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# Forensic Engineering Analysis of Reliance on Standards in a Multi-Defendant Cross Claim Case

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## Abstract

A personnel lift was rented by a film school student for use in filming a student movie. The hired operator caused the lift to contact powerlines, resulting in a student's death and a civil suit. One defendant, the lift rental agency, lodged a cross-claim against another defendant, the renter. This forensic analysis examines the ANSI/SIA A92 safety standard for these lifts, the rental agency's varied levels of reliance on (and compliance with) that standard, and the general topic of providing reasonable notice of both responsibilities and potential hazards.

## Keywords

Forensic engineer, standard, aerial, lift, boom, scissor, platform, scaffold, rental

## Background of the incident

Note: the actual names of all parties have been changed to generic names in the following discussion. The type of personnel lift and the specific designator for the relevant standard have also been omitted as they are not critical to the discussion; if provided, this information would reduce the desired anonymity of this fatality case.

In this litigation matter, the client Mr. Smith was making a student film in connection with an undergraduate course at a university film school. On May 27, 2009 Mr. Smith rented a rough-terrain aerial platform or personnel lift ("lift") from a suburban location of ABCD Rentals for use on a rural movie set about two hour's drive from the city. Prior to the rental date, Mr. Smith and his film school associate Ms. Berry visited the ABCD Rentals location on May 18, 2009; the ABCD salesperson they had interacted with since Ms. Berry's initial email inquiry (on April 22, 2009) was branch manager Mr. Jones. During that visit, Mr. Smith and Ms. Berry received an unstructured introduction to the subject lift by an ABCD service technician. The subject lift was delivered on May 27 by ABCD Rentals' driver, and the person receiving the lift at the rural filming location was the film's art director Ms. Carter. On May 28, crew member Mr. Green was aboard the operating platform of the lift, using it to move some movie lighting equipment into position. Cables descending from the lighting equipment went to a junction box; crew member Mr. Richards (a student) was working with other electrical equipment connected to the same junction box. Through Mr.

Green's operation of the lift, the operating platform of the lift contacted overhead municipal powerlines, and metallic components of the lighting equipment caused high-voltage electricity to fatally injure Mr. Richards. Members of the family of decedent Mr. Richards were the Plaintiffs, and they sued Mr. Smith, lift operator Mr. Green, ABCD Rentals, the film school, and other parties. ABCD Rentals cross-claimed against client Mr. Smith, as there was a provision on the rental agreement that all renters indemnified ABCD Rentals against claims related to the renter's use of the rented equipment. This cross-claim was the reason for our involvement in this case; the client Mr. Smith had already reached a financial settlement with the Plaintiffs.

## **Inspection**

A joint inspection of the 2005 lift was conducted in August 2009 at the subject ABCD Rentals location. The lift was operated by others during this inspection and no significant functional defects were noted. The operator's manual was found on the lift; the printing date was August 2004, and the manual states that the lift complies with the 1992 version of the relevant ANSI - Scaffold Industry Association (SIA, renamed in October 2011 to Scaffold & Access Industry Association or SAIA) A92 safety standard.

## **Content of standards**

The requirements of the 1992 and 2006 A92 standards differ. The introduction to the 2006 standard established that it was applicable to the subject 2009 rental, even though the lift was built to the 1992 standard. One significant change in the later standard was that it defined a separately-published *Manual Of Responsibilities* that was a softbound excerpt from the full standard; it included the "Responsibilities Of" sections for Dealers, Owners, Users, Operators, Lessors, Lessees, and Brokers. The 2006 A92 standard establishes that this *Manual Of Responsibilities* was to accompany the other manuals on the lift.

