

1 SECOND JUDICIAL DISTRICT COURT
2 COUNTY OF BERNALILLO
3 STATE OF NEW MEXICO

4 CV-2011-09344

5 SIMON LEES, ET AL. ,

6 Plaintiffs,

7 vs.

8 STOREFRONT SPECIALTIES AND GLAZING, LLC, ET AL. ,

9 Defendants.

10

11 TRANSCRIPT OF PROCEEDINGS

12 On the 14th day of December, 2012, at approximately 9:00
13 a.m. , this matter came on for hearing on JURY TRIAL before
14 the C. SHANNON BACON, Division XXIII, Judge of the Second
15 Judicial District, State of New Mexico.

16 The Plaintiff, SIMON LEES, ET AL. , appeared by Counsel
17 of Record, GREGG FALLICK, Attorney at Law, 100 Gold Ave. ,
18 S.W. , Suite 205, Albuquerque, New Mexico 87102.

19 The Defendant, STOREFRONT SPECIALTIES AND GLAZING, LLC,
20 ET AL, appeared by Counsel of Record, RODEY LAW FIRM, SETH
21 SPARKS and GINA CONSTANT, Attorneys at Law, 201 Third Street,
22 N.W. , Albuquerque, New Mexico 87102.

23 At which time the following proceedings were had:

24

25

1 Q. The person who questioned Jeffrey Lynch about the
2 accident was Hendrik De Bruijn, correct?

3 A. Correct.

4 Q. No one else, did they?

5 A. I'm not sure. I wasn't there.

6 Q. When you say you weren't there, you mean you weren't at
7 the crash scene?

8 A. No.

9 Q. Were you at the crash scene?

10 A. No.

11 THE COURT: There you go.

12 Q. (BY MR. FALLICK) Did you ever interview Jeffrey Lynch
13 about the circumstances of the crash?

14 A. Him and I spoke the next day.

15 Q. And tell us what that -- what was said.

16 A. Well, we talked about the crash, him and I, and Hendrik,
17 and he kind of explained to me what had happened.

18 Q. Can you remember what that was?

19 A. That he was just trying to make a left turn with the
20 heavy traffic.

21 Q. In addition to being one of the owners of the
22 Storefront, you're Storefront's field supervisor, right?

23 A. Correct.

24 Q. That means you coordinate the work in the field for the
25 men who install it; is that true?

1 A. That's true.

2 Q. You go start jobs and make sure the guys are installing
3 properly?

4 A. Correct.

5 Q. You also are Storefront's safety officer, true?

6 A. Yes, that's true.

7 Q. What does that mean?

8 A. Well, since I'm in charge of the guys, I make sure that
9 we have meetings monthly, about how things are in the field,
10 how to use scaffolding, make sure they take the proper
11 training for equipment.

12 Q. You considered it Storefront's responsibility to
13 maintain a safe workplace, right?

14 A. Yes.

15 Q. And that's always been true?

16 A. Yes.

17 Q. As long as you owned that business?

18 A. Yes.

19 Q. You consider it Storefront's responsibility to create a
20 culture of good safety habits in every aspect of your
21 company's business?

22 A. I try to, yes.

23 Q. And you consider that your responsibility?

24 A. Yes.

25 Q. You agree that it's necessary to train all employees to

1 work safely, right?

2 A. Yes.

3 Q. And you consider it Storefront's responsibility to
4 insure that individuals who operate Storefront vehicles are
5 safe drivers, true?

6 A. Yes.

7 Q. Do you agree that the attitude of a Storefront driver
8 takes when behind the wheel is a single most important factor
9 in driving safety?

10 MS. CONSTANT: Objection; leading. I thought it
11 was just setting up -- objection; leading.

12 MR. FALLICK: He's an adverse party, Your Honor.

13 THE COURT: I don't think you have demonstrated
14 that he's being contentious at this point, so let's try open
15 ended, and then we'll go from there.

16 Q. (BY MR. FALLICK) Is the attitude a Storefront driver
17 takes when behind the wheel the single most important factor
18 in driving safety?

