

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  
: CONSOLIDATED  
SILVI CONCRETE PRODUCTIONS, :  
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. :

- - -  
September 18, 2018  
Courtroom 646 - City Hall  
Philadelphia, Pennsylvania  
- - -

JURY TRIAL

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

TRACY ALLEN, RPR  
OFFICIAL COURT REPORTER

1 THE CRIER: All rise as the  
2 Judge and jury enter the room.

3 - - -

4 (The following occurs in  
5 open court in the presence and hearing of  
6 the jury.)

7 - - -

8 THE CRIER: Court is now back  
9 in session. You may be seated.

10 Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 I am sorry they messed up your  
13 lunch order. I appreciate that you worked  
14 together to kind of make sure you got food  
15 and you worked it out. We will switch up  
16 to another lunch place tomorrow.

17 So closing arguments on behalf  
18 of Silvi, Mr. Corcoran.

19 MR. CORCORAN: Thank you, Your  
20 Honor.

21 May it please the Court,  
22 Mr. Ball, Mr. Farrar, Mr. Sherry. Good  
23 afternoon, folks.

24 JURORS: Good afternoon.

25 MR. CORCORAN: I hope you had

1 a good lunch. I feel your pain.

2 I would like to appeal to your  
3 reason and not emotion and anger. During  
4 the closing, I will ask you follow me  
5 through the evidence and to base your  
6 decision and your verdict only on the  
7 evidence, not what I say or what counsel  
8 says, no theatrics, no histrionics, the  
9 evidence. That's what I am going to ask  
10 you to do.

11 Now, I can't win, my client  
12 can't win a case based on emotion. This  
13 is a horrible injury to this woman,  
14 terrible. We all know that, and I don't  
15 want to sound trite by saying it's  
16 terrible, but it is.

17 And if you find that someone  
18 was responsible, and I think you will as I  
19 get into this, she's entitled to  
20 compensation, what you think is fair and  
21 reasonable under all the circumstances,  
22 which I will talk to you about.

23 But we know that justice is  
24 blind. And, as a result, whatever  
25 thoughts and biases or ideas we may have

1           about things, when you sit in the that box  
2           and you take your oath, you put behind  
3           you. You leave it at that door. That  
4           gives me and my fellow counsel and their  
5           client and my clients a fair opportunity  
6           and even playing field here. That's all  
7           we ask.

8                         Now, there's a recurrent theme  
9           in this case which I would like to begin  
10          with and, perhaps, you saw it, perhaps,  
11          you agree.

12                        I think from the opening bell  
13          until the closing arguments before lunch,  
14          the plaintiffs have tried to fool you and  
15          dupe you and mischaracterize the evidence.

16                        I will go through the areas  
17          where I think that happened. You may  
18          agree or disagree with me.

19                        But if you agree with me, then  
20          I would ask you, as you deliberate, to  
21          think of the simple question: Why? If  
22          the case against Silvi is so strong and  
23          we've done all these terrible things to  
24          cause this very bad incident, this  
25          accident, then why do you have to try to

1 fool and misrepresent?

2 I suggest to you the reason is  
3 anger. I think a lot of this case is  
4 trying to get people mad.

5 Why? Because, perhaps, if you  
6 are mad, your award will be bigger. You  
7 are more likely to award punitive damages,  
8 which we will talk to you about.

9 So the recurring theme is  
10 whether the plaintiffs have been straight  
11 with you.

12 And I think the most obvious  
13 example where they have not is tire  
14 inflation. From the first day of the  
15 trial until the last closing, we heard so  
16 much about this hammer and the tire gauge.  
17 I think at one point Mr. Sherry was so  
18 familiar with it, he was using it as a  
19 pointer the other day.

20 That's all we heard about.

21 And why?

22 Well, the theory was that the  
23 tire was underinflated. It was below 105  
24 or 110 or 115, whatever number you want to  
25 pick. And that's why the accident

1           happened. That's what they have been  
2           selling you from day one.

