

DEPOSITION OF C.B. JONES
MAY 10, 2017

1 Q: Could you state your name for the record, please?

2 A: My name is C.B. Jones.

3 Q: What do the initials stand for?

4 A: Beats me. My dad was a trucker. Called me "C.B." That handle just stuck.

5 Q: Where do you live?

6 A: I live in Zigzag, Oregon. Named for its paper industry.

7 Q: You're a long way from home.

8 A: You have to be from out-of-town to be a really good expert, and I'm from out-of-state.

9 Q: What is your profession or occupation?

10 A: I am a safety consultant.

11 Q: How long have you been a safety consultant?

12 A: I have been a safety consultant for 15 years, since my retirement from OSHA.

13 Q: And what do you do as a safety consultant?

14 A: My principal function is to go to places of business and inspect them to see if I spot any
15 safety problems, including violations of OSHA standards. My job is basically to prevent
16 accidents first, and second to prevent OSHA citations.

17 Q: How long did you work for OSHA before you became a safety consultant?

18 A: I worked for OSHA for 20 years, then decided that it would be more lucrative to be an
19 expert witness.

20 Q: What did you do for OSHA?

21 A: I started out of as safety inspector, then I moved to regional director, then I moved to
22 Washington, D.C. as a deputy to the administrator of OSHA.

1 Q: What did you do as a safety inspector for OSHA?

2 A: Two things. First, I would go to businesses and do surprise inspections to see if they
3 were violating any standards that I could give them citations for. And second, I
4 investigated the occasional accident that might happen.

5 Q: How many accidents did you investigate for OSHA?

6 A: Probably a dozen or so.

7 Q: As a safety consultant, have you investigated accidents?

8 A: Yes, several, including two electrocution accidents.

9 Q: What are your qualifications to do the work that you do?

10 A: Well, I'm qualified first by experience. As you probably know, OSHA has a pretty
11 extensive training program on how to do investigations, and I had that training twice.

12 Q: What about your educational background?

13 A: Well, yes.

14 Q: Yes meaning what?

15 A: Yes meaning I have an education.

16 Q: Did you get a degree from a university?

17 A: Of course I did. I got a Bachelor of Arts degree in Agricultural Science from the
18 prestigious Lone Star A&M University, then a Masters Degree in Industrial Hygiene, also
19 from Lone Star A&M.

20 Q: Any further education beyond that?

21 A: Why would you need any?

22 Q: Were you asked to look into the accident involving Rocky Rhodes on June 16, 2015?

1 A: Yes, Armadillo Elevator Company asked me to look into the facts and circumstances
2 leading up to the accident, and to determine the identity of the person or persons,
3 company or companies, that might be responsible.

4 Q: What did you review in connection with your assignment?

5 A: I reviewed all of the depositions that have been taken, and I understand mine is the last to
6 be taken. I read and considered the sworn statements. I looked at all the exhibits that were
7 reviewed by the plaintiff's expert. And I paid particular attention to a report from the
8 power company showing the results of their measurement of the line, which is marked as
9 Exhibit 10.

10 Q: Did you come to any opinions or conclusions as a result of your investigation?

11 A: Yes, I came to several conclusions. First, and foremost, this accident was entirely the
12 fault of Rocky Rhodes. He failed to exercise even the slightest care for his own safety.
13 Second, the accident was not the fault of Armadillo Elevator Company. Of all of the
14 parties who had anything to do with this, Armadillo Elevator Company is the least
15 culpable. Third, it is my opinion that Big State Power Company failed to erect this power
16 line at a proper height. It is also my opinion that Pretorius Railway and Brew Company
17 should have identified the height of the power line as a safety hazard over their spur line.
18 Finally, I'm of the opinion that Austin Grain Sampling Company failed to properly train
19 Mr. Rhodes and failed to adequately warn him of the dangers involved here.

20 Q: Did you inspect the premises yourself?

21 A: Yes, I made a site visit and looked at all of the relationships of the facilities and the
22 equipment. And, of course, I looked at the tracks. Those tracks are depicted in a
23 photograph that is marked as Exhibit 12.

1 Q: Going back to your first opinion, why do you say that Mr. Rhodes is responsible for this
2 accident?

3 A: Well, there are 2 or 3 things about that. First, Mr. Rhodes failed to properly do a site
4 hazard analysis before he began the work. If you're going to do work at a location where
5 you have never been before, you really have a duty to yourself and to others to go out
6 there and spot any hazards that might exist. And you do that before you begin the
7 job. You have a much better opportunity to see things than you would when you are
8 actually doing the job. And Mr. Rhodes was out there and had the opportunity to do a site
9 hazard analysis on 2 occasions. He was out there the day before to do this work, and
10 looked around and decided that it was too muddy. He should have done a site hazard
11 analysis at that time, and he should have noticed this power line. Second, when he
12 actually went out there the next day to do the work, he should have looked at the site to
13 make sure that nothing had changed and that there weren't new hazards. If he had done
14 that, he would have spotted the power line and known that it was there.

