

# SPRING 2021 IRA S. FLORY MOCK TRIAL COMPETITION

# LSU Law

**ADVOCACY PROGRAMS**

## Wendy Humphrey White-Hill vs. Pipe-Test, Inc.

This case file was commissioned by the Texas Young Lawyers Association and was prepared by Marvin W. Jones for the 2014 National Trial Competition.  
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# STIPULATIONS AND WITNESS LISTS

## I. Statement of the Case

*(This statement of the case is for introduction only. It is not evidence and may not be introduced for any purpose at any point in the trial.)*

This is an employer's liability case involving the death of an employee of Pipe Test, Inc. The accident occurred on July 20, 2010 at a location near Winters, Lone Star, where Pipe Test had been employed to test the integrity of a pipeline used to carry petroleum products from nearby oil fields. The employee in question, Benjammen White-Hill, was found dead at the worksite on the morning of July 20, 2010. Liquid nitrogen had been leaking from the collar placed around the pipe, and the body, when discovered, was completely frozen.

## II. Procedural Matters:

- a. Both parties are bound by these stipulations.
- b. All Flory Trial Rules apply. The Federal Rules of Evidence and the Federal Rules of Civil Procedure apply to this action.
- c. Jurisdiction and venue are proper.
- d. Witnesses, while testifying, may not "invent" an individual not mentioned in the facts and have testimony or evidence offered to the court or jury from that individual.
- e. The four witness statements included in this file were given under oath and the witnesses have had an opportunity to review and correct those statements.
- f. All documents and exhibits in the file are fair and accurate representations of the matters they purport to represent. If asked, all witnesses must admit that exhibits are fair and accurate representations of that which they purport to represent on the relevant dates. Each exhibit contained in the file is the original of that document unless otherwise established by the evidence. Proper chain of custody has been established for all exhibits.
- g. The plaintiff and the defendant must each call the two witnesses listed on their respective witness lists below but may call them in any order. No other witnesses may be called.
- h. All materials contained in this file have been provided to both parties in advance of trial, and notice has been provided by both parties of their possible intent to use and/or introduce any and all materials in the case file.
- i. The parties cannot request or refer to any jury instructions, verdict forms, or charges other than those appearing in the file's "Jury Instructions" section, including any lesser

included offenses or responsive verdicts. Both parties have consented to the jury instructions as written.

- j. The parties have agreed to the below “housekeeping” matters. No additional housekeeping matters may be raised pre-trial:
  - a. None of the four witnesses may be sequestered, and Federal Rule of Evidence 615 may not be invoked against any of the witnesses.
  - b. All exhibits have been pre-marked for identification, and counsel and the court shall use the pre-marked exhibit numbers.
  - c. Counsel are free to sit or stand at all points during the trial, at their discretion.
  - d. All sidebars shall be treated as constructive sidebars.
  - e. The plaintiff has reserved any time remaining for a rebuttal closing, if they choose to offer a rebuttal closing.
- k. This trial has been bifurcated and shall be tried solely on the issue of liability.
- l. The trial shall be held in the order set forth in the Flory Trial Rules. Neither party may defer, waive, or otherwise deviate from the order of the trial, and any and all provisions of the Federal Rules of Civil Procedure allowing for such deviations are nullified for purposes of this trial:
  - a. Opening Statement for the Plaintiff,
  - b. Opening Statement for the Defense,
  - c. Examination of the Witnesses for the Plaintiff,
  - d. Mid-Trial Motions for the Defense, if any,
  - e. Examination of the Witnesses for the Defense,
  - f. Mid-Trial Motions for the Plaintiff, if any,
  - g. Closing Argument for the Plaintiff,
  - h. Closing Argument for the Defense, and
  - i. Rebuttal Closing Argument for the Plaintiff.

**I. Substantive Matters**

- a. This case comes to trial in 2021. No reference shall be made by any counsel or witness to the time that has elapsed between the underlying incident and the trial date.
- b. Exhibit 14, the autopsy report, is a certified copy of a public record, and as such is admissible in evidence, if relevant.
- c. 29 C.F.R. § 1926.651(j) provides as follows:

Adequate protection shall be provided to protect employees from loose rock or soil that could pose a hazard by falling or rolling from an excavation face. Such protection shall consist of scaling to remove loose material; installation of protective barricades at intervals as necessary on the face to stop and contain falling material; or other means that provide equivalent protection.

d. 29 U.S.C. § 654.5 provides as follows:

(a) Each employer --

(1) 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 physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

e. 29 C.F.R. § 1926.21(b)(2) provides as follows:

The employer shall 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.

f. 29 CFR 651(g)(1)(ii) provides as follows:

Adequate precautions shall be taken to prevent employee exposure to atmospheres containing less than 19.5 percent oxygen and other hazardous atmospheres. These precautions include providing proper respiratory protection or ventilation in accordance with subparts D and E of this part respectively.

g. The Lone Star versions of the above sections of the CFRs shall control for purposes of this trial.

h. Plaintiff's motion to deem violations, if any, of the foregoing OSHA regulations to be negligence *per se* has been denied by the Court and no further motions in that respect will be entertained.

i. Lone Star Civil Practices & Remedies Code Section 11101.125 provides as follows:

(a) In an action against an employer by or on behalf of an employee who is not covered by workers' compensation insurance obtained in the manner authorized by this Act to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

i. the employee assumed the risk of injury or death; or

ii. the injury or death was caused by the negligence of a fellow employee.

(b) The employer may defend the action on the ground that the injury was caused:

- i. by an act of the employee intended to bring about the injury;
- ii. by an act of a third person; or
- iii. while the employee was in a state of intoxication.

j. Cory Harbour and Francis Newton have both been accepted by the court as expert witnesses pursuant to Rule 702. Counsel are free to conduct a *voir dire* examination to explore the scope and reliability of these witnesses' testimony, or may reserve such questioning for cross-examination, but both witnesses shall be permitted to give opinion testimony under Rule 702 if such opinion testimony is relevant.

## **II. Witness Lists (in no particular order):**

The plaintiff and the defendant must each call the two witnesses listed on their respective witness lists below, but may call them in any order. The parties may not call any other witnesses.

Plaintiff:

- Alex Bell (who may be played by a witness of any gender, but will be considered a male for purposes of the trial); and
- Cory Harbour (who may be of any gender).

Defense:

- Jamie Stroud (who may be of any gender); and
- Francis Newton (who may be of any gender).

## **III. Exhibit List:**

1. Photo of truck
2. Photo of excavation
3. Photo of excavation
4. OSHA citation
5. Discharge papers
6. Pipe Test financial statement
7. Photo of freezing collar
8. Settlement agreement between OSHA and Pipe Test
9. Facebook printout
10. Soil test report
11. Training records
12. Printout of Wikipedia page
13. Table of Slopes by Soil Type
14. Autopsy

WENDY HUMPHREY WHITE-HILL,	§	IN THE 874 <sup>th</sup> DISTRICT COURT
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	IN AND FOR TRAVIS COUNTY
	§	
PIPE TEST, INC.	§	
	§	
<i>Defendant.</i>	§	STATE OF LONE STAR

**PLAINTIFF’S ORIGINAL COMPLAINT**

TO THE HONORABLE COURT:

COMES NOW, Plaintiff WENDY HUMPHREY WHITE-HILL and files this Original Complaint against Defendant PIPE TEST, INC., and for cause of action against said Defendant shows the Court as follows:

**I.**  
**PARTIES, JURISDICTION AND VENUE**

1. This is an action for damages within the jurisdictional limits of this Court.
2. Wendy Humphrey White-Hill has been a resident of Travis County, Lone Star since 1999. Plaintiff was the wife of Benjammen White-Hill, deceased, to whom she was married at the time of his death on July 20, 2010.
3. Pipe Test, Inc. is a Nevada corporation with its principal place of business in Travis County, Lone Star. Said Defendant may be served with citation in this matter by serving its president, Jamie Stroud, at its corporate headquarters located at 1492 Penguin Way, Armadillo, Lone Star.
4. Venue is proper in Travis County, Lone Star because the accident that is the subject of Plaintiff’s Original Complaint occurred in Travis County, Lone Star.

Additionally, Defendant's principal place of business is located in Travis County, Lone Star. Finally, Plaintiff resides in Travis County, Lone Star.