3                       The problem is, that's not  
4           what the expert testimony is.

5                       You don't have to believe me.  
6           You don't have to believe Silvi witnesses.  
7           You don't have to believe Silvi experts.  
8           I am talking about the plaintiffs'  
9           experts.

10                      There was Mr. Stopper and Mr.  
11           Cottles. There's been a lot of reference  
12           to them in closing of Mr. Ball and  
13           Mr. Sherry. They got on the stand and  
14           told you a lot of things as to why this  
15           accident happened. They were the tire  
16           experts, the tire failure experts.

17                      Neither of them, neither of  
18           them told you that the tire failed because  
19           it was underinflated. Neither of them  
20           told you it failed because it was at 105  
21           as opposed to 110, or 110 as opposed to  
22           115, or any number you want to pick in  
23           between. Neither of them told you that.

24                      In fact, bring up Mr. Stopper  
25           at 86.

1                   This is his trial testimony.

2                   And in this case you did no  
3 analysis to ascertain whether or not 105  
4 PSI was appropriate for the load that was  
5 being carried on that day at issue,  
6 correct?

7                   Answer: Correct.

8                   That's Stopper, the  
9 plaintiffs' expert. He did no analysis,  
10 none, to say that the tire pressure was  
11 wrong.

12                   Let's move on to Mr. Cottles  
13 at 88.

14                   Now, this is Troy Cottles. We  
15 heard a little before about his impeccable  
16 resume. They put his picture up, a  
17 nice-looking guy, has all these  
18 credentials, testified all over the world.  
19 He's the star.

20                   What does he tell us?

21                   The failure mode for the tire  
22 that was on Mr. Barrientos' truck was a  
23 complete tread separation, right?

24                   Answer: Yes.

25                   Question: And so the entire

1 tread portion came off at the same time?

2 Answer: Yes.

3 Question: All right. You  
4 have testified before that you did not  
5 believe that underinflated operation of a  
6 tire causes tread separation?

7 Answer: Correct.

8 Question: If the entire tire  
9 is underinflated, you see a different type  
10 of failure and a tread separation?

11 Answer: Yes. You are  
12 breaking up on that a little bit, but,  
13 yes, I believe that is correct.

14 Go to the next clip, please.

15 Now, but here -- thank you.

16 Here we find a tire that  
17 wasn't running underinflated leading to  
18 failure, but a tire that was separating,  
19 polishing, leading to its failure.

20 Now, he told you about  
21 different ways that tires fail.

22 You can take that down.

23 One is if it's underinflated.

24 That makes sense.

25 Another is if there's a defect

1           in the tire.

2                           And he distinguished between  
3           those and he is the one who told you, not  
4           me, not my client, their expert is the one  
5           who is telling you that underinflation had  
6           nothing to do with this. Think of that  
7           for a second. The inflation on this tire  
8           had nothing to do with the accident.

9                           So, therefore, why do we care  
10          about a hammer? Why do we care about a  
11          tire gauge? What's the significance of  
12          that?

13                          You folks have been doing this  
14          so long you are almost experts. You could  
15          go on a talk show at night, the talking  
16          heads, tell them all about civil  
17          litigation. You have been here six weeks.

18                          You know from all the  
19          testimony that the expert gets on the  
20          stand after they prepare a report.  
21          Everybody had a report. The expert gets  
22          on the stand after a report.

23                          The reports are prepared by  
24          the expert, sent to the attorney who hired  
25          them. In this case, Cottles was hired by

1 Mr. Ball's firm. Then they are sent to  
2 us.

3 Cottles' and Stopper's reports  
4 were done last year. For over a year,  
5 they've known that neither Cottles nor  
6 Stopper had any opinion that  
7 underinflation was a contributing factor  
8 to this accident, and yet they come in  
9 with every, single witness and expert and  
10 pick up the hammer and wave it and bang  
11 stuff. It's terrible. I don't know what  
12 they are doing when they knew it had  
13 nothing to do with anything, nothing.

14 I think there's an obligation  
15 to be forthright with you. I think we  
16 have to be straight with you. I don't  
17 think we try to fool you and hide things.

