL PROPOSED PENALTIES:</b>	<b>\$4,500.00</b>

*pd 7/13/15*

Correcting a violation prior to the expiration of the abatement date does not eliminate the requirement to pay the penalty. Payment of the penalty does not eliminate the requirement of correcting the violation.

The state does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Payment must be made within 15 working days of the date a proposed penalty of a citation item becomes a final order of the board. This would be the thirtieth (30<sup>th</sup>) working day after receipt of each citation item which is not appealed. For the payment of any penalty, make a check or money order payable to the "State of Michigan" and remit to the Department of Licensing and Regulatory Affairs at the address shown on the citation. PLEASE RECORD THE APPLICABLE INSPECTION NUMBER, CITATION NUMBER(S) AND ITEM NUMBER(S) ON THE CHECK, MONEY ORDER OR YOUR TRANSMITTAL LETTER.

Enclose this invoice page (or a copy thereof) with your payment.

  
Authorized Signature

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RECEIPT VALIDATION

Department of Licensing and Regulatory Affairs  
Revenue Services Section

Not Valid Without Original

Tran Info: 2204 30542077-1 07/13/15  
Chk#: 50038299 Amt: \$4,500.00  
ID: FERROUS PROCESSING & TRADING CO

REC'D 15 JUL 14 PM 3:41

C-107 (2.06)

50038299

FERROUS PROCESSING & TRADING CO.  
PT-PONTIAC DIVISION L.L.C.  
500 COLLIER ROAD  
PONTIAC, MI 48340

DETACH STATEMENT BEFORE DEPOSITING

INVOICE NUMBER	DATE	DESCRIPTION	GROSS AMOUNT	DEDUCTIONS	AMOUNT PAID
70815	070815	MIOSHA CITATION #1005701			4,500.00

REC'D 15 JUL 14 PM 3:41

7/21/21  
PRA

**IMIS OPERATOR INSTRUCTION SHEET**

CSHO # INSPECTION #			
03495			
1005701	SUPV/SO INITIAL & DATE	CLERK INITIAL & DATE	INSTRUCTIONS
HOLD FILE UNTIL			
SEND ODA LETTER			
SEND ODP LETTER			
ASSIGN FOLLOW-UP			THE SUPV/SO WILL ATTACH A HAND WRITTEN INSPECTOR INSTRUCTION SHEET.
SEND TO TREASURY			ALL ITEMS MUST BE ABATED AND AN ODP LTR SENT FIRST
CLOSE WHEN PAID	TD 7/24/15	8/18/15 mib	HOLDING FOR PMT VERIFICATION PMT SENT TO LANSING:
CLOSE FILE			
ABATE <u>1</u> INSTANCES DATE & INITIAL EACH INSTANCE ON BLUE COPY	TD 7/24/15		IMIS OPERATOR TO ABATE ITEMS IN IMIS

NOTES:  
 Reviewed AA - Close File when PAID.  
 TD 7/24/15

ISA COORDINATOR/ CLOSING CLERK:	ABATED: (Y) PENALTY PAID: (Y) SIGNED ISA REC'VD & ENTERED: X SIGNED SA REC'VD & ENTERED: X	CLOSED IMIS: (Y) CLOSED DIARY SHEET: (Y) CLOSED UL: DOCUMENTS IN ORDER: (Y) CLOSE LTR SENT: (Y)	Recd - 5/28/15 FOD - 7/22/15 abate - 7/17/15 Pen - 7/13/15
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SUPERVISOR, SAFETY OFFICER & IMIS OPERATOR - INITIAL AND DATE EACH ACTION.  
 REV. 7/12 MIB SUBSTITUTE FORM FOR OSHA #166

# Inspection Report

Thu May 14, 2015 08:48:48 AM

RID	CSHO ID	Supervisor ID	Inspection Number	Optional Report Number	Case Closed Date
0552652	U3495	G7750	1005701		

Establishment Name		Ferrous Processing & Trading Co		Doing Business As (DBA)		
Establishment Owner Name	Private Sector	Type of Business	Corporation	Primary NAICS		423930
Site Address	500 Collier Rd PONTIAC, MI, 48340	Site Phone	(248)-335-8141	Extn	Site FAX	
Business Address	500 Collier Rd PONTIAC, MI, 48340	Business Phone	2483358141 244		Business FAX	
Mailing Address	500 Collier Rd PONTIAC, MI, 48340	E-mail			Mobile Phone	
Site Activity		NAICS Inspected	423930		Days on Site	1
Federal EIN	383376283	DUNs			Temporary or Fixed Site?	

Entry	01-APR-2015		First Closing Conference	30-APR-2015	
Opening Conference	01-APR-2015		Second Closing Conference		
Walkaround			Exit		

Inspection Initiating Type	Program Planned		Secondary Type		
Other Initiating Type			Inspection Category		Safety
Scope of Inspection	Partial		Reason No Inspection		
Sampling Performed?	N	SVEP	N	Expln. for No Insp.	
Federal Strategic Initiatives					
National Emphasis					
State Emphasis	Injury/Illness				
Local Emphasis					
Primary Emphasis	Injury/Illness				

Employed in Establishment	30	Walkaround?	Y	Advance Notice?	N
Covered By Inspection	6	Interviewed?	Y	Flag for Follow-up	N
Controlled By Employer	1000	Union?	Y	Reason for Follow-up	

Related Activity			
Activity Number	Activity Type	Satisfied	Establishment Name

Related Inspections		
Inspection Number	Establishment Name	Related Inspection Type
1005698	P&T Leasing Co of Marlette	MULTI-EMPLOYER

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Additional Codes			
Type	ID	Value	Description
S	03	Non-Fatal Incident Invest	Non-Fatal Incident Investigations
S	12	13	

Employer Representatives Contacted				
First Name	Last Name	Job Title	Participation	Interviewed?
Phil	Hernandez	Operations Manager	Walk Around, Credentials, Opening Conference	N
Todd	Somerville	Human Resources	Walk Around, Credentials	N

Employees Contacted					
<b>Name</b>	Steve Adamus	<b>Job Title</b>	Manager	<b>Occupation</b>	
<b>Address</b>					
<b>Home</b>		<b>Work</b>		<b>Mobile</b>	
<b>Email</b>			<b>Participation</b>		
<b>Name</b>	David Wise	<b>Job Title</b>	Road Inspector	<b>Occupation</b>	
<b>Address</b>					
<b>Home</b>		<b>Work</b>		<b>Mobile</b>	
<b>Email</b>			<b>Participation</b>		
<b>Name</b>	Bob Szczesny	<b>Job Title</b>	Yard Supervisor	<b>Occupation</b>	
<b>Address</b>					
<b>Home</b>		<b>Work</b>		<b>Mobile</b>	
<b>Email</b>			<b>Participation</b>		

Union Information			
<b>Union Name</b>	International Brotherhood of Teamsters	<b>Local</b>	#614
<b>Rep Name</b>	Ms. Billie Hawkins	<b>Job Title</b>	
<b>Address</b>		250 N Perry St. PONTIAC, MI, 48342	
<b>Home</b>		<b>Work</b>	
<b>Email</b>		<b>Participation</b>	Citation Mailed
<b>Union Name</b>	International Brotherhood of Teamsters	<b>Local</b>	#614
<b>Rep Name</b>	Mark Chevalier	<b>Job Title</b>	Union Steward
<b>Address</b>		250 Norht Perry St.	

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		PONTIAC, MI, 48342			
<b>Home</b>		<b>Work</b>	248-335-8141	<b>Mobile</b>	810-577-9710
<b>Email</b>			<b>Participation</b>	Walk Around, Credentials, Opening Conference	

CSHO Signature		Date	
----------------	--	------	--

**INSPECTION GUIDELINES**  
Michigan Department of Licensing and Regulatory Affairs  
**MIOSHA**

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Est. Name: Ferrous Processing & Trading Co

Insp#: 1005701

CSHO: U3495

TYPE OF BUSINESS: Recycling of metal scrap								
E/E ORGANIZATION OR UNION (NA FOR NONE): International Brotherhood of Teamsters Local #614 c/o Billie Hawkins								
ORGANIZATION ADDRESS: 250 North Perry St.				CITY, STATE, ZIP CODE: Pontiac, MI 48342			TELEPHONE: 248-334-4573	
REPRESENTATIVE:	TITLE:	E/R REP	E/E REP	OPEN	WALK AROUND	CLOSE	REPORT Send To	INTER VIEW
Mr. Phil Hernandez	Operations Manager	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mr. Mark Chevalier	Union Steward	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mr. Todd Somerville	Human Resources	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OK to Email Closing Letter to E/R? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		EMAIL ADDRESS OF EMPLOYER REPRESENTATIVE:						

<p><b>OPENING CONFERENCE GUIDELINES</b></p> <p>Date: 04/01/15</p> <p><input checked="" type="checkbox"/> CET Services?</p> <p>Explained the Following to Employer:</p> <p><input checked="" type="checkbox"/> Purpose of Visit</p> <p><input checked="" type="checkbox"/> No Advance Notice</p> <p><input checked="" type="checkbox"/> Rights and Responsibilities</p> <p><input checked="" type="checkbox"/> Walk Around Requirements</p> <p><input checked="" type="checkbox"/> Need for Photos &amp; Samples</p> <p><input checked="" type="checkbox"/> Required Records and Posters</p> <p><input checked="" type="checkbox"/> Requirement to Interview Employees</p> <p><input checked="" type="checkbox"/> Employee Discrimination</p>	<p><b>CLOSING CONFERENCE GUIDELINES</b>      <input type="checkbox"/> On-Site      <input checked="" type="checkbox"/> Phone</p> <p>Date: 4/30/2015</p> <p><input checked="" type="checkbox"/> Discussed Inspection Findings</p> <p><input checked="" type="checkbox"/> Provided &amp; Discussed Applicable Standards &amp; Regulations</p> <p><input checked="" type="checkbox"/> Discussed Alleged Violations, Abatement Dates, &amp; Abatement Assurance</p> <p><input checked="" type="checkbox"/> Explained Citation &amp; Penalty Process (Penalty Reduction Given, E/R Must Post Citations)</p> <p><input checked="" type="checkbox"/> Discussed Payment of Penalty Regardless of Abatement of Item</p> <p><input checked="" type="checkbox"/> Explained Appeal Process (ISA, Formal Appeal &amp; PMA)</p> <p><input checked="" type="checkbox"/> Explained Proposed Citations Subject to Supervisor Review</p> <p><input checked="" type="checkbox"/> Advised Possibility of Follow-up Visit</p> <p><b>OTHER</b></p> <p><input checked="" type="checkbox"/> I&amp;I Review      <input checked="" type="checkbox"/> Workers' Comp?      <input checked="" type="checkbox"/> Customer Comment Card Given</p>
--	---

<p><b>ERGONOMIC GUIDELINES</b></p> <p><input type="checkbox"/> Assessed Workstations</p> <p><input checked="" type="checkbox"/> Interviewed Employees</p> <p><input type="checkbox"/> Issued Ergonomic Recommendations</p>	<p><input checked="" type="checkbox"/> Reviewed Injury/Illness Log Specifically For Ergonomic Injuries/Illnesses</p> <p><input type="checkbox"/> Evaluated Ergonomic Program (Training, Assessment, Controls, Medical)</p>
--	--

**ADDITIONAL INFORMATION:**

# GOOD FAITH WORKSHEET

Michigan Department of Licensing and Regulatory Affairs

MIOSHA

Est. Name:

Insp #:

CSHO:

Ferrous Processing & Trading Co.

1005701

U3495

Site Address:

500 Collier Rd., Pontiac, MI 48340

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## Factors

## Good Faith Points Earned

Compliance:

enter 9, 5, 3, or 0

One or more of the proposed violations are classified as high gravity serious.

0

Cooperation:

enter 4, 2, or 0

4

Correction/Mitigation:

enter 3, 1, or 0

NOTHING ABATED AT TIME OF CLOSING CONFERENCE

3

Postings/Logs:

enter 3, 1, or 0

3

PPE:

enter 3, 1, or 0

3

Housekeeping:

enter 3, 1, or 0

3

MIOSHA Training Institute:

enter 3, 1, or 0

0

Miscellaneous Circumstances:

enter a number from -6 to 0 to +6

0

Total Points Earned:

16

Total Reduction:

20%

- 25 points or greater = 30% reduction
- 15-24 points = 20% reduction
- 5-14 points = 10% reduction
- 0-4 points = 0% reduction

Emphasis 2.1

Promoted safety and health management systems during this MIOSHA visit:



## Violation Worksheet

Print Date : 05/14/2015

<b>Inspection Number</b>	1005701
<b>Opt. Insp. Number</b>	

<b>Establishment Name</b>	Ferrous Processing & Trading Co				
<b>DBA Name</b>					
<b>Type Of Violation</b>	Serious	<b>Citation Number</b>	1	<b>Item/Group</b>	1 /
<b>Number Exposed</b>	6	<b>No. Instances</b>	1	<b>REC</b>	
<b>Special Enforcement?</b>		<b>Employer's Relationship to Hazard</b>			
<b>Standard</b>	408.10011(a)				
<b>Substance Codes</b>		<b>Photo/Video Number</b>	Photo 1-10		
<b>Alleged Violation Description</b>	<p>408.10011(a): GI Part 1, General Provisions                      Provide training to each newly assigned employee regarding the operating procedures, hazards, and safeguards of the job.</p> <p>(Employees were not trained in the safe operating procedures, particular hazards, or appropriate safeguards of approaching opened doors of roll-off dumpsters holding metal scrap in the sorting/dumping area.)</p>				
<b>Recommended Abatement Action</b>					

### Penalty

<b>Severity</b>	High		
<b>Severity Justification</b>			
<b>Probability</b>	Greater		
<b>Probability Justification</b>			
<b>Number of Times Repeated</b>			
<b>Gravity</b>	High	<b>Gravity based Penalty</b>	5000.00
<b>Multiplier</b>		<b>Size</b>	0%
<b>Good Faith</b>		<b>History</b>	10%
<b>Calculated Penalty</b>	4500.00	<b>Proposed Penalty</b>	4500.00
<b>Proposed Penalty Justification:</b>			

### Abatement Details

<b>Days to Abate</b>	20 Wkg Days	<b>Abatement Status</b>	
<b>User-entered Abatement Due Date</b>		<b>Date Abated</b>	

<b>Abatement Documentation Required?</b>	Yes	<b>Date Verified</b>	
<b>Abatement Completed Description:</b>			

**MultiStep Abatement**

Type/Other Type	Days to abate	User entered Abatement Due Date	Completed(status)	Verify Date
-----------------	---------------	---------------------------------	-------------------	-------------

**Employee Exposure**

Exposure Instance	No. Exposed	Employer	Name and Address Telephone Numbers	Duration	Frequency	Proximity
1	1	Ferrous Processing & Trading Co	Steve Adamus Home: Work: Personal Mobile: Fax:	12.00 month	10 min/shift	within 3 feet
1	1	Ferrous Processing & Trading Co	David Wise Home: Work: Personal Mobile: Fax:	12.00 month	2 hrs/shift	within 3 feet
1	1	Ferrous Processing & Trading Co	Bob Szczesny Home: Work: Personal Mobile: Fax:	12.00 month	10 min/shift	within 3 feet

20. **Instance Description:**      A. Hazard    B. Equipment    C. Location    D. Injury/Illness    E. Measurements

a) **Hazards-Operation/Condition-Accident:** Exposure: Employees are exposed to falling metal scrap from roll-off dumpsters on the back of semis while inspecting loads. When inspecting the loads, employees approach open door to within 3 feet of the dumpster.

Hazard: Struck by

b) **Equipment:** 40 yard roll-off dumpster

c) **Location:** Sorting/Dumping area

d) **Injury/Illness (and Justifications for Severity and Probability):** Probability: Greater, driver(non-employee) had leg amputated on 10/14/14 when large metal pipe fell from load, employee was struck and injured by same falling pipe, loads shift every time because of the way the dumpsters are loaded/unloaded, and employees are not trained.

Severity: High, fractures, amputations, or death

e) **Measurements:** Dumpsters are placed onto semi-trailers approximately 67 inches high. The dumpsters are

approximately 6 feet high, approximately 8 feet wide, and approximately 20 feet long.

23. **Employer Knowledge:** General industry knowledge. Employer requires employees to wear hard hats and steel toed boots to protect from falling debris. Manager, Steve Adamus stated that he knew they should not have been standing near the open door.

24. **Comments:**

25. **Other Employer Information:**

# FIELD NARRATIVE

Michigan Department of Licensing and Regulatory Affairs  
MIOSHA

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Est. Name: Ferrous Processing & Trading Co

Insp # 1005701

CSHO:U3495

Street: 500 Collier Rd.	City: Pontiac	State: MI	Zip Code: 48340	Telephone: 313-477-0602
----------------------------	------------------	--------------	--------------------	----------------------------

Date/Ref	
----------	--

As directed by Lansing Office, Safety Officer Jeff Edgerton proceeded to P&T Leasing Company of Marlette (#1005698) for the purpose of conducting an injury and illness investigation. The representative at P&T Leasing indicated the injury occurred at the above address and firm. That person indicated all witnesses to the event would be employees of Ferrous Processing. I contacted Acting Safety Supervisor Drew Popovecz and was instructed to proceed to the above address to open an inspection so that I may interview Ferrous employees and observe the job site. I met with the person specified on the Inspection Guideline sheet and it was indicated the firm has union presence. That representative was contacted and shortly arrived. An opening conference was then held in accordance with the Inspection Guidelines.

The firm's primary business is scrap metal recycling.  
SIC 5093  
NAICS 423930

The firm had the required MIOSHA information posters posted near the employee time clock.

The firm has no recent history with MIOSHA.

Injury and illness data were reviewed for 2011-2015. No injuries required specific follow up. The required summary was posted by the employee time clock.

04/01/15

Operations Manager, Phil Hernandez provided copies of 9 photographs the firm took of the area and equipment after the incident.

**Information provided to employer:**

- CET pamphlet
- Appeals and Enforcement pamphlet
- MTI schedule
- Blue comment card

**Inspection findings:**

Dean McMaster was driving truck #812, owned by P&T Leasing Company of Marlette, carrying a load of metal scrap in a metal roll-off dumpster owned by Ferrous Processing & Trading Co. He was in the sort/dump area and had already opened the back door on the roll-off dumpster and secured it with a chain. Ferrous's Road Inspector, David Wise had inspected Mr. McMaster's load and determined that it was a mixed load of metal. Mr. Wise was new to the job and called Ferrous Manager Stephen Adamus on the radio to look at the load to determine where it needed to be dumped. McMaster and Wise waited for approximately 10 minutes for Mr. Adamus to arrive. During that time the door was open and neither McMaster nor Wise went near the open door. When Mr. Adamus arrived with Bob Szczesney, all four people approached the open door to observe the load. They stepped within 5 feet of the open door and observed the load for approximately 30

# FIELD NARRATIVE

Michigan Department of Licensing and Regulatory Affairs  
MIOSHA

Est. Name: Ferrous Processing & Trading Co

Insp # 1005701

CSHO:U3495

seconds when a metal pipe, approximately 6 feet long, 18 inches in diameter, and ½ thick, fell from a height of approximately 9 feet and struck Mr. McMaster in the leg. The leg was only left on by strands of skin and ligament. Doctors attempted to reattach the leg unsuccessfully and it later had to be surgically amputated. The pipe also struck Mr. Adamus in the head and back but only caused minor injuries.

## Employee interviews:

Stephen Adamus  
45876 Keding St., Utica, MI 48317  
586-431-4439

Manager in training, 2 years

The employee is considered management and is not covered by the union. This interview was conducted privately. This employee sincerely believed that the inspection was a joke because it was April 1<sup>st</sup>. I produced my credentials and assured him that it was no joke. The employer representative later told me that I had not convinced Mr. Adamus and he still believed it to be a joke. Mr. Adamus indicated that he was called by Mr. Wise to inspect the load for him since it was miscellaneous steel and Mr. Wise did not know where to have it dumped. Adamus stated that McMaster would have opened the door and that it would have remained open for approximately 10 – 20 minutes. Adamus stated that Bob Szczesney was with him and when they arrived at the truck, all four of them proceeded to the back of the trailer. He stated they were looking at the load for approximately 30 seconds when the pipe fell striking Mr. McMaster and himself. He indicated that he did go to the hospital just to be sure. He indicated he had x-rays of his head and back but everything was normal. He stated he just had soreness as a result. He had no safety concerns and knew of no injuries.

Milen Dimitrov  
7838 Twins Dr., Waterford, MI 48229  
Maintenance, 10 years

Employee is a member of the union and I explained employees' rights to have the union representative present during the interview. The employee chose to exercise that right and we conducted the interview with Union Steward, Mark Chevalier present. Employee indicated that he did not witness the event. He stated he never has anything to do with the dumping or inspection processes that were ongoing when the incident occurred. He stated that he came out of the maintenance shop after the incident and saw all the after events. He had no safety concerns and knew of no injuries. After the interview I spoke with the employer representative and he apologized. He mistakenly had thought that Mr. Dimitrov was a direct witness to the incident.

Mark Chevalier  
2163 E Mclean, Burton, MI 48529  
810-577-9710

Crane Operator/Union Steward, 27 years

Employee is a member of the union and I explained employees' rights to have the union representative present during the interview. The employee chose not to exercise that right and we conducted the interview privately. Employee stated that he did not witness the incident. He stated that the roll-off dumpster was owned by Ferrous and that it was unlikely the exact roll-off would be

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# FIELD NARRATIVE

Michigan Department of Licensing and Regulatory Affairs  
MIOSHA

Est. Name: Ferrous Processing & Trading Co

Insp # 1005701

CSHO:U3495

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	<p>found at the jobsite. He stated there were plenty of roll-offs exactly like the one involved and showed me where they were located. He indicated that he had nothing more to add to the investigation, had no safety concerns, and knew of no injuries. At that point, Mr. Chevalier asked if I needed his presence for the rest of the inspection. I indicated that I would only need to look at the dumpsters and collect some paperwork from the employer. I stated that it was his right to accompany and if he desired not to provide a replacement representative that I would still continue the inspection. He did not object to that and excused himself from the inspection at that point.</p>
04/02/15	<p><b>Employee telephone interview:</b></p> <p>David Wise 1956 Rome Ave., Warren, MI 48091 586-690-3964 Road Inspector, 1 year</p> <p>Employee is a member of the union and I explained employees' rights to have the union representative present during the interview. The employee chose not to exercise that right and we conducted the interview privately. Wise stated that he is new to inspecting and when McMaster opened the roll-off door, he could see that the load was miscellaneous steel and he did not know where to have it dumped. Employee indicated he called Adamus on the radio to inspect the load. Wise stated that McMaster had already opened the door and secured it with a chain. While they waited for the arrival of Adamus, Wise stated that both men stood on the side of the dumpster by where the door had been secured with a chain. They waited approximately 10 minutes with the door open the entire time. Wise stated there were no other trucks or equipment running nearby to cause vibrations. Wise stated that Adamus had arrived with Szczesney and all four then approached the back of the dumpster. He said they stood within 5 feet of the dumpster. He indicated he saw the pipe starting to fall so he ran away and did not see it strike anyone. He indicated that loads of metal always shift because of the way they are loaded on an angle and that drivers always open the doors slightly (2 inches) to observe if it is safe to open the rest of the way. He stated the drivers stand behind the door and open it by pulling so the door is always between the driver and the load. He indicated it is typical to have random steel fall from the back of the dumpsters but it has always happened as the door is opened so there is no danger. He had no safety concerns and knew of no other injuries.</p>
04/30/15	<p>A joint closing conference was conducted by telephone with the persons listed on the Guideline Sheet. It was indicated that Todd Somerville was out of the state and requested that I contact him. I did so, by telephone, and held another closing conference with him.</p> <p>Applicable standards and abatement assurance was discussed for the following standards: Part 1</p>

---

**FERROUS**   
Processing & Trading Co.

**FPT-Pontiac Div. LLC**

Phil Hernandez  
Operations Manager

500 Collier Road  
Pontiac, Michigan 48340  
Phone: 248 335-8141 Ext. 244  
Fax: 248 335-8714  
Mobile: 313 477-0602  
Email: phil.hernandez@fptscrap.com

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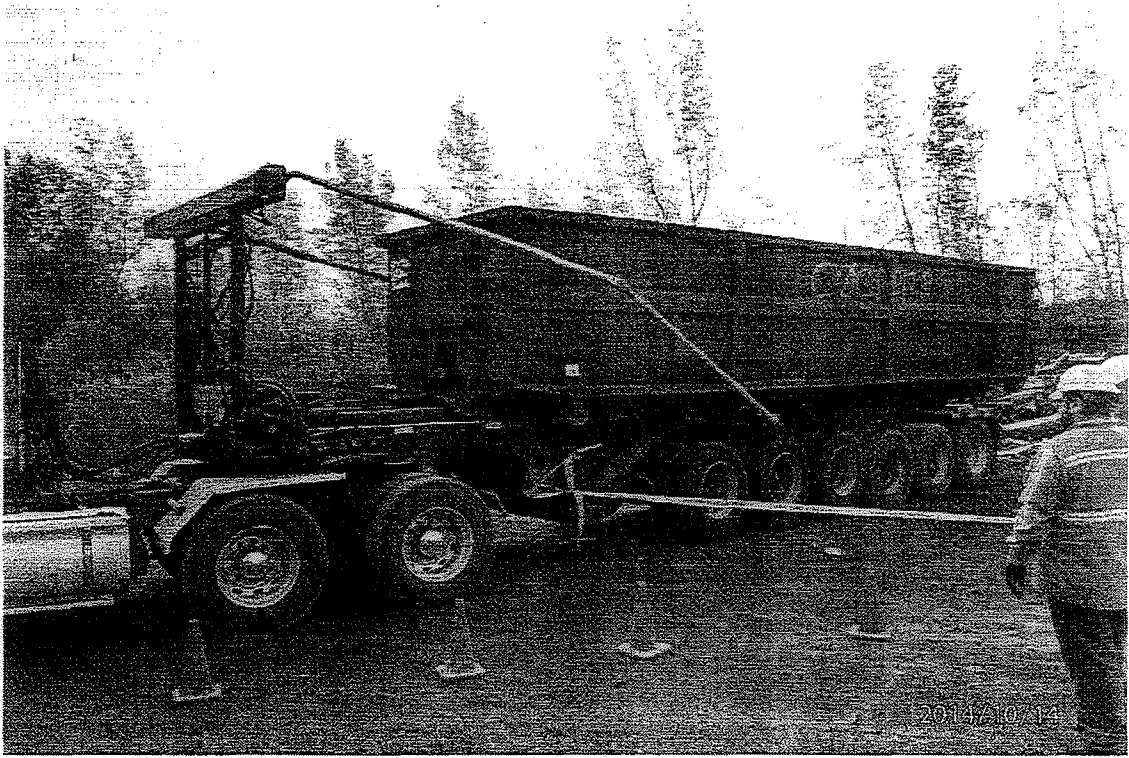
**FERROUS**   
Processing & Trading Co.

Todd Somerville  
Human Resources

9100 John Kronk  
Detroit, MI 48210  
Phone: 313 582-2911 Ext. 217  
Fax: 313 557-0029  
Cell: 313 218-2332  
Email: todd.somerville@fptscrap.com



2014/10/14









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Establishment Search Inspection Detail -- OSHA View

<b>Inspection: 313292583 - Ferrous Processing &amp; Trading Co</b>	
<b>Office: Michigan Safety Cnst</b>	
Nr: 313292583 Report ID: 0552651 Open: 03/23/2011	
Ferrous Processing & Trading Co 14533 Telegraph Rd Flat Rock , MI 48134 SIC: 1542/Nonresidential Construction, Nec NAICS: 236220/Commercial and Institutional Building Construction Mailing: 5970 W Warren Ave , Detroit , MI 48210	Nr Employees: 4 Nr Controlled: 9 Union Status: NonUnion
Inspection Type: Planned Scope: Complete Ownership: Private Safety/Health: Safety Planning Guide: Safety-Construction Emphasis: S:Construction Opt Report Nr: 11-019/3	Employees Covered: 4 Advance Notice: N Close Conference: 03/25/2011 Close Case: 04/27/2011
Optional Information: Type ID Value N 01 313292617 N 09 100% N 20 P S 01 PARTS GALORE REMODELING	

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1			1		2
Current Violations	1			1		2
Initial Penalty	100.00					100.00
Current Penalty	100.00					100.00
FTA Amount						

Violation Items

ID	Type	Standard	Issuance	Abate	AC	Curr\$	Init\$	Fta\$	Contest	LastEvent
1. 01001	Serious	4084185106	04/14/2011	04/19/2011	X	100	100	0		-
2. 02001	Other	4084186504	04/14/2011	04/19/2011	X	0	0	0		-

Payment and Administrative Actions

Empr Phone: 734-341-2607				
Payments -- 100.00/ 0.00				
163 Nr	Type	Date	Penalty	FTA Origin Balance
921119012	Payment	04/27/2011	100.00	

Occupational Safety & Health Administration  
200 Constitution Avenue, NW  
Washington, DC 20210

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Advanced Search

Establishment Search Inspection Detail -- OSHA View

<b>Inspection: 308840487 - Ferrous Processing &amp; Trading Co Inc</b>	
<b>Office: Michigan Safety Gen</b>	
Nr: 308840487 Report ID: 0552652 Open: 08/08/2007	
Ferrous Processing & Trading Co Inc 3400 E Lafayette Detroit , MI 48207 SIC: 5093/Scrap and Waste Materials NAICS: 425120/Wholesale Trade Agents and Brokers	Nr Employees: 100 Nr Controlled: 300 Union Status: Union
Inspection Type: Planned Scope: Complete Ownership: Private Safety/Health: Safety Planning Guide: Safety-Manufacturing Emphasis: S:Enf Targeted	Employees Covered: 100 Advance Notice: N Hours Spent: 45.4 Close Conference: 08/16/2007 Close Case: 10/31/2007
Optional Information: Type ID Value N 20 LISA CARROLL S 11 21 S 12 15%	

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	7			9		16
Current Violations	7			9		16
Initial Penalty	4200.00					4200.00
Current Penalty	2520.00					2520.00
FTA Amount						

Violation Items

ID	Type	Standard	Issuance	Abate	AC	Curr	\$	Init	\$	Fta	\$	Contest	LastEvent
1.	01001	Serious	4081012101	09/17/2007	09/17/2007	X	315	525	0				I-Informal Settlement
2.	01002	Serious	4081072701	09/17/2007	09/17/2007	X	420	700	0				I-Informal Settlement
3.	01003	Serious	4081073101	09/14/2007	10/17/2007	X	420	700	0				I-Informal Settlement
4.	01004	Serious	4081111504	09/14/2007	10/17/2007	X	315	525	0				I-Informal Settlement
5.	01005	Serious	4081142104	09/14/2007	10/17/2007	X	420	700	0				I-Informal Settlement
6.	01006	Serious	4081173202	09/14/2007	09/14/2007	X	315	525	0				I-Informal Settlement
7.	01007	Serious	4081331201	09/14/2007	10/17/2007	X	315	525	0				I-Informal Settlement
8.	02001	Other	4081022703	09/14/2007	09/14/2007	X	0	0	0				-
9.	02002	Other	4081083503	09/14/2007	09/14/2007	X	0	0	0				-
10.	02003	Other	4081213102	09/14/2007	10/17/2007	X	0	0	0				-
11.	02004	Other	4081216101 A	09/14/2007	10/17/2007	X	0	0	0				-
12.	02005	Other	4081492301	09/14/2007	10/17/2007	X	0	0	0				-
13.	02006	Other	4081541602	09/14/2007	09/14/2007	X	0	0	0				-

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14. 02007 Other	19100147 C04 I	09/14/2007	10/17/2007	X	0	0	0	-
15. 02008 Other	19100110 F02 I	09/14/2007	09/14/2007	X	0	0	0	-
16. 02009 Other	19101200 F05	09/14/2007	09/14/2007	X	0	0	0	-

Payment and Administrative Actions				
Empr Phone: 313-582-2911				
<b>Payments -- 2520.00/ 0.00</b>				
163 Nr	Type	Date	Penalty	FTA Origin Balance
922137781	Payment	10/30/2007	2520.00	

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Occupational Safety & Health Administration  
 200 Constitution Avenue, NW  
 Washington, DC 20210

# CASE FILE DIARY

Establishment: **Ferrous Processing & Trading Co**

*See 1005698*

Activity #:

Inspection #: 1005701

Date	Comment/Action	Initials
04/01/15	Opening/inspection/interviews	JE
04/02/15	Telephone interviews with employees/mailed short form to LT, DP, and MH	JE
04/30/15	Telephone CC/electronic submission/mailed CD/mailed RP and LT	JE
05.1.15	Entered Information in UL, gave file to MH	LT
5/5/15	RAP to review / keep with 1005698	MH
5/15/15	CASE FILE REVIEW / TO FUTURE FOR TYPING	RAPSR
5/15/15	RAP to sign	FC
5/19/15	Signed Citations	RAPSR
5-21-15	mailed citations & filed in Gun Card Holding	FC
6/18/15	1st appeal letter received	mit
6/19/15	REVIEW 1ST APPEAL	RAPSR
6/22/15	close to supervisor to sign	mit
6/23/15	Signed decision	RAPSR
6/25/15	Mailed decision & entered in OIS	mit
7/21/15	AA	mit
7/24/15	Review AA - Close File after PAO	NO
8/18/15	Closed file, emailed SO	mit

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STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
MARTHA B. YODER  
DIRECTOR

RICK SNYDER  
GOVERNOR

MIKE ZIMMER  
DIRECTOR

August 18, 2015

Mr. Phil Hernandez  
Operations Manager  
Ferrous Processing & Trading Co.  
500 Collier Rd.  
Pontiac, MI 48340

INSPECTION #: 1005701

Dear Mr. Hernandez:

This letter acknowledges abatement of the violation(s) cited on the subject inspection. Our records indicate the violation(s) were abated during the inspection or you subsequently submitted abatement verification to this office.

Based on the above information, it appears the violations have been satisfactorily abated and this investigation is therefore closed. Our records show no outstanding penalty amounts.

We appreciate your cooperation and efforts to create and maintain a safe and healthy workplace.

Sincerely,

*Todd Davidson*

Todd Davidson  
Safety Officer

TD:mib

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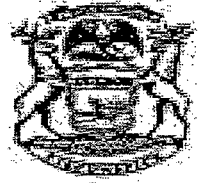


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Auxiliary aids, services and other reasonable accommodations  
are available upon request to individuals with disabilities.  
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**Michigan Department of Licensing  
and Regulatory Affairs**  
7150 Harris Drive,  
P.O. Box 30644  
Lansing MI 48909  
Phone: (517) 322-1831 Fax: (517) 322-6353

**Inspection Number:** 1005701  
**Inspection Date(s):** 04/01/2015-04/30/2015  
**Issuance Date:** 05/20/2015  
**Optional Reporting Number:**



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**Citation and Notification of Penalty**

**Company Name:** Ferrous Processing & Trading Co  
**Inspection Site:** 500 Collier Rd, Pontiac, MI 48340

Citation 1 Item 1

Type of Violation: **Serious**

408.10011(a): GI Part 1, General Provisions

Provide training to each newly assigned employee regarding the operating procedures, hazards, and safeguards of the job.

(Employees were not trained in the safe operating procedures, particular hazards, or appropriate safeguards of approaching opened doors of roll-off dumpsters holding metal scrap in the sorting/dumping area.)

**Date By Which Violation Must be Abated:**

**June 23, 2015**

**Proposed Penalty:**

**\$4,500.00**

  
Authorized Signature

REC'D 15 JUL 17 PM 12:03

CFD

Ferrous Processing and Trading

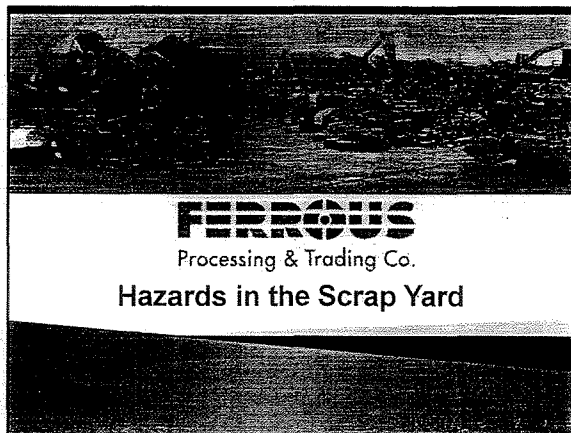
Safety Training Hazards in the Scrap Yard

Date 6/26/15

Location Portac

Print Name	Signature
Stephany Allen	[Signature]
STEVE BLAIN	Steve J. Blain
Christopher Chevalier	[Signature]
Ronald J Chevalier	Ronald J Chevalier
JAMIE JUTHE	[Signature]
HAROU TEDHAMS	[Signature]
Annaelija Cmajski	[Signature]
Bruce Johnson	[Signature]
MILEN DIMITROV	[Signature]
PHIL HERRMANN	[Signature]
Irwin Fish	[Signature]
DAN WILBE	[Signature]
Dave Wick	[Signature]
Bryan Kirby	[Signature]
Nick Milanoni	[Signature]
ROBERT SZCZESNY	[Signature]
Christine Harrison	Christine Harrison
Jason Walker	[Signature]
SEAD ZUKANOVIC	[Signature]
Frank Smith	[Signature]
DANNY WALLACE	Danny Wallace
Mark Chavakis	[Signature]
Michael Bruce	Michael Bruce

Inspection # 1005701



### PPE Required

- ▶ Hard Hats
- ▶ Safety Glasses
- ▶ Steel Toe Boots
- ▶ Reflective Wear
- ▶ Shirts w/sleeves
- ▶ Long Pants
- ▶ Ear plugs or Ear muffs
- ▶ Gloves

▶ Additional personal protective equipment may be required for specific tasks.

