

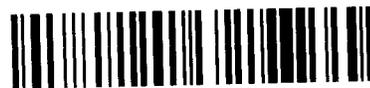
COMMON PLEAS COURT OF PHILADELPHIA
 TRIAL DIVISION - CIVIL
 TRIAL WORKSHEET

Event: <u>Final</u> , at <u>1/1</u> : in _____				
Scheduled: <u>1/1</u> , JURY CE - COMMERCE - EXPEDITED, JURY				
Judge's Name: <u>Gary S Glazer</u>			Signature: <u>[Signature]</u>	
Caption: <u>SCOTTSDALE INSURANCE CO VS METRO ELEVATOR COMPANY,</u>			Case Type: 1D - INSURANCE, DECLARATOR JUDGMN	
Term and Number: #1108-01297		If Consolidated: Term and Number(s)		
TRIAL DATE:	ACTUAL: <input type="checkbox"/> JURY <input checked="" type="checkbox"/> NON-JURY	TOTAL AMOUNT	NUMBER OF DAYS: <u>5</u>	DATE SHEET PREPARED: <u>2/1/13</u>
Disposition Date: <u>2/1/13</u>				
FULL DESCRIPTION OF DISPOSITION (To Be Entered VERBATIM On The Docket):				
<i>See Attached Order along with Findings & Facts & Conclusions of Law</i>				

- | | |
|-----------------------------------------------------------|-------------------------------------------------------------------------------------|
| <input type="checkbox"/> DEFAULT JUDGMENT/COURT ORDERED | <input type="checkbox"/> JURY VERDICT FOR PLAINTIFF |
| <input type="checkbox"/> DISPOSITIVE MOTION GRANTED | <input type="checkbox"/> JURY VERDICT FOR DEFENDANT |
| <input type="checkbox"/> DIRECTED VERDICT | <input type="checkbox"/> MISTRIAL |
| <input type="checkbox"/> DISCONTINUANCE ORDERED | <input type="checkbox"/> HUNG JURY |
| <input type="checkbox"/> DISCONTINUE/TRANSFER BINDING ARB | <input type="checkbox"/> NON-PROS ENTERED |
| <input checked="" type="checkbox"/> FINDING FOR DEFENDANT | <input type="checkbox"/> NON-SUIT ENTERED |
| <input type="checkbox"/> FINDING FOR PLAINTIFF | <input type="checkbox"/> SETTLED PRIOR TO ASSIGNMENT FOR TRIAL (TEAM LEADERS, only) |
| <input type="checkbox"/> DAMAGES ASSESSED | <input type="checkbox"/> SETTLED AFTER ASSIGNMENT FOR TRIAL |
| <input type="checkbox"/> JUDGMENT ENTERED BY AGREEMENT | <input type="checkbox"/> TRANSFERRED TO OTHER JURISDICTION |
| <input type="checkbox"/> JUDGMENT ENTERED | <input type="checkbox"/> OTHER (EXPLAIN) _____ |

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Scottsdale Insurance Co-WSFFD



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COMMON PLEAS COURT OF PHILADELPHIA
TRIAL DIVISION - CIVIL
TRIAL WORKSHEET

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**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

SCOTTSDALE INSURANCE CO.,	:	AUGUST TERM, 2011
	:	
Plaintiff,	:	NO. 01297
	:	
v.	:	COMMERCE PROGRAM
	:	
METRO ELEVATOR CO., INC., et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 1st day of February, 2013, after a non-jury trial of this matter, and in accord with the Findings of Fact and Conclusions of Law issued simultaneously, it is

ORDERED as follows:

1. Pursuant to the terms of the parties' Settlement Agreement, as between PPL Corporation, PPL Energy Supply, LLC, PPL Generation, LLC, PPL Brunner Island, and PPL Montour LLC, (collectively the "PPL Defendants") and Metro Elevator Co., Inc, their percentage relative responsibility for Christopher Rainey's accident is:

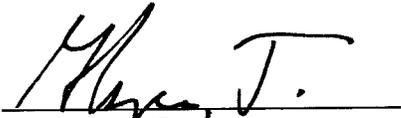
PPL Defendants – 100%

Metro Elevator – 0%

2. Under the terms of the contract between PPL Montour LLC and Patent Construction Corp, a division of Harsco Corporation (collectively "Harsco"), Harsco must reimburse the PPL

Defendants 100% of their costs of settlement, damages and direct expenses, including reasonable attorney's fees incurred in this action and the underlying action brought be Mr. Rainey.

