

**STATE OF MISSISSIPPI
CIRCUIT COURT OF HARRISON COUNTY
FIRST JUDICIAL DISTRICT**

DEAN E. KELLY and LAUREN M. BRUNELLE,

Plaintiffs,

vs.

KENAN BEL BUCHERT, MISSISSIPPI DEPARTMENT OF
TRANSPORTATION, GRANITE CONSTRUCTION, INC.,
et al.

Defendants.

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Case No.: A2401-09-369

CONSOLIDATED FOR ALL PURPOSES WITH:

JOSHUA DRIGHT,

Plaintiff,

vs.

MISSISSIPPI DEPARTMENT OF TRANSPORTATION AND
COUNTY OF HARRISON, MISSISSIPPI TRANSPORTATION
COMMISSION, GRANITE CONSTRUCTION COMPANY,
et al.,

Defendants.

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Case No.: A2401-09-377

CONSOLIDATED FOR ALL PURPOSES WITH:

BRANDON ALEXANDER,

Plaintiff,

vs.

MISSISSIPPI DEPARTMENT OF TRANSPORTATION AND
COUNTY OF HARRISON, MISSISSIPPI TRANSPORTATION
COMMISSION, GRANITE CONSTRUCTION COMPANY,
et al.,

Defendants.

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Case No.: A2401-09-378

CONSOLIDATED FOR ALL PURPOSES WITH:

KENAN BEL BUCHERT,

Plaintiff,

vs.

MISSISSIPPI DEPARTMENT OF TRANSPORTATION,
GRANITE CONSTRUCTION COMPANY, et al.

Defendants.

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Case No.: A2401-10-32

CONSOLIDATED FOR ALL PURPOSES WITH:

EDWARD VINCENT BRADLEY,

Plaintiff,

vs.

KENAN BEL BUCHERT,

Defendant.

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Case No.: A2401-09-370

**POWELL CONSTRUCTION SERVICES, INC.'S SUPPLEMENTAL
MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

COMES NOW, POWELL CONSTRUCTION SERVICES, INC. (“PCS”), a defendant in the above-styled cause, by and through counsel, and hereby supplements its memorandum brief in support of motions for summary judgment filed on July 19, 2012:

SYNOPSIS

This lawsuit is a consolidated personal injury action arising out of an October 26, 2008 night-fishing trip that ended when the boat hit the Bay St. Louis Bridge. The plaintiffs allege that PCS and others are liable for their injuries and damages because certain lights on the bridge were not illuminated on the night in question. This brief will demonstrate PCS’s blamelessness for two reasons: PCS accomplished the job it was hired to do, thus breaching no duty; and the unusual circumstances leading to the wreck preclude a finding of causation – as a matter of law.

PCS did not design, construct, maintain or control the Bay St. Louis Bridge, or the bridge's lighting system. PCS's role was limited to certain repairs of the lighting system following Hurricane Gustav. The plaintiffs contend that PCS failed to timely inspect and/or timely repair the bridge lights. Undisputed facts will show that PCS accomplished the scope of work for which MDOT engaged PCS.

Additionally, the plaintiffs cannot establish proximate causation because boat operator, Kenan Bel Buchert attempted to pass underneath the Bay St. Louis Bridge with full knowledge that (1) the bridge was up ahead, (2) the navigation lights over the channel were not illuminated and (3) his heading was based on a previous GPS course through the bridge in a location far from the channel. "Far from the channel" means 1½ football fields away. Basically, Mr. Buchert was not attempting to pass through the channel when he hit the bridge. Therefore, the context of the accident shows the navigation lights to be a pretext for the lawsuit.

NARRATIVE STATEMENT OF UNDISPUTED FACTS

PCS adopts as if set forth fully herein paragraphs 1 through 53 contained within its original brief. PCS adds the following:

54. Following Hurricane Gustav, on September 2, 2008, MDOT inspected the lighting system at the Bay St. Louis Bridge and discovered that the navigation lights were not functioning (Mississippi Department of Transportation's Responses to Interrogatories and Request for Production of Documents Propounded by Defendant Kenan Bel Buchert, numbers 7 and 8; Deposition of Kelly Castleberry at page 43).

55. Therefore, MDOT summoned PCS for temporary repairs to the navigation lights until the control panels could be removed and replaced. (Mississippi Department of Transportation's

Responses to Interrogatories and Request for Production of Documents Propounded by Defendant Kenan Bel Buchert number, 8; Deposition of Kelly Castleberry at page 65).

56. On September 16, 2008, PCS got the navigation lights operational. (Mississippi Department of Transportation's Responses to Interrogatories and Request for Production of Documents Propounded by Defendant Kenan Bel Buchert, number 8). MDOT's Kelly Castleberry oversaw PCS's repairs to the navigation lights and watched the repairs being accomplished. (Mississippi Department of Transportation's Responses to Interrogatories and Request for Production of Documents Propounded by Defendant Kenan Bel Buchert, number 9; Deposition of Kelly Castleberry at page 66).

57. Mr. Castleberry inspected PCS's work and verified that the navigation lights were working again. (Mississippi Department of Transportation's Responses to Interrogatories and Request for Production of Documents Propounded by Defendant Kenan Bel Buchert, number 13; Deposition of Kelly Castleberry at page 66).

58. The navigation lights are comprised of two red and one green south-facing lights suspended under the bridge and over the channel; and two red and one green north-facing lights suspended under the bridge and over the channel. As of September 18, 2008, PCS had the two red and one green south-facing lights illuminated. (Deposition of Gene Powell at pages 96-97). As of that same date, PCS had the western-most, north-facing red navigation light illuminated. (Deposition of Gene Powell at pages 96-97). However, the green and eastern-most red navigation lights on the north side of the bridge were missing bulbs or parts, and so not illuminated. (Deposition of Gene Powell at pages 96-97; Deposition of Kelly Castleberry at pages 26-28).

59. MDOT knew of the need for the parts or bulbs and, in fact, had them on order. (Deposition of Kelly Castleberry at pages 26-28). Specifically, that was handled by MDOT's electrical superintendent, Lemon Sullivan. (Deposition of Kelly Castleberry at page 26-28).

60. Mr. Sullivan or one of his electrical department crewmen would have been the one to actually screw in the navigation light bulbs once obtained. (Deposition of Kelly Castleberry at page 89; Deposition of Gene Powell at pages 101 and 111; Mississippi Department of Transportation's Answers to First Set of Interrogatories Propounded by Plaintiffs Brandon Alexander and Joshua Dright, number 16).

61. MDOT agrees that it was the duty of MDOT to maintain the navigation lights and to keep them burning. (Deposition of Kelly Castleberry at pages 24-25; Deposition of Gene Powell at page 135; Mississippi Department of Transportation's Answers to First Set of Interrogatories Propounded by Plaintiffs Brandon Alexander and Joshua Dright, number 18). MDOT in fact has bridge inspection crews to inspect bridge lights. (Deposition of Kelly Castleberry at pages 17 and 20).

62. Mr. Castleberry was the MDOT-PCS contact on this repair project. (Deposition of Kelly Castleberry at page 100). Mr. Castleberry testified that PCS accomplished the job for which MDOT had called upon PCS, and that PCS did the job to MDOT's satisfaction. (Deposition of Kelly Castleberry at page 100). Referring to PCS's Gene Powell who was Mr. Castleberry's contact, Mr. Castleberry testified as follows:

“Q. Is there anything that Gene Powell could have said to MDOT to have changed anything that happened?”

A. I do not know of anything that could have been done.”

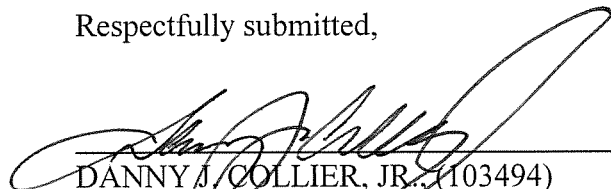
LAW AND ARGUMENT

PCS adopts as if set forth fully herein its law and argument contained within its original brief. As applicable to PCS, PCS adopts as if set forth fully herein the law and argument contained within the memorandum briefs filed in support of motions for summary judgment by Defendants’ Granite Construction Company, Archer Western Contractors, LTD., Granite Archer Western, A Joint Venture, Ingram Signalization, Inc., Mississippi Department of Transportation, Mississippi Department of Transportation and HNTB Corporation.

WHEREFORE, premises considered, POWELL CONSTRUCTION SERVICES, INC., respectfully asserts that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law.

ORAL ARGUMENT RESPECTFULLY REQUESTED

Respectfully submitted,


DANNY J. COLLIER, JR. (103494)
Attorney for Powell Construction Services, Inc.

OF COUNSEL:

LUTHER, COLLIER, HODGES & CASH LLP
Post Office Box 1002
Mobile, Alabama 36633
(251) 694-9393 Office
(251) 694-9392 Fax
dcollier@lchclaw.com

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 10th day of November, 2012 served a copy of the foregoing pleading on counsel for all parties to this proceeding by:

- Electronic Court Filing
- United States mail, first class postage prepaid
- Electronic Mail
- Confirmed Facsimile
- Hand Delivery
- Overnight Courier

as follows:

Joseph Kelly, Esq.
Post Office Box 610
Liberty, Mississippi 39645
joek@jkellylaw.net
Attorney for Dean E. Kelly and Lauren M. Brunelle

Remy Fransen, Jr., Esq.
Matthew R. Fransen, Esq.
814 Howard Avenue
New Orleans, Louisiana 70130
arfransen@aol.com
mattfransen@aol.com
Attorney for Dean E. Kelly and Lauren M. Brunelle

Harold S. Bartholomew, Esq.
Bartholomew Law Office
Post Office Box 786
Metairie, Louisiana 70004
hsb@bartholomewlawoffices.com
Attorney for Dean E. Kelly and Lauren M. Brunelle

W. Chad Stelly, Esq.
Rome, Arata & Baxley, LLC
650 Poydras Street
Suite 2017, Poydras Center
New Orleans, LA 70130
wcstelly@romearata.com
Attorney for Joshua Dright and Brandon Alexander

Owen J. Bradley
2700 Octavia Street
New Orleans, Louisiana 70115
owenjbradley@gmail.com
Attorney Edward Vincent Bradley

Doug Bagwell, Esq.
14231 Seaway Road
Building 2000, Suite 2001
Gulfport, Mississippi 39503
dbagwell@carrallison.com
Attorney for Granite Construction, Inc. and Archer Western Contractors, Ltd.

