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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

| | | |
|-------------------------------------|---|---|
| AARON EBO, |) | Case No.S:07-CV-00763 JAM-DAD |
| |) | |
| Plaintiff, |) | <u>AMENDED PRETRIAL CONFERENCE</u> |
| |) | <u>ORDER</u> |
| v. |) | |
| |) | |
| MANITEX; INTERNATIONAL LINE |) | |
| BUILDERS, INC.; and DOES 1 |) | |
| through 100, inclusive, |) | |
| |) | |
| Defendants. |) | |
| |) | |
| <u>INTERNATIONAL LINE BUILDERS,</u> |) | |
| <u>INC.; LIBERTY MUTUAL,</u> |) | |
| |) | |
| <u>Plaintiffs-in-Intervention</u> |) | |

Pursuant to court order, a Pretrial Conference was held on August 14, 2009 before Judge John Mendez. Edward Deacon appeared as counsel for plaintiff; Timothy Ryan and Rebekka Martorano appeared as counsel for defendants; and David Vogl appeared as counsel for Plaintiffs-in-Intervention. After hearing, the court makes the following findings and orders:

I. JURISDICTION/VENUE

Jurisdiction is predicated upon 28 U.S.C. § 1441(b), and has previously been found to be proper by order of this court, as has

1 venue. Those orders are confirmed.

2 II. JURY/NON-JURY

3 Both parties have demanded a jury trial.

4 III. STATEMENT TO BE READ TO JURY

5 Seven (7) days prior to trial the parties shall submit a joint
6 statement of the case that may be read to the jury at the beginning
7 of jury selection.

8 IV. UNDISPUTED FACTS

9 1. Plaintiff, AARON EBO, was born on September 1, 1967.

10 2. On January 12, 2006, plaintiff suffered injuries while in
11 the course and scope of his employment at International Line
12 Builders, Inc. as a journeyman lineman.

13 3. At the time of the accident, plaintiff was attempting to
14 stow the jib on a crane designed and manufactured by Manitex, Inc.

15 4. Plaintiff was injured when the jib fell on him.

16 5. International Line Builders, Inc.'s workers' compensation
17 insurance carrier, Liberty Mutual, paid workers' compensation
18 benefits to plaintiff.

19 6. The incident giving rise to this action involved a
20 commercial truck mounted crane manufactured in 1997, model number
21 2284, serial number 31483, unit number C-150, with a boom length of
22 84 feet, equipped with a 26 to 46 foot extensible jib.

23 V. DISPUTED FACTUAL ISSUES

24 EBO's Disputed Factual Issues:

25 Facts related to EBO's negligence claim against Manitex
26 include:

27 1. That the design of the "fastening" point of the jib
28 was/were unreasonably confusing to a user such as Mr. Ebo who could

1 reasonably believe the jib was safely stowed when it was not
2 despite the user going through routine and foreseeable stowing
3 procedures.

4 2. That the design of the "fastening" system of the jib to
5 the boom on the subject crane unreasonably lacked a redundant,
6 affordable, secondary "attachment" point that would have made the
7 jib safer and less likely to result in a mistaken belief that the
8 jib had been safely "stowed" when in fact it had not been.

9 3. That the design of the jib and boom lacked any visible
10 markings that would have advised a foreseeable user that the jib
11 had been safely stowed after reasonably foreseeable stowing
12 procedures had been followed by the user.

13 Facts Related to EBO's Strict Liability Claims Against Manitex

14 Include:

15 4. That the design of the "fastening" point of the jib to
16 the boom on the subject crane was defective in design because its
17 design prevented clear visual confirmation that the jib had been
18 properly secured when the securing procedures were completed in a
19 foreseeable manner.

20 5. That the design of the "fastening" point of the jib was
21 defective in that it failed to include secondary, redundant,
22 "fastening" points that would have provided safety benefits the
23 cost of which outweighed the risk of injury from the design
24 utilized in the subject crane.

25 6. That the design of the jib was defective because it
26 failed to include visual markings which would have clearly
27 confirmed proper stowing of the jib which would have provided
28 safety benefits the cost of which outweighed the risk of injury

1 from the design utilized in the subject crane.

2 Facts Related to EBO's Damages Claims:

3 7. That Ebo is disabled from any gainful employment.

4 8. That Ebo would have worked to a retirement age of 65 to
5 67 years.

6 International Line Builders, Inc. and Liberty Mutual's

7 Disputed Factual Issues:

8 International Line Builders, Inc. and Liberty Mutual hereby
9 incorporate herein by reference as if fully set forth herein
10 plaintiff Aaron Ebo's Disputed Factual Issues. Additionally,
11 International Line Builders, Inc. and Liberty Mutual submit the
12 following further Disputed Factual Issues:

13 1. Whether the subject accident was caused by any failure on
14 the part of any International Line Builders, Inc. employee other
15 than plaintiff to verify and/or ensure that the pin that secures
16 the jib for stowage was properly inserted and that the jib was
17 properly stowed against the boom.

18 2. Whether the subject accident was caused by any failure on
19 the part of International Line Builders, Inc. to provide adequate
20 training to plaintiff and/or to other International Line Builders,
21 Inc. employees regarding the procedure for storing the jib.

22 3. Whether the subject accident was caused by any failure on
23 the part of International Line Builders, Inc. to implement adequate
24 safety procedures for storing the jib.