**II.**  
**FACTUAL BACKGROUND**

5. On July 20, 2010, Benjammen White-Hill was working as a laborer for Defendant Pipe Test, Inc. As part of his job responsibilities, Decedent was required to work with a dangerous substance, specifically liquid nitrogen. Decedent was involved in an operation involving the use of this dangerous substance to freeze water inside a pipeline using a collar device through which liquid nitrogen was flowing. At the time and on the occasion in question, the collar device was leaking liquid nitrogen. Decedent was exposed to the leaking liquid nitrogen and became unconscious and then dead.

**III.**  
**CAUSES OF ACTION**

6. Defendant was negligent in one or more of the following ways, which negligence was a proximate cause of the death of Benjammen White-Hill:
  - a. Defendant failed to provide a safe place to work;
  - b. Defendant failed to properly train White-Hill concerning the proper manner and techniques for working around liquid nitrogen;
  - c. Defendant failed to provide proper personal protective equipment to White-Hill, including respirators, when it knew or should have known he would be exposed to oxygen deficient atmospheres, including atmospheres saturated with nitrogen gas;

- d. Defendant required White-Hill to perform work and labor in a trench that was improperly sloped and/or shored up for the type of soil in which the trench was dug, causing White-Hill and other employees to be afraid of climbing out of the excavation using the side walls rather than the end ramps, which ramps were located much farther away.

**IV.**  
**DAMAGES**

7. Plaintiff was married to Benjammen White-Hill 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.

**V.**  
**JURY DEMAND**

8. Plaintiff hereby requests trial by jury.

**VI.**  
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that the Defendant be cited to appear and answer herein, and that upon final hearing the Plaintiff have judgment for damages, pre-judgment and post-judgment interest as allowed by law, costs of suit and such other and further relief, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully Submitted,

DRATH & WRATH, P.C.  
1864 Poison Spring  
P.O. Box 41864  
Armadillo, Lone Star 76706  
(361) 305-6400 (Telephone)  
(361) 757-6400 (Facsimile)

By: /s/ John M. Drath  
John M. Drath  
State Bar No. 00045896

*Attorneys for Plaintiff*

NO. 11-06597-CV

WENDY HUMPHREY WHITE-HILL,	§	IN THE 874 <sup>th</sup> DISTRICT COURT
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	IN AND FOR TRAVIS COUNTY
	§	
PIPE TEST, INC.	§	
	§	
<i>Defendant.</i>	§	STATE OF LONE STAR

**DEFENDANT’S ORIGINAL ANSWER**

TO THE HONORABLE COURT:

COMES NOW Pipe Test, Inc., by and through its undersigned counsel and files its Defendant’s Original Answer, showing the Court as follows:

**I.**  
**ANSWER**

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 Travis County, Lone Star and that the accident referenced in Plaintiff’s Complaint occurred in Travis 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 requests trial by jury.
9. To the extent necessary, Defendant denies all the remaining allegations in the Complaint.

**II.**  
**AFFIRMATIVE DEFENSES**

10. Without waiver of the foregoing but in addition thereto, Defendant affirmatively pleads that the accident at issue was caused solely or, alternatively, in part, by the negligence of Benjammen White-Hill in the following respects:
  - a. Failing to follow warnings and training provided to him by Defendant;
  - b. Entering an area he knew or should have known to be unsafe; and
  - c. Failing to utilize personal protective equipment provided to him by Defendant.
11. Without waiver of the foregoing but in addition thereto, Defendant affirmatively pleads that the death of Benjammen White-Hill was caused in whole or in part by the conduct of one or more persons unknown to this Defendant and here referred to as “John or Jane Doe,” in the following respects:
  - a. John or Jane Doe assaulted and stabbed Benjammen White-Hill at the site of the job he was working on for Defendant;
  - b. If Benjammen White-Hill’s death was not immediate as a result of the assault and stabbing, he fell or was pushed into the excavation at the job site while in an unconscious or otherwise incapacitated and helpless state and subsequently succumbed to the lack of atmospheric oxygen existing at the bottom of such excavation.

12. Pursuant to Lone Star Civil Remedies Code Section 69.082, Defendant designates John or Jane Doe as a responsible third party and requests the Court to submit to the jury the issue of his or her fault and the percentage by which such fault caused or contributed to cause the unfortunate and untimely death of Defendant's treasured employee.

**III.**  
**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,

LAW OFFICES OF CHARLES RICHARD DUCK  
150 E. Middle Way  
P.O. Box 15008  
Armadillo, Lone Star 76707  
(512) 831-7364  
(512) 832-2628 FAX

By: /s/ Chuck Dick Duck  
Charles "Chuck" Richard Duck  
State Bar No. 1588324

**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 John M. Drath, Wrath of Drath, P.C., on this 1<sup>st</sup> day of September, 2010.

By: /s/ [electronically signed] \_\_\_\_\_  
Charles "Chuck" Richard Duck

2. 29 CFR 1926.651(j) provides as follows:

Adequate protection shall be provided to protect employees from loose rock or soil that could pose a hazard by falling or rolling from an excavation face. Such protection shall consist of scaling to remove loose material; installation of protective barricades at intervals as necessary on the face to stop and contain falling material; or other means that provide equivalent protection.

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(1) 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 physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this Act.

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- i. the employee assumed the risk of injury or death; or
- ii. the injury or death was caused by the negligence of a fellow employee.

(b) The employer may defend the action on the ground that the injury was caused:

- i. by an act of the employee intended to bring about the injury;
- ii. by an act of a third person; or
- iii. while the employee was in a state of intoxication.

1 Q: Please tell us your name?

2 A: My name is Alex Bell.

3 Q: How are you employed, Alex?

4 A: I'm an employee of a company called Pipe Test.

5 Q: What is your educational background?

6 A: Graduated from high school at Paris in 1999. I had some technical school courses after  
7 that in welding and pipe fitting, and I've been in the workforce ever since.

8 Q: You went to high school in Paris, France?

9 A: No, Paris, Lone Star. Totally different place.

10 Q: Did you know Benjammen White-Hill, the employee of Pipe Test who was found dead  
11 on July 20, 2010?

12 A: Yes, Ben was a co-employee at Pipe Test, and we were on jobsites together a lot.

13 Q: How long had you worked with Ben?

14 A: Work is kind of a strong word for Ben. We were co-employees for five years.

15 Q: Are you saying Ben wasn't a good worker?

16 A: Let's just say if you were on a job site with Ben, you'd better be ready to carry both  
17 halves.

18 Q: Have you been at the job site at Winters in Lone Star, the scene of his death?

19 A: Yes, I was out at the job site when we originally did the excavation out there. I helped  
20 Ben do that work, and we set up the pipe freezing equipment together.

21 Q: Describe for us what you were doing out at the jobsite?

22 A: This is a pretty simple type of job. What we do is we test the integrity of pipelines. In  
23 order to do that, we need some kind of plug in the pipeline that you can put pressure

1 against to see if the pipeline is leaking anywhere. Instead of tearing the pipeline apart to  
2 do that, Pipe Test has devised a method of freezing a water plug inside a small portion of  
3 the pipeline. You can then test against the ice plug itself, which provides a nice seal  
4 inside the pipe.

5 Q: How do you get an ice plug inside a pipeline?

6 A: Well, first you get all the product out of the line, whether its oil or natural gas or natural  
7 gas liquids. Then you run some water into the line. We then put this collar device which  
8 is about six feet long around a six foot section of the pipeline and inject liquid nitrogen  
9 into the collar. This produces a nice ice plug right where the collar is. You can then put  
10 pressure on either side of the ice plug and test both sides of the line that way.

11 Q: And how is the liquid nitrogen put in the collar?

12 A We have a big liquid nitrogen tanker truck. We just hook the hoses from that truck onto  
13 the collar. Once you got it hooked up, it's a simple matter of watching it to make sure that  
14 everything is working right. At that point, it's a one man job.

15 Q: Can you identify Exhibit 1?

16 A: Yes, that's a photo of one of the nitrogen tanker trucks we use for jobs like this.

17 Q: Who took this photo?

18 A: I did. I took it the day of this accident, and it truly and accurately shows what that tanker  
19 truck looked like.

20 Q: Were you actually out there on the job site at any time before the accident?

21 A: Yes, I helped Ben excavate the pipe originally for this project.

22 Q: What do you mean by excavate the pipe?

1 A: Well, these pipelines are buried, so you have to dig around them to expose enough pipe to  
2 actually put the freezing collar on. So we go out with a trenching machine and we dig a  
3 trench around either side of the pipeline so that it is exposed maybe twenty or thirty feet.

