

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

4 SHANIKA LAKIYAH BROWN, )  
5 INDIVIDUALLY, AND AS )  
6 PARENT OF A.B., MINOR, )  
7 ET AL. ) CASE ID NOS.  
8 ) 151000925  
9 ) 161101727  
10 ) 170302288  
11 v. )  
12 SILVI CONCRETE )  
13 PRODUCTIONS, INC., ET AL. )

14 Courtroom 646, City Hall  
15 Philadelphia, Pennsylvania

16 AUGUST 14, 2018

17 BEFORE: THE HONORABLE LISA M. RAU, J.

18 JURY TRIAL  
19 AFTERNOON SESSION

20 REPORTED BY: JANET M. MANSFIELD, RPR  
21 OFFICIAL COURT REPORTER

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1 EXAMINATION INDEX

2 WITNESS	PAGE
3 PAIGE McGUINNESS	
4 DIRECT BY MR. FARRAR	66
5 CROSS BY MR. SHERRY	74
6 CROSS BY MR. MICKUS	76
7 SCOTT KECK	
8 BY MR. FARRAR (AS ON CROSS)	85

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5

1 (In open court.)  
2 THE COURT OFFICER: All rise as  
3 jury enters the room.  
4 (The jury entered the courtroom.)  
5 THE COURT OFFICER: Everyone may be  
6 seated. Thank you.  
7 THE COURT: Members of the jury,  
8 you'll notice when you enter and exit  
9 the courtroom, you'll hear my staff say,  
10 "All rise as the jury enters the  
11 courtroom." Again, when you hear that,  
12 just remind yourself that that's a show  
13 of respect for what you've undertaken to  
14 do. So when you see everybody rise, go  
15 "Oh, yeah, that's because I'm supposed  
16 to be fair and they've vested me with  
17 this really important duty."  
18 The other thing is we throw around  
19 a lot of legal terms, and we don't even  
20 hear that they're words that people  
21 don't normally use in everyday  
22 language. I will try to pick up on  
23 those as we go and define them.  
24 One word that we will use a lot  
25 during the course of the trial is the

6

1 term deposition.  
2 Prior to a case getting to trial,  
3 the attorneys have the opportunity to  
4 question witnesses or the parties under  
5 oath and there's a certified court  
6 reporter. They take an oath just like  
7 you'll see them take here in this  
8 courtroom, and they testify and get  
9 questioned about what occurred.  
10 So when you hear an attorney refer  
11 to a deposition, that is sworn testimony  
12 under oath with all of the lawyers  
13 representing the parties present and a  
14 certified court reporter.  
15 With that said, let's move to  
16 opening statements on behalf of Pamela  
17 Reed. Mr. Sherry.  
18 MR. SHERRY: Thank you, Your  
19 Honor.  
20 Good afternoon, members of the  
21 jury. Good afternoon, Counsel. Good  
22 afternoon, Reed Family. Good afternoon  
23 to you.  
24 Members of the jury, I'm only going  
25 to take 15 minutes and 15 seconds to

7

1 talk to you this afternoon. I've  
2 instructed Mr. Ball to keep a timer on  
3 me.  
4 The reason why is because those 15  
5 minutes constitute the pretrip  
6 inspection that Silvi did not do on this  
7 tire and the approximately 15 seconds  
8 Silvi did not take to call 9-1-1.  
9 My client was deprived of that, and  
10 as a result, Mrs. Reed, her daughter  
11 Shanika, Miss Thomas, and that little  
12 girl have had their lives changed in a  
13 way that is difficult to describe.  
14 Now, as Mr. Ball was talking to  
15 you, he was describing the tire and what  
16 Silvi did, and that phrase pretrip  
17 inspection, which Silvi states should  
18 take 15 minutes, kept coming up.  
19 Now, with some assistance, I'd like  
20 to bring around the carcass of the tire,  
21 not this tread that got in the roadway,  
22 but the carcass of the tire to show you  
23 how a pretrip inspection, the evidence  
24 will bear out, should be done.  
25 Thank you, gentlemen.

8

1 Now, you'll recall from Mr. Ball's  
2 presentation, this concrete truck had a  
3 number of these tires on it, and, as you  
4 can see, the tire is resting on the  
5 ground.  
6 There are a number of things that  
7 one needs to do to undertake a proper  
8 CDL pretrip inspection when it comes to  
9 a tire. You have to make sure there's  
10 nothing in it. You have to make sure  
11 the air pressure is good. But also you  
12 should be checking the part of the tire  
13 that's resting on the ground. We call  
14 that the contact patch, a fairly big  
15 section of the tire (indicating).  
16 The evidence in this case is going  
17 to show you that Mr. Barrientos, in  
18 addition to kicking the tire, instead of  
19 using one of these, an air gauge, never  
20 rolled the truck forward to check the  
21 contact patch. Indeed, that would be  
22 difficult to do if one is only taking  
23 five minutes to do a pretrip  
24 inspection.  
25 You may roll that away, gentlemen.

9

1 The evidence is going to prove that  
2 Silvi has a fairly large fleet of  
3 vehicles.  
4 So how did we get here? How is it  
5 that you have a person like Dave  
6 Barrientos, the  
7 five-instead-of-15-minute, tire-kicking,  
8 bolt-in-one-tire-missing,  
9 nail-in-a-different-tire-missing David  
10 Barrientos, how is he permitted to act  
11 this way, again, with a concrete truck  
12 that weighs tens of thousands of pounds  
13 and is on public highways?  
14 Well, here is what the evidence is  
15 going to show you.  
16 Christopher Pruden, whose  
17 deposition Mr. Ball played in part, who  
18 testified, "Well, had we known about the  
19 tread," and then the audio dispatch  
20 comes out, and then, "Oh, that's right,  
21 I was one of the people on that call,"  
22 the evidence is going to show that  
23 Mr. Pruden was in charge of making sure  
24 that Mr. Barrientos did his pretrip  
25 inspection properly. He was his

10

1 supervisor.  
2 You know what Mr. Pruden doesn't  
3 have? I'll tell you what he doesn't  
4 have and what the evidence will bear  
5 out. He doesn't have a CDL license. He  
6 doesn't know what he's looking at.  
7 The testimony from Silvi is that,  
8 oh, well, every driver just kind of does  
9 it their own way.  
10 A highly methodical process to  
11 ensure that members of the motoring  
12 public like Mrs. Reed are protected, the  
13 evidence will show is essentially a  
14 free-for-all at Silvi, kick tires, or if  
15 Mr. Ceck is to be believed, whack the  
16 tires, no process, and put somebody in  
17 charge who has no idea what they're  
18 seeing and cannot intervene.  
19 And, as you might expect, the  
20 evidence is going to show it's not  
21 limited to Mr. Barrientos, although the  
22 evidence will also show about two weeks  
23 before July 31st, 2015, Mr. Barrientos  
24 strangely enough blows another tire.  
25 But it's not limited to him. No.

