

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

RHONDA STARK, individually and  
as Administratrix of the ESTATE OF  
ROBERT E. STARK,

Plaintiffs,

v.

Civil Action No.: 20-C-267-3

Hon. James A. Matish

CHAD EDWARDS and  
MATTHEW MAXWELL,

Defendants.

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

Now comes Plaintiff, Rhonda Stark, individually and as the Administratrix of the Estate of Robert E. Stark ("Plaintiff"), and states that no responsive pleading has been served to the Complaint which was filed herein on November 16, 2020. As such, and pursuant to West Virginia Rules of Civil Procedure R. 15(a), Plaintiff herein alleges and avers as follows:

**PARTIES**

1. Plaintiff is a resident and citizen of Harrison County, West Virginia. On July 1, 2019, Plaintiff was duly appointed the Administratrix of the Estate of her late husband, Robert E. Stark, by the Harrison County Commission. *See Exhibit A.*
2. Upon information and belief, Defendant Chad Edwards is a resident of Harrison County, West Virginia.

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**PARTIES**

1. Plaintiff is a resident and citizen of Harrison County, West Virginia. On July 1, 2019, Plaintiff was duly appointed the Administratrix of the Estate of her late husband, Robert E. Stark, by the Harrison County Commission. *See Exhibit A.*
2. Upon information and belief, Defendant Chad Edwards is a resident of Harrison County, West Virginia.

3. At all relevant times hereto, Defendant Edwards was the City Manager for the City of Shinnston, Harrison County, West Virginia. As such, Defendant Edwards is and was subject to and responsible for the day to day operations of all aspects of the City, which included, but were not limited to, operation of the Public Works and Utilities Division of the City of Shinnston.

4. Upon information and belief and at all times relevant hereto, Defendant Matthew Maxwell was a resident of Harrison County, West Virginia.

5. At all relevant times hereto, Defendant Maxwell was the Public Works Supervisor for the City of Shinnston, Harrison County, West Virginia.

6. The Public Works and Utilities Division of the City of Shinnston operates and maintains the city's storm water conveyance system, drinking water supply and distribution system, wastewater collections system, and wastewater treatment.

7. As part of operating and maintaining the city's storm water and conveyance system, drinking water supply and distribution system, wastewater collections system, and wastewater treatment, the Public Works and Utilities Division engages in work involving excavation and trenching.

8. As the City Manager, Defendant Edwards was subject to and responsible for compliance with all applicable regulations, statutes, and safety standards for workplace safety and training, applicable to the work done by his employees which included excavation and trenching.

9. As the Public Works Supervisor, Defendant Maxwell was subject to and responsible for compliance with all applicable regulations, statutes, and safety standards

for workplace safety and training, applicable to the work done by his employees in the Public Works and Utilities Division which included excavation and trenching.

10. At all times relevant hereto, Robert E. Stark was employed by the City of Shinnston, Harrison County, West Virginia in the Public Works and Utilities Division.

11. As such, at all times relevant herein, Robert Stark's boss was Defendant Edwards and his immediate supervisor was Defendant Maxwell.

12. As such, at all times relevant herein, Defendant Edwards and Defendant Maxwell, as employers of Robert Stark, were responsible for compliance with all applicable regulations, statutes, and safety standards for workplace safety and training, applicable to the work done by Robert Stark, which included excavation and trenching.

13. At all times relevant hereto, Defendants Edwards and Maxwell provided oversight, control, safety, training and support services to employees of the Public Works and Utilities Division, including Robert Stark.

14. At all times relevant hereto, Defendants Edwards and Maxwell maintained, operated and controlled the city's storm water conveyance system, drinking water supply and distribution system, wastewater collections system, and wastewater treatment.

#### **JURISDICTION and VENUE**

15. The Court has jurisdiction over this matter pursuant to W. Va. Code § 51-2-2 as the amount in controversy exceeds the current jurisdictional minimum (\$7,500.00).

