

BROWN VS. SILVI, ET AL.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

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SHANIKA LAKIYAH BROWN, IND. : OCTOBER TERM, 2015
AND AS PARENT OF A.B., MINOR :
vs. : LEAD CASE
SILVI CONCRETE PRODUCTIONS, : CONSOLIDATED
INC., ET AL. : NO. 00925

- - -

CONSTRUCTURAL DYNAMICS, INC., :
T/A SILVI CONCRETE PRODUCTS, :
INC., ET AL. :
vs. : CONSOLIDATED
RICHARD E. PIERSON :
CONSTRUCTION CO., INC., ET AL. :

- - -

MCCARTHY TIRE SERVICES CO., INC. :
vs. : CONSOLIDATED
ALTA INDUSTRIAL PROPERTIES, :
INC., D/B/A SILVI CONCRETE :
OF LOGAN, INC. :

- - -

August 14, 2018
Courtroom 646 - City Hall
Philadelphia, Pennsylvania

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JURY TRIAL

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B E F O R E: THE HONORABLE LISA M. RAU, J.,
and a jury.

TRACY ALLEN, RPR
OFFICIAL COURT REPORTER

1 us out. My law clerks are not paid to
2 clean up. They are paid to do legal work.

3 So please, at the end of the
4 day, if you would help us out by cleaning
5 up the jury room so that it's nice for you
6 the next day. We will have a cleaning
7 staff coming in. Just get stuff in
8 trashcans.

9 And, finally, I want to thank
10 you again for your service, and I look
11 forward to having you for the next couple
12 months.

13 Opening statements on behalf
14 of plaintiff, Mr. Ball.

15 MR. BALL: May it please the
16 Court?

17 THE COURT: Yes.

18 MR. BALL: Good afternoon,
19 ladies and gentlemen of the jury.
20 Congratulations.

21 My name is Wesley Ball. I,
22 along with Kyle Farrar, represent Shanika
23 Brown, A.B., and Karen Thomas. A.B. is
24 also represented by Bernie Smalley, her
25 guardian at litem, an attorney.

1 attempt to get the tread out of the
2 roadway.

3 Then again, approximately 20
4 minutes later, the following 911 call is
5 placed.

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7 (Audio played for the Court
8 and jury.)

9 - - -

10 MR. BALL: I know that's very
11 difficult for Ms. Brown to hear.

12 Ladies and gentlemen, the baby
13 he was seeking about was little A.B. The
14 mother is Shanika Brown. Also involved in
15 that accident was Karen Thomas and
16 Ms. Reed, the mother and grandmother to
17 Shanika and A.B., driving the vehicle.

18 Ms. Reed will tell you that
19 she had very little, if any, time to
20 react. She came upon the tread in the
21 roadway, turned left. She missed it. She
22 turned right, back into her lane. She had
23 to turn left again to miss the guardrail
24 on the other side and just clipped with
25 the rear end of her vehicle the guardrail,

1 which caused her vehicle to do a very
2 small quarter-turn, not a full roll, just
3 a turn on the side of the vehicle.

4 Because of that, lives have
5 been changed forever, multigenerations,
6 three generations of lives.

7 So how did we get here?

8 Well, David Barrientos, who
9 you will hear from in this case, was the
10 driver of that Silvi truck.

11 Mr. Barrientos will testify
12 that he never called 911 and that he saw
13 the aftermath of this.

14 You will hear that had 911 had
15 been called by Silvi earlier, that
16 precious minutes, if not more, would have
17 been saved in hopes of preventing this.

18 So I will also begin how this
19 happened with who is involved. I will let
20 you know, over the last three years, we
21 made a deliberate attempt to go everywhere
22 we needed to, to talk to everyone we
23 needed to. We have spoken to people that
24 manufactured the tire originally. We have
25 spoken all the way to the people that

1 maintained the tire at the end and tried
2 our best to speak to everyone that had
3 hands on the tire in between them.

