



PRACTICE TIPS: Cross Examination of an Employer's Safety Expert in *Ronald L. Bayer v. Panduit Corp. et al*

by Jay R. Luchsinger

Introduction

This is a cross examination conducted in a case involving a structural ironworker, Ron Bayer, who fell while setting structural steel on a warehouse being built near Dekalb, Illinois. The plaintiff fell approximately twelve feet, head first. He tripped on a shop-installed shear stud that protruded above the top flange of a steel beam on which he was working. Landing on a concrete wall on his neck, plaintiff suffered severe permanent injuries that made him a quadriplegic. Plaintiff had climbed out of a man basket on an aerial lift (JLG) onto the structural steel to make a connection of a large beam. He was not "tied off," i.e. using a full body harness and lanyard attached to an anchor point, because such a system had not been implemented or provided, despite the fact that the site specific safety plan of the jobsite required one.

In his direct examination the defendant's attorney called to the stand the safety director of the employer, Area Erectors, a steel erection subcontractor, to claim that the jobsite required a "100 percent fall protection" tie-off requirement, that plaintiff was at fault for climbing out of the man basket and not using a retractable lanyard to tie off to the man baskets (as an anchor point). Defendant made a point of establishing the witness's qualifications and expertise regarding steel erection fall protection. Further, the defendant's direct exam sought to establish that the general contractor had no control over safety or methods of work on the jobsite.

In this cross examination, plaintiff

sought to use the witness's purported expertise to establish the following: the structural steel was fabricated in such a manner as to permit shear studs to project over the top flange of the steel beams creating a trip hazard that caused plaintiff's fall, an express violation of OSHA regulations; although there was a site specific safety plan calling for "100 percent fall protection" that called for OSHA approved stanchions as anchor points (5,000 lb.), there were none provided, i.e. the plan was merely a piece of paper that was ignored; that the custom and practice on this jobsite was that the ironworkers regularly climbed out of the man baskets onto the steel and improperly used the man baskets as an anchor point; that the use of retractable lanyards on this jobsite was contrary to the manufacturer's recommendations and warnings; that according to ANSI standards relating to the safety of steel erection connectors, such as the plaintiff, plaintiff properly refused to misuse the retractable lanyard provided and did not misuse an aerial lift man basket as an anchor point. Plaintiff also sought to establish the knowledge and control over safety that the general contractor retained and possessed.

The cross examination utilized text book cross techniques, refreshment of recollection, and impeachment. The case resulted in a verdict for plaintiff of \$64,000,000.00, the largest reported verdict for a single individual in a compensatory damages claim in Illinois history.

Cross Examination by Mr. Luchsinger:

Q Mr. Pettitt, hello, sir. I've got a few

questions for you.

You were telling us about your training. You have had extensive training in construction jobsite safety, it sounds, right?

A Yes.

Q You're trained in the OSHA construction safety standards, you told us, right?

A I am.

Q You're knowledgeable about the contents of Subpart R, the OSHA section that deals with steel erection?

A Correct.

Q Okay. And you're quite knowledgeable, am I right?

A Quite knowledgeable.

Q Okay. And you're quite knowledgeable about the contents of Subpart M of OSHA, right?

A Yes.

Q Subpart M deals with fall protection procedures?

A Yes, it does.

Q And Subpart M describes what conventional fall protection is per OSHA, am I right?

A Correct.

Q And you're knowledgeable about your training in the ANSI standards?

A Somewhat.

Q Well, you told us in your – you're knowledgeable that –

A Yes.

Q You're knowledgeable that American National Standard – ANSI A10.13-2001, the safety requirements for steel erection, you're knowledgeable about that standard, right?

A Correct.

Q And you're knowledgeable -- in fact, you told us it's an authoritative standard?



A Yes.

Q And this is one of the standards, rules for how connectors can and may and should govern themselves when erecting steel, one of the places we can go to is this ANSI standard?

A Correct.

Q And obviously you're knowledgeable about the contents of the site specific safety plans for Area?

A Correct.

Q Area's safety manuals?

A Correct.

Q Area's toolbox talks?

A Yes, sir.

Q These are all important training tools to use to inform ironworkers on safety?

A Correct.

Q And to enforce conventional fall protection safety on jobsites, right?

A Yes.

Q And that was one of your jobs?

A Yes.

Q And one for your foreman, we will just refer to Mr. Untersee for a second, that would be one of his jobs?

A Yes.

Q So we could reasonably expect and know that if anyone could know on this jobsite, this Panduit jobsite if there were any violations of OSHA Subpart R, you would know, right?

A I would have found out at some point, yes.

Q Right. And as well as Mr. Untersee, right?

A Yes.

Q So for instance, if OSHA Subpart R stated that shear studs on pour stops constituted -- if they were shop welded, that they constituted a trip hazard, you would know that, right?

A Yes.

Q And you do know that, isn't that true?

A I do.

Q Right. Because simply put, Subpart R of OSHA states that pour stops and studs, whether horizontally extending or vertically extending upward, they shall not be put on the steel in the shop, only after the decking is laid down, right?

A Per the standard, yes.

Q Right. And that's what the standard says, right?

A Yes.

Q And simply put, remember you told us when you would start, you would go to a jobsite to try to find out if there were any unsafe conditions, correct?

A Correct.

Q And you knew from the get-go that beams were coming out onto this jobsite, the perimeter iron, the mezzanine iron with pour stops and horizontal studs put on in the shop, right?

A No.

Q You didn't know that?

A No, I didn't.

Q Did you ever learn that?

A Yes.

Q Yeah. And you learned that --

A You said, correct me, I'm sorry, you said before -- before it came out I knew it.

Q Pardon me. If I misspoke, excuse me. When the beams started coming out to the site sometime in May of '07, you would have had knowledge of that?

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A Yes.

Q When you went out to the site -- I think the first time we have a site specific safety plan in which you were involved, I think we have a date of May 15th, '07, does that sound about right?

A Correct.

Q And that's when you would have read the plan to the ironworkers, right?

A Yes, I would.

Q That was your training, you would read the plan to them, right?

A We would go over it, and have a question, Q&A period afterwards, yes.

Q We will get into that in a second. So as of the mid May, you, yourself, person very knowledgeable about the contents of Subpart R, knew that shop installed trip hazards were being shipped out to the site where your ironworkers were going to work, isn't that true?

A Somewhat after they showed up. I didn't know prior to the shipping, no.

Q Once they arrived and you came to the site sometime in May, you knew that shop installed trip hazards were being installed on the top flanges of

some of the beams that were going to be erected by your men?

A I can't say that. I can say that I knew shop welded bent plate or Nelson studs were being welded on. I can't say they were all trip hazards, no, but they were welded on.

Q I'm not asking you if they're trip hazards. I'm asking you this.

A Okay.

Q Go ahead, sir.

The Court: Ask your question, Counsel.

The Witness: I'm asking what you said.

The Court: Wait for a minute. Wait for a question. Let's go.

By Mr. Luchsinger:

Q Sir, Subpart R of OSHA says they're trip hazards, isn't that true?

A Yes, but also --

Q No, I'm not asking about a but.

A Okay.

Mr. Patton: Your Honor, can he finish his answer?

The Court: This is cross examination just like with you. If it's a yes or no question, calls for a yes or no answer,

that's how he's supposed to answer it, or he can say I can't answer it yes or no and follow up from there.

The Witness: I have a problem with it.

The Court: You'll have a chance to question.

The Witness: I have a problem with the yes or no.

The Court: Just a minute, sir. Go ahead. Next question.

By Mr. Luchsinger:

Q The question is Subpart R of OSHA says if they're shop welded -- Strike that. Subpart R of OSHA says that the top flange of the structural steel beams is a walking, working surface for ironworkers. You're knowledgeable about that, right?

A Correct.

Q And then after that Subpart R says you must install these types of pour stops, bent plate, and studs in the field after the decking's laid, isn't that true?

A Yes.

Q Now, you also mentioned -- at the time I think you said you were a



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member of 498?

A I am or was.

Q Were you a member of 498 while you worked for Area?

A I was.

Q And you told us that certainly the -- there were union rules that pertain to safety, right?

A Yes.

Q And you were knowledgeable about those union rules?

A Yes.

Q And you're knowledgeable about safety provisions of the union that are contained in their own collective bargaining agreement?

A Yes.

Q And you're knowledgeable about those?

A Yes.

