

**ORAL DEPOSITION OF KIM WILLIAMS
FEBRUARY 4, 2017**

Q: State your name for the record, please.

A: My name is Kim Williams.

Q: Where do you live?

A: I live in Armadillo, Lone Star.

Q: What is your occupation or profession?

A: I am a safety consultant.

Q: How long have you been a safety consultant?

A: About five years now, since I retired from my job with OSHA.

Q: Let's get some of your background. What is your education?

A: I have a degree in industrial safety engineering from Lone Star State University in Loco, over in Childress County.

Q: After you got that degree, what did you do profession wise?

A: I went to work for OSHA as a safety inspector. That is about all you can do with that kind of degree. Other than safety work for companies.

Q: What did your work as a safety inspector for OSHA entail?

A: I would do two things. One, I would go out to companies and do inspections to see if they were committing any OSHA violations. These were usually surprise visits so they wouldn't be scurrying around fixing things that they knew were violations before I got there. If there were any violations, I would tag them with a citation.

Q: What was the second thing that you did?

A: I did accident investigations, at least where there was a fatality or a very serious accident.

Q: Did you have training in accident investigation?

A: Absolutely. OSHA put us through a pretty rigorous 2 month course designed to teach us how to investigate accidents in the work place.

Q: How many years did you work for OSHA before you retired?

A: I worked for OSHA for 25 years, at which point I was qualified to take retirement. I then decided to become a consultant because the money is so much better.

Q: While you were employed at OSHA, how many accidents did you investigate?

A: Oh, my, probably two a month every year, so whatever that works out to mathematically. Six hundred or so.

Q: Did any of those accidents involve electricity?

A: Probably 10 percent of them involved some kind of accident that had to do with electricity.

Q: Have you given testimony in court before?

A: I have testified in dozens of cases, mostly after I retired. OSHA doesn't like for its inspectors to have to testify at trials.

Q: Have you even been disqualified as an expert witness for any reason?

A: No sir.

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

A: Yes, I was asked to look at that accident and subsequently, to write an expert report and to testify as necessary regarding my opinions.

Q: What did you review in order to perform your work?

A: I reviewed the Armadillo Police Investigation Report, which is identified as Exhibit 1. I looked at all the other exhibits you've given me. And, of course, I went out to the premises and looked at the relationship of everything, and I looked at the tracks. Those tracks are depicted in a photograph that is marked as Exhibit 12. And I read the depositions of Mrs. Rhodes and Chris Kitchel, and the sworn statements that were in the investigation file.

Q: Where is the power line in question in Exhibit 12?

A: You see the big white fertilizer tank on the right? There's a very tall power pole in front of it in the photo. That's one end of the line. The other end is on the other side of all those tracks, in about the center of the photo. It has 3 transformers on it.

Q: Did you form any opinions or conclusions after this investigation?

A: Yes, I reached several opinions. First, it is my opinion that the top of the railcar was, at the time of the accident, properly characterized as a work surface within the meaning of OSHA's rules. Second, it is my opinion that the work surface presented at least two hazards. The first hazard was a fall hazard. The second hazard was an electrocution hazard. Third, I concluded that Armadillo Elevator Company was a controlling employer on this work site, as that term is defined under the OSHA regulations. As such, Armadillo Elevator Company was responsible for ensuring the safety of any workers who were on the site. And finally, I'm of the opinion that Armadillo Elevator Company failed to properly provide for the safety of Mr. Rhodes, and failed to adequately warn him of the danger presented by the power line.

Q: Going back to your first opinion, why do you believe that the walkway of this railcar was a work surface at the time of the accident?

A: From a technical standpoint, a railcar sitting on a railroad track is not governed at all by OSHA, because it is governed by the Federal Railroad Act. However, under the circumstances of this accident, you had a non-railroad employee standing on a surface doing work for the benefit of Armadillo Elevator Company, at the request of Armadillo Elevator Company and with their complete knowledge of his whereabouts. Thus, as to Armadillo Elevator Company it was a work surface.

Q: Why do you conclude that there was a fall hazard related to this work surface?

A: You have seen the photograph which is marked as Exhibit 5. The walkway is about three feet wide and is at the very edge of the railcar. The walkway is fifteen feet above the ground, and there is no fall protection of any kind associated with it. It therefore violates the OSHA Regulations. Outside of OSHA, and just from a common sense safety standpoint, you have a man manipulating a ten foot long, twenty pound brass grain probe in and out of the hoppers of that car while standing on a three foot wide extruded aluminum platform at the very edge of a fifteen foot drop. Even if OSHA didn't say this was a violation, it would be a very dangerous situation.

