

2-23-2009

Brian and Christie, Inc. v. Leishman Elec. Clerk's Record v. 2 Dckt. 35929

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Supreme Court No. ³⁵⁹²⁹⁻²⁰⁰⁸
Volume No. 2

COPY

LAW CLERK

2 of 3

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

BRIAN AND CHRISTIE, INC., AN IDAHO
CORPORATION, AND D/B/A TACO TIME, AN
ASSUMED BUSINESS NAME

PLAINTIFF
And
APPELLANT

Vs

LEISHMAN ELECTRIC, INC., AN IDAHO
CORPORATION; AND JOHN DOES 1-10

DEFENDANT
And
RESPONDENT

*Appealed from the District Court of the Seventh Judicial
District of the State of Idaho, in and for Madison County*

Honorable BRENT J. MOSS District Judge

JOHN R GOODELL
BRENT L WHITING
RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED
P.O. BOX 1391
POCATELLO, ID 83204-1391

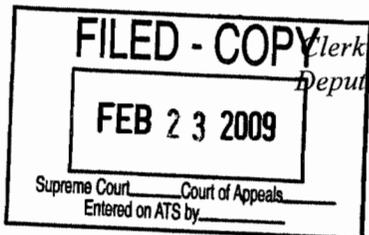
Attorney for Appellant

GARY L COOPER
COOPER & LARSEN, CHARTERED
P.O. BOX 4229
POCATELLO, ID 83205-4229

Attorney for Respondent

Filed this the _____ day of _____, 2008

By _____



35929

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Brian and Christie, Inc., an Idaho Corp vs. Leishman Electric, Inc, John does 1-10

Date	Code	User	Description	Judge
02/2006	NCOC	GWEN	New Case Filed - Other Claims	Brent J. Moss
		GWEN	Filing: A1 - Civil Complaint, More Than \$1000 No Prior Appearance Paid by: Goodell, John R (attorney for Brian and Christie, Inc., an Idaho Corp) Receipt number: 0108113 Dated: 10/2/2006 Amount: \$88.00 (Check)	Brent J. Moss
	SMIS	GWEN	Summons Issued	Brent J. Moss
1/6/2007	SMIS	GWEN	Summons Issued	Brent J. Moss
1/15/2007	AFSR	GWEN	Affidavit Of Service 03/10/07	Brent J. Moss
1/22/2007		GWEN	Filing: 11A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: Cooper, Gary L (attorney for Leishman Electric, Inc) Receipt number: 0001691 Dated: 3/22/2007 Amount: \$58.00 (Check)	Brent J. Moss
	NSRV	GWEN	Notice Of Service	Brent J. Moss
1/23/2007		KRIS	Plaintiffs' Notice of Service of Responses to Defendant's First Requests For Admissions	Brent J. Moss
		KRIS	Plaintiffs' Notice of Service of Responses to Defendant's First Requests For Admissions	Brent J. Moss
1/4/2007	NORT	GWEN	Note Of Issue/request For Trial	Brent J. Moss
	HRSC	ANGIE	Hearing Scheduled (Motion 07/09/2007 10:00 AM)	Brent J. Moss
1/5/2007	MOTN	GWEN	Defendant's Motion for Sumamry Judgment	Brent J. Moss
	MEMO	GWEN	Memorandum in Support of Defendant Leishman Electric Motion for Sumamry Judgment	Brent J. Moss
	AFFD	GWEN	Affidavit of Gary L Cooper	Brent J. Moss
	NOTH	GWEN	Notice Of Hearing	Brent J. Moss
	HRSC	GWEN	Hearing Scheduled (Motion 07/16/2007 10:00 AM)	Brent J. Moss
	RSPN	GWEN	Response and Objection to Note of Issue and Request for Trial Setting	Brent J. Moss
1/22/2007	HRSC	ANGIE	Hearing Scheduled (Motion 07/09/2007 08:30 AM)	Brent J. Moss
1/25/2007	MOTN	GWEN	Plaintiff's Motion to Continue Defendant's Motion for Summary Judgment	Brent J. Moss
	AFFD	GWEN	Affidavit of John R Goodell in Support of Rule 56(f) Motion to Continue Defendant's Motin for Sumamry Judgment	Brent J. Moss
	NOTH	GWEN	Notice Of Hearing	Brent J. Moss
	NSRV	GWEN	Notice Of Service of Plaintiff' sFirst Set of Interrogatories and Requests for Production of Documents to defendant Leishman Electric	Brent J. Moss
	NSRV	GWEN	Notice Of Service of Plaintiff's first Set of Requests for Admission to Defendant Leishman Electric Inc	Brent J. Moss

Brian and Christie, Inc., an Idaho Corp vs. Leishman Electric, Inc, John does 1-10

Date	Code	User		Judge
12/2/2007	AFFD	GWEN	Affidavit of John Goodell	Brent J. Moss
	MEMO	GWEN	Plaintiff's Memorandum in Opposition to Motion for Summary Judgment	Brent J. Moss
	AFFD	GWEN	Affidavit of Brian Larsen	Brent J. Moss
	MEMO	GWEN	Defendant's Memorandum in Opposition to Plaintiff's IRCP 56(f) Motion to Continue Defendant's Motion for Summary Judgment	Brent J. Moss
12/3/2007	AFFD	GWEN	Affidavit of Brent L Whiting in Support of Rule 56(f) Motion to Continue Defendant's Motion for Summary Judgment	Brent J. Moss
	MEMO	GWEN	Defendant's Memorandum in Opposition to Plaintiff's IRCP56(f) Motion to Continue Defendant's Motion for Summary Judgment	Brent J. Moss
	CERS	GWEN	Certificate Of Service	Brent J. Moss
12/9/2007	CONT	ANGIE	Continued (Motion 09/10/2007 10:00 AM)	Brent J. Moss
	REPL	GWEN	Reply memorandum in Support of Defendant Leishman Electric Motion for Summary Judgment	Brent J. Moss
	HRHD	ANGIE	Hearing result for Motion held on 07/09/2007 08:30 AM: Hearing Held	Brent J. Moss
12/10/2007	NOTH	GWEN	Amended Notice Of Hearing	Brent J. Moss
12/17/2007	NSRV	GWEN	Notice Of Service	Brent J. Moss
12/18/2007	NSRV	GWEN	Notice Of Service	Brent J. Moss
12/31/2007	CONT	LORI	Continued (Motion 09/17/2007 10:00 AM)	Brent J. Moss
1/2/2008	NOTH	GWEN	Second Amended Notice Of Hearing	Brent J. Moss
1/3/2008	NOTC	GWEN	Notice of Deposition of Bron Leishman	Brent J. Moss
	NOTC	GWEN	Notice of Deposition of Scott Leishman	Brent J. Moss
1/4/2008	MEMO	GWEN	Plaintiff's Supplemental Memorandum in Opposition to Motion for Summary Judgment	Brent J. Moss
	AFFD	GWEN	Affidavit of Brent L Whiting	Brent J. Moss
1/17/2008	HRHD	ANGIE	Hearing result for Motion held on 09/17/2007 10:00 AM: Hearing Held	Brent J. Moss
1/18/2008	LETT	GWEN	Letter from T&T	Brent J. Moss
1/10/15/2008	MEMO	GWEN	Memorandum Decision	Brent J. Moss
12/19/2007	NTDP	GWEN	Notice Of Taking Deposition Duces Tecum of Michael C Higgins PE	Brent J. Moss
	NTDP	GWEN	Notice Of Taking Deposition Duces Tecum of Alan Caine	Brent J. Moss
	SUBR	GWEN	Subpoena Returned	Brent J. Moss
1/17/2008	NORT	GWEN	Note Of Issue/request For Trial	Brent J. Moss
1/25/2008	RRTS	GWEN	Response To Request For Trial Setting	Brent J. Moss
2/6/2008	LETT	GWEN	Letter from M&M	Brent J. Moss

Brian and Christie, Inc., an Idaho Corp vs. Leishman Electric, Inc, John does 1-10

Date	Code	User	Description	Judge
7/13/2008	HRSC	GWEN	Hearing Scheduled (Pre-Trial 07/21/2008 11:00 AM)	Brent J. Moss
	HRSC	GWEN	Hearing Scheduled (Jury Trial 08/05/2008 09:00 AM)	Brent J. Moss
		GWEN	Notice Of Trial Setting and Order Governing Further Proceedings	Brent J. Moss
7/18/2008	HRSC	ANGIE	Hearing Scheduled (Motion 04/07/2008 08:30 AM)	Brent J. Moss
7/19/2008	MOTN	GWEN	Motion to Continue Trial Setting	Brent J. Moss
	NOTH	GWEN	Notice Of Telephonic Hearing	Brent J. Moss
7/17/2008	DCHH	ANGIE	Hearing result for Motion held on 04/07/2008 08:30 AM: District Court Hearing Held Court Reporter: David Marlow Number of Transcript Pages for this hearing estimated: less than 100 pages	Brent J. Moss
7/18/2008	ORDR	GWEN	Order to Continue Trial Setting (recieved)	Brent J. Moss
7/10/2008	MOTN	GWEN	Plaintiff's Motion for Summary Judgment	Brent J. Moss
	MEMO	GWEN	Plaintiff's Memorandum in Support of Motion for Summary Judgment	Brent J. Moss
	NOTH	GWEN	Notice Of Hearing on Plaintiff's Motion for Sumamry Judgment	Brent J. Moss
	AFFD	GWEN	Second Affidavit of Brian Larsen	Brent J. Moss
	AFFD	GWEN	Affidavit of Micahel C Higgins, PE in Support of Motions for Sumamry Judgment	Brent J. Moss
	AFFD	GWEN	Affidavit of Scott Kimbrough PhD PE in Support of Motion for Summary Judgment	Brent J. Moss
	AFFD	GWEN	Affidavit of Robert "Jake" Jacobsen CFI in Support of Plaintiff's Motion for Summary Judgment	Brent J. Moss
	CONT	ANGIE	Hearing result for Jury Trial held on 08/05/2008 09:00 AM: Continued	Brent J. Moss
	CONT	ANGIE	Hearing result for Pre-Trial held on 07/21/2008 11:00 AM: Continued	Brent J. Moss
	HRSC	ANGIE	Hearing Scheduled (Pre-Trial 10/06/2008 08:30 AM) Telephonic	Brent J. Moss
	HRSC	ANGIE	Hearing Scheduled (Jury Trial 03/24/2009 09:00 AM)	Brent J. Moss
7/11/2008	AFFD	GWEN	Affidavit of Micheal Packer	Brent J. Moss
7/16/2008	NTDP	GWEN	Notice Of Taking Deposition Duces tecum Robert "Jake" Jacobsen	Brent J. Moss
	NTDP	GWEN	Notice Of Taking Deposition Duces Tecum scott Kimbrough	Brent J. Moss
5/1/2008	NTDP	GWEN	Notice Of Taking Deposition Brian Larsen	Brent J. Moss
5/20/2008	NTDP	GWEN	Amended Notice Of Taking Deposition Duces Tecum Robert "Jake" Jacobsen	Brent J. Moss

Brian and Christie, Inc., an Idaho Corp vs. Leishman Electric, Inc, John does 1-10

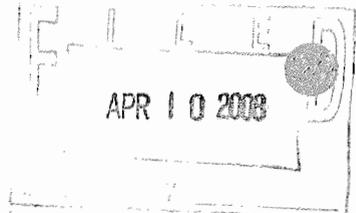
Date	Code	User		Judge
12/9/2008		KRIS	Leishman's Memo in Opposition To Plaintiff's Motion For Summary Judgment	Brent J. Moss
	AFFD	KRIS	Affidavit of Paul Moore	Brent J. Moss
	AFFD	KRIS	Second Affidavit of Gary L Cooper	Brent J. Moss
12/16/2008	BREF	GWEN	Plaintiff's Reply Brief in Support of Summary Judgment	Brent J. Moss
	AFFD	GWEN	Affidavit of John R Goodell	Brent J. Moss
12/23/2008	MINE	ANGIE	Minute Entry Hearing type: Summary Judgment Hearing date: 6/23/2008 Time: 11:29 am Court reporter: David Marlow	Brent J. Moss
	HRSC	ANGIE	Hearing Scheduled (Summary Judgment 06/23/2008 11:00 AM)	Brent J. Moss
	DCHH	ANGIE	Hearing result for Summary Judgment held on 06/23/2008 11:00 AM: District Court Hearing Held Court Reporter: David Marlow Number of Transcript Pages for this hearing estimated: less than 100 pages	Brent J. Moss
12/29/2008	ORDR	GWEN	Order Denying Plaintiff's Summary Judgment Motion	Brent J. Moss
12/31/2008	NSRV	GWEN	Notice Of Service	Brent J. Moss
1/8/2008	HRSC	ANGIE	Hearing Scheduled (Motion 09/15/2008 10:30 AM) Plaintiff's Motion for Reconsideration on Partial Summary Judgment	Brent J. Moss
1/12/2008	NOTH	GWEN	Notice Of Hearing	Brent J. Moss
	MOTN	GWEN	Motion for Reconsideration	Brent J. Moss
	MEMO	GWEN	Plaintiff's Memorandum in Support of Motion for Reconsideration	Brent J. Moss
1/19/2008	LETT	GWEN	Letter Mediation Unsuccessful	Brent J. Moss
1/28/2008	MISC	GWEN	Leishman Electrics Response to Plaintiff's Motion for Reconsideration	Brent J. Moss
1/29/2008		KRIS	Leishman Electric's Response to Plaintiffs' Motion For Reconsideration	Brent J. Moss
	MOTN	ANGIE	Motion to Amend Complaint	Brent J. Moss
	MEMO	ANGIE	Memorandum in Support of Motion to Amend Complaint	Brent J. Moss
	NOTC	ANGIE	Notice of Hearing	Brent J. Moss
	AMCO	ANGIE	First Amended Complaint and Demand for Jury Trial	Brent J. Moss
1/5/2008	MEMO	ANGIE	Leishmann Memorandum In Opposition to Plaintiff's Motion to Amend	Brent J. Moss
	MEMO	KRIS	Leishman Memorandum in Opposition to Plaintiff's Motion to Amend	Brent J. Moss
1/8/2008	MEMO	KRIS	Reply Memorandum in Support of Plaintiff's Motion For Reconsideration	Brent J. Moss

Brian and Christie, Inc., an Idaho Corp vs. Leishman Electric, Inc, John does 1-10

Date	Code	User		Judge
12/11/2008	MEMO	GWEN	Reply Memorandum in Support of Motion to Amend Complaint	Brent J. Moss
12/12/2008	CONT	ANGIE	Continued (Motion 09/16/2008 10:30 AM) Plaintiff's Motion for Reconsideration on Partial Summary Judgment	Brent J. Moss
12/16/2008	MINE	ANGIE	Minute Entry Hearing type: Motion Hearing date: 9/16/2008 Time: 10:44 am Court reporter: David Marlow	Brent J. Moss
	DCHH	ANGIE	Hearing result for Motion held on 09/16/2008 10:30 AM: District Court Hearing Held Court Reporter: David Marlow Number of Transcript Pages for this hearing estimated: less than 100 pages	Brent J. Moss
01/01/2008	MEMO	ANGIE	Memorandum Decision on Plaintiff's Motion to Reconsider	Brent J. Moss
	JDMT	ANGIE	Judgment of Dismissal	Brent J. Moss
	HRVC	ANGIE	Hearing result for Pre-Trial held on 10/06/2008 08:30 AM: Hearing Vacated Telephonic	Brent J. Moss
	HRVC	ANGIE	Hearing result for Jury Trial held on 03/24/2009 09:00 AM: Hearing Vacated	Brent J. Moss
	CDIS	ANGIE	Civil Disposition entered for: John does 1-10,, Defendant; Leishman Electric, Inc, Defendant; Brian and Christie, Inc., an Idaho Corp, Plaintiff. Filing date: 10/1/2008	Brent J. Moss
	STAT	ANGIE	STATUS CHANGED: closed	Brent J. Moss
10/8/2008	AFFD	GWEN	Affidavit of Gary L Coopre in Support of Award of Costs Including Discretionary Costs	Brent J. Moss
	MEMO	GWEN	Memorandum of Costs	Brent J. Moss
10/15/2008	OBJC	GWEN	Plaintiff's Objections and Motion to Disallow Costs	Brent J. Moss
	HRSC	ANGIE	Hearing Scheduled (Motion 11/03/2008 10:00 AM) Motion for Costs	Brent J. Moss
10/16/2008	NOTH	GWEN	Notice Of Hearing	Brent J. Moss
10/21/2008	NOTC	ANGIE	Notice of Hearing for 11/3/08 -- Defendant's Motion for Costs	Brent J. Moss
10/23/2008	CONT	LORI	Continued (Motion 11/03/2008 08:30 AM) Motion for Costs - telephonic	Brent J. Moss
10/24/2008	NOTH	KRIS	Notice Of Telephonic Hearing	Brent J. Moss
		KRIS	Defendant's Response to Plaintiff's Objections on Motion to Disallow Costs	Brent J. Moss
	RESP	ANGIE	Defendant's Response to Plaintiff's objections on Motion to Disallow Costs	Brent J. Moss
	NOTC	ANGIE	Notice of Hearing 11-3-08 @ 8:30 a.m.	Brent J. Moss
11/3/2008	HRHD	GWEN	Hearing result for Motion held on 11/03/2008 08:30 AM: Hearing Held Motion for Costs - telephonic	Brent J. Moss

Brian and Christie, Inc., an Idaho Corp vs. Leishman Electric, Inc, John does 1-10

Date	Code	User		Judge
11/5/2008		GWEN	Miscellaneous Payment: Supreme Court Appeal Fee (Please insert case #) Paid by: John Goodell Receipt number: 0013555 Dated: 11/6/2008 Amount: \$86.00 (Check)	Brent J. Moss
		GWEN	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: John Goodell Receipt number: 0013555 Dated: 11/6/2008 Amount: \$100.00 (Check)	Brent J. Moss
		GWEN	Filing: T - Civil Appeals To The Supreme Court (\$86.00 for the Supreme Court to be receipted via Misc. Payments. The \$15.00 County District Court fee to be inserted here.) Paid by: Goodell, John R (attorney for Brian and Christie, Inc., an Idaho Corp) Receipt number: 0013554 Dated: 11/6/2008 Amount: \$15.00 (Check) For: Brian and Christie, Inc., an Idaho Corp (plaintiff)	Brent J. Moss
11/6/2008	APSC	GWEN	Appealed To The Supreme Court	Brent J. Moss
11/17/2008	ORDR	GWEN	Order RE: Costs	Brent J. Moss
	CDIS	GWEN	Civil Disposition entered for: Leishman Electric, Inc, Defendant; Brian and Christie, Inc., an Idaho Corp, Plaintiff; John does 1-10,, Defendant. Filing date: 11/17/2008	Brent J. Moss
11/24/2008	JDMT	KRIS	Judgment \$12,150.00	Brent J. Moss
	CDIS	GWEN	Civil Disposition entered for: Leishman Electric, Inc, Defendant; Brian and Christie, Inc., an Idaho Corp, Plaintiff. Filing date: 11/24/2008	Brent J. Moss
12/3/2008		GWEN	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: John Goodell Receipt number: 0014115 Dated: 12/3/2008 Amount: \$1.00 (Check)	Brent J. Moss
		GWEN	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: John Goodell Receipt number: 0014115 Dated: 12/3/2008 Amount: \$100.00 (Check)	Brent J. Moss
	MISC	GWEN	Amended Notice of Appeal	Brent J. Moss
12/10/2008		GWEN	Miscellaneous Payment: Personal Copy Fee Paid by: Racine Olsen Receipt number: 0014286 Dated: 12/10/2008 Amount: \$2.40 (Check)	Brent J. Moss
		GWEN	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Racine Olsen Receipt number: 0014286 Dated: 12/10/2008 Amount: \$317.50 (Check)	Brent J. Moss
12/18/2008	LETT	GWEN	Letter for Supreme Court	Brent J. Moss



John R. Goodell (ISB#: 2872)
 Brent L. Whiting (ISB#: 6601)
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 Fax: (208)232-6109
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Attorneys for Plaintiffs

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF MADISON**

BRIAN AND CHRISTIE, INC., an Idaho)
 corporation, and d/b/a TACO TIME, as)
 assumed business name,)
)
 Plaintiff,)
)
 vs.)
)
 LEISHMAN ELECTRIC, INC., an Idaho)
 corporation; and JOHN DOES 1-10,)
)
 Defendants.)
 _____)

Case No. CV06-826

**AFFIDAVIT OF MICHAEL C.
 HIGGINS, P.E. IN SUPPORT OF
 MOTION FOR SUMMARY
 JUDGMENT**

STATE OF COLORADO)
 : ss.)
 County of Jefferson)

Michael C. Higgins, P.E., being first duly sworn, deposes and states as follows:

1. My name is Michael Higgins. I am a specialist in forensics engineering, including

experience in engineering evaluations. I am the owner of Higgins and Associates, Inc., which has been in business since April, 2000.

Attached as **Exhibit 1** is a true and correct copy of my Curriculum Vitae stating my qualifications, education, experience, and publications in more detail.

Attached as **Exhibit 2** is a true and correct copy of my depositions and trial appearances where I have testified as a forensic engineer in cases filed in the States of Idaho, New Mexico, Colorado, and other states and forums from approximately 1987 to date.

2. I performed a review of the 1996 National Electrical Code and State of Idaho Division of Building Safety Electrical Bureau Licensing Statutes regarding the electrical work conducted at the Taco Time Restaurant in Rexburg, Idaho for the 1998-1999 building remodel at the request of John Goodell, attorney for the Plaintiffs in this case. My findings and discussion are stated in my engineering report dated October 30, 2006.

Attached as **Exhibit 3** is a true and correct copy of my engineering report.

3. In summary, as indicated in my report, the electrician who energized the neon sign was in violation of the code by failing to inspect the fixture to ensure it was wired according to the National Electrical Code ("NEC").

4. It is my expert opinion that the electrician was in violation of the Idaho State Electrical Code by energizing the neon sign prior to inspecting the fixture for compliance with the NEC, and would be legally responsible for damages caused by his work.

5. My deposition was previously taken by Defendant's counsel herein on January 22, 2008. True and correct copies of excerpts of my deposition are included at **Exhibit 4** attached hereto. At the time my deposition was taken, I had also been provided and reviewed the deposition

**AFFIDAVIT OF MICHAEL C. HIGGINS, P.E. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - Page 2**

(or draft copy) of Alan Caine taken in this case on January 17, 2008, a few days earlier. I understand that Mr. Caine expressed views and opinions different than what he had previously told me in conversations about his understanding of the duty of an electrician in Idaho.

In particular, Mr. Caine is understood as expressing disagreement with my report insofar as it refers to the electrician “energizing” an electrical circuit, with an attached defective appliance which had been installed by somebody else, who would be responsible for ensuring such could not be done safely and in compliance with the NEC.

Rather, according to Mr. Caine, an electrician would only have such responsibility and compliance with the NEC if he had actually “installed” the appliance attached to the end of the circuit he was energizing, but *not* if he energized the circuit line but had *not* actually “installed” the appliance, regardless of the appliance being in a defective condition and thus presenting a fire hazard.

I must respectfully disagree with Mr. Caine’s “revised” interpretation or application of Idaho law and the NEC to this situation. Frankly, it seems to be a case of hair-splitting. I cannot understand how an electrician could energize a circuit line, as the last or only licensed electrician involved, with a defective appliance attached to the end of it, which could have been ascertained by a simple visual inspection which would have taken only a few minutes, even if the defective appliance was actually “installed” by someone else.

My interpretation of the Idaho rules and laws governing electricians, and the NEC which is also adopted by Idaho law, and *common sense*, all support the position that an electrician may hook up and/or energize an electrical circuit when he has done whatever is necessary to ensure that such can be done safely.

**AFFIDAVIT OF MICHAEL C. HIGGINS, P.E. IN SUPPORT OF
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT - Page 3**

Moreover, a UL-approved and marked appliance at the end of a circuit line is one situation where the electrician can rely on the "UL" listing and visible documentation in assuming the appliance is safe and the circuit line providing it electrical current can be hooked up and energized. This appears to be the scenario Mr. Caine assumes or refers to in his deposition testimony. However, this is emphatically *not* the situation with the subject neon sign presented in this case.

Thus, unlike a UL-approved and marked appliance situation, in this case a neon sign which was *not* UL-approved or marked was involved, which had been installed by someone else, namely, Sign Pro. In such *distinct and different* situations, and absent UL-approved listing or marking, which was lacking, before the neon sign was energized or hooked up to the building power supply, Leishman Electric's electrician needed to do whatever was necessary to determine that such could be done safely. Obviously, inspecting the neon sign was necessary and appropriate, or otherwise verifying that whoever had installed it was licensed, had a permit, or that an inspection had been done, none of which occurred.

Most simply, all Leishman Electric's electrician had to do was look over the parapet wall on the roof and examine the wiring, and remove the cover on the junction box to verify that the necessary ground fault protection device was present, which would have taken about five minutes. Such inspection would have readily determined the defective condition of the wiring and/or the lack of NEC-required ground fault protection device.

If Leishman Electric's electrician had taken any of these steps to determine that the neon sign was safe and in a condition such that the circuit line providing the building power could be energized and hooked up safely, he would have been able to readily determine that the neon sign was unsafe, presented a fire hazard, and that the building electrical branch circuit line should *not* be energized.

**AFFIDAVIT OF MICHAEL C. HIGGINS, P.E. IN SUPPORT OF
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Furthermore, since Sign Pro had already installed the neon sign and completed its work *before* Leishman Electric's electrician hooked up and energized the circuit line, he was the last person who did the last step in the process by which the dangerous condition was finalized, i.e., hooking up and energizing the circuit line with the defective neon sign attached at the end. He was the last person who could have prevented the fire hazard being created by declining to energize the circuit line. He was also the only *licensed electrician* involved in energizing the circuit line thereby providing power to the defective sign. Sign Pro's employee, Mr. Packer, has testified that he specifically did *not* provide power to the neon sign *because* he was *not* a licensed electrician and knew that it was *not proper or legal* for him to do so. Again, that leaves Leishman Electric's electrician as the sole licensed person who subsequently came along and acted to do so.

6. Given the additional explanation stated above, I hereby reaffirm and stand by my expert opinions previously stated as set forth in my engineering report, and as further explained in my deposition testimony taken herein. The key facts and conclusions and expert opinions remain unchanged by Mr. Caine's deposition testimony or for any other reason.

7. My deposition redirect testimony under questioning by Mr. Goodell is also adopted by reference and is attached hereto and adopted by reference as though set forth in narrative opinion form, which states my expert opinions and the facts and data upon which such opinions are based.

**AFFIDAVIT OF MICHAEL C. HIGGINS, P.E. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - Page 5**

AFFIDAVIT OF MICHAEL C. HIGGINS, P.E. IN SUPPORT OF
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PAGE 146

DATED this 2 day of April, 2008.

HIGGINS & ASSOCIATES, INC.

By: Michael C. Higgins
MICHAEL C. HIGGINS, P.E.

SUBSCRIBED AND SWORN TO before me this 2 day of April, 2008.



Susanne J. Shafer
NOTARY PUBLIC FOR COLORADO
Residing at: 7792 S. MARSHALL CT, LITTLETON, CO
My Commission Expires: 4/4/2009

**AFFIDAVIT OF MICHAEL C. HIGGINS, P.E. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - Page 6**

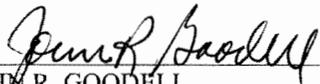
AFFIDAVIT OF MICHAEL C. HIGGINS, P.E. IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
PAGE 147

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of April, 2008, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Gary C. Cooper, Esq.
COOPER & LARSEN
151 N. Third Avenue, Suite 210
P.O. Box 4229
Pocatello, ID 83205
Fax: 208-235-1182

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email



JOHN R. GOODELL

**AFFIDAVIT OF MICHAEL C. HIGGINS, P.E. IN SUPPORT OF
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AFFIDAVIT OF MICHAEL C. HIGGINS, P.E. IN SUPPORT OF
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Higgins & Associates, Inc.
Forensic Engineering Consultants

16474 Willow Wood Court
Morrison, CO 80465
(303) 972-4900
Fax (303) 972-1134

Professional Profile of
Michael C. Higgins, P.E.
Principal

EDUCATION

- B.S. in Geological Engineering
- M.S. in Geotechnical/Civil Engineering (pending completion of thesis)

REGISTRATION/LICENSES

- Registered Professional Engineer - State of Colorado No. 32108
- Registered Professional Engineer - State of Utah No. 5824110-2202
- Registered Professional Engineer - State of Wyoming No. 10422
- Registered Professional Engineer - State of New Mexico No. 17028
- Registered Professional Engineer - State of Arizona No. 42405
- Registered Professional Engineer - State of Montana No. 16903
- Certified Fire and Explosion Investigator -- Reg. No. 10809-5034

ADDITIONAL QUALIFICATIONS

- 20 years experience in Geotechnical/Geological/Geophysical related positions
- 10 years experience in failure analysis of mechanical, electrical, and structural systems
- 40 hour Health and Safety Training
- 24 hour Radiation Management Training

EMPLOYMENT SYNOPSIS

2000 to Present Higgins & Associates, Inc.
Morrison, Colorado
Principal

Professional Engineer specializing in the field of engineering forensics on mechanical, electrical, and civil engineering systems. Investigations include cause-and-origin determination of fire and explosion losses. Performing forensic analyses involving structural damage due to improper construction, construction-related accidents and failures, and code-deficient design. Specific areas of general construction evaluation include masonry, soils, asphalt, stucco, EIFS, framing, roofing, windows, floor and wall finishes, insulation, and waterproofing.

1995 to 2000 Merlo Consulting Engineers, LLC
Englewood, Colorado
Senior Engineer

Forensic engineering in the areas of civil, structural, mechanical, and electrical engineering investigations. Performed forensic analyses involving structural damage due to improper construction, construction-related accidents, structural failures, and code-deficient design. Also conducted cause-and-origin investigations of fire and explosion losses at residential, commercial, and industrial facilities. Provided expert testimony for both depositions and trials.



1987 to 1995 Joseph A. Cesare and Associates
Englewood, Colorado
Geotechnical Engineer
Geotechnical engineering including civil engineering and environmental engineering applications.

Geotechnical/Geological Engineering Applications and Design Experience

Numerous projects involving surface and subsurface investigations for design and construction of residential and commercial structures; foundation designs; earth and rock fill dam designs; tailing facility and leach pit design; solid waste landfill design; water transmission pipeline subsurface investigations; geotechnical instrumentation design and installation; pressure grouting; settlement analyses; liquefaction analyses; slope stability analyses; geologic mapping; mud jacking; failure analyses; emergency preparedness plans; soil cement design; pile foundation dynamic analysis; filter designs; trench shoring designs; extensive field and laboratory testing; project specifications and contract document preparation.

Specific Projects:

Lead Embankment Inspector for the Aurora Dam Project, Aurora, Colorado; design modification to the Upper Beaver Brook Dam 3A, Clear Creek County, Colorado; design of the Chesapeake Mill Tailings Facility, Victor, Colorado; closure of Templeton Gap Landfill, Colorado Springs, Colorado; preliminary field investigation for the Hanlon Landfill Site, Elbert County, Colorado; geotechnical investigation for the Aurora Pipeline, Aurora, Colorado; mud jacking of Cherry Creek High School, Aurora, Colorado; foundation investigations of industrial facilities for Texaco Los Angeles Plant and Texaco Sulfur Recovery Plant, Wellington, California; grouting of the Aurora Rampart Reservoir, Douglas County, Colorado.

Environmental Engineering

Phase I environmental audits; remedial designs and remedial action plans; design of leachate recovery systems; slurry trench design; monitor well and recovery system designs; groundwater and soil sampling; stabilization/solidification of radioactive waste.

Specific Projects:

Site remediation of the Texaco Tank Farm, Cypress, California; monitoring during remediation at the Unocal Denver Toluene Site, Denver, Colorado; recovery trench design, Golden West Refinery, Santa Fe Springs, California; Leachate collection system, Sundstrand Industries, Westminster, Colorado; monitor and recovery well design and installation, Unipro Paints, Denver, Colorado; stabilization/solidification of radioactive waste, Shattuck Chemical Company.

Civil Engineering Applications and Design Experience

Design of sedimentation basins; tunnel support design; drainage plans; open channel hydraulics; pavement designs; dewatering analyses; erosion control design; concrete, steel, and masonry inspection; water transmissions pipeline design; sheet and timber shoring designs; wetlands designs; plumbing system designs; electrical system designs; pumping system designs; construction management; construction inspection, and construction claim evaluation.

Specific Projects:

The East Powers Boulevard expansion project, Colorado Springs, Colorado; tunnel support design, Mirmopco Mine, Oatman, Arizona; Lake Las Vegas sedimentation basin and wetlands design, Henderson, Nevada; slurry trench feasibility study, USBR Central Arizona project, Scottsdale, Arizona; municipal water supply design and development, City of Santa Rosa, Santa Rosa, New Mexico.

1983 to 1986 Western Geophysical Company of America
Englewood, Colorado
Geophysical Analyst

Processed seismic data using Western software in conjunction with IBM computer. Specific experience includes seismic analysis and stratigraphic profile design, refraction statics, structural analysis, and digital signal processing. Structural and Stratigraphic areas of experience include The Rio Grande Uplift, the Unita Uplift, the Williston Basin, the Powder River Basin, and the Denver/Julesburg Basin.

1982 to 1983 Dennis Engineering
Socorro, New Mexico
Staff Engineer

Supervised surveying crew; highway and roadway design; subdivision design, planning, and development; soil testing, water-well drilling and development; ground water modeling; water quality studies; drainage studies; and construction management.

1973 to 1976 A&P Plumbing and Heating
Kensington, Maryland
McMahon and Sons Plumbing and Heating
Washington, D.C.

Installation of plumbing and heating systems in residential, commercial, industrial, and institutional facilities.

**MICHAEL C. HIGGINS, P.E.
ARBITRATION, DEPOSITION, AND TRIAL
TESTIMONY LIST**

<u>Representing Law Firm</u>	<u>Case Caption, Number & Jurisdiction</u>	<u>Testimony</u>	<u>Date</u>
Ivan Sarkissian Sarkissian & McConaughy Greenwood Village, CO	The Corral at Breckenridge Homeowners Association Case No.: 06 CV 184 Summit County District Court	Deposition	12/04/07
Thomas M. Dunford Cozen O'Connor Denver, CO	Great Northern Insurance CO v. Watts Water Technologies, Inc. Case No.: 06 CV 10743 Denver District Court	Deposition	11/19/07
Stuart D. Morse Levy, Morse & Wheeler Englewood, CO	Central Park Townhome Condominiums Case No.: 2006 CV 4013 Arapahoe County District Court	Deposition	10/11/07
Ivan Sarkissian Sarkissian & McConaughy Greenwood Village, CO	Village at Boulder Creek HOA v. Titan Investments I, LLC Case No.: 2005 CV 893 Boulder County District Court	Deposition	9/6/07
Bradley W. Maudlin Dewhirst & Dolven, LLC Colorado Springs, CO	Carriage Gate Condo Assoc. v. Carriage Gate, LLC, et al. Case No.: 05 CV 5403 Arapahoe County District Court	Deposition	7/11/07
Michael J. Kleinman Law Office of Michael J. Kleinman Lone Tree, CO	Duran v. Kunkel Construction Case No.: 2006CV945 District Court City and County of Denver	Trial Deposition	10/3/07 6/27/07
Gregg Rich Lambdin & Chaney, LLP Greenwood Village, CO	McCarty v. Malouff Case No.: 05 CV 1934 District Court Jefferson County, Colorado	Deposition	3/23/07
A. Gary Bell, Jr. Bell & Pollock, P.C. Greenwood Village, CO	Davis v. Nucla Sanitation District Case No.: 2005 CV 156 District Court Montrose, Colorado	Trial Deposition	3/20/07 12/19/06
Craig S. Nuss Patterson, Nuss & Seymour, PC Englewood, CO	Eleven-One-Eleven v. Collins Companies Case No.: 2005CV5871 District Court Arapahoe County, Colorado	Trial Deposition	3/13/07 8/15/06



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 Michael C. Higgins, P.E.
 Trial Testimony List

<u>Representing Law Firm</u>	<u>Case Caption, Number & Jurisdiction</u>	<u>Testimony</u>	<u>Date</u>
Michael L. Adams Ray Lego & Associates Greenwood Village, CO	Principato v. Haberer Carpentry Inc. Case No.: 2004 CV 2340 District Court Jefferson County, Colorado	Deposition	2/19/07
<i>NEP Elec. case</i> Robin L. Bowers White & Steele Denver, CO	Dodson v. AMCO Insurance Co. Case No.: 2005 CV 137 District Court Routt County, Colorado	Deposition	1/25/07
Gerald D. Pratt McConaughy & Sarkissian, P.C. Englewood, CO	State Farm v. High Mark, Inc. Case No.: 05-cv-2103-REB-CBS U.S. District Court Denver, Colorado	Deposition	1/15/07
Larry R. Bauman Kelley, Scritsmier & Byrne, P.C. North Platte, NE	Mac Enterprises v. City of Ogallala et al. Case No.: CI 04-42 District Court, Keith County, Nebraska	Deposition	11/30/06
Gerl O'Brien Williams Dworkin, Chambers & Williams, P.C. Denver, CO	United Fire Group v. El Herradero Restaurant and Martin Rosales Case No: 05 CV 1285 Adams County District Court Brighton, CO	Deposition	11/8/06
Rosemary Orsini Burg Simpson Englewood, CO	Saddle Ridge of Ft. Collins Condo. Assoc. v. Choice Roofing Case No.: 2003 CV 423 Larimer County District Court Fort Collins, CO	Deposition	10/20/06
Brendan Powers Spies, Powers & Robinson, P.C. Denver, CO	Great Northern v. Rob Waring Construction and Robert Kosiba dba Precision Painting Case No. 05 CV 5041 Denver District Court Denver, CO	Deposition	10/19/06
Steven Jon Paul Harris, Karstaedt, Jamison & Powers, PC Colorado Springs, CO	Kleckner v. Keller Homes, Inc. Case No. 05CV25 El Paso County District Court Colorado Springs, CO	Trial Deposition	10/11/06 8/31/06

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<u>Representing Law Firm</u>	<u>Case Caption, Number & Jurisdiction</u>	<u>Testimony</u>	<u>Date</u>
✓ David M. Houliston The Law Offices of David M. Houliston Albuquerque, NM	Castro v. American RV Marts, Inc. Case No. CV-2003-08326 Second Judicial District Court County of Bernalillo, New Mexico	Deposition	5/22/06
Ivan Sarkissian McConaughy & Sarkissian, PC Englewood, CO	Park Avenue HOA v. DR Horton Case No. 01CV2276 Arapahoe County District Court Centennial, CO	Deposition	5/2/06
Brad Shefrin Zupkus & Angell, PC Denver, CO	Summit @ Rock Creek v. DR Horton Case No. 03CV209 Boulder County District Court Boulder, CO	Deposition	4/18/06
Trevor Cofer Dewhirst & Dolvin, LLP Colorado Springs, CO	Centennial Concrete v. Leaffer Case No. 03 CV 5132 Arapahoe County District Court Centennial, CO	Deposition	4/14/06
Anthony Melonakis Melonakis, Sutton & Gulley, PA Littleton, CO	East West Resorts Arbitration Forums Englewood, CO	Arbitration	3/9/06
Kenton Kuhlman Kuhlman and Kuhlman, PC Greenwood Village, CO	Sturniolo Arbitration Forums Englewood, CO	Deposition	2/20/06
Harris, Karstaedt, Jamison & Powers, PC Englewood, CO	Coggeshall Construction v. ABH Development Vertical Concepts Arbitration No.: 77 Y 110 00033 04 S1R	Deposition	2/9/06
Kenneth Gulley Sutton, Melonakis & Gulley, PA Littleton, CO	Miesel Arbitration Forums Englewood, CO	Arbitration	11/10/05
Richard Rardin Cozen O'Connor Denver, CO	Federal Insurance v. Olson and Sons Const. Case No.: 2003 CV 712 Eagle County District Court	Deposition	10/28/05

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 Michael C. Higgins, P.E.
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<u>Representing Law Firm</u>	<u>Case Caption, Number & Jurisdiction</u>	<u>Testimony</u>	<u>Date</u>
William D. Mulcahy Harris, Karstaedt, Jamison, Powers, PC Englewood, CO	Brandaw v. The Ryland Group, Inc. et al. Case No.: 2004 CV 767 Douglas County, CO	Deposition	10/12/06
Daniel P. Murphy Montgomery, Little & McGrew, PC Greenwood Village, CO	G.E. Johnson v. Plath Construction Case No.: 04 CV 4208 District Court El Paso County, CO	Deposition	10/6/05
✓ John Hayes Senter, Goldfarb & Rice Denver, CO	Paschall v. R. Gioscia Case No.: 04 CM 84 District Court Chaffee County, CO	Trial Deposition	8/26/05 7/18/05
Lori Jones Blahgger Williams & Mahoney Beverly, MA	Skovlak v. Romano Case No.: 04 2867 CA 20 th Judicial Circuit Collier County, FL	Deposition	8/17/05
✓ William P. Gralow Civerolo, Gralow, Hill & Curtis Albuquerque, NM	Ken Lewis v. Pacific Indemnity Co., et al. Cause No.: D-10101-CF-200300321 Santa Fe County, NM	Trial	8/8/05
Janet Wells Ray Lego & Associates Greenwood Village, CO	Strawberry Fields v. Structural Management Case No.: 02 CV 2123 El Paso County District Court	Deposition	7/14/05
Gregg Rich Lambdin & Chaney Denver, CO	Strawberry Fields v. SC Excavating Case No.: 02 CV 2123 El Paso County District Court	Deposition	7/14/05
Ivan Sarkissian McConaughy & Sarkissian Greenwood Village, CO	DeGenering, et al. v. Glasco, et al. Summit County District Court Case No.: 04 CV 64	Deposition	7/11/05
Janet Wells Ray Lego & Associates Greenwood Village, CO	Rykowski v. Yenter Companies, Inc. Douglas County District Court Case No.: 2002 CV 1242	Deposition	7/7/05
Brad Maudlin Dewhirst & Dolven Denver, CO	The Ponds at Blue River v. Emers Construction, Inc. Summit County District Court Case No.: 03 CV 35	Deposition	5/26/05

<u>Representing Law Firm</u>	<u>Case Caption, Number & Jurisdiction</u>	<u>Testimony</u>	<u>Date</u>
Gregg Rich Lambdin & Chaney Denver, CO	Great Northern Ins. Co. v. Simon Roofing Co. Arapahoe County District Court Case No.: 04 CV 322	Deposition	5/16/05
Thor Inouye Varnell & Associates Denver, CO	Triton Dev., LLC and 1727 Pearl Street HOA American Arbitration Association Case No.: 77 180 00120403 VSS	Deposition	5/5/05
✓ Roger Moore Law Offices of Roger Moore Denver, CO	American Family Ins. v. Fleetwood Enterprises Case No.: 03 C 10671 County Court El Paso County, CO	Trial Trial Deposition	4/28/05 4/29/05 12/1/04
John K. Shunk Messner & Reeves, LLC Denver, CO	United Securities Ins. Co. and Remington Homes v. AKM Engineering, Inc. Case No.: 03 CV 35 District Court Broomfield, CO	Deposition Deposition	4/13/05 4/15/05
D. Rico Munn Baker Hostetler, LLP Denver, CO	State Farm Fire & Casualty v. Mericanna Corp. San Miguel District Court Case No.: 03 CV 56	Deposition	4/8/05
Kevin Ahearn Prior, Johnson, Montoya, Carney & Karr, PC	Elite Properties of America & Saddleback Development v. JR. Engineering El Paso County District Court Case No.: 01 CV 2278	Deposition	3/14/05
✓ Harvey Fruman Cozen and O'Connor San Diego, CA	CNA Comm. Ins. & MCT Industries, Inc. v. Matheson Tri Gas. 2 nd Judicial District Court Bernillo County, NM Case No.: CV 2001 0380	Trial Deposition	3/8/05 11/27/01
Jack Robinson Spies, Powers & Robinson Denver, CO	Amco Ins. Co. v. Alan Power and Equip. El Paso County District Court Case No. 04 CV 2978	Trial Deposition	2/14/05 12/17/04