## **Analysis**

1. In the subject case, per both the 1992 and the 2006 A92 standards, ABCD Rentals can be categorized as a Dealer, Owner, and Lessor of the subject lift. Client Mr. Smith can be categorized as a Lessee and as a User. Mr. Green can be categorized as an Operator.
2. Prior to the subject rental and incident, renter Mr. Smith had observed these types of lifts being used on movie sets, but had not used one. In planning for the subject film his lighting director decided they needed a lift, and the film's producer posted an advertisement online for a "lift operator & gaffer", as no one on the film crew knew how to operate a lift. Mr. Green responded to the advertisement and stated he had significant experience in the position advertised. He was told that it was a low-budget student film and he agreed to do the work for free, provided he was listed in the film credits. Based on review of the depositions of Mr. Green and Mr. Smith, Mr. Green's representation of himself to Mr. Smith was consistent with that of a qualified lift operator, and further, a person with more experience in the "mechanics" of moviemaking than Mr. Smith. Similarly, the testimony of Mr. Green did not reveal a perception on his part that Mr. Smith's aerial lift experience and qualifications were equal or superior to his own.

3. Under the A92 standard, Lessees of lifts (such as the subject lift) would typically be categorized as Users, in addition to other possible roles. The 2006 version of the A92 standard was considered the applicable standard by ABCD Rentals (per the deposition of branch manager Mr. Jones), and in their discovery responses ABCD Rentals did not reveal any comparable or parallel internal safety procedures that were to be followed instead. The 2006 A92 standard assigned a wide variety of responsibilities solely to the User – both *indirect* responsibilities (e.g. ensuring training) and *direct* responsibilities involving active distinct tasks to be performed during the rental. Paraphrasing just the active tasks required of Users by ABCD Rentals via their reliance on the 2006 A92 standard “Responsibilities of Users” (and as duplicated in the companion A92 *Manual Of Responsibilities*), renter Mr. Smith was responsible for:
  - a. Observing and evaluating Mr. Green’s work practices to determine if retraining was necessary, and arranging retraining if necessary.
  - b. Directing Mr. Green to be in compliance with the A92 standard.
  - c. Monitoring and supervising Mr. Green’s use of the lift to ensure compliance with the standard.
  - d. Warning all personnel of potential hazards.
  - e. Explaining to all personnel the consequences of not following operating guidelines.
  - f. Directing and monitoring Mr. Green’s use of fall protection and personal protective equipment.
  - g. Directing Mr. Green to report any problems or malfunctions with the lift.
  - h. Directing Mr. Green to immediately report any hazardous locations that are discovered.
  - i. Directing Mr. Green to ensure the area surrounding the lift was clear before lowering the platform.
  - j. Directing Mr. Green to limit travel speeds.
  - k. Directing Mr. Green to:
    - i. Maintain clear view of the surface and route.
    - ii. Ensure worksite personnel are aware of lift.
    - iii. Maintain safe distances to hazards.
    - iv. Maintain safe distances to overhead hazards and conductors.
  - l. Directing Mr. Green to keep unauthorized persons from using the lift.
  - m. Checking the platform loading to ensure that only properly secured, evenly distributed tools and materials (that can be safely handled by platform personnel) are on the platform.
  - n. Directing Mr. Green not to exceed the manufacturer’s rated horizontal loading.
  - o. Directing Mr. Green not to use the lift or allow its use unless authorized.
  - p. Directing Mr. Green to cease operation of the lift if a hazard or unsafe condition was found, and to request further info from the dealer, manufacturer, or owner before using the lift again.

The foregoing list clearly establishes that, according to the 2006 A92 standard, Mr. Smith (as a User) had to have prior lift operational training and experience that was superior to that of Mr. Green – superior to the level of fulfilling these supervisory and technically evaluative responsibilities. And the foregoing list is not of passive or indirect tasks that could be “assumed” complete – Mr. Smith was required (by the standard) to do each task. Yet in their depositions neither Mr. Smith nor Mr. Green revealed any expectation that 22-year-old renter Mr. Smith would or could act as the technical and evaluative supervisor of 37-year-old Mr. Green. It appears that Mr. Smith sought out an outside person for the role filled by Mr. Green because (among other things) it was not within his own competence. There was no evidence that Mr. Smith had any concept that even the foregoing abbreviated list of responsibilities had been assigned to him by ABCD Rentals.