18 Did Silvi make mistakes? Yes.  
19 I am going to go through some of these.

20 But these experts, they are  
21 telling us underinflation is not a cause  
22 of this accident.

23 Now, plaintiffs ask, well,  
24 where is Silvi's tire expert? Why didn't  
25 Silvi have a tire expert?

1                   First of all, we are not the  
2                   tire defendants. That's Bridgestone and  
3                   McCarthy.

4                   But the other answer is, we  
5                   know what Stopper and Cottles say:  
6                   Underinflation didn't cause the accident.

7                   So whether it's 105, 110, 120,  
8                   100, whatever you want to pick, it didn't  
9                   cause the accident.

10                  So whether Mr. Barrientos used  
11                  this gauge or not on the day of the  
12                  accident before he left or on his pre-trip  
13                  inspection that day is meaningless because  
14                  whatever tire pressure was in that tire  
15                  when it left the yard at 3:11 on that day  
16                  was appropriate and didn't cause the  
17                  accident. That's what they are telling  
18                  you.

19                  Get back to the beginning, the  
20                  beginning of the tire and the history of  
21                  that.

22                  We know the tire was  
23                  manufactured by Bridgestone. It was  
24                  manufactured in the second week of 2011.  
25                  We know it was retread in 2013 or 2014

1 by -- I'm sorry. Retread in 2011 by  
2 McCarthy.

3 Now, we also know that my  
4 client doesn't manufacture tires and my  
5 client doesn't retread tires. My client  
6 is a consumer. It buys tires. In this  
7 instance, it didn't buy a tire. It bought  
8 a truck that had tires on it.

9 One criticism of my client is,  
10 when they bought the trucks, they didn't  
11 pull all the tires off the truck, take the  
12 tires off the rim, and then look at the  
13 tires for defects.

14 First of all, my client is not  
15 capable of doing that, so they would have  
16 to send the tires out to someone.

17 But ask yourself: Is that  
18 reasonable?

19 When you deliberate, you are  
20 going to have jury instructions, and a lot  
21 of what you are going to hear is the  
22 conduct that we are required to apply is a  
23 reasonable standard.

24 Is it reasonable to come in,  
25 say, when you buy a new truck or a used

1 truck -- a used truck, you pull the tires,  
2 take them off the rims, send them a tire  
3 manufacturer, and see if they are okay?  
4 Does that sounds reasonable to be you?

5 Now, when McCarthy was here,  
6 there was a tremendous amount of testimony  
7 about Bridgestone and defects in this  
8 tire.

9 Mr. Ball was up and said, I am  
10 not sure if Silvi is going to talk about  
11 that. I am not sure they want to.

12 Well, I do. I want to remind  
13 you about all the testimony that these  
14 people introduced before you to show  
15 defects in this tire. It wasn't our  
16 witnesses. It wasn't Bridgestone's  
17 witnesses. It wasn't McCarthy's  
18 witnesses. It was the plaintiffs'  
19 witnesses, and primarily it was  
20 Mr. Cottles, the guy with the impeccable  
21 resume.

22 And you recall that he has his  
23 own 7400 shearography machine and he puts  
24 pictures up. If we were in the other  
25 courtroom at the time that showed flaws in

1 the tire. Now, it looked like snow to me,  
2 but I am not an expert.

3 But what he told you was that  
4 there were two types of flaws. There was  
5 in liner imprints and there was trapped  
6 air. He took a picture and showed  
7 different areas and said these are  
8 defects. This is where the defects are.

9 So can we pull up Mr. Cottles  
10 at Page 73, please?

11 This is Mr. Cottles, their  
12 expert.

13 Question: I would like to  
14 talk a little about what you said the  
15 reasons for the support or how you see the  
16 separation of the tire. What is it?

17 Answer: Smoothness on the  
18 rubber from trapped air impressions and  
19 very distinct patterns in the rubber from  
20 liner imprints.

21 Question: Trapped air and  
22 liner imprints?

23 Answer: Yes.

24 Go to P-79, please. I mean,  
25 Page 79.



1                   Question: In your  
2                   inspection, your failure analysis  
3                   inspection of the tire that's here in  
4                   front of us, did you find evidence of  
5                   trapped air?