### Cranes and Loaders

### Safety Hazards

- ▶ Untrained or unauthorized operation
- ▶ Crushed or struck by equipment
- ▶ Caught between solid objects and moving equipment
- ▶ Caught in moving parts
- ▶ Falling from machines or overturning equipment

### Safety Hazards

- ▶ Contacting overhead or underground utilities
- ▶ Entanglement in moving parts
- ▶ Struck by flying debris
- ▶ Collisions with other equipment
- ▶ Traveling at excessive speeds
- ▶ Failure of lifting mechanisms/operational failures

### Ground Crew Responsibility

- ▶ Approach equipment only after making eye contact and signaling the operator. WAIT for their approval.
- ▶ Do not get near moving equipment unless it is necessary.
- ▶ Never ride on equipment unless it has been designed to carry you. This means it must have a seat and a seat belt.
- ▶ Stay in the view of the operator.

Inspection # 1005701

### Ground Crew Responsibility

- › Keep clear of moving equipment
- › Never assume the operator knows where you are and where you are going.
- › Keep and eye out for moving equipment at all times.
- › If you must walk around a piece of heavy equipment, alert the operator to stop the machine before going by.

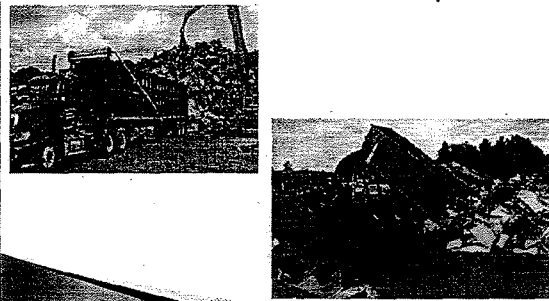
### Ground Crew Responsibility

- › Never walk alongside moving equipment. Keep in the clear in case the equipment suddenly turns your way, slides or the load shifts.
- › Never ride on a running board its easy to fall under moving equipment.
- › Never place yourself within the swing radius or path of moving components.
- › Never stand directly between wheels or on tracks when talking to the operator.

### Ground Crew Responsibility

- › Never take for granted that equipment operators see you.
- › Never depend upon hearing a horn or other warning signals.
- › Keep in the clear whenever equipment is backing up.
- › Swinging counterweights often create a dangerous pinch point. Don't get into a spot where you could be caught in between.

### Trucks Loading/Unloading



### Safety Hazards

Trucks are unstable when the boom is in the air while dumping the load. This could cause a tip over or roll over.



### Safety Hazards

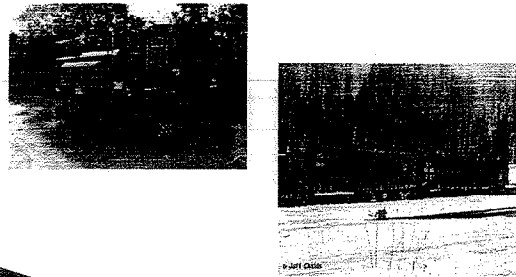
- › Hydraulic failures
- › Unstable loads
- › Frozen loads/Stuck loads
- › Load weight not properly distributed

# 1005701

### Safety Hazards

Stay a minimum of 20 feet away from any open door on a dump truck or roll off box. Loads can shift while being transported, causing material to become unstable.

### Switch Engines/Rail Cars



### Safety Hazards

Railroad safety is critical!

Accidents that occur are likely to cause amputations or death.

### Safety Hazards

- ▶ Catastrophic injuries most often involve rolling rail cars, rail car derailing and coupling and uncoupling.
- ▶ Due to the size and weight of the rail cars it is impossible for the operator to stop suddenly.

### Safety Hazards

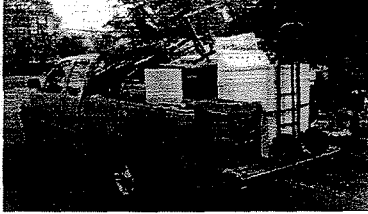
- ▶ The switch engine operator and the switchman should maintain constant communication.
- ▶ Do not distract the operator or switchman while cars are in motion.
- ▶ Avoid the rail track area when cars are being loaded or unloaded.

### Safety Hazards

- ▶ Maintain at least a 12 foot clearance
- ▶ Never walk between rail cars you could be crushed between the knuckles.
- ▶ Workers can be crushed while coupling and uncoupling cars.
- ▶ Derailed or runaway cars

#1005701

### Customer Traffic



### Safety Hazards

- › Customers may be unpredictable
- › Unloading scrap material
- › Scavenging in the scrap pile
- › Driving or walking behind heavy equipment
- › Stripping scrap

### Scrap Piles



### Safety Hazards

Scrap piles are constantly changing and are the center of activity in a scrap yard.

- › Can be unstable may slide or fall due to gravity.
- › Trucks or customers unloading scrap
- › Cranes and loaders dressing piles

### Summary

Knowing what equipment is in your area and paying attention to what is going on around you can help prevent accidents.



Questions?

# 1005701



STATE OF MICHIGAN  
 DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
 MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
 MARTHA B. YODER  
 DIRECTOR

RICK SNYDER  
 GOVERNOR

MIKE ZIMMER  
 DIRECTOR

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June 23, 2015

Ms. Susan L. Johnson  
 Butzel Long  
 Attorneys & Counselors  
 Stoneridge West  
 41000 Woodward Ave.  
 Bloomfield Hills, MI 48304

RE: Ferrous Process & Trading Co.  
 500 Collier Rd.  
 Pontiac, MI 48340

Dear Ms. Johnson:

DECISION IN RESPONSE TO EMPLOYER PETITION

INSPECTION #1005701

On June 11, 2015, you filed a petition for modification and/or dismissal of the subject item of the citation issued pursuant to Act 154, Public Acts of 1974, as amended, the Michigan Occupational Safety and Health Act.

After due consideration of your petition, along with any relevant information, the following decision has been made. Included with this decision for you and your employees information are Board Rule Excerpts and an Appeal Requirements sheet applicable to the appeal process. ALL MUST BE POSTED WITH THE DECISION.

Citation #1, Page #4, Item #1 concerning the General Provisions Standard, the entire item and the proposed penalty are reaffirmed. Your petition is denied. The Department's position is that the violation has been correctly cited and the proposed penalty has been correctly assigned.

The department requests that the remaining total penalty of \$4,500.00 be paid within 15 working days of receiving this decision letter.



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Ferrous Process & Trading Co.  
June 23, 2015  
Page 2

If you have any questions regarding this letter, please call this office at (517) 322-1831.

Sincerely,



Rick Pfander, Jr.  
Safety Supervisor

RP:mib

Enclosures: Appeal Requirements  
Excerpt of Board Rules

CC: Mr. Phil Hernandez  
Operations Manager  
Ferrous Processing & Trading Co.  
500 Collier Rd.  
Pontiac, MI 48340

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MR PHIL HERNANDEZ  
OPERATIONS MANAGER  
FERROUS PROCESSING & TRADING CO  
500 COLLIER RD  
PONTIAC MI 48340  
1005701 MIB DECISION LETTER

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MR PHIL HERNANDEZ  
OPERATIONS MANAGER  
FERROUS PROCESSING & TRADING CO  
500 COLLIER RD  
PONTIAC MI 48340  
1005701 MIB DECISION LETTER

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 *Archie Zetter*  Addressee

B. Received by (Printed Name) *Archie Zetter* C. Date of Delivery *7/1/15*

Address different from item 1?  Yes  
or delivery address below:  No

3. Service type

Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from service label) **7011 1570 0002 5215 2928** *6/29 PA*

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Total Postage & Fees	\$	

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City, State

PS Form

MS SUSAN L JOHNSON BUTZEL LONG  
 ATTORNEYS & COUNSELORS  
 STONERIDGE WEST  
 41000 WOODWARD AVE  
 BLOOMFIELD HILLS MI 48304  
 1005701 MIB DECISION LETTER

7011 1570 0002 5215 2935

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece.</li> </ul> <p>MS SUSAN L JOHNSON BUTZEL LONG                  ATTORNEYS &amp; COUNSELORS                  STONERIDGE WEST                  41000 WOODWARD AVE                  BLOOMFIELD HILLS MI 48304                  1005701 MIB DECISION LETTER</p>	<p>A. Signature                  X <i>[Signature]</i> <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span></p> <p>B. Received by (Printed Name)  <i>Kellie K. Lewis</i></p> <p>C. Date of Delivery  <i>9/1/15</i></p> <p>Address different from item 1? <input type="checkbox"/> Yes                  or delivery address below: <input type="checkbox"/> No</p>
	<p>3. Service type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number                  (Transfer from service label)</p>	<p>7011 1570 0002 5215 2935</p> <p style="text-align: right;"><i>U/PA</i></p>
<p>PS Form 3811, February 2004 <span style="float: right;">Domestic Return Receipt 102595-02-M-1540</span></p>	

7/2021 11:00 AM

\*Supervisor, ISA Coordinator and IMIS Clerks must verify firm name, FOD, inspection #, and postmark date for each inspection being appealed.

FIRM NAME Terrous Processing + Trading Co. INSPECTION # 1005701  
 Verified: mit RAPSC Verified: mit RAPSC

DATE STAMPED IN 6/15/15

7/2/15  
8<sup>th</sup> WORK DAY

1<sup>st</sup> APPEAL

2<sup>nd</sup> APPEAL

LATE APPEAL

PMA

FINAL ORDER DATE 6/18/15

6/18/15 mit  
DATE/INITIALS

Verified: RAPSC

SUPERVISOR REVIEW DATE 6/19/15

REVIEWED BY RAPSC

CSHO U3495 # EDGERTON

CITATION REC DECISION LTR REC. 5/28/15  
(Used for 2<sup>nd</sup> Appeal Calculation)

POSTMARK DATE 6/11/15

DAYS LAPSED 14

Verified: mit RAPSC

SEND POST LTR? Y / (N)

CIT.	APPL RESP.	SEE NOTE	TYPE VIOL.	STANDARD	PART	SEC	PAR	SUB PART	ABATE DATE	PEN
CIT. 1 PAGE 4 ITEM 1	R1E2		S	GENERAL PROVISIONS	1				6/23/15	\$4,500.00
CIT. PAGE ITEM										
CIT. PAGE ITEM										
CIT. PAGE ITEM										
CIT. PAGE ITEM										
CIT. PAGE ITEM										

# BUTZEL LONG

ATTORNEYS AND COUNSELORS

a professional corporation

Susan Lynn Johnson  
248 258 1307  
johnsons@butzel.com

Stoneridge West  
41000 Woodward Avenue  
Bloomfield Hills, Michigan 48304  
T: 248 258 1616 F: 248 258 1439  
butzel.com

June 11, 2015

VIA FEDERAL EXPRESS  
AND FACSIMILE

Michigan Occupational Safety  
and Health Administration  
General Industry Safety and Health Division  
7150 Harris Drive  
PO Box 30644  
Lansing, MI 48909-8144

**RE: Ferrous Processing & Trading Co**  
**Inspection Site: 500 Collier Rd**  
**Inspection No.: 1005701**  
**Inspection Dates: 04/01/2015-04/30/2015**  
**Issuance Date: 05/20/2015**  
**Reporting ID: 0552652**  
**CSHO ID: U3495**

To whom it may concern:

On behalf of our client, Ferrous Processing & Trading Co. ("FPT"), we submit this appeal of the following citation for the reasons listed.

Citation 1 Item 1. This citation alleges a violation of 408.10011(a):GI Part 1, General Provision; Provide training to each newly assigned employee regarding the operating procedures, hazards, and safeguards of the job.

Ferrous Processing & Trading is a scrap metal processor. The company purchases various types of scrap metal from generators and vendors of the scrap metal. In the instance the subject of this citation, a load of mixed scrap was delivered to FPT in a truck carrying a roll-off dumpster. In order to inspect the load, the back door of the dumpster was opened while still on the truck bed. FPT's employee, as well as the truck driver, viewed the load from behind the dumpster. The dumpster remained level on the truck at all times. The citation indicates that "[e]mployees were not trained in the safe operating procedures, particular hazards, or appropriate safeguards of approaching opened doors of roll-off dumpsters holding scrap in the sorting/dumping area".

Ann Arbor Bloomfield Hills Detroit Lansing New York Washington D.C.  
Alliance Offices Beijing Shanghai Mexico City Monterrey Member Lex Mundi www.butzel.com

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6/17

Michigan Occupational Safety  
and Health Administration  
General Industry Safety and Health Division  
June 11, 2015

Employees of FPT are provided regular "Near Miss" training, which touches on hazards associated with the scrap yard, including falling objects. Employees are also provided with Safety Awareness training which includes Common Hazards, Hierarchy of Risk Controls, Hazard Identification, and Case Studies. Every new employee also receives PPE Hazard Assessment training at orientation. As such, not only are new employees trained in identifying and avoiding common hazards and risks at the scrap yard, but they receive additional periodic training.

FPT requests that this citation be dismissed as it was not the result of a lack of training in the operating procedures, hazards, and safeguards of the job. The incident resulting in the injury to FPT's employee and the customer driver was either a result of the failure of the two men to properly assess the hazard before approaching the back of the roll-off as they were trained to do or was simply an isolated accident which additional training would not have prevented. The men observed the load for quite a while before a piece of pipe suddenly rolled out of the box. The roll-off box was not moved or elevated during this time. There was no indication that this load was anything but stable or could otherwise pose an immediate risk or hazard until the pipe suddenly rolled out. This was a fluke accident that may not have been avoided regardless of training. The MIOSHA inspector seemingly acknowledged this in the closing meeting with site management, indicating that he saw no apparent violation. As such, FPT believes the citation is unwarranted and should be dismissed.

In addition, the citation classification of "serious" is too severe given the facts presented above. As indicated, considerable training is provided in the hazards involved in the scrap yard operations. Additional training is unlikely to have prevented this incident. In any event, FPT did not know, and had no reason to know, that failure to specifically identify the facts involved in this incident in its other hazard training would or could result in serious injury, as the hazard involved is similar to those identified in the regular training.

For the reasons set forth above, FPT is requesting the citation be dismissed. FPT also requests an extension of the abatement date pending resolution of its appeals.

Very truly yours,

BUTZEL LONG,  
a professional corporation

  
Susan Lynn Johnson

SLJ


Enclosure

cc: Phil Hernandez, FPT (via e-mail)  
Lisa Carroll, FPT (via e-mail)

Michigan Occupational Safety  
and Health Administration  
General Industry Safety and Health Division  
7150 Harris Drive  
PO Box 30644  
Lansing, MI 48909-8144

**RE: Ferrous Processing & Trading Co**  
**Inspection Site: 500 Collier Rd**  
**Inspection No.: 1005701**  
**Inspection Dates: 04/01/2015-04/30/2015**  
**Issuance Date: 05/20/2015**  
**Reporting ID: 0552652**  
**CSHO ID: U3495**

I hereby certify that the above referenced citation has been posted at or near the location where the alleged violation took place.



Phil Hernandez, Operations Manager  
FPT-Pontiac L.L.C.

Dated: 6-1-15



BUTZEL LONG



Extremely Urgent

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FZ 664

10:30

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Page 1 of 1

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Butzel Long  
Stoneridge West  
41000 Woodward Avenue  
Bloomfield Hills, MI 48304

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J151215022303uv

Ship Date: 11JUN15  
ActWgt: 1.0 LB  
CAD: 4757080/INET3610

Delivery Address Bar Code



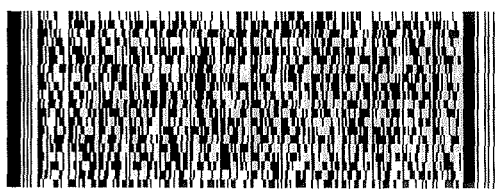
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**LANSING, MI 48909**

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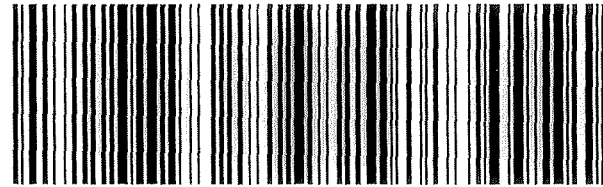
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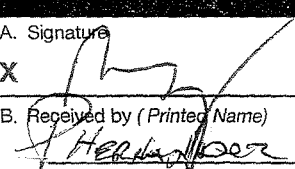
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MR PHIL HERNANDEZ  
 OPERATIONS MANAGER  
 FERROUS PROCESSING & TRADING CO  
 500 COLLIER RD  
 PONTIAC MI 48340

PS Form 3800, August 2006 See Reverse for Instructions

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<p>2. Article Number                  (Transfer from service label)</p> <p>1005901 FC U3495</p>	<p>Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>7011 1570 0002 5215 1594</p>	
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p>	



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
MARTHA B. YODER  
DIRECTOR

RICK SNYDER  
GOVERNOR

MIKE ZIMMER  
DIRECTOR

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May 20, 2015

Mr. Phil Hernandez  
Operations Manager  
Ferrous Processing & Trading Co.  
500 Collier Rd.  
Pontiac, MI 48340

Dear Mr. Hernandez:

RE: Inspection #1005701:

On April 1, 2015, the Michigan Occupational Safety and Health Administration (MIOSHA), General Industry Safety and Health Division began an occupational safety inspection at your worksite located at:

500 Collier Rd.  
Pontiac, MI 48340

This inspection has resulted in at least one citation. Please review the citation(s) for information regarding penalties, abatement requirements, deadlines, settlement agreement instructions, and appeal information.

Enclosed you may find additional information such as recommendations, data sheets, and supplemental information on occupational safety and health. This inspection may have resulted in citations not directly related to the complaint or referral items.

MIOSHA standards as well as additional consultation, education, and training materials are located online at [www.michigan.gov/miosha](http://www.michigan.gov/miosha). If you should have any questions concerning this matter, please contact me at (517) 322-1831. Your personal support and interest in the safety and health of your employees is appreciated.

Note: If you wish to send correspondence by **overnight delivery**, such as FedEx or UPS, please do not use the address listed below. Instead, use the following for overnight deliveries: MIOSHA-GISHD, Attention: LARA Mailroom, 525 W Allegan, Lansing, Michigan, 48909.

Sincerely,

*Rick Pfander Jr.*

Rick Pfander Jr.  
Safety Supervisor

RP:fc  
Enclosure(s)



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[www.michigan.gov/miosha](http://www.michigan.gov/miosha) • Phone: (517) 322-1831 • Fax: (517) 322-6353



# EXHIBIT 6

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STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DEAN McMASTER,

Plaintiff,

-vs-

Case No. 15-147414-NO  
Hon. CHERYL MATTHEWS

DTE ELECTRIC COMPANY and FERROUS  
PROCESSING AND TRADING COMPANY,  
d/b/a FERROUS PROCESSING & TRADING  
CO., Jointly and Severally,  
Defendants.

\_\_\_\_\_ /

PAGES 1 - 95

The deposition of JEFFREY EDGERTON,  
Taken at 201 McMorran Boulevard,  
Port Huron, Michigan,  
Commencing at 12:09 p.m.,  
Wednesday, August 17, 2016,  
Before Kristin DeCasas, CSR 6438.

1 APPEARANCES:  
 2  
 3 MR. TODD J. WEGLARZ P48035  
 4 FIEGER, FIEGER, KENNEY & HARRINGTON  
 5 19390 West 10 Mile Road  
 6 Southfield, Michigan 48075  
 7 248-355-5555  
 8 Appearing on behalf of the Plaintiff:  
 9  
 10 MR. TIMOTHY YOUNG P22657  
 11 CUMMINGS, MCCLOREY, DAVIS & ACHO, P.L.C.  
 12 33900 Schoolcraft  
 13 Livonia, Michigan 48150  
 14 734-261-2400  
 15 tyoung@cnda-law.com  
 16 Appearing on behalf of the Defendant, DTE:  
 17  
 18 MR. JOHN J. O'SHEA P52009  
 19 LAW OFFICE OF JOHN O'SHEA  
 20 18000 Mack Avenue  
 21 Grosse Pointe, Michigan 48230  
 22 313-884-2000  
 23 oshealaw@att.net  
 24 Appearing on behalf of the Defendant Ferrous:  
 25

1 TABLE OF CONTENTS  
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 15 Report of Ferrous investigation  
 16 DEPOSITION EXHIBIT 2 5  
 17 Report of P & T investigation  
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1 APEARANCES CONTINUED:  
 2  
 3 MR. WILLIAM S. SELESKY P77750  
 4 ASSISTANT ATTORNEY GENERAL  
 5 MICHIGAN DEPARTMENT OF ATTORNEY GENERAL  
 6 P.O. Box 30217  
 7 Lansing, Michigan 48909-7717  
 8 Appearing on behalf of the State of Michigan.  
 9  
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1 Port Huron, Michigan  
 2 Wednesday, August 17, 2016  
 3 At or about 12:09 p.m.  
 4  
 5 JEFFREY EDGERTON,  
 6 having first been duly sworn, was examined  
 7 and testified on his oath as follows:  
 8  
 9 (EXHIBITS 1 AND 2 WERE MARKED BY THE COURT  
 10 REPORTER.)  
 11  
 12 MR. YOUNG: Let the record reflect this is  
 13 the deposition of Jeff Edgerton taken pursuant to  
 14 notice and agreement of counsel and subpoena for  
 15 the witness and to be taken for all purposes in  
 16 accordance with the Michigan Court Rules.  
 17 EXAMINATION BY MR. YOUNG:  
 18 Q. Would you state your full name for the record,  
 19 please.  
 20 A. Jeffrey Vallie Edgerton, r-e-y, V-a-l-l-i-e.  
 21 Q. And you are employed by the State of Michigan; is  
 22 that correct?  
 23 A. Correct.  
 24 Q. In the Department of Licensing and Regulatory  
 25 Affairs?

1 And about two-thirds of the way down in the  
2 interview section for David Wise, the sentence is,  
3 "He said they stood within five feet of the  
4 dumpster."  
5 Do you see that?  
6 A. I do.  
7 Q. Is that what David Wise told you?  
8 A. It is.  
9 Q. Is there any reason why you would put down a  
10 distance like five feet, um, within five feet of  
11 the dumpster if that's not what that witness told  
12 you?  
13 A. Could you rephrase the question?  
14 Q. Is there -- would there be any reason for you to  
15 put down, standing within five feet of the  
16 dumpster, if that's not what that particular  
17 witness told you?  
18 A. There would be no reason for me to write anything  
19 down that the employee didn't tell me.  
20 Q. Okay.  
21 And then the next sentence for David Wise,  
22 "He indicated that he saw the pipes starting to  
23 fall, so he ran away and did not see it strike  
24 anyone."  
25 That's what he told you?

1 A. Correct.  
2 Q. Next sentence, "He indicated that loads of metal  
3 always shift because of the way they are loaded on  
4 an angle and the drivers always open the doors  
5 slightly (two inches) to observe if it is safe to  
6 open the rest of the way."  
7 Is that what he told you?  
8 A. Correct.  
9 Q. Next sentence, "He stated that the drivers stand  
10 behind the door and open it by pulling so the door  
11 is always between the driver and the load."  
12 Is that what he told you?  
13 A. Correct.  
14 Q. Next sentence, "He indicated it is typical to have  
15 random steel fall from the back of the dumpsters  
16 but has always happened as the doors open so there  
17 is no danger."  
18 Is that what he also told you?  
19 A. Correct.  
20 Q. And then further up above, like halfway within  
21 this interview, where it says, "Wise stated that  
22 both men stood on the side of the dumpster by  
23 where the door had been secured with a chain."  
24 He told you that, correct?  
25 A. Correct.

1 Q. And then next, "They waited approximately  
2 10 minutes with the door open the entire time"; is  
3 that correct?  
4 A. Correct.  
5 Q. And then if you can refer to page 1 of 3 of this  
6 Field Narrative for Ferrous.  
7 A. Okay.  
8 Q. At the bottom of the page it has a heading for  
9 "Inspection Findings."  
10 A. Okay.  
11 Q. And is this your -- kind of your summary after  
12 doing all the interviews or is this based upon  
13 your opening conference with Phil Hernandez or how  
14 does this come about?  
15 A. This would be a summary after the interviews.  
16 It's typically put on the first day, April 1st.  
17 But sometimes I'll change that, that summary,  
18 based on other testimony from other witnesses.  
19 But it's basically a summary from all of the  
20 employee interviews.  
21 Q. So this summary of inspection findings, although  
22 it's on page 1, it comes after you conduct the  
23 interviews at the employer, in this case Ferrous?  
24 A. I don't recall at what point I would have made the  
25 inspection findings for this one. Typically, I'll

1 have the inspection findings, um, in a rough draft  
2 on the first day that I do the inspection so that  
3 I don't forget details, um, and then change it  
4 accordingly if I have later interviews.  
5 Q. Okay.  
6 So is it true then that you concluded from  
7 your interviews and you summarized it in the  
8 inspection findings beginning at the last sentence  
9 on page 1, "That they stepped within five feet of  
10 the open door and observed the load for  
11 approximately 30 seconds when a metal pipe  
12 approximately six feet long 18 inches in diameter  
13 and a half inch thick, fell from a height of  
14 approximately nine feet and struck Mr. MaMaster in  
15 the leg"?  
16 A. That would have been what I was told.  
17 Q. And then referring to Exhibit 2, that is the  
18 investigation you conducted at P and T; is that  
19 correct?  
20 A. Correct.  
21 Q. And it's P and T Leasing Company of Marlette,  
22 correct?  
23 A. Correct.  
24 Q. And if you could refer to the first page. I'm  
25 sorry, I have page 2 of 3 here. It is a

1 A. I would say so.  
2 Q. And how did you say, how would you like it  
3 repositioned?  
4 A. Positioned toward possibly the front of the  
5 dumpster away from the door.  
6 Q. The way that this pipe is loaded in the container,  
7 would that violate any MIOSHA regulation?  
8 A. Could you -- I'm sorry, could you repeat that  
9 question?  
10 Q. Sure. The way that this pipe is loaded in the  
11 container as we see here in the scale photo, would  
12 that violate any MIOSHA regulation?  
13 A. As it stands with the door closed, it would not.  
14 Q. But as soon as you open it, it would, correct?  
15 A. As soon as you have employee exposure to it,  
16 correct.  
17 Q. What violation -- what regulation would be  
18 applicable?  
19 A. We're speculating that, um -- I am looking at an  
20 actual stacking, um, stacking creating a hazardous  
21 situation, um, which I believe would come out of  
22 Part 1 as well.  
23 Q. When you say "Part 1," can you be more specific?  
24 A. Part I General Provisions from General Industry.  
25 Q. And what specific chapter or regulation under

1 Part 1 would apply to the stacking that you just  
2 mentioned?  
3 A. I wouldn't know that without having the standard  
4 in front of me. I could be wrong on the Part 1.  
5 I'm pretty sure, but there are a lot of rules that  
6 we have to enforce. So memorizing them is  
7 difficult at best.  
8 Q. Okay.  
9 Have you ever investigated any incidents  
10 involving DTE Energy?  
11 A. Could you rephrase that question?  
12 Q. Sure. Have you --  
13 A. Reask.  
14 Q. -- investigated any incidents involving  
15 DTE Energy?  
16 A. I am currently on an inspection.  
17 Q. Where?  
18 A. At the St. Clair Power Plant.  
19 Q. I've heard of it.  
20 If this pipe was loaded in the container by  
21 DTE -- I believe it was at St. Clair, was it, Bell  
22 River?  
23 MR. YOUNG: Yeah.  
24 BY MR. WEGLARZ:  
25 Q. -- would there be any MIOSHA regulations

1 applicable to how the DTE employee should load  
2 that container?  
3 MR. YOUNG: Objection. It's been asked and  
4 answered.  
5 BY MR. WEGLARZ:  
6 Q. Go ahead.  
7 A. For loading it, probably not.  
8 Q. When you say "probably," that leaves some wiggle  
9 room.  
10 A. Are you asking if I were doing a wall-to-wall  
11 inspection at that facility and I saw them loading  
12 that, would I have a citation?  
13 Q. I like that question. I'll start with that one.  
14 A. No, I would not.  
15 Q. So where is the wiggle room as to where perhaps  
16 you would?  
17 A. When I look for compliance with state regulations,  
18 I have to look at employee exposure. So I would  
19 be looking at DTE employees' exposure.  
20 I've done numerous inspections with dumpsters  
21 like this. There are dumpsters that are set out  
22 in different areas. They're loaded in different  
23 ways. Typically those employees are not opening  
24 those doors. So I would not be thinking in terms  
25 of that dumpster two weeks from now when somebody

1 opens it or however long it takes for them to  
2 unload it. I wouldn't be thinking that.  
3 Q. Fair enough.  
4 Instead of Mr. McMaster being the driver of  
5 this truck and the person who opened the door,  
6 what if it was a DTE employee? So if this was  
7 loaded by DTE employees and it was going to be  
8 opened by a DTE employee, would you have any  
9 concerns for non-compliance?  
10 MR. YOUNG: Well, I'm going to object because  
11 there could be lots of variables involved in your  
12 hypothetical.  
13 MR. WEGLARZ: All noted.  
14 MR. YOUNG: Irrelevant. Immaterial. It  
15 calls for speculation on his part. And there's a  
16 lack of foundation for what this hypothetical  
17 situation involves.  
18 BY MR. WEGLARZ:  
19 Q. Go ahead.  
20 A. In that hypothetical situation, a DTE employee is  
21 going to open it, I would likely recommend the  
22 same citation as far as training.  
23 The stacking rule would really apply to  
24 forklift pallets, rolls of paper, things like that  
25 that are stored around employees. That's

1 Q. So you recommended a citation for Ferrous of  
2 not -- of improper training and never asked the  
3 employees whether or how they had been trained?  
4 A. I didn't say I never asked them. I said I didn't  
5 recall asking, and that I didn't transcribe that  
6 to --  
7 MR. YOUNG: Did you finish -- you can finish  
8 your answer if you didn't.  
9 THE WITNESS: I forgot what I was going to  
10 say.  
11 MR. O'SHEA: Sorry about that.  
12 THE WITNESS: That's okay.  
13 BY MR. O'SHEA:  
14 Q. Um, well I --  
15 MR. YOUNG: You said -- if I can put this in  
16 here -- I didn't say I never asked them. I said I  
17 didn't recall asking, and I didn't transcribe that  
18 to -- something.  
19 THE WITNESS: To the Field Narrative.  
20 BY MR. O'SHEA:  
21 Q. So again, the Field Narrative is the only  
22 document -- given MIOSHA's operating procedure of  
23 destroying notes, the Field Narrative is the only  
24 thing you can go back to after the fact to tell  
25 you what happened when you talked to these people,

1 A. No.  
2 Q. Do you know the specific training procedures that  
3 they had?  
4 A. No, I do not.  
5 Q. Do you know what FPT's "Near Miss Training" is?  
6 Do you know what that constitutes?  
7 A. No.  
8 Q. Do you know what their "Safety Awareness Training"  
9 is?  
10 A. No, I do not.  
11 Q. So can you explain to me how you determined they  
12 weren't trained properly without finding out how  
13 they were trained?  
14 A. The fact that an employee does training does not  
15 release them from their responsibility of training  
16 adequately. Um.  
17 Q. So you can train an employee, and then if they  
18 don't follow the training, you're still  
19 responsible, is that what you're saying, as an  
20 employer?  
21 A. Can you ask the question again, please?  
22 Q. Sure. So an employer can train an employee, Hey,  
23 don't go near there, but if they do, the employer  
24 can still be responsible just under MIOSHA  
25 regulations?

1 right?  
2 A. No, not correct. I can use the Violation  
3 Worksheet, you know, as well. Sometimes there's  
4 information included on there. The diary, I'll  
5 reference. There are several documents that I can  
6 reference.  
7 As far as employee interviews go, the Field  
8 Narrative is it.  
9 Q. And if you had asked the employees -- the Ferrous  
10 employees whether or not they had been trained,  
11 and they had responded either they had been or  
12 they hadn't been, how they had been trained, that  
13 would have been in your Field Narrative, correct?  
14 A. Typically.  
15 Q. So based on your -- the general way you operate,  
16 can we conclude by looking at these Field  
17 Narrative notes that you never asked any of the  
18 Ferrous employees how and to what extent they had  
19 been trained?  
20 A. As I said, I don't recall asking and it's not in  
21 my Field Narrative. So.  
22 Q. Do you as you sit here today by looking at all of  
23 the documents you've brought here today, do you  
24 know how Ferrous employees were trained prior to  
25 this accident?

1 A. I was not provided any kind of training that  
2 specifically talked about approaching the back end  
3 of a roll-off dumpster by either employer.  
4 Q. Do you know whether Mr. Pfander, Jr., was?  
5 A. I'm sorry, what did you say?  
6 Q. Do you know whether Mr. Pfander, Jr., was?  
7 A. I do not know that.  
8 Q. Um, and you had said earlier that, I believe, and  
9 correct me if I'm wrong, that in the Field  
10 Narrative you're paraphrasing and summarizing  
11 your -- the discussions with employees. And that  
12 if there is a specific quote that you want to  
13 mention, it is in quotation marks?  
14 A. Correct.  
15 Q. And unless I missed it, I don't believe you  
16 specifically quoted anybody from Ferrous; is that  
17 correct?  
18 MR. YOUNG: You mean in quotation marks?  
19 THE WITNESS: I do not see any quotation  
20 marks in my Field Narrative.  
21 BY MR. O'SHEA:  
22 Q. Which means there was nothing that was  
23 specifically said by a Ferrous employee that you  
24 specifically wrote down as a quote?  
25 A. Correct.

1 Q. Did you tell, um -- do you recall telling Ferrous,  
2 the employer, at the closing conference that you  
3 did not see any violations?  
4 A. No, I do not.  
5 Q. Um, I want to talk a little bit about this 12-foot  
6 thing, which intrigues me. You said if the pipe  
7 is six feet, you should be 12 feet away?  
8 A. As a general guideline.  
9 Q. As a general.  
10 Where are you getting that guideline from?  
11 A. Truthfully from the tree trimming standard.  
12 Q. And you said also it would be to the side of the  
13 truck?  
14 A. Correct. I'm thinking in a radius.  
15 Q. So I know this isn't going to be too helpful for  
16 the record, but let's assume this is the back of  
17 the truck.  
18 A. Correct.  
19 Q. This is the width of the back of the truck.  
20 So you're saying if you have a six-foot pipe,  
21 it's 12 feet to the driver's side of the truck?  
22 A. I would say around that area that -- in almost  
23 like a semicircle. There you go. He drew a  
24 circle around the back as a radius.  
25 Q. 12 foot?

1 A. Correct.  
2 Q. So 12 foot straight back?  
3 A. Correct.  
4 Q. And then just run it in a circular?  
5 A. Correct.  
6 Q. Do you know how these dumpsters are opened?  
7 A. Just what was explained to me by the drivers.  
8 Q. Do you understand that they have to unlatch it at  
9 the side on the passenger -- I mean on the  
10 driver's side?  
11 A. That's what was explained to me.  
12 Q. Do you understand that they now have to walk it  
13 around to the other side?  
14 A. Correct.  
15 Q. Do you understand that that's well within the  
16 12 feet radius?  
17 A. Correct.  
18 Q. So are you saying that that door can't be opened  
19 safely?  
20 A. They had the door between themselves and the load.  
21 I don't like it. But in the end --  
22 Q. But you would say opening the door itself violates  
23 your general safety provision?  
24 A. They have the door between them to protect them.  
25 Q. At least to a certain height?