16. Venue is appropriate in the Circuit Court of Harrison County pursuant to W. Va. Code §56-1-1(a), §29-12A-13 and §23-4-2, insofar as the incident described herein

which caused the death of Robert Stark occurred in the City of Shinnston, Harrison County, West Virginia.

## FACTS

17. In or about 2016, Robert Stark was hired by the City of Shinnston as a light mechanic. His work history prior to being hired was in the field of mechanics.

18. Robert Stark remained an employee of the City of Shinnston from the time of his hire through June 14, 2019.

19. Defendant Edwards, as the City Manager since January 2019, was the boss of Robert Stark at all times relevant hereto.

20. Defendant Maxwell was the immediate supervisor of Robert Stark at all times relevant hereto.

21. As early as 2018, if not earlier, the City of Shinnston decided to undertake a project to correct ongoing issues with a storm drain that was causing ground subsidence along Van Rufus Drive in the City of Shinnston, Harrison County, West Virginia.

22. In 2018, some employees of the Public Works and Utilities Division who had been working on the project complained to their supervisor that the job was not able to be safely done.

23. The complaints included, but were not limited to, that the job was not able to be safely done because the ground being excavated was unstable.

24. The complaints included, but were not limited to, that the job was not able to be safely done because the excavation was too deep.

25. The complaints included, but were not limited to, that the job was not able to be safely done because the equipment provided to perform the job was insufficient to do so safely.

26. The complaints included, but were not limited to, that the job was not able to be safely done because the employees did not have any training in how to excavate and dig trenches safely.

27. The drainpipe involved was buried fifteen (15) feet below the surface in some areas.

28. At all times relevant hereto, the employees of the Public Works and Utilities Division who were working on the project were provided no training in how to safely excavate and/or dig trenches.

29. At all times relevant hereto, the employees of the Public Works and Utilities Division who were working on the project were not provided necessary equipment to safely excavate and/or dig trenches.

30. In the fall of 2018, officials for the City of Shinnston began obtaining quotes from contractors to complete the project.

31. The effort to seek quotes from contractors was because the Public Works and Utilities Division lacked the equipment necessary to safely correct the issue at that depth.

32. The quotes received by the City of Shinnston to perform the necessary project came back at a higher cost to the City than what was anticipated.

33. Given the expense of the quotes provided, the idea of having a private contractor complete the project was abandoned.

34. Despite the lack of necessary equipment, the lack of training and experience in performing such work, and the safety concerns expressed by employees of the Public Works and Utilities Division, no contractor was ever hired to perform the work necessary to complete the project.

35. After the decision to not hire a private contractor, there was no further work on the project for the remainder of 2018.

36. For the first months of 2019, there was no work on the project while waiting for the weather to allow the project to resume.

37. During the time in late 2018 and early 2019 when there was no work being done on the project, no training was provided to the employees of the Public Works and Utilities Division to address the safety concerns which were raised.

38. During the time in late 2018 and early 2019 when there was no work being done on the project, no equipment was obtained to be used by the employees of the Public Works and Utilities Division to address the safety concerns which were raised.

39. Despite that concerns were raised by employees of the Public Works and Utilities Division about the lack of necessary experience and training to perform the job safely, and despite nothing being done to address the concerns, Defendants Edwards and Defendant Maxwell decided to resume work on the project in the spring of 2019 utilizing employees of the Public Works and Utilities Division.

40. Despite that concerns were raised by employees of the Public Works and Utilities Division about the lack of necessary equipment to perform the job safely, and despite nothing being done to address the concerns, Defendants Edwards and Defendant Maxwell decided to resume work on the project in the spring of 2019 utilizing employees of the Public Works and Utilities Division.

41. During all times relevant to resuming the project, through and including June 14, 2019, Defendant Edwards and Defendant Maxwell were responsible for ensuring the safety of the employees of the Public Works and Utilities Division underneath their supervision.

