

**IN THE DISTRICT COURT OF HENINGER COUNTY
STATE OF YELLOWHAMMER**

PAMELA MACKEY ACKER, as the)
administratrix of the estate of Rodney)
Acker,)
)
Plaintiff,)
)
v.)
)
TOM TONGUE GROCERY EMPIRE,)
INC.,)
)
Defendant.)

Case No. 23-06597-CV

Adapted from the problem created for the Texas Young Lawyers Association
by Marvin W. Jones for the 2012 National Trial Competition.

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Modified in 2024.

STATEMENT OF THE CASE

This is a premises liability case filed by the widow of Rodney Acker against Tom Tongue Grocery Empire, Inc. Mr. Acker was an employee of Need A Fix Roofing Company. Mr. Acker was killed when he fell through a skylight on the roof of the grocery business.

COMPLAINT

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Defendant.

PLAINTIFF’S ORIGINAL COMPLAINT

COMES NOW, Plaintiff PAMELA MACKEY ACKER, as the administratrix of the estate of Rodney Acker, and files this Original Complaint against Defendant TOM TONGUE GROCERY EMPIRE, INC., and for cause of action against said Defendant shows the Court as follows:

PARTIES, JURISDICTION AND VENUE

1. This is an action for damages within the jurisdictional limits of this Court.
2. Pamela Mackey Acker has been a resident of Heninger County, Yellowhammer since 1985. Plaintiff was the wife of Rodney Acker, deceased, to whom she was married at the time of his death on February 17, 2023.
3. Tom Tongue Grocery Empire, Inc. is a Delaware corporation with its principal place of business in Heninger County, Yellowhammer. Said Defendant may be served with citation in this matter by serving its president, Taylor Pennington, at its corporate headquarters located at 7466 La Clave Secreta, Garrisonville, Yellowhamer.
4. Venue is proper in Heninger County, Yellowhammer because the accident that is

the subject of Plaintiff's Original Complaint occurred in Heninger County, Yellowhammer. Additionally, Defendant's principal place of business is located in Heninger County, Yellowhammer.

FACTUAL BACKGROUND

5. On February 17, 2023, Rodney Acker was working as a laborer for Need A Fix Roofing Company on premises belonging to Tom Tongue Grocery Empire, Inc. located at 1492 Merchant Market in Garrisonville, Yellowhamer. While performing his work on the roof of the premises, Acker fell through a skylight located on the roof.

6. The fall and resulting sudden stop on a concrete floor 25 feet below the skylight resulted in Rodney Acker's death.

7. The roof of the premises belonging to Defendant was virtually flat with skylights located at very close intervals. The skylights on Defendant's roof did not have rails surrounding them, nor did they have screens or other devices shielding them from persons who might be in proximity.

8. The roof of the premises belonging to Defendant had no guardrails at or near the edges to prevent persons such as Rodney Acker from falling to the paved surfaces below.

9. The roof of the premises belonging to Defendant was covered with gravel over tar paper. The tar paper was held in place by two-foot-long boards nailed or otherwise fastened at varying intervals along the roof surface.

10. On information and belief, Rodney Acker tripped over a board fastened to the roof and fell on, against and through an adjacent skylight, falling to his death to the concrete floor 25 feet below.

PREMISES LIABILITY

11. Plaintiff incorporates by reference the allegations of paragraphs 1 through 10 as if

fully restated herein.

12. Under the law of Yellowhammer, Defendant owed the same duties to the employees of an independent contractor as it would to business invitees. Defendant violated the duties it owed to Rodney Acker, an employee of an independent contractor performing work, labor and services on the premises belonging to Defendant.

13. The premises belonging to Defendant were unreasonably dangerous for the following reasons:

- a. There were no guardrails or other barriers at or near the edge of the roof;
- b. There were no guardrails or other barriers at or near the skylights;
- c. There were boards fastened to the roof at random intervals, presenting a trip hazard to anyone working on the roof;
- d. There were skylights at very close intervals over the entire area of the roof, which skylights were old, deteriorated and no longer able to withstand their designed loading; and
- e. The skylights on the roof were not protected by screens or other devices reasonably available that would prevent persons from coming into contact with the actual skylight surfaces.

14. Defendant knew or should have known of the dangers present on its roof, but failed to warn the deceased of those dangers.

15. Defendant knew or should have known of the dangers present on its roof, but failed to take steps to remedy those dangers and make the premises safe for persons such as decedent who were reasonably anticipated to be working on the roof.

16. The failure of Defendant to discharge the duties it owed to Rodney Acker were

the proximate cause of his death.

17. As a direct and proximate consequence of Defendant's actions, Rodney Acker suffered severe injuries resulting in his death. Plaintiff was married to Rodney Acker at the time of his unnecessary death. As a result of his death, she has suffered mental anguish, loss of consortium, loss of care, comfort and support and loss of his future earnings.

WHEREFORE, Plaintiff demands judgment against Defendant in such sums of compensatory and punitive damages as a jury may assess after a full and fair consideration of the facts.

Respectfully submitted: March 13, 2023.

By: /s/ Dennis Wynn
Dennis Wynn
State Bar No. 00045896

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*Attorneys for Pamela Mackey Acker as the
administratrix of the estate of Rodney Acker.*

PLAINTIFF DEMANDS TRIAL BY STRUCK JURY

ANSWER

**IN THE DISTRICT COURT OF HENINGER COUNTY
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ANSWER

COMES NOW Tom Tongue Grocery Empire, Inc., by and through its undersigned counsel and files its Answer, showing the Court as follows:

1. Defendant admits the allegations in paragraph 1.
2. On information and belief, Defendant admits the allegations in paragraph 2.
3. Defendant admits the allegations in paragraph 3.
4. Defendant admits that its principal place of business is located in Heninger County, Yellowhammer and that the accident referenced in Plaintiff's Complaint occurred in Heninger County. Defendant has insufficient information to either admit or deny the remaining allegations in paragraph 4 of Plaintiff's Complaint, and Defendant therefore denies the remaining allegations in paragraph 4.
5. Defendant denies the allegations in paragraph 5.
6. Defendant denies the allegations in paragraph 6.
7. Defendant denies the allegations in paragraph 7.
8. Defendant denies the allegations in paragraph 8.

9. Defendant denies the allegations in paragraph 9.
10. Defendant denies the allegations in paragraph 10.
11. Defendant realleges its answers to paragraphs 1 through 10 as if fully set forth herein.
12. Defendant denies the allegations in paragraph 12.
13. Defendant denies the allegations in paragraph 13.
14. Defendant denies the allegations in paragraph 14.
15. Defendant denies the allegations in paragraph 15.
16. Defendant denies the allegations in paragraph 16.
17. Defendant denies the allegations in paragraph 17.
18. To the extent necessary, Defendant denies all the remaining allegations in the Complaint.

AFFIRMATIVE DEFENSES

19. Without waiver of the foregoing but in addition thereto, Defendant affirmatively pleads that the accident at issue was caused in whole or in part by the negligence of Rodney Acker's employer, Need A Fix Roofing in the following respects:
 - a. Failing to properly train Acker regarding working on, at or near elevated areas;
 - b. Failing to properly supervise Acker; and/or
 - c. Failing to recognize objective indications that Acker might deliberately cause or attempt to cause his own death.
20. Without waiver of the foregoing but in addition thereto, Defendant affirmatively pleads that the accident at issue was caused in whole or in part by the conduct of Rodney Acker

in the following respects:

- a. Failing to keep a proper lookout for any hazards that might have been present in the area in which he was working;
- b. Negligently standing, bouncing or jumping on the surface of the skylight in question; and/or
- c. Standing, bouncing or jumping on the surface of the skylight in question in order to deliberately cause it to fail.

21. Pursuant to Yellowhammer Code Section 70-12-82, Defendant designates Need A Fix Roofing as a responsible third party and requests the Court to submit to the jury the issue of its fault and the percentage by which such fault caused or contributed to cause the accident in question.