25 Manitex's Disputed Factual Issues:

26 Facts related to affirmative defense that plaintiff was
27 negligent:

28 1. Whether plaintiff failed to properly insert the pin that

1 secures the jib for stowage.

2 2. Whether plaintiff failed to verify that the pin that
3 secures the jib for stowage was properly inserted and that the jib
4 was properly stowed against the boom.

5 3. Whether the subject accident was caused by plaintiff's
6 failure to ensure that the pin that secures the jib was properly
7 inserted and that the jib was properly stowed against the boom.

8 4. Whether it was clearly visible and easy for plaintiff to
9 verify that the pin securing the jib was properly inserted and that
10 the jib was properly stowed against the boom.

11 5. Whether plaintiff was unreasonably careless in failing to
12 verify that the pin securing the jib was properly inserted and that
13 the jib was properly stowed against the boom.

14 6. Whether plaintiff's supervisor Scott Hudelson failed to
15 verify that the pin that secures the jib for stowage was properly
16 inserted and that the jib was properly stowed against the boom.

17 7. Whether the subject accident was caused by Scott
18 Hudelson's failure to ensure that the pin that secures the jib was
19 properly inserted and that the jib was properly stowed against the
20 boom.

21 8. Whether it was clearly visible and easy for Scott
22 Hudelson to verify that the pin securing the jib was properly
23 inserted and that the jib was properly stowed against the boom.

24 9. Whether Scott Hudelson was unreasonably careless in
25 failing to verify that the pin securing the jib was properly
26 inserted and that the jib was properly stowed against the boom.

27 10. Whether plaintiff's employer International Line Builders
28 failed to provide adequate training to plaintiff and Hudelson

1 regarding the procedure for storing the jib.

2 11. Whether plaintiff's employer International Line Builders
3 failed to implement adequate safety procedures for storing the jib.

4 12. Whether International Line Builder's failure to provide
5 adequate training and/or implement adequate safety procedures was a
6 cause of the subject accident.

7 Facts related to affirmative defense that recovery to
8 plaintiff should be diminished by amount of workers compensation
9 benefits received:

10 Facts 6-12

11 13. The amount of workers compensation benefits received by
12 plaintiff.

13 Facts 1-5

14 14. The extent to which plaintiff had knowledge of the danger
15 associated with failing to properly place the pin.

16 Facts related to affirmative defense that plaintiff has failed
17 to reasonably mitigate his damages:

18 15. Whether plaintiff has failed make reasonable efforts to
19 return to any form of gainful employment.

20 VI. DISPUTED EVIDENTIARY ISSUES

21 EBO's Disputed Evidentiary Issues

22 1. Plaintiff agrees and adopts the evidentiary issue
23 regarding defendant, MANITEX, INC.'s expert's opinion as set forth
24 by plaintiff-in-intervention, INTERNATIONAL LINE BUILDERS, INC. and
25 Liberty Mutual's Disputed Evidentiary Issue, specifically, the
26 opinion expressed by Bradley Closson based upon photographs taken
27 by different people on different days from different perspectives.

28 2. Ebo intends to submit a *Daubert* motion *in limine* to

1 exclude portions of testimony of Manitex's expert, Bradley Closson,
2 based upon a video recording of Mr. Closson demonstrating the
3 stowing of a "jib" on a Manitex manufactured crane which is not
4 substantially similar to the Manitex crane involved in Mr. Ebo's
5 injury causing incident. The Manitex crane used by Mr. Closson in
6 the subject video is a different model number and contains
7 manufacturing differences with regard to the crane involved in Mr.
8 Ebo's injury and its use would mislead the fact finder. Moreover,
9 Ebo will be seeking an order from the Court that use of the video
10 itself does not meet the standards of *Daubert* and ought not be
11 viewed by the jury.

12 International Line Builders, Inc. and Liberty Mutual's
13 Disputed Evidentiary Issues:

14 Plaintiffs-in-Intervention International Line builders, Inc.
15 ("ILB") and Liberty Mutual dispute the evidentiary foundation for
16 the opinion expressed by Bradley Closson, a crane expert retained
17 by Manitex, who testified in deposition that he did not believe the
18 accident occurred because the jib hook became lodged in the gap
19 between the bracket and the boom. Mr. Closson's opinion in that
20 regard is based upon a comparison between a photograph taken by ILB
21 employee Scott Hudelson approximately an hour after the accident
22 and a photograph taken at a later site inspection. Mr. Closson
23 purportedly compared Mr. Hudelson's photograph showing the boom
24 retracted with a site inspection depicting the boom when the hook
25 was lodged in the gap. Based on this comparison, he opined that
26 the boom at the time of the accident was not extended far enough to
27 allow the hook to have been lodged in the gap. However, that
28 opinion is based on his manual measurements of the gap between the

1 boom extension points in the two photographs, measurements that are
2 not to scale and do not represent actual measurements of the crane
3 equipment in question but rather measurements taken from different
4 photographs taken by different people on different days from
5 different perspectives.

6 International Line Builders, Inc. and Liberty Mutual will
7 bring a *Daubert* motion *in limine* to exclude the above-described
8 evidence. Additionally, International Line builders, Inc. and
9 Liberty Mutual will bring a *Daubert* motion *in limine* to preclude
10 introduction of, or testimony referring to, a video recording taken
11 by or on behalf of Mr. Closson purportedly demonstrating the
12 stowing of a jib on a different Manitex crane. The crane depicted
13 in the video is a different model with substantively different
14 manufacturing characteristics such that reference to this
15 materially different crane would mislead the jury and would be
16 prejudicial.

