

1                   IN THE COURT OF COMMON PLEAS  
2                                   FRANKLIN COUNTY, OHIO

3       JAMES DANIEL HUGHES,  
4       et al.,  
5                   Plaintiffs,

6           vs.                                   CASE NO. 13 CV 004435  
7       CT CORPORATION, et al.,  
8                   Defendants.

9                                   \* \* \*

10                   IN THE COURT OF CLAIMS OF OHIO

11       JAMES DANIEL HUGHES,  
12       et al.,  
13                   Plaintiffs,

14           vs.                                   CASE NO. 2012-09059  
15       THE OHIO STATE UNIVERSITY,  
16                   Defendant.

17                                   \* \* \*

18                   Videotaped deposition of STEPHEN  
19       JARRELLS, Witness herein, called by the  
20       Plaintiffs for cross-examination pursuant to the  
21       Rules of Civil Procedure, taken before me,  
22       Beverly W. Dillman, a Notary Public in and for  
23       the State of Ohio, at The Ohio State University  
24       Office of Legal Affairs, 1590 North High Street,  
25       Columbus, Ohio, on Friday, May 10, 2013, at  
          1:26 o'clock p.m.

\* \* \*

EXHIBIT  
**G**

1 that. It could be -- I don't remember exactly if  
2 it was '10 or '11. Whenever we were awarded the  
3 contract, then we had an on-site meeting with  
4 Faye Bodyke and Kevin Williams, and looking at  
5 some of the existing conditions, and it was  
6 brought to my attention, when we talked about  
7 fencing, that the sidewalk would always be open  
8 to pedestrian traffic in front of the site.

9 Q. Okay. And who was it that made that  
10 statement that the sidewalk would always be open  
11 to pedestrian --

12 A. Faye Bodyke.

13 MR. EKLUND: I'm sorry, what was the  
14 answer?

15 THE WITNESS: Faye Bodyke.

16 MR. EKLUND: Thank you.

17 BY MR. PERA:

18 Q. Did you have any input in that  
19 decision?

20 A. It was not my decision.

21 Q. Whose decision was it?

22 A. The University's.

23 Q. Did you agree with that decision?

24 A. I didn't have a comment at the time.

25 Q. Did you at some later time have a

1     **whether it was gonna be left open, whether it was**  
2     **gonna be closed or reopened?**

3             A.     The first conversation that I  
4     remember is back when we had our meeting in the  
5     Smith Lab building.  I -- I forget the exact  
6     date.

7                     (The notary interrupted.)

8             THE WITNESS:  Smith Lab building.  I  
9     believe it was March -- I don't know if it was  
10    13th or 23rd, I forget the exact date.

11    BY MR. PERA:

12             **Q.     Of 2012?**

13             A.     It's the first meeting I had with  
14    Major Bissett for this construction.

15             **Q.     And was it just you and Major**  
16    **Bissett, or were there others present?**

17             A.     Others.  It was -- yeah, it was  
18    2012, yeah.

19             **Q.     Tell me what you remember about that**  
20    **meeting as it relates to the sidewalk.**

21             A.     The sidewalk would be remain --  
22    would be opened up after mass excavation.  The  
23    sidewalk had to be redone; had to be re --  
24    because of where the traffic was at and where our  
25    fence went, we had to modify -- because we had

1 time?

2 A. Well, sure.

3 Q. And what were those concerns?

4 A. Just keeping the students away from  
5 the gates -- or anybody, not just students.

6 Q. So safety concerns?

7 A. Yes.

8 Q. Tell me about the next conversation  
9 you remember having with Major Bissett or anyone  
10 else that involved the reopening of the sidewalk.

11 A. After we closed it for mass  
12 excavation --

13 Q. Okay.

14 A. -- is that what you're getting to?  
15 That's when you're --

16 Q. Yeah, your next conversation that  
17 you remember that -- that involved the sidewalk  
18 and the fact that it was gonna be reopened.

19 A. Okay. That's stating that it's  
20 closed, and that's closed during our mass  
21 excavation. So we had it closed, and to reopen  
22 it, we had obstacles to jump through as far as  
23 getting the tower crane put up and all this  
24 stuff. And then the conversation was with Mark  
25 Scott that we have to have this sidewalk reopened

1 before the first home game in 2012.

2 Q. Do you remember when that  
3 conversation took place?

4 A. The exact time, I do not; exact day,  
5 I do not. It was just a conversation we had on  
6 the sidewalk out there is that we are gonna open  
7 the traffic because the first home game, if you  
8 don't, they'll -- everybody will walk in the  
9 streets. And we don't want people -- since the  
10 streets are so narrow, they don't have a way to  
11 get around, and you're gonna put students out in  
12 the road, or any pedestrian in the road, so we're  
13 opening the sidewalk.

14 Q. So he said it as matter of fact,  
15 rather than a conversation with you in terms of  
16 do you think it's okay to reopen the sidewalk  
17 now?

18 A. It was not an option, it was a  
19 direction.

20 Q. Do you recall that conversation  
21 taking place after the mass excavation was  
22 complete?

23 A. Yes.

24 Q. So that was something that would  
25 have taken place, that conversation at least, in

1 taken down, which was the Friday before the first  
2 home game. Would that be consistent with your  
3 memory in terms of when the barricades were  
4 actually taken down?