1 A. Correct.  
2 Q. Not below their waist?  
3 A. Correct.  
4 Q. So that would be a violation of your general  
5 guideline?  
6 A. They have the door between them. It provides  
7 protection. That's as far as I can really go with  
8 it.  
9 Q. So you're -- in your mind at least that door is  
10 adequate enough protection that your guideline  
11 doesn't apply?  
12 A. I would say that, um, if I were on an inspection  
13 and only saw an employee opening a door and there  
14 was no injury to it, I would say that I would  
15 probably not be able to write a citation based on  
16 that. I might recommend one, but it would not  
17 likely be signed by a supervisor.  
18 Q. In the Field Narrative with Stephen Adamus, did  
19 you ever ask him how close he was to the back when  
20 he was struck by the pipe?  
21 A. It doesn't appear that I did.  
22 Q. Do you have any explanation why you wouldn't ask  
23 that question?  
24 A. Because he was hit. So as a general rule, I don't  
25 need specific measurements. He was hit. I know

1 he was close enough to be injured. So.  
2 Q. So whether he was three feet, five feet, 10 feet,  
3 15 feet, it didn't matter?  
4 A. Correct. He was injured. So. Again, it goes  
5 to I try not to be the person trying to find the  
6 root cause.  
7 Q. And your investigation obviously is -- your whole  
8 focus, in fact, is a Ferrous employee was injured,  
9 you come out to Ferrous, see what Ferrous is  
10 doing, and you make some decisions with respect to  
11 that employer, correct?  
12 A. To the best of my ability.  
13 Q. You're not there in any way, shape, or form to  
14 discuss or decide or determine any relationship  
15 between Ferrous and some other employee such as  
16 Mr. McMaster, who was employed by P and T, that's  
17 a whole another investigation, right?  
18 A. In this situation I handled them completely  
19 separate as much as I could. There are other  
20 instances where the two are intermingled. This  
21 one didn't seem to be that intermingled to me.  
22 Q. So with respect to Mr. McMaster and P and T --  
23 A. Correct.  
24 Q. -- he said he was their employee, you made that  
25 determination over here with Ferrous and

**Jeffrey Edgerton**  
**8/17/2016**

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1 Mr. Adamus who was over here?  
 2 A. I would say that's correct.  
 3 MR. O'SHEA: Um, I don't have any other  
 4 questions, Sir. Thank you.  
 5 RE-EXAMINATION BY MR. YOUNG:  
 6 Q. Lastly, do any of the questions that you were  
 7 asked by Mr. Weglarz or Mr. O'Shea change any of  
 8 your testimony about what I asked you about what  
 9 you were told during the interviews, about all the  
 10 different employees that we went through?  
 11 MR. O'SHEA: Object to the form of the  
 12 question.  
 13 THE WITNESS: Can you ask that question  
 14 again?  
 15 BY MR. YOUNG:  
 16 Q. Did any of the questions asked by the other  
 17 lawyers change your testimony in any way about  
 18 what you were told by the employees that you  
 19 interviewed during your two investigations?  
 20 A. No. I would still stand by my Field Narrative.  
 21 MR. YOUNG: Thank you. That's all I have for  
 22 you.  
 23 MR. WEGLARZ: Just a couple questions.  
 24 RE-EXAMINATION BY MR. WEGLARZ:  
 25 Q. The photos provided to you by Ferrous, did you ask

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1 for those? Did they voluntarily give those to  
 2 you? What brought that about?  
 3 A. I don't recall. But typically I'll ask the  
 4 employer if they've done their own accident  
 5 investigation and if they have any documentation  
 6 and could I look at that. I don't specifically  
 7 remember that conversation.  
 8 Q. You would agree with me -- strike that.  
 9 I want to show you something.  
 10 I'm going to show you another photo taken in  
 11 the back of the truck. This is obviously after  
 12 the pipe already fell. This was a photo taken by,  
 13 I think it's the investigator for the workers'  
 14 comp. carrier.  
 15 Assuming that was how the load was situated  
 16 and that the pipe was, as you saw from that scale  
 17 photo I showed you before, up against the gate but  
 18 on top of -- looks like there some I-beams there,  
 19 would you have any concerns with a pipe like that  
 20 being placed at the back of the gate and on top of  
 21 a load like that?  
 22 MR. YOUNG: Same objection as before. Calls  
 23 for speculation. Lack of foundation. And how you  
 24 give the photograph and the angle of it changes  
 25 where an item may or may not have been.

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1 MR. WEGLARZ: By the way, I'm referencing  
 2 McMaster No. 8.  
 3 BY MR. WEGLARZ:  
 4 Q. So go ahead.  
 5 A. So as far as speculation, I would say that I would  
 6 have concerns as to how that was placed against  
 7 the door if it were indeed placed against the door  
 8 in that manner.  
 9 Q. And on top of those I-beams that we see to the  
 10 right of that photo?  
 11 MR. YOUNG: Same objections.  
 12 THE WITNESS: Correct.  
 13 BY MR. WEGLARZ:  
 14 Q. Why could that be a problem or a risk of harm if  
 15 it's placed on top of those beams like that?  
 16 A. Makes it an unstable load.  
 17 Q. Why is it unstable?  
 18 A. It only has two contact points, I'm guessing, one  
 19 on the truck bed and one on the I-beams, making it  
 20 less stable. As I recall it was a bent piece of  
 21 pipe, it had a bend in it. So if it were laying  
 22 flat it would make it more stable.  
 23 Q. If it's up on an angle, it's at risk for toppling  
 24 over, correct?  
 25 MR. YOUNG: Same objections. Lack of

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1 foundation. Calls for speculation.  
 2 THE WITNESS: I would guess that it would.  
 3 BY MR. WEGLARZ:  
 4 Q. And actually hitting someone who's almost to the  
 5 side of the truck, correct?  
 6 MR. YOUNG: Same objection.  
 7 MR. O'SHEA: Join.  
 8 THE WITNESS: It would pose a falling hazard  
 9 regardless of where somebody was standing, I would  
 10 say.  
 11 BY MR. WEGLARZ:  
 12 Q. You would agree with me based upon the way that  
 13 the pipe was loaded to the back of that container  
 14 like that, that alone should have told the Ferrous  
 15 employees that this pipe was at risk for falling  
 16 out the moment they started to open that door,  
 17 correct?  
 18 MR. O'SHEA: Object to form. Foundation.  
 19 Go ahead.  
 20 THE WITNESS: I can't speculate to what  
 21 another person sees or doesn't see.  
 22 BY MR. WEGLARZ:  
 23 Q. Would you agree with me in your field of work that  
 24 you understand that properly trained employees  
 25 usually act in accordance with their training if

23 (Pages 86 to 89)

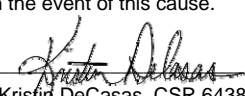

1 they're properly trained?  
2 MR. O'SHEA: Object to the form.  
3 THE WITNESS: Typically.  
4 BY MR. WEGLARZ:  
5 Q. Here we have, I believe, what, three Ferrous  
6 metals employees who got to at least within five  
7 feet of the back of an open trailer, that doesn't  
8 suggest these employees were properly trained,  
9 correct?  
10 MR. O'SHEA: I'm going to object to form and  
11 foundation because that's simply not true what the  
12 Field Narrative says. Wise as the owner said  
13 five feet. And also speculation.  
14 Go ahead.  
15 BY MR. WEGLARZ:  
16 Q. Go ahead.  
17 A. I recommended a citation based on training. So I  
18 would stand by that.  
19 Q. Just -- I won't spend much time on this: Just  
20 tell me a little bit about your background. Do  
21 you have a degree?  
22 A. I do.  
23 Q. I take it you went to college, right?  
24 A. I did.  
25 Q. Where did you go?

1 A. Correct.  
2 Q. Anything else?  
3 A. There's -- I think all of our Federal standards  
4 that we study on we have adopted. But we get some  
5 training on the Federal standards as well.  
6 Q. And Michigan has basically adopted the OSHA  
7 regulations, correct, the Federal regulations?  
8 A. Several of them.  
9 Q. But not all of them?  
10 A. Not all of them. We have to be at least as  
11 effective as Federal OSHA, but sometimes we  
12 develop our own standards.  
13 Q. And then you said there's training devoted to  
14 field training; is that what you said?  
15 A. Correct.  
16 Q. What does that entail?  
17 A. That's actually going out with another safety  
18 officer to conduct inspections in the field.  
19 Q. And how many of these safety inspections would you  
20 estimate that you've done over your five and a  
21 half, six years of experience?  
22 A. Estimate?  
23 Q. Yeah.  
24 A. Three hundred.  
25 Q. And I believe your report also references prior

1 A. I have an associate's degree from St. Clair County  
2 Community College, and I have a bachelor's degree  
3 from University of Michigan Flint.  
4 Q. What did you get your bachelor's in?  
5 A. History.  
6 Q. All right.  
7 Any other college after that, after the  
8 bachelor's?  
9 A. No.  
10 Q. That's enough.  
11 A. I was done.  
12 Q. And what type of training do you get for your  
13 position that you have now with the State of  
14 Michigan?  
15 A. Oh, man. It starts off with approximately six  
16 months, 40 hours a week of standard training and  
17 then field training.  
18 Q. And when you say standard training --  
19 A. Standards.  
20 Q. Standards?  
21 A. Yeah. Part 1, Part 2, our legislation basically  
22 that we're enforcing, our standards we're  
23 enforcing.  
24 Q. The standards you get the training on are the  
25 MIOSHA standards?

1 investigations or citations pertaining to Ferrous?  
2 MR. O'SHEA: Object.  
3 BY MR. WEGLARZ:  
4 Q. Maybe I'm looking at it wrong.  
5 A. Could you ask that question again?  
6 Q. In your report is there any reference or mention  
7 of any prior investigations done concerning  
8 Ferrous?  
9 A. In my Field Narrative it would say if there were  
10 recent inspections at the facility. This Field  
11 Narrative says this firm has no recent history  
12 with MIOSHA, meaning within the past three years,  
13 but it doesn't mean that they've never had an  
14 inspection.  
15 Q. Did it show any history beyond three years?  
16 A. I don't recall.  
17 Q. You don't recall looking for that?  
18 A. I definitely looked for it. I don't recall. The  
19 only time it's going to become part of file if  
20 it's been within the last three years and then  
21 they could be subject to repeat violations. After  
22 that I don't, you know, retain that information.  
23 MR. WEGLARZ: All right. That's all I have.  
24 Thanks.  
25 THE WITNESS: Okay.

1 MR. O'SHEA: I have no other questions.  
2 RE-EXAMINATION BY MR. YOUNG:  
3 Q. Does your training and experience -- or  
4 experience, um, involve the responsibility of a  
5 truck driver once he takes on a load?  
6 A. And is driving down the road?  
7 Q. Yes.  
8 A. Not to the best of my knowledge.  
9 MR. YOUNG: Thank you. We're all set.  
10 (The deposition concluded at 2:03 p.m.  
11 Signature of the witness was not requested by  
12 counsel for the respective parties hereto.)  
13  
14  
15  
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17  
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24  
25

1 CERTIFICATE OF NOTARY  
2  
3 STATE OF MICHIGAN )  
4 )SS  
5 COUNTY OF MACOMB )  
6 I, Kristin DeCasas, Certified Shorthand  
7 Reporter and Notary Public in and for the above  
8 county and state, do hereby certify that the  
9 deposition was taken before me at the time and  
10 place hereinbefore set forth; that the witness  
11 was by me first duly sworn to testify to the  
12 truth, and nothing but the truth, that the  
13 foregoing questions asked and answers made by  
14 the witness were duly recorded by me  
15 stenographically and reduced to computer  
16 transcription; and that I am not related to,  
17 nor of counsel to either party, nor interested  
18 in the event of this cause.  
19   
20 Kristin DeCasas, CSR 6438   
21 Notary Public  
22 Macomb County, Michigan  
23  
24  
25 My Commission Expires: July 26th, 2020

# EXHIBIT 7

SCALE at Pontiac



10/14/2014 7:36:14 AM RTZ (GMT-05:00)

SCALE at Pontiac



10/14/2014 7:36:16 AM RTZ (GMT-05:00)

SCALE at Pontiac



10/14/2014 7:36:17 AM RTZ (GMT-05:00)

SCALE at Pontiac



10/14/2014 7:36:17 AM RTZ (GMT-05:00)

# EXHIBIT 8

MCMASTER v. DTE ELECTRIC COMPANY, ET AL.

DAVID BUSHAW

August 25, 2016

*Prepared for you by*



**Bingham Farms/Southfield • Grand Rapids**  
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw

Page 1

1 STATE OF MICHIGAN  
2 IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
3  
4 DEAN McMASTER,  
5 Plaintiff,  
6 vs. Case No. 15-147414-NO  
7 Hon. Colleen O'Brien  
8 DTE ELECTRIC COMPANY and FERROUS  
9 PROCESSING AND TRADING COMPANY,  
10 d/b/a FERROUS PROCESSING & TRADING CO.,  
11 Jointly and Severally,  
12 Defendants.  
13  
14  
15  
16 The Deposition of DAVID BUSHAW,  
17 Taken at 19176 Hall Road, Suite 220,  
18 Clinton Township, Michigan,  
19 Commencing at 10:00 a.m.,  
20 Thursday, August 25, 2016,  
21 Before Wendy M. Taylor, CSR-6922.  
22  
23  
24  
25

Page 3

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7 Appearing on behalf of the Defendant, Ferrous  
8 Processing and Trading Company.  
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Page 2

1 APPEARANCES:  
2  
3 TODD J. WEGLARZ  
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5 19390 West Ten Mile Road  
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16 tyoung@cnda-law.com  
17 Appearing on behalf of the Defendant, DTE Electric  
18 Company.  
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7 EXAMINATION BY MR. O'SHEA: 88  
8 RE-EXAMINATION BY MR. WEGLARZ: 91  
9  
10 EXHIBITS  
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13 (Exhibits attached to transcript.)  
14  
15 DEPOSITION EXHIBIT 1 65  
16 DEPOSITION EXHIBIT 2 65  
17 DEPOSITION EXHIBIT 3 65  
18 DEPOSITION EXHIBIT 4 65  
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1 were cleaning an area or something. I don't know.  
2 Q. Which department would you expect to be moving a pipe  
3 like this into a container?  
4 **A. Probably maintenance or a contractor.**  
5 Q. Okay. You would agree that any loading of scrap into  
6 a container, if it was done by operations, that only  
7 comes in if it's incidental to something they were  
8 trying to do?  
9 **A. That would be fair and correct.**  
10 Q. Tell me about the maintenance department or the  
11 maintenance group at Belle River, tell me about the  
12 supervisor hierarchy there?  
13 **A. So each group of maintenance workers report to a**  
14 **supervisor and then those supervisors would report to**  
15 **a general foreman.**  
16 Q. Do they have shift supervisors for maintenance as  
17 well?  
18 **A. No, there's only a dayshift.**  
19 Q. What are the usual hours for maintenance?  
20 **A. The normal operating hours are 7:00 to 3:30.**  
21 Q. Who would be the most direct supervisor over the  
22 regular workers for maintenance?  
23 **A. There's a number of them and I don't know who it was**  
24 **back at that time frame. I don't know.**  
25 Q. Who is it now?

Page 26

1 **A. I don't even know a few of the new ones. There's**  
2 **three new ones over there. I don't really work with**  
3 **them over there so I'm not connected to them.**  
4 Q. Okay. How many supervisors are there for maintenance  
5 at Belle River?  
6 **A. I'd be guessing, five, six, but I don't know for sure.**  
7 Q. Then who would be directly above those five or six  
8 supervisors for maintenance?  
9 **A. The general foreman.**  
10 Q. Who's above the general foreman?  
11 **A. Then you're getting into the manager.**  
12 Q. Plant manager?  
13 **A. Not the plant manager, another production manager --**  
14 **maintenance manager, sorry, maintenance manager.**  
15 Q. Who's above the maintenance manager?  
16 **A. Then you're into the plant manager.**  
17 Q. Who's the general foreman for maintenance currently at  
18 Belle River?  
19 **A. Dale Cash.**  
20 Q. Who was it back in October of 2014?  
21 **A. I think it was Doug Richards but, again, I'm not 100**  
22 **percent certain.**  
23 MR. YOUNG: Sorry, what title is that?  
24 THE WITNESS: General foreman.  
25 MR. YOUNG: Yep.

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1 BY MR. WEGLARZ:  
2 Q. From what you're telling me it sounds like DTE assumed  
3 the responsibility of loading the scrap into the  
4 containers, correct?  
5 **A. I'm not sure. Sorry, would you ask that again?**  
6 **Q. Who would load, for example, this container here where**  
7 **this pipe was loaded into, you understand that this**  
8 **particular pipe was loaded into this container at the**  
9 **DTE Belle River site, correct?**  
10 **A. Yes. Well, yes.**  
11 Q. Okay. And that's something that typically goes on out  
12 there, DTE loads scrap into containers provided by  
13 Ferrous, correct?  
14 **A. Correct.**  
15 Q. DTE doesn't rely on Ferrous to come on site to load  
16 the containers, DTE assumes that responsibility, fair  
17 to say?  
18 **A. Yes.**  
19 MR. YOUNG: Contractors, as he said.  
20 BY MR. WEGLARZ:  
21 Q. Which contractors have loaded a container to your  
22 knowledge?  
23 **A. Oh, my gosh, I don't even know where to begin.**  
24 Q. Begin with the As?  
25 **A. I can't remember, Monarch Welding, B&W, I mean, I**

Page 28

1 could go on a long list here because John E. Green,  
2 Barton Malow. I don't know. I can -- I can't --  
3 there's a lot more than that, that's all I can come up  
4 with off the top of my head.  
5 Q. Sure.  
6 **A. We have lots of contractors on site.**  
7 Q. Which contractors were on the site in the fall of  
8 2014?  
9 **A. I wouldn't know that at all.**  
10 Q. Okay. And if you wanted to figure that out, where  
11 would you look?  
12 **A. I don't know. I really don't even know.**  
13 Q. Before we started your deposition, prior to this  
14 deposition did you -- did you do any investigation to  
15 try to figure out who loaded the pipe into this  
16 container?  
17 **A. No, I did not.**  
18 Q. Did you ask anyone to try to figure that out for you?  
19 **A. No, I did not.**  
20 Q. Were you told to try to figure out who loaded this  
21 pipe into this container?  
22 **A. I was asked if I knew anything.**  
23 Q. And you said no, correct?  
24 **A. Correct.**  
25 Q. And then at that point it was agreed that you're the

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1 Q. You don't have to, I'm asking, it's a question.  
 2 **A. So I think I just did. I said it was based on the**  
 3 **activity of what was going on so, in other words, if**  
 4 **we had a lot of activity, that would not be the case,**  
 5 **contractors would probably use the scrap hoppers more**  
 6 **in that time frame than DTE was using it.**  
 7 Q. I understand where you're going.  
 8 **A. So I'm trying not to --**  
 9 Q. Sure. You would agree with me if you do not have a  
 10 specific activity going on with a contractor or  
 11 subcontractor, then it's going to be the DTE personnel  
 12 loading scrap in the containers, correct?  
 13 MR. YOUNG: Objection, calls for  
 14 speculation, again, lack of knowledge. He already  
 15 explained this in his deposition today.  
 16 BY MR. WEGLARZ:  
 17 Q. Go ahead.  
 18 **A. Well, I don't know if I entirely agree with you.**  
 19 **So -- but they -- there is moments when we're doing**  
 20 **the majority of the work.**  
 21 Q. Okay. And those moments are when you don't have a  
 22 contractor there working on a project, correct?  
 23 **A. Well, yeah, I mean, it's -- I can't -- I can't rubber**  
 24 **stamp it and say that we always do -- use those**  
 25 **hoppers the most. I could not rubber stamp that.**

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1 Q. If there's no contractor on site and --  
 2 **A. Obviously.**  
 3 Q. -- the container needs to be loaded, obviously a DTE  
 4 employee is going to do it?  
 5 **A. Correct, if you're saying no other contractors on**  
 6 **site, yes, that would be accurate.**  
 7 Q. And you would agree with me as you sit here today you  
 8 can't tell me if there was a contractor on site at the  
 9 time that this container was loaded, you would agree  
 10 with that, correct?  
 11 **A. I cannot tell you who was on site that day.**  
 12 Q. You can't point to a single record showing that any  
 13 contractor was on site in the fall of 2014, correct?  
 14 **A. I can't.**  
 15 Q. Okay. You haven't seen any records showing you that  
 16 there were contractors on site during the time that  
 17 this particular container was at the Belle River plant  
 18 in the fall of 2014?  
 19 **A. I do not know who was on site on that day.**  
 20 Q. You haven't seen anything showing that there are any  
 21 contractors on site in the fall of 2014, correct?  
 22 **A. I do not know who was on site at all, DTE or**  
 23 **contractors, I don't know who was even on site.**  
 24 Q. I understand that. I just want to know have you seen  
 25 a single record or document showing that there were

Page 95

1 contractors on the premises in the fall of 2014?  
 2 **A. I've not seen any documents.**  
 3 MR. WEGLARZ: Okay. That's all. Thanks.  
 4 MR. YOUNG: We're all set.  
 5 (The deposition was concluded at 12:05 p.m.  
 6 Signature of the witness was not requested by  
 7 counsel for the respective parties hereto.)  
 8  
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1 CERTIFICATE OF NOTARY  
 2 STATE OF MICHIGAN )  
 3 ) SS  
 4 COUNTY OF LIVINGSTON)  
 5  
 6 I, WENDY M. TAYLOR, certify that this  
 7 deposition was taken before me on the date  
 8 hereinbefore set forth; that the foregoing questions  
 9 and answers were recorded by me stenographically and  
 10 reduced to computer transcription; that this is a  
 11 true, full and correct transcript of my stenographic  
 12 notes so taken; and that I am not related to, nor of  
 13 counsel to, either party nor interested in the event  
 14 of this cause.  
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*Wendy Taylor*  
 WENDY M. TAYLOR, CSR-6922  
 Notary Public,  
 Livingston County, Michigan  
 My Commission expires: 1-10-17

# EXHIBIT 9

**In The Matter Of:**  
*McMaster vs.*  
*DTE Electric Company, et al.*

---

*Steven Adamus*  
*July 25, 2016*

---



**Bingham Farms/Southfield • Grand Rapids**  
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw

*Original File ADAMUS\_STEVEN.txt*  
*Min-U-Script® with Word Index*

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Page 1

1 STATE OF MICHIGAN  
 2 IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
 3  
 4 DEAN McMASTER,  
 5 Plaintiff,  
 6 vs. Case No. 15-147414-NO  
 7 Hon. Colleen O'Brien  
 8 DTE ELECTRIC COMPANY and FERROUS  
 9 PROCESSING AND TRADING COMPANY,  
 10 d/b/a FERROUS PROCESSING & TRADING CO.,  
 11 Jointly and Severally,  
 12 Defendants.  
 13  
 14  
 15  
 16 The Deposition of STEVEN ADAMUS,  
 17 Taken at 500 Collier Road,  
 18 Auburn Hills, Michigan,  
 19 Commencing at 10:11 a.m.,  
 20 Monday, July 25, 2016,  
 21 Before Wendy M. Taylor, CSR-6922.  
 22  
 23  
 24  
 25

Page 3

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 2 Law Offices of John J. O'Shea, P.L.C.  
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 4 Grosse Pointe, Michigan 48230  
 5 (313) 884-2000  
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 8 Processing and Trading Company.  
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 8 tweglarz@fiiegerlaw.com  
 9 Appearing on behalf of the Plaintiff.  
 10  
 11 TIMOTHY YOUNG  
 12 Cummings, McClorey, Davis & Acho, P.L.C.  
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 14 Livonia, Michigan 48150  
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 8 RE-EXAMINATION BY MR. WEGLARZ: 88  
 9 RE-EXAMINATION BY MR. YOUNG: 92  
 10 EXAMINATION BY MR. O'SHEA: 92  
 11 RE-EXAMINATION BY MR. WEGLARZ: 92  
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 13 EXHIBITS  
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 15 EXHIBIT PAGE  
 16 (Exhibits attached to transcript.)  
 17  
 18 DEPOSITION EXHIBIT 1 11  
 19 DEPOSITION EXHIBIT 2 29  
 20 DEPOSITION EXHIBIT 3 54  
 21 DEPOSITION EXHIBIT 4 63  
 22  
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 25

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1 worry about it.  
 2 **A. Ferrous Salvage is an account, Complete Scrap, Scrap**  
 3 **Com, Ford, Chrysler, General Motors, 45 more?**  
 4 **BY MR. WEGLARZ:**  
 5 Q. You're doing fine.  
 6 **A. Okay.**  
 7 Q. I get it, it's a lot.  
 8 **A. Yeah.**  
 9 Q. And what usually happens is these places will fill  
 10 Ferrous containers full of scrap, you send contracted  
 11 trucks to go out there to pick them up and bring them  
 12 back to the yard, correct?  
 13 **A. Yes.**  
 14 Q. Does Ferrous give any restrictions or requests to  
 15 these customers as to how you like your containers  
 16 filled or packed or loaded?  
 17 **A. That I'm not sure.**  
 18 Q. Who would know more about that over at Ferrous?  
 19 **A. That would also probably be dispatch.**  
 20 Q. And who would be responsible for loading the  
 21 containers?  
 22 **A. The customer.**  
 23 Q. So DTE is the customer of Ferrous, right?  
 24 **A. Uh-huh.**  
 25 Q. Is that a yes?

Page 18

1 **A. Sorry, yes.**  
 2 **Q. And it's your understanding DTE would be responsible**  
 3 **for loading the containers over at Belle River Place**  
 4 **if they want you to come out and pick up your**  
 5 **containers, correct?**  
 6 **A. Yes.**  
 7 Q. Do you recall ever having to tell one of your clients  
 8 that, you know, there was something wrong with the way  
 9 they loaded a container or they should do it  
 10 differently or anything like that?  
 11 **A. No.**  
 12 Q. Do you recall having any accidents with any other  
 13 scrap containers other than Mr. McMaster's?  
 14 **A. No.**  
 15 Q. Do you recall anyone else ever being hit or injured by  
 16 any falling debris from any of these scrap  
 17 containers --  
 18 **A. No.**  
 19 Q. -- besides Mr. McMaster?  
 20 **A. No.**  
 21 Q. Have you ever loaded --  
 22 **MR. YOUNG:** Try to clarify that, no, you  
 23 don't recall anything that he asked you?  
 24 **THE WITNESS:** Correct, I don't recall, yes.  
 25 **BY MR. WEGLARZ:**


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1 Q. Have you ever loaded one of these scrap containers?  
 2 **A. I have not.**  
 3 Q. Does anyone here at Ferrous ever do that?  
 4 **A. In roll-off containers, no.**  
 5 Q. How about anything similar to that?  
 6 **A. We have push-out trucks that we load from time to**  
 7 **time, yes.**  
 8 Q. Help me out here, what's a push-out truck?  
 9 **A. A push-out truck has the same concept where you open**  
 10 **the trailer door, you secure it to the side of the**  
 11 **trailer and he has hydraulics in the front that push**  
 12 **the material out.**  
 13 Q. Sometimes Ferrous employees will load the push-out  
 14 trucks?  
 15 **A. Correct.**  
 16 Q. What do they load it with?  
 17 **A. Most of the time it's non-ferrous Metals so bulk goods**  
 18 **of aluminum or aluminum siding.**  
 19 Q. How about steel pipes?  
 20 **A. No.**  
 21 Q. When Ferrous loads these push-out trucks on occasion  
 22 do they have any type of rules, regulations, policies  
 23 or procedures, guidelines as to how those things  
 24 should be loaded?  
 25 **A. Well, there's weight restrictions that they're given,**

Page 20

1 **the truck drivers are given so we have to maintain**  
 2 **that amount of weight that we put in the trucks.**  
 3 Q. Other than weight limits?  
 4 **MR. O'SHEA:** If you know.  
 5 **A. No, I don't know.**  
 6 **BY MR. WEGLARZ:**  
 7 Q. Okay. I'll show you the rest of the pictures here of  
 8 Exhibit 1. Go to page 3. This looks like another  
 9 scale photo showing the top of Mr. McMaster's  
 10 container, correct?  
 11 **A. Yes.**  
 12 Q. Showing the pipe at the end of the container there by  
 13 the gate?  
 14 **A. Yes.**  
 15 Q. Page 4, tell me what these pictures are showing?  
 16 **MR. O'SHEA:** For the record, I apologize, I  
 17 got these pictures -- I did them backwards  
 18 chronologically so page 6 -- page 6 should be first  
 19 and then page 5 and 4, if you want to do it  
 20 chronologically from a time standpoint. I did it  
 21 backwards. I'm just telling you that's the last, page  
 22 4, that's the last picture I believe time wise. See  
 23 what I'm saying, like --  
 24 **MR. YOUNG:** It has a time under the  
 25 photograph.

1 are you aware of it opening on occasion?  
2 A. **Other than this incident, no.**  
3 **MR. WEGLARZ:** That's it. Thank you, sir.  
4 **MR. O'SHEA:** Nothing else.  
5 (The deposition was concluded at 12:29 p.m.  
6 Signature of the witness was not requested by  
7 counsel for the respective parties hereto.)  
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1 **CERTIFICATE OF NOTARY**  
2 **STATE OF MICHIGAN )**  
3 **) SS**  
4 **COUNTY OF LIVINGSTON)**  
5  
6 I, WENDY M. TAYLOR, certify that this  
7 deposition was taken before me on the date  
8 hereinbefore set forth; that the foregoing questions  
9 and answers were recorded by me stenographically and  
10 reduced to computer transcription; that this is a  
11 true, full and correct transcript of my stenographic  
12 notes so taken; and that I am not related to, nor of  
13 counsel to, either party nor interested in the event  
14 of this cause.  
15  
16  
17  
18  
19   
20  
21  
22 **WENDY M. TAYLOR, CSR-6922**  
23 **Notary Public,**  
24 **Livingston County, Michigan**  
25 **My Commission expires: 1-10-17**

# EXHIBIT 10

COPY

The Detroit Edison Company  
2000 2nd Ave., Detroit, MI 48226-1279

**Detroit Edison**



**Letter of Understanding**

Detroit Edison Company  
6200 W. Warren Avenue  
Investment Recovery C-12  
Detroit, MI 48210

November 9, 2000

Ferrous Processing & Trading Company  
3400 E. Lafayette  
Detroit, MI 48207  
Attention: John Morelli

RE: Ferrous Scrap Iron/Steel Agreement  
November 13, 2000 through October 31, 2003  
(with an option to extend for two additional years)

This letter of understanding is to document an agreement between Detroit Edison and Ferrous Processing & Trading for the handling of Detroit Edison's daily-generated scrap iron from the locations indicated on the attached sheet.

The scrap iron is generated on a day to day basis, whereby, Detroit Edison requires roll-off containers to be placed at specific locations to accommodate the disposal/sale of scrap iron generated.

Vendor Requirements

The vendor shall have available at all times, sufficient trucks and containers to accommodate the scrap iron disposals as requested by Detroit Edison. Under normal operating conditions, Detroit Edison will provide 24-hour notice to the vendor. In the event the vendor cannot or does not provide the required service, Detroit Edison reserves the right to accommodate the disposal of the scrap iron at its discretion.

It is the responsibility of the servicing vendor to provide Detroit Edison with a "certified" scale weight for each load of material removed from the Company's premises within four days of pickup.

The vendor will pay Detroit Edison the full load value, less the freight charge, less any trash and/or other non-commodity material excluded from the gross weight.

Additional Containers

*Example* Power Plant - Maintenance Outage; An increased quantity of scrap iron would be generated over a two to three week period. To accommodate the orderly disposal of this scrap, it may require additional containers for that period.

A DTE Energy Company

Letter of Understanding  
November 9, 2000  
Page 2 of 3

Occasionally, the Company may generate and require disposal service for scrap iron at random locations. Generally, Detroit Edison will request disposal service from the vendor servicing our facilities in that geographic area.

Pricing

Scrap iron pricing will be determined by using the Iron Age Publication - Scrap Price Bulletin (first effective date of the month, for the entire month). Load value will be derived from the high-side pricing for "Shredded Scrap", less the value of the handling fee for the specific Detroit Edison location. Once that price is determined, the freight charges are then deducted.

A scale ticket for each load will be generated, transmitted via fax to Detroit Edison (313-897-1410), and will be used to verify load weight and freight per location.

Freight charges and handling fees per Detroit Edison location are listed on the attachment.

Right To Know Law

*Note: The surplus materials sold by the Detroit Edison Company may bear or contain materials which may be, or become by chemical reaction or otherwise, directly or indirectly hazardous to life, to health or to property by reason of toxicity, flammability, cleaning, reconditioning, disposal, etc*

*Purchaser acknowledges and represents that it has read and understands this warning and undertakes to exercise the degree of care required to protect persons or property that may be exposed to the surplus materials. Purchaser, furthermore, agrees to indemnify and hold the Detroit Edison Company harmless from any claim arising out of or in connection with the surplus material.*

It is understood that Ferrous Processing & Trading Company is not licensed to haul & dispose of hazardous materials, nor will they haul hazardous materials.

Terms

Attached are Detroit Edison's General Terms and Conditions of Contract, DE 963-6390 and Detroit Edison's Insurance Requirements Appendix "A", DE 963-3427, which will be applicable to the proposed agreement.


Detroit Edison issues no guarantee as to the quantity and/or quality of scrap iron to be generated under the proposed agreement.

Either party may terminate the proposed agreement upon 30 days written notice. However, such termination will be accomplished so as to provide no liability or interruption of service to Detroit Edison.

Letter of Understanding  
November 9, 2000  
Page 3 of 3

Payments and correspondence should be remitted to:

Detroit Edison  
Investment Recovery C-12  
6200 W. Warren Avenue  
Detroit, MI 48210  
Attn: Nina Barber

  
Herious Processing & Trading  
John Morelli, Corporate Account Mgr.

  
DTE - Detroit Edison  
Dennis Grammatico, Marketing Sales

cc: file

DETROIT EDISON FERROUS METAL BID SHEET - COMPUTATION (11/8/00)

Vendor: FPT - Ferrous Processing & Trade Co.

Based on Iron Age Scrap Bulletin Publication

LOCATIONS	Load Volume		Box Qty Required On-Site	Freight Charge (Round Trip)	Handling Fee(s) Deducted from G/T Price Value (\$ applicable)	FPT Price to Detroit Edison		
	1999 Total Weight	2000 Wt. Fed				Scrap Market Price November, 2000	FPT	G/T
BELLE RIVER Power Plant 4505 King Rd. St. Clair, MI	218,100	72,840	2	\$ 261.00	-\$44.00	FPT	\$ 17 G/T	\$ 61 G/T
CONNORS CREEK Power Plant 200 Lyesto Detroit, MI	247,120	58,000	1	\$ 112.00	-\$44.00	FPT	\$ 17 G/T	\$ 61 G/T
PONTIAC Service Center 1070 Orchard Lake Rd Bloomfield Twp, MI	21,010	3,480	1	\$ 178.00	-\$44.00	FPT	\$ 17 G/T	\$ 61 G/T
ST CLAIR Power Plant 4801 Pointe Dr. East China Twp, MI	412,154	466,340	2	\$ 261.00	-\$44.00	FPT	\$ 17 G/T	\$ 61 G/T
WARREN Service Center 6200 W. Warren Ave Detroit, MI 48210	657,820	1,596,820	2	\$ 149.00	-\$25.00	FPT	\$ 36 G/T	\$ 61 G/T

Detroit Edison  
Letter of Understanding  
Attachment  
11/8/2000

# EXHIBIT 11

MCMASTER v. DTE ELECTRIC COMPANY, ET AL.

STEVEN BROOKS

December 8, 2016

*Prepared for you by*



**Bingham Farms/Southfield • Grand Rapids**  
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw • Troy

STEVEN BROOKS  
December 8, 2016

Page 1

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DEAN McMASTER,  
Plaintiff,  
vs. Case No. 15-147414-NO  
Hon. Colleen O'Brien

DTE ELECTRIC COMPANY and FERROUS  
PROCESSING AND TRADING COMPANY,  
d/b/a, FERROUS PROCESSING & TRADING CO.,  
Jointly and Severally,  
Defendants.

The Deposition of STEVEN BROOKS,  
Taken at 1175 Delaware Street,  
Marysville, Michigan,  
Commencing at 9:12 a.m.,  
Thursday, December 8, 2016,  
Before Wendy M. Taylor, CSR-6922.

