

10: 13

**Q. So, when you went to search for**

14

**records, you could find no records regarding**

15

**maintenance or inspections or repairs for the**

16

**crane in question prior to the accident?**

17

**A. That is correct, sir.**

18

**Q. Another one of the items, I had asked**

19

**you information about the wire rope in question**

20

**that was on the crane, and I'd asked you for a**

21

**copy of a purchase order, any kind of invoice,**

22

**any records whatsoever regarding the purchase of**

23

**that wire rope.**

24

**And your response to the court**

25

**reporter was you were unable to locate it; but**

11: 1           you may have had it at one time, or something to  
2           that effect. Does that make any sense?

3           **A. Yes, sir, it does.**

4           **Q. Explain that for me.**

5           **A. At the time when we purchased the crane**  
6           **from B & L Construction, which was prior to my**  
7           **time there, there was an inventory of material**  
8           **that came with that purchase.**  
9           **Not only did that crane come in,**  
10          **but several other pieces of equipment, and this**  
11          **sort of thing. And I thought that there may have**  
12          **been some records kept by B & L Construction. We**  
13          **looked through the material we had, was not able**  
14          **to find any such material.**

15          **Q. Okay. So, as we sit here today, you**  
16          **have no personal knowledge of when the wire rope**  
17          **that failed in this case was placed on this**  
18          **particular crane?**

19          **A. No, sir, I do not.**

20          **Q. You had learned from your crane**  
21          **operator, Mr. Fitzgerald, that he thinks it was**  
22          **replaced sometime in '89; is that correct?**

23          **A. I believe he testified something to the**  
24          **effect of 1988, '89.**

25          **Q. Okay. But as far as having some**

12: 1 records to go to and verify it, we just can't do it?

2 it.

3 A. I cannot do so.

4 Q. Okay. Do you know of any way in the

5 world that that could be done?

6 A. Potentially possible that the

7 organization that sold the crane and did the

8 repair work may have that record. I do not have

9 it.

10 Q. Did you purchase it from the B & L

11 Construction company?

12 A. That is what I have been informed.

13 Q. Okay. You weren't there at the time.

14 And that company, of course, is out of business

15 now. So, we certainly don't know what records

16 they have or do not have-

17 A. Also correct, sir.

18 Q. - correct?

19 **At the present time, do you**

20 **maintain a file or set of files for this**

21 **particular crane, so that you could go back to**

22 **your office today or tomorrow and determine what**

23 **maintenance and repairs had been done on that**

24 **crane, say, in the past six months to a year?**

25 **A. We have within our office inspection**

13: 1 reports that are conducted by the crane operator,  
2 whomever that may well be, on all of our various  
3 different cranes, daily checks and weekly checks,  
4 that indicate any problems that might be on the  
5 crane.

6 In the event that we locate a  
7 problem coming in on that report, I personally  
8 have it sent to the shop for purposes of  
9 correction.

10 **Q. And are the records of those repairs or**  
11 **corrections now kept for each crane, or are they**  
12 **just kept in general?**

13 **A. They are kept in general.**

14 **Q. So, if you wanted to go look at repairs**  
15 **or maintenance records for, say, the crane**  
16 **involved in this accident, you could do it, but**  
17 **you just couldn't go to one file that only had**  
18 **the information about this crane in it?**

19 **A. That is correct, we could identify the**  
20 **cranes in the long haul.**

21 Q. Okay. Do they put the serial number,  
22 ID number when they do repair work?

23 A. Ordinarily, the unit number would be on  
24 there.

25 Q. And that would be the crane unit number

14: 1 that y'all use?

2 A. Yes, sir.

3 Q. Okay. And I believe you told me that,  
4 prior to this accident, you didn't have that type  
5 of record?

6 A. That is correct, sir.

7 **Q. Okay. After this accident happened,**  
8 **can I assume that you notified your insurance**  
9 **company that it happened?**

10 A. Yes, sir.

11 **Q. And can I further assume that some type**  
12 **of investigation was done by them?**

13 A. That is correct, sir.

14 **Q. And who was the insurance company that**  
15 **would have carried your workers' comp and**  
16 **liability coverage? And if they were two**  
17 **different companies, tell me who they were.**

18 **A. We operate through a captive known as**  
19 **Artex, out of Dallas. Continental Insurance is**  
20 **the primary carrier in regards to our**  
21 **compensation and liability coverage.**

22 Q. How do you spell Artex?

23 A. A. R. T. E. X.

24 Q. And they're a Dallas company?

25 A. Yes, sir.

15: 1 Q. And then a - somehow within that group  
2 is Continental - what do they call themselves?