Q Okay. Sir, showing you what's been marked as Plaintiff's Exhibit 230 we showed to Mr. Untersee, this is the 498 agreement as of going up to May 31 of '07. Sir, according to your union agreement, Section 18 requires that the ironworkers of Local No. 498, that they refuse to erect, work, or walk on

any structural member which has any projection above the flat surface of said members. This refers to welding studs and shear connectors, which have been welded onto structural members in the shop. That was the union rule, correct?

A Yes.

Q Of your union?

A Correct.

Q It was -- 498 Area workers who were, amongst others, Mr. Untersee and Mr. Johnson, they had safety responsibilities?

A Yes.

Q One of the safety rules was right here, Section 18, right?

A Correct.

Q They were to refuse to erect any beams with shear studs on them, right?

A Correct.

Q And certainly you had the authority to tell them not to do that, right?

A Correct.

Q And they went ahead and did it, didn't they?

A Yes, they did.

Q Now, let's talk about the site

specific safety plans. You told us that we've heard several times that this was a 100 percent fall protection job. You said that, right?

A Yes.

Q And if we want to know the criteria for how to provide 100 percent fall protection, we would look at the plan that you wrote, sir, am I correct?

A You say criteria?

Q Yes, yes, how are you going to get 100 percent.

A Yes, there's options that are listed, yes.

Q And those options that are listed are full body harnesses, right?

A Correct.

Q Shock absorbing lanyards, correct?

A Correct.

Q Stanchions, correct?

A Correct.

Q Now, by the way, a full body harness is not an anchor point, correct?

A Correct.

Q A shock absorbing lanyard is not

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an anchor point, am I correct?

A Correct.

Q A stanchion with a horizontal lifeline, that's an anchor point, right?

A It is.

Q Okay. And perimeter cables can be an anchor point, right?

A If engineered properly.

Q Okay.

A Not all.

Q Maybe, maybe not, right?

A Not all.

Q Okay. And then retractable lifeline is another option. That's not an anchor point, correct?

A Correct.

Q So the only anchor point option listed in the safety erection procedures for fall protection in the site specific safety plan that you wrote were stanchions, am I right?

A Correct.

Q Okay. And then it has a stanchion system outlined in the paragraph that says each stanchion shall be attached to the structural steel member before it is hoisted, right?

A Right.

Q And then talks about decking operations, and we're not talking about decking operations here?

A No.

Q But it says these procedures can provide 100 percent fall protection, correct?

A Correct.

Q By the way, the word aerial or the words aerial lift or boom lift are nowhere found in this paragraph of the site specific safety plan that you read to your members and trained them on safety with regard to how this job was going to be run, is that true?

A It's not listed, true.

Q Okay. Now, by the way, I think you told the jury that aerial lifts are so recognized as fall protection that they're even contained in Subpart R of OSHA? Do you remember you told us that?

A Yes, that is.

Q I'm going show you Group 4.

A Sure.

Q And I'm going to ask you, sir, if you would take a minute, I'll open it

to Subpart R, we can just turn to page 335, and we can find Subpart R, right? That's the 2007 book, sir.

A Okay.

Q That's the book for this period. You got Subpart R right in front of you?

A I do.

Q And because you know so much about Subpart R, you're obviously going to be able to show us where -- where in Subpart R the safety rules for steel erection under OSHA where -- how they describe aerial lifts as such a component?

A I've been away from the field for a while, so I'm not sure if it's in Subpart R or if it's in the directive. There are directives that come after the fact.

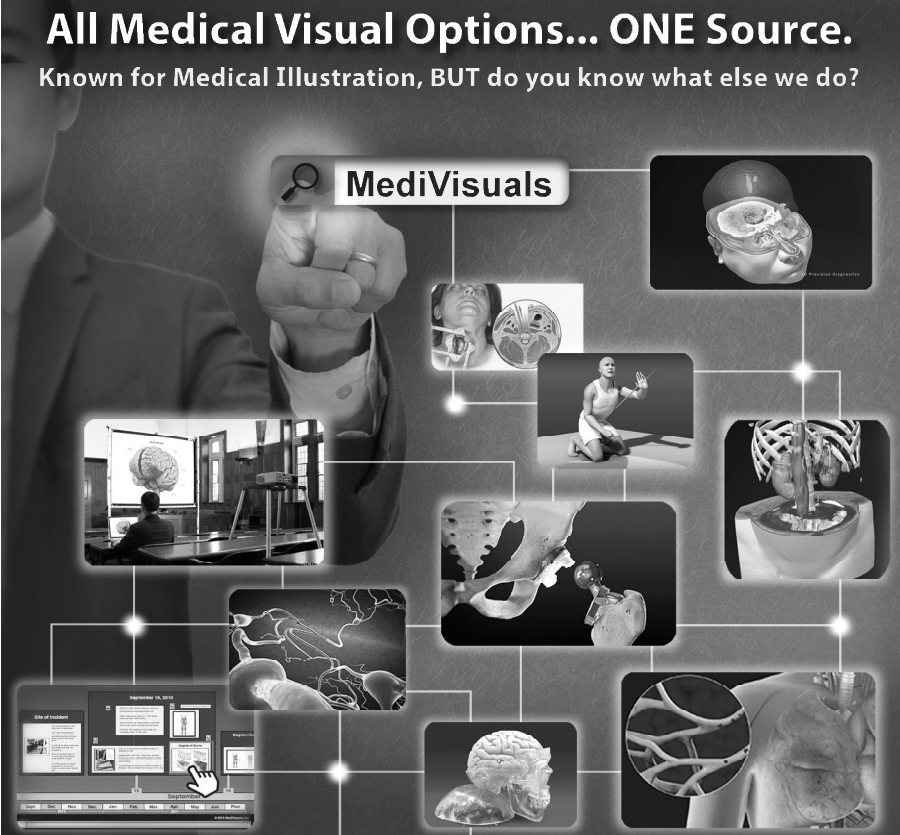
Q Respectfully, sir, I'm not asking about directives.

A Okay.

Q I'm asking about your testimony earlier where you told us that aerial lifts -- aerial lifts as fall protection were listed in Subpart R? That's all I'm asking, sir.

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A Well, I can tell you this --

Q I'm not asking -- can you show us --

A I can't find it right now.

Mr. Patton: Objection, he's trying to answer.

The Court: Just a minute. Your objection is overruled. The witness is instructed to answer the question. Ms. Court Reporter, put the question back to the witness.

(Whereupon the following question was read: "Q I'm asking about your testimony earlier where you told us that aerial lifts as fall protection were listed in Subpart R. That's all I'm asking, sir.")

The Witness: Okay. Let me look a little longer, then.

The Court: It's Group 4, isn't it?

Mr. Luchsinger: Yes, it is, your Honor.

The Witness: Under personal arrest systems, I think it's D-15 on the -- first, anchorages used for attachment of personal fall arrest equipment shall be independent of any anchorage being used to support or suspend platforms capable of supporting at

least 5,000 pounds per employee.

By Mr. Luchsinger:

Q Is that your reference?

A That would apply to it.

Q Can you show it to me, sir?

A I sure can. I lost my page. Under personal arrest systems, 15.

Q Okay. Thank you. Now, so it's -- 15 says -- and this is in -- so we're clear, this is on Page 345, Subpart R, appendix, fall protection systems. Talking about anchorages here, correct?

A Yes.

Q Anchorages used for attachment of personal fall arrest equipment shall be independent of any anchorage used to support or suspend platforms capable of supporting at least 5,000 -- and capable of supporting at least 5,000 pounds. That's your section?

A I'm thinking it might apply. I couldn't find -- we had a citation.

Q This is the section that, according to you --

A That's the nearest I could find, yes, sir.

Q Sir, we'll get back to that in a

second, but it raises a very important point. According to OSHA, any anchor point that's used in a fall arrest system has to be able to support at least 5,000 pounds, right?

A Correct.

Q And you'll find that in Subpart M, right?

A Yes.

Q You'll find that in Area's fall protection manual, right?

A Yes.

Q You'll find it right on the type of retractables that were being used on this jobsite, correct?

A Correct.

Q And you know the 600 series of JLGs that were being used on this site had an unrestricted weight limit, static weight load limit of 500 pounds, right?

A That is a working load limit for the basket, yes.

Q Right. And that says that and you know that JLG warns that if you exceed that weight load static in the basket, you may risk a tip-over of the

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basket, right?

A Under the right circumstances, yes.

Q Okay. 500 pounds is not 5,000 pounds, you agree with me on that, will you not, sir?

A Right.

Q In fact, if we look, actually, it's OSHA, and we look up aerial lifts is what we're talking about, right?