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1 APPEARANCES:	1 TABLE OF CONTENTS
2	2
3 TODD J. WEGLARZ	3 WITNESS PAGE
4 Fieger, Fieger, Kenney & Harrington, P.C.	4 STEVEN BROOKS
5 19390 West Ten Mile Road	5
6 Southfield, Michigan 48075	6 EXAMINATION BY MR. WEGLARZ: 5
7 (248) 355-5555	7
8 t.weglarz@fiegerlaw.com	8 EXHIBITS
9 Appearing on behalf of the Plaintiff.	9
10	10 EXHIBIT PAGE
11 TIMOTHY YOUNG	11 (Exhibits not offered.)
12 Cummings, McClorey, Davis & Acho, P.L.C.	12
13 33900 Schoolcraft Road	13
14 Livonia, Michigan 48150	14
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24	24
25	25
Page 3	Page 5
1 JOHN J. O'SHEA	1 Marysville, Michigan
2 Law Offices of John J. O'Shea, P.L.C.	2 Thursday, December 8, 2016
3 18000 Mack Avenue	3 9:12 a.m.
4 Grosse Pointe, Michigan 48230	4
5 (313) 884-2000	5 STEVEN BROOKS,
6 oshealaw@att.net	6 was thereupon called as a witness herein, and after
7 Appearing on behalf of the Defendant, Ferrous	7 having first been duly sworn to testify to the truth,
8 Processing and Trading Company.	8 the whole truth and nothing but the truth, was
9	9 examined and testified as follows:
10	10 MR. WEGLARZ: We're here for the deposition
11	11 of Steve Books taken pursuant to notice and in
12	12 agreement of counsel.
13	13 Mr. Brooks, my name is Todd Weglarz and I
14	14 represent Mr. Dean McMaster in a case he has against
15	15 DTE and a scrap yard arising out of a real bad injury
16	16 he suffered while at the yard.
17	17 I'm going to ask you some questions today
18	18 about yourself and anything that you may know about
19	19 what goes on at DTE. If you do not understand a
20	20 question let me know I'll try to rephrase it for you,
21	21 fair enough?
22	22 THE WITNESS: Yes.
23	23 EXAMINATION
24	24 BY MR. WEGLARZ:
25	25 Q. For the record, your full and complete name?

Page 10

1 the plant.  
2 Q. And that person is employed by DTE, right?  
3 A. Yes.  
4 Q. How would the maintenance foreperson know that a  
5 container is full?  
6 MR. YOUNG: Foreman.  
7 BY MR. WEGLARZ:  
8 Q. How would a maintenance foreman know that the  
9 container is full?  
10 A. Someone would notify him the container is full.  
11 Q. Who would that be typically?  
12 A. It could be anybody, anybody that notices that the  
13 container is full and needs to be changed out.  
14 Q. Do you know whose job it is to determine whether the  
15 containers are full and need to be notified to someone  
16 or need to be picked up?  
17 A. I don't know if anyone is designated for that.  
18 Q. And then tell me about the warehouse, who usually from  
19 the warehouse will call you to let you know a  
20 container is full?  
21 A. Usually the warehouse leader.  
22 Q. Who is that?  
23 A. Dan Ennest.  
24 Q. How do you spell the last name?  
25 A. E-n-n-e-s-t.

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1 Q. What does Mr. Ennest do over at Belle River?  
2 A. He's a warehouse leader. He's in charge of the daily  
3 routine in the warehouse, receiving material, issuing  
4 inventory.  
5 Q. What's the function or purpose of the warehouse?  
6 A. To house the inventory and to disburse it to the  
7 plant.  
8 Q. Are scrap containers considered part of the inventory?  
9 A. No.  
10 Q. So why does the warehouse -- or why do you even have  
11 any role with respect to these containers?  
12 A. I don't know, that's a good question.  
13 Q. That's an honest answer.  
14 A. I don't.  
15 MR. YOUNG: Sorry, the warehouse inventory  
16 and what else did you say about it?  
17 THE WITNESS: Disburse it to the plant.  
18 BY MR. WEGLARZ:  
19 Q. Are these containers brought over to the warehouse?  
20 A. The scrap containers?  
21 Q. Yes.  
22 A. No.  
23 Q. Where are the scrap containers placed at the facility?  
24 A. There's a designated area on site where most of the  
25 scrap containers are placed.

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1 Q. And how many of those designated areas do they have?  
2 A. I'm aware of two, there may be more.  
3 Q. Okay. Which two are you aware of?  
4 A. There's one by the loading dock area near the parking  
5 lot and there's one around the back of the plant.  
6 Q. Are there always containers usually in that area?  
7 A. Usually, yes.  
8 Q. What's the purpose of that container being there?  
9 A. So people could put material into it.  
10 Q. What type of material can be placed into these  
11 containers?  
12 A. Scrap.  
13 Q. Can you put anything, can you put garbage in there?  
14 A. There's separate containers designated for garbage,  
15 for trash.  
16 Q. How does an employee or an employee of a subcontractor  
17 know if the container is used for trash or if a  
18 container is used for scrap?  
19 A. Usually containers for trash are green and the scrap  
20 metal are red.  
21 Q. And how do you know what type of material qualifies as  
22 scrap where you're allowed to put it in the red  
23 container?  
24 A. I would assume just material that isn't useful  
25 anymore.

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1 Q. So it can be anything?  
2 A. It could be anything.  
3 Q. It could be a Little Caesars pizza box?  
4 A. Yes.  
5 MR. YOUNG: For the scrap is what he's  
6 asking you, a Little Caesars pizza box can be put in  
7 the scrap, that's what he's asking you.  
8 MR. WEGLARZ: He said yes.  
9 BY MR. WEGLARZ:  
10 Q. So it could be pretty much anything, right?  
11 A. Yes, it could be.  
12 Q. DTE doesn't have any special rules, they don't tell  
13 its employees or subcontractors make sure only A, B, C  
14 and D go into the red bin, right?  
15 A. Not that I'm aware.  
16 Q. Does DTE do anything to make sure or to look at the  
17 contents of those scrap containers?  
18 A. Not that I'm aware of.  
19 Q. Does DTE have any idea as to what's being placed into  
20 those red containers?  
21 A. Not that I'm aware of.  
22 Q. Okay. So if someone wanted they could fill up one of  
23 those red scrap containers with goods that they're  
24 trying to steal from the plant and DTE really wouldn't  
25 know about it, right?

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1 A. Right.  
2 Q. They don't have anyone there looking in the containers  
3 making sure it's loaded with certain things, correct?  
4 A. Correct.  
5 Q. Eventually someone determines that, hey, this  
6 container is full, I'm going to notify the warehouse  
7 or Steve Brooks?  
8 A. Uh-huh.  
9 Q. Yes?  
10 A. Yes.  
11 Q. You don't know whose job that is to look at the  
12 containers once they're full and to make that  
13 notification?  
14 A. No.  
15 Q. Is it your understanding that it's someone who happens  
16 to notice that it's full and that's the one who will  
17 then initiate the call?  
18 A. Yes, it could be anyone that notices that it's full.  
19 Q. Someone from DTE, correct?  
20 A. It could be anyone on site.  
21 Q. Well, have you ever been notified that a container is  
22 full by a nonemployee?  
23 A. I don't believe so.  
24 Q. Then once you get this call that a container is full,  
25 what do you do?

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1 A. I notify Nina Barber at -- I believe she's at the  
2 Warren Service Center.  
3 Q. And what do you tell Nina?  
4 A. That we have a scrap metal hopper that's full, I give  
5 her the number and she will send out an empty to  
6 replace it.  
7 Q. All right. Once a container is full, is there  
8 anything that's done to that full container while  
9 you're waiting for someone to pick it up?  
10 A. No.  
11 Q. You don't close it up, you don't put a sign on it,  
12 don't throw anything else in there?  
13 A. No.  
14 Q. Do people still load containers even if they're full  
15 or while you're waiting for it to be picked up?  
16 A. I don't know.  
17 Q. And then who usually picks up the containers?  
18 A. It's whoever Nina would call.  
19 Q. I mean, is it always the same company?  
20 A. I don't know. I don't know if they have just one  
21 company or several.  
22 Q. Other than calling Nina to let her know you have this  
23 container over at Belle River ready to be picked up,  
24 do you do anything else as it pertains to that  
25 container?

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1 A. No, nothing.  
2 Q. Do you fill out any logs, records or forms?  
3 A. No.  
4 Q. Okay. I'm going to show you a record here --  
5 A. Okay.  
6 Q. -- it's been marked as Busha Exhibit Number 4, it's  
7 part of a daily master shipment log.  
8 Do you see that?  
9 A. Yes.  
10 Q. Have you ever seen a record like that before?  
11 A. Yes.  
12 Q. What is that?  
13 MR. YOUNG: Did you ask him what it is?  
14 MR. WEGLARZ: Yeah.  
15 MR. YOUNG: Okay.  
16 A. I'm not sure. I guess this is a record of the hopper  
17 that needs to be changed out.  
18 BY MR. WEGLARZ:  
19 Q. Is this a shipment log that is done just for those  
20 scrap containers?  
21 A. I don't know.  
22 Q. Is your writing on any of that document?  
23 A. No.  
24 Q. Can I look at that, please?  
25 A. Uh-huh.

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1 Q. Do you log like the container number or anything like  
2 that?  
3 A. No. Huh-uh.  
4 Q. It says here -- I believe it says here near the main  
5 warehouse dock, see that?  
6 A. Yes.  
7 Q. What's that describing?  
8 A. That's the area I told you about earlier, one of the  
9 locations where the scrap metal hoppers are on site.  
10 Q. One of the designated areas?  
11 A. The designated areas, yeah.  
12 Q. Have you ever seen anyone load contents or scrap into  
13 those containers?  
14 A. No.  
15 Q. And those containers stay in those designated areas  
16 and that's where they get loaded, right?  
17 A. Yes.  
18 Q. Okay. You've never observed anyone place anything in  
19 those containers at any time?  
20 A. Not that I can remember.  
21 Q. Do you recall any large items ever being placed in one  
22 of those containers?  
23 A. No.  
24 Q. Have you ever seen equipment placing items in those  
25 containers?

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1 have. Thank you.  
2 MR. O'SHEA: No questions.  
3 MR. YOUNG: I have no questions.  
4 BY MR. WEGLARZ:  
5 Q. Sorry. One more.  
6 When you were working as the warehouse  
7 person where you would sometimes load these  
8 containers, would you have any involvement with the  
9 people picking up the containers?  
10 A. No.  
11 Q. Are you aware of a company called Ferrous?  
12 A. Yes.  
13 Q. What's your understanding as to what Ferrous is?  
14 A. It's a scrap metal company I believe.  
15 Q. And are they under contract with DTE?  
16 A. I don't know. I assume they are. I don't know.  
17 Q. Why do you assume that?  
18 A. Because their container was on our site.  
19 Q. They've had containers on the DTE site since when?  
20 A. I don't know.  
21 Q. Ever since you'd been working there you recall,  
22 correct?  
23 A. No, I don't.  
24 Q. When you were loading scrap containers, were those  
25 Ferrous containers?

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1 A. I don't know that.  
2 Q. Do you ever recall loading a Ferrous container?  
3 A. No, not specifically, no.  
4 Q. Do you recall any driver coming out to pick up a scrap  
5 container?  
6 A. No.  
7 MR. WEGLARZ: That's it. We're done.  
8 (The deposition was concluded at 9:56 a.m.  
9 Signature of the witness was not requested by  
10 counsel for the respective parties hereto.)  
11  
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Page 40

1 CERTIFICATE OF NOTARY  
2 STATE OF MICHIGAN )  
3 ) SS  
4 COUNTY OF LIVINGSTON)  
5  
6 I, WENDY M. TAYLOR, certify that this  
7 deposition was taken before me on the date  
8 hereinbefore set forth; that the foregoing questions  
9 and answers were recorded by me stenographically and  
10 reduced to computer transcription; that this is a  
11 true, full and correct transcript of my stenographic  
12 notes so taken; and that I am not related to, nor of  
13 counsel to, either party nor interested in the event  
14 of this cause.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

*Wendy Taylor*  
WENDY M. TAYLOR, CSR-6922  
Notary Public,  
Livingston County, Michigan  
My Commission expires: 1-10-17

# EXHIBIT 12

**In the Matter of:**  
Dean McMaster v. DTE Electric Company and  
Ferrous Processing and Trading Company

**Transcript of:**  
Walter Scott Anderson

June 29, 2016  
Volume:



Madison Heights - Detroit - Chicago - Grand Rapids  
deps@computingsource.com  
www.computingsource.com  
Madison Heights - 248-213-1500

Page 1

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DEAN McMASTER,  
Plaintiff,

vs. Case No. 15-147414-NO  
Hon. Cheryl Matthews

DTE ELECTRIC COMPANY and FERROUS  
PROCESSING AND TRADING COMPANY,  
d/b/a FERROUS PROCESSING & TRADING CO.,  
Jointly and Severally,  
Defendants.

---

Deposition of WALTER SCOTT ANDERSON  
Taken at 19176 Hall Road, Suite 220  
Clinton Township, Michigan  
Commencing at 2:03 p.m.  
Wednesday, June 29, 2016  
Before Denise M. Kizy, RPR, CRR, CSR-2466

Page 3

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3 18000 Mack Avenue  
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5 313.884.2000  
6 oshealaw@att.net  
7 Appearing on behalf of the Defendant,  
8 Ferrous Processing and Trading Company  
9 d/b/a Ferrous Processing & Trading Co.  
10  
11  
12  
13  
14  
15  
16  
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19  
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24  
25

Page 2

1 APPEARANCES:  
2  
3 TODD J. WEGLARZ  
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6 Southfield, Michigan 48075  
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9 Appearing on behalf of the Plaintiff  
10  
11 TIMOTHY YOUNG  
12 Cummings, McClorey, Davis & Acho, P.L.C.  
13 33900 Schoolcraft Road  
14 Livonia, Michigan 48150  
15 734.261.2400  
16 tyoung@cmda-law.com  
17 Appearing on behalf of the Defendant,  
18 DTE Electric Company  
19  
20  
21  
22  
23  
24  
25

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BY MR. YOUNG	55

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1 Q. Do you remember who the trainer was?  
2 A. Scott Spooner.  
3 Q. And is he still around?  
4 A. I don't know what he's doing now, but, yeah, he's  
5 still around.  
6 Q. What area does he live in or work in?  
7 A. I'm not sure. That company was in Flint.  
8 Q. Okay. I think that's all the questions I have for  
9 you.  
10 One of these gentlemen may have  
11 questions for you as well.  
12 EXAMINATION  
13 BY MR. WEGLARZ:  
14 Q. I'll have a couple question for you, Mr. Anderson.  
15 I'm going to show you a photo here. I  
16 take it you have a general understanding as to  
17 what happened to Dean McMaster; right?  
18 A. Yeah. I heard something slid out and it caught  
19 him in the leg or something.  
20 Q. And is it your understanding that it was a large  
21 pipe that rolled out?  
22 A. I didn't exactly hear exactly what it was, no.  
23 Q. Okay. Let me show you something.  
24 All right. I'll show you McMaster  
25 Exhibit 17. This is one of the photos in the yard

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1 of the pipe. See that pipe there?  
2 A. Mm-hmm.  
3 Q. Is that a yes for Madam Court Reporter? You meant  
4 yes by that; right?  
5 A. Yes.  
6 Q. Have you ever seen pipes like that or similar to  
7 that loaded in roll-off containers before?  
8 A. Yes.  
9 Q. And how do they normally load those in there? Do  
10 they put them parallel, flush against the rear  
11 gate? Do they put them usually parallel to the  
12 length of the container, the side of the  
13 container?  
14 MR. YOUNG: I'm going to object.  
15 BY MR. WEGLARZ:  
16 Q. If you know.  
17 MR. YOUNG: Lack of foundation, calls  
18 for speculation. Who is they and when and how  
19 often and how many?  
20 MR. WEGLARZ: Sure.  
21 BY MR. WEGLARZ:  
22 Q. Go ahead.  
23 A. I've seen them loaded in every different  
24 direction. It all depends how long it was or, you  
25 know, if it's real long they load them long ways,

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1 or if they're short ones they put them in any way  
2 they can fit them in to make a full load.  
3 Q. I'll show you the scale photo of Mr. McMaster's  
4 container when he came into the Ferrous Metals  
5 yard that day.  
6 You see -- this is Exhibit Number 12 of  
7 the McMaster dep. You see how that pipe is  
8 loaded, what appears to be parallel to the back  
9 gate?  
10 A. Okay. This one right here?  
11 Q. Yeah. Okay. I'll show you that picture. That's  
12 Exhibit 2. Now I'll show you what's inside of the  
13 gate.  
14 MR. YOUNG: I'm just going to object to  
15 that question so far with that reference since  
16 that is not clear at all from that x-ray  
17 photograph as to where that blue pipe is in  
18 relationship to anything.  
19 BY MR. WEGLARZ:  
20 Q. I'm also showing you another photo into the  
21 container, the load there, Exhibit Number 8, but  
22 my question for you is do you see any problem with  
23 the way that that pipe was loaded being parallel  
24 to the back gate there?  
25 MR. YOUNG: The pipe is not in there,

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1 is it, in what you're showing him, Exhibit 8?  
2 MR. WEGLARZ: No, I'm not talking about  
3 Exhibit 8.  
4 BY MR. WEGLARZ:  
5 Q. I'm talking about the way that it was loaded that  
6 you saw in the prior photo. I can pull it up  
7 again.  
8 There you go. It's Exhibit 12.  
9 A. I've seen them loaded in all different directions  
10 like I said. You drop these containers off, they  
11 want to get as much in them as they can. You  
12 know, they don't want to send them out half empty  
13 because, you know, they got to pay for the  
14 trucking, so they put as much in there as they  
15 can. If they got smaller pieces, if they're  
16 standing straight up or laying down, they fill any  
17 hole that they need to do.  
18 Q. Okay. Now you've seen them loaded like that. Now  
19 I'm not a truck driver and I don't have any  
20 experience operating these roll-offs like you do,  
21 but as a layperson the way I look at it is if you  
22 have a pipe like that parallel to the gate, once  
23 you open the gate, it looks like that -- doesn't  
24 that increase the risk of that pipe rolling out  
25 the way it's positioned?

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1 A. That's the first thing that's coming out.  
2 Q. You would agree with that?  
3 A. Right.  
4 Q. Okay. And it would seem to me that if you wanted  
5 to load it in a safer position, the safer position  
6 for that pipe would be so that it's parallel  
7 against the length of the container, would you  
8 agree, so it doesn't roll off?  
9 MR. YOUNG: Objection; lack of  
10 foundation, calls for speculation.  
11 BY MR. WEGLARZ:  
12 Q. Go ahead.  
13 A. Yes.  
14 Q. You do agree with that?  
15 A. Right.  
16 Q. Okay. That's all.  
17 Have you ever witnessed pipes rolling  
18 off of the roll-off containers because of the way  
19 they were loaded?  
20 A. When?  
21 Q. Once you open the gate where they just kind of  
22 roll out.  
23 A. Yeah.  
24 Q. It happens?  
25 A. Yeah.

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1 Q. And you usually see it if they're loaded when  
2 they're parallel against that back gate when they  
3 do that?  
4 A. Yeah, when I crack the door open you can see if  
5 anything is pushing on the door.  
6 Q. Okay. And then you mentioned earlier that at  
7 least at the place where you work -- what is it,  
8 RJ Torching?  
9 A. Yep.  
10 Q. What they'll do is when these -- when you bring  
11 your truck in with your container, they'll take a  
12 photo of it and they'll have someone look at the  
13 photo to see what type of materials you're  
14 bringing in?  
15 A. Well, no. Usually the guy on the crane, say they  
16 don't have a catwalk like you was asking earlier  
17 where they can look in there, if I don't know if  
18 it's heavy material or light material, I'll pull  
19 up next to the crane and he'll look over in and  
20 see and he'll tell me where to go.  
21 Q. So at RJ Torching do they have a scale house?  
22 A. Yes.  
23 Q. And do they take a picture of the container when  
24 you're coming in at the scale house?  
25 A. Yeah, they got a camera.

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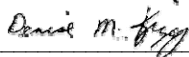
1 Q. And then do they look through that camera to see  
2 what's in the load to then direct the driver to go  
3 to a certain place in the yard?  
4 A. Sometimes.  
5 Q. Is that generally what they do? I'm just trying  
6 to figure out the general process.  
7 A. Right. Sometimes, if he knows, the scale guy  
8 knows, if he can see it's all heavy, or he'll ask  
9 us is it all heavy stuff or is it a mixed load, if  
10 you tell him it's a mixed load then usually we've  
11 got a spot where we dump our mixed load so they  
12 can separate them, or he'll have the crane  
13 operator look at it.  
14 Q. And is that the usual routine?  
15 A. Yep.  
16 Q. And that way they can tell you exactly where to  
17 go --  
18 A. Right.  
19 Q. -- so that you don't have to guess as to where to  
20 go and then open up your gate and try to evaluate  
21 the load; right?  
22 A. Right. Or dump it in the wrong spot and make more  
23 work for other people.  
24 Q. Exactly.  
25 Do you remember talking to any

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1 investigator from OSHA or MIOSHA at any time  
2 regarding Dean McMaster's incident or another  
3 incident?  
4 A. Yeah, one called, yeah.  
5 Q. Do you recall what they said to you?  
6 A. He just asked me the same thing, the routine on  
7 dumping, what the procedure was.  
8 Q. Did they tell you what specifically they were  
9 looking at or how they thought Mr. McMaster's  
10 incident occurred?  
11 A. No. They just wanted to know what I do, what my  
12 procedure was. Told me he was checking with all  
13 the drivers, see what their procedures were as far  
14 as dumping and unloading. I told him the same  
15 thing; I was working for a totally different  
16 company than where Dean worked.  
17 Q. Okay. Now I read somewhere that some scrap yards,  
18 if you're bringing in large diameter pipe, that  
19 some of them will request that you cut a pipe in  
20 half lengthwise.  
21 Have you ever heard of that before?  
22 A. I guess that would have to do with hauling it,  
23 yeah. If it's too big to go on like a flatbed  
24 trailer or too big to go on a container, they have  
25 to cut it down to make it fit.

1 CERTIFICATE  
2 STATE OF MICHIGAN  
3 COUNTY OF OAKLAND  
4

5 I, DENISE M. KIZY, a Notary Public in  
6 and for the above county and state, do hereby  
7 certify that this deposition was taken before me  
8 at the time and place hereinbefore set forth; that  
9 the witness was by me first duly sworn to testify  
10 to the truth; that this is a true, full, and  
11 correct transcript of my stenographic notes so  
12 taken; and that I am not related, nor of counsel,  
13 to any party, nor interested in the event of this  
14 cause.  
15  
16  
17  
18

19  
20 



21  
22 DENISE M. KIZY, CSR-2466, CRR  
23 Notary Public  
24 Oakland County, Michigan  
25 My commission expires 7-28-2019

# EXHIBIT 13

**In The Matter Of:**  
*McMaster vs.*  
*DTE Electric Company, et al.*

---

*David Wise*  
*July 25, 2016*

---



**Bingham Farms/Southfield • Grand Rapids**  
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw

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*Min-U-Script® with Word Index*

Page 1

1 STATE OF MICHIGAN  
 2 IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
 3  
 4 DEAN McMASTER,  
 5 Plaintiff,  
 6 vs. Case No. 15-147414-NO  
 7 Hon. Colleen O'Brien  
 8 DTE ELECTRIC COMPANY and FERROUS  
 9 PROCESSING AND TRADING COMPANY,  
 10 d/b/a FERROUS PROCESSING & TRADING CO.,  
 11 Jointly and Severally,  
 12 Defendants.  
 13  
 14  
 15  
 16 The Deposition of DAVID WISE,  
 17 Taken at 500 Collier Road,  
 18 Auburn Hills, Michigan,  
 19 Commencing at 12:48 p.m.,  
 20 Monday, July 25, 2016,  
 21 Before Wendy M. Taylor, CSR-6922.  
 22  
 23  
 24  
 25

Page 3

1 JOHN J. O'SHEA  
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 4 Grosse Pointe, Michigan 48230  
 5 (313) 884-2000  
 6 oshealaw@att.net  
 7 Appearing on behalf of the Defendant, Ferrous  
 8 Processing and Trading Company.  
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Page 2

1 APPEARANCES:  
 2  
 3 TODD J. WEGLARZ  
 4 Fieger, Fieger, Kenney & Harrington, P.C.  
 5 19390 West Ten Mile Road  
 6 Southfield, Michigan 48075  
 7 (248) 355-5555  
 8 tweglarz@fiiegerlaw.com  
 9 Appearing on behalf of the Plaintiff.  
 10  
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 13 33900 Schoolcraft Road  
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 15 (734) 261-2400  
 16 tyoung@cnda-law.com  
 17 Appearing on behalf of the Defendant, DTE Electric  
 18 Company.  
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 22  
 23  
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 25

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1 Q. Do you know how this accident could have been avoided?  
 2 A. **No, sir, obviously.**  
 3 Q. Did you do any inspection to see that the truck was  
 4 made fundamentally stable?  
 5 A. **No, sir.**  
 6 Q. Has the road inspector -- do you have any type of  
 7 check list that you follow when inspecting the loads  
 8 on the ladder or when the door is open at the sort  
 9 area?  
 10 A. **No, sir.**  
 11 Q. Okay. Do you remember what the banter was about with  
 12 you and Dean waiting for Steve and Bobby to come over?  
 13 A. **I know he made a comment about my uniforms, my new  
 14 uniforms, so -- that I finally got them after so long  
 15 so we were just B.S.-ing about that.**  
 16 Q. When you're inspecting the load from the ladder, are  
 17 you inspecting for any potential danger of the  
 18 material in the -- in the roll-off container?  
 19 A. **Yes, sir.**  
 20 Q. In what way?  
 21 A. **Making sure that there's nothing butted up against the  
 22 door as soon as anything -- was anything going to fall  
 23 out of the container when he opens the door.**  
 24 Q. Are you able to make that determination from viewing  
 25 the top of the container on the ladder?

1 Q. Okay. He meaning the driver of the truck?  
 2 A. **Yes.**  
 3 Q. **So if you see a hazard like that then what you  
 4 normally do is you call the crane, the grap crane?**  
 5 A. **Yeah, that would be my first option.**  
 6 Q. What does the grap crane do?  
 7 A. **Use the claw to pick items up, pieces of material.**  
 8 Q. You said that's your first option, sometimes you can't  
 9 always do that?  
 10 A. **That would all depend, mag or --**  
 11 Q. Or what?  
 12 A. **Grapple.**  
 13 Q. Got it. **Have you ever done that, have you saw  
 14 something up against the gate, door, where you said  
 15 that's right up against it, I don't want you opening  
 16 it, we'll have a crane pick it out?**  
 17 A. **Yes, I've probably done it once or twice, yes.**  
 18 Q. Okay. When was the last time that you think that  
 19 happened?  
 20 A. **Over a year ago. I'm not on the road anymore.**  
 21 Q. How about the time before that, how long ago?  
 22 A. **I don't -- I couldn't even recall.**  
 23 Q. Would both incidents have been before this incident  
 24 with Dean or after?  
 25 A. **Probably one before, one after.**

1 A. **Yes, sir.**  
 2 Q. And so from what you saw you didn't see any danger of  
 3 something falling when the door was going to be open,  
 4 right?  
 5 A. **Yes, sir.**  
 6 Q. Do you know if Ferrous has a rule that when the  
 7 drivers pull over to the sort area that the engines  
 8 should be turned off?  
 9 A. **I'm not aware of such a rule.**  
 10 MR. YOUNG: Okay. That's all the questions  
 11 I have for you.  
 12 RE-EXAMINATION  
 13 BY MR. WEGLARZ:  
 14 Q. Just a couple more questions for you. We'll be done  
 15 soon.  
 16 You mentioned that sometimes when you look  
 17 at these loads if you think that there's something up  
 18 against the gate door, is that what you said?  
 19 A. **Yes, sir.**  
 20 Q. Say that again, sorry, I missed it.  
 21 A. **So if I'm inspecting from the top of the ladder and I  
 22 look down and there's something leaned up against the  
 23 door that's going to cause a danger then that's where  
 24 I would say get a machine over there or something  
 25 to -- he wouldn't open the door.**

1 Q. And what type -- what types of objects did you see?  
 2 A. **Filing cabinets for -- I think one time there was a  
 3 filing cabinet. I don't know about the time before.  
 4 There was a filing cabinet butted up against the door.**  
 5 Q. Why did you think the filing cabinet butting up  
 6 against the door -- why did you think that was a  
 7 hazard?  
 8 A. **Because when you open the door, it doesn't matter  
 9 what -- you know, once you open the door, swing the  
 10 door open, if he doesn't see it it could get him.**  
 11 Q. And then what about the other incidents?  
 12 A. **I don't recall what the material was.**  
 13 Q. Do you recall who the driver was?  
 14 A. **No, sir.**  
 15 Q. Do you recall what company?  
 16 A. **No, sir.**  
 17 Q. **If this pipe was up against the door do you think that  
 18 would be a hazard where maybe you would call in the  
 19 crane or the grap?**  
 20 A. **Absolutely.**  
 21 Q. Okay. Have you ever heard of near-miss training?  
 22 A. **Near-miss, yes.**  
 23 Q. What is that?  
 24 A. **Near-miss training is when -- something talking about  
 25 the falling off the piles.**

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1 Q. Okay. What type of training -- how often do they do  
 2 near-miss training?  
 3 **A. I don't know the -- they rotate through the safety**  
 4 **procedures.**  
 5 Q. Okay. In near-miss training is things falling off the  
 6 piles in the yard or are they talking about  
 7 containers --  
 8 **A. Containers.**  
 9 Q. Tell me the type of training that they provide on  
 10 that?  
 11 **A. I haven't -- I don't really remember the training.**  
 12 **Yeah, I know to stay eight feet away from the box,**  
 13 **that's -- I haven't really been involved with**  
 14 **containers since I've been in the metal shop.**  
 15 Q. Okay. Anything else that you recall about near-miss  
 16 other than stay eight feet away?  
 17 **A. No, sir.**  
 18 Q. When they say stay eight feet away, do they just mean  
 19 stay eight feet away from the back or period, stay  
 20 eight feet away whether you're on the side or the  
 21 back?  
 22 **A. I believe it's just the back, sir, when they open up**  
 23 **the door.**  
 24 Q. And then what about, do they do case studies?  
 25 **A. Those are usually within the videos.**

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1 Q. Okay. What are case studies?  
 2 **A. A case study that they show on the videos, from my**  
 3 **understanding, is what's been shown to places and the**  
 4 **statistics.**  
 5 Q. Does any of the case study training that you've been  
 6 provided relate to things falling out of containers?  
 7 **A. Not to -- not 100 percent like positive that container**  
 8 **but they talked about things falling in the scrap yard**  
 9 **and they've shown where it's happened to other people**  
 10 **before.**  
 11 Q. What types of things do they specifically discuss,  
 12 what types of things falling?  
 13 **A. Scrap material.**  
 14 Q. Did any of it ever deal with pipes?  
 15 **A. I don't know.**  
 16 Q. Do you recall near-miss training discussing pipes at  
 17 all?  
 18 **A. I don't really remember.**  
 19 Q. Do you recall any of the training talking about pipes?  
 20 **A. Just general scrap, could be a pipe, could be a filing**  
 21 **cabinet.**  
 22 Q. Anything about pipes having a tendency to roll off?  
 23 **A. No.**  
 24 Q. Do they have -- is there such a thing as a rain delay,  
 25 do they hold up the dumping of loads because of rain?

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1 **A. I don't know.**  
 2 Q. Okay. And you believe this happened right around 8:00  
 3 a.m., right?  
 4 **A. Around there, yes, sir.**  
 5 Q. Okay. Do they have cameras that are directed, shown  
 6 or pointing at the area, the sort area?  
 7 **A. I don't know.**  
 8 Q. Have you seen any of the video, the yard video of the  
 9 incident?  
 10 **A. No, no video, sir, just these pictures.**  
 11 Q. Do you know who got these pictures?  
 12 **A. No, sir.**  
 13 Q. Do you know who's in charge of the videos?  
 14 **A. No, sir.**  
 15 **MR. WEGLARZ:** All right. That's all.  
 16 Thanks.  
 17 RE-EXAMINATION  
 18 **BY MR. YOUNG:**  
 19 Q. One more thing.  
 20 If you have the photos in front of you,  
 21 like on page 6, it has some captioning at the top,  
 22 truck driver to pile to dump.  
 23 **A. Okay.**  
 24 Q. Do you know who put the caption there?  
 25 **A. What's that?**

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1 Q. Who put that caption there, that description?  
 2 **A. I don't know.**  
 3 Q. How about the next one, Adamus and Bob walked toward  
 4 the truck to inspect the load. Do you know who put  
 5 that there?  
 6 **A. No idea.**  
 7 **MR. YOUNG:** Thank you.  
 8 **MR. O'SHEA:** We're done.  
 9 (The deposition was concluded at 2:38  
 10 Signature of the witness was not requested by  
 11 counsel for the respective parties hereto.)  
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1 CERTIFICATE OF NOTARY  
2 STATE OF MICHIGAN )  
3 ) SS  
4 COUNTY OF LIVINGSTON)  
5

6 I, WENDY M. TAYLOR, certify that this  
7 deposition was taken before me on the date  
8 hereinbefore set forth; that the foregoing questions  
9 and answers were recorded by me stenographically and  
10 reduced to computer transcription; that this is a  
11 true, full and correct transcript of my stenographic  
12 notes so taken; and that I am not related to, nor of  
13 counsel to, either party nor interested in the event  
14 of this cause.  
15  
16  
17  
18



19  
20  
21  
22 WENDY M. TAYLOR, CSR-6922  
23 Notary Public,  
24 Livingston County, Michigan  
25 My Commission expires: 1-10-17

# EXHIBIT 14

**In The Matter Of:**  
*McMaster vs.*  
*DTE Electric Company, et al.*

---

*Robert Reed*  
*October 26, 2016*

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STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

- - -

Dean McMaster,  
Plaintiff,

vs. : Case No.  
: 15-147414-NO

DTE Electric Company and Ferrous  
Processing and Trading Company,  
d/b/a Ferrous Processing & Trading  
Co., jointly and severally,

Defendants.

- - -

TELECONFERENCED DEPOSITION OF ROBERT REED

- - -

Wednesday, October 26, 2016  
12:38 p.m.  
Anderson Reporting Services, Inc.  
3242 West Henderson Road  
Columbus, Ohio 43220

- - -  
SUSAN L. COOTS, RPR  
REGISTERED PROFESSIONAL REPORTER  
- - -

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I N D E X

- - -

WITNESS ROBERT REED	Cross-Examination (By Mr. Weglarz) Cross-Examination (By Mr. O'Shea) Continued Cross-Examination (By Mr. Weglarz) Redirect Examination (By Mr. Young) Recross-Examination (Mr. Weglarz)	PAGE 4 129 135 144 145
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- - -

EXHIBITS Exhibit No. 1 (Curriculum Vitae) Exhibit No. 2 (Binder of Documents) Exhibit No. 3 (Thumb Drive)	MARKED 6 9 13
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- - -

Page 2

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(Via teleconference)

6 On behalf of Plaintiff.

7 MR. TIMOTHY YOUNG, Attorney at Law  
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(Via teleconference)

12 On behalf of Defendant.

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(313) 884-2000  
oshealaw@att.net  
(Via teleconference)

17 On behalf of Defendant,  
Ferrous Processing and Trading Company.

- - -

Page 4

1 PROCEEDINGS

2 ---

3 ROBERT REED,

4 being by me first duly sworn, as hereinafter

5 certified, deposes and says as follows:

6 CROSS-EXAMINATION

7 BY MR. WEGLARZ:

8 Q. Let the record reflect that we are here for

9 the deposition of Robert Reed, taken pursuant to

10 notice and agreement of counsel.

11 Can you hear me okay?

12 A. Yes.

13 Q. Mr. Reed, my name's Todd Weglarz. I'm the

14 plaintiff's attorney. I'm going to ask you questions

15 about your review, your opinions.

16 If you do not understand a question, which

17 may happen from time to time, especially since we're

18 doing this by phone, please let me know and I will

19 rephrase or reask the question. Okay?

20 A. That will be fine.

21 Q. Mr. Reed, I was told to bring a check with

22 me today for your deposition. What do you charge for

23 your depositions?

24 A. I have a prepayment minimum charge of

25 \$1,200.

1 scrap.

2 Q. Have you ever loaded objects similar to the

3 steel pipe involved in this case?

4 A. I've loaded pipe when the -- we had 12 crews

5 out working. When those crews came in over the

6 weekend, they brought all their junk and all of their

7 stuff that needed discarded, and it was my job, and

8 the people that worked with me, to get rid of it,

9 because they went out on Sunday night again. We put

10 it in our containers. There were pipes, cast-iron

11 pipes, you know, coated pipes, lined pipes, small

12 pipes, big pipes, water pipes, gasoline pipes.

13 Q. Was there any particular way you would try

14 to load these pipes in these containers?

15 A. No. Other than just put them in. We did

16 not load above the sideboard, and we always made sure

17 that the tailgate was tied down so it didn't come

18 loose or come open going down the highway.

19 Q. Would you ever load these pipes up against

20 the back of the tailgate and parallel to the tailgate?

21 A. They could have been. There's no rule.

22 Q. I know it could have, but would you ever

23 intentionally try to do that?

24 A. No. But I mean, it depends on what else is

25 in there. You know, there wasn't --

1 A. Well, the stuff can fall on you, and the

2 driver knows that.

3 Q. Even the pipes that you've loaded for years

4 into these scrap containers, most of those were

5 unloaded with a claw or magnet --

6 A. Yes.

7 Q. -- because the risk of injury when opening

8 it, that's why?