4 Q: Did you have any trouble digging the trench in this particular job?

5 A: Yes, we ran into some rocky, nasty soil. We had a lot of trouble getting the trencher to  
6 even bite it. We finally got enough of a trench dug, but the side walls were fairly steep,  
7 and I for one didn't think it was safe.

8 Q: Why didn't you think it was safe?

9 A: Well, with a trench like that, you have a different angle that you can make for different  
10 types of soil. My opinion, this was a Type C soil, therefore the trench could be no more  
11 than ten degrees slope. This trench was a greater slope than that, which meant that you  
12 had the risk of the sides of the trench caving in or sloughing off and burying people. It  
13 was a very dangerous trench.

14 Q: Did you express your reservation about the trench to anybody at Pipe Test?

15 A: No, it never did any good to complain to those guys. They just didn't care. So I just kept  
16 to myself.

17 Q: After you got the trench dug, did you have any other trouble with this job?

18 A: Yes, the collar that we were using had a bad gasket in one end, and when that happens,  
19 nitrogen can leak from the collar excessively. That's what I think happened here.

20 Q: Why would nitrogen leaking from the collar cause a problem?

21 A: Nitrogen is not oxygen. You can't breathe nitrogen. Worse than that, when you are in a  
22 nitrogen-filled atmosphere, it actually displaces oxygen. So you can't even hold your

1 breath very well in a nitrogen atmosphere. You breathe one breath of it, and it removes  
2 all the oxygen from your lungs and it kills you instantly.

3 Q: Were you aware the last time you left the job site that the gasket was leaking?

4 A: Yes, and I called in for a replacement, but the people in our repair shop told me that they  
5 would have to order one from the factory and it would be a couple of weeks. So we just  
6 went on with the job.

7 Q: Did you ever discuss this with Ben?

8 A: Yes, we both thought it was a dangerous condition, and we both talked about how we  
9 would not ever want to go into that trench with the gasket leaking like that.

10 Q: Can you identify Exhibit 7?

11 A: Yes, that is a photo of the freezing unit with the leaky gasket. As you can see, there's a  
12 lot of nitrogen leaking around the ends, and a lot of it actually dripping onto the ground.

13 Q: When was this photo taken and by whom?

14 A: I took the photo right after we set the freeze unit up. I was fairly unhappy about having  
15 to work around this condition and I wanted to document it to show to management later.

16 Q: Did you show this to anyone in the management of Pipe Test before poor Mr. White-Hill  
17 died in this ditch?

18 A: No, I didn't get the time to do that.

19 Q: Can you tell us what Exhibit 14 is?

20 A: Yes, that's Dr. Stockard's autopsy report. I was provided a copy of this by the good  
21 doctor himself, just before he filed it.

22 Q: The last paragraph says you tried to persuade the doctor to alter his autopsy report—is  
23 that true?

1 A: Umm, not so much persuade as merely suggest. I thought the reference to a puncture  
2 wound was not necessary. That knife wound had nothing to do with how Ben came to be  
3 on the dead side of things. I'm extremely close to the widow, and I thought it might  
4 upset her if the cause of death was somehow at issue. I thought it would be better if there  
5 was no question that Pipe Test's carelessness killed him.

6 Q: Just how close the widow are you?

7 A: We've known each other since we were teenagers. I'd do just about anything to help her.

1 Q: Please tell us your name?

2 A: My name is Cory Harbour.

3 Q: What do you do for a living?

4 A: I work for the Occupational Safety and Health Administration as an inspector out of the  
5 office in Vega, here in Lone Star.

6 Q: What is your educational background that might qualify you to be an OSHA inspector?

7 A: I have a degree in Icelandic Culture from Vega State University, and subsequently I  
8 received a Master's Degree in Industrial Engineering from Lone Star A&M.

9 Q: What year did you graduate from Lone Star A&M?

10 A: I graduated from Lone Star A&M in 2003, more or less.

11 Q: What do you mean by "more or less?"

12 A: Well, with a Master's Degree in industrial engineering, you have to take a lot of courses  
13 in such things as engineering, and it took me two or three times to pass one of those  
14 courses, but they gave me my degree actually before I passed.

15 Q: And have you worked at the Vega office of OSHA ever since you graduated?

16 A: Yes, right there in Vega, Lone Star.

17 Q: Why did you choose the Vega office?

18 A: Well, it's not particularly busy, and so I'm not always being bothered by having to go out  
19 and do investigations and unpleasant things like that.

20 Q: How many investigations have you done in the past seven years?

21 A: I have done ten investigations in the past seven years.

22 Q: How many of those investigations related to excavations?

23 A: Well, basically, none of them did.

1 Q: How many of those investigations had to do with a work place death?

2 A: Well, actually, none of them did.

3 Q: What was the nature of the investigations you were doing?

4 A: These were generally investigations of complaints at work places, like where somebody  
5 was unhappy with work conditions and then complained to OSHA about them. We would  
6 go out and investigate those to see if there was any veracity at all to the complaints,  
7 which usually there was not.

8 Q: When did you first become aware of the death involving Pipe Test employee Benjammen  
9 White-Hill?

10 A: That came in as a call in to our office from a Pipe Test employee at the site of the death.  
11 By law, the employer is supposed to call us when there is a death on the work site, and  
12 that is what happened here.

13 Q: Who called in from Pipe Test?

14 A: Some person named Andy Little. It was pretty hard to understand the person, because  
15 there seemed to be a lot of panic and the like. But Little said to me that the accident was  
16 something that was inevitable due to the way the company was run.

17 Q: Did you ask what Little meant by that?

18 A: No, the person was really distraught, and I didn't want to pursue it. I felt like I should get  
19 out to the site as quickly as possible.

20 Q: When did you arrive at the site?

21 A: It was around 11:00 a.m.

22 Q: What did you see when you got there?

1 A: The local police had already cordoned off the area with some yellow tape. There were  
2 several folks standing around, including the Pipe Test employee named Little who had  
3 called in the report. There were several law enforcement people. There were a couple of  
4 paramedics. There was some kind of manager or owner of Pipe Test, and there was an  
5 officer of the company that owned the pipeline itself.

6 Q: What else did you see when you got there?

7 A: Well, as I stepped up closer I could see that there was a trench or excavation. When I  
8 looked down in the excavation, I could see the body of a person later identified as  
9 Benjammen White-Hill. The body appeared to be crumpled up at the bottom of the  
10 trench.

11 Q: Can you identify Exhibits 2 and 3?

12 A: Yes, those are photographs I took at the site and they do truly and accurately reflect the  
13 scene that I saw there that day.

14 Q: Specifically focusing on Exhibit 3, what does that show us?

15 A: It shows the excavation with the fairly steep sidewalls. You can't see it from this photo,  
16 but this was right where the decedent's body was laying in the bottom of the trench.

17 Q: Did you check to see if Mr. White-Hill was in fact dead?

18 A: No, I simply asked the paramedics if he was as dead as he looked. They told me that they  
19 never saw him in life, but if he looked anything like that, then he was in pretty bad shape  
20 before he died. But to answer your question specifically, they told me he was dead, and  
21 that his body was quite frozen.

22 Q: Frozen?

1 A: Yes, liquid nitrogen is cold, and the body had been there long enough and exposed to  
2 enough liquid nitrogen at the bottom of the trench that the body was in fact frozen.

3 Q: What did you do next?

4 A: I told the paramedics they could go ahead and go down in the trench and remove the  
5 body.

6 Q: And what did you do?

7 A: I went down in the trench to make sure that there wasn't something under the body that  
8 might be relevant that I needed to see or take a picture of.

9 Q: What did you do next?

10 A I set up some of instruments and measured the slope of the trench walls in order to  
11 determine whether they complied with OSHA regulations, and found that they did not.

12 Q: In what way did they not comply?

13 A: Well, I determined that this was a type "B" soil, and the slope could be no more than 45  
14 degrees on that type of soil. The slope here was 51 degrees, so the excavation was out of  
15 compliance.

16 Q: Why does that matter?

17 A: In terms of OSHA investigations, we look at violations on the work site of every kind.  
18 This was a violation on the work site and we issued a citation for it.