42. During all times relevant to resuming the project, through and including June 14, 2019, Defendant Edwards and Defendant Maxwell were responsible for ensuring the employees underneath their supervision had the appropriate training necessary to safely complete the projects to be undertaken as part of their employment.

43. During all times relevant to resuming the project, through and including June 14, 2019, Defendant Edwards and Defendant Maxwell were responsible for ensuring the employees underneath their supervision had the appropriate equipment necessary to safely complete the projects to be undertaken as part of their employment.

44. During all times relevant to resuming the project, through and including June 14, 2019, Defendant Edwards and Defendant Maxwell were responsible for overseeing, monitoring, and controlling the projects to be undertaken by the employees underneath their supervision.



45. When the spring of 2019 arrived and the weather permitted, Defendant Edwards and Defendant Maxwell made the decision to resume the project using the equipment and employees of the Public Works and Utilities Division, including Robert Stark.

46. Neither Defendant Edwards nor Defendant Maxwell had implemented adequate training, work practices and procedures for their employees to safely replace and repair storm sewer drainpipes.

47. Neither Defendant Edwards nor Defendant Maxwell had implemented adequate training, work practices and procedures for their employees to safely work in trenches which were necessary in performing the replacement and repair of storm sewer drainpipes.

48. At no time during his employment did Robert Stark receive any safety training in excavation and trenching work.

49. At no time during his employment and prior to the spring of 2019 had Robert Stark worked on the project involving the storm drain that was causing ground subsidence along Van Rufus Drive in the City of Shinnston.

50. When work resumed in the spring of 2019, Robert Stark was directed and assigned to work on the project.

51. This type of excavation/trenching work involved in the project was new to Robert Stark.

52. Prior to June 14, 2019, work had resumed on the project for several weeks.

53. On June 14, 2019, Robert Stark was working on the project at Van Rufus Drive.

54. The work on June 14, 2019 included replacing a section of storm drainpipe in front of 5 Van Rufus Drive. To do so, a trench was dug which was approximately eight (8) feet deep, approximately twenty (20) feet long, and approximately two (2) feet wide.

55. No testing or monitoring was conducted by either Defendant Edwards or Defendant Maxwell to determine the stability of the soil in and around the area where the trench was dug.

56. No testing or monitoring was requested or acquired by either Defendant Edwards or Defendant Maxwell to determine the stability of the soil in and around the area where the trench was dug.

57. Neither Defendant Edwards nor Defendant Maxwell acquired training for the employees under their supervision to test or monitor the stability of the soil in and around the area where the trench was dug.

58. Neither Defendant Edwards nor Defendant Maxwell acquired training for the employees under their supervision to identify when testing and/or monitoring for stability of the soil would be prudent and safe.

59. Defendant Edwards and Defendant Maxwell failed to implement safe work practices and procedures for employees under their supervision and control.

60. None of the employees of Defendant Edwards and Defendant Maxwell who were working on the project on June 14, 2019, including Robert Stark, were properly equipped and properly trained to safely work in and around trenches.

61. It is a well-known consensus safety standard in work involving excavation and trenching that a trench such as the one dug on June 14, 2019 (as described herein) be appropriately and safely benched, shored, or sloped.

62. On June 14, 2019, the trench dug at the project was not benched, shored, or sloped.

63. It is a well-known consensus safety standard in work involving excavation and trenching that a trench such as the one dug on June 14, 2019 (as described herein) have adequate means of egress maintained at all times.

64. On June 14, 2019, the trench dug at the project did not have adequate means of egress.

65. It is a well-known consensus safety standard in work involving excavation and trenching that a trench such as the one dug on June 14, 2019 (as described herein) be inspected for hazardous conditions daily, or when changing conditions warrant (such as rain).

66. On June 14, 2019, the trench dug at the project was never inspected for hazardous conditions.

67. It is a well-known consensus safety standard in work involving excavation and trenching that when hazardous conditions are found upon inspection, employees must be removed from the excavation at once.

