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REPORTER'S RECORD

CAUSE NO. 15-10405-C

FERNANDO CANALES,	§	IN THE DISTRICT COURT
PLAINTIFF,	§	
	§	
VS	§	68TH JUDICIAL DISTRICT
	§	
RJC MIDWEST, LP,	§	
DEFENDANT.	§	OF DALLAS COUNTY, TEXAS

TRIAL ON THE MERITS

EXCERPT TESTIMONY OF ROBERT JORDAN, JR.

ON THE **27TH DAY OF SEPTEMBER, 2017**, the following proceedings came on to be heard in the presence of the jury, in the above-entitled and numbered cause; and the following proceedings were had before the HONORABLE MARTIN HOFFMAN, Judge of the 68th Judicial District Court in Dallas, Dallas County, Texas:

Proceedings reported by Computerized Stenotype Machine.

ANTIONETTE REAGOR, OFFICIAL COURT REPORTER
68TH JUDICIAL DISTRICT COURT
600 Commerce Street
Dallas, Texas 75202
(214) 653-7158

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A P P E A R A N C E S:

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(SEPTEMBER 27, 2017)

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WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>V.D.</u>
Robert Jordan, Jr.	--	--	04 20	17 --	18 --

1 Q. And all those responsibilities your company had
2 towards the people that were doing -- that were Gera's
3 workforce, right?

4 A. The responsibilities for RJC as it related to
5 Gera was to facilitate, not to train the employees of
6 Gera.

7 Q. Sir, did you not testify over and over in your
8 deposition that the Gera labor force was entitled and
9 supposed to be trained in fall protection by your safety
10 coordinator Mr. Darek Grzymala?

11 A. To orientate, but not to specifically train.

12 Q. And did part of the orientation, if you want to
13 call it that, was supposed to include on how to use a fall
14 protection system correctly?

15 A. We had no responsibility over the means and
16 measures as to which they performed the safety and the
17 scope of work.

18 Q. That's not my question. My question is, did RJC,
19 through its safety coordinator, have the responsibility to
20 make sure that the Gera workforce was trained before
21 starting work on how to use the fall protection system
22 correctly?

23 A. We were told they were trained.

24 Q. Sir, I'm going to hand you a copy of your
25 deposition. Because I know the jury's just heard it, but

1 it sounds like you have a definite position on it right
2 now. Would you turn to page 45 for me? Or excuse me,
3 actually, why don't we start on page 44.

4 And you see that the question is, "You understood
5 that Mr. Guerra had a labor force that he had obtained to
6 do the job or that he had to do the job?" And what was
7 your answer?

8 A. "Yes."

9 Q. And it goes on to ask, "Did you ever instruct Mr.
10 Grzymala, Darek Grzymala, to conduct any safety
11 orientation for the labor force of Mr. Guerra that was
12 going to be doing the actual work for the framing,
13 decking, et cetera?" What's your answer?

14 A. "Not that I recall."

15 Q. Next question was, "Did you expect Mr. Grzymala
16 to do such?" And what was your answer?

17 A. "Yes, in regards to the safety orientation."

18 Q. So, does that refresh your memory that you did
19 expect Mr. Grzymala to do his safety orientation for the
20 labor force doing the decking?

21 A. Yes.

22 Q. And you understood that to -- that actual labor
23 force included Mr. Canales? You know that now?

24 A. Now, yes.

25 Q. And it goes on to say, next question, "And that

1 would include a safety orientation about fall protection?"

2 And your answer was what?

3 A. "Correct."

4 Q. Actually, it says, "sure," doesn't it?

5 A. "Sure."

6 Q. Because it, next question, "Is because that's
7 what your safety manual requires, correct?"

8 A. "Correct."

9 Q. And the next question that I asked you about
10 earlier was about the safety training that you expected
11 Mr. Grzymala as your safety coordinator. I'm going to
12 read the following question. "That would include how to
13 properly use a fall protection harness and safety lifeline
14 system, correct?"

15 A. "Correct."

16 Q. "And you're expecting Mr. Grzymala to do that as
17 part of his job as your safety coordinator?" That's what
18 it said. That's the question. What's your answer?

19 A. "Yes."

20 Q. Does that refresh your memory that, yes, Mr.
21 Grzymala was supposed to train --

22 A. Not train.

23 Q. -- the people to do the decking?

24 A. Not train, sir.

25 Q. I'm not done with my question. I promise I'll

1 let you answer.

2 That Mr. Grzymala, whether you want to call it an
3 orientation or anything else, that included how to use a
4 harness and safety lifeline system correctly for the labor
5 force that was doing the decking?