A Sure.

Q If we look up under aerial lifts, I've taken the effort to do so, the only place we'll find them discussed is on Page 372 under Power Transmission and Distribution. That's Section V, that's not section R, right, sir? Section V of Power Transmission and Distribution is not Section R?

A Actually listed, yes.

Q So the term aerial lift, boom lift does not appear anywhere in Subpart R, am I correct, to the best of your reading today?

A Not other than a directive.

Q I'm not asking about directives, sir.

A Not in the Subpart R, per Subpart R, yes.

Q All right. Now, so we were talking about anchorages because you called attention to the fact that an anchor point has to be -- has to support a minimum of 5000 pounds. Actually, do you have the Area -- before I go to the toolbox talk, counsel had shown you Bayer -- pardon me, Defendant's Exhibit No. 5, the Area Erectors safety manual. Do you remember he showed you that?

A Yes, yes.

Q And sir, if we want to know what Area's rules on fall protection are in that manual, then we will go to Section H, am I right?

A I haven't looked at that in a long time, so I would have to check.

Q Sure. Okay. Section H, sir, that's the fall protection program?

A Correct.

Q Now?

A Correct.

Q Okay. It has a cover page that says Fall Protection Program, right?

A Yes.

Q It has a table of contents page is next, right?

A Correct.

Q Then apparently it's got 12 pages of content, 3 through 12, right?

A Looks like it, yes.

Q Okay. Sir, isn't it true that in Area's own fall protection program, Section H of the manual, the word aerial lift or boom lift does not even exist, it's not in there at all, am I right?

A Correct.

Q Okay. Now, if we go, then, to the other thing -- one of the other things that counsel showed you, which I don't have his copy, remember he showed you the hazard recognition -- this is Plaintiff's Exhibit 3, your Honor. He showed you Area Erectors' work rules for employees. Do you have those in front of you?

A I don't know. This says 4.

Q That might be their -- defendant's number. A Is that the same one?

Q Is that the same?

A Looks like it.

Q Okay. By the way, sir, as we know, right on the cover of that hazard recognition manual you see an Area crane, correct?



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A I do.

Q And you see that it's -- it's got a nice little -- it says Work Rules For Employees, right?

A Correct.

Q Hooked on Safety, correct?

A Correct.

Q And what does it have attached to the top flange of the beam?

A Looks like a type of stanchion system.

Q Stanchion and lifeline system?

A And lifeline, yes.

Q Very system that was specified by you in the site specific safety plan for this job, right?

A No, it was given an option. It wasn't specified.

Q Remember, we looked at it. In the safety erection procedures fall protection, the only anchor point included is stanchions, am I right?

A If you look above that, no.

Q Okay.

A Area Erectors has the right per contract to implement only those aspects of the safety program that are required by the conditions of the

jobsite and applicable. I mean, these are options.

Q Sir, yes. And of these options that are listed, the only listed option that is an anchorage says stanchions, am I correct, sir?

A Correct.

Q Okay. Thank you. Now, if we're looking at your hazard -- by the way, we're going to find out and show here what we already know, that before Mr. Bayer fell, there wasn't a single stanchion on the job, isn't that true?

A I don't know. I can't --

Q You never saw one, did you?

A I don't remember seeing any, but I don't know.

Q Okay. We will get into that in a second. If we look at the work rules for employees, and we look at page 4, you got your work rules for employees in front of you?

A Is that the same one you handed me?

Q Yes, look at page 4, sir. That is the structural steel erection compliance with Subpart R section of this Area safety manual, right?

A Correct.

Q By the way, in that section, do they mention aerial lifts anywhere?

A No. There's usually a different section for aerial lifts.

Q So in the section that discusses Subpart R steel erection, Area Erectors does not even mention aerial lifts, isn't that true?

A Correct.

Q It does say that Area will be following a 15 foot rule, correct?

A That was prior to our 6 foot, yes.

Q It says 15 foot rule per OSHA, right?

A Yes.

Q Because Subpart R of OSHA says that for ironworkers, fall protection is not required until 15 feet for detail guys and welders and things, right?

A Correct.

Q Up to 30 feet for connectors, correct?

A Correct.

Q Now, by the way, since we're talking about anchorages, this is Bayer 126, this is the Area toolbox

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talk on fall protection, and of course, these are -- this is one of the training tools that you would utilize, correct, sir?

A Correct.

Q Okay. By the way, in this particular toolbox talk on fall protection, did you put together these toolbox talks, sir?

A No, I didn't.

Q Did you have a role in choosing these toolbox talks?

A No, I didn't.

Q Was this something that was -- just Area had before you became a safety person?

A Yes.

Q But in any event, we go to Area's training on fall protection per its toolbox talks, the words aerial lift don't exist in the document, isn't that true?

A That's true.

Q But what it does say in the document is that -- the last two sentences, the most important aspect of the fall protection devices is the anchorage point, right? Last two sentences, sir.

A Yes.

Q And you agree with that, don't you?

A I do.

Q It says all anchor points must be able to withstand a force of 5,000 pounds, right?

A That's what it says, yes.

Q So anyone on this job or any Area job, they were tying off to an anchor point that could not withstand -- was not OSHA approved 5,000-pound strength. If anyone was tying off to an anchor point that could not withstand a force of 5,000 pounds, that would be a violation of OSHA, correct?

A No, not in all cases.

Q Okay. So as far as you're concerned, then, Area ironworkers on some occasions, maybe we'll find out what those are, were permitted to tie off to anchor points that could not support 5,000 pounds per OSHA, am I right?

A Not only Area, anyone.

Mr. Luchsinger: Pardon me. Your Honor, I object to the nonresponsive nature.

The Court: Answer will be stricken. Ms. Court Reporter --

The Witness: Correct.

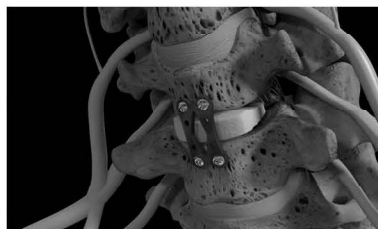
The Court: Just a minute. Ms. Court Reporter, reread the question. The witness is instructed to answer the question as asked, or if you can't answer it as a yes or no, you can simply say I can't answer it yes or no. (Whereupon the following question was read: "Q So as far as you're concerned, then, Area ironworkers on some occasions, maybe we'll find out what those are, were permitted to tie off to anchor points that could not support 5,000 pounds per OSHA, am I right?")

The Witness: Correct.

By Mr. Luchsinger:

Q Well, if you saw ironworkers on Area jobs tying off to anchor points that were not OSHA approved, did not -- did not fit the OSHA requirement, 5,000-pound anchor strength, sometimes that was okay with you, right?

A Yes.



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Q Okay. I think we're going to find -- we'll get there. Also, just to mention, Area also has a toolbox talk on aerial lifts, right?

A I guess they do.

Q You guess?

A I don't know every toolbox talk they have.

Q Excuse me. I thought that --

A I've been away from Area since 2009 -- or 2010. I don't know every toolbox talk they have.

Q Okay. Well, I'll show you. This is Plaintiff's 28-A. Have you ever seen this before?

A I probably did.

Q Aerial lifts?

A It looks like one of Area's toolbox talks.

Q Right, sir. And it states right on the first sentence, Aerial lifts can be a great tool when used properly. Unfortunately, these lifts can be very dangerous if misused. Right?

A Exactly.

Q Now, you would agree with me, would you not -- sir, would you agree with me, would you not, talking about

the site specific safety plan, that there's nothing in Area's site specific safety plan for this job or any job that tells an ironworker that a JLG-type man basket is acceptable anchorage after the ironworker has left the basket, isn't that true?

A Probably, yes.

Q And there's nothing in the Area site specific safety plan that says it is an acceptable practice to tie off to the basket as an anchor point after you've left the basket, right?

A Correct.

Q And you aren't aware of any aerial manufacturer's -- any aerial lift manufacturer's manual, whether Genie, JLG, or Terex, that states that it is acceptable to use a basket as an anchorage for fall protection after the ironworker has left the basket, correct?

A Correct.

Q You won't find that in any manual for aerial lift manufacturers that says after you leave our lift, you can tie off to our lift and go do work, you won't find it anywhere, right?

A Correct.

Q And you're not aware of any literature, safety standards, or policies that state that it is acceptable practice to use a man basket as an anchorage after a worker has left the basket, isn't that true?

A I can't answer that question.

Q Would your deposition refresh your recollection as to whether or not you knew?