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 Michael C. Higgins, P.E.
 Trial Testimony List

<u>Representing Law Firm</u>	<u>Case Caption, Number & Jurisdiction</u>	<u>Testimony</u>	<u>Date</u>
Roger Moore Law Office of Roger Moore Denver, CO	State Farm Fire v. Roto Rooter Service Co. District Court City and County Denver Case No. 04 CV 1251	Deposition	1/29/05
Bradley Shefrin Zupkus & Angell PC Denver, CO	Vastola v. Ashcroft Homes Arapahoe County District Court Case No. 02 CV 1408	Deposition	11/04/04
Bruce Logan Varnell & Associates Denver, CO	Doggart v. Fox Construction Inc. District Court County of Routt, CO Case No. 03 CV 56	Deposition	9/13/04
✓ Rich Rardin Cozen O'Connor Denver, CO	Claire Long & Allstate Ins. v. US Brass Corp. US District Court Case No. 03 B 0968 (BNB)	Deposition	7/29/04
Miles Dewhirst Dewhirst & Dolvin Colorado Springs, CO	Gore Trail Wilderdest Assoc. v. Gore Trail Wilderdest, LLC, et al. District Court Summit County, CO Case No. 01 CV 437	Deposition	7/26/04
Jeffrey J. Richards Anstine, Hill, Richards & Simpson Denver, CO	Kaplan v. A Action Heating, et al. District Court Park County, CO Case No. 03 CV 106	Deposition	7/16/04
Pat Sullivan Poore, Roth & Robinson Butte, MT	Amco Ins. Co. v. Sun & Snow, Inc. Montana 2 nd District Court Silver Bow County Case No. DV 03 174	Deposition	7/15/04
Matthew A. Holmes Walberg, Dagner & Tucker Centennial, CO	Shepherd v. Schranz & Schranz Weld County District Court Case No. 02 CV 1355	Deposition	7/12/04
Lew Harstead Neuens & Assoc. Greenwood Village, CO	Mid-America v. E & R Pallet Denver County District Court Case No. 00 CV 2779	Deposition	7/02/04

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 Michael C. Higgins, P.E.
 Trial Testimony List

<u>Representing Law Firm</u>	<u>Case Caption, Number & Jurisdiction</u>	<u>Testimony</u>	<u>Date</u>
Brendan O. Powers Spies, Powers & Robinson Denver, CO	Gorsuch & Aspen Ski Co. v. Colorado Cullinary, Inc. Pitkin County District Court Case No. 03 CV 7	Deposition	7/01/04
Justin Jeffrey Ray Lego & Assoc. Greenwood Village, CO	Duarte v. Dutch Ridge HOA Jefferson County District Court Case No. 03 CV 3619	Trial	6/22/04
Ivan Sarkissian McConaughy & Sarkissian Denver, CO	Monument Villas v. Cambria Corp. El Paso County District Court Case No. 03 CV 634	Deposition	6/15/04
Karl A. Chambers Seaman, Giometti & Murphy, P.C. Denver, CO	Great Northern Insurance. v. Conbraco Industries, Inc. et al. US District Court Case No. 03 Z 502	Deposition	6/10/04
✓ Thomas P. Howard Thomas P. Howard, LLC Louisville, CO	Ginther v. Tann Jefferson County District Court Case No. 03 CV 1689	Trial	4/30/04
Brad Maudlin Dewhirst & Dolven Colorado Springs, CO	Forest Park at Wilderdest v. Emers Construction, Inc. Summit County District Court Case No. 02 CV 103	Deposition	4/12/04
James Hickey Hickey & Assoc., PC Denver, CO	Patterson v. Centex Real Estate Corp. Adams County District Court Case No. 03 CV 784	Deposition	2/11/04
✓ Brad Maudlin Dewhirst & Dolven Colorado Springs, CO	Galloway, et al. v. Fisher Price, et al. District Court Finney County, KS Case No. 01 C 165	Deposition	1/21/04
Justin Jeffrey Ray Lego & Associates Denver, CO	Goldstein v. Old Broadmoor Road Condominium Association, Inc. El Paso County District Court Colorado Springs, CO Case No. 03 CV 301	Deposition	1/16/04

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 Michael C. Higgins, P.E.
 Trial Testimony List

<u>Representing Law Firm</u>	<u>Case Caption, Number & Jurisdiction</u>	<u>Testimony</u>	<u>Date</u>
✓ Rich Rardin Cozen and O'Connor Denver, CO	Ballin v. Almeida Flores, Inc., et al. District Court Boulder County, CO Case No. 2003 CV 171	Deposition Deposition	1/6/04 12/5/03
Janet Bouffard Ray Lego & Associates Denver, CO	Louisiana Purchase II HOA Amrepc District Court Arapahoe County, CO Case No. 01 CV 2029	Deposition	11/07/03
Justin Jeffrey Ray Lego & Associates Denver, CO	Verna Market v. Bayberry Condominiums District Court Arapahoe County, CO Case No. 03 CV 2825	Deposition	11/04/03
Ivan Sarkissian Levy, Morse & Wheeler Denver, CO	Villa Riva Condo. v. Discovery Place Investments District Court Denver County, CO Case No. 01 CV 6532	Deposition	10/14/03
Brad Maudlin Dewhirst & Dolven Colorado Springs, CO	Gore Trail at Wilderrest v. Emers Construction District Court Summit County, CO Case No. 01 CV 437	Mediation	10/14/03
Gregg Rich Zupkus & Angell Denver, CO	Cypress Ridge v. J.S. Jones El Paso County District Court Case No. 01 CV 1432	Deposition	09/24/03
Brad Maudlin Dewhirst & Dolven Colorado Springs, CO	Assurance Co. of America v. Persiani Arapahoe County District Court Case No. 00 CV 237	Deposition	08/04/03
Robin Bowers White & Steele Denver, CO	Canyon Ranch v. Start Paint Douglas County District Court Case No. 98 CV 545	Deposition	04/30/03
Cindy Manzano Frascona, Joiner, Goodman & Greenstein Boulder, CO	Wescoatt v. Woodley and Associates Judicial Arbiter Group, Inc. Case No. 220376	Arbitration	04/09/03

<u>Representing Law Firm</u>	<u>Case Caption, Number & Jurisdiction</u>	<u>Testimony</u>	<u>Date</u>
John Shunk Messner & Reeves Denver, CO	Village Point Townhomes at Breckenridge v. Wooden Ski Development Corp., et al. Summit County District Court Case No. 99 CV 188	Deposition	01/07/02
MON ✓ Ellison, Nielsen, Knibbs Chicago, IL	Hospitality Lodging South Golden, Colorado	Arbitration	12/13/01
✓ Bruce Rohde Davis & Ceriani Denver, CO	Davison, Inc. v. South Broadway Automotive Group, Inc. Arapahoe County District Court Case No. 01 CV 1725	Deposition	12/07/01 01/11/02
✓ Denise Ghatta Benitez Professional Corp. Denver, CO	Mountain States Video v. Dakota Drilling Jefferson County District Court Case No. 01 CV 1156	Deposition	
✓ Phillip Lorenzo Baker & Hostetler Denver, CO	Bargan v. McPhee Service Larimer County District Court Case No. 00 CV 1505	Deposition	11/06/01
Elizabeth Voles Baldwin & Brown Denver, CO	Rainbow Shoppes v. Subway Restaurants Adams County District Court Case No. 00 CV 2072	Deposition	10/07/01

Higgins & Associates, Inc.
Forensic Engineering Consultants

TERMS AND FEE SCHEDULE
as of January 1, 2008

16474 Willow Wood Court
Morrison, CO 80465
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Services: Higgins & Associates, Inc. will perform professional engineering services within the limits prescribed by the Client. Services performed will be with the usual thoroughness and competence of the engineering profession. No other expressed or implied warranty is included or intended.

Fees: Higgins & Associates, Inc. performs work on an hourly basis. Hourly rates are billed in half hour increments. Costs incurred in the interest of the project will be invoiced to the client. Such costs include but are not limited to travel, shipping, delivery, document reproduction, consultant fees, laboratory services, equipment rental, and testing devices. Should a lump sum contract be required, the client shall enter into a written agreement prior to Higgins & Associates, Inc. beginning their work. Billing rates are as follows and are subject to change in subsequent years without notice.

<u>Description</u>	<u>Individual Categories</u>	<u>Hourly Rate</u>
Principal Engineer	Investigation	\$195.00
	Testimony*	\$260.00*
Senior Engineer/Architect	Investigation	\$170.00
	Testimony*	\$210.00*
Senior Technician	Investigation	\$100.00
Field Technician	Investigation	\$ 80.00
Administrative Assistant		\$ 60.00
Mileage		\$ 0.60 per mile
Evidence Storage		\$ 15.00 per month

*Deposition, Arbitration, and Trial Testimony are billed for a minimum of four hours. Expenses are billed separately. Higgins & Associates will **not divide an invoice amongst two or more parties** unless agreed to by us in writing prior to giving said testimony or providing the investigative services. **The party requesting testimony is responsible for the full amount** of the deposition and trial testimony fees including portal to portal travel and associated expenses.

Billing: Invoices will be sent to clients following a project completion, as a progress billing for long-term projects, or following an extended period of inactivity. In the event of any termination, Higgins & Associates, Inc. will be paid for all services rendered through the date of termination including all reimbursable expenses. Invoices will be considered past due if not paid within 30 days of the invoice and will be subject to late fees of 1.5% per month and/or termination of services at our discretion. If any remaining invoice balance remains after 90 days, the client shall also be responsible for Higgins & Associates, Inc.'s costs for collection including but not limited to reasonable attorney's fees and a lien against the subject property may be filed.

Documents, Site Access, and Hidden Conditions: Client shall provide Higgins & Associates all pertinent and related documents for the matter being investigated. Client shall also provide Higgins & Associates access to the site as necessary for the activities requested to perform. Higgins & Associates will use reasonable caution but shall not be held responsible for costs associated with restoration due to damage incurred as a result of the investigation. A site condition is considered hidden if it is concealed by existing finishes/hardware or is blocked by personal items and cannot be observed. Higgins & Associates is not responsible for knowledge of, identifying, or mitigating any hidden conditions, concealed evidence, or undisclosed documents.

Arbitration, Laws, and Risk Allocation: All claims, disputes and other matters in question between the parties of the agreement for services may be decided by arbitration only upon prior agreement by both parties. The agreement shall be governed by the laws of the State of Colorado. The Client agrees to limit Higgins & Associates, Inc.'s liability due to negligent acts, errors, or omissions so that the total aggregate liability shall not exceed the Higgins & Associates' total fee for services rendered on the Project.

Document Ownership and Construction: It is agreed that Higgins & Associates' reports and other documents prepared for the Project shall become the property of the Client. Higgins & Associates will not provide copies of any report or documents to any other party without express written or verbal consent from the Client. Client acknowledges that drawings and other documents prepared by Higgins & Associates, Inc. are created for this Project and are not intended or represented to be suitable for reuse by Client or others for any other project. Higgins & Associates does not assume responsibility for construction means, methods, techniques, sequences, procedures, or for safety programs or precautions in connection with construction work. Higgins & Associates does not assume responsibility for the Client or Owner's failure to carry out the work in accordance with the written recommendations made, for stopping the work in event of such failure, or failure to carry out safety or precautionary recommendations made.

Higgins & Associates, Inc.
Forensic Engineering Consultants

16474 Willow Wood Court
Morrison, CO 80465
(303) 972-4300
Fax (303) 972-1134

October 30, 2006
John R. Goodell, Esq.
Racine, Olson, Nye, Budge & Bailey
201 East Center Street
Pocatello, Idaho 83204-1391

Re: Evaluation of Electrical Code

Taco Time Restaurant Fire
274 South 2nd West
Rexburg, Idaho 83440

Date of Loss: June 9, 2004

Allied Insurance Claim No.: 36A40447

Our Job No.: 2464.06

Dear Mr. Goodell:

At your request we have conducted a review of the 1996 National Electrical Code (NEC) and State of Idaho Division of Building Safety Electrical Bureau Licensing Statutes regarding the electrical work conducted at the Taco Time Restaurant in Rexburg, Idaho for the 1998-1999 building remodel.

It is our understanding a fire occurred at the Taco Time building on June 9, 2004, that caused extensive damage to the roof structure and smoke damage to the building interior. It is further our understanding an origin and cause fire investigation was conducted by Burn Pattern Analysis, Inc. of Salt Lake City, Utah that placed the origin of the fire at a neon sign that was installed on the east parapet wall of the building during the 1998-1999 remodel by HJL Construction of Eugene, Oregon. It was further determined that improper installation of the neon sign was the cause of the fire. The sign was installed on the building by Sign Pro of Southeast Idaho, Inc. located in Idaho Falls, Idaho.

Specifically, MRA Forensic Sciences, who was hired by Burn Pattern Analysis to evaluate the electrical wiring inside the neon sign, determined that the sign installation violated two requirements of the NEC. The requirements included:

a. "The sign used a transformer that did not have secondary circuit ground fault protection, and

b. "The sign was not properly grounded."



It is also our understanding the sign installer admitted to installing the fixture with the above noted electrical code violations; however, they denied that their employees neither installed the electrical wiring to the neon sign nor connected the electrical power to the fixture. Based upon the testimony from a Sign Pro employee, it was determined that the electrical power was most likely run and connected to the sign by an electrician working for Leishman Electric during the 1998-1999 remodel.

Following the fire investigation a settlement agreement was reached with Sign Pro of Southeast Idaho, Inc., the installer of the neon fixture, for their defective work. However, the issue arose during the settlement conference that the electrician may be partially responsible for connecting the electrical power to a light fixture that was defectively installed prior to inspecting the fixture to verify it had been properly wired.

The purpose of our engineering evaluation was to analyze the 1996 National Electrical Code (NEC) and State of Idaho statutes governing the work by licensed electricians to determine whether there are provisions in either the code or state statutes that would make it illegal for an electrician to connect power to an illegal, defective, or faulty electrical device, circuit, or fixture. Furthermore, we were asked to determine whether an electrician had a duty or responsibility to inspect a branch circuit, fixture, or device prior to connecting or energizing to the system to ensure the circuit or device was properly wired per the NEC.

As part of our analysis we obtained records from the City of Rexburg Building Department and State of Idaho Division of Building Safety for work that was conducted on the Taco Time building. This includes the inspection records by the City and State on any electrical work conducted on the building during the 1998-1999 remodel. Records obtained from the State of Idaho Electrical Bureau confirmed that Leishman Electric had obtained an electrical permit on September 16, 1998, for work on the Taco Time building. The permit records by the City and State have been included under Exhibit 1.

We also obtained a copy of the State of Idaho Division of Building Safety Electrical Bureau Licensing Section and Idaho Statute Title 54, Professions, Vocations and Businesses; Chapter 10, Electrical Contractors and Journeymen document; and IDAPA 07, Title 1, Chapter 4, Rules of Electrical Licensing and Registration – General Division of Building Safety, Electrical Bureau. These documents have been included under Exhibits 2 and 3. Other documents reviewed as part of our investigation include:

- The 1996 National Electric Code
- The affidavit of Scott Kimbrough, Ph.D., P.E. dated June 21, 2006
- The affidavit of Robert "Jake" Jacobsen, C.F.I. dated June 23, 2006
- The affidavit of W. Ronald Kilgore, P.E. dated August 2, 2006
- The affidavit of Brian Larsen dated June 23, 2006
- The affidavit of Michael Packer dated May 12, 2006
- The deposition transcript of Michael Packer dated August 2, 2006
- Supplemental affidavit of Robert "Jake" Jacobsen, C.F.I. (Corrected) dated August 18, 2006
- Supplemental letter report and attached enlarged photos from Robert "Jake" Jacobsen, C.F.I. to John Goodell, Esq. dated August 21, 2006
- Supplemental letter report from Scott Kimbrough, Ph.D., P.E. to John Goodell, Esq. dated August 24, 2006

In addition, we conducted telephone interviews on October 5, and 6, 2006, with Mr. Jeff Fitzloff, the Chief of the Idaho State Electrical Bureau and Mr. Allen Caine, a Licensing Supervisor and Code Interpreter. The purpose of interviewing Mr. Fitzloff and Mr. Caine was to obtain the State of Idaho Electrical Bureau's interpretation of their statute regarding an electrician's responsibility for analyzing/evaluating an electrical circuit and/or fixture prior to energizing the system.

In summary, it was the opinion of both Mr. Fitzloff and Mr. Caine that a licensed electrician in the State of Idaho would be responsible for evaluating and inspecting any branch circuit or fixture they are energizing to ensure that the system was wired per the NEC or per a fixture manufacturer's recommendations. It was further their opinion that by energizing a circuit/fixture that was defective or improperly wired the electrician was in direct violation of the State of Idaho Administrative Code. Furthermore, both parties stated that an electrician would be responsible for any resulting damages that may occur should they fail to properly evaluate a defective or improperly wired circuit or fixture that they energize.

To support their opinions the State Electrical Inspectors identified several areas of the state statutes which would define the requirements and responsibilities of a licensed electrician. The sections of the statutes are as follows:

"Idaho Administrative Code 07.01.01 Rules Governing Electrical Inspection Tags - Division of Building Safety

"012. Electrical Contractors' Inspection Tags

"Electrical contractors' inspection tags shall be furnished by the Electrical Bureau to licensed electrical contractors upon request. The serial numbers of such tags shall be registered in the name of the electrical contractor to whom they are issued and they shall not be transferable. Electrical inspection tags issued to an electrical contractor shall be used only for electrical installations made by said electrical contractor and for which said electrical contractor assumes full responsibility. (7-1-97)

"01. Completion of Electrical Inspection Tag. For each electrical installation made by an electrical contractor and coming under the provisions of Section 54-1001, Idaho Code, said contractor or his authorized representative shall complete an electrical inspection tag, issued by the Electrical Bureau, giving all pertinent information. The name of the electrical contractor shall be stated and the tag shall be signed by the electrical contractor or his authorized agent. All five copies shall be legible. (7-1-97)"

"Idaho Administrative Code 07.01.03 Rules of Electrical Licensing & Regulations – General Division of Building Safety

"015. Electrical Contractor.

"01. Qualifications for Electrical Contractor. (4-7-91)

"a. Except has hereinafter provided, any person, partnership, company, firm, association, or corporation shall be eligible to apply for an electrical contractor license upon the condition that such applicant shall have at least one (1) full-time employee who holds a valid master electrician license or journeyman electrician license issued by the Electrical Bureau, and has held a valid journeyman electrician's license for a period of not less than two (2) years, during which time he was actively employed as a journeyman electrician for a minimum of four thousand (4,000) hours, and who will be responsible for supervision of electrical installations made by said company, firm, association, or corporation as provided by Section 54-1010, Idaho Code. An individual electrical contractor may act as his own supervising journeyman electrician upon the condition that he holds a valid master electrician license or journeyman electrician license issued by the Electrical Bureau, and has held a valid journeyman electrician's license for a period of not less than two (2) years, during which time he was actively employed as a journeyman electrician for a minimum of four thousand (4,000) hours. The supervising journeyman electrician shall be available during working hours to carry out the duties of supervising journeyman, as set forth herein. (4-5-00)

"b. Those duties include assuring that all electrical work substantially complies with the National Electrical Code and other electrical safety installation laws and rules of the state, and that proper electrical procedures are followed; assuring that all electrical labels, permits, and licenses required to perform electrical work are used; assuring compliance with correction notices issued by the Bureau; and any person designated under Subsection 015.01.a, and the contractor he represents, shall each notify the Bureau in writing if the supervising journeyman's working relationship with the contractor is terminated. Each notice must be filed with the Bureau within ten (10) working days) of the date of termination. If the supervising journeyman's relationship with the contractor is terminated, the contractor's license is void within ninety (90) days unless another supervising journeyman is qualified by the Bureau. (7-27-94)"

"03. Electrical Contracting Work Defined. An electrical contractor license issued by the Division of Building Safety must be obtained prior to acting or attempting to act as an electrical contractor in Idaho. (4-5-00)

"a. Electrical contracting work includes electrical maintenance or repair work, in addition to new electrical installations, unless such work is expressly exempted by Section 54-1016, Idaho Code. (4-5-00)"

"Idaho Administrative Code 07.01.04 Rules of Governing Electrical Specialty Licensing - Division of Public Safety

"02. Sign Electrical. Any person qualifying for and having in his possession a current sign electrical license may install, maintain, repair, and replace equipment, controls, and wiring on the secondary side of sign disconnecting means; providing the disconnecting means is located on the sign or within sight therefrom. He shall be employed by a licensed sign electrical contractor whose installations shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty. (3-15-02)"

"03. Manufacturing or Assembling Equipment.

"b. Any person licensed pursuant to Subsection 014.03.a. may install, maintain, repair, and replace equipment, controls, and accessory wiring, integral to the specific equipment, on the load side of the equipment disconnecting means. Electrical service and feeder are to be installed by others. The licensee may also install circuitry in modules or fabricated enclosures for the purpose of connecting the necessary components which individually bear a label from a nationally recognized testing laboratory when such equipment is designed and manufactured for a specific job installation. All wiring completed shall meet all requirements of Title 54, Chapter 10, Idaho Code, all rules promulgated pursuant thereto, and the most current edition of the National Electrical Code. (7-1-94)"

Analysis of Permits and Idaho Administrative Code

Records we were provided by the State of Idaho confirmed that Leishman Electric had obtained a permit for electrical work that appears to have been conducted when the 1998-1999 remodel occurred at the Taco Time Restaurant. However, since the State has recently converted all their paper records to computer files, the exact nature of the electrical work conducted under the permit is unknown. The electrical permit we were provided indicated that Leishman Electric conducted electrical work at the approximate time the sign was installed by Sign Pro.

Section 07.01.01.012 of the Idaho Administrative Code requires that an electrical contractor obtain a permit/inspection tag for all work conducted. When obtaining an inspection tag, the electrician needs to identify all work that will be conducted under the permit. This is required so that the State can ensure that all work is inspected and conducted per the NEC. If Leishman Electric ran an electrical circuit to the neon sign, they should have included this work on the inspection tag. If the electrical contractor fails to identify all aspects of their work when obtaining an inspection tag, they are in violation of the code.

Once the electrical work has been completed, the electrician is required to contact the State so that all of their work can be inspected. Had the neon sign been inspected by the State, it is highly probable the code violation would have been identified. Failure to contact the State for an inspection is in violation of the code.

Section 07.01.03.015.01 (a) and (b) of the code defines the required qualifications for an electrical contractor. To comply with the State statute all work would have needed to have been conducted and/or supervised by either a master or journeyman electrician. The statute also states that the electrical contractor's duties include assuring that all work substantially complies with the NEC and other electrical safety installation laws and rules of the state. If a contractor fails to conduct their work in compliance with the NEC, they are in violation of the State statute.

According to Mr. Fitzloff and Mr. Caine, they also interpreted this section of the code to include the electrician's responsibility to ensure the branch circuit and/or fixture that is being energized by the electrician is safely wired per the NEC. If the electrical contractor fails to evaluate the circuit and/or fixtures they are energizing, they are in violation of the code and would be responsible for damages caused by their work.

Under Section 07.01.04.02 of the Idaho Administrative Code any person qualifying for and having in his possession a current sign electrical license may install, maintain, repair and replace equipment, controls, and wiring on the secondary side of sign disconnecting means. According to the State Electrical Bureau, any licensed master or journeyman electrician may also work on any electrical sign, including a neon sign, without possessing an electrical specialties sign license.

Furthermore, only a licensed electrical contractor can connect the power to the primary side of a transformer to a neon sign. However, a person holding an electrical specialties sign license that is not a licensed electrical contractor/electrician cannot, per the code, run power or energize the primary side of the transformer.

Based upon this information the electrical contractor, Leishman Electric, not the neon sign installer, Sign Pro, would have been responsible for energizing the sign and ensuring that the fixture was properly wired per the NEC prior to energizing the sign. This would include inspecting the neon sign to ensure it was installed with secondary circuit ground fault protection and was properly grounded. Failure of the electrician to inspect the sign to ensure it was wired per the NEC was in violation of the State of Idaho Electrical Code.

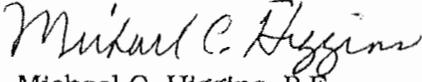
Summary and Conclusions

In summary, it is our opinion based upon our review of the Idaho Electrical Code and interviews with representatives of the State Electrical Bureau, the electrician who energized the neon sign was in violation of the code by failing to inspect the fixture to ensure it was wired per the NEC. It was the opinion of two representatives employed by the State Electrical Bureau, including the Chief Inspector that an electrician would be responsible for inspecting all circuits and fixtures prior to them being energized to ensure they are safe and wired in compliance with the NEC.

Since all licensed electricians in the State of Idaho can work on any type of sign, they would be required to have the proper knowledge on how these fixtures were to be properly installed. This includes knowing that secondary circuit ground fault protection and proper grounding was required per the NEC. By energizing the neon sign prior to inspecting the fixture for compliance with the NEC, the electrician was in violation of the Idaho State Electrical Code and would be responsible for damages caused by his work.

We trust this report is self-explanatory; however, should you have any questions please contact our office.

Sincerely,


Michael C. Higgins, P.E.

TACO TIME RESTAURANT

EXHIBIT 1

Building Department Permit Information

Division of **Building Safety**

Permit Information Date: 12/4/2008

Bureau: Type: Permit No:

 Work Value: \$4,000.00

Inspector: Area:

 WREP Code: UNASSIGNED DB: \$130.00 CR: \$130.00 Bal: \$0.00

License Bureau: License Type: License No:
Work Type:

Permit Holder: **LEISHMAN ELECTRIC** Contractor: **LEISHMAN ELECTRIC**

Owner **Property Location**

Name: Status:

Address: Address:

Address 2: Address 3:

City: City:

State: State:

County: County:

Postal Code: Postal Code:

Phone: Work Started:

Location:

Division of **Building Safety**

Permit Information Date: 12/4/2008

Bureau: Type: Permit No:

 Work Value: \$4,000.00

Inspector: Area:

 WREP Code: UNASSIGNED DB: \$130.00 CR: \$130.00 Bal: \$0.00

License No.	Date	Year Fee For	Amount	City	Amount	Total
592159	3/24/1998	1998 DS	OTHER-TND & COMMERCIAL 0.00	\$130.00	\$130.00	

AFFIDAVIT OF MICHAEL C. HIGGINS, P.E. IN SUPPORT OF
 MOTION FOR SUMMARY JUDGMENT
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File Edit View Favorites Tools Help
 Search Favorites
 Address: http://www.cityofpawnee.com/.../ELE3/area2/typeID=CM/PermitNo=372345

Division of Building Safety

Permit Information Date: 12/1/2004

Division: ELS Type: C Permit No: 372345 ORS: Work Value: 16,000.00
 Inspected: EA Area: 3K PERM Code: Unassigned V/OB: \$130.00 CB: \$190.00 BW: \$0.00

PERM No	Division	Area	Type	Code	Permit	Value	OB	CB	BW	Final
12/21/2002	ELS	1497402	I	1999	PERMIT Unassigned	\$130.00	No			A
12/21/2002	ELS	1491692	M	1999	PERMIT Unassigned	\$0.00	No			A
12/21/2002	ELS	1494891	K	1999	PERMIT Unassigned	\$0.00	No			A
12/21/2002	ELS	1491076	M	1999	PERMIT Unassigned	\$0.00	No			A
12/21/2002	ELS	1492201	M	1999	PERMIT Unassigned	\$0.00	No			A
12/21/2002	ELS	1492753	F	1999	PERMIT Unassigned	\$0.00	No			F

9/24/1998
 9/24/1998
 10/8/1998
 10/28/1998
 11/12/1998
 12/9/98
 FINAL

Done Local Intranet

TACO TIME RESTAURANT
EXHIBIT 2
State of Idaho Electrical Codes

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IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.01 - RULES GOVERNING ELECTRICAL INSPECTION TAGS

000. LEGAL AUTHORITY.

The Idaho Electrical Board is authorized under Sections 54-1005, and 54-1006, Idaho Code, to adopt rules concerning the issuance of electrical inspection tags covering electrical installations referred to in Section 54-1001, Idaho Code. (2-26-93)

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 07.01.01, "Rules Governing Electrical Inspection Tags," Division of Building Safety. These rules include criteria for the use of electrical inspection tags for electrical installations. (2-26-93)

002. WRITTEN INTERPRETATIONS.

This agency has no written interpretations of this chapter. (2-26-93)

003. ADMINISTRATIVE APPEALS.

This chapter does not allow administrative relief of the provisions outlined herein. (2-26-93)

004. DEFINITIONS.

01. **Associated Buildings.** All buildings, structures, and fixtures used for domestic purposes and in connection with the primary or secondary residence, such as garages, sheds, barns, or shops. (2-23-94)

005. -- 010. (RESERVED).

011. ELECTRICAL INSPECTION TAGS.

Electrical Inspection tags as authorized by Section 54-1005, Idaho Code, shall be printed and made available by the Electrical Bureau. Each tag shall bear a Serial Number and shall be in five parts, to be designated No. 1, No. 2, No. 3, No. 4, and No. 5, for all electrical contractor inspection tags or shall be in four parts, to be designated No. 1, No. 2, No. 3, and No. 4, for all property-owner inspection tags. (1-14-93)

012. ELECTRICAL CONTRACTORS' INSPECTION TAGS.

Electrical contractors' inspection tags shall be furnished by the Electrical Bureau to licensed electrical contractors upon request. The serial numbers of such tags shall be registered in the name of the electrical contractor to whom they are issued and they shall not be transferable. Electrical inspection tags issued to an electrical contractor shall be used only for electrical installations made by said electrical contractor and for which said electrical contractor assumes full responsibility. (7-1-97)

01. **Completion of Electrical Inspection Tag.** For each electrical installation made by an electrical contractor and coming under the provisions of Section 54-1001, Idaho Code, said contractor or his authorized representative shall complete an electrical inspection tag, issued by the Electrical Bureau, giving all pertinent information. The name of the electrical contractor shall be stated and the tag shall be signed by the electrical contractor or his authorized agent. All five copies shall be legible. (7-1-97)

02. **Posting of Electrical Inspection Tag.** Before work is commenced, the electrical contractor or his authorized representative shall place part No. 5 of the electrical inspection tag at the location of the service switch and mail or deliver part No. 4 to the power supplier. Parts No. 1 & No. 2, together with the proper inspection fee as herein provided, shall be received by the Electrical Bureau within seven (7) calendar days from the time the electrical work is started. Where the total cost of installation is unknown, the minimum inspection fee as listed in IDAPA 07.01.02, "Rules Governing Fees For Electrical Inspections," Subsection 011.06 of the fee schedule shall accompany the tag and arrangements shall be made, in writing, with the Electrical Bureau or its authorized agent for payment of the balance of the fee. In all cases, payment of the total inspection fee shall be made prior to completion of the

installation. (4-5-00)

a. The Electrical Bureau may refuse to extend credit to any electrical contractor for late payment or non-payment of any electrical inspection fees when due. In such instance, the contractor shall return all unused permits to the Electrical Bureau forthwith. No further permits will be issued to the contractor unless prepaid in cash or cash equivalent. Such contractor will not be allowed to purchase further permits unless and until all such unused permits have been returned to the Electrical Bureau, Boise Office, and all outstanding fees due have been paid in full. (7-1-97)

b. Failure to post Part 5 of the electrical inspection tag at the required location, or failure to submit parts No. 1 and No. 2 of such tag and the proper inspection fee to the Electrical Bureau within seven (7) calendar days from the time the electrical installation work is commenced will result in the imposition of a double inspection fee. (7-1-97)

013. ELECTRICAL LICENSING EXEMPTION FOR REAL PROPERTY OWNERS AND MAINTENANCE ELECTRICIANS; INSPECTION TAG REQUIREMENTS.

The licensing provisions of Title 54, Chapter 10, Idaho Code, and IDAPA 07.01.03, "Rules Governing Electrical Licensing," do not apply to the following pursuant to Section 54-1016, Idaho Code: (7-1-98)

01. **Personal Property Installations.** Persons making electrical installations on their own property. (7-1-98)

02. **Maintenance Electricians.** Maintenance electricians employed full-time only to service, maintain, assemble, or repair EXISTING electrical installations located on their employers' premises. (2-23-94)

03. **Procedures for Inspection Tags for Exempt Property Owners.** Persons exempt from licensing pursuant to Subsection 013.01 of this rule must still secure all electrical inspection tags required by Section 54-1005, Idaho Code, before making any electrical installation. No electrical wiring or equipment may be concealed in any manner from access or sight until the work has been inspected and approved for cover by the electrical inspector. A final inspection shall be made upon the completion of all electrical work. The procedure for obtaining inspection tags follows: (7-1-98)

a. Any exempt person shall obtain an application form from the Electrical Bureau, either at its Boise, Idaho, main office or at a designated location in each county. The application form shall be properly completed, signed, and mailed to the Electrical Bureau, P.O. Box 83720, Boise, Idaho 83720-0028, with the proper inspection fee as provided for in these rules. (7-1-98)

b. Upon receipt of the properly completed application together with the proper inspection fee, the Electrical Bureau shall immediately issue an electrical inspection tag for the electrical installation designated in the application. (2-23-94)

c. Parts No. 1 and 4 of the electrical inspection tag shall be retained by the Electrical Bureau. Part No. 2 shall be mailed to the applicant and shall be placed on the location of the service, and Part No. 4 shall be forwarded to the state electrical inspector who will make the electrical inspection as provided by Sections 54-1004 and 54-1005, Idaho Code. (2-23-94)

d. Part No. 3 shall be mailed or delivered to the power supplier. (2-23-94)

014. ELECTRICAL INSPECTION TAG REQUIREMENTS FOR INDUSTRIAL ACCOUNTS.

Property owners, companies, firms, associations, or corporations who use employees to make electrical installations coming under the provisions of Section 54-1001, Idaho Code, on their own premises, must establish an Industrial Account with the Electrical Bureau and secure electrical inspection tags by making application to the Electrical Bureau. Employees performing non-maintenance electrical installations on an Industrial Account must be licensed electrical journeymen as provided by Section 54-1002(2). One (1) properly licensed employee shall be designated the supervising journeyman for the Industrial Account with the Electrical Bureau. (7-1-98)

01. **Application Forms.** The application form shall be properly completed, signed by the property

owner or agent of the company, firm, association, or corporation, and mailed to the Electrical Bureau, P.O. Box 83720, Boise, Idaho, 83720-0028, with the proper inspection fee as hereinafter provided. (7-1-98)

02. Posting of Electrical Inspection Tag. Upon receipt of a properly completed application from a property owner, company, firm, association, or corporation for an electrical inspection tag, together with the proper inspection fee, the Electrical Bureau shall immediately issue an electrical inspection tag for the electrical installations designated in the application. Parts No. 1 and No. 4 shall be retained by the Electrical Bureau. Part No. 2 of the 4-part tag shall be mailed to the applicant and shall be placed at the location of the service switch. Part No. 3 shall be mailed or delivered to the power supplier, and Part No. 4 shall be forwarded to the State Electrical Inspector who will make the electrical inspection as provided by Sections 54-1004 and 54-1005, Idaho Code. (1-14-87)

03. Power Supply Company. In the event the power supplier deems it necessary to energize an electrical installation without delay to preserve life or property, the power supply company may accept the application properly completed and signed, with the proper inspection fee attached, in lieu of the electrical inspection tag required by Section 54-1004, Idaho Code, provided the power supply company or its authorized agent shall assume the responsibility of mailing the application and inspection fee to the Electrical Bureau, P.O. Box 83720, Boise, Idaho, 83720-0028. The Electrical Bureau shall, upon request, furnish application forms and self-addressed, postage-paid envelopes to power supply companies operating within the state of Idaho. (7-1-98)

015. TEMPORARIES.

Temporaries for construction may be energized by power suppliers upon receipt of a contractor's tag, an owner application as provided in Subsection 07.01.01.013.03, or a Temporary For Construction label purchased from the Electrical Bureau by a building contractor. (2-23-94)

016. -- 999. (RESERVED).

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IDAPA 07
TITLE 01
CHAPTER 03

07.01.03 - RULES OF ELECTRICAL LICENSING AND REGISTRATION - GENERAL
DIVISION OF BUILDING SAFETY

000. LEGAL AUTHORITY.

The Idaho Electrical Board is authorized under Section 54-1006(5), Idaho Code, to adopt rules concerning the issuance of electrician licenses and apprentice registrations referred to in Sections 54-1007 and 54-1010, Idaho Code. (2-26-93)

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 07.01.03, "Rules of Electrical Licensing and Registration - General," Division of Building Safety. These rules include criteria for issuance of electrical licenses and registrations. (2-26-93)

002. WRITTEN INTERPRETATIONS.

This agency has written interpretations of this chapter in the form of legal memoranda. (2-26-93)

003. ADMINISTRATIVE APPEALS.

The Idaho Rules of Administrative Procedure of the Attorney General govern license revocation/suspension meetings. (2-26-93)

004. -- 010. (RESERVED).