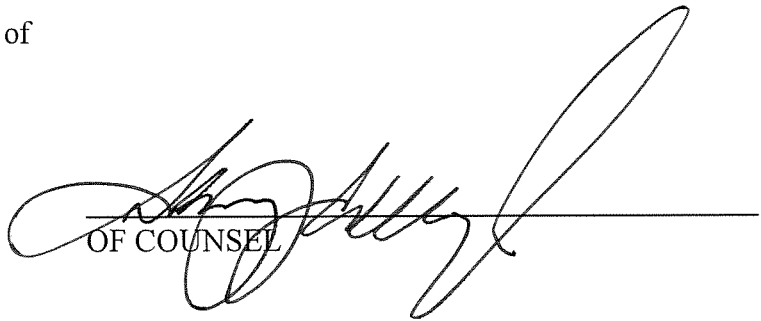
Brett W. Tweedel, Esq.
3421 North Causeway Blvd.
Suite 900
Metairie, Louisiana 70002
btweedel@bluewilliams.com
Attorney for Kenan B. Buchert

Stephen P. Bruno, Esq.
Bruno & Bruno, LLP
855 Baronne Street
New Orleans, Louisiana 70112
Stephen@brunobrunolaw.com
Attorney for Ken Bel Buchert

Trace D. McRaney, Esq.
2909 13th Street
6th Floor
Gulfport, Mississippi 39502
trace@ddkf.com
Attorney for Mississippi Department of
Transportation

Gerald J. Diaz, Jr., Esq.
The Diaz Law Firm, PLLC
208 Waterford Square, Suite 300
Madison, Mississippi 39110
jdiazjr@msattorneys.com
Attorney for Kenan Bel Buchert

J. Stephen Kennedy, Esq.
Everett E. White, Esq.
Baker, Donelson, Bearman, Caldwell &
Berkowitz, P.A.
Post Office Box 14167
Jackson, Mississippi 39236-4167
skennedy@bakerdonelson.com
ewhite@bakerdonelson.com
Attorneys for HNTB Corporation



OF COUNSEL

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

DEAN E. KELLY AND LAUREN BRUNELLE PLAINIFFS

VERSUS CAUSE NO. A2401-09-369

KENAN BEL BUCHERT, MISSISSIPPI DEPARTMENT
OF TRANSPORTATION, GRANITE CONSTRUCTION
COMPANY, ARCHER WESTERN CONTRACTORS, LTD.,
HNTB CORPORATION, INGRAM SIGNALIZATION, INC.,
AND POWELL CONSTRUCTION SERVICES, INC. DEFENDANTS

AND

GRANITE CONSTRUCTION COMPANY AND ARCHER
WESTERN CONTRACTORS, LTD. CROSS-PLAINIFFS

VERSUS

HNTB CORPORATION CROSS-DEFENDANT

AND

INGRAM SIGNALIZATION, INC. CROSS-DEFENDANT

CONSOLIDATED FOR ALL PURPOSES WITH:

JOSHUA DRIGHT PLAINTIFF

VERSUS CAUSE NO. A2401-09-377

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
AND COUNTY OF HARRISON, MISSISSIPPI
TRANSPORTATION COMMISSION, GRANITE
CONSTRUCTION COMPANY, ARCHER WESTERN
CONTRACTORS, LTD., GRANITE ARCHER
WESTERN, A JOINT VENTURE, KENAN BEL BUCHERT,
HNTB CORPORATION, INGRAM SIGNALIZATION, INC.,
AND POWELL CONSTRUCTION SERVICES, INC. DEFENDANTS

CONSOLIDATED FOR ALL PURPOSES WITH:

BRANDON ALEXANDER PLAINTIFF

VERSUS CAUSE NO. A2401-09-378

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
AND COUNTY OF HARRISON, MISSISSIPPI
TRANSPORTATION COMMISSION, GRANITE
CONSTRUCTION COMPANY, ARCHER WESTERN
CONTRACTORS, LTD., GRANITE ARCHER
WESTERN, A JOINT VENTURE, KENAN BEL BUCHERT, HNTB
CORPORATION, INGRAM SIGNALIZATION, INC., AND
POWELL CONSTRUCTION SERVICES, INC. DEFENDANTS

CONSOLIDATED FOR ALL PURPOSES WITH:

KENAN BEL BUCHERT PLAINTIFF

VERSUS CAUSE NO. A2401-10-32

MISSISSIPPI DEPARTMENT OF TRANSPORTATION,
GRANITE CONSTRUCTION COMPANY AND ARCHER

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WESTERN CONTRACTORS, LTD., AND JOHN DOES 1-5

DEFENDANTS

CONSOLIDATED FOR ALL PURPOSES WITH:

EDWARD VINCENT BRADLEY

PLAINTIFF

VERSUS

CAUSE NO. A2401-09-370

KENAN B. BUCHERT

DEFENDANT

**MISSISSIPPI DEPARTMENT OF TRANSPORTATION'S
RESPONSES TO INTERROGATORIES AND REQUEST FOR PRODUCTION OF
DOCUMENTS PROPOUNDED BY DEFENDANT KENAN BEL BUCHERT**

COMES NOW, the Defendant, Mississippi Department of Transportation, by and through its attorneys of record, Dukes, Dukes, Keating & Faneca, P.A., and file this its Responses to Interrogatories and Request for Production of Documents Propounded by Defendant Kenan Bel Buchert as follows:

INTERROGATORIES

INTERROGATORY NO. 1: Please provide the name, address, telephone number and job title of everyone involved in providing responses to these Interrogatories.

ANSWER NO. 1:

Kelly Castleberry, Southern District Engineer for MDOT.

INTERROGATORY NO. 2: Please state the scope of work that Granite Archer Western was hired to perform in connection with the Hwy 90/Bay St. Louis Bridge.

ANSWER NO. 2: GAW was the design/build general contractor that was awarded the best value bid for the reconstruction of the Highway 90 Bridge over the Bay of St. Louis, following Hurricane Katrina.

INTERROGATORY NO. 3: Please state the amount of money that Granite Archer Western was paid in connection with the work it did on the Hwy 90/Bay St. Louis Bridge.

ANSWER NO. 3: \$283,543,242.12.

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

DEAN E. KELLY AND LAUREN BRUNELLE PLAINIFFS

VERSUS CAUSE NO. A2401-09-369

KENAN BEL BUCHERT, MISSISSIPPI DEPARTMENT
OF TRANSPORTATION, GRANITE CONSTRUCTION
COMPANY, ARCHER WESTERN CONTRACTORS, LTD.,
HNTB CORPORATION, INGRAM SIGNALIZATION, INC.,
AND POWELL CONSTRUCTION SERVICES, INC. DEFENDANTS

AND

GRANITE CONSTRUCTION COMPANY AND ARCHER
WESTERN CONTRACTORS, LTD. CROSS-PLAINIFFS

VERSUS

HNTB CORPORATION CROSS-DEFENDANT

AND

INGRAM SIGNALIZATION, INC. CROSS-DEFENDANT

CONSOLIDATED FOR ALL PURPOSES WITH:

JOSHUA DRIGHT PLAINTIFF

VERSUS CAUSE NO. A2401-09-377

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
AND COUNTY OF HARRISON, MISSISSIPPI
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WESTERN, A JOINT VENTURE, KENAN BEL BUCHERT,
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AND POWELL CONSTRUCTION SERVICES, INC. DEFENDANTS

CONSOLIDATED FOR ALL PURPOSES WITH:

BRANDON ALEXANDER PLAINTIFF

VERSUS CAUSE NO. A2401-09-378

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
AND COUNTY OF HARRISON, MISSISSIPPI
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CONTRACTORS, LTD., GRANITE ARCHER
WESTERN, A JOINT VENTURE, KENAN BEL BUCHERT, HNTB
CORPORATION, INGRAM SIGNALIZATION, INC., AND
POWELL CONSTRUCTION SERVICES, INC. DEFENDANTS

CONSOLIDATED FOR ALL PURPOSES WITH:

KENAN BEL BUCHERT PLAINTIFF

VERSUS CAUSE NO. A2401-10-32

MISSISSIPPI DEPARTMENT OF TRANSPORTATION,
GRANITE CONSTRUCTION COMPANY AND ARCHER

WESTERN CONTRACTORS, LTD., AND JOHN DOES 1-5

DEFENDANTS

CONSOLIDATED FOR ALL PURPOSES WITH:

EDWARD VINCENT BRADLEY

PLAINTIFF

VERSUS

CAUSE NO. A2401-09-370

KENAN B. BUCHERT

DEFENDANT

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RESPONSES TO INTERROGATORIES AND REQUEST FOR PRODUCTION OF
DOCUMENTS PROPOUNDED BY DEFENDANT KENAN BEL BUCHERT**

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ANSWER NO. 2: GAW was the design/build general contractor that was awarded the best value bid for the reconstruction of the Highway 90 Bridge over the Bay of St. Louis, following Hurricane Katrina.

