

STATE OF NEW YORK

COUNTY OF ESSEX

SUPREME COURT

TOWN OF ESSEX and JAMES Z. MORGAN, JR., as *

SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF ESSEX, *

Plaintiffs, *

-v- *

LEWIS FAMILY FARMS, INC., *

Defendant. *

Examination Before Trial of EUGENE BENWAY regarding the
above-referenced matter was held September 18, 2007, in
Essex Town Hall, Essex, New York, before Lisa L. Tennyson,
Certified Shorthand Reporter, Registered Merit Reporter and
Notary Public in and for the State of New York; pursuant to
usual stipulations.

APPEARANCES: DARRELL W. HARP, ESQ.
Attorney for Plaintiffs
12 Rolling Brook
Clifton Park, New York 12065

BRENNAN & WHITE, LLP.
Attorneys for Defendant
163 Haviland Road
Queensbury, New York 12804
By: Joseph R. Brennan, Esq.

ORIGINAL

S T I P U L A T I O N S

It is hereby stipulated and agreed by and between
the attorneys between the respective parties hereto;
that the signing and filing of the Notary's oath be
waived;

that the formal filing of the transcript of
testimony in the office of the County Clerk be waived;

that the examining party will furnish the examined
party one copy of the testimony as taken, without
charge;

that all objections, except as to the form of the
question, be specifically reserved for the time of the
trial;

that the testimony, when transcribed, may be read
by the witness and sworn to by him/her before any Notary
Public or other officer authorized to administer oaths.

* * * * *

1 E U G E N E B E N W A Y , having been duly sworn,
2 was examined and testified as follows:

3 EXAMINATION BY

4 MR. BRENNAN:

5 Q Good afternoon, Mr. Benway.

6 A Good afternoon.

7 Q Mr. Benway, where do you live, sir?

8 A 889 Whallons Bay Road.

9 Q In the town of Essex?

10 A Yes.

11 Q You're employed by the Town of Essex in the
12 highway department?

13 A Yes.

14 Q What's your official title or job
15 classification?

16 A Heavy equipment operator.

17 Q How long have you been so employed?

18 A Two and a half years.

19 Q What is your educational background?

20 A High school diploma.

21 Q From what school?

22 A Willsboro Central.

23 Q What year did you graduate?

24 A 2002.

25 Q How old are you?

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Lisa L. Tennyson, CSR, RMR, RPR
(518) 494-7897

1 A Twenty-four.

2 Q Have you had any training or courses of any
3 type after you graduated from high school?

4 A No.

5 Q Before you began working for the Town of Essex --
6 that would have been, what? 2004 or 2005?

7 A I believe it was 2004.

8 Q 2004? Have you had any prior employment
9 history before that?

10 A Yes.

11 Q Did you have any kind of training or anything
12 in the use of heavy equipment before you began working
13 for the Town of Essex?

14 A Yes. I did temporary winging for the Town of
15 Essex for three years.

16 Q By that you act as a wingman --

17 A Yes.

18 Q -- in a snowplowing operation?

19 A Yes.

20 Q I understand now in the winter that your
21 duties are that you are actually one of the truck
22 drivers that does the plowing?

23 A Yes.

24 Q And I presume operate the other types of heavy
25 equipment?

1 A Yes.

2 Q How many other heavy equipment operators are
3 there employed in the highway department?

4 A As of now there's just myself and one other
5 one.

6 Q The other gentleman's name is --

7 A Gerry Pierce.

8 Q And you both report directly to Mr. Morgan; is
9 that correct?

10 A Yes.

11 Q During the months of the year other than
12 during the winter, you operate equipment to maintain
13 heavy equipment, maintain the roads?

14 A Yes.

15 Q Resurface roads, things of that nature?

16 A Yes.

17 Q You've been involved in the application of
18 wollastonite to various town roads?

19 A Yes.

20 Q Now, with regard to the summer months, have
21 you had occasion during the summer months to participate
22 during your employment in any work being performed on
23 Cross Road?

24 A Yes, I do.

25 Q You know where that road is?

1 A Yes.

2 Q You're familiar with the area in which -- what
3 we've been referring to as the farm roads on the Lewis
4 Family Farm are located?