17 Manitex's Disputed Evidentiary Issues:

18 1. Manitex intends to bring *Daubert* motions to exclude
19 portions of the testimony of Ebo's experts Andrew O'Brien and
20 Robert McCauley related to the assumption that Ebo will never work
21 again, on the grounds that the testimony is inadmissible pursuant
22 to the requirements of Federal Rules of Evidence Rule 702, and
23 *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592 (1993).
24 Manitex requests that the court set dates for the briefing and
25 hearing of the *Daubert* motions.

26 2. Manitex will file motions *in limine* to exclude portions of
27 the testimony of Ebo's experts Andrew O'Brien, Tamorah Hunt, and
28 Robert McCauley, related to the assumption that Ebo will never work

1 again, or the assumption that Ebo would have worked until age 67.

2 3. Manitex will file a motion in limine to exclude evidence
3 related to certain studies regarding other cranes and construction-
4 site accidents.

5 4. Manitex will file a motion in limine to exclude evidence
6 of other accidents unless plaintiffs can demonstrate that the
7 accident involved a jib and boom of reasonably similar design, and
8 the accident occurred under reasonably similar circumstances.

9 VII. RELIEF SOUGHT

10 EBO seeks to recover the following monetary damages:

- 11 1. General damages for pain, suffering and loss of quality of life;
12 2. lost income to date and future lost income.

13 International Line Builders, Inc. and Liberty Mutual seek to
14 recover all workers' compensation payments made for medical and
15 surgical treatment and for all other workers' compensation payments
16 awarded and to be awarded to plaintiff.

17 VIII. POINTS OF LAW

18 Trial briefs shall be filed with the court no later than seven
19 (7) days prior to the date of trial, i.e., September 21, 2009. Any
20 points of law not previously argued to the Court should be briefed
21 in the trial briefs.

22 IX. ABANDONED ISSUES

23 Plaintiff originally named plaintiff-in-intervention,
24 INTERNATIONAL LINE BUILDERS, INC., as a defendant in this matter
25 but dismissed this defendant on or about June 25, 2007.

26 Plaintiff, AARON EBO, abandons his cause of action for breach
27 of warranty.

1 X. WITNESSES

2 Plaintiff's witness list is attached to this Pretrial
3 Conference Order as Exhibit 1.

4 Plaintiffs'-in-Intervention witness list is attached to this
5 Pretrial Conference Order as Exhibit 2.

6 Defendant's witness list is attached to this Pretrial
7 Conference Order as Exhibit 3.

8 Each party may call a witness designated by the other.

9 A. No other witnesses will be permitted to testify unless:

10 (1) The party offering the witness demonstrates that the
11 witness is for the purpose of rebutting evidence which could not be
12 reasonably anticipated at the Pretrial Conference, or

13 (2) The witness was discovered after the Pretrial
14 Conference and the proffering party makes the showing required in
15 "B" below.

16 B. Upon the post-Pretrial discovery of witnesses, the
17 attorney shall promptly inform the court and opposing parties of
18 the existence of the unlisted witnesses so that the court may
19 consider at trial whether the witnesses shall be permitted to
20 testify. The evidence will not be permitted unless:

21 (1) The witnesses could not reasonably have been
22 discovered prior to Pretrial;

23 (2) The court and opposing counsel were promptly
24 notified upon discovery of the witnesses;

25 (3) If time permitted, counsel proffered the witnesses
26 for deposition;

27 (4) If time did not permit, a reasonable summary of the
28 witnesses' testimony was provided opposing counsel.

1 XI. EXHIBITS, SCHEDULES AND SUMMARIES

2 Plaintiff's exhibit list is attached to this Pretrial
3 Conference Order as Exhibit 4.

4 Plaintiffs'-in-Intervention exhibit list is attached to this
5 Pretrial Conference Order as Exhibit 5.

6 Defendant's exhibit list is attached to this Pretrial
7 Conference Order as Exhibit 6.

8 Each party may use an exhibit designated by the other.

9 A. No other exhibits will be permitted to be introduced
10 unless:

11 (1) The party proffering the exhibit demonstrates that
12 the exhibit is for the purpose of rebutting evidence which could
13 not be reasonably anticipated at the Pretrial Conference, or

14 (2) The exhibit was discovered after the Pretrial
15 Conference and the proffering party makes the showing required in
16 paragraph "B," below.

17 B. Upon the post-Pretrial discovery of exhibits, the
18 attorneys shall promptly inform the court and opposing counsel of
19 the existence of such exhibits so that the court may consider at
20 trial their admissibility. The exhibits will not be received
21 unless the proffering party demonstrates:

22 (1) The exhibits could not reasonably have been
23 discovered prior to Pretrial;

24 (2) The court and counsel were promptly informed of
25 their existence;

26 (3) Counsel forwarded a copy of the exhibit(s) (if
27 physically possible) to opposing counsel. If the exhibit(s) may
28 not be copied, the proffering counsel must show that he has made

1 the exhibit(s) reasonably available for inspection by opposing
2 counsel.