PRAYER

WHEREFORE, Defendant requests that upon final trial that Defendant have judgment that Plaintiff take nothing by her suit, that Defendant be discharged from any and all liability, that Defendant recover court costs and for such other and further relief, at law or in equity, general or special, to which Defendant may show itself justly entitled.

Respectfully submitted,
By: /s/ Clark Howell
Clark Howell
State Bar No. 1588324

STAUB GOUZH & HOWELL
150 E. Middle Way
P.O. Box 15008
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Original Answer has been served by certified mail, return receipt requested, to Dennis Suplee on this 1st day of April, 2023.

By: /s/ Clark Howell
Clark Howell

**WITNESS & EXHIBIT LIST
FACTUAL STIPULATIONS
APPLICABLE LAW**

WITNESS AND EXHIBIT LIST

WITNESSES:

1. Pamela Mackey Acker
2. Stevie Walker (Plaintiff Expert)
3. Jordan Pennington
4. Cory Harbour (Defendant Expert)
5. Tim Williams

EXHIBITS:

1. OSHA Citation (Tom Tongue)
2. Twitter Message
3. OSHA Citation (Need A Fix Roofing)
4. Lab Report
5. Photograph of Roof
6. Photograph of New Skylight
7. Manufacturer's Information Sheet
8. Invoice for Skylights
9. Invoice for New Skylights
10. Personnel File of Cory Harbour
11. Photograph of Rodney Acker and Friend
12. Photograph of Store Front
13. Acker Arrest Record

STIPULATIONS AS TO EVIDENTIARY MATTERS

1. Federal Rules of Civil Procedure and Federal Rules of Evidence apply.
2. Assume all evidence and testimony in this pack has been admitted without objection.
3. Other than what is explicitly established through the evidence in this packet, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.
4. This competition does not permit a competitor to “invent” an individual not mentioned in this problem and introduce testimony or evidence offered to the court or jury from that “invented” individual.
5. Need a Fix is unrepresented in this matter because they went out of business and entered bankruptcy shortly after Rodney Acker’s death. There is evidence produced during discovery (but not admitted during trial) that Need A Fix has no appreciable assets or insurance for the Plaintiff to recover any judgment entered against it.

APPLICABLE LAW

1. Yellowhammer Code § 70-12-82 provides as follows:

DESIGNATION OF RESPONSIBLE THIRD PARTY.

(a) A defendant may seek to designate a person as a responsible third party by filing a motion for leave to designate that person as a responsible third party. The motion must be filed on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date.

(b) By granting a motion for leave to designate a person as a responsible third party, the person named in the motion is designated as a responsible third party for purposes of this chapter without further action by the court or any party.

(c) The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility, stated in whole numbers, for the following persons with respect to each person's causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these:

- (1) each claimant;
- (2) each defendant;
- (3) each responsible third party who has been designated under this Section.

2. The Court granted Defendant's motion to designate Need A Fix Roofing, Inc. as a responsible third party. Therefore, Need A Fix Roofing, Inc. was properly designated as a responsible third party pursuant to Yellowhammer Code § 70-12-82.

3. Yellowhammer is a pure comparative negligence state, and a plaintiff is entitled to recover damages even if they are found to be 99% negligent and responsible for their own injuries.

4. 29 CFR Section 1910.12 provides as follows:

1910.12(a) "Standards." The standards prescribed in part 1926 of this chapter are adopted as occupational safety and health standards under section 6 of the Act and shall apply, according to the provisions thereof, to every employment and place of employment of every employee engaged in construction work. Each employer shall protect the employment and places of employment of each of his employees

engaged in construction work by complying with the appropriate standards prescribed in this paragraph.

5. 29 CFR Section 1910.23 provides as follows:

1910.23(a)(4) Every skylight floor opening and hole shall be guarded by a standard skylight cover or a fixed standard railing on all exposed sides.

1910.23(e)(8) Skylight screens shall be of such construction and mounting that they are capable of withstanding a load of at least 200 pounds applied perpendicularly at any one area on the screen. They shall also be of such construction and mounting that under ordinary loads or impacts, they will not deflect downward sufficiently to break the glass below them. The construction shall be of grillwork with openings not more than 4 inches long or of slatwork with openings not more than 2 inches wide with length unrestricted.

6. 29 CFR Section 1926.501 provides as follows:

1926.501(a)(2) The employer shall determine if the walking/working surfaces on which its employees are to work have the strength and structural integrity to support employees safely. Employees shall be allowed to work on those surfaces only when the surfaces have the requisite strength and structural integrity.

1926.501(b)(4)(i) Each employee on walking/working surfaces shall be protected from falling through holes (including skylights) more than 6 feet (1.8 m) above lower levels, by personal fall arrest systems, covers, or guardrail systems erected around such holes.

1926.501(b)(4)(ii) Each employee on a walking/working surface shall be protected from tripping in or stepping into or through holes by covers.

7. The Yellowhammer versions of the above sections of the CFRs, which are identical in all respects, shall control for purposes of this competition.

8. Yellowhammer case law provides that the owner, lessee, tenant, or other occupier of real property “owes a duty to invitees, including business invitees, to exercise reasonable care and diligence to keep the premises in a reasonably safe condition for the uses contemplated by the invitation, and to warn the invitee of known dangers, dangers that ought to have been known, and hidden and concealed dangers of which the invitee was ignorant.” *Bartlett v. Prchal*, 831 So. 2d 408, 417 (Yel. 2004). Yellowhammer case law has further clarified that “hidden and

concealed dangers” means “circumstances or situations that are not immediately observable by persons exercising ordinary care, and circumstances and situations which, although immediately observable, present a greater risk of harm than ordinarily associated with the same or similar circumstances and situations due to latent defects known to the owner, lessee, tenant or other occupier and not known to an invitee.” *Bartlett*, 831 So. 2d at 418.

9. Under Yellowhammer state law, the “elements in any premises-liability case are the same as the elements for negligence in any other tort litigation: duty, breach of that duty, proximate cause, and damages.” *Sleadd v. Carroll*, 24 So. 3d 76, 85 (Yel. 2018).

10. Finally, Yellowhammer state law provides that the “duties owed to an invitee by an owner, lessee, tenant or other occupier of real property are also owed to contractors, subcontractors and the employees of contractors and subcontractors.” *Hollingsworth v. Williamson*, 17 Yel. 874, 876 (1917).

TRIAL TRANSCRIPTS

**TRANSCRIPT OF TRIAL TESTIMONY OF PAMELA MACKEY ACKER
SEPTEMBER 23, 2024**

1 Q: Can you state your full name, please.

2 A: Yes, my name is Pamela Mackey Acker, and I am the widow of the love of
3 my life, Rodney Acker.

4 Q: How long were you married to Rodney Acker?

5 A: We were married eighteen glorious months. And four days.

6 Q: Was this your first marriage?

7 A: Not really.

8 Q: Had you been married previously?

9 A: Yes, I had been married once previously, and Rodney had been married
10 three times previously. But he said many times that this marriage was the
11 one he had been waiting for all of his life and that we would stay together
12 forever.

13 Q: And did you agree with that assessment?

14 A: I have never loved anyone like Rodney.

15 Q: During his lifetime, what did Mr. Acker do?

16 A: Mr. Acker worked for Need A Fix Roofing as a laborer.

17 Q: And what if anything do you do?

18 A: Oh, I'm a big time criminal defense lawyer here in the state of
19 Yellowhammer.

20 Q: How did you meet Mr. Acker?

21 A: Well, I was defending Rodney in connection with a dog fighting ring he had
22 gotten mixed up in.

23 Q: Did Mr. Acker ever talk to you about his work?

24 A: Yes, he talked about his work all the time.

25 Q: Why did he talk to you so much about his work?

26 A: Frankly, he talked to me about his work in the context of an attorney-client
27 relationship. He was seeking my advice as his attorney rather than his wife.