6                   Answer: I did.

7                   Go to Page 72, please.

8                   My opinion is that had  
9                   McCarthy properly inspected, they should  
10                  have seen -- would have seen that there  
11                  was separations in the tire. It came  
12                  through as a casing to them before they  
13                  went through the retread -- retread  
14                  process, which should have caused them to  
15                  scrap the tire and not retread it.

16                  Question: And I would want  
17                  to make --

18                  THE COURT: Slow down a  
19                  little.

20                  MR. CORCORAN: I'm sorry, Your  
21                  Honor.

22                  Question: And I want to make  
23                  sure we are clear because you said earlier  
24                  that there are operational and there are  
25                  manufacturing separations, correct?

1 Answer: Yes.

2 Question: These are not  
3 separations that we are talking about that  
4 would have developed after it left  
5 McCarthy, correct?

6 Answer: No, not the  
7 manufacturing ones.

8 Question: The ones you are  
9 talking about that you say McCarthy would  
10 have caught in the manufacturing process,  
11 those were there when they retread the  
12 tire?

13 Answer: That's correct.

14 Now, if you remember what  
15 Cottles did is, he criticized both  
16 Bridgestone and McCarthy.

17 But in order to get to  
18 McCarthy, they had to first get to  
19 Bridgestone. And to get to Bridgestone  
20 what he said was, we had trapped air and  
21 liner imprints, and they are defects.  
22 They are defects.

23 I think we were in the  
24 courtroom; do you remember he had a piece  
25 of rubber that had a little backing on it

1           and he tore the backing off? He said,  
2           this is like a layer of rubber. And what  
3           happens, you put layer on layer on layer  
4           and you press it together, or bonds it or  
5           something.

6                         He said, you said you want to  
7           make sure all this air is out of here.  
8           And if the air is not out, it's trapped.  
9           If it's trapped then it weakness the tire.

10                        So he said this tire was  
11           defective when it left Bridgestone because  
12           of those two reasons.

13                        And the criticism of McCarthy,  
14           in part, was, well, listen, McCarthy gets  
15           this tire to retread, and one of their  
16           obligations is to make sure that you can  
17           safely retread it.

18                        And how do they do that?

19                        They put it in the their  
20           shearography machine.

21                        And what did he say?

22                        He said, one of two things  
23           happen. Either the machine wasn't working  
24           properly or the operator didn't know how  
25           to operate the machine because there were

1 defects in the tire that would have been  
2 obvious on the machine if the operator  
3 knew what he was doing and the operator  
4 didn't pick it up.

5 So the second manufacturing  
6 defect, according to Mr. Cottles, was  
7 McCarthy because they didn't pick it up.

8 Then he went on and criticized  
9 the operator, because if you recall, none  
10 of them were certified at the time. None  
11 of them. The plaintiff made a big deal  
12 about that, not directed at Silvi. We are  
13 not in that fight. But none of them are  
14 certified.

15 He also talked about the  
16 maintenance on the equipment and showed  
17 there was problems with the maintenance.

18 All that led to the conclusion  
19 that either the operator didn't know how  
20 to operate the machine or it was  
21 defective.

22 But either event, the defects  
23 in the tire from the time Bridgestone  
24 manufactured until it got to McCarthy  
25 remains, and McCarthy should not have

1           retread this tire.

2                         That's what they told you a  
3           few weeks ago. Now, interestingly, today,  
4           they back away from that. McCarthy is not  
5           here, so they don't want you to find  
6           McCarthy responsible.

7                         Is that being honest with you?  
8           Is that a consistent position?

9                         Why did they change their  
10          position? What happened?

11                        No one came in and said,  
12          Cottles was wrong. Nobody from McCarthy  
13          testified. Nobody from Bridgestone  
14          testified. We don't put on a witness in  
15          that respect. That's not our fight.

16                        So the uncontroverted  
17          testimony, really the only uncontroverted  
18          testimony in the whole case is that there  
19          was defects in the tire from Bridgestone  
20          and McCarthy. That's what it is you are  
21          left with, if you believe Cottles.