011. LICENSE APPLICATION FORMS/APPRENTICE REGISTRATION FORMS.

Application forms for Electrical Contractor, Master Electrician, Journeyman Electrician Licenses, Specialty Electrical Licenses, and registration forms for Apprentice Electricians and Specialty Electrical Trainees shall be printed and made available by the Electrical Bureau of the Division of Building Safety, State of Idaho. (4-5-00)

01. Application Forms. All applications for licenses and all registrations shall be properly completed, giving all pertinent information, and all signatures shall be notarized. (4-5-00)

02. Application Fee. All applications for electrical licenses shall be accompanied by the fifteen dollar (\$15) application fee; apprentice and specialty trainee registration forms shall be accompanied by the ten dollar (\$10) registration fee as provided by Section 54-1014, Idaho Code. (4-5-00)

03. Application Submission. An application for license shall be submitted to the Electrical Bureau and shall be approved by an authorized representative of the Bureau before any examination is given and before any license is issued. (4-5-00)

04. Examination. An applicant for licensure must take the required examination within ninety (90) days of the date of application, or the application shall be considered to be null and void. (4-5-00)

05. License. Following the approval by an authorized representative and the successful completion of the required examination, the applicant must purchase a license prior to engaging in business within the state of Idaho. Applicants who fail to purchase a license within ninety (90) days of the date of successful examination shall be required to reapply for licensure, again obtain the approval of an authorized representative, and re-examine. (4-5-00)

012. APPRENTICE ELECTRICIAN.

01. Requirements for Apprentice Electrician. (5-3-03)

a. A person wishing to become an apprentice electrician register with the Division of Building Safety prior to going to work. Said person shall carry a current registration certificate on his person at all times and shall present it upon request to personnel of the Division of Building Safety for examination. Each apprentice shall re-register prior to each July 31, furnishing proof of completion of a minimum of one hundred forty-four (144) hours of an organized sequence of instruction in technical subjects related to the electrical trade as approved by the Idaho State

Electrical Board and the Idaho State Board for Professional and Technical Education and work experience performed during the previous year with notarized letters from each employer and a certificate of achievement from the vocational institution attended. This requirement shall continue each year until the minimum requirements of Chapter 10, Title 54, Idaho Code, have been fulfilled. Any apprentice failing to register by August 1 of each year shall pay an additional fee of ten dollars (\$10) to revive his registration certificate. Time shall not be credited while the apprentice is inactive or not registered, nor shall time be allowed for any year which is not accompanied by proof of required instruction for that year of apprenticeship. (5-3-03)

b. In order to qualify to take the journeyman electrician examination an apprentice electrician shall be required to work four (4) years, defined as a minimum of eight thousand (8,000) hours of work experience, under the constant on-the-job supervision of a journeyman electrician. That work shall include three (3) categories: (5-3-03)

- i. Residential; (5-3-03)
- ii. Commercial; and (5-3-03)
- iii. Industrial installations. (5-3-03)

c. Experience shall not exceed seventy-five percent (75%) of the work time in any one (1) category. The requirements of Subsection 012.01.b. shall not apply to a registered apprentice enrolled in an apprenticeship program accredited by the Electrical Bureau. (5-3-03)

d. An apprentice who has completed the required number of instructional hours and has not passed the journeyman's examination within two (2) years of completion of the required instructional training hours shall provide proof of continuation training in order to re-register as an apprentice. For the purposes of Section 012, continuation training is defined as registration in an approved fourth year apprenticeship class. (4-6-05)

e. An apprentice who has not advanced in apprenticeship training for a period of two (2) years shall provide proof of successful completion of continuation training in order to re-register as an apprentice. For purposes of Section 012, continuation training is registration in an approved year of apprenticeship class for which the apprentice is eligible or a repeat of the most recent apprenticeship class attended. (4-6-05)

02. **Direct Supervision.** It shall be the responsibility of the employing electrical contractor to insure that the apprentice performs electrical work only under the constant on-the-job supervision of a journeyman electrician. Any contractor who employs more than two (2) apprentice electricians for each licensed journeyman electrician employed is presumed to be in violation of the direct supervision requirements of Section 54-1010, Idaho Code, and of the constant on-the-job supervision requirement of Section 54-1003A, Idaho Code. This presumption may be rebutted by a showing by the contractor that special circumstances exist which are peculiar to the work done by that contractor which allows for effective supervision by each journeyman electrician of more than two (2) apprentice electricians. Prior to employing more than two (2) apprentice electricians for each journeyman electrician, a contractor must obtain permission from the Electrical Bureau to do so. Failure to comply with this requirement will be grounds for suspension or revocation of the electrical contractor's license. (4-1-91)

013. JOURNEYMAN ELECTRICIAN.

01. **Experience and Education Required.** (5-3-03)

a. An applicant for a journeyman electrician license must have worked as an apprentice electrician making electrical installations for four (4) years, defined as a minimum of eight thousand (8,000) hours under the constant on-the-job supervision of a qualified journeyman electrician and meet the minimum vocational educational requirements of the Idaho State Electrical Board and the Idaho State Board for Professional and Technical Education as provided by Section 54-1007, Idaho Code and Subsection 012.01.a. That work shall include three (3) categories: (5-3-03)

- i. Residential; (5-3-03)
- ii. Commercial; and (5-3-03)

- iii. Industrial installations. (5-3-03)
 - b. Experience shall not exceed seventy-five percent (75%) of the work time in any one (1) category. The requirements of Subsection 013.01.a. shall not apply to a registered apprentice enrolled in an apprenticeship program accredited by the Electrical Bureau. (5-3-03)
 - c. An applicant with out-of-state experience from a state that does not have a current reciprocal agreement with Idaho must meet the experience and vocational education requirements as set forth in Subsection 013.01.a. or if the applicant has not completed the vocational education requirement, the applicant may alternately submit verification of twice the amount of experience (eight (8) years defined as a minimum of sixteen thousand (16,000) hours). That work shall include three (3) categories: (5-3-03)
 - i. Residential; (5-3-03)
 - ii. Commercial; and (5-3-03)
 - iii. Industrial installations. (5-3-03)
 - d. Experience shall not exceed seventy-five percent (75%) of the work time in any one (1) category and must have been legally obtained in the state in which the applicant received his or her experience. (5-3-03)
 - e. An applicant from a state that has a current reciprocal agreement with the state of Idaho may be issued a journeyman electrician license without testing in accordance with Section 54-1007, Idaho Code, upon verification that: (5-3-03)
 - i. The license is current and active and in good standing; (5-3-03)
 - ii. The license was obtained by testing from the issuing state; (5-3-03)
 - iii. The license has been in effect for a minimum of one year; and (5-3-03)
 - iv. The applicant has not previously taken and failed the Idaho State journeyman electrical examination. (5-3-03)
 - f. Experience in appliance repairing, motor winding, and communications will not be accepted towards qualification for a journeyman electrician license. (5-3-03)
- 02. Application and Examination.** A qualified journeyman electrician not holding an Idaho state license shall make application for a journeyman electrician license with the Electrical Bureau prior to going to work in the state of Idaho as provided by Section 54-1002(2), Idaho Code. An applicant will be permitted a maximum of thirty (30) days in which to take the examination after making application unless mutual agreements have been made between the applicant and the Electrical Division. (1-14-87)
- 014. MASTER ELECTRICIAN.**
An applicant for a Master Electrician license must have at least four (4) years experience as a licensed journeyman electrician as provided in Section 54-1007, Idaho Code. Any person having these qualifications may make application at any time by remitting to the Electrical Bureau the application fee. Upon approval, the applicant will be notified and may apply to take the next examination. Upon notification of passing the examination, the applicant must remit the required fee for the issuance of a master license. A person holding a current master license shall not be required to hold a journeyman license. (4-6-05)
- 015. ELECTRICAL CONTRACTOR.**
- 01. **Qualifications for Electrical Contractor.** (4-7-91)
 - a. Except as hereinafter provided, any person, partnership, company, firm, association, or corporation

shall be eligible to apply for an electrical contractor license upon the condition that such applicant shall have at least one (1) full-time employee who holds a valid master electrician license or journeyman electrician license issued by the Electrical Bureau, and has held a valid journeyman electrician's license for a period of not less than two (2) years, during which time he was actively employed as a journeyman electrician for a minimum of four thousand (4,000) hours, and who will be responsible for supervision of electrical installations made by said company, firm, association, or corporation as provided by Section 54-1010, Idaho Code. An individual electrical contractor may act as his own supervising journeyman electrician upon the condition that he holds a valid master electrician license or journeyman electrician license issued by the Electrical Bureau, and has held a valid journeyman electrician's license for a period of not less than two (2) years, during which time he was actively employed as a journeyman electrician for a minimum of four thousand (4,000) hours. The supervising journeyman electrician shall be available during working hours to carry out the duties of supervising journeymen, as set forth herein. (4-5-00)

b. Those duties include assuring that all electrical work substantially complies with the National Electrical Code and other electrical installation laws and rules of the state, and that proper electrical safety procedures are followed; assuring that all electrical labels, permits, and licenses required to perform electrical work are used; assuring compliance with correction notices issued by the Bureau; and any person designated under Subsection 015.01.a., and the contractor he represents, shall each notify the Bureau in writing if the supervising journeyman's working relationship with the contractor has been terminated. Each notice must be filed with the Bureau within ten (10) days of the date of termination. If the supervising journeyman's relationship with the contractor is terminated, the contractor's license is void within ninety (90) days unless another supervising journeyman is qualified by the Bureau. (7-27-94)

02. Required Signatures on Application. An application for an electrical contractor license shall be signed by the applicant or by the official representative of the partnership, company, firm, association, or corporation making the application. The application shall be countersigned by the supervising journeyman electrician. (4-1-91)

03. Electrical Contracting Work Defined. An electrical contractor license issued by the Division of Building Safety must be obtained prior to acting or attempting to act as an electrical contractor in Idaho. (4-5-00)

a. Electrical contracting work includes electrical maintenance or repair work, in addition to new electrical installations, unless such work is expressly exempted by Section 54-1016, Idaho Code. (4-5-00)

b. Any person or entity providing or offering to provide electrical contracting services, including, but not limited to, submitting a bid shall be considered as acting or attempting to act as an electrical contractor and shall be required to be licensed. (4-5-00)

c. Any person or entity, not otherwise exempt, who performs or offers to perform electrical contracting work, is acting as an electrical contractor, whether or not any compensation is received. (4-5-00)

04. Previous Revocation. Any applicant for an electrical contractor license who has previously had his electrical contractor license revoked for cause, as provided by Section 54-1009, Idaho Code, shall be considered as unfit and unqualified to receive a new electrical contractor license so long as such cause for revocation is continuing and of such nature that correction can be made by the applicant. (1-14-87)

05. Reviving an Expired License. Any applicant for an electrical contractor license who has allowed his license to expire and seeks to revive it under the provisions of Section 54-1013, Idaho Code, may be denied a license as unfit and unqualified if, while operating under the license prior to expiration, he violates any of the laws and/or rules applicable to electrical contractors. (4-1-91)

06. Qualification for Supervising Journeyman. A journeyman electrician shall not be considered as qualified to countersign an electrical contractor license application as the supervising journeyman, nor shall said application be approved if he does countersign said application as the supervising journeyman, if said journeyman has had his Idaho Electrical Contractor license revoked for cause under Section 54-1009, Idaho Code. A supervising journeyman shall not countersign for more than one (1) contractor. A journeyman who is a full time employee of a company, corporation, firm or association with an industrial account may sign as supervising journeyman for that industrial account in addition to signing as supervising journeyman for his own contractor's license so long as the journeyman is listed as the owner and complies with the provisions of Subsections 015.01.a. and 015.01.b. (7-1-97)

07. **Failure to Correct Defects in Electrical Installations.** If a journeyman countersigns an electrical contractor license application pursuant to Subsection 015.03 and thereafter willfully fails to correct defects in electrical installations he made or supervised, and such defects are within his power to correct and are not the fault of the contractor, then the Electrical Bureau shall have the power to suspend or revoke said journeyman's license pursuant to Section 54-1009, Idaho Code. (1-14-87)

08. **Overcharging of Fees.** It shall be grounds for suspension or revocation of an electrical contractor license if he charges and collects from the property owner an electrical permit or inspection fee which is higher than the fee actually in effect at the time of such charging and collection, pursuant to the current Electrical Laws and Rules of the Division of Building Safety, Electrical Bureau, and the fee remitted by the contractor to the Bureau is less than the fee actually charged and collected by him. (4-6-83)

09. **Electrical Contractor's Examination.** (9-1-94)

a. Each electrical contractor's license applicant must pass a contractor's examination to be administered by the Bureau or its designee. Any applicant which purports to be a non-individual (i.e., corporation, partnership, company, firm, or association), must designate in writing an individual to represent the partnership, company, etc., for examination purposes. Any such designee shall be a full-time supervisory employee and may not represent any other applicant for an electrical contractor's license. (9-1-94)

b. Any person designated under Subsection 015.09.a., and the contractor he represents, shall each notify the Bureau in writing if the designee's working relationship with the contractor has been terminated. Each notice must be filed with the Bureau within ten (10) days of the date of termination. If the designee's relationship with the contractor is terminated, the contractor's license is void within ninety (90) days unless another duly qualified designee passes the electrical contractor's examination on behalf of the contractor. (9-1-94)

c. Passage of the contractor's examination shall only be required for new electrical contractor license applications submitted after the effective date of this rule, September 1, 1994, and shall not apply to license renewal or revival under Section 54-1013, Idaho Code. (9-1-94)

016. -- 999. (RESERVED).

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IDAPA 07
TITLE 01
CHAPTER 04

07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING
DIVISION OF BUILDING SAFETY

000. LEGAL AUTHORITY.

The Idaho Electrical Board is authorized under Section 54-1006(5), Idaho Code, to adopt rules concerning the issuance of electrician licenses referred to in Section 54-1001, Idaho Code. (2-26-93)

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 07.01.04, "Rules Governing Electrical Specialty Licensing," Division of Building Safety. These rules set out the special types of electrical installations for which a specialty license is required; the minimum experience requirements for such license; and describe the procedure for securing such license. (7-1-97)

002. WRITTEN INTERPRETATIONS.

This agency has written interpretations of this chapter in the form of legal memoranda. (2-26-93)

003. ADMINISTRATIVE APPEALS.

The Attorney General's Idaho Rules of Administrative Procedure govern license revocation/suspension proceedings. (2-26-93)

004. -- 010. (RESERVED).

011. QUALIFIED JOURNEYMAN ELECTRICIANS.

Qualified journeyman electricians, as defined in Section 54-1003A.2, Idaho Code, shall be permitted to make all installations as subsequently described herein without securing an additional license for said installation. (4-9-79)

012. MINIMUM EXPERIENCE REQUIREMENTS.

Experience gained by an individual while engaged in the practice of one (1) or more of the specialties named below shall not be considered towards the satisfaction of the minimum experience requirements for licensing as a journeyman electrician. (11-28-77)

013. SPECIALTY EXPERIENCE REQUIREMENT.

01. Specialty Journeyman Electrician. An applicant for a specialty journeyman electrician license must have at least two (2) years experience with the type of installation for which the license is being applied for, in compliance with the requirements of the state in which the experience was received, or as a specialty electrical trainee making electrical installations in accordance with the requirements as stated herein. (4-5-00)

02. Specialty Electrical Trainee. A specialty electrical trainee shall be required to work two (2) years, defined as a minimum of four thousand (4,000) hours of work experience, under the constant on-the-job supervision of a specialty journeyman electrician of the same specialty category to qualify for testing as a specialty journeyman electrician. A person wishing to become a specialty electrical trainee shall register with the Division of Building Safety prior to going to work. Said person shall carry a current registration certificate on his person at all times and shall present it upon request to personnel of the Division of Building Safety for examination. Each specialty electrical trainee shall re-register prior to each July 1, furnishing proof of work experience performed during the previous year and notarized letters from each employer. This requirement shall continue each year until the minimum requirements of Chapter 10, Title 54, Idaho Code, have been fulfilled. Any specialty electrical trainee failing to re-register by August 1 of each year, shall pay an additional fee of ten dollars (\$10) to receive his registration certificate. Time shall not be credited while the trainee is inactive or not registered. (4-5-00)

014. ELECTRICAL SPECIALTIES REQUIRING A SPECIAL LICENSE.

The following shall be considered as electrical specialties, the practice of which shall require a special license: (4-9-79)

01. **Elevator, Dumbwaiter, Escalator, or Moving-Walk Electrical.** Any person qualifying for and having in his possession a current elevator electrical license may install, maintain, repair, and replace equipment, controls, and wiring beyond the disconnect switch in the machine room of the elevator and pertaining directly to the operation and control thereof when located in the elevator shaft and machine room. He shall be employed by a licensed elevator electrical contractor and his installation shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty. (4-9-79)

02. **Sign Electrical.** Any person qualifying for and having in his possession a current sign electrical license may install, maintain, repair, and replace equipment, controls, and wiring on the secondary side of sign disconnecting means; providing the disconnecting means is located on the sign or within sight therefrom. He shall be employed by a licensed sign electrical contractor whose installations shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty. (3-15-02)

03. **Manufacturing or Assembling Equipment.** (4-5-00)

a. A licensed specialty manufacturing or assembling equipment electrician must be employed by a licensed specialty manufacturing or assembling equipment contractor in order to work in this category. The holder of a specialty license in this category may not countersign a contractor's license application as supervising journeyman except for work within this specialty. (4-5-00)

b. Any person licensed pursuant to Subsection 014.03.a. may install, maintain, repair, and replace equipment, controls, and accessory wiring, integral to the specific equipment, on the load side of the equipment disconnecting means. Electrical service and feeder are to be installed by others. The licensee may also install circuitry in modules or fabricated enclosures for the purpose of connecting the necessary components which individually bear a label from a nationally recognized testing laboratory when such equipment is designed and manufactured for a specific job installation. All wiring completed shall meet all requirements of Title 54, Chapter 10, Idaho Code, all rules promulgated pursuant thereto, and the most current edition of the National Electrical Code. (7-1-94)

04. **Limited Energy Electrical License.** (9-17-85)

a. Limited energy systems are defined as fire and security alarm systems, class 2 and class 3 signaling circuits, key card operators, nurse call systems, motor and electrical apparatus controls and other limited energy applications covered by the NEC. (7-1-99)

b. Limited energy systems do not include, and no license of any type is required for, the installation of landscape sprinkler controls or communication circuits, wires and apparatus that include telephone systems, telegraph facilities, outside wiring for fire and security alarm systems which are used for communication purposes, and central station systems of a similar nature, PBX systems, audio-visual and sound systems, public address and intercom systems, data communication systems, radio and television systems, antenna systems and other similar systems. (7-1-99)

c. Unless exempted by Section 54-1016, Idaho Code, any person who installs, maintains, replaces or repairs electrical wiring and equipment for limited energy systems in facilities other than one (1) or two (2) family dwellings shall be required to have a valid limited energy electrical license and must be employed by a licensed limited energy specialty electrical contractor or electrical contractor. The holder of a specialty license may only countersign a contractor's application as a supervising journeyman for work within his specialty. (7-1-98)

05. **Irrigation Sprinkler Electrical.** Any person qualifying for and having in his possession, an irrigation system electrical license may install, maintain, repair and replace equipment, controls and wiring beyond the disconnect switch supplying power to the electric irrigation machine. The irrigation machine is considered to include the hardware, motors and controls of the irrigation machine and underground conductors connecting the control centers on the irrigation machine to the load side of the disconnecting device. Disconnect device to be installed by others. All such installations performed by individuals under this section shall be done in accordance with the applicable provisions of the National Electrical Code. He shall be employed by a licensed electrical contractor whose license is contingent upon the granting of a specialty electrical license to an employee and whose

installations shall be limited to this category. The holder of a specialty license may not countersign a contractor's license application as supervising specialty journeyman except for work in his specialty. (1-1-92)

06. **Well Driller and Water Pump Installer Electrical Licenses.** All such installations performed by individuals under this section shall be done in accordance with the applicable provisions of the approved National Electrical Code. He shall be employed by a licensed well driller and water pump installer electrical contractor whose installations shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising specialty journeyman except for work in his specialty. Any person currently licensed in this category may perform the following types of installations: (1-14-87)

a. Single or three (3) phase water pumps: install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to the load side, including fuses, of the disconnecting device. Disconnecting device installed by others. (4-6-85)

b. Domestic water pumps, one hundred twenty/two hundred forty (120/240) volt, single phase, sixty (60) amps or less: Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device. (7-1-98)

c. Temporarily connect into a power source to test the installations, provided that all test wiring is removed before the installer leaves the site. (1-14-87)

d. Individual residential wastewater pumping units. Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device for systems that serve one-, two-, or three-family residential installations. (4-11-06)

07. **Refrigeration, Heating, and Air-Conditioning Electrical Installer.** All such installation, maintenance, and repair performed by individuals under this section shall be done in accordance with applicable provisions of the National Electrical Code. He shall be employed by a licensed electrical contractor whose license shall be covered by this category. The holder of such specialty license may not countersign a contractor's license application as a supervising specialty journeyman except for work in his specialty. Any person currently licensed in this category may perform the following types of installations, which installations shall be limited to factory-assembled, packaged units: (9-17-85)

a. Heating Units (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

b. Refrigeration, Air-Conditioning Equipment and Heat Pumps (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

c. Refrigeration, Air-Conditioning and Heating Systems (three-phase): install, maintain, and repair all electrical equipment and accessories up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

015. APPLICATIONS FOR SPECIALTY LICENSES.

Applications for any of the above specialty licenses may be obtained from the Electrical Bureau, Division of Building Safety. The forms shall be returned with the application fee, as provided by Section 54-1014, Idaho Code, with proof of the required two (2) years of experience in the field of specialty, and all applications shall be signed and notarized. Upon receiving a passing grade, the applicant may remit the license fee for issuance of the license. (5-3-03)

016. LICENSE AND RENEWAL FEES.

The license fee and renewal fee for each type of specialty license shall be as provided for by Section 54-1014, Idaho Code, for other journeyman licenses. (7-9-84)

017. SPECIALTY CONTRACTOR LICENSE.

01. **Qualifications for Specialty Electrical Contractor.** Except as herein provided, any person, partnership, company, firm, association, or corporation shall be eligible to apply for a specialty electrical contractor license upon the condition that such applicant will be responsible for supervision of electrical installations made by said company, firm, association, or corporation as provided by Section 54-1010, Idaho Code. The supervising specialty journeyman electrician shall be available during working hours to carry out the duties of supervising specialty journeyman, as set forth herein. In addition, the applicant shall meet or have at least one (1) full-time employee who meets one (1) of the following criteria: (3-30-01)

a. Holds a valid specialty journeyman electrician license issued by the Electrical Bureau, in the same category as the specialty contractor, and has held a valid specialty journeyman electrician's license for a period of not less than two (2) years, during which time he was employed as a specialty journeyman electrician for a minimum of four thousand (4,000) hours; (3-30-01)

b. Holds a valid specialty journeyman electrician license issued by the Electrical Bureau, in the same category as the specialty contractor, and has at least four (4) years of experience in the specialty electrical category with a minimum of two (2) years practical experience in planning, laying out, and supervising electrical installations in this specialty category. (3-30-01)

02. **Modification to Qualifications.** Applicants for specialty contractor licenses, or individuals countersigning such applications, shall be subject to the same requirements, restrictions, and fees applicable to other electrical contractors and countersigning journeyman, as set forth in the current Electrical Laws and Rules. (3-30-01)

018. -- 999. (RESERVED).

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TACO TIME RESTAURANT

EXHIBIT 3

Idaho Code § 54-1003A (2006)
and
Idaho Code § 54-1001 (2006)

Idaho Code § 54-1003A (2006)

1. § 54-1003A. Definitions (1) Electrical Contractor. Except as provided in section 54-1016, Idaho Code, any person, partnership, company, firm, association or corporation engaging in, conducting, or carrying on the business of installing wires or equipment to carry electric current or installing apparatus to be operated by such current, or entering into agreements to install such wires, equipment or apparatus, shall for the purpose of this act be known as an electrical contractor. An electrical contractor, prior to being issued a license, shall be required to provide proof of liability insurance in the amount of three hundred thousand dollars (\$ 300,000) and proof of worker's compensation insurance if applicable.(2) Journeyman Electrician. Except as provided in section 54-1016, Idaho Code, and subsections (3), (4), (5) and (6) of this section, any person who personally performs or supervises the actual physical work of installing electric wiring or equipment to convey electric current, or apparatus to be operated by such current, shall, for the purpose of this act, be known as a journeyman electrician.(3) Apprentice Electrician. Any person who, for the purpose of learning the trade of journeyman electrician, engages in the installation of electric wiring, equipment, or apparatus while under the constant on-the-job supervision of a qualified journeyman electrician shall, for the purpose of this act, be known as an apprentice electrician.(4) Maintenance Electrician. Any person who is regularly employed to service, maintain or repair electrical apparatus, or to make minor repairs or alterations to existing electrical wires or equipment located on his employer's premises shall, for the purpose of this act, be known as a maintenance electrician.(5) Master Electrician. A person who has the necessary qualifications, training, experience and technical knowledge to plan, layout or design the installation of electrical wiring or equipment, or to supervise such planning, layout, or design, and who performs or supervises such planning, layout or design, shall, for the purpose of this act, be known as a master electrician.(6) Specialty Electrician. A person having the necessary qualifications, training, experience and technical knowledge to install, alter, repair and supervise the installing, altering or repairing of special classes of electrical wiring, apparatus or equipment within categories adopted by the board. Specialty electricians shall perform work only within the scope of the specialty category for which the person is licensed.(7) Specialty Electrical Contractor. Except as provided in section 54-1016, Idaho Code, any person, partnership, company, firm, association or corporation engaging in, conducting or carrying on the business of installing, altering or repairing special classes of electrical wiring, apparatus or equipment within categories adopted by the board or entering into agreements to perform such specialty work, shall for the purpose of this act be known as a specialty electrical contractor. Specialty electrical contractors shall perform work only within the scope of the specialty category for which the contractor is licensed. A specialty electrical contractor, prior to being issued a license, shall be required to provide proof of liability insurance in the amount of three hundred thousand dollars (\$ 300,000) and proof of worker's compensation insurance if applicable.(8) Specialty Electrical Trainee. Any person who, for the purpose of learning the trade of a specialty electrician, engages in the installation of electrical wiring, equipment or apparatus while under the constant on-the-job supervision of a qualified specialty electrician shall, for the purpose of this act, be known as a specialty electrical trainee.**HISTORY:** I.C., § 54-

1003A, as added by 1961, ch. 311, § 6, p. 583; am. 1986, ch. 296, § 3, p. 742; am. 1999, ch. 99, § 3, p. 311; am. 1999, ch. 367, § 3, p. 968; am. 2005, ch. 82, § 1, p. 294. **NOTES: COMPILER'S NOTES.** The words "this act" refer to S.L. 1999, ch. 367. See note following § 54-1002. This section was amended by two 1999 acts -- ch. 99, § 3 and ch. 367, § 3, both effective July 1, 1999, which do not appear to conflict and have been compiled together. The 1999 amendment by S.L. 1999, ch. 99, § 3, in subsection (2), substituted "subsections (3), (4) and (5) of this section" for "part (3) and part (4) of this section" and in subsection (5), deleted "journeyman" in two places. The 1999 amendment by S.L. 1999, ch. 367, § 3, in subsection (2), substituted "subsections (3), (4), (5) and (6) of this section" for "part (3) and part (4) of this section" and added present subsections (6), (7) and (8). Section 4 of S.L. 1986, ch. 296 is compiled as § 54-1005. Section 4 of S.L. 1999, ch. 367, is compiled as § 54-1005. Section 2 of S.L. 2005, ch. 82 is compiled as § 54-1013. **SEC. TO SEC. REF.** This section is referred to in § 54-1007. **OPINIONS OF THE ATTORNEY GENERAL.** An individual or firm submitting a bid to a property owner, general contractor, or contracting agency, to do electrical work, must possess an electrical contractor's license at the time of submission of such a bid, as this conduct would constitute an "attempt" to act as contractor; on the other hand, a general and relatively widely broadcast advertising is at most a mere "preparation" as opposed to an "attempt." OAG 83-9. **COLLATERAL REFERENCES.** 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 33.

Idaho Code § 54-1001 (2006)

§ 54-1001. Declaration of policy From and after the taking effect of this act, all installations in the state of Idaho of wires and equipment to convey electric current and installations of apparatus to be operated by such current, except as hereinafter provided, shall be made substantially in accord with the National Electrical Code of 1971, as approved by the American Standards Institute, relating to such work as far as the same cover both fire and personal injury hazards, and as the National Electrical Code shall be amended, revised, compiled and published from time to time and as such amendments or revisions are adopted by the Idaho electrical board.**HISTORY:** 1947, ch. 251, § 1, p. 681; am. 1955, ch. 28, § 1, p. 46; am. 1961, ch. 311, § 2, p. 583; am. 1974, ch. 39, § 76, p. 1023.**NOTES:COMPILER'S NOTES.** The words "this act" refer to S.L. 1947, ch. 251, which is codified as §§ 54-1001 to 54-1003, 54-1005, 54-1007 to 54-1009, and 54-1013 to 54-1018. Section 2 of S.L. 1955, ch. 28, is compiled as § 54-1005. Section 1 of S.L. 1961, ch. 311, repealed former §§ 54-1004, 54-1006, 54-1010, 54-1011, and 54-1012 of the Idaho Code. Section 75 of S.L. 1974, ch. 39 is compiled as § 45-615.**SEC. TO SEC. REF.** This chapter is referred to in §§ 39-4103 and 67-2601. This section is referred to in § 54-1005.**AUTHORITY OF COMMISSIONER.** Commissioner of law enforcement does not have the authority to issue regulations governing inspection of installations by electrical contractors and journeymen, since act regulating electrical contractors and journeymen does not provide for the issuance of rules and regulations by commissioner of law enforcement. Grayot v. Summers, 75 Idaho 125, 269 P.2d 765 (1954).**COLLATERAL REFERENCES.** 58 Am. Jur. 2d, Occupations, Trades, and Professions, §§ 1, 33-35.

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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF MADISON

Case No. CV-06-826

DEPOSITION OF MICHAEL C. HIGGINS
January 22, 2008

BRIAN AND CHRISTIE, INC., an Idaho corporation,
and dba TACO TIME, an assumed business name,

Plaintiff,

vs.

LEISHMAN ELECTRIC, INC., an Idaho corporation;
and JOHN DOES 1-10,

Defendants.

APPEARANCES:

LAW OFFICES OF RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
By John R. Goodell, Esq.
201 East Center Street
P.O. Box 1391
Pocatello, Idaho 83204
Appearing on behalf of Plaintiff.

LAW OFFICES OF COOPER & LARSEN, CHARTERED
By Gary L. Cooper, Esq.
151 North 3rd Avenue, Suite 210
P.O. Box 4229
Pocatello, Idaho 83205
Appearing on behalf of Defendant
Leishman Electric, Inc., an Idaho
corporation.



1 Pursuant to Notice and the Idaho Rules
2 of Civil Procedure, the deposition of
3 MICHAEL C. HIGGINS, called by Defendant Leishman
4 Electric, was taken on Tuesday, January 22, 2008,
5 commencing at 9:35 a.m., at 216 - 16th Street,
6 Suite 650, Denver, Colorado, before Alan H. Agren,
7 Certified Shorthand Reporter and Notary Public
8 within and for the State of Colorado.

9

10 I N D E X

11 DEPOSITION OF MICHAEL C. HIGGINS

12 EXAMINATION BY: PAGE

13 Mr. Goodell 96

14 Mr. Cooper 4

15

EXHIBITS INITIAL REFERENCE

16 Exhibit 4 Notice of Deposition 23

17 Duces Tecum of Michael C.
Higgins, P.E.

18 Exhibit 5 Plaintiff's Responses to 36

19 Defendant's First Request
for Admissions

20 Exhibit 6 Deponent's file 23

21 Exhibit 6A Product literature 52

22 Exhibit 6B Photocopy of photograph 52

23 Exhibit 7 Professional Profile of 7

24 Michael C. Higgins, P.E.

25

1 I N D E X (Continued)

2 EXHIBITS INITIAL REFERENCE

3 Exhibit 7A Professional Profile of 7

Michael C. Higgins, P.E.

4

5 INFORMATION REQUESTED TO BE SUPPLIED PAGE

6 Billing records 24

7 Sections of NEC which support use 79

of word "energize" by deponent

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1 to Mr. Goodell or whomever you sent it to?
2 A No, we did not, and the reason for that
3 is because the report is confidential and product
4 of our client and without their approval, I'm not
5 at liberty to do that.

6 Q You did not report the conversations
7 that you had with Mr. Caine and Mr. Fitzloff?

8 A No, sir, I don't do that unless I would
9 tell somebody. And if I did tell them I was going
10 to -- that I was going to do that, my experience
11 is that the interview typically ends at that
12 point.

13 Q So have we now discussed all of your
14 opinions that you hold in this case?

15 A If I may, I would like to just
16 summarize the high points of the opinions just to
17 make sure that we don't -- that if they haven't
18 been made clear in the report that there is a
19 record that -- as to what we will state.

20 Q That's helpful. Go ahead.

21 I think the first opinion is that the
22 work that was done by Leishman Electric, by
23 hooking up to a fixture that had no -- and could
24 have no UL listing to it -- without properly
25 evaluating the fixture which would have included

1 making sure that it was properly tagged and
2 installed by a licensed sign installer, that
3 through the tag it was inspected by the State to
4 make sure that it complied with the requirements
5 of the National Electric Code and the fact that by
6 being able to visually examine the sign without
7 disassembling the sign or by having to conduct
8 only minor disassembly of the sign which would by
9 no means alter any of the electrical connections,
10 just opening up a box cover, they could have
11 easily determined that the sign had not been
12 installed per the National Electric Code for which
13 they should know the regulations under the Idaho
14 statute, because as a licensed electrician they
15 had the ability and are required to know the
16 proper installation methods, the procedures for a
17 neon sign.

18 By not hooking up or by not evaluating
19 the sign prior to hooking up to that sign, they
20 violated the National Electric Code and state
21 statutes because they subjected the building to
22 unsafe and dangerous conditions, electrical -- was
23 the high potential for electrical failure. And by
24 simply conducting a visual inspection of that sign
25 they could have determined it did not meet code.

1 They could have called the State and
2 said, "Have you inspected it?" By just some
3 simple methods of doing some basic in-field
4 analysis they could have determined that the sign
5 had never been inspected, had never been installed
6 per code and at that point could have made the
7 decision, you know, we are not hooking up to this.

8 It's not the responsibility to correct
9 the defects of -- identify it in the sign or in
10 the branch circuit. They are not required by the
11 code to correct them, but they are required by
12 code to not hook up to that fixture, branch
13 circuit or whatever, unless those deficiencies
14 have been corrected. And by doing that they are
15 in violation of the National Electric Code and
16 common sense for any electrical contractor.

17 I think that those are the principal
18 issues in this case. And it's very clear-cut to
19 me and it should be very clear-cut to anyone who
20 reviews this, including the State, that those are
21 the primary issues. And, as such, Leishman
22 Electric is responsible for damages that occurred
23 to the building. It's real simple.

24 Q I just want to make sure. You've
25 already identified for me the provisions of the

1 1996 National Electric Code that you believe
2 require that inspection by Leishman Electric and
3 the provisions of the Idaho Administrative
4 Procedures Act and Idaho statutes which required
5 that, correct?

6 A Yes.

7 MR. COOPER: I have no further
8 questions. Thank you.

9 EXAMINATION

10 BY MR. GOODELL:

11 Q Mr. Higgins, just to clarify a few
12 points here, if you would refer to your report,
13 Page 5, which I guess is marked as Exhibit 2 to
14 your deposition -- or 3?

15 A He said 2 previously.

16 Q Your report is marked as Deposition
17 Exhibit 2, right? Is that right or not?

18 MR. COOPER: It's Exhibit 2. It was
19 previously marked in Mr. Caine's deposition.

20 MR. GOODELL: You haven't re-marked it
21 here?

22 THE DEPONENT: No, it's all part of
23 this file. But it's marked as Exhibit 2, right?

24 MR. COOPER: Yes.

25 Q (By Mr. Goodell) All right. Would you

1 turn to rule -- ending in Subsection 015 which is
 2 quoted, I think, on Page 5 and you've also got a
 3 copy in your exhibits to the report. So either
 4 place, whatever is most convenient.
 5 Do you have that?
 6 A Yes.
 7 Q And Subsection b states as follows,
 8 quote, Those duties include assuring that all
 9 electrical work substantially complies with the
 10 National Electrical Code and other electrical
 11 safety installation laws and rules of the state,
 12 and that proper electrical procedures are
 13 followed; assuring that all electrical labels,
 14 permits, and licenses required to perform
 15 electrical work are used; et cetera, close quote.
 16 Did I read that portion correctly?
 17 A Yes.
 18 Q Now, this Subsection b of Subsection
 19 015 refers to electrical contractors; is that
 20 right?
 21 A Yes.
 22 Q And duties of electrical contractors?
 23 A Yes.
 24 Q And in this case Leishman Electric was
 25 an electrical contractor which worked on the

1 As far as licenses go, they did not
 2 verify that a licensed sign contractor had
 3 performed the work on the sign that they hooked up
 4 to. Those would just be a few of the violations
 5 to the National Electric Code and the state
 6 statute under this provision.
 7 Q With regard to the part of this
 8 Subparagraph 015, Point b, that refers to, quote,
 9 and that proper electrical procedures are
 10 followed, quote, what, in your opinion, was the
 11 duty of Leishman Electric, as the electrical
 12 contractor, that made the final power connection
 13 of the building to this sign? What was Leishman's
 14 duty in that regard before making that connection,
 15 that is, to see that the proper electrical
 16 procedures are followed of the sign that somebody
 17 else installed?
 18 MR. COOPER: Object to the form of the
 19 question.
 20 A Their duty was, first of all, to verify
 21 the sign had been tagged and permitted, which
 22 would ensure that the State would be inspecting
 23 the sign.
 24 Their second duty was to -- if, in
 25 fact, they could not find the tag was to contact

1 Taco Time building, according to your information?
 2 A Yes.
 3 Q And which made the primary power
 4 connection of the building power to this sign
 5 installed by SignPro?
 6 A That is correct.
 7 Q Now, can you explain, in light of that
 8 Subsection 015, Point b that I just read, what
 9 duties Leishman Electric, as the electrical
 10 contractor, had with regard to these defects that
 11 have been identified in the sign?
 12 MR. COOPER: Object to the form.
 13 A Well, every aspect of it basically has
 14 been violated. You know, it says -- if you took
 15 the part assuring that all electrical labels --
 16 well, by not verifying that the transformer had
 17 secondary ground fault protection, obviously, they
 18 did not look at the electrical labels on that
 19 section of the sign to verify that it was the
 20 proper transformer for this installation.
 21 Permits. They did not verify that a
 22 permit for the sign had ever been obtained which
 23 would have required a simple call to the State,
 24 since there was no evidence that a sign permit was
 25 on-site.

1 the State to verify that a permit had ever been
 2 pulled and that the sign had been inspected. And
 3 the primary duty they had was by -- by not having
 4 the information that allowed them to determine
 5 that the sign had ever been inspected by the State
 6 or installed by a licensed person, the duty was to
 7 evaluate the sign, make sure that it was installed
 8 correctly. And that if they had conducted these
 9 simple procedures, the final duty would have been
 10 not to hook up to it. Fire would have never
 11 occurred if they hadn't hooked up to it.
 12 Q (By Mr. Goodell) And so then to what
 13 extent does Leishman, as the electrical contractor
 14 who makes the final power connection of the
 15 building power to this sign fixture at the end of
 16 this branch circuit line, what duty do they have
 17 to evaluate the safe condition or unsafe condition
 18 of this fixture or sign before hooking it up as
 19 the last step in the process?
 20 MR. COOPER: Object to the form.
 21 A The primary duty they have is to ensure
 22 that it's installed per the National Electric
 23 Code. And, if not, not to hook up to it.
 24 Q (By Mr. Goodell) Now, you mentioned
 25 that there were some red flags that should have

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1 alerted Leishman to the fact that there was no
2 assurance that the sign as installed by SignPro
3 was in a safe condition before they hooked up the
4 power, right?
5 A Yes.
6 Q And so the red flags that should have
7 alerted Leishman were a number of different
8 things, as you mentioned, and one was that there
9 was no permit on-site for the sign install?
10 MR. COOPER: Object to the form.
11 A That is correct.
12 Q (By Mr. Goodell) And that there was no
13 evidence, given the lack of permit, that a
14 licensed sign installer had installed it?
15 MR. COOPER: Object to the form.
16 A That's correct.
17 Q (By Mr. Goodell) Is that another red
18 flag?
19 A Yes.
20 MR. COOPER: Object to the form.
21 Q (By Mr. Goodell) You indicated that
22 there was no evidence that the State had ever
23 inspected this sign to give it a clean bill of
24 health prior to hooking it up?
25 MR. COOPER: Object to the form.

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1 Q (By Mr. Goodell) That's another
2 condition?
3 MR. COOPER: Same objection.
4 A That's correct.
5 Q (By Mr. Goodell) And is that another
6 red flag?
7 MR. COOPER: Same objection.
8 A Yes.
9 Q (By Mr. Goodell) And you indicate by
10 referring to the photo, Exhibit 6B, of the
11 conditions of the sign and related components
12 after the fire that there are other readily
13 observable problems with what was various aspects
14 of SignPro's work; is that right?
15 MR. COOPER: Object to the form.
16 A That's correct.
17 Q (By Mr. Goodell) You mentioned one of
18 those things, for example, was that the connectors
19 on the conduit were not waterproof?
20 MR. COOPER: Object to the form.
21 A Yes.
22 Q (By Mr. Goodell) They were not rated
23 and approved for exterior usage?
24 MR. COOPER: Object to form.
25 A That's correct.

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1 Q (By Mr. Goodell) But they were used on
2 the exterior?
3 MR. COOPER: Object to form.
4 A Yes.
5 Q (By Mr. Goodell) Those would have been
6 readily observable by Leishman when it hooked up
7 the building power to this disconnect box?
8 MR. COOPER: Object to the form.
9 A Very likely that they may have even
10 hooked up -- used one of the improper connectors
11 when attaching the wire from the sign to the -- to
12 the disconnect, the sign disconnect.
13 Q (By Mr. Goodell) Do you have some
14 understanding as to who installed this disconnect
15 box or this junction box where the disconnect is
16 made? Is that SignPro or Leishman or do you know?
17 A It would have had to have been by
18 Leishman. I shouldn't say that. Junction box
19 legally could have been installed by either party.
20 However, the disconnect can only be installed by
21 the licensed electrician.
22 Q All right. This weather-tight metal
23 box we've indicated here is something that was
24 installed by SignPro?
25 A Yes.

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1 Q It's part of the neon sign components?
2 A Yes.
3 Q And in order to determine whether or
4 not a secondary ground fault protection device had
5 been included, then one would simply have taken
6 off two or maybe four screws, lifted the lid and
7 looked in it at the transformer inside?
8 A That's correct.
9 Q The transformer inside would be labeled
10 in such a way to designate whether it did or did
11 not have secondary ground protection?
12 A Yes.
13 Q And if Leishman had wanted to do that,
14 then it could have removed those screws, opened
15 the box and checked it before hooking up the power
16 line?
17 A Yes, they should have.
18 Q By so doing, have readily determined
19 whether there was or wasn't secondary ground fault
20 protection in conjunction with the neon sign
21 components?
22 MR. COOPER: Object to the form.
23 A That's correct.
24 Q (By Mr. Goodell) And you mentioned
25 also, in referring to the diagram of the sign,

1 that the continuous bonding necessary to form a
 2 proper grounding on the lettering of the sign was
 3 missing between two points. I think it was A and
 4 T? I could be wrong on T. Maybe you should check
 5 the diagram.
 6 A I think you are wrong. Let's check it.
 7 It's B. B as in boy.
 8 Q Between A and B on the lettering of the
 9 sign there is a gap which indicates no continuous
 10 bonding of the ground wire at that point, meaning
 11 the sign is not correctly grounded?
 12 A That's correct.
 13 Q Now, assuming the sign is mounted -- I
 14 don't know -- 12, 15 feet off the ground on the
 15 exterior of the building wall, if somebody leaned
 16 the ladder up to it, climbed up the ladder and
 17 looked at the wiring on the sign, would that be
 18 readily visible externally if lack of bonding
 19 between the two points made the lettering of the
 20 sign non-grounded?
 21 A It should have been visible on the roof
 22 where the electrician conducted the work.
 23 Q In other words, just to look over the
 24 wall down at the sign itself?
 25 A Yes. Sort of when they were connecting

1 the pigtail from the sign to the disconnect they
 2 could have seen it and should have been visible at
 3 that point.
 4 Q So somebody wouldn't even have needed
 5 to go off the roof down to the ground, lean the
 6 ladder against the wall and climb up the ladder to
 7 examine that, they could have just looked over the
 8 parapet wall and seen it?
 9 A It's right in front of them.
 10 Disconnects here and the sign is right here
 11 (indicating). They should have been able to just
 12 look at it from where they were hooking up the
 13 disconnect.
 14 Q How long would that have taken, to see
 15 if the grounding wiring on the lettering of the
 16 sign was proper or not?
 17 MR. COOPER: Object to the form.
 18 A Less than a minute.
 19 Q (By Mr. Goodell) So are all of these
 20 things that were not done simple matters that
 21 Leishman, if they wanted to, could have checked to
 22 see whether the sign was properly grounded and had
 23 secondary ground fault protection or not?
 24 MR. COOPER: Object to the form.
 25 A Could you -- I'm not really sure

1 what --
 2 Q (By Mr. Goodell) All of these several
 3 different things, these red flags we've talked
 4 about --
 5 A Yes.
 6 Q -- is that something that Leishman, as
 7 a licensed electrician, could have taken a
 8 reasonable amount of time to inspect and determine
 9 the condition of before hooking up the building
 10 power?
 11 MR. COOPER: Object to the form.
 12 A Very easily, yes.
 13 Q (By Mr. Goodell) If Leishman had done
 14 such inspections and determined there were these
 15 electrical defects, that is, the lack of secondary
 16 ground fault protection and the lack of proper
 17 grounding, then as the electrician, what was the
 18 duty under the National Electrical Code whether --
 19 with regard to hooking or not hooking up the
 20 building power that would affect the sign?
 21 MR. COOPER: Object to the form.
 22 A The duty was not to hook up to the
 23 sign.
 24 Q (By Mr. Goodell) Why is that?
 25 A Because the sign doesn't meet the

1 National Electric Code requirements and represents
 2 a significant fire hazard. I would say that
 3 most -- we've looked at several fires at
 4 commercial buildings and a lot of those fires have
 5 resulted from neon signs being improperly
 6 installed for an electrician -- all electricians
 7 should know the severe fire risk associated with
 8 them because these step-up transformers have
 9 extremely high voltage. And if, in fact, the
 10 connectors leak, once they become wet, if it's not
 11 grounded, it's -- it's almost a guarantee that a
 12 fire will start at the sign.
 13 Q Is there something about neon signs
 14 that makes them more dangerous than other typical
 15 exterior lighting?
 16 A Yes.
 17 Q What is that? Explain.
 18 A Two things. One is the signs
 19 themselves aren't -- aren't evaluated and listed
 20 by any well-known listing agency. Second of all
 21 is the fact that they use high voltage to excite
 22 the gas inside the tubes and -- to excite the gas.
 23 Like you would excite a person by whatever. By
 24 exciting -- the high voltage is required to excite
 25 the gas. And so knowing that these have

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1 voltages -- that typically range from, you know,
2 7500 to 15,000 volts -- knowing that if they are
3 not properly installed, they represent extreme
4 risk of fire danger.
5 Q Are neon signs more dangerous than
6 regular exterior sign lighting?
7 MR. COOPER: Object to the form.
8 A In my opinion, yes.
9 Q (By Mr. Goodell) For the reasons
10 you've explained?
11 A Yes. We all -- investigators always
12 laugh when we see them. Here's another neon sign
13 fire. They are kind of a much higher degree of --
14 of fire risk if not properly installed, and I
15 would say that the technical expertise required to
16 install them is a little bit more than it is for a
17 typical sign.
18 Q So if neon signs are more dangerous
19 than your typical exterior sign lighting, what
20 does that say to you in terms of the duty of an
21 electrician who's doing the primary power hookup
22 to such sign in light of the code requirements and
23 the Idaho state law and rules requirements you've
24 referred to in your report?
25 MR. COOPER: Object to the form.

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1 A What it tells me is that you better be
2 extra careful and make sure that you know that
3 that sign has been properly installed by a
4 qualified person if you are going to hook up to
5 it.
6 If not, you better look at it very,
7 very closely to make sure that it complies with
8 the National Electric Code, has all the safety
9 requirements of grounding and secondary ground
10 fault protection before you hook up to it.
11 Q (By Mr. Goodell) And do you agree or
12 disagree with Mr. Caine's interpretation or early
13 testimony in part of his deposition that Leishman
14 had no duty to be cognizant of the condition of
15 the sign or to evaluate its condition when it
16 hooked up the primary power to the sign because
17 the sign install was done by somebody else, mainly
18 SignPro?
19 A I totally disagree with that
20 interpretation.
21 Q Explain why.
22 A Because an electrician under the
23 code -- under both codes -- is to install all
24 electrical fixtures, circuits, all his work has to
25 be done in a -- per the code and in a safe manner.