5 A. I think they were taken down on a  
6 Wednesday prior to.

7 Q. Okay.

8 A. Only because of looking at old  
9 photos, so that's the only reason I would say  
10 that.

11 Q. When you say looking at old photos,  
12 are you talking about pictures that you looked at  
13 in preparation for your deposition today?

14 A. These pictures were looked at weeks  
15 and weeks and weeks ago.

16 Q. Okay. Is there anything that you  
17 have reviewed in preparation for your deposition  
18 today?

19 A. Reviewed a few e-mails; I reviewed a  
20 few documents. Police report, I reviewed several  
21 weeks ago.

22 Q. Anything else that you can recall  
23 reviewing?

24 A. No.

25 Q. The e-mails that you reviewed, are

1           Q.    Okay.  So the only -- before the  
2   incident, before Daniel was injured, the only  
3   time that you recall there being any  
4   conversations about traffic flow into and out of  
5   the CBEC site was at the Smith Lab meeting early  
6   in the -- we will call it the design phase; is  
7   that right?

8           A.    Yes.  Correct.

9           Q.    And that was before any type of  
10  construction had started; correct?

11          A.    Correct.

12          Q.    We have heard some testimony about  
13  the use of stop paddles -- I have seen it stop  
14  and go, stop and slow, I'm not sure we have  
15  completely figured out what the other part of  
16  stop is -- but do you recall having any  
17  discussions with Don Bissett, Major Bissett,  
18  about the use of stop paddles at the CBEC site?

19          A.    Yes.

20          Q.    What do you remember about that?

21          A.    I had a very stern phone call from  
22  Major Bissett one morning when McDaniel's went to  
23  assist a truck in and out of the site with  
24  paddles.  And he removed them from their  
25  possession and directed us to stay within the

1 boundaries of the fence.

2 Q. And you remember him indicating that  
3 you needed -- and when I say you, meaning Gilbane  
4 or any of its subcontractors -- they needed to  
5 remain inside the boundaries of the fence?

6 A. Absolutely.

7 Q. So it wasn't just that they needed  
8 to be out of the street, they needed to be inside  
9 the fence?

10 A. They needed to be within our site.

11 Q. Was there any -- well, how did you  
12 react to that stern call?

13 A. I met with him on-site and we  
14 discussed the issue with us helping the trucks in  
15 and out, and it was directed to me that you are  
16 not gonna step foot in the road, your contractors  
17 have no authority, they have to be -- they can  
18 assist from the site, no paddles in hand.

19 And we talked about students, and I  
20 said: I can't have my guys tackle students. And  
21 we said to warn them, look out for them, motion  
22 trucks in and then allow them back out when there  
23 is light flow. And that was the direction given  
24 at the time, and --

25 Q. Was this still during the mass

1           A.    That's correct.

2                   MR. BRICKER:  Object to the form.

3  BY MR. PERA:

4           Q.    And you voiced that to Don Bissett?

5           A.    No, it wasn't a -- you know -- we  
6 talked.  I said, well, what are we allowed to do?  
7 And that's what my question to Don was.

8           Q.    And what did he say?

9           A.    Is that you'll work within the  
10 boundaries of your site.

11           Q.    And I understand before you told me  
12 that he was pretty clear about not having anyone  
13 in the road; correct?

14           A.    Yes.

15           Q.    And you have now also said that he  
16 said that you will work within the boundaries of  
17 your site.  I take it that's why you understood  
18 him to mean that you would have to remain inside  
19 of the fence?

20           A.    That's correct.

21                   MR. BRICKER:  Object to the form.

22  BY MR. PERA:

23           Q.    Was there any discussion, because  
24 you asked him what can we do --

25                   MR. WEBER:  What was the answer to

1 that?

2 (Record read.)

3 BY MR. PERA:

4 Q. Was there any discussion, because  
5 you had asked him, well, what can we do, about  
6 whether or not you could have flaggers or  
7 spotters assist with trucks entering the site in  
8 that sidewalk area near the entrance that was  
9 between the roadway and the actual fenced-in  
10 area?

11 A. Repeat that again.

12 Q. Sure. Did you ask -- did you ask  
13 Don Bissett at that time whether or not you could  
14 have people in between the roadway and the actual  
15 fenced-in entrance to the site?

16 A. It wasn't a question, it was his  
17 direction was for us to work within our  
18 boundaries, which means you -- no paddles in your  
19 hand because he -- he confiscated the paddles.  
20 And you're gonna work within the boundaries;  
21 anybody in the road -- he didn't say sidewalk, as  
22 far as there was two sidewalks there, the  
23 existing one that was there from the Woodruff  
24 project and then the addition we added toward the  
25 road.

1 should say.

2 Q. So at least as far as you know, that  
3 was the first and only time that flaggers were  
4 ever used at the CBEC site?

5 A. That's not correct because when new  
6 contractors come on board, no matter how many  
7 conversations you had with the management, the  
8 guys in the field are programmed to grab a flag  
9 and run out with the -- in the street.

10 Q. Did you notice that with each  
11 contractor that came on the site?

12 A. We tried. The more contractors came  
13 in, the more we made it a point that you're only  
14 allowed to do this.

15 Q. And the reason that -- from your  
16 experience, the reason that contractors are used  
17 to having their guys run out in the street and  
18 have flaggers assist with the entrance of those  
19 trucks into the site is for safety reasons;  
20 correct?