A Sure, sure.

Q Approach, your Honor. This is your deposition?

A Yes.

Q Okay. Just calling your attention, just showing you that, ask you to read that silently what's been bracketed.

Mr. Patton: What page, Counsel?

The Court: Page, line? Page and line?

Mr. Luchsinger: Oh, that is page -- I apologize.

The Witness: Is it 161?

Mr. Luchsinger: I'll take it just for a second. This is Page 163, Lines 1 through 5.

practice tips continued on page 58

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By Mr. Luchsinger:

Q Does that refresh your recollection, sir?

A Yes, it does.

Q I'll take that back, if I may.

A And I still have a problem with it.

Q Well, it's correct to say, sir –

A I answered it no.

Q You were asked: Are you aware of any literature or standards or safety standards or policy – policies that state that it's an acceptable practice to use a man basket as an anchorage after the worker has left the basket? And your answer was?

A No

Q I'm sorry?

A No.

Q Under oath?

A Yes.

Q Okay.

A And I still have a policy – I have a problem with that question. I'm sorry. I misunderstood it at the time, and I still do now.

Q I think when we start looking at

some more evidence, we'll see that there was a problem.

A Okay.

Q I think we're going to see that.

Mr. Patton: Objection to the speech, Judge.

By Mr. Luchsinger:

Q And there's nothing in Area's safety manual that states that it is acceptable practice to use a man basket as an anchorage once a worker has left the basket, isn't that true?

Mr. Patton: Asked and answered.

The Court: He may answer.

The Witness: True.

By Mr. Luchsinger:

Q Now, sir, you actually from time to time went to this jobsite and took some photos of the Area ironworkers doing their work, right?

A I did.

Q You did so before the accident from time to time?

A I did.

Q In fact, on the date of the accident after Ron fell and he was taken to the hospital, you went to the site and took photos, isn't that true?

A I did.

Mr. Patton: Objection to what he did after the accident.

The Court: Overruled.

Mr. Patton: Relevance.

The Court: Overruled. These photos have been in evidence in this case. So let's go.

The Witness: I did.

By Mr. Luchsinger:

Q And it's correct that those photos that you took on that jobsite truly and accurately depict the customs and the practices that were used on this jobsite throughout the course of the project regarding how the ironworkers were erecting steel on the jobsite, right?

A I don't know if they accurately depict it. They were pictures taken at the time.

Q I'm sorry?

A Pictures taken at the time.

Q And they truly and accurately depict the customs and practices the ironworkers were using to erect steel on that jobsite, right?

A I don't know. I can't answer that.

Q Sir, Line 73, Line 1 through 18 -- Line 1 through 8.

Mr. Patton: I'm sorry, what page?

Mr. Luchsinger: Page 73, Counsel.

By Mr. Luchsinger:

Q You were asked this question, you gave this answer:

Q Those photos truly and accurately depict, not in its entirety but the customs and practices that were -- that were used on this job site throughout the course of the project leading up to June, leading up to the time the photos were taken that show how the ironworkers were erecting steel on this jobsite, correct?

A I would think so, yes.

Q You were asked that question, sir, and you gave that answer, am I right, sir?

A I guess.

Q Under oath?

A It's my deposition, yes.

Q We've looked -- we showed you some of the photos during your deposition, correct, do you recall?

A Yes, I -- yes.

Q Here's one of Mr. Komiskey –

A Yes.

Q -- climbing out of the basket? Remember we talked about that one?

A Yes.

Q He's got his retractable lanyard down below there, right? Maybe he's not tied off, but he tells us he was tied off, and his retractable was down there?

A Okay.

Q Now, for one thing, you are never supposed to step on the rails of a basket, right?

A Correct.

Q You're always supposed to step on the floor of the basket?

practice tips continued on page 60

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A When you're operating it, yes.

Q When you're operating -- doing anything?

A When you're operating the vehicle, yes, your feet have to be on the deck.

Q When you're working you're supposed to do it, stand on the floor, right?

A Unless you're exiting it.

Q Well, you're supposed to exit through a gate, sir?

A Well, I'm just saying, the feet are supposed to be flat on the floor except when you're exiting, yes.

Q That's a proper exit?

A No, no.

Q That's an improper exit?

A He should have resituated the basket, yes.

Q And by the way, the retractables, you know that those retractables warn that you're never to work above the retractable anchor point, right?

A Yes, they say that.

Q So that's a -- if he's attached to that retractable, that's a violation of

that manufacturer's recommendation and warnings, correct?

A I just said he should have resituated the basket.

Q So am I correct?

A Correct.

Q That shows a violation of the manufacturer's recommendation and warnings, right?

A Yes.

Q Climbing on the -- on the rails, that's a violation of the manufacturer's recommendations and warnings, right?

A Yes.

Q By the way, you told us that the rule that you taught your ironworkers was that if they are ever going to exit the basket, they're supposed to have two lanyards, right?

A Yes.

Q Do you see two lanyards in that photo?

A Only when they're transitioning.

Q Do you see two lanyards in that photo?

A No, I don't, no, I don't.

Q Did you ever see one photo on

this -- that was taken on this jobsite that showed an ironworker with two lanyards?

A I don't know. I haven't seen these photos for years. I really don't know.

Q Now, we also showed you No. 12. I think the jury has seen this probably several times now, but since you're the one that took the photo, here's Photo No. 12, right?

A Uh-hum.

Q Is that a yes?

A Yes.

Q That's an ironworker. He looks like he's on a beam?

A It does.

Q Does it look like he's got his hands up?

A It does.

Q Probably a connector, right?

A It does.

Q Pushing the beam?

A Yes.

Q Is that what connectors do, they get on the steel, and they push the iron around, right?

A Occasionally.

Q Okay. This is one of the

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occasions, right?

A Yes.

Q And here he is tied off with his retractable down –

A Yes.

Q -- to the basket?

A Correct.

Q And once again, just so we're clear, we know if -- you know no OSHA provision, no ANSI provision, no JLG provision, no Area provision, no literature provision that states that it's permissible to tie off to a basket with a unrestricted weight limit of 500 pounds as an anchor point once you've left the basket, right?

Mr. Patton: Asked and answered.

The Court: Overruled. I didn't hear the answer.

The Witness: Correct.

By Mr. Luchsinger:

Q And simply put, on this jobsite, the ironworkers on this jobsite when connecting steel climbed out of baskets and got out on the iron just as shown in these photos, right?

A Yes.

Q That was the practice on the job, right?

A Yes.

Q Didn't you tell us that when you instructed these guys per the site specific safety plan, you told them that they're always supposed to stay in the baskets?

A I told them they're supposed to be tied off 100 percent. He's tied off.

Q In your view tying off to a JLG basket after you've left the basket, that's an acceptable practice to you, right? Right?

A Are these yes and no questions?

The Court: It does call for a yes or no answer.

The Witness: Yes.

By Mr. Luchsinger:

Q All right. So Area Erectors was fine with the idea for safety to have their ironworkers climb out of the baskets using retractable lanyards and then get on the iron and use the basket as an anchor point, am I right?

A When it wasn't -- when they weren't able to do it from the basket. Primarily,

preferably, from the basket, but yes.

Q And obviously we know from the photos that there were times when the ironworkers had to get out of the basket to do their work, right?

A Yes, they did.

Q We saw Mr. Komiskey, right?

A Yes.

Q Whoever this gentleman is, we can't tell, but ironworkers just did that, right, on this job?

A On some occasions, yes.

Q And by the way, you never issued any sort of warning or disciplinary notice to any ironworker for climbing out of the basket and getting on the iron, isn't that true?

A No, it's not true.

Q You did?