3 As to each exhibit, each party is ordered to exchange copies
4 of the exhibit not later than fourteen (14) days before trial.
5 Each party is then granted five (5) days to file and serve
6 objections to any of the exhibits. In making the objection, the
7 party is to set forth the grounds for the objection. The attorney
8 for each party is directed to appear before and present an original
9 and one (1) copy of said exhibit to Harry Vine, Deputy Courtroom
10 Clerk, at 8:30 a.m. on the date set for trial or at such earlier
11 time as may be agreed upon. As to each exhibit which is not
12 objected to, it shall be marked and may be received into evidence
13 on motion and will require no further foundation. Each exhibit
14 which is objected to will be marked for identification only.

15 XII. DISCOVERY DOCUMENTS

16 Ebo: The Court ordered EBO to submit a more specific list of
17 the portions of discovery documents it intends to use at trial.

18 International Line Builders, Inc. and Liberty Mutual: None
19 other than for impeachment purposes.

20 Manitex: None other than for impeachment purposes.

21 XIII. FURTHER DISCOVERY OR MOTIONS

22 Pursuant to the court's Status Conference Order, all discovery
23 and law and motion was to have been conducted so as to be completed
24 as of the date of the Pretrial Conference. That order is
25 confirmed. The parties are free to do anything they desire
26 pursuant to informal agreement. However, any such agreement will
27 not be enforceable in this court.
28

1 deposition or imposition of such other sanctions as the court deems
2 appropriate.

3 D. The parties are ordered to file with the court and
4 exchange between themselves not later than one (1) week before the
5 trial a statement designating portions of depositions intended to
6 be offered or read into evidence (except for portions to be used
7 only for impeachment or rebuttal).

8 E. The parties are ordered to file with the court and
9 exchange between themselves not later than one (1) week before
10 trial the portions of Answers to Interrogatories which the
11 respective parties intend to offer or read into evidence at the
12 trial (except portions to be used only for impeachment or
13 rebuttal).

14 F. Each party may submit proposed voir dire questions the
15 party would like the court to put to prospective jurors during jury
16 selection. Proposed voir dire should be submitted one (1) week
17 prior to trial.

18 G. In limine motions shall be filed separately at least ten
19 (10) days prior to trial, i.e., September 18, 2009. Opposition
20 briefs shall be filed five (5) days prior to trial, i.e., September
21 23, 2009. No reply briefs may be filed.

22 XVII. SETTLEMENT NEGOTIATIONS

23 No further formal settlement conferences will be set by the
24 Court.

25 XVIII. AGREED STATEMENTS

26 See paragraph III, *supra*.

27 XIX. SEPARATE TRIAL OF ISSUES

28 The separate trial of issues is not feasible and advisable.

**EXHIBIT "1" TO REVISED JOINT PRETRIAL STATEMENT
PLAINTIFF'S WITNESS LIST**

a. **Offered in person**

Name: Scott Hudelson
Address: 9357 Wellington Way, Granite Bay, CA 95746
Telephone: (530) 200-5794

b. **Offered in person**

Name: Rafeal Battig
Address: 2454 South Stone Avenue, Modesto, CA
Telephone: (209) 505-3278

c. **Offered in person**

Name: George Smith
Address: 1211 Central Street, Apartment C, Lodi, CA
Telephone: (916) 997-5297

d. **Offered in person**

Name: Bill Paynter
Address: 9687 Clay Station Road, Wilton, CA
Telephone: (916) 687-7753

e. **May be offered by deposition**

Name: Bryce Owen
Address: 13023 S.W. Tearose Way, Tigard, OR
Telephone: (530) 784-8633

f. **Offered in person**

Name: Isabel Carlson
Address: 8151 Cross Well Court, Sacramento, CA 95829
Telephone: (916) 996-3717

g. **Offered in person**

Name: Joanne Lee
Address: 10551 Peruvian Way, Sacramento, CA 95829
Telephone: (916) 682-0412

**EXHIBIT "1" TO JOINT PRETRIAL STATEMENT
PLAINTIFF'S WITNESS LIST**

- h. **Offered in person**
Name: Richard Auleb
Address: 8224 Danbury Park Drive, Sacramento, CA 95828
Telephone: *82 (916) 682-0431
- i. **Offered in person**
Name: Julie Auleb
Address: 8224 Danbury Park Drive, Sacramento, CA 95828
Telephone: *82 (916) 682-0431
- j. **Offered in person**
Name: Ron Godferey
Address: 8150 Cross Well Court, Sacramento, CA 95829
Telephone: (916) 559-0778
- k. **Offered in person**
Name: Ethelynda Jaojoco, M.D.
Address: 4420 Duckhorn Drive, Suite 200. Sacramento, CA 95834
Telephone: (916) 419-9900
- l. **Offered in person**
Name: Dr. Alan Hirahara
Address: Sacramento Orthopedic Center, 2801 K Street, Suite 330, Sacramento,
CA 95816
Telephone: (916) 733-5049
- m. **Offered in person**
Name: Robert McAuley, Ph.D.
Address: 729 Sunrise Avenue, Suite 200, Roseville, CA 95661
Telephone: (916) 781-7882
- n. **Offered in person**
Name: Gary Gilbert Ph.D
Address: 4070 Bridge Street, Suite 5, Fair Oaks, CA 95628
Telephone: (916) 967-3335
- o. **May be offered by deposition**
Name: Ed Lowery PMK-International Line Builders, Inc
Address: 19020 SW Cipole Road, Building A, Tualatin, OR 94062
Telephone: Unknown