21 A. Absolutely.

22 Q. Would you agree that the safer thing  
23 to do when there was a concern about students  
24 getting into the roadway would have been to add  
25 more safety measures, rather than pulling all of

1 You're in and out, in and out, in and out, and it  
2 makes it harder because you're never gonna get a  
3 truck driver to call you: I'm two feet from the  
4 gate or 20 feet from the gate or 500 feet from  
5 the gate, meet me up there. That's the problem,  
6 communication. So --

7 Q. When the traffic control officers  
8 were used at the CBEC site -- first of all, when  
9 were they initially used; during the mass  
10 excavation phase?

11 A. They were at the first three days of  
12 school.

13 Q. So when the students returned for  
14 the fall semester --

15 A. Yes.

16 Q. -- they were there for three days?

17 A. Yeah.

18 Q. Who -- who obtained the traffic  
19 control officers for those three days?

20 A. The direction was given through Ken  
21 Wayman. That's how I understood it. I didn't  
22 hear that directly from Ken.

23 Q. Who did you hear it from?

24 A. Brett.

25 Q. Did you do anything -- Brett Meyer?

1 the procurement of traffic control officers?

2 A. That's correct.

3 Q. Were there any other times where you  
4 attempted to procure traffic control officers or  
5 did any coordinating regarding traffic control  
6 officers?

7 A. I was aware of the times and the  
8 necessity of when they were to be used.

9 Q. Who dictated the necessity of when  
10 the traffic control officers were to be used?

11 A. Faye.

12 Q. Faye Bodyke?

13 A. Yes.

14 Q. Anyone else?

15 A. Mark Scott.

16 Q. Anyone else?

17 A. No.

18 Q. So was it your understanding that  
19 traffic control officers would only be used when  
20 Ohio State personnel told you that they should be  
21 used?

22 A. It was the understanding that they  
23 would -- there were certain activities -- road  
24 closures, like I just mentioned, those were the  
25 activities, and the concrete pours, when the

1 traffic and parking would be necessary.

2 Q. Did you have the option of procuring  
3 traffic control officers at other times? In  
4 other words, if you felt like they would be  
5 beneficial from a safety standpoint, could you  
6 coordinate the procurement of them?

7 A. Not for our contract. It says that  
8 the University provided them.

9 Q. You got that from your reading of  
10 the contract --

11 A. No.

12 Q. -- or from what someone told you?

13 A. From what -- it was relayed to me.

14 Q. And who relayed that to you?

15 A. Brett Meyer. It did not say that on  
16 the contract negotiations.

17 Q. So in terms of the -- that -- going  
18 back to the morning of the September 5th, that  
19 meeting, any discussion that would have taken  
20 place about the number of trucks that were going  
21 to be arriving or the delivery times of those  
22 trucks, it wasn't gonna have any bearing on  
23 whether any traffic control officers were  
24 present?

25 A. After Daniel's incident?

1           Q.    No, before.  On the morning of his  
2  injury, we were talking about -- let me rewind a  
3  little bit to help reorient you because I jumped  
4  around.

5           A.    I know what you're saying.

6           Q.    At that September 5th, 2012 meeting,  
7  that morning, you have told me that there was --  
8  the first part of the meeting would have been  
9  safety, the second part was coordinating  
10 deliveries and the timing of deliveries with  
11 trucks; correct?

12          A.    Yes.

13          Q.    No matter what type of delivery load  
14 or number of trucks or even timing of trucks that  
15 was gonna take place that day, there would have  
16 been no ability for you to obtain traffic control  
17 officers, at least as you understood the  
18 arrangement; is that correct?

19          A.    That's correct.

20          Q.    Did that bother you?

21          A.    It's the procedure we follow when we  
22 are there.

23          Q.    Did you feel like that was the  
24 safest procedure to follow?

25          A.    It's a -- the direction was given.

1 BY MR. PERA:

2 Q. And my question to you is, if you  
3 know, whether or not that is a picture that you  
4 would have taken on the day of Daniel's injury.

5 A. It is absolutely the picture I took  
6 at 2:47 p.m. that day.

7 Q. How soon, in relation to Daniel's  
8 injury, was that taken?

9 A. Almost the exact same time.

10 Q. As in just within a few minutes of  
11 his injury?

12 A. Seconds.

13 Q. Okay.

14 A. As I took this picture, I heard the  
15 tire blow out.

16 Q. So you were taking the picture  
17 already as he was being struck?

18 A. As the tire blew out. I heard the  
19 pop.

20 Q. And what was your purpose in taking  
21 that picture at that time?

22 A. We were documenting erosion control.

23 Q. How close is that in relation to the  
24 area where Daniel was struck, in terms of feet or  
25 yards, whatever is easiest for you?

1 the truck.

2 **Q. What else did you see?**

3 A. Well, I asked the students to -- I  
4 asked a student -- my thought was the tire on the  
5 truck blew out. And when all the students were  
6 standing there, I said: Did somebody get hit by  
7 shrapnel or debris?