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1 If, in fact, he is hooking up to a -- to a sign,
2 branch circuit, whatever, without having properly
3 evaluated, he's not only in violation of the code,
4 but common sense. He's taking a risk he's going
5 to hurt someone or kill somebody or create a fire.
6 It's his duty to ensure that what he is energizing
7 is properly installed and the circuit is safe.
8 Q But for Leishman Electric hooking up
9 primary power from the building to this neon sign,
10 would there have been a fire hazard even
11 recognizing the defects in the sign?
12 MR. COOPER: Object to the form.
13 A Until it's energized, it does not
14 represent a hazard.
15 Q (By Mr. Goodell) So in evaluating the
16 circumstances or conditions about which -- let me
17 start over.
18 In evaluating the conditions or
19 circumstances which caused the fire in this case,
20 I take it there would be at least two parts. One
21 part being the repair, assembly, manufacture and
22 install of the sign on the building and the
23 components by SignPro as one part, right?
24 MR. COOPER: Object to the form.
25 A Yes.

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1 Q (By Mr. Goodell) But that, in and of
2 itself, without power being hooked to it, did not
3 present a fire hazard?
4 MR. COOPER: Object to the form.
5 A No.
6 Q (By Mr. Goodell) So then the second
7 part which brought about this fire was the
8 connection of the primary power to the sign
9 thereby energizing it which was done by Leishman
10 Electric?
11 MR. COOPER: Object to the form.
12 A That is correct.
13 Q (By Mr. Goodell) And so the cause of
14 this fire was the result of these actions of these
15 two actors, one plus one, which presented the
16 completed electrical unit hazard and resulting
17 fire hazard?
18 MR. COOPER: Object to the form.
19 A Yes.
20 MR. GOODELL: I think I'll just quit
21 there. Thank you very much. No other questions.
22 MR. COOPER: Thank you.
23 (The deposition concluded at 1:05 p.m.,
24 January 22, 2008.)
25

APR 10 2008

John R. Goodell (ISB#: 2872)
Brent L. Whiting (ISB#: 6601)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109
Email: jrg@racinelaw.net

Attorneys for Plaintiffs

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MADISON**

BRIAN AND CHRISTIE, INC., an Idaho)
corporation, and d/b/a TACO TIME, as)
assumed business name,)
)
Plaintiff,)
)
vs.)
)
LEISHMAN ELECTRIC, INC., an Idaho)
corporation; and JOHN DOES 1-10,)
)
Defendants.)
_____)

Case No. CV06-826

**AFFIDAVIT OF SCOTT
KIMBROUGH, Ph.D., P.E. IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

STATE OF UTAH)
 : ss.
County of Salt Lake)

SCOTT KIMBROUGH, Ph.D., P.E., being first duly sworn, deposes and states as follows:

1. My name is Scott Kimbrough. I am a specialist in forensics engineering, including

**AFFIDAVIT OF SCOTT KIMBROUGH, Ph.D., P.E. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - Page 1**

experience in cause and origin of electrical fires in structures, vehicles, and appliances. I have been a partner in MRA Forensic Services from July 1994 to date.

Attached as **Exhibit 1** is a true and correct of my Curriculum Vitae stating my qualifications, education, experience publications, and patents held in more detail.

Attached as **Exhibit 2** is a true and correct copy of my depositions and trial appearances where I have testified as a forensic engineer in cases filed in the States of Idaho, Utah, Wyoming, Nevada, Montana, California, New Mexico, Texas, Colorado, and other states and forums from approximately 1990 to date.

2. Sometime shortly after June 16, 2004, Robert "Jake" Jacobsen, C.F.I., of Burn Pattern Analysis, Inc., forwarded a Preliminary Report of his fire scene investigation dated June 16, 2004, with photographs, and the remains of a neon sign removed from the reported area of origin of the fire. He requested that I perform an electrical engineering evaluation.

3. I performed the electrical engineering evaluation as requested. My findings and discussion are stated in my letter report dated December 2, 2004 sent to Mr. Jacobsen.

Attached as **Exhibit 3** is a true and correct copy of my letter report.

4. In summary, as indicated in my letter report, the subject neon sign was improperly and defectively installed in a manner which violated two (2) significant requirements of the National Electrical Code ("NEC"). Specifically, my "Findings" as stated in the report are as follows:

"1. The neon sign in question violated two important requirements of the National Electrical Code.

a. The sign used a transformer that did not have secondary circuit ground fault protection.

b. The sign was not properly grounded.

**AFFIDAVIT OF SCOTT KIMBROUGH, Ph.D., P.E. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - Page 2**

Because of these violations, the sign would have presented a significant fire hazard.” (Exhibit 3, Report, p. 3)

My report states further in the “Closure” section:

“The neon sign found in the zone of the most severe damage at the fire scene was of faulty design and violated two important safety requirements of the National Electrical Code. As it was constructed, the subject sign would have presented a significant fire hazard.

* * *

The defective sign was located in and around the damage zone from the fire. That supports the notion that the neon sign caused the fire. However, because the current capacity of a neon sign transformer is so low, failures from neon signs often do not produce clear evidence such as heavy arcing damages, which could help pinpoint the exact failure location. Typically, evidence that arc tracking has occurred appears as fine etching patterns in insulation and wood. Finding the exact failure point of a neon sign becomes even harder when the sign has been engulfed in the ensuing fire, such as in this case, because the etching patterns are easily burned away.

To date, this investigator has not been able to find an exact failure point, which is not an unusual outcome when analyzing a fire damaged neon sign. Therefore, fully implicating the neon sign may require showing that all other potential causes have been eliminated; which may not be too difficult since the zone of damage was limited in extent. This investigator has not been to the fire scene, so it will be up to the scene investigator to complete the case.” (Exhibit 3, Report, p. 6)

5. In my review of the scene investigation Preliminary Report by Mr. Jacobsen, in the section “Comments, Conclusions & Recommendations,” the following statement is noted:

“All potential cause from deliberate human involvement, intentional acts or arson were eliminated during the investigation.

While there were numerous electrical circuits routed throughout the attic assembly that provided branch circuit supply to lighting fixtures, heating appliances and outlets, those components do not appear to be involved with the cause of the fire.

**AFFIDAVIT OF SCOTT KIMBROUGH, Ph.D., P.E. IN SUPPORT OF
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT - Page 3**

AFFIDAVIT OF SCOTT KIMBROUGH, PH.D., P.E. IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT
PAGE 214

* * *

All negligent and intentional acts by the insured and/or his employees were eliminated during the investigation.” (Robert “Jake” Jacobsen Affidavit, Exhibit 7, pp. 9-10)

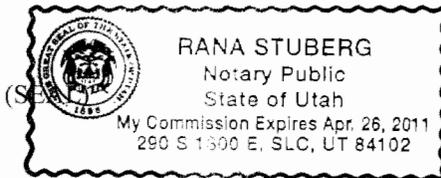
6. Assuming and relying on the accuracy of Mr. Jacobsen’s elimination of other potential causes of the fire as the scene investigator, it is my expert opinion that the cause of the fire was the defective wiring and installation of the subject neon sign as explained in my letter report attached and summarized above. There is simply no evidence of other electrical failure in the area of origin of the fire which has been identified as a potential cause; and other possible causes have been reasonably eliminated.

DATED this 3 day of ~~March~~^{April}, 2008.

MRA FORENSIC SCIENCES

By: Scott Kimbrough
SCOTT KIMBROUGH, Ph.D., P.E.

SUBSCRIBED AND SWORN TO before me this 3 day of ~~March~~^{April}, 2008.



Rana Stuberg
NOTARY PUBLIC FOR UTAH
Residing at:
My Commission Expires:

**AFFIDAVIT OF SCOTT KIMBROUGH, Ph.D., P.E. IN SUPPORT OF
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT - Page 4**

AFFIDAVIT OF SCOTT KIMBROUGH, PH.D., P.E. IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT
PAGE 215

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of April, 2008, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Gary C. Cooper, Esq.
COOPER & LARSEN
151 N. Third Avenue, Suite 210
P.O. Box 4229
Pocatello, ID 83205
Fax: 208-235-1182

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email



JOHN R. GOODELL

CURRICULUM VITAE
Scott Kimbrough, Ph.D., P.E.

SPECIALTIES:

Forensics Engineering, Failure Analysis and Accident Investigation, Instrumentation and Testing, Human Factors, Safety Engineering, Electronic and Mechanical System Design and Prototype Fabrication.

MEMBERSHIPS:

SAB, SCCA, SOAR, HFES, IAAI, ACM-SIGAPL

Offices Held:

Utah Section SAB; Vice Chairman (1990), Chairman (1991), and Chairman on Student Activities (1992, 1993).

Utah Section ASME; Committee Chairman on Technical Activities (1990).

ASME; National Vehicle Design Committee (1998-2004),

Associate Editor of Heavy Vehicle Systems, International Journal of Vehicle Design.

EDUCATION:

Ph.D. EE 11/84 UCLA; Majored in Control Systems. Minored in Operations Research and Applied Math.

MSME 6/77 California Institute of Technology; Majored in Thermal Sciences. Minored in Mechanics.

BSME 6/75 University of Nevada (Reno); Majored in Thermal Science. Minored in Machine Design.

EMPLOYMENT:

7/94 - Present: Partner Motion Research Associates. Have handled many cases involving failure analysis. Past cases include: numerous vehicle fires, appliance fires, and structure fires (concentrating on electrical cause and origin), failure of hydraulic systems; alleged ABS brake system failures, bolt and fastener failures, structural failures, automatic gates and doors, commercial washing machine malfunction, traffic signal controllers, failure of a substation autotransformer, lightning damage to irrigation pumps, diagnosis of vehicle control systems, bridge collapse, several scaffolding collapses, construction crane tip-overs, failure of a natural gas powered engine, structural seismic conformance, failures of fire-protection sprinkler systems, and structural damage due to blasting, and inadequate drainage systems. Other cases involve: driver reaction and perception analysis, visibility studies of both day and night settings, dynamics analysis of bodies and objects, numerous slip-and-falls and trip-and-falls, vibration exposure analysis, and patent infringement. Have investigated construction and manufacturing defects, involving: soil settlement, stairs, ramps, retaining walls, water treatment systems, control systems for snow-cats, faulty stucco, failed snow-melt systems, ventilation systems, parking lot designs; and basement flood damage from ground water. Also have designed and built custom instrumentation systems and test apparatus, including: instrument systems for cars, vans, buses, trailers, motorcycles, and boats, and apparatus for sensing steering torque, measuring brake pressures, measuring vibration levels, and measuring muscle response. Have performed numerous automobile, truck, and trailer accident investigations, involving: collisions of all types, many accidents involving cars and trucks pulling trailers, roll-overs, and heavy commercial vehicles. Also have performed research on brake systems and steering systems for Ford Motor Company. Conducted product tests for several major manufacturers.

9/85 - Present: Owner KYOTE Scientific Co. Perform engineering design and prototype development. Designed solid state controller for series wound D.C. motors. Designed ABS lock-out for brake retarders. Designed, constructed, tested, and established production plans for an automatic, microprocessor-controlled, coffee-making machine that had a clock, timer, radio, and speech capability; this work performed for Salton.

9/94 - 9/97: Partner K-Tronics, Inc., Involved in design, test, and manufacturing of solid state controllers for electromagnetic brake retarders. Also developed this of associated hand control and brake pedal control devices. Sold partnership position for royalties.

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9/88 - 7/94: Assistant Professor University of Utah Mechanical Engineering Department. Instructor of controls courses, dynamics courses, and systems courses. Performed research on vehicle dynamics and control. Led team that designed and built a trailer with an automatic steering system. Led team that designed and built an advanced brake research vehicle. Developed control theory on braking of ground vehicles and combined cornering and braking of ground vehicles.

9/90 - 7/94 Consultant to various agencies, worked on investigating accidents and equipment failures, e.g., a compressor explosion at a dairy, an alleged failure of an ABS brake system, and an accident on an alpine slide. Measured levels of vibrations in the locomotives of freight trains. Designed and fabricated monitoring devices and signal conditioning equipment. Wrote and utilized software for analyzing the amplitude and frequency distribution of the vibrations.

6/92-Present Consultant to KLAM America, performing testing and development of electromagnetic brake retarders.

8/90 Consultant to Motorcycle Specialist. Worked on a team that instrumented a motorcycle. Designed and fabricated instrumentation systems for several motorcycle tests. Designed test apparatus and conducted field tests.

6/89 - 9/89 Consultant to Fay Engineering Company. Performed automobile accident analysis using computer simulation. Case involved loss of control by the driver of a small truck.

2/85 - 9/88 Senior Research Engineer General Motors Research Laboratories. Developed control systems for automotive steering, braking, and suspension applications. Worked on active suspension car, semi-active suspension car, 4-wheel-steer car, and ABS research car.

3/82 - 9/82 Consultant to Hughes Aircraft. Analyzed spacecraft thermal systems.

8/81 - 3/82 Self Employed KYOTE Company. Designed, constructed, and tested a range of thermal-electric products, including an air-conditioned bed and an air-conditioned jacket.

3/81 - 8/81 Consultant to AeroJet General. Analyzed spacecraft thermal systems.

6/77 - 9/79 Consultant to IBM. Performed research on the design of energy efficient buildings. Wrote computer programs for predicting heating, cooling, and lighting loads. Developed optimization procedures for designing buildings to minimize energy costs. Developed optimal control algorithms for HVAC systems.

9/75 - 9/76 Development Engineer AIResearch. Developed and tested automotive turbochargers. Worked as liaison engineer to General Motors Detroit Diesel. Supervised laboratory personnel and supervised instrumentation of test cells.

6/74 - 9/74 Coop Student Sierra Pacific Power Co.. Analyzed steam power plant performance; performed efficiency analysis. Developed water test procedures for detecting levels of silicon in feedwater. Designed water channel to carry and measure reservoir overflow. Designed a building to house auxiliary generators.

RESEARCH FUNDING:

1. 1990 - \$5,000 Faculty Grant from U.of U. to help build steering trailer.
2. 1990 - \$5,270 Research Equipment Grant from U.of U. to buy control computer.
3. 1991 - \$30,000 Contract from Ford to develop brake system research program.
4. 1991 - \$30,000 Equipment Grant from Bosch in the form of optical speed sensor.
5. 1992 - \$50,000 Grant from E-Systems to construct high-speed hydraulic brake system.
6. 1992 - \$4,000 Contract from Klam America to test brake retarder performance.
7. 1992 - \$30,000 Extension Grant from E-Systems to complete construction of hydraulics.

8. 1992 - \$12,000 Contract from VSE to investigate the application of advanced steering and braking controllers on Army tanker trucks.
9. 1993 - \$83,000 Contract from Ford to develop brake control strategies.
10. 1993 - \$74,000 Contract from Ford to develop brake control strategies.
11. 1996 - \$7,500 Contract from ICON to design motor controller.
12. 1997 - \$1,500 Contract from Ford to draft patent application on brake controller.

PUBLICATIONS:

REFEREED CONFERENCE PAPERS: (papers appear in proceedings)

1. Kimbrough, S., "Sub-Optimal Bilinear Regulation", Proceedings of the 1984 American Control Conference, pp 1641-1645
2. Kimbrough, S., "Linear Programming and HVAC Control", 1986 ASME Winter Annual Meeting, 86-WA/DSC-16
3. Kimbrough, S., "Control System Development Tools", Proceedings of APL87, APL Quote Quad, Vol.17, No. 4, pp 15-29
4. Kimbrough, S., Chiu, C., and Dewell, L., "An Automatic Steering System for Utility Trailers to Enhance Stability and Maneuverability", Proceedings of 1990 American Control Conference, pp 2924-2929
5. Kimbrough, S. and Dewell, L., "Electric Motor Selection for Motion Control Systems", Proceedings of 1990 American Control Conference, pp 2079-2082
6. Kimbrough, S. and Chiu, C., "A Brake Control Strategy for Emergency Stops of Vehicles Towing Trailers", Proceedings of 1991 American Control Conference, pp 409-414
7. Kimbrough, S., "A Sub-Optimal Dual Regulator for Bilinear Systems", Proceedings of ConCom 3, Victoria, B.C., pp 307-314
8. Elwell, M., and Kimbrough, S., "An Advanced Braking and Stability Controller for Tow-Vehicle and Trailer Combinations" SAE 931878
9. Kimbrough, S., "A Computer Investigation of the Performance Potential of an Advanced Brake Controller", SAE 940836
10. Kimbrough, S., "Optimal Control of ElectroMagnetic Brake Retarders", SAE 942325
11. Park, Y., and Kimbrough, S., "A Robust Backward Steering Controller Design for Combination Vehicles", SAE 942333
12. Kimbrough, S., "APL, Dynamic Programming, and the Optimal Control of Electromagnetic Brake Retarders", 1995 APL Conference.
13. Kimbrough, S., "Rule Based Wheel Slip Assignment for Vehicle Stability Enhancement", SAE 1999-01-0476
14. Kimbrough, S., "Rebound Characteristics of Seats", SAE 1999-01-0630

REFEREED SYMPOSIUM PAPERS: (papers appear in bound volumes)

1. Kimbrough, S., "Bilinear Modelling and Regulation of Variable Component Suspensions", 1st Symposium on Transportation Systems, 1986 ASME Winter Annual Meeting, AMD-Vol. 80, DSC-Vol. 2, pp 235-255
2. Kimbrough, S. and Chiu, C., "Control Strategies for Trailers Equipped with Steering Systems", 2nd Symposium on Transportation Systems, 1990 ASME Winter Annual Meeting, AMD-Vol. 108, pp 33-41
3. Kimbrough, S., "A Brake Control Strategy for Emergency Stops that Involve Steering: Part 1 Theory", 2nd Symposium on Transportation Systems, 1990 ASME Winter Annual Meeting, AMD-Vol. 108, pp 117-122
4. Kimbrough, S., "A Brake Control Strategy for Emergency Stops that Involve Steering: Part 2 Implementation Issues and Simulation Results", 2nd Symposium on Transportation Systems, 1990 ASME Winter Annual Meeting, AMD-Vol. 108, pp 123-129
5. Kimbrough, S., "Coordinated Steering and Braking Control for Emergency Stops That Involve Steering", 1991 ASME WAM Symposium on Advanced Automotive Technology, DE-Vol. 40, pp 229-244
6. Chiu, C. and Kimbrough, S., "The Domain of Stability of a Steering Controller for the Backward Motion of Steering Trailers", 1991 ASME WAM Symposium on Advanced Automotive Technology, DE-Vol. 40, pp 57-67

7. Kimbrough, S., "Simultaneous D.C. Motor Selection and Control Policy Determination for Servo-Systems", Transactions of 1991 PCIM Conference, ISBN-0-931033-34-9, pp 246-259
8. Kimbrough, S. and Elwell, M., "Reduction of the Effects of Driver Delay using Closed-Loop Vehicle-Stability-Enhancement Systems", Transactions CSME Forum 1992, pp 140-146
9. Kimbrough, S., "Coordinated Braking and Steering Based on Side-Slip, Yaw-Rate, and Heading", Transactions CSME Forum 1992, pp 205-210
10. Kimbrough, S., "Sudden Heading Error as a Control Input for Vehicle Stability Enhancement Systems", Symposium on Transportation Systems, 1992 ASME WAM, DSC-Vol. 44, pp 397-411
11. Kimbrough, S., "A Control Strategy for Stabilizing Trailers Via Selective Application of Brakes", 1992 ASME WAM, DSC-Vol. 44, pp 413-428
12. Park Y., and Kimbrough, S., "A Robust Steering Controller Design for Combination Vehicles to Enhance Stability and Maneuverability", 1994 ISATA paper 94SF001
13. Kimbrough, S., "An Effective Method for Implementing Wheel Slip Control without Using a Ground Speed Sensor", 1995 IAVSD Conference.
14. Kimbrough, S., "A Topology for Vehicle Stability and Handling Enhancement via Wheel Slip Control", 1999 ASME
15. Kimbrough, S., "Probability Analysis of Motor Vehicle Accidents", 2002 ASME IMECE2002-32957
16. Kimbrough, S., "Monte Carlo Analysis of Safe Following Distances Under Different Road Conditions", IMECE2003-428605
17. Kimbrough, S., "Determining the Relative Likelihoods of Competing Scenarios of Events Leading to an Accident", SAB 2004-01-1222
18. Kimbrough, S., "Engineering Techniques for the Forensic Analysis of Visibility Conditions", IMECE2004-60345

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1. Kimbrough, S., *State-Space Analysis of Building Thermal Characteristics*. 1978 IBM Internal Paper
2. Kimbrough, S., *An Efficient Algorithm for Minimizing the Combined Heating, Cooling, and Lighting Cost*. 1978 IBM Internal Paper
3. Kimbrough, S. and Chalasani R., "Control Strategies for 4-Wheel-Steer", 1987 General Motors Internal Research Paper
4. Kimbrough, S., "Nonlinear Strategies for Traction Control", 1987 General Motors Internal Research Paper
5. Kimbrough, S., "A Traction Control Algorithm Applicable to Partial Effort Braking and Accelerating", 1988 General Motors Internal Research Paper
6. Kimbrough, S., and Hoying, J., "Hydraulic Engine Mount Analysis", 1988 General Motors Internal Research Paper
7. Kimbrough, S., "A Comparison of the Performance of 5 Magnetic Brake Retarders", 1992 Report to Klam America Corporation.
8. Kimbrough, S., "Final Report on the Brake Research Project", 1992 report to Ford Motor Company.
9. Kimbrough, S., "A Technical Study Report on the Application of an Advanced Brake Controller on a Tanker Truck", 1993 Report to VSE corp.
10. Elwell, S., and Kimbrough, S., "A Technical Study Report on the Application of an Advanced Steering Controller on a Tanker Truck", a 1993 Report to VSE corp.
11. Kimbrough, S., "Final Report on 2ND Phase of Brake Research Project", 1994 Report to Ford.
12. Thomas, Tong, and Kimbrough, "An Investigation of the Roll Stability and Handling performance of an Oshkosh T-3000 Truck" National Research Council of Canada CSTT-HWV-CTR-027

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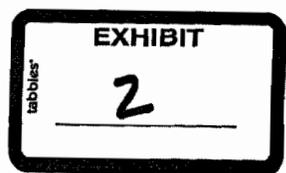
1. Kimbrough, S., *Regulators for Bilinear Systems*. 1984 Ph.D. Dissertation, UCLA
2. Kimbrough, S., "Nonlinear Regulators for a Class of Decomposable Systems", *ASME J. of Dynamic System Measurement and Control*, June 1987
3. Kimbrough, S., "Stability Enhancement and Traction Control of Ground Vehicles", *International Journal of System Science*, 1990, Vol. 21, No. 6, pp 1105-1119

4. Kimbrough, S., Elwell, M., and Chiu, C., "Braking Controllers and Steering Controllers for Combination Vehicles", Heavy Vehicle Systems, Series B., International Journal of Vehicle Design, Vol. 1, No. 2
5. Kimbrough, S., "A Steering Trailer: Design Aspects and Experimental Results" Heavy Vehicle Systems, Series B., International Journal of Vehicle Design, Vol. 1, No. 3
6. Kimbrough, S., "A Computer Investigation of the Performance Potential of an Advanced Brake Controller", 1995 SAE Transactions

PATENTS:

1. Kimbrough, S., and Hallman, S., "Four Wheel Steering System with Closed-Loop Feedback and Open-Loop Feedforward", Patent Number 4842089, Issued 6/27/89
2. Kimbrough, S., and Hallman, S., "Closed-Loop Four Wheel Steering System Having Dual Response Rate Rear Steering", Patent Number 4828061, Issued 5/9/89
3. Kimbrough, S., and Vincent S., "A Hitch Angle Sensor", Patent Number 5558350, Issued 9/24/96
4. Kimbrough, S. and Chiu, C., "An Automatic Steering System for Trailers", Patent Number 5579228, Issued 11/26/96
5. Kimbrough, S., Henderson, R., and Smilneek, L., "Electromagnetic Retarder Control Apparatus and Method", Patent Number 5,743,599, Issued 4/28/98
6. Kimbrough, S., "Wheelslip Regulating Brake Control", Patent Number 6,292,735, Issued 9/18/2001
7. Kimbrough, S., "Method of Calculating Optimal Wheelslips For Brake Controller", Patent Number 6,370,467, Issued 4/9/2002

- Selley vs. U.S. Energy; 6/29/00; Hired by defense attorney Richard Day; District Court of Fremont County, Wyoming 9th Judicial District; Case No. CV 30869; Testified about building code compliance issues regarding a structure that burned down.
- Stanga vs. Salt Lake City; 7/13/2000; Hired by defense attorney Robert Wallace; 3rd Judicial District, County of Salt Lake, State of Utah; Case No. 980913001; Testified regarding the safety of a curb at a location where a lady fell.
- Townsend vs. Stever, et al; 9/7/2000; Hired by plaintiff attorney Steve Nichols; Superior Court of California for Los Angeles; Case No. BC 210055; Testified regarding who precipitated a head-on collision.
- Fedderson vs. Sun Power; 9/19/2000; Hired by plaintiff attorney Fredrick Harrison; Wyoming District Court, 6th Judicial District; Case No. 22096; Testified regarding need for warnings on automatic gate.
- Everett vs. Harts Gas & Food; 9/20/2000; Hired by defense attorney Baird Morgan; Utah District Court, 7th District; Case No. 990700044; Testified regarding slip resistance of floor.
- Nittoli vs. Prestige Stations; 9/21/2000; Hired by defense attorney Robert McBride; Nevada District Court, Clark County; Case No. A369494; Testified regarding injury potential of cigarette tray.
- Gray vs. Great Southern Express; 10/30/00; Hired by defense attorney Marvin Tyler; U.S. District Court for District of Wyoming; C.V. No. 00-CV-0088-D; Testified that opposing truck was across center line.
- Ballie vs. Schorling; 12/28/2000; Hired by plaintiff attorney Steve Nichols; Superior Court, State of California, County of Kern; No. 234753-RA; Testified that based upon eye-witness testimony the defendant ran the red light.
- Jones vs. Snow and Nichols; 2/14/01; Hired by defense attorney Clinton Casey; District Court of Idaho, Ada County; No. CV PI 0000028D; Testified that there was uncertainty over location where vehicle began to turn.
- Ramirez vs. Chicago Automatic Door; 4/23/01; Hired by defense attorney Martina Jaccarino; District Court, Clark County, Nevada; Case No. A 381447; Testified that automatic door had been altered by intervening parties.
- Lucero vs. Cannon et. al. ; 5/9/01; Hired by plaintiff attorney William Rawlings; 3rd District Court, Salt Lake County, State of Utah; Civil No. 000903392; Testified that if the parking lot lights had been on the probability of the accident would have been reduced.
- Church vs. Jessop et al; 10/24/01; Hired by plaintiff attorney Tracy Mendola; District Court, Las Vegas Nevada; Civil No. A388441; Testified that truck violated right of way of plaintiff.
- Rocha vs. Bridgestone/Firestone; 11/1/01; Hired by plaintiff attorney Tracy Mendola; District Court, Clark County Nevada; Civil No. A408483; Testified that tire failure precipitated accident.
- Degen et al vs. Clark & Sons Trucking et al; 1/9/02; Hired by defense attorney Douglas Balfour; 5th District State of Idaho; CV-00-00730; Testified that car pulled in front of semi-truck.
- Laughlin vs. Angel; 2/14/02; Hired by defense attorney William Mattox; 14th District Court, State of Montana; CV 99-55; Testified that tow truck created hazard.
- Spauling vs. Rutstein; 2/18/02; Hired by defense attorney Marvin Tyler; 3rd District Court, Wyoming; C-00-424; Testified that opposing expert improperly ruled out scenario proffered by defendant.



Hofland vs. Evans Construction; 5/10/02; Hired by defense attorney Joe Minnoe; District Court of Teton County Wyoming; Case No. 11818; Testified that hydraulic brake system was functional.

Rightman vs. Crystal Clear; 6/6/02; Hired by defense attorney George Ranalli; District Court, Clark County Nevada; Case No. A435093; Testified that tonneau cover was defective.

Bodirsky vs. Artman; 8/13/02; Hired by plaintiff attorney Steve Nichols; Superior Court of California, Kern County; No. 243293; Testified that truck passed by close to fog line.

Barton vs. Ford; 11/27/02; Hired by plaintiff attorney Frank Falk; 3rd Judicial District Court Salt Lake County, Utah; No. 010900529; Testified that fire started in fuse box of truck.

Huff vs. Shumate; 1/17/03; Hired by plaintiff attorney Peter Young; US District Court for the District of Wyoming; No. 02-CV-1047D; Testified that the driver did not react in an unreasonable way.

Garola vs. Southwest Coil Steel; 1/24/03; Hired by defense attorney Tom Sandenaw; State of New Mexico 3rd Judicial District Court; CV-2001-1142; Testified that crane operating practices were compliant with OSHA regulations.

Collins vs. Dixon; 1/31/03; Hired by Plaintiff attorney Daniel Simon; 5th Judicial District Court for Washington County, Utah; No. 000500291; Testified that van precipitated accident with motorcycle.

Ripley vs. Sunnyside; 2/5/03; Hired by defense attorney Mitch Rice; 7th Judicial District Court for Carbon County, Utah; No. 000700772; Testified that powerplant had adequate safety program.

Hansen vs. Garriot; 2/6/03; Hired by plaintiff attorney Peter Young; 5th District Court, State of Wyoming; No. 22035; Testified that driver towing trailer was negligent.

Johnson vs. New Holland; 9/16/03; Hired by plaintiff attorney Sherwin Wittman; District Court of Colorado; No. 02-WM-1457 (CBS); Testified that skid-steer loader was unreasonably dangerous.

Starly vs. Cornhusker, et. al.; 1/5/04 and 1/14/04; Hired by defense attorney Steve Owens; District Court of Utah for Salt Lake County; Case No. 020907021 PI; Testified that Starly hit back of Chavez semi.

Drew v. Western Construction Components; 3/5/04; Hired by Plaintiff Attorney Don Lojeck; Case Idaho No. CV PI 0200465D; Testified that there was no evidence that the trailer was overloaded or being misused when it failed.

Carbrera v. Clark; 4/2/04; Hired by defense attorney Michael Mills; Case Nevada No. A457024; Testified that struck vehicle must have pulled to the left and slowed down before impact.

Cross v. General Motors; Hired by plaintiff attorney Ron Adkinson; Case No. 2-03CV-317; District Court, Eastern District of Texas, Marshall Division; Testified that failure of airbag to deploy caused fatality and that airbag design was defective.

Murray v. Caterpillar et al.; Hired by defense attorney John Gormley; Case No. A436691; District Court Clark County Nevada; Testified that filter system was adequate to protect seat hydraulic system from disabling contamination.

Larsen vs. Riverton Music et al.; Hired by defense attorney Cory Memmott; Case No. 20021800151; District Court Utah County Utah; Testified that there were alternate explanations for why a truck veered across traffic lanes after impacting another a car.

USAA vs. Caldera Spas et al.; Hired by plaintiff attorney Richard Briski; Case No. DV-03-421, Montana 18th Judicial Dist. Court; Testified that cause of fire was either spa motor or receptacle.

Utah Local Government Trust vs. Wheel Machinery; Hired by defense attorney Joseph Rust; Case No. 030501330; The 5th Judicial District of Utah; Testified that Wheeler was only a supplier.

Edizone vs Cloud Nine; Hired by defense attorney Ted Kanell; Case No. 1:04CV00117 TS; US District Court, Utah; Testified that Cloud 9 formula was prior art.

Travelers v. Snow Electric; Hired by defense attorney Robert Thompson; Case No. 020501864; Washington County District Court, State of Utah; Testified about vibration measurements taken during investigation.

Raslioh v. McGinness et al.; Hired by defense attorney Michael Mills; Case No A451365; Clark County Nevada District Court; Testified that there was no proof that the van driver reacted in an impaired manner.

USAA v. Allied Precision; Hired by plaintiff attorney Ralph Tate; Case No. 040907977; Third Judicial District Court Utah, Salt Lake County; Testified that bucket heater was probable cause of fire.

Ignacio Garcia v. Paramount Citrus; Hired by plaintiff attorney Todd Gall; Case No. 03 CECG 02782; Superior Court for California, County of Fresno; Testified about reconstruction of accident in orchard.

Court Appearances:

Jacobson v. Poulsen Construction; 8/28/91; Defense witness; In the Third Judicial Court in and for Salt Lake County, State of Utah; Testified about acceleration levels experience when hitting a pothole.

King v. Salt Lake Airport Authority; 5/17/94; Plaintiff witness; Testified as to defect in automatic door sensor system.

Salazar v. ; 11/21/95; Appearance before Industrial Commission; Testified that tire was worn out when it suffered blow-out.

State of Utah v. Jason Pearson; 6/29/95; Defense witness; Testified as to accuracy of shooting from moving vehicle.

Jacobellis vs. Kafesjian; 6/5/97; Plaintiff witness; Third District Court of Salt Lake County, State of Utah, Case No. 960900803; Testified that car precipitated accident rather than motorcycle.

Garret vs Trench Shoring; 9/24/98; Plaintiff witness; Third District Court of Salt Lake County, State of Utah; Civil No. 950908053; Testified that lifting eye was defective.

Stringer v. Pioneer Pipe et al; 9/16/99; Defense witness; Colorado; Testified that overhanging pipe did not cause accident.

Reas v. K Mart; 10/6/99; Defense witness; District Court Clark County Nevada; Case No. A344830; Testified that opposing expert improperly measured slip resistance of floor.

Munns vs. Swift Transport; 4/27/2000; Hired by Plaintiff attorney Robin Dunn; District Court (7th) State of Idaho; Case No. CV 98-5627; Testified that police measurements were in error and could not be used to estimate vehicle speeds.

Harmon vs. Harmon; 11/28/00; Hired by plaintiff attorney David Cannon; District Court (6th) State of Idaho; Case No. CVPI-00-00020C; Testified that a ladder and its usage were unreasonably dangerous.

Bedeger vs. Allstate; 3/28/01; Hired by defense attorney Lloyd Harcastle; Mediation Conference 81 134 00028 01; Testified regarding visibility conditions at accident site at night.

Newhall vs. Burt Bros.; 6/29/01; Hired by defense attorney Trystan Smith; 3rd District Court, Salt Lake County, Utah; Civil No. 000910586; Testified regarding engine repair.

Bonds vs. Carter; 8/8/01; Hired by defense attorney Martina Jaccarino; District Court, Clark County Nevada; Binding Arbitration Hearing; Case No. A401946; Testified regarding appropriate speed.

Singer vs. NY/NY Casino; 9/17/02; Hired by Plaintiff attorney Devera Petak; US District Court for Nevada; Case No. CV-S-99-0717-JBR-RLH; Testified that it was negligent to have a loose hand-grip in the spa.

Fabela vs. U-Haul; 2/29/03; Hired by defense attorney John Tuffnell; Iowa District Court for Polk County; Case No. CL87464; Testified that brakes on truck were adequately maintained.

Angela Wong-Kurtz vs. Jeffery Allen Eastes, et. al.; 10/23/03; Hired by defence attorney Christopher Moore; Nevada District Court for Eureka County; Case No. 3543; Testified that semitruck had duty to stop in dust storm.

Hoopas vs. State of Idaho; 11/25/03; Hired by defense attorney Joel Tingey; Idaho District Court for Fremont County; Case No. CV-02-475; Testified that semitruck driver locked brakes of semi and lost ability to steer.

MRA FORENSIC
SCIENCE

Robert Jacobsen, C.F.I.
Burn Pattern Analysis, Inc.
125 W. Burton Avenue
Salt Lake City, UT 84115

December 2, 2004

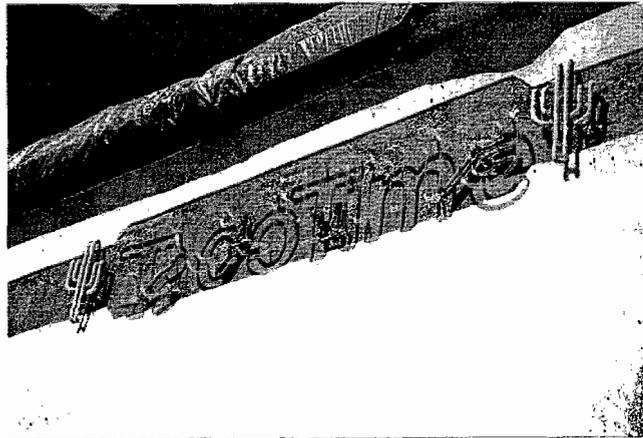
RE: BPA File No. 24-2392 SL
Insured - Taco Time
d.o.l - 6/9/04

Dear Mr. Jacobsen:

The report conveys the findings of an examination of the remains of a neon sign that was removed from the apparent origin of a fire.

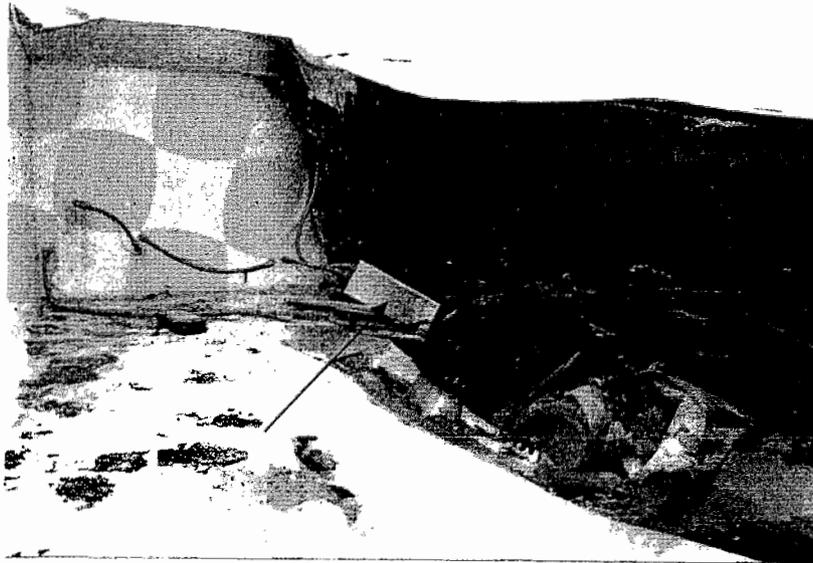
Background:

This investigator was asked to examine the remains of a neon sign that was removed from the scene of a fire. The fire involved a Taco Time fast-food restaurant in Rexburg, Idaho. The photograph below shows the sign in question.



According to a fire investigation report by Burn Pattern Analysis, the damage to the Taco Time was largely confined to a section of the roof in immediate proximity to the neon sign in question. The sign had been installed on the exterior surface of a knee wall that formed the boundary of a parapet roof structure. The sign transformer and wiring was located behind the wall on the roof surface. The photograph that follows shows the back of the sign shown above.

125 W. Burton, Salt Lake City, UT 84115 (801)-746-1145 ph. (801)-746-1170 fax.
800-747-6820 toll free



The photograph above shows the back of the neon sign. The arrow points to the transformer of the sign, which is about to fall into the burn zone. The left hand side of the back of the sign (or the right hand side of the front of the sign) is still in good shape, but the right hand side has been heavily damaged. The transformer was located right about the middle of the sign.

The Burn Pattern Investigator, Robert Jacobsen, collected the remains of the neon sign, as well as some components of another neon sign that was across the roof from the one in question. According to information, a company called Sign Pro, based in Idaho Falls, had installed both of these neon signs.

Information:

The opinions expressed in this report are based upon the following sources of information:

1. A fire investigation report authored by Robert Jacobsen, C.F.I., of Burn Pattern Analysis, Inc., dated June 16, 2004.
2. The National Electrical Code.
3. An examination of the remains of the neon sign.

Findings:

1. The neon sign in question violated two important requirements of the National Electrical Code.

- a. The sign used a transformer that did not have secondary circuit ground fault protection.
- b. The sign was not properly grounded.

Because of these violations, the sign would have presented a significant fire hazard.

Discussion:

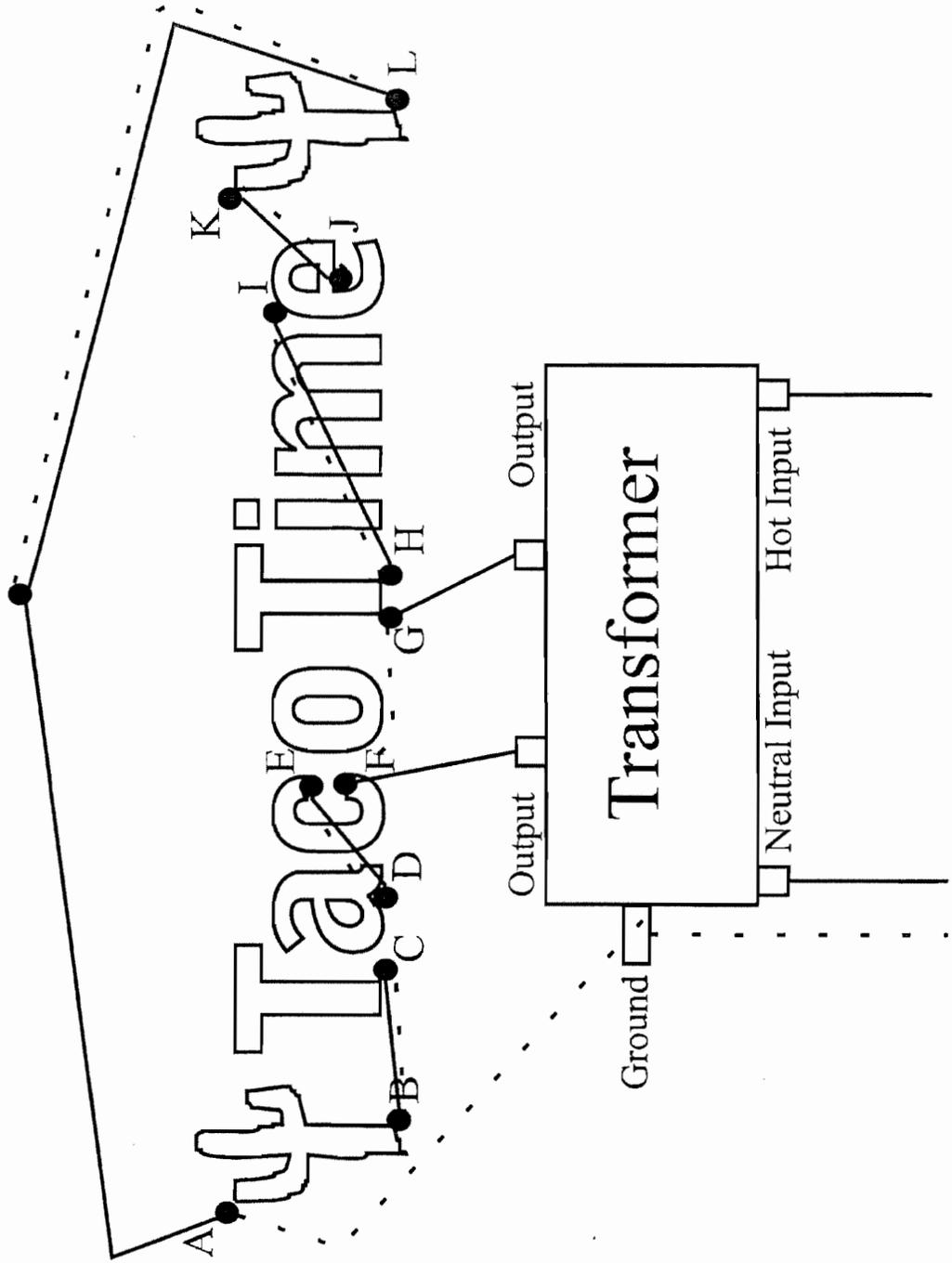
Since 1996, the National Electrical Code (600.23 A,B) has required that neon sign transformers in installation similar to the one being discussed must use a transformer with secondary (i.e., output) circuit ground fault protection. With such protection, the output of the transformer would be interrupted if a ground fault occurred and was detected in the output wiring. The reason for instituting this requirement was to reduce the fire hazards associated with neon signs. The neon sign in question used a MagneTek transformer p/n 721-11-401, rated at 30 milliamps @15000 V, with a grounded midpoint. When information about this transformer was sought, it was learned that MagneTek is no longer in the neon sign transformer business and that their product line has been sold to Universal Lighting Technologies, Inc. A call was placed to Universal Lighting Technologies (800-BALLAST) and a discussion was held with one of the application engineers. This engineer said that the subject part number, 721-11-401, referred to an obsolete transformer that did not have secondary circuit ground fault protection. Besides what this engineer stated, it was apparent from the remains of the transformer (and also the exemplar transformer taken from the neighboring neon sign) that these transformers did not have secondary circuit ground fault protection, since there was arcing damage on the output wiring.