4 In doing that, on behalf of my
5 clients, we have brought a lawsuit against
6 Silvi Concrete for the failure of this
7 tire and the maintenance thereof, and
8 we've also brought a lawsuit against
9 McCarthy Tire. McCarthy Tire is a company
10 who retread the tire before this incident.

11 How did these defendants
12 interact?

13 In 2008, Bridgestone was the
14 original manufacturer of this tire, that
15 was when it left the assembly line.
16 Between 2008 and sometime in 2011, the
17 first life of this tire gets used up. In
18 other words, the tread gets worn down
19 at -- all the way through the first life.

20 Sometime in 2011, McCarthy
21 repurchases this tire as a stock tire, and
22 you will come to understand what a stock
23 tire is more in a little bit. But let me
24 tell you, a stock tire is a worn-out tire.
25 It is a tire that has little tread left on

1 it. It is a tire that is simply discarded
2 by someone else. And then someone such as
3 a tire jockey goes on these open markets
4 or collects someone's trash and takes it
5 and sells it to people such as McCarthy so
6 that they can take old parts, i.e., the
7 old tire, and make new tires with
8 retreads.

9 I would tell you, based upon
10 what -- the evidence you will see in the
11 case, that both of these companies are
12 responsible for this incident, and it
13 would be up to you to decide what that
14 responsibility is.

15 THE COURT: Would you pause
16 for just a moment so we could get the
17 sirens? That's a drawback in this room is
18 we will have to do that throughout the
19 course of the trial.

20 (Pause for sirens.)

21 MR. BALL: After McCarthy
22 repurchases this tire sometime in 2011, we
23 know because of the marking on the tire
24 that was retread in October of 2011 by
25 McCarthy. We know that McCarthy then sold

1 that tire they call a stock tire and then
2 sold that to a company called Pierson, a
3 concrete company. Pierson purchased that
4 in 2012.

5 In January of 2014, or around
6 about that time, Silvi purchases a lot of
7 assets from Pierson being both concrete
8 companies, and the purchase included Truck
9 118 that this tire was on and this tire.
10 That's how it got to Silvi's possession.

11 Then we know approximately two
12 months thereafter that Silvi put it into
13 use, the truck.

14 The tire failed on July 31,
15 2015.

16 Let's begin with the rule.
17 Every expert will agree that you would see
18 here, and almost every witness for Silvi
19 will agree that concrete trucks are
20 extremely dangerous.

21 THE COURT: Counsel, take that
22 down.

23 Go ahead.

24 MR. BALL: Every witness will
25 agree that the evidence will show that

1 concrete trucks are among the heaviest and
2 the most dangerous vehicles on our road,
3 and because of that, concrete trucks are
4 governed by different sets of rules and
5 regulations than our passenger cars are
6 governed by.

7 You will see there's many
8 different rules and regulations that they
9 are governed by, and they are governed by
10 different rules and regulations because as
11 the evidence will show they are dangerous
12 if not maintained in the way that they
13 need to be maintained to provide safety to
14 occupants of these vehicles and the
15 motoring public beside them.

16 Concrete trucks, everyone will
17 agree, operate on job sites.

18 MR. LEVY: I have to object,
19 never been shown these words at the top.

20 THE COURT: Can you show just
21 the diagrams without the words?

22 MR. BALL: I'm sorry, Your
23 Honor. I can't but I will go on.

24 Concrete trucks work on job
25 sites. Job sites are dangerous places.

1 Job sites are places where concrete trucks
2 and their tires pick up bolts, nails,
3 rocks, whatever else may be because these
4 trucks go where no other passenger cars
5 go. They are put under extreme,
6 heavy-duty use.

7 And because of that, we have
8 rules that they must follow in order to
9 maintain the safety of those trucks all
10 the time.

11 Let's talk about the used
12 stock tire. The evidence will show, as I
13 said earlier, this is a stock tire.
14 McCarthy and their witnesses are going to
15 refer to it as a stock tire or a used
16 tire. This, I think you will see, will
17 become a very important fact, the reason
18 being is because, as I mentioned earlier,
19 the stock tire is really nothing other
20 than a tire that has gone through a useful
21 life through someone. They used the truck
22 or tire and the tread has been worn down.