**TRANSCRIPT OF TRIAL TESTIMONY OF PAMELA MACKEY ACKER
SEPTEMBER 23, 2024**

1 He wanted to know what he could do about some of the work conditions in
2 which he was forced to work.

3 Q: What kinds of things was he telling you about his work?

4 A: Well, he was unhappy because the folks at Need A Fix Roofing had no
5 safety program. They had no training. They had no concept of safety
6 training. It was just a bunch of 'good ol' boys who were running a very
7 sloppy shop.

8 Q: Did he ever mention the job at Tom Tongue Grocery Empire?

9 A: Yes, he was particularly concerned about that job. He thought working on
10 that roof was very unsafe because there were no guardrails around the edge
11 of the roof. Worse, the guy who was the maintenance supervisor for the
12 grocery store was always up there telling them what to do and demanding
13 that they work harder and longer hours even when they were fatigued.

14 Q: Did he tell you anything else about this maintenance supervisor?

15 A: Yes, he said the maintenance supervisor, a guy named John Ward, ordered
16 him to work very close to the edge of the roof without any kind of personal
17 protective equipment like a safety belt. Ward also made him climb a ladder
18 up to the roof carrying really heavy loads, much too heavy for safety.

19 Q: Did he ever mention the skylights that were on the roof?

20 A: No, he never said a word about any skylights on the roof.

21 Q: Did you ever go inspect the premises at Tom Tongue?

22 A: Yes, I thought it was important to see what Rodney was experiencing in
23 order to properly represent him.

24 Q: When did you go there?

25 A: I went late one night, when I figured no one would try to stop me.

26 Q: Did you see anyone there?

27 A: Yes, there happened to be a security person there.

**TRANSCRIPT OF TRIAL TESTIMONY OF PAMELA MACKEY ACKER
SEPTEMBER 23, 2024**

1 Q: Did you speak with this security person?

2 A: Yes, the security person, a guy named Chris Jensen, came over and spoke
3 with me for quite a while. I asked him about the safety conditions around the
4 premises.

5 Q: What, if anything at all, did Mr. Jensen say about the conditions out there?

6 A: He said that the roof area was just a disaster waiting to happen.

7 Q: Did he say why he thought that?

8 A: He said that he had been up there once, and the skylights were so thick that
9 you couldn't walk around up there without stumbling into them.

10 Q: Did he say whether he had any trouble walking around up there?

11 A: He said he realized before he even took a step that he was too drunk to
12 maneuver that minefield, so he climbed back down.

13 Q: Did you go look for yourself?

14 A: No, I had heard enough at that point and I was ready to advise my client.

15 Q: What was your advice to Rodney regarding the working conditions at Need
16 A Fix?

17 A: I told him he ought to quit there and go ring bells for the Salvation Army.

18 Q: Why that specific advice?

19 A: Because he had such a supple wrist. It's what made him good at roofing.

20 Q: What do you recall about his demeanor the day he fell through the skylight
21 at Tom Tongue?

22 A: He seemed just fine. He didn't seem to have a care in the world. As he left
23 for work, he gave me a peck on the cheek and said that he thought this
24 would be one of his best days.

25 Q: Can you identify Exhibit 1?

26 A: This is an OSHA citation that Rodney found laying around in a restroom at
27 Tom Tongue while he was working there. He thought it was important so he

**TRANSCRIPT OF TRIAL TESTIMONY OF PAMELA MACKEY ACKER
SEPTEMBER 23, 2024**

1 picked it up and kept it.

2 Q: What is this OSHA citation for?

3 A: This citation says that Tom Tongue failed to properly train its employees in
4 safety measures.

5 Q: Do you use a Twitter account?

6 A: Only for business purposes.

7 Q: Can you identify Exhibit 2?

8 A: It appears to be a printout of a message that supposedly came from my
9 Twitter account.

10 Q: Does this appear to have come from your Twitter account?

11 A: Well, it appears to come from my account, I'll grant you that.

12 Q: And do you know a person named Ed Kronk?

13 A: Yes, I know Ed. Ed is a client of mine.

14 Q: Is this a business message?

15 A: Yeah, my business. And I resent you trying to get in my business.

**TRANSCRIPT OF TRIAL TESTIMONY OF STEVIE WALKER
SEPTEMBER 23, 2024**

1 Q: Please state your name for the record.

2 A: My name is Stevie Walker.

3 Q: What do you do for a living?

4 A: I'm a safety consultant.

5 Q: Tell us something about your educational background, please.

6 A: I graduated from high school in Happy, Yellowhammer. I then went to
7 Flower Mound University over in Flower Mound and got a Bachelor of Arts
8 in Biometrics. I then went to Dangerfield State University, where I received
9 a Masters degree in Civil Engineering.

10 Q: What did you do after you received your education?

11 A: I went to work for the Occupational Safety and Health Administration, or
12 OSHA, in their regional office out of Garrisonville, where I worked for
13 approximately for twelve years.

14 Q: What kind of work were you doing for OSHA for twelve years?

15 A: I was doing safety inspections and accident investigations.

16 Q: What's involved in doing a safety inspection?

17 A: We would go into a business, sometimes announced and sometimes not, and
18 we would start looking for safety hazards, things that violate OSHA
19 standards. If we found violations, we could do anything from simply
20 sitting down with the owner and talking about it, to issuing citations, to even
21 shutting the business down entirely.

22 Q: During your twelve years with OSHA, did you ever have occasion to
23 examine the roof of a business for safety violations?

24 A: Because a roof is not ordinarily a work area per se, we did not usually
25 inspect a roof on a routine safety inspection. And so I never actually
26 inspected the roof of a business for safety violations, except for this one. I
27 was still working for OSHA when this accident happened, and I actually did

**TRANSCRIPT OF TRIAL TESTIMONY OF STEVIE WALKER
SEPTEMBER 23, 2024**

1 the post-accident inspection.

2 Q: When did you leave OSHA?

3 A: Right after this investigation. I handed my notes and all over to the next
4 inspector, and the new inspector was the one who wrote the citation here.

5 Q: Why did you stop working at OSHA?

6 A: I was tired of watching other folks make the big bucks as consultants when
7 they really knew very little. Very little. So I became a consultant.

8 Q: Did my firm employ you to take a look at the accident involving Mr. Acker
9 and render opinions about that accident?

10 A: Yes, you said you would pay me to do it, and I said I'd be happy to receive
11 that pay. That's what I'm in the business of doing.

12 Q: What did you review in connection with working this case?

13 A: I reviewed all of the depositions that have been taken. I also reviewed my
14 notes on the OSHA investigation and I've reviewed photographs of the roof.
15 Additionally, I went back to the grocery store and again inspected the roof. I
16 also reviewed a laboratory report from some testing done on one of the
17 skylights from the roof.

18 Q: What is Exhibit 3?

19 A: It is the OSHA citation issued against Need A Fix Roofing in relation to this
20 accident.

21 Q: Based upon your years of experience, your education and training, your prior
22 and recent investigations, and your review of the materials that have been
23 provided to you in connection with this case, have you formed opinions and
24 conclusions regarding the accident that took Mr. Acker's life?

25 A: Yes, I have formed the following opinions: First, that entire roof area was
26 just one big OSHA violation. I've never seen such a dangerous place. There
27 is nowhere on that roof that is safe. Second, I believe that the owner of

**TRANSCRIPT OF TRIAL TESTIMONY OF STEVIE WALKER
SEPTEMBER 23, 2024**

1 the building should have erected guardrails or barriers of some kind around
2 each of the skylights on the roof while the roofing work was being done in
3 order to protect against this kind of accident. Third, I believe the owner of
4 the building should have warned Mr. Acker and his coworkers about the fact
5 that the skylights were there, and further should have warned that the
6 skylights were in such poor condition that they would not hold anywhere
7 near their rated capacity.

8 Q: Let's take up your first opinion. Why do you believe the entire roof was one
9 big OSHA violation?

10 A: Although this was a flat roof, and therefore did not present any kind of slope
11 hazard, the roof itself was simply littered with boards that had been nailed
12 down to hold the tar paper down. There were probably two hundred boards
13 up there, every one of them was a 2x4x8 dimensionally. Every one of those
14 boards was a trip hazard.