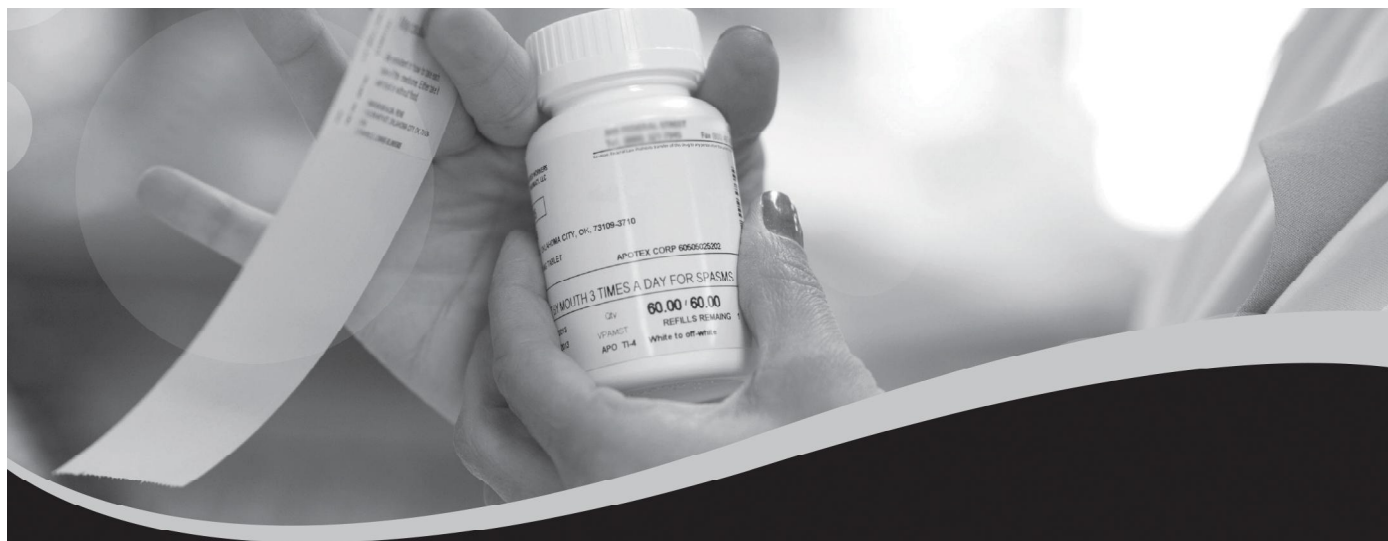
A Yes, I have.

Q On this job?

A You didn't say this job.

Q Oh, no, I'm sorry. My apologies. On this job you never issued any warning or any disciplinary action for any ironworker who got out of the baskets, right?

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A Not written, no.

Q Okay. All right. And you're the one that took the photos, right?

A Some of these photos. I can't take responsibility for all of them. Yes, some of them I've taken. Like I said, it's been since 2007.

Q I'm not asking about --

A Not all of them.

Q In fact, in your view, from Area's point of view, an ironworker on this jobsite who climbed out of the basket, remained tied off to the basket, and then traveled some distance away from the basket, you did not view that as an unsafe condition, did you?

A In some cases, yes.

Q You did. Okay. Because if you violate manufacturer's recommendations and warnings, that could be unsafe, right?

A No. That wasn't what I was getting at.

Q Well, that's what I'm getting at.

A No, not in all cases, no. I'm a safety professional, no.

Q If we look at the retractable

lanyard that you guys used on this job, it warned right on the top, right on the lanyard itself that alteration or misuse of this product or failure to follow instructions may result in serious injury or death, am I right?

A Correct.

Q And you agree with that, correct?

A I agree with that 100 percent.

Q And then they tell you how to use it so you don't subject yourself to potential serious injury or death, right?

A Ideally, yes.

Q Well, they didn't use the word ideally here, did they?

A I'm telling you --

Q I'm not asking you about --

A Yes, yes, yes.

Q It says anchorage strength requirement, 5,000 pounds, we already talked about that, right?

A Yes.

Q Anchor unit as directly above work area as possible to reduce swing fall hazard, correct?

A Key words as possible.

Q Do not work above anchorage

level. Do you see where it says that?

A I do see that.

Q That doesn't say if possible, that just says don't do it, right?

A It says do not do it.

Q And we know from the photos on this jobsite that the ironworkers on this jobsite were given a system whereby they were provided with retractables and then used them to tie off below themselves and tie off to get up on the iron from time to time, correct?

A Correct.

Q That was a system that you knew about, right?

A That is a system, yes.

Q That was a system that you not only accepted but you allowed -- permitted to exist, right?

A On occasion, correct.

Q One more photo if I may. By the way, showing you one other photo here. This is D-10. This is another photo that Area produced to us in this jobsite. You see the ironworker up on the beam?

A I do.



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Q You see his retractable lanyard going down to his basket?

A I do. I don't know where that's going to. I see it breaking over the iron. I don't know where the anchorage point is from that picture, no, I don't.

Q Well, sir, the anchorage point is away from him, right?

A Yes, but it could be another beam or on a stanchion -- on a beam or something or a top flange. I can't see where it's anchored, sir.

Q Fair enough. Does the aerial lift -- Strike that. Did the retractable lanyard manufacturers warn that you were to mount the anchor point above you to protect you against swing hazards?

A It said as possible, as much as possible, that's what the wording was, yes.

Q If that fellow fell off the steel, would he be subjected to a potential swing hazard?

Mr. Patton: Calls for speculation.

The Court: Overruled.

The Witness: From that angle, no.

By Mr. Luchsinger:

Q So if an ironworker was working from this angle with a retractable lanyard, as far as you're concerned, that would not subject him to a potential swing hazard, am I right?

A I'm saying depending on where he -- which way he fell. I can't tell you how he's going to fall. He going to fall forward or backwards. I can't tell you that.

Q I didn't ask you.

A I don't know. I can't tell.

Q You don't know if an ironworker fell from that position with the retractable lanyard located where it is stretching down to wherever anchor point it's got, you don't know if that would subject him to a swing hazard, right?

Mr. Patton: Asked and answered.

The Witness: No, I can't tell.

The Court: Overruled. If you hear on objection, why don't you wait until I rule on it.

The Witness: I'm sorry.

The Court: That's all right

By Mr. Luchsinger:

Q By the way, I apologize to the court for my own bit of disorganization here. By the way, is there an OSHA provision that states that the purpose of tying off to the basket is to keep the worker from being thrown out of the basket?

A I think there is.

Q Okay. But that's the whole purpose, right, you don't want the worker to fall out of the basket or get thrown out of the basket?

A I don't know if that's the sole purpose, but that's one reason why, yes.

Q Now, you knew that Area was supplying these guys, these ironworkers with retractable lanyards that could stretch 16 feet, right?

A 11 feet, I think. I don't know about 16.

Q Well, actually, the ones that we took the photo of, the photo you took in Mr. Bayer's basket and other ironworkers have told us that it was

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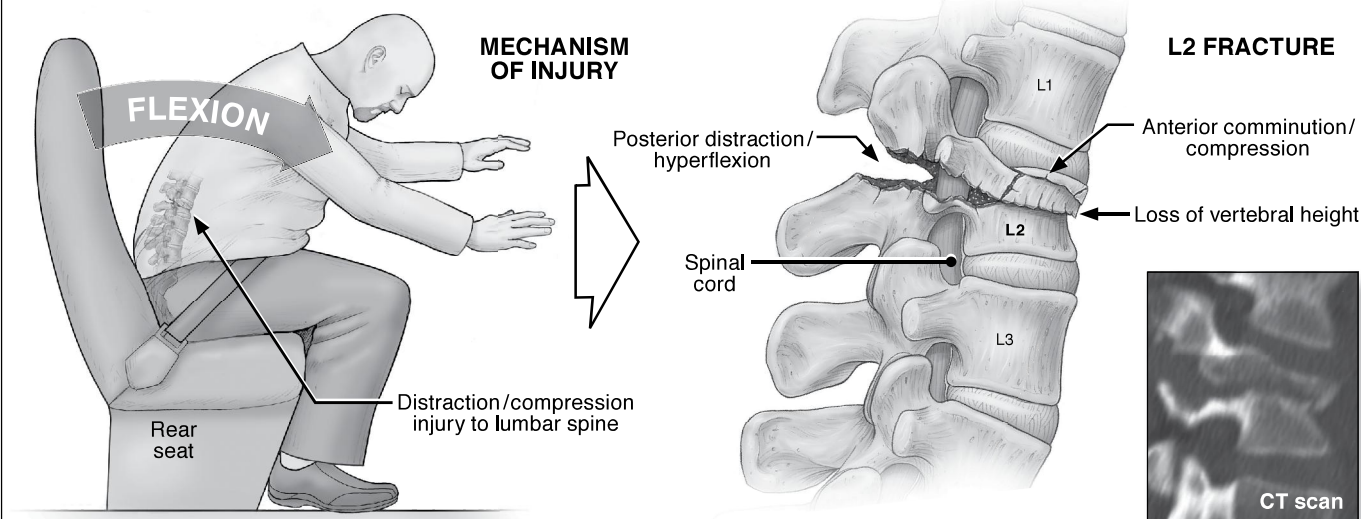
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this model, and we've gone, we talked to Mr. Wolner, the vice president of the manufacturing, and this is a 16 foot?