68. On June 14, 2019, the trench dug at the project had hazardous conditions yet employees, including Robert Stark, were not removed.

69. It is a well-known consensus safety standard in work involving excavation and trenching that visual and manual soil testing is to be performed by a competent person to determine soil type before employees are permitted to enter a trench.

70. On June 14, 2019, no soil testing of any kind was performed regarding the trench dug at the project.

71. On June 14, 2019, Robert Stark entered the trench to work on replacing and repairing the storm sewer drainpipes.

72. Robert Stark entered the trench without having the appropriate safety equipment and/or knowing how to safely work in and around trenches.

73. The walls of the trench were not shored in any way.

74. There were no trench shields or trench boxes in place.

75. There was no sloping or benching of the trench walls.

76. After entering the trench, Robert Stark tried to help with connecting a pipe.

77. While doing this, a large section of one of the walls of the trench collapsed and covered Robert Stark.

78. As a result of the trench collapse, Robert Stark suffered serious, catastrophic, and life-threatening physical and psychological injuries, including but not limited to, being buried alive and ultimately succumbing to suffocation due to the inability to breathe.

79. There was so much dirt that collapsed on Robert Stark that it took approximately twenty-nine (29) minutes for multiple individuals and skilled first responders to extricate him from the collapsed trench.

80. Robert Stark died on June 14, 2019, as a direct and proximate result of the horrific injuries sustained in the trench collapse.

81. The conduct of Defendant Edwards and Defendant Maxwell contributed to and/or caused the trench collapse to occur by allowing and directing work to take place despite not having the appropriate and safe equipment to do so.

82. The conduct of Defendant Edwards and Defendant Maxwell contributed to and/or caused the trench collapse to occur by supervising and directing employees to perform work knowing they did not have the proper training to do so safely.

83. The conduct of Defendant Edwards and Defendant Maxwell contributed to and/or caused the trench collapse to occur by failing to train their employees in the appropriate methods with which to perform the work necessary to complete the project they were made to work on.

84. The actions and conduct of Defendant Edwards and Defendant Maxwell directly violated commonly accepted and well-known consensus industry safety standards.

85. As a direct and proximate result of the acts and/or omissions of Defendant Edwards and Defendant Maxwell, Robert Stark suffered serious and needless injuries, experiencing severe pain, suffering, terror, and mental anguish before his untimely and wrongful death.

86. In turn, Defendant Edwards and Defendant Maxwell are liable to Plaintiff for all damages recoverable under West Virginia's Wrongful Death Act, including but not limited to:

- a. damages for Robert Stark's pain and suffering from the time of the injury to death pursuant to W. Va. Code § 55-7-8;
- b. sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of Robert Stark;
- c. compensation for reasonably expected loss of income and earning capacity of Robert Stark;
- d. compensation for reasonably expected services, protection, care and assistance provided by Robert Stark;
- e. reasonable funeral expenses; and,
- f. other expenses incurred because of his wrongful death.

### COUNT I

#### DELIBERATE INTENT DEFENDANT EDWARDS AND DEFENDANT MAXWELL

87. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 86 of this Complaint as if set forth herein verbatim.

88. On and prior to June 14, 2019, Defendant Edwards and Defendant Maxwell violated W. Va. Code § 23-4-2(d)(2), in that they acted with a consciously, subjectively and deliberately formed intention to produce the specific result of death to Robert Stark.

89. A specific unsafe working condition existed in the workplace which presented a high degree of risk and a strong probability of serious injury or death.

90. Defendants, prior to the injury, had actual knowledge of the existence of the specific unsafe working condition(s) and of the high and the strong probability of serious injury or death presented by the specific unsafe working condition(s).

91. The specific unsafe working condition was a violation of a commonly accepted and well-known safety standard within the industry or business of Defendants.