BY THE COURT,



GLAZER, J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

SCOTTSDALE INSURANCE CO.,	:	AUGUST TERM, 2011
	:	
Plaintiff,	:	NO. 01297
	:	
v.	:	COMMERCE PROGRAM
	:	
METRO ELEVATOR CO., INC., et al.,	:	
	:	
Defendants.	:	

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

1. On April 22, 2007, Christopher Rainey, who is a nominal defendant in this action, was badly injured when he fell from the seventh floor to the fifth floor at a power plant owned by defendant, PPL Montour, LLC (“PPL Montour”).¹
2. At the time of the accident, Mr. Rainey was employed by and working for defendant Patent Construction Systems, Inc., which is a division of defendant Harsco Corporation (collectively “Harsco”).
3. Prior to the accident, PPL Montour contracted with Harsco to erect scaffolding, landing platforms, and a temporary elevator at the power plant, including the platforms under construction on the 7th floor where Mr. Rainey’s accident occurred.²

¹ PPL Corporation, PPL Energy Supply, LLC, PPL Generation, LLC, and PPL Brunner Island, which are all affiliates of PPL Montour, are also defendants in this action. The PPL entities are collectively referred to as the “PPL Defendants.”

² See Trial Ex. 1 - Contract between PPL Montour and Harsco (“PPL/Harsco Contract”).

4. Harsco sub-contracted with defendant Metro Elevator Company, Inc. (“Metro”)³ to supply and erect the elevator and immediate support structure for the elevator, including bracing the elevator mast to the power plant’s structural steel.⁴

5. After his accident, Mr. Rainey brought a personal injury action against the PPL Defendants, Metro and several other entities.⁵ Mr. Rainey did not sue his employer Harsco because he was barred from doing so under the Worker’s Compensation Act.

6. The PPL Defendants, Metro, Harsco, and several of their insurers agreed to settle with Mr. Rainey and to have this court determine their relative liability. Their Settlement Agreement provides:

b. [This Philadelphia Court] will determine the relative responsibility for the happening of Mr. Rainey’s accident as between PPL Defendants and Metro Elevator, the only remaining viable defendants at the time the Rainey Action was settled with Mr. Rainey. At the trial, a determination will be made of the percentage relative responsibility of Metro Elevator and PPL Defendants, with the total amounts adding up to 100%. It is understood that all defenses available to the claims made by Mr. Rainey in the Rainey Action are available to each of the Parties. The Court shall allocate on a percentage basis the relative responsibility of Metro Elevator and PPL Defendants, totaling 100% (e.g., 100% to Metro Elevator, or 100% to PPL Defendants, or some percentage to PPL Defendants and some percentage to Metro Elevator totaling 100%).

c. The Court will also separately determine Harsco’s responsibility to reimburse PPL, in whole or in part, pursuant to the terms of the PPL/Harsco Contract, including the responsibility, if any, allocated to PPL under paragraph B. 1.b., above, as well as Harsco’s responsibility, if any, to pay attorney’s fees, pursuant to the PPL/Harsco Contract.

d. Mr. Rainey will not be allocated any percentage responsibility by the Court.⁶

³ Plaintiff Scottsdale Insurance Company insured Metro.

⁴ See Trial Ex. 54 – Equipment Lease Agreement between Harsco and Metro.

⁵ Rainey v. Metro Elevator Co., April Term, 2009, No. 01890 (Phila. Co.) (the “Rainey Action”).

⁶ Stipulation docketed as “So Ordered” on February 2, 2012, pp. 4-5.