4. The rental paperwork provided to Mr. Smith by ABCD Rentals contained no information regarding his A92-mandated (and thereby ABCD Rentals-mandated) responsibilities as User. At a more basic level, among the ABCD Rentals-provided discovery materials, the only mention of this industry-recognized A92 safety standard was in a five-word sentence inside the factory lift operator’s manual. The A92 standard was copyrighted and was not a public document; it was only available for purchase through a standards provider such as ANSI or the Scaffold Industry Association. The associated *A92 Manual Of Responsibilities* was only available in hardcopy from the same sources. The existence of and means for accessing these standard documents would not have qualified as common knowledge for neophyte lift Lessees – it was reasonable to expect that the Lessor or Dealer would bring this to their attention. And it would be unreasonable to expect a neophyte Lessee to have read and understood the entire A92 standard, with all of its subtleties and use of industry-specific technical language.
5. Regarding the A92 standard, there were significant issues with it that arguably compromised it being used as ABCD Rentals’ turnkey safety policy for lift rentals. The core business of ABCD Rentals was customer rentals of personnel lifts (among other devices), which are complex, specialized, potentially hazardous machines requiring specific knowledge to operate. As such, a proactive approach to customer safety should have been at the core of ABCD Rentals’ business. The deposition of branch manager Mr. Jones revealed that safety meetings held at ABCD dealt with *employee* safety, not customer safety. Yet the focus should not only have been the safety of ABCD employees who were around lifts every day, but also the safety of customers that may have never rented a lift before. The A92 standard, like all standards written by a committee, had “holes” that could be found in the coverage of a topic; this particular standard had holes in the provision of safety. ABCD Rentals’ nominal reliance on this safety standard was appropriate, as it was the standard of care in the USA, but this reliance should have been subsequent to a duly diligent analysis of the safety processes it prescribed. Some of the deficiencies of the A92 standard were detailed in the industry publication “*Statement of Best Practices of General Training and Familiarization for Aerial Work Platform Equipment*”, published post-incident

in February 2010. Through this document ABCD Rentals would gain awareness of these deficiencies, but ABCD Rentals should have already known of the deficiencies as a result of its own analysis – and ABCD Rentals was on the committee that prepared the Statement. Given the safety-focused nature of the deficiencies, ABCD Rentals had an obligation to address those deficiencies through targeted procedures and processes – which they failed to do. A number of deficiencies in the 2006 A92 standard are outlined below:

- a. Careful reading of the standard reveals two levels of instruction that were to be provided (through various means) to Operators of the lift: Training and Familiarization.
- b. A section under “Responsibilities of Dealers” discussed Training, which (paraphrasing) stated that the Dealer must *offer* appropriate training that would facilitate compliance with the standard’s requirements by Owners, Users and Operators. The content of this Training was not defined in this section, and Training topics outlined later in “Responsibilities of Operators” were not established as being appropriate. Also undefined was at what point the Training was to be offered, and to which of the entities named.
- c. A section under “Responsibilities of Dealers” discussed Familiarization that was to occur upon the lift’s delivery. It stated (paraphrasing) that for any type of lift usage, the dealer’s representative (e.g. the delivery driver) must instruct the person receiving the lift (hereafter “receiver”) in four areas:
  - i. Showing the receiver where the weather resistant manual storage compartment was.
  - ii. Confirming that the manufacturer-specified manuals were present.
  - iii. Reviewing with the receiver the functioning of the lift controls.
  - iv. Reviewing with the receiver any lift-specific safety devices.

This section thereby required the dealer to perform this Familiarization; it could not be declined if the receiver didn’t want it. But nothing in the standard specified the necessary competence of the receiver, and a neophyte Lessee may not have known who would be best to so designate. The standard indirectly established that Training was supposed to precede any non-Training use of a lift. And as Training may have been on a different model of lift, the Familiarization (in turn) was supposed to inform the *already-trained* operator about the controls and safety specifics of the *delivered* lift. This was elaborated upon in detail in the “*Statement of Best Practices of General Training and Familiarization for Aerial Work Platform Equipment*” document - published with the specific intent of clarifying this two-phase instructional requirement. Regardless, from the standpoint of ensuring safety, the receiver must either have been the intended Operator or must have been competent to understand all the Familiarization information provided by the delivery person - and then have communicated it to the intended Operator without error. But none of this was specifically stated in the A92 standard. Of interest, as discussed later, is that the prior (1992) version of the A92 standard required Dealers to conduct training upon every delivery, not just Familiarization - in fact “Familiarization” wasn’t a term used in the 1992 standard.



