

COHEN, FEELEY, ALTEMOSE & RAMBO, P.C.

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 COPY

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

Vincenzo DeNisi : CIVIL ACTION-LAW
Plaintiff, :
 :
v. : NO. C-48-CV-2019-11658
 :
SmitHahn Company, Inc. d/b/a SmitHahn; : JURY TRIAL DEMANDED
Donald L. Keeney General Contractors, Inc.; : (12 JURORS)
Yoe Concrete Industrial Services, Inc. d/b/a :
Yoe Industrial Services; Yoe Industrial :
Services, Inc.; Lehigh Hanson, Inc.; :
Lehigh Hanson, Inc.; Lehigh Cement :
Company LLC; Lehigh Hanson :
ECC Inc.; and Lehigh Hanson Services, LLC, :
Defendants :

NOTICE TO DEFEND

FILED
2021 APR -6 A 9:51
COURT OF COMMON PLEAS
CIVIL DIVISION
NORTHAMPTON COUNTY, PA.

"NOTICE

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

"YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

NORTHAMPTON COUNTY BAR
ASSOCIATION
LAWYER REFERRAL and
INFORMATION SERVICE
155 S 9th St,
Easton, PA 18042
(610) 258-6333

"AVISO

"Le han demandado en corte. Si usted quiere defenderse contra las demandas nombradas en las páginas siguientes, tiene veinte (20) días, a partir de recibir esta demanda y la notificación para entablar personalmente o por un abogado una comparecencia escrita y también para entablar con la corte en forma escrita sus defensas y objeciones a las demandas contra usted. Sea avisado que si usted no se defiende, el caso puede continuar sin usted y la corte puede incorporar un juicio contra usted sin previo aviso para conseguir el dinero demandado en el pleito o para conseguir cualquier otra demanda o alivio solicitados por el demandante. Usted puede perder dinero o propiedad u otros derechos importantes para usted.


USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE ABOGADO (O NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO), VAYA EN PERSONA O LLAME POR TELEFONO LA OFICINA NOMBRADA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ESTA OFICINA PUEDE PROPORCIONARLE LA INFORMACION SOBRE CONTRATAR A UN ABOGADO. SI USTED NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO, ESTA OFICINA PUEDE PROPORCIONARLE INFORMACION SOBRE AGENCIAS QUE OFRECEN SERVICIOS LEGALES A PERSONAS QUE CUMPLEN LOS REQUISITOS PARA UN HONORARIO REDUCIDO O NINGUN HONORARIO.

ASOCIACION DE LICENCIADOS
DE NORTHAMPTON
SERVICO DE REFERENCA E
INFORMACION LEGAL
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Vincenzo DeNisi

Plaintiff,

v.

SmitHahn Company, Inc. d/b/a SmitHahn;
Donald L. Keeney General Contractors, Inc.;
Yoe Concrete Industrial Services, Inc. d/b/a
Yoe Industrial Services; Yoe Industrial
Services, Inc.; Lehigh Hanson, Inc.;
Lehigh Hanson, Inc.; Lehigh Cement
Company LLC; Lehigh Hanson
ECC Inc.; and Lehigh Hanson Services, LLC,

Defendants

CIVIL ACTION-LAW

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JURY TRIAL DEMANDED
(12 JURORS)

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FILED

COMPLAINT

I. INTRODUCTION

1. On or about September 13, 2019, Vincenzo DeNisi's life was tragically altered when his left leg was amputated above the knee by a fine screw while he was lawfully working at the premises known as Lehigh Heidelberg Cement Group Plant 3, Nazareth, PA 18064 (the "Subject Premises").

2. Plaintiff, Vincenzo DeNisi, was just thirty years old at the time he suffered this horrific injury.

II. PARTIES

3. Plaintiff, Vincenzo DeNisi (hereinafter "Plaintiff"), is an adult individual who resides at 5884 Portland Drive, Bath, PA 18014.

4. Defendant, SmitHahn Company, Inc. d/b/a SmitHahn (hereinafter "SmitHahn"), is a corporation, partnership, limited partnership, incorporated association, unincorporated association, limited liability corporation, limited liability partnership or other business entity organized and existing under the laws of Pennsylvania with a primary place of business located at 836 E. North St., Bethlehem, Pa, 18016.

5. At all times mentioned herein, Defendant, SmitHahn, purposely established significant contacts in Pennsylvania, has carried out, and continues to carry out, substantial, continuous, and systematic activities and business in the Commonwealth of Pennsylvania and has regularly conducted business in Northampton County.

6. At all times mentioned herein, Defendant, SmitHahn, acted individually and/or by and through its employees, servants, and actual, apparent, and/or ostensible agents, acting within the course and scope of their employment, service, and/or agency.

7. Defendant, Donald L. Keeney General Contractors, Inc. (hereinafter "Keeney"), is a corporation, partnership, limited partnership, incorporated association, unincorporated association, limited liability corporation, limited liability partnership or other business entity organized and existing under the laws of Pennsylvania with a primary place of business located at 3114 Bath Pike, Nazareth, Pa, 18064.

8. At all times mentioned herein, Defendant, Keeney, purposely established significant contacts in Pennsylvania, has carried out, and continues to carry out, substantial, continuous, and systematic activities and business in the Commonwealth of Pennsylvania.

9. At all times mentioned herein, Defendant, Keeney, acted individually and/or by and through its employees, servants, and actual, apparent, and/or ostensible agents, acting within the course and scope of their employment, service, and/or agency.

10. Defendant, Yoe Concrete Industrial Services, Inc. d/b/a Yoe Industrial Services (hereinafter "Yoe Concrete"), is a corporation, partnership, limited partnership, incorporated association, unincorporated association, limited liability corporation, limited liability partnership or other business entity organized and existing under the laws of the Commonwealth of Pennsylvania and/or a business with a primary place of business located at 435 E. Locust St., Dallastown, PA 17313.

11. At all times mentioned herein, Defendant, Yoe Concrete, purposely established significant contacts in Pennsylvania, has carried out, and continues to carry out, substantial, continuous, and systematic activities and business in the Commonwealth of Pennsylvania.

12. At all times mentioned herein, Defendant, Yoe Concrete, acted individually and/or by and through its employees, servants, and actual, apparent, and/or ostensible agents, acting within the course and scope of their employment, service, and/or agency.

13. Defendant, Yoe Industrial Services, Inc. (hereinafter "Yoe Industrial"), is a corporation, partnership, limited partnership, incorporated association, unincorporated association, limited liability corporation, limited liability partnership or other business entity organized and existing under the laws of the Commonwealth of Pennsylvania and/or a business with a primary place of business located at 435 E. Locust St., Dallastown, PA 17313.

14. At all times mentioned herein, Defendant, Yoe Industrial, purposely established significant contacts in Pennsylvania, has carried out, and continues to carry out, substantial, continuous, and systematic activities and business in the Commonwealth of Pennsylvania.

15. At all times mentioned herein, Defendant, Yoe Industrial, acted individually and/or by and through its employees, servants, and actual, apparent, and/or ostensible agents, acting within the course and scope of their employment, service, and/or agency.

16. Defendant, Lehigh Hanson, Inc. (hereinafter "Lehigh Hanson 1"), is a corporation, partnership, limited partnership, incorporated association, unincorporated association, limited liability corporation, limited liability partnership or other business entity organized and existing under the laws of the Delaware, and Incorporated in Delaware in 1984, with a registered agent for service of Corporation Service Company, 251 Little Falls Drive, Wilmington, De 19808

17. At all times mentioned herein, Defendant, Lehigh Hanson 1, purposely established significant contacts in Pennsylvania, has carried out, and continues to carry out, substantial, continuous, and systematic activities and business in the Commonwealth of Pennsylvania.

18. At all times mentioned herein, Defendant, Lehigh Hanson 1, acted individual and/or by and through its employees, servants, and actual, apparent, and/or ostensible agents, acting within the course and scope of their employment, service, and/or agency.

19. Defendant, Lehigh Hanson, Inc. 2 (hereinafter "Lehigh Hanson 2"), is a corporation, partnership, limited partnership, incorporated association, unincorporated

association, limited liability corporation, limited liability partnership or other business entity organized and existing under the laws of the Delaware, and Incorporated in Delaware in 2008, with a registered agent for service of the Corporation Trust Company, 1209 Orange St., Wilmington, De 19801.

20. At all times mentioned herein, Defendant, Lehigh Hanson 2, purposely established significant contacts in Pennsylvania, has carried out, and continues to carry out, substantial, continuous, and systematic activities and business in the Commonwealth of Pennsylvania.

21. At all times mentioned herein, Defendant, Lehigh Hanson 2, acted individual and/or by and through its employees, servants, and actual, apparent, and/or ostensible agents, acting within the course and scope of their employment, service, and/or agency.

22. Defendant, Lehigh Cement Company LLC (hereinafter "Lehigh Cement"), is a corporation, partnership, limited partnership, incorporated association, unincorporated association, limited liability corporation, limited liability partnership or other business entity organized and existing under the laws of the Delaware with a registered agent for service of the Corporation Service Company, 251 Little Falls Drive, Wilmington, De 19808.

23. At all times mentioned herein, Defendant, Lehigh Cement, purposely established significant contacts in Pennsylvania, has carried out, and continues to carry out, substantial, continuous, and systematic activities and business in the Commonwealth of Pennsylvania.

24. At all times mentioned herein, Defendant, Lehigh Cement, acted individually and/or by and through its employees, servants, and actual, apparent, and/or

ostensible agents, acting within the course and scope of their employment, service, and/or agency.

25. Defendant, Lehigh Hanson ECC, Inc. (hereinafter "Lehigh Hanson ECC") is a corporation, partnership, limited partnership, incorporated association, unincorporated association, limited liability corporation, limited liability partnership or other business entity organized and existing under the laws of the Commonwealth of Pennsylvania and/or a business with a primary place of business located at 3928 Easton-Nazareth Hwy, Nazareth, Pa 18064.

26. Defendant, Lehigh Hanson ECC's name was Essroc Cement Corp., from 1997 until 2017 at which time its name was changed to Lehigh Hanson ECC, Inc.

27. Essroc Cement Corp. was a party to a merger in 2013 with Riverton Investment Corporation, where Riverton Investment Corporation merged with and into Essroc Cement Corp., the surviving corporation.

28. On or about July 27, 2018, Defendant, Lehigh Hanson ECC, merged with and into Defendant, Lehigh Cement Company.

29. As a result of the aforesaid merger, Defendant, Lehigh Cement Company, assumed and agreed to accept any and all liabilities of Defendant, Lehigh Hanson ECC, including but not limited to personal injury tort liability for tortious acts committed by Defendant, Lehigh Hanson ECC prior to its merger with and into Defendant, Lehigh Cement Company.

30. Defendant, Lehigh Cement Company, is a successor corporation to Defendant, Lehigh Hanson ECC, by merger and is liable to the Plaintiff in damages for any

tortious acts committed by Defendant, Lehigh Hanson ECC, prior to Defendant, Lehigh Hanson ECC's, merger with and into Defendant, Lehigh Cement Company.

31. At all times mentioned herein, Defendant, Lehigh Hanson ECC, purposely established significant contacts in Pennsylvania, has carried out, and continues to carry out, substantial, continuous, and systematic activities and business in the Commonwealth of Pennsylvania.

32. At all times mentioned herein, Defendant, Lehigh Hanson ECC, acted individually and/or by and through its employees, servants, and actual, apparent, and/or ostensible agents, acting within the course and scope of their employment, service, and/or agency.

33. Defendant, Lehigh Hanson Services, LLC (hereinafter "Lehigh Hanson Services"), is a corporation organized and existing under the laws of the Delaware with a registered agent for service of the Corporation Service Company, 252 Little Falls Drive, Wilmington, De 19808.

34. At all times mentioned herein, Defendant, Lehigh Hanson Services, purposely established significant contacts in Pennsylvania, has carried out, and continues to carry out, substantial, continuous, and systematic activities and business in the Commonwealth of Pennsylvania.

35. At all times mentioned herein, Defendant, Lehigh Hanson Services, acted individually and/or by and through its employees, servants, and actual, apparent, and/or ostensible agents, acting within the course and scope of their employment, service, and/or agency.

III. FACTS

36. At all times relevant hereto, Defendants, Lehigh Hanson 1, Lehigh Hanson 2, Lehigh Hanson Services, Lehigh Hanson ECC and/or Lehigh Cement, individually and/or jointly owned, possessed, cared for, maintained, inspected, repaired, supervised, managed, operated and/or controlled the Subject Premises and all cement manufacturing being performed at the Subject Premises.

37. In the alternative, Defendants, Lehigh Hanson 1, Lehigh Hanson 2, Lehigh Hanson Services, and/or Lehigh Hanson ECC individually and/or jointly owned, possessed, cared for, maintained, inspected, repaired supervised, managed, operated and controlled the Subject Premises at all times relevant hereto, and Defendants, Lehigh Hanson 1, Lehigh Hanson 2, Lehigh Hanson Services, Lehigh Hanson ECC and/or Lehigh Cement, individually and/or jointly owned, possessed, cared for, maintained, inspected, repaired, supervised, managed, operated and/or controlled the Subject Premises and all cement manufacturing being performed at the Subject Premises at all times on or after July 27, 2018.

38. On or about July 11, 2019, Plaintiff became employed for the first time by any employer to perform work in concrete manufacturing at the Subject Premises.

39. Plaintiff was never an agent, servant workman or employee of Defendant, Lehigh Hanson ECC.

40. On or about September 13, 2019, Plaintiff was a business invitee of Defendants, Lehigh Hanson 1, Lehigh Hanson 2, Lehigh Hanson Services, Lehigh Hanson ECC and/or Lehigh Cement, lawfully working at the Subject Premises.

41. At all times relevant hereto, a fine screw conveyor machine and system, was installed at the Subject Premises, located in a trough (the "trough") in the floor of the

Premises, and including metal grates and covers supported, at some locations by support angles, over the trough (collectively referred to as the "Fine Screw").

42. At all times relevant hereto, except as otherwise set forth herein, Defendants, Lehigh Hanson 1, Lehigh Hanson 2, Lehigh Hanson Services, Lehigh Hanson ECC and/or Lehigh Cement, individually and/or jointly owned, possessed, cared for, maintained, inspected, repaired, supervised, managed, operated and/or controlled the Fine Screw.

43. In the alternative, Defendants, Lehigh Hanson 1, Lehigh Hanson 2, Lehigh Hanson Services, and Lehigh Hanson ECC individually and/or jointly owned, possessed, cared for, maintained, inspected, repaired, supervised, managed, operated and/or controlled the Fine Screw at all times relevant hereto, and Defendants, Lehigh Hanson 1, Lehigh Hanson 2, Lehigh Hanson Services, Lehigh Hanson ECC and/or Lehigh Cement, individually and/or jointly owned, possessed, cared for, maintained, inspected, repaired, supervised, managed, operated and/or controlled the Fine Screw at all times on or after July 27, 2018.