15 Q: Were the workers from the roofing company supposed to be removing those
16 boards in order to put down a new roofing material?

17 A: Yes, they had probably taken 25 or so of the boards off when this accident
18 occurred.

19 Q: What else was it about the roof that made it dangerous?

20 A: Well, there was no rail around the edge of the roof to keep people from
21 falling off the edge. Here you've had all of these little boards that would trip
22 you, and no guardrail to catch you if you were close to the edge. The whole
23 thing was incredibly dangerous. In addition to that, you had all those
24 skylights up there, and you could either trip on those skylights or you could
25 fall through them, as Mr. Acker did. These things were just everywhere up
26 there, and only stuck up maybe 6 or 8 inches above the roof. You could
27 easily overlook them they were so low.

**TRANSCRIPT OF TRIAL TESTIMONY OF STEVIE WALKER
SEPTEMBER 23, 2024**

1 Q: Your second opinion is that the building owner should have erected
2 guardrails or barriers around the skylights to make them safe during roofing
3 work. What is that based on?

4 A: It's just based on common sense. It's also based on the legal notion that the
5 building owner has a duty to make hazards like that safe or warn about them.

6 Q: And that brings us to your third opinion, which is that the owner should have
7 warned about the hazards. What is that opinion based on?

8 A: Again, it is based on good common sense. You have a hazard like that up
9 there, you need to either make it safe or give explicit warnings about it.

10 Q: As between erecting barriers and giving a warning, do you have an opinion
11 as to which would be preferable?

12 A: Absolutely, building barriers. You can give a warning once, and it's
13 forgotten shortly after that. Worse than that, when workers work around a
14 terrible hazard like this for several days, they tend to get inured to the
15 danger, and they have to be warned over and over and over to make it
16 stick. If you build barriers, you don't have to tell them at all.

17 Q: You also mentioned in your opinion the skylights were cracked or crazed in
18 such a way that they wouldn't withstand their rated load; what's the basis for
19 that opinion?

20 A: First, just visually, you can see that they are weathered out and cracked or
21 crazed. That's just obvious when you look at them. Second, I can look at the
22 laboratory tests, shown in Exhibit 4, and see that they skylights have been
23 weakened by this cracking or crazing.

24 Q: Other than the items you have mentioned specifically, did you find any
25 OSHA violations in connection with this accident?

26 A: Yes, I think there were three very specific violations. First, there was a
27 violation of Section 1910.23(a)(4) because there was no protection for

**TRANSCRIPT OF TRIAL TESTIMONY OF STEVIE WALKER
SEPTEMBER 23, 2024**

1 openings in the roof, which by the way also implicates Section
2 1926.501(b)(4). Second, there was a violation of Section 1926.501(a)(1)
3 because there was no fall protection system in place, and there were
4 unprotected edges and surfaces all over the place, including the edge of the
5 roof itself. And of course, that applies here through Section 1910.12(a). And
6 third, uh, uh, what's the third one? Uh, sorry. Oops.

7 Q: Well, let me just ask, in your opinion, whether this accident could have been
8 avoided if certain common, ordinary safety precautions had been followed?

9 A: Of course it could have. Every accident is avoidable. This one is no
10 exception.

11 Q: Can you identify Exhibit 4?

12 A: Yes, this is the lab report where the skylights were tested to see what kind of
13 weight load they would withstand without breaking. As you can see, the
14 similar skylight taken from that roof was tested by this laboratory and it
15 failed at a weight load of 150 pounds. The skylights are supposed to be rated
16 for 600 pounds. That means this skylight was only at 25% percent of its
17 strength.

18 Q: In your opinion, would it make a difference in weight bearing capacity as to
19 how the weight is applied to the skylight?

20 A: Yes, a material like this will withstand a much heavier load if that load is
21 applied steadily or uniformly. It will bear up under a lot less weight if that
22 weight is applied suddenly or sharply.

23 Q: Can you identify Exhibit 5?

24 A: Yes, that is a photograph of the roof showing all of the skylights that were
25 there, before they got the gravel back down, which is part of what poor dead
26 Rodney was supposed to be doing.

27 Q: And finally, can you identify Exhibit 6?

**TRANSCRIPT OF TRIAL TESTIMONY OF STEVIE WALKER
SEPTEMBER 23, 2024**

1 A: Yes, that's a picture of a new skylight. There were several of these put up on
2 the grocery store roof after the accident.

3 Q: Why were new skylights put in up there?

4 A: Well, one was broken by Acker and one was taken out for testing. Oh, and I
5 remembered the third OSHA violation up there. Section 1910.23(e)(8),
6 because the skylight couldn't bear 200 pounds applied perpendicularly.

**TRANSCRIPT OF TRIAL TESTIMONY OF JORDAN PENNINGTON
SEPTEMBER 24, 2024**

- 1 Q: Tell us your name please.
- 2 A: My name is Jordan Pennington.
- 3 Q: What is your occupation or profession?
- 4 A: I am the owner of Tom Tongue Grocery Empire, a grocery business here in
5 Garrisonville.
- 6 Q: How long have you owned that business?
- 7 A: I inherited the business ten years ago, and I have run it ever since.
- 8 Q: Who did you inherit the business from?
- 9 A: I inherited the business from my uncle, Rufus Pennington. May he rest in
10 peace.
- 11 Q: What is your background for running a business like this?
- 12 A: Well, after I graduated from Garrisonville High School, I went to Yale and
13 graduated in six or seven years. I then came back to Yellowhammer and
14 attended Yellowhammer State, where I received a Masters in Business
15 Administration. That's an MBA for the folks in Auburn.
- 16 Q: What was your undergraduate major?
- 17 A: Mostly snoozin' and boozin', but technically lunar music theory with a
18 minor in underwater basket weaving.
- 19 Q: Before taking over Tom Tongue, had you had any experience in the grocery
20 business?
- 21 A: No, but how hard is it to run a business anyway? Really doesn't matter if
22 you're peddling steaks or peddling BS like you lawyers do, it's all the same
23 business principles.
- 24 Q: When you took over the business, what kind of shape was it in financially?
- 25 A: It was pretty stretched, it had been mismanaged some, there was quite a bit
26 of debt on the books.
- 27 Q: How's the business done since that time?

**TRANSCRIPT OF TRIAL TESTIMONY OF JORDAN PENNINGTON
SEPTEMBER 24, 2024**

1 A: I've been able to turn around the profits pretty good. With a business like
2 that, you've got to concentrate on getting the revenues up and the expenses
3 down and I've been able to do that pretty well.

4 Q: How were you able to get revenues up?

5 A: We started advertising pretty heavily. As you might guess, the business
6 name is kind of catchy and it makes for some great advertising.

7 Q: Speaking of, can you identify Exhibit 12?

8 A: Yes sir, that's a photo of the front of the store where this accident happened.
9 As you can see, I've spent a lot of money making the stores catch the eye, so
10 to speak. A lot of money.

11 Q: How were you able to get expenses down?

12 A: The first thing you do is look around and see if you have excess employees.
13 Employees are one of the huge costs in any business. If you've got too many
14 of them, it can be a real drain on the bottom line. So, I looked around and
15 slashed the nonessential personnel.

16 Q: What else did you do to get expenses down?

17 A: I cut out other expense items that could either be eliminated or deferred. My
18 uncle was setting aside a fairly significant amount of cash every year for
19 maintenance, and I pared that down consistent with good business practices.

20 Q: Are you familiar with the incident that happened on February 17, 2023, at
21 your building?

22 A: Yes, unfortunately, I was actually in the business the day it happened.

23 Q: What was Mr. Acker doing on the roof at the time of the fall?

24 A: If you are asking what he was supposed to be doing, the answer is that he
25 was supposed to be repairing the roof.

26 Q: Was Mr. Acker one of your employees or did he work for somebody else?

27 A: He worked for Need A Fix Roofing. I had hired Need A Fix to make

**TRANSCRIPT OF TRIAL TESTIMONY OF JORDAN PENNINGTON
SEPTEMBER 24, 2024**

1 necessary repairs on the roof because it started leaking pretty badly after that
2 big snow we had last year.