7. The contract between Harsco and PPL Montour provided in relevant part as follows:

b. Statutory Indemnity - With respect to Claims brought against [PPL Defendants] by or on behalf of [Harsco's] employees or other third parties, arising from or in any manner relating to injuries to or death of [Harsco's] employees, including but not limited to Claims based upon allegations of negligence of [PPL Defendants], [Harsco] shall indemnify [PPL Defendants] for any and all loss or liability resulting therefrom, including the costs of settlements, judgments, damages and direct expenses including reasonable attorney's fees (including reasonable attorney's fees incurred in establishing a right to indemnity hereunder). [Waiver of Harsco's Worker's Compensation Act immunity omitted because not in dispute.]

c. The language of any indemnity, defense or hold harmless provisions notwithstanding, it is understood and agreed that [Harsco's] obligations shall be limited to [Harsco's] negligence and proportionate share of joint or concurrent negligence.⁷

8. The contract between PPL Montour and Harsco also contained the following provisions

regarding PPL Montour's and Harsco's responsibilities for the safety of Harsco's employees:

E. [Harsco] shall take all reasonable precautions for the safety of all [Harsco] personnel engaged in the Work and shall continuously maintain adequate protection of all its work, [PPL Montour's] work site, and persons to prevent damage, injury, or loss. [Harsco] shall at all times exercise due care with regard to all equipment, machinery and materials to prevent damage, loss or injury to persons and property, and shall use such adequate protective devices, warning signs, crossover points and barriers as may be reasonably required under the circumstances.

F. [PPL Montour] shall have the right, from time to time, to undertake a safety performance audit of [Harsco's] services, work-practices, tools, equipment and materials. [PPL Montour] may, at any time, and in its sole discretion, suspend all or a portion of the Work for safety-related reasons. [Harsco] shall take immediate, appropriate corrective action.⁸

* * *

M. The purpose of this article is to define [Harsco's] safety responsibilities under this Contract while performing Work on [PPL Montour's] work site. Although [PPL Montour] may monitor [Harsco's] safety performance, may review safety performance with [Harsco's] safety contact person, may suspend the Work for safety-related reasons, these actions are for the primary purpose of protecting

⁷ PPL/Harsco Contract, Amendment, p. 0001.014.

⁸ PPL/Harsco Contract, p. 0001.005.

[PPL Montour] personnel and property. [Harsco] shall remain solely responsible for the safe performance of the Work under this Contract. The provisions of this article shall be interpreted and construed in a manner consistent with [Harsco's] status as an independent contractor.⁹

9. At the time Mr. Rainey fell, he was working without a safety harness. He stepped off a secure platform onto several "Sure Deck" planks that were not secured to the channel whalers upon which they rested. The planks on which he stepped tipped upwards, and Mr. Rainey fell down two stories.

10. Mr. Rainey's accident took place within an area on the 7th floor that had been "red-tagged" by Harsco. Red tagging signified that the area was under construction and open only to Harsco employees and others authorized by Harsco.¹⁰

11. The red tagged area consisted of an elevator landing platform that was under construction and another platform on which construction materials were being stored temporarily.¹¹

12. The unsecured planks on which Mr. Rainey stepped was positioned so that Harsco employees could transport materials from the materials platform to the elevator platform by walking on the planks.¹²

13. A safety harness known as a retractable life line or yo-yo was available for Mr. Rainey's use in the red tagged area at the time of his accident, but he did not put it on before stepping onto the unsecured planks.¹³

⁹ *Id.*, p. 0001.006.

¹⁰ See Notes of Trial Testimony ("N.T.") from August 27, 2012 ("I") at 70:10-12, 127:25-128:1, 143:6-144:15, 151:8-17.

¹¹ See Trial Exs. 9, 10, 13, 14, 15, and 16

¹² See N.T. I at 37:7- 52:4, 88:21-89:3, 100:3-23, 162:7-13, 172:16-173:22, 255:3-10; Trial Exs. 9 and 10.

¹³ See Trial Exs. 14, 15, and 16.

14. Metro employees had worked on the 7th floor, near the area of Mr. Rainey's accident, three or four days before the accident, but no Metro personnel were there at the time of the accident.¹⁴

15. Harsco employees, including Mr. Rainey, were working on the 7th floor, in the red tagged area at the time of the accident.¹⁵

16. Harsco owned the planks involved in Mr. Rainey's accident.¹⁶

17. Metro did not place the planks involved in the accident in the positions they occupied at the time of the accident.¹⁷

18. There was no evidence that the PPL Defendants placed the planks involved in the accident in the positions they occupied at the time of the accident.

19. Harsco employees placed the planks in the positions they occupied at the time of the accident, so Harsco employees, including Mr. Rainey, could perform work for Harsco on PPL Montour's power plant.¹⁸

20. There was no evidence that, on the day of the accident, Metro had any responsibility for safety within the area red tagged by Harsco.