44. At all times relevant hereto, the Fine Screw included rotating blades within the trough, and when it was in operation and rotating these rotating blades created nip points, and were capable of cutting and crushing bones, flesh and tissue and causing severe injuries and death to any person ambulating at the Subject Premises whose body part entered the trough, and these moving rotating blades were accessible to pedestrians using the Subject Premises as intended and as reasonably foreseeable. (the "hazards of the Fine Screw").

45. At all times relevant hereto, all Defendants knew, or should have known, of the hazards of the Fine Screw.

46. At all times relevant hereto, in order for the Fine Screw and Subject Premises to be reasonably safe for their intended, reasonable and foreseeable uses, the Fine Screw and Subject Premises needed to include safety features, systems, and warnings to prevent pedestrians ambulating in the Subject Premises from accessing the Fine Screw while it was operating, and to prevent any part of the body of pedestrians ambulating in the Subject Premises from entering the trough and contacting the Fine Screw while it was operating.

47. At all times relevant hereto, all Defendants knew, or should have known, that in order for the Fine Screw and Subject Premises to be reasonably safe for their intended, reasonable and foreseeable uses, the Fine Screw and Subject Premises needed to include safety features, systems, and warnings to prevent pedestrians ambulating in the Subject Premises from accessing the Fine Screw when it was operating, and to prevent any part of the body of pedestrians ambulating in the Subject Premises from entering the trough and contacting the Fine Screw when it was operating.

48. At all times relevant hereto, the absence of safety features, systems and warnings to prevent pedestrian access to the Fine Screw while it was operating, and to prevent any part of the body of pedestrians ambulating in the Subject Premises from entering the trough and contacting the Fine Screw while it was operating, and any features, systems and warnings that caused or contributed to pedestrian access to the Fine Screw while it was operating, and that allowed for pedestrian's body parts to enter the trough and contact the Fine Screw while it was operating constituted dangerous and/or defective conditions of the Fine Screw and the Subject Premises (the "dangerous and/or defective conditions").

49. At all times relevant hereto, all Defendants knew, or should have known, that the absence of safety features, systems and warnings to prevent pedestrian access to the

Fine Screw while it was operating, and to prevent any part of the body of pedestrians ambulating in the Subject Premises from entering the trough and contacting the Fine Screw while it was operating, and any features, systems and warnings that caused or contributed to pedestrian access to the Fine Screw while it was operating, and that allowed for pedestrian's body parts to enter the trough and contact the Fine Screw while it was operating constituted dangerous and/or defective conditions of the Fine Screw and the Subject Premises.

50. In or about 2016, Defendant, Yoe Concrete, agreed to undertake, and did in fact, undertake duties and work at the Subject Premises, including but not limited to, the removal and replacement of the existing Fine Screw and the old drive unit with a new Fine Screw and drive unit and the installation of wet bearings, wet bearing hangers and securement plates and in doing so, to comply with the reasonable standards of care and safety established by the common law, contract, federal, state and local statutes and regulations and the industry standards of care.

51. In or about 2016, Defendant, Yoe Industrial, agreed to undertake, and did in fact, undertake duties and work at the Subject Premises, including but not limited to, the removal and replacement of the existing Fine Screw and the old drive unit with a new Fine Screw and drive unit and the installation of wet bearings, wet bearing hangers and securement plates and in doing so, to comply with the reasonable standards of care and safety established by the common law, contract, federal, state and local statutes and regulations and the industry standards of care.

52. In or about 2017, Defendant, SmithHahn agreed to undertake duties and work at the Subject Premises, including but not limited to, the removal and replacement of all grates and plates and support angles for the grates and plates for the Fine Screw, install

two new sections of Fine Screw, install one new intermediate support bearing and anchor for the Fine Screw, modify the tail casing of the Fine Screw, replace intermediate bearing number 1, align the Fine Screw intermediate bearings, provide two new mounting plates on the tail of the Fine Screw and to provide and install guards for the Fine Screw and in doing so, to comply with the reasonable standards of care and safety established by the common law, contract, federal, state and local statutes and regulations and the industry standards of care.

53. In or about 2017, Defendant, Keeney, agreed to undertake duties and work at the Subject Premises, including but not limited to, the removal of all wet bearings on the Fine Screw, to install six dry bearing on the Fine Screw and to install support angle and channel for the Fine Screw and in doing so, to comply with the reasonable standards of care and safety and safety established by the common law, contract, federal, state and local statutes and regulations and the industry standards of care.

54. At all times relevant hereto, although all Defendants were required to comply with the reasonable standards of care and safety, all Defendants failed to comply with the reasonable standards of care and safety, and Defendants created and/or failed to eliminate, warn or otherwise protect pedestrians ambulating in the Subject Premises from the hazards of the Fine Screw and the aforesaid dangerous and/or defective conditions existing of the Fine Screw and the Subject Premises.

55. At all times relevant hereto, although all Defendants knew, or should have known, that they were required to comply with the reasonable standards of care and safety, all Defendants knew, or should have known, that they failed to do so, and created and/or failed to eliminate, warn or otherwise protect pedestrians ambulating in the Subject Premises

from the hazards of the Fine Screw and the dangerous and/or defective conditions existing of the Fine Screw and the Subject Premises.

56. At all times relevant hereto, support angle or other means of support were not installed in the trough throughout the entire length of the Fine Screw to support the entire grate and grate cover located over the trough and the grate, and its cover were not entirely secured by the existing support angle or any other means of support or securement including welds or bolts.

57. At all times relevant hereto, all Defendants knew, or should have known, that support angle or other means of support were not installed throughout the entire length of the fine screw to support the grate and its cover and located over the trough and the grate and its cover were not entirely secured by the existing support angle or any other means of support or securement including welds or bolts.

58. At all times relevant hereto, pedestrians ambulated on the grate and cover above the location where the Fine Screw was in operation.

59. At all times relevant hereto, all Defendants knew, or should have known, and it was reasonably foreseeable to Defendants that pedestrians would ambulate on the grate and cover above the location where the Fine Screw was in operation.

60. On or about September 13, 2019, Plaintiff stepped on a section of grate of the Fine Screw at or about a location where the support angle or other means of support necessary to support the grate were missing and where the grate was not secured.

61. As a direct and proximate result of the hazards of the Fine Screw and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, resulting from all Defendants' failure to comply with the reasonable standards of care as set forth

herein, Plaintiff was at the subject location and the grate collapsed, causing Plaintiff to fall into the trough and into the blades of the Fine Screw, causing Plaintiff to suffer the injuries and damages more fully set forth at length below.

62. Defendants, are jointly and severally liable for the catastrophic injuries suffered by Plaintiff.

COUNT I – NEGLIGENCE

VINCENZO DeNISI V. SMITHAHN COMPANY, INC. D/B/A SMITHAHN

63. The allegations contained in the preceding paragraphs are incorporated herein as though fully set forth at length.

64. The aforesaid accident was directly, proximately, legally and substantially caused by the negligence, carelessness, gross negligence and recklessness of Defendant, SmitHahn Company, Inc. d/b/a SmitHahn, in that it, *inter alia*, did:

- a. Fail to provide a safe and secure pedestrian walkway over the trough and the Fine Screw;
- b. Fail to prohibit pedestrians from walking on the grates or covers over the trough and the Fine Screw;
- c. Fail to design the Fine Screw with appropriate guards to prevent pedestrian access to the hazards of the Fine Screw;
- d. Fail to incorporate necessary and appropriate guards to prevent pedestrian access to the hazards of the Fine Screw into the Fine Screw and Subject Premises;
- e. Fail to incorporate accessible e-stop or kill switches along the Fine Screw to allow for an individual to stop the movement of the fine screw prior to becoming entrapped, caught in, or contacting the Fine Screw;

- f. Fail to select a necessary and appropriately sized grates and plates for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- g. Fail to install the enclosure for the Fine Screw specified by the designer, manufacture and seller thereof;
- h. Fail to install into the Fine Screw or the Subject Premises sensors or similar devices that would automatically shut down the Fine Screw in the event that the grates or covers were removed, not secured or displaced;
- i. Fail to install proximity sensors or similar devices to automatically shut down the Fine Screw if a pedestrian were to approach the Fine Screw on the floor above, or step on top of the Fine Screw on the floor, grate or cover;
- j. Fail to provide Site Specific Hazard Training to Plaintiff, Plaintiff's supervisors, Plaintiff's employer and other users of the Subject Premises;
- k. Fail to inform or instruct Plaintiff, Plaintiff's employer and supervisors and users of the Subject Premises that the enclosure for the Fine Screw specified by the designer, manufacturer and seller thereof was not installed, the appropriate cover for safety, and necessary to prevent pedestrians at the Subject Premises from encountering the hazards of the Fine Screw;
- l. Fail to secure the grate and plates for the subject Fine Screw so that the grate and casing would remain intact and in placed when a pedestrian stepped upon it and not encounter the hazards of the Fine Screw;
- m. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- n. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have prevented the grate from collapsing;
- o. Cut back a section of the grate and install the grate so the grate would pass the edge of the mounting plate and extend to the edge of the bearing hanger of the Fine Screw without installing angle iron or another supporting structure to the mounting plate beneath the grate to support the grate;
- p. Fail to install a grate with a larger diameter that would not have dislodged and collapsed;

- q. Fail to provide angle support or other support for the grates and plates throughout the entirety of the fine screw, including up to the edge of and within the mounting plates securing the bearing hanger;
- r. Remove and fail to replace angle supports for the grates and plates;
- s. Remove plates previously used to secure the bearing hangers and bearings to the floor, leaving an area of grate where there were no support angles;
- t. Install bearings and bearing hangers that left an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- u. Fail to install bearings and bearing hangers that did not leave an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- v. Fail to block pedestrian access to the hazards of the Fine Screw;
- w. Fail to warn Plaintiff, Plaintiff's employer and supervisors and other users of the Subject Premises of each act or omission of Defendant set forth in the preceding subparagraphs and the serious risk of serious injury or death caused thereby, in conscious disregard of this severe risk;
- x. Create the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- y. Allow the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises to remain, when Defendant knew, or should have known of their existence;
- z. Fail to eliminate the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known of their existence;
- aa. Fail to inspect the Fine Screw and Subject Premises and discover the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known, of their existence;
- bb. Fail to issue any warning, verbal, written, placarded, audio or visual to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw

and Subject Premises, when Defendant knew, or should have known of their existence;

- cc. Fail to provide proper and adequate training and instruction to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, and the proper means and methods by which they may avoid the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- dd. Permit and allow pedestrians to walk in the area where Plaintiff's accident occurred when Defendant knew, or should have known, of the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ee. Fail to post barriers or barricades to prevent Plaintiff and others similarly situated from encountering the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ff. Fail to create, implement and enforce policies and procedures designed to prevent the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and the Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- gg. Fail to comply with Defendant's own policies and procedures and those of Plaintiff's employer and all other users of the Subject Premises designed to prevent the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- hh. Fail to conduct job or hazard analyses and evaluate the Fine Screw and Subject Premises for hazards created and existing in or about the Fine Screw and Subject Premises;

- ii. Fail to hire qualified and competent personnel to install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- jj. Fail to hire and train qualified and competent supervisors and management personnel to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and the protection of users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- kk. Fail to train Defendant's personnel in the means and methods to properly and safely install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ll. Fail to discover that Defendant's personnel were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- mm. Fail to discover that Defendant's supervisory and management personnel who were charged with the responsibility to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises were not qualified and competent to perform their duties;
- nn. Allow Defendant's personnel who Defendant knew, or should have known, were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- oo. Allow Defendant's supervisory and management personnel who Defendant knew, or should have know, were incompetent and unqualified to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- pp. Fail to adopt, enact, employ and enforce proper, adequate and comprehensive safety programs, precautions, procedures, measures and plans;

- qq. Fail to perform a comprehensive safety analysis of the Subject Premises and the subject Fine Screw, to promulgate safety rules and practices accordingly;
- rr. Fail to perform proper Safety Task Analyses and/or Job Hazard Analyses;
- ss. Fail to coordinate all work with other entities that were involved in the installation, service, repair, maintenance, care and inspection of the Fine Screw and Premises;
- tt. Fail to evaluate and/or advise of evaluating tasks for potential hazards, to minimize these hazards and timely coordinate and train the work of users of the Subject Premises in applicable safety procedures;
- uu. Fail to cease all work being performed until proper and necessary precautions could be taken to safeguard users of the Subject Premises, such as Plaintiff, in proximity to the subject Fine Screw;
- vv. Fail to take feasible, reasonable, and cost-effective precautions that would have prevented Plaintiff's serious injuries;
- ww. Violate and fail to comply with the industry standards of care that were designed to prevent, permit discovery of, protect users of the Fine Screw and Subject Premises from, and eliminate the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- xx. Violate and fail to comply with state, federal and local statutes and regulations including but not limited to: 30 C.F.R. Sections 18.61, 46.1, 46.2, 46.3, 46.4, 46.5, 46.6, 46.7, 46.8, 46.9, 46.10, 46.11, 46.12, 48.3, 48.3, 48.5, 48.6, 48.7, 48.8, 48.11, 56.3200, 56.1101, 56.11001, 56.11008, 56.11012, 56.11013, 56.11014, 56.14100, 56.14107, 56.14112, 56.18002, 56.18006; 29 C.F.R. Sections 1910.22(a), 1910.22(a)(1), 1910.22(a)(3), 1910.22(b), 1910.22(c), 1910.22(d), 1910.22(d)(1), 1910.22(d)(2), 1910.22(d)(3), 1910.22(d)(2), 1910.22(d)(3), 1910.28(a)(1), 1910.28(a)(2)(ii), 1928.28(b)(3), 1910.28(b)(3)(ii), 1910.28(b)(3)(v), 1910.28(b)(3)(v)(A), 1910.28(b)(3)(v)(B), 1910.28(b)(3)(v)(C), 1910.28(b)(6), 1910.28(b)(6)(i), 1910.29(e), 1910.29(e)(1), 1910.29(e)(2), 1910.30(a), 1910.30(a)(1), 1910.30(a)(2), 1910.30(a)(3), 1910.30(a)(3)(i), 1910.30(a)(3)(ii), 1910.176(g), 1910.212(a)(1), 1910.212(a)(2), 1910.212(a)(3), 1910.212(a)(3)(i), 1910.212(a)(3)(ii), 1910.212(a)(3)(iv)(e), 1910.144(a)(3); 1910.144(a)(3), 1910.145(a)(3), 1910.145(c)(2)(i), 1910.145(c)(2)(i), said regulations and the requirements thereof being incorporated herein by reference;
- yy. Undertake, gratuitously or for consideration, the contractual and common law duties set forth herein and breach and fail to perform said duties as set

forth herein when such failure increased the risk of harm to Plaintiff and/or where Plaintiff and his employer relied upon Defendant's performance of said duties in performing their work, in violation of their duties under various sections of the Restatement of Torts (Second) including, but not limited to, §§ 314, 324A, 324, 343, 388, 413, 414, 416, 427, 429, the elements of which are incorporated herein by reference;

zz. Negligently and carelessly force, encourage, instruct, order, recommend or suggest to users of the Subject Premises, such as Plaintiff to perform work in or around the Fine Screw.