11

1 The day before the incident, Silvi is  
2 told that a tire on a different vehicle  
3 blows apart. They're told in a text  
4 message, which you'll see, that  
5 Bridgestone has said, "You blew that  
6 tire because you were running it on low  
7 pressure."  
8 Same thing here. The day of the  
9 incident, approximately six, seven hours  
10 before the catastrophe, there's a text  
11 amongst Silvi that another driver is,  
12 quote, tearing up over his bald tires.  
13 The evidence will show that if  
14 you're doing proper pretrip inspections,  
15 you don't get to that point. You don't  
16 drive around with tires that have bolts  
17 in them and nails in them under  
18 pressure.  
19 You don't allow tires to wear down  
20 to bald if you're paying attention, if  
21 you're supervising your drivers  
22 correctly. But if you put people like  
23 Chris Pruden in charge that don't know  
24 what they're looking at, you're going to  
25 have those type of issues.

12

1 There are going to be two experts  
2 called by plaintiffs who are going to  
3 testify that Silvi's fleet should have  
4 been shut down based on what was  
5 occurring, that other blowout with  
6 Mr. Barrientos, the blowing out of the  
7 other tire, driving around on bald  
8 tires, drivers tearing up about it.  
9 Shut that fleet down. But they  
10 don't make any money. So instead what  
11 do they do? Get the trucks out, get  
12 delivered. Who bears the consequences?  
13 The motoring public.  
14 Mr. Ball indicated my client is not  
15 the first person who encountered that  
16 tread. I showed you the pictures of two  
17 nice young women, and you heard the  
18 audio about a Penn Jersey truck whacking  
19 the tread -- that's before my client --  
20 and this Honda getting torn up.  
21 That leads me to what do we do and  
22 what the evidence will show if we do, as  
23 a company, throw something like this  
24 into the middle of a public highway.  
25 Well, you heard the audio. Did it

1 start off with, "Hey, tread in the  
2 roadway. Get the cops out here"? No.  
3 "Oh, you don't want to take this call,"  
4 and then on it goes. Tick, tock, tick,  
5 tock.

6 Barrientos doesn't call 9-1-1.  
7 Chris Pruden doesn't call 9-1-1. And  
8 Mr. Rich from Silvi, who personally  
9 witnesses what this can do to a vehicle,  
10 doesn't call 9-1-1.

11 As a result, I guess it's what  
12 would be termed a pretrip inspection,  
13 should an expert take the stand and try  
14 to say that for Silvi, and as a result  
15 of not calling 9-1-1 and telling the  
16 police what came off a Silvi vehicle and  
17 went into the roadway, what happened to  
18 Mrs. Reed? She's placed in an  
19 emergency.

20 Anybody comes in here and says that  
21 that woman or any other motorist wasn't  
22 put into an emergency, you'll assess  
23 their credibility very carefully. I  
24 have no doubt of that.

25 Nevertheless, it seems that Silvi

1 would like to blame Mrs. Reed for the  
2 emergency that Silvi created, blame  
3 Mrs. Reed in an emergency.

4 McCarthy -- I barely talked about  
5 them -- one thing is clear, when they're  
6 retreading the tire, there's not going  
7 to be any evidence that they were under  
8 an emergency.

9 Mr. Barrientos, back at the yard,  
10 when he's supposed to be taking 15  
11 minutes to check that truck, is he  
12 operating under an emergency? Of course  
13 not. No one is going to put that  
14 evidence on.

15 Who is in the emergency?  
16 Mrs. Reed.

17 So you're going to assess that very  
18 carefully when people get up on that  
19 stand and say, I don't like the way  
20 Mrs. Reed reacted to the emergency we  
21 created. I don't like how she drove  
22 after we put this, that into a public  
23 highway, and don't call 9-1-1, and  
24 there's a crash and another crash and  
25 another crash and another crash until,

1 finally, Mrs. Reed encounters it.

2 You will assess that testimony and  
3 that advocacy very carefully if somebody  
4 tells you that Mrs. Reed bears blame for  
5 this accident.

6 I have a couple of minutes left.  
7 Judging by that counter, Mr. Barrientos  
8 still would have another five minutes to  
9 be performing his pretrip inspection.

10 Or, put differently, in the  
11 remaining four minutes, according to  
12 him, he could complete another pretrip  
13 inspection of a concrete truck.

14 You will hear things in this case  
15 about damages. I urge you to listen to  
16 those questions and the answers that  
17 come from the witness stand very  
18 carefully, because what happened to this  
19 family is difficult to even describe.

20 Mr. Ball talked about  
21 multi-generational injuries, and that's  
22 true. Mrs. Reed understandably had  
23 devastating emotional and psychological  
24 trauma as a result of this. The  
25 evidence will bear that out. You see

1 your daughter ripped apart and your  
2 granddaughter ripped apart and come  
3 through that okay, Shanika and then that  
4 little girl.

5 If you wouldn't mind, I broke a  
6 promise to myself. Every time I see the  
7 little girl, it makes me mad.

8 When you hear the testimony from  
9 the stand, understand the severity and  
10 understand how this becomes even more  
11 important when you're talking about a  
12 family, about a unit, a family unit that  
13 was permanently changed as a result of,  
14 among other things, failure to perform a  
15 15-minute inspection and a failure to  
16 spend 15 seconds calling 9-1-1.