21. As the party who red tagged the area in which Mr. Rainey's accident occurred, Harsco had primary responsibility for the safety of persons, including Mr. Rainey, within that area.¹⁹

¹⁴ See N.T. I at 123:23-124:4; N.T. from August 28, 2012 ("II") at 147:18-148:3.

¹⁵ See N.T. I at 39:15 – 61:9; Exs. 14, 15, and 16

¹⁶ See N.T. I at 40:19-22, 216:20-217:1.

¹⁷ See N.T. II at 156:18-157:5.

¹⁸ See N.T. I at 37:7- 52:4, 88:21-89:3, 162:7-13; 235:3-10; Trial Ex. 20.

¹⁹ See N.T. I at 55:1-13, 89:19-25, 129:13-23, 144:3-20; N.T. II at 19:14-20:1.

22. Under the contract between PPL Montour and Harsco, PPL Montour reserved the right to do safety inspections and audits of Harsco's work.²⁰

23. PPL Montour borrowed an employee of PPL Generation's, Mr. Johnson, to oversee Harsco's work. Mr. Johnson's duties included observing the progress of Harsco's work under the contract, including its safety practices, and acting as Harsco's contact person on behalf of PPL Montour.²¹

24. Neither Mr. Johnson nor any other employee of the PPL Defendants was in the red-tagged area on the 7th floor at the time of Mr. Rainey's accident,²² nor was there any evidence that Mr. Johnson or any other employee of the PPL Defendants had entered the red tagged area at any time before the accident.

25. Mr. Johnson and the PPL Defendants did not observe Mr. Rainey's failure to use a safety harness at the time of the accident.²³

26. Mr. Johnson and the PPL Defendants did not observe the unsecured placement of the planks involved in the accident.²⁴

27. In accord with the terms of the parties' Settlement Agreement, as between the PPL Defendants and Metro, their percentage relative responsibility for Mr. Rainey's accident is:

PPL Defendants – 100%

Metro – 0%

²⁰ See PPL/Harsco Contract, p. 0001.005.

²¹ See N.T. II at 12:24-16:11, 84:6-15, 92:16-21, 102:4-15; Trial Ex. 31.

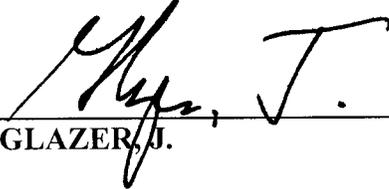
²² See N.T. II at 64:8-9, 99:12-21.

²³ See N.T. II at 59:24-60:14, 110:14-111:1.

²⁴ See N.T. II at 110:14-115:19.

28. Under the contract between PPL Montour and Harsco, Harsco has a duty to indemnify the PPL Defendants for that portion of the PPL Defendants' liability attributable to Harsco's negligence or Harsco's joint or concurrent negligence.²⁵
29. Under the contract between PPL Montour and Harsco, Harsco had primary responsibility for the safety of its worksite, including the red-tagged area, and its employees, including Mr. Rainey.²⁶
30. Harsco failed to secure the planks to the channel whalers and failed to remove the unsecured planks from the positions they occupied at the time of the accident.²⁷
31. Harsco failed to prevent Mr. Rainey from stepping on the planks while not wearing a safety harness.²⁸
32. With respect to the PPL Defendants' 100% liability for Mr. Rainey's accident, 100% of it is attributable to Harsco's negligence or Harsco's joint or concurrent negligence.
33. Under the contract between PPL Montour and Harsco, Harsco must reimburse the PPL Defendants 100% of their costs of settlement, damages and direct expenses, including reasonable attorney's fees incurred in this action and the underlying Rainey Action.²⁹

BY THE COURT,


GLAZER, J.

²⁵ See PPL/Harsco Contract, Amendment, p. 0001.014.

²⁶ See PPL/Harsco Contract, p. 0001.006.

²⁷ See N.T. I at 51:15-52:4, 88:21-89:8, 162:7-13, 166:4-15, 237:1-5; Trial Ex. 20.

²⁸ See Trial Exs. 14, 15, and 16.

²⁹ See PPL/Harsco Contract, Amendment, p. 0001.014.