65. As a direct and proximate result of the carelessness, negligence, gross negligence and recklessness of Defendant, SmithHahn, as set forth above, Plaintiff, Vincenzo DeNisi, suffered serious, severe, disabling and catastrophic injuries including, but not limited to above the knee amputation of Plaintiff's left leg; immense, conscious pain and suffering; severe pain, aching, throbbing, sharp and shooting pain; extensive physical therapy; stress and anxiety; scarring, disfigurement, depression, despair, despondency, anxiety, and mental and emotional pain and suffering; loss of life's pleasures, past, present and future, loss of earnings and wages and loss of earnings capacity, past, present and future; hospital, medical and rehabilitation expenses past, present and future, including medical equipment, supplies and other medical care and treatment; other psychological, psychiatric, and neurological injuries, the full extent of which are yet to be determined and some or all of which may be permanent in nature.

a. As a direct and proximate result of the conduct of Defendants, Plaintiff has in the past required, continues to require, and may in the future require, medical treatment and care, and has in the past, continues presently, and may in the future incur the cost of medicines, medical care, hospitalizations, treatment, future operations, testing, and rehabilitation and attempts to alleviate and/or cure his condition.

b. As a direct and proximate result of the conduct of Defendants, Plaintiff has in the past, and continues to suffer physical and emotional pain, disfigurement, scarring, loss of independence, mental anguish, humiliation, embarrassment, loss of well-being, inability to enjoy the normal pleasures

of life, and restrictions on his ability to engage in normal activities and pleasures of life, and other intangible losses.

- c. As a direct and proximate result of the conduct of Defendants, Plaintiff has been prevented and will be prevented in the future from performing his usual duties, activities, occupations and avocations and has suffered a loss of earning and a loss of earning capacity.

66. Defendant committed the aforesaid acts or omissions in conscious disregard of the severe risk of serious injury or death said acts or omissions presented to Plaintiff and all other users of the Subject Premises.

67. By conducting itself as described above, Defendant, SmitHahn, acted recklessly, entitling Plaintiff to recover punitive damages.

WHEREFORE, Plaintiff, Vincenzo DeNisi, demands judgment in his favor and against Defendant, SmitHahn Company, Inc. d/b/a SmitHahn, in an amount in excess of \$50,000, plus costs of suit, delay damages and punitive damages.

COUNT II – NEGLIGENCE

VINCENZO DeNISI V. DONALD L. KEENEY GENERAL CONTRACTORS, INC.

68. The allegations contained in the preceding paragraphs are incorporated herein as though fully set forth at length.

69. The aforesaid accident was directly, proximately, legally and substantially caused by the negligence, gross negligence, carelessness and recklessness of Defendant, Donald L. Keeney General Contractors, Inc., in that it, *inter alia*, did:

- a. Fail to provide a safe and secure pedestrian walkway over the trough and the Fine Screw;
- b. Fail to prohibit pedestrians from walking on the grates or covers over the trough and the Fine Screw;

- c. Fail to design the Fine Screw with appropriate guards to prevent pedestrian access to the hazards of the Fine Screw;
- d. Fail to incorporate necessary and appropriate guards to prevent pedestrian access to the hazards of the Fine Screw into the Fine Screw and Subject Premises;
- e. Fail to incorporate accessible e-stop or kill switches along the Fine Screw to allow for an individual to stop the movement of the fine screw prior to becoming entrapped, caught in, or contacting the Fine Screw;
- f. Fail to select a necessary and appropriately sized grates and plates for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- g. Fail to install the enclosure for the Fine Screw specified by the designer, manufacture and seller thereof;
- h. Fail to install into the Fine Screw or the Subject Premises sensors or similar devices that would automatically shut down the Fine Screw in the event that the grates or covers were removed, not secured or displaced;
- i. Fail to install proximity sensors or similar devices to automatically shut down the Fine Screw if a pedestrian were to approach the Fine Screw on the floor above, or step on top of the Fine Screw on the floor, grate or cover;
- j. Fail to provide Site Specific Hazard Training to Plaintiff, Plaintiff's supervisors, Plaintiff's employer and other users of the Subject Premises;
- k. Fail to inform or instruct Plaintiff, Plaintiff's employer and supervisors and users of the Subject Premises that the enclosure for the Fine Screw specified by the designer, manufacturer and seller thereof was not installed, the appropriate cover for safety, and necessary to prevent pedestrians at the Subject Premises from encountering the hazards of the Fine Screw;
- l. Fail to secure the grate and plates for the subject Fine Screw so that the grate and casing would remain intact and in placed when a pedestrian stepped upon it and not encounter the hazards of the Fine Screw;
- m. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;

- n. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have prevented the grate from collapsing;
- o. Cut back a section of the grate and install the grate so the grate would pass the edge of the mounting plate and extend to the edge of the bearing hanger of the Fine Screw without installing angle iron or another supporting structure to the mounting plate beneath the grate to support the grate;
- p. Fail to install a grate with a larger diameter that would not have dislodged and collapsed;
- q. Fail to provide angle support or other support for the grates and plates throughout the entirety of the fine screw, including up to the edge of and within the mounting plates securing the bearing hanger;
- r. Remove and fail to replace angle supports for the grates and plates;
- s. Remove plates previously used to secure the bearing hangers and bearings to the floor, leaving an area of grate where there were no support angles;
- t. Install bearings and bearing hangers that left an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- u. Fail to install bearings and bearing hangers that did not leave an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- v. Fail to block pedestrian access to the hazards of the Fine Screw;
- w. Fail to warn Plaintiff, Plaintiff's employer and supervisors and other users of the Subject Premises of each act or omission of Defendant set forth in the preceding subparagraphs and the serious risk of serious injury or death caused thereby, in conscious disregard of this severe risk;
- x. Create the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- y. Allow the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises to remain, when Defendant knew, or should have known of their existence;

- z. Fail to eliminate the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known of their existence;
- aa. Fail to inspect the Fine Screw and Subject Premises and discover the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known, of their existence;
- bb. Fail to issue any warning, verbal, written, placarded, audio or visual to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, when Defendant knew, or should have known of their existence;
- cc. Fail to provide proper and adequate training and instruction to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, and the proper means and methods by which they may avoid the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- dd. Permit and allow pedestrians to walk in the area where Plaintiff's accident occurred when Defendant knew, or should have known, of the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ee. Fail to post barriers or barricades to prevent Plaintiff and others similarly situated from encountering the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ff. Fail to create, implement and enforce policies and procedures designed to prevent the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and the Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- gg. Fail to comply with Defendant's own policies and procedures and those of Plaintiff's employer and all other users of the Subject Premises designed to

prevent the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;

- hh. Fail to conduct job or hazard analyses and evaluate the Fine Screw and Subject Premises for hazards created and existing in or about the Fine Screw and Subject Premises;
- ii. Fail to hire qualified and competent personnel to install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- jj. Fail to hire and train qualified and competent supervisors and management personnel to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and the protection of users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- kk. Fail to train Defendant's personnel in the means and methods to properly and safely install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ll. Fail to discover that Defendant's personnel were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- mm. Fail to discover that Defendant's supervisory and management personnel who were charged with the responsibility to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises were not qualified and competent to perform their duties;
- nn. Allow Defendant's personnel who Defendant knew, or should have known, were not were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;

- oo. Allow Defendant's supervisory and management personnel who Defendant knew, or should have know, were incompetent and unqualified to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- pp. Fail to adopt, enact, employ and enforce proper, adequate and comprehensive safety programs, precautions, procedures, measures and plans;
- qq. Fail to perform a comprehensive safety analysis of the Subject Premises and the subject Fine Screw, to promulgate safety rules and practices accordingly;
- rr. Fail to perform proper Safety Task Analyses and/or Job Hazard Analyses;
- ss. Fail to coordinate all work with other entities that were involved in the installation, service, repair, maintenance, care and inspection of the Fine Screw and Premises;
- tt. Fail to evaluate and/or advise of evaluating tasks for potential hazards, to minimize these hazards and timely coordinate and train the work of users of the Subject Premises in applicable safety procedures;
- uu. Fail to cease all work being performed until proper and necessary precautions could be taken to safeguard users of the Subject Premises, such as Plaintiff, in proximity to the subject Fine Screw;
- vv. Fail to take feasible, reasonable, and cost-effective precautions that would have prevented Plaintiff's serious injuries;
- ww. Violate and fail to comply with the industry standards of care that were designed to prevent, permit discovery of, protect users of the Fine Screw and Subject Premises from, and eliminate the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- xx. Violate and fail to comply with state, federal and local statutes and regulations including but not limited to: 30 C.F.R. Sections 18.61, 46.1, 46.2, 46.3, 46.4, 46.5, 46.6, 46.7, 46.8, 46.9, 46.10, 46.11, 46.12, 48.3, 48.3, 48.5, 48.6, 48.7, 48.8, 48.11, 56.3200, 56.1101, 56.11001, 56.11008, 56.11012, 56.11013, 56.11014, 56.14100, 56.14107, 56.14112, 56.18002, 56.18006; 29 C.F.R. Sections 1910.22(a), 1910.22(a)(1), 1910.22(a)(3), 1910.22(b), 1910.22(c), 1910.22(d), 1910.22(d)(1), 1910.22(d)(2), 1910.22(d)(3), 1910.22(d)(2), 1910.22(d)(3), 1910.28(a)(1), 1910.28(a)(2)(ii), 1928.28(b)(3), 1910.28(b)(3)(ii), 1910.28(b)(3)(v),

1910.28(b)(3)(v)(A), 1910.28(b)(3)(v)(B), 1910.28(b)(3)(v)(C), 1910.28(b)(6), 1910.28(b)(6)(i), 1910.29(e), 1910.29(e)(1), 1910.29(e)(2), 1910.30(a), 1910.30(a)(1), 1910.30(a)(2), 1910.30(a)(3), 1910.30(a)(3)(i), 1910.30(a)(3)(ii), 1910.176(g), 1910.212(a)(1), 1910.212(a)(2), 1910.212(a)(3), 1910.212(a)(3)(i), 1910.212(a)(3)(ii), 1910.212(a)(3)(iv)(e), 1910.144(a)(3); 1910.144(a)(3), 1910.145(a)(3), 1910.145(c)(2)(i), 1910.145(c)(2)(i), said regulations and the requirements thereof being incorporated herein by reference;

- yy. Undertake, gratuitously or for consideration, the contractual and common law duties set forth herein and breach and fail to perform said duties as set forth herein when such failure increased the risk of harm to Plaintiff and/or where Plaintiff and his employer relied upon Defendant's performance of said duties in performing their work, in violation of their duties under various sections of the Restatement of Torts (Second) including, but not limited to, §§ 314, 324A, 324, 343, 388, 413, 414, 416, 427, 429, the elements of which are incorporated herein by reference;
- zz. Negligently and carelessly force, encourage, instruct, order, recommend or suggest to users of the Subject Premises, such as Plaintiff to perform work in or around the Fine Screw.

70. As a direct and proximate result of the carelessness, negligence, gross negligence and recklessness of Defendant, Keeney, as set forth above, Plaintiff was caused to suffer the injuries and damages more fully set forth at length in Count I above.

71. Defendant committed the aforesaid acts or omissions in conscious disregard of the severe risk of serious injury or death said acts or omissions presented to Plaintiff and all other users of the Subject Premises.

72. By conducting itself as described above, Defendant, Keeney, acted recklessly, entitling Plaintiff to recover punitive damages.

WHEREFORE, Plaintiff, Vincenzo DeNisi, demands judgment in his favor and against Defendant, Donald L. Keeney General Contractors, Inc., in an amount in excess of \$50,000, plus costs of suit, delay damages and punitive damages.

COUNT III – NEGLIGENCE

VINCENZO DeNISI V. YOE CONCRETE INDUSTRIAL SERVICES, INC. D/B/A YOE INDUSTRIAL SERVICES

73. The allegations contained in the preceding paragraphs are incorporated herein as though fully set forth at length.

74. The aforesaid accident was directly, proximately, legally and substantially caused by the negligence, carelessness, gross negligence and recklessness of Defendant, Yoe Concrete Industrial Services, Inc. d/b/a Yoe Industrial Services in that it, *inter alia*, did:

- a. Fail to provide a safe and secure pedestrian walkway over the trough and the Fine Screw;
- b. Fail to prohibit pedestrians from walking on the grates or covers over the trough and the Fine Screw;
- c. Fail to design the Fine Screw with appropriate guards to prevent pedestrian access to the hazards of the Fine Screw;
- d. Fail to incorporate necessary and appropriate guards to prevent pedestrian access to the hazards of the Fine Screw into the Fine Screw and Subject Premises;
- e. Fail to incorporate accessible e-stop or kill switches along the Fine Screw to allow for an individual to stop the movement of the fine screw prior to becoming entrapped, caught in, or contacting the Fine Screw;
- f. Fail to select a necessary and appropriately sized grate and plates for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- g. Fail to install the enclosure for the Fine Screw specified by the designer, manufacture and seller thereof;

- h. Fail to install into the Fine Screw or the Subject Premises sensors or similar devices that would automatically shut down the Fine Screw in the event that the grates or covers were removed, not secured or displaced;
- i. Fail to install proximity sensors or similar devices to automatically shut down the Fine Screw if a pedestrian were to approach the Fine Screw on the floor above, or step on top of the Fine Screw on the floor, grate or cover;
- j. Fail to provide Site Specific Hazard Training to Plaintiff, Plaintiff's supervisors, Plaintiff's employer and other users of the Subject Premises;
- k. Fail to inform or instruct Plaintiff, Plaintiff's employer and supervisors and users of the Subject Premises that the enclosure for the Fine Screw specified by the designer, manufacturer and seller thereof was not installed, the appropriate cover for safety, and necessary to prevent pedestrians at the Subject Premises from encountering the hazards of the Fine Screw;
- l. Fail to secure the grate and plates for the subject Fine Screw so that the grate and casing would remain intact and in place when a pedestrian stepped upon it and not encounter the hazards of the Fine Screw;
- m. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- n. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have prevented the grate from collapsing;
- o. Cut back a section of the grate and install the grate so the grate would pass the edge of the mounting plate and extend to the edge of the bearing hanger of the Fine Screw without installing angle iron or another supporting structure to the mounting plate beneath the grate to support the grate;
- p. Fail to install a grate with a larger diameter that would not have dislodged and collapsed;
- q. Fail to provide angle support or other support for the grate and plate throughout the entirety of the fine screw, including up to the edge of and within the mounting plates securing the bearing hanger;
- r. Remove and fail to replace angle supports for the grate and plates;
- s. Remove plates previously used to secure the bearing hangers and bearings to the floor, leaving an area of grate where there were no support angles;

