

[REDACTED]

**ATTORNEY FOR DEFENDANT**

[REDACTED]

[REDACTED]

v.

[REDACTED]

v.

[REDACTED]

PHILADELPHIA COUNTY  
COURT OF COMMON PLEAS

[REDACTED] TERM, [REDACTED]; NO.: 0 [REDACTED]

TRIAL BY JURY OF TWELVE DEMANDED

**PRETRIAL MEMORANDUM OF DEFENDANT, [REDACTED]**

**I. CONCISE SUMMARY OF THE NATURE OF THE CASE**



Plaintiff, [REDACTED], was an electrician's apprentice on November 23, 2013, when working on the [REDACTED]. While he was working on the 9<sup>th</sup> floor, the wind blew his hard hat off his head and down an elevator shaft. The hard hat landed on a heat barrier/plastic

sheath on the second floor (inserted photo on the left). Plaintiff walked down the stairs to find his hard hat, which was sitting on the plastic. He claims that the guard rails (seen in the photograph below) were not in place, so he simply walked



onto the plastic sheath, believing it to be concrete, and fell 36 feet to the floor below.

Plaintiff claims that [REDACTED] was responsible for placing the guardrails around all of the floor openings and that it failed to do so. In fact, Plaintiff contends that the photograph to the left and others, which were taken approximately one and one-half hours after the incident, were staged. He asserts that [REDACTED] went onto the site and installed guard rails around all of the openings in the floors *after* he fell. To that end, he has obtained the affidavits of two other electricians who note that there were no guardrails before this incident and that immediately afterward, the [REDACTED] workers rushed to get them all in place. On the other hand, the Safety Director of the [REDACTED] has testified that when he reached the site, some 20 minutes after the incident, all guardrails were in place and no one was rushing to install them. The witnesses that he interviewed at the time all stated that the guardrails were in place. Even Plaintiff's superintendent noted on the incident report that the guardrails were in place. Plaintiff's liability expert speculates that the guardrail was not in place and also presumes that had there been a toeboard on the 9<sup>th</sup> floor, this incident would not have occurred. [REDACTED] has available to it statutory employer immunity and has filed a motion for summary judgment to that effect. Moreover, [REDACTED] the subcontractor which retained Plaintiff's employer, owes [REDACTED] defense and indemnification should the matter reach a jury. |

**II. WITNESSES**

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]
- d. [REDACTED]
- e. [REDACTED]
- f. [REDACTED]
- g. [REDACTED]
- h. [REDACTED]

- i. [REDACTED]
- j. [REDACTED]
- k. [REDACTED]
- l. [REDACTED]
- m. [REDACTED]
- n. [REDACTED]
- o. [REDACTED]
- p. [REDACTED]
- q. [REDACTED]
- r. [REDACTED]
- s. Any and all persons listed in any parties' discovery responses or reports
- t. Any and all persons listed in any parties' pretrial memorandum

**III. EXHIBITS**

- a. Plaintiff's Complaint
- b. Plaintiff's Answers to Interrogatories
- c. Plaintiff's Answers to Request for Production of Documents
- d. Deposition (transcript and videotape) of Plaintiff
- e. Plaintiff's medical records
- f. Plaintiff's subpoenaed records
  - 1. University of Pennsylvania
  - 2. Jefferson University Hospital
  - 3. Dr. [REDACTED]
  - 4. Dr. [REDACTED]
  - 5. Novacare
  - 6. Dr. [REDACTED]
  - 7. Dr. [REDACTED]
  - 8. [REDACTED] Physical Therapy
  - 9. [REDACTED]
  - 10. Presbyterian Medical Center
  - 11. Methodist Hospital
  - 12. Pennsylvania Hospital
  - 13. [REDACTED] Insurance
  - 14. [REDACTED]
- g. Workers' compensation documents
- h. Tax documents
- i. Report, CV, and videotape of Dr. [REDACTED]

- j. Report, CV, and videotape of Dr. [REDACTED]
- k. Report, CV, and videotape of Dr. [REDACTED]
- l. Report, CV, and videotape of [REDACTED]
- m. Report, CV, and videotape of [REDACTED]
- n. Report, CV, and videotape of [REDACTED]
- o. Metadata of all photographs
- p. Photographs of the incident scene
- q. Progress Photographs
- r. Heat barrier framed
- s. Contract between [REDACTED]
- t. Subcontract between [REDACTED]
- u. [REDACTED]'s response to [REDACTED]'s request for admissions
- v. [REDACTED] responses to discovery
- w. [REDACTED]-produced photographs
- x. Statement of [REDACTED]
- y. Incident report
- z. [REDACTED] incident report
- aa. Project schedules
- bb. Daily reports
- cc. Affidavit of [REDACTED]
- dd. Affidavit of [REDACTED]
- ee. Videotape of deposition of [REDACTED]
- ff. Any and all pleadings by the parties in this matter
- gg. Any and all exhibits/documents listed in any parties' discovery responses or reports
- hh. Any and all exhibits/documents listed in any parties' pretrial memorandum

#### **IV. DAMAGES AND COVERAGE**

##### **a. Plaintiff's injuries**

As a result of this incident, Plaintiff claims multiple injuries: left ulna fracture; left wrist closed dislocation; right LS vertebral fracture; status post fusion LS-S 1; bilateral iliac fracture; bilateral iliac fracture with acetabular wall fracture; right femoral neck fracture (right hip); left lateral condyle comminuted fracture; left distal femoral fracture; displaced right posterior calcaneus fracture; deformity of left anterior process of the left calcaneus; head and facial

laceration/abrasions/contusions; concussion; right adrenal hemorrhage without extravasation; multiple mesenteric hematomas without extravasation; and right PSOAS hematoma. Plaintiff now also claims a traumatic brain injury, despite not treating for it for over three years and without raising it in his workers' compensation claim for which a full C&R was obtained.

Plaintiff further contends that he cannot work any longer and that he will suffer a loss of earning capacity. Nevertheless, [REDACTED] has retained experts to respond to those reports recently submitted by the Plaintiff. Dr. [REDACTED], orthopedic surgeon, and Dr. [REDACTED] physical rehabilitation medicine, have both opined that Plaintiff is capable of work and that indeed he should have returned to work. Moreover, his continued treatment is not necessary. Plaintiff has a history of drug-related issues and apparently now is continuing to take unnecessary pain killers.

[REDACTED], vocational rehabilitation expert, opines that currently, [REDACTED] is capable of earnings and that he even has the ability to complete school and earn at a greater level. The economic report of [REDACTED] is also attached, demonstrating the overstatement of the Plaintiff's claim to lost wages and earnings.

**b. Applicable Insurance Carriers and Limits**

Currently, [REDACTED], [REDACTED] carrier, has agreed to defend [REDACTED]. There appears to be a difference of opinion with respect to whether [REDACTED] owes any indemnity in this action. The limits of [REDACTED]s coverage under its subcontract with [REDACTED] are \$1M per occurrence with up to \$10M excess coverage. [REDACTED] itself has a policy of insurance through [REDACTED] Insurance Company with \$1M in primary, non-contributory coverage.

Plaintiff's demand is \$8.5M to which [REDACTED] has offered \$100,000.

**V. LENGTH OF TRIAL**

It is estimated that the trial in this case will last 7 days, exclusive of any bifurcated issue as to indemnification.

**Respectfully submitted,  
CAMPBELL, LIPSKI & DOCHNEY**



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LISA BELLINO APELIAN, ESQUIRE  
Attorney for Defendant, [REDACTED]