A It could have been.

Q You knew that you were giving ironworkers retractable lanyards to use in the baskets that could extend 16 feet, right?

A In that case I was, I guess, I guess.

Q Now, the only purpose to give an ironworker or anyone a retractable lanyard to tie off in the basket so they can travel 16 feet would certainly envision that they're climbing out of the basket from time to time?

A On occasion, on occasion, yes.

Q So you certainly knew that?

A Yes.

Q It was known from the beginning of this job that ironworkers were going to be climbing out of baskets from time to time, right?

A Yes.

Q That's one of the reasons the site specific safety plan talked about stanchions, because stanchions were only utilized if ironworkers were going to be on the steel, right?

A That's one form.

Q Okay. But they're only utilized if -- stanchions -- if ironworkers are going to be out on the iron, correct?

A Correct.

Q So it was no secret to Area at any point in time that ironworkers were going to be doing their ironwork on the structural steel beams from time to time on this job, right?

A It was -- I'm sorry, I don't understand the question.

Q It was no secret to Area that ironworkers were going to be on the steel doing their work out of the baskets from time to time on this job, right?

A They were going to be on the steel. I'm not saying on the baskets. We use the baskets as much to utilize them staying in the basket. That's why we use the baskets.

Q That's not what I'm asking, sir.

A Okay.

Q It was no secret to Area that ironworkers were going to be getting out of the baskets on the steel to conduct their work from time to time, right?

A Okay. Correct.

Q And in order to do that Area had to supply proper OSHA approved fall protection for them when they were on the steel, right?

A Correct.

Q And you have to agree -- I think you'll agree, maybe you won't. Tying off to baskets after you've left the steel -- Strike that. Tying off to baskets after you climbed out of the basket onto the steel and traveling laterally, that basket is not an OSHA approved anchor point, am I right?

A I cannot agree with what you're saying there because I don't know where the anchorage point is. I can't see if it's tied off to a basket. It looks like it could be to a beamer that's clamped on the top flange. I can't tell that from that photo. You're referring to that. I can't tell.

Q Let's take the photo down. I'm not referring to the photo.

A Okay.

Q It's correct to say -- and we just asked the question about there's no literature that allows baskets to be used as anchor points, remember we talked about that?

A Yes.

Q Is it fair to say that using a basket, a 500 pound unrestricted weight limit basket as an anchor point after you've left the basket, that's not an OSHA approved anchor point, I am right?

Mr. Patton: Asked and answered.

The Court: Overruled. You may answer.

The Witness: 500 pound unrestricted is not what those baskets -- those baskets are rated. The anchorage points on those baskets are rated for 5,000 pounds, or there would not be a proper anchorage point to begin with, sir.

By Mr. Luchsinger:

Q Sir, showing you Exhibit 158. This is one of the decals right on the JLGs?

A Exactly, exactly. I know what it's talking about. We're talking capacity.

Q Right.

A Men and equipment.

Q 500 pounds?

A Men and equipment. You need to know what you're talking about, sir. Men and equipment.

Mr. Luchsinger: Your Honor, I object to the nonresponsive narrative argument at this point in time, and I'd ask --

The Witness: I apologize.

The Court: Mr. Pettit, you will restrain yourself and answer the questions asked as best you can. If you need a break --

The Witness: I'm sorry.

The Court: -- for some reason, then let me know, but otherwise I would like you to respond to these questions in this trial as this is an important case to everyone concerned. Can you do that for us?

The Witness: I can. I'm sorry.

The Court: Ms. Court Reporter, I would like you to put the question last asked of this witness.

(Whereupon the following question and answer read: "Q 500 pounds?

A Men and equipment. You need to know what you're talking about, sir. Men and equipment.")

The Court: Put the question, not the answer.

The Witness: I apologize.

The Court: That's okay.

Mr. Luchsinger: Let me try a fresh question.

The Court: Rephrase the question, then.

By Mr. Luchsinger:

Q It's correct to say that right on the JLG lifts that you were having your men work in and out of on this jobsite, JLG stated that the unrestricted capacity was 500 pounds, right?

A Correct.

Q Under very limited circumstances up to 1,000 pounds, right?

A Correct.



Q That's everything in the basket at the same time, tools, equipment, welders, welding leads, et cetera, right?

A Correct.

Q And then right next to it it has a warning, right, correct?

A I don't know where that other sticker is. It could be right next to it, yes.

Q Do you see it?

A No -- that was taken -- I don't know where these came from. I'm sorry.

Q These came from the 600 series JLG lifts.

A It came off of the lift? I didn't know if they were just collaged. I didn't know. I'm sorry.

Q Fair enough. Right next to it it says, Warning, tip-over hazard, right?

A Yes.

Q Do not exceed the platform capacity, correct?

A Correct.

Q It's warning that if you exceed the platform capacity of 500 pounds or 1,000 pounds, very limited circumstances, boop, the lift can tip over, isn't that true?

A Under the right conditions, yes.

Q Actually, under the wrong conditions?

A Or wrong conditions, yes.

Q And again, 500 pounds, 1,000 pounds, that ain't 5,000 pounds, right?

A Correct.

Q Now -- oh, do you have the ANSI standard? So we've already talked about the fact that if you misuse, don't use the retractable lanyards according to the manufacturer's recommendations and warning, that could pose an unsafe condition, right?

Mr. Patton: Asked and answered.

The Court: Preliminary. He may answer.

The Witness: Correct.

By Mr. Luchsinger:

Q And if you use a JLG lift as an anchor point, the basket as an anchor point as you leave it and walk out, walk out on the iron, climb out on the iron, if you fall, there's at least a potential for tip over, right?

Mr. Patton: Asked and answered.

The Court: That has been asked and

answered. Where we going?

Mr. Luchsinger: Going right here, your Honor. Pardon me.

By Mr. Luchsinger:

Q Remember we talked about the ANSI standards?

A Yes.

Q A10.13 for steel erection?

A Okay.

Q And we talked about the fact that you're knowledgeable about these, correct?

A Somewhat.

Mr. Patton: Asked and answered.

The Court: Overruled.

By Mr. Luchsinger:

Q Let's look at what ANSI has to say for connectors -- about connection right in the standard. It states, correct me if I'm wrong, that a connector who thinks that tie off creates a greater hazard may personally opt to disconnect his safety lanyard during the time he receives incoming loads. See that, sir?

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A I see that.

Q That's one of the standards for steel erection, sir?

A It is, yes, it is.

Q It's recognized in the field as one of the customs and practices in the field, if a connector is supplied with a fall protection system or what they're calling a fall protection system, that may subject him to danger, that may subject him to injury, he can opt to untie, isn't that true, sir?

A True.

Q Okay. Now, if someone like an ironworker like Ron Bayer was up on a beam that was about 14 foot above the surface, he would not be in violation of any OSHA standard, right?

Mr. Patton: Asked and answered.

The Court: I never asked that once, your Honor.

Mr. Patton: We went into that.

The Court: Overruled, overruled.

The Witness: Correct.

By Mr. Luchsinger:

Q And he would be in violation of

any OSHA standard up until 30 feet, right?

A As long as he had the capability, yes.

Q And if an ironworker like Ron Bayer or any other ironworker who was working above about 14 foot up, and he was looking at a system that asked him to tie off to some basket when he wasn't supposed to using a retractable lanyard that said don't do it, it might subject you to serious injury or death, if he deemed that to be an unsafe system, he had the right under the ANSI standard to untie, isn't that true, sir?

Mr. Patton: Objection to -- objection to the form of the question and the relevancy of that question given the facts in this case.

The Court: Overruled. Ms. Court Reporter, put the question again for the witness.

(Whereupon the following question was read: "Q And if an ironworker like Ron Bayer or any other ironworker who was working above about 14 foot up, and he was looking at a system that

asked him to tie off to some basket when he wasn't supposed to using a retractable lanyard that said don't do it, it might subject you to serious injury or death, if he deemed that to be an unsafe system, he had the right under the ANSI standard to untie, isn't that true, sir?")

The Witness: No.

By Mr. Luchsinger:

Q That's what the ANSI standard says. Let's take another look at it.

A Our --

Q I'm not asking about our. I'm asking about ANSI standards, sir. You'll get a chance to talk about other things.

A Under the ANSI standards, yes.

Q I'm sorry?

A Under ANSI, yes.

Q That's all I'm asking.

A Sorry.