6 A. Can you repeat that?

7 Q. Yes. Mr. Grzymala was supposed to conduct
8 something, whether you want to call it an orientation or
9 training, that include -- for the labor force doing the
10 decking, about how to use the fall protection system,
11 including the harness, the rope, and the lifeline
12 correctly. He was supposed to do that?

13 A. I call it orientation.

14 Q. Well, I understand you want to split hairs. Why
15 don't you turn to page 51, maybe we can be a little more
16 precise.

17 So, as you recall, we went through your safety
18 manual and talked about Mr. Grzymala's duties as the site
19 safety coordinator that you chose, correct?

20 A. Yes.

21 Q. Okay. And starting on page 12 it says, fifth
22 down is quote, and it's straight from your safety manual,
23 "Facilitating safety training, correct?" And your answer
24 was?

25 A. Where are you at again? Page 51?

1 Q. Yes, sir, line 12.

2 A. Line 12. "Correct."

3 Q. "And that's the safety training you expected Mr.
4 Grzymala to do on the project?" And what's your answer?

5 A. "Correct."

6 Q. And that would include Mr. Guerra's workers?

7 A. Correct.

8 Q. And you understood that Mr. Canales was one of
9 the people that ended up doing all this work, the decking?

10 A. Not at that time, no.

11 Q. Well, you understood there were workers on site.
12 They're showing up. They're doing Gera's work?

13 A. Correct.

14 Q. And part of your response, your safety manual
15 says is, we're not going to let these workers start
16 working until we conduct this orientation for them, right?

17 A. Correct.

18 Q. And that would include Mr. Canales or anyone else
19 coming to do the decking and framing work which is under
20 your contract?

21 A. Correct.

22 Q. And as far as the word training, would you read
23 the next question starting on page 20, after -- say after
24 the question/answer, that would include Mr. Guerra's
25 workers. Page 51, line 20, sir.

1 A. I thought you said page 20.

2 Q. No, sir. I'm sorry.

3 A. Line 20 says, "And include making sure they were
4 trained in how to properly use fall protection equipment."

5 Q. So, earlier it was your testimony that it was
6 RJC's job, through its safety coordinator, to train the
7 Gera workers at how to use, properly use the fall
8 protection equipment. Are you wanting to change that
9 testimony now?

10 A. No, sir. It says that they were trained, not
11 that we were to train them.

12 Q. So what did Mr. -- what did you instruct Mr.
13 Grzymala to do to make sure the workers were trained on
14 how to use fall protection equipment?

15 A. To have conversations with their supervisors as
16 to whether or not those individuals that they were
17 bringing on the job site were trained.

18 Q. And if Mr. Grzymala did not do the safety
19 orientation which included going over how to properly use
20 the fall protection harness and safety line system as we
21 talked about on the previous page, that would include Mr.
22 Canales, he was ignoring your safety manual, was he not?

23 A. Can you repeat that question, please?

24 Q. Sure. If Mr. Grzymala did not do the safety
25 orientation that you said he was supposed to do for the

1 deckers, that included Mr. Canales, and going over how to
2 properly use the harness, a safety rope, and lifeline
3 system, then he was ignoring your safety manual?

4 A. Yes.

5 Q. You're aware that no such -- Mr. Grzymala did not
6 do any of the orientation he was supposed to do,
7 correct?

8 A. He received information that the employees that
9 were there on the job were trained and understood what
10 fall protection was.

11 Q. That's not my question. Mr. Grzymala did not do
12 any of the orientation he was supposed to do, correct?

13 A. I don't know. He wasn't supposed to do it unless
14 it needed to be done.

15 Q. Could you go to page 54 for me, sir, of your
16 deposition?

17 So looking at, starting on page 9. I'll put this
18 in context for you, sir. I'm going to show you Exhibit
19 No. 2, which is your training manual. I'm going to show
20 you where I'm getting this from. Page 54 it says,
21 "Training programs should be provided as follows." And it
22 lists a number of bullet points. The second one being for
23 all new contractors before beginning work. Do you see
24 that?

25 A. Yes.

1 Q. That's straight out of your safety manual, is it
2 not, sir?

3 A. Yes.

4 Q. There's Exhibit 2, that's your safety manual.
5 You see that?

6 A. Yes.

7 Q. And that would -- you were asked, "And that would
8 include Mr. Guerra's labor?" And what was your answer?

9 A. "Correct." "I don't, correct."

10 Q. You understand that Mr. Guerra's labor force was
11 doing the decking, right?

12 A. Yes.

13 Q. And those workers included Mr. Canales?

14 A. Yes.

15 Q. In your deposition you said that the contractors
16 were to receive training, the fall protection before,
17 right?