5 A Yes.

6 Q Are you familiar with that area? Have you
7 done any work there on that work this summer?

8 A Not this summer, no.

9 Q You worked there last summer?

10 A Yes.

11 Q What did you do there last summer?

12 A We dug the ditches both sides.

13 Q My understanding is Cross Road runs generally
14 east and west, right?

15 A Right.

16 Q You dug ditches on both the north and south
17 sides?

18 A Yes.

19 Q You've not had any occasion to observe at any
20 time any flooding on the surface of Cross Road at any
21 time, have you?

22 A No.

23 Q Are you familiar with where there is a culvert
24 in the area depicted on --

25 A Yes.

1 Q -- Exhibits 1 and 2?

2 A The culvert is about in there (indicating).

3 Q About where the Deposition Exhibit No. 1,
4 letter "C" and "C" --

5 A Yes.

6 Q -- are located to show the culvert which runs
7 underneath Cross Road. Correct?

8 A Yes.

9 Q That's a culvert that was installed and is
10 maintained by the Town of Essex --

11 A Yes.

12 Q -- right? Now, what occasion did you have to
13 do any work in the area of the culvert? Just the
14 excavation work?

15 A Yes. Just the cleaning of the ditch.

16 Q Did you do anything to clean out the culvert?

17 A Yes. We usually take a shovel and run it
18 through the culvert and clean it out.

19 Q Was that done here?

20 A Yes.

21 Q That was in 2006?

22 A Yes.

23 Q Had the farm roads depicted in Exhibits 1 and
24 2 been constructed at that time?

25 A No, they were not.

1 Q Other than that you did no work on the
2 culvert --

3 A No.

4 Q -- correct?

5 A No.

6 Q Now, last winter you participated in plowing
7 activities as a truck driver. Correct?

8 A Yes.

9 Q And the truck you drove was what specific
10 truck?

11 A It was a -- do you want the make?

12 Q However you can identify.

13 A A single-axle International.

14 Q Do you know what the approximate weight of the
15 truck is?

16 A No, I do not.

17 Q That was equipped with a plow?

18 A Yes. Plow and wing and a sander.

19 Q Do you need a C.D.L. to operate that truck?

20 A Yes. Class B.

21 Q Class B?

22 A Yes.

23 Q And you have one?

24 A Yes.

25 Q There is a plow attached. What type of a plow

1 is that?

2 A It's a one-way Viking plow.

3 Q By "one-way," you mean as you're proceeding
4 down the road I presume it plows the snow off the road
5 to the right?

6 A Yes.

7 Q Or whatever direction you're traveling?

8 A (Witness nods head).

9 Q What's the approximate height of that plow?

10 A Maybe four and a half feet.

11 Q Is that a plow that in the upper portion of it
12 is curved?

13 A Yes.

14 Q Curved outward --

15 A Yes.

16 Q -- to allow the snow to roll --

17 A Uh-huh.

18 Q -- as it's being plowed off to surface the
19 road?

20 A Yes.

21 Q You have a wingman?

22 A Yes.

23 Q You generally have the same individual working
24 with you as a wingman?

25 A Yes. Most of the time.

1 Q And last winter who was that?

2 A It was Eric Holland.

3 Q Is he a full-time or part-time employee of the
4 highway department?

5 A He's getting hired on full time October 1st.

6 Q Last year, last winter he was part time?

7 A He was part time.

8 Q You're assigned to plow certain specific
9 roads?

10 A Yes.

11 Q And one of the roads that you're assigned to
12 is Cross Road?

13 A Yes.

14 Q Are there any other roads that you're assigned
15 to plow where the elevation of the land on both sides of
16 the road is higher than the surface of the road itself?

17 A Yeah. It's Luke's Lane.

18 Q How much higher is it on the sides of the road
19 on the land above the level of the road on --

20 A Maybe 8 inches.

21 Q Now, describe the operation as how you go
22 about plowing and what the function of the wingman is.

23 A The wingman operates the wing which is on the
24 side of the truck.

25 Q He has a separate set of controls?

1 A He has the only controls.

2 Q For the wing?

3 A For the wing.

4 Q The wing extends, what? Down from the front
5 of the truck to the right?

6 A Yes.

7 Q Extends beyond, farther out than the now?

8 A About four feet in front of the plow.

9 Q Okay. What type of controls does he have to
10 control that?

11 A Just cable controls right in front of him on
12 the passenger side.

13 Q Were there specific instructions or directions
14 you had as a plow operator that came from Mr. Morgan as
15 to how you are to conduct plowing operations?