9 A. Well, you've got to know what you're

10 hauling. If you've got mixed stuff, you know, that

11 has no rhyme or reason of being in there. You know,

12 the way you're talking about is loading them on the

13 sides, and you don't want to put any heavy pipes on

14 the sides because then you'll have the container

15 tilting the truck.

16 Q. Well, so to have the weight distributed

17 evenly, you want it to be parallel to the back gate,

18 right?

19 A. No, you don't. You could have it parallel

20 to the front, parallel to the middle, parallel to the

21 back gate, or you can have it run horizontal up and

22 back from the front to rear. But you don't want it

23 clear on the sides because then you've got weight

24 distribution problems that can cause you to lean going

25 down the highway and affect your stability and

1 Q. Would that be the ideal and safe way to load

2 scrap pipes like you've done, to place them up against

3 the rear tailgate and parallel to the rear tailgate?

4 MR. YOUNG: I'm going to object to the

5 question because there are no rules for loading

6 materials.

7 Go ahead.

8 A. It would be fine. It wouldn't be unsafe

9 because the driver has to do his inspections and make

10 sure. And we had the same conditions: When we took

11 these things to the scrapyard, you know, most of the

12 time we would have a magnet or a claw unload them

13 because you don't want to be opening the tailgate with

14 all that metal in there anyway. When you've got a

15 bunch of sorted metal -- like I said before, metal on

16 metal slides and it can cascade down and fall on you

17 at any time. So you either get a magnet or you have a

18 crane unload it with a clapper bucket.

19 Q. Why would you use the claw or the magnet to

20 unload scrap?

21 A. Because that's a safe way of doing it. You

22 don't open the tailgate with that stuff in there.

23 Q. What's wrong with opening the tailgate with

24 that stuff in there? What's the harm? What's the

25 danger?

1 mobility.

2 Q. Now, when you would load these pipes -- you

3 said you've been doing this for what? 12 years?

4 A. No, I said I've got 12 -- hold on. My phone

5 is --

6 (Telephone interruption.)

7 I've got 12 years' experience with

8 containers, hauling them and being around them.

9 Q. And loading them, right?

10 A. And loading them, yes. And unloading them.

11 Q. And where would you load these containers?

12 A. Well, when I was at Rumpke Recycling, we had

13 probably 50 container trucks and hundreds of

14 containers.

15 Q. Okay. But where would you do the physical

16 loading of the scrap containers? At what place or

17 facility?

18 A. Well, Rumpke had customers that they leased

19 these to and we would go out and empty them. I didn't

20 go every day, but I went as needed. When I was at

21 Pro-Terra, we had our own under the contract. And

22 then, like I said, we had two junk containers that we

23 threw our junk in and took to the junkyard.

24 Q. So would you always, after loading the

25 containers, also be involved in hauling the containers

1 it was elevated?  
2 A. I'm just saying they did not move from  
3 horizontal to vertical. Had they been loaded  
4 vertical, that would have been improper.  
5 Q. How did they move then?  
6 A. They moved front to back.  
7 Q. How far?  
8 A. Don't know. Nobody knows because of the  
9 actions of the truck.  
10 MR. WEGLARZ: All right. That's all I have.  
11 Thanks.  
12 MR. YOUNG: Thank you very much, Mr. Reed.  
13 Sue, this is Tim Young. I'll take a copy.  
14 MR. O'SHEA: This is John O'Shea. I will as  
15 well.  
16 MR. YOUNG: I presume Mr. Weglarz will order  
17 the original.  
18 MR. WEGLARZ: Yeah, regular order.  
19 (Signature not waived.)  
20 ---  
21 And, thereupon, the deposition was concluded  
22 at approximately 4:16 p.m.  
23 ---  
24  
25

1 State of Ohio :  
2 County of Franklin: SS:  
3 I, ROBERT REED, do hereby certify that I  
4 have read the foregoing transcript of my deposition  
5 given on October 26, 2016; that together with the  
6 correction page attached hereto noting changes in form  
7 or substance, if any, it is true and correct.  
8 \_\_\_\_\_  
9 ROBERT REED  
10 I do hereby certify that the foregoing  
11 transcript of the deposition of ROBERT REED was  
12 submitted to the witness for reading and signing; that  
13 after he had stated to the undersigned Notary Public  
14 that he had read and examined his deposition, he  
15 signed the same in my presence on the \_\_\_\_\_ day of  
16 \_\_\_\_\_, \_\_\_\_\_.  
17 \_\_\_\_\_  
18 Notary Public  
19 My commission expires \_\_\_\_\_  
20 - - -  
21  
22  
23  
24  
25

1 CERTIFICATE  
2 State of Ohio :  
3 County of Franklin: SS:  
4 I, Susan L. Coots, Notary Public in and for  
5 the State of Ohio, duly commissioned and qualified  
6 certify that the within named witness was by me duly  
7 sworn to testify to the whole truth in the cause  
8 aforesaid; that the testimony was taken down by me in  
9 stenotypy in the presence of said witness, afterwards  
10 transcribed upon a computer; that the foregoing is a  
11 true and correct transcript of the testimony given by  
12 said witness taken at the time and place in the  
13 foregoing caption specified.  
14 I certify that I am not a relative  
15 employee, or attorney of any of the parties hereto, or  
16 of any attorney or counsel employed by the parties, or  
17 financially interested in the action.  
18 IN WITNESS WHEREOF, I have set my hand and  
19 affixed my seal of office at Columbus, Ohio, on this  
20 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
21 \_\_\_\_\_  
22 SUSAN L. COOTS, Notary Public  
23 in and for the State of Ohio  
24 and Registered Professional  
25 Reporter.  
My Commission expires January 10, 2020.  
- - -

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# EXHIBIT 15



# OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

**DIRECTIVE NUMBER:** CPL 2-00.124

**EFFECTIVE DATE:** December 10, 1999

**SUBJECT:** Multi-Employer Citation Policy

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## ABSTRACT

**Purpose:** To Clarify the Agency's multi-employer citation policy.

**Scope:** OSHA-Wide

**References:** OSHA Instruction CPL 2.103 ( the FIRM)

**Suspensions:** Chapter III, Paragraph C. 6. of the FIRM is suspended and replaced by this Directive.

**State Impact:** This Instruction describes a Federal Program Change. Notification of State intent is required, but adoption is not.

**Action Offices:** National, Regional and Area Offices

**Originating Office:** Directorate of Construction

**Contact:** Carl Sall (202) 693 2345  
Directorate of Construction  
N3468 FPB  
200 Constitution Ave., NW  
Washington DC 20210

By and Under the Authority of  
R. Davis Layne  
Deputy Assistant Secretary, OSHA

Cover Sheet

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    B. No Changes in Employer Duties. . . . . 2

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    C. The Exposing Employer. . . . . 3

    D. The Correcting Employer. . . . . 5

    E. The Controlling Employer. . . . . 5

    F. Multiple Roles. . . . . 12

- I. Purpose. This Directive clarifies the Agency's multi-employer citation policy and suspends Chapter III. C. 6. of OSHA's Field Inspection Reference Manual (FIRM).
- II. Scope. OSHA-Wide
- III. Suspension. Chapter III. Paragraph C. 6. of the FIRM (CPL 2.103) is suspended and replaced by this Directive.
- IV. References. OSHA Instructions:
  - CPL 02-00.103; OSHA Field Inspection Reference Manual (FIRM), September 26, 1994.
  - ADM 08-0.1C, OSHA Electronic Directive System, December 19,1997.
- V. Action Information.
  - A. Responsible Office. Directorate of Construction.
  - B. Action Offices. National, Regional and Area Offices
  - C. Information Offices. State Plan Offices, Consultation Project Offices
- VI. Federal Program Change. This Directive describes a Federal Program Change for which State adoption is not required. However, the States shall respond via the two-way memorandum to the Regional Office as soon as the State's intent regarding the multi-employer citation policy is known, but no later than 60 calendar days after the date of transmittal from the Directorate of Federal-State Operations.
- VII. Force and Effect of Revised Policy. The revised policy provided in this Directive is in full force and effect from the date of its issuance. It is an official Agency policy to be implemented OSHA-wide.
- VIII. Changes in Web Version of FIRM. A note will be included at appropriate places in the FIRM as it appears on the Web indicating the suspension of Chapter III paragraph 6. C. and its replacement by this Directive, and a hypertext link will be provided connecting viewers with this Directive.
- IX. Background. OSHA's Field Inspection Reference Manual (FIRM) of September 26, 1994 (CPL 2.103), states at Chapter III, paragraph 6. C., the Agency's citation policy for multi-employer worksites. The Agency has determined that this policy needs clarification. This directive describes the revised policy.
  - A. Continuation of Basic Policy. This revision continues OSHA's existing policy for

issuing citations on multi-employer worksites. However, it gives clearer and

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more detailed guidance than did the earlier description of the policy in the FIRM, including new examples explaining when citations should and should not be issued to exposing, creating, correcting, and controlling employers. These examples, which address common situations and provide general policy guidance, are not intended to be exclusive. In all cases, the decision on whether to issue citations should be based on all of the relevant facts revealed by the inspection or investigation.

- B. No Changes in Employer Duties. This revision neither imposes new duties on employers nor detracts from their existing duties under the OSH Act. Those duties continue to arise from the employers' statutory duty to comply with OSHA standards and their duty to exercise reasonable diligence to determine whether violations of those standards exist.

X. Multi-employer Worksite Policy. The following is the multi-employer citation policy:

- A. Multi-employer Worksites. On multi-employer worksites (in all industry sectors), more than one employer may be citable for a hazardous condition that violates an OSHA standard. A two-step process must be followed in determining whether more than one employer is to be cited.

1. Step One. The first step is to determine whether the employer is a creating, exposing, correcting, or controlling employer. The definitions in paragraphs (B) - (E) below explain and give examples of each. Remember that an employer may have multiple roles (see paragraph H). Once you determine the role of the employer, go to Step Two to determine if a citation is appropriate (NOTE: only exposing employers can be cited for General Duty Clause violations).
2. Step Two. If the employer falls into one of these categories, it has obligations with respect to OSHA requirements. Step Two is to determine if the employer's actions were sufficient to meet those obligations. The extent of the actions required of employers varies based on which category applies. Note that the extent of the measures that a controlling employer must take to satisfy its duty to exercise reasonable care to prevent and detect violations is less than what is required of an employer with respect to protecting its own employees.

B. The Creating Employer

1. Step 1: Definition: The employer that caused a hazardous condition that violates an OSHA standard.

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2. **Step 2: Actions Taken:** Employers must not create violative conditions. An employer that does so is citable even if the only employees exposed are those of other employers at the site.

- a. **Example 1:** Employer Host operates a factory. It contracts with Company S to service machinery. Host fails to cover drums of a chemical despite S's repeated requests that it do so. This results in airborne levels of the chemical that exceed the Permissible Exposure Limit.

**Analysis: Step 1:** Host is a creating employer because it caused employees of S to be exposed to the air contaminant above the PEL. **Step 2:** Host failed to implement measures to prevent the accumulation of the air contaminant. It could have met its OSHA obligation by implementing the simple engineering control of covering the drums. Having failed to implement a feasible engineering control to meet the PEL, Host is citable for the hazard.

- b. **Example 2:** Employer M hoists materials onto Floor 8, damaging perimeter guardrails. Neither its own employees nor employees of other employers are exposed to the hazard. It takes effective steps to keep all employees, including those of other employers, away from the unprotected edge and informs the controlling employer of the problem. Employer M lacks authority to fix the guardrails itself.

**Analysis: Step 1:** Employer M is a creating employer because it caused a hazardous condition by damaging the guardrails. **Step 2:** While it lacked the authority to fix the guardrails, it took immediate and effective steps to keep all employees away from the hazard and notified the controlling employer of the hazard. Employer M is not citable since it took effective measures to prevent employee exposure to the fall hazard.

C. **The Exposing Employer.**

1. **Step 1: Definition:** An employer whose own employees are exposed to the hazard. See Chapter III, section (C)(1)(b) for a discussion of what constitutes exposure.
2. **Step 2: Actions taken:** If the exposing employer created the violation, it is citable for the violation as a creating employer. If the violation was created by another employer, the exposing employer is citable if it (1)

knew of the hazardous condition or failed to exercise reasonable diligence to discover the condition, and (2) failed to take steps consistent with its authority to protect its employees. If the exposing employer has authority to correct the hazard, it must do so. If the exposing employer lacks the authority to correct the hazard, it is citable if it fails to do each of the following: (1) ask the creating and/or controlling employer to correct the hazard; (2) inform its employees of the hazard; and (3) take reasonable alternative protective measures. In extreme circumstances (e.g., imminent danger situations), the exposing employer is citable for failing to remove its employees from the job to avoid the hazard.

- a. *Example 3:* Employer Sub S is responsible for inspecting and cleaning a work area in Plant P around a large, permanent hole at the end of each day. An OSHA standard requires guardrails. There are no guardrails around the hole and Sub S employees do not use personal fall protection, although it would be feasible to do so. Sub S has no authority to install guardrails. However, it did ask Employer P, which operates the plant, to install them. P refused to install guardrails.

*Analysis: Step 1:* Sub S is an exposing employer because its employees are exposed to the fall hazard. *Step 2:* While Sub S has no authority to install guardrails, it is required to comply with OSHA requirements to the extent feasible. It must take steps to protect its employees and ask the employer that controls the hazard – Employer P – to correct it. Although Sub S asked for guardrails, since the hazard was not corrected, Sub S was responsible for taking reasonable alternative protective steps, such as providing personal fall protection. Because that was not done, Sub S is citable for the violation.

- b. *Example 4:* Unprotected rebar on either side of an access ramp presents an impalement hazard. Sub E, an electrical subcontractor, does not have the authority to cover the rebar. However, several times Sub E asked the general contractor, Employer GC, to cover the rebar. In the meantime, Sub E instructed its employees to use a different access route that avoided most of the uncovered rebar and required them to keep as far from the rebar as possible.

*Analysis: Step 1:* Since Sub E employees were still exposed to some unprotected rebar, Sub E is an exposing employer. *Step 2:* Sub E made a good faith effort to get the general contractor to correct the hazard and took feasible measures within its control to protect its employees. Sub E is not citable for the rebar hazard.

D. The Correcting Employer.

1. Step 1: Definition: An employer who is engaged in a common undertaking, on the same worksite, as the exposing employer and is responsible for correcting a hazard. This usually occurs where an employer is given the responsibility of installing and/or maintaining particular safety/health equipment or devices.
2. Step 2: Actions taken: The correcting employer must exercise reasonable care in preventing and discovering violations and meet its obligations of correcting the hazard.
- a. Example 5: Employer C, a carpentry contractor, is hired to erect and maintain guardrails throughout a large, 15-story project. Work is proceeding on all floors. C inspects all floors in the morning and again in the afternoon each day. It also inspects areas where material is delivered to the perimeter once the material vendor is finished delivering material to that area. Other subcontractors are required to report damaged/missing guardrails to the general contractor, who forwards those reports to C. C repairs damaged guardrails immediately after finding them and immediately after they are reported. On this project few instances of damaged guardrails have occurred other than where material has been delivered. Shortly after the afternoon inspection of Floor 6, workers moving equipment accidentally damage a guardrail in one area. No one tells C of the damage and C has not seen it. An OSHA inspection occurs at the beginning of the next day, prior to the morning inspection of Floor 6. None of C's own employees are exposed to the hazard, but other employees are exposed.

*Analysis:* **Step 1:** C is a correcting employer since it is responsible for erecting and maintaining fall protection equipment. **Step 2:** The steps C implemented to discover and correct damaged guardrails were reasonable in light of the amount of activity and size of the project. It exercised reasonable care in preventing and discovering violations; it is not citable for the damaged guardrail since it could not reasonably have known of the violation.

E. The Controlling Employer.

1. Step 1: Definition: An employer who has general supervisory authority over the worksite, including the power to correct safety and health violations itself or require others to correct them. Control can be

established by contract or, in the absence of explicit contractual provisions, by the exercise of control in practice. Descriptions and examples of different kinds of controlling employers are given below.

2. Step 2: Actions Taken: A controlling employer must exercise reasonable care to prevent and detect violations on the site. The extent of the measures that a controlling employer must implement to satisfy this duty of reasonable care is less than what is required of an employer with respect to protecting its own employees. This means that the controlling employer is not normally required to inspect for hazards as frequently or to have the same level of knowledge of the applicable standards or of trade expertise as the employer it has hired.
3. Factors Relating to Reasonable Care Standard. Factors that affect how frequently and closely a controlling employer must inspect to meet its standard of reasonable care include:
  - a. The scale of the project;
  - b. The nature and pace of the work, including the frequency with which the number or types of hazards change as the work progresses;
  - c. How much the controlling employer knows both about the safety history and safety practices of the employer it controls and about that employer's level of expertise.
  - d. More frequent inspections are normally needed if the controlling employer knows that the other employer has a history of non-compliance. Greater inspection frequency may also be needed, especially at the beginning of the project, if the controlling employer had never before worked with this other employer and does not know its compliance history.
  - e. Less frequent inspections may be appropriate where the controlling employer sees strong indications that the other employer has implemented effective safety and health efforts. The most important indicator of an effective safety and health effort by the other employer is a consistently high level of compliance. Other indicators include the use of an effective, graduated system of enforcement for non-compliance with safety and health requirements coupled with regular jobsite safety meetings and safety training.

4. Evaluating Reasonable Care. In evaluating whether a controlling employer has exercised reasonable care in preventing and discovering violations, consider questions such as whether the controlling employer:

- a. Conducted periodic inspections of appropriate frequency (frequency should be based on the factors listed in G.3.);
- b. Implemented an effective system for promptly correcting hazards;
- c. Enforces the other employer's compliance with safety and health requirements with an effective, graduated system of enforcement and follow-up inspections.

5. Types of Controlling Employers.

- a. Control Established by Contract. In this case, *the Employer Has a Specific Contract Right to Control Safety.* To be a controlling employer, the employer must itself be able to prevent or correct a violation or to require another employer to prevent or correct the violation. One source of this ability is explicit contract authority. This can take the form of a specific contract right to require another employer to adhere to safety and health requirements and to correct violations the controlling employer discovers.

(1) *Example 6:* Employer GH contracts with Employer S to do sandblasting at GH's plant. Some of the work is regularly scheduled maintenance and so is general industry work; other parts of the project involve new work and are considered construction. Respiratory protection is required. Further, the contract explicitly requires S to comply with safety and health requirements. Under the contract GH has the right to take various actions against S for failing to meet contract requirements, including the right to have non-compliance corrected by using other workers and back-charging for that work. S is one of two employers under contract with GH at the work site, where a total of five employees work. All work is done within an existing building. The number and types of hazards involved in S's work do not significantly change as the work progresses. Further, GH has worked with S over the course of several years. S provides periodic and other safety and health training and uses a graduated system of enforcement of safety and health rules. S has consistently had a high level of compliance at its previous jobs and at this site. GH monitors S by a combination of weekly inspections, telephone discussions and a

weekly review of S's own inspection reports. GH has a system of graduated enforcement that it has applied to S for the few safety and health violations that had been committed by S in the past few years. Further, due to respirator equipment problems S violates respiratory protection requirements two days before GH's next scheduled inspection of S. The next day there is an OSHA inspection. There is no notation of the equipment problems in S's inspection reports to GH and S made no mention of it in its telephone discussions.

*Analysis: Step 1:* GH is a controlling employer because it has general supervisory authority over the worksite, including contractual authority to correct safety and health violations. **Step 2:** GH has taken reasonable steps to try to make sure that S meets safety and health requirements. Its inspection frequency is appropriate in light of the low number of workers at the site, lack of significant changes in the nature of the work and types of hazards involved, GH's knowledge of S's history of compliance and its effective safety and health efforts on this job. GH has exercised reasonable care and is not citable for this condition.

(2) *Example 7:* Employer GC contracts with Employer P to do painting work. GC has the same contract authority over P as Employer GH had in Example 6. GC has never before worked with P. GC conducts inspections that are sufficiently frequent in light of the factors listed above in (G)(3). Further, during a number of its inspections, GC finds that P has violated fall protection requirements. It points the violations out to P during each inspection but takes no further actions.

*Analysis: Step 1:* GC is a controlling employer since it has general supervisory authority over the site, including a contractual right of control over P. **Step 2:** GC took adequate steps to meet its obligation to discover violations. However, it failed to take reasonable steps to require P to correct hazards since it lacked a graduated system of enforcement. A citation to GC for the fall protection violations is appropriate.

(3) *Example 8:* Employer GC contracts with Sub E, an electrical subcontractor. GC has full contract authority over Sub E, as in Example 6. Sub E installs an electric panel box exposed to the weather and implements an assured equipment grounding conductor program, as required under the contract. It fails to

connect a grounding wire inside the box to one of the outlets. This incomplete ground is not apparent from a visual inspection. Further, GC inspects the site with a frequency appropriate for the site in light of the factors discussed above in (G)(3). It saw the panel box but did not test the outlets to determine if they were all grounded because Sub E represents that it is doing all of the required tests on all receptacles. GC knows that Sub E has implemented an effective safety and health program. From previous experience it also knows Sub E is familiar with the applicable safety requirements and is technically competent. GC had asked Sub E if the electrical equipment is OK for use and was assured that it is.

*Analysis: Step 1:* GC is a controlling employer since it has general supervisory authority over the site, including a contractual right of control over Sub E. *Step 2:* GC exercised reasonable care. It had determined that Sub E had technical expertise, safety knowledge and had implemented safe work practices. It conducted inspections with appropriate frequency. It also made some basic inquiries into the safety of the electrical equipment. Under these circumstances GC was not obligated to test the outlets itself to determine if they were all grounded. It is not citable for the grounding violation.

- b. Control Established by a Combination of Other Contract Rights:  
Where there is no explicit contract provision granting the right to control safety, or where the contract says the employer does not have such a right, an employer may still be a controlling employer. The ability of an employer to control safety in this circumstance can result from a combination of contractual rights that, together, give it broad responsibility at the site involving almost all aspects of the job. Its responsibility is broad enough so that its contractual authority necessarily involves safety. The authority to resolve disputes between subcontractors, set schedules and determine construction sequencing are particularly significant because they are likely to affect safety. (NOTE: citations should only be issued in this type of case after consulting with the Regional Solicitor's office).
- (1) *Example 9:* Construction manager M is contractually obligated to: set schedules and construction sequencing, require subcontractors to meet contract specifications, negotiate with trades, resolve disputes between subcontractors, direct work and make purchasing decisions, which affect safety. However, the

contract states that M does not have a right to require compliance with safety and health requirements. Further, Subcontractor S asks M to alter the schedule so that S would not have to start work until Subcontractor G has completed installing guardrails. M is contractually responsible for deciding whether to approve S's request.

*Analysis: Step 1:* Even though its contract states that M does not have authority over safety, the combination of rights actually given in the contract provides broad responsibility over the site and results in the ability of M to direct actions that necessarily affect safety. For example, M's contractual obligation to determine whether to approve S's request to alter the schedule has direct safety implications. M's decision relates directly to whether S's employees will be protected from a fall hazard. M is a controlling employer. **Step 2:** In this example, if M refused to alter the schedule, it would be citable for the fall hazard violation.

(2) *Example 10:* Employer ML's contractual authority is limited to reporting on subcontractors' contract compliance to owner/developer O and making contract payments. Although it reports on the extent to which the subcontractors are complying with safety and health infractions to O, ML does not exercise any control over safety at the site.

*Analysis: Step 1:* ML is not a controlling employer because these contractual rights are insufficient to confer control over the subcontractors and ML did not exercise control over safety. Reporting safety and health infractions to another entity does not, by itself (or in combination with these very limited contract rights), constitute an exercise of control over safety. **Step 2:** Since it is not a controlling employer it had no duty under the OSH Act to exercise reasonable care with respect to enforcing the subcontractors' compliance with safety; there is therefore no need to go to Step 2.

c. Architects and Engineers: Architects, engineers, and other entities are controlling employers only if the breadth of their involvement in a construction project is sufficient to bring them within the parameters discussed above.

(1) *Example 11:* Architect A contracts with owner O to prepare contract drawings and specifications, inspect the work,

report to O on contract compliance, and to certify completion of work. A has no authority or means to enforce compliance, no authority to approve/reject work and does not exercise any other authority at the site, although it does call the general contractor's attention to observed hazards noted during its inspections.

*Analysis:* **Step 1:** A's responsibilities are very limited in light of the numerous other administrative responsibilities necessary to complete the project. It is little more than a supplier of architectural services and conduit of information to O. Its responsibilities are insufficient to confer control over the subcontractors and it did not exercise control over safety. The responsibilities it does have are insufficient to make it a controlling employer. Merely pointing out safety violations did not make it a controlling employer. NOTE: In a circumstance such as this it is likely that broad control over the project rests with another entity. **Step 2:** Since A is not a controlling employer it had no duty under the OSH Act to exercise reasonable care with respect to enforcing the subcontractors' compliance with safety; there is therefore no need to go to Step 2.

(2) *Example 12:* Engineering firm E has the same contract authority and functions as in Example 9.

*Analysis:* **Step 1:** Under the facts in Example 9, E would be considered a controlling employer. **Step 2:** The same type of analysis described in Example 9 for Step 2 would apply here to determine if E should be cited.

d. Control Without Explicit Contractual Authority . Even where an employer has no explicit contract rights with respect to safety, an employer can still be a controlling employer if, in actual practice, it exercises broad control over subcontractors at the site (see Example 9). NOTE: Citations should only be issued in this type of case after consulting with the Regional Solicitor's office.

(1) *Example 13:* Construction manager MM does not have explicit contractual authority to require subcontractors to comply with safety requirements, nor does it explicitly have broad contractual authority at the site. However, it exercises control over most aspects of the subcontractors' work anyway, including aspects that relate to safety.

*Analysis:* **Step 1:** MM would be considered a controlling employer since it exercises control over most aspects of the subcontractor's work, including safety aspects. **Step 2:** The same type of analysis on reasonable care described in the examples in (G)(5)(a) would apply to determine if a citation should be issued to this type of controlling employer.

F. Multiple Roles.

1. A creating, correcting or controlling employer will often also be an exposing employer. Consider whether the employer is an exposing employer before evaluating its status with respect to these other roles.
2. Exposing, creating and controlling employers can also be correcting employers if they are authorized to correct the hazard.

# EXHIBIT 16

**MIOSHA**

Michigan Occupational Safety and Health Administration  
Department of Licensing and Regulatory Affairs

**AGENCY  
INSTRUCTION**

DOCUMENT IDENTIFIER:  
MIOSHA-COM-04-1R4

DATE: December 16, 2015

**SUBJECT: Multi-Employer Work Sites**

- I. Purpose. This instruction provides guidelines for the Construction Safety and Health Division (CSHD) and the General Industry Safety and Health Division (GISHD) compliance safety and health officers (CSHO) to follow when conducting enforcement activities at and preparing citations for multi-employer work sites.
- II. Scope. This instruction applies to enforcement activities conducted by the MIOSHA CSHD and GISHD.
- III. References.
  - A. Michigan Occupational Safety and Health Act, R408.1001 et seq., P.A. 154 of 1974, as amended.
  - B. MIOSHA Field Operations Manual (FOM), as amended.
- IV. Distribution. MIOSHA Staff; OSHA Lansing Area Office; General; S-drive Accessible; MIOSHA Weekly; and Internet Accessible.
- V. Cancellations. All previous versions of this Agency Instruction.
- VI. History. History of previous versions include:
  - MIOSHA-COM-04-1R3, September 23, 2011
  - MIOSHA-COM-04-1R2, July 31, 2007
  - MIOSHA-COM-04-1R1, May 26, 2006
  - MIOSHA-COM-04-1, September 30, 2004
- VII. Contact: Lawrence Hidalgo, Director, Construction Safety and Health Division, and Adrian Rocskay, Director, General Industry Safety and Health Division
- VIII. Originator: Barton G. Pickelman, Deputy Director, Michigan Occupational Safety and Health Administration
- IX. Significant Changes.
  - A. Reformatted according to the new DMS Instruction.
  - B. Revised flowcharts B and C in Appendix C titled Determining Controlling Employers.
- X. Multi-Employer Work Site Policy. The following is the multi-employer citation policy:
  - A. Multi-Employer Work Sites. On multi-employer work sites (in all industry sectors), more than one employer may be citable for a hazardous condition that violates a MIOSHA standard. A two-step process must be followed in

determining whether more than one employer is to be cited. All facts considered in the two-step process shall be documented in the case file.

1. Step 1. The first step is to determine whether the employer is a creating, exposing, correcting, or controlling employer. The definitions in paragraphs (B) – (E) below explain and give examples of each. Remember that an employer may have multiple roles. Once you determine the role of the employer, go to Step 2 to determine if a citation is appropriate.
2. Step 2. If the employer falls into one of the four categories, it has obligations with respect to MIOSHA requirements. Step 2 is to determine if the employer's actions were sufficient to meet those obligations. The extent of the actions required of employers varies based on which category applies. Note that the extent of the measures that a controlling employer must implement to satisfy this duty of reasonable care is less than what is required of an employer with respect to protecting its own employees. This means that the controlling employer is not normally required to inspect for hazards as frequently, or to have the same level of knowledge of the applicable standards or of trade expertise, as the employer it has hired.
3. Examples of Potential MIOSHA Enforcement on Multi-Employer Work Sites in Appendix A, Guidelines for Issuing Citations to Controlling Employers on Multi-Employer Work Sites in Appendix B and Flowcharts for Determining Controlling Employers in Appendix C.

B. The Creating Employer.

1. Definition: The employer that caused a hazardous condition that violates a MIOSHA standard.
2. Employers must not create violative conditions. An employer that does so is citable even if the only employees exposed are those of other employers at the site.

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a) **Example 1:** Employer Host operates a factory. It contracts with Company S to service machinery. Host fails to cover drums of a chemical. This results in airborne levels of the chemical that exceed the Permissible Exposure Limit (PEL).

**Analysis: Step 1:** Host is a creating employer because it caused employees of S to be exposed to the air contaminant above the PEL. **Step 2:** Host failed to implement measures to prevent the accumulation of the air contaminant. It could have met its MIOSHA obligation by implementing the simple engineering control of covering the drums. Having failed to implement a feasible engineering control to meet the PEL, Host is citable for the hazard. Company S would also be obligated to remove their

employees from the area or otherwise protect their employees from the hazard.

- b) **Example 2:** Employer M hoists materials onto Floor 8, damaging perimeter guardrails. Employer M lacks authority to fix the guardrails itself. Employer M takes effective steps to keep all employees, including those of other employers, away from the unprotected edge and informs the controlling employer of the problem. As a result, neither Employer M's own employees nor employees of other employers are exposed to the hazard.

**Analysis: Step 1:** Employer M is a creating employer because it caused a hazardous condition by damaging the guardrails. **Step 2:** While it lacked the authority to fix the guardrails, it took immediate and effective steps to keep all employees away from the hazard and notified the controlling employer of the hazard. Employer M is not citable since it took effective measures to prevent employee exposure to the fall hazard.

C. The Exposing Employer.

1. Definition: An employer whose own employees are exposed to the hazard.
2. If the exposing employer created the violation, it is citable for the violation as a creating employer. If the violation was created by another employer, the exposing employer is citable if it (1) knew of the hazardous condition or failed to exercise reasonable diligence to discover the condition, and (2) failed to take steps consistent with its authority to protect its employees. If the exposing employer has authority to correct the hazard, it must do so. If the exposing employer lacks the authority to correct the hazard, it is citable if it fails to do each of the following: (1) ask the creating and/or controlling employer to correct the hazard; (2) inform its employees of the hazard; and (3) take reasonable alternative protective measures. In extreme circumstances (e.g., imminent danger situations), the exposing employer is citable for failing to remove its employees from the job to avoid the hazard.

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- a) **Example 3:** Employer Sub S is responsible for inspecting and cleaning a work area in Plant P around a large, permanent hole at the end of each day. A MIOSHA standard requires guardrails. There are no guardrails around the hole and Sub S employees do not use personal fall protection, although it would be feasible to do so. Sub S has no authority to install guardrails. However, it did ask Employer P, which operates the plant, to install them. P refused to install guardrails.

**Analysis: Step 1:** Sub S is an exposing employer because its employees are exposed to the fall hazard. **Step 2:** While Sub S

has no authority to install guardrails, it is required to comply with MIOSHA requirements to the extent feasible. It must take steps to protect its employees and ask the employer that controls the hazard - Employer P - to correct it. Although Sub S asked for guardrails, since the hazard was not corrected, Sub S was responsible for taking reasonable alternative protective steps, such as providing personal fall protection. Because that was not done, Sub S is citable for the violation.

- b) **Example 4:** Unprotected rebar on either side of the access ramp presents an impalement hazard. Sub E, an electrical subcontractor, does not have the authority to cover the rebar. However, several times Sub E asked the general contractor, Employer GC, to cover the rebar. In the meantime, Sub E instructed its employees to use a different access route that avoided most of the uncovered rebar and required them to keep as far from the rebar as possible.

**Analysis: Step 1:** Since Sub E employees were still exposed to some unprotected rebar; Sub E is an exposing employer. **Step 2:** Sub E made a good faith effort to get the general contractor to correct the hazard and took feasible measures within its control to protect its employees. Sub E is not citable for the rebar hazard.

D. The Correcting Employer.

1. Definition: An employer who is engaged in a common undertaking, on the same work site, as the exposing employer and is responsible for correcting a hazard. This usually occurs where an employer is given the responsibility of installing and/or maintaining particular safety/health equipment or devices.
2. The correcting employer must exercise reasonable care in preventing and discovering violations and meet its obligations of correcting the hazard.

**Example 5:** Employer C, a carpentry contractor, is hired to erect and maintain guardrails throughout a large, 15-story project. Work is proceeding on all floors. C inspects all floors in the morning and again in the afternoon each day. It also inspects areas where material is delivered to the perimeter once the material vendor is finished delivering material to that area. Other subcontractors are required to report damaged/missing guardrails to the general contractor, who forwards those reports to C. C repairs damaged guardrails immediately after finding them and immediately after they are reported. On this project few instances of damaged guardrails have occurred other than where material has been delivered. Shortly after the afternoon inspection of Floor 6, workers moving equipment accidentally damage a guardrail in one area. No one tells C of the damage and C has not seen it. A MIOSHA inspection occurs at the beginning of the next day, prior to the morning inspection of Floor

*Revised*

6. None of C's own employees are exposed to the hazard, but other employees are exposed.

**Analysis: Step 1:** C is a correcting employer since it is responsible for erecting and maintaining fall protection equipment. **Step 2:** The steps C implemented to discover and correct damaged guardrails were reasonable in light of the amount of activity and size of the project. It exercised reasonable care in preventing and discovering violations; it is not citable for the damaged guardrail since it could not reasonably have known of the violation.

E. The Controlling Employer.

1. Definition: An employer who has general supervisory authority over the work site, including the power to correct safety and health violations itself or require others to correct them. Control can be established by contract or, in the absence of explicit contractual provisions, by the exercise of control in practice. Descriptions and examples of different kinds of controlling employers are given below.
2. A controlling employer must exercise reasonable care to prevent and detect violations on the site. The extent of the measures that a controlling employer must implement to satisfy this duty of reasonable care is less than what is required of an employer with respect to protecting its own employees. This means that the controlling employer is not normally required to inspect for hazards as frequently or to have the same level of knowledge of the applicable standards or of trade expertise as the employer it has hired.
3. Factors Relating to Reasonable Care Standard: Factors that affect how frequently and closely a controlling employer must inspect to meet its standard of reasonable care include:
  - a) The scale of the project.
  - b) The nature and pace of the work, including the frequency with which the number or types of hazards change as the work progresses.
  - c) How much the controlling employer knows about both the safety history and safety practices of the employer it controls and about that employer's level of expertise.
  - d) More frequent inspections are normally needed if the controlling employer knows that the other employer has a history of noncompliance. Greater inspection frequency may also be needed, especially at the beginning of the project, if the controlling employer had never worked with this other employer before and does not know its compliance history.