3 A. Continental Insurance, sir.

4 Q. Continental Insurance?

5 A. Yes, sir.

6 Q. And they are the ones that are  
7 responsible for taking care of comp and  
8 liability?

9 A. Yes, sir.

10 Q. Okay.

11 A. There are several umbrella policies on  
12 top of that, but they are the primaries.

13 **Q. I assume they came down and did an**  
14 **investigation?**

15 **A. That is correct, sir.**

16 **Q. Who came down from the insurance**  
17 **company to do that investigation?**

18 **A. If memory serves me correctly, it was**  
19 **Mr. Ron Arthur.**

20 Q. Ron Arthur?

21 A. Yes, sir.

22 Q. Have you seen this accident?  
23 Do you know if he's still with the company?

24 A. Yes, sir, he is. And, yes, I have seen  
25 him a number of times.

16: 1 **Q. Does he come out and do maybe yearly**

2 **inspections of your facilities?**

3 **A. He does not do inspections of the**

4 **facilities. He comes down to discuss claims that**

5 **we might have.**

6 Q. Okay. Did he do a complete

7 investigation of this accident-

8 A. Would you define "complete," please?

9 Q. -depending on what complete means?

10 A. Yes, sir.

11 Q. All right. Let me break it down. Did

12 he come out and take statements of people who

13 might have knowledge of what happened?

14 A. If memory serves me correctly, sir, he

15 did not personally take statements.

16 Prior to his arrival, an OSHA

17 inspector had been on scene and had taken

18 statements from the primary parties at that time.

19 And he was, of course, furnished copies of those

20 statements.

21 Q. So, to the best of your memory, he just

22 used the statements that had already been

23 obtained?

24 A. I believe that would be correct.

25 **Q. Okay. Did he do an investigation**

17: 1 report for his principals or bosses, telling them  
2 what happened, as best he could figure out?

3 **A. I'm not certain of that, sir.**

4 **Q. Have you ever seen such a report?**

5 **A. No, sir. We have had numerous pieces  
6 of correspondence back and forth as to different  
7 things that we wanted to do during the course of  
8 the investigation of this thing, primarily  
9 looking at causation, for preventive purposes.**

10 **As far as a formal report  
11 indicating: We believe this to be the cause, or  
12 that to be the cause, I'm not certain that he has  
13 done that.**

14 **Q. Okay. Now, from the standpoint of your  
15 company, I was noticing in your safety manual  
16 that there was a requirement in there that you  
17 would investigate all accidents and do an  
18 accident report. Did Young Brothers do that in  
19 this particular case.**

20 **A. I certainly did the accident.  
21 investigation.**

22 **Q. Okay. Did you prepare any kind of  
23 report as to what happened?**

24 **A. I have notes in regards of meetings.**

25 **As far as a formal typewritten report, no, I**

18: 1        **don't think I have.**

2        **Q. Okay. What did you call those notes?**

3        **A. Memorandums of meetings between myself**

4        **and an accident reconstructionist that came in.**

5        **Mr. Arthur was present. I was present. Mr. F.**

6        **M. Young was present. And if memory serves - in**

7        **fact, I know Jerry Campbell, our trial counsel in**

8        **Waco, was in fact present.**

9        Q. Okay. And during these meetings, y'all

10       discussed the possibilities of what happened or

11       what might have happened?

12       A. Yes, sir. We looked at all the

13       alternatives that we had available to us at that

14       time.

15       Q. And were minutes kept those

16       meetings?

17       A. I took personal notes, yes, sir.

18       Q. Did anyone type up the notes, or are

19       they just in handwriting?

20       A. I typed up my own notes.

21       Q. And do you have those records somewhere

22       in your office?

23       A. I do, sir.

24       Q. Okay. Those were not produced to the

25       court reporter, I do not believe. And I can't

19: 1 remember if they asked you for investigation or  
2 accident reports or not. Do you recall one way  
3 or the other?