8 And the student said there was  
9 somebody under the truck. And I asked the  
10 students to step off to the side because I  
11 couldn't get to the truck. So I asked the  
12 students to step away from the truck. And then  
13 is when the guy pointed to -- one of the -- one  
14 of the kids there pointed to Daniel.

15 **Q. And where was Daniel in relation to**  
16 **the truck at that time?**

17 A. His shoulders were close to the  
18 right front set of duals, is all I could see when  
19 I first approached him.

20 **Q. As you continued to approach him,**  
21 **what did you see?**

22 A. I noticed his head wasn't under the  
23 truck, is what I was afraid of when I walked up  
24 there, and I noticed that he was severely injured  
25 at his waist area.

1           Q.    Did the truck move either forward or  
2 backward after you arrived at the scene of the --  
3 of the injury?

4           A.    No, it did not.

5           Q.    So by that time the truck had been  
6 put in park and the driver was out?

7           A.    I don't know if he was out, he just  
8 wasn't moving.

9           Q.    Did you discuss -- have an  
10 opportunity to discuss anything with Daniel or  
11 talk to Daniel at that time?

12          A.    Daniel was -- he lay motionless, but  
13 I heard him moaning.

14          Q.    He was conscious at the time?

15          A.    His eyes were -- I could not see his  
16 eyes, the way he was positioned, he was laying,  
17 but he was moaning. So that's when I asked  
18 somebody if somebody had called 911, and of  
19 course, yes, somebody had said that -- several  
20 kids had said that, so --

21          Q.    Could you tell if any part of  
22 Daniel's body was disfigured at that time?

23          A.    Absolutely.

24          Q.    What did you notice in that regard?

25          A.    His right hip was absolutely

1 destroyed.

2 Q. And when you say absolutely  
3 destroyed, meaning --

4 A. It was unrecognizable as far as what  
5 bones should go where, hip, socket.

6 Q. Anything else you noticed about --

7 A. His midriff section was intact, his  
8 head seemed to be intact and his feet seemed to  
9 be intact.

10 Q. Did you remain at the site of the  
11 injury until any first responders arrived?

12 A. When I heard the first responder, I  
13 ran to the road to make sure they had a clear  
14 path to get in. So the road was a few steps  
15 away. I motioned -- I believe it was an officer,  
16 a female officer, I believe, was the first  
17 responder.

18 Q. Did you notice if Daniel's bicycle  
19 was near his body when you first saw him under  
20 the truck?

21 A. His bicycle was more -- it was more  
22 positioned under the truck. I didn't care about  
23 the bicycle.

24 Q. Understood. Fair to say that the  
25 bicycle was not positioned between Daniel's legs

1 at that time?

2 A. It was not between his legs.

3 Q. Did you talk with any students at  
4 that time who indicated that they saw the  
5 accident happen?

6 A. I asked several students, did  
7 anybody see anything, and not a one of them would  
8 repeat -- or one boy said he seen something,  
9 and he was a -- he was foreign-speaking, so I  
10 didn't -- it was very hard for me to understand  
11 him. So --

12 Q. Fair to say, then, that you were not  
13 able to talk with any students that claimed to  
14 have seen the crash?

15 A. No. It was -- it was -- the time  
16 that, you know, I checked on him and the sirens  
17 were just -- I mean, seemed like immediately.  
18 But they was extremely quick getting there. And  
19 my concern was for him. And I noticed he wasn't  
20 bleeding profusely. Seemed like he was -- there  
21 was no large amounts. That's what I was looking  
22 for, to make sure he wasn't bleeding. So I was  
23 more concerned for him not to be -- to bleed out  
24 because of how -- the severity of his injuries.

25 Q. Did Daniel remain conscious the

1 September 5, 2012, Monesi was not hiring -- I'm  
2 sorry -- hauling for McDaniel's, it was hauling  
3 for Baker; correct?

4 A. That's correct.

5 Q. Even though McDaniel's had used  
6 Monesi for other things on the job; correct?

7 A. Correct.

8 Q. You indicated that you asked  
9 McDaniel's to take the barrier and the sign down;  
10 correct?

11 A. Correct.

12 Q. And you did that because it was  
13 their equipment?

14 A. Yes.

15 Q. And they were the ones that actually  
16 put it up; correct?

17 A. That's correct.

18 Q. Okay. You didn't ask them to take  
19 it down because it was their decision to take it  
20 down, you asked them to take it down simply  
21 because it was their stuff?

22 A. The only reason they was involved is  
23 because the -- the -- that equipment and that  
24 fencing belonged -- is the possession of  
25 McDaniel's Construction.

1 reopening that site?

2 A. He was not in favor of it  
3 personally.

4 Q. And did he say why he wasn't in  
5 favor of it?

6 A. Just the same, you know, as ours; is  
7 that the farther you push students back, the  
8 better off you are.

9 Q. So some safety concerns of his?

10 A. Yes.

11 Q. If I understood your -- your answers  
12 to Marc, having the TOC officers on site on  
13 9-5-12 wasn't an option for you?

14 A. No. It was never given to me that I  
15 could just call them randomly and say I need you  
16 out here because I have got three trucks coming  
17 in or anything, it was not an option.

18 Q. And as of 9-5-12 the contractors,  
19 such as Baker, they couldn't have their  
20 employees, as I understand it, outside the fence  
21 acting as either, you know, flaggers, to help  
22 direct traffic in or out of the site; is that  
23 correct?