**EXHIBIT "1" TO JOINT PRETRIAL STATEMENT
PLAINTIFF'S WITNESS LIST**

- p. **Plaintiff's Expert Witness**
Name: Tamorah Hunt, Ph.D of Formuzis, Pickersgill & Hunt, Inc.
Address: 2000 E. Fourth Street, Suite 200, Santa Ana, CA 92705
Telephone: (714) 542-8853
- q. **Plaintiff's Expert Witness**
Name: Andrew M. O'Brien, M.S., C.R.C
Address: 2609 Capitol Avenue, Suite 5, Sacramento, CA 95816
Telephone: (916) 444-5933
- r. **Plaintiff's Expert Witness**
Name: Glen Stevick, Ph.D, P.E. of Berkeley Engineering and Research, Inc.,
Address: 2216 5th Street, Berkeley, CA 94710
Telephone: (510) 549-3300
- s. Name: Mark Repeshaw, investigator with db Ronk & Company, Inc.
Address: 2600 X Street, Sacramento, California 95818
Telephone: (916) 455-7363

**EXHIBIT "1" TO JOINT PRETRIAL STATEMENT
PLAINTIFF'S WITNESS LIST**

EXHIBIT 2

WITNESS LIST OF INTERNATIONAL LINE BUILDERS, INC. AND LIBERTY MUTUAL

- 1 Aaron Ebo, c/o counsel for plaintiff herein.
- 2 Isabel Carlson, 8151 Cross Well Court, Sacramento, CA 95829.
- 3 David Minami, c/o counsel for plaintiffs-in-intervention herein.
- 4 Bryce Owen, c/o counsel for plaintiffs-in-intervention herein.
- 5 Scott Hudelson, 9357 Wellington Way, Granite Bay, CA 96746.
- 6 George Smith, 5714 Folsom Blvd., #267, Sacramento, CA 95819 .
- 7 Raphael Battig, 2454 South Stone Ave., Modesto, CA 95358.
- 8 Bill Paynter, Jr., 9687 Clay Station Rd., Wilton, CA 95693.
- 9 Ed Lowery, c/o counsel for plaintiffs-in-intervention herein.
- 10 David Moravec, Manitex, Inc., 3000 S. Austin Ave., Georgetown, TX 78626.
- 11 Bradley Closson, CRAFT Forensic Services, 1057 Calle Mesita, Bonita, CA 91902.
- 12 Glen Stevick, Ph.D., Berkeley Engineering & Research, Inc., 2216 5th St., Berkeley, CA 94710.
- 13 Peter Neubauer, P.E., P. O. Box 989, Los Altos, CA 94023
- 14 Tamorah Hunt, Ph.D., Formuzis, Pickersgill & Hunt, Inc., 2000 E. Fourth St., Suite 200, Santa Ana, CA 92705.
- 15 Mickey Willie, 10499 Alta Mesa Road in Wilton, CA 96793.
- 16 Bill Paynter III, present address unknown.
- 17 Bill Whalen, present address unknown.
- 18 Stan McCreedy, present address unknown.
- 19 Andrew M. O'Brien, 2609 Capitol Ave., Suite 5, Sacramento, CA 95816.
- 20 Ethelynda Jaojoco, M.D., 4420 Duckhorn Dr., Suite 200, Sacramento, CA 95834.
- 21 Martin Shaffer, Ph.D., 5 Third St., Suite 412, San Francisco, CA 94103.
- 22 Alan Hirahara, M.D., Sacramento Orthopedic Center, 2801 K St., Suite 330, Sacramento, CA 95816.
- 23 Robert McAuley, Ph.D., 729 Sunrise Ave., Suite 200, Roseville, CA 95661.
- 24 Gary Gilbert, Ph.D., 70 Bridge St., Suite 5, Fair Oaks, CA 95628.
- 25 Otis Stephen, M.D., 8110 Laguna Blvd., Elk Grove, CA 95628.
- 26 Kyle Yamushira, PT, Results Physical Therapy, 9500 Micron Ave., Suite 106, Sacramento, CA 95827.
- 27 Praveen Pasad, M.D., 2801 K St., Suite 330, Sacramento, CA 95816.
- 28 John Farassetto, PT, Laguna Physical Therapy, 9281 Office Park Cir., Suite 110, Elk Grove, CA 95758.
- 29 Malcolm McHenry, M.D., Northern California Cardiology Associates, 5301 F St., Suite 117, Sacramento, CA 95819.
- 30 Michael Preskar, M.D., 7601 Hospital Drive, Suite 104B, Sacramento, CA 95816.
- 31 Connie Kimble, M.D., 1996 Zinfandel Drive, Suite 201, Rancho Cordova, CA 95670.
- 32 Jeffrey Light, M.D., Sacramento Prosthodontics, 2650 21st St., Suite 3, Sacramento, CA 95818.

- 33 Franklin Chinn, M.D., 3160 Folsom Blvd., Sacramento, CA 95816.
- 34 Keith Liang, M.D., Center for Sight, 3160 J St., Sacramento, CA 95816.