Further analyzing the delivery driver's tasks of Familiarization, the tasks include:

- v. *Showing the receiver where the weather resistant manual storage compartment was.*  
This was merely the highlighting of a location, and no discussion (with the receiver) of the contents and/or significance of the manuals was required.
- vi. *Confirming that the manufacturer-specified manuals were present.* This was merely the verification of the presence of the manufacturer-specified manuals, and no discussion (with the receiver) of the contents and/or significance of the manuals was required. If Dealers were compliant with the 2006 version of A92, the *Manual Of Responsibilities* was required to be present, but the *Manual Of Responsibilities* was not a manufacturer-specified manual for the subject 2005 lift. Again there was nothing that required the Dealer to discuss the *Manual Of Responsibilities* at all, let alone discuss its significance and applicability with the receiver.
- vii. *Reviewing with the receiver the functioning of the lift controls.* Again this presupposed the competence of the receiver. This was not an *introduction* to lift control functions, it was a *review* of that model of lift's controls, which may have been different than those previously used by the intended Operator. So for safety, if the receiver wasn't the intended Operator, they would need to be familiar enough with lift controls that they could pass the information on to the Operator.
- viii. *Reviewing with the receiver any lift-specific safety devices.* Again this was not an *introduction* to lift safety devices; it was a *review*, presupposing the appropriate prior knowledge of the receiver.

In consideration of these Familiarization tasks, they were clearly based on an assumption of the receiver's prior Training, or technical competence and ability to communicate. This was a nontrivial assumption – as evidenced by the publication of “*Statement of Best Practices of General Training and Familiarization for Aerial Work Platform Equipment*”.

- d. The definition of “Operator” referred to a “Qualified Person” that controls the lift. This A92 standard defines a “Qualified Person” in the same manner as OSHA 1915.151, which was as follows:
  - i. One who, by possession of a recognized degree, certificate, or professional standing, or by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems related to the subject matter...

This definition was much more detailed than the 1992 A92 definition, and prescribes a higher level of competence. It is interesting that the definition didn't discuss qualifications to perform some service or task (e.g. operating a lift), it only discussed addressing problems. As an establishment of the threshold of adequate qualifications, having “*extensive knowledge, training, and experience*” (the “and” making all three necessary), this was a higher benchmark of competence than most first-time lift Operators could achieve. A training course could have been created that would teach the “*extensive knowledge*”, and provide some experience,

but it was left unstated whether the Training content later outlined in “Responsibilities of Operators” would have met this high standard for minimum qualifications. There were no internal references in the standard that indicated any such correlation. As such, it would have been difficult for the A92 reader to correlate this qualification benchmark with any specific means for attaining it.

- e. As mentioned previously, in addition to the many “indirect” procedural and administrative tasks that the User was required to perform under the 2006 A92 standard, there were numerous required direct tasks involving supervision and evaluation of the Operator’s use of the lift. As such, it was clear that the User was required to be more than just a trained Operator; they were to have the skills and experience necessary to judge the competence of Operators, as well as supervisory authority for the worksite. But this was not specifically stated in the A92 standard. For safety, there was a need for a person (or defined team) on the lift worksite to have the skills and competence required of a User, and this person may have had the most overall responsibility (apart from the manufacturer). But the wording of the standard did not provide a mechanism to ensure that a Lessee understood these responsibilities and either *was* or *had* someone with sufficient qualifications to be a User.
- f. In the “Responsibilities of Operators” section of the standard, one shortcoming pertained to the section describing specific Training elements. This section was actually entitled “General Training”, and for the purposes of consistent language and reliance on definitions, the addition of the word “General” could add confusion. The rest of the A92 standard discussed Training, so the A92 reader then must look to see if there was a separate section for “Training” in addition to “General Training” – there wasn’t.
- g. Given all of the A92 allocations of responsibility, safety processes, training guidelines, and other necessary information, and given the Lessor/Lessee relationships that could be expected, the A92 standard (or the *Manual Of Responsibilities*) should not have only been available through self-initiated purchase. At a minimum, entities such as Dealers and Lessors should have (in the standard) been advised to specifically alert Lessees and Users to the A92 responsibilities outlined therein, well in advance of the rental delivery. Loans or sales of the hardcopy-only *Manual Of Responsibilities* could be offered – though this would not inform a potential Lessee that emails or calls in a rental inquiry. Even if the full A92 standards were not given away, the standard’s content could have been offered online in cumbersome-to-print individual sections free to view on the SIA website (similar to the International Code Commission’s online free building codes), allowing a much broader dissemination of these important safety standards.