The circuit of the sign was determined by studying the photographs in the Burn Pattern Analysis fire investigation report and by studying the remains of the sign. This was an arduous task because the sign had six segments and many of the sign components had been damaged by the fire and or disheveled in the fire suppression efforts. However, after much effort, this investigator is confident that the circuitry of the sign has been reconstructed properly.

The diagram on the following page illustrates how the sign was wired.

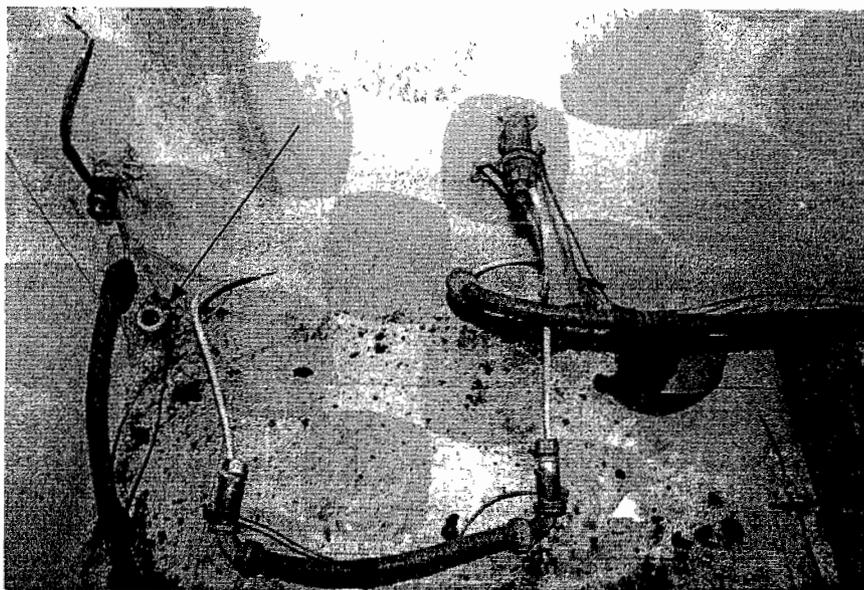
Solid Lines Indicate Current Carrying Conductors

Dashed Lines Indicate Ground Lines



The features of the diagram warrant some discussion.

As the diagram indicates, the neon sign spelled out the words Taco Time in between two cacti. The black dots on the cacti and letters indicate where high voltage is fed to the individual neon tube characters of the sign. Actually, the black dots represent places where conduit passed through knee wall and provides an avenue for the high voltage wires (called GTO wire) to pass through the wall.



The photograph above shows how the high voltage wires were passed through the knee wall at dots L and K per the diagram. The white wires emerging from the conduits are the high voltage GTO wires. Notice the metal hoops that are attached to the wires; the one on the left that an arrow points to has been disconnected and the one on the right is still around the end of the conduit. These metal hoops and the associated wiring were used by the installer in an attempt to ground the sign.

On the lower section of the diagram is a transformer that receives a ground wire, a neutral wire, and a hot wire (120V) from the building electrical system. The case of the transformer is grounded and so is the mid-point of the secondary winding. The transformer has two high voltage outputs, which are illustrated on the top of the transformer.

The solid wires on the diagram represent current carrying conductors and the dashed lines represent the ground wires, which would normally not be carrying any current. At first we will discuss the routes of the solid wires then we will discuss the routes of the dashed wires.

Even though the current and voltage from the high voltage outputs of the transformer are alternating outputs, in the discussion below, we will assume that current leaves the left-hand high voltage output and returns to the right-hand high voltage output. This will simplify the discussion without creating any misconception.

The left hand output of the transformer enters the sign at dot F where it powers the letters c and o of the word Taco. It is then sequentially routed via an external wire from dot E to dot D where it enters and powers the letters T and a of the word Taco. It is then sequentially routed via an external wire from dot C to dot B where it enters and powers the left-hand cactus. It is then sequentially routed via an external wire to dot L where it enters and powers the right cactus. It is then sequentially routed via an external wire from dot A to dot L where it enters and powers the right-hand cactus. It is then sequentially routed via an external wire from dot K to dot J where it enters and powers the letters e and m of the word Time. It is then sequentially routed via an external wire from dot I to dot H where it enters and powers the letters T and I of the word Time. Finally, it is sequentially routed from dot G to the right-hand high voltage output.

Since in reality the current is alternating at 60 cycles a second, what has just been described only applies over half of each cycle. Over the other half of the cycle the current flows in the opposite direction.

Next, we turn our attention to the dashed wires, the ones supposedly being used to ground the neon sign. The National Electrical Code requires that wherever high voltage wires pass through metal conduit that the metal conduit be grounded (250.4 A,B). All of the dots in the above diagram represent the location where metal conduit is being used to create a passageway through the knee wall that creates the boundary of the parapet roof structure. Recall that the transformer is located interior to the knee wall and the neon tubes are mounted on the exterior surface of the knee wall.

According to the diagram it appears that the sign installer attempted to daisy chain the ground line roughly along the path just described for the current carrying lines to the neon tubes. However, there is a major problem with this approach. Where as the current in the current carrying lines can pass through the neon tubes, there is no avenue for maintaining the continuity of the ground circuit. For example current can pass from dot B to dot A through the tube of the cactus, but the ground connection at dot A is in no way connected to the supposed ground connection at dot B. In reality, the only part of the sign that was grounded was the conduit at dot A. All the other supposed ground connections were actually floating connections.

The failure to properly ground the components of the sign created a severe fire hazard. Normally, in a properly grounded neon sign if there is a breakdown of one of the wires passing through a metal conduit the short circuit current that results, which is very small due to the design of a neon sign transformer (only about .03 amps), is passed harmlessly through the ground connection. However, if there is no ground connection the current (which is driven by high voltage around 15,000 Volts) can wander through the surrounding structures searching for a ground. This is a dangerous situation because a phenomena called "arc tracking" can occur along the path of the errant current, especially where the current passes through wood, which through time can cause a fire to ignite. Even though the output current of a neon sign transformer is small, the power that can be released is appreciable, because it is the product of the current times the voltage.

It was interesting to compare the wiring techniques used in installing the two neon signs on the Taco Time. The other sign, components of which were taken into evidence, was wired substantially differently. It appears that two different people installed the two signs. The grounding of the second neon sign was significantly different. However, the second sign also had a noncompliant transformer.

Closure:

The neon sign found in the zone of the most severe damage at the fire scene was of faulty design and violated two important safety requirements of the National Electrical Code. As it was constructed, the subject sign would have presented a significant fire hazard.

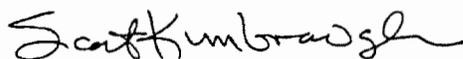
It would be interesting to see if a building official ever inspected the neon sign in question.

In this report this author has tried to avoid repeating the contents of the Burn Pattern Analysis report. Therefore no additional pictures of the subject sign are being submitted, because there are numerous photographs of the sign in the previous report.

The defective neon sign was located in and around the damage zone from the fire. That supports the notion that the neon sign caused the fire. However, because the current capacity of a neon sign transformer is so low, failures from neon signs often do not produce clear evidence such as heavy arcing damage, which could help pinpoint the exact failure location. Typically, evidence that arc tracking has occurred appears as fine etching patterns in insulation and wood. Finding the exact failure point of a neon sign becomes even harder when the sign has been engulfed in the ensuing fire, such as in this case, because the etching patterns are easily burned away.

To date, this investigator has not been able to find an exact failure point, which is not an unusual outcome when analyzing a fire damaged neon sign. Therefore, fully implicating the neon sign may require showing that all other potential causes have been eliminated; which may not be too difficult since the zone of damage was limited in extent. This investigator has not been to the fire scene, so it will be up to the scene investigator to complete the case.

Thank you for the opportunity to investigate this case.



Scott Kimbrough, Ph.D., P.E.

APR 10 2008

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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MADISON**

BRIAN AND CHRISTIE, INC., an Idaho)
corporation, and d/b/a TACO TIME, as)
assumed business name,)
)
Plaintiff,)
)
vs.)
)
LEISHMAN ELECTRIC, INC., an Idaho)
corporation; and JOHN DOES 1-10,)
)
Defendants.)
_____)

Case No. CV-06-826

**AFFIDAVIT OF ROBERT "JAKE"
JACOBSEN, C.F.I. IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

STATE OF UTAH)
 : ss.
County of Salt Lake)

ROBERT "JAKE" JACOBSEN, C.F.I., being first duly sworn, deposes and states as follows:

1. My name is Robert "Jake" Jacobsen. I am a Certified Fire Investigator. My expertise over the past 38 years, includes as a Firefighter, Arson Investigator, and currently as a Professional Fire and Explosion Investigator, during which time I have examined in excess of 4,000 fires. I have

**AFFIDAVIT OF ROBERT "JAKE" JACOBSEN, C.F.I. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - 1**

prepared a report regarding the Taco Time restaurant fire, dated June 16, 2004, attached hereto as Exhibit A, a letter dated December 7, 2004 addressed to Robert Croft with Allied Insurance Company, attached hereto as Exhibit B, and a supplemental report dated August 21, 2006, attached hereto as Exhibit C. I provide this Affidavit to clarify certain facts, expert opinions, and matters regarding the Taco Time restaurant origin and cause fire investigation performed.

2. With regard to the "area of origin," my Preliminary Report, "Investigation" section, at page 4, states:

"Access to the interior was made through the main entry main door located on the east elevation. Upon access, a heavy smell of smoke lingered throughout the entire structure. Most damage was confined to the attic assembly. It was obvious that the fire had traveled through the interior spaces of the attic, venting through the roof in the northeast corner, above the restrooms. This area also later proved to be the origin of the fire.

Access to the roof was provided through a structure mounted ladder located on the northwest corner of the north elevation. An inspection underneath the visqueen tarp, shown in photographs #11 through #20, gave a distinct impression of the origin of fire by virtue of the damage that was found above the exterior roof membrane.

Careful assessment of the burn patterns and char depth in the area of origin was performed. During this time it was evidenced that the fire originated below the sub-roof within the spaces above the sheetrock and in proximity to the signage power supply conductors."
(Underlining added)

There were three levels of ceiling and roofing material in the area above the Men's and Ladies' restrooms. In addition to the sub-roof which was comprised of several inches of rubber membrane, old roofing tar and gravel, a fiber insulation shield and the plywood sub-roof, there was a sheetrock "false ceiling" directly above the suspended acoustical tiles. The ceiling spaces appeared to be six to eight inches in depth. The reason that the acoustical tiles were added into that room is

**AFFIDAVIT OF ROBERT "JAKE" JACOBSEN, C.F.I. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - 2**

unknown, it may be due to the fact that this was a retrofit design change after the original construction of the building, which would thereby accommodate the light fixtures and the exhaust ceiling fan for both of the bathroom ceilings or for a pitch added for drainage.

The ceiling fans were not of concern during this investigation because there was minimal damage in the area where they were located. In addition to that, there was minimal fire load. The only fire load would have been the plastic conduit leading to the fans, the combustible fan circuitry components and the acoustical tiles which could not provide enough heat or flames necessary during the incipient stages of the fire, to penetrate the one hour (or more) rated sheetrock. There is evidence to show that the sheetrock above this area was not breached or compromised during the fire, and the greatest amount of damage was above the sheetrock.

During a conversation with firefighters, it was learned that their first interior attack was in the Men's bathroom. When they pulled down the ceiling fan, light fixtures and acoustical ceiling, the sheetrock "false ceiling" was found. After they pierced the sheetrock, the attacks to the fire on the attic spaces were then accomplished. Prior to that, there was no fire found within either the Men's or Women's restroom.

Evidence of the suspended acoustical tile and the sheetrock ceiling are shown in photograph #72 of my report.

Additional evidence of this fact is the inspection of the light fixtures that were mounted in the Men's and Ladies' restrooms. Similar to those shown in photograph #56, the unmounted photographs provide clear definition and evidence that the damage to those fixtures, while very minimal, was from external heat. The ceiling fans in both bathrooms would be expected to resemble the same type of damage. With that minimal damage, they clearly could be eliminated as a cause

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PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

of the fire.

Similarly, my Preliminary Report, "Comments Conclusions & Recommendations," at page 9, states further:

"Clearly, the origin of the fire occurred within the attic spaces of the northeast attic assembly, above the Men's restroom. The most probable cause of this fire involves electrical dysfunction of the circuits leading to the neon tube signage on the exterior of the building."

The "area of origin" is thus below the sub-roof, and above the "false ceiling" sheetrock, within the attic space, in proximity to the neon signage conductors, located above the sheetrock ceiling of the bathrooms in the vicinity of the northeast corner of the building.

3. ***Actual Inspection of Other Circuits and Appliances Performed and Potential Causes Eliminated:*** Facts concerning the inspection and elimination of other circuitry and electrical appliances are clarified here.

Rest Rooms: My Preliminary Report, "Investigation," at page 4, states further:

"Branch circuit wiring that routed through the same area, but below the sheetrock, was inspected and found to be a victim of the fire. These conductors were routed through flexible plastic conduit to various areas of the restroom.

Photograph #67 shows a three-wire electrical service (arrow) that ran through the attic assembly, over to the east wall and down to an in-wall heater. These circuits were obviously victims of the fire and not energized at the time of the incident. Photograph #59 shows other circuits that were routed to the fluorescent light fixture positioned within the suspended acoustical ceiling assembly. These circuits were inspected and also proved to be victims of the fire. While arcing was found on the conductors leading to the appliance, it appeared that this was from exterior heat impingement."

Thus, the other circuitry and appliances in the bathrooms, which included the Men's and

**AFFIDAVIT OF ROBERT "JAKE" JACOBSEN, C.F.I. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT . 4**

Women's bathroom ceiling fans although not specifically inspected, were not within the "area of origin, but rather below the sheetrock "false ceiling" which were all found to be "victims of the fire."

Similarly, my Preliminary Report, "Comments, Conclusions & Recommendations," at page 9, reiterates such point, stating further:

"While there were numerous electrical circuits routed throughout the attic assembly that provided branch circuit supply to lighting fixtures, heating appliances and outlets, those components do not appear to be involved with the cause of the fire."

The Rexburg Fire Department's narrative report, attached as Exhibit A to the Harper Affidavit, states:

"The fans from the bathrooms had been pulled down by the fire department during the fire and had been hauled off before they could be checked. The area of the fans in the ceiling showed the men's bathroom had little damage while the women's showed more damage. It was undetermined that this was a cause of the fire." (Underlining added)

It is unclear why the Rexburg Fire Department personnel were unable to locate the bathroom ceiling fans, but such does not alter the fact that I did locate and inspect them. In any case, the Rexburg Fire Department personnel similarly concluded that the "area of the fans in the ceiling showed the men's bathroom had little damage while the women's showed more damage," and that it was "undetermined that this was a cause of the fire." I also ruled out the bathroom fans in the ceiling, other bathroom appliances, in-wall heater, and fluorescent light fixtures, which were all not within the "area of origin," as potential causes of the fire as the above-quoted provisions from my Preliminary Report support.

It was also obvious that the electrical circuitry in proximity to all of the appliances above the Men's bathroom were not involved with the cause of the fire, as the plastic flexible conduit was in

**AFFIDAVIT OF ROBERT "JAKE" JACOBSEN, C.F.I. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

place or had been burned off of the circuits, revealing the internal conductors. Those conductors were inspected and found to be free of arcing. This indicated that the ceiling and lights in the Men's bathroom, and the fan, were in the "off" position at the time of the fire.

Hood Vent: As part of my fire investigation, I also did inspect the hood vent, which was also easily eliminated as the potential cause, as the ceiling materials above the exhaust fan mounted on the exterior of the roof line were intact and showed only smoke staining. The roof assembly around that unit was still in place. Had this been the origin of fire, you would expect the roof assembly to be destroyed, similar or identical to the way the roof assembly that was in proximity to the circuits of the neon signage was destroyed.

As stated in the narrative report of the Rexburg Fire Department: "The hood vent was at the west edge of the heavy damage and did not seem to be a cause of fire. "

I agree with the Rexburg Fire Department personnel that the hood vent was at the extreme west edge of the heavy damage and was thus eliminated as a potential cause of the fire. Further analysis of the hood vent is thus simply unnecessary.

Storm Lightening: My Preliminary Report also considered the existence of a storm with lightening which had occurred earlier in the evening on the date of the fire.

Kevin McFadden, manager of Taco Time, was interviewed. He had worked the evening of the fire but left several hours before it was discovered a few minutes before midnight. My Preliminary Report, "Investigation," at page 7, states his comments about the storm as follows:

"He stated prior to his departure that evening, there were no indications of a problem. While there was a storm present that evening, the only light[en]ing or thunder that was heard occurred at approximately 6:00 p.m." (Underlining added)

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PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Brian Larsen, owner of Taco Time, was also interviewed regarding the storm several hours earlier the night of the fire. My Preliminary Report, "Interviews," at page 8, also reports his information as follow:

"Brian stated that he was in the back room of the restaurant between 6:00 and 7:00 p.m. during a rain storm where he witnessed thunder and lightning at approximately 6:00 p.m. These activities did not cause any power outage, flickering of lights, or indication of an electrical problem. Mr. Larsen left the facility a short time later, unaware of any problems, or without concern of a potential fire."
(Underlining added)

The lack of any power outage, flickering lights, or other evidence of any electrical problem, in response to the rainstorm and any associated thunder and lightning, were thus considered and eliminated as a potential cause of the fire at the time of my Preliminary Report.

Any issue of lightning is not relevant. Had there been a lightning strike to the building, there were NUMEROUS other electrical appliances and components more fragile and more subject to failure from the strike than were the electrical components of the signage on the building. None of these fragile components revealed evidence of failure or over-current. The most obvious question is, if lightning did strike the building why was the only electrical "thing" in the entire structure affected by this enormous surge of electrical energy isolated to the sign on the front of the building? This is an impossibility electrically and systemically.

According to Mr. McFadden's deposition testimony since taken and reviewed, he never saw or had any information from anyone that lightning ever hit the Taco Time restaurant building. Rather, a few days after the fire a woman named Alyssa Kinney (or McKinney), told Mr. McFadden's wife, who later told him, that she thought she saw lightning hit a power pole located on the corner of the lot at a distance he estimates to be 75 feet distant from the Taco Time building.

**AFFIDAVIT OF ROBERT "JAKE" JACOBSEN, C.F.I. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - 7**

Examination of burn patterns and char depth:

During my investigation, a careful analysis of the destruction caused by fire was performed. Part of this analysis included reading burn patterns to show fire travel, fire load and the greatest amount of destruction and char depth. Obviously, the greatest amount of damage to the ceiling/roof assembly was directly above the Men's bathroom. It is this area that firefighters and witnesses first saw flames on the exterior of the building. This is the only place on the exterior of the building where flames were found, at the onset of the incident.

In several places in my report, and emphasized by photographs #59 through #70, and also #75 through #79, the greatest destruction to the roof assembly and parapet wall on the interior surfaces (those areas above the roof and inside of the parapet wall) was in direct proximity to the electrical circuits that ran from the outside signage, through the parapet wall and directly to the transformer that was positioned on the roof inside the wall. This area of destruction, especially those spaces above the roof line, was significant and found nowhere else in the entire building.

As clearly identified in photographs #76 and #77, the parapet wall had a small pony wall mounted below it, which was the space containing the lighting for the Men's room and the exhaust fan. It was through this area that fire penetrated into the spaces below the sheet rock, but more importantly, the complete destruction to the parapet wall, base plate and framing, identifies the location of the fire in direct proximity to the "a" in Taco Time and the conduit that ran through that location, as shown in photograph #76. This is the only area that arcing on the conduit was found during the investigation.

**AFFIDAVIT OF ROBERT "JAKE" JACOBSEN, C.F.I. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - 8**

4. Having determined the “area of origin” of the fire as described above, and having identified and eliminated other potential causes of the fire, my Preliminary Report focused on the neon sign circuitry as described:

My Preliminary Report, “Investigation,” at page 5, states further:

“Concerns focused upon a three-wire branch circuit that led to a junction box that was mounted to the interior surface of the roof joists. This service, as shown in photographs #61 through #69, caused concerns due to the extreme damage on the external surfaces of the junction box and the heavy damage to the multi-strand electrical conductors. In photograph #62, one can see that the three circuits, supplied to the junction box, terminates within the junction box and then is routed to the parapet wall through a dual-conductor leading to a termination junction box where the circuits for the switch to the outside signage lighting was provided. From the switch, three circuits ran to a transformer that was then routed to various GTO circuits, providing power to the neon tube lighting on the exterior of the building. Photographs #75 through #99, show the circuits of concern and the identification and numbering of those conductors in sequential order.

Concerns were drawn to the potential lack of an adequate ground for that service. Further assessment of those concerns may be performed though a supplemental investigation. Prior to removal of the evidence, potential adverse parties were notified and invited to inspect the scene before the destructive removal occurred.”
(Underlining added)

My Preliminary Report, “Comments, Conclusions & Recommendations,” at page 9, states further:

“With the information, data, details and evidence collected during this investigation, the origin and most probable cause of this fire was determined. Clearly, the origin of this fire occurred within the attic spaces of the northeast attic assembly, above the Men’s restroom. The most probable cause of this fire involves electrical dysfunction of the circuits leading to the neon tube signage on the exterior of the building. The specific failures involved with this fire incident are unknown at this juncture.

**AFFIDAVIT OF ROBERT “JAKE” JACOBSEN, C.F.I. IN SUPPORT OF
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

All potential causes from deliberate human involvement, intentional acts or arson were eliminated during the investigation.

While there were numerous electrical circuits routed throughout the attic assembly that provided branch circuit supply to lighting fixtures, heating appliances and outlets, those components do not appear to be involved with the cause of the fire.”

Recommendation was made to retain an electrical engineer to assist further assessment of the electrical service and evidence, which occurred. The evidence gathered and information obtained from my investigation was supplied to Scott Kimbrough, Ph.D., P.E., who supplied an evaluation and report confirming the neon signage circuitry as the cause of fire as set forth in his report filed with his Affidavit herein.

5. **Conclusion:** All evidence, including my photographs, support the origin of the fire within the sign circuits. Arcing and over-heating of the circuits as well as the burn patterns all indicate that a failure associated with the electrical components was the underlying cause of this fire. All other possible causes were carefully considered, explored and eliminated during the scene inspection. Also be aware that the investigation was performed with both electrical company representatives present. Any suggestion that other potential causes existed are refuted by the actual evidence of the investigation, and the reported findings and conclusions as set forth in my Preliminary Report, and final December 7, 2005 letter report forwarding Dr. Kimbrough’s engineering report to Plaintiff’s insurer.

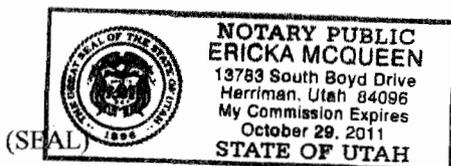
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 7 day of ~~March~~ April, 2008.

BURN PATTERN ANALYSIS, INC.

By: *Robert "Jake" Jacobsen*
ROBERT "JAKE" JACOBSEN, C.F.I.

SUBSCRIBED AND SWORN TO before me this 7 day of April, 2008.



Ericka McQueen
NOTARY PUBLIC FOR UTAH
Residing at: Herriman
My Commission Expires: Oct 29, 2011

AFFIDAVIT OF ROBERT "JAKE" JACOBSEN, C.F.I. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - 11

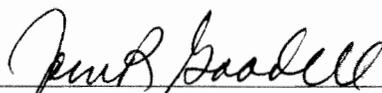
AFFIDAVIT OF ROBERT "JAKE" JACOBSEN, C.F.I. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
PAGE 244

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of April, 2008, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Gary C. Cooper, Esq.
COOPER & LARSEN
151 N. Third Avenue, Suite 210
P.O. Box 4229
Pocatello, ID 83205
Fax: 208-235-1182

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email



JOHN R. GOODELL

**PRIVILEGED/CONFIDENTIAL DOCUMENT
PRELIMINARY REPORT**

Allied Insurance Company
8804 258th Street East
Graham, WA 98338

Attention: Robert Croft, Large Loss Adjuster

Insured: Brian Larsen

Date of Loss: 6-9-04

Description of Loss: Commercial Fast Food Restaurant (Taco Time)

Loss Location: 274 South 2nd West
Rexburg, Idaho 83440

Policy/Claim #: 36A 40447

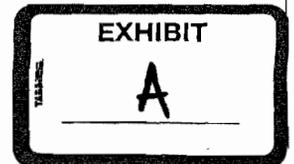
Evidence Location: In the evidence lock-up of **Burn
Pattern Analysis**

Our File #: 24-2392 SL

Occupant/Owner: Taco Time / Brian Larsen

Origin and Cause: An accidental fire that originated in the northeast corner of the structure within the attic space due to a suspected electrical dysfunction of the neon light signage.

This report is confidential and the exclusive property of the addressee. Dissemination of this report or any content of the same to anyone is the sole responsibility of the addressee.



**PRIVILEGED/CONFIDENTIAL DOCUMENT
PRELIMINARY REPORT**

Allied Insurance Company
8804 258th Street East
Graham, WA 98338

Attention: Robert Croft, Large Loss Adjuster

24-2392 SL June 16, 2004

ASSIGNMENT:

This case assignment was received on June 14, 2004, through a telephone conversation with **Dennis Mills, SIU Representative** for **Allied Insurance Company** in conjunction with **Robert Croft, Large Loss Adjuster** for **Allied Insurance Company**. The concern of this conversation was to conduct an investigation into the origin, cause and circumstances of a fire that occurred on June 9, 2004, in a Taco Time Restaurant during the evening business hours while employees were still within the structure. There were no known injuries reported as a result of this fire incident.

RISK:

The fire of concern involved a single level, commercial structure that was built in the 1960s. At the time that the fire occurred, the business was being operated under a Taco Time franchise, through the owner and insured, Brian Larsen. The building has been a Taco Time establishment since 1973. The insured purchased the franchise and building in 1991.

The interior of the subject structure encompassed approximately 2,700 square feet of commercial space including the customer area and operation footage. In 1999, the insured remodeled the business and the interior conditions of the structure. At that time, several modifications were undertaken including an upgrade and installation of a "code approved" electrical system.

24-2392 SLPage 1 June 16, 2004

The general contractor involved in the remodeling was HJL Construction, Inc., P. O. Box 42133, Eugene, OR 97404, (541) 689-3828, who sub-contracted the expertise of various other contractors, including Sign Pro, who installed the subject signage on the building, and also with Leishman Electrical who provided the interior electrical upgrade and installation services.

The main frame construction consisted of 2" x 6" perimeter walls that supported a flat roof construction containing a rubber membrane as a finished surface. Interior bearing walls included steel I-beam construction to add additional support to the roof assembly. Interior partition walls were framed with 2" x 4" wood studs that contained a painted sheetrock interior surface.

The ceiling was comprised of a suspended acoustical tile while the roof assembly was constructed of 2" x 4" framing and plywood sub-roof. Insulation was afforded through batt fiberglass, paperback insulation that was also supplemented by cellulose insulation in various areas. There were several areas above the acoustical tile suspended ceiling that had a 5/8" sheetrock interior ceiling.

The structure also included a partial 3/4 basement where the natural gas, forced air furnace, was located. Natural gas also supplied the water heater located on the main level. Underground supply conductors were attached to the west elevation and routed into numerous breaker panels on the interior surface of the west wall. All utility components were eliminated as being involved with the cause of the fire.

Interior floor surfaces were comprised of ceramic tile and linoleum flooring in various areas.

INVESTIGATION:

This investigation commenced on the day following the assignment, through contact with the insured and coordination through Dennis Mills who provided various details and information about the incident and parties involved.

After ground travel to the scene, with verbal and written permission to conduct the scene inspection, the investigation was conducted under the nationally recognized industry guidelines and standard practices by commencing the inspection from the least damage and continuing to the greatest damage. For purposes of this investigation, the exterior and interior portions of the residence were photographed through the use of a Nikon N80 SLR 35mm camera using a Nikkor AF Zoom 28-70mm lens. Flash photography, where necessary, was assisted through the use of the internal flash and with a Nikon SB-28 DX Autofocus Speedlight. Kodak Gold 200 film was used in the photography process. Copies of photographs taken during this investigation accompany this report.

The investigation commenced on the exterior surfaces where all four elevations were carefully inspected and photographed. Negligible signs of fire damage were found on the exterior surfaces. The only sign of any fire damage was noted on the east elevation, due to the application of green visqueen tarp, installed by All American Restoration subsequent to the fire, to protect the interior conditions from adverse environmental conditions.

At the time of this investigation, the restoration and debris removal was underway, performed by All American Restoration and Cleaning, supervised by Tim Thomas. Most of the areas involved in the origin of fire were not disturbed by the clean-up and restoration activities. Interior fluorescent lights, suspended acoustical tile and the framework for the ceiling assembly, had been removed prior to the arrival of this investigator. These activities and the removal of those items, did not interfere with the investigation, or effect the origin and cause determination.

Access to the interior was made through the main entry mandoor located on the east elevation. Upon access, a heavy smell of smoke lingered throughout the entire structure. Most damage was confined to the attic assembly. It was obvious that the fire had traveled through the interior spaces of the attic, venting through the roof in the northeast corner, above the restrooms. This area also later proved to be the origin of the fire.

It was clear, and shown in photographs #11 through #12, that the fire extended through the attic assembly from the northeast quadrant where the greatest damage occurred, to areas exited to the south and west where lesser damage was noted. These conditions are shown in photographs #15 through #18.

Access to the roof was provided through a structure mounted ladder located on the northwest corner of the north elevation. An inspection underneath the visqueen tarp, shown in photographs #11 through #20, gave a distinct impression of the origin of fire by virtue of the damage that was found above the exterior roof membrane.

Careful assessment of the burn patterns and char depth in the area of origin was performed. During this time, it was evident that the fire originated below the sub-roof within the spaces above the sheetrock and in proximity to the signage power supply conductors. Branch circuit wiring that routed through that same area, but below the sheetrock, was inspected and found to be a victim of the fire. These conductors were routed through flexible plastic conduit to various areas of the restroom.

Photograph #67 shows a three-wire electrical service (arrow) that ran through the attic assembly, over to the east wall and down to an in-wall heater. These circuits were obviously victims of the fire and not energized at the time of the incident. Photograph #59 shows other circuits that were routed to the fluorescent light fixture positioned within the suspended acoustical ceiling assembly. These circuits were inspected and also proved to be victims of the fire. While arcing was found on the conductors leading to the appliance, it appeared that this was from exterior heat impingement.

Concerns focused upon a three-wire branch circuit that led to a junction box that was mounted to the interior surface of the roof joists. This service, as shown in photographs #61 through #68, caused concerns due to the extreme damage on the external surfaces of the junction box and the heavy damage to the multi-strand electrical conductors. In photograph #62, one can see that the three circuits, supplied to the junction box, terminates within the junction box and then is routed to the parapet wall through a dual-conductor leading to a termination junction box where the circuits for the switch to the outside signage lighting was provided. From the switch, three circuits ran to a transformer that was then routed to various GYO circuits,

providing power to the neon tube lighting on the exterior of the building. Photographs #75 through #99, show the circuits of concern and the identification and numbering of those conductors in sequential order.

Concerns were drawn to the potential lack of an adequate ground for that service. Further assessment of those concerns may be performed through a supplemental investigation. Prior to removal of any of the evidence, potential adverse parties were notified and invited to inspect the scene before the destructive removal occurred.

While at the scene, this office contacted Sign Pro, 1730 Woodruff Park, Idaho Falls, Idaho 83401, (208) 523-8540. A conversation was held with Brian Tallman, a principal representative to attend the investigation was made.

In addition to this, contact was made with Leishman Electric, 442 South #4 East, Rexburg, Idaho 83440, (208) 356-3770. Initially, Chris Leishman was contacted and advised of the issues of concern. In view of the fact that all principal parties of this business were out of town, she indicated that her son, Troy Leishman, who was originally involved with this business and subsequently had gone out on his own, would be in attendance. Troy is the journeyman and owner of TL Electric, 4184 East Aschill Lane, Idaho Falls, Idaho 83406, (208) 552-1301.

Mr. Leishman and Mr. Tallman responded to the scene to perform a joint inspection of the evidence prior to removal. The client was also contacted from the scene to advise of the preliminary findings of the investigation. In view of potential subrogation, this office was authorized to retain the services of an electrical engineer to assess the subrogation potential of the subject evidence. This supplemental investigation and those activities will be performed at a later date, with the information of the findings provided in a supplemental report.

INTERVIEWS:

An interview was conducted with **David H. Davis, Assistant Fire Chief, Rexburg-Madison County Emergency Services, 26 North Center, Rexburg, Idaho 83440, (208) 359-3010**. Chief Davis was involved in the fire incident and responded with the initial response. His arrival time was approximately 10 minutes after the first engine crew.

Chief Davis stated that upon his arrival, suppression efforts were underway. The fire scene command indicated that the fire was noticed venting through the roof in the northeast corner of the structure. Attack lines were made through the main entry door and also through a ladder crew that accessed the roof line. Roof crews stated that the fire had vented approximately 1' from the parapet wall on the east elevation and traveled in a north-south direction.

Hose streams were directed to the area of venting where the flames were then extinguished. However, due to the internal burning of the attic assembly, the flames re-appeared through the hole in the roof. Lines were advanced through the interior doors, the ceiling was removed and the sheetrock was penetrated to allow hose

with any of the electrical service since the remodeling project in 1999.

Mr. Larson also stated that the employees that were present on the evening of the fire, were very reputable and substantial employees who had been with him for a reasonable length of time, without any problems.

EVIDENCE OBTAINED:

During the course of this investigation, the GTO circuits leading to the signage were collected intact, from the lettering to the distribution circuits of the transformer. The subject transformer was also collected, as well as the power circuits leading to the on and off switch, terminating within the junction box on the interior interstitial spaces of the facade. A junction box circuit, leading down to the attic "J" box, was also collected as additional evidence. Fluorescent signage materials, end caps and other components were also procured as evidence. Circuit breakers controlling these circuits were collected from the breaker panel.

An exemplar fluorescent lighting transformer located on the southwest corner of the building, was collected as exemplar evidence. All items were placed in the evidence lock-up of this office for future inspection as needed. Photographs taken during this investigation and enclosed with this report, will serve as additional evidence in this case.

COMMENTS, CONCLUSIONS & RECOMMENDATIONS:

With the information, data, details and evidence collected during this investigation, the origin and most probable cause of this fire was determined. Clearly, the origin of this fire occurred within the attic spaces of the northeast attic assembly, above the Men's restroom.

The most probable cause of this fire involves electrical dysfunction of the circuits leading to the neon tube signage on the exterior of the building. The specific failures involved with this fire incident are unknown at this juncture.

All potential cause from deliberate human involvement, intentional acts or arson were eliminated during the investigation.

While there were numerous electrical circuits routed throughout the attic assembly that provided branch circuit supply to lighting fixtures, heating appliances and outlets, those components do not appear to be involved with the cause of the fire.

In view of potential subrogation, the evidence was carefully collected, intact as much as possible. Photographic documentation of the conditions during the removal process, were intricately made, as well as the careful identification marking of specific circuits prior to removal.

Through communications with Dennis Mills, it was recommended that the retaining of an electrical engineer, to assist in the further assessment of the electrical service and evidence, should be made. Mr. Mills provided authorization for the initial non-destructive assessment of those concerns, in view of any potential subrogation.

24-2392 SLPAGE 6 JUNE 16, 2004

Once those activities are performed, a cursory, verbal and written report can be provided to the client, with specific details and recommendations for further activities. This office will retain the services of an engineer to assess the electrical issues of this incident.

All negligent and intentional acts by the Insured and/or his employees were eliminated during the investigation.

With this information, and the filing of this preliminary report, this case assignment is complete pending further requests of the client.

Sincerely,

Robert "Jake" Jacobsen, CFI
BURN PATTERN ANALYSIS, INC.

Enclosures: Copy of signed Consent form for Fire Scene Examination
Copy of signed Evidence Release form
Copy of the Rexburg-Madison County Emergency Services report #132
Copy of the Fire Incident Command and Inspector Narrative
Copy of the Group Inspection/Investigation Attendance Log, dated

6/15/04

Copies of the Installation/Remodeling receipts (4 pages)
104 mounted and 69 loose photographs

cc: Dennis Mills, SIU Representative

RJJ:bpt

A:J46-2392.rptRJ



"Our Expertise Could Be Your Best Protection"

December 7, 2004

Robert Croft, Large Loss Adjuster
 Kevin Butler, Subrogation Specialist
Allied Insurance Company
 8804 258th Street East
 Graham, WA 98338

RE: Taco Time
Date of Loss: 6-9-04
Claim #: 36A40447
Our File #: 24-2392 SL

Dear Gentlemen:

Enclosed with this letter is a copy of the engineer's report from MRA Forensic Sciences, Scott Kimbrough, P.E. As you will note, his investigation has concluded that there were defects in the installation of the subject sign in terms of the National Electric Code and that the installation of the sign was also in violation of the code and industry standard practices.

These findings confirm the preliminary determinations of origin and cause made by this office. We are prepared to move forward with any further assessments or investigation that you feel is needed. However, at this time, I will place my file in a "hold" status, pending those instructions.

Enclosed with this letter is my interim billing for the additional time and expenses incurred in this matter since my last invoice to you on July 8, 2004.

Please feel free, after reviewing the report, to contact us with any questions or concerns that you may have, or any other matters that we may be of assistance with. It has been a pleasure to conduct professional fire and explosion investigation services for Allied Insurance Company.

Sincerely,

Robert "Jake" Jacobsen, C.F.I.

BURN PATTERN ANALYSIS, INC.

Enclosures

cc: Dennis Mills, SIU

RJJ:bpt / A:J55-2392.ltrRC.KB

125 West Burton Ave. • Salt Lake City, Utah 84115 • Phone (801) 746-1142 • Fax (801) 7

EXHIBIT

B



"Our Expertise Could Be Your Best Protection"

August 21, 2006

John Goodell, Attorney
Racine, Olsen, Nye, et al
201 East Center Street
Pocatello, Idaho 83204-1391

RE: Taco Time/Brian Larsen
Date of Loss: 6-9-04
Civil Case #: CV-05-884 (Madison County Idaho)
Our File #: 24-2392 SL

Dear Mr. Goodell:

Thank you for your telephone conversation this evening regarding the above captioned litigation matter. After our discussion, it appears that the adverse counsel, Mr. Brian D. Harper, is confused about the determinations of origin and cause by this office and also by the Engineer, Dr. Scott Kimbrough of MRA Forensic Sciences.

May I offer this letter as a clarification regarding those issues. In view of that I've also duplicated photographs that I took during my investigation, blown them up in a larger format for clarification purposes. Hopefully, with these additional documents and photographs, as I truly believe in the old adage that "a picture is worth a thousand words," will add clarification to the issue and resolve the matter.

With that said, I will further reiterate that the origin of this fire occurred inside of the parapet wall, slightly above the roof membrane, on the interior surfaces of the parapet wall. In proximity to that location were the electrical sign circuitry within conduit that ultimately exited from the exterior surface, to the interior surface, and then ran to the transformer. The transformer was positioned on top of the roof.

The roof construction consisted of a 1/2" thick rubber membrane that had a mineral coating that would offer additional surface protection, which would also inhibit or delay flame penetration for a fire within the parapet wall and below the sub-roof, as noted in photographs #13 and #63.

AFFIDAVIT OF ROBERT "JAKE" JACOBSEN, C.F.I. IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
PAGE 254

This is an important factor in view of the fire travel in this incident. While the fire originated within the parapet wall, the most readily combustible components would have been the OSB plywood sub-roof and also the same materials that were used in the construction of the parapet wall. The rubber membrane would have been covered and ran up the interior surface of the parapet wall. That rubber membrane enhanced the fire to burn inside of the open spaces of the concealed attic below the sub-roof and above the sheetrock as the path of least resistance and the easier combustible fuel.

The fire destroyed these readily combustible components and propagated to adjacent combustible material during the duration of the fire. These circumstances and "fall-down burning" led up to the complete destruction of the baseplate for the parapet wall. These are shown in photograph #76, with arrows identifying those specific locations. The fire was contained in the channel of the parapet wall by virtue of the vertical studs that were used for support purposes, and in a normal fashion of constructing a wall of that type.

Once the fire propagated to the point that the baseplate of the parapet wall was breached, additional combustion air was offered in the dead space below the sub-roof and above the sheetrock wall. That combustion air allowed the fire to propagate and extend throughout that level, again, burning through the easily combustible plywood sub-roof and eventually through the rubber membrane which then presented itself as open burning on top of the roof, as witnessed by various parties that saw the fire during that stage of burning. It is also important to understand that the fire continued to burn for an extended period of time prior to the witnesses noticing the flames on top of the roof, as the fire was well advanced within the attic at this point.

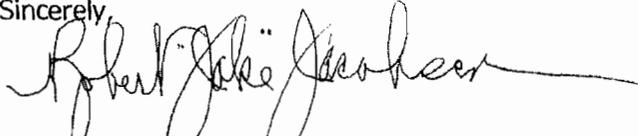
In this location of erosion, was the signage conduit for the broken letter "a". It is shown in the photographs and identified by the red arrow in photograph #13. That shows the destruction at that location, which is dissimilar to any other position on that wall, roof or interior space. The greatest amount of destruction occurred in that specific location which is in proximity to the failing point of the letter "a" and the conduit that is shown in photographs #13, #76 and #77, revealing the greatest degree of oxidation (which is generally an indicator of significant heat) found during the entire inspection of the signage material.

The evidence is clear, the burn patterns are identified in the photographs and these facts are in harmony with the findings of MRA Forensic Sciences' Engineer, Dr. Scott Kimbrough. His enclosed report will add additional information to the conclusions offered in this clarification letter.

August 21, 2006

If I may be of further assistance in this matter, please contact me at your earliest convenience.

Sincerely,

A handwritten signature in black ink that reads "Robert 'Jake' Jacobsen". The signature is written in a cursive style with a long horizontal line extending to the right.

Robert "Jake" Jacobsen, C.F.I.

BURN PATTERN ANALYSIS, INC.