4 A. No, sir. Off the top side of my head,  
5 I don't.

6 Q. I don't see it on there, either, so  
7 I'll ask you for that at a later date.

8 A. Very well, sir.

9 Q. Your safety handbook or safety  
10 manual - and I'll find it for you, so you will  
11 know what we're talking about - this one here,  
12 that says: Safety Manual Waco Bryan Young  
13 Brothers?

14 A. Yes, sir.

15 Q. Was that in effect in August of 1991,  
16 when this accident happened?

17 A. It was in effect, yes, sir.

18 Q. Okay. Is it still in effect?

19 A. It is, sir.

20 Q. It does in fact contain a requirement  
21 in there that accidents will be investigated and  
22 reports will be made, does it not?

23 A. I would assume, yes, sir.

24 Q. Okay. Do you recall that particular  
25 provision in there?

- 20: 1 A. I did not write this particular manual,  
2 sir. I have written a secondary manual, that  
3 would have a similar requirement.
- 4 Q. All right. When you came to Young  
5 Brothers, did anyone tell you about that  
6 provision in the manual and instruct you that you  
7 should make reports when you investigated an  
8 accident?
- 9 A. I'm sure that I read the manual,  
10 myself, sir.
- 11 Q. Okay. Is there a reason why you didn't  
12 do an official accident report, as required by  
13 the manual?
- 14 A. I would have believed that, in this  
15 particular situation, right from the word go, we  
16 understood that there was probably going to be  
17 litigation in regard to the matter.  
18 due to my legal background, I am  
19 very cognizant of placing reports in files prior  
20 to the actual notice letters coming in.
- 21 Q. so, you determined that it would  
22 probably be in the best interests of your company  
23 that no official written report be prepared?
- 24 A. I don't believe that was one of my  
25 considerations.

21: 1 Q. Okay. I must have missed something in  
2 the translation, then.  
3 As a practical matter, you didn't  
4 prepare a written report of what happened -

5 A. That is correct.

6 Q. - and your findings. Okay. Now, tell  
7 me, then, why you didn't do that.

8 A. The attorney-client privilege, No. 1.  
9 secondly speaking, in regard to the actual  
10 findings on the report, I am cognizant of,  
11 certainly, discovery; ans as a result of that,  
12 regardless of what my personal determinations  
13 were, we did not want them recorded.

14 Q. Okay. So, you had on your lawyer hat  
15 when you were making those decisions?

16 A. That's part of the reason why I'm  
17 there, sir.

18 Q. All right. Now, who has custody of  
19 those meetings and memos that we're talking  
20 about?

21 A. I have custody of those files, sir.

22 **Q. Okay. Were you able to find any**  
23 **records whatsoever regarding the purchase of this**  
24 **crane from B & L Construction?**

25 **A. The only thing I was able to locate was**

22: 1           **an inventory of equipment that had come during**  
2           **the course of the purchase, of which the crane**  
3           **was listed on there.**

4           **Q. So, it was just listed as Item No. 1, 2**  
5           **or 3?**

6           **A. Yes, sir.**

7           **Q. P & H 40-ton crane?**

8           **A. I think that's very close, yes, sir.**

9           **Q. Okay. So, you didn't have any other**  
10           **materials that referenced the crane or gave you a**  
11           **history of it, or anything like that?**

12           **A. I was not able to find any.**

13           Q. Okay. So, you even know who owed it  
14           before you did?

15           A. No, sir.

16           Q. Okay.

17           A. Beyond B & L Construction. Beyond  
18           that, no, sir.

19           Q. All right. Now, after this accident  
20           happened, there was some repair and, I guess,  
21           maintenance work done to the crane before it went  
22           back into operation; correct?

23           A. Correct, sir.

24           Q. Okay. Now, was that all done at Young  
25           Brothers' shop, or did you have to send part of

23: 1           it out?

2           A. I believe it was all done at Young

3           Brothers.

4           Q. And who did that work or supervised the

5           performance of that work?

6           A. Kenneth Jugart.

7           Q. Kenneth -

8           A. Jugart.

9           Q. How do you spell Jugart?

10          A. I believe it is J. U. G. A. R. T.

11          Q. Okay. and what is his position with

12          Young Brothers?

13          A. He is a welding foreman, maintenance

14          technician.

15          Q. Okay. And I take it he's still with

16          Young Brothers?

17          A. That is correct, sir.

18          Q. Okay. How long has he been with you?

19          A. Approximately 30 years.

20          Q. Who assisted him in doing any repair or

21          maintenance work to get that crane back in

22          operation?