19 MS. CONSTANT: Objection; still leading.

20 THE COURT: Sustained.

21 MR. FALLICK: Okay.

22 Q. (BY MR. FALLICK) What is the most important factor in
23 driving safety?

24 A. What is the most important factor -- I don't understand.

25 MR. FALLICK: How about now, Judge, can I read him

1 his deposition?

2 THE COURT: It was a clear question, so yes.

3 Q. (BY MR. FALLICK) Do you remember being asked the
4 following question and giving the following answer at your
5 deposition: "Question" --

6 MS. CONSTANT: Page.

7 MR. FALLICK: Oh, I'm sorry. Page 13, line 24.

8 Q. (BY MR. FALLICK) "QUESTION: Do you agree that the
9 attitude a Storefront driver takes when behind the
10 wheel is the single most important factor in
11 driving safety?

12 "ANSWER: Yes. "

13 Do you remember giving that testimony?

14 A. I really don't remember, but I guess I did.

15 Q. When a Storefront driver is in an accident, do you
16 consider it Storefront's responsibility to insure that the
17 employee involved is a safe driver before putting that driver
18 back behind the wheel?

19 A. Yes.

20 Q. As the safety officer, are you the person with primary
21 responsibility to ensure that individuals who operate
22 Storefront vehicles are safe drivers?

23 A. Am I -- no.

24 Q. Who in particular at Storefront is responsible to ensure
25 that individuals who operate Storefront vehicles are safe

1 drivers?

2 A. We submit our driver information to a third-party
3 investigator, and they look into it.

4 Q. Do you recall being asked the following question and
5 giving the following answer at your deposition:

6 "QUESTION: Who in particular at Storefront is
7 responsible to ensure that individuals who operate
8 Storefront vehicles are safe drivers?

9 "ANSWER: Well, it starts with me. When they put n
10 in an application, we make sure their license is
11 valid. They don't operate until we run their
12 license with the insurance to make sure it's good."

13

1 (NOTE: Conversation at the Bench concluded.)

2 Q. (BY MR. FALLICK) After a traffic accident, are you also
3 the person primarily responsible to ensure that the employee
4 involved in the safe -- is a safe driver before putting that
5 driver back behind the wheel?

6 A. Well, I look at the situation, what happened, and I
7 figure, Jeff didn't do anything wrong.

8 Q. Were you asked the following question, and did you give
9 the following answer at your deposition, page 15, line 9:

10 "QUESTION: And after a traffic accident, are you
11 also the person primarily responsible to ensure
12 that the employee involved is a safe driver before
13 putting that driver back behind the wheel?

14 "ANSWER: Yes."

15 Do you remember giving that testimony?

16 A. Yes.

17 Q. Before I show it to you, at your deposition, you had
18 never seen the police report, right?

19 A. No.

20 Q. Sorry. I'm going to have to ask that question a little
21 differently. Before your deposition, had you ever seen the
22 police report?

23 A. Seen a police report? A police report?

24 Q. The police report about this crash?

25 A. No.

1 Q. Was the reason that Mr. Lynch was not driving during his
2 next shift the fact that his truck was not drivable?

3 A. Didn't you ask me that question already?

4 MS. CONSTANT: Objection; asked and answered.
5 Thank you.

6 THE COURT: Sustained.

7 Q. (BY MR. FALLICK) And then let me direct you to your
8 testimony, page 23, line 20, and ask you if you provided the
9 following -- gave the following -- asked the following
10 question and gave the following answer:

11 "QUESTION: Was the reason that Mr. Lynch not
12 driving during his next shift the fact that his
13 truck was not drivable.

14 "ANSWER: His truck was not drivable.

15 "QUESTION: And was Mr. Lynch's driving privilege
16 ever suspended by Storefront for safety reasons?

17 "ANSWER: No."

18 Did you give that testimony at your deposition?

19 A. Yes.

20 Q. At Storefront's safety meeting, where you discussed the
21 November 10, 2009 accident, was there any discussion of
22 fault?