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Exhibit 3 to Revised Joint Pretrial Statement

Manitex, Inc.'s List of Witnesses

1. Raphael Battig
2. Bradley Closson
3. Aaron Ebo
4. Gary S. Gilbert, Ph.D
5. Alan M. Hirahara, M.D.
6. Scott Hudelson
7. Ethelynda Jaojoco, M.D.
8. Edward Lowery
9. David Minami
10. David Moravec
11. Bryce Owen
12. William Paynter, Jr.
13. Martin Shaffer, Ph.D.
14. George Smith
15. Frank Damiata

**EXHIBIT "4" TO REVISED JOINT PRETRIAL STATEMENT
PLAINTIFF'S WITNESS LIST**

- a. Plaintiff's Resume;
- b. Plaintiff's W2's for 2003 and 2004;
- c. Plaintiff's tax returns 2003 and 2004;
- d. State of California Department of Occupational Safety and Health Administration, inspection and findings report;
- e. Plaintiff's medical records from, University of California Medical Center;
- f. Plaintiff's medical records from, Med Clinic of Sacramento;
- g. Plaintiff's medical records from, Murieta Physical Therapy;
- h. Plaintiff's medical records from, Sacrament Orthopedic Center;
- i. Plaintiff's medical records from, Sutter Memorial Hospital;
- j. Plaintiff's medical records from, Results Therapy and Training Center;
- k. Plaintiff's medical records from, Laguna Physical Therapy and Hand Rehabilitation;
- l. Plaintiff's medical billing records from, Sutter Central Billing Office;
- m. Plaintiff's medical billing records from, Med Clinic Business Office;
- n. Plaintiff's medical billings records from, Murieta Physical Therapy;
- o. Plaintiff's medical billing records from, University of California Medical Center Correspondence Unit;
- p. Plaintiff's Workers' Compensation Records;
- q. International Line Builders, Inc.'s, Accident Report;
- r. Plaintiff's MRI Report regarding Cervical MRI taken on April 22, 2008;

**EXHIBIT "4" TO JOINT PRETRIAL STATEMENT
PLAINTIFF'S WITNESS LIST**

- s. Plaintiff's MRI Report regarding Lumbar MRI taken on April 22, 2008;
- t. California Outside Line Construction Agreement, as amended, effective June 1, 2003 through May 31, 2006;
- u. California Outside Line Construction Agreement, as amended, effective June 1, 2006 through May 31, 2009;
- v. Plaintiff's Personnel File from International Line Builders;
- w. Plaintiff's National Electrical Annuity Plan showing employers contributions and investment activity from 1997 through December 31, 2007;
- x. Plaintiff's tax returns 2002;
- y. Plaintiff's tax returns 2005;
- z. Plaintiff's tax returns 2006;
- aa. Plaintiff's Social Security Notice of Award;
- bb. 2/5/08 Report from Martin Schaffer, Ph.D., regarding neuropsychological examination;
- cc. Manitex Operator's Manual 900, 1400, 1700 & 2200 Series
- dd. Crane Safety Manual For Operating and Maintenance Personnel;
- ee. Millenium Series 2200/M2200 Series Service Section for Cranes built before 12/97- Two Volumes;
- ff. 32 Photographs taken during Crane Inspection on October 8, 2007;
- gg. 163 Photographs taken by Plaintiff, Aaron Ebo's, Expert Witness, Glen Stevick during Crane Inspection on April 25, 2008;
- hh. 2 minute 56 second video taken by Plaintiff, Aaron Ebo's, Expert Witness, Glen Stevick during Crane Inspection on April 25, 2008;
- ii. 16 second video taken by Plaintiff, Aaron Ebo's, Expert Witness, Glen Stevick during Crane Inspection on April 25, 2008

**EXHIBIT "4" TO JOINT PRETRIAL STATEMENT
PLAINTIFF'S WITNESS LIST**

- jj. 287 photographs taken by Defendant, Manitex, Inc.'s, Expert Witness, Bradley Closson during Crane Inspection on April 25, 2008;
- kk. 10 minute 21 second video taken by Defendant, Manitex, Inc.'s, Expert Witness, Bradley Closson during Crane Inspection on April 25, 2008;
- ll. 120 photographs taken during Crane Inspection on October 8, 2007;
- mm. Deposition of Scott Hudelson, including exhibits to deposition;
- nn. Deposition of Rafeal Battig, including exhibits to deposition;
- oo. Deposition of George Smith, including exhibits to deposition;
- pp. Deposition of Bill Paynter, including exhibits to deposition;
- qq. Deposition of Bryce Owen, including exhibits to deposition;
- rr. Deposition of Ethelynda Jaojoco, M.D., including exhibits to deposition;
- ss. Deposition of Aaron Ebo, including exhibits to deposition;
- tt. Deposition of Dr. Alan Hirahara, including exhibits to deposition;
- uu. Deposition of Dr. Robert McCauley, including exhibits to deposition;
- vv. Deposition of Gary Gilbert Ph.D, including exhibits to deposition;
- ww. Deposition of Ed Lowery PMK-International Line Builders, Inc., including exhibits to deposition;
- xx. Deposition of Peter Neubauer P.E., including exhibits to deposition;
International Line Builders, Inc.'s Expert Witness
- yy. Deposition of David Moravec, including exhibits to deposition;
Manitex, Inc.'s Expert Witness
- zz. Deposition of Bradley D. Closson, including exhibits to deposition;
Manitex, Inc.'s Expert Witness
- aaa. Deposition of Tamorah Hunt, Ph.D, including exhibits to deposition;
Aaron Ebo's Expert Witness