- t. Install bearings and bearing hangers that left an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- u. Fail to install bearings and bearing hangers that did not leave an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- v. Fail to block pedestrian access to the hazards of the Fine Screw;
- w. Fail to warn Plaintiff, Plaintiff's employer and supervisors and other users of the Subject Premises of each act or omission of Defendant set forth in the preceding subparagraphs and the serious risk of serious injury or death caused thereby, in conscious disregard of this severe risk;
- x. Create the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- y. Allow the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises to remain, when Defendant knew, or should have known of their existence;
- z. Fail to eliminate the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known of their existence;
- aa. Fail to inspect the Fine Screw and Subject Premises and discover the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known, of their existence;
- bb. Fail to issue any warning, verbal, written, placarded, audio or visual to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, when Defendant knew, or should have known of their existence;
- cc. Fail to provide proper and adequate training and instruction to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, and the proper means and methods by which they may avoid the

hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;

- dd. Permit and allow pedestrians to walk in the area where Plaintiff's accident occurred when Defendant knew, or should have known, of the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ee. Fail to post barriers or barricades to prevent Plaintiff and others similarly situated from encountering the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ff. Fail to create, implement and enforce policies and procedures designed to prevent the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and the Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- gg. Fail to comply with Defendant's own policies and procedures and those of Plaintiff's employer and all other users of the Subject Premises designed to prevent the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- hh. Fail to conduct job or hazard analyses and evaluate the Fine Screw and Subject Premises for hazards created and existing in or about the Fine Screw and Subject Premises;
- ii. Fail to hire qualified and competent personnel to install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- jj. Fail to hire and train qualified and competent supervisors and management personnel to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and the protection of users of the Subject

Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;

- kk. Fail to train Defendant's personnel in the means and methods to properly and safely install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ll. Fail to discover that Defendant's personnel were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- mm. Fail to discover that Defendant's supervisory and management personnel who were charged with the responsibility to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises were not qualified and competent to perform their duties;
- nn. Allow Defendant's personnel who Defendant knew, or should have known, were not were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- oo. Allow Defendant's supervisory and management personnel who Defendant knew, or should have know, were incompetent and unqualified to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- pp. Fail to adopt, enact, employ and enforce proper, adequate and comprehensive safety programs, precautions, procedures, measures and plans;
- qq. Fail to perform a comprehensive safety analysis of the Subject Premises and the subject Fine Screw, to promulgate safety rules and practices accordingly;
- rr. Fail to perform proper Safety Task Analyses and/or Job Hazard Analyses;
- ss. Fail to coordinate all work with other entities that were involved in the installation, service, repair, maintenance, care and inspection of the Fine Screw and Premises;

- tt. Fail to evaluate and/or advise of evaluating tasks for potential hazards, to minimize these hazards and timely coordinate and train the work of users of the Subject Premises in applicable safety procedures;
- uu. Fail to cease all work being performed until proper and necessary precautions could be taken to safeguard users of the Subject Premises, such as Plaintiff, in proximity to the subject Fine Screw;
- vv. Fail to take feasible, reasonable, and cost-effective precautions that would have prevented Plaintiff's serious injuries;
- ww. Violate and fail to comply with the industry standards of care that were designed to prevent, permit discovery of, protect users of the Fine Screw and Subject Premises from, and eliminate the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- xx. Violate and fail to comply with state, federal and local statutes and regulations including but not limited to: 30 C.F.R. Sections 18.61, 46.1, 46.2, 46.3, 46.4, 46.5, 46.6, 46.7, 46.8, 46.9, 46.10, 46.11, 46.12, 48.3, 48.3, 48.5, 48.6, 48.7, 48.8, 48.11, 56.3200, 56.1101, 56.11001, 56.11008, 56.11012, 56.11013, 56.11014, 56.14100, 56.14107, 56.14112, 56.18002, 56.18006; 29 C.F.R. Sections 1910.22(a), 1910.22(a)(1), 1910.22(a)(3), 1910.22(b), 1910.22(c), 1910.22(d), 1910.22(d)(1), 1910.22(d)(2), 1910.22(d)(3), 1910.22(d)(2), 1910.22(d)(3), 1910.28(a)(1), 1910.28(a)(2)(ii), 1928.28(b)(3), 1910.28(b)(3)(ii), 1910.28(b)(3)(v), 1910.28(b)(3)(v)(A), 1910.28(b)(3)(v)(B), 1910.28(b)(3)(v)(C), 1910.28(b)(6), 1910.28(b)(6)(i), 1910.29(e), 1910.29(e)(1), 1910.29(e)(2), 1910.30(a), 1910.30(a)(1), 1910.30(a)(2), 1910.30(a)(3), 1910.30(a)(3)(i), 1910.30(a)(3)(ii), 1910.176(g), 1910.212(a)(1), 1910.212(a)(2), 1910.212(a)(3), 1910.212(a)(3)(i), 1910.212(a)(3)(ii), 1910.212(a)(3)(iv)(e), 1910.144(a)(3); 1910.144(a)(3), 1910.145(a)(3), 1910.145(c)(2)(i), 1910.145(c)(2)(i), said regulations and the requirements thereof being incorporated herein by reference;
- yy. Undertake, gratuitously or for consideration, the contractual and common law duties set forth herein and breach and fail to perform said duties as set forth herein when such failure increased the risk of harm to Plaintiff and/or where Plaintiff and his employer relied upon Defendant's performance of said duties in performing their work, in violation of their duties under various sections of the Restatement of Torts (Second) including, but not limited to, §§ 314, 324A, 324, 343, 388, 413, 414, 416, 427, 429, the elements of which are incorporated herein by reference;

zz. Negligently and carelessly force, encourage, instruct, order, recommend or suggest to users of the Subject Premises, such as Plaintiff to perform work in or around the Fine Screw.

75. As a direct and proximate result of the carelessness, negligence, gross negligence and recklessness of Defendant, Yoe Concrete, as set forth above, Plaintiff, Vincenzo DeNisi, was caused to suffer the injuries and damages more fully set forth at length in Count I above.

76. Defendant committed the aforesaid acts or omissions in conscious disregard of the severe risk of serious injury or death said acts or omissions presented to Plaintiff and all other users of the Subject Premises.

77. By conducting itself as described above, Defendant, Yoe Concrete, acted recklessly, entitling Plaintiff to recover punitive damages.

WHEREFORE, Plaintiff, Vincenzo DeNisi, demands judgment in his favor and against Defendant, Yoe Concrete Industrial Services, Inc. d/b/a Yoe Industrial Services in an amount in excess of \$50,000, plus costs of suit, delay damages and punitive damages.

COUNT IV – NEGLIGENCE

VINCENZO DeNISI V. YOE INDUSTRIAL SERVICES, INC.

78. The allegations contained in the preceding paragraphs are incorporated herein as though fully set forth at length.

79. The aforesaid accident was directly, proximately, legally and substantially caused by the negligence, carelessness, gross negligence and recklessness of Defendant, Yoe Industrial Services, Inc. in that it, *inter alia*, did:

- a. Fail to provide a safe and secure pedestrian walkway over the trough and the Fine Screw;

- b. Fail to prohibit pedestrians from walking on the grates or covers over the trough and the Fine Screw;
- c. Fail to design the Fine Screw with appropriate guards to prevent pedestrian access to the hazards of the Fine Screw;
- d. Fail to incorporate necessary and appropriate guards to prevent pedestrian access to the hazards of the Fine Screw into the Fine Screw and Subject Premises;
- e. Fail to incorporate accessible e-stop or kill switches along the Fine Screw to allow for an individual to stop the movement of the fine screw prior to becoming entrapped, caught in, or contacting the Fine Screw;
- f. Fail to select a necessary and appropriately sized grates and plates for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- g. Fail to install the enclosure for the Fine Screw specified by the designer, manufacture and seller thereof;
- h. Fail to install into the Fine Screw or the Subject Premises sensors or similar devices that would automatically shut down the Fine Screw in the event that the grates or covers were removed, not secured or displaced;
- i. Fail to install proximity sensors or similar devices to automatically shut down the Fine Screw if a pedestrian were to approach the Fine Screw on the floor above, or step on top of the Fine Screw on the floor, grate or cover;
- j. Fail to provide Site Specific Hazard Training to Plaintiff, Plaintiff's supervisors, Plaintiff's employer and other users of the Subject Premises;
- k. Fail to inform or instruct Plaintiff, Plaintiff's employer and supervisors and users of the Subject Premises that the enclosure for the Fine Screw specified by the designer, manufacturer and seller thereof was not installed, the appropriate cover for safety, and necessary to prevent pedestrians at the Subject Premises from encountering the hazards of the Fine Screw;
- l. Fail to secure the grate and plates for the subject Fine Screw so that the grate and casing would remain intact and in placed when a pedestrian stepped upon it and not encounter the hazards of the Fine Screw;
- m. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;

- n. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have prevented the grate from collapsing;
- o. Cut back a section of the grate and install the grate so the grate would pass the edge of the mounting plate and extend to the edge of the bearing hanger of the Fine Screw without installing angle iron or another supporting structure to the mounting plate beneath the grate to support the grate;
- p. Fail to install a grate with a larger diameter that would not have dislodged and collapsed;
- q. Fail to provide angle support or other support for the grates and plates throughout the entirety of the fine screw, including up to the edge of and within the mounting plates securing the bearing hanger;
- r. Remove and fail to replace angle supports for the grates and plates;
- s. Remove plates previously used to secure the bearing hangers and bearings to the floor, leaving an area of grate where there were no support angles;
- t. Install bearings and bearing hangers that left an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- u. Fail to install bearings and bearing hangers that did not leave an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- v. Fail to block pedestrian access to the hazards of the Fine Screw;
- w. Fail to warn Plaintiff, Plaintiff's employer and supervisors and other users of the Subject Premises of each act or omission of Defendant set forth in the preceding subparagraphs and the serious risk of serious injury or death caused thereby, in conscious disregard of this severe risk;
- x. Create the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- y. Allow the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises to remain, when Defendant knew, or should have known of their existence;

- z. Fail to eliminate the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known of their existence;
- aa. Fail to inspect the Fine Screw and Subject Premises and discover the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known, of their existence;
- bb. Fail to issue any warning, verbal, written, placarded, audio or visual to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, when Defendant knew, or should have known of their existence;
- cc. Fail to provide proper and adequate training and instruction to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, and the proper means and methods by which they may avoid the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- dd. Permit and allow pedestrians to walk in the area where Plaintiff's accident occurred when Defendant knew, or should have known, of the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ee. Fail to post barriers or barricades to prevent Plaintiff and others similarly situated from encountering the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ff. Fail to create, implement and enforce policies and procedures designed to prevent the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and the Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- gg. Fail to comply with Defendant's own policies and procedures and those of Plaintiff's employer and all other users of the Subject Premises designed to

- prevent the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- hh. Fail to conduct job or hazard analyses and evaluate the Fine Screw and Subject Premises for hazards created and existing in or about the Fine Screw and Subject Premises;
 - ii. Fail to hire qualified and competent personnel to install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
 - jj. Fail to hire and train qualified and competent supervisors and management personnel to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and the protection of users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
 - kk. Fail to train Defendant's personnel in the means and methods to properly and safely install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
 - ll. Fail to discover that Defendant's personnel were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
 - mm. Fail to discover that Defendant's supervisory and management personnel who were charged with the responsibility to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises were not qualified and competent to perform their duties;
 - nn. Allow Defendant's personnel who Defendant knew, or should have known, were not were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;

- oo. Allow Defendant's supervisory and management personnel who Defendant knew, or should have know, were incompetent and unqualified to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- pp. Fail to adopt, enact, employ and enforce proper, adequate and comprehensive safety programs, precautions, procedures, measures and plans;
- qq. Fail to perform a comprehensive safety analysis of the Subject Premises and the subject Fine Screw, to promulgate safety rules and practices accordingly;
- rr. Fail to perform proper Safety Task Analyses and/or Job Hazard Analyses;
- ss. Fail to coordinate all work with other entities that were involved in the installation, service, repair, maintenance, care and inspection of the Fine Screw and Premises;
- tt. Fail to evaluate and/or advise of evaluating tasks for potential hazards, to minimize these hazards and timely coordinate and train the work of users of the Subject Premises in applicable safety procedures;
- uu. Fail to cease all work being performed until proper and necessary precautions could be taken to safeguard users of the Subject Premises, such as Plaintiff, in proximity to the subject Fine Screw;
- vv. Fail to take feasible, reasonable, and cost-effective precautions that would have prevented Plaintiff's serious injuries;
- ww. Violate and fail to comply with the industry standards of care that were designed to prevent, permit discovery of, protect users of the Fine Screw and Subject Premises from, and eliminate the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- xx. Violate and fail to comply with state, federal and local statutes and regulations including but not limited to: 30 C.F.R. Sections 18.61, 46.1, 46.2, 46.3, 46.4, 46.5, 46.6, 46.7, 46.8, 46.9, 46.10, 46.11, 46.12, 48.3, 48.3, 48.5, 48.6, 48.7, 48.8, 48.11, 56.3200, 56.1101, 56.11001, 56.11008, 56.11012, 56.11013, 56.11014, 56.14100, 56.14107, 56.14112, 56.18002, 56.18006; 29 C.F.R. Sections 1910.22(a), 1910.22(a)(1), 1910.22(a)(3), 1910.22(b), 1910.22(c), 1910.22(d), 1910.22(d)(1), 1910.22(d)(2), 1910.22(d)(3), 1910.22(d)(2), 1910.22(d)(3), 1910.28(a)(1), 1910.28(a)(2)(ii), 1928.28(b)(3), 1910.28(b)(3)(ii), 1910.28(b)(3)(v),

1910.28(b)(3)(v)(A), 1910.28(b)(3)(v)(B), 1910.28(b)(3)(v)(C), 1910.28(b)(6), 1910.28(b)(6)(i), 1910.29(e), 1910.29(e)(1), 1910.29(e)(2), 1910.30(a), 1910.30(a)(1), 1910.30(a)(2), 1910.30(a)(3), 1910.30(a)(3)(i), 1910.30(a)(3)(ii), 1910.176(g), 1910.212(a)(1), 1910.212(a)(2), 1910.212(a)(3), 1910.212(a)(3)(i), 1910.212(a)(3)(ii), 1910.212(a)(3)(iv)(e), 1910.144(a)(3); 1910.144(a)(3), 1910.145(a)(3), 1910.145(c)(2)(i), 1910.145(c)(2)(i), said regulations and the requirements thereof being incorporated herein by reference;

- yy. Undertake, gratuitously or for consideration, the contractual and common law duties set forth herein and breach and fail to perform said duties as set forth herein when such failure increased the risk of harm to Plaintiff and/or where Plaintiff and his employer relied upon Defendant's performance of said duties in performing their work, in violation of their duties under various sections of the Restatement of Torts (Second) including, but not limited to, §§ 314, 324A, 324, 343, 388, 413, 414, 416, 427, 429, the elements of which are incorporated herein by reference;
- zz. Negligently and carelessly force, encourage, instruct, order, recommend or suggest to users of the Subject Premises, such as Plaintiff to perform work in or around the Fine Screw.