17 Thank you, members of the jury.  
18 Thank you, Your Honor.

19 THE COURT: Thank you, Mr. Sherry.  
20 Let's turn to opening statements by  
21 defendant Silvi. Mr. Levy.

22 MR. LEVY: Can you hear me okay?

23 THE COURT: I want you to have a  
24 working mic. Do you have one? What  
25 were you using? Let's share that one.

17

1 Use that one that Mr. Sherry had.

2 MR. LEVY: Can you hear me now?

3 THE COURT: Do you want the podium,

4 Counsel?

5 MR. LEVY: I'll just use this area,

6 Your Honor. The corner of the table

7 will be fine. You'll excuse me if I put

8 my head down.

9 Let me see if I can take the

10 temperature down in this room a little

11 bit after that very emotional opening

12 statement by Ms. Reed's counsel.

13 We have two very seriously injured

14 plaintiffs. When we look at A.B. there,

15 you know, hearts go out to her. She is

16 pure and innocent, delightful as any

17 little girl is in her little pretty

18 dress. And her mom, a young mother, our

19 hearts go out to her, too.

20 If we try this case on emotion, my

21 client loses, because all of us are

22 going to feel emotion for them and for

23 Ms. Reed and for Karen Thomas. We're

24 going to feel that.

25 But as you were instructed and as

18

1 we've talked about all through the jury

2 deliberation -- not deliberation -- the

3 jury selection process, your job is to

4 evaluate this case on the facts and the

5 law that the Judge gives you. If we do

6 that, it's not a complicated case. It's

7 not.

8 You're going to hear lots of

9 evidence that was not presented and not

10 told to you in those opening

11 statements. When you hear that evidence

12 and you hear it all through, you'll see

13 that Silvi is not at fault, not at fault

14 for this accident.

15 The primary person who is at fault

16 for the accident is Pamela Reed. And I

17 know that sounds harsh to say that the

18 woman driving, the mother of Shanika

19 Brown, the grandmother of A.B., is at

20 fault for the accident, but that's

21 because you don't know her yet and you

22 don't know the evidence yet.

23 So let me give you a little piece

24 of the evidence, and this will tell

25 you. It will be the testimony of Pamela

19

1 Reed, and I'm only going to play four

2 minutes of it, and she's going to tell

3 you what happened, and then I'll tell

4 you, by showing you exhibits and the

5 accident scene, the consequences of

6 that. Okay?

7 So if we could play Pamela Reed's

8 testimony, please.

9 (The above-referenced videotaped

10 testimony was played.)

11 THE COURT: Turn it off, and we'll

12 take a five-minute recess.

13 THE COURT OFFICER: Court stands in

14 a five-minute recess. All rise as the

15 jury exit the room.

16 (The jury exited the courtroom.)

17 THE COURT: You may be seated.

18 We'll just take five minutes, or do you

19 want more?

20 MR. LEVY: Five minutes will be

21 fine.

22 THE COURT: And you can pick up.

23 You decide. Okay?

24 And if you would move A.B. down.

25 It's very distracting. Move her down to

20

1 where she was before. Maybe Ms. Thomas

2 can switch spots with her. But I want

3 them listening to the lawyers and not

4 watching the games she's doing.

5 We'll stand in recess.

6 (Recess taken.)

7 (In open court.)

8 THE COURT OFFICER: All rise as the

9 jury enter the room.

10 (The jury entered the courtroom.)

11 THE COURT OFFICER: Please be

12 seated and cease all conversation.

13 THE COURT: Mr. Smalley.

14 THE COURT OFFICER: This Court is

15 now back in session.

16 (Pause.)

17 THE COURT: Mr. Levy, you may pick

18 up where you left off.

19 MR. LEVY: Thank you, Your Honor.

20 As I stated, this is an emotional

21 trial. We'll have to put that aside.

22 Just continue where we were,

23 please.

24 (The above-referenced videotape

25 testimony was played.)

21

1 MR. LEVY: In his opening,  
2 Mr. Sherry expressed outrage that we  
3 would suggest that the accident was  
4 caused by Pamela Reed, but he left out  
5 that Shanika and Karen Thomas also sued  
6 Pamela Reed, and I'll explain why.  
7 Can we put up Exhibit DS-181,  
8 please?  
9 And you've heard what she said how  
10 it happened. So she is in lane 3 as the  
11 accident -- as she's coming up on the  
12 tread. Here is the tread in the middle  
13 of the road. It's on what are called  
14 skip lines. This is exactly where it  
15 was after the accident. There's no  
16 evidence to suggest that it was moved  
17 after the accident.  
18 MR. BALL: Objection, Your Honor.  
19 THE COURT: Sustained.  
20 MR. LEVY: The evidence will show  
21 that this is where it was.  
22 The lanes are 12 feet. So between  
23 each skip line we have 12 feet, and the  
24 evidence will show the Saturn that she  
25 was driving, the mini van was only six

22

1 feet wide. So she had six feet.  
2 Can we see DS-181-14, please?  
3 Now, this is looking northbound.  
4 We're just past where the tire was. The  
5 evidence is going to show that Pamela  
6 Reed never hit the tire tread. She  
7 overturned her own vehicle, but did not  
8 hit the tire tread.  
9 What we're seeing here are called  
10 yaw marks. These are rolling tire  
11 marks, not brake marks, but she has cut  
12 her vehicle so sharply to the left, and  
13 now is trying to come back to the right,  
14 that she left these marks here, and the  
15 police noted them.  
16 Can we see DS-181, please? Now  
17 we're beyond the tire, and we see  
18 another yaw mark. This time she has cut  
19 the wheel sharply to the right. She has  
20 passed the tire, has not hit the tire,  
21 and now has gone left and sharply to the  
22 right.  
23 Could we see DS-224, please?  
24 She crosses over the lane that she  
25 was in. So she went into the left