23 A. No.

24 Q. Did you think it was important to know who was at fault
25 for this crash?

1 A. Like I said, I don't think Jeff did anything wrong. We
2 talked about it, I didn't figure he was at fault.

3 Q. Are you saying that as of today you still don't think
4 that he was at fault?

5 A. No.

6 Q. Sorry. I did it again.

7 THE COURT: Double negatives.

8 Q. (BY MR. FALLICK) As of today, do you think it was
9 Jeffrey Lynch's fault?

10 A. No.

11 Q. Do you remember at your deposition being asked the
12 following question and giving the following answer on page
13 24, line 16:

14 "QUESTION: Did you think it was important to know
15 who was at fault for the accident?

16 "ANSWER: Yes. "

17 Do you remember giving that testimony?

18 A. I don't remember.

19 MR. FALLICK: Can you confirm that, or do you want
20 me to show the witness the testimony?

21 MS. CONSTANT: You can show the witness what it is.

22 Q. (BY MR. FALLICK) So if this happens again, I have it in
23 front of me. I'm going to leave you this transcript, and you
24 can ignore those pieces of paper. They're just page numbers.

25 Now, I'm going to ask you to turn to page 24, line

1 16, and please tell me when you're there.

2 A. Line 13.

3 Q. 1-6, 16. See that?

4 "QUESTION: Did you think it was important to know
5 who was at fault for the accident?

6 "ANSWER: Yes. "

7 Do you now remember giving that testimony?

8 A. I don't remember.

9 Q. You never spoke with Officer Chris Enyart about the
10 cause of this crash, did you?

11 A. No.

12 Q. To this day, you never have?

13 A. No.

14 Q. And you never tried to speak with Officer Enyart, did
15 you?

16 A. No.

17 Q. The person who questioned Jeffrey Lynch about the
18 accident was Hendrik De Bruijn, correct?

19 A. I don't know that.

20 Q. Page 31, line 6:

21 "QUESTION: When Storefront questioned Jeffrey
22 Lynch about the accident, was that you or someone
23 else?

24 "ANSWER: That was someone else.

25 "QUESTION: Do you know who it was?

1 "ANSWER: Hendrik."

2 Does that refresh your recollection?

3 A. I guess, yes.

4 Q. Your policies require you to post conspicuously -- let
5 me try that one again.

6 Your safety policies require you to post
7 conspicuously all of your safety committee records; isn't
8 that true?

9 A. I don't know.

10 Q. Is there anyone other than the safety officer at
11 Storefront Specialties & Glazing who would know the answer to
12 that question?

13 A. I don't.

14 Q. You did not maintain the records that are required by
15 your safety policy, did you?

16 A. Require the record of?

17 Q. What I'm saying is your safety policy requires certain
18 records to be prepared and kept; isn't that true?

19 A. I guess, yes.

20 Q. And you don't follow that policy, do you?

21 A. Yes, I do.

22 Q. Your policy also requires that individual employees be
23 retrained after the occurrence of a work-related injury
24 caused by an unsafe act; isn't that true?

25 A. Jeff didn't do anything wrong, so I figured he didn't

1 need any training.

2 Q. Well, I'm asking you about your policy. Could you move
3 the microphone a little closer to you?

4 A. Okay. Sorry about that.

5 Q. So I'm not asking you about Jeff Lynch. I'm asking you
6 about your policy. Do you have a policy that requires you to
7 retrain your employees after the occurrence of a work-related
8 injury caused by an unsafe act?

9 A. Yes.

10 Q. And I take it from your last answer that after the
11 November 10, 2009 crash, Jeffrey Lynch did not receive any
12 retraining?

13 A. No, he didn't need any.

14 Q. Part of the reason in your safety policy for getting to
15 the bottom of an accident is so you can make any changes in
16 the way you do things to avoid future accidents, right?

17 A. Yes.

18 Q. And part of the reason for getting to the bottom of the
19 accident is to determine whether any of your employees need
20 retraining, right?

21 A. Yes.

22 Q. Your safety policy also requires you to prepare a
23 diagram of an accident after it happens; isn't that true?

24 A. Yes.

25 Q. You didn't do that, did you?

1 A. When I spoke to Jeff, and Hendrik kind of explained to
2 me everything that happened, and we kind of talked about it,
3 did a little diagram, yes, we did.