Enclosures: Enlarged views of photographs #13, #63, #76 and #77

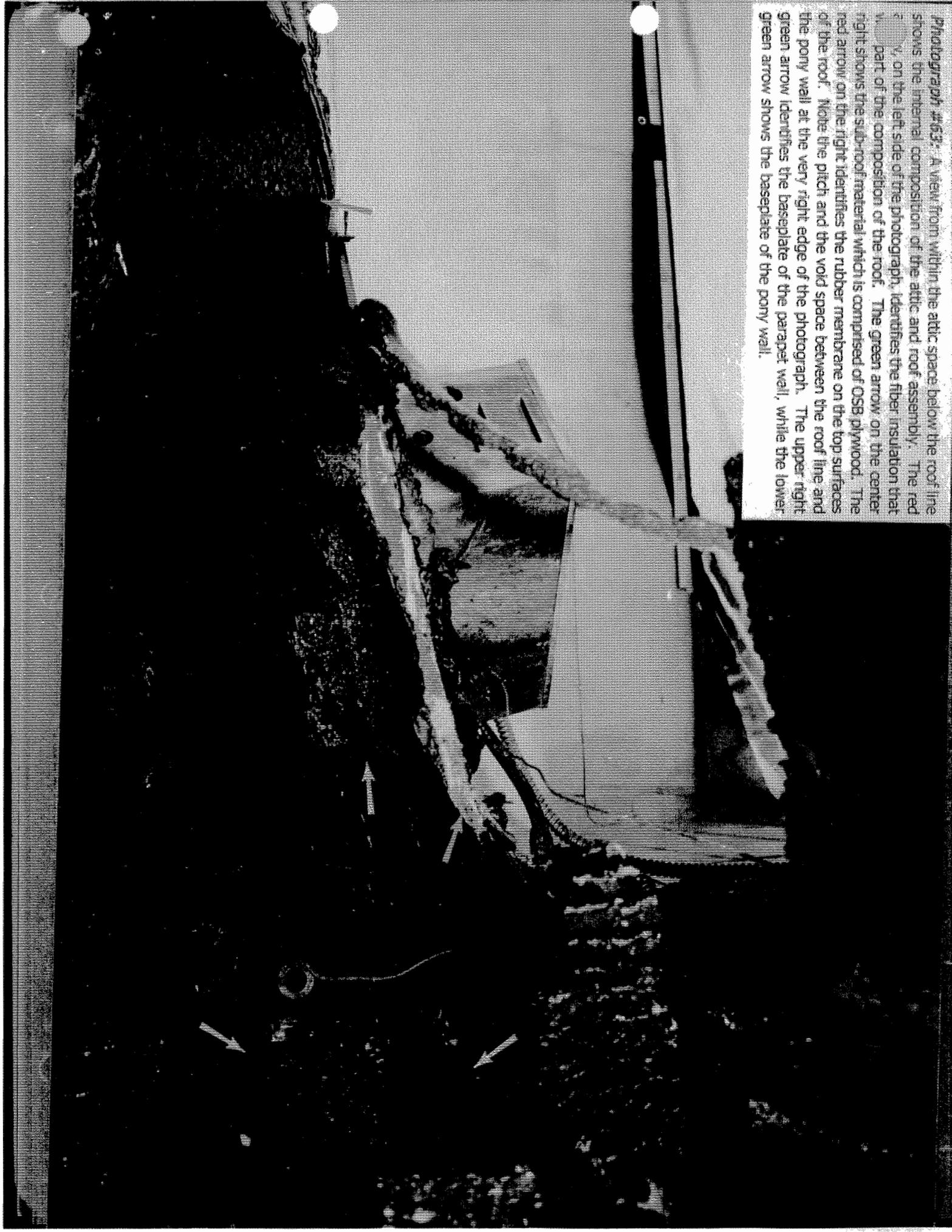
RJJ:bpt

A:J68-2392.ltrJG



Photograph #13: The internal surfaces of the east parapet wall are shown here. Note the heavy destruction directly behind the transformer box for the **sign** equipment. This **destruction to** the parapet wall was found

Photograph #63: A view from within the attic space below the roof line shows the internal composition of the attic and roof assembly. The red arrow on the left side of the photograph, identifies the fiber insulation that is part of the composition of the roof. The green arrow on the center-right shows the sub-roof material which is comprised of OSB plywood. The red arrow on the right identifies the rubber membrane on the top surfaces of the roof. Note the pitch and the void space between the roof line and the pony wall at the very right edge of the photograph. The upper right green arrow identifies the baseplate of the parapet wall, while the lower green arrow shows the baseplate of the pony wall.



Photograph #75: The charring in the space between the two upright 2' x 4's, shows the penetration down through the baseplate of the parapet wall. The original penetration was in proximity to the conduit shown in the upper right of the photograph. The arrow identifies the point of penetration through the baseplate that occurred during the propagation of the fire.



Photograph #77: The close up view shown here identifies the conduit containing the GTO wiring for the letter "a" on the opposite side of this wall. Note the erosion in proximity to the conduit, the oxidation of the tubing that is dissimilar to all other conduit in the sign material, and also the internal oxidation from arcing by comparison to the conduit to the right of this location. A portion of the arc conductor inside the conduit can be seen in this photograph. This is the only arcing that was found in any of the signage circuitry.



APR 11 2008

John R. Goodell (ISB#: 2872)
Brent L. Whiting (ISB#: 6601)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109
Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MADISON**

BRIAN AND CHRISTIE, INC., an Idaho)
corporation, and d/b/a TACO TIME, as)
assumed business name,)

Case No. CV-06-826

Plaintiff,)

AFFIDAVIT OF MICHEAL PACKER

vs.)

LEISHMAN ELECTRIC, INC., an)
Idaho corporation; and "JOHN DOES 1-10,")

Defendants.)

STATE OF IDAHO)
: ss.
County of Bonneville)

I, MICHEAL PACKER, being first duly sworn, deposes and states as follows:

1. I am an adult of legal age and otherwise competent to swear to the facts stated herein.

2. I have personal knowledge of the facts and circumstances surrounding the installation of neon signs at the Taco Time premises in Rexburg, Idaho, by Sign Pro of Southeast Idaho, Inc., in the year 1999.

3. I was employed by Sign Pro of Southeast Idaho, Inc. ("Sign Pro") beginning in late

AFFIDAVIT OF MICHEAL PACKER

1998 or early 1999.

4. When I applied for employment at Sign Pro, my application accurately showed that I had no prior training or experience with installing electrical or neon signs.

5. My employment at Sign Pro initially did not involve sign installations. Although I do not recall the exact date, I began to install signs as a regular part of my employment at some point within the first several months.

6. I was informed by Sign Pro's salesman, Dave Whitehead, that Sign Pro had agreed with the owners of Taco Time in Rexburg to prepare and install neon signs at the Taco Time building. My manager, Evan Cook, assigned me the responsibility of installing multiple neon signs at the Taco Time building in Rexburg.

7. I had never before installed a neon sign, and I don't recall having installed even any standard electrical signs prior to the Taco Time job. It certainly was one of the first, if not the very first electrical sign I ever installed. At no time did I ever say or do anything that would have led my coworkers or supervisors at Sign Pro to believe that I had any prior experience installing electrical or neon signs. To the best of my knowledge, it was commonly known at Sign Pro that I lacked such prior experience.

8. While at the Taco Time premises, the only assistance or supervision that I received in performing the installations was by way of telephone calls to Evan Cook in Idaho Falls.

9. I installed multiple neon signs, including two neon signs, each of which formed the words "Taco Time," that I mounted on opposite sides of the Taco Time building. Prior to my installation of the neon "Taco Time" signs, there were no wires attached to the signs. I personally made all of the electrical wire connections between the various components of the neon Taco Time

AFFIDAVIT OF MICHEAL PACKER

Page 2

signs including the connections between the neon glass and the separate external transformers that I brought with me. The neon glass, wiring and transformer were not enclosed in any kind of casing that made the neon sign into a single enclosed unit.

10. To the best of my recollection, the transformers that I used did not have a secondary ground fault protection system.

11. I attached the neon glass to the wall and used high voltage wire routed through plastic conduit to connect the neon glass to the transformer, but I did not make the final connection between the transformer and the primary power source. I made no additional grounding connections on the sign.

12. All of the wiring that I did on the Taco Time signs was done while I was on the roof of the building.

13. I was not a licensed electrician, nor was an electrician present who supervised or otherwise observed the installation of the neon signs.

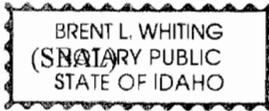
14. In June or July of 2004, I was in Rexburg and saw that there had been a fire at the Taco Time building where I installed the neon signs. I immediately became concerned that the neon signs may have been the cause of the fire and stopped to speak with the owner of Taco Time. In my conversation with the owner we discussed the fire and my belief as to the cause of the fire but I do not recall specifically what was said.

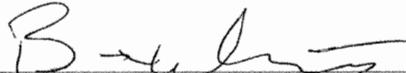
FURTHER YOUR AFFIANT SAITH NAUGHT.

DATED this 9 day of ^{April}~~March~~, 2008.


MICHEAL PACKER

SUBSCRIBED AND SWORN TO before me this 9 day of April, 2008.





NOTARY PUBLIC FOR IDAHO
Residing at:
My Commission Expires:

CERTIFICATE OF SERVICE

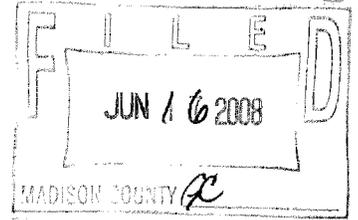
I HEREBY CERTIFY that on the 9th day of April, 2008, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Gary L. Cooper
COOPER & LARSEN, CHARTERED
151 N. 3rd Ave., Ste. 210
P. O. Box 4229
Pocatello, ID 83205-4229
Fax: 235-1182

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile



John R. Goodell (ISB#: 2872)
 Brent L. Whiting (ISB#: 6601)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109
Attorneys for Plaintiff



**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF MADISON**

BRIAN AND CHRISTIE, INC., an Idaho)
 corporation, and d/b/a TACO TIME, as)
 assumed business name,)
)
 Plaintiff,)
)
 vs.)
)
 LEISHMAN ELECTRIC, INC., an)
 Idaho corporation; and "JOHN DOES 1-10,")
)
 Defendants.)
 _____)

Case No. CV-06-826

AFFIDAVIT OF JOHN R. GOODELL

**(Supplying deposition excerpts and Amended
 Complaint in support of Plaintiff's Motion for
 Summary Judgment)**

STATE OF IDAHO)
 : ss.
 County of Bannock)

John R. Goodell, being first duly sworn, deposes and states as follows:

1. I am counsel of record for Plaintiff Brian and Christie, Inc. d/b/a Taco Time in the above action and have personal knowledge of the facts and matters stated herein.
2. Attached hereto as Exhibit A are true and correct copies of excerpts of the transcripts of the Depositions of Scott Stephen Kimbrough, Ph.D., P.E. taken May 15, 2008, and Al Caine, taken on January 17, 2008.

3. Plaintiff Brian and Christie, Inc. relies on the deposition testimony of Scott Stephen Kimbrough and Al Caine in support of its Brief in Support of Motion for Summary Judgment.

2. Attached hereto as Exhibit B is a true and correct copy of the Amended Complaint filed by Brian and Christie, Inc. d/b/a Taco Time against SignPro of Southeast Idaho, Inc. in Madison County Case No. CV05-884.

3. Plaintiff Brian and Christie, Inc. relies on the Amended Complaint filed against SignPro of Southeast Idaho, Inc. in support of its Brief in Support of Motion for Summary Judgment.

DATED this 16th day of June, 2008.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: *John R. Goodell*
JOHN R. GOODELL

SUBSCRIBED AND SWORN TO before me this 16th day of June, 2008.

(SEAL)

Sally A. Dietz
NOTARY PUBLIC FOR IDAHO
Residing at: *America Falls*
My Commission Expires: *10-01-10*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of June, 2008, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Gary L. Cooper
COOPER & LARSEN, CHARTERED
151 N. 3rd Ave., Ste. 210
P. O. Box 4229
Pocatello, ID 83205-4229
Fax: 235-1182

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- Postage Prepaid
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- Facsimile



JOHN R. GOODELL

EXHIBIT A

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1 don't really consider that notable, that it takes
 2 time, because time is -- you know, things are
 3 deteriorating over time. The insulation is
 4 deteriorating. It's being exposed to the weather.
 5 So it's not surprising it would take five or however
 6 many years that was.

7 MR. COOPER: Okay. Thank you. That's all
 8 the questions I have. We'll take a look at your
 9 evidence here and go from there.

10 THE WITNESS: All right.

11 EXAMINATION

12 BY MR. GOODELL:

13 Q. I just have a couple of questions I'd like
 14 to clarify.

15 Counsel's explored with you and your
 16 report reflects the two defects in the sign that
 17 you've explained in detail. And my question is Sign
 18 Pro's installer who rebuilt what we understood was a
 19 broken sign, broken lettering, being the one that
 20 ultimately was identified as a cause of the fire
 21 without properly wiring it because the grounding was
 22 lacking -- is that a fair description of that defect?

23 MR. COOPER: Objection to form.

24 THE WITNESS: Well, the defect having to
 25 do with grounding was, again, he was depending upon

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1 the letters to communicate the ground, and they
 2 actually couldn't do that. They weren't conductive.
 3 So he needed to have many more jumpers. Wherever his
 4 so-called ground circuit was going through a letter,
 5 he actually needed a jumper across that letter from
 6 its inputs to its output. He needed another jumper
 7 to continue the ground across.

8 Q. (By Mr. Goodell) And so recognizing that
 9 that fact existed as to the defective ground wiring
 10 of the letters of the sign itself, what would be the
 11 circumstances if there had been in the transformer
 12 secondary ground-fault protection?

13 A. Repeat that question.

14 Q. In other words, what I'm trying to get at
 15 is the sign is wired incorrectly, it's not properly
 16 grounded, right?

17 A. Yes.

18 Q. And then the other defect has to do with
 19 the secondary ground-fault protection in the
 20 transformer as not the prescribed type of equipment.

21 A. Okay. Yes.

22 Q. Those are two separate defects.

23 A. Yes, um-hum (affirmative).

24 Q. So I'm trying to get at the relationship
 25 between the two of them. Let's eliminate the

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1 secondary ground-fault protection lack as a defect,
 2 and -- and my question is what -- if there had been a
 3 transformer and secondary ground-fault protection and
 4 the sign was not wired correctly and shorted, what
 5 would be the effect?

6 A. Well, one -- as the current starts to go
 7 to ground, it's going to leak out. I mean, that's
 8 what happens with neon signs, is they're at very,
 9 very high voltages. So if some insulation breaks
 10 down, something like that, you've got this high, high
 11 voltage, and it's going to try to drive current
 12 somewhere. It's going to try to find something that
 13 looks like a ground. And it's got the voltage to
 14 send it through wood, through all kinds of things you
 15 wouldn't normally think about, especially over the
 16 surface of things.

17 So what you can do, then, is you can have
 18 that high voltage driving current through wood over
 19 to something that looks like a fairly decent ground
 20 like a window frame, or who knows, you know, what's
 21 in the proximity. And as it's going across that
 22 trail, it's going across that wood. And if that wood
 23 ever gets wet, or whatever, or just over time it
 24 starts to turn to carbon and it starts to conduct
 25 more completely, then you can start to have current

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1 traveling across wood, and that can start a fire.
 2 That's a typical way that neon signs will start
 3 fires. They call it arc tracking.

4 What the concept is with these grounds is
 5 to have a really close-by ground, so that if you do
 6 start to have a failure somewhere, then the current
 7 that's looking for a ground will find it real close.
 8 And then it's typically close enough that it's
 9 harmless. Then you don't have the current traveling
 10 across the wood or something. You have it failing
 11 and then going right to a nearby ground, so you
 12 prevent the arc tracking. That's the concept of
 13 trying to have a lot of ground around a neon sign.

14 Q. What's the purpose of secondary
 15 ground-fault protection, what is the protection it
 16 provides?

17 A. Okay. What it's doing is it's sending out
 18 current to the sign. And if -- and then it's looking
 19 to see how much it gets back. And it should get back
 20 what it sends. If it doesn't get back what it sends,
 21 it says, Uh-oh, current's taking off somewhere.
 22 Current is taking off maybe through the wood or
 23 whatever else, and I'm going to shut the sign down.
 24 So it's looking for an imbalance between what I sent
 25 back and what I -- what I sent and what I get back.

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<p style="text-align: right;">SHEET 10</p> <p>1 even a greater responsibility about what happens. So 2 I don't know what that relationship was between these 3 parties. That's why I can't get involved in 4 determining percentage of liabilities, stuff like 5 that. 6 Q. (By Mr. Goodell) And I'm not asking you 7 to determine percentages. I'm just asking you in 8 general terms do you think it's fair that there were 9 two actors, Sign Pro, who created the bad ground 10 wiring on the sign letters and which supplied the 11 transformer for the neon sign without having 12 secondary ground protection as one party partially 13 responsible, and then Leishman Electric as a licensed 14 electrician who came along and energized it by 15 hooking the building power to this defective 16 transformer and sign, that Leishman also has some 17 partial responsibility? 18 MR. COOPER: Object to the form. 19 THE WITNESS: Well, if Leishman was paid 20 to go in there and hook it up -- 21 MR. COOPER: To hook what up? 22 THE WITNESS: The neon sign up. 23 -- then they are acting in a professional 24 function, in my mind, and they have a responsibility 25 to make sure it's done right and that the whole</p>	<p style="text-align: right;">73</p> <p>1 MR. COOPER: Object to the -- 2 Q. (By Mr. Goodell) -- by hooking or not 3 hooking up? 4 MR. COOPER: Object to the form. 5 THE WITNESS: Leishman would have been the 6 last party. 7 Q. (By Mr. Goodell) And it would have been 8 just a matter of a few minutes and minimal effort for 9 Leishman to take the couple of screws and cover off 10 of the weather box to look at the -- see what kind of 11 transformer was there? 12 MR. COOPER: Object to the form. 13 THE WITNESS: That's true. It would be a 14 matter of minutes. Probably two or three minutes he 15 could have lifted the transformer plus the sign. 16 Q. (By Mr. Goodell) And just a few minutes 17 and minimal effort to check the wiring to see if it 18 was properly grounded on the sign lettering? 19 MR. COOPER: Object to the form. 20 THE WITNESS: That's true. 21 MR. GOODSELL: Okay. Thank you, 22 Mr. Kimbrough. I have no further questions. 23 FURTHER EXAMINATION 24 BY MR. COOPER: 25 Q. Have you viewed the Idaho Administrative</p>
<p>1 process is right. 2 Q. (By Mr. Goodell) And by "the whole 3 process," you mean what? 4 A. Well, to look at the sign they're hooking 5 up to, to at least ask questions about it, to have 6 asked someone is -- you know, is this a listed sign? 7 And if the answer's no, Well, what have you got here? 8 Let's look at just the fundamental things that we 9 should look at here, you know, things that are on the 10 short list of things to look at when you're assessing 11 a neon sign. 12 Q. And whether they've been paid to do it or 13 not, what about the fact that they undertook and did 14 do it, that is, hooked the building power to the 15 transformer and sign? 16 MR. COOPER: Object to the form. 17 THE WITNESS: Well, I think they pick up 18 some responsibility. 19 Q. (By Mr. Goodell) And assuming Sign Pro 20 installed the wrongly wired sign with the wrong 21 transformer and then left the job and Leishman came 22 along after that and hooked it up to the building 23 power, who, in your opinion, was in the last position 24 to determine if there was a fire hazard and to create 25 it or to avoid creating it --</p>	<p style="text-align: right;">74</p> <p>1 Rules on electrical contractors? 2 A. The parts that are in Higgins's exhibits 3 to his deposition. 4 Q. Have you reviewed the Idaho Administrative 5 Rules on specialty contractors such as neon sign 6 installers? 7 A. No. 8 MR. COOPER: No further questions. 9 MR. GOODSELL: No questions. 10 MR. COOPER: Now, before we leave, let's 11 just identify which original exhibits have been 12 substituted with copies. 13 You will have Exhibits 1 through 5, which 14 are original exhibits, and Exhibits 6 through -- 15 THE WITNESS: That's definitely copied 16 because that doesn't have any color to it. These are 17 originals -- oh, Hum, 18 MR. COOPER: No. She must have made color 19 photocopies. 20 THE WITNESS: No. We don't have a color 21 copy machine. 22 MR. COOPER: That's an original. 23 THE WITNESS: Yeah, 24 MR. GOODSELL: Did she make a copy of that? 25 THE WITNESS: Yeah. Maybe something</p>

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1 you've got in your hands already.
 2 MR. COOPER: Oh, I do. Sorry. Okay.
 3 THE WITNESS: Now, what is the court
 4 reporter hoping to have copies of the --
 5 MR. GOODELL: 6, 7, 8, 9, 10 --
 6 THE WITNESS: I guess my question is does
 7 she want copies of the exhibits or --
 8 MR. COOPER: Just a second. Let me do it.
 9 THE WITNESS: All right.
 10 MR. COOPER: -- 10, 11, 12 and 13. You
 11 will have copies of those, and we've returned the
 12 originals of Exhibits 6 through 13 to the witness.
 13 (A discussion was held off the record.)
 14 MR. GOODELL: He'd like to read and sign.
 15 (EXHIBIT-3A was marked.)
 16 (The deposition concluded at 3:03 p.m.)
 17
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1 Case: Brian and Christie, Inc. v. Leishman Electric
 2 Case No: CV-08-826
 3 Reporter: Susette M. Snider
 4 Date taken: May 15, 2008

WITNESS CERTIFICATE

5 I, SCOTT STEPHEN KIMBROUGH, PH.D., P.E.,
 6 HEREBY DECLARE: That I am the witness in the foregoing
 7 transcript; that I have read the transcript and know
 8 the contents thereof; that with these corrections I
 9 have noted this transcript truly and accurately
 10 reflects my testimony.

PAGE-LINE	CHANGE/CORRECTION	REASON
11		
12		
13		
14		
15		
16		

16 No corrections were made.

17 I, SCOTT STEPHEN KIMBROUGH, PH.D., P.E. HEREBY
 18 DECLARE UNDER THE PENALTIES OF PERJURY OF THE LAWS OF
 19 THE UNITED STATES OF AMERICA AND THE LAWS OF THE
 20 STATE OF UTAH THAT THE FOREGOING IS TRUE AND CORRECT.

Scott Stephen Kimbrough, Ph.D., P.E.
 21 SUBSCRIBED and SWORN to at
 22 , this day of
 23 2008.
 24
 25 Notary Public

78

REPORTER'S CERTIFICATE

1 STATE OF UTAH)
 2) ss.
 3 COUNTY OF SALT LAKE)

4
 5 I, Susette M. Snider, Registered
 6 Professional Reporter, Certified Realtime Reporter
 7 and Notary Public in and for the State of Utah, do
 8 hereby certify:
 9
 10 That prior to being examined, the witness,
 11 Scott Stephen Kimbrough, Ph.D., P.E., was by me duly
 12 sworn to tell the truth, the whole truth, and nothing
 13 but the truth;
 14
 15 That said deposition was taken down by me
 16 in stenotype on May 15, 2008, at the place therein
 17 named, and was thereafter transcribed and that a true
 18 and correct transcription of said testimony is set
 19 forth in the preceding pages;
 20
 21 I further certify that, in accordance with
 22 Rule 30(e), a request having been made to review the
 23 transcript, a reading copy was sent to Scott Stephen
 24 Kimbrough, Ph.D., P.E., to read and sign before a
 25 notary public and then return to me for filing with
 Gary L. Cooper, Attorney at Law.

16 I further certify that I am not kin or
 17 otherwise associated with any of the parties to said
 18 cause of action and that I am not interested in the
 19 outcome thereof.

20 WITNESS MY HAND AND OFFICIAL SEAL this
 21 26th day of May, 2008.

22
 23
 24 Susette M. Snider, RFR, CRR
 25 Notary Public
 Residing in Salt Lake County.

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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF MADISON

BRIAN AND CHRISTIE, INC., an Idaho)
corporation and dba TACO TIME, an)
assumed business name,)
Plaintiff,)

vs.) Case No.

LEISHMAN ELECTRIC, INC., an) CV-06-826
Idaho corporation; and JOHN DOES)
1-10,)
Defendants.)

_____)

DEPOSITION OF AL CAINE

January 17, 2008

REPORTED BY:

DIANA L. DURLAND, CSR No. 637

Notary Public

1 product would be in compliance with the NEC,
 2 electrical safety installation laws and rules of the
 3 state and proper electrical procedures. It shouldn't
 4 have been connected; should it?
 5 MR. COOPER: Object to the form.
 6 WITNESS: I can't determine that.
 7 Q. (BY MR. GOODELL) Why not?
 8 A. Because of what we discussed here. Several
 9 different ways and different angles is that if there
 10 was an obvious safety violation or whatever,
 11 absolutely not. You wouldn't hook it up.
 12 If it could be reasonably presumed that you
 13 had a safe device to hook up, then it's very
 14 commonplace for an electrical contractor to
 15 proceed.
 16 Q. The only way you could determine it would be
 17 safe would be one, it had already been inspected and
 18 approved by the state?
 19 A. That's correct. That's one way.
 20 Q. There's no evidence that that had been done
 21 here; is there?
 22 A. That's correct.
 23 Q. So Lieshman couldn't reasonably rely upon
 24 that possibility in proceeding, assuming it was safe;
 25 could it?

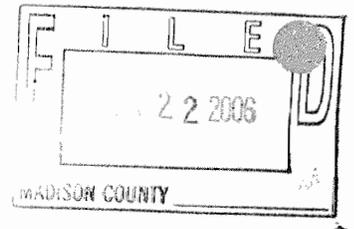
1 A. Correct.
 2 Q. Another possible way would be to examine and
 3 see if there's this UL listing and the pigtails and
 4 closed packaging and everything that indicates things
 5 had been certified and can be presumed safe. That
 6 would be another way; right?
 7 A. That's correct.
 8 Q. And we don't know if there's any information
 9 or facts that support that either?
 10 A. That's correct.
 11 Q. And so you don't know if Lieshman did that
 12 or relied on that in proceeding, you're just
 13 speculating?
 14 A. That's correct.
 15 Q. And so if we assume that no inspection had
 16 been done and no UL listing, close packaging,
 17 certification, stamping, existed on the sign, then
 18 you have agreed, as I understand your testimony, that
 19 the electrician here, Lieshman, should make further
 20 investigation to determine whether it's safe to hook
 21 up the power to this sign?
 22 MR. COOPER: Object to the form.
 23 WITNESS: I would agree with you.
 24 Q. (BY MR. GOODELL) By examining the
 25 condition of the sign is the only way to do it;

1 right?
 2 A. Correct.
 3 Q. Or by talking to the sign installer and
 4 getting information about what is done; right?
 5 A. Correct.
 6 Q. And we don't have any information. In fact,
 7 I think it's admitted by Lieshman that they made no
 8 further investigation at all of any of those things,
 9 didn't talk to the inspector, didn't talk to the sign
 10 installer, didn't look at the sign to see if it had
 11 this UL certification and didn't make any further
 12 examination or inspection of the sign. Did none of
 13 those things.
 14 MR. COOPER: Object to the form.
 15 Q. (BY MR. GOODELL) Under those circumstances,
 16 if that's what the evidence establishes at trial, do
 17 you believe that under these circumstances Lieshman
 18 Electric complied with its duty not to hook up a
 19 line, which was its work, to an appliance or device
 20 which it lacked knowledge or information about its
 21 safety?
 22 MR. COOPER: Object to the form.
 23 WITNESS: Under all of those assumptions,
 24 which there are several, certainly Lieshman would
 25 have a duty to question further before hooking it up.

1 Q. (BY MR. GOODELL) And not to hook up the
 2 sign. In other words, its duty -- let me start
 3 over.
 4 Under those assumptions and circumstances,
 5 if shown by the evidence, Lieshman did not have a
 6 basis to conclude the sign was safe and so should not
 7 have hooked it up until such information was known;
 8 right.
 9 MR. COOPER: Object to the form.
 10 WITNESS: Again I would agree if all of
 11 those assumptions were taken.
 12 Q. (BY MR. GOODELL) With regard to those
 13 assumptions, you don't know one way or another that
 14 subject is proof at trial as to what the evidence is
 15 or isn't?
 16 A. That's correct.
 17 Q. But then that is quite a different situation
 18 than your earlier answers to Mr. Cooper's questions
 19 which confine and limit Lieshman's duty solely to the
 20 work it did. That is, installing the line and having
 21 no responsibility to determine what is at the other
 22 end line before it hooked up and energized it.
 23 Namely the sign and the condition of the sign
 24 installed by somebody else. It's quite different;
 25 isn't it?

EXHIBIT B

John R. Goodell (ISB#: 2872)
 Steven J. Muhonen (ISB#: 6689)
 Brent L. Whiting (ISB#: 6601)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109



Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF MADISON**

BRIAN AND CHRISTIE, INC., an Idaho)
 corporation, and d/b/a TACO TIME, an)
 assumed business name,)
)
 Plaintiff,)

Case No. CV 05-884

**FIRST AMENDED COMPLAINT AND
 DEMAND FOR JURY TRIAL**

vs.)

SIGN PRO OF SOUTHEAST IDAHO,)
 INC., an Idaho corporation, and d/b/a/)
 and/or as successor-in-interest to SIGN)
 PRO, INC., an Idaho corporation, and/or)
 SIGN PRO, an unknown entity; and)
 JOHN DOES 1-5,)
)
 Defendants.)

COMES NOW Plaintiff, by and through its counsel of record, and for its First Amended
 Complaint against the above-named Defendant, states and alleges as follows:

JURISDICTION AND PARTIES

1. At all times material herein, Plaintiff, Brian and Christie, Inc., was an Idaho
 corporation, and doing business as Taco Time, an assumed business name, in Rexburg, Madison

County, Idaho ("Taco Time" or "Plaintiff").

2. At all times material herein, Defendant, Sign Pro of Southeast Idaho, Inc., was an Idaho corporation, and doing business as, and/or as successor-in interest to, Sign Pro, Inc., and Idaho corporation, and/or Sign Pro, an unknown entity, collectively hereinafter "Sign Pro." Sign Pro has its principal place of business in Idaho Falls, Bonneville County, Idaho.

Sign Pro transacted business and/or committed tortious acts in Rexburg, Madison County, Idaho, as more fully set forth below.

3. Defendants, John Does 1-5, are other fictitious individuals, corporations, or entities which are liable for Plaintiff's claims herein, whose true names or identities are currently unknown, and shall be determined in discovery herein. Plaintiff reserves the right to name any such individuals and/or entities properly named as Defendants hereinafter when such information becomes known.

4. The amount in controversy exceeds \$10,000.00

5. Jurisdiction and venue are proper in this Court.

FACTUAL ALLEGATIONS AND CLAIMS

(Negligence; Negligence Per Se; and Breach of Contract)

6. Sometime in late 1998 and early 1999 the Plaintiff remodeled its Taco Time restaurant building located in Rexburg, Idaho ("remodel project").

7. Plaintiff hired and contracted with a general contractor not named in this action to perform the remodel project, and which work was done.

8. As part of the remodel project, the general contractor hired Leishman Electric as the electrical subcontractor to perform the electrical work of the remodel project, and which work was done.

9. As part of the remodel project, Plaintiff purchased two used exterior neon signs from another Taco Time restaurant.

10. As part of the remodel project, Plaintiff hired and contracted directly with Sign Pro to inspect, repair, and install the two neon signs and related electrical components, which work was done.

11. Sign Pro repaired and re-wired one neon sign prior to installation, but failed to properly ground it.

12. Sign Pro installed both neon signs on the exterior of the Taco Time building.

13. Sign Pro wired the both neon signs, including the repaired and re-wired neon sign, and related components, including transformers, to the building electrical system.

14. The repaired and re-wired neon sign, all wiring between the neon sign and the transformer, and all wiring between the transformer and the building electrical system, were intact, undisturbed, and remained in the same condition following the installation work by Sign Pro, until the fire loss which occurred on or about June 9, 2005.

15. On or about June 9, 2004 a fire loss occurred at the Taco Time restaurant building causing substantial physical damages and business losses.

16. The cause and origin investigation has determined that fire loss was the repaired and re-wired neon sign, and related electrical components, including the transformer.

17. Other potential cause(s) and origins(s) of the fire loss have been reasonably and conclusively eliminated based on the site and physical evidence investigation.

18. The National Electrical Code ("NEC") has been adopted as the law of the State of Idaho, pursuant to Idaho Code § 54-1001.

19. The subject neon sign and related electrical components, including the transformer, as repaired, installed, and wired to the building electrical system, by Sign Pro, violated two important requirements of the NEC, and Idaho law, namely:

A. The repaired and re-wired neon sign was wired with a transformer that did not have secondary ground fault protection; and

B. The repaired and re-wired neon sign was not properly grounded.

20. The failure of Sign Pro to repair, install, and/or wire the neon sign and related components, including a transformer, to the building electrical system in a safe and workmanlike manner, and in accordance with the NEC, constitute negligence, and/or negligence per se, rendering one or both of them fully liable for all Plaintiff's damages resulting from the fire loss.

21. In addition, or alternatively, Sign Pro only breached its promise, agreement, and contract to repair, install, and re-wire the subject neon sign to the building electrical system in a safe and workmanlike manner, and is liable for damages for breach thereof resulting from the fire loss.

22. As a direct and proximate cause of the negligence, negligence per se, breach of contract, and/or other wrongful conduct by Sign Pro described above, Sign Pro is liable to Plaintiff for all damages for physical losses, costs of repair, and business income losses sustained, which equal the total the sum of **\$295,159.94** principal, or such other amount as shall be proved at the time of trial.

*3500
6-2-2018
included*

23. Plaintiff has made timely demands for payment of the above principal amount on Sign Pro, which has been denied.

24. Plaintiff is entitled to recover prejudgment interest on all liquidated damages in the total principal amount stated above until paid or entry of judgment at the statutory rate @ 12% per

annum.

25. Plaintiff is entitled to recover costs of suit and reasonable attorney fees pursuant to I.C. §§ 12-120(3) and/or 12-121, or as otherwise allowed by law. If judgment is taken by default Plaintiff alleges that a reasonable attorney fee is \$25,000.00, or such other amount as the Court deems just and reasonable in the premises.

WHEREFORE, Plaintiffs pray for judgment against the Defendant Sign Pro as follows:

- A. For a money judgment in the amount of \$295,159.94 for the fire loss, related damages and losses to the building, personal property, and business income losses, or such other amount as may be proved at the time of trial;
- B. For an award of prejudgment interest at the statutory rate @ 12% from the date of loss until paid or entry of judgment;
- C. For an award of costs incurred;
- D. For an award of reasonable attorney fees, which shall be no less than \$25,000.00 if judgment is entered by default, or such other amount as the Court deems just and reasonable in the premises;
- E. For such other relief as the Court deems just in the premises.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED this 21st day of March, 2005.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

By: _____

For JOHN R. GOODELL
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

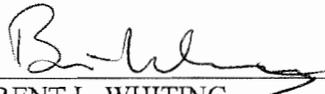
I HEREBY CERTIFY that on the 21st day of March, 2006, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Gary L. Cooper, Esq.
COOPER & LARSEN
151 N. 3rd Avenue - 2d Floor
P. O. Box 4229
Pocatello, ID 83205-4229
Attorneys for Leishman Electric, Inc.

U. S. Mail
Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile

G. Lance Nalder, Esq.
NALDER LAW OFFICE
591 Park Avenue, Suite 201
Idaho Falls, ID 83402
Attorney for Tallman

U. S. Mail
Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile



BRENT L. WHITING

Date: 12/2/2008

Seventh Judicial District Court - Madison County

User: GWEN

Time: 02:36 PM

Minutes Report

Page 1 of 2

Case: CV-2006-0000826

Brian and Christie, Inc., an Idaho Corp vs. Leishman Electric, Inc, etal.

Selected Items

Hearing type:	Summary Judgment	Minutes date:	06/23/2008
Assigned judge:	Brent J. Moss	Start time:	11:29 AM
Court reporter:	David Marlow	End time:	11:29 AM
Minutes clerk:	Angie Wood	Audio tape number:	

Parties: Brian and Christie, Inc., an Idaho Corp; Goodell, John
Leishman Electric, Inc; Cooper, Gary

Tape Counter: 1129 J INTRO

MR. GOODELL ARGUES MOTION FOR SUMMARY JUDGMENT

MR. COOPER ARGUES AGAINST SUMMARY JUDGMENT MOTION

MR. GOODELL RESPONDS

FILED
JUL 29 2008

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR MADISON COUNTY

BRIAN AND CHRISTIE, INC., an Idaho)
Corporation, and dba TACO TIME, an)
Assumed business name,)
)
Plaintiffs,)
)
v.)
)
LEISHMAN ELECTRIC, INC., an Idaho)
Corporation; and JOHN DOES 1-10,)
)
Defendants.)
_____)

Case No. CV-06-826

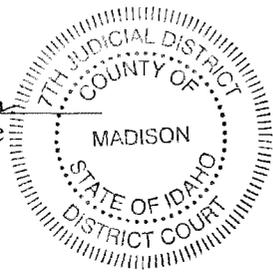
ORDER DENYING PLAINTIFFS'
SUMMARY JUDGMENT
MOTION

Plaintiffs move the Court to grant summary judgment on their negligence action against Leishman Electric. Their motion is premature. Two elements of their case, causation and damages, have issues of material fact fit for jury determination. As to causation, several individuals worked on the sign and there is an issue of fact as to the extent each individual's actions had in the fire's causation. As to damages, the Court has ruled that the Plaintiffs are limited to non-economic damages; there is an issue of fact as to the amount of those damages. Plaintiffs' summary judgment motion is denied.

So Ordered.

DATED this 29 day of July, 2008.

Brent J. Moss
Brent J. Moss, District Judge

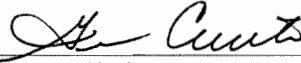


CERTIFICATE OF SERVICE

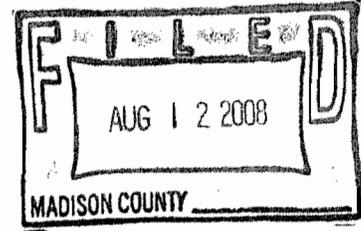
I HEREBY CERTIFY that a true and correct copy of the foregoing Order was this
29 day of July, 2008, served upon the following individuals via U.S. Mail, postage
prepaid:

John Goodell & Brent Whiting
RACINE, OLSON, NYE, BUDGE, & BAILEY, CHTD.
P.O. Box 1391
Pocatello, ID 83204-1391
Counsel for Plaintiffs

Gary L. Cooper
COOPER & LARSEN, CHTD.
151 North Third Ave., Suite 210
P.O. Box 4229
Pocatello, ID 83205-4229
Counsel for Defendant

By: 
Deputy Clerk

John R. Goodell (ISB#: 2872)
 Brent L. Whiting (ISB#: 6601)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109
 Email: jrg@racinelaw.net



Attorneys for Plaintiff

ORIGINAL

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF MADISON**

BRIAN AND CHRISTIE, INC., an Idaho)
 corporation, and d/b/a TACO TIME, as)
 assumed business name,)
)
 Plaintiff,)
)
 vs.)
)
 LEISHMAN ELECTRIC, INC., an)
 Idaho corporation; and "JOHN DOES 1-10,")
)
 Defendants.)
 _____)

Case No. CV-06-826

MOTION FOR RECONSIDERATION

COMES NOW Plaintiff, by and through counsel of record, and hereby moves the Court pursuant to IRCP 11(a)(2)(B), and 56, for reconsideration of its *Memorandum Decision filed 10/15/08*, relating to the "economic loss" ruling only, partially granting Defendant's Motion for Summary Judgment herein.

This motion is made on the grounds and for the reason that Plaintiffs respectfully submit that the Court's "economic loss" ruling and application is erroneous as a matter of law given the undisputed facts established by the record in this case.

First: The “economic loss” rule simply does not apply. The fire damages to the building and equipment clearly establishes “other property damage.” The Court’s prior Memorandum Decision acknowledges “other property damage.” By definition, where there is “other property damage,” the “economic loss rule does not apply under the governing Idaho case law.

Second: There is an exception or limitation to applicability of the “economic loss” rule recognized by Idaho case law, which holds that where there is “other property damage,” then all damages are recoverable, regardless of whether they are characterized as “economic” or “non-economic” damages. The exception clearly applies here. Given damage to the building and equipment, all damages for costs of repair and replacement of all property are recoverable, as well as lost profits.

Third: The “economic loss” rule applies to prevent recovery in a negligence action of “costs of repair and replacement of defective property which is the subject of the transaction. . . .” (emphasis supplied). Here, the “defective property” here is the neon sign (which was improperly wired so as not to be properly grounded), and the obsolete neon sign transformer (which lacked secondary ground fault protection) contrary to the NEC’s requirements. Such “defects” were the origin an cause of the electrical fire which damaged the Taco Time Restaurant building and equipment. There is no other “defective property” within the meaning of the “economic loss” rule definition. Clearly, the entire Taco Time building itself, and equipment and inventory itself, were not “defective” in any sense.

Fourth: The “economic loss” rule applies to prevent recovery in a negligence action fo “costs of repair and replacement of defective property which is the subject of the transaction” (emphasis supplied). The “transaction” involving the neon sign/transformer as the “defective

property” is Taco Time’s contract with Sign Pro to repair and install the same. It is undisputed that such “transaction” was separate and distinct from the building remodel contract Taco Time had with a general contractor, who hired Leishman for the electrical subcontract portion of the building remodel to re-wire the building. The fact that the two separate transactions – one for building remodel, and one for neon sign/transformer repair and installation – were coincidentally being done at the same time, does not render them one and the same “transaction” for purposes of the “economic loss” rule. It appears that the mere coincidence of timing that both transactions were being done at the same time has caused the Court to somehow lump them together and fail to distinguish them as separate transactions which is what they were.

However, as discussed above, where “other property damage” clearly exists, as discussed above, the nature of the “transactions” are immaterial and irrelevant because the “economic loss” rule does not even apply as a matter of law.

RECORD RELIED ON

Plaintiff rely on the entire record herein and Plaintiff’s Memorandum in Support Of Motion For Reconsideration filed herewith.

DATED this 8th day of August, 2008.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

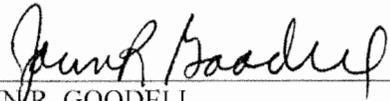
By: John R. Goodell
JOHN R. GOODELL
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

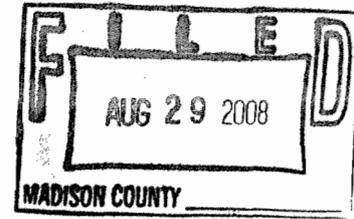
I HEREBY CERTIFY that on the 8th day of August, 2008, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Gary L. Cooper
COOPER & LARSEN, CHARTERED
151 N. 3rd Ave., Ste. 210
P. O. Box 4229
Pocatello, ID 83205-4229
Fax: 235-1182

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile



JOHN R. GOODELL



John R. Goodell (ISB#: 2872)
Brent L. Whiting (ISB#: 6601)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109
Email: jrg@racinelaw.net

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MADISON**

BRIAN AND CHRISTIE, INC., an Idaho)
corporation, and d/b/a TACO TIME, as)
assumed business name,)

Case No. CV-06-826

Plaintiff,)

MOTION TO AMEND COMPLAINT

vs.)

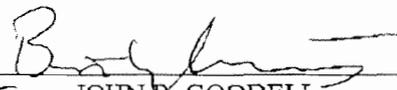
LEISHMAN ELECTRIC, INC., an)
Idaho corporation; and "JOHN DOES 1-10,")

Defendants.)

COMES NOW Plaintiff, by and through counsel of record, and hereby moves the Court pursuant to IRCP 15(a) to allow Plaintiff to file its First Amended Complaint and Demand for Jury Trial in the interests of justice. This motion is supported by the memorandum filed herewith, the First Amended Complaint with Exhibit filed herewith, and the record already on file with the Court in this matter.