23

1 center lane, then she cut back to the  
2 right center lane, and then crossed  
3 right over that, and now started to cut  
4 back to avoid the guide rail.  
5 You can see the yaw marks here,  
6 and, at this point, the back end of her  
7 mini van catches the guide rail, but the  
8 car is on two wheels at this point, and  
9 she's flipping it over.  
10 There where I'm pointing with my  
11 marker here is where the car flips over  
12 on its side, lands, and we see the car  
13 up farther on the road. We'll talk  
14 about that in a second. But bystanders  
15 have uprighted the car by the time this  
16 photograph is taken.  
17 This is DS-181. Here we see the  
18 scrape marks up to where the car was,  
19 and, again, this is the photograph of it  
20 after it's been lifted up by bystanders.  
21 So this is its point of rest.  
22 The Saturn's right side is all  
23 scraped. The scrape along the pavement  
24 is about 300 feet.  
25 So the crash happens because she

24

1 panics and she jerks her steering  
2 wheel. The evidence will show she  
3 violates the one rule that we all have  
4 to follow on the road, and that is we  
5 have to maintain control of our cars at  
6 all times.  
7 Here is the thing. She didn't need  
8 to do that. She didn't need to steer  
9 any way. She just had to go straight.  
10 Can we see DS-225, please?  
11 Here we see, again, the photograph  
12 I showed you in the beginning of the  
13 tire tread in the middle of the road.  
14 It's on the skip line. The evidence is  
15 going to show it's a foot to two feet on  
16 either side of the line.  
17 At this point, she could have just  
18 gone straight. She's in that lane. She  
19 testified or her deposition testimony  
20 was that she had nobody in front of her,  
21 it was clear.  
22 Can we see DS-159, No. 3, please?  
23 All right. This is a little  
24 bright. But I brought this up because I  
25 wanted to show you, look, these are

1 other cars that are on the road, and  
2 they're easily staying away from the  
3 skip line. There's plenty of room for  
4 them.

5 Can we see DS-226?

6 Here I'm just putting this up to  
7 show you. Now we're looking southbound  
8 on 295 after the accident, the vehicle  
9 has been righted, and just to show you  
10 the gap between the skip line and the  
11 Saturn in this picture. So there's  
12 plenty of room for her. So she didn't  
13 need to steer outside.

14 She should have seen this coming.  
15 This is a road that is not only straight  
16 on 295 North in Deptford Township, but  
17 it's curving upward. It's going to get  
18 up to a bridge, which if you're driving  
19 on the road, you don't even know you're  
20 going over a railroad bridge. But it's  
21 a slight incline all the way up.

22 So if we could look at DS-181 9,  
23 please.

24 So here, this photograph is looking  
25 northbound. This is about a half a mile

1 south of where the location was where  
2 the police found the tire tread after  
3 the accident. So the experts will say  
4 there's no geometric obstacles, meaning  
5 the road is straight.

6 The accident is not going to happen  
7 until up here. That's where she  
8 overturns her vehicle.

9 Let's go to the next one,  
10 DS-181-10. Thank you.

11 So now we're looking approximately  
12 775 feet before the accident. She said  
13 she didn't have anybody in front of  
14 her. She had an unobstructed view. The  
15 tire tread is going to be way up here.  
16 So there's plenty of opportunity to  
17 see.

18 If we look at DS-181-11, this  
19 picture is important from my point of  
20 view because this is -- where it's taken  
21 is about 500 feet before where the tire  
22 tread is found by the police after the  
23 accident.

24 She testified she was traveling at  
25 50, 55 miles per hour. At that speed,

1 she has 6.5 seconds to react. There's  
2 nothing sudden about this, 6.5 seconds  
3 to cover 500 feet with no car in front  
4 of her.

5 I also want to point out that when  
6 we get to the other side of this hill,  
7 that's where Mr. Barrientos brings his  
8 truck safely to rest.

9 He can't see the tire tread back  
10 there on the road. From where he is, he  
11 can't see it. He knows the tire tread  
12 has come off because he'll testify he's  
13 driving along, it's the third load of  
14 the day, and he hears a bang, and then  
15 the tire starts to go out.

16 And we know -- and it's  
17 undisputed -- that he ran over a bolt of  
18 some type, and we'll show you a picture  
19 of what we think it might have been. We  
20 couldn't find it, of course.

21 So he could not have prevented her  
22 crash by running back out. You can see  
23 there's no shoulder there. This is  
24 where that railroad bridge is going over  
25 a railroad track.

1 The state police, wait until you  
2 hear their testimony. They will say  
3 that Mr. Barrientos was not at fault.

4 MR. SHERRY: Your Honor, objection.

5 MR. BALL: Your Honor, objection.

6 THE COURT: Sustained and stricken.  
7 Members of the jury strike that complete  
8 sentence.

9 MR. LEVY: I'll simply say --

10 THE COURT: And let me just  
11 emphasize he was not there. It will be  
12 for you to decide who was at fault.

13 MR. LEVY: Thank you, Your Honor.  
14 And I apologize.

15 All I can say is before you draw  
16 any conclusions, you're going to listen  
17 to all the evidence, wait until you hear  
18 what the state police have to say.

19 MR. BALL: Your Honor, objection.

20 THE COURT: Sustained and  
21 stricken.

22 Counsel, don't do it again.

23 MR. LEVY: I will not, Your Honor.

24 THE COURT: Members of the jury,  
25 you and you alone will be deciding who



1 was at fault, if anyone, in this case,  
2 not a state trooper, not any other  
3 witness. You will decide.

4 MR. LEVY: If we can look at  
5 DS-181, please, No. 12.

6 So here is the Silvi truck after  
7 the accident, safely moved to the side  
8 of the road. There is the tire that we  
9 now see here in front of us, the inner  
10 lining of the tire.

11 Mr. Barrientos will testify that he  
12 pulled his truck over safely to do what  
13 he was supposed to do, and he called  
14 back to dispatch.

15 He'll testify that when he first  
16 calls, he has the thought that he has a  
17 blowout. Then cars begin to hit the  
18 tire that's behind him.

19 Then, fortunately, one of the Silvi  
20 folks, Zach Rich, Mr. F-Bomb, he comes  
21 along the scene. The evidence will show  
22 he talks with a fellow named Greg  
23 Nichols, who has had damage to his car,  
24 and he confirms or satisfies himself  
25 that Mr. Nichols has called 9-1-1 or is

1 about to call 9-1-1.