A general summary of these A92 deficiencies included poor establishment of Training and Familiarization requirements, and a general lack of methodologies for ensuring full



and timely understanding of responsibilities by all parties. These deficiencies were not trivial, and ABCD Rentals (as a Dealer) would have been expected to properly address and accommodate them. Given the above, ABCD Rentals had several options; one was to request Interpretations of the A92 standard from the A92 Accredited Standards Committee - but a more efficient choice would have been to make appropriate changes or additions to the ABCD Rental processes and procedures. It was not known whether ABCD Rentals' entire corporate safety processes and procedures were revealed in discovery, and as such their *intended* implementation at the subject rental facility could not be evaluated.

6. As mentioned, there was a shift in the A92 standard from the 1992 to the 2006 version, mostly in the area of defined roles and responsibilities. Lifts are complex machines, feature specialized controls, and require an awareness of myriad potentially life-threatening operational hazards that would be non-obvious to laypersons. Dealers of lifts are in a superior position (versus Lessees) to understand these operational complexities and hazards. The 1992 version of the A92 standard (to which the subject lift was designed to comply) arguably provided a higher level of safety for Lessees and Operators than the 2006 version, in that the 1992 version holds both Dealers and Lessors responsible for providing training and manufacturer's instructions upon every lift delivery. The 2006 version of the standard, which ABCD Rentals relied upon, only required that Training be *offered* to a non-specific entity among the Owner, User, and Operator. Though the issue of what comprised "training" was poorly defined in the 1992 standard, it was reasonable to conclude that it would have been more inclusive and detailed than the Familiarization specified in the 2006 standard. Generally, the 2006 version of the A92 standard (compared to the 1992 version) shifted much of the responsibility for ensuring safe operation of this complex device away from those who understand the device best (the Dealers and Owners) to those whose core competence was likely not lift operation (the Lessees). It is of note that the A92 standards committee had the ability to restrict membership in the committee, and membership was relatively expensive. Other Standards Development Organizations, specifically ASTM, allow any member to join and actively participate in any of ASTM's Technical Committees – and membership is relatively inexpensive. This provides the opportunity for a more balanced cross-section of interests among voting members. Regardless, the overall shift of responsibilities in the 2006 version versus the 1992 version (of the A92 standard) may have been acceptable, provided that all parties (Dealers, Owners, Lessors, Lessees, Users, Operators) understood their responsibilities such that they could make appropriate and timely decisions for safe lift usage.
7. As revealed by ABCD Rentals' Mr. Jones in the original rental inquiry email exchange he had with Ms. Berry, all ABCD Rentals required prior to delivery was a credit application, credit card authorization, and confirmed insurance coverage. None of those documents outlined any safety responsibilities at all. Mr. Jones's deposition testimony stated that ABCD's standard Rental