INTERROGATORY NO. 3: Please state the amount of money that Granite Archer Western was paid in connection with the work it did on the Hwy 90/Bay St. Louis Bridge.

ANSWER NO. 3: \$283,543,242.12.

INTERROGATORY NO. 4: Please provide the name, address and telephone number of all individuals or entities that oversaw, supervised, monitored or approved the work performed by Granite Archer Western.

ANSWER NO. 4: Objection is made to this Interrogatory on the grounds that it is vague and over broad as there would have been literally hundreds of individuals in this regard. Without waiving any objections, final approval was given by MDOT's project engineer, David Seyfarth, and by URS's Project Engineer. MDOT will supplement his name.

INTERROGATORY NO. 5: For each individual or entity listed in response to Interrogatory No. 4, please list their responsibilities or scope of work.

ANSWER NO. 5: These engineers approved the work performed.

INTERROGATORY NO. 6: Please provide the date that construction of the Hwy 90/Bay St. Louis Bridge was completed.

ANSWER NO. 6: April 16, 2008.

INTERROGATORY NO. 7: Please state the date that MDOT first learned that the navigational lights/channel marker lights had been damaged by Hurricane Gustav.

ANSWER NO. 7: September 2, 2008.

INTERROGATORY NO. 8: Please list in detail the steps taken by MDOT to repair the navigational lights/channel marker lights following Hurricane Gustav.

ANSWER NO. 8: Following Hurricane Gustav, MDOT inspected the bridge to analyze what was damaged and it was determined that the control boxes on each end of the bridge were inundated with salt water. Powell Construction Services was involved in an ongoing hurricane repair project on Highway 90 in Biloxi, Mississippi. Powell was

summoned to the Bay St. Louis Bridge to inspect the damage. The priority was to first get the navigational lights operational. Powell got the navigational lights operational on September 16, 2008. The priority then was to get new control boxes fabricated and shipped and then move the control boxes to higher ground, following which the entire lighting system would have been re-wired.

INTERROGATORY NO. 9: Please provide the name, address and telephone number of all individuals or entities that oversaw, supervised, monitored or approved the repairs to the navigational lights/channel marker lights following Hurricane Gustav.

ANSWER NO. 9: Kelly Castleberry.

INTERROGATORY NO. 10: Please state the date that the work performed by Powell Construction Services, Inc. was completed.

ANSWER NO. 10: March, 2009.

INTERROGATORY NO. 11: Please state if MDOT received any complaints about the navigational lights/channel marker lights between the date that Powell Construction Services, Inc. finished its work and the date of this accident.

ANSWER NO. 11: Objection is made to this Interrogatory on the grounds that it is vague and ambiguous. Without waiving any objections, MDOT received no complaints about the navigational lights/channel marker lights between the date Powell Construction had them operational on September 16, 2008, and the date of the accident in question.

INTERROGATORY NO. 12: Please state when and how MDOT first learned of the accident that forms the basis of this lawsuit.

ANSWER NO. 12: Kelly Castleberry learned of the accident the following morning while watching WLOX-TV, Channel 13.

INTERROGATORY NO. 13: Please state if MDOT inspected or tested the lighting system on the, including, but not limited to, the navigational lights/channel marker lights, between the time Powell Construction Services, Inc. finished its work and the date of this accident. If yes, please provide a list of dates and the names of the individuals that performed the inspection or the testing.

ANSWER NO. 13: Objection is made to this Interrogatory on the ground that it is vague and ambiguous, inasmuch as on September 16, 2008, when Powell had the navigational lights operational, its work was not finished. Without waiving any objections, when Powell Construction Services had the navigational lights operational on September 16, 2008, Kelly Castleberry inspected the work.

INTERROGATORY NO. 14: Please describe any investigation conducted by MDOT or on MDOT's behalf into this accident, the cause of this accident and/or the condition of the lighting system at the time of the accident.

ANSWER NO. 14: There was no investigation.

INTERROGATORY NO. 15: Please identify the following information for each witness you will or may call at the trial of this matter:

- (a) The name, address and telephone number of each such witness;
- (b) The relationship of each such witness to you;
- (c) A brief description of the substance of the facts you expect to elicit from each such witness;
- (d) Whether such person will be offered as an "expert" witness, and if so, the following information:
 - (1) The academic and professional qualifications of each such witness,

- and the field of expertise in which you intend to tender that witness;
- (2) A brief description of the substance of any opinions which you expect to elicit from each such witness;
 - (3) A list of any and all documents or other tangible evidence given to each such expert witness.

ANSWER NO. 15: Objection is made to this Interrogatory on the grounds that it is premature as discovery is not complete and the Defendant has not determined what witnesses it may call at trial of this matter. Additional objection is made to the extent that this Interrogatory is beyond the scope of permissible discovery. Without waiving any objections, the Defendant may call Kelly Castleberry, Raymond Sullivan, Gene Powell, Kenan Buchert, Joshua Dright, Brandon Alexander, Edward Bradley, Dean Kelly, Lauren Brunelle, Trey Banks, Scott Saucier, Tom Burleson, David Seyfarth, and URS Engineer (will supplement his name).

INTERROGATORY NO. 16: Please identify each and every document or other item of tangible evidence which you intend to offer for introduction into evidence at the trial of this matter. Please note that a reference such as "see attached" will not be considered a sufficient response to this interrogatory as there is no way to determine at a later date what documents have been attached to these responses.

ANSWER NO. 16: Objection is made to this Interrogatory on the grounds that is premature as discovery is not complete and this Defendant has not determined what documents it may introduce at trial of this cause. Without waiving any objections, the Defendant reserves the right to introduce all documents which have previously been produced by Powell Construction. Defendant further reserves the right to introduce all

documents produced in response to Request for Production of Documents propounded by Powell Construction to MDOT. The Defendant further reserves the right to introduce any documents produced in response to Joshua Dright and Brandon Alexander's Request for Production of Documents, and produced in Response to Request for Production of Documents below.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Please produce any and all contracts, invoices, receipts, emails, memorandum or other documents relating to any work performed on the Hwy 90/Bay St. Louis Bridge, including but not limited to the lighting system, between August 2005 and December 2009.

RESPONSE NO. 1: Objection is made to this Request on the grounds that it vague, ambiguous, and over broad. Without waiving any objections, please see the documents produced in response to Powell Construction's Request for Production of Documents propounded to MDOT and documents produced by Powell Construction Services, Inc. Also, see all documents produced by MDOT in Response to Request for Production of Documents from Brandon Alexander and Joshua Dright. Also, see Exhibit "A" attached hereto (payment documentation); Exhibit "B" (Bridge inspection documentation; Exhibit "C" (Supplemental Agreements documentation); Exhibit "D" (letter to GC Contractors, AJV, dated May 27, 2008 - Final Maintenance Release); Exhibit "E" (CD with Bridge Inspection Reports and photos for July 14, 2008, July 23, 2009, and July 14, 2011); and Exhibit "F" (Underwater Bridge Inspection, May 16, 2009 and beam repair, October 20, 2010).

REQUEST NO. 2: Please produce any and all correspondence, emails, reports,

memoranda or other documents prepared by or received by you relating to this accident.
(This request is not seeking communications you had with your attorney regarding this accident.)

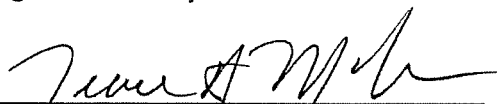
RESPONSE NO. 2: Objection is made to this Request on the grounds that it is over broad and violates the attorney/client privilege and the work product doctrine. Without waiving any objections, see the Department of Marine Resources' Investigative Five previously produced herein.

Respectfully submitted, this the 14 day of September, 2012.



MISSISSIPPI DEPARTMENT OF
TRANSPORTATION

Signed as to objections:



Trace D. McRaney, Esq.
DUKES, DUKES, KEATING & FANCA, P.A.
2909 13TH STREET, SIXTH FLOOR
POST OFFICE DRAWER W
GULFPORT, MS 39502-0680
TELEPHONE: 228- 868-1111
FAX: 228- 863-2886

STATE OF MISSISSIPPI

COUNTY OF Jorruat

Kelly R. Castleberry, being first duly sworn on oath, deposes and says that he has read the foregoing answers to interrogatories and he subscribes and knows the contents thereof, that said responses were prepared with the advice and assistance of counsel, that the responses set forth herein, subject to inadvertent or undiscovered errors, are based on and therefore necessarily limited by the records and information still in existence, presently recollected and thus far discovered in the course of the preparation of these responses; that consequently, he reserves the right to make any changes in the responses if it appears at any time that omissions or errors have been made therein or that more accurate information is available and that subject to the limitations as set forth herein, said responses are true and correct to the best of his knowledge, information and belief.

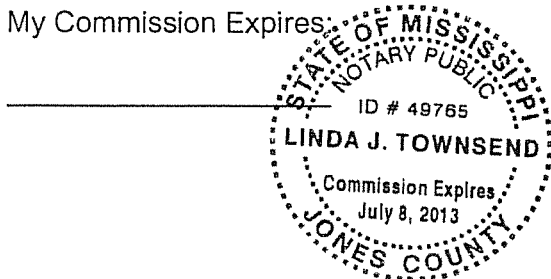
DATED this the 6th day of September, 2012.

Kelly R. Castleberry
MISSISSIPPI DEPARTMENT OF
TRANSPORTATION

SWORN TO AND SUBSCRIBED BEFORE ME, this the 6th day of
September, 2012.