Q: Why do you say the location presented an electrocution hazard?

A: Let me be very clear about this: If you're on top of a railcar on a spur track where there is no power line, there is no electrocution hazard associated with the top of this railcar. However, here you had a power line crossing perpendicular to the railroad tracks therefore perpendicularly across the top of the railcar. The power line itself crossed at the very end of the railcar where the third hopper was if you are looking from the loading platform. So the presence of the power line created a potential danger.

Q: Can you identify Exhibit 3?

A: Yes, that's a Big State Power Company employee named Mike Gershon measuring the height of the line over the tracks.

Q: How high was this line above the railcar?

A: The power line was 24 feet and 2 inches above the ground, therefore, just over ten feet above the walkway.

Q: Does that represent a violation of the NESC standards?

A: Yes, the line was out of compliance with the NESC. And you should remember that the standard here is 26 feet above the tracks with ½" of ice radially around the line. The accident happened on a 60 degree day with no ice, so the line should have actually been higher than 26 feet. The 26 feet is the minimum clearance with ½" of ice. The day it was measured, the temperature was 61 degrees and there was no ice.

Q: Was the clearance a violation of OSHA standards?

A: Yes, but the OSHA violation only comes in where you put a person on the walkway 15 feet above the ground. OSHA regulations say that you cannot bring a man or material within ten feet of a power line of this type. This was a 13,000 volt phase-to-phase line, and therefore the standard applies. Unless the person was less than 1 foot tall, there would be a violation just having a person walk along the walkway. If you add a 10 foot long brass grain probe into the equation, it becomes possible for him to bring the material within 10 feet of the power line, which would also be an OSHA violation, even if the person was just under 1 foot tall.

Q: Was the power line pretty obvious when you were standing on top of the railcar?

A: Well, the power line was clearly visible to me, but I was looking for it. I knew an accident had happened. I don't know if you would have the same perspective if you were

up there trying not to fall off a three foot wide platform 15 in the air and manipulating your grain probe at the same.

Q: In your opinion, does the railroad share any blame in this accident?

A: No, the railroad built these track years before the power line was put in. It is my understanding that the power line was only placed here three years ago at the request of the Armadillo Elevator Company.

Q: Did the power line serve a large segment of Armadillo?

A: No, this was a little stub power line that came off of the pole on the east side of the track and ran to a pole on the west side of the track. It only served a liquid fertilizer tank belonging to Armadillo Elevator Company.

Q: What is your understanding of who owned the line?

A: Big State Power Company owned the line. Armadillo Elevator Company asked them to put in this little stub line to serve that fertilizer tank.

Q: Does Big State Power Company share any blame in this accident?

A: No; I have read the sworn statement of the Big State Power Company representative. He testified that nobody from Armadillo Elevator Company told him that people would be dancing around on top of these railcars sampling grain. That was material information that would have informed Big State's engineering division as to where to put the line and how high to put it.

Q: Well, shouldn't Mr. Rhodes be responsible for his own safety?

A: There you go again, trying to blame an employee for an accident that some big company should have avoided. It is my understanding that Mr. Rhodes never worked at any other site that had a power line, and I can tell you that when I was on top of that car looking at

the power line, I was spending three quarters of my time looking at my feet to make sure that I didn't fall off of the railcar. Without any fall protection, it just scared the Aggie right out of me.

Q: I thought you said that you were from Lone Star State University?

A: You're not from around here, are you?

Q: Finally, why is it your opinion that Armadillo Elevator Company was the controlling employer at this work site?

A: Start with the idea that nobody else had any person out there doing any active work. Add to that the notion that Mr. Rhodes was not the employee of anybody out there, he was a contractor. But, he was a contractor who was doing work that everybody out there should have known needed doing. Federal law says that Armadillo Elevator Company can't use its own employees to sample its own grain, which just makes sense. The railroad company didn't have anybody out there. Big State Power Company certainly didn't have anybody stationed there permanently to watch. Armadillo Elevator Company had thirty employees in and around that area all day long, including two employees who are actually up in the loading platform watching Mr. Rhodes do this work from four hundred feet away. They were the ones who had the responsibility for Mr. Rhodes being there in the first place, and they were the owners of the premises, except the tracks themselves. They had the ultimate say so over the premises. They were the controlling employer.

Q: Have you stated all of the opinions and conclusions that you have reached in connection with this action in this deposition?

A: Sure have.