16 A Just not to exceed over 20 miles an hour.

17 Q Is that the speed of which you attempt
18 generally to plow?

19 A Anywhere from 15 to 20.

20 Q Do you know what the length of Cross Road is?

21 A No, I do not.

22 Q Do you have an approximation?

23 A Two miles maybe.

24 Q My understanding is that the surfaces is not
25 paved, it's covered with wollastonite material.

1 Correct?

2 A Yes.

3 Q And there are ditches to the --

4 A Yes.

5 Q -- to the right and left?

6 A (Witness nods head).

7 Q And you did the plowing there each time it was
8 required during the winter of 2006/2007?

9 A Yes.

10 Q Was there ever an occasion where anyone else
11 other than yourself operated that truck during that
12 winter that did the plowing?

13 A Not that truck, no.

14 Q You plowed that road in the area --

15 A Yes.

16 Q -- depicted in Deposition Exhibit 1 and 2,
17 correct?

18 A Correct.

19 Q During the winter of 2006/2007 you had no
20 difficulty plowing that road in the area of where the
21 Lewis Family Farm roads are located, did you?

22 A At first, where the rocks are the plows would
23 hit it.

24 Q Hit the rocks?

25 A Yes.

1 Q But as far as removing snow from the road, you
2 didn't have any difficulty removing snow --

3 A No.

4 Q -- from the road, correct?

5 A Correct.

6 Q Were you involved in an accident on Cross Road
7 while plowing during the winter of 2006/2007?

8 A I went in the ditch, yes.

9 Q But it was at a location other than where the
10 farm roads are shown in Exhibit 1 and 2?

11 A It was up at the top of this hill here.

12 Q Before you got to that area --

13 A Yes.

14 Q -- correct?

15 A Yes.

16 Q You would plow that road at 15 to 20 miles per
17 hour. Correct?

18 A Yes.

19 Q If the width of that road is -- the travel
20 portion of the road is 20 feet?

21 A Right.

22 Q Correct? Could you clear that road of snow by
23 making one pass in each direction?

24 A Yes.

25 Q And then whenever the snowfall accumulated to

1 whatever the minimum amount is, then you would go back
2 through and do it; is that correct?

3 A Right.

4 Q I would assume that it would only take you a
5 few minutes to plow that road one way?

6 A Yeah. Well, about 20 minutes.

7 Q Would you turn around and go back the other
8 way?

9 A Yes. Turn around at the other end and go
10 right back.

11 Q Are there roads where in fact your wingman
12 does not use the wing plow?

13 A No.

14 Q You use it on every road?

15 A Every road.

16 Q When you talk about something hitting the
17 stones at the farm road, you're talking about the wing.
18 Correct?

19 A Yes. Yes.

20 Q Because I assume when you're driving you're
21 keeping the truck so that the plow is plowing from the
22 center of the road?

23 A Yes.

24 Q Up onto the right, correct?

25 A Yes.

1 Q So the plow wouldn't come anywhere --

2 A No.

3 Q -- near that?

4 A Just the wing.

5 Q And in fact, the plow would go over toward the
6 edge of the traveled portion of the road maybe?

7 A Right.

8 Q But not really anything beyond that. Correct?

9 A Right.

10 Q You were never caused to stop --

11 A No.

12 Q -- on that road for any reason? You plow
13 right through, clear the road off, remove all the snow
14 from the traveled portion?

15 A It depends on the snowfall. A lot of snow
16 with a single axle usually up on the hill where it
17 drifts over, never down in that area.

18 Q So you get drifting up at the top of the hill,
19 correct?

20 A Mostly.

21 Q You didn't have any drifting down in the area?

22 A It does drift on there, it depends on the wind
23 direction.

24 Q Now, you were able to plow it without the farm
25 roads interfering with your plowing in any way other

1 than the wing hitting some stones. Correct?

2 A Right.

3 Q That didn't slow you or stop you or anything.
4 Correct?

5 A No.

6 Q There was room to plow the snow off both the
7 north and south sides of the road during your normal
8 plowing activities. Correct?

9 A Correct.

10 Q Now, my understanding from the testimony
11 before is, the most severe snowfall was about three feet
12 in February, over a --

13 A Yes.

14 Q -- a couple-day period?

15 A Uh-huh.

16 Q You plowed that road that day?

17 A Yes.

18 Q And probably the next day?

19 A Yes.

20 Q And probably several times, right?

21 A Yes.

22 Q Over the total snowfall? And you never had
23 any difficulty plowing the road, correct?

24 A Near the end. Not during the storm.

25 Q What was the problem plowing the road?

1 A When we get a lot of snow, you -- you keep
2 pushing it off the same side all the time so the more
3 snow you get, the more snow that is pushing up against
4 that wall. And eventually it -- the snow will roll back
5 into the road because it -- it used to go over.