Q So under the ANSI standard if Ron Bayer as a connector deemed whatever was provided him, a basket and a retractable that would require him to misuse the retractable in the



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basket and subject himself to serious injury or death under the ANSI standard, he had the right to choose not to tie off and subject himself to danger, isn't that true?

Mr. Patton: Same objection as to facts not in evidence, relevancy.

The Court: Objection is overruled. He may answer.

The Witness: Correct. If I understand you correctly, there's so many parts to that when you're saying that, I think correct.

By Mr. Luchsinger:

Q Okay. Now, let's go to another topic. You told us that these -- with regard to this jobsite over -- in terms of safety -- Untersee had some safety responsibility, you told us that?

A Yes, he does.

Q And you were above Mr. Untersee, right?

A We were on the same level.

Q Okay. Fair enough. In any event, Panduit was the general contractor on the job, right?

A Correct.

Q Per your own site specific safety plan, Panduit was the controlling contractor on the job, right?

A That's what it says, yes.

Q And that was the plan that you prepared, right?

A Correct.

Q Okay. Now, is it correct to say on job sites such as this with all your years of experience you're knowledgeable about the customs and practices in the construction industry with regard to the hierarchy of authority on construction jobsites?

A Sure.

Q And if we want to talk about the hierarchy of authority among contractors on jobsites, the custom and practice is -- among the customs and practices regarding that is that the general is at the top of the hierarchy in terms of control, isn't that true?

Mr. Patton: Objection to the form of the question.

The Court: Overruled.

The Witness: I don't know -- the way you're wording it, I don't know.

By Mr. Luchsinger:

Q And I'll ask the question, to be fair to you, what about my wording is difficult? I want to fix it.

A There's a chain of command, but as far as hierarchy and who, I don't know -- I know who we work for. We work -- we -- we sometimes are hired directly as a company, as an erector by the owner or the general contractor. Sometimes we work through the fabricator, they hire us. So I don't know. It's not always the same.

Q Just a second here. Okay. Sir, you were asked various questions at your deposition regarding the hierarchy of authority on this job, am I correct?

A Okay.

Q Am I right?

A Okay. Yes I was.

Q I'm on page 65 and 66, Counsel. Of course, at the deposition you told the truth?

A I did.

Q Took the same oath you took today?

A If I understood the question

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properly, I told what I understood, what I thought I understood.

Q Okay. Fair enough. At that deposition you were asked these questions, and you gave these answers, sir, Line 24 on 65:

Q Generally speaking, on a construction jobsite there is a hierarchy of authority, would you agree, among the contractors?

A Yes.

Q If we want to know the company that customarily is at the top of the hierarchy, at the top of the pyramid of authority, so to speak, on any construction job, generally it's the general contractor, correct?

A Usually.

Q And on this job, that was Panduit?

A Yes. Did I ask --

A Correct.

Q Now, if Panduit as the -- as the general contractor, they had the authority to exercise control over safety on the job, right?

A They did.

Q And that's according to the

customs and practices in the industry, right?

A Correct.

Q By the way, you said when you went out there from time to time, went out to this jobsite, when you went out to the jobsite from time to time, you could see beams like this one, 112-C, with the shop welded bent plate and shear studs, right?

A Only when they were erected. When it was part of the -- the assembly you've got depicted there.

Q Well, actually, if we look at 8, you're familiar with the fact that this is a photo from the jobsite. As an ironworker, you're familiar with the fact that they have a lay-down area, right?

A Yes, yes.

Q And is it correct to say that usually the custom and practice is that the general contractor, the controlling contractor tells the ironworkers where their lay-down area can be, right?

A They do in some cases.

Q That's part of Subpart R, isn't it?

A Yes.

Q Okay. So the general contractor, in

this case, Panduit, they certainly knew where the lay-down area was, right?

Mr. Patton: Objection as to what Panduit knew, foundation.

Mr. Luchsinger: I'll rephrase.

By Mr. Luchsinger:

Q You would have expected the general contractor, Panduit, who determined the lay-down area to know where it was, right?

A Yes.

Q And beams such as the ones shown in Exhibit 8, they could be seen from time to time in the lay-down area, right?

Mr. Patton: Objection as to what could be seen, foundation, form.

The Court: Overruled in light of his previous testimony. You may answer.

The Witness: From time to time as long as they were working in that area, erecting them, they don't sit there forever, yes.

By Mr. Luchsinger:

Q Right. They sit in the lay-down area which -- see one over here with a choker on it, don't you?

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A Right, right.

Q So the beams are -- you hear the phrase shake out, shake out some iron?

A Yes.

Q The crane swings over and then steel is taken off the trucks, and it's usually in bundles and kind of jumbled together, right?

A Correct.

Q Then they hook some shake out hooks to the crane, and the ironworkers lay out the beams at certain distances, right?

A They do, they do.

Q So you can see what the beam is and what the number on the beam is, correct?

A Correct.

Q Okay. And then the beam at some point in time is hoisted, put up in into the structure, right?

A Correct.

Q Whether it's on the ground or up in the air, pretty open to see the iron on that job, right?

A Yes.

Q Okay. Now, we talked about the site specific safety plan and the

sole option of stanchions in that fall protection paragraph. It's correct to say that if Panduit told Area that Panduit wanted that particular part of the fall protection plan, the stanchion system, put in place on the beams, Area would have had to do it, right?

A I would think so.

Q Okay. Because they're the controlling contractor, right?

A I would think so.

Q And it's correct to say that you would have expected -- OSHA has a phrase competent person, right?

A Yes.

Q It has a particular meaning, right?

A Yes.

Q That means someone who is knowledgeable about how to identify safety hazards on a construction jobsite, right?

A Correct.

Q And someone who's knowledgeable enough if he or she identifies safety hazards to figure out how to fix them, right?

A Correct.

Q And you would have expected

Panduit as the controlling contractor on this jobsite to have its own competent person on the job who knows fall protection, isn't that true?

A I don't know if I would have expected it. I would think that they would know something about safety.

As far as fall protection pertaining to ironworking, I don't know.

Q You took a deposition in this case, sir?

A I did.

Q Once again, you told the truth?

A Yes, I did.

Q Talking about your knowledge of the customs and practices in the field at the time?

A I did.

Q Page 144, Counsel. 141, pardon me. Start at line 7. You were asked these questions and you gave these answers:

Q You would expect Panduit to have a competent person on the jobsite, wouldn't you?

A Yes.

Q I mean, certainly you would

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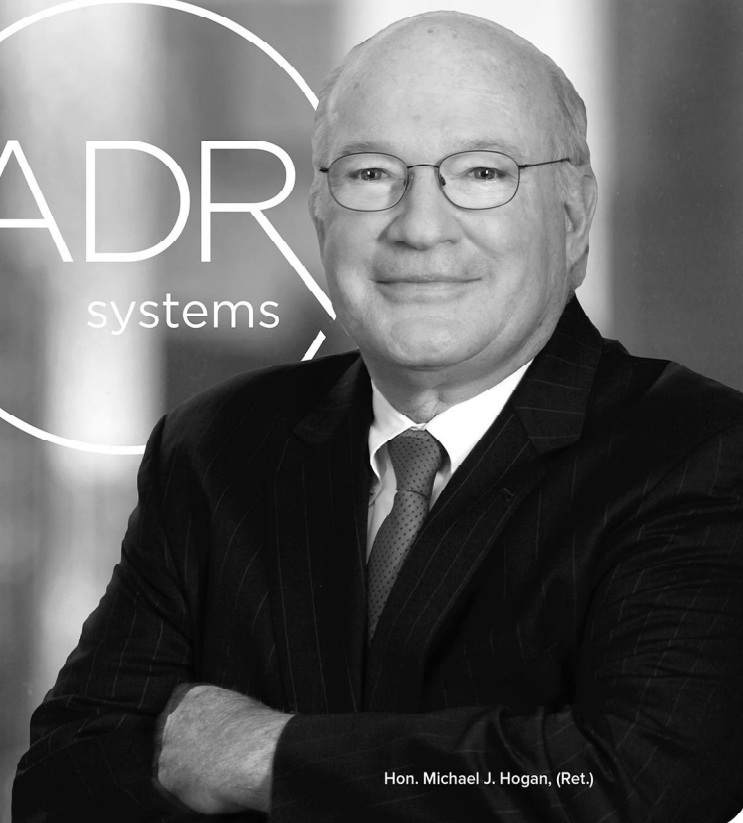
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Hon. Michael J. Hogan, (Ret.)



expect Panduit to have someone performing tasks with regard to this project who had a working knowledge of OSHA, correct?