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- e) Less frequent inspections may be appropriate where the controlling employer sees strong indications that the other employer has implemented effective safety and health efforts. The most important indicator of an effective safety and health effort by the other employer is a consistently high level of compliance. Other indicators include the use of an effective, graduated system of enforcement for noncompliance with safety and health requirements coupled with regular jobsite safety meetings and safety training.
4. Evaluating Reasonable Care: In evaluating whether a controlling employer has exercised reasonable care in preventing and discovering violations, consider questions such as whether the controlling employer:
- a) Conducted periodic inspections of appropriate frequency; (frequency should be based on the factors listed in E.3 above.).
  - b) Implemented an effective system for promptly correcting hazards.
  - c) Enforces the other employer's compliance with safety and health requirements with an effective, graduated system of enforcement and follow-up inspections.
5. Types of Controlling Employers:
- a) Control Established by Contract. In this case, the employer has a specific contract right to control safety. To be a controlling employer, the employer must itself be able to prevent or correct a violation or to require another employer to prevent or correct the violation. One source of this ability is explicit contract authority. This can take the form of a specific contract right to require another employer to adhere to safety and health requirements and to correct violations the controlling employer discovers.
    - (1) **Example 6:** Employer GH contracts with Employer S to do sandblasting at GH's plant. Some of the work is regularly scheduled maintenance and considered general industry work; other parts of the project involve new work and are considered construction. Respiratory protection is required. Further, the contract explicitly requires S to comply with safety and health requirements. Under the contract GH has the right to take various actions against S for failing to meet contract requirements, including the right to have noncompliance corrected by using other workers and back-charging for that work. S is one of two employers under contract with GH at the work site, where a total of five employees work. All work is done within an existing building. The number and types of hazards involved in S's work do not significantly change as the

work progresses. Further, GH has worked with S over the course of several years. S provides periodic and other safety and health training and uses a graduated system of enforcement of safety and health rules. S has consistently had a high level of compliance at its previous jobs and at this site. GH monitors S by a combination of weekly inspections, telephone discussions and a weekly review of S's own inspection reports. GH has a system of graduated enforcement that it has applied to S for the few safety and health violations that had been committed by S in the past few years. Further, due to respirator equipment problems, S violates respiratory protection requirements two days before GH's next scheduled inspection of S. The next day there is a MIOSHA inspection. There is no notation of the equipment problems in S's inspection reports to GH and S made no mention of it in its telephone discussions.

**Analysis: Step 1:** GH is a controlling employer because it has general supervisory authority over the work site, including contractual authority to correct safety and health violations. **Step 2:** GH has taken reasonable steps to try to make sure that S meets safety and health requirements. Its inspection frequency is appropriate in light of the low number of workers at the site, lack of significant changes in the nature of the work and types of hazards involved, GH's knowledge of S's history of compliance and its effective safety and health efforts on this job. GH has exercised reasonable care and is not citable for this condition.

FEARLESS

- (2) **Example 7:** Employer GC contracts with Employer P to do painting work. GC has the same contract authority over P as Employer GH had in Example 6. GC has never worked with P before. GC conducts inspections that are sufficiently frequent in light of the factors listed above in E.3. Further, during a number of its inspections, GC finds that P has violated fall protection requirements. It points the violations out to P during each inspection but takes no further actions.

**Analysis: Step 1:** GC is a controlling employer since it has general supervisory authority over the site, including a contractual right of control over P. **Step 2:** GC took adequate steps to meet its obligation to discover violations; however, it failed to take reasonable steps to require P to correct hazards since it lacked a graduated system of enforcement. A citation to GC for the fall protection violations is appropriate.

- (3) **Example 8:** Employer GC contracts with Sub E, an electrical subcontractor. GC has full contract authority over Sub E, as in Example 6. Sub E installs an electric panel box exposed to the weather and implements an assured equipment grounding conductor program, as required under the contract. It fails to connect a grounding wire inside the box to one of the outlets. This incomplete ground is not apparent from a visual inspection. Further, GC inspects the site with a frequency appropriate for the site in light of the factors discussed above in E.3. It saw the panel box but did not test the outlets to determine if they were all grounded because Sub E represents that it is doing all of the required tests on all receptacles. GC knows that Sub E has implemented an effective safety and health program. From previous experience it also knows Sub E is familiar with the applicable safety requirements and is technically competent.

**Analysis: Step 1:** GC is a controlling employer since it has general supervisory authority over the site, including a contractual right of control over Sub E. **Step 2:** GC exercised reasonable care. It had determined that Sub E had technical expertise, safety knowledge and had implemented safe work practices. It conducted inspections with appropriate frequency and had no reason to believe that the work was being performed unsafely. Under these circumstances GC was not obligated to test the outlets itself to determine if they were all grounded. It is not citable for the grounding violation.

- b) **Control Established by a Combination of Other Contract Rights.** Where there is no explicit contract provision granting the right to control safety, or where the contract says the employer does not have such a right, an employer may still be a controlling employer. The ability of an employer to control safety in this circumstance can result from a combination of contractual rights that, together, give it broad responsibility at the site involving almost all aspects of the job. Its responsibility is broad enough so that its contractual authority necessarily involves safety. The authority to resolve disputes between subcontractors, set schedules and determine construction sequencing is particularly significant because they are likely to affect safety.
- (1) **Example 9:** Construction manager M is contractually obligated to set schedules and construction sequencing, require subcontractors to meet contract specifications, negotiate with trades, resolve disputes between

subcontractors, direct work, and make purchasing decisions which affect safety. However, the contract states that M does not have a right to require compliance with safety and health requirements. Further, Subcontractor S asks M to alter the schedule so that S would not have to start work until Subcontractor G has completed installing guardrails. M is contractually responsible for deciding whether to approve S's request.

**Analysis: Step 1:** Even though its contract states that M does not have authority over safety, the combination of rights actually given in the contract provides broad responsibility over the site and results in the ability of M to direct actions that necessarily affect safety. For example, M's contractual obligation to determine whether to approve S's request to alter the schedule has direct safety implications. M's decision relates directly to whether S's employees will be protected from a fall hazard. M is a controlling employer. **Step 2:** In this example, if M refused to alter the schedule, it would be citable for the fall hazard violation.

- (2) **Example 10:** Employer ML's contractual authority is limited to reporting on subcontractors' contract compliance to owner/developer O and making contract payments. Although it reports on the extent to which the subcontractors are complying with safety and health infractions to O, ML does not exercise any control over safety at the site.

**Analysis: Step 1:** ML is not a controlling employer because these contractual rights are insufficient to confer control over the subcontractors and ML did not exercise control over safety. Reporting safety and health infractions to another entity does not, by itself (or in combination with these very limited contract rights), constitute an exercise of control over safety. **Step 2:** Since it is not a controlling employer it had no duty under the MIOASH Act to exercise reasonable care with respect to enforcing the subcontractors' compliance with safety; therefore, there is no need to go to Step 2.

- c) **Architects and Engineers:** Architects, engineers, and other entities are controlling employers only if the breadth of their involvement in a construction project is sufficient to bring them within the parameters discussed above.

- (1) **Example 11:** Architect A contracts with owner O to prepare contract drawings and specifications, inspect the work, report to O on contract compliance, and to certify completion of work. A has no authority or means to enforce compliance, no authority to approve/reject work and does not exercise any other authority at the site, although it does call the general contractor's attention to observed hazards noted during its inspections.

**Analysis: Step 1:** A's responsibilities are very limited in light of the numerous other administrative responsibilities necessary to complete the project. It is little more than a supplier of architectural services and conduit of information to O. A's responsibilities are insufficient to confer control over the subcontractors and it did not exercise control over safety. The responsibilities it does have are insufficient to make it a controlling employer. Merely pointing out safety violations did not make it a controlling employer. **NOTE:** In a circumstance such as this it is likely that broad control over the project rests with another entity. **Step 2:** Since A is not a controlling employer it had no duty under the MIOASH Act to exercise reasonable care with respect to enforcing the subcontractors' compliance with safety; therefore, there is no need to go to Step 2.

- (2) **Example 12:** Engineering firm E has the same contract authority and functions as in Example 9.

**Analysis: Step 1:** Under the facts in Example 9, E would be considered a controlling employer. **Step 2:** The same type of analysis described in Example 9 for Step 2 would apply here to determine if E should be cited.

- d) **Control Without Explicit Contractual Authority:** Even where an employer has no explicit contract rights with respect to safety, an employer can still be a controlling employer if, in actual practice, it exercises broad control over subcontractors at the site (see Example 9).

- (1) **Example 13:** Construction manager MM does not have explicit contractual authority to require subcontractors to comply with safety requirements, nor does it explicitly have broad contractual authority at the site. However, it exercises control over most aspects of the subcontractors' work anyway, including aspects that relate to safety.

**Analysis: Step 1:** MM would be considered a controlling employer since it exercises control over most aspects of the subcontractor's work, including safety aspects. **Step 2:** The same type of analysis on reasonable care described in the examples in E.5.a above, would apply to determine if a citation should be issued to this type of controlling employer.

F. Multiple Roles.

1. A creating, correcting, or controlling employer may be an exposing employer. Consider whether the employer is an exposing employer before evaluating its status with respect to these other roles.
2. Exposing, creating, and controlling employers may be correcting employers if they are authorized to correct the hazard.

## Appendix A

### *Examples of Potential MIOSHA Enforcement On Multi-Employer Work Sites*

**Multi-Employer Work Sites.** On multi-employer work sites, more than one employer may be citable for the same condition. The following employers are potentially citable:

- (1) **The Exposing Employer.** An employer whose own employees are exposed to the hazard.
  - (a) The exposing employer must protect its employees from the hazard. If the employer has the authority to correct the hazard, it is citable if it failed to exercise reasonable care to correct it. The reasonable care standard for the exposing employer is very high: it must frequently and carefully inspect to prevent hazards and must correct hazards found promptly.
  - (b) If the exposing employer lacks the authority to correct the hazard, it is citable if it fails to take all feasible measures to: minimize the hazard, minimize its employees' exposure to the hazard, and ask the controlling employer to get the hazard corrected. In extreme circumstances (e.g., imminent danger situations), the exposing employer is citable for failing to remove its employees from the job to avoid the hazard.
- (2) **The Creating Employer.** The employer who created the hazard. *DTE*
  - (a) ***Example 1:*** A contractor hoisting materials onto a floor damages perimeter guardrails. None of its own employees are exposed to the hazard, but employees of other contractors are exposed.

***Analysis:*** This creating employer is citable if it failed to take immediate steps to keep all employees, including those of other employers, away from the hazard and to notify the controlling contractor of the hazard. If it had the authority to repair the guardrails, it is also citable if it failed to promptly correct the hazard.
  - (b) ***Example 2:*** An excavating contractor digs a trench with a backhoe, never entering the trench. It fails to install cave-in protection as it was required by contract to do and leaves the site. The next day employees of a plumbing contractor enter the unprotected trench.

***Analysis:*** The excavating contractor is citable because it created the hazard even though none of its employees were exposed to the hazard. The plumbing contractor is citable as an exposing employer.
- (3) **The Correcting Employer.** An employer who is responsible for correcting a hazard.
  - (a) ***Example 3:*** A carpentry contractor is hired to erect and maintain guardrails throughout a project. None of its own employees are exposed

to the hazard, but other employees are exposed where the guardrails are missing or damaged.

**Analysis:** This correcting employer is citable if it failed to exercise reasonable care in its efforts to install and repair guardrails and to discover missing or damaged guardrails.

**Note:** Exposing, creating and controlling employers can also be correcting employers if they are authorized to correct the hazard.

- (4) **The Controlling Employer.** An employer who has control over the exposing, creating and/or correcting employer. To be citable as a controlling employer, the employer must have sufficient control and must have failed to exercise reasonable care in preventing, discovering or correcting the hazard.

FEBRUARY

(a) Sufficient Contractual Control.

- (1) By a Specific Contract Right to Control Safety: To be a controlling contractor, the employer must be able to require a subcontractor to prevent or correct a violation. One source of this ability is contract authority. This can take the form of a specific contract right to require a subcontractor to adhere to safety and health requirements.
- (2) By a Combination of other Contract Rights: Where there is no specific contract provisions granting the right to control safety or where the contract says the employer does not have such a right, an employer may still be a controlling employer. The ability of an employer to control safety in this circumstance can result from a combination of contractual rights that together, give it broad responsibility at the site involving almost all aspects of the job, including aspects that affect safety.
- (3) Contractual Rights that Typically Combine to Result in this Authority: The right to set schedules and construction sequencing, require contract specifications to be met, negotiate with trades, resolve disputes between subcontractors and direct work or make purchasing decisions that affect safety. Where the combination of rights results in the ability of the employer to direct actions relating to safety, the employer is considered a controlling employer.

(b) Sufficient control without contractual authority.

- (1) Even where an employer has no contract rights with respect to safety, the employer can still be a controlling employer if, in actual practice, it exercises broad control over subcontractors at the site.
- (2) A construction manager does not have specific contractual authority to require subcontractors to comply with safety requirements. However, it exercises control over most aspects of the subcontractors' work anyway, including aspects that relate to

safety. This construction manager would be considered a controlling employer and would be citable if it failed to exercise reasonable care in overseeing safety.

- (c) Reasonable care.
- (1) A controlling employer normally shall be cited if it failed to exercise reasonable care in preventing or correcting a violation.
  - (2) The reasonable care standard for a controlling employer is not as high as it is for an exposing, creating or correcting employer.
    - (i) This means that the controlling employer is not normally required to inspect as frequently or to have the same level of knowledge of the applicable standards or of trade expertise as the subcontractor.
    - (ii) Factors that affect how frequently and closely a controlling contractor must inspect to meet its standard of reasonable care include the scale of the project, the nature of the work, how much the general contractor knows about both the safety history and safety practices of the subcontractor and about the subcontractor's level of expertise.
  - (3) **Example 4:** A general contractor hires an electrical subcontractor. The electrical subcontractor installs an electrical panel box exposed to the weather and implements an assured equipment grounding conductor program, as required under the contract. It fails to connect the grounding wire inside the box to one of the outlets. This incomplete ground is not apparent from a visual inspection. The general contractor inspects the site twice a week. It saw the panel box but did not test the outlets to determine if they were grounded because the electrical contractor represents that it is doing all of the required tests on all receptacles. The general contractor knows that the subcontractor has a good safety program. From previous experience it also knows that the subcontractor is familiar with the applicable safety requirements and is technically competent. It had asked the subcontractor if the electrical equipment is OK for use and was assured that it is.

**Analysis:** The general contractor exercised reasonable care. It had determined that the subcontractor had technical expertise, safety knowledge and used safe work practices. It also made some basic inquiries into the safety of the electrical equipment. Under these circumstances it was not obligated to test the outlets itself to determine if they were all grounded. It would not be citable for the grounding violation.

**Appendix B**  
**Guidelines for Issuing Citations to Controlling Employers**  
**on Multi-Employer Work Sites**

- I. Purpose: The purpose of Appendix B is to provide guidelines and establish the necessary supporting documentation when alleging citations to the controlling employer on a multi-employer work site.
- II. Background: The Multi-Employer Work Sites Agency Instruction and the Field Operations Manual uses language such as “reasonable care” and “due diligence” for determining the application of controlling employer responsibilities in relation to multi-employer work sites. As a result, there have been inconsistencies when applying the instruction when alleging a violation for controlling employer issues.

MIOSHA’s mission is to protect the workers of the State of Michigan. The Multi-Employer Work Site Agency Instruction provides guidance for determining which of the four criteria to use when alleging a violation on a multi-employer work site or involving multi-employer issues. The four criteria being:

- A. Exposing Employer
- B. Creating Employer
- C. Correcting Employer
- D. Controlling Employer

The Multi-Employer Work Site Agency Instruction does not place “primary” responsibility for the safety of subcontractors’ employees on the controlling contractor. To the contrary, the instruction makes clear that the primary responsibility rests with an employee’s employer. The instruction specifically states:

“The extent of the measures that a controlling employer must implement to satisfy this duty of reasonable care is less than what is required of an employer with respect to protecting its own employees. This means that the controlling employer is not normally required to inspect for hazards as frequently, or to have the same level of knowledge of the applicable standards, or of trade expertise as the employer it has hired.”

- III. Determining the Controlling Employer(s). The Safety Officers (SO) or Industrial Hygienist (IH) must first evaluate where the employer is a controlling employer either through contracts, exercising control, or through implicit responsibility.
  - A. Contract to Control. When controlling employer issues are indicated, the SO/IH shall review the controlling employer language in the contract and include this portion of the contract and any other supporting documentation in the case file.
    - 1. Site Specific Contract. Owner hires an individual or another employer/contractor to oversee the project and subcontractors. The owner would not likely be the controlling employer unless exercising control.

2. Generic Safety and Health Responsibility Language is in the Contract. Employer/owner requires all subcontractors to adhere to MIOSHA Rules and Regulations or have language in the contract that gives them the authority to remove an employer from the site for safety issues.
  3. Written or Verbal Owner/Employer Controlling Contracts. The owner/employer has separate contracts for each subcontractor. He/She coordinates and/or oversees the work progress.
  4. No Written or Verbal Contract.
- B. Exercising Control – With or Without a Contract. SO/IH must explain and document how this employer is exercising control.
1. Is this employer supervising other sub-contractors' employees?
  2. Does this employer tell subcontractor employees how, when, or where to perform their job?
  3. Has this employer removed another subcontractor employee from the site?
  4. Did this employer schedule or coordinate work activities of sub-contractors?
  5. Does this employer inspect the work operations of other subcontractors for safety or health hazards?
- C. Implicit Responsibility. When a work operation is not specific to the subcontractor, but has broad application that may affect other employers at the work site, then the controlling employer is responsible for the general safety conditions on the site. They are in the best position to correct the hazard.

Examples:

- |                                      |                       |
|--------------------------------------|-----------------------|
| General Fire Extinguishers           | Illumination          |
| General Housekeeping                 | Carbon Monoxide       |
| General Guarding of Walking Surfaces | Noise Ambient         |
| Handrails and Stair Rails            | Fire Protection Plans |
| Toilet/Washing Facilities            | Presence of Lead      |

- D. Non-Implicit Responsibility. Typically the controlling employer will not be cited when the work activity is specific to the subcontractors work operation.

Examples:

- |  |                     |
|--|---------------------|
| Fall Protection for Specific Work Activities<br>(Warning lines, PFAS usage, CDZ) | Aerial Lift Permits |
| Non-Safety Gasoline Containers   | Missing Saw Guards  |
| Worn Extension Cords   | Eye Protection      |
| Respirators  | No Showers (lead)   |
|  | Hard Hats           |

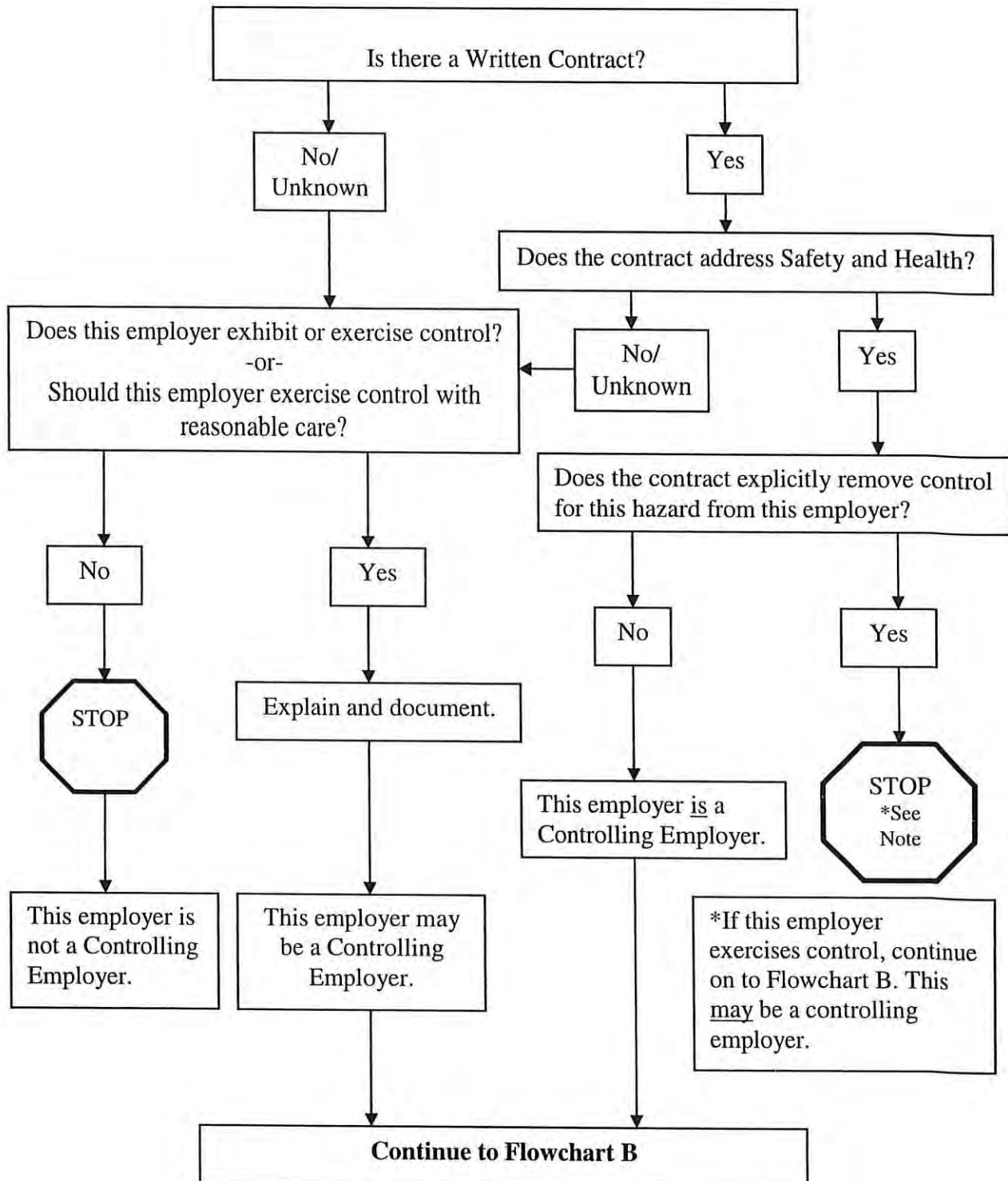
The exception for non-implicit responsibility would be for imminent danger conditions. In imminent danger conditions, the controlling employer must take immediate corrective actions.

- E. Knowledge of the Activity – Is there a Hazard?
1. Direct knowledge:
    - a) Did the Controlling Employer see the activity?
    - b) Was the Controlling Employer informed of the activity?
    - c) Did the Controlling Employer direct the activity?
  2. Indirect Knowledge:
    - a) Should the controlling employer have had knowledge of the activity?
    - b) Does this employer know there is a hazard?
    - c) Does the subcontractor have a history with MIOSHA/OSHA? (subcontractor pre-qualification)
    - d) Were there previous injuries/illnesses during a similar activity?
    - e) Did the violation exist as a matter of custom and practice at the work site?
    - f) Had the subcontractor been warned of previous hazards?
- F. Reasonable Care/Due Diligence. The SO/IH must determine whether the controlling employer exercised reasonable steps or due diligence to protect employees given the information known and available at the time of the inspection. The SO/IH must include any documentation or statements in the case file that demonstrates the employer did not take reasonable steps to protect employees from safety and health hazard.
- A controlling employer's responsibility for a violation diminishes as the evidence becomes clearer that they acted reasonable to protect employees. The extent of the measures that a controlling employer must implement to satisfy this duty of reasonable care is less than what is required of an employer with respect to protecting its own employees. This means that the controlling employer is not normally required to inspect for hazards as frequently or to have the same level of knowledge of the applicable standards or of trade expertise as the employer it has hired.
1. How are hazards detected on this project?
  2. How often are jobsite inspections conducted?
  3. Is a system in place for correcting identified hazards?
    - a) Safety Orientation
    - b) Tool Box Talks
    - c) Pre-task Analysis
    - d) Safety Meetings
    - e) Inspection

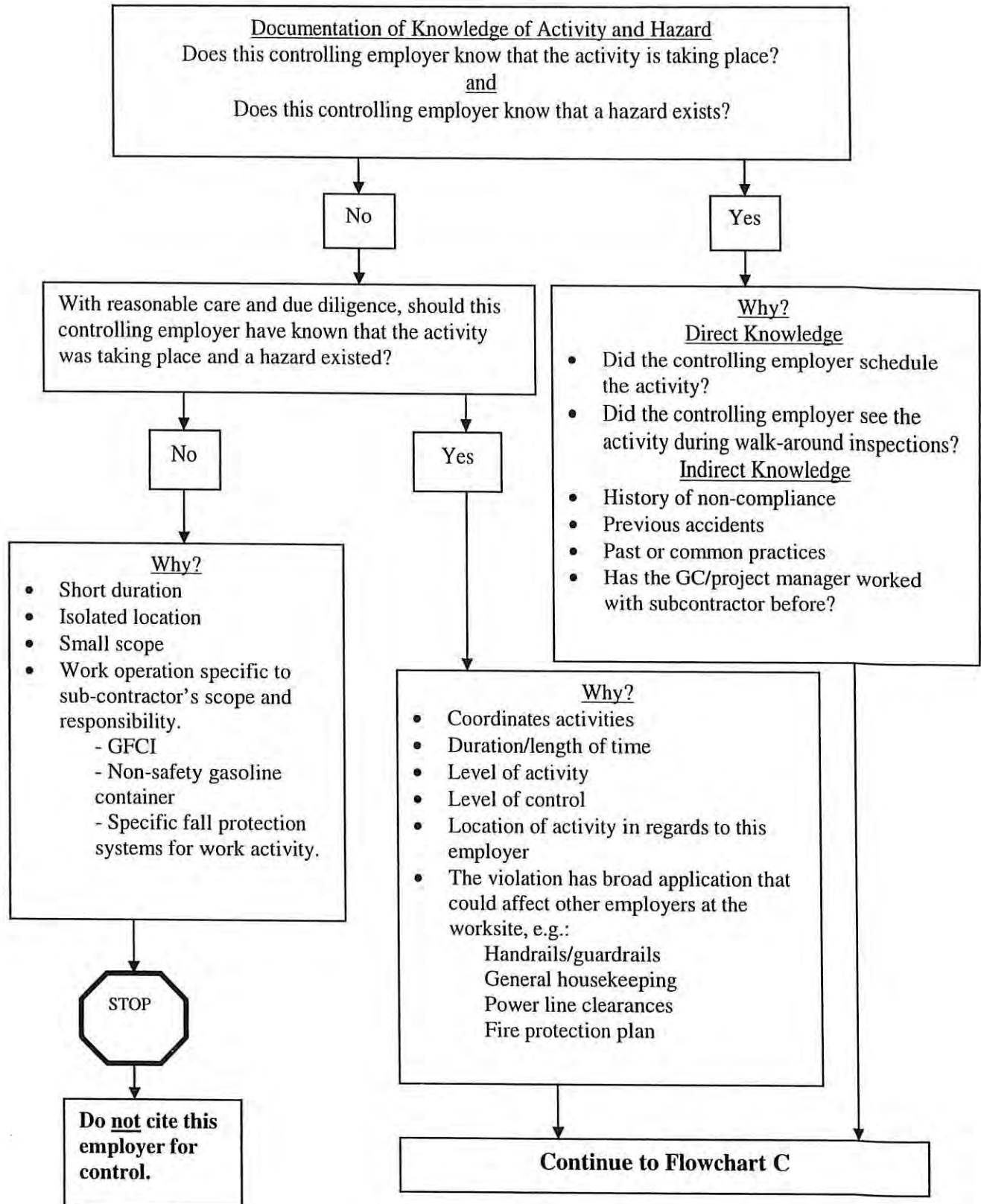
4. Why is this inadequate?
- G. Additional Responsibilities for Controlling Employers. The controlling employer must take immediate action to eliminate a hazard that is generally recognized as imminent danger regardless of whether they are implicitly responsible. The SO/IH shall document the controlling employer's knowledge of the activity or hazard. The following conditions must be met before a hazard becomes an imminent danger:
1. There must be a reasonable likelihood that a serious accident will occur immediately or, if not immediately, then before abatement would otherwise be required.
  2. The harm/threat must be death or serious physical harm. For a health hazard, exposure to the toxic substance or other health hazard must cause harm to such a degree as to shorten life or cause substantial reduction in physical or mental efficiency even though the resulting harm may not manifest itself immediately.
- H. Documentation Required for Issuing Citations to Controlling Employer:
1. A description of the type of activity performed by the controlling employer at the work site.
  2. A description of the respective roles and obligations of all the employers at the worksite, i.e., – contracts and verbal agreements.
  3. The specific facts that describe the controlling employer's involvement in creating or failing to correct the violation, including those facts that identify the employer as an exposing, creating, controlling and/or correcting employer. (Who, What, When, Where, and Why)
  4. The specific facts that determine the degree of control exercised on the part of the controlling employer.
  5. Any other evidence that supports or weighs against citing the controlling employer.
  6. Include a copy of the flowcharts in Appendix C to illustrate the rationale for citing an employer as a controlling employer.

## Appendix C Determining Controlling Employers

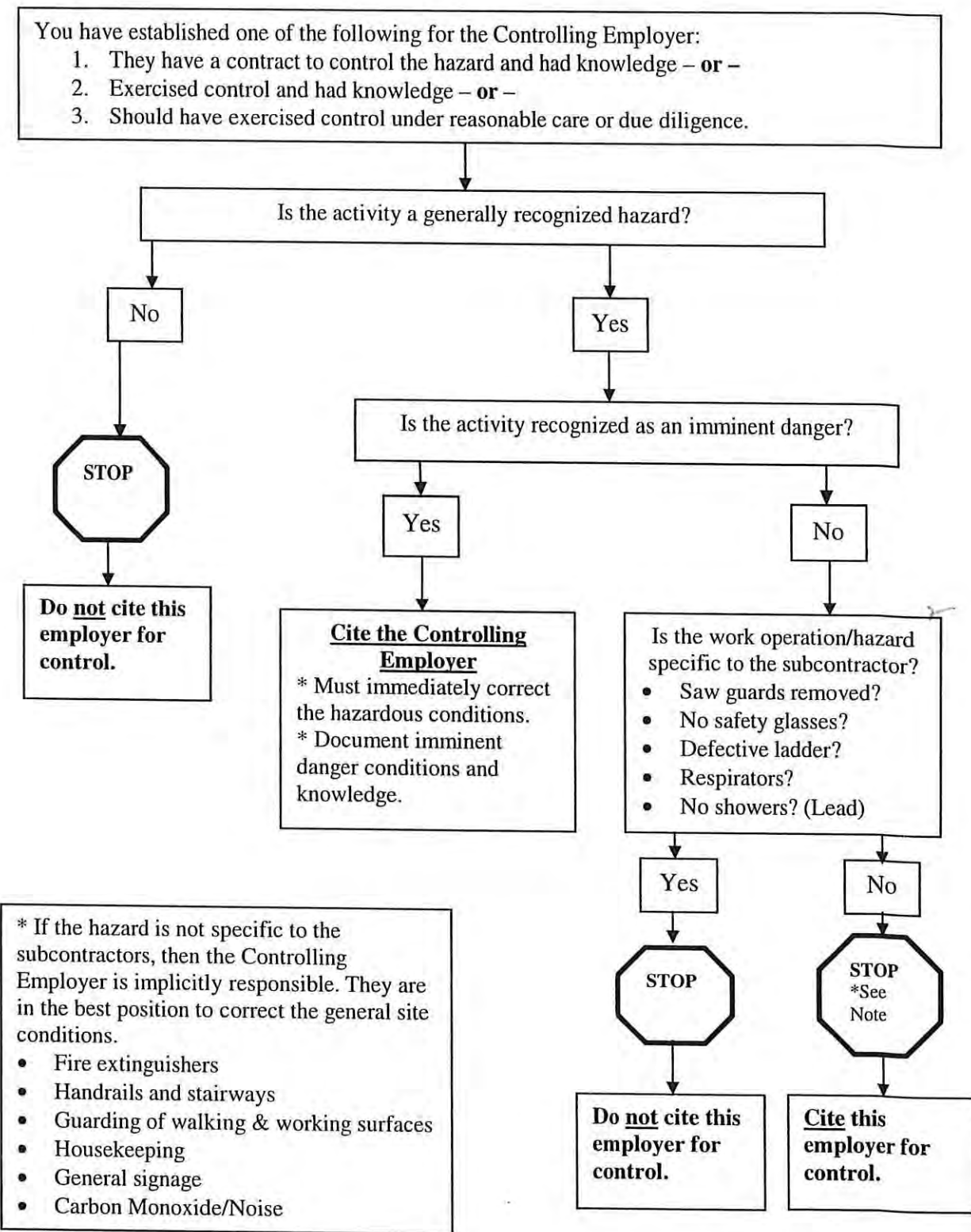
Flowchart A



### Flowchart B



### Flowchart C



# Exhibit 17

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DEAN McMASTER,

CASE NO. 15-147414-NO

Plaintiff,

HON. CHERYL MATTHEWS

v

DTE ELECTRIC COMPANY and FERROUS  
PROCESSING AND TRADING COMPANY,  
d/b/a FERROUS PROCESSING & TRADING CO.,  
Jointly and Severally,

Defendants.

FIEGER, FIEGER, KENNEY & HARRINGTON, P.C. BY: GEOFFREY N. FIEGER (P30441) TODD J. WEGLARZ (P48035) <b>Attorneys for Plaintiff</b> 19390 W. Ten Mile Road Southfield, MI 48075 Ph: 248-355-5555/Fax: 248-355-5148 <a href="mailto:t.weglarz@fiegerlaw.com">t.weglarz@fiegerlaw.com</a>	
LAW OFFICE OF JOHN J. O'SHEA, P.L.C. BY: JOHN J. O'SHEA (P52009) <b>Attorneys for Defendant Ferrous</b> 18000 Mack Avenue Grosse Pointe, MI 48230 Ph: 313-884-2000 <a href="mailto:oshealaw@att.net">oshealaw@att.net</a>	CUMMINGS, MCCLOREY, DAVIS & ACHO, P.L.C. BY: TIMOTHY YOUNG (P22657) <b>Attorneys for Defendant</b> 33900 Schoolcraft Livonia, MI 48150 Phone: 734-261-2400/Fax: 734-261-4510 <a href="mailto:tyoung@cnda-law.com">tyoung@cnda-law.com</a>

**ORDER GRANTING SUMMARY DISPOSITION  
TO DEFENDANT DTE ELECTRIC COMPANY**

At a session of said Court held in the courthouse in the  
County of Wayne, State of Michigan, on Jan 10, 2017.

PRESENT: HONORABLE CHERYL MATTHEWS  
CIRCUIT COURT JUDGE

This matter having come on for hearing on January 4, 2017 on Defendant DTE Electric Company's Motion for Summary Disposition, the Court having reviewed the briefs filed by the respective parties, having entertained oral argument, and being of the opinion that the motion should be granted in part;

IT IS HEREBY ORDERED that summary disposition be and hereby is entered in favor of Defendant DTE Electric Company for the reasons set forth on the record.

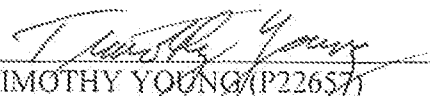
This Order does not resolve claims against the remaining parties and does not close the case.

/s/Cheryl A. Matthews  
AW CIRCUIT COURT JUDGE

APPROVED AS TO FORM:

/s/ Todd J. Weglarz (with consent 1/9/17)  
TODD J. WEGLARZ (P48035)  
Attorney for Plaintiff

/s/ John J. O'Shea (with consent 1/9/17)  
JOHN J. O'SHEA (P52009)  
Attorney for Defendant Ferrous Processing

  
TIMOTHY YOUNG (P22657)  
Attorney for Defendant DTE Electric Company

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DEAN McMASTER,

Plaintiff,

-vs-

Case No. 15-147414-NO

DTE ELECTRIC COMPANY and FERROUS  
PROCESSING AND TRADING COMPANY  
d/b/a FERROUS PROCESSING & TRADING  
CO., jointly and severally,

HON. CHERYL MATTHEWS

Defendants.

---

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Todd J. Weglarz (P48035)  
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Law Office of John J. O’Shea, P.L.C.  
Attorney for Ferrous Processing  
18000 Mack Avenue  
Grosse Pointe, MI 48230  
313-884-2000

---

***STIPULATED ORDER OF DISMISSAL WITH PREJUDICE  
AND WITHOUT COSTS***

---

At a session of said Court held in the Oakland  
County Circuit Court, City of Pontiac, Michigan,  
on: 6/28/2017

PRESENT: HON. Cheryl A. Matthews

This matter having come before the Court upon the stipulation of the parties, this matter  
having been settled, and the Court being otherwise fully advised in the premises:

IT IS HEREBY ORDERED that Plaintiff’s First Amended Complaint is hereby  
dismissed with prejudice and without costs to any party.

This Order resolves the last pending claim and closes the case.

/s/Cheryl A. Matthews

Circuit Court Judge

MB

Stipulated to for entry:

/s/John J. O'Shea

John J. O'Shea (P52009)

Attorney for Defendant Ferrous Processing

/s/Todd J. Weglarz

Todd J. Weglarz (P48035)

Attorney for Plaintiff

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Received for Filing Oakland County Clerk 6/29/2017 2:22 PM

# Exhibit 18

STATE OF MICHIGAN  
COURT OF APPEALS

---

DEAN McMASTER,

Plaintiff-Appellant,

v

DTE ENERGY COMPANY,

Defendant,

and

DTE ELECTRIC COMPANY,

Defendant-Appellee,

and

FERROUS PROCESSING AND TRADING  
COMPANY d/b/a FERROUS PROCESSING &  
TRADING CO,

Defendant.