3 Q: It snows in Yellowhammer?

4 A: It sure did last year.

5 Q: Did you go up on the roof to take a look at the condition before you called
6 Need A Fix?

7 A: No, I can't say that I've ever been on the roof of that building. My head of
8 maintenance and head of safety went up on the roof and took a look around.

9 Q: Who is your head of maintenance and safety?

10 A: That would be the red headed wonder, Christine Stroud.

11 Q: What is Christine Stroud's job description?

12 A: Stroud is responsible for keeping up the maintenance of our equipment, such
13 as our refrigerators and our dairy cases and the like. She is also in charge of
14 maintaining the building itself as needed. Stroud also has responsibilities for
15 safety and training of the employees.

16 Q: What is Ms. Stroud's background that qualifies her for this safety and
17 training position?

18 A: I don't really know the answer to that. She was working in the deli when I
19 took the business over. She told me she wasn't nonessential, so I kept her
20 around even after I cut the staffing in our deli.

21 Q: Have you ever attended any of Stroud's training sessions?

22 A: No, I'm too busy to do things like that. I trust that the employees are getting
23 proper training, and our safety record bears that out.

24 Q: What is your safety record?

25 A: We have not had any kind of accident in the past five years. That's pretty
26 good, considering how many grapes people throw on the floor.

27 Q: Can you identify Exhibit 7?

**TRANSCRIPT OF TRIAL TESTIMONY OF JORDAN PENNINGTON
SEPTEMBER 24, 2024**

1 A: Yes, Exhibit 7 is a manufacturer's sheet on the skylights in our roof.

2 Q: Where did this come from?

3 A: It was in my uncle's files concerning the building.

4 Q: Have you verified that the sheet actually shows the skylights that are in
5 place?

6 A: Well, again, I've never been up on the roof, but Ms. Stroud tells me that this
7 is the right sheet for those skylights.

8 Q: Can you identify Exhibit 8?

9 A: Yes, that is an original invoice for the purchase of the skylights from the
10 manufacturer that's listed in Exhibit 7.

11 Q: What is the date of that invoice?

12 A: August 18, 1987.

13 Q: Is it possible those skylights have been in place without replacement for
14 more than thirty years?

15 A: Yes, that's what it appears to be. My uncle kept careful records of every
16 purchase he made on the building, every maintenance item he ever had to
17 perform, every piece of equipment he had to replace. There are not any other
18 invoices for skylights.

19 Q: Can you identify Exhibit 9?

20 A: Yes, that is the invoice for some new skylights.

21 Q: Why were these skylights purchased?

22 A: After the accident, we decided that we should replace some of the skylights
23 in the roof.

24 Q: Prior to the accident, did you have any issue with the way Need A Fix was
25 performing the work they were hired to do?

26 A: Stroud told me that she thought several of their workers were drunk when
27 they were on the roof. She also told me that she saw several new, empty beer

**TRANSCRIPT OF TRIAL TESTIMONY OF JORDAN PENNINGTON
SEPTEMBER 24, 2024**

1 cans on the roof when she went up there after the accident.

2 Q: Do you know if Mr. Acker was one of the drunk workers Ms. Stroud
3 observed?

4 A: I don't know.

5 Q: Do you know where Ms. Stroud is now?

6 A: No. She quit a month after Acker broke my window.

**TRANSCRIPT OF TRIAL TESTIMONY OF CORY HARBOUR
SEPTEMBER 24, 2024**

- 1 Q: What is your name?
- 2 A: Cory Harbour.
- 3 Q: Where do you reside?
- 4 A: Daviston, Yellowhammer.
- 5 Q: What is your occupation or profession?
- 6 A: I am a materials specialist.
- 7 Q: Who is your employer?
- 8 A: I am self employed as a consultant.
- 9 Q: What is your educational background?
- 10 A: I attended William Mitchell College of Cosmic Harmony in Ozone,
11 Arkansas for 5 years. Never did get a degree. Then I moved back down
12 here and went to Yellowhammer A&M University, where I received double
13 degrees in Civil and Mechanical Engineering.
- 14 Q: What is your work background?
- 15 A: Right out of A&M, I went to work for the City of Garrisonville. Jobs were
16 pretty tight then, and I couldn't find anything that fit my degrees, so I took a
17 job as a supervisor of the waste management operations for the City of
18 Garrisonville.
- 19 Q: What were your job duties?
- 20 A: I supervised the crews that operated the mobile equipment used to effectuate
21 the waste management program within the City.
- 22 Q: You supervised the garbage pickup crews?
- 23 A: That's one way to put it.
- 24 Q: How long did you work for the City of Garrisonville in that capacity?
- 25 A: For about five years.
- 26 Q: How did that employment terminate?
- 27 A: I was terminated by the City because I insisted that the drivers of the waste

**TRANSCRIPT OF TRIAL TESTIMONY OF CORY HARBOUR
SEPTEMBER 24, 2024**

1 management effectuation vehicles at least have a green card, if not an actual
2 driver's license. I insisted, they resisted, and they won.

3 Q: What did you do after City fired you?

4 A: I was lucky enough to find a job that fit my education. I went to work for a
5 company that manufactured materials for building things.

6 Q: What kind of materials are we talking about?

7 A: Steel, fiberglass, some plastics.

8 Q: How long did you work for that company?

9 A: For about fifteen months. I left them in order to become a consultant,
10 because I discovered you can make a lot more money becoming an expert
11 witness than you can working in the industry.

12 Q: And how long have you been serving as a consultant or expert witness?

13 A: I've served as both a consultant and an expert, and I have been doing that for
14 the past four years.

15 Q: Were you asked to look into the facts and circumstances surrounding the
16 death of Mr. Acker?

17 A: Yes, you've asked me to take a look at that accident and give opinions
18 regarding caused it.

19 Q: What did you review in order to undertake that assignment?

20 A: I reviewed all of the depositions that were taken, and I understand mine is
21 the last one being taken. I also reviewed the OSHA files on this matter, and
22 I looked at the manufacturer's data sheet setting forth the specifications for
23 the skylights in question. I also did some independent research regarding
24 plastics and their breaking resistance capabilities.

25 Q: Were you able to form an opinion regarding how this accident happened?

26 A: Yes, my opinion is that the accident was caused when the skylight broke.
27 The skylight broke because Mr. Acker was either standing on it or

**TRANSCRIPT OF TRIAL TESTIMONY OF CORY HARBOUR
SEPTEMBER 24, 2024**

1 deliberately jumped on it.

2 Q: What is the basis for your assumption that Mr. Acker might have been
3 standing on the skylight?

4 A: I read a statement from a coworker who was on the roof at the same time.
5 Although the coworker did not witness the actual accident, he said he had
6 observed Mr. Acker actually standing on one of the other skylights earlier in
7 the day.

8 Q: Who was the coworker?

9 A: His name was Tim Williams.

10 Q: Was the coworker knowledgeable about why Mr. Acker was standing on the
11 skylight?

12 A: Not really, he just said Acker was kind of standing there flexing up and
13 down on his toes. He thought maybe Rodney was just getting off the hot
14 black part of the roof, which was pretty brutal on their feet. The coworker
15 said he thought it was pretty dumb for Rodney to be there, and told him so,
16 but he just shrugged.

17 Q: Your second scenario is that Mr. Acker deliberately jumped on the skylight.
18 What makes you think so?

19 A: Well, we'll get more into that in a minute in terms of the analysis of what the
20 skylights would withstand, but from a general standpoint, jumping on the
21 skylight would have exerted more impact type force. But in my opinion,
22 either one of those things could have done the job, depending on the
23 breaking strength of the skylight material.

24 Q: Speaking of the breaking strength of the skylight material, did you have it
25 tested?

26 A: Yes, I had a skylight that resembled the one that broke taken out of the roof
27 and sent to the lab for testing.

**TRANSCRIPT OF TRIAL TESTIMONY OF CORY HARBOUR
SEPTEMBER 24, 2024**

1 Q: How did you choose the skylight that you sent for testing?

2 A: Well, I looked for a skylight that had similar characteristics in terms of the
3 cracking or crazing that appeared to be present in the one that Mr. Acker fell
4 through.