DATED this 29th day of August, 2008.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

By: 
FOR JOHN R. GOODELL
Attorneys for Plaintiff

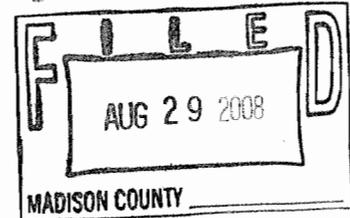
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of August, 2008, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Gary L. Cooper
COOPER & LARSEN, CHARTERED
151 N. 3rd Ave., Ste. 210
P. O. Box 4229
Pocatello, ID 83205-4229
Fax: 235-1182

- U. S. Mail
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FOR JOHN R. GOODELL



John R. Goodell (ISB#: 2872)
Brent L. Whiting (ISB#: 6601)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MADISON

BRIAN AND CHRISTIE, INC., an Idaho
corporation, and d/b/a TACO TIME, an
assumed business name,

Case No. CV-06-826

Plaintiff,

FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL

vs.

LEISHMAN ELECTRIC, INC., an
Idaho corporation; and JOHN DOES 1-10,

Defendants.

COMES NOW Plaintiff, by and through its counsel of record, and for its cause of action
against the above-named Defendants, states and alleges as follows:

JURISDICTION AND PARTIES

1. At all times material herein, Plaintiff, Brian and Christie, Inc., was an Idaho
corporation, and doing business as Taco Time, an assumed business name, in Rexburg, Madison
County, Idaho ("Taco Time" or "Plaintiff").

2. At all times material herein, Defendant Leishman Electric, Inc. ("Leishman Electric"),

was an Idaho corporation having its principal place of business in Rexburg, Madison County, Idaho, which transacted business and/or committed tortious acts in Rexburg, Madison County, Idaho, as more fully set forth below.

3. Defendants, John Does 1-10, are other fictitious individuals, corporations, or entities which are liable for Plaintiff's claims herein, whose true names or identities are currently unknown, and shall be determined in discovery herein. Plaintiff reserves the right to name any such individuals and/or entities properly named as Defendants hereinafter when such information becomes known.

4. The amount in controversy exceeds \$10,000.00

5. Jurisdiction and venue are proper in this Court.

FACTUAL ALLEGATIONS AND CLAIMS

(Negligence and Negligence Per Se)

6. Sometime in late 1998 and early 1999 the Plaintiff remodeled its Taco Time restaurant building located in Rexburg, Idaho ("remodel project").

7. Plaintiff hired and contracted with a general contractor not named in this action to perform the remodel project, which work was done.

8. As part of the remodel project, the general contractor hired Leishman Electric as the electrical subcontractor to perform the electrical work of the remodel project, which work was done.

9. During the remodel project, Plaintiff purchased used exterior neon signs from another Taco Time restaurant.

10. Plaintiff contracted directly with Sign Pro to inspect, repair, and install two neon sign systems and related electrical wiring, transformers, and related components onto the building, which work was performed.

11. Sign Pro failed to properly ground the neon sign system which was installed on the front and east side of the building.

12. Sign Pro failed to use a transformer with secondary ground fault protection as part of said neon sign system.

13. Sign Pro's failure to properly ground said neon sign system, and/or failure to use a transformer with secondary ground fault protection a part of the neon sign system, violated the National Electrical Code (NEC), and the reasonable and ordinary standard of care, and constitutes negligence and/or negligence per se.

14. Sign Pro's negligence and other wrongful conduct described above was one direct and proximate cause of an electrical fire which occurred on or about June 9, 2004, and which resulted in substantial damages to Plaintiff.

15. Sign Pro did not make the final connection of the neon sign system which caused the fire to the building power supply because it was not a licensed electrical contractor.

16. Although there was no contact or communication between Sign Pro and Leishman Electric regarding the neon sign systems, Leishman Electric did make the final connection of the neon sign system that was the cause of the fire to the building power supply.

17. Before making the final power connection of the neon sign system to the building power supply, Leishman Electric, as the professional and licensed electrician expert, had a duty of reasonable care to do so in a safe and workmanlike manner.

18. In addition, before making the final power connection of the neon sign system to the building power supply, Leishman Electric had a special duty of care as the expert and licensed electrician to inspect and verify that the neon sign system and all components and parts were

properly grounded; that the transformer had secondary ground fault protection; that the neon sign system and all components fully complied with the NEC; and do whatever else was reasonable and necessary to ensure that the neon sign system, as connected to the building power supply, was safe and presented no fire hazard.

19. Leishman Electric breached its duty of care which constitutes negligence and/or negligence per se by reason of the following acts and/or omissions:

- a. Connecting the neon sign system in its unsafe condition as installed by Sign Pro to the building power supply;
- b. Failing to connect the neon sign system to the building power supply in a manner which ensured said system was properly grounded;
- c. Failing to connect the neon sign system to the building power supply in a manner which ensured said system had a proper transformer with secondary ground fault protection;
- d. Failing to adequately inspect the neon sign system before connecting it to the building power supply to determine its conditions and ensure it could be safely connected and not be in such condition as to create a fire or safety hazard;
- e. Failing to verify that the neon sign system could be safely connected to the building fire supply so as not to create any fire or safety hazard;
- f. Failing to make the final connection of the neon sign system to the building power supply in a manner which complied with the NEC's requirements;
- g. Otherwise failing to do whatever was reasonably necessary to connect the

neon sign system to the building power supply in a manner which would not create any fire or safety hazard.

20. Leishman Electric's negligence and other wrongful conduct described above was one direct and proximate cause of the electrical fire which occurred on or about June 9, 2004, and which resulted in substantial damages to Plaintiff.

21. Sign Pro's negligence and Leishman's negligence were concurring direct and proximate causes of the electrical fire which occurred on or about June 9, 2004, and which resulted in substantial damages to Plaintiff.

22. The neon sign system, and its final connection to the building power supply, remained in the same condition following the installation and connection work by Sign Pro and Leishman Electric until the fire which occurred on or about June 9, 2004.

23. The origin and cause investigation has determined that the fire on June 9, 2004 was the result of the lack of proper grounding and/or lack of a transformer having secondary ground fault protection, either one of which would have prevented the fire.

24. Other potential origins and causes of the fire were eliminated based on the fire investigation.

25. The National Electrical Code ("NEC") has been adopted as the law of the State of Idaho, pursuant to Idaho Code § 54-1001.

26. As a direct and proximate result of the independent concurring negligence and negligence per se and/or other wrongful conduct by Sign Pro and Leishman Electric which combined and contributed to the cause of the fire, Sign Pro and Leishman Electric are liable to Plaintiff for all damages for physical losses, costs of repair, and business income losses sustained.

27. Plaintiff's total damages from the fire loss equal **\$295,868.06** principal.
28. Plaintiff is entitled to recover prejudgment interest from the June 9, 2004 date of fire loss at the statutory rate @ 12% on its principal damages stated in the prior paragraph.
29. Pre-judgment interest accrued from the June 9, 2004 date of fire loss through August 29, 2008 is the amount of **\$149,895.67**.
30. Upon a prior misunderstanding that Leishman Electric had no connection with the neon signs, Plaintiff pursued litigation only against Sign Pro. On or about August 9, 2006, Plaintiff reached a settlement with Sign Pro wherein Sign Pro paid a certain sum to Plaintiff and Plaintiff provided Sign Pro with a release and indemnity agreement. A true and correct copy of the release and indemnity agreement is attached hereto as **Exhibit A**, and incorporated herein as if set forth fully. Said release does not provide for a reduction in the amount recoverable from other tortfeasors, and the full amount of Plaintiff's damages is potential recoverable against Leishman Electric pursuant to Idaho Code §§ 6-803 and 6-805.
31. Leishman Electric is liable to Plaintiff for the full amount of Plaintiff's damages multiplied by the percentage of its fault, which percentage shall be determined at trial, plus interest thereon from the date of the loss.
32. Plaintiff is entitled to recover costs of suit and reasonable attorney fees pursuant to I.C. §§ 12-120(3) and/or 12-121, or as otherwise allowed by law. If judgment is taken by default Plaintiff alleges that a reasonable attorney fee is \$50,000.00, or such other amount as the Court deems just and reasonable in the premises.

WHEREFORE, Plaintiff prays for entry of judgment against Defendant Leishman Electric as follows:

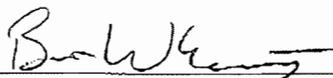
- A. For a money judgment in an amount to be determined at trial; and
- B. For an award of prejudgment interest at the statutory rate of 12% from the date of fire loss through the date of judgment;
- C. For an award of costs incurred;
- D. For an award of reasonable attorney fees, which shall be no less than \$50,000.00 if judgment is entered by default, or such other amount as the Court deems just and reasonable in the premises; and
- E. For such other relief as the Court deems just in the premises.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED this 29th day of August, 2008.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

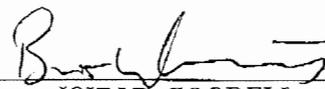
By: 
FOR JOHN R. GOODELL
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29 day of August, 2008, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Gary L. Cooper
COOPER & LARSEN, CHARTERED
151 N. 3rd Ave., Ste. 210
P. O. Box 4229
Pocatello, ID 83205-4229
Fax: 235-1182

- U. S. Mail
Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile


OR JOHN R. GOODELL

RELEASE AND INDEMNITY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, Brian Larsen, as agent and officer of BRIAN AND CHRISTIE, INC., an Idaho corporation, and d/b/a TACO TIME, an assumed business name, being of lawful age, for the sole consideration of ONE HUNDRED EIGHTY SEVEN THOUSAND FOUR HUNDRED FIVE and NO /100 DOLLARS (\$187,405.00), to the undersigned, receipt of which is hereby acknowledged, does hereby and for its executors, administrators, agents, partners, shareholders, directors, officers, employees, successors and assigns, and insurers, including but not limited to Allied Insurance Company, release, acquit and forever discharge SIGN PRO OF SOUTHEAST IDAHO, INC., an Idaho corporation, and d/b/a and/or as successor-in-interest to SIGN PRO, INC., an Idaho corporation, and/or SIGN PRO, an unknown entity, its executors, administrators, agents, partners, shareholders, directors, officers, employees, representatives, successors, insurers and indemnitors of and from any and all claims, causes of action, demands, rights, damages, costs, loss of revenue, expenses and compensation whatsoever, which the undersigned now has or which may hereafter accrue on account of, or in any way grow out of any and all known and unknown, foreseen and unforeseen damage and the consequences thereof resulting or to result from that certain incident, casualty or event which forms the subject matter of undersigned's First Amended Complaint in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Madison, Civil No. CV-05-884.

It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the parties hereby released, and that said releasees deny liability therefor and intend merely to avoid litigation and buy their peace.

Although this release discharges all liability between the undersigned and the parties herein released, it is understood that the undersigned may have claims against other persons or entities arising out of, or resulting as a consequence of the above-recited event which are not resolved by this instrument. It is acknowledged by undersigned that it is the intent and agreement of undersigned to discharge releasees herein from all liability to undersigned, and also all liability, if any, for contribution or indemnification to all other persons or entities, if it is determined that releasees were acting in concert with, or as agent of, any other person or entities against which the undersigned may pursue claims.

To give effect to such intention, and in the event it is determined releasees were joint tortfeasors with other persons or entities as respects the damages sustained by undersigned as a result of the aforementioned event, undersigned hereby releases that portion or share of the cause of action which undersigned has against releasees and discharges all damages attributable to releasees.

RELEASE AND INDEMNITY AGREEMENT

FIRST AMENDED COMPLAINT AND DEMAND
FOR JURY TRIAL
PAGE 298

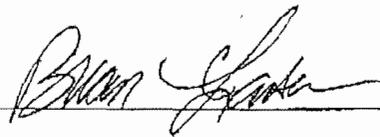
**PLAINTIFF'S
EXHIBIT**

The undersigned further agrees to save harmless and indemnify said releasees, their representatives, agents, employees, servants, insurers and all persons, associations and corporations acting for, by or through, or in any way on behalf of said releasees from any claims, demands or actions against the parties released hereby arising, to arise or which may arise out of or by reason of the incident recited herein.

In the event the undersigned initiates or further pursues a claim or complaint for the damages sustained by undersigned as a result of the above-recited event, against any other person or entity and that person or entity institutes a claim, complaint or legal action for contribution or indemnity against releasees herein, the undersigned will faithfully, diligently and in a workmanlike manner assume and undertake the defense of releasees in such action and undersigned further stipulates and agrees that it will, at its sole cost, assume and bear all legal expense, costs, attorney fees and all costs of litigation that said releasees may incur in the defense of any suit or claim for contribution or indemnity.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

DATED this 08 day of September, 2006.



Brian Larsen
Agent and Officer for
BRIAN AND CHRISTIE, INC.

APPROVED:

RACINE, OLSON, NYE, BUDGE & BAILEY

By 
_____ John R. Goodell
Attorneys for Plaintiff

STATE OF IDAHO)
County of Madison) SS.

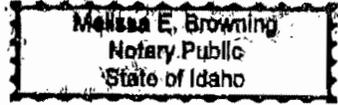
On this 8th day of September, 2006, before me the undersigned, a Notary Public in and for said State, personally appeared **Brian Larsen**, known to me or identified to me to be the person whose name is subscribed to the within and foregoing instrument, and

RELEASE AND INDEMNITY AGREEMENT

FIRST AMENDED COMPLAINT AND DEMAND
FOR JURY TRIAL
PAGE 299

acknowledged to me that he executed the same as an agent and officer for BRIAN AND CHRISTIE, INC.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Melissa E. Browning

NOTARY PUBLIC FOR IDAHO
Residing *Boise* at:

My Commission Expires: 12/17/09

FIRST AMENDED COMPLAINT AND DEMAND
FOR JURY TRIAL
PAGE 300

RELEASE AND INDEMNITY AGREEMENT

Date: 12/2/2008

Seventh Judicial District Court - Madison County

User: GWEN

Time: 02:36 PM

Minutes Report

Page 2 of 2

Case: CV-2006-0000826

Brian and Christie, Inc., an Idaho Corp vs. Leishman Electric, Inc, etal.

Selected Items

Hearing type:	Motion	Minutes date:	09/16/2008
Assigned judge:	Brent J. Moss	Start time:	10:44 AM
Court reporter:	David Marlow	End time:	12:00 AM
Minutes clerk:	Angie Wood	Audio tape number:	

Parties: Brian and Christie, Inc., an Idaho Corp; Goodell, John
Leishman Electric, Inc; Cooper, Gary

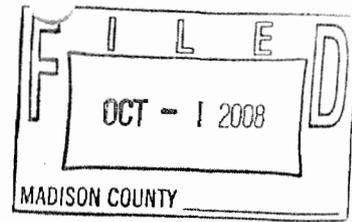
Tape Counter: 1044 J INTRO

MR. GOODELL MAKE REMARKS TO COURT

MR. COOPER ARGUES HIS MOTION FOR RECONSIDERATION

MR. GOODELL RESPONDS

Tape Counter: 1106 IF RULING MAINTAINS DECISIONS MR. GOODELL WILL SEEK CERTIFICATION TO
SUBMIT TO SUPREME COURT



**THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, MADISON COUNTY**

BRIAN AND CHRISTIE, INC., an Idaho
Corporation, and dba *TACO TIME*, an assumed
business name,

Plaintiff,

vs.

LEISHMAN ELECTRIC, INC., an Idaho
Corporation; and *JOHN DOES 1-10*,

Defendants.

Case No.: **CV-06-826**

*MEMORANDUM DECISION on
PLAINTIFF'S MOTION TO RECONSIDER*

CASE HISTORY

In October of 2007, this Court issued a Memorandum Decision citing the “economic loss rule” as a bar to negligence claims against the defendant for property damage arising from the subject of the transaction. The Court declined to dismiss other claims holding that other property damage, not the subject of the transaction, would not be subject to the economic loss rule. The parties then attempted to mediate the dispute but that mediation was unsuccessful because it was unclear, based on this Court’s prior ruling, how to differentiate between property damage which was subject of the transaction and that property that was not.¹ Plaintiff has now filed a “Motion for Reconsideration.”

¹ Brian Larsen’s second affidavit of April, 2008, illustrates the difficulty of attempting to parse the building/restaurant into portions that were actually being remodeled and portions that were not. This affidavit reveals that the building and the remodeling are an “integrated whole”, and that it was the building/restaurant as an integrated whole that was the “subject of the transaction.”

Plaintiff argues that “the Court’s ‘economic loss’ ruling and application is erroneous as a matter of law given the undisputed facts ... in this case.”² In support of that position, Plaintiff argues that the installation of the neon signage via contract with Sign Pro was a separate and distinct “transaction ... from the building remodel contract ... with the general contractor, who hired Leishman for the electrical subcontract portion of the building remodel to re-wire the building.” Thus, Plaintiff concludes, Defendant is liable in tort for other portions of the restaurant damaged by the fire and that the Court erred by lumping these transactions together.³

Defendant responds by reiterating that all damages claimed by Plaintiff constitute economic losses barred by the economic loss rule. Defendant also argues that if the Court reconsiders its prior ruling, it should dismiss Plaintiff’s action in its entirety.

The pending motion was argued before the Court, and both parties submitted additional affidavits, depositions, and memoranda to support their respective positions. This Court has reviewed the entire file and Idaho’s cases on the economic loss rule, and holds that its prior ruling was erroneous because Plaintiff’s damage claims do not survive application of the economic loss rule.⁴

DISCUSSION

The economic loss rule precludes parties to commercial transactions from seeking recovery of purely economic loss in a negligence action, except when there is damage “to property *other than that which is the subject of the transaction.*” *Bland v. Richard B. Smith, Inc.*, 141 Idaho 296, 300, 108 P.3d 996 (2005), quoting: *Salmon River Sportsman Camps v. Cessna Aircraft Company*, 97 Idaho 348, 351, 544 P.2d 306 (1975). (emphasis added). “[T]he word ‘transaction,’ for the purpose of the economic loss rule, does not mean a business deal—it means the subject of the lawsuit. It is the subject of the transaction that determines whether a loss is property damage or economic loss, not the

² Motion for Reconsideration at p. 1.

³ See Motion for Reconsideration at pp. 2-3.

⁴ This Court, in its earlier decision, erroneously attempted to parse damages between the portions of the building, and its contents, that were directly subject to the remodeling and those portions that were not subjected to actual work then being conducted on the restaurant.

status of the party being sued.” *Blahd*, 141 Idaho at pp. 300, 301. Here, the economic loss rule precludes any recovery from the Defendant based on negligence.

All of Plaintiff’s damage claims arise from restaurant property damaged by the fire, and such damages constitutes economic loss. Plaintiff acknowledges that the installation of the signs by Sign Pro was part of the extensive remodel project undertaken in 1998/1999. Plaintiff had no relation with Defendant during this project as Defendant was hired by the general contractor to re-wire the building in connection with the remodel. The various components of the remodeling, including electrical rewiring, installation of the signs, and other building improvements were wholly integrated into the building, not separate or apart from it. These improvements were of necessity integrated with the existing building to better facilitate the purpose for which the building was used, a restaurant.

It is the restaurant/building, not the services provided via remodeling, that was the subject of the transaction; and it was the building, its contents, and the profits derived from the building’s use that were damaged by the fire. Plaintiff’s damage claims do not relate to any property “other than that which is the subject of the transaction.” *See e.g., Blahd, supra; Ramerth v. Hart*, 133 Idaho 194, 196-97, 983 P.2d 848 (1999); *Duffin v. Idaho Crop Improvement Association*, 126 Idaho 1002, 1006-1008, 895 P.2d 1195 (1995); *Tusch Enterprises v. Coffin*, 113 Idaho 37, 49-51, 740 P.2d 1022 (1987).

Plaintiff is barred, by application of the economic loss rule, from seeking any recovery from the defendant on the basis of negligence. This Court cannot find anything in the record supporting an exception to the application of the rule, but also notes that Plaintiff’s remedies via contract, warranty, etc., are unaffected by this ruling.

CONCLUSION

Based on the foregoing, and being fully advised in the premises, Plaintiff’s complaint against defendant is *DISMISSED*. Plaintiff’s Motion to Amend its complaint is also *DENIED* as it is also based strictly on allegations of Defendant’s negligence.

IT IS SO ORDERED.

Dated this 30 day of September 2008

Brent J. Moss,
District Judge

Brent J. Moss

CERTIFICATE OF SERVICE

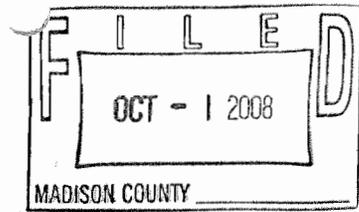


I hereby certify that I served a true and correct copy of this Memorandum Decision on each attorney of record.

Dated this 1 day of October 2008

A Wood

Deputy Clerk.



THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, MADISON COUNTY

BRIAN AND CHRISTIE, INC., an Idaho
Corporation, and dba *TACO TIME*, an assumed
business name,

Plaintiff,

vs.

LEISHMAN ELECTRIC, INC., an Idaho
Corporation; and *JOHN DOES 1-10*,
Defendants.

Case No.: CV-06-826

JUDGMENT OF DISMISSAL

This Court, having rendered its Memorandum Decision on Plaintiff's Motion to Reconsider, *NOW THEREFORE*,

IT IS HEREBY ORDERED:

1. Plaintiff's complaint is precluded by the economic loss rule and is, therefore, *DISMISSED*.
2. Defendant is awarded its costs.

Dated this 1st day of October 2008

Brent J. Moss,
District Judge

Brent J. Moss



CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document on each of the individuals named below in the manner specified:

John R. Goodell
P. O. Box 1391
Pocatello, ID 83204-1391

Facsimile
 Regular Mail
 Hand Delivered

Gary L. Cooper
P.O. Box 4229
Pocatello, ID 83205-4229

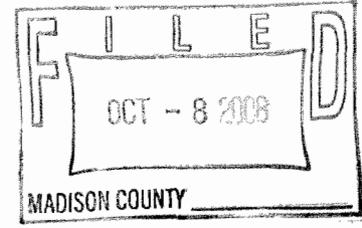
Facsimile
 Regular Mail
 Hand Delivered

Dated this 1 day of October, 2008.

A Wood

Deputy Clerk of Court.

Gary L. Cooper - Idaho State Bar #1814
 COOPER & LARSEN, CHARTERED
 151 North Third Avenue, Suite 210
 P.O. Box 4229
 Pocatello, ID 83205-4229
 Telephone: (208) 235-1145
 Facsimile: (208) 235-1182



Counsel for Defendant Leishman Electric, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

BRIAN AND CHRISTIE, INC., an Idaho)
 corporation, and dba TACO TIME, an)
 assumed business name,)
)
 Plaintiff,)
)
 vs.)
)
 LEISHMAN ELECTRIC, INC., an)
 Idaho corporation; and JOHN DOES 1-10,)
)
 Defendants.)
 _____)

CASE NO. CV-06-826

**AFFIDAVIT OF GARY L. COOPER
 IN SUPPORT OF AWARD OF COSTS
 INCLUDING DISCRETIONARY
 COSTS**

STATE OF IDAHO)
 :ss
 County of Bannock)

GARY L. COOPER, being first duly sworn on oath, deposes and states as follows:

1. Your affiant is the attorney for the Defendant Leishman Electric, Inc., and makes this Affidavit of his own personal knowledge.
2. Leishman Electric, Inc. was named as a defendant in a lawsuit filed by Brian and Christie, Inc. dba Taco Time on September 29, 2006.

3. Leishman Electric, Inc. is the prevailing party in this litigation due to the fact that this Court granted it summary judgment, dismissed Plaintiff's Complaint and awarded Defendant Leishman Electric, Inc. its costs in an Order dated October 1, 2008.
4. On April 8, 2008, Plaintiff Brian and Christie, Inc. dba Taco Time filed a Motion for Summary Judgment supported with Affidavits of a forensic engineering expert (Michael Higgins), a certified fire investigator (Jake Jacobsen) and another forensic engineering expert (Scott Kimbrough) in which said experts testified by affidavit that Leishman Electric violated the National Electrical Code and rules and regulations administered by the Idaho Division of Building Safety. It was absolutely necessary that Leishman Electric hire an expert to rebut the claims of these experts. The undersigned on behalf of Leishman Electric hired Paul Moore of MDE, Inc. who is a well-qualified electrical engineer to rebut these claims. These costs were exceptional and reasonably incurred, at least at that stage of the proceedings which was in advance of the expert witness disclosures which were not due in this case until February of 2009. These costs were exceptional because Plaintiff brought and pursued a Motion for Summary Judgment on liability which was clearly unwarranted under the facts and law applicable to this case. There were clearly questions of fact which existed which resulted in the denial of the Motion and a determination by this Court that the Motion was "premature." Defendant Leishman Electric submits that the expenses incurred in hiring an electrical engineer to rebut the three experts hired by the Plaintiffs to pursue an unwarranted Motion for Summary Judgment on liability and damages qualify as exceptional, necessary and reasonably incurred.

5. Defendant Leishman Electric, Inc. participated in mediation in this case on July 30, 2008, following which an Offer of Judgment for \$40,000 was filed on behalf of Defendant Leishman Electric, Inc. Plaintiff failed and refused to accept said offer. It is submitted that the expenses incurred by or on behalf of Defendant Leishman Electric, Inc. for a mediator in a failed mediation were exceptional, necessary and reasonably incurred and should be awarded as discretionary costs.
6. In connection with taking the deposition of one of Plaintiff's Defendant Leishman Electric, Inc. forensic engineering experts, Michael Higgins, it was determined that it was less expensive for Defendant's counsel to travel to Denver to take the deposition than to pay Michael Higgins to travel to Rexburg for the deposition. Counsel for Defendant incurred travel expenses of \$590.18 for airfare, hotel and rental car to attend the deposition. Because this decreased the overall expense for the deposition of Plaintiff's expert, the expenses are exceptional, necessary and reasonably incurred and should be awarded as discretionary costs.

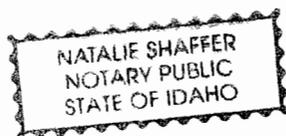
DATED this 7 day of October, 2008.

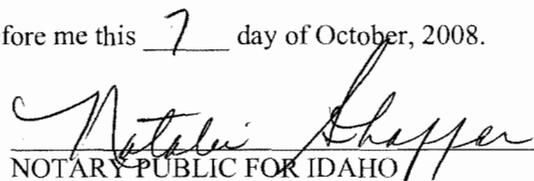


GARY L. COOPER

SUBSCRIBED AND SWORN to before me this 7 day of October, 2008.

(SEAL)





NOTARY PUBLIC FOR IDAHO
Residing at Inkom
My commission expires: 1/29/09

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of October, 2008, I served a true and correct copy of the foregoing to:

John Goodell & Brent Whiting
Racine Olson Nye Budge & Bailey, Chtd
P. O. Box 1391
Pocatello, ID 83204-1391

- U.S. mail
- Express mail
- Hand delivery
- Fax: 232-6109



GARY L. COOPER

AFFIDAVIT OF GARY L. COOPER IN SUPPORT OF AWARD OF
COSTS INCLUDING DISCRETIONARY COSTS
PAGE 312

Gary L. Cooper - Idaho State Bar #1814
COOPER & LARSEN, CHARTERED
151 North Third Avenue, Suite 210
P.O. Box 4229
Pocatello, ID 83205-4229
Telephone: (208) 235-1145
Facsimile: (208) 235-1182

Counsel for Defendant Leishman Electric, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

BRIAN AND CHRISTIE, INC., an Idaho)
corporation, and dba TACO TIME, an)
assumed business name,)

CASE NO. CV-06-826

Plaintiff,)

NOTICE OF SERVICE

vs.)

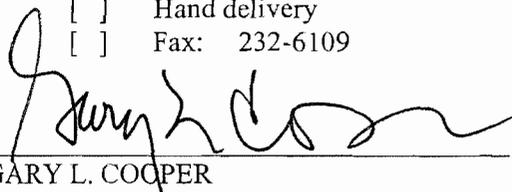
LEISHMAN ELECTRIC, INC., an)
Idaho corporation; and JOHN DOES 1-10,)

Defendants.)

COMES NOW Defendant Leishman Electric, Inc., by and through its counsel of record,
pursuant to Rule 68 of the Idaho Rules of Civil Procedure, and hereby gives notice to the Court that
an *Offer of Judgment* was served upon counsel, together with a copy of this *Notice of Service*,
postage prepaid, on the 30th day of July, at the following address:

John Goodell
Racine Olson Nye Budge & Bailey, Chtd
P. O. Box 1391
Pocatello, ID 83204-1391

U.S. mail
 Express mail
 Hand delivery
 Fax: 232-6109

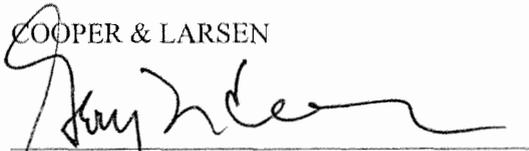


GARY L. COOPER

authority to sign this offer of judgment on behalf of said Defendant.

DATED this 30th day of July, 2008.

COOPER & LARSEN



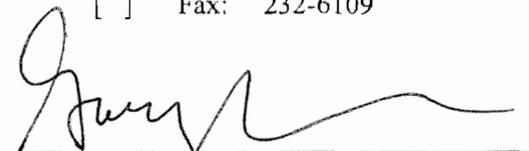
GARY L. COOPER

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 2008, I served a true and correct copy of the foregoing to:

John Goodell
Racine Olson Nye Budge & Bailey, Chtd
P. O. Box 1391
Pocatello, ID 83204-1391

U.S. mail
 Express mail
 Hand delivery
 Fax: 232-6109



GARY L. COOPER

AFFIDAVIT OF GARY L. COOPER IN SUPPORT OF AWARD OF
COSTS INCLUDING DISCRETIONARY COSTS
PAGE 316

Madison County Clerk
6170 · Filing Fees

Filing Fee / 06-111.04 Brian Christie, Inc v Leishman
3/21/2007

19280

58.00

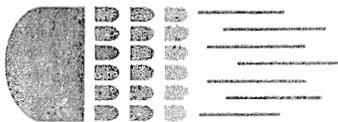
PAYMENT
RECORD

Cash in Bank

06-111.04 Brian Christie, Inc v Leishman Elec

58.00

 DELUXE BUSINESS FORMS 1-800-328-0304 www.deluxeforms.com



T&T Reporting

Certified Court Reporters
P.O. Box 51020
Idaho Falls, Idaho 83405-1020
208.529.5491

TO:

Gary L. Cooper, Esq.
COOPER & LARSEN, CHARTERED
151 North Third Avenue, Suite 210
PO Box 4229
Pocatello, Idaho 83205-4229

August 9, 2007

Invoice# 6027A

Balance: \$119.52

Re: Brian & Christie Inc v. Leishman Electric
Leishman, Bron/Scott
on 08/07/07 by Dick Telford

Invoicing Information

<u>Charge Description</u>	<u>Amount</u>
Certified Copy: Scott Leishman Exhibits - none	45.00
Certified copy: Bron Leishman Exhibits - none	61.20
E-Transcript ---- Complimentary with order	
Shipping & Handling	6.95
2.00% per month on unpaid balance	
6.0000% Sales Tax:	6.37

P l e a s e R e m i t - - - > T o t a l D u e : \$ 1 1 9 . 5 2

Visa - MasterCard - Discover - American Express
EIN 72-1526406 - Write Invoice # on Remittance

Return copy of statement with payment to insure proper credit
2.00% per month charged on accounts not paid within 40 days

Alan Caine
6050 - Fees-Other Costs

06-111 Taco Time v Leishman Elec / Witness Fee

12/17/2007

20782

20.00

Cash in Bank

Witness Fee

20.00

 DELUXE BUSINESS FORMS 1-800-328-0304 www.deluxeforms.com



Agren • Blando Court Reporting & Video, Inc.

216 - 16th Street, Suite 650 • Denver, Colorado 80202 • 303-296-0017 • Fax: 303-296-0203 • 1-800-739-4846
www.agren.com

Invoice No. 013008-030

Terms: Net 30

Invoice Date: 01/30/2008
Tax ID: 84-1334569

BILLING	DELIVERY
----------------	-----------------

Attention: ACCOUNTS PAYABLE Client: GARY L COOPER ESQ Firm Name: LAW OFFICES OF COOPER & LARSEN Address1: 151 N 3RD AVE Address2: STE 210 City: POCATELLO State: ID Zip: 83205-4229	Client: GARY L COOPER ESQ Firm Name: LAW OFFICES OF COOPER & LARSEN Address1: 151 N 3RD AVE Address2: STE 210 City: POCATELLO State: ID Zip: 83205-4229
--	---

Deponent: MICHAEL C HIGGINS Volume: 1 Date Taken: 01/22/2008
Case: BRIAN AND CHRISTIE VS. LEISHMAN ELECTRIC

TOTAL	\$885.76
(Paid)	
BALANCE	\$885.76

Please remember to include your remittance copy with payment. Interest is applied to open balances beyond 30 days at the rate of 1.5% per 30 days.

Thank you for allowing us to service your litigation needs.

Special Notes:

AFFIDAVIT OF GARY L. COOPER IN SUPPORT OF AWARD OF COSTS INCLUDING DISCRETIONARY COSTS
PAGE 320

06-111

Method of Payment:

Check Enclosed

Charge my credit card: VISA Mastercard AMEX

Credit card # Exp Date

Signature (as it appears on your card)

Printed name (as it appears on your card)

Daytime phone

Higgins & Associates, Inc.
16474 Willow Wood Court
Morrison, CO 80465
Phone 303-972-4300 Fax 303-972-1134
Tax I.D. No.: 84 -1535241

January 30, 2008

Invoice Number 2497

Gary L. Cooper, Esq.
Cooper & Larsen, Chartered
P.O. Box 4229
Pocatello ID 83205-4229

Re: Taco Time Restaurant - Deposition
274 South 2nd West
Rexburg, Idaho 83440
Date of loss: June 9, 2004
Brian & Christie, Inc., DBA Taco Time
v Leishman Electric, Inc.
Case No.: CV-06-826
Our Job 2464.06

Professional Services

	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
1/22/2008 MH Deposition	260.00/hr	6.00	1,560.00
For professional services rendered		6.00	\$1,560.00

Additional Charges :

	<u>Price</u>	<u>Qty</u>	
Total Mileage	0.60	42	25.20
Parking	16.00	1	16.00
Total for additional charges			\$41.20
TOTAL AMOUNT OF THIS INVOICE			\$1,601.20

Payment is due within 30 days of invoice. A late fee/interest of 1.5% per month will be charged on accounts past due. After 90 days, the client shall also be responsible for costs for collection, and a lien against the subject property may be filed.

06-111



**Court Reporting
Service, Inc.**
Fed Id No. 82-0298125

Boise, Idaho
421 W. Franklin Street
P.O. Box 2636 83701-2636
208 345-9611
208 345-8800 (fax)
email m-and-m@qwest.net

SOUTHERN OFFICES
1 800 234-9611

Twin Falls, Idaho
208 734-1700
Pocatello, Idaho
208 232-5581
Ontario, Oregon
541 881-1700

NORTHERN OFFICES
1 800 879-1700

Coeur d'Alene, Idaho
208 765-1700
Spokane, Washington
509 455-4515

Billed: 1/2008

Billed to : Gary L. Cooper
Cooper & Larsen
151 North Third Avenue, Suite 210
P.O. Box 4229
Pocatello ID 83205-4229

JOB INFORMATION (16623B4)

Invoice # 21945B5

Case: Brian and Christie, Inc. v. Leishman Electric

Taken: 1/17/2008

Witness : Al Caine (**Orig. & 1 copy**)

Location : Division of Building Safety
1090 E. Watertower
Meridian, ID

06-111

Amount Due: \$778.86

(Return bottom portion with check)



DATE	INVOICE #
5/16/08	8961D-7

BILL TO
Gary L. Cooper Cooper & Larsen PO Box 4229 Pocatello, ID 83205-4229

INVOICE

TERMS
Net 30

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
5/16/08	RE: TACO TIME File# 910-31451 Claim# 910.31451 DOL 6/9/04 Deposition	2	250.00	500.00

AFFIDAVIT OF GARY L. COOPER IN SUPPORT OF AWARD OF COSTS INCLUDING DISCRETIONARY COSTS
PAGE 323

06-111-1

Tax ID #87-0431453, for corporate name: Motion Research Associates dba MRA Forensic Sciences
Terms: Net 30 days, 1 1/2% per month thereafter

Total	\$500.00
--------------	-----------------

125 West Burton Ave. • Salt Lake City, Utah 84115 • (801) 746-1145 • Fax (801) 746-1170
800.747.6820

INVOICE



CITICOURT
THE REPORTING GROUP

170 South Main Street, Suite 300, Salt Lake City, UT 84101
TOLL FREE: 877.532.3441 PH: 801.532.3441 FAX: 801.532.3414

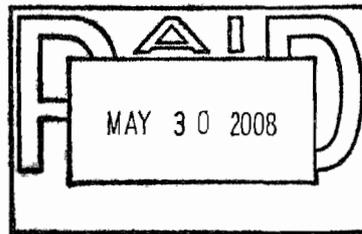
Gary L. Cooper
Cooper & Larsen
151 North 3rd Avenue, Suite 210
Pocatello, ID 83205

Invoice No.	Invoice Date	Job No.
25545	5/28/2008	18557
Job Date	Case No.	
5/15/2008	CV-06-826	
Case Name		
Brian and Christie vs. Leishman Electric		
Payment Terms		
Net 30, 1.5% per mo. plus fees		

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:

Scott Kimbrough	500.95
Full Day Appearance Fee	150.00
TOTAL DUE >>>	\$650.95

COMPLIMENTARY CONDENSED TRANSCRIPT
Thank you for using CitiCourt.



Tax ID: 87-0661285

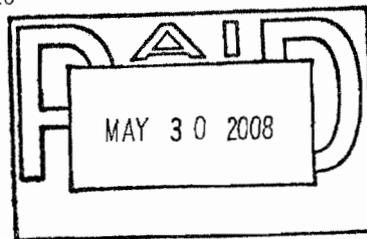
Phone: 208-235.1145 Fax:208-235.1182

Please detach bottom portion and return with payment.

Gary L. Cooper
Cooper & Larsen
151 North 3rd Avenue, Suite 210
Pocatello, ID 83205

Job No. : 18557 BU ID : 1-CITI
Case No. : CV-06-826
Case Name : Brian and Christie vs. Leishman Electric

Invoice No. : 25545 Invoice Date : 5/28/2008
Total Due : \$ 650.95



Remit To: **CitiCourt, LLC**
170 South Main, Suite 300
Salt Lake City, UT 84101

AFFIDAVIT OF GARY L. COOPER IN SUPPORT OF AWARD OF
COSTS INCLUDING DISCRETIONARY COSTS
PAGE 324

PAYMENT WITH CREDIT CARD



Cardholder's Name: _____
 Card Number: _____
 Exp. Date: _____ Phone#: _____
 Billing Address: _____
 Zip: _____ Amount to Charge: _____
 Cardholder's Signature: _____

INVOICE



CITICOURT
THE REPORTING GROUP

170 South Main Street, Suite 300, Salt Lake City, UT 84101
TOLL FREE: 877.532.3441 PH: 801.532.3441 FAX: 801.532.3414

Gary L. Cooper
Cooper & Larsen
151 North 3rd Avenue, Suite 210
Pocatello, ID 83205

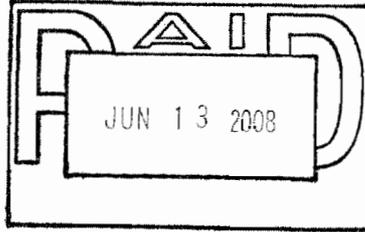
Invoice No.	Invoice Date	Job No.
25753	6/11/2008	18988
Job Date	Case No.	
6/3/2008	CV-06-826	
Case Name		
Brian and Christie vs. Leishman Electric		
Payment Terms		
Net 30, 1.5% per mo. plus fees		

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:

Robert "Jake" Jacobsen	618.05
Half Day Appearance Fee	75.00

TOTAL DUE >>> \$693.05

COMPLIMENTARY CONDENSED TRANSCRIPT
Thank you for using CitiCourt.

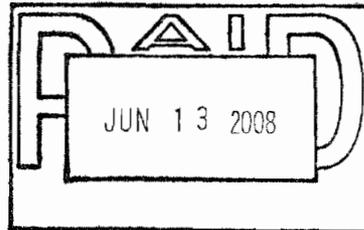


Tax ID: 87-0661285

Phone: 208-235.1145 Fax: 208-235.1182

Please detach bottom portion and return with payment.

Gary L. Cooper
Cooper & Larsen
151 North 3rd Avenue, Suite 210
Pocatello, ID 83205



Job No. : 18988 BU ID : 1-CITI
Case No. : CV-06-826
Case Name : Brian and Christie vs. Leishman Electric
Invoice No. : 25753 Invoice Date : 6/11/2008
Total Due : \$ 693.05

Remit To: **CitiCourt, LLC**
170 South Main, Suite 300
Salt Lake City, UT 84101

AFFIDAVIT OF GARY L. COOPER IN SUPPORT OF AWARD OF
COSTS INCLUDING DISCRETIONARY COSTS
PAGE 325

PAYMENT WITH CREDIT CARD



Cardholder's Name: _____
Card Number: _____
Exp. Date: _____ Phone#: _____
Billing Address: _____
Zip: _____ Amount to Charge: _____
Cardholder's Signature: _____

BURN PATTERN ANALYSIS, INC.

P.O. BOX 571307
Salt Lake City, UT 84157-1307
(801) 746-1142

INVOICE

TERMS NET CASH 10 DAYS
July 10, 2008

FED I.D. # 87-0552116
Invoice # 28-2-2392

Gary Cooper, Attorney
Cooper and Larsen Chartered
151 North 3rd Ave, Suite 210
Pocatello, ID 83205-4229

Re: Taco Time
Date of Loss: 06-09-04
District Court Case #: CV-06-826
Our File #: 24-2392 SL

PROFESSIONAL SERVICES

Fire litigation case, scene photography duplication, deposition and follow-up, billing.

<u>1.0</u> hours at \$150.00 / hr.	\$ 150.00
_____ hours travel time at \$65.00 / hr.	\$ N/C
1/2 Day Deposition (1/2 day rate)	\$ 700.00

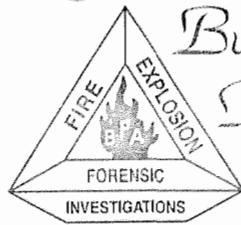
Expenses

Mileage – _____ miles at \$.70 / mile	\$ N/C
Photographs <u>104</u> mounted at \$2.00 each	\$ 208.00
<u>69</u> loose at \$0.00 each	\$ 69.00
_____ digital at \$ 0.50 each	\$ N/C
Fire/Police Reports	\$ N/C
Billing & Clerical	\$ 44.00

Total Expenses	\$ 321.00
Total Due	\$ 1,171.00

THANK YOU!

PAST DUE ACCOUNTS SUBJECT TO A 1-1/2 % PER MONTH FINANCE CHARGE



*Burn
Pattern
Analysis, Inc.*

"Our Expertise Could Be Your Best Protection"

July 10, 2008

Gary Cooper, Attorney
Cooper and Larsen Chartered
151 North 3rd Ave, Suite 210
Pocatello, ID 83205-4229

Re: Taco Time
Date of Loss: 06-09-04
District Court Case #: CV-06-826
Our File #: 24-2392 SL

Dear Mr. Cooper,

Pursuant to the taking of my deposition, and the requests made at that time, I am preparing the photographs, mounted with the narration as you requested. I'm also providing you with 69 loose photographs that were not mounted in my report which contained 104 photographs.

Additionally you've requested that I forward the invoice to you, for payment. Typically, I pre-bill my deposition fees, but due to time constrains, that was not possible. Therefore, they are enclosed with my invoice.

Please feel free to contact me or Mr. Goodell with questions or concerns that you may have in this matter.

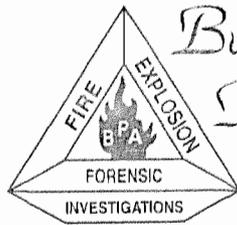
Sincerely,


Robert "Jake" Jacobsen, IAAI-C.F.I.
BURN PATTERN ANALYSIS, INC.