24 MR. BRICKER: Object to the form.

25 THE WITNESS: They could not be

1 too about Don Bissett taking paddles from  
2 somebody who was in Woodruff Avenue directing  
3 traffic?

4 A. Yes.

5 Q. And you may have been asked this; if  
6 you were, I apologize. Who was in the street,  
7 what subcontractor, that day?

8 A. McDaniel's.

9 Q. McDaniel's, okay. You did say that.  
10 How did you learn they were in the street?

11 A. A phone call from Major Bissett.

12 Q. Okay. So when they were first out  
13 there, you -- you were probably in another area  
14 of the site, you just weren't aware of it at that  
15 point?

16 A. Correct.

17 Q. Had he already talked to them when  
18 he called you, if you know --

19 A. Yes.

20 Q. -- Don? You believe he had, okay.

21 A. He told me he had. He had removed  
22 their paddles from their hands.

23 Q. When he called you, so he --

24 A. When he called me.

25 Q. For certain, you believe he had

1     **spotters or flaggers, whatever you want to call**  
2     **them, could not be in the entranceway that was**  
3     **not part of the roadway?**

4             A.    He -- we weren't allowed to be out  
5     in the road or in traffic. We were to be inside  
6     the fence. And then we communicated where inside  
7     the fence? And then he said it was convenient to  
8     the location where the truckers can see you. So  
9     we wasn't given a ten feet back, five feet back,  
10    two feet back; it's where they can be seen.

11            Q.    **Is the entranceway considered part**  
12    **of the site? There is the road, Woodruff Avenue,**  
13    **then there is the temporary sidewalk, then there**  
14    **was the original sidewalk, I believe?**

15            A.    Inside my site means inside my  
16    fence.

17            Q.    To you, that's what it means?

18            A.    Yes.

19            Q.    Okay. We -- you -- going back to  
20    **safety devices that were in the area, from**  
21    **looking at the pictures, my understanding is that**  
22    **on some of the -- I guess what would be the west**  
23    **and east side of the CBEC project there is fabric**  
24    **on the fence?**

25            A.    There was fabric put in. And the

1 fabric was only put in after we submitted a  
2 fabric plan, a fencing plan to OSU: This is  
3 where we have fencing, this is where we have  
4 fabric. You have to hold the fabric back so many  
5 feet to allow the buses to see students coming  
6 out. So there was specific locations we were  
7 allowed to have fabric, and then not.

8 Q. And that's where I'm heading.

9 A. Right.

10 Q. Another safety device at the CBEC  
11 area was that on the site facing Woodruff, in the  
12 area of the temporary sidewalk, the fence was not  
13 covered with fabric, was it?

14 A. That's correct.

15 Q. So a person -- whether they were  
16 driving, walking, riding a bike -- could see  
17 through that chain link fence and know that this  
18 was a construction area, couldn't they?

19 A. That's why it was left off.

20 Q. That was intentional, wasn't it?

21 A. Yes.

22 Q. And that existed even after the  
23 temporary sidewalk was opened back up, didn't it?

24 A. That's correct.

25 Q. Now, was the temporary sidewalk one

1 width the whole way?

2 A. Yeah. I believe it's seven feet, I  
3 believe. I'm not exactly sure of the measurement  
4 all the way down from where our fence -- where  
5 the crosswalk is on the west side into where the  
6 bus stop is on the east side. I believe it's a  
7 continuous seven feet all the way down through  
8 there, right at that seven feet mark.

9 Q. If you know, do you know if it  
10 narrowed on the west side of the construction  
11 entrance right before the entrance?

12 A. It does not narrow there, no.  
13 It's --

14 Q. You don't think it does?

15 A. -- parallel to the street.

16 Q. Okay. After Mr. Bissett talked with  
17 McDaniel's, got them out of the street, what you  
18 told us about here, was there a plan put in place  
19 whereby if subcontractors needed to have flaggers  
20 in the street, somebody would contact OSU and  
21 they would get an officer out there to accompany  
22 them?

23 A. We was not going to have flaggers in  
24 the street, period.

25 Q. Can I see the exhibits, please?

1 the sidewalk was going to be closed during the  
2 heavy concrete pours?

3 A. No, it was the -- I may have stated  
4 but the -- as far as the sidewalk being closed,  
5 that was not necessarily the direction. It was  
6 we would have T&P officers during the concrete  
7 pours.

8 Q. Okay. But those had not started as  
9 of September 5th, 2012?

10 A. That's correct.

11 Q. Okay. Do you remember -- now, were  
12 there other pours besides those pours?

13 A. The foundation, footing pours, wall  
14 pours.

15 Q. Are those smaller pours?

16 A. Absolutely, yes.

17 Q. Okay. And do you know how many  
18 trucks were coming in on September 5th, 2012?

19 A. I did not have an exact -- we didn't  
20 have -- we do not have coordination meetings on  
21 the day we have progress managers' meetings. So  
22 I didn't have a one-on-one with the Baker  
23 supervisor. I knew we had deliveries, we talk  
24 about them every day, and we know that we are  
25 gonna do this, this, this and this. But I don't

1 CROSS-EXAMINATION

2 BY MR. WEBER:

3 Q. Steve, Chris Weber, for Baker  
4 Concrete.

5 You testified earlier, in response  
6 to Dan Taylor's question, down at the end of the  
7 table, that Baker could not be outside the fence;  
8 do you remember that testimony?