23 After that tire or the stock
24 tire is worn down, then, as I said
25 someone, such as a tire jockey -- you will

1 hear evidenced from McCarthy -- is a
2 person who goes out and buys these tires
3 that have been discarded or the trash or
4 another company buys them and then puts
5 them together in big lots, a quantity of
6 tires, then that tire jockey sells them to
7 someone like McCarthy so McCarthy could
8 retread some, throw others away, retread
9 some, throw others away.

10 And I say that because my next
11 question is, what is the history that we
12 know about that stock tire, about that
13 tire before it was put on Truck 118?

14 The evidence will show that we
15 know nothing, zero. We don't know what
16 company used it, where they used it, what
17 truck they used it on, what loads they
18 used it on, the pressures that they put it
19 at the job sites they worked at. We know
20 absolutely nothing about that tire's first
21 use. And that matters for reasons I will
22 explain in a little bit.

23 But with regards to that
24 tire's first use, you will understand the
25 evidence will show you Silvi will say on

1 the stand that tires are the second most
2 expensive thing -- or the second most
3 expensive -- second largest expense for a
4 concrete company, the first being gas.

5 So if tires are the second
6 largest expense for a concrete company, I
7 will tell you the evidence will show over
8 and over, why did someone discard that
9 tire? Was it because there was something
10 wrong with that tire and they discarded it
11 for that reason?

12 Ask yourself these questions
13 as you hear about this tire and what
14 McCarthy did to it after they purchased it
15 through a tire jockey.

16 The reason I said that is
17 because, one, McCarthy purchased the tire.
18 McCarthy failed to detect dangerous flaws
19 in the tire.

20 What do I mean by that? Well,
21 I anticipate that McCarthy's lawyers are
22 going to tell you that this tire -- if we
23 put it all back together, the tread that
24 they put on the outside part, that's not
25 what failed.

1 That's what they are going to
2 tell you over and over again, and I agree
3 with it. I agree that the top part of
4 this tire, the tread didn't come off.
5 That's not what failed. But it goes back
6 to the stock tire, what didn't they know
7 about it and what should they have known
8 about it.

9 You will see that this tire
10 had flaws because there was separations in
11 the tire, separations in this tire before
12 and after the retread.

13 What is a separation? Let's
14 first go through a small tutorial of what
15 this tire is.

16 So this tire, if we put it
17 back together, has a tread. Under the
18 tread is Belt 1 or -- excuse me -- Belt 4.
19 Under that is Belt 3, then Belt 2, then
20 Belt 1.

21 Right here, what we have here,
22 is the tread and all four belts. So this
23 tire came apart at Belt 1 and the tire
24 carcass, not at the tread.

25 Why does that matter? It

1 matters because the tire itself is
2 evidence of where it was weakened between
3 Belt 1 and the carcass. In other words,
4 there was a separation between Belt 1 and
5 the carcass, a separation that McCarthy
6 should have found in the retread of the
7 tire.

8 How do we know there was a
9 separation in this tire? Because the tire
10 and the evidence on the tire, as will be
11 presented to you by a man named Troy
12 Cottles, who designed tires for 20-plus
13 years, a tire engineer, will tell you the
14 evidence on the tire shows we have fabric
15 liner imprint marks on the tire.

16 What is that? It would be
17 easier to understand later, but assume for
18 a second this belt is laid all the way
19 out.

20 (Pause.)

21 MR. BALL: When these tires
22 are put together, these belts are cut to
23 precut lengths, four of them for each
24 tire, but they stack them up obviously to
25 make them go on one tire at a time.

1 To stack these belts up in
2 precut lengths and to put them onto this
3 portion of the tire, what they do is, they
4 separate them with a liner. So they will
5 put Belt 1 down, separate it; put Belt 2
6 down, separate the liner on and up. Then
7 maybe you have 50 or 75 belts at the time.

8 Liner imprints are from where
9 this rubber, before it was put into an
10 oven, is very, very tacky. And the liner
11 imprints will then be transferred from the
12 liner itself to the rubber, that new
13 rubber.