6 Q It didn't go out into the road this time, did
7 it?

8 A No.

9 Q Now, was that about a three-foot snowstorm, as
10 you recall it?

11 A Yes.

12 Q Did you have any difficulties on any roads
13 that you plowed that day?

14 A Luke's Lane.

15 Q What was the problem there?

16 A I got off the road.

17 Q So you were off the road twice that day?

18 A Yes.

19 Q The snow, even during that three-foot
20 snowstorm, was removed entirely from the entire traveled
21 portion of the road. Correct?

22 A Correct.

23 Q Have you ever used any other heavy equipment
24 other than that truck while employed by the Town of
25 Essex to remove snow from any other location?

1 A Yes.

2 Q Do you operate the grader?

3 A No.

4 Q Who operates the grader?

5 A That was David Mercury.

6 Q Is the grader routinely used in some locations
7 as part of the snow removal process of the highway
8 department?

9 A Not since I've been in.

10 Q How about front-end loader?

11 A Yes.

12 Q Do you have those?

13 A Yes.

14 Q How many of them do you have?

15 A One.

16 Q You operate that?

17 A Everybody operates it.

18 Q Is the front-end loader used in certain
19 locations --

20 A Yes.

21 Q -- to remove snow?

22 A (Witness nods head).

23 Q You during your employ and during last winter
24 you never used a front-end loader to remove snow from
25 Cross Road, did you?

1 A No. Not on Cross Road.

2 Q You didn't use the grader to remove snow from
3 Cross Road?

4 A No.

5 Q It was strictly the use of the truck that you
6 drove with the wing plow, correct?

7 A Yes.

8 Q Are there different methods that are used for
9 plowing using a truck or is it simply the same method
10 used all the time you drive the truck with the plow, the
11 wingman, drive down the road and push it off to the
12 right?

13 A That's -- same routine.

14 Q So the plowing of Cross Road was no different
15 than the method of plowing used on any other road.
16 Correct?

17 A Correct.

18 Q I think you testified that since you've been
19 employed there and since the roads have been
20 constructed, you have never seen any flooding on --

21 A That's correct.

22 Q -- Cross Road? Correct?

23 A (Witness nods head).

24 Q Had there been some severe rainstorms on
25 occasion?

1 A On occasion, yes.

2 Q And they have not resulted in flooding on
3 Cross Road --

4 A No.

5 Q -- at any location where the farm roads are
6 located. Correct?

7 A Correct.

8 MR. BRENNAN: Nothing further.

9 MR. HARP: Just a couple questions I have
10 to ask you.

11 EXAMINATION BY

12 MR. HARP:

13 Q You said that they use a grader with a plow on
14 it or wing on it or something?

15 A Wing.

16 Q If you have a heavy snowstorm, you need that
17 type of equipment?

18 A Depends on the storm really.

19 Q When you use the word "depends on the storm,"
20 what do you mean?

21 A I mean if you get 8 feet of snow, you're going
22 to need the wing on the grader. Or -- you know, a
23 massive amount of snow.