---

UNPUBLISHED  
November 8, 2018

No. 339271  
Oakland Circuit Court  
LC No. 15-147414-NO

Before: JANSEN, P.J., and METER and STEPHENS, JJ.

PER CURIAM.

Plaintiff Dean McMaster appeals as of right an order entered on January 10, 2017 granting summary disposition in favor of defendant DTE Electric Company (“DTE”). We affirm.

I. BACKGROUND

DTE contracted with Ferrous Processing & Trading Company (“Ferrous”) to have containers of scrap picked up from DTE facilities and taken to Ferrous’ salvage yard. Ferrous subcontracted with P&T Leasing Company (“P&T”) to pick up the scrap containers and deliver them to Ferrous. Plaintiff was employed by P&T as a driver. This case arises out of injuries sustained by plaintiff when a large steel pipe rolled out of a container and struck him in the leg resulting in the amputation of his leg.

On the morning of October 14, 2015 plaintiff arrived at DTE's Belle River Power Plant to pick up a container of demolition scrap and deliver it to Ferrous' salvage yard. Plaintiff inspected the container prior to hauling it away and observed a large industrial blue steel pipe inside the container. The pipe was parallel to and up against the back door of the container. Plaintiff could have requested that a DTE crane operator relocate or remove the pipe from the container but did not do so. Plaintiff used his truck's hydraulics to lift the container onto his trailer, secured the container to his truck and departed the Belle River Power Plant for the Ferrous facility in Pontiac. Upon plaintiff's arrival at the Ferrous salvage yard, he took the truck to be weighed, then drove to the inspection area to meet with the Ferrous road inspector. The inspector told plaintiff where to take the container and plaintiff drove to the specified dumping location. Once he arrived at the specified location, he got out of the truck and walked backed to where the container was secured to his flat-bed trailer. Plaintiff kept the truck engine running because it also controlled the hydraulic system that was necessary to lift the container up to the 35-40 degree angle needed to dump the container. He cracked the container door partially open to see if any materials would fall out. When nothing fell out, he felt it was safe to continue and proceeded to open the door all of the way so that the materials could be dumped out. However, before plaintiff was able to dump out the contents of the container, the Ferrous road inspector had second thoughts about where this particular load should be dumped and he and another Ferrous employee decided that it should be taken to another area in the facility. Plaintiff and the two Ferrous employees talked for about 5-10 minutes about where the container should be dumped while standing behind the wide open door of the container with the truck's engine running. Once the decision had been made as to where to take the container, plaintiff proceeded to return to his truck in order to shut off the hydraulics so that he could take the container to another area as instructed. As plaintiff walked to the driver side of the truck, the blue pipe rolled out of the container and struck plaintiff in the leg resulting in the amputation of his leg.

Plaintiff filed suit against defendants DTE and Ferrous alleging negligence against both. Both defendants answered, denying liability and moving for summary disposition under MCR 2.116(C)(10) asserting that they did not owe plaintiff any duty of care and that plaintiff was not able to meet his burden of proof as to causation. The trial court held a hearing on both motions for summary disposition on January 4, 2017 and while it denied the motion brought by Ferrous, it granted DTE's motion concluding that there was neither evidence of a breach of duty nor proximate causation. Ferrous and the plaintiff subsequently entered into a stipulated order of dismissal on June 28, 2017. The instant appeal against defendant DTE followed.

## II. DEFENDANT'S JURISDICTIONAL CHALLENGE

We first turn to defendant's challenge to this Court's jurisdiction over the instant appeal. DTE argues that the June 28, 2017 stipulated order of dismissal without prejudice bars any appeal against it. We disagree. A stipulation "is to be read and construed in the light surrounding the circumstances and the whole record," and it is not "so construed as to give effect of waiver of a right not plainly intended to be relinquished." *Whitley v Chrysler Corp*, 373 Mich 469, 474; 130 NW2d 26 (1964). DTE was not a party to the stipulation entered on June 28, 2017 nor is there any indication on the record of a stipulation to relinquish any claims as to plaintiff and defendant DTE. Those claims were addressed in the court's January 10, 2017 order granting DTE summary disposition. More importantly, that grant of summary disposition was not a final order appealable as of right because the claims against Ferrous were still pending. A final order

is the first order in a civil action that disposes of all of the claims of all of the parties. MCR 7.202(6)(a)(i). Not until entry of the stipulation did plaintiff's right to appeal accrue. We, therefore, conclude this Court has jurisdiction over plaintiff's appeal.<sup>1</sup>

## II. COMMON-LAW DUTY

On appeal, plaintiff argues that DTE owed plaintiff a common law duty to exercise reasonable care when loading the containers so as not to create an unreasonable risk of harm. We agree.

This Court reviews a trial court's order on a motion for summary disposition de novo. *Bennett v Detroit Police Chief*, 274 Mich App 307, 316; 732 NW2d 164 (2006). When reviewing a motion for summary disposition brought pursuant to MCR 2.116 (C)(10), a court must consider "the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Bennett*, 274 Mich App at 317.

It is well established that a prima facie case of negligence requires a plaintiff to prove four elements: duty, breach of that duty, causation, and damages. *Kosmalski v St. John's Lutheran Church*, 261 Mich App 56, 60; 680 NW2d 50 (2004). Even where there is a contract a tort duty to use due care toward non-parties has been recognized. see *Clark v Dalman*, 379 Mich 251, 261; 150 NW2d 755 (1967). In *Clark*, the duty "imposed by law" was "[t]he general duty of a contractor to act so as not to unreasonably endanger the well-being of employees of either subcontractors or inspectors, or anyone else lawfully on the site of the project. *Id* at 261-262. Plaintiff, as an employee of a sub-contractor was owed that duty of care.

Next, plaintiff argues that the trial court erred when it ruled that DTE did not breach the duty of reasonable care owed to plaintiff and that it, also erred in concluding that plaintiff's proofs on causation failed. We disagree.

We first reject plaintiff's argument that a MIOSHA violation occurred and that therefore there is evidence of a breach of duty. The MIOSHA citations in this case were against Ferrous and P&T, not DTE. The testimony offered by the MIOSHA inspector noted that the hazard causing the Ferrous and P&T citations was not the loading of the container but the lack of training and procedures surrounding the unloading and opening of the container door. Plaintiff offers the testimony of his expert, Larry Baareman to support his assertion of breach of duty. Contrary to defendant's argument we must consider the deposition testimony of Baareman offered to the trial court which was attached to the plaintiff's response to the motion for summary disposition, because the expert was not stricken when the motion was considered.

---

<sup>1</sup> This Court "has jurisdiction of an appeal of right filed by an aggrieved party from . . . [a] final judgment or final order of the Circuit Court, or Court of Claims, as defined in MCR 7.202(6)." MCR 7.203(A)(1).

Baareman testified at length about the likelihood that the placement of the pipe parallel to the container door was unwise. He acknowledged that there was no statute or regulation on loading but asserted that industry best practices were not followed in this instance regarding how a load should be positioned. The plaintiff admits he observed the pipe and its location before he left DTE's property and again minutes before it fell from the container while he was at the Ferrous facility. Plaintiff also acknowledges that he had the opportunity to select how the container was to be off-loaded. Thus, he acknowledges the open and obvious nature of the pipe's placement and negates the exception of effectively unavoidable. Plaintiff offers no evidence of any other special aspect removing this case from the application of the doctrine that there is no duty to warn or protect from a known danger. *Groncki v Detroit Edison Co*, 453 Mich 644, 656; 557 NW2d 289 (1996).

We are aware that DTE argues that they owed no duty to this plaintiff because of MCL 480.11a, under which Michigan adopted the federal Motor Carrier Safety regulations as provided by 49 CFR 392.9. *DOT v Initial Transport, Inc*, 276 Mich App 318, 323; 740 NW2d 720 (2007), rev'd in part on other grounds 481 Mich 862 (2008). DTE has offered several unpublished cases in support of its position that the *Savage*<sup>2</sup> doctrine should be followed. Because this case is decided under the open and obvious doctrine we decline to address *Savage*.

Affirmed.

/s/ Kathleen Jansen  
/s/ Patrick M. Meter  
/s/ Cynthia Diane Stephens

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<sup>2</sup> *United States v Savage Truck Line, Inc*, 209 F2d 442, 445 (CA 4, 1953).

# Exhibit 19

**Court of Appeals, State of Michigan**

**ORDER**

Dean McMaster v DTE Energy Company

Docket No. 339271

LC No. 2015-147414-NO

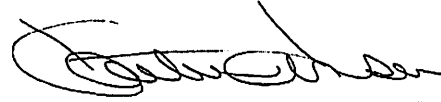
Kathleen Jansen  
Presiding Judge

Patrick M. Meter

Cynthia Diane Stephens  
Judges

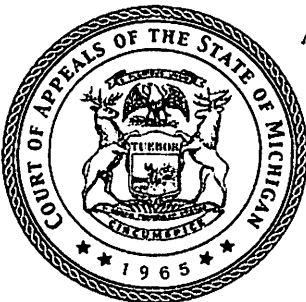
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The Court orders that the motion for reconsideration is DENIED.



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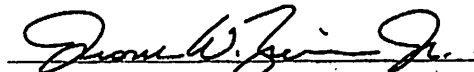
Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

**DEC 21 2018**

Date



Chief Clerk

# Exhibit 20

STATE OF MICHIGAN

6TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DEAN MCMASTER,

Plaintiff,

v

File No. 2015-147414-NO

DTE ELECTRIC and

FERROUS PROCESSING AND TRADING,

Defendants.

\_\_\_\_\_ /

HEARING

BEFORE THE HONORABLE CHERYL A. MATTHEWS, CIRCUIT COURT JUDGE

Pontiac, Michigan - Wednesday, January 4, 2017

APPEARANCES:

For the Plaintiff: TODD JOSEPH WEGLARZ (P48035)  
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TRANSCRIBED BY: THERESA'S TRANSCRIPTION SERVICE  
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P.O. Box 21067  
Lansing, Michigan 48909-1067

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DTE Electric:

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(734) 261-2400

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WITNESSES: PLAINTIFF

PAGE

None

WITNESSES: DEFENDANT DTE:

None

WITNESSES: DEFENDANT FERROUS:

None

OTHER MATERIAL IN TRANSCRIPT:

None

EXHIBITS:

INTRODUCED

ADMITTED

None

X

X

1 Pontiac, Michigan

2 Wednesday, January 4, 2017 - 10:58:02 a.m.

3 THE CLERK: Your Honor, now calling number  
4 six on our docket today, McMaster versus DTE Energy,  
5 15-147414-NO.

6 MR. YOUNG: Morning, your Honor.

7 THE COURT: Good morning.

8 MR. YOUNG: Timothy Young for DTE Electric.

9 MR. WEGLARZ: Your Honor, Todd Weglarz for  
10 the plaintiff.

11 MR. O'SHEA: Good morning, your Honor, John  
12 O'Shea on behalf of defendant, Ferrous Processing.

13 THE COURT: Let me get rid of some paper  
14 here. All right. Go ahead.

15 MR. YOUNG: Your Honor, there had been many  
16 admissions made by the plaintiff in this case, including  
17 the fact that when he went to the --

18 THE COURT: He's a pretty honest guy. You  
19 like that, right?

20 MR. YOUNG: I'm sorry?

21 THE COURT: He seems like a pretty honest  
22 guy. We like that.

23 MR. YOUNG: He is a very honest guy.

24 THE COURT: Yeah.

25 MR. YOUNG: Refreshingly so.

1 THE COURT: Refreshingly.

2 MR. YOUNG: We -- we noticed at the  
3 deposition he admitted that DTE did nothing wrong. He  
4 admitted that, when he went to the facility to pick up the  
5 dumpster, he went up the ladder to the dumpster, looked  
6 inside the dumpster. He could accept the load or reject  
7 the load since he's responsible once he gets on the  
8 highway, under the Federal Motor Carrier Regulations. He  
9 accepted the load.

10 THE COURT: Could you -- could you excuse me  
11 for --

12 MR. YOUNG: Sure.

13 THE COURT: -- one second, I have --

14 (At 10:59:17 a.m., hearing recessed)

15 (At 11:00:25 a.m., hearing resumed)

16 THE COURT: All right.

17 MR. YOUNG: He -- Mr. McMaster admitted that  
18 he was responsible for securing that load, meaning that  
19 once he took that dumpster and -- with hydraulic devices at  
20 a 45 degree angle, put on his flat trailer bed, knew that  
21 all the stuff was going to go to the back of the dumpster  
22 where the door was.

23 He admitted that he looked at the subject  
24 blue pipe that's become so much of an issue in this case.  
25 That he saw it when he was on the ladder at the -- at DTE.

1 It was no problem. Was no danger. He knows things are  
2 going to move around in the dumpster as he loads that onto  
3 the flat bed trailer and -- and goes down the road. When  
4 he got to the Ferrous salvage yard, he opened the door and  
5 he looked inside. He saw the blue pipe and again, thought  
6 it was no danger at all. Now other people disagree.

7 Plaintiff's expert said it was a danger with  
8 the blue pipe there. Some other people may have said  
9 something. But they all agreed that if there's ever any  
10 question, all you have to do is ask Ferrous to bring a  
11 crane over and remove whatever item might be a danger. The  
12 only reason that this incident happened, the but for  
13 argument is that once he opened that door and after waiting  
14 10 minutes, he walked into the danger zone that every  
15 single truck driver, every single expert has -- has agreed,  
16 you don't do that. You don't go in -- in back of the open  
17 door of the dumpster because you know something's going to  
18 fall out.

19 Now as far as DTE goes, DTE had no duty to  
20 load this scrap metal in the dumpster. There is no rule,  
21 standard, regulation at all. Plaintiff has admitted there  
22 is no written rule. There's no unwritten rule either. So  
23 there's no particular way to load scrap metal into a  
24 dumpster.

25 In addition to that, plaintiff admitted that

1 he -- this load that he took this particular day was the  
2 same as hundreds of other loads he's taken from DTE.  
3 Therefore, it was done in a reasonable way. His boss, Phil  
4 Sisson (ph), said, "People just throw the stuff in the  
5 dumpster. They don't look at it. They're -- they do it  
6 with a Hi-Lo or a crane. Everyone does it the same way.  
7 You just throw the stuff in there. That's the way it is."

8 And then the Ferrous employees that saw this  
9 load, once it got to Ferrous, all said the same thing.  
10 "This is like any other load. We've seen blue pipe before.  
11 Blue pipe doesn't stand out whatsoever." So as far as any  
12 duty on the part of DTE, there was no duty to load this  
13 dumpster a certain way. There was no breach of any duty  
14 either.

15 Then the only thing that the plaintiff has  
16 tried to come up with to hang their hat on is something  
17 under OSHA, a multi-employer liability rule, which the  
18 MIOSHA investigator who completely investigated this case  
19 and found that the problem was that the plaintiff's  
20 employer did not properly train the plaintiff to avoid  
21 known dangers, that is, the open door with stuff falling  
22 out.

23 The MIOSHA investigator did not cite DTE,  
24 testified he could not cite DTE for a safety violation  
25 because, at DTE, there was no danger at all. The door was

1 closed so there's no risk to plaintiff or any employee or  
2 any contractor at DTE.

3 The MIOSHA multi-plyer -- employer --  
4 employer rule, this Court might be familiar with from like  
5 a construction site. When there's multiple employers on  
6 the construction site, MI -- the MIOSHA rule allows MIOSHA  
7 to cite an employer for a danger to some other contractor's  
8 employee. That's what it's for. But it's not for two  
9 different sites.

10 So DTE was never on the Ferrous site. Never  
11 went there. Never saw the unloading process. Never knew  
12 that the plaintiff would walk in a zone of danger. Never  
13 knew that this phenomenon of this blue pipe would fall 10  
14 minutes after the door was open. They couldn't possibly  
15 anticipate that. They couldn't foresee it. It's not  
16 foreseeable to DTE or to a contractor.

17 So part of our argument -- part of the  
18 missing pieces here, as the Court is familiar with, since  
19 we've been here, is there's -- there's -- there's -- it's  
20 speculation as to who put this blue pipe in there. We  
21 don't know if it was a DTE employee. Don't know if it was  
22 a contractor employee. Don't know if it was someone else.  
23 We don't even know if it came from the Bell River Power  
24 Plant. We've had testimony that it could have come from  
25 the St. Clair Power Plant, which is nearby. So, no way of

1 knowing that.

2 So for plaintiff to make an argument that it  
3 was DTE is just based on pure speculation. No proof  
4 whatsoever.

5 THE COURT: I mean, even if DTE put it in  
6 there -- oh, never mind. Okay. What if -- what if -- what  
7 if there was proof that DTE put -- someone from DTE put the  
8 pipe in there? Does that change it at all?

9 MR. YOUNG: It doesn't change the arguments  
10 that there was no duty on the proper way to load scrap into  
11 a dumpster. It doesn't change the argument that there's no  
12 breach of duty. And it doesn't change the argument that  
13 there's no proximate cause.

14 There's no way for anyone to anticipate,  
15 other than plaintiff himself, who's in charge of that load  
16 from the time he went up that ladder and said, "I'm okay  
17 with it," until he -- until even after the accident. He  
18 was still in charge of that load even when this accident  
19 occurred, because even as he, his expert and his employer  
20 says, specifically Tracy Sisson, says, "He's responsible  
21 for that load until he drops that load on the ground." The  
22 load had not been dropped on the ground yet. He's still  
23 responsible.

24 So it doesn't change any of the arguments  
25 about duty. No breach of duty and -- and no proximate

1 causation for DTE. There's no way to anticipate. Since  
2 DTE's not there to see what is happening at the Ferrous  
3 yard, they did not direct him to leave that door open and  
4 to wait for 10 minutes. That was something that was done  
5 at the Ferrous yard.

6 So plaintiff made an argument -- so I'll just  
7 address this very quickly. He made an argument that was  
8 not alleged in the complaint. We refuted each and every  
9 allegation in the complaint. But then he comes up in his  
10 response that there's a lat -- a laten danger. There is no  
11 laten danger, because again, Mr. McMaster was the one who  
12 was in charge of this load. He knew better than anyone.  
13 He saw that blue pipe before he left DTE. He saw it when  
14 he got to Ferrous and he thought there was no problem  
15 whatsoever.

16 And then they also rely upon this Letter of  
17 Understanding that came up here in some of the motions.  
18 That Letter of Understanding was only to take care of  
19 allocating the cost for the salvage for the scrap metal  
20 that was in the dumpster so it could be split as to the  
21 cost between DTE and Ferrous. That's the only thing that  
22 -- that that contract does. It -- it said nothing  
23 whatsoever, contrary to the argument by plaintiff, nothing  
24 whatsoever about DTE being responsible for loading that  
25 container, pursuant to that Letter of Understanding.

1                   So -- so speculation on -- on whether DTE or  
2 contractor, no duty -- no breach of duty, no proximate  
3 causation. Any questions for me, your Honor?

4                   THE COURT: No, not -- we -- we read  
5 everything.

6                   MR. YOUNG: Thank you very much.

7                   MR. O'SHEA: Your Honor, I have a motion. Do  
8 you want Mr. Weglarz to respond as to DTE or have me  
9 --(multiple speakers)--

10                  THE COURT: What would -- what would you  
11 prefer?

12                  MR. WEGLARZ: I think one at a time is  
13 probably best.

14                  THE COURT: Okay.

15                  MR. WEGLARZ: Thank you, your Honor. Your  
16 Honor, quite simply, no -- there are no specific statutes  
17 or regulations that tell someone how to put a pipe in a  
18 container, that there is the common law. If you undertake  
19 an action, you better carry out that action reasonably.  
20 And the State of Michigan has adopted that. It's in their  
21 Restatements. And in fact, I wanted to hand this to you,  
22 if I may approximately. Restatements 323 and 324A talk  
23 about it, your Honor. And I do have copies.

24                  THE COURT: You're giving it to them too, cuz  
25 --(multiple speakers)--

1 MR. WEGLARZ: Yes, your Honor.

2 THE COURT: Okay.

3 MR. WEGLARZ: But quite simply, DTE assumed  
4 this -- this act. They loaded the container. They decided  
5 to place this heavy --

6 THE COURT: How do we know they did?

7 MR. WEGLARZ: Well, I have a question of fact  
8 that says they did. It's a DTE construction project going  
9 on. I've got Mr. Booshaw (ph) who says DTE usually loads  
10 these containers. Mr. Adamus (ph) from Ferrous, who has  
11 the contractual relationship with DTE says DTE is  
12 responsible for loading the containers. And we just  
13 received a transcript from another DTE employee that we  
14 took after the filing of our response. Mr. Brooks. And  
15 I'll -- and I'll hand the pages to the Court --

16 THE COURT: Okay, let's assume -- let's  
17 assume for the sake of argument, that DTE loaded the  
18 container. Your guy checks it, observes it, brings it up  
19 onto the -- whatever. Who -- you know, right?

20 MR. WEGLARZ: Hydraulic  
21 --(multiple speakers)--

22 THE COURT: Okay, that. That's  
23 --(inaudible)-- that noise of --(inaudible)-- hydraulic,  
24 okay? And then he drives it how many miles would it be?  
25 Pontiac, right?

1 MR. WEGLARZ: About 60 or 70 miles? Yeah.

2 THE COURT: Right?

3 MR. WEGLARZ: Correct.

4 THE COURT: And then he checks it out again  
5 and --

6 MR. WEGLARZ: He doesn't check it out again.

7 THE COURT: Well, he's --

8 MR. WEGLARZ: That's --

9 THE COURT: He has the ability to.

10 MR. WEGLARZ: Well, there's a question of --  
11 of fact on that as well. He says, "Actually, I never check  
12 it out, the Ferrous yard." He says that they usually do  
13 that. "They tell me where to go. I follow them. I mean,  
14 once I get it there," he doesn't inspect it anymore.

15 THE COURT: Well, they do -- they do tell him  
16 where to -- where to go.

17 MR. WEGLARZ: Correct.

18 THE COURT: Mm-hmm. Okay. Okay, so we're  
19 talk -- but we're talking -- I guess we're talking about  
20 DTE right now, though.

21 MR. WEGLARZ: Talking about DTE.

22 THE COURT: Mm-hmm.

23 MR. WEGLARZ: And our argument is, yes,  
24 though Mr. McMaster, he says -- and by the way, on page 189  
25 of his dep, he says, "This time it was different." He's

1           been to DTE before, but on that day, it was different.  
2           He's picked up pipes before and he does look inside. And  
3           normally those pipes are loaded so they're parallel to the  
4           side of the container. This time, it was parallel to the  
5           back of the container and on top.

6                        He thought it was strange, but he's a simple  
7           person. He -- he didn't perceive a hazard. He said, "What  
8           do I care? Normally, I just go out there. I dump the  
9           thing and it's over. That's it." But a sophisticated user  
10          like DTE should understand. And there's a lot of  
11          deposition testimony that says this is a hazard. You put a  
12          big, huge pipe at the very end against the back gate,  
13          that's a ha -- a hazard. Mr. Anderson testified to that.  
14          Mr. Baerman (ph), my expert, testified to that. Mr. Weiss  
15          from Ferrous, says, "That's a hazard." What's the hazard?  
16          As soon as you open it, it's going to fall.

17                       THE COURT: Well, isn't it -- isn't it  
18          natural for anyone to think if you open the back of that  
19          thing that things might fall? Specially when it's lifted  
20          up, it's not lifted up flat. It's lifted up in an angle,  
21          right? It's like when I open my son's closet, right?

22                       MR. WEGLARZ: Yes.

23                       THE COURT: Scary.

24                       MR. WEGLARZ: Depending on the way it's  
25          packed, absolutely. It can fall out.

1 THE COURT: Mm-hmm.

2 MR. WEGLARZ: But if we're going to argue  
3 that Mr. McMaster has some comparative fault, I get that.  
4 That's for the jury to decide.

5 THE COURT: Okay.

6 MR. WEGLARZ: Mr. Anderson, who's a very  
7 experienced loader and hauler and truck driver, says, "You  
8 don't place it parallel to the back. You put it parallel  
9 to the sides so it doesn't slide out. Even Mr. Edgerton  
10 (ph) from MIOSHA, when I show him the picture. "Do you  
11 have a problem with this?" "Yeah. Wow, you shouldn't load  
12 it like that. The first concern is, if you open it, it  
13 could fall out."

14 The supervisor for the Ferrous yard even  
15 testified he doesn't think Mr. McMaster is as fault. He  
16 doesn't ascribe him any negligence. He doesn't think he's  
17 to be blamed for this incident. But again, those are  
18 questions of fact. For DTE, you have to undertake your  
19 actions reasonably. It's unreasonable to put this big huge  
20 pipe at the very end of that container, your Honor.

21 THE COURT: All right.

22 MR. YOUNG: Just real quick, your Honor.

23 THE COURT: Sure.

24 MR. YOUNG: So DTE did load it reasonably,  
25 like every other time, as Mr. McMasters admitted. Like his

1 expert admitted that it was loaded reasonably. That  
2 everything in that container was loaded the way it should  
3 be. And so there is absolutely nothing that they can point  
4 to and even this Restatement doesn't say -- does -- doesn't  
5 apply. It says, "One who undertakes gratuitously or for  
6 consideration. DTE did not do anything gratuitously or for  
7 consideration with Mr. McMaster, who works for P and T.  
8 That's -- that's -- that doesn't apply whatsoever.

9 And so although there may be a common law  
10 rule about doing something reasonably, in this case, all  
11 the evidence has been, DTE did do it reasonably. This --  
12 this argument that Mr. Weglarz says that the way it should  
13 be loaded, no one is ascribing to that. That wasn't in his  
14 response brief whatsoever.

15 The way to do it is, as Mr. Sisson, the  
16 employer, for -- for Mr. McMaster said, "This is the way  
17 you do it." The way we see it in this photograph, our  
18 Exhibit 1, attached to our motion, that's the way it's  
19 done. That's the way everyone does it. That's what a  
20 reasonable person does.

21 And that's why DTE complied with the  
22 reasonable person standard and again, the admission by  
23 plaintiff that, although Mr. Weglarz said he may have said  
24 this was different because the way the -- the pipe was,  
25 even their expert says, there's not even a industry best

1 practice that you load things a certain way -- a pipe like  
2 this.

3 And so, DTE complied with what is the --  
4 reasonable person does as admitted by plaintiff himself, as  
5 admitted by his expert, as noted by the Ferrous employees  
6 that said, "Yep, this is the way it's done every time we  
7 receive it," and by his employer that says, "This is the  
8 way it's done. You throw the stuff in there and that's --  
9 that's the way it is." Thank you.

10 THE COURT: Thank you.

11 MR. WEGLARZ: Your Honor, if I may comment on  
12 that. For the Restatements, Section 323 applies to someone  
13 applying the service directly to another person. 324A,  
14 which is very similar to 323, simply applies to someone  
15 who's performing the service from someone else, but you're  
16 still -- your -- your -- your -- your concern is about the  
17 third persons -- third parties. You need to protect them.

18 Mister -- Mr. McMaster is a foreseeable third  
19 party, okay? He's hauling this container. He's unloading  
20 this container for Ferrous. DTE is loading this container  
21 for Ferrous pursuant to its contractual arrangement. So it  
22 definitely applies. And Mr. Baerman, my expert, said it's  
23 industry standard. "Look at, you load these things in a  
24 common sense, safe way. Loading it the way you did is not  
25 common sense and safe. It's unreasonable." Just like the

1 other witnesses who testified to that, Mr. Anderson, Mr. --

2 THE COURT: Well, this picture looks like  
3 everything's just tossed in. I -- it -- you know, just  
4 kinda looks like, you know, like a dumpster.

5 MR. WEGLARZ: The -- the top one is cuz  
6 that's after -- when the pipe already fell out. If you  
7 look at my Exhibit number 3, you will see the scale house  
8 photo. The scale house photo shows the pipe in the  
9 container as it was being brought into the yard and you can  
10 see it right at the back. It's right there. David Weiss,  
11 for Ferrous, who's the inspector, got on top. He saw the  
12 pipe. It was there to be seen. And we'll talk about that  
13 a little bit more when we talk about their motion.

14 But as far as DTE is concerned, to place that  
15 pipe in that precarious, dangerous position, it's a hazard  
16 and there's testimony documenting that. They have to load  
17 it to minimize that hazard, parallel to the sides, very  
18 simple.

19 MR. YOUNG: Your Honor, just lastly real  
20 quick. So I'm objecting to the Restatement of torts here,  
21 at the last minute. To surprise us with this, it -- it --  
22 it's not exactly been hidden. It was available. He could  
23 have put it in his brief, so we could have responded to it  
24 rather than this surprise. And secondly, his argument is  
25 not based upon evidence in this case. He's -- he's making

1 up things that are not in his brief and not what was said  
2 by the witnesses.

3 MR. WEGLARZ: I'm just citing the evidence  
4 that is in my brief, your Honor. The Restatement is even  
5 discussed, I think, in the *Lewicki Case*. It's a common  
6 thing. This is not a surprise. Everyone knows about this.  
7 This is general tort law. If you assume an act, you have  
8 to do it reasonably.

9 THE COURT: All right. Do you want to go  
10 next?

11 MR. O'SHEA: Yes, sure. Thank you, your  
12 Honor. Good morning, your Honor. I have Ferrous  
13 Processing so some of the facts are similar. There's a  
14 little bit difference. I will -- I will do my best not to  
15 reiterate what Mr. Young already argued. But Mr. Young is  
16 -- is correct that he -- plaintiff is the only person that  
17 knew what was in this load when he gets to the Ferrous  
18 yard. He has the superior knowledge. He knows the pipe's  
19 there. He knows where it is. He doesn't think it's a  
20 concern.

21 He testified in his deposition he was shown  
22 the -- the photo that Mr. Weglarz just referenced where --  
23 showing the pipe near the back in this --(inaudible)--  
24 photo and he said, "Yep, that's in the same position that I  
25 saw it at DTE." No concerns.

1                   Mr. Weglarz said he didn't view the load once  
2 he was at Ferrous. Not true. He said after he opened it,  
3 he saw the blue pipe, saw the load opened, no concern. No  
4 idea this was going to fall. No indication whatsoever this  
5 was unsteady. No indication this thing was never going to  
6 fall.

7                   In fact, he testified specifically, your  
8 Honor, which I think we would say is dispositive. I asked  
9 him, "Can you identify anything that anyone at Ferrous did  
10 wrong that day? Answer: "I don't think nobody did  
11 anything wrong because nobody knows what was going to  
12 happen." Question: "Nobody could see that one coming?"  
13 Answer: "No, no." Question: "Did you, in any way,  
14 foresee the possibility that that pipe was going to fall  
15 and hit you?" "No, no."

16                   That, I think, is dispositive, your Honor,  
17 unforeseeability. You don't have a duty to warn something  
18 that no one can foresee. And everyone after the fact can  
19 say what they want about this pipe. The only people that  
20 saw that pipe in that load were the three Ferrous employees  
21 and Mr. McMaster. Every single one of them said this was  
22 not a danger. Every single one of them said there's  
23 nothing that lead us to believe that this was a problem.  
24 Okay?

25                   So there -- there's nothing -- and plaintiff

1 now claims, in one part of his brief, that it was a laten  
2 defect. Well, if it's a laten defect, nobody knows about  
3 it. It's concealed and hidden.

4 But what we do know, your Honor, is the one  
5 danger that Mr. McMaster testified in detail he knows full  
6 well about, is scrap can fall off the back of a truck when  
7 it's opened.

8 And what -- what is important, your Honor, is  
9 the testimony that we cited, which what Mr. McMaster said  
10 is, just very briefly. I know your Honor understands this.  
11 But when you open the truck, you're at the side, the back  
12 being here. You pop it open, because if anything's going  
13 to fall, Mr. McMaster testified, "Five to ten percent of  
14 the time I open my back, scrap falls. Ninety percent of  
15 the time it falls when I just pop it back because anything  
16 against the door is going to fall out."

17 The other 10 percent is when the truck driver  
18 grabs the door, walks it around to the passenger side,  
19 latches it on. That's when the other 10 percent fall.

20 Mr. McMaster has never seen scrap fall when  
21 the truck has been open for several minutes. No one at  
22 Ferrous has ever seen that. No one at P and T had ever  
23 seen that. That's why plaintiff testified honestly in his  
24 deposition, nobody saw this coming. This was a freak  
25 accident. That's how he char -- characterized it.

1                   Now, he's trying to -- I don't know if he's  
2                   trying to run away from it, but the briefs are trying to  
3                   run away from his own sworn testimony.

4                   And what is also important, I think, your  
5                   Honor, is he's the most experienced guy on that site. He  
6                   is the truck driver that has brought hundreds of loads to  
7                   Ferrous and dumped hundreds of loads. It is his load. Mr.  
8                   Young said he controls that load until he dumps it. He's  
9                   the only truck driver. He's the only guy that hauls scrap.  
10                  He's the only guy that dumps scrap on a regular basis in  
11                  that facility, that day. He knows what's in his load. He  
12                  didn't think it was a concern. He knows not to walk behind  
13                  an open container, yet he did.

14                  And what's important is, he also admitted  
15                  that nobody from Ferrous made him stand anywhere. He  
16                  voluntarily went every single place. The only thing  
17                  Ferrous says is, "Uh, that looks like a -- a sort file. Go  
18                  to the sort file." That's all they do. He decides how to  
19                  back in. He decides how far to be away from the pile. He  
20                  makes that decision and he decides where to stand every  
21                  second that he is on that facility.

22                  He testified that, "No one at Ferrous made me  
23                  stand anywhere. No one tells me where to stand and no one  
24                  can make me stand anywhere where I feel unsafe." He  
25                  testified, "I didn't even have to be at the back of the

1 truck. I could have been at the front of the truck. I  
2 could have stayed in my truck, cuz all -- they're going to  
3 just tell me what pile to go to, whether to dump it here or  
4 whether to dump it there." But the fact of the matter is  
5 he voluntarily went behind the truck.

6 He is now behind the truck where he feels  
7 safe and Ferrous says, "Now -- because you open it up, now  
8 you see that there's I beams below. You can't see that  
9 when you're inspecting. You see the I beams below. Okay,  
10 you got to take it to the P and S pile. He said he's fully  
11 aware of that. It's happened before. He said, "In fact,  
12 if I had known there were I beams in there, I would have  
13 told them, 'Hey, there's I beams in here. You're probably  
14 going to send me to the P and S pile.'" So this is  
15 business as usual.

16 He's standing there and they say, "You got to  
17 take it to the P and S pile. Everything's fine. He then  
18 makes a decision. Him alone. To voluntarily take a path  
19 to his truck that passes by the open --(inaudible)-- For  
20 whatever reason, the pipe falls. No one knows why. It's  
21 all speculation as to why it fell. But the only reason he  
22 was hurt is because he voluntarily chose the path right  
23 behind that open container.

24 As plaintiff's own expert testified, your  
25 Honor, "Question: Do you recall his testimony that he

1 would have never let anyone from Ferrous make him or direct  
2 him to stand in an unsafe area?" "Answer: I believe that,  
3 yes." "Question: And he fully appreciated the fact that  
4 scrap can fall from the truck?" "Yes, he knew that. He  
5 said -- in fact, he said, 'That's why I don't walk behind  
6 trucks.'" "Exactly."

7 And then he says, later on, your Honor, "So  
8 when he was standing with the Ferrous employee, in Mr.  
9 McMaster's mind, he was in a completely safe location,  
10 correct?" "Correct." "But what happens once the roll-off  
11 is open?" "Answer: Once it's open, then we have the  
12 hazard exposed to anybody in the vicinity." "Question:  
13 Right. Which plaintiff voluntarily put himself in?"  
14 "Answer: Which all of them were in that area, yes."  
15 "Question: But plaintiff voluntarily put himself in that  
16 strike zone and got hit?" "Answer: Yes, I would say so."  
17 That's plaintiff's own expert. That's the only cause of  
18 this accident, your Honor.

19 So we have -- our motion is both C(8) and  
20 C(10), there is -- there is no duty here, because, first of  
21 all, to the extent that it is this -- you don't have to  
22 warn -- under Michigan law, you don't have to warn a person  
23 of a danger they know about. He knew full well that scrap  
24 can fall off a truck and that you don't walk behind an open  
25 container. He knew that. He didn't have to be warned

1 about that. There's no duty to warn of something he knows  
2 about.

3 You also have no duty to warn of a readily  
4 apparent, dangerous condition, which he knew about to the  
5 extent an open container is, as the *Dykema Case* said. It's  
6 unreasonable to impose a duty on the organizer of an  
7 outdoor event, to warn a spectator of a condition that the  
8 spectator is fully able to observe and react to on his own.  
9 Not only was he fully able to observe it, he admits he  
10 fully knew about the risk of walking behind the thing. And  
11 he not only was readily able to observe it and avoid it, he  
12 specifically did not avoid it. That's the only reason for  
13 this accident.