2 He's checked that off of his list,  
3 and the evidence will show he was right,  
4 Mr. Nichols did call, and I'm going to  
5 go through a time line of this for you  
6 in just a second, but I want to just  
7 continue on this discussion for a  
8 minute.

9 Where he brought this to rest, it  
10 would be unsafe and even unlawful for  
11 him to try to go back and pull it out of  
12 the road, just so you know.

13 The evidence is going to show that  
14 Pamela Reed should not have been  
15 driving. She has medical issues, which  
16 I'm not going to go into detail with you  
17 now, but she had medical issues that  
18 meant she should not have been driving.

19 Shanika, the testimony will show  
20 knew of those medical problems, knew  
21 that her mother had contracted -- had a  
22 contract with one of the medical  
23 providers not to drive, and she still  
24 got in the car with her.

25 MR. BALL: Your Honor, I would

1 object to that.

2 MR. LEVY: That's what the evidence  
3 is going to show, Your Honor.

4 THE COURT: Members of the jury,  
5 will you step out? Unless you want to  
6 move to another section, Counsel.

7 MR. LEVY: I'll move on, Your  
8 Honor.

9 Let me talk about David Barrientos,  
10 the driver of this truck, the man they  
11 say so clearly didn't do his pretrip  
12 inspections.

13 David Barrientos, when he was hired  
14 by Silvi, had been a truck driver  
15 driving concrete mixer trucks and other  
16 trucks for 27 years. He's not a newby.  
17 He knows how to do a pretrip  
18 inspection.

19 The evidence will show that he did  
20 a pretrip inspection.

21 Could we put up the pretrip  
22 inspection form, please, the driver  
23 vehicle inspection report?

24 In those 27 years before he was  
25 hired by Silvi, he had never had an

1 accident in his truck.

2 Here is his pretrip inspection  
3 report. He has done his pretrip. He  
4 has checked it all off.

5 They suggested in the openings that  
6 Mr. Barrientos rushed his pretrip  
7 inspection, he did it in only five  
8 minutes. That's what it takes him on  
9 average to do a pretrip inspection.

10 But that day, he was in no hurry.  
11 As you'll see here, he started work at  
12 7:30. He doesn't get to the job until  
13 11:03 that day, a job in Philadelphia,  
14 and the records will show that his truck  
15 wasn't loaded until 10:30 that morning.  
16 So he had about three hours to be with  
17 his truck, to inspect it, and so on.

18 Let me tell you what his procedure  
19 is. First, of course, he's with that  
20 truck all the time. That's his truck.  
21 He's had it the night before. He's had  
22 it the day before.

23 He does it -- every evening he does  
24 a post-trip inspection. He can note any  
25 problems with the truck, and he fills



1 out paperwork, and he puts it down on  
2 the seat, and the mechanics will fix it  
3 overnight if he wants it fixed.

4 Then the following morning, he  
5 comes in. The company allocates 15  
6 minutes to do a pretrip inspection, but  
7 they can take as much time as they want  
8 to do a pretrip inspection. There's no  
9 rushing.

10 He does his pretrip inspection. He  
11 waits for almost three hours before his  
12 truck is loaded. Then when it's loaded,  
13 he has to wash it down.

14 So during his pretrip inspection,  
15 he inspects the tires among other  
16 things. There was no nail, the evidence  
17 is going to show, either in the tire, no  
18 big bolt through there, or nail in any  
19 other tire on July 31st, 2015.

20 After he loads the truck or the  
21 truck is loaded with the concrete for  
22 the first delivery of the day, he goes  
23 around and he washes the tires off. He  
24 has to wash any cement off of the truck,  
25 concrete off the truck that's, you know,

1 splashed on, and then he goes to the job  
2 site.

3 When he leaves the job site after  
4 he's given the concrete there, he washes  
5 his tires again, and he washes his truck  
6 out again, because he's just delivered  
7 concrete. He's been in probably --  
8 maybe it's on-street, maybe it's an  
9 off-street facility. But he washes his  
10 truck down again.

11 He then he comes back. He loads  
12 the truck again. He washes it down,  
13 checks the tires again. Any problem  
14 with the contact patch, he's picking it  
15 up in any of these following  
16 inspections, which are not required by  
17 the Department of Transportation.

18 He's only required to do this  
19 pretrip inspection once under the  
20 Department of Transportation rules. But  
21 not David Barrientos and not a Silvi  
22 employee; that's not enough. They wash  
23 the truck, and they wash the tires.

24 So then he goes to the job site for  
25 a second load, give that load, washes

1 the tire again, checks the tires again,  
2 brings it back. There's no problem with  
3 these tires.

4 He gets there back to the  
5 facility. The truck is loaded again.  
6 He washes the tires again. This is six  
7 times that day he has washed his tires.  
8 Then he leaves the facility, comes down  
9 295, and, bang, the tire explodes.

10 After the tire explodes and he  
11 pulls over, people start calling 9-1-1.  
12 The first call comes about two minutes  
13 after the blowout.

14 So he pulls over. We know when he  
15 pulled over because we have GPS records  
16 and time records to show when the truck  
17 stopped.

18 We believe that two minutes later,  
19 a woman calls 9-1-1 and reports there's  
20 a giant --

21 THE COURT: We discussed this.

22 MR. LEVY: This is what the  
23 evidence is going to show, Your Honor.

24 Okay. There are calls made. The  
25 substance of those calls may be revealed

1 later. But there's two, three, calls  
2 made to 9-1-1. 9-1-1 issues an order  
3 for that job.

4 If I can put up some times here --  
5 excuse me.

6 THE COURT: Counsel, you should  
7 feel free to move so you can see.

8 MR. LEVY: By the way, Silvi has an  
9 extensive robust maintenance and repair  
10 policy and procedure. They have  
11 mechanics who check the tire pressure on  
12 the tires. The drivers don't have to do  
13 that.

14 All the drivers are expected to do  
15 is a visual inspection, look at it, and  
16 see if it's too low, it looks like it's  
17 going flat, which they can tell because  
18 they're experienced professional  
19 drivers.

20 Some of the drivers will take a  
21 mallet and they'll give the tire a  
22 thump. Some of the drivers have like a  
23 wooden bat and they give the tire a  
24 thump. They can hear a difference.  
25 Some drivers just give it a kick.