Linda J. Townsend
NOTARY PUBLIC

My Commission Expires:



CERTIFICATE OF SERVICE

I, TRACE D. McRANEY, of the law firm of Dukes, Dukes, Keating & Faneca, P.A., do hereby certify that I have this date mailed, postage prepaid, a true and correct copy of the above and foregoing pleading to the following:

W. Chad Stelly, Esq.
Rome, Arata & Baxley, LLC
Suite 2017, Poydras Center
650 Poydras Street
New Orleans, LA 70130
Attorney for Joshua Dright and Brandon Alexander

Doug Bagwell, Esq.
Carr Allison
14231 Seaway Road, Bldg. 2000
Suite 2001
Gulfport, MS 39503
Attorney for Granite Construction Company and Archer Western Contractors, Ltd.

A. Remy Fransen, Jr., Esq.
Matthew R. Fransen, Esq.
814 Howard Avenue
New Orleans, LA 70130
Attorney for Dean Kelly and Lauren Brunelle

Harold S. Bartholomew, Esq.
P.O. Box 786
Metairie, LA 70004
Attorney for Dean Kelly and Lauren Brunelle

Brett Tweedel, Esq.
3421 North Causeway Blvd.
Suite 900
Metairie, LA 70002
Attorney for Kenan B. Buchert

Owen J. Bradley, Esq.
Bradley & Bradley
2700 Octavia Street
New Orleans, LA 70015
Attorney for Edward Bradley

J. Stephen Kennedy, Esq.
Everett E. White, Esq.
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.A.
P.O. Box 14167
Jackson, MS 39236
Attorney for HNTB Corporation

Danny J. Collier, Jr., Esq.
Luther, Collier, Hodges & Cash, LLP
401 Church Street
Mobile, AL 36602
Attorney for Powell Construction Services, Inc.

This, the 14th day of September, 2012.

s/ Trace D. McRaney
TRACE D. MCRANEY

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

DEAN E. KELLY AND LAUREN BRUNELLE

PLAINTIFFS

VERSUS

CAUSE NO. A2401-09-369

KENAN BEL BUCHERT, MISSISSIPPI DEPARTMENT
OF TRANSPORTATION, GRANITE CONSTRUCTION
COMPANY, ARCHER WESTERN CONTRACTORS, LTD.,
HNTB CORPORATION, INGRAM SIGNALIZATION, INC.,
AND POWELL CONSTRUCTION SERVICES, INC.

DEFENDANTS

AND

GRANITE CONSTRUCTION COMPANY AND ARCHER
WESTERN CONTRACTORS, LTD.

CROSS-PLAINTIFFS

VERSUS

HNTB CORPORATION

CROSS-DEFENDANT

AND

INGRAM SIGNALIZATION, INC.

CROSS-DEFENDANT

CONSOLIDATED FOR ALL PURPOSES WITH:

JOSHUA DRIGHT

PLAINTIFF

VERSUS

CAUSE NO. A2401-09-377

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
AND COUNTY OF HARRISON, MISSISSIPPI
TRANSPORTATION COMMISSION, GRANITE
CONSTRUCTION COMPANY, ARCHER WESTERN
CONTRACTORS, LTD., GRANITE ARCHER
WESTERN, A JOINT VENTURE, KENAN BEL BUCHERT,
HNTB CORPORATION, INGRAM SIGNALIZATION, INC.,
AND POWELL CONSTRUCTION SERVICES, INC.

DEFENDANTS

CONSOLIDATED FOR ALL PURPOSES WITH:

BRANDON ALEXANDER

PLAINTIFF

VERSUS

CAUSE NO. A2401-09-378

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
AND COUNTY OF HARRISON, MISSISSIPPI
TRANSPORTATION COMMISSION, GRANITE
CONSTRUCTION COMPANY, ARCHER WESTERN
CONTRACTORS, LTD., GRANITE ARCHER
WESTERN, A JOINT VENTURE, KENAN BEL BUCHERT, HNTB
CORPORATION, INGRAM SIGNALIZATION, INC., AND
POWELL CONSTRUCTION SERVICES, INC.

DEFENDANTS

CONSOLIDATED FOR ALL PURPOSES WITH:

KENAN BEL BUCHERT

PLAINTIFF

VERSUS

CAUSE NO. A2401-10-32

MISSISSIPPI DEPARTMENT OF TRANSPORTATION,
GRANITE CONSTRUCTION COMPANY AND ARCHER

WESTERN CONTRACTORS, LTD., AND JOHN DOES 1-5

DEFENDANTS

CONSOLIDATED FOR ALL PURPOSES WITH:

EDWARD VINCENT BRADLEY

PLAINTIFF

VERSUS

CAUSE NO. A2401-09-370

KENAN B. BUCHERT

DEFENDANT

**DEFENDANTS STATE OF MISSISSIPPI, MISSISSIPPI DEPARTMENT OF
TRANSPORTATION, AND MISSISSIPPI TRANSPORTATION COMMISSION'S
ANSWERS TO FIRST SET OF INTERROGATORIES PROPOUNDED BY PLAINTIFFS
BRANDON ALEXANDER AND JOSHUA DRIGHT**

COME NOW, the Defendants, State of Mississippi, Mississippi Department of Transportation, and Mississippi Transportation Commission, by and through their attorneys of record, Dukes, Dukes, Keating & Faneca, P.A., and file this their Answers to First Set of Interrogatories Propounded by Plaintiffs Brandon Alexander and Joshua Dright.

INTERROGATORY NO. 1: Please state the name of the individual(s) answering these Interrogatories, and for each such individual, state his/her current address, telephone number, date of birth, employer, and employment position/title.

ANSWER NO. 1: Kelly Castleberry, District Engineer, Mississippi Department of Transportation.

INTERROGATORY NO. 2: Please fully identify by name, present addresses, and employer of each person who has investigated or who has been requested by you, your attorney, or your insurance carrier to investigate or render an opinion (whether an expert opinion or lay opinion) with respect to the incident.

ANSWER NO. 2: This matter has been investigated by CSMI. This matter was also investigated by the Mississippi Department of Marine Resources. See Deposition of

Officer Scott Saucier.

INTERROGATORY NO. 3: If any photographs, videotape, motion pictures, surveys, charts, plats, drawings or diagrams were made of any person(s), place(s), or thing(s), including but not limited to photographs of the accident scene and/or site, of employees of yours present at the scene, Plaintiff, and/or anything involved in the incident in question, by or on behalf of you or any other person or company, please state the following:

- (a) How many photographs or motion pictures were taken, the dates they were taken, and the name, address, job title and present whereabouts of each person who made any such photographs or motion pictures or was present at the time of the making of any such photographs or motion pictures;
- (b) A description of each survey, chart, plat, or item made or prepared, describing what each such item depicts or purports to depict, the date that each was made or prepared and the name, address, job title and present whereabouts of each person who made any such survey, chart, plat or drawing; and
- (c) The name and address of the person or persons who now have custody or control of any such photographs, motion pictures, surveys, charts, plats, drawings, diagrams, etc., showing the items in the custody or control of each such person.

ANSWER NO. 3:

- (a) Please see video of the scene of the accident taken by Kenan Buchert and all photographs produced in Response to Request for Production of

Documents.

- (b) Plans and Profile of Proposed State Highway, U.S. 90/St. Louis Bay.
- (c) Copies of photographs, video, and the Plan and Profile are produced in response to Request for Production of Documents.

INTERROGATORY NO. 4: Have you or your counsel, agents, representatives, or others acting on your behalf obtained any oral or written statement(s) from any person purporting to be a witness to any part of the incident in question, or from any other person, and with respect to each, please state the name and address of the person or persons who have custody or control of any summary of each such oral or written statement, the date the statement was given, and the name and address of each person giving any such oral or written statement, and the name and addresses of those persons who obtained such oral or written statement. (For the purpose of this interrogatory, a written statement is one that is signed, or otherwise adopted or approved by the person making it, stenographic, mechanical, electrical or other recording or transcription thereof that is substantially a verbatim recital of an oral statement by the person making, and contemporaneously recorded.)

ANSWER NO. 4: No formal statements have been taken; however, defense counsel has spoken with Kelly Castleberry and Gene Powell with Powell Construction Services, Inc. Also, please see all depositions taken in this matter.

INTERROGATORY NO. 5: Please state whether you have tendered the defense of this action to any other person or entity, and if so, whether said defense has been accepted, whether you have made any claims whatsoever under any policy of insurance as a result of this accident, and if so, the nature, extent, and amount of any such claim,

and whether those claims have been paid by said company, and if so the amount of said payment.

ANSWER NO. 5: Not applicable.

INTERROGATORY NO. 6: Please identify all sources of insurance coverage whatsoever that may be available for payment of any claim made against you by Plaintiff herein arising out of the instant accident, either liability, so-called "umbrella" or excess policy or any other type of liability policy or co-insurance coverage or any bond coverage by and through which you or your employees were or may be insured or covered in any manner or to any extent for any cause of action for the damages claimed against you in the above-captioned action and state separately for each:

- (a) The name of the company or companies issuing each of said policies of insurance;
- (b) The name and type and number of each of said policies of insurance;
- (c) The name or names of the insured under each of the said policies or insurance;
- (d) The limits of liability of each insurance policy; and
- (e) The name, address, and insurer of the present custodian of each insurance policy.

ANSWER NO. 6:

- (a) There is no insurance coverage. However, the Mississippi Tort Claims Fund is providing a defense and indemnity, if any, to MDOT.
- (b) Not applicable.
- (c) Not applicable.

(d) \$500,000 inclusive of all claims.

(e) Not applicable.

INTERROGATORY NO. 7: Please identify and describe the appearance of each and every person who observed or was present in the vicinity of the accident, giving the name, address, and employer of each person, if known to you.