92. Notwithstanding the existence of the facts set forth herein, Defendants, through their management and supervision of Robert Stark, nevertheless intentionally thereafter exposed Robert Stark to the specific unsafe working condition(s)

93. Robert Stark suffered serious compensable injury and death as defined in section one, article four, chapter twenty-three as a direct and proximate result of the specific unsafe working condition(s).

94. As a direct and proximate result of the actions and omissions of Defendant Edwards and Defendant Maxwell, on and prior to June 14, 2019, Robert Stark, experienced pre-death pain, suffering, impairment and mental anguish, and the Estate of Robert E. Stark and its beneficiaries suffered losses as set forth in West Virginia's Wrongful Death Act, West Virginia Code § 55-7-6(c)(1) and (2).

95. In support of the Plaintiff's allegations as to the existence of specific unsafe working conditions, violations of relevant industry safety standards as a contributing cause of Robert Stark's injuries and subsequent death, Plaintiff attaches as **Exhibit B**, the verified statement of workplace safety expert, Diane Matthew Brown.

## COUNT II

### INTENTIONAL AND RECKLESS CONDUCT OF DEFENDANT EDWARDS AND DEFENDANT MAXWELL

96. Plaintiff repeats and incorporates by reference, the allegations contained in paragraphs 1 through 95 of this Complaint as if set forth herein verbatim.

97. Defendant Edwards was the City Manager for the City of Shinnston and as such, was responsible for the day to day operations of the City, which duties included, but were not limited to, compliance with all commonly accepted and well-known safety standards within the industry for all work being performed by employees of the City of Shinnston.

98. Defendant Maxwell was the Public Works Supervisor for the City of Shinnston and as such, was responsible for compliance with all commonly accepted and well-known safety standards within the industry for all work being performed under his supervision.

99. Defendant Edwards and Defendant Maxwell provided safety, oversight, supervision, training, and support to the employees of the Public Works and Utilities Division, including Robert Stark.

100. As such, through their own actions and conduct, Defendant Edwards and Defendant Maxwell had a duty of reasonable and ordinary care to provide a safe workplace, safe work environment, safe equipment, to adopt and implement safe work practices and procedures, and to ensure that employees of the Public Works and Utilities Division were adequately trained to perform their assigned work tasks.

101. Defendant Edwards and Defendant Maxwell intentionally and recklessly breached their duty to Robert Stark by allowing and directing him to perform work despite not having the appropriate and safe equipment to do so.



102. Defendant Edwards and Defendant Maxwell intentionally and recklessly breached their duty to Robert Stark by supervising and directing him (as well as other employees) to perform work knowing he did not have the proper training to do so safely.

103. Defendant Edwards and Defendant Maxwell intentionally and recklessly breached their duty to Robert Stark by failing to train him (as well as other employees) in the appropriate methods with which to perform the work necessary to complete the project he was made to work on.

104. Defendant Edwards and Defendant Maxwell intentionally and recklessly breached their duty to Robert Stark by failing to ensure a safe workplace and safe work environment.

105. Defendant Edwards and Defendant Maxwell intentionally and recklessly breached their duty to Robert Stark by allowing and directing work to occur which directly violated commonly accepted and well-known consensus industry safety standards.

106. As a direct and proximate result of the intentional and reckless conduct of Defendant Edwards and Defendant Maxwell, Robert Stark experienced pre-death pain, suffering, impairment and mental anguish, and the Estate of Robert Stark and its beneficiaries suffered losses as set forth in West Virginia's Wrongful Death Act, West Virginia Code § 55-7-6(c)(1) and (2).