9 A. Uh-huh. Not supposed to be outside  
10 the fence.

11 Q. Right. Did you tell Baker personnel  
12 that?

13 A. The foremans, yes.

14 Q. You told the foreman?

15 A. Supervisors.

16 Q. Do you remember who?

17 A. Jay Segura. Travis Good.

18 (The notary interrupted.)

19 THE WITNESS: Jay, J A Y, Segura.

20 BY MR. WEBER:

21 Q. And you told Jay that before the  
22 September 5 accident?

23 A. Yes.

24 Q. Do you remember what day Baker  
25 Concrete mobilized?

1 contractors are programmed to have their people  
2 out on the road directing traffic?

3 A. That's true, normal -- normally.

4 Q. Was Baker, after that point in time,  
5 directed to have its people inside the fence?

6 A. Yes.

7 MR. WEBER: That's all I have.

8 FURTHER CROSS-EXAMINATION

9 BY MR. PERA:

10 Q. Stephen, I have got just a little  
11 bit of follow-up for you here.

12 One of the -- one of the comments  
13 you made when you were asked questions before is  
14 that there should have been somebody from Baker  
15 assisting that truck as it entered the site; do  
16 you remember saying that?

17 A. (Witness nodding head up and down.)

18 Q. That's a yes, for her?

19 A. Yes. Sorry.

20 Q. Who was it from Baker that you had  
21 spoken with, such that you knew somebody should  
22 have been assisting the Monesi truck get into the  
23 site?

24 A. Two individuals; be Jay Segura and  
25 Travis Good.

1           Q.    So the quarry should have contacted  
2 somebody --

3           A.    Dispatcher of the trucking company.

4           Q.    The dispatcher of the trucking  
5 company should have called who?

6           A.    To communicate -- coordinate their  
7 delivery with Travis, in my opinion. He is the  
8 foreman there; Baker.

9           Q.    And said our driver is on his way?

10          A.    Yes.

11          Q.    Do you know if the Monesi dispatcher  
12 contacted Travis to let him know that his truck  
13 was on his way?

14          A.    I do not know.

15               MR. TAYLOR: Continuing objection.

16 BY MR. WEBER:

17          Q.    And if the -- if the spotter is not  
18 present when a truck driver arrives, you see no  
19 objection to the driver going around the block?

20          A.    No. That was the direction from us  
21 to Baker and -- well, Baker. We don't deal with  
22 the sub-subcontractors.

23          Q.    That if there is no spotter present,  
24 that that driver should go around the block?

25          A.    Should go around the block.

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IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

JAMES DANIEL HUGHES,  
et al.,

Plaintiffs,

vs.

CASE NO. 13 CV 004435

CT CORPORATION, et al.,

Defendants.

\* \* \*

IN THE COURT OF CLAIMS OF OHIO

JAMES DANIEL HUGHES,  
et al.,

Plaintiffs,

vs.

CASE NO. 2012-09059

THE OHIO STATE UNIVERSITY,

Defendant.

\* \* \*

Videotaped deposition of DONALD A.

BISSETT, Witness herein, called by the Plaintiffs

for cross-examination pursuant to the Rules of

Civil Procedure, taken before me, Beverly W.

Dillman, a Notary Public in and for the State

of Ohio, at The Ohio State University Office

of Legal Affairs, 1590 North High Street,

Columbus, Ohio, on Thursday, May 9, 2013, at

9:02 o'clock a.m.

\* \* \*

EXHIBIT  
**H**

1           A.    After I got traffic flowing, that's  
2 correct.

3           Q.    Okay.  Now, did you indicate to them  
4 that you did not want them out there directing  
5 traffic in the street from that point forward?

6           A.    When I walked up to them, I said I  
7 would -- I would do traffic, and you need to have  
8 traffic office -- or officers out here in the  
9 street directing traffic.  I don't know who I  
10 talked to; all I know is whoever the guys with  
11 the paddles was.

12          Q.    Okay.  But you made it known that  
13 from that point forward, if there was gonna be  
14 traffic that was directed out in the street, it  
15 was going to be done by --

16          A.    Officers.

17          Q.    -- I guess it would be T&P officers,  
18 as opposed to construction people?

19          A.    Yes.

20          Q.    Is that right?

21          A.    Yes.

22          Q.    Okay.  All right.  Now, you were  
23 asked some questions about you yourself directing  
24 traffic out there.  Were there other occasions  
25 that you directed traffic, other than the day

1                   IN THE COURT OF COMMON PLEAS  
2                                   FRANKLIN COUNTY, OHIO

3 JAMES DANIEL HUGHES,  
4 et al.,  
5                   Plaintiffs,

6 vs.                                   CASE NO. 13 CV 004435  
7 CT CORPORATION, et al.,  
8                   Defendants.

9                                   \* \* \*

10                   IN THE COURT OF CLAIMS OF OHIO

11 JAMES DANIEL HUGHES,  
12 et al.,  
13                   Plaintiffs,

14 vs.                                   CASE NO. 2012-09059  
15 THE OHIO STATE UNIVERSITY,  
16                   Defendant.