14 And if those liner imprints
15 are seen on a tire like this afterwards,
16 that means that the belt and the carcass
17 of the tire, or Belt 2 and Belt 3
18 together, or Belt 3 and Belt 4, did not
19 come together like a cake. Put the cake
20 together as layers. Put the cake
21 together, bake it, you can't get the cake
22 back apart.

23 But if you are really bad
24 baking a cake, like they were with the
25 tire, you will see that the two pieces of

1 belt or the two belts did not come
2 together. And we know that because you
3 could see liner imprints on the tire
4 itself.

5 Take, for instance, Play-Doh.
6 You know what that is. We take Play-Doh,
7 mash it out, put it down on the carpet.
8 When I pull it up, you are going to see
9 the imprint of the carpet. If I take that
10 and take another piece of Play-Doh, put it
11 together, and make sure they are totally
12 together, you never will be able to get
13 that Play-Doh apart again to see those
14 liner imprints.

15 If I took the pieces of
16 Play-Doh, put them together, and made sure
17 there was separation between the two, then
18 when you pulled it apart, you would be
19 able to see the line -- you would be able
20 to see the design from the carcass. That
21 was what we see on this tire.

22 (Pause.)

23 MR. BALL: What about these
24 liner imprints?

25 As I said, you would see in

1 this tire, here they are. This is this
2 tire. You will see that these prints are
3 not supposed to be there. They can't be
4 there unless there was a separation in
5 this tire when McCarthy retread it.

6 Why does it matter there was a
7 separation in this tire?

8 Well, it's because McCarthy
9 has to follow a certain process when they
10 retread all of these tires. And in part
11 of that process they had to follow -- well
12 the process is given to them by Bandag.
13 You will hear about them in the case. I
14 don't know how much, but some.

15 Bandag and McCarthy have a
16 franchisee/franchisor relationship, kind
17 of like a subfranchise. Bandag provides
18 to McCarthy all of the materials, trains
19 employees, provides all the equipment.
20 And, in doing so, McCarthy agrees to take
21 all of it, put them together in the way
22 they are told to put them together.

23 And part of that process that
24 Bandag gives them includes how they are to
25 select tires to be retread because if you

1 select a bad tire to be retread, it's
2 trash in, trash out. You select a tire
3 that shouldn't be retread, and bad things
4 happen.

5 So aside from the evidence on
6 the tire, what else do we know about the
7 manufacture of this tire by McCarthy?

8 You will find out May 10,
9 2011, the McCarthy plant that retread this
10 tire did not pass inspection the way that
11 it should. The plant for the first time
12 was put on -- it was taken from passed
13 status to conditional status for a number
14 of reasons, but the reasons we will talk
15 about concern specifically this tire.

16 They had no certified
17 retreading technicians at the plant. They
18 had poor maintenance of the 7400
19 shearography machine that we will talk
20 about, and the shearography machine that
21 we will talk about had nobody certified to
22 work it and someone even trained to work
23 it.

24 A shearography machine, before
25 we get to this testimony, is something

1 that's basically an MRI. Take an MRI,
2 look into your knee to see what is going
3 on, that's what a shearography machine is
4 for lack of a better word for it.

5 Take a tire that's already put
6 together, put it in the machine, and a
7 bunch of sound waves bounce off and it
8 shows you on the results where there's
9 voids, if any, on the inside of the tire.
10 You do that so you find out if it's a tire
11 that should or should not be retread.

12 And it matters who's working
13 those machines because you have to have
14 someone to interpret the results.

15 See what Mr. Cox says about
16 these.

17 - - -
18 (Video played for the Court
19 and jury.)

20 - - -
21 MR. BALL: See what else he
22 says.

23 - - -
24 (Video played for the Court
25 and jury.)

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MR. BALL: That is because you will see that McCarthy, their business is to take old products, the starting products, make them new products. And to do that, they have to make sure they take products that can be made into new products safely. And they use a machine like this, as they did on this tire -- we know they did. When they use these machines, they must use them with the proper training and proper employees. You would see they did not do that.