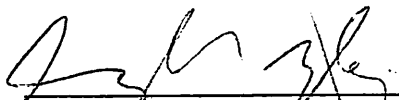
WHEREFORE, the Plaintiff, Rhonda Stark, individually, and as the Administratrix of the Estate of Robert E. Stark, demands judgment against the Defendants for:

- a.) an amount of compensatory damages determined by a jury according to the laws of the State of West Virginia;
- b.) costs and attorney fees expended in prosecution of this matter;
- c.) pre-judgment and post-judgment interest as provided under the law; and,
- d.) all other relief to which the Court deems Plaintiff, individually and as the

Administratrix of the Estate of Robert E. Stark, is entitled.

**PLAINTIFF DEMANDS A JURY TRIAL.**

RHONDA STARK, individually and  
as Administratrix of the ESTATE OF  
ROBERT E. STARK,  
By Counsel



Timothy R. Miley (WVSB #5797)  
Douglas R. Miley (WVSB #10611)  
THE MILEY LEGAL GROUP, PLLC  
229 W. Main Street, Suite 400  
Clarksburg, WV 26301  
Phone: (304) 326-1800  
Fax: (304) 326-1801  
[tmiley@mileylegal.com](mailto:tmiley@mileylegal.com)  
[dmiley@mileylegal.com](mailto:dmiley@mileylegal.com)

United States of America

State of West Virginia



County of Harrison, ss:

Letter of Administration

Estate of ROBERT EARL STARK

I, Susan J Thomas, Clerk of the Harrison County Commission, in the State of West Virginia, do hereby certify that RHONDA SUE STARK was on the 1st day of July, 2019, appointed by the County Clerk of the Harrison County Commission as administratrix(s) of the Estate of ROBERT EARL STARK, duly qualified as such by taking oath prescribed by law, and by giving approved bond in the sum of \$0.00, as required by law.

NOW THEREFORE, be it known that said appointment is now in full force and effect and that full faith and credit are due and should be given to all the acts of the said RHONDA SUE STARK as such administratrix(s) of the Estate of ROBERT EARL STARK, as well in all jurisdictions, as elsewhere.

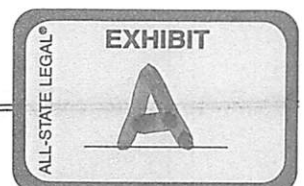
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Harrison County Commission at my office in said County on the 1st day of July, 2019.

Handwritten signature of Susan J. Thomas in cursive script.

Susan J Thomas  
Clerk of the Harrison County Commission

By Handwritten signature of June Eschenmann in cursive script.

June Eschenmann  
Deputy Clerk



CERTIFICATE AND AFFIDAVIT PURSUANT TO W. Va. Code §23-4-2

THE STATE OF WEST VIRGINIA,

COUNTY OF Jefferson, to-wit

I, Diane Matthew Brown, CIT, states as follows:

1. I earned a Masters Degree in Safety Management from West Virginia University. My resume is attached hereto as EXHIBIT A.
2. I am a Certified Instructional Trainer (CIT) from the Board of Certified Safety Professionals (BCSP).
3. I am an OSHA Authorized General Industry Outreach Instructor, authorized to teach the Outreach Program's 10 and 30-hour classes with my most recent reauthorization occurring in 2017.
4. In addition to the foregoing I worked for the American Federation of State, County, and Municipal Employees (AFSCME), spending 21 years with the union's safety program. My expertise in safety training programs includes, but is not limited to: excavations; confined space entry; emergency planning; hazard communication; hazardous materials and emergency response; OSHA 10 and 30 hour programs; and, incident investigation.
5. In addition to the foregoing, as a Safety and Health Specialist/Trainer, I conducted walk through inspections and hazard assessments for workers in both public and private sectors. After retiring from AFSCME, I have operated my own



safety training and consulting business as a safety and health trainer since 2017. My business is Labor of Love Safety Training and Consulting.

6. In addition to the foregoing I was a past member and contributor for the American National Standards Institute (ANSI) Z-10 Standard for Occupational Health and Safety Management Systems.

7. In addition to the foregoing, I was a primary contributor to the AFSCME workplace health and safety publication "Excavation, Trenching and Shoring Safety and the OSHA Excavation Standard."