17                                   \* \* \*

18                   Videotaped deposition of JOHN "JAY"  
19 SEGURA, JR., Witness herein, called by the  
20 Plaintiffs for cross-examination pursuant to the  
21 Rules of Civil Procedure, taken before me,  
22 Beverly W. Dillman, a Notary Public in and for  
23 the State of Ohio, at 1590 North High Street,  
24 Fourth Floor, Columbus, Ohio, on Monday, June 3,  
25 2013, at 1:36 o'clock p.m.

                                 \* \* \*



1 Q. He indicated also that on September  
2 5th, that your company was the subcontractor  
3 responsible for the CBEC site at that time; is  
4 that correct?

5 MR. WEBER: Objection.

6 Go ahead.

7 THE WITNESS: We were one of many  
8 contractors on the site.

9 BY MR. CRANDALL:

10 Q. You were contracting with Monesi  
11 Trucking to have trucks come -- come and go?

12 A. Yes.

13 Q. And that's what I'm referring to.  
14 As it pertains to those construction vehicles and  
15 the one at issue here that ran over Daniel, they  
16 were -- they had contracted with you, they were  
17 coming on the site for your purposes, being  
18 Baker; right?

19 A. Yes.

20 Q. And can we agree on September 5th,  
21 when the dump truck that Mr. Hinton came on the  
22 site struck Daniel, that there is no evidence  
23 that your company had a flagger to assist Mr.  
24 Hinton on and off the site at that time; correct?

25 A. We were not in the roadway flagging

1     which was on the street?

2             A.    No.

3             Q.    Is there any evidence that you had  
4     anyone in zone two, on the sidewalk, to assist  
5     Isaac and any pedestrians in that area?

6             A.    No.

7             Q.    Is there any evidence that you had  
8     anyone in zone three, being from where that  
9     fence -- fence began, all the way to the hole,  
10    assisting Mr. Hinton or the pedestrians around  
11    the truck?

12            A.    No.

13            Q.    Now, I have talked to Steve  
14    Jarrells, I have talked to Brett Meyer, I just  
15    talked to Mr. Hinton himself. We have talked to  
16    many, many fact witnesses. No one saw a Baker  
17    flagger on September 5th when this truck hit  
18    Daniel Hughes. And you agree, there was no such  
19    Baker employee acting as a flagger at that time;  
20    correct?

21            A.    Yes.

22            Q.    Now, when I talked to Mr. McMillen  
23    about this fact, he indicated to me that because  
24    your company did not have a flagger, that Baker  
25    Concrete and Construction was in fact negligent

1 going. He has done this numerous times that day,  
2 and that was something that he was -- you know,  
3 he knew what he was doing.

4 Q. Okay. Well, I want to go back and  
5 visit something that you just said.

6 A. Uh-huh.

7 Q. And I get the impression now, you  
8 said that the discussions that Travis had related  
9 to the fact that traffic -- or controlling  
10 traffic was not to take place out in the area of  
11 the street; is that right?

12 A. When we were given that directive,  
13 in my interpretation of the directive is that we  
14 had no -- we had no responsibility with anything  
15 outside of -- outside of the -- outside of the  
16 fenced area.

17 Q. Okay.

18 MR. VALENTINE: Why don't we change  
19 out now; all right?

20 VIDEO TECHNICIAN: We are off the  
21 record.

22 (Recess taken.)

23 VIDEO TECHNICIAN: We are on the  
24 record.

25 BY MR. VALENTINE:

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Defendant.

\* \* \*

Videotaped deposition of ERNESTINE FAYE  
BODYKE, Witness herein, called by the Plaintiffs  
for cross-examination pursuant to the Rules of  
Civil Procedure, taken before me, Beverly W.  
Dillman, a Notary Public in and for the State  
of Ohio, at The Ohio State University Office  
of Legal Affairs, 1590 North High Street,  
Columbus, Ohio, on Thursday, May 9, 2013, at  
11:35 o'clock a.m.

\* \* \*

EXHIBIT  
**J**

1 A. Yes.

2 Q. Were there trucks, trucks and more  
3 trucks around this construction site in August  
4 and September of 2012?

5 A. Yes.

6 Q. Was it foreseeable that you would  
7 need to ensure student safety from these trucks,  
8 trucks and more trucks in August and September of  
9 2012?

10 MR. DeMARCO: Objection.

11 You can answer.

12 THE WITNESS: Yes. We had a plan on  
13 how to ensure safety during mass excavation of  
14 the site.

15 BY MR. CRANDALL:

16 Q. Are you saying max -- mass  
17 excavation in a specific sense, in terms of when  
18 it ended?

19 A. Yes.

20 Q. When was that?

21 A. The end of August.

22 Q. Did you have any plan in place after  
23 that?

24 A. Yes.

25 Q. Who was responsible for the plan in

1 place regarding safety of pedestrians in the mass  
2 excavation portion, in your opinion?

3 MR. DeMARCO: Objection.

4 You can answer.

5 THE WITNESS: Gilbane.

6 BY MR. CRANDALL:

7 Q. Anyone else?

8 A. Gilbane and their subcontractors.

9 Q. Anyone else?

10 A. No. The University would make any  
11 recommendations, if we wanted to make adjustments  
12 to Gilbane and the contractor's plan.