This is just a shearography machine, a short picture of one. It's a really big machine. Think how big this tire is itself.

It takes the tire and loads it in, closes the door, then goes about figuring out through sound waves if there's separations on the inside.

So getting back to Bandag, Bandag, as part of the process that they give to McCarthy to retread these tires, also come out and do audits on the plants

1 where this tire is made and other tires
2 have been made.

3 Those audits, again, going
4 back to the one that I mentioned earlier,
5 this plant went from passed to
6 conditional.

7 This is Mr. Schofield. I
8 asked him questions about that audit
9 itself. You will take note that the
10 evidence will show that the audit
11 Mr. Schofield did in May 2011 was the same
12 year the tire was retread, but they also
13 did some followup work on some equipment
14 checklist, including the shearography
15 machine, on October 10 of 2011.

16 That matters because this tire
17 was retread, we all agree, between October
18 the 3rd and October the 10th of 2011. So
19 we have direct evidence that you will see
20 about things that were wrong at that plant
21 the week after this tire was made.

22 - - -
23 (Video played for the Court
24 and jury.)

25 - - -

1 MR. BALL: The plant was not
2 put on fail. That was not the evidence
3 that you will see. The plant was placed
4 on conditional status. That's why it was
5 placed on conditional status because I
6 think the evidence will show they don't
7 put plants on fail status.

8 Now, McCarthy, when they
9 retread this tire, they put into the
10 stream of commerce onto these huge
11 concrete trucks a tire that was weak, a
12 tire that was flawed.

13 That matters because we also
14 have Silvi in this case, because remember
15 I told you that we believe it is both
16 McCarthy and Silvi's fault that this tire
17 failed?

18 You will come to understand
19 Silvi's maintenance policies. I will not
20 go over every one of them with you now,
21 but the evidence will show that the
22 maintenance policies as it concerns this
23 tire specifically and the other tires fell
24 far below their own standards, more or
25 less the standards that they needed to

1 live up to.

2 The first policy that Silvi
3 violated as it concerns the tire is the
4 stock tire nature in itself. Silvi
5 testified, and you will see as the
6 evidence will show, that Silvi does not
7 use stock tires on its cement trucks.
8 They said if they are going to use a stock
9 tire, that they won't. Rather, what they
10 will do is use a new tire. They don't do
11 it because they don't know the history of
12 the tire.

13 However, when Silvi purchased
14 the truck from Pierson, knowing the tire
15 was a stock tire, Silvi went ahead and put
16 it into use, violating their own policy.

17 Scott Keck, who you are going
18 to hear from in this case, broke his own
19 policy by putting a stock tire in use on
20 Truck 118.

21 "Then if it's significant to
22 you, why is it that Silvi doesn't have a
23 policy to look for things like that when
24 they acquire tires that have been used?

25 "Answer: We -- we only cap

1 our own casings. Other companies buy
2 casings to get it recapped. Our policy
3 is, we only recap our own casings. If we
4 don't have any casings to recap, we will
5 buy new, install new ones."

6 This tire was on the rear of
7 Truck 118 when it failed. It is -- there
8 is no doubt the evidence will show say --
9 will show that it was a stock tire. No
10 doubt the evidence will show that was
11 owned by someone and discarded before it
12 was ever retread. And there is no doubt
13 that the evidence will show that in doing
14 so, allowing this tire on the Silvi
15 Concrete truck, Scott Keck broke the first
16 rule of Silvi.

17 Again, what about this tire
18 don't we know?

19 Well, it's not really what we
20 don't know. How about what Mr. Keck, what
21 he didn't know? He says the evidence will
22 show that the stock tire with no
23 information is good enough.

24 - - -

25 (Video played for the Court

1 and jury.)

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MR. BALL: Never received any maintenance records for this truck. Put it in service and two months later the tire fails.

Remember the rule, these are dangerous trucks. They must be kept in a different way.