19 Q: Can you identify Exhibit 4?

20 A: Yes, that is a copy of the citations we issued to Pipe Test in connection with this  
21 investigation.

22 Q: And which of the entries here relate to the slope of the trench?

1 A: The first entry relates to the slope of the trench. As you can see, I called this a serious  
2 violation.

3 Q: Are there other citations listed in Exhibit 4?

4 A: Yes. You can see that there are three other citations listed.

5 Q: What are those citations about?

6 A: Well, the next one down the list is a citation for failing to provide a safe place to work.

7 Q: What does that specifically relate to?

8 A: An employer has a duty to provide a safe place to work. In this particular instance, the  
9 equipment that was being utilized had a leaky gasket. That gasket leak caused liquid  
10 nitrogen to be in the bottom of the trench. I found that to be a dangerous condition, but  
11 there was no specific OSHA regulation that pertains to nitrogen in the bottom of a ditch  
12 because of defective equipment. When that's the case, you resort to the general duty  
13 clause, and the employer has a general duty to provide a safe work place. Therefore I  
14 gave a citation for failure to provide a safe work place. And as you see, that also is a  
15 serious violation.

16 Q: And what is the third citation in Exhibit 4?

17 A: The third citation is for failure to properly train employees.

18 Q: And what does that relate to?

19 A: I went through the training records for this employee, which are marked as Exhibit 11,  
20 and I just couldn't find where they had trained Mr. White-Hill about the job he was  
21 doing. This was a dangerous job in the sense that if you went into the trench while liquid  
22 nitrogen was present, the liquid nitrogen could cause immediate unconsciousness and  
23 result in fairly immediate death. I felt there should be specific training about that subject,

1 and I didn't see that Mr. White-Hill had been trained. Therefore, I gave a citation for  
2 failure to train an employee on the dangers encountered on the job site.

3 Q: Is that also a serious violation?

4 A: Yes.

5 Q: And the fourth citation shown in Exhibit 4?

6 A: That citation is for failing to provide proper respiratory protection for employees who  
7 might be exposed to atmospheres having less than 19.5% oxygen.

8 Q: Did you show that as a serious violation?

9 A: Yes, that one is serious as well.

10 Q: Did you test the oxygen content of the excavation?

11 A: No, there was no point in doing that because the equipment had been shut down by the  
12 time I got there. So, yes, I was pretty much hypothesizing about the oxygen levels at the  
13 time of White-Hill's death.

14 Q: You were guessing?

15 A: That's a crass way to put it. And, I might add, while we are on the subject, that I could  
16 have cited Pipe Test for yet another violation but chose not to.

17 Q: What other citation might have you cited Pipe Test for?

18 A: I did not find a Job Safety Analysis, or JSA as we like to call it, in the files at Pipe Test  
19 concerning this specific job site.

20 Q: What is a JSA?

21 A: Well, an employer is supposed to look around at a jobsite, and that means every job site,  
22 to see and identify what the potential hazards might be and then guard against them. In  
23 this instance, they should have done a JSA when they set up this job, and the JSA should

1 have identified the trench as a dangerous place to be, and it should of identified the  
2 sidewalls as being improperly sloped, presenting dangerous hazards, and it should have  
3 identified the potential that nitrogen would be leaking anywhere at the site, whether it be  
4 from the pipe freezing collar itself, the hoses that serve it or the tanker truck that brought  
5 it to the site.

6 Q: Based on your investigation and your training, did you form a conclusion as to what  
7 caused the death of Mr. White-Hill?

8 A: Yes, based on my education, training and experience, I concluded that Mr. White-Hill's  
9 death was the direct result of Pipe Test's negligence in failing to replace the gasket in the  
10 pipe collar connection, allowing nitrogen to leak into the trench and ultimately resulting  
11 in Mr. White-Hill's suffocation.

12 Q: Isn't the danger of nitrogen suffocation well known in the industry involved here?

13 A: There is certainly a baseline knowledge of the danger among workers in this industry, but  
14 you have to remember two things: first, training is as much about reminding people of  
15 things they already know as it is about teaching new things. Second, from what I  
16 understand, Mr. White-Hill was not the sharpest thumbtack in the corkboard, and Pipe  
17 Test should have known a guy like that needed constant reminders of even the most  
18 obvious dangers.

1 Q: Please state your name?

2 A: I am Jamie Stroud.

3 Q: Are you the owner of a company called Pipe Test, Inc.?

4 A: 100% owner of Pipe Test, yes.

5 Q: Where were you raised?

6 A: I was raised in China Grove, here in Lone Star. The one near San Antonio, not that other

7 one.

8 Q: Did you graduate from high school there?

9 A: Not really. China Grove was too small to have a high school. I graduated from high

10 school in San Antonio.

11 Q: What did you do after high school?

12 A: I voluntarily went into the Armed Services.

13 Q: Where did you serve?

14 A: I was in the Army. I was assigned to a battalion charged with logistics. We moved stuff

15 around to where it was needed.

16 Q: Were you honorably discharged?

17 A: Pretty much.

18 Q: Can you identify Exhibit 5?

19 A: Those are my discharge papers, for what they're worth.

20 Q: What did you do after you got out of the Army?

21 A: While I was in the Army, I learned a lot about tractor trailers and hauling products like

22 helium, nitrogen, cryogenic gases, and the like. I wanted to put that knowledge to use in

23 some way. I had a friend who was involved in the pipeline business. We got together and

1           figured out how to do pipeline testing against a frozen water plug in a pipeline. We put  
2           together this device that we still are using for pipeline freezing for testing purposes.  
3           Apparently it was a pretty clever idea, because a lot of other companies immediately  
4           copied it and started doing the same thing we were doing. But in any event, we made a  
5           business out of it, and I've been able to eke out a living since that time.

6   Q:    Can you identify Exhibit 6?

7   A:    Yes, that is a financial statement that Pipe Test gave to its bank, Blissful State Bank.

8   Q:    Is this what you describe as eking out a living?

9   A:    Well, one becomes accustomed to a certain standard.

10  Q:    So describe for us if you would how the pipe freezing processing works?

11  A:    Well it's actually incredibly simple. In order to test a pipe to see if it is leaking, you need  
12       to be able to pressure it up, and you need to be able to do so without volatile products like  
13       natural gas liquids or oil in the line. Typically, you would put water in the line and then  
14       put pressure on it. The problem was always with trying to isolate small segments of the  
15       line to test so you didn't have to test the whole thing at once. We devised this collar that  
16       you can put around the pipe. Once you've emptied the pipe of volatile products, you fill it  
17       full of water and then put nitrogen into the pipe collar. That causes the water directly  
18       adjacent to the collar to freeze, forming a big ice plug. As you know, water expands  
19       when it freezes, so you can't move that ice plug. Therefore, you can pressure test against  
20       it. Using this method, you can isolate various sections of line, however long you want  
21       them, depending on what your problems are.

22  Q:    Can you identify Exhibit 2?

23  A:    Yes, that's a photograph of one our collars placed on a pipe.

1 Q: And can you identify specifically the location where this photograph was taken?

2 A: Yes, that's where Mr. Whitehouse was accidentally killed due to his own carelessness.

3 Q: Can you identify Exhibit 7?

4 A: That's a better photo of one of our collars on a pipe.

5 Q: Were you familiar with this site before the death occurred?

6 A: No, I had not gone out to this particular site. I had capable employees who were well  
7 trained in what to do, and I trusted them to set up everything like it should be. And they  
8 did.

9 Q: Did your company offer training for its employees who would be doing this process?

10 A: Absolutely. We trained them in how to do excavations, and we trained them in the  
11 dangers of nitrogen asphyxiation.

12 Q: Did you have a training sheet showing that Mr. White-Hill actually participated in  
13 nitrogen asphyxiation training?

14 A: No, I never could locate one of those. But this job wasn't his first rodeo. He had done this  
15 job at least a dozen times. He had to know, you know, he just had to know that it was  
16 dangerous.

17 Q: Are you familiar with Exhibit 4, the OSHA citations in this case?

18 A: Of course.

19 Q: What did you do about these citations once you received them?

20 A: Well, we went to an informal conference, but nothing got done at that conference. I  
21 talked with my lawyer about it extensively, he told me that it was really difficult to fight  
22 these citations because you had to go through all this administrative procedural stuff, in

1 front of administrative judges who hate employers, and so we decided it would be  
2 prudent to just pay the fines and go on.