13 Q. Who was responsible for the safety  
14 program for pedestrians in and around the site  
15 after mass excavation, in your opinion?

16 A. Gilbane.

17 Q. Anyone else?

18 A. And their appropriate  
19 subcontractors.

20 Q. When you talk about the  
21 subcontractor during mass excavation, are you  
22 talking about McDaniel's?

23 A. Yes.

24 Q. Anyone else?

25 A. No.

1           Q.    When you talk about postmass  
2 excavation, are you talking about Gilbane and  
3 Baker?

4           A.    Yes.

5           Q.    Anyone else?

6           A.    Depends on the contractors that are  
7 having major, major deliveries. So immediate  
8 following, it was Baker, because that was the  
9 logistics nature of the schedule.

10          Q.    Immediately following what?

11          A.    The September 5th incident.

12          Q.    Okay. And, I'm sorry, you were  
13 being very precise, as you should be. From the  
14 time excavation stopped, which you said was what  
15 date again?

16          A.    I don't know the exact date, it was  
17 just the end of August.

18          Q.    There was an e-mail that you wrote  
19 to Ken Wayman regarding the amount of trucks that  
20 went in and out due to mass -- mass excavation;  
21 do you recall that?

22          A.    Yes, I do.

23          Q.    Would that likely be the date that  
24 it ended?

25          A.    Maybe -- could have ended a couple

1 days before that e-mail.

2 Q. After that, up until September 5th,  
3 who, in your opinion, was solely responsible for  
4 the safety plan put in place for the pedestrians  
5 in and around the site; Gilbane and Baker?

6 MR. DeMARCO: Objection.

7 MR. VALENTINE: Objection.

8 Mr. DeMARCO: Go ahead.

9 THE WITNESS: Gilbane would be  
10 responsible for the safety of the site.

11 BY MR. CRANDALL:

12 Q. The plan that you talked about that  
13 was in place through mass excavation, was that  
14 written anywhere?

15 A. I don't -- I don't recall.

16 Q. Was there a drawing of it, an  
17 illustration of it, a diagram of it?

18 A. No.

19 Q. When construction vehicles were  
20 going to turn off of Woodruff onto the  
21 construction site, okay, whether they come from  
22 the east or the west --

23 A. Uh-huh.

24 Q. -- can we agree that it would impact  
25 the traffic flow of vehicles on that street, just

1 through that, but in terms of diagrams,  
2 illustrations, is there anything that exists  
3 showing those types of things on a plan?

4 A. No. Just this (indicating).

5 Q. Okay. You mentioned that Ohio State  
6 makes recommendations to Gilbane. If a  
7 recommendation was made to do -- to Gilbane to  
8 change a safety feature --

9 A. Uh-huh.

10 Q. -- and they followed that, in your  
11 opinion, in terms of the contracts that you had  
12 with Gilbane, would that make Ohio State  
13 responsible for those recommendations that they  
14 made?

15 MR. DeMARCO: Objection.

16 THE WITNESS: No.

17 MR. DeMARCO: Give -- give me a  
18 second to object.

19 THE WITNESS: Okay.

20 MR. DeMARCO: That's okay.

21 THE WITNESS: All right. Sorry.

22 MR. DeMARCO: It's all right.

23 BY MR. CRANDALL:

24 Q. There were documents released to me  
25 yesterday, one of which was a contract between

1 Ohio State University and Gilbane. You're -- you  
2 said at the beginning you're fairly familiar with  
3 that?

4 A. Generally.

5 Q. OSU Bates-stamped this, and on OSU  
6 Bates stamp 1002, and the section of the contract  
7 is 6.3.1, I want to read to you what this says;  
8 okay? The CM is solely responsible for -- and by  
9 the way, who is the CM in this case?

10 A. Gilbane.

11 Q. -- and has control over all  
12 construction means, methods, manners, techniques,  
13 sequences and procedures for safety precautions  
14 and programs in connection with the work and for  
15 coordinating all portions of the work.

16 Is that your understanding in terms  
17 of the relationship between OSU and Gilbane in  
18 terms of responsibility?

19 MR. DeMARCO: Objection.

20 THE WITNESS: Yes.

21 BY MR. CRANDALL:

22 Q. There is meeting minutes from May  
23 10th, 2012, you can look at it here, that talks  
24 about the fact that Gilbane -- could you read  
25 that highlighted area there?

1           Q.    But when the pouring began, you  
2 don't know?

3           A.    I don't know the exact date.

4           Q.    But what you're saying is the idea  
5 or plan for TCO officers in Woodruff, but not  
6 on-site, were during mass excavation and during  
7 concrete pours?

8           A.    Then Gilbane had full  
9 responsibility; if they needed them at other  
10 times, all they needed to do was to contact the  
11 T&P office and have those scheduled accordingly,  
12 as needed.

13          Q.    So we had for sure coverage during  
14 mass excavation and concrete pour?

15          A.    Yes.

16          Q.    And then you had discretionary  
17 coverage if Gilbane felt they needed TCOs?

18          A.    It was -- they needed to just  
19 contact the T&P office and request them as  
20 needed.

21          Q.    Now, the TCO in Woodruff during mass  
22 excavation and concrete pours, who was  
23 responsible for paying for that?

24          A.    The University is responsible for  
25 paying for all of them.