1 They're not expected by Silvi to  
2 measure the tire pressure every time  
3 they do a pretrip inspection.

4 In this case, Silvi's mechanic had  
5 looked at the tires, and we have a  
6 record that will show you -- if we can  
7 put it up. Let me get this out of your  
8 way.

9 So we're looking at a Silvi work  
10 order detail from July 28th, just three  
11 days before the accident, and you'll see  
12 Tire Pressure Checks and Gre, meaning  
13 greased, they greased the truck.

14 Plaintiffs' counsel suggested the  
15 tire pressure is supposed to be measured  
16 by every truck driver on a pretrip  
17 inspection.

18 The evidence will show that the  
19 Department of Transportation does not  
20 require that. When a truck driver --  
21 and it could be any truck driver. Let's  
22 say somebody who just wanted to get into  
23 the business. When they're tested for  
24 their CDL, commercial driver's license  
25 exam, they have to put a gauge on the

1 tires to show that they know how to  
2 gauge a tire.

3 Silvi doesn't require that of its  
4 drivers. It's not required by law. The  
5 mechanics take care of the mechanical  
6 aspects of the truck. The pretrip  
7 inspection with respect to the tires is  
8 a visual inspection.

9 So we believe the evidence is going  
10 to show that the blowout occurred around  
11 3:23. We believe the evidence is going  
12 to show that the first 9-1-1 call was at  
13 3:25. Zach Rich makes a call back to  
14 dispatch. You heard that call. His  
15 call is at about 3:29.

16 I say "about" on all of these  
17 things, because when you're talking  
18 about time and people recording time,  
19 you know, anything within 30 seconds, 50  
20 seconds, that's sometimes the best we  
21 can do.

22 There's another call to 9-1-1 at  
23 3:32. So we've got the blowout, one  
24 call, two calls, and then sometime after  
25 that, there's a third call, and I'm not

1 sure what time that is.

2 But I know that from records that  
3 will be presented to you, that from  
4 those calls, 9-1-1 creates a response  
5 and then sends it out, dispatches it to  
6 the state police, and we know that  
7 happens at 3:34. Trooper Warwick is  
8 expected to testify. He takes that  
9 dispatch and accepts it at 3:36.

10 Do I have that right? Yes.

11 The rollover occurs sometime after  
12 that and before he can get to the  
13 scene. So he gets to the scene at 3:47,  
14 and somewhere in there, the rollover has  
15 occurred.

16 So 9-1-1 has been called within two  
17 minutes of the blowout. The trooper  
18 accepts the dispatch within two minutes  
19 of it being created, and he can't get  
20 there in time. No one is going to fault  
21 the state police for this incident.

22 Can we look at Dr. Lieberman's  
23 photograph, please? Would you mind  
24 moving that for me, Josh? Thank you.

25 Okay. So this is what we think

1 penetrated the tire. It's some kind of  
2 carriage bolt. It has little lines on  
3 it. When it went in, it made these  
4 imprint lines.

5 There's no evidence of them rolling  
6 around or wiping this smooth as it would  
7 if it had been in there for a long  
8 time.

9 Plaintiffs have no one who will  
10 come in and say that this was in there  
11 for hundreds of miles or 900 miles, a  
12 thousand miles, whatever he said in his  
13 opening.

14 And the evidence is going to show  
15 that doesn't make any sense, a half-inch  
16 bolt goes into a tire, breaks through  
17 its metal cords, its steel belts. That  
18 tire would rotate at about 400 to 440  
19 rotations per mile according to expert  
20 testimony in this case. It can't be in  
21 there long the evidence will show.

22 And, of course, if the driver is  
23 doing -- and you'll be the ones to judge  
24 his credibility. But if Dave Barrientos  
25 is doing what he says he's doing, it's

1 not there. He's picked it up somewhere  
2 between leaving the plant, on the  
3 highway, and this blowout.

4 You were shown and I think even  
5 here in the courtroom somewhere is  
6 another big tire like this, except it's  
7 intact and it has another little nail in  
8 it.

9 That nail is not there at the time  
10 of the accident according to both Dave  
11 Barrientos and according to those who  
12 inspected the tire afterwards. It's  
13 picked up somewhere after that, and it's  
14 not there at that time, and, you know,  
15 Dave Barrientos will testify on this.

16 When Dave Barrientos and Zach Rich  
17 look at this, Dave Barrientos is pulled  
18 over, we have that photograph of the  
19 truck on the side of the road, and this  
20 is all that's left on it.

21 They're perplexed. They're  
22 perplexed, because a tire, any of our  
23 tires, if you get a nail in it, should  
24 not separate this way. There is going  
25 to be some evidence on that. Plaintiff

1 has told you that already.

2 Silvi is not a tire expert  
3 company. It has a separate company that  
4 it hires. If they see a nail in a tire,  
5 the Silvi mechanic will just simply pull  
6 the tire off and put it in the pile, and  
7 a company comes and picks them up and  
8 tells Silvi what to do, "You need a new  
9 tire, here is a replacement." They're  
10 not tire experts.

11 Tire pressure. Plaintiffs stated  
12 in his opening statement, Plaintiffs'  
13 attorney, and he showed you an image of  
14 the fact that Silvi had the tire  
15 pressure set to 105, not to the maximum  
16 tire pressure of 120.

17 You'll hear that there's good  
18 reason for that. The trucks are not  
19 loaded to their full capacity. You need  
20 to have the tire set at 120 pounds per  
21 square inch if the trucks are going to  
22 be absolutely full.

23 At 105 pounds per square inch, the  
24 evidence will show that's perfectly  
25 fine, perfectly fine, and plaintiffs

1 have no expert to suggest otherwise.

2 So we have an emotional case. We  
3 have a lot of stones being thrown at  
4 Silvi. But nothing Silvi did, the  
5 evidence will show, caused the accident  
6 other than the sin of running over a  
7 bolt and having their tire blow out.

8 We'd like you to judge the case on  
9 the facts and the evidence, not on what  
10 counsel say, not on what you hear today,  
11 but on the evidence, and the case will  
12 show that on the facts and the law,  
13 Silvi prevails.