3 Q: Can you identify Exhibit 8?

4 A: Yes, Exhibit 8 is the settlement agreement between Pipe Test and OSHA.

5 Q: Did your employees like Benjammen White-Hill have access to the company computer  
6 network?

7 A: Yes, we made sure they each had a computer at their house that was tied into our network  
8 so we could dispatch them without having to call them.

9 Q: Following Mr. White-Hill's death, did you have an occasion to take a look at his  
10 computer?

11 A: Yes, we needed to get that computer to another employee, so we did take a look at it.

12 Q: What, if anything, did you find on his computer?

13 A: Well, apparently he surfed the Internet quite a bit. There were telltale indications that he  
14 particularly enjoyed surfing certain Internet sites, if you get my drift. But he also  
15 maintained a Facebook account and apparently spent a great deal of time interacting with  
16 folks on Facebook.

17 Q: Can you identify Exhibit 9?

18 A: Yes, that is a printout of a Facebook page that we discovered on Mr. Whitehorse's  
19 computer after his death.

20 Q: You mean White-Hill?

21 A: Yeah, whatever.

22 Q: This Facebook entry appears to be from someone named Thea Whalen; do you know who  
23 that is?

1 A: Yes, that woman is well known around town. She has bad reputation as being someone  
2 who is quite fond of gentlemen friends.

3 Q: Did you bring this Facebook post to the attention to any of the investigators in the case?

4 A: No, I figured Ben was dead and his wife didn't really need to know about any possible  
5 connection with that woman, Thea Whalen. I did show it to Alex Bell, who said he  
6 already knew about that problem.

1 Q: What is your name?

2 A: My name is Francis Newton.

3 Q: How old are you?

4 A: I'm 74.

5 Q: Where do you reside?

6 A: Detroit.

7 Q: Michigan?

8 A: No, the one here in Lone Star. Just as broke, though.

9 Q: Are you still employed anywhere, or are you retired?

10 A: Yes to each.

11 Q: What do you mean by that?

12 A: I worked for OSHA as a regional manager until 2005. When I hit the 35 year mark I decided

13 to hang it up. Since that time, I have technically been "retired," and I have also been serving

14 as a consultant, which is where the real money is.

15 Q At my request, have you reviewed the facts and circumstances surrounding the death of Mr.

16 Benjammen White-Hill in order to determine whether Pipe Test was responsible for that

17 death?

18 A: Yes, and in carrying out my assignment, I reviewed all of the depositions that have been

19 taken up to this point in case. I understand mine is the last deposition to be taken. I also

20 reviewed the OSHA investigation along with the citations that were wrongfully issued by

21 OSHA. I reviewed the autopsy report from the autopsy of Mr. White-Hill, and I reviewed a

22 bunch of photographs out at the scene of this tragic accident.

1 Q: What is your educational background to qualify you to be an OSHA regional manager?

2 A: I have Bachelor's and Master's Degrees in Civil Engineering from Lone Star Tech over in  
3 Lubbock. After I graduated from Lone Star Tech, I took a job with the Bureau of Labor  
4 Standards, the predecessor to OSHA. When OSHA was formed, I started working as an  
5 OSHA inspector and worked my way up to regional manager.

6 Q: In your 35 years with OSHA, did you have an opportunity to do investigations of accident  
7 sites?

8 A Yes, literally hundreds of them.

9 Q: Did any of those involve excavations?

10 A Probably a few dozen.

11 Q: Did any of them involve suffocation deaths due to nitrogen concentrations in a trench  
12 excavated to do freeze testing on a pipeline?

13 A: No, now you're pushing too hard.

14 Q: Based on your review of the materials you have described, based on your training and  
15 experience, did you come to a conclusion about whether Pipe Test was responsible for the  
16 death of Ben White-Hill?

17 A: Yes, I came to a conclusion and no, Pipe Test was not responsible in any way, shape or form  
18 for Mr. White-Hill's death.

19 Q: Let's look at the OSHA citation that has been marked as Exhibit 4. The first citation relates  
20 to an excavation or trenching violation. Did you review the evidence concerning that?

1 A: Yes, I not only reviewed the evidence, but I did what that OSHA investigator or inspector  
2 should have done. I went out and took a soil sample and had it tested so I would know what  
3 the soil type out there really was.

4 Q: Let me hand you Exhibit 10; can you identify that?

5 A: Yes, that is a report from Lone Star Testing Labs indicating that the soil sample I submitted  
6 to them for routine soil type testing was a Type A soil.

7 Q: What is the significance of that finding?

8 A: A Type A soil only requires shoring up if the slope is above 53 degrees. The slope on this  
9 ditch was around 51 degrees, and so I found it did not need to be shored for the slope. In  
10 other words, there wasn't a violation.

11 Q: Can you identify Exhibit 13?

12 A: Yes, this is the table of soil types and relevant slopes published by OSHA. It is what we use  
13 to determine slope violations.

14 Q: What about the second item on the citation?

15 A: I was not able to actually inspect the pipe collar and gasket at issue. I was hired a month or  
16 so after this accident, and everything had been moved from the scene at that time and the  
17 gasket had been changed out. There was a new gasket in both ends of the chamber. I  
18 concluded, however, that a leaking gasket was not causally related to Mr. White-Hill's death.

19 Q: What do you mean by that?

20 A: If you look at the autopsy report which is Exhibit 14, you will see that there is no finding of  
21 asphyxiation and/or suffocation or smothering as we like to call it. There's just not a finding

1 one way or the other. Without that finding, I'm not inclined to guess or speculate that Mr.  
2 White-Hill died because of nitrogen inhalation and asphyxiation.

3 Q: Is there anything in the autopsy report that you can rely on in terms of a cause of death?

4 A: Yes, the autopsy report indicates a wound in the middle of Mr. White-Hill's back that would  
5 have been consistent with a knife wound. As you know, the body had to be thawed in order  
6 to do the autopsy, therefore, the finding of a knife wound is a little ambiguous as well, but  
7 there is clearly a wound in the middle of Mr. White-Hill's back that is not explained by  
8 nitrogen asphyxiation . I am more inclined to believe that he was stabbed to death.

9 Q: Who would have done such a thing?

10 A: I'm the OSHA investigator, not the Sheriff. I don't know.

11 Q: What about the third citation on Exhibit 4?

12 A: You know, I went through the training records that are marked as Exhibit 11, and I did not  
13 find Mr. White-Hill's actual signature or name on any of the nitrogen asphyxiation training  
14 records. However, it is clear to me that Pipe Test was doing training on nitrogen  
15 asphyxiation. A number of employees signed off on a sheet saying they had received that  
16 training at a time when Mr. White-Hill was working at the company. It is inconceivable to  
17 me that he would have not attended one of these meetings and learned about nitrogen  
18 asphyxiation. But in any event, that's irrelevant.

19 Q: Why is it irrelevant?

20 A: I did some research on the Internet, specifically looking at Wikipedia, and learned that the  
21 dangers of nitrogen asphyxiation in doing this kind of job are well known in the industry, not  
22 only among the people who own the companies, but also among workers who are handling

1 the equipment and handling the nitrogen. Because this danger is well known, I do not  
2 believe it was necessary for Pipe Test to have trained its employees or to have warned them  
3 about the dangers of nitrogen asphyxiation.

4 Q: Can you identify Exhibit 12?

5 A: Yes, that's a printout from Wikipedia describing what I just told you.

6 Q: How about the fourth citation in Exhibit 4?

7 A: There's no way to actually tell whether the atmospheric oxygen levels were less than 19.5%  
8 at the time of the death, so I don't know how OSHA can support that one.

9 Q: Were you aware that Pipe Test settled the first three citations with OSHA by reclassifying  
10 them as "other than serious?"

11 A: Those never should have been asserted in the first place, so that's consistent with what I've  
12 testified to.

13 Q: Looking at Exhibit 8, do you agree that Pipe Test and OSHA left Citation 4 regarding  
14 respirators as it was, that is, as a "Serious" violation?