22                        If you don't believe Cottles,  
23          you don't believe anything he said, in  
24          which case, how does that affect Silvi?

25                        But that's what Cottles is

1           telling you. That's what he said up on  
2           the stand. He was here for a long time.  
3           Nothing has changed from that testimony  
4           until today.

5                         But all of the sudden, the  
6           plaintiffs not only want you to forget it,  
7           but they want to make pretend it didn't  
8           happen.

9                         It's like we are in la-la  
10          land. That wasn't said.

11                        Is that being straight with  
12          you, ladies and gentlemen?

13                        Now, the other problem that  
14          McCarthy had is Mr. Logan testified. They  
15          didn't talk about him, but they beat him  
16          up on cross-examination. He was the guy  
17          who said 2009, '10, and '11, we have  
18          production increases and they didn't give  
19          me more help and there were problems with  
20          the warranties were increasing, claims.

21                        So during this period of time  
22          having more problems with the tires, had  
23          to produce more tires with the same amount  
24          of people, that's the testimony the  
25          plaintiff introduced when McCarthy was

1 here in order to demonstrate McCarthy  
2 didn't know what they were doing.

3 McCarthy is now gone, and all  
4 of the sudden these theories go away?

5 They don't, because the  
6 verdict sheet, which you will see, is  
7 going to ask if there was a manufacturing  
8 defect by McCarthy. I will get into that.  
9 Just because McCarthy isn't here doesn't  
10 mean all the testimony directed against  
11 them that the plaintiff produced -- we  
12 didn't do it. The plaintiff did. That's  
13 not magically going away, particularly  
14 when it is uncontroverted.

15 Now, in the final analysis  
16 here, Mr. Cottles tells you that this tire  
17 failed for two reasons.

18 The first reason was the  
19 manufacturing problems I talked about,  
20 both Bridgestone and McCarthy.  
21 Bridgestone's defects, McCarthy's failure  
22 to pick them up, and then the bolt.

23 So he's spreading the blame on  
24 everybody but clearly says it was the  
25 combination.

1                   Please go to Page 60.

2                   Question: Mr. Cottles, do you  
3                   have an opinion as to how the  
4                   manufacturing defect and the foreign  
5                   object in this tire combined to cause the  
6                   failure -- combined to cause the failure?

7                   Answer: Yes.

8                   Question: --

9                   THE COURT: Don't speed up.

10                  MR. CORCORAN: I'm sorry.

11                  Just hit me.

12                  Question: What's your opinion  
13                  in that respect, Mr. Cottles?

14                  Answer: The manufacturing  
15                  defects that we've talk about, the liner  
16                  pattern mark impressions, weakened bonds,  
17                  and the separation and the trapped air  
18                  locations already had begun weakening this  
19                  tire.

20                  Already had begun weakening  
21                  this tire.

22                  And when the puncturing object  
23                  was driven into the tire and worked within  
24                  the belts, it changed how the tire handled  
25                  stress and strain. The wires were already

1           supposed to be covered by rubber. And  
2           when you push wires into contact with  
3           other wires, as we see in the images on  
4           the screen, they are not connected.

5                        THE COURT: They are not  
6           covered.

7                        MR. CORCORAN: Sorry.

8                        Not covered anymore, so heat  
9           generates from the stress and strains that  
10          are there.

11                       Also, the object appears to  
12          have been wrenched back and forth in the  
13          tire.

14                       We see how it is grooved out  
15          at certain portions of the tread area and  
16          went deep into the tread.

17                       So in that motion, as it was  
18          being rotated on the road and pulled off  
19          the belts, and we see they were actually  
20          beginning to polish against each other.  
21          The rubber shows smoothness around the  
22          puncture. They were polishing each other  
23          up to the point that the area became so  
24          weak that the tire failed.

25                       You can take that down. Thank

1           you.

2                           What does that tell you? The  
3 combination. That's what he told you.

4                           Plaintiffs would have you  
5 believe today that that's not true. Only  
6 half is true. It's only the bolt.