What's the next policy that Silvi violated as concerns this tire? Well, when Silvi violates the safety policy and dangerously underinflates this huge stock tire to 105 PSI when it should be 120.

You will hear testimony that Silvi's policy is, they inflate their tires like this from 110 to 115, somewhere around that.

However, this is the original inspection of this truck when Silvi was putting it into service from Pierson and on. And just three months before this incident occurs, it says on April 27, 2015, set all tire pressures to 105.

1 The first inspection, Silvi
2 went ahead and violated its own policy
3 that it set the tires from 110 to 115, and
4 I will tell you that the evidence will
5 show you even setting your tire pressures
6 on trucks and tires like this to 110 and
7 115 is dangerous. But they didn't even
8 follow the 110 to 115 policy that they had
9 at their company.

10 You will see that's dangerous
11 because these concrete trucks, as we said,
12 haul things that other vehicles can't. So
13 when you put the maximum load into these
14 trucks and you've got the air pressure on
15 these tires lower than what it's supposed
16 to be maximum, you have now overloaded the
17 tire, and it takes a period of time until
18 that tire fails.

19 What else did Silvi do as
20 concerned this tire? Well, fails to train
21 drivers to properly inspect their tires
22 and their tire air pressure.

23 Let's start with the rule of
24 how Silvi is supposed to check its air
25 pressure.

1 take a hammer and thump?

2 "Answer: Correct."

3 That is how Silvi believes
4 they safely maintain and manage the
5 pressure of tires that require 120 PSIs on
6 concrete trucks that carry 40-plus
7 thousand pounds every day.

8 But that's not enough. You
9 will see from the evidence that while
10 Mr. --

11 MR. LEVY: Objection. It's
12 the language at the top.

13 THE COURT: Overruled.
14 Overruled.

15 MR. BALL: -- that while
16 Mr. Keck believes that it is proper to
17 maintain his tires by thumping them with a
18 hammer, the driver himself,
19 Mr. Barrientos, who you will hear from in
20 this case, did not agree.

21 He said Silvi taught him and
22 the way that he does it is, I use my feet
23 to kick the tires. That is how Silvi
24 safely and properly maintains the tire
25 pressure of their trucks.

1 The time in which -- the time
2 for which every driver is to determine
3 whether their tire pressures in their
4 truck are proper or not is during what we
5 call a pre-trip inspection. Silvi
6 mandates that each driver, or at least
7 through its written work -- written rules,
8 mandates that the drivers are to do
9 pre-trip inspections in the morning and in
10 the afternoon.

11 Part of that pre-trip
12 inspection is to determine if you have
13 proper air pressure in your tires. In
14 determining if you have proper air
15 pressure in your tires, you also look at
16 your tires to see if there's anything else
17 wrong with your tires. If you are kicking
18 your tires, I would submit that the
19 evidence will show you are not getting
20 down and looking at your tires to find out
21 what's wrong with your tires.

22 How long is the pre-trip
23 inspection supposed to take? Mr. Tim Kurz
24 will tell you in this case that it should
25 take 15 minutes. Mr. Barrientos will tell

1 you he normally takes five minutes.

2 In addition to kicking your
3 tires and only taking five minutes, I will
4 tell you that the evidence will show, you
5 can't figure out what's wrong with your
6 tire in that amount of time and under
7 those conditions.

8 And why do they do that? Why
9 would Barrientos cut those corners and
10 kick or thump the tires?

11 Silvi's documents will tell --
12 show you in their driver orientation
13 program, it is very easy in the hectic
14 nature of the ready-mix concrete industry
15 to take shortcuts and violate good safety
16 practices in order to get the job done
17 quickly. There is always pressure to
18 hurry up, go faster, unload quicker, and
19 get back to the plant for the next load.
20 Accidents can happen if drivers -- if the
21 driver gives in to that pressure.

22 It is possible to work safely
23 and efficiently but only if the driver has
24 the right safety attitude. Accidents can
25 happen if the driver gives into that

1 pressure.

2 I will submit to you, the
3 evidence will show that's exactly what
4 David Barrientos did. He gave into the
5 pressure of going harder, faster, and
6 doing more in a smaller amount of time.