5 Q: Wasn't the one that Mr. Acker fell through totally shattered by the fall?

6 A: Yes, that did complicate my analysis. I admit it was hard to know exactly
7 what it looked like before the accident. But I assumed it was like the average
8 skylight up there.

9 Q: What lab did you send this to?

10 A: I sent it to a lab in China Grove that specializes in testing the breaking
11 strength in various materials. It is a lab that I have personally worked with
12 on many occasions, and it is a certified testing laboratory. I have complete
13 confidence in their abilities.

14 Q: Can you identify Exhibit 4?

15 A: Yes, that is the laboratory testing results on the skylight that I sent them.

16 Q: What do these results show us?

17 A: This testing demonstrated that the exemplar skylight would withstand 600
18 pounds of pressure placed on the skylight itself without breaking.

19 Q: Did Mr. Acker weigh 600 pounds?

20 A: Close to it, I think. Well, not really. His wife told me he barely tipped the
21 scales at 160 pounds.

22 Q: If he weighed something less than that, how would that affect your analysis?

23 A: It wouldn't affect it much. You see, these results indicate that even after
24 thirty years of service, the skylight material still had a hefty percent of its
25 breaking strength available. In terms of where they were, which was on a
26 roof, and given the fact that they were generally inaccessible, it is my
27 opinion that the skylights did not present an unreasonable danger to people.

**TRANSCRIPT OF TRIAL TESTIMONY OF CORY HARBOUR
SEPTEMBER 24, 2024**

1 Given the fact that the roof is not a work area, the slight possibility that
2 the skylights had lost some of their breaking strength is really pretty
3 irrelevant.

4 Q: Based on these test results, can you rule out either standing on the skylight
5 or jumping on the skylight as cause of this accident?

6 A: Either one of those things is just as likely as the other, in my opinion.

7 Q: Is it possible that Mr. Acker simply tripped on something on the roof and fell
8 through the skylight?

9 A: No, I would think if he had fallen his weight would have been more evenly
10 distributed across the surface of the skylight. This three hundred pound
11 number really came from dropping a weight from 3 feet onto a very
12 concentrated point in the center of the skylight. If you spread the weight out,
13 you get a different result.

14 Q: Did you have the lab test that scenario?

15 A: I couldn't use up all the skylights on the roof. I only took one to test.

16 Q: In the final analysis, what is your opinion of the ultimate cause of this
17 accident?

18 A: Either Mr. Acker was deliberately standing in the middle of the skylight,
19 which means he was incredibly fearless, or he deliberately jumped through
20 it, which means he was incredibly suicidal.

21 Q: Can you identify Exhibit 10?

22 A: That's part of my personnel file from the City. A small part of it.

**TRANSCRIPT OF TRIAL TESTIMONY OF TIM WILLIAMS
SEPTEMBER 25, 2024**

- 1 Q: Tell us your name, please?
- 2 A: My name is Tim Williams.
- 3 Q: Where do you reside?
- 4 A: I live in Garrisonville, here in Yellowhammer.
- 5 Q: How long have you lived in Garrisonville?
- 6 A: Seems like all my life, but it's really just two years. Before that, I lived in a
7 town in Oklahoma, the actual name of which I don't remember.
- 8 Q: How are you employed?
- 9 A: I work for Need A Fix Roofing Company.
- 10 Q: What is your job at Need A Fix?
- 11 A: I am a laborer. I work on roofs.
- 12 Q: Were you familiar with Rodney Acker?
- 13 A: Poor dead Rodney. Yeah, I knew Rodney.
- 14 Q: Were you working with Mr. Acker on the roof of the store belonging to Tom
15 Tongue Grocery Empire on the date of his death?
- 16 A: Yes, I was on the roof of their Armadillo store with Rodney that day.
- 17 Q: Did you observe Mr. Acker doing anything you thought to be unusual that
18 day?
- 19 A: Yes, early in the day, right after we got to work, I saw Rodney standing on
20 one of the skylights on the roof of the building. He was kinda flexing up and
21 down on his toes. I didn't know what to make of that.
- 22 Q: Did you ask him why he was doing that?
- 23 A: Yes, I asked him why he was doing such a foolish thing.
- 24 Q: And what was his response?
- 25 A: He didn't really answer the question. He just looked at me and shook his
26 head.
- 27 Q: What did you do then?

**TRANSCRIPT OF TRIAL TESTIMONY OF TIM WILLIAMS
SEPTEMBER 25, 2024**

1 A: I just let him be. I could tell he wasn't his usual self, that he had lost his
2 sense of humor.

3 Q: Do you know if Mr. Acker had been drinking the day of the accident?

4 A: I can't remember if he'd been drinking that day.

5 Q: Can you identify Exhibit 11?

6 A: Yes, that's a picture of Rodney and Big Ed Kronk, who Rodney always said
7 was his best friend.

8 Q: Have you seen this photo before?

9 A: Yeah, Rodney had it in his pickup one day, showing it to us and laughing
10 about it.

11 Q: Can you explain what they were doing in this photograph?

12 A: Uh, um, Easter?

Cross Examination Excerpt

14 Q: At any point, had you been given a warning about the danger posed by the
15 condition of the skylights?

16 A: Not that I recall.

17 Q: At any point, had you been warned not to stand on the skylights?

18 A: No. But that seemed to me to be common sense.

19 Q: Did you see Mr. Acker standing on a skylight at the time he fell?

20 A: At the time he fell? No. Come to think of it, it may have even been a day or
21 two before he fell that I saw him standing on the skylight.

22 Q: Do you recall whether there were any boards nailed to the roof of the Tom
23 Tongue?

24 A: Oh yeah. There were tons of them. And they were hard to see because the tar
25 paper they were supposed to be holding down had ripped and covered a
26 bunch of them up.

27 Q: Did you ever observe any of your fellow workers trip on these boards?

TRANSCRIPT OF TRIAL TESTIMONY OF TIM WILLIAMS
SEPTEMBER 25, 2024

1 A: Constantly. We complained about them to the lady there who was in charge
2 of maintenance, but she just shrugged and went back to her phone.

EXHIBITS



Citation and Notification of Penalty

Company Name: TOM TONGUE GROCERY EMPIRE, INC.

Inspection Site: 1492 MERCHANT MARKET, GARRISONVILLE, YELLOWHAMMER

Citation 1 Item 1 Type of Violation: **Other than Serious**

29 CFR 1926.21(b)(2): The employer did not instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury.

Tom Tongue Grocery Empire Roof Area: On September 2, 2022, employees were engaged in labor on the roof of the premises, placing 2x4 boards along the roof to hold down tar paper. The employees were exposed to hazards on and near the roof area without receiving instruction from the employer in the recognition of unsafe conditions to control or eliminate hazards.

Conditions including, but not limited to:

- a.) Use of fall protection while working around unguarded edges;
- b.) Working in close proximity to unguarded holes.

twitter Home Profile Messages Who To Follow BigTimeCrimester

Send ed_kronk1 a message

Messages 4

Direct Messages

BigTimeCrimester Pamela Mackey
April 14, 2023 10:09 am

BigTimeCrimester Pamela Mackey
I'm kinda worried...
February 17, 2023 6:09 am

BigTimeCrimester Pamela Mackey
He threw some stuff around, then got really morose and drunk. When he left this morning he said goodbye in a really creepy way.
February 17, 2023 6:09 am

ed_kronk1
uh oh. now what?
February 17, 2023 6:04 am

BigTimeCrimester Pamela Mackey
rodney knows
February 17, 2023 6:01 am

EXHIBIT 2

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 18005539910
Inspection Date(s): FEB 17, 2023
Issuance Date: SEP 15, 2023



Citation and Notification of Penalty

Company Name: Need A Fix Roofing Company, Inc.