14 Thank you.

15 THE COURT: Thank you, Mr. Levy, on  
16 behalf of the Silvi defendants.

17 Mr. Greenbaum, do you want to get  
18 the mic?

19 MR. GREENBAUM: Sure.

20 THE COURT: Mr. Greenbaum on behalf  
21 of the McCarthy Tire defendants. Would  
22 you like the podium?

23 MR. GREENBAUM: No. This is fine,  
24 Your Honor. I'll just let Mr. Levy move  
25 his materials.

1 Good afternoon. I know it's been a  
2 long day, but let me reintroduce  
3 myself. My name is Josh Greenbaum. I'm  
4 here with my partners, Evan Caplan and  
5 Paul Leary, and we represent McCarthy  
6 Tire Company.

7 Here from McCarthy Tire Company is  
8 Colleen Doyle, and I'll discuss her and  
9 the family and the business in a little  
10 bit.

11 But I want to first thank you for  
12 your service and your sacrifice. This  
13 is a very important portion of our  
14 judicial system, and what you're doing  
15 here is very important, and I appreciate  
16 your promise that you made during the  
17 voir dire process, which is to listen to  
18 all the evidence and weigh it and make  
19 the decision only after you've heard all  
20 the evidence, and the other promise that  
21 you made is to treat individuals and  
22 corporations the same.

23 There's no question this accident  
24 involved very serious injuries, and  
25 McCarthy has nothing but sympathy for

1 those that were injured in this  
2 accident.

3 However, after you hear the  
4 evidence, we're going to ask that you  
5 find in favor of McCarthy in this case.

6 Talking about evidence, what  
7 Mr. Ball said, what Mr. Sherry said,  
8 what Mr. Levy said and, in fact, what I  
9 say is not evidence. It's merely to  
10 show what we believe what the evidence  
11 will show when it's presented to you.

12 Could you please put up the logo,  
13 please?

14 Let me just tell you a little about  
15 my client, McCarthy Tire Service Company  
16 of Wilkes Barre, Pennsylvania. It was  
17 started in 1926 by Joe McCarthy. He  
18 opened up his first plant -- first store  
19 in Wilkes Barre, Pennsylvania.

20 Eventually, Joe McCarthy's son Jack  
21 got involved in the business. Then from  
22 there, his grandchildren got involved,  
23 his grandson and his granddaughter, and,  
24 in fact -- I think I'm saying this  
25 appropriately -- his grand sons-in-law

1 got involved in the business, and you'll  
2 actually hear from one of those grand  
3 sons-in-law Neil Horn, who is one of the  
4 vice presidents.

5 Then, from there, they went to the  
6 great grandchildren, and, in fact,  
7 you'll hear from one of those great  
8 grandchildren who is Gary Lambert, who  
9 was involved in the sales with respect  
10 to the tires.

11 Again, we have another great  
12 grandchild here who is Colleen Horn.

13 The McCarthys take very much pride  
14 in their business. It's a very  
15 important business to them.

16 They're in the business of tire  
17 sales, tire service, and the retreading  
18 business. They deal with commercial and  
19 retail customers from large  
20 tractor-trailers to construction  
21 equipment to police cars.

22 Part of this retreading business  
23 we're going to be discussing is their  
24 retreading plant in Cobleskill, New  
25 York.

1 Let me just kind of talk a little  
2 about what retreading is again.  
3 Mr. Ball talked a little about it. But  
4 it's the process of getting a used tire,  
5 a tire which its tread is worn down, by  
6 removing it, the worn tread almost down  
7 to its -- almost removing it completely  
8 and putting a new tread on.

9 There'll be evidence that these  
10 tires and, in fact, this subject tire  
11 which was manufactured by Bridgestone  
12 back in 2008, that these tires are  
13 actually designed in order that they can  
14 be retreaded. That's the business that  
15 my client is in.

16 And, in fact, you find retreaded  
17 tires on commercial trucks, school  
18 buses, ambulances, tractors, and  
19 airplanes and, of course, in this case,  
20 on construction equipment.

21 Now, there will be evidence in this  
22 case about the process that my client  
23 goes through in retreading a tire, and  
24 there will be testimony about how long  
25 it takes.

1 It's a four, four-and-a-half-hour  
2 process from the start of receiving the  
3 tire to the inspection of the tire to  
4 doing nondestructive testing on the  
5 tire, removing and buffing down the  
6 tread, as we said, and then putting  
7 uncured rubber on the tire, and then  
8 basically curing it so it adheres and it  
9 becomes a tire with a new tread on it.

10 Now, with respect to this  
11 process -- and I know that Mr. Ball had  
12 put up and mentioned a couple of things  
13 about the audits. Let's me try to  
14 clarify a couple of things.

15 McCarthy utilizes Bridgestone  
16 Bandag's retreading process and  
17 Bridgestone Bandag's equipment when they  
18 do this.

19 He talked about a May 11 audit. So  
20 I want you to just make sure you be  
21 aware through the evidence in this case  
22 when you see an exhibit identified as  
23 132. If I recall, Mr. Ball when he put  
24 up that piece of evidence, he said it  
25 talked about the status of our client

1 during that audit, and he talked about  
2 the issue of the shearography machine,  
3 which is one of the nondestructive  
4 testings our client goes through when  
5 they're retreading the tire, and he said  
6 there was a problem with that tire.

7 When you see that piece of evidence  
8 and you look at that audit, you will  
9 find nothing as it relates to the  
10 shearography machine.

11 Also, Mr. Ball put on evidence or  
12 put on testimony of a Mr. Scofield.  
13 Mr. Scofield was one of the auditors  
14 from Bridgestone Bandag that came in to  
15 look at the process and look at the  
16 equipment.

17 In fact, he came in not on October  
18 10, which Mr. Ball said, but he came in  
19 between October 12th and 13th, when that  
20 equipment check took place, and the  
21 evidence will show that Mr. -- I want to  
22 make sure I get this correct -- Scofield  
23 said that there was no problem  
24 whatsoever with the shearography machine  
25 that was utilized for the retreading

1 process and the retreading process that  
2 took a week before.