7 And, in doing so, what
8 happened?

9 David Barrientos misses a bolt
10 in the tire, the dead center of the tire.
11 That hole right there. That hole right
12 there is right here. That's that hole.
13 That hole is almost an inch wide.

14 You will come to find out from
15 the evidence that that is a hole made by a
16 bolt that is probably three-fourths, maybe
17 larger than an inch wide, and that bolt
18 remained in the tire for hundreds, if not
19 thousands, of miles.

20 And that's not what my expert
21 and you will hear from me say. You will
22 hear that said from McCarthy and their
23 expert.

24 Now, Silvi is going to tell
25 you that that hole was made in the

1 seconds -- split seconds before this tire
2 failed. I will submit to you the evidence
3 will show that you do not -- you do not
4 get this reaming effect by just puncturing
5 something immediately and coming right
6 back out. You also don't make a tire this
7 big fail simply because it's punctured one
8 time.

9 These are concrete trucks that
10 go to job sites, that pick up things like
11 this. You have to have that remain there
12 for a long time.

13 Silvi allowed the dangerous
14 hole to remain in the tire a long time.

15 How we know is, outside of the
16 tread has small circles on it where this
17 hole was. Those circles -- see that bolt?
18 Those are the impressions from a bolt.
19 This is not the bolt that was in it, but
20 you can see the impressions from the bolt.
21 I submit to you, the evidence will show
22 you don't make those impressions like that
23 immediately. It has to stay in a tire for
24 a long time.

25 Another reason I will tell you

1 that bolt is in there a long time is
2 because that's a nail, and it's on the
3 same truck in a different tire. So if
4 Mr. Barrientos was doing what he says he
5 was doing, checking his tires every day,
6 15 minutes, five, as he said, at a time,
7 he would not have only found the bolt in
8 this tire, he would have found the bolt or
9 the nail in another tire.

10 So we have separation or a
11 flaw in the original retread by McCarthy.
12 You add to that chronic underinflation by
13 Silvi, and add to that a bolt, and a hole
14 like you just saw, and you have a ticking
15 time bomb. That's how we believe this
16 tire failed.

17 What about the response? We
18 know that approximately 3:20 or so is when
19 the tire failed. We know Silvi never
20 called 911.

21 Here's what Frank King says
22 about Silvi breaking its own rule and
23 never called 911 to alert authorities
24 about the hazard.

25 - - -

1 (Video played for the Court
2 and jury.)

3 - - -

4 MR. BALL: They were expected
5 to and they didn't.

6 You will hear from an expert
7 in this case, a longtime police officer,
8 who says that had Silvi called and made
9 that phone call and one way or another
10 passed along the information that needed
11 to be passed on to the right people, that
12 very precious minutes would have been
13 saved, if not more, to hopefully have
14 prevented this incident. But Silvi
15 didn't, and, in doing so, violated their
16 own policy.

17 Other drivers. You recall
18 from the dispatch call that another driver
19 had already hit the tread. We know of
20 four vehicles that hit and interacted with
21 this tread. We have testimony, and you
22 will hear it from three of them, one being
23 Ms. Reed, two being witnesses, one you
24 will hear from possibly today and another
25 you will tomorrow.

1 Ms. Caucci said when she hit
2 it, her car almost flipped over.

3 Mrs. McGinnis said, she hoped
4 and prayed the car made it over it.

5 They will both tell you they
6 had split seconds to react. And why does
7 that matter? Because there was an
8 emergency situation created by Silvi.
9 There was a hazardous situation created by
10 Silvi.

11 Try driving down Interstate
12 295 on a Friday afternoon in July coming
13 upon a tread like this. Ms. Reed had a
14 decision to make immediately. Do I stay
15 straight? Turn left? What do I do? She
16 turned left but had to do so in a very
17 small amount of time. An emergency
18 situation is defined by the amount of time
19 you have to act, emergent.

20 You will hear Silvi's lawyers,
21 I believe, blame Ms. Reed over and over,
22 accept no responsibility on their own.
23 That is something you will hear on the
24 four walls of this courtroom.

