DEPOSITION OF CHRIS KITCHEL
APRIL 27, 2016

Q: Can you state your name for the record.

A: Yes, my name is Chris Kitchel.

Q: Where do you live?

A: I live in Clackamas, Lone Star.

Q: Where is that exactly?

A: It is just outside of Armadillo.

Q: What is your occupation or profession?

A: I own and run the Amadillo Elevator Company.

Q: How long have you owned that elevator company?

A: It seems like all of my life, which would be seventy-five years. I've actually only owned it for forty-five of those.

Q: What did you do before you owned the elevator?

A: I was a clerk at a chicken feed store.

Q: And where was that chicken feed store?

A: It was in a town in deep East Lone Star called Nameless. The store was the Nameless Chicken Feed and Hatchery Store. Went out of business, oddly enough.

Q: What is your educational background?

A: I have a degree in astrophysics from Massachusetts Institute of Technology. Never did use that degree, obviously.

Q: Are you familiar with the accident involving Mr. Rhodes that occurred on June 16, 2015?

A: Yes, I was at the elevator on that day.

Q: What were you doing at the time of the accident?

A: I was up in an elevated and enclosed platform where we load railcars, right next to one of the main elevators tanks. That elevated platform is about twenty feet above the track, and has all of our automation equipment in it so that we can run the loading operation from there, weigh the grain that goes into the hopper cars and issue a ticket showing how much grain is in each specific car. It's a pretty complicated set of equipment up there.

Q: Are there any windows in that loading platform?

A: Yes, there are windows that look both ways along the track. We need to see railcars as they are coming in on the spur track and we need to be able to see back the other direction, because we are pushing cars down that way.

Q: In terms of loading railcars, how is that done?

A: Well, Pretorius Railway & Brew Company is contacted and we ask them to leave the number of cars that we need on the spur track north of the loading platform. So let's say we call Pretorius to order a hundred railcars. Pretorius delivers a hundred cars and spots them on the track north of the loading platform.

Q: What happens then?

A: Well, we normally use a little push car that we own to separate the cars and then to push groups of three or four of the cars under the loading platform to be loaded. The push car won't handle much more than three or four loaded cars, so we get on the north side of three or four cars, unhook them from the rest, get the push car positioned and then push the cars one at a time on to the loading platform. They get loaded there, a ticket gets issued showing the weight and the car number, and then the push car pushes that group down south along the spur. When we get all of the cars loaded and spotted on the south

spur, Pretorius comes back, hooks on to either end and either pushes or pulls them out onto the main track and off into interstate commerce.

Q: You said you normally use your own push car to move these railcars; is that what you were doing that day?

A: That day we were experimenting with how fast our new loading platform could load cars, so we asked Pretorius to have an engine on hand to push the cars. An engine has a lot more power than our little push car, so while they were there, we were really flying.

Q: Why do these railcars have to be sampled?

A: Federal law requires us sample the cars after we load them and before we put them into commerce. The sample has to show the quality of the grain in terms of a grade, the moisture in the grain in terms of a percentage, deleterious substances that might be in the grain, and the actual weight per unit of the gain. Sometimes you get wheat that is real plump and fat and weights sixty-two pounds per bushel. A standard bushel is sixty pounds, so it makes a difference in what you are selling. On the other hand, sometimes the wheat is all shriveled up like a Congressman and only weighs fifty-seven pounds per bushel, and you need to know that, too.

Q: Who does the grain sampling?

A: Well, by law we cannot use our own employees. Kind of like the fox guarding the hen house. So we have to use outside contractors to get that work done. In this case, we use Austin Grain Sampling Company pretty much exclusively.

Q: Is Mr. Rhodes somebody that you ever saw out there sampling grain on behalf of Austin Grain Sampling Company?

A: No, usually his friend Dusty Stockard was the person who did the grain sampling. I do not know why Mr. Rhodes was out there. We saw him for the first time the day before the accident.

Q: Why was Mr. Rhodes out there the day before this accident?

A: He came out the day before the accident to sample grain. We had about a hundred cars to load, and we had half of them loaded the day before. He was supposed to sample those first fifty, and we were loading the other ones at the same time. But he came out and looked at the site and told us that he thought it was too muddy, and he might get his boots wet and muddy and slip off the walkway, so he headed to the house.

Q: Did he come back the next day?

A: Yes, he came back around 1:00 p.m. to sample the cars. By that point, we had about eighty cars loaded and were still loading the other twenty.

Q: Where were the cars located that Mr. Rhodes was going to sample?

A: Well, if you will look at Exhibit 12, you will see that there are two parallel spur tracks in that area, and we were using both. We had filled up the east spur track with loaded cars, and the west spur track was almost full of loaded cars when he got there. So he started out on the cars on the east side of the track.