7                           Are they being straight with  
8 you?

9                           Let's talk about Pamela Reed.

10                           I would like to go from  
11 general to specific comments.

12                           I'm sorry for my voice. You  
13 probably realize I have a cold.

14                           We know Pamela Reed had a long  
15 psychiatric history dating back to at  
16 least 2006. She had problems with memory,  
17 with depression, with anxiety. She was on  
18 medication for anxiety and depression,  
19 problems with concentration. Her daughter  
20 was a payee on the checking account  
21 because she could not manage that. That's  
22 unconverted. That's from the medical  
23 records they supplied, not from us. So  
24 there's no question about that.

25                           Dr. Ziv told you, because of

1 all these problems, she shouldn't have  
2 been driving. She should not have been  
3 operating a motor vehicle on the day of  
4 the accident.

5 Go back a little and look at  
6 the records of Wiley. If you recall, she  
7 treated at Wiley Christian Behavioral. We  
8 will put documents up in a second. On  
9 November 14, 2014, she went to Wiley and  
10 went there because she was having  
11 psychiatric problems. She was hearing  
12 voices.

13 What did Weiss and Ziv say?  
14 Evidence of hallucinations. Dr. Weiss was  
15 their doctor. Evidence of hallucinations.

16 Put up DS-113, please.

17 Now, this is the document --  
18 can you make that bigger on the bottom  
19 part, just the bottom?

20 Thank you.

21 This was the document that we  
22 read at least twice. This was the  
23 document that Dr. Ziv testified about, and  
24 the date is 11/17/14.

25 In previous intakes, the

1 client, meaning Ms. Reed, denied the  
2 auditory demands to harm self or others  
3 but reported both today. Client reports  
4 that she heard commands to, quote, just  
5 get in the car and drive in the river. It  
6 won't hurt.

7 We are not making that up.  
8 That comes directly from Pamela Reed's  
9 medical records.

10 Go to next page of 113,  
11 please.

12 Now, if you recall, when we  
13 talked about this, the people at Wiley  
14 were concerned. Wouldn't you be?

15 And they asked, client also  
16 contracted not to drive a car until she is  
17 more stable and not having commands, and  
18 said she understands this is for her  
19 safety and the safety of others.

20 11/17/14. Not our records,  
21 her treating doctors. She's hearing  
22 commands to drive into the river, and they  
23 are asking her not to drive.

24 What did she say about that?  
25 They asked me, but I didn't agree.



1 go.

2 So pull up DS-119, please.

3 Discuss following concern for  
4 patient's mental status today.

5 Go down to, let me call  
6 family. She adamantly refused.

7 I will not read the whole  
8 thing. You remember they wanted her to go  
9 the crisis center and she refused. That's  
10 six weeks before the accident, ladies and  
11 gentlemen.

12 Now, what does Dr. Ziv tell  
13 you?

14 Dr. Ziv tells you, it wasn't  
15 even in answer to my question. It was in  
16 answer to Mr. Ball's question on  
17 cross-examination. She shouldn't have  
18 been driving that day because she was  
19 having hallucinations. That day.

20 How does she know? This is  
21 telling to me. Dr. Ziv sat there very  
22 calmly in front of the cross-examination  
23 of Mr. Ball, who is very competent, and  
24 said, she had hallucinations. I know that  
25 because the way she interacted with the

1 police after the accident. I read it. I  
2 described it. It wasn't rational. She  
3 was irrational.

4 She snapped her fingers. You  
5 don't turn on hallucinations and  
6 irrational conduct like that. It doesn't  
7 happen.

8 So it's not like you have an  
9 accident and become in a hallucinogenic  
10 state. She said that she had that before  
11 the accident because you don't just throw  
12 the switch to go from stable to  
13 non-stable.

14 So that's what we know about  
15 her psychiatric condition. She wouldn't  
16 have been driving generally and  
17 specifically on the day of the accident.