4 Q. You did a diagram?

5 A. Yes.

6 Q. When did you do that diagram?

7 A. The next day.

8 Q. Do you know why the diagram wasn't provided?

9 A. Well, it's just something that we talked about, just so
10 I can check what had happened, explain it to me, and I
11 thought between everything that they told me, I assumed Jeff
12 didn't do anything wrong.

13 Q. And you didn't preserve the diagram?

14 A. No.

15 Q. Please turn to page 41, line 20. Were you asked the
16 following question, and did you give the following answer:

17 "QUESTION: Did anyone at Storefront draw a diagram
18 of the accident street, note the street names and
19 locations of traffic signals, et cetera, in
20 investigation of the accident at issue in this
21 lawsuit?

22 "ANSWER: I don't know."

23 Is that right?

24 A. That's right.

25 Q. And when between your deposition in March of this year

1 and now did you remember that you had done this diagram that
2 you failed to preserve?

3 A. Well, we talked about it that day. We didn't write the
4 street names and everything. I knew where the accident had
5 occurred. We just kind of talked about it, and he showed me
6 what was going on. It wasn't a diagram showing exactly what
7 color of the car or anything, just trying to check on how --
8 what had happened and, like I said, Jeff didn't do anything
9 wrong.

10 Q. So you knew at the time that you had a diagram without
11 the streets, so you said, I don't know to that question
12 because it included the reference to the streets?

13 A. Yes, I don't know.

14 Q. And you think, like Jeff Lynch testified at trial, that
15 he made the best choice he could in taking that left-hand
16 turn the way he did?

17 A. I'm not sure what Jeff said in the trial. I wasn't
18 here.

19 Q. Well, you know what he said about taking that left-hand
20 turn, and you have testified before that you agreed with him
21 that he made the best choice, right?

22 A. Yes.

23 Q. And you still agree with him that he made the best
24 choice?

25 A. Yes.

1 Q. Now, you agree that when you get to a place where you
2 can't see oncoming traffic, including bicycle traffic, that
3 you're required to inch up and not just make a continuous
4 turn through that blind turn, right?

5 A. Right.

6 Q. You were instructed not to conduct any further
7 investigation into this case, true?

8 A. I'm not sure what you're -- what the question is.

9 Q. Your policies that you've just described would have you
10 conduct an investigation to determine whether there was some
11 way you could do things safer in the future, so you could
12 make corrections or retrain employees. You testified about
13 that, right?

14 A. My investigation was between me and Jeff and Hendrik of
15 what happened. They told me what happened.

16 Q. And you never in that investigation learned more than
17 just Jeff Lynch took a left-hand turn across a bicycle lane
18 and a bike hit him. That's all you learned in your
19 investigation, right?

20 A. Yes.

21 Q. You never learned any more about whether there was any
22 unsafe act other than those facts, true?

23 A. True.

24 Q. And when I asked you questions about why you didn't do
25 more, and one of the things you said is -- wasn't that the

1 State's job to make sure that Jeff Lynch was a safe driver,
2 right. Do you remember that?

3 A. What was the question again, sir?

4 Q. Well, let me -- I'm tiptoeing. I want to make sure I'm
5 doing it the right way.

6 When I asked you questions about, wasn't it your
7 responsibility to do more, you -- one of your references was
8 isn't that the State's job, the State of New Mexico's job to
9 make sure that Jeff Lynch is a safe driver. Do you remember
10 saying that?

11 A. I still don't understand what the question is. The
12 State's job to do what?

13 Q. To make sure that Jeff Lynch is a safe driver. Did you
14 say that?

15 A. I don't know. I'm not sure what -- I don't know.

16 Q. Were you asked the following question, and did you give
17 the following answer:

18 "QUESTION: The point is and the point of the" --

19 MS. CONSTANT: Page number.

20 MR. FALLICK: Really good idea. Page 72, line 7,
21 second sentence.

22 Q. (BY MR. FALLICK) "The point is and the point of the
23 question is, did you put him back on the road
24 without satisfying yourself by a real investigation
25 that he understood the rules of the road?"

1 "ANSWER: Wasn't that the State's job? They gave
2 him a driver's license, so he was authorized to
3 drive."