Enclosures: Invoice # 28-2-2392
Rates Sheet

cc: John Goodell, Attorney

AFIDAVIT OF GARY L. COOPER IN SUPPORT OF AWARD OF COSTS INCLUDING DISCRETIONARY COSTS
PAGE 327



Burn
Pattern
Analysis, Inc.

"Our Expertise Could Be Your Best Protection"

FEES/RATES SCHEDULE FOR ROBERT "JAKE" JACOBSEN, CFI *

Fire/Explosion Scene Investigation	\$ 125.00/hour
Case Consulting Time	\$ 150.00/hour
Travel Time	\$ 65.00 hour
Court/Deposition Time/Minimum Half-Day (includes proofreading and signing depositions)	\$ 700.00/half day
Court / Deposition Time / Full Day	\$ 1,200.00/full day
Mileage	\$.70/mile
Travel Expenses (I.e., Lodging, Car Rental, Air Fare, Meals and Other Expenses)	Actual Cost

PHOTOGRAPHY RATE SCHEDULE *

4 x 6 Photographs:

Mounted with/without Report	\$ 2.00/each
Loose with Report	No Charge
Loose Duplicates	\$ 1.00/each
Digital Images	\$.50 each
Video Taping and Duplication	\$ 25.00/tape

EVIDENCE STORAGE RATE SCHEDULE

	\$ 100.00/6 months small container
	\$ 200.00/6 months large pallet
	Special fee to be determined for larger items

*Evidence storage fees are billed in advance every six months.
At the time of rebilling, or when requested, the client is provided
an "Authorization to Destroy Evidence" form for signature, permitting
evidence disposal and elimination of payment for the advance billing.*

THIRD PARTY OR ADVERSE PARTY BILLING POLICY

*When performing services, including, but not limited to research,
depositions, document production, duplication (copies or photographs),
evidence review or production, consultation, shipping and handling, we
reserve the right to request prepayment of projected expenses
and/or a retainer prior to services or materials being rendered.*

All rates subject to change without prior notice.

12/07

AFIDAVIT OF GARY L. COOPER IN SUPPORT OF AWARD OF
COSTS INCLUDING DISCRETIONARY COSTS
PAGE 328

Private Law Office of Retired Judge

JAMES C. HERNDON

Practice Limited to Alternative Dispute Resolution Services

1055 Riverton Rd.
Blackfoot, ID 83221

Telephone (208) 785-0720
Cell (208) 680-3837
E-mail jherndon@ida.net

August 12, 2008

MEDIATION STATEMENT

Re: Brian and Christie, Inc., d/b/a Taco Time, Plaintiffs,
VS Leishman Electric, Inc., Defendant

Madison County Case No. CV-06-826

<u>Time/Description</u>	<u>Hr/Rate</u>	<u>Total</u>
9:00 AM - 1:30 PM Mediation	4.5 hrs @ \$175/hr	\$ 787.50
Written report to Court		N/C
Mileage		N/C
	TOTAL	\$ 787.50

John R. Goodell
Attorney for Plaintiffs \$ 393.75

Gary L. Cooper
Attorney for Defendant \$ 393.75

TOTAL \$ 787.50

REMIT TO:

MDE Inc.

700 South Industrial Way
Seattle, WA 98108-5231

INVOICE

D6-111.1

Cooper & Larsen
PO Box 4229
Pocatello, ID 83205-4229

Invoice number 45526
Date 6/10/2008

Contract: 017141-00
Brian & Christie v Leishman
Scope of Work: Attn: Gary Cooper
DOL: 6/10/2004

Customer ID: COO004

For Professional Services rendered through May 31, 2008

Labor

<u>Employee</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Douglas J. Barovsky			
<i>Consultation with P. Moore; discussed declaration, NEC and UL standard specific to case</i>	0.50	205.00	102.50
Paul J. Moore			
<i>Initial consultation; open casefile</i>	0.25	205.00	51.25
<i>Review file materials, including depositions</i>	1.00	205.00	205.00
<i>Review materials; research applicable codes and standards; consult w/Gary Cooper</i>	2.25	205.00	461.25
<i>Review discovery/depositions</i>	6.50	205.00	1,332.50
Labor subtotal	10.50		2,152.50

Reimbursable

<u>Activity</u>	<u>Date</u>	<u>Amount</u>
Standards/Manuals/Documents <i>PJM expense report</i>	5/31/2008	228.28
Reimbursable subtotal		228.28

AFFIDAVIT OF GARY L. COOPER IN SUPPORT OF AWARD OF COSTS INCLUDING DISCRETIONARY COSTS
PAGE 330

Terms: Net 20 days; 1.5% per month *Handling charge on all invoiced-at-cost items.
TO INSURE PROPER CREDIT, PLEASE REFERENCE ABOVE INVOICE NO. ON REMITTANCE

Employer Identification Number: 91-1185695 PHONE 206/622-2007 • FAX 206/622-2248

REMIT TO:

AIDE Inc.

700 South Industrial Way
Seattle, WA 98108-5231

INVOICE

Cooper & Larsen
PO Box 4229
Pocatello, ID 83205-4229

Invoice number 45526
Date 6/10/2008

Contract: 017141-00
Brian & Christie v Leishman

Customer ID: COO004

Invoice total

2,380.78

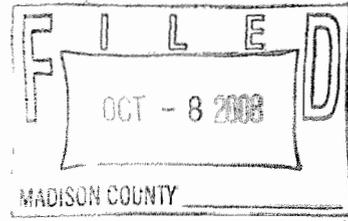
AFFIDAVIT OF GARY L. COOPER IN SUPPORT OF AWARD OF
COSTS INCLUDING DISCRETIONARY COSTS
PAGE 331

Page 2 of 2

Terms: Net 20 days; 1.5% per month *Handling charge on all invoiced-at-cost items.
TO INSURE PROPER CREDIT, PLEASE REFERENCE ABOVE INVOICE NO. ON REMITTANCE

Employer Identification Number: 91-1185695 PHONE 206/622-2007 • FAX 206/622-2248

Gary L. Cooper - Idaho State Bar #1814
 COOPER & LARSEN, CHARTERED
 151 North Third Avenue, Suite 210
 P.O. Box 4229
 Pocatello, ID 83205-4229
 Telephone: (208) 235-1145
 Facsimile: (208) 235-1182



Counsel for Defendant Leishman Electric, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

BRIAN AND CHRISTIE, INC., an Idaho)
 corporation, and dba TACO TIME, an)
 assumed business name,)
)
 Plaintiff,)
)
 vs.)
)
 LEISHMAN ELECTRIC, INC., an)
 Idaho corporation; and JOHN DOES 1-10,)
)
 Defendants.)
 _____)

CASE NO. CV-06-826

MEMORANDUM OF COSTS

COMES NOW DEFENDANT LEISHMAN ELECTRIC, INC. pursuant to Rule 54(d)(1)

of the Idaho Rules of Civil Procedure and submits its memorandum of costs as follows:

COSTS AS A MATTER OF RIGHT [IRCP 54 (d) (1) (C)]:

- | | | | |
|-----|---|----|-------|
| (1) | Filing fees - Madison County Clerk (Answer) | \$ | 58.00 |
| (2) | Service fees | \$ | 0 |
| (3) | Non-party/non-expert witness fee | | |
| | (A) Al Caine | \$ | 20.00 |
| (4) | Travel expenses | \$ | 0 |

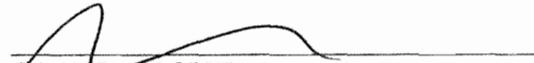
(5)	Certified copies	\$	0
(6)	Exhibit preparation	\$	0
(7)	Bond premium	\$	0
(8)	Expert fees (up to \$2,000)		
	(A) Michael Higgins (discovery deposition)	\$	1,601.20
	(B) Robert Jacobsen (discovery deposition)	\$	1,171.70
	(C) Scott Kimbrough (discovery deposition)	\$	500.00
(9)	Deposition reporting and transcribing		
	(A) Scott and Bron Leishman	\$	119.52
	(B) Michael Higgins	\$	885.76
	(C) Al Caine	\$	778.86
	(D) Scott Kimbrough	\$	650.95
	(E) Robert Jacobsen	\$	693.05
	TOTAL COSTS AS A MATTER OF RIGHT	\$	8,179.04

DISCRETIONARY COSTS [IRCP 54 (d) (1) (D)]

(1)	½ Mediation Fee (Ret. Judge James Herndon)	\$	393.75
(2)	Paul Moore, electrical engineer (MDE, Inc.)	\$	3,380.78
(3)	airfare, car and hotel in Denver for Higgins depo	\$	590.18
	TOTAL DISCRETIONARY COSTS	\$	4,364.71

DATED this 7 day of October, 2008.

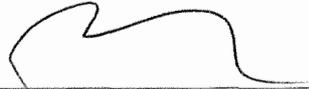
COOPER & LARSEN


GARY L. COOPER

VERIFICATION

The undersigned, Gary L. Cooper, certifies that the costs claimed are correct in amount and are being claimed in compliance with I.R.C.P. 54.

COOPER & LARSEN



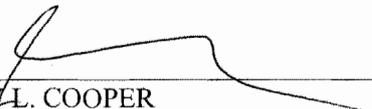
GARY L. COOPER

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of October, 2008, I served a true and correct copy of the foregoing to:

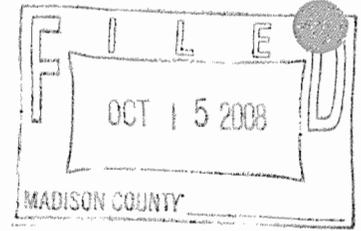
John Goodell & Brent Whiting
Racine Olson Nye Budge & Bailey, Chtd
P. O. Box 1391
Pocatello, ID 83204-1391

U.S. mail
 Express mail
 Hand delivery
 Fax: 232-6109



GARY L. COOPER

John R. Goodell (ISB#: 2872)
 Brent L. Whiting (ISB#: 6601)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109
 Email: jrg@racinelaw.net



Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF MADISON**

BRIAN AND CHRISTIE, INC., an Idaho)
 corporation, and d/b/a TACO TIME, as)
 assumed business name,)
)
 Plaintiff,)
)
 vs.)
)
 LEISHMAN ELECTRIC, INC., an)
 Idaho corporation; and "JOHN DOES 1-10,")
)
 Defendants.)
 _____)

Case No. CV-06-826

**PLAINTIFF'S OBJECTIONS AND
 MOTION TO DISALLOW COSTS**

COMES NOW Plaintiff, by and through counsel of record, and hereby submits the following
 Objections and Motion To Disallow Costs claimed by Defendant, Leishman Electric, Inc., pursuant
 to IRCP 54(d)(6), as follows:

Objection To All Costs:

1. The Court has granted summary judgment to Defendant solely on the narrow legal
 ground that the "economic loss" rule allegedly bars Plaintiff's claim as a matter of law. The legal
 ground and basis for the Court's ruling renders all factual issues immaterial and irrelevant. This

PLAINTIFF'S OBJECTIONS AND MOTION TO DISALLOW COSTS - Page 1

singular circumstance supports the conclusion that all discovery conducted, including the taking of any depositions, and the hiring of a defense expert witness, were totally unnecessary and not reasonably incurred; or were incurred for the purpose of harassment; or were incurred in bad faith; or were incurred for the purpose of unnecessarily increasing costs. Therefore all costs should be denied on one or more of such ground(s), pursuant to IRCP 54(d)(1)(C).

Additional Objection to Expert Fees Claimed As Costs:

2. Defendant seeks \$1,601.20 for “expert fees” of Michael Higgins. Review of the Higgins & Associates, Inc.’s 1/30/08 invoice #2497 relied on, attached to the Affidavit of Gary L. Cooper (Counsel’s Affidavit), evidences \$1,560.00 charged by such witness for expert fees. Plaintiff objects.

The remainder is mileage and parking expenses of \$41.20. The latter travel expenses are not “expert fees” contemplated by IRCP 54(d)(1)(C)(8), but rather travel expenses of counsel incidental to taking such deposition for which there is no right to recover and should be disallowed. No claim for such item as a “discretionary cost” is made by Defendant pursuant to IRCP 54(d)(1)(D) which are therefore waived.

3. Defendant seeks \$1,171.70 for “expert fees” of Robert Jacobsen. Review of Burn Pattern Analysis, Inc.’s 7/10/08 invoice #28-2-2392 relied on, attached to the Counsel’s Affidavit, evidences \$850 for professional services. Plaintiff objects.

The remainder is charges for duplicate original mounted and loose photographs, and billing and clerical expense, totaling \$321.00. The latter travel expenses are not “expert fees” contemplated by IRCP 54(d)(1)(C)(8), but rather “costs for preparation of . . . photographs,” pursuant to IRCP 54(d)(1)(C)(8).

PLAINTIFF’S OBJECTIONS AND MOTION TO DISALLOW COSTS - Page 2

However, Defendant fails to assert or establish that the same were “admitted in evidence as exhibits in a hearing or trial of the action” as required. Defendant makes no such showing in his Memorandum of Costs or supporting Counsel’s Affidavit of such admission.

Defendant does not even claim such costs of photographs as “exhibits” under subsection (6) of the rule, which they are, but rather claims them as “expert fees” under subsection (8) of the rule which they are clearly not. Failure to make such costs claim under the proper category for “exhibits” waives such costs.

Additional Objection to Deposition Expenses Claimed As Costs:

4. Defendant seeks costs for “deposition reporting and transcribing” for the taking of Scott Kimbrough’s deposition in the amount of \$650.95. Plaintiff objects.

Review of CitiCourt’s 5/28/08 invoice #25545 evidences that \$500.95 was the actual charge for the “original and 1 certified copy of transcript of Scott Kimbrough” deposition, pursuant to IRCP 54(d)(1)(C)(9, 10).

An additional “full day appearance fee” of \$150.00 was charged by the court reporter, which is not contemplated by the subsection of said rule.

Moreover, the 5/16/08 invoice #8961D-7 from MRA Forensic Sciences, which is the \$500 billing for Kimbrough’s expert fees indicates the deposition was only “2 hours,” although CitiCourt’s invoice purports to charge a “full day appearance fee.” Where the deposition was only 2 hours, a “full day appearance fee” is excessive and unreasonable.

5. Defendant seeks costs for “deposition and transcribing” for the taking of Robert “Jake” Jacobsen’s deposition in the amount of \$693.05. Plaintiff objects.

Review of CitiCourt’s 6/11/08 invoice #25753 evidences that \$618.05 was the actual charge

for the “original and 1 certified copy of transcript of Scott Kimbrough” deposition, pursuant to IRCP 54(d)(1)(C)(9).

An additional “half day appearance fee” of \$75.00 was charged by the court reporter, which is not contemplated by the subsection of said rule.

Additional Objection to “Discretionary Costs” Claimed:

6. Defendant seeks \$393.75 as one-half the mediation fees as “exceptional, necessary, and reasonably incurred and should be awarded as discretionary costs” per Counsel’s Affidavit. Plaintiff objects.

Defendant’s claim for costs for a mediator’s fee is a novel proposition. Plaintiff is aware of no legal authority to support such an award. Defendant submits none.

IRCP 54(d)(1)(D) nowhere refers to a mediator’s fees as an item of costs contemplated or recoverable under such rule.

A mediator’s fees are not “exceptional” or “necessary” costs incurred under IRCP 54(d)(1)(D). Rather, the parties simply voluntarily agree to participate in mediation as a means of pursuing possible settlement. A failed mediation does not warrant imposing costs, which amounts to a “penalty” to a non-settling party, regardless of the subsequent proceedings or ultimate outcome of the case. Such a rule is against the public policy of encouraging informal settlement and promoting voluntary mediation as a means to such end.

The “interests of justice” requirement of the rule is also not served by awarding such costs to Defendant and against Plaintiff given the disposition based solely on the “economic loss” rule.¹

¹While unclear, to the extent Defendant refers to IRCP 68 in support of such costs award, no costs were incurred after Defendant’s Offer of Judgment made after mediation occurred to support an award of any costs under IRCP 68. Further, Defendant does not appear to assert a

7. Defendant seeks an award of discretionary costs for hiring its own expert witness, Paul Moore, electrical engineer. Such costs are also not “exceptional,” but are routine given the nature of the case, i.e., electrical fire.

Such costs also were not “necessary” given the Court’s disposition of the case on the narrow and sole legal ground of the “economic loss” rule as a matter of law as stated above.

The “interests of justice” requirement of the rule is also not served by awarding such costs to Defendant and against Plaintiff given the disposition based solely on the “economic loss” rule.

Further, since Mr. Moore did not testify by deposition, his fees are not recoverable as a matter of right, as Defendant evidently concedes in claiming them only as an alleged “discretionary” cost.

8. Defendant seeks an award of discretionary costs for “airfare, car and hotel in Denver for Higgins depo.” Such costs are not “exceptional,” but are simply routine travel expenses of counsel and non-recoverable.

The “interests of justice” requirement of the rule is also not served by awarding such costs to Defendant and against Plaintiff given the disposition based solely on the “economic loss” rule.

9. Finally, at the final summary judgment hearing preceding this Court’s entry of judgment dismissing the case, the Court acknowledged that it struggled with the “economic loss” rule’s application and effect on the Plaintiff’s claims in this case. The colloquy between the Court and counsel discussed the possible certification of an appeal to obtain clarification of the application and effect of the “economic loss” rule in this case.

Evidently, in order to avoid the certification procedure (including the Supreme Court’s

claim for costs under IRCP 68; does not allege or establish any costs were incurred after the Offer of Judgment; and therefor has waived any cost claim on such basis.

PLAINTIFF’S OBJECTIONS AND MOTION TO DISALLOW COSTS - Page 5

potential refusal to grant certification), this Court elected to dismiss the entire case to enable such appeal as a matter of right. This ultimate result may be one which promotes judicial economy and avoids the necessity for an appeal following trial and possible reversal and remand for retrial given this Court's earlier ruling on the "economic loss" rule.

This Court's stated difficulty and uncertainty in determining the proper application of the "economic loss" rule and its effect, if any, in this case, underscores the fact that the interests of justice clearly do not support an award of costs to Defendant in this case.

CONCLUSION

Based on the foregoing, Plaintiff respectfully submits that Defendant's Memorandum of Costs should be denied in its entirety for the reasons stated above.

Alternatively, Plaintiff submits that Defendant's Memorandum of Costs should be denied in part based on the objections with respect to specific items of costs claimed for the reasons stated above.

DATED this 14th day of October, 2008.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

By: John R. Goodell
JOHN R. GOODELL
Attorneys for Plaintiff

PLAINTIFF'S OBJECTIONS AND MOTION TO DISALLOW COSTS - Page 6

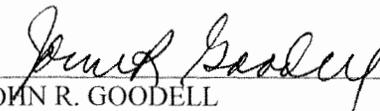
PLAINTIFF'S OBJECTIONS AND MOTION TO
DISALLOW COSTS
PAGE 340

CERTIFICATE OF SERVICE

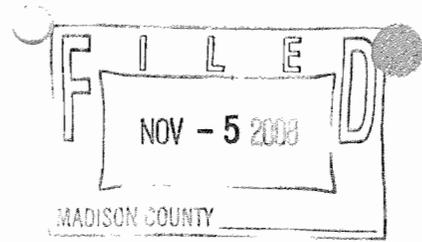
I HEREBY CERTIFY that on the 14th day of October, 2008, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Gary L. Cooper
COOPER & LARSEN, CHARTERED
151 N. 3rd Ave., Ste. 210
P. O. Box 4229
Pocatello, ID 83205-4229
Fax: 235-1182

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile



JOHN R. GOODELL



John R. Goodell (ISB#: 2872)
Brent L. Whiting (ISB#: 6601)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109
Email: jrg@racinelaw.net

Attorneys for Plaintiff/Appellant Brian and Christie, Inc. dba Taco Time

ORIGINAL

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MADISON**

BRIAN AND CHRISTIE, INC., an Idaho)
corporation, and d/b/a TACO TIME, as)
assumed business name,)

Case No. CV-06-826

Plaintiff/Appellant,)

NOTICE OF APPEAL

vs.)

LEISHMAN ELECTRIC, INC., an)
Idaho corporation,)

Defendant/Respondent,)

Fee Category/Amount: (T)(\$101)

and)

“JOHN DOES 1-10,”)

Defendants.)

TO: THE ABOVE NAMED RESPONDENT, LEISHMAN ELECTRIC, INC., AND THE
PARTY’S ATTORNEYS, GARY L. COOPER, COOPER & LARSEN, P. O. BOX 4229,
POCATELLO, ID 83205-4229; AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE OF APPEAL - Page 1

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, Brian and Christie, Inc., appeals against the above named Respondent to the Idaho Supreme Court from the final Judgment of Dismissal filed 10/1/08; Memorandum Decision On Plaintiff's Motion To Reconsider [and Plaintiff's Motion to Amend Complaint] filed 10/1/08; prior Memorandum Decision [Granting Partial Summary Judgment Re: "Economic Loss" Rule] filed 10/15/07; and Order awarding costs to be entered after entry of final judgment herein as a result of the hearing on costs heard 11/3/08, which rulings were entered in the above entitled action on the dates stated above by the Honorable Brent J. Moss, District Judge, presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgements or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1) and/or 11(a)(7), I.A.R.

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, include the following:

A. Does the "economic loss" rule bar recovery as a matter of law by a building/restaurant owner, against a licensed electrical contractor, whose negligent work causes an electrical fire, and resulting substantial property damage to a building and contents?

B. Is a plaintiff entitled to recovery 100% of damages sustained in an electrical fire without reduction for settlement proceeds recovered from another tortfeasor, under I.C. § 6-805 and the *Sani-Top* case?

C. Is a plaintiff entitled to recover prejudgment interest in a negligence action

NOTICE OF APPEAL PAGE 3

for cost or repairs to a building and replacement of contents?

4. Has an order been entered sealing all or any portion of the record? **NO.**

5. (a) Is a reporter's transcript requested?

YES.

(b) The appellant requests the preparation of the following portions of the reporter's transcript:

SEPTEMBER 16, 2008 HEARING ON PLAINTIFF'S MOTION TO RECONSIDER PARTIAL SUMMARY JUDGMENT.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, FILED 6/5/2007;

AFFIDAVIT OF GARY L. COOPER, FILED 6/5/2007;

AFFIDAVIT OF BRIAN LARSEN, FILED 7/2/2007;

AFFIDAVIT OF BRENT L. WHITING, FILED 9/4/2007;

MEMORANDUM DECISION [GRANTING PARTIAL SUMMARY JUDGMENT RE: "ECONOMIC LOSS"], FILED 10/15/2007;

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, FILED 4/10/2008;

SECOND AFFIDAVIT OF BRIAN LARSEN, FILED 4/10/08;

AFFIDAVIT OF MICHAEL C. HIGGINS, P.E., FILED 4/10/08;

AFFIDAVIT OF SCOTT KIMBROUGH, Ph.D., P.E., FILED 4/10/08;

AFFIDAVIT OF ROBERT "JAKE" JACOBSEN, C.F.I., FILED 4/10/08;

AFFIDAVIT OF MICHAEL PACKER, FILED 4/11/08;

NOTICE OF APPEAL - Page 3

AFFIDAVIT OF JOHN R. GOODELL, FILED 6/16/2008;
MOTION FOR RECONSIDERATION [RE: "ECONOMIC LOSS"],
FILED 8/12/2008;
MOTION TO AMEND COMPLAINT, FILED 8/29/2008;
AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL [PROPOSED],
FILED 8/29/2008;
MEMORANDUM DECISION ON PLAINTIFF'S MOTION TO
RECONSIDER, FILED 10/1/2008;
JUDGMENT OF DISMISSAL, FILED 10/1/2008;
MEMORANDUM OF COSTS, FILED 10/8/2008;
AFFIDAVIT OF GARY L. COOPER IN SUPPORT OF AWARD OF COSTS,
INCLUDING DISCRETIONARY COSTS, FILED 10/8/2008;
PLAINTIFF'S OBJECTIONS AND MOTION TO DISALLOW COSTS,
FILED 10/15/2008;

ALSO:

**COURT'S RULING ON COSTS TO BE ISSUED AFTER THIS NOTICE OF
APPEAL WAS PREPARED.**

7. I certify:

- (a). That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

David Marlow, Court Reporter
c/o District Court Clerk

P. O. Box 389
Rexburg, ID 83440.

- (b)(1). That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.
- (c)(1). That the estimated fee for preparation of the clerk's record had been paid.
- (d)(1). That the appellate filing fee has been paid.
- (e). That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 4th day of November, 2008.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

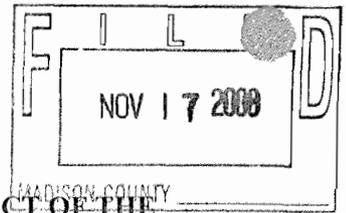
I HEREBY CERTIFY that on the 4th day of November, 2008, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Gary L. Cooper
COOPER & LARSEN, CHARTERED
151 N. 3rd Ave., Ste. 210
P. O. Box 4229
Pocatello, ID 83205-4229
Fax: 235-1182

- U. S. Mail
Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile


JOHN R. GOODELL

NOTICE OF APPEAL



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR MADISON COUNTY

BRIAN AND CHRISTIE, INC., an Idaho Corporation, and dba TACO TIME, an Assumed business name,)	
)	
Plaintiffs,	)	Case No. CV-06-826
)	
v.	)	ORDER RE: COSTS
)	
LEISHMAN ELECTRIC, INC., an Idaho Corporation; and JOHN DOES 1-10,)	
)	
Defendants.)	

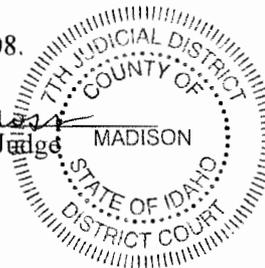
The Court reviewed Plaintiffs' objections to costs. In this case, even though the Court decided the case based on a legal issue, Defendants were justified in hiring experts, taking depositions, and preparing exhibits in preparation for trial. The Court finds that Defendants' "Costs as a Matter of Right" are reasonable.¹

Plaintiffs object to Defendants' "Discretionary Costs." Defendants hired their own expert witness to rebut Plaintiffs' expert witness.² This is a necessary and exceptional cost reasonably incurred.³ Similarly, the trip to Denver to depose Plaintiffs' expert, Mr. Higgins, was a necessary and exceptional cost reasonably incurred. However, it is not reasonable that Plaintiffs should bear the full cost of mediation. The \$393.75 as one-half of the mediation fee will be born by Defendants. All other costs are awarded as outlined in Defendants' Memorandum of Costs.

So Ordered.

DATED this 10 day of November, 2008.

Brent J. Moss
Brent J. Moss, District Judge



¹ I.R.C.P. 54(d)(1)(C).
² Aff. of Gary L. Cooper, ¶ 4 (Oct. 8, 2008).
³ I.R.C.P. 54(d)(1)(D).

CERTIFICATE OF SERVICE

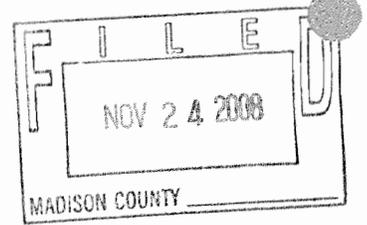
I HEREBY CERTIFY that a true and correct copy of the foregoing Order was this
17 day of November, 2008, served upon the following individuals via U.S. Mail,
postage prepaid:

John Goodell & Brent Whiting
RACINE, OLSON, NYE, BUDGE, & BAILEY, CHTD.
P.O. Box 1391
Pocatello, ID 83204-1391
Counsel for Plaintiffs

Gary L. Cooper
COOPER & LARSEN, CHTD.
151 North Third Ave., Suite 210
P.O. Box 4229
Pocatello, ID 83205-4229
Counsel for Defendant

By: 
Deputy Clerk

Gary L. Cooper - Idaho State Bar #1814
COOPER & LARSEN, CHARTERED
151 North Third Avenue, Suite 210
P.O. Box 4229
Pocatello, ID 83205-4229
Telephone: (208) 235-1145
Facsimile: (208) 235-1182



Counsel for Defendant Leishman Electric, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

BRIAN AND CHRISTIE, INC., an Idaho)
corporation, and dba TACO TIME, an)
assumed business name,)
)
Plaintiff,)
)
vs.)
)
LEISHMAN ELECTRIC, INC., an)
Idaho corporation; and JOHN DOES 1-10,)
)
Defendants.)
_____)

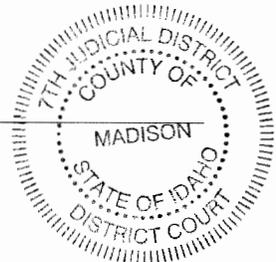
CASE NO. CV-06-826

JUDGMENT

IT IS HEREBY ORDERED Defendant, Leishman Electric, Inc., is awarded a Judgment against the Plaintiff, Brian and Christie, Inc. dba Taco Time, for costs in the amount of \$12,150.00.

DATED this 24 day of November, 2008.


BRENT J. MOSS
District Judge



JUDGMENT - PAGE 1

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of November, 2008, I served a true and correct copy of the foregoing to:

John Goodell & Brent Whiting
Racine Olson Nye Budge & Bailey, Chtd
P. O. Box 1391
Pocatello, ID 83204-1391

U.S. mail
 Express mail
 Hand delivery
 Fax: 232-6109

Gary L. Cooper
Cooper & Larsen
P. O. Box 4229
Pocatello, ID 83205-4229

U.S. mail
 Express mail
 Hand delivery
 Fax: 235-1182

CLERK OF THE COURT

By: 
Deputy Clerk

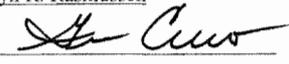
IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

BRIAN AND CHRISTIE, INC., an Idaho)
corporation, and d/b/a TACO TIME, as)
assumed business name)
)
Plaintiff-Appellant) SUPREME COURT NO.
) CASE NO. CV-06-826
)
vs) CLERK'S CERTIFICATE OF
) APPEAL
)
LEISHMAN ELECTRIC, INC., an Idaho)
corporation)
Defendant-Respondent)
and)
)
"JOHN DOES 1-10")

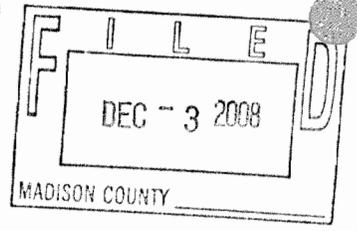
APPEAL FROM: 7th Judicial District Madison County
HONORABLE Brent J. Moss PRESIDING
CASE NO. FROM COURT: CV-2006-826
ORDER OF JUDGMENT APPEALED FROM: *Judgment of Dismissal filed October 1, 2008, Memorandum Decision on Plaintiff's Motion to Reconsider [and Plaintiff's Motion to Amend Complaint] filed October 1, 2008, Prior Memorandum Decision [Granting Partial Summary Judgment RE: "Economic Loss" Rule] filed October 15, 2007, and Order Awarding Cost, filed November 24, 2008*
ATTORNEY FOR APPELLANT: *John R Goodell and Brent L Whiting, RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED, PO Box 1391, Pocatello, ID 83204-1391*
ATTORNEY FOR THE RESPONDENT: *Gary L Cooper, COOPER & LARSEN, CHARTERED, PO Box 4229, Pocatello, ID 83205-4229*
APPEALED BY: *BRIAN AND CHRISTIE, INC., an Idaho Corporation, and dba TACO TIME, an assumed business name*
APPEALED AGAINST: *LEISHMAN ELECTRIC, INC., an Idaho Corporation; and JOHN DOES 1-10*
NOTICE OF APPEAL FILED: *November 5, 2008 (Judgment on Attorney's fees filed November 24, 2008)*
AMENDED NOTICE OF APPEAL FILED: N/A
NOTICE OF CROSS-APPEAL FILED: N/A
AMENDED NOTICE OF CROSS-APPEAL FILED: N/A
APPELLATE FEE PAID: *Yes*
RESPONDENT OR CROSS RESPONDENT'S REQUEST FOR ADDITIONAL RECORD: N/A
TRANSCRIPT FILED: *No*
WAS DISTRICT COURT REPORTER'S TRANSCRIPT REQUESTED?: *Yes*
IF SO, NAME OF REPORTER: *David Marlowe*
ESTIMATED NUMBER OF PAGES: *Less than 100*
NAME AND ADDRESS: *David Marlowe, PO Box 389, Rexburg, ID 83440*

Dated this 2 day of Dec, 2008

Marilyn R. Rasmussen

BY 

DEPUTY CLERK



John R. Goodell (ISB#: 2872)
 Brent L. Whiting (ISB#: 6601)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109
 Email: jrg@racinelaw.net

Attorneys for Plaintiff/Appellant Brian and Christie, Inc. dba Taco Time

ORIGINAL

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF MADISON**

BRIAN AND CHRISTIE, INC., an Idaho)
 corporation, and d/b/a TACO TIME, as)
 assumed business name,)
)
 Plaintiff/Appellant,)
)
 vs.)
)
 LEISHMAN ELECTRIC, INC., an)
 Idaho corporation,)
)
 Defendant/Respondent,)
)
 and)
)
 "JOHN DOES 1-10,")
)
 Defendants.)
 _____)

Case No. CV-06-826

AMENDED NOTICE OF APPEAL

Fee Category/Amount: (T)(\$101)

TO: THE ABOVE NAMED RESPONDENT, LEISHMAN ELECTRIC, INC., AND THE
 PARTY'S ATTORNEYS, GARY L. COOPER, COOPER & LARSEN, P. O. BOX 4229,
 POCA TELLO, ID 83205-4229; AND THE CLERK OF THE ABOVE ENTITLED COURT.
 NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, Brian and Christie, Inc., appeals against the above named Respondent to the Idaho Supreme Court from the final Judgment of Dismissal filed 10/1/08; Memorandum Decision On Plaintiff's Motion To Reconsider [and Plaintiff's Motion to Amend Complaint] filed 10/1/08; prior Memorandum Decision [Granting Partial Summary Judgment Re: "Economic Loss" Rule] filed 10/15/07; and supplemental Judgment awarding costs filed 11/24/08, the Honorable Brent J. Moss, District Judge, presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgements or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1) and/or 11(a)(7), I.A.R.

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, include the following:

A. Does the "economic loss" rule bar recovery as a matter of law by a building/restaurant owner, against a licensed electrical contractor, whose negligent work causes an electrical fire, and resulting substantial property damage to a building and contents?

B. Is a plaintiff entitled to recovery 100% of damages sustained in an electrical fire without reduction for settlement proceeds recovered from another tortfeasor, under I.C. § 6-805 and the *Sani-Top* case?

C. Is a plaintiff entitled to recover prejudgment interest in a negligence action for cost or repairs to a building and replacement of contents?

4. Has an order been entered sealing all or any portion of the record? **NO.**

AMENDED NOTICE OF APPEAL - Page 2

5. (a) Is a reporter's transcript requested?

YES.

- (b) The appellant requests the preparation of the following portions of the reporter's transcript:

SEPTEMBER 16, 2008 HEARING ON PLAINTIFF'S MOTION TO RECONSIDER PARTIAL SUMMARY JUDGMENT.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, FILED 6/5/2007;

AFFIDAVIT OF GARY L. COOPER, FILED 6/5/2007;

AFFIDAVIT OF BRIAN LARSEN, FILED 7/2/2007;

AFFIDAVIT OF BRENT L. WHITING, FILED 9/4/2007;

MEMORANDUM DECISION [GRANTING PARTIAL SUMMARY JUDGMENT RE: "ECONOMIC LOSS"], FILED 10/15/2007;

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, FILED 4/10/2008;

SECOND AFFIDAVIT OF BRIAN LARSEN, FILED 4/10/08;

AFFIDAVIT OF MICHAEL C. HIGGINS, P.E., FILED 4/10/08;

AFFIDAVIT OF SCOTT KIMBROUGH, Ph.D., P.E., FILED 4/10/08;

AFFIDAVIT OF ROBERT "JAKE" JACOBSEN, C.F.I., FILED 4/10/08;

AFFIDAVIT OF MICHAEL PACKER, FILED 4/11/08;

AFFIDAVIT OF JOHN R. GOODELL, FILED 6/16/2008;

MOTION FOR RECONSIDERATION [RE: "ECONOMIC LOSS"],

AMENDED NOTICE OF APPEAL - Page 3

FILED 8/12/2008;
MOTION TO AMEND COMPLAINT, FILED 8/29/2008;
AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL [PROPOSED],
FILED 8/29/2008;
MEMORANDUM DECISION ON PLAINTIFF'S MOTION TO
RECONSIDER, FILED 10/1/2008;
JUDGMENT OF DISMISSAL, FILED 10/1/2008;
MEMORANDUM OF COSTS, FILED 10/8/2008;
AFFIDAVIT OF GARY L. COOPER IN SUPPORT OF AWARD OF COSTS,
INCLUDING DISCRETIONARY COSTS, FILED 10/8/2008;
PLAINTIFF'S OBJECTIONS AND MOTION TO DISALLOW COSTS,
FILED 10/15/2008;
JUDGMENT [SUPPLEMENTAL AWARDING COSTS], FILED 11/24/08.

7. I certify:

(a). That a copy of this amended notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

David Marlow, Court Reporter
c/o District Court Clerk
P. O. Box 389
Rexburg, ID 83440.

(b)(1). That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.

(c)(1). That the estimated fee for preparation of the clerk's record had been paid.

(d)(1). That the appellate filing fee has been paid.

AMENDED NOTICE OF APPEAL - Page 4

(e). That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 2nd day of December, 2008.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of December, 2008, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Gary L. Cooper
COOPER & LARSEN, CHARTERED
151 N. 3rd Ave., Ste. 210
P. O. Box 4229
Pocatello, ID 83205-4229
Fax: 235-1182

U. S. Mail
Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile


JOHN R. GOODELL

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR MADISON COUNTY

BRIAN AND CHRISTIE, INC., AN)	
IDAHO CORPORATION, AND D/B/A)	
TACO TIME, AN ASSUMED BUSINESS)	
NAME)	
	)	SUPREME COURT NO 35929-2008
PLAINTIFF-	)	CASE NO. CV-2006-826
APPELLANT	)	CERTIFICATE OF EXHIBITS
VS)	
)	
LEISHMAN ELECTRIC, INC., AN)	
IDAHO CORPORATION; AND JOHN)	
DOES 1-10)	
)	
DEFENDANT-)	
RESPONDENT)	
)	

I, Gwen Cureton, Deputy Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for Madison County, do hereby certify that the following is a list of the exhibits, offered or admitted and which have been lodged with the Supreme Court or retained as indicated:

NO.	DESCRIPTION	SENT/RETAINED
NONE		

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 12 day of Jan, 2009.

MARILYN R. RASMUSSEN
CLERK OF THE DISTRICT COURT

CERTIFICATE
I HEREBY CERTIFY THE
FOREGOING INSTRUMENT
TO BE A TRUE AND COR-
RECT COPY OF THE ORIG-
INAL ON FILE IN MY
OFFICE.

DATED Jan 12 09
Marilyn R. Rasmussen
Madison County Clerk,
Auditor and Recorder,
Clerk of the District Court

By [Signature]
Deputy

By [Signature]
Deputy Clerk

In the Supreme Court of the State of Idaho

BRIAN AND CHRISTIE, INC., an Idaho
corporation, and dba TACO TIME, an
assumed business name,

Plaintiff-Appellant,

v.

LEISHMAN ELECTRIC, INC., an Idaho
corporation,

Defendant-Respondent.

and

JOHN DOES 1-10,

Defendants.

ORDER GRANTING MOTION TO
AUGMENT THE RECORD

Supreme Court Docket No. 35929-2008
Madison County No. 2006-826

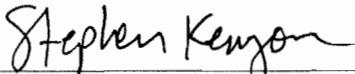
A MOTION TO AUGMENT THE RECORD AND STATEMENT IN SUPPORT THEREOF was filed by counsel for Respondent on August 18, 2009. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondent's MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion, as EXHIBITS:

1. Affidavit of Paul Moore, file-stamped June 9, 2008; and
2. *Second* Affidavit of Gary L. Cooper, file-stamped June 9, 2008.

DATED this 20th of August 2009.

For the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

BRIAN AND CHRISTIE, INC., AN)	
IDAHO CORPORATION, AND D/B/A/)	
TACO TIME, AN ASSUMED BUSINESS)	
NAME)	
	)	CLERK'S CERTIFICATE
PLAINTIFF)	
APPELLANT)	
VS	)	SUPREME COURT NO.35929-2008
	)	CASE NO. CV-2006-826
LEISHMAN ELECTRIC, INC., AN)	
IDAHO CORPORATION; AND)	
JOHN DOES 1-10)	
)	
DEFENDANT-)	
RESPONDENT)	

I, Marilyn R. Rasmussen, Clerk of the District Court of the 7th Judicial District of the State of Idaho, in and for the County of Madison, do hereby certify that the foregoing Clerk's Record in the above entitled cause was compiled and bound under my direction and contains true and correct copies of all pleadings, documents and papers designated to be included under Rule 28, IAR, the Notice of Appeal, any Notice of Cross Appeal, and any additional documents requested to be included.

I further certify that all documents, x-rays, charts and pictures offered or admitted as exhibits in the above entitled cause, if any, will be duly lodged with the Clerk of the Supreme Court with any Reporter's Transcript and the Clerk's Record (except for exhibits, which are retained in the possession of the undersigned), as required by Rule 31 of the Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 12 day of Jan, 2009.

MARILYN R. RASMUSSEN
CLERK OF THE DISTRICT COURT

CERTIFICATE
I HEREBY CERTIFY THE
FOREGOING INSTRUMENT
TO BE A TRUE AND COR-
RECT COPY OF THE ORIG-
INAL ON FILE IN MY
OFFICE.

By [Signature]
Deputy Clerk

DATED Jan 12 09
Marilyn R. Rasmussen
Madison County Clerk,
Auditor and Recorder.
Clerk of the District Court

By [Signature]
Deputy

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

BRIAN AND CHRISTIE, INC., AN)	
IDAHO CORPORATION, AND D/B/A)	
TACO TIME, AN ASSUMED)	
BUSINESS NAME)	
	)	PLAINTIFF-
	)	APPELLANT
VS	)	CERTIFICATE OF SERVICE
	)	CASE NO. CV-2006-826
	)	SUPREME COURT NO. 35929-2008
LEISHMAN ELECTRIC, INC., AN)	
IDAHO CORPORATION; AND)	
JOHN DOES 1-10)	
	)	DEFENDANT-
	)	RESPONDENT

I, Gwen Cureton, Deputy Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Madison, do hereby certify that I have personally served or mailed, by United States Mail, postage prepaid, one copy of the Clerk's Record and any Reporter's Transcript to each of the parties or their Attorney of Record as follows:

John R Goodell	Gary L Cooper
Brent L Whiting	Cooper & Larsen, Chartered
Racine, Olson, Nye, Budge &	P.O. Box 4229
Bailey, Chartered	Pocatello, ID 83205-4229
P.O. Box 1391	
Pocatello, ID 83204-1391	

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 12 day of Jan, 2009

MARILYN R. RASMUSSEN
CLERK OF THE DISTRICT COURT

CERTIFICATE
I HEREBY CERTIFY THE
FOREGOING INSTRUMENT
TO BE A TRUE AND COR-
RECT COPY OF THE ORIG-
INAL ON FILE IN MY
OFFICE.

DATED Jan 12, 09
Marilyn R. Rasmussen
Madison County Clerk,
Auditor and Recorder,
Clerk of the District Court

By [Signature]
Deputy

Seal: JUDICIAL DISTRICT COUNTY OF MADISON STATE OF IDAHO DISTRICT COURT