A Yes.

Q You were asked those questions, and you gave those answers, right?

A Correct.

Q Because as the controlling contractor and per Panduit's own safety rules, they had the authority and responsibility to enforce OSHA, right?

Mr. Patton: Objection as to responsibility, legal conclusion.

The Court: You led in direct examination, overruled.

The Witness: Can you repeat it? I'm sorry.

(Whereupon the following question was read: "Q Because as the controlling contractor and per Panduit's own safety rules, they had the authority and responsibility to enforce OSHA, right?")

The Witness: Correct.

The Court: I didn't hear the answer.

The Witness: Correct.

By Mr. Luchsinger:

Q In fact, Panduit, as the controlling contractor -- by the way, when you say enforce OSHA, OSHA includes Subpart R, which we've already talked about, right?

A Yes.

Q And Subpart M, right?

A Yes.

Q The 5,000 pound anchorage point required, right?

A Correct.

Q The prohibition of studs, shop welded studs on beams, right?

A Correct.

Q And Panduit had the authority as the controlling contractor on this jobsite to stop any work it deemed unsafe until the work was made safe pursuant to Panduit's own directives, isn't that true, sir?

A Correct.

Q I'm sorry?

A Correct.

Q I'll just ask it this way. If we have to go farther -- I'm trying to quicken it up

here. Panduit had the authority also to enforce the ANSI standards, right?

A Correct.

Q We've already looked at one of the ANSI standards regarding connectors having the right to untie if they're given unsafe tie-off options, right?

A Correct.

Q If Panduit had any reason to know that any of the OSHA or ANSI standards were being violated, Panduit had authority on this jobsite to stop work until the work was made compliant with those safety standards, isn't that true?

A True.

Q Now, you got those Panduit safety rules? You put them in my hand. I'm sorry. Now, Panduit had their own safety and security guidelines for this job, right?

A They did.

Q So they had their own site specific safety rules, right?

Mr. Patton: Objection to the form of the question. Site specific, it's not the

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title of the document.

The Court: If he knows, he may answer.

The Witness: I don't.

By Mr. Luchsinger:

Q Well, these rules were -- they were applicable to this work, right?

A I don't know. I don't know if I've seen that document. It's been a long time. I don't know. I can't see it.

Q That's fair enough, sir. 22-A, take a look at that document, sir, and I'm going to call your attention to subparagraph 3.

A Okay.

Q And I'm going to ask you to assume for purposes of these questions regarding that --

A Okay.

Q -- that the Panduit contract for this jobsite, the Panduit-Garbe contract, included those safety rules in the safety section of the contract as applicable to this job. I'm going to ask you to assume

--

A Okay.

Q -- that as a fact.

A Okay.

Q Now, assuming that as a fact --

A I'm sorry, what were you assuming again?

Q I'll withdraw that question.

A Okay.

Q Let me put it this way: Panduit had the authority to require whatever safety rules they wanted to be followed on this job followed, right?

Mr. Patton: Asked and answered.

The Court: It has been, but you may answer again.

The Witness: Sure.

By Mr. Luchsinger:

Q If Panduit wanted Area to put proper anchored points to actually permit an OSHA compliant 100 percent tie-off system in place, Panduit had the authority to require that, isn't that true?

A Yes, they did.

Q Panduit had the authority to require Area to put in perimeter cable if they wanted, right?

A That would be a discussion that is -- I'm not part of, so I don't know.

Q Sir, at your deposition you were asked this question, gave this answer, page 93, line 24 up to 94:

Q And certainly Panduit had the authority to require perimeter cable placed whenever Panduit desired, correct?

A Yes.

A Okay. If that's my answer, yes.

Q One second, if I may, your Honor. Panduit had the authority to require that the JLGs on this jobsite, that they be operated in accordance with JLG's manual, isn't that true?

A Yes.

Mr. Patton: Same objection as to responsibility.

The Court: There were questions on direct as to who had the duty to enforce safety, so he can answer the question.

The Witness: Can you repeat the question?

(Whereupon the following question was read: "Q In fact, pursuant to OSHA, Panduit had the responsibility to make sure that the JLGs were operated in accordance with the JLG manual, isn't that true"?)

The Witness: True.

By Mr. Luchsinger:

Q Now, you talked about -- we talked about the retractable lanyards. Remember we talked about that?

A Yes, we did.

Q And we know that also with the lanyard came a manual, correct?

A Correct.

Q That's custom and practice, right?

A Right.

Mr. Patton: Objection, asked and answered multiple times on retractable lanyards.

The Court: Sustained. Where we going, Counsel? It's getting late.

By Mr. Luchsinger:

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Q It's correct to say that Panduit had the authority to read the retractable lanyard instructions whenever they chose, right?

Mr. Patton: Same objection. We've covered this topic, Judge.

The Court: He may answer that question. Go ahead.

The Witness: Correct.

By Mr. Luchsinger:

Q Simply put, Panduit had the authority to exercise control, safety on this jobsite, right?

Mr. Patton: Asked and answered multiple times.

The Court: Last time. Answer the question.

The Witness: Correct.

By Mr. Luchsinger:

Q And Panduit did that on this jobsite, isn't that true?

Mr. Patton: Same objection.

The Court: It has been covered, Counsel, but answer the question, sir.

Mr. Luchsinger: Last thing, your

Honor. I'll withdraw it.

The Court: All right. Let's go.

By Mr. Luchsinger:

Q You mentioned that you attended some various safety training seminars at the Chicagoland Council of -- Safety Council?

A Construction Safety Council, yes.

Q Thank you. That's a construction safety council that anyone can attend that, right?

A Yes, anyone can.

Q Right. And if someone from Panduit wanted to learn about OSHA or ANSI or construction safety or fall protection, they could send any of their guys or ladies over to there to take some courses like you did?

A They could.

Mr. Patton: Objection to the form, calls for speculation.

The Court: Overruled. Answer stands.

Mr. Luchsinger: And I'm sorry, your Honor --

The Witness: Correct.

Mr. Luchsinger: -- was that overruled?

The Court: It was overruled. I thought he gave an answer. The answer is correct?

The Witness: I'm sorry. Correct.

By Mr. Luchsinger:

Q There is no special rule in the construction industry that says only a safety rep can attend those training seminars?

A No.

Mr. Patton: Objection, form of the question, relevancy.

The Court: I think we're getting a little collateral here. Let's move on.

Mr. Luchsinger: Three or four more, sir.

By Mr. Luchsinger:

Q By the way, you went out to the site I think approximately once a week, right?

A Correct.

Q Panduit was on-site every day, right?

A I couldn't say for sure. It was -- I can't assume that.

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Q Okay. It's customary for the general contractor to have a superintendent or manager on the jobsite on a daily basis?

A On most jobs, yes.

Q Okay. All right. And lastly, counsel had told -- asked you some questions earlier, and apparently, if I heard it correctly, you were flown up at counsel's expense?

A Yes, I was.

Q From what state?

A Florida.

Q And they put you up in a hotel?

A Yes.

Q What hotel, sir?

A Courtyard Marriott.

Q Now, I presume, correct me if I'm wrong, that you had the opportunity to discuss when counsel -- did they call you on the phone when you were down in Florida?

A I was subpoenaed.

Q Okay. All right. Did you ever have

any phone consultation with regard to coming up, or did you just get on a plane and come?

A I did talk to someone in the office or my wife did, yes.

Q And when you got up here and you got placed in the hotel, had you had any meetings with counsel to discuss your testimony today?

A Correct.

Q And did you discuss your testimony with counsel today?

A No, not my testimony. We discussed -- refreshed what -- some of the stuff, and I also went over my deposition.

Q Fair enough.

A Yes.

Q And for how long did you sit with counsel and go over these documents and go over your deposition testimony?

A A few hours.

Mr. Luchsinger: Okay. Thank you very

much. I appreciate it, sir.

The Court: Mr. Patton, you want to proceed now?

Mr. Patton: I do, because --

The Court: Folks, I think we better take a break. I see some smiles over there, which means there's groans, so jurors to the jury room.

Jay Luchsinger is a trial attorney and partner at Horwitz, Horwitz & Associates, trying cases primarily in the area of construction/industrial injury (plaintiff) for over 25 years. Along with his Horwitz trial team, he has won numerous record verdicts. Before becoming a trial attorney/litigator Jay worked for 15 years as a journeyman structural ironworker, attending John Marshall Law School at night after a day of erecting steel in downtown Chicago.



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