4 Do you remember saying that?

5 A. Yes.

6 Q. If you had learned in the course of an investigation
7 that your driver didn't stop before entering the bicycle
8 lane, at least try to crane his neck to see if he could see
9 the biker, and then there's an accident like this, you would
10 have wanted to sit down with that driver and make sure he
11 understands the rules of the road, right?

12 A. Can you repeat that again, sir?

13 Q. If you knew that Jeff Lynch had not made a complete stop
14 before entering the bicycle lane, had not even tried to crane
15 his neck to look up the bicycle lane to see if he could see
16 from that vantage point before entering the bicycle lane, and
17 then made a continuous turn across the bicycle lane and as a
18 result resulted in serious injury to a bicyclist, you would
19 have at least wanted to sit down and talk with him about that
20 to make sure that he understood the rules of the road, right?

21 A. Well, I feel Jeff didn't do anything wrong, and he
22 explained everything to me, so I think he didn't do anything
23 wrong. I was satisfied.

24 Q. Page 77, line 23, were you asked the following and did
25 you give the following answer at your deposition? I'll wait

1 for you to get there?

2 A. Page 77, what line?

3 Q. Page 77, line 23: Question: And if in the course of
4 investigation, you learn you had a driver who
5 didn't stop before he entered the bicycle lane
6 under those circumstances, and tried to at least
7 crane his neck to see if he could see the biker,
8 and there's an accident and a biker is very
9 seriously injured, would you want to then sit down
10 with the driver and make sure that the driver
11 understands the rules of the road before you hand
12 him the keys to the truck?

13 "ANSWER: Yes."

14 Do you remember giving that testimony?

15 A. Yes, I spoke with Jeff.

16 Q. You never learned anything in the course of your
17 investigation that led you to believe that Jeffrey Lynch
18 required additional training, did you?

19 A. No.

20 Q. The reason you didn't learn more about what happened in
21 this accident and that corrective training was needed is that
22 your insurance company told you to leave it to them and not
23 to do anything that would interfere; isn't that true?

24 A. I don't know.

25 Q. And were you asked the following question and did you

1 give the following answer at your deposition, page 79, line
2 21:

3 "QUESTION: Is the reason you didn't do more to
4 learn what happened in that accident and to see
5 whether any corrective training was required is the
6 reason that your insurance company told you to
7 leave it to them and not to do anything that would
8 interfere with the defense of the case?

9 "ANSWER: I don't want to answer. I don't want to
10 answer yes, no, I don't know.

11 "QUESTION: Read that question again. We can take
12 a break if you're getting tired.

13 "ANSWER: I was told by the insurance that they
14 would take care of it, and I left it at that."

15 Isn't that true?

16 A. I don't know.

17 Q. You don't know if the court reporter got it right, or
18 what is it that you don't know?

19 A. I don't know if I answered or not. I don't know.

20 Q. Let's talk about -- were you asked the following series
21 of questions, and did you give the following answers at your
22 deposition, starting on page 37, line 1:

23 "QUESTION: Now please turn to page 29, and the
24 bottom paragraph reads: Quote, 'individual
25 employees will be retrained after the occurrence of

1 a work-related injury caused by an unsafe act or
2 work practice and when a supervisor observes
3 employees displaying unsafe acts, practices or
4 behaviors.' Did I read that correctly?

5 "ANSWER: YES.

6 "QUESTION: After the November 10th, 2009 accident,
7 was Jeffrey Lynch retrained in any way?

8 "ANSWER: Well, we had -- we had talked about the
9 whole thing. We didn't find any negligence on his
10 part, so we just -- I left it at that.

11 "QUESTION: And would you please turn to page 32.
12 page 32 talks about accident investigation
13 procedures. Is that a policy you were following
14 back on November 10, 2009?

15 "ANSWER: Well, a person got hurt, and we turned
16 all this over to our insurance to take over and
17 make sure it gotten taken care of properly, just
18 besides me. So we moved on to our insurance, and
19 we called them immediately and told them what
20 happened and they took over.

21 "QUESTION: Did your insurance company do anything
22 to try to train your employees after its
23 investigation?

24 "ANSWER: No.

25 "Did they provide you with any information to

1 suggest that you retrain based on anything they
2 learned in their investigation?