8. I have been trained, certified, and/or qualified for and have many years of work experience regarding workplace safety around excavation and trenching. I have trained others in same and been actively involved in safety management of such work and projects. Among other tasks, I have: conducted safety audits; dealt with OSHA compliance; investigated incidents; developed safety programs; evaluated compliance with regulations, industry standards and industry practices; and, consulted on workplace safety matters involving excavation and trenching work, specifically involving overall safety planning, procedures, and workplace issues for those types of work.

9. I have knowledge and expertise in the fields of workplace safety statutes, rules, regulations, and consensus industry safety standards applicable to this matter.

10. I have reviewed the City of Shinnston Police Department's General Investigative Report of the incident in question, said report prepared by Chief Jon

Harbert. The report contained four (4) pages, communication from the West Virginia Department of Health and Human Resources Office of Chief Medical Examiner, the Harrison/Taylor County 911 CAD Incident Report, and 11 photographs of the scene. I also reviewed additional photographs taken at the scene on the date of the incident by a firefighter who responded to the emergency.

11. I do know that at the time of the subject incident Robert Stark was employed by the City of Shinnston in the Public Works & Utilities Division.

12. In connection with my review, I identified the following specific unsafe working conditions:

- Failure to have and implement adequate work practices and procedures in order to safely excavate and repair/replace storm drains;
- Failure to train employees on safe work practices and procedures to excavate and repair/replace storm drains;
- Failure to properly supervise and coordinate the work in the field so it was conducted in a safe manner;
- Failure to correct hazards present in the excavation thereby exposing workers to hazardous working conditions;
- Failure to have a safe work place as work was performed in a trench in which no protective systems were utilized (shoring or trench box), no sloping of the trench walls was performed, and no inspections for hazardous conditions and soil type were performed.

13. The specific unsafe working conditions listed above violated the following safety statutes, rules, and/or consensus industry safety standards; all of which are for this situation and applied in this industry:

- American National Standards Institute ("ANSI") standards, and specifically ANSI/ASSP A10.12-1998 (R2010) (safety requirements for excavation)
- Occupational Safety and Health Act/Administration ("OSHA") standards, and specifically: 29 C.F.R. 1926.651 *et seq* and 29 C.F.R. 1926.652 (excavation requirements and protections);
- National Institute for Occupational Safety and Health ("NIOSH"), specifically "Preventing Worker Deaths from Trench Cave-Ins," DHHS (NIOSH) Publication No. 2011-180 (superseded by 2011-208);
- Associated General Contractors of America (AGC - The Construction Association), specifically "Safety Checklist - Trenching & Excavation"; and,
- Interstate Natural Gas Association of America ("INGAA") Construction Safety & Quality Consensus Guidelines, specifically document CS-S-12, "Trenching and Excavation Safety."

14. The safety statutes, rules, and/or consensus industry safety standards referenced in #13 above are by no means an exhaustive list as virtually every industry, in every state, and in many countries, follow the standards set forth by ANSI, OSHA, and NIOSH.

15. The specific unsafe working conditions identified herein were present on and prior to June 14, 2019, when Robert Stark was performing work and these specific unsafe working conditions caused fatal injuries to Robert Stark.
16. The opinions expressed herein are stated to a reasonable degree of certainty within my field of expertise.
17. The opinions expressed herein are based wholly on materials available to me at the time I performed my review of this matter.
18. I reserve the right to review any document that may later be generated and/or supplied to me, and to supplement or amend the opinions herein as may be appropriate in my opinion.

11/11/2020  
Date

Diane Matthew Brown, CIT  
Diane Matthew Brown, CIT

Taken, subscribed and sworn to before me this 11 day of November, 2020.

My commission expires on 05/12/2022.

Claudia Soodeen  
NOTARY PUBLIC





FILED IN 15TH  
CIRCUIT COURT

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