ANSWER NO. 7: Objection is made to this Interrogatory to the extent it seeks information beyond the scope of permissible discovery. Without waiving any objections,

Kenan Bel Buchert

Dean Kelly

Lauren Brunelle

Joshua Dright

Brandon Alexander

Edward Bradley

Tom Burlison, Bay St. Louis Police Department

G.S. Saucier, Mississippi Dept. of Marine Resources

Scott Anderson, Mississippi Dept. of Marine Resources

Tre' M. Banks, 31 McAllister Drive, New Orleans, LA 70115

INTERROGATORY NO. 8: Did anyone associated or employed by you ever prepare, submit or make any written statement or report of the accident?

ANSWER NO. 8: CSMI prepared reports; however, they are protected by the work product doctrine.

INTERROGATORY NO. 9: If your answer to the preceding interrogatory is in the affirmative, please state: 1) The date of any such written statement or report; and 2) The

substance and contents of any such written statement or reports.

ANSWER NO. 9: See Answer to Interrogatory No. 8.

INTERROGATORY NO. 10: Please state every act or omission, if any, on the part of Plaintiff which you claim caused or contributed to cause the collision.

ANSWER NO. 10: Plaintiff boarded the boat at night with captain who was under the influence of drugs and alcohol. The Plaintiff failed to make driver slow down. The Defendant reserves the right to supplement this Answer.

INTERROGATORY NO. 11: Please identify by name, address, and employer, to the best of your knowledge, those individuals who were present at the scene of the accident or who arrived shortly thereafter, and state whether each such individual was within the course and scope of his/her employment with you at the time of the accident.

ANSWER NO. 11: See Answer to Interrogatory No. 7.

INTERROGATORY NO. 12: State in as much detail as possible how you contend the accident happened which resulted in the injuries to Plaintiff in this action, and also state whether or not you contend that you were not at least in part at fault for the accident, and if it is your contention that another person was at fault (whether a party to this lawsuit or not), please indicate the name of each such person and state precisely how they were at fault.

ANSWER NO. 12: Objection is made to this Request to the extent it is vague and over broad. Further, discovery has only just begun. Without waiving any objections, Kenan Bucher has testified that he knew he was not proceeding in the navigation channel when he attempted to drive his boat under the U.S. 90 bridge over the Bay of St. Louis. Further, Kenan Buchert was traveling at an excessive speed without the benefit of a spot

light when he negligently and/or recklessly drove his boat into the U.S. Highway 90 Bridge over the Bay of St. Louis. MDOT bears no fault. All parties on the boat were at fault, namely, the driver. The Defendants reserve the right to supplement.

INTERROGATORY NO. 13: Please describe in detail everything you did to avoid the instant accident, both before and at the time of the accident.

ANSWER NO. 13: Objection is made to this Interrogatory on the grounds that it is vague and over broad and seeks to discover mental impressions of counsel. Without waiving any objections, the sole proximate cause of the accident was the fault of Kenan Buchert and all parties who were passengers on the boat in question.

INTERROGATORY NO. 14: Please indicate what remedial measures you took following the accident to ensure that this type of accident will not occur in the future, whether it be new and/or additional electrical systems, lighting, warnings and/or signage; addition of equipment; disciplinary action; monitoring; regulation of boating; and/or posting of additional personnel, etc.

ANSWER NO. 14: Objection is made to this Interrogatory on the grounds that it is beyond the scope of permissible discovery and is otherwise vague and ambiguous. Without waiving any objections, prior to the accident in question, following Hurricane Gustav, the decision to move the electrical boxes for the lighting on the bridge to higher ground was made.

INTERROGATORY NO. 15: Please state whether during the period of January 1, 2003 through the present, you made or received any requests, admonishments, warnings, comments or reports to or from any organization about dangerous or unsafe walking conditions of the Highway 90 Bridge over Bay St. Louis, and for each, state the following,

to wit:

- a. Whether same was oral or written;
- b. The author or declarant, providing name, address, and last known employer;
- c. To whom same was initially submitted and later forwarded;
- d. Your response to same, including oral, written, or action taken; and
- e. Whether a claim for damages associated with same was asserted, and the disposition of same.

ANSWER NO. 15: Objection is made to this Interrogatory on the grounds that it is vague, ambiguous, and over broad. Without waiving any objections, none.

INTERROGATORY NO. 16: Please state your understanding of the owner, operator, lessor, lessee, and/or custodian of the Highway 90 Bridge over Bay St. Louis including, but not limited to any and all electrical systems, lighting, and/or reflective materials affixed adjacent to and/or the underside of the bridge and/or its support pilings.

ANSWER NO. 16: MDOT.

INTERROGATORY NO. 17: Please identify any and all contracts which were in full force and effect between you and any other entity for the period of January 1, 2000 through the present for the design, construction, maintenance, repair, upkeep, and/or monitoring of the condition of the Highway 90 Bridge over Bay St. Louis including, but not limited to any and all electrical systems, lighting, and/or reflective materials affixed adjacent to and/or the underside of the bridge and/or its support pilings.

ANSWER NO. 17: Objection is made to this Interrogatory on the grounds that it is vague and ambiguous. Without waiving any objections, Granite Archer Wesler, A Joint Venture, contracted with MDOT to rebuild the U.S. 90 Bay of St. Louis bridge. HNTB

designed the new bridge. Further repairs to the electrical system of the bridge were performed under a contract with Powell Construction Services, Inc.

INTERROGATORY NO. 18: Please identify any and all persons responsible for the design, construction, maintenance, repair, upkeep, and/or monitoring of the condition of the Highway 90 Bridge over Bay St. Louis including, but not limited to any and all electrical systems, lighting, and/or reflective materials affixed adjacent to and/or the underside of the bridge and/or its support pilings for the period of January 1, 2000 up to the present.

ANSWER NO. 18: The bridge was designed by HNTB and built by Archer Western Contractors, Ltd., and repairs to the electrical system after Hurricane Gustav were performed by Powell Construction, Inc. MDOT maintained the bridge at all relevant times.

INTERROGATORY NO. 19: Please describe in detail all documentary evidence that you intend to introduce into evidence at the trial of this matter.

ANSWER NO. 19: See all documents produced in response to Request for Production of Documents. The Defendants reserve the right to supplement.

INTERROGATORY NO. 20: Please identify all persons whom you will or may call as witnesses at the trial of this matter and as to each such witness, please state the full name, present address, present phone number, the name and address of present employer and the substance to which each person is expected to testify.

ANSWER NO. 20: Objection is made to this Interrogatory on the grounds it seeks information beyond the scope of discovery. Without waiving any objections:

Kelly Castleberry, Gulf Coast Regional Engineer for MDOT;

Gene Powell, Powell Construction Services, Inc.;

Kenan Bel Buchert;

Dean Kelly;
Lauren Brunelle;
Joshua Dright;
Brandon Alexander;
Edward Bradley;
Scott Saucier, Mississippi Department of Marine Resources;
Tom Burlington;
Lemon Sullivan, MDOT Electrical Superintendent, District 6;
Keith Carr, Engineer for MDOT, Bridge Division; and
Mitch Carr, Engineer for Gulf Coast Region, Bridge Division.

INTERROGATORY NO. 21: If you contend that the accident herein sued upon was due to the fault of third parties for whom you are not responsible, please identify each such third party and list every fact which you contend constitutes evidence to support your allegation that said third parties were at fault and that you are not responsible for their fault.

ANSWER NO. 21: The accident was the fault of Kenan Buchert and/or all of the passengers on the boat in question.

INTERROGATORY NO. 22: Please state what you contend caused the accident and injuries to Plaintiff.

ANSWER NO. 22: The negligence of Kenan Buchert and/or all of the passengers on the boat in question was the cause of the Plaintiffs' injuries, if any.

INTERROGATORY NO. 23: Please state what if any policies and procedures regarding inspection of for the design, construction, maintenance, repair, upkeep, and/or

monitoring of the condition of the Highway 90 Bridge over Bay St. Louis including, but not limited to any and all electrical systems, lighting, and/or reflective materials affixed adjacent to and/or the underside of the bridge and/or its support pilings which were in place for the period of January 1, 2003 through the present, indicating the effective dates of the policies and procedures and any modifications to same.

ANSWER NO. 23: Objection is made to this Interrogatory on the grounds that it is vague and over broad. Without waiving any objections, after the bridge was reconstructed following Hurricane Katrina, it was inspected by URS. As for MDOT, every year, a bridge inspection crew inspects the bridge. Every year or two, a "snooper" truck is used to inspect underneath the bridge.

INTERROGATORY NO. 24: Please identify what, if any, documents, paper or electronic records, and/or logs were maintained of inspection, repair, and/or maintenance of the of the condition of the Highway 90 Bridge over Bay St. Louis including, but not limited to any and all electrical systems, lighting, and/or reflective materials affixed adjacent to and/or the underside of the bridge and/or its support pilings which were in place for the period of January 1, 2003 through the present.

ANSWER NO. 24: Objection is made regarding the scope of this Interrogatory as the bridge was destroyed by Hurricane Katrina in 2005, and/or the grounds of said Interrogatory is vague and over broad. Without waiving any objections, see the MDOT Maintenance Repair Record dated 8/15/2008; Structure Inventory Appraisal Report, 7/14/11; MDOT Standard Bridge Inspection Form, 7/14/11; and MDOT Standard Bridge Inspection Form, July 23, 2009, attached hereto as collective Exhibit "A".

INTERROGATORY NO. 25: Please identify by name, address, date of accident,


and disposition of claim any and all prior and subsequent accidents alleged to have been caused as a result of the condition of the of the condition of the Highway 90 Bridge over Bay St. Louis including, but not limited to any and all electrical systems, lighting, and/or reflective materials affixed adjacent to and/or the underside of the bridge and/or its support pilings for the period of January 1, 2003 through the present.