80. As a direct and proximate result of the carelessness, negligence, gross negligence and recklessness of Defendant, Yoe Industrial, as set forth above, Plaintiff, Vincenzo DeNisi, was caused to suffer the injuries and damages more fully set forth at length in Count I above.

81. Defendant committed the aforesaid acts or omissions in conscious disregard of the severe risk of serious injury or death said acts or omissions presented to Plaintiff and all other users of the Subject Premises.

82. By conducting itself as described above, Defendant, Yoe Industrial, acted recklessly, entitling Plaintiff to recover punitive damages.

WHEREFORE, Plaintiff, Vincenzo DeNisi, demands judgment in his favor and against Defendant, Yoe Industrial Services, Inc. in an amount in excess of \$50,000, plus costs of suit, delay damages and punitive damages.

COUNT V – NEGLIGENCE

VINCENZO DeNISI V. LEHIGH HANSON, INC. 1

83. The allegations contained in the preceding paragraphs are incorporated herein as though fully set forth at length.

84. The aforesaid accident was directly, proximately, legally and substantially caused by the negligence, carelessness, gross negligence and recklessness of Defendant, Lehigh Hanson, Inc. 1 in that it, *inter alia*, did:

- a. Fail to provide a safe and secure pedestrian walkway over the trough and the Fine Screw;
- b. Fail to prohibit pedestrians from walking on the grates or covers over the trough and the Fine Screw;
- c. Fail to design the Fine Screw with appropriate guards to prevent pedestrian access to the hazards of the Fine Screw;
- d. Fail to incorporate necessary and appropriate guards to prevent pedestrian access to the hazards of the Fine Screw into the Fine Screw and Subject Premises;
- e. Fail to incorporate accessible e-stop or kill switches along the Fine Screw to allow for an individual to stop the movement of the fine screw prior to becoming entrapped, caught in, or contacting the Fine Screw;
- f. Fail to select a necessary and appropriately sized grate and plates for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- g. Fail to install the enclosure for the Fine Screw specified by the designer, manufacture, and seller thereof;
- h. Fail to install into the Fine Screw or the Subject Premises sensors or similar devices that would automatically shut down the Fine Screw in the event that the grates or covers were removed, not secured or displaced;
- i. Fail to install proximity sensors or similar devices to automatically shut down the Fine Screw if a pedestrian were to approach the Fine Screw on the floor above, or step on top of the Fine Screw on the floor, grate or cover;

- j. Fail to provide Site Specific Hazard Training to Plaintiff, Plaintiff's supervisors, Plaintiff's employer and other users of the Subject Premises;
- k. Fail to inform or instruct Plaintiff, Plaintiff's employer and supervisors and users of the Subject Premises that the enclosure for the Fine Screw specified by the designer, manufacturer and seller thereof was not installed, the appropriate cover for safety, and necessary to prevent pedestrians at the Subject Premises from encountering the hazards of the Fine Screw;
- l. Fail to secure the grate and plates for the subject Fine Screw so that the grate and casing would remain intact and in place when a pedestrian stepped upon it and not encounter the hazards of the Fine Screw;
- m. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- n. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have prevented the grate from collapsing;
- o. Cut back a section of the grate and install the grate so the grate would pass the edge of the mounting plate and extend to the edge of the bearing hanger of the Fine Screw without installing angle iron or another supporting structure to the mounting plate beneath the grate to support the grate;
- p. Fail to install a grate with a larger diameter that would not have dislodged and collapsed;
- q. Fail to provide angle support or other support for the grate and plate throughout the entirety of the fine screw, including up to the edge of and within the mounting plates securing the bearing hanger;
- r. Remove and fail to replace angle supports for the grate and plates;
- s. Remove plates previously used to secure the bearing hangers and bearings to the floor, leaving an area of grate where there were no support angles;
- t. Install bearings and bearing hangers that left an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- u. Fail to install bearings and bearing hangers that did not leave an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;

- v. Fail to block pedestrian access to the hazards of the Fine Screw;
- w. Fail to warn Plaintiff, Plaintiff's employer and supervisors and other users of the Subject Premises of each act or omission of Defendant set forth in the preceding subparagraphs and the serious risk of serious injury or death caused thereby, in conscious disregard of this severe risk;
- x. Create the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- y. Allow the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises to remain, when Defendant knew, or should have known of their existence;
- z. Fail to eliminate the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known of their existence;
- aa. Fail to inspect the Fine Screw and Subject Premises and discover the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known, of their existence;
- bb. Fail to issue any warning, verbal, written, placarded, audio or visual to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, when Defendant knew, or should have known of their existence;
- cc. Fail to provide proper and adequate training and instruction to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, and the proper means and methods by which they may avoid the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- dd. Permit and allow pedestrians to walk in the area where Plaintiff's accident occurred when Defendant knew, or should have known, of the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises;

- ee. Fail to post barriers or barricades to prevent Plaintiff and others similarly situated from encountering the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ff. Fail to create, implement and enforce policies and procedures designed to prevent the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and the Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- gg. Fail to comply with Defendant's own policies and procedures and those of Plaintiff's employer and all other users of the Subject Premises designed to prevent the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- hh. Fail to conduct job or hazard analyses and evaluate the Fine Screw and Subject Premises for hazards created and existing in or about the Fine Screw and Subject Premises;
- ii. Fail to hire qualified and competent personnel to install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- jj. Fail to hire and train qualified and competent supervisors and management personnel to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and the protection of users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- kk. Fail to train Defendant's personnel in the means and methods to properly and safely install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;

- ll. Fail to discover that Defendant's personnel were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- mm. Fail to discover that Defendant's supervisory and management personnel who were charged with the responsibility to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises were not qualified and competent to perform their duties;
- nn. Allow Defendant's personnel who Defendant knew, or should have known, were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- oo. Allow Defendant's supervisory and management personnel who Defendant knew, or should have know, were incompetent and unqualified to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- pp. Fail to adopt, enact, employ and enforce proper, adequate and comprehensive safety programs, precautions, procedures, measures and plans;
- qq. Fail to perform a comprehensive safety analysis of the Subject Premises and the subject Fine Screw, to promulgate safety rules and practices accordingly;
- rr. Fail to perform proper Safety Task Analyses and/or Job Hazard Analyses;
- ss. Fail to coordinate all work with other entities that were involved in the installation, service, repair, maintenance, care and inspection of the Fine Screw and Premises;
- tt. Fail to evaluate and/or advise of evaluating tasks for potential hazards, to minimize these hazards and timely coordinate and train the work of users of the Subject Premises in applicable safety procedures;
- uu. Fail to cease all work from being performed until proper and necessary precautions could be taken to safeguard users of the Subject Premises, such as Plaintiff, in proximity to the subject Fine Screw;

- vv. Fail to take feasible, reasonable, and cost-effective precautions that would have prevented Plaintiff's serious injuries;
- ww. Violate and fail to comply with the industry standards of care that were designed to prevent, permit discovery of, protect users of the Fine Screw and Subject Premises from, and eliminate the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- xx. Violate and fail to comply with state, federal and local statutes and regulations including but not limited to: 30 C.F.R. Sections 18.61, 46.1, 46.2, 46.3, 46.4, 46.5, 46.6, 46.7, 46.8, 46.9, 46.10, 46.11, 46.12, 48.3, 48.3, 48.5, 48.6, 48.7, 48.8, 48.11, 56.3200, 56.1101, 56.11001, 56.11008, 56.11012, 56.11013, 56.11014, 56.14100, 56.14107, 56.14112, 56.18002, 56.18006; 29 C.F.R. Sections 1910.22(a), 1910.22(a)(1), 1910.22(a)(3), 1910.22(b), 1910.22(c), 1910.22(d), 1910.22(d)(1), 1910.22(d)(2), 1910.22(d)(3), 1910.22(d)(2), 1910.22(d)(3), 1910.28(a)(1), 1910.28(a)(2)(ii), 1928.28(b)(3), 1910.28(b)(3)(ii), 1910.28(b)(3)(v), 1910.28(b)(3)(v)(A), 1910.28(b)(3)(v)(B), 1910.28(b)(3)(v)(C), 1910.28(b)(6), 1910.28(b)(6)(i), 1910.29(e), 1910.29(e)(1), 1910.29(e)(2), 1910.30(a), 1910.30(a)(1), 1910.30(a)(2), 1910.30(a)(3), 1910.30(a)(3)(i), 1910.30(a)(3)(ii), 1910.176(g), 1910.212(a)(1), 1910.212(a)(2), 1910.212(a)(3), 1910.212(a)(3)(i), 1910.212(a)(3)(ii), 1910.212(a)(3)(iv)(e), 1910.144(a)(3); 1910.144(a)(3), 1910.145(a)(3), 1910.145(c)(2)(i), 1910.145(c)(2)(i), said regulations and the requirements thereof being incorporated herein by reference;
- yy. Undertake, gratuitously or for consideration, the contractual and common law duties set forth herein and breach and fail to perform said duties as set forth herein when such failure increased the risk of harm to Plaintiff and/or where Plaintiff and his employer relied upon Defendant's performance of said duties in performing their work, in violation of their duties under various sections of the Restatement of Torts (Second) including, but not limited to, §§ 314, 324A, 324, 343, 388, 413, 414, 416, 427, 429, the elements of which are incorporated herein by reference;
- zz. Negligently and carelessly force, encourage, instruct, order, recommend or suggest to users of the Subject Premises, such as Plaintiff to perform work in or around the Fine Screw.

85. As a direct and proximate result of the carelessness, negligence, gross negligence and recklessness of Defendant, Lehigh Hanson 1, Plaintiff was caused to suffer the injuries and damages more fully set forth at length in Count I above.

86. Defendant committed the aforesaid acts or omissions in conscious disregard of the severe risk of serious injury or death said acts or omissions presented to Plaintiff and all other users of the Subject Premises.

87. By conducting itself as described above, Defendant, Lehigh Hanson 1, acted recklessly, entitling Plaintiff to recover punitive damages.

WHEREFORE, Plaintiff, Vincenzo DeNisi, demands judgment in his favor and against Defendant, Lehigh Hanson, Inc. 1, in an amount in excess of \$50,000, plus costs of suit, delay damages and punitive damages.

COUNT VI – NEGLIGENCE

VINCENZO DeNISI V. LEHIGH HANSON, INC.

88. The allegations contained in the preceding paragraphs are incorporated herein as though fully set forth at length.

89. The aforesaid accident was directly, proximately, legally and substantially caused by the negligence, carelessness, gross negligence and recklessness of Defendant, Lehigh Hanson, Inc. 2 in that it, *inter alia*, did:

- a. Fail to provide a safe and secure pedestrian walkway over the trough and the Fine Screw;
- b. Fail to prohibit pedestrians from walking on the grates or covers over the trough and the Fine Screw;
- c. Fail to design the Fine Screw with appropriate guards to prevent pedestrian access to the hazards of the Fine Screw;
- d. Fail to incorporate necessary and appropriate guards to prevent pedestrian access to the hazards of the Fine Screw into the Fine Screw and Subject Premises;
- e. Fail to incorporate accessible e-stop or kill switches along the Fine Screw to allow for an individual to stop the movement of the fine screw prior to becoming entrapped, caught in, or contacting the Fine Screw;

- f. Fail to select a necessary and appropriately sized grate and plates for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- g. Fail to install the enclosure for the Fine Screw specified by the designer, manufacture, and seller thereof;
- h. Fail to install into the Fine Screw or the Subject Premises sensors or similar devices that would automatically shut down the Fine Screw in the event that the grates or covers were removed, not secured or displaced;
- i. Fail to install proximity sensors or similar devices to automatically shut down the Fine Screw if a pedestrian were to approach the Fine Screw on the floor above, or step on top of the Fine Screw on the floor, grate or cover;
- j. Fail to provide Site Specific Hazard Training to Plaintiff, Plaintiff's supervisors, Plaintiff's employer and other users of the Subject Premises;
- k. Fail to inform or instruct Plaintiff, Plaintiff's employer and supervisors and users of the Subject Premises that the enclosure for the Fine Screw specified by the designer, manufacturer and seller thereof was not installed, the appropriate cover for safety, and necessary to prevent pedestrians at the Subject Premises from encountering the hazards of the Fine Screw;
- l. Fail to secure the grate and plates for the subject Fine Screw so that the grate and casing would remain intact and in placed when a pedestrian stepped upon it and not encounter the hazards of the Fine Screw;
- m. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- n. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have prevented the grate from collapsing;
- o. Cut back a section of the grate and install the grate so the grate would pass the edge of the mounting plate and extend to the edge of the bearing hanger of the Fine Screw without installing angle iron or another supporting structure to the mounting plate beneath the grate to support the grate;
- p. Fail to install a grate with a larger diameter that would not have dislodged and collapsed;

- q. Fail to provide angle support or other support for the grate and plate throughout the entirety of the fine screw, including up to the edge of and within the mounting plates securing the bearing hanger;
- r. Remove and fail to replace angle supports for the grate and plates;
- s. Remove plates previously used to secure the bearing hangers and bearings to the floor, leaving an area of grate where there were no support angles;
- t. Install bearings and bearing hangers that left an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- u. Fail to install bearings and bearing hangers that did not leave an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- v. Fail to block pedestrian access to the hazards of the Fine Screw;
- w. Fail to warn Plaintiff, Plaintiff's employer and supervisors and other users of the Subject Premises of each act or omission of Defendant set forth in the preceding subparagraphs and the serious risk of serious injury or death caused thereby, in conscious disregard of this severe risk;
- x. Create the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- y. Allow the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises to remain, when Defendant knew, or should have known of their existence;
- z. Fail to eliminate the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known of their existence;
- aa. Fail to inspect the Fine Screw and Subject Premises and discover the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known, of their existence;
- bb. Fail to issue any warning, verbal, written, placarded, audio or visual to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw

and Subject Premises, when Defendant knew, or should have known of their existence;

- cc. Fail to provide proper and adequate training and instruction to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, and the proper means and methods by which they may avoid the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- dd. Permit and allow pedestrians to walk in the area where Plaintiff's accident occurred when Defendant knew, or should have known, of the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ee. Fail to post barriers or barricades to prevent Plaintiff and others similarly situated from encountering the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ff. Fail to create, implement and enforce policies and procedures designed to prevent the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and the Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- gg. Fail to comply with Defendant's own policies and procedures and those of Plaintiff's employer and all other users of the Subject Premises designed to prevent the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- hh. Fail to conduct job or hazard analyses and evaluate the Fine Screw and Subject Premises for hazards created and existing in or about the Fine Screw and Subject Premises;