Q: Did you observe him as he was sampling grain on those cars?

A: Yes, we could see down from the loading platform and could see what he was doing. He started at the far south end of those cars and placed grain sampling bags on each one, just walking along the top dropping bags. When he got to the farthest car on the north, he grabbed his grain probe and started back south doing sampling.

Q: Did he finish the east line of cars at some point in the afternoon?

A: Yes, and then he started on the set on the west side of the spur. We saw him place grain bags starting on the car that farthest to the south and worked back to the north, and then he grabbed his grain probe and started working back south again.

Q: Can you identify Exhibit 16?

A: Yes, it is a photograph of the loading platform as seen from the spur track that Mr. Rhodes was on when this accident happened.

Q: How far away is the loading platform from the power line?

A: According to the survey, which is marked as Exhibit 8, it is four-hundred sixty feet.

Q: Could you clearly see Mr. Rhodes?

A: As clearly as you can see somebody who is a football field and third away from you, yes.

Q: Where were you looking when the accident happened?

A: I was looking right at him. I had gone to the south window to see where he was because we were pushing cars in his direction, and we wanted to make sure that we didn't bump into the cars that he was sampling. We thought that might knock him off.

Q: You say "we were pushing cars;" I thought you said that Pretorius Railway and Brew Company was supplying an engine to push cars that day?

A: Yes, they had their engine out there most all day, but at some point they left. I just don't recall when that was. We started pushing cars ourselves after they left. But when I said "we," I was using the editorial form of the pronoun. Us and Pretorius.

Q: What did you see at the time of the accident in question?

A: Well, I saw him stab the probe down into the hopper, and then I saw him pull it back out and swing it up-side down to empty it. At that point, I saw a bright flash and realized that he had come into contact with that power line.

Q: What did you do next?

A: We shut down the loading that we were doing and ran down the steps of the loading platform, ran down the railroad track to get to where he was laying next to the track and beside the car.

Q: What did you observe about him at that time?

A: Well, I observed that he was wearing earbuds, and I noticed that one of them had been knocked loose. I noticed that he had a slight amount of blood coming out of the back of his head. I called 911 right away, and then checked to see if he had a pulse. He didn't seem to have a pulse, but we did some CPR anyway. The ambulance came pretty quick, but the attendants checked him over and said that he was deceased.

Q: Did you or anybody employed by you, to your knowledge, remove anything from Mr. Rhodes' body at that time?

A: Of course not.

Q: You say that you had not seen Mr. Rhodes out there before. When he came out the day before, did you point out the power lines to him?

A: No, it never occurred to us that we needed to point out something that is so open and obvious. We figured he was a big boy, and he could take care of himself.

Q: Why was this power line there?

A: We put in this liquid fertilizer tank three or four years ago. That tank has a big electric pump so we can pump fertilizer out of rail cars on the spur or pump it into trucks that come along the loading area on the other side of it. We had these big electric pumps, we needed power to them, so we asked Big State Power to come put in a line.

Q: Did you have anything to do with the design or specifications of the power line?

A: No, we left that to the Big State Power Company engineers.

Q: Can you identify Exhibit 3?

A: Yes, that is the Big State Power Company engineer measuring the height of the power line after the accident.

Q: Do you know what the measurement was?

A: Yes, it was twenty six feet.

Q: Do you know whether that complied with the relevant codes or standards?

A: Beats me, that's not our business.

Q: Can you identify Exhibit 9?

A: Yes, that's a photo of the power line over the rail car that Rhodes was standing on when he got the probe in it.

Q: Can you identify Exhibit 13?

A: Yes, that is a photograph taken from on top of the grain car when this accident happened, looking back north. It shows that we left about a fifteen foot gap between the car that Mr. Rhodes was on and the next car closest to the loading platform.

Q: Why did you do that?

A: Again, we knew he was sampling grain out there, and we wanted to make sure that we didn't bump into the cars that he was sampling and accidently knock him off. We left that gap there, just to remind us not to bump into his car.

Q: Can you tell us what Exhibit 14 is?

A: This is the grain loading ticket for the car that Mr. Rhodes was on at the time he contacted the power line.

Q: Does this exhibit tell us when that car was loaded?

A: Yes, it was loaded at 3:32 p.m.

Q: And what is Exhibit 15?

A; This is the grain loading ticket for the car that was right north of the car Mr. Rhodes was on.

Q: What does Exhibit 15 show about when that car was loaded with grain?

A: It shows to have been loaded at 3:55 pm.

Q: Have you told us everything that you know about this accident during the course of your deposition here?

A: Yes, I have.