25 However, what Silvi's lawyers

1 will tell you in case in the four walls of
2 this courtroom is different from what
3 Silvi's own employees say.

4 Silvi admits there was an
5 emergency situation.

6 "Question: It created an
7 emergency situation, correct?

8 "Answer: Correct.

9 "Question: Do you agree that
10 it's an accident waiting to happen?

11 "Answer: It potentially could
12 be, yes. It potentially could be."

13 The dispatch audio itself
14 demonstrates Silvi's knowledge of how bad
15 the situation had become.

16 We have taken depositions in
17 this case, and some people we've taken
18 more than once.

19 This is Mr. Pruden. Here's
20 what Mr. Pruden said on June 13 before we
21 discovered the dispatch audio.

22 - - -

23 (Video played for the Court
24 and jury.)

25 - - -

1 MR. BALL: If Silvi employees
2 had that information, the evidence will
3 show -- you remember the dispatch call?

4 - - -

5 (Audio played for the Court
6 and jury.)

7 - - -

8 MR. BALL: That's Chris, the
9 same guy that said if Silvi had that
10 information.

11 Now, what does Mr. Pruden say
12 after the discovery of that call?

13 - - -

14 (Videotape played for the
15 Court and jury.)

16 - - -

17 MR. BALL: What about Silvi's
18 testimony before and after concerning a
19 hazard before?

20 - - -

21 (Videotape played for the
22 Court and jury.)

23 - - -

24 MR. BALL: After the
25 discovery.

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(Videotape played for the
Court and jury.)

- - -

MR. BALL: Ladies and
gentlemen of the jury, the evidence in
this case is going to show you that Silvi
created a situation that they knew they
could avoid and they did not. And when
they created the situation, I believe the
evidence will show you that it was very
unfair to turn around and to try to blame
someone for how they reacted to avoid
their emergency situation they created.

And, in doing so, I believe
the evidence will show you that Silvi's
own people, not their lawyers, Silvi's own
people believe that same thing.

Lastly, as it concerns Silvi,
I asked Mr. Desmond in this case, the
plant manager that day, "Is there any
reason why a driver would need to call to
his manager on his cellphone? Does he
have to call before a load? After a load?
Anything like that?"

1 He said, "No, not unless
2 there's an issue. Not unless there's an
3 issue."

4 We got ahold of Mr. Pruden's
5 cellphone records, the gentleman who you
6 heard from earlier, and didn't recall the
7 dispatch audio. We got ahold of Mr.
8 Pruden's cellphone records. And the GPS
9 data on the truck shows us that at 2:53, a
10 string of four calls began between
11 Mr. Pruden and Mr. Barrientos, the driver.
12 Those four calls were placed while
13 Mr. Barrientos's truck sat at the Silvi
14 plant facility and before he left on his
15 third load of the day approximately ten
16 minutes before the incident occurred.

17 I think the evidence will show
18 you that Silvi knew that they had a
19 problem with their tire but nonetheless
20 continued on because of profit motive.

21 Because of that, three
22 generations, grandmother, mother, baby,
23 and friend have been seriously injured,
24 and this is their life from now until
25 then.

1 This could have been avoided.
2 I think the evidence will show you that
3 should have been avoided.

4 And I appreciate your time.
5 Thank you. Thank you.

6 THE COURT: Thank you,
7 Mr. Ball, on behalf of some of the
8 plaintiffs.

9 It's a good time to break for
10 lunch, so we will stand in luncheon recess
11 until 1:35.

12 See if they will give you
13 ten percent off when you wear your badge.
14 Please, I know it's annoying. It feels
15 awful, but wear the badge everywhere so
16 that it's a signal to people to not
17 discuss a case in front of you, sort of a
18 caution sign. So please always. And they
19 will let you in the other doors in the
20 building, so make sure you always have the
21 jury badge.

22 We will see you at 1:35.
23 Enjoy your lunch.

24 THE CRIER: All rise as the
25 jury exits the courtroom.