15 A: Yeah, you never know what kind of pressure OSHA was putting on Pipe Test.

16 Q: Had you ever heard of Pipe Test prior to this particular case?

17 A: Yes, back when I was in the business so to speak, I inspected one of their sites and gave them  
18 a citation.

19 Q: What was that citation for?

20 A: I gave them a citation for failure to do a job safety analysis before beginning work at a job  
21 site.

22 Q: Was any kind of injury or fatality involved in that incident?

1 A: Not that I could ever figure out.







EXHIBIT 3



## **Citation and Notification of Penalty**

**Company Name:** TEST PIPE, INC.

**Inspection Site:** 1492 PENGUIN WAY, ARMADILLO, LONE STAR

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

29 CFR 1926.651(j): Adequate protection was not provided to protect employees from loose rock or soil that could pose a hazard by falling or rolling from an excavation face.

Pipe Test, Inc. work site at Winters, Lone Star: On or about July 20, 2010, employees of Pipe Test, Inc. were exposed to the hazard of soil falling or rolling from an excavation site where the slope was 51 degrees and the soil type was "B."

### **Citation 2 Item 1** Type of Violation: **Serious**

29 USC 654.5: The employer failed to provide employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to such employees.

Pipe Test, Inc. work site at Winters, Lone Star: On or about July 20, 2010, employees of Pipe Test, Inc. were exposed to a work place that was not free from recognized hazards associated with exposure to extreme cold associated with nitrogen and to atmospheres containing less than 19.5% oxygen. The equipment in use in a trench 7 feet deep was defective due to leaking gaskets that allowed nitrogen to seep into and occupy the trench.

### **Citation 3 Item 1** Type of Violation: **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.

Pipe Test, Inc. work site at Winters, Lone Star: On or about July 20, 2010, employees of Pipe Test, Inc. were engaged in a hazardous operation for which one or more of them had not received relevant training, to wit: Benjammen White-Hill had not received relevant training regarding the hazards of using and/or being in the presence of nitrogen, a substance with

known dangers and risks, including the danger of exposure to extremely cold temperatures and the dangers of asphyxiation.

Citation 4 Item 1 Type of Violation: **Serious**

29 CFR 651(g)(1)(ii): Adequate precautions, including proper respiratory protection, were not taken to prevent employee exposure to atmospheres containing less than 19.5 percent oxygen.

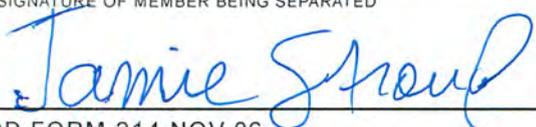
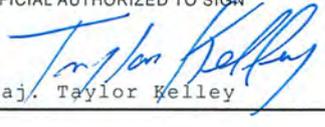
Pipe Test, Inc. work site at Winters, Lone Star: On or about July 20, 2010, employees of Pipe Test, Inc. were exposed to atmospheres containing less than 19.5 percent oxygen without adequate precautions such as respirators being provided.

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES

THIS IS AN IMPORTANT RECORD SAFEGUARD IT

ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

### CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (LAST, FIRST, MIDDLE) STROUD, JAMIE		2. DEPARTMENT, COMPONENT AND BRANCH USMP-C1		3. SOCIAL SECURITY NO. 888-77-6543	
4. GRADE, RATE OR RANK PRIVATE	5. PAY GRADE E-4	6. DATE OF BIRTH 751031	7. RESERVE OBLIG TERM DATE N/A		
8. PLACE OF ENTRY INTO ACTIVE DUTY QUANTICO, VA 22134		9. HOME OF RECORD AT TIME OF ENTRY CHINA GROVE, LONE STAR			
10. LAST DUTY ASSIGNMENT AND MAJOR COMMAND MWS-3 3DMAW FMFPAP BERGSTROM, LS		11. STATION WHERE SEPARATED HQHQRON MCASET BERGSTROM, LS			
12. COMMAND TO WHICH TRANSFERRED FORT DAVIS, LONE STAR		13. PRIMARY SPECIALTY LOGISTICS & TRANSPORTATION			
14. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED RIFLE EXPERT BADGE (4TH AWARD); PISTOL EXPERT BADGE (6TH AWARD); LETTER OF APPRECIATION (3RD AWARD); HAND-TO-HAND COMBAT PROFICIENCY AWARD					
15. MILITARY EDUCATION LOGISTICS & TRANSPORTATION					
16. REMARKS MANDATORY SEPARATION					
17. MAILING ADDRESS AFTER SEPARATION 79 N. PRAIRIE ARMADILLO, LS 76706			18. NEAREST RELATIVE TIMMY WILLIAMS 573483 LOSTWAY WAY CHINA GROVE, LS 73993		
19. SIGNATURE OF MEMBER BEING SEPARATED 			20. OFFICIAL AUTHORIZED TO SIGN  Maj. Taylor Kelley		

DD FORM 214 NOV 06

21. TYPE OF SEPARATION SEPARATED FROM ACTIVE DUTY		22. CHARACTER OF SERVICE LESS THAN HONORABLE	
23. SEPARATION AUTHORITY MAJ ORSA IDGE THI MOUT OFHE RE	24. SEPARATION CODE BHK GLJ	25. REENTRY CODE RE-4	
26. NARRATIVE REASON FOR SEPARATION ENGAGED IN KNIFE FIGHT WITH CIVILIAN OFF BASE			

DD FORM 214 NOV 06

EXHIBIT 5

# BLISSFUL STATE BANK

# FINANCIAL STATEMENT

## SECTION 1 PERSONAL INFORMATION

		<input type="checkbox"/> Single	<input type="checkbox"/> Married	<input type="checkbox"/> Separated	<input type="checkbox"/> Divorced
Borrower's Name	Jamie Stroud	SSN	888-77-6543	Birth Date	10/31/75
Address		City / State		Zip Code	76706-1000
Occupation	Owner/Entrenpenuer	Position		Years	
Spouse's Name	N/A	SSN	N/A	Birth Date	N/A
Occupation	N/A	Position	N/A		
Business Name	Pipe Test, Inc	Bus. Type	Pipe Testing	EIN / TIN	78-584211
Address	1492 Penguin Way	City / State	Armadillo, TX	Zip Code	76707-5647
Business / Work Phone	555-322-5815	Cell Phone	555-452-6497	Home Phone	

## SECTION 2 STATEMENT OF FINANCIAL CONDITION

as of:

CURRENT ASSETS		(Omit Cents)	CURRENT LIABILITIES		(Omit Cents)
Cash:	In this Bank	\$987.12	CPLTD:	Oil & Gas Interests	1,898,900
	In other Institutions	184,984		Real Estate Notes Payable	-
Securities:	Marketable	225,378		Other Term Notes Payable	-
	Non-Marketable		<b>Accounts Payable:</b>	Accounts Payable	265,417
Accounts & Notes Receivable		-	Bank Revolving Lines	264,782	
Cash Value of Life Insurance		-	Estimated Credit Card Balances	45,897	
Other Current Assets:	100% Stock Pipe Test, Inc.	657,237	<b>Taxes Payable:</b>	Federal Income Taxes	16,489
			Real Estate & Other Taxes	4,324	
			<b>Other Current Liabilities:</b>		
<b>TOTAL CURRENT ASSETS</b>		<b>1,068,586</b>	<b>TOTAL CURRENT LIABILITIES</b>		<b>2,495,809</b>
NON-CURRENT ASSETS		(Omit Cents)	NON-CURRENT LIABILITIES		(Omit Cents)
Real Estate:	Homestead	450,000	<b>Mortgages Payable:</b>	Homestead	
	Investment Property			Investment Property	
	Other Real Estate			Other Real Estate	
Other Business Interests		-	<b>Notes Payable:</b>	Oil & Gas Interests	
Deferred Comp. & Retirement Plans		-		Other Business Interests	
Oil & Gas Interests		335,500		Automobiles	
Non-Current Accounts & Notes Receivable			Other Term Notes Payable		
Other Non-Current Assets:			<b>Other Non-Current Liabilities:</b>		
			<b>TOTAL LIABILITIES</b>		<b>\$2,495,809</b>
			<b>NET WORTH (Assets less Liabilities)</b>		<b>(\$641,723)</b>
<b>TOTAL ASSETS</b>		<b>\$1,854,086</b>	<b>TOTAL LIABILITIES &amp; NET WORTH</b>		<b>\$1,854,086</b>

 Signed: Jamie Stroud Date: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

EXHIBIT 6



EXHIBIT 7

SECRETARY OF LABOR,  
UNITED STATES DEPARTMENT OF LABOR,  
Complainant,

OSHRC Docket No.  
10-0411

v.

PIPE TEST, INC.,  
and its Successors, Respondent.

