

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

EFRAIN HILARIO and GABINA
MARTINEZ FLORES, As
Surviving Parents of ERIK
HILARIO, Deceased, and
EFRAIN HILARIO, As Personal
Representative of the Estate
of ERIK HILARIO, Deceased,

Plaintiffs,

vs.

No. 12EV01500J

NEWELL RECYCLING OF ATLANTA,
INC.; NEWELL EQUIPMENT
LEASING, LLC; NEWELL
RECOVERY, LLC; and NEWELL
TRANSPORTATION, LLC,

Defendants.

DEPOSITION OF
EFRAIN HILARIO MARTINEZ
September 25, 2013
11:55 a.m.
200 North LaSalle Street
Chicago, Illinois
Brenda S. Tannehill, CSR, RPR, CRR
License #084-003336



1 APPEARANCES :

2 SHIVER HAMILTON, LLC

3 BY MR. ALAN J. HAMILTON

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8 Representing the Plaintiffs;

9

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11 BY MR. NEIL T. EDWARDS

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16 Representing the Defendants;

17

18 Also Present: Mr. Rodrigo Bonifaz,

19 Legal Assistant

20 Mr. Alex Vazquez, Interpreter

21 Mr. Efrain Hilario Bautista,

22 Mr. Fredy Hilario Martinez

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1 tank on the puncher and drained the tank, right?

2 A. Yes, but not on a daily basis. Just
3 sometimes when I was sent. But not all of us
4 did the job the same way, not all of us let all
5 the gas drain out first.

6 Q. Okay. You didn't do it every day, but
7 you did it about once or twice a week?

8 A. Yes.

9 Q. And my question is: At any time when
10 you were personally doing it, did you spill
11 gasoline on the ground?

12 A. I would let them be drained well, but
13 not all of us did the job the same. Not all of
14 us had the same safety. I can do the job
15 differently, you could do it differently from
16 me.

17 Q. But if the job was done right, all the
18 gas would be drained and there would be no gas
19 on the floor, true?

20 A. No. The gasoline is always going to be
21 there because the tank ends up bent. So when
22 you move the crane, even if you don't want to,
23 there's still gasoline that's going to end up
24 there anyway. And we're not talking about two
25 cars, we're talking about hundreds of cars.

1 Q. So even if you did the job right like
2 you did, there would still be some gasoline on
3 the ground; is that right?

4 A. Still, there was going to be gas
5 spilled and all the time there's going to be gas
6 there.

7 Q. So when was the first time that you
8 personally witnessed this as you were operating
9 the crane, the gas spilling on the floor?

10 A. Since the first day I started to work
11 with that.

12 Q. And that was about a year and a half
13 into the job?

14 A. That puncher was -- yes, since the
15 first day we started to work at that place was
16 when all that was seen, and that's when the
17 fires started as well.

18 Q. Okay. I'm just asking about how far
19 along you were working when you started punching
20 cars, you personally.

21 A. When I started that, I had been working
22 there for over three years.

23 Q. I appreciate that. Thanks for bearing
24 with me.

25 Did you ever complain to a supervisor

1 either formally or informally about the issue of
2 gas being on the ground during the punching
3 process?

4 A. Even if we complained, we'd have to do
5 the job. I think they weren't blind. I think
6 they also saw the gas there. They have to see
7 it as well. They see the gas that's spilling.

8 Q. Right. So is the answer to the
9 question no, that you never complained?

10 A. I did not complain.

11 Q. If you were going to complain, who
12 would you have complained to?

13 A. If I were to complain? I don't
14 understand the question.

15 Q. If you were to go to someone with a
16 complaint about safety issues, who would you
17 have gone to?

18 A. The supervisors, the supervisor.

19 Q. Like George?

20 A. That's right.

21 Q. Okay. Now, with respect to the
22 batteries sparking, when was the first time you
23 noticed that issue?

24 A. When was the first time? Well, they
25 told us that when you take the thing out of the

1 Q. Did you ever consider resigning from
2 Newell Recycling?

3 A. No.

4 Q. Did Erik ever tell you that he was
5 seeking other employment while he was working
6 there?

7 A. No.

8 Q. Did Erik ever tell you he was
9 considering resigning from his position with
10 Newell?

11 A. I can't answer that question because
12 I'm not Erik.

13 Q. Yeah, right.

14 You never became aware of that?

15 A. No.

16 Q. Did Erik ever share with you that he
17 was concerned about any safety issues?

18 A. No.

19 Q. You mentioned several concerns about
20 the puncher and the puncher area. Did that ever
21 come up in conversation with you and Erik?

22 A. No.

23 Q. Is it your understanding that Erik was
24 aware of the same kinds of safety issues, or do
25 you not have any understanding of that?

1 **A. That's something I can't answer because**
2 **I'm not Erik to be able to answer those**
3 **questions. I wasn't him, I don't know how he**
4 **thought about that.**

5 Q. Erik also worked in the area of the
6 puncher on a regular basis like you did?

7 MR. HAMILTON: Object to foundation.

8 BY MR. EDWARDS:

9 Q. Just to the extent you know.

10 **A. Yes, he also worked there.**

11 Q. And you would agree that there was gas
12 on the ground in that area all the time or
13 sometimes or very rarely?

14 **A. All the time.**

15 Q. Could you estimate how much gas there
16 was maybe not by volume unit but just was it a
17 thin layer, a thick puddle, or how it was there?

18 MR. HAMILTON: Object to form. When?

19 MR. EDWARDS: All the time, he said.

20 **THE WITNESS: All the time. It was wet**
21 **all the time.**

22 BY MR. EDWARDS:

23 Q. And if Erik worked in the area of the
24 puncher, as far as you know, he would be aware
25 that there was gasoline on the ground as well?

1 MR. HAMILTON: Object to foundation,
2 calls for speculation.

3 BY MR. EDWARDS:

4 Q. Just what do you think?

5 A. **Yes, yes, there was gas all the time.**

6 Q. And Erik was there working and would
7 know about it?

8 MR. HAMILTON: Same objection.

9 **THE WITNESS: Yes.**

10 BY MR. EDWARDS:

11 Q. I'm going to ask you a couple of
12 questions about Erik and your relationship with
13 him, and again, I know this can be a difficult
14 area so please take a break whenever you need
15 to.

16 You were Erik's older brother; is that
17 correct?

18 A. **Yes.**

19 Q. How much older are you than Erik?

20 A. **One year.**

21 Q. You and Erik were both born in Toluca,
22 Mexico?

23 A. **Yes, in Toluca, Mexico.**

24 Q. Toluca. Excuse me.

25 And you both came to America at the