Inspection Site: Tom Tongue Grocery Empire, Inc., 1492 Merchant Market, Garrisonville, Yellowhammer

Citation 1 Item 1 Type of Violation: **Serious**

OSHA ACT 1970 Sec. 5(a): (1) Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious harm to their employees, and (2) shall comply with occupational safety and health standards promulgated under this Act.

Tom Tongue Grocery Empire roof: On 2/17/2010, an employee was exposed to potential fall hazards and potential trip hazards. The roof area on which the employee was working was not free from recognized hazards that were likely to cause death or serious physical harm to the employees.

EXHIBIT 3



Materials Testing Laboratories
1010 Hennipin Highway
China Grove, Yellowhammer 73945

March 15, 2024

CLIENT: Tom Tongue Grocery Empire, Inc., Garrisonville, Yellowhammer
c/o Jordan Pennington, President, CEO, COO

MATERIALS SUBMITTED FOR TESTING:

- ~~1. Sample 1: Shattered skylight with frame and 5 pieces plastic skylight material, observed to be crazed, cracked, weathered, and semi-opaque due to long exposure to sunlight and elements~~
2. Sample 2: Exemplar skylight with frame, observed to be crazed, cracked, weathered, and semi-opaque due to long exposure to sunlight and elements, taken from general area of roof as first

TESTING REQUESTED:

Determine breaking strength per ASTM R-549; mfg sheet submitted with materials shows breaking strength rating to 600 lbs total bearing weight or 300 lbs per sq. foot

METHODOLOGY:

1. Sample 1 pieces to be subjected to load testing individually.
2. Sample 2 will be tested by loading with weighted sandbag in the approximate shape of a 6'0" male, beginning with weights of <100 pounds and moving up in 50 pound intervals until breaking is observed, with a maximum of 600 pounds. First round testing to be accomplished by lowering weighted sandbag onto surface to cover surface evenly. If no breaking observed, second round testing will be carried out with 3 foot drop onto center point of skylight, again beginning with <100 pounds and adding 50 pounds per test until breaking is observed, with a maximum of 300 pounds.

RESULTS:

1. Testing of broken skylight pieces was inclusive because the pieces were shattered as part of the operative accident.
2. The exemplar skylight survived first round testing intact and without observable degradation from the testing.
3. Second round testing was initiated at 50 pounds dropped 3 feet onto the center point of the skylight. The exemplar skylight failed at 150 pounds, shattering in a pattern suggestive of Sample 1.

EXHIBIT 4

EXHIBIT 5



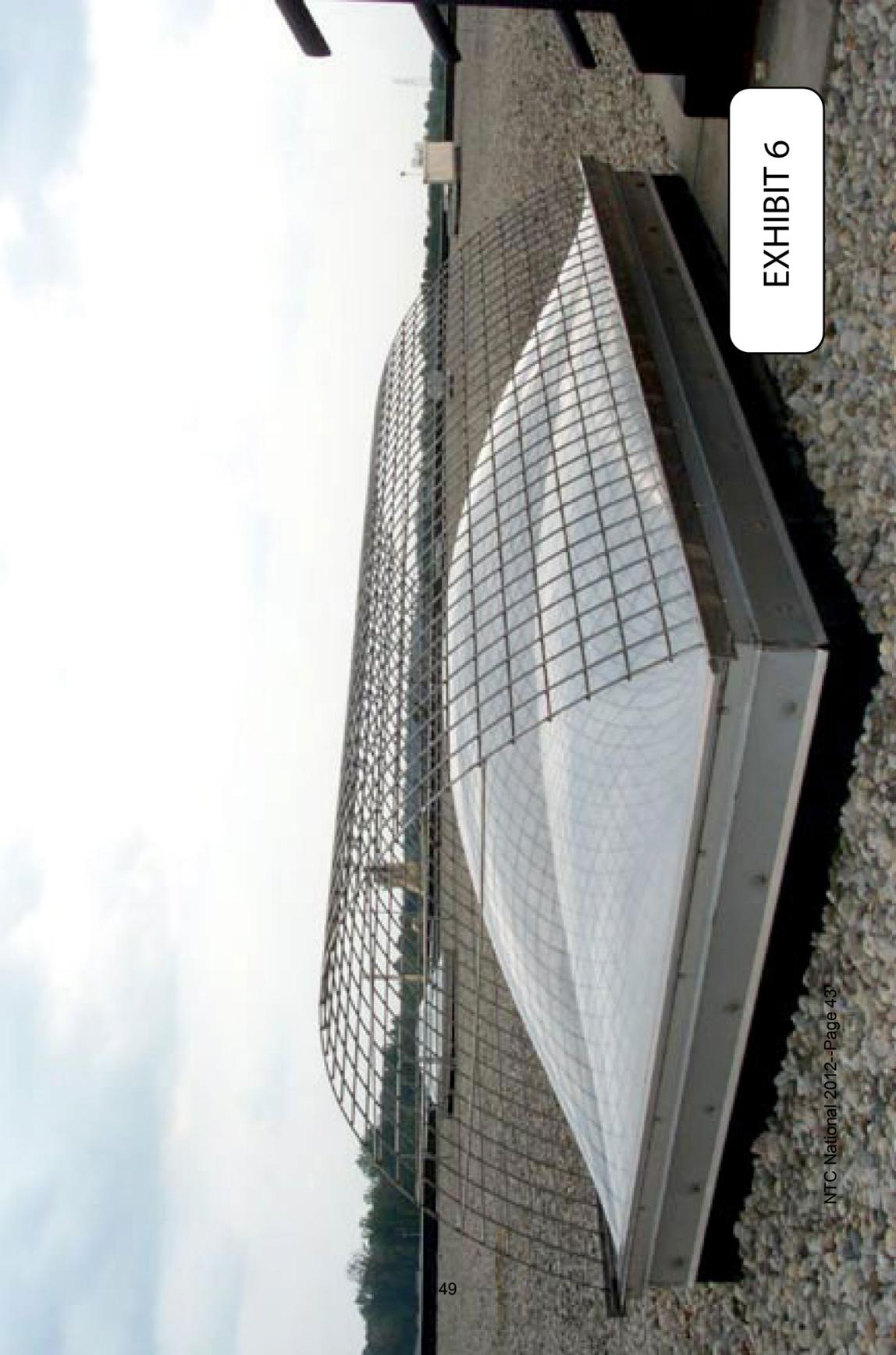


EXHIBIT 6



**FLEXCORP DOMED SKYLIGHT SERIES III
SPECIFICATION SHEET**

Skylight Construction

Supplied to the building site in pre-assembled form where possible, FLEXCORP skylights are constructed of two components - a *shatterproof* molded acrylic skylight dome and an exclusively designed aluminum curb frame. Domes are offered in a variety of shapes. Curb frames may be mounted to wood or concrete curbs constructed by others, or to preformed metal curbs supplied by FLEXCORP.

Use

- For all commercial, industrial, institutional or residential buildings.
- With flat or sloping roofs, any construction.
- For new construction or renovation of existing structures.
- For conventional or unusual applications.

Skylight General Features

- Wide range of standard types, dome color and sizes to suit virtually any function or aesthetic requirement; also custom fabricated to any size or shape for unusual lighting effects.
- Fast installation of pre-assembled units minimizes on-site costs.
- Engineered to meet Uniform Building Code live load requirements.
- Tested to be *shatterproof* for loading up to 600 lbs total bearing weight or 300 lbs per sq. ft.
- Acrylic dome materials proven to resist discoloration, hazing and loss of strength in more than a half-century of successful outdoor use.
- Meets fire code requirements when tested in accordance with ASTM D-635.



PRODUCT INVOICE

DATE: AUGUST 18, 1987

PURCHASER: Tom Tongue Grocery Store, Inc.
 2121 Sina Weibo Way
 Garrisonville, Yellowhammer 76706

DELIVERY ADDRESS: Same

PRODUCT	QUANTITY	PRICE/UNIT	TOTALS
Flexcorp Domed Skylights	120	143.51	17,221.20
Metal Mounting Frames	120	45.89	5,506.80
Hi-Torque Frame Bolts	960	2.26	2,169.60
Hail Screens	*	*	*
*Declined			

Flexcorp, Inc. 9588 Oxlip Road, Bucksnot, MN 55114
 "BUCKSNORT! ALL THE CHARM OF MINNEAPOLIS—HALF THE MOSQUITOS!"