- ii. Fail to hire qualified and competent personnel to install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- jj. Fail to hire and train qualified and competent supervisors and management personnel to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and the protection of users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- kk. Fail to train Defendant's personnel in the means and methods to properly and safely install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ll. Fail to discover that Defendant's personnel were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- mm. Fail to discover that Defendant's supervisory and management personnel who were charged with the responsibility to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises were not qualified and competent to perform their duties;
- nn. Allow Defendant's personnel who Defendant knew, or should have known, were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- oo. Allow Defendant's supervisory and management personnel who Defendant knew, or should have know, were incompetent and unqualified to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- pp. Fail to adopt, enact, employ and enforce proper, adequate and comprehensive safety programs, precautions, procedures, measures and plans;

- qq. Fail to perform a comprehensive safety analysis of the Subject Premises and the subject Fine Screw, to promulgate safety rules and practices accordingly;
- rr. Fail to perform proper Safety Task Analyses and/or Job Hazard Analyses;
- ss. Fail to coordinate all work with other entities that were involved in the installation, service, repair, maintenance, care and inspection of the Fine Screw and Premises;
- tt. Fail to evaluate and/or advise of evaluating tasks for potential hazards, to minimize these hazards and timely coordinate and train the work of users of the Subject Premises in applicable safety procedures;
- uu. Fail to cease all work from being performed until proper and necessary precautions could be taken to safeguard users of the Subject Premises, such as Plaintiff, in proximity to the subject Fine Screw;
- vv. Fail to take feasible, reasonable, and cost-effective precautions that would have prevented Plaintiff's serious injuries;
- ww. Violate and fail to comply with the industry standards of care that were designed to prevent, permit discovery of, protect users of the Fine Screw and Subject Premises from, and eliminate the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- xx. Violate and fail to comply with state, federal and local statutes and regulations including but not limited to: 30 C.F.R. Sections 18.61, 46.1, 46.2, 46.3, 46.4, 46.5, 46.6, 46.7, 46.8, 46.9, 46.10, 46.11, 46.12, 48.3, 48.3, 48.5, 48.6, 48.7, 48.8, 48.11, 56.3200, 56.1101, 56.11001, 56.11008, 56.11012, 56.11013, 56.11014, 56.14100, 56.14107, 56.14112, 56.18002, 56.18006; 29 C.F.R. Sections 1910.22(a), 1910.22(a)(1), 1910.22(a)(3), 1910.22(b), 1910.22(c), 1910.22(d), 1910.22(d)(1), 1910.22(d)(2), 1910.22(d)(3), 1910.22(d)(2), 1910.22(d)(3), 1910.28(a)(1), 1910.28(a)(2)(ii), 1910.28(b)(3), 1910.28(b)(3)(ii), 1910.28(b)(3)(v), 1910.28(b)(3)(v)(A), 1910.28(b)(3)(v)(B), 1910.28(b)(3)(v)(C), 1910.28(b)(6), 1910.28(b)(6)(i), 1910.29(e), 1910.29(e)(1), 1910.29(e)(2), 1910.30(a), 1910.30(a)(1), 1910.30(a)(2), 1910.30(a)(3), 1910.30(a)(3)(i), 1910.30(a)(3)(ii), 1910.176(g), 1910.212(a)(1), 1910.212(a)(2), 1910.212(a)(3), 1910.212(a)(3)(i), 1910.212(a)(3)(ii), 1910.212(a)(3)(iv)(e), 1910.144(a)(3); 1910.144(a)(3), 1910.145(a)(3), 1910.145(c)(2)(i), 1910.145(c)(2)(i), said regulations and the requirements thereof being incorporated herein by reference;
- yy. Undertake, gratuitously or for consideration, the contractual and common law duties set forth herein and breach and fail to perform said duties as set

forth herein when such failure increased the risk of harm to Plaintiff and/or where Plaintiff and his employer relied upon Defendant's performance of said duties in performing their work, in violation of their duties under various sections of the Restatement of Torts (Second) including, but not limited to, §§ 314, 324A, 324, 343, 388, 413, 414, 416, 427, 429, the elements of which are incorporated herein by reference;

zz. Negligently and carelessly force, encourage, instruct, order, recommend or suggest to users of the Subject Premises, such as Plaintiff to perform work in or around the Fine Screw.

90. As a direct and proximate result of the carelessness, negligence, gross negligence and recklessness of Defendant, Lehigh Hanson 2, Plaintiff was caused to suffer the injuries and damages more fully set forth at length in Count I above.

91. Defendant committed the aforesaid acts or omissions in conscious disregard of the severe risk of serious injury or death said acts or omissions presented to Plaintiff and all other users of the Subject Premises.

92. By conducting itself as described above, Defendant, Lehigh Hanson 2, acted recklessly, entitling Plaintiff to recover punitive damages.

WHEREFORE, Plaintiff, Vincenzo DeNisi, demands judgment in his favor and against Defendant, Lehigh Hanson, Inc. in an amount in excess of \$50,000, plus costs of suit and delay damages.

COUNT VII – NEGLIGENCE

VINCENZO DeNISI V. LEHIGH CEMENT COMPANY, LLC

93. The allegations contained in the preceding paragraphs are incorporated herein as though fully set forth at length.

94. The aforesaid accident was directly, proximately, legally and substantially caused by the negligence, carelessness, gross negligence and recklessness of Defendant, Lehigh Cement Company, LLC, in that it, *inter alia*, did:

- a. Fail to provide a safe and secure pedestrian walkway over the trough and the Fine Screw;
- b. Fail to prohibit pedestrians from walking on the grates or covers over the trough and the Fine Screw;
- c. Fail to design the Fine Screw with appropriate guards to prevent pedestrian access to the hazards of the Fine Screw;
- d. Fail to incorporate necessary and appropriate guards to prevent pedestrian access to the hazards of the Fine Screw into the Fine Screw and Subject Premises;
- e. Fail to incorporate accessible e-stop or kill switches along the Fine Screw to allow for an individual to stop the movement of the fine screw prior to becoming entrapped, caught in, or contacting the Fine Screw;
- f. Fail to select a necessary and appropriately sized grate and plates for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- g. Fail to install the enclosure for the Fine Screw specified by the designer, manufacture, and seller thereof;
- h. Fail to install into the Fine Screw or the Subject Premises sensors or similar devices that would automatically shut down the Fine Screw in the event that the grates or covers were removed, not secured or displaced;
- i. Fail to install proximity sensors or similar devices to automatically shut down the Fine Screw if a pedestrian were to approach the Fine Screw on the floor above, or step on top of the Fine Screw on the floor, grate or cover;
- j. Fail to provide Site Specific Hazard Training to Plaintiff, Plaintiff's supervisors, Plaintiff's employer and other users of the Subject Premises;
- k. Fail to inform or instruct Plaintiff, Plaintiff's employer and supervisors and users of the Subject Premises that the enclosure for the Fine Screw specified by the designer, manufacturer and seller thereof was not installed, the

appropriate cover for safety, and necessary to prevent pedestrians at the Subject Premises from encountering the hazards of the Fine Screw;

- l. Fail to secure the grate and plates for the subject Fine Screw so that the grate and casing would remain intact and in place when a pedestrian stepped upon it and not encounter the hazards of the Fine Screw;
- m. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- n. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have prevented the grate from collapsing;
- o. Cut back a section of the grate and install the grate so the grate would pass the edge of the mounting plate and extend to the edge of the bearing hanger of the Fine Screw without installing angle iron or another supporting structure to the mounting plate beneath the grate to support the grate;
- p. Fail to install a grate with a larger diameter that would not have dislodged and collapsed;
- q. Fail to provide angle support or other support for the grate and plate throughout the entirety of the fine screw, including up to the edge of and within the mounting plates securing the bearing hanger;
- r. Remove and fail to replace angle supports for the grate and plates;
- s. Remove plates previously used to secure the bearing hangers and bearings to the floor, leaving an area of grate where there were no support angles;
- t. Install bearings and bearing hangers that left an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- u. Fail to install bearings and bearing hangers that did not leave an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- v. Fail to block pedestrian access to the hazards of the Fine Screw;
- w. Fail to warn Plaintiff, Plaintiff's employer and supervisors and other users of the Subject Premises of each act or omission of Defendant set forth in the

preceding subparagraphs and the serious risk of serious injury or death caused thereby, in conscious disregard of this severe risk;

- x. Create the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- y. Allow the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises to remain, when Defendant knew, or should have known of their existence;
- z. Fail to eliminate the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known of their existence;
- aa. Fail to inspect the Fine Screw and Subject Premises and discover the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known, of their existence;
- bb. Fail to issue any warning, verbal, written, placarded, audio or visual to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, when Defendant knew, or should have known of their existence;
- cc. Fail to provide proper and adequate training and instruction to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, and the proper means and methods by which they may avoid the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- dd. Permit and allow pedestrians to walk in the area where Plaintiff's accident occurred when Defendant knew, or should have known, of the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ee. Fail to post barriers or barricades to prevent Plaintiff and others similarly situated from encountering the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;

- ff. Fail to create, implement and enforce policies and procedures designed to prevent the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and the Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- gg. Fail to comply with Defendant's own policies and procedures and those of Plaintiff's employer and all other users of the Subject Premises designed to prevent the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- hh. Fail to conduct job or hazard analyses and evaluate the Fine Screw and Subject Premises for hazards created and existing in or about the Fine Screw and Subject Premises;
- ii. Fail to hire qualified and competent personnel to install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- jj. Fail to hire and train qualified and competent supervisors and management personnel to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and the protection of users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- kk. Fail to train Defendant's personnel in the means and methods to properly and safely install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ll. Fail to discover that Defendant's personnel were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;

- mm. Fail to discover that Defendant's supervisory and management personnel who were charged with the responsibility to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises were not qualified and competent to perform their duties;
- nn. Allow Defendant's personnel who Defendant knew, or should have known, were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- oo. Allow Defendant's supervisory and management personnel who Defendant knew, or should have know, were incompetent and unqualified to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- pp. Fail to adopt, enact, employ and enforce proper, adequate and comprehensive safety programs, precautions, procedures, measures and plans;
- qq. Fail to perform a comprehensive safety analysis of the Subject Premises and the subject Fine Screw, to promulgate safety rules and practices accordingly;
- rr. Fail to perform proper Safety Task Analyses and/or Job Hazard Analyses;
- ss. Fail to coordinate all work with other entities that were involved in the installation, service, repair, maintenance, care and inspection of the Fine Screw and Premises;
- tt. Fail to evaluate and/or advise of evaluating tasks for potential hazards, to minimize these hazards and timely coordinate and train the work of users of the Subject Premises in applicable safety procedures;
- uu. Fail to cease all work from being performed until proper and necessary precautions could be taken to safeguard users of the Subject Premises, such as Plaintiff, in proximity to the subject Fine Screw;
- vv. Fail to take feasible, reasonable, and cost-effective precautions that would have prevented Plaintiff's serious injuries;

- ww. Violate and fail to comply with the industry standards of care that were designed to prevent, permit discovery of, protect users of the Fine Screw and Subject Premises from, and eliminate the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- xx. Violate and fail to comply with state, federal and local statutes and regulations including but not limited to: 30 C.F.R. Sections 18.61, 46.1, 46.2, 46.3, 46.4, 46.5, 46.6, 46.7, 46.8, 46.9, 46.10, 46.11, 46.12, 48.3, 48.3, 48.5, 48.6, 48.7, 48.8, 48.11, 56.3200, 56.1101, 56.11001, 56.11008, 56.11012, 56.11013, 56.11014, 56.14100, 56.14107, 56.14112, 56.18002, 56.18006; 29 C.F.R. Sections 1910.22(a), 1910.22(a)(1), 1910.22(a)(3), 1910.22(b), 1910.22(c), 1910.22(d), 1910.22(d)(1), 1910.22(d)(2), 1910.22(d)(3), 1910.22(d)(2), 1910.22(d)(3), 1910.28(a)(1), 1910.28(a)(2)(ii), 1928.28(b)(3), 1910.28(b)(3)(ii), 1910.28(b)(3)(v), 1910.28(b)(3)(v)(A), 1910.28(b)(3)(v)(B), 1910.28(b)(3)(v)(C), 1910.28(b)(6), 1910.28(b)(6)(i), 1910.29(e), 1910.29(e)(1), 1910.29(e)(2), 1910.30(a), 1910.30(a)(1), 1910.30(a)(2), 1910.30(a)(3), 1910.30(a)(3)(i), 1910.30(a)(3)(ii), 1910.176(g), 1910.212(a)(1), 1910.212(a)(2), 1910.212(a)(3), 1910.212(a)(3)(i), 1910.212(a)(3)(ii), 1910.212(a)(3)(iv)(e), 1910.144(a)(3); 1910.144(a)(3), 1910.145(a)(3), 1910.145(c)(2)(i), 1910.145(c)(2)(i), said regulations and the requirements thereof being incorporated herein by reference;
- yy. Undertake, gratuitously or for consideration, the contractual and common law duties set forth herein and breach and fail to perform said duties as set forth herein when such failure increased the risk of harm to Plaintiff and/or where Plaintiff and his employer relied upon Defendant's performance of said duties in performing their work, in violation of their duties under various sections of the Restatement of Torts (Second) including, but not limited to, §§ 314, 324A, 324, 343, 388, 413, 414, 416, 427, 429, the elements of which are incorporated herein by reference;
- zz. Negligently and carelessly force, encourage, instruct, order, recommend or suggest to users of the Subject Premises, such as Plaintiff to perform work in or around the Fine Screw.

95. As a direct and proximate result of the carelessness, negligence, gross negligence and recklessness of Defendant, Lehigh Cement, Plaintiff was caused to suffer the injuries and damages more fully set forth at length in Count I above.

96. Defendant committed the aforesaid acts or omissions in conscious disregard of the severe risk of serious injury or death said acts or omissions presented to Plaintiff and all other users of the Subject Premises.

97. By conducting itself as described above, Defendant, Lehigh Cement, acted recklessly, entitling Plaintiff to recover punitive damages.

WHEREFORE, Plaintiff, Vincenzo DeNisi, demands judgment in his favor and against Defendant, Lehigh Cement Company, LLC, in an amount in excess of \$50,000, plus costs of suit, delay damages and punitive damages.

COUNT VIII – NEGLIGENCE

VINCENZO DeNISI V. LEHIGH CEMENT COMPANY, LLC (AS SUCCESSOR CORPORATION TO DEFENDANT, LEHIGH HANSON ECC, INC.)