OSHA Inspection No. 16123394181-R

STIPULATION AND SETTLEMENT AGREEMENT

The Secretary of Labor, United States Department of Labor, hereinafter referred to as the "Secretary," and Pipe Test, Inc. and its Successors, hereinafter referred to as "Respondent," stipulate and agree as follows:

I.

Citations in Docket No. 10-0411

The Secretary hereby modifies Citation number 1, Item 1 by recharacterizing it as Other than Serious; and hereby reduces the penalty for Citation number 1, Item 1 from \$1083.00 to \$540.00.

The Secretary hereby modifies Citation number 2, Item 1 by recharacterizing it as Other than Serious; and hereby reduces the penalty for Citation number 2, Item 1 from \$1083.00 to \$540.00.

The Secretary hereby modifies Citation number 3, Item 1 by recharacterizing it as Other than Serious; and hereby reduces the penalty for Citation number 1, Item 1 from \$1083.00 to \$540.00.

The Citation and notification of proposed penalty is deemed amended accordingly.

There is no modification of Citation 4, Item 1.

Item	Proposed Penalties	Amended Penalties	Other Amendments
Serious Cit 1, Item 1	\$1083	\$540	Item 1 is recharacterized as Other than Serious
Serious Cit 2, Item 1	\$1083	\$540	Item 1 is recharacterized as Other than Serious
Serious Cit 3, Item 1	\$1083	\$540	Item 1 is recharacterized as Other than Serious
Serious Cit 4, Item 1	\$5000	\$5000	No change

The Citations and notifications of proposed penalties are deemed amended accordingly.

## II.

### Abatement, Posting, and Payment of Penalty

Respondent hereby withdraws its notices of contest to each Citation and the proposed penalties, as amended herein. In support of its withdrawal, Respondent states:

A. That the violations described in Serious Citation number 1, Item 1, amended, above, to Other than Serious, and Serious Citation number 2, Item 1, amended, above, to Other than Serious, and in Serious Citation number 3, Item 1, amended, above, to Other than Serious, and Serious Citation number 4, Item 1, have been abated. Respondent agrees that the date of final execution of this Agreement shall be the final abatement date for said items. Respondent further agrees that it shall comply with all applicable abatement verification provisions of 29 CFR § 1903.19, including but not limited to, all certification, documentation, and posting requirements.

B. That affected employees are not represented by an authorized employee representative at certain of the covered worksites referenced in Appendix A, and, as to each of these, therefore, a copy of this Stipulation and Settlement Agreement shall be posted at Respondent's said workplaces on February 14, 2011. Respondent represents that at each covered work site there is a bulletin board or notice board where employee information is routinely posted, and that said location is the place in each covered work site that a copy of this Agreement is being posted, where it may be viewed by its employees. The Agreement shall remain posted at each work site until it becomes a final order of the Commission.

## III.

### Inspections During Term of Agreement

Provided that Respondent implements this Agreement in good faith, the Secretary agrees that OSHA shall not conduct programmed inspections of Respondent with regard to the particular conditions covered by this Agreement at its covered worksites during the time for abatement. OSHA retains the right to conduct all other types of inspections of Respondent permitted under the Act, and nothing in this Agreement shall be construed to alter or affect Respondent's rights and obligations under the Act with regard to such inspections.

## IV.

### Non-Admission Clause

Except for proceedings under the Act, none of the foregoing agreements, statements, findings, and actions taken by the Respondent shall be deemed an admission by the Respondent of a violation of the Act or an admission of the allegations contained within the citations or notifications of penalties in this matter. The parties understand and acknowledge that the legal

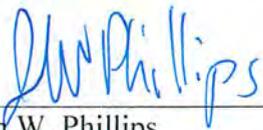
standards and procedures involved in these administrative proceedings are not necessarily the same as those involved in civil litigation outside of the Act, agree that the agreements, statements, findings, and actions taken herein are made solely for the purpose of compromising and settling this administrative matter amicably to avoid protracted and expensive litigation, and are not intended to be used in any judicial or administrative forum for any other purpose whatsoever, except for proceedings under the Act. It is specifically understood by Respondent and the Secretary that the compromise and settlement of these administrative proceedings is not intended to constitute an admission or finding of civil liability or responsibility of any kind in any civil personal injury or wrongful death action; and such civil liability or responsibility is specifically denied by the Respondent.

V.  
Fees and Costs

Each party hereby agrees to bear her or its own fees and other expenses incurred by such party in connection with any stage of this proceeding, including but not limited to, attorney's fees, costs, and other expenses. The parties agree that Respondent is ineligible under the Equal Access to Justice Act, 5 U.S.C. § 504, as amended.

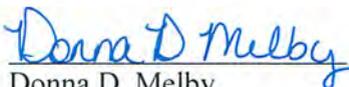
Dated this 11<sup>th</sup> day of February, 2011.

JACKSON KRANTZ LLP

By   
John W. Phillips  
Attorney  
1333 K Street NW  
Suite 4500- East Tower  
Washington, DC 20005-3373  
(202) 414-9200  
(202) 414-9299

Attorneys for Respondent

T. John Ward  
Acting Solicitor of Labor  
Michael P. Angelini  
Regional Solicitor

  
Donna D. Melby  
Attorney  
1210 City Center Square  
1100 Main Street  
Armadillo, Lone Star 76706  
(817) 426-6441  
(817) 426-2500 (fax)

Attorneys for  
Secretary of Labor,  
U.S. Department of Labor

EXHIBIT 8

Claim your Facebook email Turn on text messaging Chat is online

Messages

+ New Message Search Messages



Thea: It's so totally over. I can't breath with you around. You're crushing the air out of me. Come get your stuff--preferably while I'm at work so I don't have to see your face.

July 4, 2010



Really? You're gonna blow me off on Facebook?? You're worse than my last boyfriend, may he rest in peace. I'm gonna make you look me in the face, you freaking coward!!!! I'll catch up with you, Ben-O.

July 4, 2010

- FAVORITES
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  - Other
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  - Questions

Friends on Chat



EXHIBIT 9

View: Unread Archived Setup: Email Text Messaging



November 5, 2010

CLIENT: Francis Newton, Armadillo, Lone Star

**MATERIALS SUBMITTED FOR TESTING:**

1. Sample 1: Uncompacted soil, reddish brown in color, weighing 1.8 kg
2. Sample 2: Compacted soil, reddish brown in color, weighing 1.2 kg

**TESTING REQUESTED:**

Determine soil classification as "A" or "B" or "C"

**METHODOLOGY:**

The samples were prepared and tested using the American Society for Testing Materials (ASTM) Standards D653-85 and D2488; The Unified Soils Classification System; The U.S. Department of Agriculture (USDA) Textural Classification Scheme; and The National Bureau of Standards Report BSS-121.

**RESULTS:**

1. Visual examination and testing revealed both samples to consist of cohesive, fine grained clay soil with no organic matter.
2. Based on the visual examination and testing, the samples are both properly classified as Type A soil for purposes of classification under 29 CRF 1926 Subpart P Appendix A.

EXHIBIT 10

**PIPE TEST, INC.**  
HUMAN RESOURCES DEPARTMENT

Employee Training Record

Employee: Benjammen White-Hill Employee Id. No.: 5844377

DATE	TRAINING SUBJECT	COMPLETED
3/22/10	New employee safety orientation	√
3/22/10	Diversity in the workplace	√
3/22/10	Stress management	√
3/24/10	Hazard Communication Training	√
3/25/10	Slips, Trips, and Falls	√
4/09/10	Electrical and lockout/tagout	√
4/15/10	Lifting techniques	√
4/15/10	Confined spaces	√
4/22/10	Personal Protective Equipment	√
4/22/10	First Aid	√
4/29/10	Second Aid	√
5/05/10	Respiratory protection training	√
5/12/10	HAZWOPER training	√
5/19/10	Fall protection training	√
6/04/10	Harassment in the workplace training	√
6/11/10	Driver training	√
6/17/10	Food safety training	√

EXHIBIT 11



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The Free Encyclopedia

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## Inert gas asphyxiation

From Wikipedia, the free encyclopedia

### Liquid Nitrogen

Accidental nitrogen asphyxiation is a possible hazard where large quantities of nitrogen are used.