3 "ANSWER: Well, we talked to Jeff and we saw how he
4 felt. We saw how everything felt and we factored
5 all that in and just stated what had happened. And
6 we took it one day at a time, but we didn't find no
7 negligence on his behalf, so I think he was okay."

8 Did you give that testimony?

9 A. Yes.

10 Q. And then on line 15:

11 "Did your insurance company make any safety
12 recommendations at all to Storefront as a result of
13 their investigation?

14 "ANSWER: No."

15 MR. FALLICK: I'm trying to walk that fine line.

16 Q. (BY MR. FALLICK) "Question: Did your insurance company
17 make any safety recommendations at all to
18 Storefront as a result of their investigation?

19 "ANSWER: No.

20 "QUESTION: Part of the reason your policy, and as
21 you have testified today, for getting to the bottom
22 of an accident is to try to make any changes in the
23 way you do things to avoid accidents in the future,
24 right?

25 "ANSWER: Yes."

1 Did you testify that way?

2 A. Yes.

3 Q. And you've said today you don't think that Jeff Lynch
4 did anything wrong, right?

5 A. No.

6 Q. As a co-owner and safety director of Storefront, in your
7 opinion, is it okay for a driver of a Storefront truck, whose
8 vision of a bike path is blocked by traffic, to not stop his
9 truck before he drives into the bicycle lane and at least try
10 to crane his neck to see if he can see up that bicycle lane
11 before he proceeds?

12 A. I wasn't there. I don't know.

13 Q. No, that's not my question. So let me slow down a
14 little and make sure that you understand it. You're a
15 co-owner and safety director of Storefront, right?

16 A. Yes.

17 Q. In your opinion, is it okay for one of your drivers,
18 whose vision of the bike path is blocked by traffic, to not
19 stop his truck before he drives into the bicycle lane and at
20 least try to crane his neck to see if he can see up that
21 bicycle lane before he proceeds --

22 MS. CONSTANT: Objection; asked and answered.

23 THE COURT: Overruled.

24 A. He -- what he told me, he just drove slowly across the
25 intersection. I really don't know how to answer it. He just

1 drove slowly across the intersection with the people waving
2 him by.

3 Q. (BY MR. FALLICK) At your deposition, on page 77, line
4 15, and ending at page 78, line 7, were you asked the
5 following questions and did you give the following answers.

6 A. Page 17, line.

7 Q. Page 7-7, line 1-5.

8 A. Okay.

9 Q. "As a co-owner and the safety director of Storefront, in
10 your opinion, is it okay for a driver of a Storefront truck,
11 whose vision of the bike path is blocked by traffic, to not
12 stop his truck before he drives into the bicycle lane and at
13 least try to crane his neck to see if he can see up that
14 bicycle lane before he proceeds. Is that okay?

15 "ANSWER: No.

16 "QUESTION: And if, in the course of an
17 investigation, you learned a driver who
18 didn't stop before he entered the bicycle lane
19 under those circumstances, and try to at least
20 crane his neck to see if he could see the biker and
21 there's an accident and the biker is very seriously
22 injured, would you want to then sit down with the
23 driver and make sure that that driver understands
24 the rules of the road before you hand him the keys
25 to the truck.

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"ANSWER: Yes. "

Do you remember giving that testimony?

A. Yes.

MR. FALLICK: Nothing further, Your Honor?

1 STATE OF NEW MEXICO)
2 COUNTY OF BERNALILLO) ss

3 I, SHANON R. MYERS, Official Court Reporter for the
4 Second Judicial District of the State of New Mexico, hereby
5 certify that I reported, to the best of my ability, the
6 proceedings, CV-2011-09334; that the pages numbered TR-1
7 through TR-219, inclusive, are a true and correct transcript
8 of my stenographic notes, and were reduced to typewritten
9 transcript through Computer-Aided Transcription; and that on
10 the date I reported these proceedings, I was a New Mexico
11 Certified Court Reporter.

12 Dated at Albuquerque, New Mexico, this 14th day of
13 December, 2012.

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SHANON R. MYERS, CCR-CRR-RPR
New Mexico CCR No. 275
Expires: December 31, 2012

THE COST NOT NECESSARY FOR NONAPPEALS

The total cost of this
Transcript is \$_____.