Agreement and Condition & Delivery Report (discussed below) were not provided to Mr. Smith or Ms. Berry for review in advance of the rental, or during their visit to ABCD Rentals' rental location nine days prior to the incident, nor were the responsibilities contained therein verbally discussed with them at any time. The ABCD Rentals policy was that these documents were only provided to renters upon delivery. Further, during delivery, ABCD Rentals did not require that the Lessee (User) be the person to sign the Rental Agreement or Condition & Delivery Report – so even if those documents contained effective alerting to the A92 User responsibilities, there was no process in place to ensure that the actual Lessee (User) would become aware of them. Or assuming the neophyte Lessee *did* receive effective alerting of the A92 User responsibilities upon receiving and studying the Rental Agreement or Condition & Delivery Report at the worksite, at that point the rental period would have already begun, the equipment would have been delivered, and workers would be waiting to perform the work that necessitated the lift. In essence, at that point, and as a result of ABCD Rentals' procedures, *it was too late*; the neophyte Lessee's "safe" choices would have been to cancel the lift rental (and associated work) or postpone its use until someone could be found and hired that had the qualifications necessary to act as the User. But again due to ABCD Rentals' procedures, not even upon delivery was Mr. Smith made aware of the A92 User responsibilities so that he could have made the "safe" choice at the rural worksite.

8. Even if Mr. Smith (as Lessee) had been timely provided with ABCD Rentals' Rental Agreement and Condition & Delivery Report (which he wasn't), or had he known enough of its content and importance to appropriately advise his designated receiver (art director Ms. Carter) to pay particular attention to the terms and commitments therein, the wording used in those documents was (in places) poorly chosen by ABCD Rentals. Overly generic language, inconsistent use of defined A92 terminology, and misstated A92 requirements in these documents could have compromised his ability (or Ms. Carter's ability) to make appropriate decisions. It was reasonable to expect that ABCD Rentals, as a nationwide company, should have recognized the need to use consistent, correct, specific, and comprehensive terminology in important documents that control the rental of a complex and potentially hazardous machine. The following discussion is in reference to the 2006 version of the A92 standard.

- a. Rental Agreement:

- i. The rental was of a lift compliant to this A92 standard, yet the terminology of the Rental Agreement was inconsistent with the standard, and nowhere on the Rental Agreement did it mention A92 or ABCD Rentals' foundational reliance on A92 for their lift safety policy. The Agreement used the term "Customer" when "User" or "Lessee" were the terms (with defined responsibilities) in A92.
- ii. Recalling the A92 standard's definition of Familiarization, the front-page Rental Agreement small print stated "Signer...agrees that...familiarization has been offered at the point of delivery of the equipment". Yet as outlined above, the A92 standard did not allow the Dealer (ABCD Rentals) to merely *offer* familiarization at the

point of delivery – the four steps (show manual storage compartment, show that manufacturer’s manuals are present, review controls, review safety features) were required to be performed by the dealer with the receiver.

- iii. The back-page small print contained many “important terms” in 37 paragraphs – including the indemnification relied on by ABCD Rentals in their cross-claim. Yet it was only at delivery time (once the rental had nominally begun) that these terms were provided for review.
- iv. A “Customer Obligations” paragraph required the Customer (not User or Lessee) to ensure that safety, operating manual, and maintenance instructions were followed, but it didn’t mention the *Manual Of Responsibilities* or ABCD Rentals’ reliance on it for detailed allocation of responsibility to the Customer. In other words, this paragraph failed to alert Lessees to the *Manual Of Responsibilities* and failed to require the Customer’s informed acceptance of the responsibilities delegated to them.

#### b. Condition & Delivery Report

- i. The terminology of the Condition & Delivery Report was also inconsistent with A92, as outlined below.
- ii. A section entitled “Familiarization”, intended to be used by both the delivery driver and the receiver, had the wording “Confirm Operators Manuals Present”. This was incorrect – the A92 standard requires the Dealer to confirm that the *manufacturer specified* manuals are present. With ABCD Rentals’ wording, even if the manufacturer referenced the *Manual Of Responsibilities*, the ABCD Rentals delivery person wouldn’t have needed to confirm its presence.
- iii. A section entitled “Equipment, Vehicles and Machine Condition Walk Around Visual Inspection” had a check-off for “Operator and ANSI User Manuals (Present/ Protected)”, but for this class of device there’s no such thing as an “ANSI User Manual”. Again, all these terms were defined in the A92 standard – had this line instead said “ANSI *Manual Of Responsibilities*”, it would have referred to an actual document that had a title that self-described its importance.
- iv. A section entitled “Customer Certification” started off with “I certify that I have been provided with and am aware of the Operating Manual or User Instructions and ANSI Responsibilities Manual, if applicable, etc. which govern the use of this equipment or vehicle and further acknowledge:...”. This sentence at least mentioned the ANSI *Manual Of Responsibilities* (incorrectly calling it the ANSI Responsibilities Manual), though it introduced the new term “User Instructions” – leaving undefined whether these were different from the “User Manuals”. The specificity of the reference to the “Responsibilities Manual” was reduced by the use of “if applicable, etc.”, likely reducing the Lessee’s perception of its importance and introducing uncertainty as to its applicability. It would have been straightforward for ABCD Rentals to have