**EXHIBIT "4" TO JOINT PRETRIAL STATEMENT
PLAINTIFF'S WITNESS LIST**

- bbb. Deposition of Andrew M. O'Brien, M.S., C.R.C, including exhibits to deposition;
Aaron Ebo's Expert Witness
- ccc. Deposition of Glen Stevick, Ph.D, P.E., including exhibits to deposition;
Aaron Ebo's Expert Witness
- ddd. Photographs taken by Mark Repeshaw of a Manitex truck mounted crane, Model # 2892C reasonably believed to be the same model used by Manitex's expert, Bradley Closson, in making the video used and produced at the time of his deposition
- eee. Diagram of the attachment point where the pin is inserted to secure the jib to the boom of the Model 2892C with measurements prepared by Mark Repeshaw

**EXHIBIT "4" TO JOINT PRETRIAL STATEMENT
PLAINTIFF'S WITNESS LIST**

EXHIBIT 5

EXHIBIT LIST OF INTERNATIONAL LINE BUILDERS, INC. AND LIBERTY MUTUAL

- 1 Summary of medical expenses and disability payments paid by to date by Liberty Mutual to or on behalf of plaintiff.
- 2 Liberty Mutual computer printout BOComp Session.zws – Passport re paid-to-date totals on plaintiff’s workers’ compensation claim, Exhibit A to the deposition of David Minami..
- 3 Liberty Mutual computer printout BOComp Session.zws – Passport re breakdown of workers’ compensation payments to plaintiff by benefit type, Exhibit B to the deposition of David Minami.
- 4 Liberty Mutual computer printout BOComp Session.zws – Passport re breakdown of workers’ compensation payments to plaintiff by benefit type, Exhibit C to the deposition of David Minami.
- 5 Liberty Mutual Medical Cost Summary: Service Category/Year, Exhibit D to the deposition of David Minami.
- 6 Computer notes prepared by David Minami re plaintiff’s workers’ compensation claim, Exhibit E to the deposition of David Minami.
- 7 Indemnity benefits paid on plaintiff’s workers’ compensation claim, Exhibit F to the deposition of David Minami.
- 8 12-page medical cost summary list re plaintiff’s workers’ compensation claim, Exhibit G to the deposition of David Minami.
- 9 Liberty Mutual Benefit Code Index Key with attached group of electronic files, Exhibit H to the deposition of David Minami.
- 10 Medical records pertaining to plaintiff, Exhibit I to the deposition of David Minami.
- 11 International Line Builders, Inc. Supervisor’s Injury Accident Report re plaintiff’s accident, Exhibit 8 to the deposition of Bryce Owen.
- 12 International Line Builders Accident Report re plaintiff’s accident, Exhibit 9 to the deposition of Bryce Owen.
- 13 Aaron Ebo Injury Crew Statements produced in discovery to defendant Manitex.
- 14 International Line builders Monthly Safety Grams for January and March 2006 produced in discovery to defendant Manitex.
- 15 Maintenance records (30 pages total) on subject equipment produced in discovery to defendant Manitex.
- 16 Plaintiff’s personnel file (23 pages total) produced in discovery to defendant Manitex.
- 17 OSHA investigation documents (28 pages total) produced in discovery to defendant Manitex.
- 18 Photographs taken by Scott Hudelson (47 total) produced in discovery to defendant Manitex.
- 19 Inspection photographs taken October 8, 2007 (40 total) produced in discovery to defendant Manitex.
- 20 Inspection video taken October 8, 2007 (40 total) produced in discovery to defendant Manitex.
- 21 Plaintiff’s inspection photographs taken October 8, 2007 (65 total).
- 22 Peter Neubauer’s employment history with attached report, photos, and miscellaneous documents, Exhibit 2 to the deposition of Peter Neubauer.