98. The allegations contained in the preceding paragraphs are incorporated herein as though fully set forth at length.

99. The aforesaid accident was directly, proximately, legally and substantially caused by the negligence, carelessness, gross negligence and recklessness of Defendant, Lehigh Hanson ECC, Inc., Defendant, Lehigh Cement's predecessor in interest as aforesaid, for whose tortious conduct Defendant is liable as a successor corporation based upon the aforesaid facts and the law, in that Defendant, Lehigh Hanson ECC, Inc., *inter alia*, did:

- a. Fail to provide a safe and secure pedestrian walkway over the trough and the Fine Screw;
- b. Fail to prohibit pedestrians from walking on the grates or covers over the trough and the Fine Screw;
- c. Fail to design the Fine Screw with appropriate guards to prevent pedestrian access to the hazards of the Fine Screw;

- d. Fail to incorporate necessary and appropriate guards to prevent pedestrian access to the hazards of the Fine Screw into the Fine Screw and Subject Premises;
- e. Fail to incorporate accessible e-stop or kill switches along the Fine Screw to allow for an individual to stop the movement of the fine screw prior to becoming entrapped, caught in, or contacting the Fine Screw;
- f. Fail to select a necessary and appropriately sized grate and plates for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- g. Fail to install the enclosure for the Fine Screw specified by the designer, manufacture, and seller thereof;
- h. Fail to install into the Fine Screw or the Subject Premises sensors or similar devices that would automatically shut down the Fine Screw in the event that the grates or covers were removed, not secured or displaced;
- i. Fail to install proximity sensors or similar devices to automatically shut down the Fine Screw if a pedestrian were to approach the Fine Screw on the floor above, or step on top of the Fine Screw on the floor, grate or cover;
- j. Fail to provide Site Specific Hazard Training to Plaintiff, Plaintiff's supervisors, Plaintiff's employer and other users of the Subject Premises;
- k. Fail to inform or instruct Plaintiff, Plaintiff's employer and supervisors and users of the Subject Premises that the enclosure for the Fine Screw specified by the designer, manufacturer and seller thereof was not installed, the appropriate cover for safety, and necessary to prevent pedestrians at the Subject Premises from encountering the hazards of the Fine Screw;
- l. Fail to secure the grate and plates for the subject Fine Screw so that the grate and casing would remain intact and in placed when a pedestrian stepped upon it and not encounter the hazards of the Fine Screw;
- m. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- n. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have prevented the grate from collapsing;

- o. Cut back a section of the grate and install the grate so the grate would pass the edge of the mounting plate and extend to the edge of the bearing hanger of the Fine Screw without installing angle iron or another supporting structure to the mounting plate beneath the grate to support the grate;
- p. Fail to install a grate with a larger diameter that would not have dislodged and collapsed;
- q. Fail to provide angle support or other support for the grate and plate throughout the entirety of the fine screw, including up to the edge of and within the mounting plates securing the bearing hanger;
- r. Remove and fail to replace angle supports for the grate and plates;
- s. Remove plates previously used to secure the bearing hangers and bearings to the floor, leaving an area of grate where there were no support angles;
- t. Install bearings and bearing hangers that left an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- u. Fail to install bearings and bearing hangers that did not leave an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- v. Fail to block pedestrian access to the hazards of the Fine Screw;
- w. Fail to warn Plaintiff, Plaintiff's employer and supervisors and other users of the Subject Premises of each act or omission of Defendant set forth in the preceding subparagraphs and the serious risk of serious injury or death caused thereby, in conscious disregard of this severe risk;
- x. Create the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- y. Allow the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises to remain, when Defendant knew, or should have known of their existence;
- z. Fail to eliminate the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known of their existence;
- aa. Fail to inspect the Fine Screw and Subject Premises and discover the existence of the hazards of the Fine Screw and Subject Premises and the

- dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known, of their existence;
- bb. Fail to issue any warning, verbal, written, placarded, audio or visual to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, when Defendant knew, or should have known of their existence;
 - cc. Fail to provide proper and adequate training and instruction to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, and the proper means and methods by which they may avoid the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
 - dd. Permit and allow pedestrians to walk in the area where Plaintiff's accident occurred when Defendant knew, or should have known, of the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises;
 - ee. Fail to post barriers or barricades to prevent Plaintiff and others similarly situated from encountering the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
 - ff. Fail to create, implement and enforce policies and procedures designed to prevent the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and the Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
 - gg. Fail to comply with Defendant's own policies and procedures and those of Plaintiff's employer and all other users of the Subject Premises designed to prevent the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw

and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;

- hh. Fail to conduct job or hazard analyses and evaluate the Fine Screw and Subject Premises for hazards created and existing in or about the Fine Screw and Subject Premises;
- ii. Fail to hire qualified and competent personnel to install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- jj. Fail to hire and train qualified and competent supervisors and management personnel to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and the protection of users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- kk. Fail to train Defendant's personnel in the means and methods to properly and safely install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ll. Fail to discover that Defendant's personnel were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- mm. Fail to discover that Defendant's supervisory and management personnel who were charged with the responsibility to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises were not qualified and competent to perform their duties;
- nn. Allow Defendant's personnel who Defendant knew, or should have known, were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- oo. Allow Defendant's supervisory and management personnel who Defendant knew, or should have know, were incompetent and unqualified to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards

and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;

- pp. Fail to adopt, enact, employ and enforce proper, adequate and comprehensive safety programs, precautions, procedures, measures and plans;
- qq. Fail to perform a comprehensive safety analysis of the Subject Premises and the subject Fine Screw, to promulgate safety rules and practices accordingly;
- rr. Fail to perform proper Safety Task Analyses and/or Job Hazard Analyses;
- ss. Fail to coordinate all work with other entities that were involved in the installation, service, repair, maintenance, care and inspection of the Fine Screw and Premises;
- tt. Fail to evaluate and/or advise of evaluating tasks for potential hazards, to minimize these hazards and timely coordinate and train the work of users of the Subject Premises in applicable safety procedures;
- uu. Fail to cease all work from being performed until proper and necessary precautions could be taken to safeguard users of the Subject Premises, such as Plaintiff, in proximity to the subject Fine Screw;
- vv. Fail to take feasible, reasonable, and cost-effective precautions that would have prevented Plaintiff's serious injuries;
- ww. Violate and fail to comply with the industry standards of care that were designed to prevent, permit discovery of, protect users of the Fine Screw and Subject Premises from, and eliminate the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- xx. Violate and fail to comply with state, federal and local statutes and regulations including but not limited to: 30 C.F.R. Sections 18.61, 46.1, 46.2, 46.3, 46.4, 46.5, 46.6, 46.7, 46.8, 46.9, 46.10, 46.11, 46.12, 48.3, 48.3, 48.5, 48.6, 48.7, 48.8, 48.11, 56.3200, 56.1101, 56.11001, 56.11008, 56.11012, 56.11013, 56.11014, 56.14100, 56.14107, 56.14112, 56.18002, 56.18006; 29 C.F.R. Sections 1910.22(a), 1910.22(a)(1), 1910.22(a)(3), 1910.22(b), 1910.22(c), 1910.22(d), 1910.22(d)(1), 1910.22(d)(2), 1910.22(d)(3), 1910.22(d)(2), 1910.22(d)(3), 1910.28(a)(1), 1910.28(a)(2)(ii), 1928.28(b)(3), 1910.28(b)(3)(ii), 1910.28(b)(3)(v), 1910.28(b)(3)(v)(A), 1910.28(b)(3)(v)(B), 1910.28(b)(3)(v)(C), 1910.28(b)(6), 1910.28(b)(6)(i), 1910.29(e), 1910.29(e)(1), 1910.29(e)(2), 1910.30(a), 1910.30(a)(1), 1910.30(a)(2), 1910.30(a)(3), 1910.30(a)(3)(i), 1910.30(a)(3)(ii), 1910.176(g), 1910.212(a)(1), 1910.212(a)(2),

1910.212(a)(3), 1910.212(a)(3)(i), 1910.212(a)(3)(ii),
1910.212(a)(3)(iv)(e), 1910.144(a)(3); 1910.144(a)(3), 1910.145(a)(3),
1910.145(c)(2)(i), 1910.145(c)(2)(i), said regulations and the requirements
thereof being incorporated herein by reference;

yy. Undertake, gratuitously or for consideration, the contractual and common law duties set forth herein and breach and fail to perform said duties as set forth herein when such failure increased the risk of harm to Plaintiff and/or where Plaintiff and his employer relied upon Defendant's performance of said duties in performing their work, in violation of their duties under various sections of the Restatement of Torts (Second) including, but not limited to, §§ 314, 324A, 324, 343, 388, 413, 414, 416, 427, 429, the elements of which are incorporated herein by reference;

zz. Negligently and carelessly force, encourage, instruct, order, recommend or suggest to users of the Subject Premises, such as Plaintiff to perform work in or around the Fine Screw.

100. Solely as a result of the carelessness, negligence, gross negligence and recklessness of Defendant's predecessor in interest as aforesaid for whose conduct Defendant is liable as a successor corporation based upon the aforesaid facts and law, Plaintiff was caused to suffer the injuries and damages more fully set forth at length in Count I above.

101. The aforesaid acts or omissions were committed in conscious disregard of the severe risk of serious injury or death said acts or omissions presented to Plaintiff and all other users of the Subject Premises.

102. By conducting itself as described above, Defendant's predecessor, Defendant, Lehigh Hanson ECC, acted recklessly, entitling Plaintiff to recover punitive damages against Defendant, Lehigh Cement.

WHEREFORE, Plaintiff, Vincenzo DeNisi, demands judgment in his favor and against Defendant, Lehigh Cement Company, LLC (as the Successor Corporation to

Defendant, Lehigh Hanson ECC, Inc.), in an amount in excess of \$50,000, plus costs of suit and delay damages.

COUNT IX – NEGLIGENCE

VINCENZO DeNISI V. LEHIGH HANSON ECC, INC.

103. The allegations contained in the preceding paragraphs are incorporated herein as though fully set forth at length.

104. The aforesaid accident was directly, proximately, legally and substantially caused by the negligence, carelessness, gross negligence and recklessness of Defendant, Lehigh Hanson ECC, Inc., in that it, *inter alia*, did:

- a. Fail to provide a safe and secure pedestrian walkway over the trough and the Fine Screw;
- b. Fail to prohibit pedestrians from walking on the grates or covers over the trough and the Fine Screw;
- c. Fail to design the Fine Screw with appropriate guards to prevent pedestrian access to the hazards of the Fine Screw;
- d. Fail to incorporate necessary and appropriate guards to prevent pedestrian access to the hazards of the Fine Screw into the Fine Screw and Subject Premises;
- e. Fail to incorporate accessible e-stop or kill switches along the Fine Screw to allow for an individual to stop the movement of the fine screw prior to becoming entrapped, caught in, or contacting the Fine Screw;
- f. Fail to select a necessary and appropriately sized grate and plates for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- g. Fail to install the enclosure for the Fine Screw specified by the designer, manufacture, and seller thereof;
- h. Fail to install into the Fine Screw or the Subject Premises sensors or similar devices that would automatically shut down the Fine Screw in the event that the grates or covers were removed, not secured or displaced;

- i. Fail to install proximity sensors or similar devices to automatically shut down the Fine Screw if a pedestrian were to approach the Fine Screw on the floor above, or step on top of the Fine Screw on the floor, grate or cover;
- j. Fail to provide Site Specific Hazard Training to Plaintiff, Plaintiff's supervisors, Plaintiff's employer and other users of the Subject Premises;
- k. Fail to inform or instruct Plaintiff, Plaintiff's employer and supervisors and users of the Subject Premises that the enclosure for the Fine Screw specified by the designer, manufacturer and seller thereof was not installed, the appropriate cover for safety, and necessary to prevent pedestrians at the Subject Premises from encountering the hazards of the Fine Screw;
- l. Fail to secure the grate and plates for the subject Fine Screw so that the grate and casing would remain intact and in place when a pedestrian stepped upon it and not encounter the hazards of the Fine Screw;
- m. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- n. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have prevented the grate from collapsing;
- o. Cut back a section of the grate and install the grate so the grate would pass the edge of the mounting plate and extend to the edge of the bearing hanger of the Fine Screw without installing angle iron or another supporting structure to the mounting plate beneath the grate to support the grate;
- p. Fail to install a grate with a larger diameter that would not have dislodged and collapsed;
- q. Fail to provide angle support or other support for the grate and plate throughout the entirety of the fine screw, including up to the edge of and within the mounting plates securing the bearing hanger;
- r. Remove and fail to replace angle supports for the grate and plates;
- s. Remove plates previously used to secure the bearing hangers and bearings to the floor, leaving an area of grate where there were no support angles;

- t. Install bearings and bearing hangers that left an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- u. Fail to install bearings and bearing hangers that did not leave an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- v. Fail to block pedestrian access to the hazards of the Fine Screw;
- w. Fail to warn Plaintiff, Plaintiff's employer and supervisors and other users of the Subject Premises of each act or omission of Defendant set forth in the preceding subparagraphs and the serious risk of serious injury or death caused thereby, in conscious disregard of this severe risk;
- x. Create the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- y. Allow the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises to remain, when Defendant knew, or should have known of their existence;
- z. Fail to eliminate the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known of their existence;
- aa. Fail to inspect the Fine Screw and Subject Premises and discover the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known, of their existence;
- bb. Fail to issue any warning, verbal, written, placarded, audio or visual to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, when Defendant knew, or should have known of their existence;
- cc. Fail to provide proper and adequate training and instruction to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, and the proper means and methods by which they may avoid the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;

- dd. Permit and allow pedestrians to walk in the area where Plaintiff's accident occurred when Defendant knew, or should have known, of the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ee. Fail to post barriers or barricades to prevent Plaintiff and others similarly situated from encountering the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ff. Fail to create, implement and enforce policies and procedures designed to prevent the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and the Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- gg. Fail to comply with Defendant's own policies and procedures and those of Plaintiff's employer and all other users of the Subject Premises designed to prevent the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
- hh. Fail to conduct job or hazard analyses and evaluate the Fine Screw and Subject Premises for hazards created and existing in or about the Fine Screw and Subject Premises;
- ii. Fail to hire qualified and competent personnel to install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- jj. Fail to hire and train qualified and competent supervisors and management personnel to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and the protection of users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;

- kk. Fail to train Defendant's personnel in the means and methods to properly and safely install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ll. Fail to discover that Defendant's personnel were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- mm. Fail to discover that Defendant's supervisory and management personnel who were charged with the responsibility to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises were not qualified and competent to perform their duties;
- nn. Allow Defendant's personnel who Defendant knew, or should have known, were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- oo. Allow Defendant's supervisory and management personnel who Defendant knew, or should have know, were incompetent and unqualified to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- pp. Fail to adopt, enact, employ and enforce proper, adequate and comprehensive safety programs, precautions, procedures, measures and plans;
- qq. Fail to perform a comprehensive safety analysis of the Subject Premises and the subject Fine Screw, to promulgate safety rules and practices accordingly;
- rr. Fail to perform proper Safety Task Analyses and/or Job Hazard Analyses;
- ss. Fail to coordinate all work with other entities that were involved in the installation, service, repair, maintenance, care and inspection of the Fine Screw and Premises;