Accidental nitrogen asphyxiation causes about eighty deaths per year in the United States, which is asserted to be more than from any other industrial gas. Liquid nitrogen is widely regarded as the most dangerous of the inert gases due to its rapid and fatal displacement of oxygen in the lungs. Those exposed to liquid nitrogen for even very short periods measured in seconds are at risk of rapidly losing consciousness.

For example in 1981, shortly before the launch of the first Space Shuttle mission, two technicians lost consciousness and one of them died after they entered the Orbiter aft compartment which was pressurized with pure nitrogen as a precaution against fire. Exposure of the technicians to the nitrogen atmosphere was determined to be less than ten seconds.

A laboratory assistant died in Scotland in 1999, apparently from asphyxiation, after liquid nitrogen spilled in a basement storage room. In 2012, a young woman in England had her stomach removed after ingesting a cocktail made with liquid nitrogen.

One worker died of apparent asphyxiation in Oklahoma while using liquid nitrogen to freeze a water flow line on an oil drilling platform. The line was located in a confined space on the drilling platform, allowing liquid nitrogen gas to displace the atmospheric oxygen.

### Safety

Because of its extremely low temperature, careless handling of liquid nitrogen may result in cold burns. Workers handling liquid nitrogen should always be provided with personal protective equipment (PPE) suitable to protect against extreme cold.

As liquid nitrogen evaporates it will reduce the oxygen concentration in the air and might act as an asphyxiant, especially in confined spaces. Nitrogen is odorless, colorless, and tasteless and may produce asphyxia without any sensation or prior warning. Workers in or near an area where nitrogen is in use should always be provided with respiratory protection.



Liquid nitrogen



Lone Star A&M students preparing homemade ice cream with liquid nitrogen

EXHIBIT 12

**TABLE B-1  
MAXIMUM ALLOWABLE SLOPES**

SOIL OR ROCK TYPE	MAXIMUM ALLOWABLE SLOPES (H:V)(1) FOR EXCAVATIONS LESS THAN 20 FEET DEEP(3)
STABLE ROCK TYPE A (2) TYPE B TYPE C	VERTICAL (90°) 3/4:1 (53°) 1:1 (45°) 1 ½:1 (34°)

Footnote(1) Numbers shown in parentheses next to maximum allowable slopes are angles expressed in degrees from the horizontal. Angles have been rounded off.

Footnote(2) A short-term maximum allowable slope of 1/2H:1V (63°) is allowed in excavations in Type A soil that are 12 feet (3.67 m) or less in depth. Short-term maximum allowable slopes for excavations greater than 12 feet (3.67 m) in depth shall be 3/4H:1V (53°).

Footnote(3) Sloping or benching for excavations greater than 20 feet deep shall be designed by a registered professional engineer.

EXHIBIT 13
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I performed an autopsy on the body of Benjammen White-Hill at the DEPARTMENT OF PATHOLOGY, ST. MOE HOSPITAL, ZERO, LONE STAR on July 22, 2010.

From the anatomic and laboratory findings and pertinent history, I ascribe the death to: ASPHYXIATION SECONDARY TO EXPOSURE TO NITROGEN GAS.

---

EXTERNAL EXAMINATION:

The body of BENJAMMEN WHITE-HILL is that of a well-developed, somewhat obese Caucasian male stated to be 28 years old. The body is presented in a frozen state, apparently the result of exposure to nitrogen gas at very low temperatures. Thawing is accomplished by exposure to multiple warm air sources, specifically hair dryers. The body weighs 212 pounds, measuring 75 inches from crown to sole. Hair is mostly dirty blond in color and straight. The irides appear hazel with the pupils fixed and dilated. The body has an identifying tattoo, "MAMMA BEAR" across a relatively underdeveloped bicep.

The head is normocephalic. There is some evidence of external traumatic injury. There is a puncture wound at approximately the T-4 level and left of midline, with edges that are ill-defined due to tissue damage from freezing.

CARDIOVASCULAR SYSTEM:

The heart weighs 290 grams, and has a normal size and configuration. Dissection reveals no evidence of myocardial episode. The lungs are reduced to an amorphous mass either due to inhalation of nitrogen and extremely cold ambient air or by the freeze/thaw process.

TOXICOLOGY:

A sample of right pleural blood as well as bile are submitted for toxicological analysis. Findings included nominal levels of ethyl alcohol and THC. None of the trace drugs or chemicals was contributory to death.

OPINION:

The decedent reportedly became exposed to an atmosphere rich in nitrogen gas, which instantly displaced the oxygen in his lungs, causing loss of consciousness and ultimately death. A potential alternate cause of death is trauma associated with a puncture wound to the back. The condition of the body was such that the nature and extent, if any, of the internal injuries that resulted from such wound could not be determined. The presence of the wound is otherwise unexplained.

The remainder of the autopsy revealed a normal, healthy adult male with no congenital anomalies.

**EXHIBIT 14**

PHYSICIAN'S SIDE NOTE: In the course of this autopsy, this physician was approached by an individual self-identified as Alex Bell, who requested that any reference to the wound in Mr. White-Hill's back be omitted from this report. Because the existence of the wound was undeniable and its role in Mr. White-Hill's death cannot be ruled out, I elected to tender the report as written.

/s/ DR. Dusty Stockard, M.D.  
CHIEF MEDICAL EXAMINER  
July 22, 2010

NO. 11-06597-CV

<p>WENDY HUMPHREY WHITE-HILL,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p>v.</p> <p>PIPE TEST, INC.</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>IN THE 874<sup>th</sup> DISTRICT COURT</p> <p>IN AND FOR TRAVIS COUNTY</p> <p>STATE OF LONE STAR</p>
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**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 Benjammen White-Hill was the result of the negligence, if any, of Pipe Test, Inc., or of White-Hill himself. In that regard, you are instructed that Wendy Humphrey White-Hill has the burden of proof on the negligence claim against Pipe Test, Inc., meaning that Wendy Humphrey White-Hill must convince you by a preponderance of the evidence that Benjammen White-Hill's death was the result of Pipe Test Inc.'s negligence, if any. You are further instructed that Pipe Test, Inc. has the burden of proof on the claim that Benjammen White-Hill's death was caused solely or in part by the negligence, if any, of White-Hill himself, or from some other cause.

With respect to Pipe Test, Inc., "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. You are further instructed that it is not a defense for Pipe Test, Inc., and you should not consider, whether White-Hill assumed the risk of injury or death or whether his death was caused by the negligence of a fellow employee of Pipe Test, Inc.

You are further instructed that it is a defense to this action if Pipe Test, Inc. proves by a preponderance of the evidence that the negligence, if any, of White-Hill caused his death, or that the death of White-Hill was caused by an act on his part intended to bring about the injury or death, or that his death was caused by the act of a third

person, or that his death occurred as a result of his intoxication, if any.

With respect to Benjammen White-Hill, 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.

“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 Benjammen White-Hill’s death was proximately caused, in whole or in part, by the negligence, if any, of Pipe Test,

Inc., or of White-Hill himself or from some other cause. If you find Pipe Test, Inc. was at fault in whole or in part, you will hear additional argument from the attorneys and you will hear additional witnesses testify concerning damages. Until that time, you are not to concern yourselves with any question of damages. 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. When you retire to the jury room, you should select one of your members to act as foreperson, to preside over your deliberations, and to sign your verdict. You will be given a verdict form, which I shall now read and explain to you.

**(READ VERDICT FORM)**

When you have agreed on your verdict, the foreperson, acting for the jury, should date and sign the verdict form and return it to the courtroom. You may now retire to consider your verdict.

NO. 11-06597-CV

<p>WENDY HUMPHREY WHITE-HILL,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p>v.</p> <p>PIPE TEST, INC.</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>IN THE 874<sup>th</sup> DISTRICT COURT</p> <p>IN AND FOR TRAVIS COUNTY</p> <p>STATE OF LONE STAR</p>
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**JURY QUESTION NO. 1**

Did the negligence, if any, of the following proximately cause the death of Benjammen White-Hill?

Answer "Yes" or "No" for each of the following:

- 1. Pipe Test, Inc. \_\_\_\_\_
- 2. Benjammen White-Hill \_\_\_\_\_

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 Benjammen White-Hill 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. Pipe Test, Inc. \_\_\_\_\_
  - 2. Benjammen White-Hill \_\_\_\_\_
- Total                      100%

**CERTIFICATE**

We the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into Court as our verdict.

\_\_\_\_\_  
Presiding Juror

To be signed by those rendering the verdict if not unanimous.