3 Would you please put up the time  
4 line?

5 Again, I know Mr. Ball had a time  
6 line on this. I just want to kind of  
7 emphasize again so you understand the  
8 history of this tire and what has taken  
9 place.

10 Can you just blow up the first kind  
11 of section from 2008 to 2011?

12 Again, we know that this tire,  
13 based on the markings of this tire, was  
14 manufactured by Bridgestone in Tennessee  
15 in January of 2008, and, as Mr. Ball  
16 stated in his time line, this tire went  
17 through its entire first life up to the  
18 point in time of October -- between the  
19 week of October 3 to October 7 when  
20 McCarthy got that tire and retread it.

21 In or around October to December  
22 2011, the subject tire was purchased by  
23 a company called Richard E. Pierson  
24 Construction Company. It's kind of a  
25 similar company as Silvi.

1 They have a concrete truck. In  
2 fact, this tire went on that concrete  
3 truck and operated for a period of time.

4 Now, Pierson is a customer of  
5 McCarthy, and when Pierson needs tires  
6 and if they get through a tire and they  
7 can't utilize and McCarthy can't repair  
8 one of their own tires, they use what is  
9 called the stock casing to replace it.  
10 That's what happened here.

11 Can you move on, please, to the  
12 second half? Thank you.

13 Now, what we know again is now the  
14 tire is with Pierson and it stays with  
15 Pierson for a period up until December  
16 of 2014.

17 The evidence will show that this  
18 tire or the truck upon which this tire  
19 was operated for thousands of miles  
20 under tremendous weights for a period of  
21 time while at Pierson. Pierson then  
22 sells the truck with the tire to Silvi.

23 Silvi operates the truck, and we  
24 know from the records from Silvi that  
25 they operate this truck for 3,200

1 miles.

2 Now, Pierson operates it on and off  
3 the road, and Silvi operates it on and  
4 off the road with heavy loads, and it's  
5 not until -- then we have the accident  
6 on July 31, 2015.

7 I think all parties agree there's  
8 no question what happened with respect  
9 to the tire. Something punctured the  
10 tire.

11 Can you put up the photographs,  
12 please? If we can go -- we can skip  
13 that. We've already seen that one.  
14 Obviously, this is the tire on the  
15 truck. Let's go to the next couple of  
16 slides. Next one, please.

17 Again, no question, nobody disputes  
18 the fact that something got into that  
19 tire and punctured that tire, went  
20 through the lug of the tire and through  
21 the tread into the inner portions of  
22 this tire.

23 Can you go to the next one,  
24 please? It's a closeup of what  
25 happened.

53

1 Then one more, please. This is  
2 showing how it went through the tire.  
3 So this is what the evidence will  
4 show. This occurred seven years after  
5 the original tire was manufactured by  
6 Bridgestone, close to four years after  
7 it had been retreaded in 2011 by  
8 McCarthy using Bridgestone Bandag's  
9 process.  
10 The tire was well into its second  
11 life, and there will be evidence to show  
12 that because of the tread wear, they  
13 knew the tread was worn approximately 43  
14 percent. So well into its second life.  
15 It traveled thousands of miles  
16 under thousands of pounds of weight, and  
17 it doesn't fail until a foreign object  
18 gets into the tire, and we believe the  
19 evidence will show there was a loss, a  
20 tremendous loss of air pressure which  
21 caused it, and based on the weight and  
22 loss of air pressure, heat builds up in  
23 this tire so much that the tire failed.  
24 We believe after you've heard all  
25 the evidence that you should find in our

54

1 favor and find in favor of McCarthy  
2 Tire.  
3 Thank you very much.  
4 THE COURT: Thank you,  
5 Mr. Greenbaum on behalf of the McCarthy  
6 defendant.  
7 I think this is a good time to take  
8 a 15-minute break. We'll resume at  
9 3:45.  
10 THE COURT OFFICER: All rise as the  
11 jury exits the room.  
12 (The jury exited the courtroom.)  
13 THE COURT: You may be seated.  
14 Mr. Ball, who do you plan to put  
15 up, given the hour, of the one of the  
16 four people you were planning on put on  
17 today?  
18 MR. BALL: Page McGinniss, Your  
19 Honor, and, frankly, I wouldn't expect  
20 her testimony to be much longer than,  
21 once she's actually sitting up there, 15  
22 minutes.  
23 THE COURT: I was kind of guessing  
24 that, and that would mean that we'd  
25 gotten started on our evidence today,

55

1 and that will feel good.  
2 Okay. You're standing for some  
3 other reason?  
4 MR. BALL: Yes, I am, Your Honor.  
5 I think the Court is very well  
6 aware of both times counsel for Silvi  
7 broke the Court's order or instruction  
8 not to talk about police officers and  
9 police reports and whatnot.  
10 Here is my problem with what he  
11 did. I'm asking the Court for a  
12 curative instruction to the jury on what  
13 he said about the police officer and the  
14 police officer's opinion.  
15 First off, he's wrong. The police  
16 officer did write Mr. Barrientos a  
17 citation, and that citation was for -- I  
18 think it was for tires or blowout or  
19 tires exceeding weight, something of  
20 that nature. I can't remember because I  
21 don't have it in front of me right now.  
22 But I have problems with what he  
23 said for two different reasons. One,  
24 the police officer never endeavored to  
25 figure out if Barrientos did anything

56

1 one way or the other in terms of going  
2 back and picking up the tread out of the  
3 road or anything. So that's misleading  
4 as it could be on that.  
5 But as it concerns opinions that  
6 the police officer gave that  
7 Mr. Barrientos had no fault, it not only  
8 violates your order, but it's not true.  
9 And, right now, we have a jury who  
10 believes that there's a police officer  
11 out there who has made an opinion or  
12 given an opinion that Mr. Barrientos did  
13 nothing wrong in this, and that's just  
14 flat wrong.  
15 THE COURT: So what is the proposed  
16 actual curative instruction that you're  
17 requesting the Court to make?  
18 MR. BALL: I would request that the  
19 Court provide me with a little more  
20 time, so that I can go back, find out  
21 exactly what the words in the report and  
22 the deposition that the police officer  
23 has used, so that I can then look at  
24 that and apply it to whatever  
25 instruction I might request from the