created forms that were specific to the type of equipment being rented, especially when so many specific terms and specific responsibilities (from the A92 standard) combined to form the core of ABCD Rentals' safety policy. Lastly, there is a difference between being *aware* of a Responsibilities Manual and being *aware of the responsibilities described* in a Responsibilities Manual.

- v. In a section entitled "Familiarization, inspection, training and customer certification signature", there was a line stating "I have received and read the Operator responsibilities", with an initial block. This was a new combination (for this form) of important terms – other places it was "Operators Manuals", "Operating Manual", "Operator/responsibility Manuals" – not a rigorous approach. There was an extensive section on "Operator Responsibilities" in the *Manual Of Responsibilities*, which (if read) would have alerted the reader to extensive obligations. But ABCD Rentals did not require the User (or Operator) to sign this document, and Ms. Carter wasn't a lift Operator. In any case, ABCD Rentals' delivery driver didn't ensure that Ms. Carter initialed that certification - the initial blocks were blank on the subject form. Also in this section was an initial certification area that says "Training Offered \_\_\_accept \_\_\_decline". The choices presuppose that training was offered; however, at the point of delivery, it is likely that the delivery driver doesn't have the qualifications (or the time) to provide full Training on the lift. As has been discussed, the A92 standard delineates between Training and Familiarization. This is another moot point, as ABCD Rentals' driver didn't get Ms. Carter's initials here either.
9. Given the above issues, the deposition of branch manager Mr. Jones provided insight as to the types of procedural accommodations ABCD Rentals should have (but failed to have) implemented for the subject 2009 rental. One superior rental scenario (from the standpoint of safety) would have included the following sequence of events:
    - a. Upon initial contact by Mr. Smith, the ABCD salesperson for Mr. Smith's rental would have inquired about the specifics of Mr. Smith's experience with lifts. Given the answers that could be expected based on Mr. Smith's deposition, the salesperson would have proactively provided (loaned, sold, or otherwise) the contents of the A92 *Manual Of Responsibilities* to Mr. Smith. The salesperson would have been familiar enough with the A92 responsibilities to answer any questions Mr. Smith may have had, including questions about the suitability of Mr. Green as Operator. The Rental Agreement and Condition And Delivery report would have been proactively provided for Mr. Smith's review.
    - b. Upon confirmation of Mr. Smith's understanding of the A92 responsibilities, the salesperson would have provided information on Training options (that would satisfy the A92 requirements), and (if asked) provided information on potential sources for candidates Mr. Smith could hire as User or as lift Operator. These steps would be

sufficiently in advance of the actual intended rental date that appropriate choices of personnel could be facilitated by Mr. Smith.

- c. Upon delivery, ABCD Rentals' driver would have performed the required Familiarization with Mr. Smith's designated Operator or User, alerting them to the Operator and User responsibilities in the *Manual Of Responsibilities*. A Rental Agreement utilizing consistent A92 terminology would have been signed by Mr. Smith (or his designee) and a similarly A92-consistent Condition & Delivery Report would have been initialed/signed in all required areas by the User or Operator.

10. ABCD Rentals branch manager Mr. Jones did not meet his reasonable obligation (as Dealer representative) to focus on customer safety and specifically to have determined Mr. Smith's competence to rent the subject lift. It was inconclusive as whether these were ABCD Rentals procedural deficiencies or Mr. Jones's own deficiencies.