ANSWER NO. 25: Objection is made regarding the scope of this Interrogatory as the bridge was destroyed by Hurricane Katrina in 2005, and on the grounds that said Interrogatory is vague and over broad. Without waiving any objections, none.

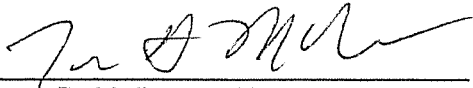
INTERROGATORY NO. 26: Please identify any and all documentation and/or records of any kind associated with any and all contact with the United States Coast Guard regarding the design, construction, maintenance, repair, upkeep, and/or monitoring of the condition of the electrical systems, lighting, illumination, and/or reflective devices affixed adjacent to and/or on the underside or the support pilings of the Highway 90 Bridge over Bay St. Louis, during the period of January 1, 2000 up to the present.

ANSWER NO. 26: Objection is made regarding the scope of this Interrogatory as the bridge was destroyed by Hurricane Katrina in 2005, and/or the grounds of said Interrogatory is vague and over broad. Without waiving any objections, will supplement.

Respectfully submitted, this the 5 day of October, 2012.


STATE OF MISSISSIPPI, MISSISSIPPI
DEPARTMENT OF TRANSPORTATION, AND
MISSISSIPPI TRANSPORTATION
COMMISSION

Signed as to objections:



Trace D. McRaney, Esq.
DUKES, DUKES, KEATING & FANCA, P.A.
2909 13TH STREET, SIXTH FLOOR
POST OFFICE DRAWER W
GULFPORT, MS 39502-0680
TELEPHONE: 228- 868-1111
FAX: 228- 863-2886

STATE OF MISSISSIPPI

COUNTY OF Forrest

Kelly R. Castleberry being first duly sworn on oath, deposes and says that he has read the foregoing answers to interrogatories and he subscribes and knows the contents thereof, that said responses were prepared with the advice and assistance of counsel, that the responses set forth herein, subject to inadvertent or undiscovered errors, are based on and therefore necessarily limited by the records and information still in existence, presently recollected and thus far discovered in the course of the preparation of these responses; that consequently, he reserves the right to make any changes in the responses if it appears at any time that omissions or errors have been made therein or that more accurate information is available and that subject to the limitations as set forth herein, said responses are true and correct to the best of his knowledge, information and belief.

DATED this the 4th day of October, 2012.

Kelly R. Castleberry
STATE OF MISSISSIPPI, MISSISSIPPI
DEPARTMENT OF TRANSPORTATION, AND
MISSISSIPPI TRANSPORTATION
COMMISSION

SWORN TO AND SUBSCRIBED BEFORE ME, this the 4th day of
October, 2012.

Linda J. Townsend
NOTARY PUBLIC

My Commission Expires:



Respectfully submitted, this the 5 day of ^{Oct}~~July~~, 2012.

STATE OF MISSISSIPPI, MISSISSIPPI
DEPARTMENT OF TRANSPORTATION, AND
MISSISSIPPI TRANSPORTATION
COMMISSION

BY: DUKES, DUKES, KEATING & FANECA, P.A.

BY: s/ Trace D. McRaney
TRACE D. MCRANEY, ESQ.

TRACE D. MCRANEY, MSB NO. 9905
DUKES, DUKES, KEATING & FANECA, P.A.
Post Office Drawer W
Gulfport, MS 39502-0680
TEL: (228) 868-1111
FAX: (228) 863-2886

CERTIFICATE OF SERVICE

I, TRACE D. McRANEY, of the law firm of Dukes, Dukes, Keating & Faneca, P.A., do hereby certify that I have this date mailed, postage prepaid, a true and correct copy of the above and foregoing pleading to the following:

W. Chad Stelly, Esq.
Rome, Arata & Baxley, LLC
Suite 2017, Poydras Center
650 Poydras Street
New Orleans, LA 70130
Attorney for Joshua Dright and Brandon Alexander

Doug Bagwell, Esq.
Carr Allison
14231 Seaway Road, Bldg. 2000
Suite 2001
Gulfport, MS 39503
Attorney for Granite Construction Company and Archer Western Contractors, Ltd.

A. Remy Fransen, Jr., Esq.
Matthew R. Fransen, Esq.
814 Howard Avenue
New Orleans, LA 70130
Attorney for Dean Kelly and Lauren Brunelle

Harold S. Bartholomew, Esq.
P.O. Box 786
Metairie, LA 70004
Attorney for Dean Kelly and Lauren Brunelle

Brett Tweedel, Esq.
3421 North Causeway Blvd.
Suite 900
Metairie, LA 70002
Attorney for Kenan B. Buchert

Owen J. Bradley, Esq.
Bradley & Bradley
2700 Octavia Street
New Orleans, LA 70015
Attorney for Edward Bradley

J. Stephen Kennedy, Esq.
Everett E. White, Esq.
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.A.
P.O. Box 14167
Jackson, MS 39236
Attorney for HNTB Corporation

Danny J. Collier, Jr., Esq.
Luther, Collier, Hodges & Cash, LLP
401 Church Street
Mobile, AL 36602
Attorney for Powell Construction Services, Inc.

This, the 5 day of Oct ~~July~~, 2012.

s/ Trace D. McRaney
TRACE D. MCRANEY

In The Matter Of:
Dean E. Kelly, et al. v.
Kenan Bel Buchert, et al.

Kelly Castleberry
September 4, 2012

Davis Court Reporting, LLC
Post Office Box 16147
Jackson, Mississippi 39236
601.991.0079 or 877.496.0079
marytodd@daviscourtreporting.com

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IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

DEAN E. KELLY AND LAUREN BRUNELLE PLAINIFFS

VERSUS CAUSE NO. A2401-09-369

KENAN BEL BUCHERT, MISSISSIPPI DEPARTMENT
OF TRANSPORTATION, GRANITE CONSTRUCTION
COMPANY, ARCHER WESTERN CONTRACTORS, LTD.,
HNTB CORPORATION, INGRAM SIGNALIZATION, INC.,
AND POWELL CONSTRUCTION SERVICES, INC. DEFENDANTS

AND

GRANITE CONSTRUCTION COMPANY AND ARCHER
WESTERN CONTRACTORS, LTD. CROSS-PLAINIFFS

VERSUS

HNTB CORPORATION CROSS-DEFENDANT

AND

INGRAM SIGNALIZATION, INC. CROSS-DEFENDANT

CONSOLIDATED FOR ALL PURPOSES WITH:

JOSHUA DRIGHT PLAINTIFF

VERSUS

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
AND COUNTY OF HARRISON, MISSISSIPPI
TRANSPORTATION COMMISSION, GRANITE
CONSTRUCTION COMPANY, ARCHER WESTERN
CONTRACTORS, LTD., GRANITE ARCHER
WESTERN, A JOINT VENTURE, KENAN BEL BUCHERT,
HNTB CORPORATION, INGRAM SIGNALIZATION, INC.,
AND POWELL CONSTRUCTION SERVICES, INC. DEFENDANTS

CONSOLIDATED FOR ALL PURPOSES WITH:

BRANDON ALEXANDER PLAINTIFF

VERSUS CAUSE NO. A2401-09-377

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
AND COUNTY OF HARRISON, MISSISSIPPI
TRANSPORTATION COMMISSION, GRANITE

CONSTRUCTION COMPANY, ARCHER WESTERN
CONTRACTORS, LTD., GRANITE ARCHER
WESTERN, A JOINT VENTURE, KENAN BEL BUCHERT, HNTB
CORPORATION, INGRAM SIGNALIZATION, INC., AND
POWELL CONSTRUCTION SERVICES, INC. DEFENDANTS

CONSOLIDATED FOR ALL PURPOSES WITH:

KENAN BEL BUCHERT PLAINTIFF

VERSUS CAUSE NO. A2401-10-32

MISSISSIPPI DEPARTMENT OF TRANSPORTATION,
GRANITE CONSTRUCTION COMPANY AND ARCHER
WESTERN CONTRACTORS, LTD., AND JOHN DOES 1-5 DEFENDANTS

DEPOSITION OF KELLY CASTLEBERRY

APPEARANCES NOTED HEREIN

TAKEN AT INSTANCE OF: PLAINTIFFS
DATE: SEPTEMBER 4, 2012
PLACE: DUKES, DUKES, KEATING & FANCA, P.A.
2909 13TH STREET, SUITE 600
GULFPORT, MISSISSIPPI
TIME: 2:45 P.M.

REPORTED BY: Connie Chastain, RMR
CSR NO. 1025

DAVIS COURT REPORTING
Post Office Box 16147
Jackson, Mississippi 39236-6147
(601) 991-0079
www.daviscourtreporting.com

1 Gustav, do you know whether all six of those navigational
2 lights were working at all times?

3 A. I cannot testify at all times. I can't make
4 that testimony.

5 Q. Do you know whether immediately before Gustav
6 all six were operating?

7 A. I cannot testify that all six were working
8 before then. I know that --

9 Q. You just don't know?

10 A. I just don't know.

11 Q. Did MDOT have some sort of plan in place to
12 inspect in one way or another the efficacy of those
13 lights; that is, whether they were still working from
14 time to time just for safety reasons?

15 A. Yes. MDOT has bridge inspection crews.

16 Q. Okay.

17 A. They go out and they inspect the structure,
18 the entire structure.

19 Q. In other words, the integrity of the legs of
20 the bridge and the lighting and the whole works?

21 A. Foundation.

22 Q. All right.

23 A. Slabs, columns, everything.

24 Q. Yeah. Because what happens sometimes, if you
25 don't build a bridge correctly, the wash of the water can

1 part of the deal?