24 Q Does the wing have anything to do with how
25 much snow ends up on the road?

1 A Yes.

2 Q During 2006/2007, do you know if there were
3 any storms that came either from the north or the south?

4 A I don't know.

5 Q When that piece of equipment, the grader with
6 a wing on it, how far out would that push snow?

7 A I believe 12 feet.

8 Q Twelve feet. And whereabouts would the grader
9 be riding when it --

10 A Right on the -- same lane as the truck would
11 be.

12 Q Same lane?

13 A Right. As if you were plowing with a truck,
14 grader would be in the same lane.

15 Q Grader also?

16 A Also has a 14-foot blade underneath it.

17 Q Has a 14-foot -- so it's 26 feet tall?

18 A Well --

19 MR. BRENNAN: Objection.

20 A Under the center of the grader is 14-foot
21 blade and the wing just sticks out 12 foot --

22 Q Beyond that?

23 A Yes. It's on the back of the grader.

24 Q Is that angled or is that angled --

25 A The wing?

1 Q Yes.

2 MR. BRENNAN: Is he referring to an grader?

3 MR. HARP: Yes, on the grader I'm talking
4 about.

5 MR. BRENNAN: He's talking about a grader.

6 Q The wing on the grader. Is it straight out or
7 does -- or is it --

8 A I'm not sure. I never seen it on the grader.

9 Q During any storm where you were a wing
10 operator or the operator, did you incur any severe
11 storms?

12 A Just February storm.

13 Q I'm talking about the total time you've been
14 either a wingman or --

15 A I don't recall.

16 Q You don't recall. Okay. During 2006/2007,
17 other than hitting into the stones and like that, did
18 you experience anything different than any of the prior
19 years?

20 A The way the snow went off the road. It didn't
21 go off the road as far as it usually would go off the
22 road.

23 Q It built up along the road? You've got to
24 explain it to it us.

25 A As you're plowing down through here, you're

1 plowing -- your wing will hit this wall right here,
2 usually the snow would go off the road. Where these
3 roads are built and now it just builds up along the
4 sides of these roads. So if you get a lot of snow, it
5 will build up and you won't have anywhere to go with it.
6 Instead of going out into the field, it will catch on
7 this wall here.

8 Q From your experience as a wingman or as an
9 operator, how far out would you estimate the snow went?

10 A Anywhere from 30 to 40 feet.

11 Q From Exhibit No. 1, can you identify the ditch
12 that you dug in 2006.

13 A Yes. It's right here. Used to run down along
14 here.

15 Q You say "it used to."

16 A It's filled in with stone.

17 Q The ditch is filled in with stone?

18 A Yes. It's right here. Where it -- stone ends
19 down in here, that's the center of our ditch.

20 Q The stone is partially in the ditch --

21 A Yes.

22 Q -- that you dug?

23 A Yes.

24 Q Is that true on both sides, both the north
25 side and south side?

1 A No, not on this side.

2 Q Not on the north side?

3 A No.

4 Q How about on the south side?

5 A Yes.

6 Q Is the road complete on the north side?

7 A Which side? This side?

8 Q Yes. This side over here.

9 A I don't believe so.

10 Q During 2007 have you done any ditching work
11 along Cross Road?

12 A No, we haven't.

13 Q Did you add any wollastonite to Cross Road?

14 A Not the year 2007.

15 Q Okay.

16 A It was graded but there was no wollastonite
17 added.

18 MR. HARP: I don't have any further
19 questions.

20 BY MR. BRENNAN:

21 Q Mr. Benway, just one question about plowing
22 snow. How far the plow will push the snow or the wing
23 is also dependent upon what type of snow it is, isn't
24 it?

25 A Right. That's correct.

1 Q If you have a heavy, wet snow, as opposed to a
2 very light, fluffy snow, the heavy, wet snow doesn't get
3 pushed very far, does it?

4 A Right, no.

5 Q Okay.

6 MR. BRENNAN: Nothing further.

7 (Whereupon, stenographic record concluded)

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1 STATE OF NEW YORK
 2 COUNTY OF ESSEX SUPREME COURT
 3 *****
 4 TOWN OF ESSEX and JAMES Z. MORGAN, JR., as *
 5 SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF ESSEX, *
 6 Plaintiffs, *
 7 -v- *
 8 LEWIS FAMILY FARMS, INC., *
 9 Defendant. *

10 *****

11
 12 EUGENE BENWAY, having been duly sworn,
 13 states he has read the foregoing transcript of testimony
 14 given in the pending matter and knows the same to be
 15 true.

16
 17 
 18 EUGENE BENWAY

19
 20 Subscribed and Sworn to before me
 21 this 4th day of October 2007

22
 23 
 24 Notary Public

25

LOIS A. SAYWARD
 NOTARY PUBLIC, STATE OF NEW YORK
 REG. NO. 4953812
 QUALIFIED IN ESSEX COUNTY
 MY COMM. EXPIRES 7/31/09

C E R T I F I C A T I O N

I, Lisa L. Tennyson, Certified Shorthand Reporter,
Registered Merit Reporter and Notary Public in and for
the State of New York, hereby certify that the foregoing
26 pages of testimony taken by me to be a true and
complete computer-aided transcript to the best of my
ability.

Lisa L. Tennyson C.S.R., R.M.R.
Lisa L. Tennyson, C.S.R., R.M.R.

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PAGE - LINE ITEM

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