14 So there's no duty. Also, if you -- because  
15 of the known danger, which he knows about. Also because  
16 there is no foreseeability, cuz nobody saw this coming.  
17 There's no duty under Michigan law when the harm is not  
18 foreseeable.

19 If you fall, your Honor, to the general  
20 concept of, do we want to impose a duty?, there's no reason  
21 to impose a duty here, because he's the experienced one.  
22 There's no special relationship here. We're not -- we have  
23 no more knowledge than him. This is not a situation where  
24 Ferrous has all this extra knowledge. Everybody's looking  
25 at the same load. In fact, he's the one who had superior

1 knowledge cuz he saw it at DTE. He could have  
2 --(inaudible)-- at DTE if he wanted to. But he chose not  
3 to. So no, there's no special relationship here. There's  
4 no special knowledge.

5 And then, your Honor, to -- and then we -- we  
6 look at the burdens. Plaintiff wants to impose a burden on  
7 Ferrous to now monitor every truck driver that comes into  
8 their facility, hundreds a day, to make sure they don't do  
9 what they know they're not supposed to do. That's what  
10 they're asking. And the burden on plaintiff with no duty,  
11 is just don't do what you know you're not supposed to do.  
12 Don't walk behind an open container. You do it five times  
13 a day. You do it hundreds of times in your career. Okay?

14 So you can't have Ferrous now monitoring  
15 every single truck driver that come -- "Wait, where you  
16 going? Hey, what are you do" -- it's impossible. So from  
17 a public policy standpoint, it's impossible to impose that  
18 duty on -- on Ferrous when plaintiff knew everything.  
19 There's nothing here that -- that Ferrous knew that  
20 plaintiff did not.

21 So that's the first issue, on a duty -- no  
22 duty for those reasons. Also, Ferrous did not breach any  
23 duty. Ferrous did nothing wrong. Mr. McMaster is where he  
24 was because that's where he wanted to be and he voluntarily  
25 walked into that strike zone. Period. Nothing Ferrous did

1 -- they never made him stand anywhere. They never made him  
2 go anywhere that was unsafe. They never dictated his  
3 actions whatsoever.

4 In the response brief, plaintiff has come up  
5 with several factual things that they argue that is simply  
6 not true, that we placed him in harm's way. We didn't. We  
7 never did. He voluntarily walked into harm's way and he  
8 was behind the truck because he wanted to be there. Not  
9 because Ferrous made him. Ferrous directed his actions and  
10 controlled his location? We never controlled his location  
11 ever. We told him what pile to go to. From that point on,  
12 there is no evidence whatsoever that we controlled his  
13 location once outside that truck ever, because we didn't.

14 Plaintiff argues that we instructed him to  
15 open the container instead of removing the pipe. Simply  
16 not true. Nobody thought this was a problem. Nobody  
17 thought it was a danger.

18 They argue Ferrous controls the distance  
19 between the truck and the pile. Not true. Plaintiff's own  
20 expert says plaintiff himself decides that distance by how  
21 far he backs in. Plaintiff also argues that this pipe was  
22 rolling -- ready to roll off and was teetering and all  
23 these horrible words, when no one testified that that was  
24 the case.

25 So for all those reasons, your Honor, we

1 don't -- we don't believe there's a duty, there's no  
2 breach. There's also no foreseeability and also the only  
3 cause of this accident, proximate and but for, the only  
4 cause is Mr. McMaster's voluntary actions of going where he  
5 knew he should not have gone and if he didn't do that, he  
6 doesn't get hit. Thank you, your Honor.

7 MR. WEGLARZ: Thank you, your Honor. The  
8 yard inspector, Mr. David Weiss, his testimony is just  
9 crucial. He says every load that comes in, he gets up on  
10 the ladder and he looks down in -- into it. Go, "Why do  
11 you look into the load?" He says, "I want to make sure  
12 there's no hazards. If there's anything up against the  
13 door. You know, if there's anything that can fall out, we  
14 get a grapple or a crane to remove it out. We don't want  
15 to subject the driver to that harm."

16 These containers are owned by Ferrous. Mr.  
17 McMasters, being hired by Ferrous to go out there, pick up  
18 the Ferrous container, bring it back for Ferrous. Ferrous  
19 makes money off of the hauling services. They make money  
20 off of the scrap. This is all about Ferrous.

21 Mr. Weiss testify -- I asked him, I said,  
22 "Look at, if -- if -- I'm going to show you a picture of  
23 this pipe here, the scale house photo. If this pipe is up  
24 against the -- the door, do you think that's a hazard where  
25 you would call in a crane or a grap to take it out?" His

1 answer is, "Absolutely." But he didn't do it.

2 He goes up there and looks. He sees it. He  
3 doesn't do it. Then he -- he tells Mr. McMaster, "Go to  
4 the sort area and unload it." Mr. McMaster says, every  
5 time he gets a DTE load, that's what he does. He goes to  
6 the sort area and he unloads it. He goes to the sort area  
7 and he -- he -- he moves back the -- the container. He  
8 opens up the door. He's going to go in his truck now to  
9 unload it. Now all of a sudden, Ferrous employees, Mr.  
10 Weiss is saying, "Hey, hey, hold on. Hold on. We want to  
11 take another look. We want to look at it and figure out  
12 what we really want to do with it so just stay there."

13 Well, now you have this container with this  
14 huge pipe on top against the gate, now with the door open  
15 just sitting there. Ferrous has actually increased the  
16 hazard. Not only did they acknowledge there was a hazard,  
17 but not remove it. Now they're telling McMaster, "Don't  
18 load like we told you. Hold off," with the door open.  
19 It's there for 10 minutes. They finally come out. Mr.  
20 Adamus, the supervisor, the general manager says, "We want  
21 you to now take it elsewhere to dump it."

22 Mr. McMaster, in his deposition, said, "You  
23 know what, that's how this accident was caused. If they  
24 would have let me do what I normally do, I would have  
25 dumped -- unloaded this thing right away, this never would

1 have happened. But because they kept stalling, told me to  
2 wait, this has never happened before. This is very  
3 unusual. It was just teetering. Eventually, it was going  
4 to collapse."

5 THE COURT: Wait, he didn't say he -- he saw  
6 it teetering, right?

7 MR. WEGLARZ: Well, not teetering, but your  
8 Honor, if you look at that picture and you open the door,  
9 that is teetering. It's just hanging there. There's  
10 nothing holding it.

11 THE COURT: Okay, but he didn't then run  
12 away, right --(multiple speakers)--

13 MR. WEGLARZ: He stood to the side.

14 THE COURT: Or say -- or say, "timber" or  
15 what -- "Geronimo," I don't know.

16 MR. WEGLARZ: He didn't. But the longer you  
17 leave something in that precarious position, the greater  
18 the risk it eventually will fall. Page 166, Mr. McMaster  
19 says he was never -- he testified, "I was never standing  
20 directly behind the truck." He was standing to the side.  
21 And when it fell, it -- it spun around and clipped him. He  
22 was not behind it. He was to the side of it. Mr. Adamus,  
23 again from Ferrous, doesn't criticize or fault Mr. McMaster  
24 at all. He doesn't think he was negligent.

25 But if you look at the Restatement and you

1 look at the general law if you assume a duty, not only did  
2 they assume the duty of inspecting and looking for hazards  
3 and removing the hazards, they increased that duty by  
4 telling him to open up the door and then to wait 10 minutes  
5 while they figured out what they wanted to do. And your  
6 Honor, there's questions of fact as to their liability and  
7 the motion should be denied.

8 MR. O'SHEA: Briefly, your Honor. I don't  
9 know what -- fact that Ferrous makes money. Plaintiff  
10 makes money doing the same thing.

11 We keep going back to the same thing, your  
12 Honor. Plain -- for some reason, Ferrous is supposed to  
13 have this super duty that plaintiff doesn't. Plaintiff  
14 looks at this pipe and says, "This is not a problem. I  
15 have hundreds of loads. It's not a problem." He opens the  
16 thing. "It's not a problem." Now all of a sudden, Mr.  
17 Weiss is supposed to get up there and say, "This is such a  
18 problem." Well, he looked at it and said, "It's not a  
19 problem.

20 And he -- and what he said in his deposition  
21 is very clear. "If something's leaning against the door,  
22 I'm going to tell the driver, 'Hey.'" And he -- I think he  
23 referenced a filing cabinet. "One time there's a filing  
24 cabinet right up against the door. So I told the guy,  
25 'Hey, you got a filing cabinet right up against the door.'

1 We'll get a crane to take it out." This wasn't up against  
2 the door and we know that because when it was opened, it  
3 didn't fall. Stood there for five or ten minutes. So this  
4 wasn't up against the door.

5 So all that testimony is irrelevant because  
6 yeah, if the pipe is sitting against the door, it's going  
7 to fall. Someone would have said something. Mr. McMaster  
8 would have done something. But he saw the same load. And  
9 he said, "I didn't think it's a concern."

10 So plaintiff's whole case, your Honor, is you  
11 got to protect plaintiff from himself. Plaintiff looks at  
12 the load. Not a problem. But Ferrous, you should have  
13 seen it as a problem even though plaintiff didn't.  
14 Everyone knows not to walk behind a container. Plaintiff  
15 did and got hit. Well, you should have stopped him. Well,  
16 plaintiff is -- plaintiff is the most experienced guy  
17 there. He has all the knowledge that everyone has and he  
18 knows what he's doing.

19 So the fact that -- the fact that this thing  
20 was not against the door and saying it is is complete  
21 speculation. In fact, we know it wasn't cuz it didn't fall  
22 out.

23 This -- Mr. Weglarz said us telling him to go  
24 to a different facility's never happened before. That's  
25 simply false. We've -- we've quoted testimony where he

1 said it happens -- it happens a lot. "I go to the  
2 facility. I -- you go to one pile, you open it up. You  
3 see things below that you can't see on top and I gotta go  
4 to the other" --(inaudible)-- In fact, my guy said that he  
5 made a joke. "Give me 20 bucks." Cuz it happens a lot  
6 because you got to see what the load is when you open it  
7 up.

8 And he understood that and he's testified in  
9 his deposition. "I understand I can go to another load."

10 The fact that this door was open, your Honor,  
11 again, it's another red herring. The only exposure to this  
12 danger is plaintiff walking behind the load and getting  
13 hit. It doesn't matter if it's open for an hour. It  
14 doesn't -- if he's not standing in the strike zone and it  
15 falls, there's no danger. It falls to the ground. Just  
16 like when -- just like when you open up that back and you  
17 stand to the side and you go like that and it falls, it's  
18 going to fall out harmlessly.

19 That's the only -- the only -- this danger is  
20 you -- he is standing there -- the only danger is because  
21 of where he's standing. The thing falls, it falls  
22 harmlessly if he's not in the strike zone. It's that  
23 simple.

24 So again, it goes back to the same argument,  
25 this proximate cause and -- is that the only cause of this

1 thing is this guy putting him in a position where he  
2 shouldn't have been. And he was very honest about that.  
3 He said, "I could have walked -- I could have walked  
4 differently -- if I would have known pipe was going to  
5 fall, I would have walked on a different path." Well,  
6 don't walk where you tell me -- where you know you're not  
7 supposed to walk. And that's the whole case, your Honor.  
8 Thank you.

9 MR. WEGLARZ: Mr. McMaster's not the most  
10 experienced person there. He's been a truck driver for 20  
11 years, but he got into this hauling scrap business for  
12 about a year and half. When he does work, he may do a few  
13 loads a day. Ferrous has been doing this for decades.  
14 They see truck after truck after truck, load after load.  
15 They know which types of scrap -- which types of materials,  
16 which loading patterns are hazardous way more than Mr.  
17 McMaster is. They're the ones who see the top of the load  
18 every single load that comes in there every single day for  
19 decades.

20 Mr. McMaster did not go up there and look at  
21 that load. That was done by Ferrous and Mr. Weiss -- the  
22 big difference between Mr. Weiss and Mr. McMaster, Mr.  
23 McMaster did not appreciate -- or recognize that there was  
24 a hazard, even though the pipe was at the back. Mr. Weiss  
25 did. He testified that the pipe up against the door is a

1 hazard and he doesn't just tell the driver. He orders a  
2 crane to remove it so the driver's not exposed to the  
3 hazard.

4 Mr. McMaster did, indeed, testify that -- on  
5 page -- at page 154, for example, that it was unusual that  
6 they had him open the door and then have him wait and then  
7 tell him to go -- go to a different area. He says, "I  
8 can't say this was a freak accident." That's page 122.  
9 Page 166, he was never directly behind the truck. He was  
10 off to the side. He really wasn't aware that you can use a  
11 grapple or a crane to remove the hazards at the yard.  
12 That's page 114. But they were. That was their practice.  
13 If there's a hazard, we get the crane to remove it. They  
14 acknowledge it was a hazard, but they didn't do anything.

15 In fact, they did the opposite. They had him  
16 stand right next to the truck with an open container,  
17 knowing the hazard was right there.

18 THE COURT: All right.

19 MR. WEGLARZ: Thank you, your Honor.

20 MR. O'SHEA: Just one second

21 --(multiple speakers)--

22 THE COURT: Sure.

23 MR. O'SHEA: -- quick minute.

24 THE COURT: We have read everything, just so  
25 you know.

1 MR. O'SHEA: Yes, I understand. We didn't  
2 make him stand --

3 THE COURT: Stacks and stacks.

4 MR. O'SHEA: I understand. We didn't make  
5 him stand anywhere. I mean, that's -- we keep getting this  
6 mischar -- we didn't make him stand anywhere. He could  
7 have stood anywhere he wanted. He could have been in his  
8 truck. He admitted that in his deposition. The pipe  
9 wasn't --(multiple speakers)--

10 THE COURT: He -- he doesn't -- he doesn't  
11 say that you made him stand anywhere. He said that he had  
12 to -- he was supposed to drop the load and then -- but then  
13 he was told to wait and then --

14 MR. O'SHEA: That's correct.

15 THE COURT: -- go some place else  
16 --(multiple speakers)--

17 MR. O'SHEA: And he also testified that he  
18 could have been in front of the truck. He could have been  
19 in his truck. He didn't have to be in the back of the  
20 truck to see the load. That's a decision made by Ferrous.  
21 And he also understood that that happens from time to time.

22 The pipe wasn't against the -- we keep going  
23 back to this David Weiss. David Weiss never testified that  
24 the pipe was against the door. In fact, David Weiss  
25 testified he didn't remember seeing the pipe.

1                   So this -- this argument that Mr. Weiss  
2 testified, "Well, this pipe's against the door," it's  
3 simply not true. It's not anywhere in the deposition  
4 testimony. In fact, he said, "I don't even remember seeing  
5 the pipe," cuz it's a run of the mill load of scrap. This  
6 is -- this is -- there's nothing unusual about this load of  
7 scrap and plaintiff is the most experien -- he's the only  
8 person on that facility involved that unloads scrap.

9                   And -- and it's important, I think, for the  
10 Court to understand -- and I know the Court understands  
11 this by reading this, is normally, he isn't -- he goes to  
12 that pile -- if we say, "Go to the sort pile," he'll go in,  
13 he backs up, he unloads, closes up and he goes. Ferrous  
14 isn't involved in the unloading process at all. That's his  
15 job. It's his load. He does it. He's the only one that  
16 does it. Those three guys there, they don't unload scrap.  
17 Plaintiff does. He didn't think it was a harm. He didn't  
18 think it was a problem and now, all of a sudden, Ferrous is  
19 supposed to.

20                   THE COURT: All right. This matter is before  
21 the Court on defendant DTE Electric Company and -- D -- DTE  
22 Electric Company and Ferrous Processing and Trading  
23 Company's separate motions for summary disposition.  
24 Plaintiff Dean McMaster was injured on October 14th, 2014  
25 when a pipe weighing approximately 500 pounds fell out of a

1 dumpster container and struck him in the leg.

2 Plaintiff brought suit against both  
3 defendants and alleged that they were each negligent in a  
4 variety of ways. Plaintiff was employed by P and T Leasing  
5 at the time of the accident.

6 First, as to DTE's motion pursuant to MCR  
7 2.116C(10). In his first amended complaint, the plaintiff  
8 alleged that DTE owed a duty to plaintiff to reasonably and  
9 properly load and packet (ph) scrap containers and to  
10 reasonably and properly load said containers onto  
11 plaintiff's truck as a reasonable person would under like  
12 and similar circumstances, including ensuring that such  
13 loading was done in conformity with state law.

14 All government regulations applicable to the  
15 loading of commercial trucks and trailers and common  
16 industry standards, as well as a duty to ensure that the  
17 truck or trailer was loaded in such a way as to reasonably  
18 protect the safety of plaintiff.

19 Plaintiff alleges that DTE breached those  
20 duties in a variety of ways and that as direct and  
21 proximate result of defendant DTE's negligence, plaintiff  
22 suffered injuries and damages. In a standard negligence  
23 action, a plaintiff must demonstrate that first, the  
24 defendant owed the plaintiff a duty of care. Second, that  
25 the defendant breached that duty. Third, that the

1 plaintiff was injured. And fourth, that the defendant's  
2 breach caused plaintiff's injuries. That's *Henry versus*  
3 *Dow Chemical*, 473 Michigan 63, a 2005 case.

4 The existence or non-existence of a legal  
5 duty is a question of law for the Court to decide. And  
6 that's *Moning versus Alfonso*, 400 Michigan 425, a 1977  
7 matter. And is stated and cited correctly by the  
8 plaintiff, a determination of reasonableness of one's  
9 conduct is generally reserved for the trier of fact.

10 DTE argues that they did not breach any duty  
11 owed to plaintiff because the evidence shows there was no  
12 state law or government regulations or common industry  
13 standards that DTE had to conform to, which would give rise  
14 to a specific legal duty to conform to while loading scrap  
15 metal into a roll-off container like the one in this case.

16 DTE also argues that they did not breach a  
17 duty to keep the plaintiff safe. DTE then argues that the  
18 cause of plaintiff's injuries, based on speculation and  
19 conjecture and that there's no genuine issue of material  
20 fact that any alleged breach by DTE caused plaintiff's  
21 injuries.

22 Plaintiff responds that DTE loaded the  
23 container without using due care by placing a big pipe  
24 against and parallel to the back door and on top of other  
25 scrap. However, plaintiff agrees that there's no

1 established rules, standards, or regulations delineating  
2 exactly how a scrap container should be loaded. Plaintiff  
3 argues that DTE's breach was a proximate cause of his  
4 injuries. Plaintiff gave a thorough and well analyzed  
5 argument of how Michigan law applies to the cause element  
6 of negligence actions in the facts in this case.

7 DTE brought this motion pursuant to MCR  
8 2.116C(10). The -- the Court adopts the standard of review  
9 for a -- a C(10) motion as stated in DTE's brief.

10 After considering the legal arguments made by  
11 counsel and in looking at the evidence in the light most  
12 favorable to the plaintiff, the Court concludes that  
13 there's no genuine issue of material fact that exists that  
14 would allow reasonable minds to differ in concluding that  
15 DTE did not breach the duty of reasonable care owed to  
16 plaintiff.

17 Further, the Court concludes that plaintiff  
18 has not sustained his burden as to causation and there's no  
19 genuine issue of any material fact remaining as to the  
20 elements of negligence analysis. Summary dispo is granted  
21 in favor of DTE pursuant to MCR 2.116C(10).

22 As to Ferrous's motion for summary dispo  
23 pursuant to C(8) and C(10). In his first amended  
24 complaint, plaintiff alleges that Ferrous owed a duty to  
25 plaintiff to reasonably and properly maintain its facility

1 in a safe manner to implement appropriate safety procedures  
2 and protocols and train and supervise its agents, employees  
3 in appropriate safety procedures and protocols as a  
4 reasonable person would under like and similar  
5 circumstances in conformity with common industry standards.

6 Plaintiff alleges that Ferrous breached those  
7 duties in a variety of ways and that, as a direct and  
8 proximate result of Ferrous's negligence, plaintiff  
9 suffered injuries and damages. The Court adopts the  
10 standard of review under C -- C(10) as a --(inaudible)--  
11 stated by plaintiff. Plaintiff's claim is sufficient as  
12 pled and therefore, summary disposi -- disposition is  
13 denied as to C(8).

14 Like DTE, Ferrous argues that, in -- with  
15 regard to C(10), like DTE, Ferrous argues that plaintiff  
16 cannot articulate an actual duty that Ferrous owed  
17 plaintiff and that the evidence submitted shows that there  
18 was no break of any alleged duty and lastly, that plaintiff  
19 caused his own injuries. It -- it seem -- it seems like  
20 everybody agrees that Mr. McMaster took some unfortunate  
21 actions in the course of this.

22 Plaintiff responds that Ferrous owed the  
23 plaintiff a duty of reasonable care and to maintain its  
24 scrap yard practices in a safe manner and that Ferrous  
25 exposed plaintiff to an unreasonable risk of harm.

1           After consider the legal arguments of counsel  
2           and evidence submitted, the Court concludes that a genuine  
3           issue of material fact exists as to whether or not Ferrous  
4           breached the duty of reasonable care and due care owed to  
5           plaintiff and that a question of fact also remains as to  
6           causation. Therefore, summary disposition is denied,  
7           pursuant to MCR 2.116C(10) as it applies to Ferrous.

8           MR. YOUNG: Thank you, your Honor.

9           THE COURT: Thank you.

10          MR. WEGLARZ: Thank you, your Honor. Your  
11          Honor, if I may -- just to protect the Record. I wanted to  
12          hand the Court those deposition excerpts of Mr. Brooks.

13          THE COURT: Mr. Brooks?

14          MR. WEGLARZ: Yeah.

15          THE COURT: Okay.

16          MR. WEGLARZ: If I may approach and I have  
17          copies for opposing counsel --

18          THE COURT: All right.

19          MR. WEGLARZ: -- as well. And I'm handing  
20          the Court pages 21 through 36, the deposition of Stephen  
21          Brooks. Thank you, your Honor.

22          THE COURT: Thank you.

23          MR. YOUNG: Thank you.

24          THE COURT: Thank you.

25          MR. O'SHEA: Thank you, your Honor.

1 (At 11:46:27 a.m., hearing recessed)

2 (At 11:50:50 a.m., hearing resumed)

3 THE CLERK: (Inaudible) McMaster versus DTE,  
4 case number 15-147414-NO.

5 THE COURT: All right. Do you want to  
6 approach? Do you want to stand there? What do you  
7 --(multiple speakers)--

8 UNIDENTIFIED SPEAKER: I want to approach  
9 --(multiple speakers)--

10 THE COURT: Okay.

11 (At 11:51:04 a.m., hearing recessed)

12 (At 12:06:10 p.m., hearing resumed)

13 THE COURT: All right, I'm going to make a  
14 quick Record, okay? All right. So we had a discussion  
15 about the trial date. Apparently, plaintiff's counsel is  
16 in trial in Bay County the day before our trial date is  
17 set, but I'm going to order both parties and the lien  
18 carrier, we believe to be -- who did you say?

19 MR. O'SHEA: Acuity.

20 MR. WEGLARZ: Acuity.

21 THE COURT: Acuity, into facilitation within  
22 60 days. You're going to choose the facilitator and I'm  
23 going to reset this matter for trial on April 10th at 8:30  
24 in the morning. I won't adjourn it after that though,  
25 okay? That -- that'll only be half day. In the afternoon

1 is criminal call, okay?

2 MR. YOUNG: Just --(inaudible)--

3 THE COURT: Yeah, just the morning, yeah.

4 For that day.

5 MR. WEGLARZ: (Multiple speakers) trial.

6 THE COURT: What's that?

7 MR. WEGLARZ: The whole length of the trial,  
8 mornings only?

9 THE COURT: No, just on the -- on the 10th of  
10 April is a Monday. I have my criminal call on Monday  
11 afternoon

12 MR. WEGLARZ: Okay, understood.

13 THE COURT: That's why. All right?

14 MR. O'SHEA: And the Court --(inaudible)-- I  
15 think is -- is court closed Good Friday?

16 THE COURT: No. Uh-uh

17 --(multiple speakers)-- we are not.

18 MR. O'SHEA: I think that's

19 --(multiple speakers)--

20 THE COURT: Mm-hmm.

21 MR. O'SHEA: I think it's --(inaudible)--

22 THE COURT: April 16th is, yeah.

23 MR. WEGLARZ: Thank you, your Honor.

24 THE COURT: All right, thank you.

25 MR. O'SHEA: Thank you, your Honor.

1

THE CLERK: All rise.

2

(At 12:07:13 p.m., hearing concluded)

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of forty-six (46) pages, before the 6th Judicial Circuit Court, Oakland County in the matter of:

DEAN MCMASTER

v

FERROUS PROCESSING AND TRADING AND  
DTE ELECTRIC

\_\_\_\_\_ /

Location: Circuit Court

Date: Wednesday, January 4, 2017

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

          /s/ Linda Bacon          

Linda Bacon, CER #8970  
Certified Electronic Recorder

Dated: May 23, 2017

Theresa's Transcription Service, P.O. Box 21067  
Lansing, Michigan 48909-1067 - 517-882-0060

# Exhibit 21

STATE OF MICHIGAN  
COURT OF APPEALS

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DEAN McMASTER,  
Plaintiff-Appellant,

UNPUBLISHED  
July 2, 2020

v

No. 339271  
Oakland Circuit Court  
LC No. 15-147414-NO

DTE ENERGY COMPANY,

Defendant,

ON REMAND

and

DTE ELECTRIC COMPANY,

Defendant-Appellee,

and

FERROUS PROCESSING AND TRADING  
COMPANY d/b/a FERROUS PROCESSING  
AND TRADING CO,

Defendant.

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Before: JANSEN, P.J., and METER and STEPHENS, JJ.

PER CURIAM.

This case is before us on remand from our Supreme Court “for application of the law of ordinary negligence and for consideration of the issues raised by the parties on the question of the defendant’s legal duty.”<sup>1</sup> Again, we affirm the trial court’s grant of summary disposition to defendant DTE.

I. BACKGROUND

<sup>1</sup> *McMaster v DTE Electric Company*, \_\_\_ Mich \_\_\_, 933 NW2d 42 (2019).

Our previous opinion summarized the facts of this case as follows:

DTE contracted with Ferrous Processing & Trading Company (“Ferrous”) to have containers of scrap picked up from DTE facilities and taken to Ferrous’ salvage yard. Ferrous subcontracted with P&T Leasing Company (“P&T”) to pick up the scrap containers and deliver them to Ferrous. Plaintiff was employed by P&T as a driver. This case arises out of injuries sustained by plaintiff when a large steel pipe rolled out of a container and struck him in the leg resulting in the amputation of his leg.

On the morning of October 14, 2015 plaintiff arrived at DTE’s Belle River Power Plant to pick up a container of demolition scrap and deliver it to Ferrous’ salvage yard. Plaintiff inspected the container prior to hauling it away and observed a large industrial blue steel pipe inside the container. The pipe was parallel to and up against the back door of the container. Plaintiff could have requested that a DTE crane operator relocate or remove the pipe from the container but did not do so. Plaintiff used his truck’s hydraulics to lift the container onto his trailer, secured the container to his truck and departed the Belle River Power Plant for the Ferrous facility in Pontiac. Upon plaintiff’s arrival at the Ferrous salvage yard, he took the truck to be weighed, then drove to the inspection area to meet with the Ferrous road inspector. The inspector told plaintiff where to take the container and plaintiff drove to the specified dumping location. Once he arrived at the specified location, he got out of the truck and walked backed to where the container was secured to his flat-bed trailer. Plaintiff kept the truck engine running because it also controlled the hydraulic system that was necessary to lift the container up to the 35-40 degree angle needed to dump the container. He cracked the container door partially open to see if any materials would fall out. When nothing fell out, he felt it was safe to continue and proceeded to open the door all of the way so that the materials could be dumped out. However, before plaintiff was able to dump out the contents of the container, the Ferrous road inspector had second thoughts about where this particular load should be dumped and he and another Ferrous employee decided that it should be taken to another area in the facility. Plaintiff and the two Ferrous employees talked for about 5-10 minutes about where the container should be dumped while standing behind the wide open door of the container with the truck’s engine running. Once the decision had been made as to where to take the container, plaintiff proceeded to return to his truck in order to shut off the hydraulics so that he could take the container to another area as instructed. As plaintiff walked to the driver side of the truck, the blue pipe rolled out of the container and struck plaintiff in the leg resulting in amputation of his leg.

Plaintiff filed suit against defendants DTE and Ferrous alleging negligence against both. Both defendants answered, denying liability and moving for summary disposition under MCR 2.116(C)(10) asserting that they did not owe plaintiff any duty of care and that plaintiff was not able to meet his burden of proof as to causation. The trial court held a hearing on both motions for summary disposition on January 4, 2017 and while it denied the motion brought by Ferrous, it granted DTE’s motion concluding that there was neither evidence of a breach of duty nor

proximate causation. Ferrous and the plaintiff subsequently entered into a stipulated order of dismissal on June 28, 2017. The instant appeal against defendant DTE followed. [*McMaster v DTE Electric Company*, unpublished opinion per curiam of the Court of Appeals, entered November 8, 2018 (Docket No. 339271).]

## II. SUMMARY DISPOSITION

### A. STANDARD OF REVIEW

“This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law.” *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). [*Id.* at 120].

Issues of statutory interpretation are also reviewed de novo. *Ford Motor Credit Co v Detroit*, 254 Mich App 626, 628; 658 NW2d 180 (2003).

### B. ANALYSIS

“To establish a prima facie case of negligence, plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages.” *Finazzo v Fire Equip Co*, 323 Mich App 620, 635; 918 NW2d 200 (2018).

#### 1. DUTY

“Contractors have a common-law duty to perform their work with ordinary care so as not to unreasonably endanger employees of other subcontractors or anyone else lawfully on the worksite.” *Id.* at 634. We previously decided that plaintiff, as an employee of a sub-contractor, was owed the duty of reasonable care. *McMaster v DTE Energy Co*, unpublished per curiam opinion of the Court of Appeals, issued Nov 8, 2018 (Docket No. 339271), p 2. See *Clark v Dalman*, 379 Mich 251, 262; 150 NW2d 755 (1967) (“The general duty of a contractor to act so as not to unreasonably endanger the well-being of employees of either subcontractors of inspectors, or anyone else lawfully on the site of the project, is well settled.”) We revisit that holding on remand as directed.

The defendant argues that the common law duty which was owed to plaintiff under the common law was abrogated by the passage of MCL 480.11a. Under MCL 480.11a, Michigan adopted the federal Motor Carrier Safety Regulations as provided by 49 CFR 392.9. *DOT v Initial Transport, Inc*, 276 Mich App 318, 323; 740 NW2d 720 (2007), rev'd in part on other grounds 481 Mich 862 (2008). The relevant portion of 49 CFR 392.9 states:

(a) General. A driver may not operate a commercial motor vehicle and a motor carrier may not require or permit a driver to operate a commercial motor vehicle unless—

(1) The commercial motor vehicle’s cargo is properly distributed and adequately secured . . .

\* \* \*

(b) [T]he driver of a truck or truck tractor must—

(1) Assure himself/herself that the provisions of paragraph (a) of this section have been complied with before he/she drives that commercial motor vehicle;

(2) Inspect the cargo and the devices used to secure the cargo within the first 50 miles after beginning a trip and cause any adjustments to be made to the cargo or load securement devices as necessary, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from the commercial motor vehicle . . . [49 CFR 392.9(a)(1) and (b)(1)].

Noting that there is no Michigan case addressing this issue, defendant asks us to be guided by the United States Court of Appeals for the Sixth Circuit’s holding in *Rector*, that “[w]hile not dispositive, [CFR 392.9(b)] is indicative of the proper allocation of duty as between a common carrier and a shipper for the proper loading of goods.” *Rector v Gen Motors Corp*, 963 F2d 144, 147 (CA 6, 1992).

Addressing the doctrine of abrogation in *Dawe v Dr Reuven Bar-Levav & Assoc, PC*, 485 Mich 20; 780 NW2d 272 (2010), the Supreme Court wrote:

The common law remains in force until modified. *Wold Architects & Engineers v. Strat*, 474 Mich. 223, 233, 713 N.W.2d 750 (2006). The abrogative effect of a statutory scheme is a question of legislative intent, and “legislative amendment of the common law is not lightly presumed.” *Id.* Rather, the Legislature “should speak in no uncertain terms” when it exercises its authority to modify the common law. *Hoerstman Gen. Contracting, Inc. v. Hahn*, 474 Mich. 66, 74, 711 N.W.2d 340 (2006). Additionally, “[t]he Legislature is presumed to know of the existence of the common law when it acts.” *Wold Architects*, 474 Mich. at 234, 713 N.W.2d 750. [*Dawe*, 485 Mich at 28].

The legislature has the power to amend the common law.

In *Dawe*, the Court found that the legislature did not intend to repeal the common law because it addressed only one aspect of a psychiatrist’s duties to patients. The defendant argues to this Court that by adopting the part of the CFR which only addresses the duties of a carrier, the legislature implicitly abrogated any shipper duty of care, citing the rule of statutory construction:

*expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another).<sup>2</sup> Such is not always the case, however. Two years after *Dawe*, the Supreme Court in *Velez v Tuma*, 492 Mich 1; 821 NW2d 432 (2012), found that even an express repeal of a statute that acknowledged the common law is not always evidence of intent to abrogate the common law:

We cannot conclude that the Legislature intended to abolish the common-law setoff rule in the context of joint and several liability medical malpractice cases. While the pertinent statutes are silent with respect to the application of the common-law setoff rule, we cannot agree with plaintiff that the repeal of the statutory setoff, former MCL 600.2925d(b), by 1995 PA 161 demonstrates a clear intent to abrogate the common-law rule. Plaintiff's argument ignores the fact that the repeal of former MCL 600.2925d(b) was but one part of comprehensive tort-reform legislation and that there is no conflict between the common-law rule and the current legislation that would prevent the setoff's application. [*Id.* at 12].

The *Velez* Court noted that there were several portions of "tort reform" legislation that continued to use the omitted concept (setoff for joint and several liability). Unlike the physician's duty to patients in *Dawe*, there are no other tort duties that flow from a shipper to a carrier. In contrast to *Velez* where numerous statutes addressed calculations of tort damages, there are no other statutes that proscribe the manner in which a load of this kind was to be stacked or secured, or which set forth a duty for which noncompliance could support an inference of a breach of duty. We find that the adoption of MCL 480.11a abrogated the shipper's common law duty of ordinary care.

Alternatively, if the legislature did not intend to eliminate the common law duty of care, it certainly expressed an intent to modify it significantly so as to limit the circumstances where a carrier is owed a duty by a shipper to circumstances where the shipper is in a superior position to appreciate and protect against the risk. This was articulated as the "shipper's exception" to this duty, as stated by the United States Court of Appeals for the Fourth Circuit in *United States v Savage Truck Line, Inc*, 209 F2d 442 (CA 4, 1953):

The primary duty as to the safe loading of property is therefore upon the carrier. When the shipper assumes the responsibility of loading, the general rule is that he becomes liable for the defects which are latent and concealed and cannot be discerned by ordinary observation by the agents of the carrier; but if the improper loading is apparent, the carrier will be liable notwithstanding the negligence of the shipper. [*Id.* at 444].

Just as the legislature is presumed to have known about the common law sharing of duties, it is presumed to have been aware of the shipper's exception or *Savage* rule which preceded Michigan's adoption of MCL 480.11a.

The shipper's exception, however, does not salvage the plaintiff's case. The facts viewed in the light most favorable to the plaintiff reveal that he did in fact examine the load several times. Accepting his expert's testimony that it was the manner of loading, not the vibration or the process

<sup>2</sup> See e.g. *Detroit City Council v Detroit Mayor*, 283 Mich App 442, 456; 770 NW2d 117 (2009).

of unloading, that occasioned plaintiff's tragic injury, there is no evidence that anything was "hidden". The pipes and their arrangement in the truck bed were readily observable and in plain sight. Therefore, even under the shipper's exception the defendant did not owe a duty to the plaintiff.

Having concluded that no duty was owed by the defendant to the plaintiff we need not address arguments as to the other elements of negligence. Accordingly, the trial court did not err in granting the defendant summary disposition.

Affirmed.

/s/ Kathleen Jansen  
/s/ Patrick M. Meter  
/s/ Cynthia Diane Stephens

# Exhibit 22

**Court of Appeals, State of Michigan**

**ORDER**

Dean McMaster v DTE Energy Company

Docket No. 339271

LC No. 2015-147414-NO

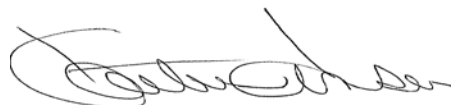
Kathleen Jansen  
Presiding Judge

Patrick M. Meter

Cynthia Diane Stephens  
Judges

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The motion for reconsideration of this Court's opinion dated July 2, 2020 is DENIED.



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Presiding Judge

August 24, 2020