15 Q: Okay, what else should have Mr. Rhodes have done?

16 A: Lone Star has a fairly typical statute called the Six Foot Rule. That statute simply
17 provides that if you are going to bring a person or material within six feet of a power line
18 with this kind of voltage, then the person responsible for that work should contact the
19 power company and arrange for the line to be de-energized or guarded. He clearly was
20 going to bring his person or material within six feet of the line. I mean, he touched it
21 after all. So, he was responsible for calling the power company and having the line
22 guarded or de-energized.

23 Q: Anything else on Mr. Rhodes' negligence?

1 A: Yes, and perhaps the most important. He was standing on top of a fifteen foot high
2 railcar. The power line was a mere ten feet above his head. It is open. It is obvious. It is
3 hard to miss. He failed to keep a proper lookout while he was up there to make sure that
4 he wasn't about to get into trouble. And if he had seen this open and obvious line, he
5 clearly could have avoided it. And, if he had followed the instructions from his employer,
6 Austin Grain Sampling, he would have avoided this accident. Further, he walked under
7 the same line when he was sampling the cars on the east spur, so he had ample
8 opportunity to look up and be safe.

9 Q: What were the instructions from Austin Grain Sampling?

10 A: Exhibit 11 clearly told Mr. Rhodes to keep his grain probe more than six feet away from
11 power lines. If he had done that, his probe would not have contacted the line.

12 Q: Did you see evidence that the brass grain probe had contacted the power line?

13 A: Yes, there were arc marks clearly evident on the tip of the probe, 14 inches down from the
14 very end, where the pole came into contact with the power line.

15 Q: Can you identify Exhibit 4?

16 A: Yes, that's a photo of the grain probe.

17 Q: Where was the probe at the time this photo was taken?

18 A: It was in the offices of Austin Grain Sampling Company. You can see that it was being
19 inspected under a microscope for arc marks, and that the distance from the tip of the
20 probe to the arc marks was being measured. That was 14 inches, by the way.

21 Q: Can you identify Exhibit 17?

22 A: Yes, that's a close up of one of several arc marks on the probe.

23 Q: Could these marks have been caused by some other accident in the past?

1 A: Not unless somebody else was killed holding this grain probe. And there is no evidence
2 of that.

3 Q: Why do you believe that Armadillo Elevator Grain Company is not at fault at all here?

4 A: Because they had the most passive role of anybody. All Armadillo Elevator Grain
5 Company did was ask Austin Grain Sampling to send somebody out to sample the grain.
6 Armadillo Elevator Grain Company didn't build the tracks, didn't own the railcar, didn't
7 build the power line, didn't train Mr. Rhodes.

8 Q: Why do you say that Big State Power Company had any responsibilities here?

9 A: Several things. First, they built a power line across the railroad track almost two feet
10 below the NESC requirement. That is a bad deal right there.

11 Q: Did Big State Power Company know that people would be standing on railcars under that
12 power line?

13 A: Well, there is no evidence that they actually knew that.

14 Q: If a person was standing under the power line on the railroad tracks, would he be able to
15 bring himself or a ten foot grain probe within ten feet of the line?

16 A: You can do the math just like I can. Of course not.

17 Q: Could the power line have been built to NESC requirements?

18 A: No, the pole on the east, which was a preexisting pole, was only twenty-six feet tall.
19 When you drop a foot down to where the cross arms are, that's only twenty-five feet, so
20 the take off point for this little stub line was below the NESC height. The sag in the line
21 then took the north phase down to 24 feet 2 inches above the spur track.

22 Q: Exhibit 12 seems to show a really tall pole on the other side of the tracks near the liquid
23 fertilizer tank; wouldn't that have raised the line height enough to comply with the Code?

1 A: The pole on the other side was thirty-five feet, which was plenty tall, but there wasn't
2 enough distance between the short pole and the spur track to make-up that angle. They
3 never could have got it to twenty-six feet over that particular track.

4 Q: Why do you believe Pretorius Railway and Brew Company had responsibility here?

5 A: These are their railroad tracks. The railroad company has an easement upon Armadillo
6 Elevator Company's land, therefore they should have some responsibility to make sure that
7 the area is safe. Besides that, they were out there once a month looking at their main track
8 to see if the rails were messed up or the cross ties were broken or anything like that. It is
9 not too much to ask them to look up as well as looking down. The railroad company had
10 a duty to make sure that their tracks are clear of dangers. This was a danger.

11 Q: Who pushed this car from the loading platform to the place under this power line?

12 A: That's a good question. The railroad company had an engine out there all day, so you'd
13 think Pretorius put the car where it was.

14 Q: Any other opinions that you've formed that you have not told us about in the course of
15 this deposition?

16 A: No, sir.