- tt. Fail to evaluate and/or advise of evaluating tasks for potential hazards, to minimize these hazards and timely coordinate and train the work of users of the Subject Premises in applicable safety procedures;
- uu. Fail to cease all work from being performed until proper and necessary precautions could be taken to safeguard users of the Subject Premises, such as Plaintiff, in proximity to the subject Fine Screw;
- vv. Fail to take feasible, reasonable, and cost-effective precautions that would have prevented Plaintiff's serious injuries;
- ww. Violate and fail to comply with the industry standards of care that were designed to prevent, permit discovery of, protect users of the Fine Screw and Subject Premises from, and eliminate the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- xx. Violate and fail to comply with state, federal and local statutes and regulations including but not limited to: 30 C.F.R. Sections 18.61, 46.1, 46.2, 46.3, 46.4, 46.5, 46.6, 46.7, 46.8, 46.9, 46.10, 46.11, 46.12, 48.3, 48.3, 48.5, 48.6, 48.7, 48.8, 48.11, 56.3200, 56.1101, 56.11001, 56.11008, 56.11012, 56.11013, 56.11014, 56.14100, 56.14107, 56.14112, 56.18002, 56.18006; 29 C.F.R. Sections 1910.22(a), 1910.22(a)(1), 1910.22(a)(3), 1910.22(b), 1910.22(c), 1910.22(d), 1910.22(d)(1), 1910.22(d)(2), 1910.22(d)(3), 1910.22(d)(2), 1910.22(d)(3), 1910.28(a)(1), 1910.28(a)(2)(ii), 1928.28(b)(3), 1910.28(b)(3)(ii), 1910.28(b)(3)(v), 1910.28(b)(3)(v)(A), 1910.28(b)(3)(v)(B), 1910.28(b)(3)(v)(C), 1910.28(b)(6), 1910.28(b)(6)(i), 1910.29(e), 1910.29(e)(1), 1910.29(e)(2), 1910.30(a), 1910.30(a)(1), 1910.30(a)(2), 1910.30(a)(3), 1910.30(a)(3)(i), 1910.30(a)(3)(ii), 1910.176(g), 1910.212(a)(1), 1910.212(a)(2), 1910.212(a)(3), 1910.212(a)(3)(i), 1910.212(a)(3)(ii), 1910.212(a)(3)(iv)(e), 1910.144(a)(3); 1910.144(a)(3), 1910.145(a)(3), 1910.145(c)(2)(i), 1910.145(c)(2)(i), said regulations and the requirements thereof being incorporated herein by reference;
- yy. Undertake, gratuitously or for consideration, the contractual and common law duties set forth herein and breach and fail to perform said duties as set forth herein when such failure increased the risk of harm to Plaintiff and/or where Plaintiff and his employer relied upon Defendant's performance of said duties in performing their work, in violation of their duties under various sections of the Restatement of Torts (Second) including, but not limited to, §§ 314, 324A, 324, 343, 388, 413, 414, 416, 427, 429, the elements of which are incorporated herein by reference;
- zz. Negligently and carelessly force, encourage, instruct, order, recommend or suggest to users of the Subject Premises, such as Plaintiff to perform work in or around the Fine Screw.

105. As a direct and proximate result of the carelessness, negligence, gross negligence and recklessness of Defendant, Lehigh Hanson ECC, was caused to suffer the injuries and damages more fully set forth at length in Count I above.

106. Defendant committed the aforesaid acts or omissions in conscious disregard of the severe risk of serious injury or death said acts or omissions presented to Plaintiff and all other users of the Subject Premises.

107. By conducting itself as described above, Defendant, Lehigh Hanson ECC, acted recklessly, entitling Plaintiff to recover punitive damages.

WHEREFORE, Plaintiff, Vincenzo DeNisi, demands judgment in his favor and against Defendant, Lehigh Hanson ECC, Inc., in an amount in excess of \$50,000, plus costs of suit and delay damages.

COUNT X – NEGLIGENCE

VINCENZO DeNISI V. LEHIGH HANSON SERVICES, LLC

108. The allegations contained in the preceding paragraphs are incorporated herein as though fully set forth at length.

109. The aforesaid accident was directly, proximately, legally and substantially caused by the negligence, carelessness, gross negligence and recklessness of Defendant, Lehigh Hanson Services, LLC, in that it, *inter alia*, did:

- a. Fail to provide a safe and secure pedestrian walkway over the trough and the Fine Screw;
- b. Fail to prohibit pedestrians from walking on the grates or covers over the trough and the Fine Screw;
- c. Fail to design the Fine Screw with appropriate guards to prevent pedestrian access to the hazards of the Fine Screw;

- d. Fail to incorporate necessary and appropriate guards to prevent pedestrian access to the hazards of the Fine Screw into the Fine Screw and Subject Premises;
- e. Fail to incorporate accessible e-stop or kill switches along the Fine Screw to allow for an individual to stop the movement of the fine screw prior to becoming entrapped, caught in, or contacting the Fine Screw;
- f. Fail to select a necessary and appropriately sized grate and plates for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- g. Fail to install the enclosure for the Fine Screw specified by the designer, manufacture, and seller thereof;
- h. Fail to install into the Fine Screw or the Subject Premises sensors or similar devices that would automatically shut down the Fine Screw in the event that the grates or covers were removed, not secured or displaced;
- i. Fail to install proximity sensors or similar devices to automatically shut down the Fine Screw if a pedestrian were to approach the Fine Screw on the floor above, or step on top of the Fine Screw on the floor, grate or cover;
- j. Fail to provide Site Specific Hazard Training to Plaintiff, Plaintiff's supervisors, Plaintiff's employer and other users of the Subject Premises;
- k. Fail to inform or instruct Plaintiff, Plaintiff's employer and supervisors and users of the Subject Premises that the enclosure for the Fine Screw specified by the designer, manufacturer and seller thereof was not installed, the appropriate cover for safety, and necessary to prevent pedestrians at the Subject Premises from encountering the hazards of the Fine Screw;
- l. Fail to secure the grate and plates for the subject Fine Screw so that the grate and casing would remain intact and in place when a pedestrian stepped upon it and not encounter the hazards of the Fine Screw;
- m. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have provided the necessary and appropriate protection from the hazards of the Fine Screw;
- n. Fail to select, install and maintain an appropriately sized support angle or other support structure for the grating and covers for the subject Fine Screw that would have prevented the grate from collapsing;

- o. Cut back a section of the grate and install the grate so the grate would pass the edge of the mounting plate and extend to the edge of the bearing hanger of the Fine Screw without installing angle iron or another supporting structure to the mounting plate beneath the grate to support the grate;
- p. Fail to install a grate with a larger diameter that would not have dislodged and collapsed;
- q. Fail to provide angle support or other support for the grate and plate throughout the entirety of the fine screw, including up to the edge of and within the mounting plates securing the bearing hanger;
- r. Remove and fail to replace angle supports for the grate and plates;
- s. Remove plates previously used to secure the bearing hangers and bearings to the floor, leaving an area of grate where there were no support angles;
- t. Install bearings and bearing hangers that left an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- u. Fail to install bearings and bearing hangers that did not leave an opening where a body part of a pedestrian may enter the trough and be exposed to the hazards of the Fine Screw;
- v. Fail to block pedestrian access to the hazards of the Fine Screw;
- w. Fail to warn Plaintiff, Plaintiff's employer and supervisors and other users of the Subject Premises of each act or omission of Defendant set forth in the preceding subparagraphs and the serious risk of serious injury or death caused thereby, in conscious disregard of this severe risk;
- x. Create the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- y. Allow the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises to remain, when Defendant knew, or should have known of their existence;
- z. Fail to eliminate the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known of their existence;
- aa. Fail to inspect the Fine Screw and Subject Premises and discover the existence of the hazards of the Fine Screw and Subject Premises and the

- dangerous and/or defective conditions of the Fine Screw and Subject Premises when Defendant knew, or should have known, of their existence;
- bb. Fail to issue any warning, verbal, written, placarded, audio or visual to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, when Defendant knew, or should have known of their existence;
 - cc. Fail to provide proper and adequate training and instruction to Plaintiff, Plaintiff's employer and supervisors, and all other users of the Subject Premises of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises, and the proper means and methods by which they may avoid the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
 - dd. Permit and allow pedestrians to walk in the area where Plaintiff's accident occurred when Defendant knew, or should have known, of the existence of the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises;
 - ee. Fail to post barriers or barricades to prevent Plaintiff and others similarly situated from encountering the hazards of the Fine Screw and Subject Premises and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
 - ff. Fail to create, implement and enforce policies and procedures designed to prevent the hazards of the Fine Screw and Subject Premises and the dangerous and/or defective conditions of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and the Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;
 - gg. Fail to comply with Defendant's own policies and procedures and those of Plaintiff's employer and all other users of the Subject Premises designed to prevent the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises from existing, to discover the existence of the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises, to warn users of the Subject Premises of the existence of the dangerous and/or defective conditions and hazards of the Fine Screw

and Subject Premises, and to remedy the dangerous and/or defective conditions and hazards of the Fine Screw and Subject Premises;

- hh. Fail to conduct job or hazard analyses and evaluate the Fine Screw and Subject Premises for hazards created and existing in or about the Fine Screw and Subject Premises;
- ii. Fail to hire qualified and competent personnel to install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- jj. Fail to hire and train qualified and competent supervisors and management personnel to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and the protection of users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- kk. Fail to train Defendant's personnel in the means and methods to properly and safely install, maintain, inspect or repair the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- ll. Fail to discover that Defendant's personnel were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- mm. Fail to discover that Defendant's supervisory and management personnel who were charged with the responsibility to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises were not qualified and competent to perform their duties;
- nn. Allow Defendant's personnel who Defendant knew, or should have known, were not qualified and competent to install, maintain, inspect or repair the Fine Screw and to protect users of the Subject Premises from the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;
- oo. Allow Defendant's supervisory and management personnel who Defendant knew, or should have know, were incompetent and unqualified to properly oversee the installation, maintenance, inspection or repair of the subject Fine Screw and to protect users of the Subject Premises from the hazards

and dangerous and/or defective conditions of the Fine Screw and Subject Premises to continue to work for Defendant;

- pp. Fail to adopt, enact, employ and enforce proper, adequate and comprehensive safety programs, precautions, procedures, measures and plans;
- qq. Fail to perform a comprehensive safety analysis of the Subject Premises and the subject Fine Screw, to promulgate safety rules and practices accordingly;
- rr. Fail to perform proper Safety Task Analyses and/or Job Hazard Analyses;
- ss. Fail to coordinate all work with other entities that were involved in the installation, service, repair, maintenance, care and inspection of the Fine Screw and Premises;
- tt. Fail to evaluate and/or advise of evaluating tasks for potential hazards, to minimize these hazards and timely coordinate and train the work of users of the Subject Premises in applicable safety procedures;
- uu. Fail to cease all work from being performed until proper and necessary precautions could be taken to safeguard users of the Subject Premises, such as Plaintiff, in proximity to the subject Fine Screw;
- vv. Fail to take feasible, reasonable, and cost-effective precautions that would have prevented Plaintiff's serious injuries;
- ww. Violate and fail to comply with the industry standards of care that were designed to prevent, permit discovery of, protect users of the Fine Screw and Subject Premises from, and eliminate the hazards and dangerous and/or defective conditions of the Fine Screw and Subject Premises;
- xx. Violate and fail to comply with state, federal and local statutes and regulations including but not limited to: 30 C.F.R. Sections 18.61, 46.1, 46.2, 46.3, 46.4, 46.5, 46.6, 46.7, 46.8, 46.9, 46.10, 46.11, 46.12, 48.3, 48.3, 48.5, 48.6, 48.7, 48.8, 48.11, 56.3200, 56.1101, 56.11001, 56.11008, 56.11012, 56.11013, 56.11014, 56.14100, 56.14107, 56.14112, 56.18002, 56.18006; 29 C.F.R. Sections 1910.22(a), 1910.22(a)(1), 1910.22(a)(3), 1910.22(b), 1910.22(c), 1910.22(d), 1910.22(d)(1), 1910.22(d)(2), 1910.22(d)(3), 1910.22(d)(2), 1910.22(d)(3), 1910.28(a)(1), 1910.28(a)(2)(ii), 1928.28(b)(3), 1910.28(b)(3)(ii), 1910.28(b)(3)(v), 1910.28(b)(3)(v)(A), 1910.28(b)(3)(v)(B), 1910.28(b)(3)(v)(C), 1910.28(b)(6), 1910.28(b)(6)(i), 1910.29(e), 1910.29(e)(1), 1910.29(e)(2), 1910.30(a), 1910.30(a)(1), 1910.30(a)(2), 1910.30(a)(3), 1910.30(a)(3)(i), 1910.30(a)(3)(ii), 1910.176(g), 1910.212(a)(1), 1910.212(a)(2),

1910.212(a)(3), 1910.212(a)(3)(i), 1910.212(a)(3)(ii), 1910.212(a)(3)(iv)(e), 1910.144(a)(3); 1910.144(a)(3), 1910.145(a)(3), 1910.145(c)(2)(i), 1910.145(c)(2)(i), said regulations and the requirements thereof being incorporated herein by reference;

- yy. Undertake, gratuitously or for consideration, the contractual and common law duties set forth herein and breach and fail to perform said duties as set forth herein when such failure increased the risk of harm to Plaintiff and/or where Plaintiff and his employer relied upon Defendant's performance of said duties in performing their work, in violation of their duties under various sections of the Restatement of Torts (Second) including, but not limited to, §§ 314, 324A, 324, 343, 388, 413, 414, 416, 427, 429, the elements of which are incorporated herein by reference;
- zz. Negligently and carelessly force, encourage, instruct, order, recommend or suggest to users of the Subject Premises, such as Plaintiff to perform work in or around the Fine Screw.

110. As a direct and proximate result of the carelessness, negligence, gross negligence and recklessness of Defendant, Lehigh Hanson Services, Plaintiff was caused to suffer the injuries and damages more fully set forth at length in Count I above.


111. Defendant committed the aforesaid acts or omissions in conscious disregard of the severe risk of serious injury or death said acts or omissions presented to Plaintiff and all other users of the Subject Premises.

112. By conducting itself as described above, Defendant, Lehigh Hanson Services, acted recklessly, entitling Plaintiff to recover punitive damages.

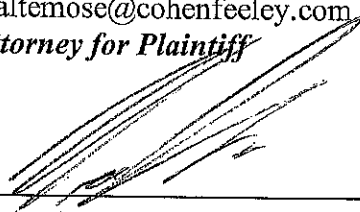
WHEREFORE, Plaintiff, Vincenzo DeNisi, demands judgment in his favor and against Defendant, Lehigh Hanson Services, LLC, in an amount in excess of \$50,000, plus costs of suit and delay damages.

COHEN, FEELEY, ALTEMOSE & RAMBO, P.C.

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VERIFICATION

The Undersigned verifies that he/she has read the attached pleading and that it is true and correct to the best of his/her knowledge, information and belief. To the extent that the contents of the pleading are that of counsel, signer has relied upon counsel in taking this Verification. Also, in the event that the pleading contains inconsistent averments, the undersigned has been unable after reasonable investigation to ascertain which of the inconsistent averments are true but that the undersigned has knowledge or information sufficient to form a belief that one of them is true.

This verification is made subject to the penalties of 18 P.S. Section 4904 relating to unsworn falsification to authorities.

X 

DATE: 4/6/21