18 A. Say that again, I'm sorry.

19 Q. In your deposition -- we've gone now to three
20 different places where it says either orientation, make
21 sure they're trained, and actually train the workers who
22 were doing the decking in fall protection. That's what
23 you testified in your deposition?

24 A. Correct.

25 Q. Are you wanting to change that today?

1 A. No.

2 Q. Did Mr. Grzymala do, provide for the actual fall
3 hazard training that he was supposed to provide for new
4 contractors before they started work?

5 A. Repeat that please.

6 Q. Did Mr. Grzymala actually provide the training on
7 fall hazards that he was supposed to for new contractors
8 before they started work on the San Antonio job?

9 A. No.

10 Q. He did not, did he?

11 A. No.

12 Q. He was ignoring your safety manual, wasn't he?

13 A. No.

14 Q. Well, your safety manual specifically says, and
15 I'll bring it to you if you'd like, sir, that he's
16 supposed to give specific fall hazard training to the new
17 contractors before they start work, right sir?

18 A. Yes. But our contract states that the safety
19 training and responsibilities were that of Gera.

20 Q. Actually, the word safety training is nowhere in
21 their contract with Gera, is it?

22 A. It might not say training.

23 Q. It doesn't say training, does it?

24 A. No.

25 Q. In fact, Mr. Guerra had to -- his company had to

1 comply with safety measures instituted or initiated by
2 your company, right?

3 A. I don't follow.

4 Q. Look at the thing that you read earlier, 4.3.1.
5 And you read, as I recall, you said, you substituted Gera
6 and RJC. Where it said contractor/subcontractor, it says
7 -- you said, Gera shall comply with safety measures
8 initiated by the contractor. Right?

9 A. Yes.

10 Q. The safety measures you had here were in your
11 training manual, right?

12 A. Yes.

13 Q. The safety measures you had here required your
14 safety coordinator and Mr. Guerra, to coordinate with him
15 for the training of Gera's workers, right?

16 A. Yes.

17 Q. So, your contract actually provided for Gera to
18 comply with your safety people and your safety manuals and
19 your safety measures, which is what you went over in your
20 deposition about all the training that people like
21 Fernando Canales should have received before they started
22 work, right, sir?

23 A. Yes.

24 Q. And Darek Grzymala, if he was told to do the
25 things that you say you told him to do, just ignored the

1 manual? Right?

2 A. Yes.

3 Q. You made the decision, because of the training
4 you had received from OSHA, that your company was going to
5 retain the right to control the safety training of new
6 contractors when they came on the job. You put that in
7 your safety manual, that you had that right, correct?

8 A. Yes.

9 Q. And you had that responsibility?

10 A. Yes.

11 Q. And you exercised that control when you
12 instructed Mr. Grzymala that he was supposed to go out and
13 carry out this training of the workers before they started
14 work, right?

15 A. Yes.

16 Q. Because you wanted to make sure because you had
17 been -- well, strike that. You had been trained by OSHA
18 that you knew that there were people out there that
19 thought they had been doing things right for years and
20 they were just wrong. Especially with fall protection.
21 You were trained that, right?

22 A. Yes.

23 Q. And that's why you retained that right to do
24 safety training for fall protection, because you knew that
25 was a known phenomena in the industry?

1 A. Yes.

2 Q. And you don't -- are you here today to say, and I
3 haven't heard you say it, sir, but I heard your lawyer say
4 it, that you should not be responsible and your company
5 should not be responsible for failing to do the exact
6 training that your safety manual lays out?

7 A. Repeat that question, please.

8 Q. Are you here to tell the jury that your company
9 should not be held responsible for conducting the exact
10 training that the safety manual lays out?

11 A. Yes.

12 Q. If your company didn't conduct that safety
13 training, it should be responsible, right?

14 A. Yes.

15 Q. And if your company did not train Fernando
16 Canales, and he was continuing to make the same mistake he
17 had made for years, it's not right to point the finger at
18 him when you didn't even give him training, is it, sir?

19 A. He wasn't trained by the subcontractor that we
20 hired to perform those services.

21 Q. And he wasn't trained by you, even though your
22 safety manual required it, correct?

23 A. Yes.

24 Q. And it's not right to now point the finger at him
25 to say, well, we didn't hold up our end of the bargain and

1 you made a mistake, it should be your fault, not ours.