23          A. I believe, one of the chief welders.

24          Name is Les - have to pardon me; I don't

25          remember his last name right offhand. There -

24: 1 he maintains a staff of approximately seven to  
2 eight welders, and I'm sure that several of them  
3 probably had something to do with it.

4 Q. Who was the Raymond person that  
5 Mr. Fitzgerald was talking about, that was a  
6 repair person at Young Brothers?

7 A. I am unfamiliar with that person.

8 Q. Okay. How many people work at Young  
9 Brothers?

10 A. About 750, more or less.

11 Q. So, it's a pretty large operation.

12 A. Yes, sir.

13 Q. And the main office is in Waco?

14 A. That's correct.

15 Q. Is that where you office?

16 A. That is correct.

17 **Q. Tell me what they have there, besides**  
18 **the repair facility and a shop.**

19 **A. Main office is there. they have a**  
20 **truck facility, welding shops, ready mix plant,**  
21 **asphalt plant, material storage yard, and**  
22 **trucking department. That's at the main yard.**  
23 **We also maintain an airport yard,**  
24 **that has the heavy equipment shop in it, another**  
25 **asphalt plant, and a concrete pug mill.**

25: 1 **Q. Okay. The airpport shop is where you**  
2 **keep and maintain your heavy equipment?**

3 **A. That is where heavy equipment is**  
4 **maintained.**

5 **Q. And this - the crane involved in this**  
6 **accident would be one of those pieces of**  
7 **equipment?**

8 **A. Under normal situation, yes, sir.**

9 **Q. Okay. Now you got me confused,**  
10 **Mr. Baldwin. What, under abnormal situations,**  
11 **happens?**

12 **A. The welding shop is located at the main**  
13 **office location on Highway 6. The items that**  
14 **needed to be repaired on this particular crane**  
15 **required welding; so, in this particular**  
16 **situation, it was not sent to the general**  
17 **maintenance shop.**

18 **Q. All right. Tell me, as best you can**  
19 **recall, what types of things or general areas of**  
20 **the crane had to be repaired.**

21 **A. The boom area had to be repaired.**  
22 **There were several bent lacings within the boom,**  
23 **that had to be removed and refitted with new**  
24 **material. seems to me like the boom tip, itself,**  
25 **had to be repaired. The spreader bar had to be**

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**repaired.**

**I think that was about it, sir.**

**Q. are we talking about the lower or the upper spreader?**

**A. seems to me like both spreader bars were repaired.**

Q. Okay. And are you familiar with what repair was done to them?

A. The major repair that struck in my memory was some deep gouges in the spreader bar.

Q. And how were they repaired?

A. They were repaired by remelting metal into the spreader bars, and then machining back down to smooth surfaces.

Q. Okay. And this was done to the spreader bars before you got it back in operation, after the accident?

A. That is correct, sir.

Q. Okay. It seems to me that the engineers that we've talked to in this case, Mr. Colthorp, that he or you, or both of you may have done some testing and looked at a spreader bar sometime after the accident. and my recollection is that you looked at a spreader bar from a similiar crane, as

27: 1                   opposed to the spreader bar on the crane involved

2                   in this accident; is that correct?

3                   A. We have looked at a number of spreader

4                   bars off 40-ton P & H cranes-

5                   Q. Okay.

6                   A. -yes, sir.

7                   Q. How many P & H cranes does Young

8                   Brothers have?

9                   A. Young Brothers has a total of four

10                  P & H cranes.

11                 Q. Okay. Now, you have two 40-tons, don't

12                 you?

13                 A. That is correct.

14                 Q. What are the other ones?

15                 A. We have a 35-ton and we have a 30-ton

16                 hydraulic.

17                 Q. Okay. Do you know the vintage of those

18                 cranes, when they were manufactured, or anything

19                 like that?

20                 A. Off the top of me head, no, sir.

21                 Q. Okay. Where are the records maintained

22                 for all of the repair work that was done on the

23                 crane involved in this accident?

24                 A. I don't actually believe there is a

25                 documented repair record on this particular

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28: 1 crane.

2 The person who has that knowledge

3 is Kenneth Jugart.

4 Q. So, you have never seen any records

5 showing exactly what was done or what it cost, or

6 anything like that?

7 A. No, sir.

8 Q. And you don't know - as far as you

9 know, no such records exist?

10 A. That is correct, sir.