2 A. MDOT standard bridge inspection form.

3 Q. Okay. Why don't you mark that three.

4 A. (Witness complies).

5 Q. Go to the next one. I want you to go through
6 each one and mark it until you get to something that's
7 not relevant to bridge inspection.

8 A. (Witness complies).

9 Q. Okay. Go to the next one.

10 A. (Witness complies).

11 Q. Do you have any role in the use of these
12 documents?

13 A. I personally do not look at the documents. I
14 have a bridge inspection team that their responsibility
15 is to look at these, and then they assess it with our
16 bridge engineer for the Department of Transportation.

17 Q. Could you identify for me, while you're going
18 through those documents, the bridge -- the bridge -- the
19 bridge people that do the inspection and the engineers
20 that would be involved in that?

21 A. You're asking me to do two tasks at one time.

22 Q. I understand. Finish the first. You don't
23 have to multi-task. Looks like that whole pile is
24 relevant, huh? All right. Give me those, please.

25 MR. R. FRANSEN: I'm going to mark them.

1 A. I'm only vaguely familiar that we have control
2 boxes that run the wiring and supply power to the
3 lighting systems. I do not know the intricacies of how
4 it's done.

5 Q. You're not the man for that detail, so I'll
6 bypass that and we'll find somebody else who can tell us
7 about that. That's fair.

8 But you are able to testify that it was MDOT's
9 responsibility to maintain the lighting system on the
10 bridge one way or the other?

11 A. Correct.

12 Q. Do you have any knowledge of whether lighting
13 such as the navigational lights are mandated by any
14 statutory authority of any governmental body that has
15 jurisdiction in Mississippi?

16 A. You'll have to answer that -- do that question
17 one more time.

18 Q. Okay.

19 MR. R. FRANSEN: Repeat it, please.

20 (QUESTION READ BACK)

21 THE WITNESS: Only the navigational
22 lights are warranted. No other lighting
23 system is required on any roadway or bridge.

24 BY MR. R. FRANSEN: (Continuing)

25 Q. And explain to me who it is that requires the

1 navigational light system.

2 A. The Coast Guard requests the navigational
3 system.

4 Q. And the reason for that, to the best of your
5 knowledge, is for safety for mariners, for people
6 traversing under the bridge; is that correct?

7 A. It is an aid to help mariners go through a
8 bridge.

9 Q. In your capacity as an employee of MDOT, would
10 you be able to tell us whether MDOT has an obligation to
11 maintain the integrity of those navigational lights, make
12 sure they're on at all pertinent times of the night?

13 A. MDOT does periodic inspections for these
14 navigation lights on all of our structures along the
15 coastal and navigable waterways.

16 Q. Because it's your -- that is, MDOT's duty to
17 keep them running?

18 A. It is our duty to try to keep them running.

19 Q. Where -- well, first of all, maybe you can
20 tell me, but if you can't, I'd like to know where I could
21 find out. Who can tell me the condition of those six
22 navigational lights that we saw on that other exhibit,
23 the condition of those six navigational lights in
24 mid-October -- no -- yeah, in mid-October of 2008?

25 A. Is this the time the accident occurred?

1 Q. Just before.

2 A. The lights were burning.

3 Q. All six?

4 A. I do not -- I cannot testify to all six, but I
5 was there in September when we actually got the wires to
6 burn hot and got the lights on.

7 Q. Did you have all six lit?

8 A. Not at that time. We had two that we had
9 placed on order, and my electrical superintendent placed
10 the new bulbs. I could not tell you the date that that
11 was done.

12 Q. All right. What date -- yeah, you can't tell
13 me the date that --

14 A. I can't tell you the date that that was --

15 Q. Not when he ordered, but when you turned it
16 back on, what date was that? A rough date will help.

17 A. I'm not -- you're -- you'll have to ask that
18 question again. I'm not --

19 Q. Who would I ask that question of?

20 A. The question you just asked, please repeat it.

21 BY MR. R. FRANSEN: Repeat it, please.

22 (QUESTION READ BACK)

23 MR. MCRANEY: Are we talking about
24 turning it back on on the 16th or --

25 MR. R. FRANSEN: No, no. I'm asking

1 right before -- he indicated to me that
2 immediately before -- let me see if this is
3 right. I'm telling you what I heard. Okay.

4 BY MR. R. FRANSEN: (Continuing)

5 Q. Immediately before the Gustav storm, the
6 lights were on but some were not --

7 A. No.

8 Q. -- of the six?

9 A. That's not what you asked.

10 Q. That was -- okay. Then explain the answer
11 because I missed --

12 A. You'll have to ask me the question.

13 Q. All right. I'll do it again. Don't worry.

14 My question is, in mid-October before Gustav --

15 MR. M. FRANSEN: Gustav was in September.

16 THE WITNESS: Gustav was in September.

17 MR. R. FRANSEN: Oh. I'm thinking --

18 MR. M. FRANSEN: October is the accident.

19 BY MR. R. FRANSEN: (Continuing)

20 Q. Before Gustav, were all of those navigational
21 lights functioning?

22 A. To the best of our knowledge, they were.

23 Q. And how would we confirm that, the best of
24 your knowledge being that of the MDOT?

25 A. Two ways. One being periodic inspections of

1 the electrical superintendent or his crew going out to
2 say yes, they're burning. There is no set time to do
3 that. And/or a public comment of such that we have
4 navigational lights or lighting out on the structure, or
5 from the Coast Guard.

6 Q. Who would be the electrical fellow that we
7 would ask about the condition before the Gustav
8 hurricane?

9 A. Lemon Sullivan. He is my electrical
10 superintendent.

11 Q. Okay. When you say my, are you in the
12 corporate hierarchy ahead of him, over him?

13 A. Currently, I am.

14 Q. Okay.

15 MR. R. FRANSEN: See if you can find me
16 Lemon's affidavit.

17 MR. M. FRANSEN: It's in here.

18 BY MR. R. FRANSEN: (Continuing)

19 Q. I'm reading Mr. Lemon's affidavit. All right.
20 I'm going to ask you a question regarding a statement
21 Mr. Lemon Sullivan made. This is in an affidavit of 2nd
22 July. It's kind of a lengthy commentary, but listen to
23 it and see if you agree with what he said. Okay. It's
24 Item 6.

25 It says, PCS, which is your contractor, came

1 can answer if you can.

2 THE WITNESS: Actually, the inspection
3 was performed after Gustav for the Gustav
4 event. That's when we noticed that we had an
5 issue with the lighting system. We asked to
6 make temporary repairs and set up in order to
7 make those temporary repairs. So yes, a
8 periodic inspection was performed after a
9 storm event.

10 BY MR. R. FRANSEN: (Continuing)

11 Q. Is there a record kept somewhere of some
12 functionary of MDOT or its appointee who goes out there,
13 looks at the lights, the navigation lights, it's all
14 okay, and then issues a report which says it's all okay?

15 A. Not on the periodic inspections. Pretty much
16 the inspections are done. If everything is working, then
17 everything goes as usual. There's not necessarily a
18 report. When the bridge inspections are performed, then
19 if anything is out, it would be noted on that bridge
20 inspection.

21 Q. So if there's, shall we use the term, casual
22 inspection, no record is kept?

23 A. Correct.

24 Q. But on an official -- you'd use that term
25 maybe, official inspection, a record is kept?

1 BY MR. R. FRANSEN: (Continuing)

2 Q. And according to your testimony, the
3 navigational lights were on?

4 A. Correct.

5 Q. Can you conceive of a situation in which the
6 navigational lights might be off and the roadway lights
7 in operation, or you don't know enough to tell me?

8 A. I don't know enough to tell you.

9 Q. Okay. Now, in the construction -- or how do
10 we put it -- the repair or however you term it that took
11 place with Powell Construction after Gustav, you played a
12 role in that, did you not, in communication with Powell
13 and its representatives?

14 A. Correct.

15 Q. Tell me what your role in that procedure was.

16 A. Once we identified that the lighting system
17 was damaged from the storm, I asked Powell Construction
18 Services to come over to the bridge site and look at what
19 would be possible for us to get temporary service to the
20 navigational lights and to make a more permanent repair.

21 Q. Why did you want to get the navigational
22 lights up and running?

23 A. Navigational lights aid in the -- for mariners
24 and it's a requirement for the Coast Guard, so we were
25 trying to get our lights back operational.

1 Q. Because the law requires that you have
2 navigational lights, doesn't it?

3 A. The Coast Guard requests that we have
4 navigational lights there.

5 Q. Request or mandate?

6 A. The same. We need navigational lights there
7 according to the Coast Guard.

8 Q. All right. So what's the relationship -- what
9 happened when Powell came out there? Were you there when
10 they inspected and did all of that?

11 A. I was present when Powell Construction
12 Services came over. We looked at the control units that
13 were damaged, watched them make the repairs, and once
14 they got them operational, verified that the lights did
15 burn.

16 Q. Well, we know from your testimony earlier that
17 at least two of the navigational lights did not burn
18 after that; isn't that true?

19 A. That is correct.

20 Q. Okay. Just want to be sure we don't
21 overstate.

22 All right. So now here we are. You've got
23 Powell out there. Powell makes some temporary repairs.
24 And then even after there are repairs, two of the
25 navigational lights are not burning; is that correct?

1 a permit is required to have a structure over navigable
2 waterway, and a permit was acquired for that.

3 Q. From the Coast Guard?

4 A. From the Coast Guard.

5 Q. Okay. We've talked about the north side of
6 the bridge having two navigational lights that did not
7 work. Do you recall that?