- a. When asked (in his deposition) about the A92 standard, Mr. Jones said he had "glanced through it" and wasn't required by ABCD Rentals to study or comprehend it. He stated that he had never reviewed all of the User responsibilities in the standard, that ABCD Rentals had not required him to understand those responsibilities, and that he didn't know whether ABCD Rentals required him to determine if Users were aware of those responsibilities. He believed the User responsibilities were "pretty important" but provided a nonresponsive answer to whether it was important that the User know of those responsibilities before the rental. Mr. Jones stated it was "probably pretty good" for the User to learn of these responsibilities during Familiarization – but Familiarization takes place during delivery (not before the rental), the User isn't necessarily the one who receives Familiarization, and ABCD Rentals doesn't require any particular qualifications for the person receiving Familiarization. In general, despite Mr. Jones's role as the ABCD Rentals branch manager and employee responsible for the rental, he revealed an informal, indistinct, and incomplete understanding of the A92 standards that ABCD Rentals relied on in their lift safety policy.
- b. When asked (three times) whether ABCD Rentals had a procedure for determining whether a renter was capable and qualified to operate the lift, Mr. Jones's responses focused on whether the renter could pay for the rental; finally he revealed that there was in fact no ABCD Rentals policy on determining technical competence to rent.



## Summary of opinions

1. It was reasonable to conclude that had Mr. Smith been made aware of all of the specific User responsibilities (and subordinate responsibilities) that were to be indirectly assigned solely to him by ABCD Rentals through their reliance on the A92 standard, he would have recognized his potential liability, lack of competence to meet those responsibilities, or the possibility that Mr. Green was not an appropriate Operator. Upon such recognition, he would then have had the information necessary to determine whether alternate arrangements should have been made that would have resulted in mitigation or elimination of the conditions that led to this fatal incident. ABCD Rentals was in a superior position to know about (and inform Mr. Smith about) these responsibilities and the associated operational complexities and hazards of lifts, yet ABCD Rentals' systematically failed to either notify Mr. Smith of these responsibilities or to tangibly verify Mr. Smith's pre-existing knowledge (if any) of these responsibilities. ABCD Rentals' branch manager Mr. Jones was unaware of the User responsibilities that his employer required Mr. Smith to accept, despite Mr. Jones's years of personnel lift rental experience, employee training, and increased responsibilities that culminated in his branch manager position. Had ABCD Rentals sufficiently trained Mr. Jones in the lift "safety policy" they purchased as the A92 standard, it is reasonable to expect that he would have taken it upon himself to alert Mr. Smith to the myriad User (and subordinate) responsibilities, in the absence of an appropriately specific ABCD Rentals process for doing so. Mr. Jones made at best a superficial evaluation of the competence of Mr. Smith to rent the lift, backed by a lackadaisical understanding and application of the A92 safety standards ABCD Rentals relied on. As such, he substantially compromised Mr. Smith's ability to safely rent the lift.
2. ABCD Rentals appeared to rely on the A92 standard to define the responsibilities and training requirements of its lift customers. Yet their experience from specialization in lift rentals, combined with participation in industry safety improvement programs, should reasonably have alerted ABCD management to the recognized safety deficiencies in that standard - and caused them to implement processes to mitigate those deficiencies. Specific safety deficiencies in that standard, such as (but not limited to) the need for clarification of each party's responsibilities and the need for ensuring proper training, would have, if properly addressed and implemented by ABCD prior to Mr. Smith's rental booking, likely mitigated or eliminated the conditions that led to this fatal incident.

## Case outcome

In support of client Mr. Smith's position in this litigation, a report outlining the above issues was submitted to the court by one of this article's authors, John Leffler. Based on the report's content, both the Plaintiffs and the film school also indicated their interest in using the report to support their own interests. However, ABCD Rentals agreed to dismiss its cross-claim against renter Mr. Smith provided that John Leffler was withdrawn as Mr. Smith's expert – thereby withdrawing the report as well.