- 23 Peter Neubauer's handwritten notes re Service Section manual (2 pages total), Exhibit 3 to the deposition of Peter Neubauer.
- 24 Peter Neubauer's handwritten notes re Operator's Manual (1 page total), Exhibit 4 to the deposition of Peter Neubauer.
- 25 Terex boom failure file (13 pages total), Exhibit 5 to the deposition of Peter Neubauer.
- 26 Peter Neubauer's handwritten notes re 2200/M2200 Series Parts Section (1 page total), Exhibit 6 to the deposition of Peter Neubauer.
- 27 Incidental Crane Operator's and Incidental Rigger's Manual (41 pages total), Exhibit 7 to the deposition of Peter Neubauer.
- 28 Boom Truck Operator Training Manual (68 pages total), Exhibit 8 to the deposition of Peter Neubauer.
- 29 Aerial Work Platform Written Test (2 pages total), Exhibit 9 to the deposition of Peter Neubauer.
- 30 Portions of 2200/M2200 Series Parts Section (3 pages total), Exhibit 10 to the deposition of Peter Neubauer.
- 31 Portions of 2200/M2200 Series Service Section (2 pages total), Exhibit 11 to the deposition of Peter Neubauer.
- 32 Portions of Operators Manual 900, 1400, 1700, & 2200 Series (7 pages total), Exhibit 12 to the deposition of Peter Neubauer.
- 33 ASME Mobile and Locomotive Cranes with addenda (86 pages total), Exhibit 13 to the deposition of Peter Neubauer.
- 34 Crane Safety Manual For Operating and Maintenance Personnel (face page only), Exhibit 14 to the deposition of Peter Neubauer.
- 35 Handwritten notes (5 pages total), photographs (27 total), CD labeled "ILB/Ebo Docs), and miscellaneous documents, Exhibit 15 to the deposition of Peter Neubauer.
- 36 Correspondence between Mr. Neubauer and counsel for plaintiffs-in-intervention with attached OSHA documents (32 pages total), Exhibit 16 to the deposition of Peter Neubauer.
- 37 Correspondence between Mr. Neubauer and counsel for plaintiffs-in-intervention with attached invoice and rental agreement (3 pages total), Exhibit 17 to the deposition of Peter Neubauer.
- 38 Copy of photographs 3 and 4 from report by Peter Stevick, Exhibit 18 to the deposition of Peter Neubauer.
- 39 Handwritten notes of explanation of Fail Safe, Exhibit 19 to the deposition of Peter Neubauer.
- 40 Letter to Mr. Neubauer dated July 7, 2008, Exhibit 20 to the deposition of Peter Neubauer.
- 41 Letter to Mr. Neubauer dated April 19, 2007, Exhibit 21 to the deposition of Peter Neubauer.
- 42 Case file folder with miscellaneous documents (5 pages total), Exhibit 21 to the deposition of Peter Neubauer.
- 43 Color photographs of subject equipment (4 total), Exhibits 2-5 to the deposition of Glen Stevick.
- 44 Crane Users Safety Manual (4 pages total), Exhibit 6 to the deposition of Glen Stevick.
- 45 Excerpts from "Fundamentals of Machine Component Design" (13 pages total), Exhibit 7 to the deposition of Glen Stevick.
- 46 Color photographs of subject equipment (10 total), Exhibits 8-9 to the deposition of Glen Stevick.
- 47 May 15, 2008 report of Glen Stevick to Ted Deacon, Exhibit 10 to the deposition of Glen Stevick.
- 48 March 5, 2008 letter from Ted Deacon to Glen Stevick, Exhibit 11 to the deposition of Glen Stevick.

- 49 Declaration of Peter Neubauer dated May 13, 2008 with exhibits, Exhibit 12 to the deposition of Glen Stevick.
- 50 Color photos of subject equipment (17 total), Exhibit 13 to the deposition of Glen Stevick.
- 51 Manitex Operator's 900, 1400, 1700, & 2200 Series (45 pages total), Exhibit 14 to the deposition of Glen Stevick.
- 52 Association of Equipment Manufacturers Safety Manual (82 pages total), Exhibit 15 to the deposition of Glen Stevick.
- 53 ASME 30.5, Mention of "Outrigger" (2 pages total), Exhibit 16 to the deposition of Glen Stevick.
- 54 Job Intake Sheet, Exhibit 17 to the deposition of Glen Stevick.
- 55 Deposition summaries of plaintiff and witnesses Hudelson, Moravec, and Closson, Exhibit 18 to the deposition of Glen Stevick.
- 56 Condensed deposition transcript of plaintiff herein with cover letter, Exhibit 19 to the deposition of Glen Stevick.
- 57 Manitex, Inc.'s Disclosure of Expert witnesses with initial report by Bradley Closson, Exhibit 20 to the deposition of Glen Stevick.
- 58 June 30, 2008 supplemental report from Bradley Closson, Exhibit 21 to the deposition of Glen Stevick.
- 59 Excerpts from the deposition of Scott Hudelson, Exhibit 22 to the deposition of Glen Stevick.
- 60 Curriculum Vitae of Glen Stevick, Exhibit 23 to the deposition of Glen Stevick.
- 61 Work product of Andrew O'Brien concerning plaintiff (75 pages total), Exhibit A to the deposition of Andrew O'Brien.
- 62 Mr. O'Brien's CV, fee schedule, litigation activity, and publications (42 pages total), Exhibit B to the deposition of Andrew O'Brien.
- 63 Documents reviewed by Mr. O'Brien in connection with his assignment as a retained expert, including medical records, tax returns, reference materials, and miscellaneous documents, Exhibit C to the deposition of Andrew O'Brien.

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Exhibit 6 to Revised Joint Pretrial Statement

Manitek Inc.'s List of Exhibits

1. Excerpts of Cal/OSHA investigation report and related file
2. ILB Accident Report
3. ILB Accident Notification/Explanation for Tardiness
4. ILB Supervisor's Injury/Accident Report
5. Excerpts of Aaron Ebo personnel file
6. Excerpts of Crane maintenance file
7. Manitek Model 2284 Operator's Manual
8. Manitek Model 2284 Maintenance Manual
9. Manitek Model 2284 Parts Manual
10. Association of Equipment Manufacturers Safety Manual
11. CIMA Crane Safety Manual
12. Photographs and videotape of subject crane taken by Brad Closson
13. Photographs and videotape of exemplar crane taken by Brad Closson
14. Post-incident inspection photographs and videotape of subject crane
15. Incident site photographs
16. Graphs or diagrams of jib-storage mechanism
17. Model of jib-storage mechanism
18. Model of crane jib and boom
19. Model of truck mounted crane
20. Excerpts of medical records of Dr. Ethelynda Jaojoco
21. Excerpts of medical records of Dr. Alan M. Hirahara
22. Excerpts of medical records of Dr. Gary Gilbert
23. Closson Deposition Exhibit 7 - Documents related to National and Terex truck-mounted cranes
24. Closson Deposition Exhibits 8-10 - Annotated photographs of subject crane and page from General Specifications