EXHIBIT 8



Delux Rooflite Products, Inc.
2200 Ross Avenue, Doolittle, Yellowhammer 77998

INVOICE

DATE: March 12, 2023
PURCHASER: Tom Tongue Grocery Empire, Inc.
1492 Merchant Market
Garrisonville, Yellowhammer 76719
DELIVER TO: Same

PRODUCT	QTY	PRICE	TOTALS
Delux Maxi-Dome Skylights	35	412.36	14,432.60
Aluminum Roof Mounts	35	87.55	3,064.25
Screw Downs	280	1.25	350.00
Skylight Screens	35	50.12	1,754.20
FREIGHT			247.14
			19,848.19

EXHIBIT 9

EXHIBIT 11



Tom Tongue
We'll Lick Any Price!



EXHIBIT 12

YELLOWHAMMER ARREST REPORT

Fingerprinted	R84 Completed
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

OFFICER'S WORK PRODUCT MAY NOT BE PUBLIC INFORMATION

IDENTIFICATION	1 ORI #	2 Agency Name Garrisonville Police Department	3 Case # 22-009214	4 SFX						
	5 Last, First, Middle Name Acker, Rodney		6 Alias AKA N/A							
ARREST	7 Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	8 Race <input checked="" type="checkbox"/> W <input type="checkbox"/> B <input type="checkbox"/> A <input type="checkbox"/> O	9 Ethnicity <input type="checkbox"/> Hispanic <input type="checkbox"/> Other	10 Hgt 5'8"	11 Wgt 145	12 Eye Brn	13 Hair Brn	14 Skin	15 <input type="checkbox"/> Scars <input type="checkbox"/> Marks <input type="checkbox"/> Tattoos <input type="checkbox"/> Amputations	
	16 Place of Birth (City, County State) Gresham, YH			17 SSN XXX-XX-1234		18 Date of Birth 09/12/82		19 Age 40	20 Miscellaneous ID #	
	34 Location of Arrest (Street, City, State, Zip) 579 Main St. Garrisonville, YH 72345			35 Sector #	36 Arrested for Your Jurisdiction? <input type="checkbox"/> In State <input checked="" type="checkbox"/> Out of State Agency <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
	37 Condition of Arrestee: <input checked="" type="checkbox"/> Drunk <input type="checkbox"/> Sober <input type="checkbox"/> Drinking <input type="checkbox"/> Drugs		38 Resist Arrest? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	39 Injuries? <input type="checkbox"/> Officer <input checked="" type="checkbox"/> None <input type="checkbox"/> Arrestee		40 Armed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		41 Description of Weapon <input type="checkbox"/> Handgun <input type="checkbox"/> Other Firearm <input type="checkbox"/> Rifle <input type="checkbox"/> Other Weapon <input type="checkbox"/> Shotgun		
42 Date of Arrest 09/13/22		43 Time of Arrest 07:45 <input checked="" type="checkbox"/> AM <input type="checkbox"/> MIL		44 Day of Arrest S M T W T F S <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		45 Type of Arrest? <input checked="" type="checkbox"/> On View <input type="checkbox"/> Warrant <input type="checkbox"/> Call		46 Arrested Before? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown		
47 Charge <input type="checkbox"/> Fel <input checked="" type="checkbox"/> Misd			Crim. Code § 13A-11-10 Public Intoxication							

EXHIBIT 13

**IN THE DISTRICT COURT OF HENINGER COUNTY
STATE OF YELLOWHAMMER**

**PAMELA MACKEY ACKER, as the
administratrix of the estate of Rodney
Acker,**)
)
)
)
Plaintiff,)
)
)
v.)
)
)
**TOM TONGUE GROCERY EMPIRE,
INC.,**)
)
)
Defendant.)

Case No. 23-06597-CV

FINAL JURY INSTRUCTIONS

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to decide the issues, and only those issues, that I submit for determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you to the facts as you find them, from the evidence.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received into evidence, and all facts that may be admitted or agreed to by the parties. In determining the facts, you may draw reasonable inferences from the evidence. You may make deductions and reach conclusions which reason and common sense lead you to draw from the facts shown by the evidence in this case, but you should not speculate on any matters outside the evidence.

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the

witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in light of your own experience and common sense.

The issue for your determination is whether the death of Rodney Acker was the result of the negligence, if any, of Tom Tongue Grocery Empire, Inc. or Need A Fix Roofing. In that regard, you are instructed that Pamela Mackey Acker has the burden of proof on the negligence claim against Tom Tongue Grocery Empire, Inc., meaning that Pamela Mackey Acker must convince you by a preponderance of the evidence that Rodney Acker's death was the result of Tom Tongue Grocery Empire Inc.'s negligence, if any. You are further instructed that Tom Tongue Grocery Empire, Inc. has the burden of proof on the claim that Rodney Acker's death was caused in whole or in part by the negligence, if any, of Need A Fix Roofing. You are further instructed that Tom Tongue Grocery Empire, Inc. has the burden of proof on the claim that Rodney Acker's death was caused in whole or in part by the negligence, if any, of Rodney Acker himself.

You are instructed that the term "negligence" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances. With respect to Tom Tongue Grocery Empire, Inc., "negligence" means the existence of a condition that posed an unreasonable risk of harm, of which Tom Tongue Grocery Empire, Inc. had actual knowledge and of which Rodney Acker did not have actual knowledge, and that Tom Tongue Grocery Empire, Inc. failed to either

adequately warn Rodney Acker of the condition or failed to make the condition reasonably safe.

“Ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

“Proximate cause” means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using *ordinary care* would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Answer “Yes” or “No” to all questions unless otherwise instructed. A “Yes” answer must be based on a preponderance of the evidence unless you are otherwise instructed. If you do not find that a preponderance of the evidence supports a “Yes” answer, then answer “No.” The term “preponderance of the evidence” means the greater weight and degree of credible evidence admitted in this case. Whenever a question requires an answer other than “Yes” or “No,” your answer must be based on a preponderance of the evidence unless you are otherwise instructed.

At this point in the trial, you, as jurors, are deciding if Rodney Acker’s death was proximately caused, in whole or in part, by the negligence, if any, of Tom Tongue Grocery Empire, Inc., Need A Fix Roofing, or by Rodney Acker’s own actions. If you find Tom Tongue Grocery Empire, Inc. was at fault in whole or in part, you must then assess the degree of responsibility each party has for the death of Rodney Acker. Your verdict must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice, sympathy, or any other sentiment for or against any party.

At this stage of the trial, you are not to be concerned with how damages—if you find any

are necessary and proper—are to be awarded.

**IN THE DISTRICT COURT OF HENINGER COUNTY
STATE OF YELLOWHAMMER**

**PAMELA MACKEY ACKER, as the
administratrix of the estate of Rodney
Acker,**)
)
)
)
Plaintiff,)
)
v.)
)
**TOM TONGUE GROCERY EMPIRE,
INC.,**)
)
)
Defendant.)

Case No. 23-06597-CV

JURY QUESTION NO. 1

Did the negligence, if any, of the following proximately cause the death of Rodney Acker?

Answer “Yes” or “No” for each of the following:

1. Tom Tongue Grocery Empire, Inc. _____
2. Need a Fix Roofing _____
3. Rodney Acker _____

If you have answered “yes” with respect to more than one party in response to Jury Question No. 1, answer the following Jury Question; otherwise, do not answer the following Jury Question.

JURY QUESTION NO. 2

What percentage of the negligence that caused the death of Rodney Acker do you find to be attributable to each of those listed below and found by you, in your answer to Jury Question No. 1, to have been negligent?

1. Tom Tongue Grocery Empire, Inc. _____
2. Need a Fix Roofing _____
3. Rodney Acker _____

Total 100%