8 A. Correct.

9 Q. When were those two navigational lights fixed?

10 A. I cannot tell you an exact date of when those
11 were fixed.

12 Q. Can you tell me if it was before or after the
13 accident?

14 A. I cannot tell you before or after the
15 accident.

16 Q. Do you know whose responsibility it was to fix
17 those?

18 A. Mr. Sullivan would have placed those or one of
19 his -- one of his workers out of the electrical
20 department would have placed those on there.

21 Q. Like they would have done the physical repair?

22 A. They would have swiveled it up and screwed in
23 the light bulb.

24 Q. When did you -- no. Just so I'm clear, you
25 were not the Region 6 engineer when the accident

1 Q. Mr. Castleberry, you were the MDOT contact
2 with Powell Construction on this repair project?

3 A. Correct.

4 Q. And you were here this morning and sat through
5 Mr. Gene Powell's deposition testimony; correct?

6 A. Correct.

7 Q. Is there anything that Gene Powell could have
8 said to MDOT to have changed anything that happened?

9 A. I do not know of anything that could have been
10 done.

11 Q. Did Powell Construction do the job that MDOT
12 called them out to do?

13 A. Yes, they did.

14 Q. To MDOT's satisfaction?

15 A. Yes.

16 Q. Did you tell us already that you're not sure
17 when Mr. Lemon -- or Mr. Sullivan changed those two -- or
18 replaced those two nav lights that were out?

19 A. I'm unaware of the exact time that they would
20 have been replaced.

21 Q. Is that something that could have been done as
22 easily as just pulling up on that chain and doing it from
23 the side of the bridge?

24 A. Yes.

25 Q. Okay. That's not an elaborate fix?

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

DEAN E. KELLY AND LAUREN BRUNELLE PLAINTIFFS

VERSUS CAUSE NO. A2401-09-369

KENAN BEL BUCHERT, MISSISSIPPI DEPARTMENT
OF TRANSPORTATION, GRANITE CONSTRUCTION
COMPANY, ARCHER WESTERN CONTRACTORS, LTD.,
HNTB CORPORATION, INGRAM SIGNALIZATION, INC.,
AND POWELL CONSTRUCTION SERVICES, INC. DEFENDANTS

AND

GRANITE CONSTRUCTION COMPANY AND ARCHER
WESTERN CONTRACTORS, LTD. CROSS-PLAINTIFFS

VERSUS

HNTB CORPORATION CROSS-DEFENDANT

AND

INGRAM SIGNALIZATION, INC. CROSS-DEFENDANT

CONSOLIDATED FOR ALL PURPOSES WITH:

JOSHUA DRIGHT PLAINTIFF

VERSUS

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
AND COUNTY OF HARRISON, MISSISSIPPI
TRANSPORTATION COMMISSION, GRANITE
CONSTRUCTION COMPANY, ARCHER WESTERN
CONTRACTORS, LTD., GRANITE ARCHER
WESTERN, A JOINT VENTURE, KENAN BEL BUCHERT,
HNTB CORPORATION, INGRAM SIGNALIZATION, INC.,
AND POWELL CONSTRUCTION SERVICES, INC. DEFENDANTS

CONSOLIDATED FOR ALL PURPOSES WITH:

BRANDON ALEXANDER PLAINTIFF

VERSUS CAUSE NO. A2401-09-377

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
AND COUNTY OF HARRISON, MISSISSIPPI
TRANSPORTATION COMMISSION, GRANITE

CONSTRUCTION COMPANY, ARCHER WESTERN
CONTRACTORS, LTD., GRANITE ARCHER
WESTERN, A JOINT VENTURE, KENAN BEL BUCHERT, HNTB
CORPORATION, INGRAM SIGNALIZATION, INC., AND
POWELL CONSTRUCTION SERVICES, INC. DEFENDANTS

CONSOLIDATED FOR ALL PURPOSES WITH:

KENAN BEL BUCHERT PLAINTIFF

VERSUS CAUSE NO. A2401-10-32

MISSISSIPPI DEPARTMENT OF TRANSPORTATION,
GRANITE CONSTRUCTION COMPANY AND ARCHER
WESTERN CONTRACTORS, LTD., AND JOHN DOES 1-5 DEFENDANTS

DEPOSITION OF GENE POWELL

APPEARANCES NOTED HEREIN

TAKEN AT INSTANCE OF: PLAINTIFFS
DATE: SEPTEMBER 4, 2012
PLACE: DUKES, DUKES, KEATING & FANCA, P.A.
2909 13TH STREET, SUITE 600
GULFPORT, MISSISSIPPI
TIME: 10:33 A.M.

REPORTED BY: Connie Chastain, RMR
CSR NO. 1025

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1 MR. R. FRANSEN: Oh, okay. All right.

2 Fair enough. Fair enough.

3 BY MR. R. FRANSEN: (Continuing)

4 Q. So they're not in the middle?

5 A. No, sir.

6 Q. Okay. All right. On any of these photographs
7 that are spread in front of you, can you show me where
8 those lights would have been?

9 MR. COLLIER: The nav lights or the
10 street lights?

11 BY MR. R. FRANSEN: (Continuing)

12 Q. These right here (indicating) on --

13 A. I drew them here.

14 Q. Okay. That's them. All right.

15 A. Yes, sir. That's where they should be, I
16 guess, if you could see them suspended down.

17 Q. And they were actually suspended from beneath
18 the roadway?

19 A. They mount on the side of the bridge rail and
20 they're on a pivot arm, and they --

21 Q. So you could pick it up to change the lights?

22 A. Yes, sir. They got it to where you can pick
23 it up to maintain the lights, fix the bulbs, whatever,
24 fuses.

25 Q. But when you got out there, those lights

1 weren't operating, were they, when you did your work in
2 September?

3 A. Yes, sir, they were operating. The -- the
4 south side two reds and green. The north side, they were
5 missing a far east red and a middle green, and then I
6 can't remember if the bulbs were out or the lighting
7 assemblies were missing. And that's when we called Lemon
8 with MDOT and he -- if I remember right, he had them on
9 order and was going to take care of those themselves. So
10 they had one red light on the far west side working.

11 Q. So, in fact, there weren't just three red or
12 green lights, there were six?

13 A. Well, you had the north and south side. Yes,
14 sir. For ships coming southbound and ships going out
15 northbound.

16 Q. I understand. These lights are for purpose of
17 safe navigation, are they not?

18 A. Yes, sir.

19 Q. And you are in the business of putting up such
20 lights that take into account rules of safe navigation,
21 aren't you?

22 A. I have installed them before.

23 Q. If some of those lights were out on the day of
24 the accident, what effect would that have on a navigator
25 trying to get his way through the span of the bridge?

1 BY MR. R. FRANSEN: (Continuing)

2 Q. Were out?

3 A. The day that we restored power for the first
4 day, yes, sir.

5 MR. BAGWELL: You had power to them.
6 They just had a bad bulb or whatever?

7 THE WITNESS: Yes, sir, and they were
8 special bulbs, high intensity bulbs. It
9 wasn't just like a -- go to Wal-Mart and get a
10 screw bulb. So -- and I think Lemon had told
11 me he had them on order and he was going to
12 take care of them.

13 BY MR. R. FRANSEN: (Continuing)

14 Q. Did anybody take care of them, to your
15 knowledge?

16 A. Not to my knowledge. Like I said --

17 Q. Well, who --

18 MR. COLLIER: Wait, wait, wait. Let him
19 finish.

20 MR. R. FRANSEN: I'm sorry. I didn't --

21 THE WITNESS: We were never called again.

22 BY MR. R. FRANSEN: (Continuing)

23 Q. All right.

24 A. And -- just trying to get some air. We were
25 never called again. Even when we went back, we still did

1 Q. Right. That's north side.

2 A. So if you're coming southbound, that'd be east
3 in the center.

4 Q. Let me see which ones they were. But when you
5 left in September, I think it was, they were by then lit
6 or no?

7 A. They were not lit.

8 Q. They were not lit?

9 A. Those two.

10 Q. Those two?

11 A. Yes, sir.

12 Q. The rest of them were?

13 A. Yes, sir.

14 Q. You couldn't get them running? Was that the
15 problem or what?

16 A. To -- something special. Called Lemon, he had
17 it on -- whatever it was, he had it ordered and he was
18 taking care of it. End of story.

19 Q. So when you left in September, never to be
20 called back, all of the navigational lights were not,
21 n-o-t, in operation? Those two were not?

22 A. No, sir.

23 Q. Okay. Here's a letter which I'd like you to
24 explain to me.

25 (DOCUMENT MARKED EXHIBIT NUMBER 5)

1 A. We cleaned them pretty good, so it would have
2 took a while. I can't tell you a specific date.

3 Q. Are we talking, you know, it can last six
4 months, it can last three months, it can last one month?

5 A. I've never been in this situation with it to
6 really scientifically give you -- I mean, that's just
7 what it's made for, when something's submerged in water.

8 Q. Can you tell me the name, like the actual name
9 of the product or who makes it?

10 A. Not offhand, but I'm sure I can get that
11 information. I'm not -- we buy it through Stuart Irby
12 and it's --

13 Q. Okay. So you can get that information to your
14 attorney?

15 A. I can.

16 Q. Okay. You had testified earlier that if MDOT
17 maintains your temporary repairs, you felt that the
18 repairs could have lasted from September 19th, '08 to, I
19 believe, it was about March 19th, give or take a day or
20 two of 2009 when the new panels were put in. What did
21 you mean when you say maintained?

22 A. Just we've got the power back up and running.

23 Q. Uh-huh.

24 A. They said they were going to maintain them.

25 Q. Okay.