2 That's not right, is it, sir?

3 A. No.

4 MR. MILLER: Pass the witness.

5 THE COURT: Mr. Little, do you have
6 anything else?

7 MR. LITTLE: Yes, Your Honor. May I
8 approach?

9 THE COURT: Sure.

10 Is this a new exhibit?

11 MR. LITTLE: It's been pre-admitted. As I
12 understand it, it's Plaintiff's 44.

13 MR. MILLER: No, it's not been admitted,
14 Your Honor. We've not offered it.

15 MR. LITTLE: Okay.

16 THE COURT: Let me look at it real quick.
17 Do not publish it if it has not been admitted.

18 Plaintiff 44 has not been admitted.

19 MR. LITTLE: May I approach the witness?

20 THE COURT: You may.

21 **RE-CROSS-EXAMINATION**

22 **BY MR. LITTLE:**

23 Q. Sir, could you look at Exhibit 44 and tell us
24 generally what that document is?

25 A. It says Job Site Safety Policy Manual. Gera

1 Construction Services.

2 MR. MILLER: Your Honor, I object. This
3 witness has no knowledge about this document. Can't
4 authenticate it.

5 THE COURT: I would guess that's the case.
6 But, you're going to have to lay a foundation to admit it.
7 I don't know that this gentleman has the right knowledge.

8 MR. LITTLE: Thank you, Your Honor.

9 Q. (By Mr. Little) Have you ever seen this document
10 before?

11 A. Yes.

12 Q. Under what circumstances?

13 A. It was provided by Albert Guerra.

14 Q. To who?

15 A. To RJC.

16 Q. Do you know --

17 MR. MILLER: I'm going to object, Your
18 Honor. I'd like to take him on voir dire because this is
19 not a document RJC ever provided, so, on this thing.

20 THE COURT: Sure. Go ahead and take him on
21 voir dire.

22 **VOIR DIRE EXAMINATION**

23 **BY MR. MILLER:**

24 Q. Mr. Jordan, you didn't provide this document in
25 discovery, did you?

1 A. No, sir.

2 Q. The first time you saw this document was when
3 your lawyer showed it to you, right?

4 This actual document, this Exhibit 44?

5 A. Yes, sir.

6 Q. All right. So, as far as whether this is a true
7 and correct copy of any safety manual, you don't know, do
8 you?

9 A. No.

10 THE COURT: All right. Let's move along,
11 Mr. Little.

12 MR. LITTLE: Thank you, Your Honor.

13

14 Q. (By Mr. Little) Do you assert that it was your
15 company's responsibility to train every worker or the nine
16 subcontractors that you entered into subcontracts with?

17 A. No, sir.

18 Q. Why not?

19 A. We weren't experts in those areas to provide
20 competent training for those trades. We relied on them
21 through our specific contracts for them to provide the
22 means and measures to complete the work in a safe
23 manner.

24 Q. Did that -- those contracts, at least from your
25 perspective, that the safety training burden for those

1 subcontractors and their employees on the
2 subcontractors?

3 A. Yes, sir.

4 Q. Did any of the subcontractors that RJC Midwest
5 contracted with, did any of those subcontractors come to
6 you and say, we need you, RJC Midwest, to provide our
7 workers safety training?

8 A. No, sir.

9 Q. Is that true of Gera Construction as well?

10 A. Yes, sir.

11 Q. So Gera never said, where is the safety training,
12 please provide it?

13 A. That's correct.

14 Q. And at that time you had never even heard of
15 Martinez Construction, correct?

16 A. Correct.

17 MR. LITTLE: Pass the witness, Your Honor.

18 **FURTHER EXAMINATION**

19 **BY MR. MILLER:**

20 Q. It was RJC's job to prepare Darek Grzymala,
21 whoever else was responsible for carrying out the training
22 and safety responsibilities in your own safety manual,
23 correct, sir?

24 A. Yes.

25 Q. And your safety manual doesn't just say, we're

1 going to train only upon request, does it?

2 A. No.

3 Q. In fact, it says, you're going to train period,
4 right?

5 A. Yes.

6 MR. MILLER: Thank you, Your Honor.

7 MR. LITTLE: No more, Your Honor.

8 THE COURT: All right. Sir, you may step
9 down. This is a good time to break for lunch. Why don't
10 we reconvene at one o'clock. Does that work for
11 everybody?

12 (Jury leaving courtroom at 12:00 p.m.)

13 (End of excerpt request.)

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1 STATE OF TEXAS :

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3 COUNTY OF DALLAS :

4 I, ANTIONETTE REAGOR, Official Court Reporter in and
5 for the 68th Judicial District Court, of Dallas County,
6 Texas, do hereby certify that the above and foregoing
7 pages contain a true and correct transcription of
8 excerpted portions of evidence and other proceedings
9 requested in writing by counsel for the parties to be
10 included in this volume of the Reporter's Record, in the
11 above-styled and numbered cause, all of which occurred in
12 open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits, if
15 any, offered by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$154.00.

18 Witness my hand this the 28th day of September, 2017.

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