18 Now, what do we know  
19 specifically about the accident?

20 Pull up the photograph of the  
21 four lanes.

22 So this is Lanes 1, 2, 3, and  
23 4.

24 So the testimony is from  
25 Ms. Reed, the little, wobbly man was in

1 Lane 1. I was in Lane 2. And because the  
2 wobbly man was in Lane 1, I moved to Lane  
3 3. That's what she said.

4 Now, we know that the tire  
5 tread is between Lane 3 and Lane 4. We  
6 know that. We know she's now in Lane 3.

7 Would you pull up Ms. Reed's  
8 testimony at Page 43, please?

9 What? You don't have it?

10 (Pause.)

11 MR. CORCORAN: We will get to  
12 it.

13 Now, at the same time this is  
14 happening, Mr. Bohannon is behind her.  
15 Mr. Bohannon testified by video. He said,  
16 I am three to four car lengths behind her.

17 Do we have his photograph, 57?

18 (Pause.)

19 MR. CORCORAN: No. Take that  
20 down.

21 I will keep going. If you  
22 find that, let me know.

23 Here it is.

24 Can we turn that light off,  
25 Your Honor, so they could see this a

1           little better?

2                         THE COURT: We will handle the  
3 lights. No, no. Please don't. We've got  
4 it. Thank you. They are complicated in  
5 here.

6                         MR. CORCORAN: So Mr. Bohannon  
7 was three or four car lengths behind  
8 Ms. Reed. It is -- he drew right here  
9 where he thought the tire was. It's hard  
10 to see. This is the carcass right here.  
11 This is what he drew.

12                         And Mr. Sherry or Ball  
13 commented this morning, I don't remember  
14 which one, but that's Bohannon's circle.

15                         Now, what we know is Bohannon  
16 is behind her, and the car in front of  
17 Bohannon veers sharply. So Bohannon does  
18 not see the tread, but he also veers as a  
19 result of the other car.

20                         And what he tells us is, he  
21 goes in to -- go back to the full  
22 photograph, please.

23                         Goes into Lane Number 2 a  
24 little and is able to avoid the carcass.  
25 That's what we know from Mr. Bohannon.



1           2. She told us that. The experts both  
2           said that.

3                       So she's driving in Lane 3,  
4           turns 90 degrees. Mr. Gilbert told you  
5           that, 90 degrees, a quarter turn. She  
6           goes into lane Number 2 and doesn't hit  
7           anything. Then she goes back sharply to  
8           the right, crosses over into Lane 4. The  
9           back of the car hits the guardrail. And  
10          we know she steers 270 degrees to the  
11          left. It's the steering, not the  
12          guardrail, that causes the car to lose its  
13          balance all over.

14                       Do you have it?

15                       MS. TYSON: Yes.

16                       MR. CORCORAN: Question: And  
17          the highway -- I think you said, first of  
18          all, the traffic was not very heavy on  
19          that day?

20                       Answer: That's correct.

21                       Question: And you had a  
22          fairly clear view looking in that  
23          direction, in the direction that you were  
24          traveling; is that right?

25                       Answer: Yes.

1                   Do you have her deposition  
2 testimony, which is 54?

3                   If not, just tell me.

4                   (Pause.)

5                   MR. CORCORAN: I will take  
6 that as a no.

7                   So she says that the traffic  
8 wasn't that heavy.

9                   Mr. Motyczka, their expert,  
10 says that 1.3 cars are passing every  
11 second past that area, 1.3.

12                   And one of the justifications  
13 for that is because it's shore traffic.  
14 Well, Mr. Motyczka, I guess, doesn't go to  
15 shore, and certainly I understand why  
16 Mr. Ball and Mr. Farrar wouldn't know  
17 this.

18                   If you go to the shore, ladies  
19 and gentlemen, you are going southbound.  
20 If you want to get to Wildwood or Sea Isle  
21 or Ocean City, where I live, you go south,  
22 not north. So all this alleged shore  
23 traffic that day had nothing to do with  
24 anything.

25                   Ms. Reed told you that the

1 traffic was not that heavy. Mr. Motyczka  
2 would say 1.3 cars per second.

3 But, if that's true, how many  
4 cars passed that area safely during the  
5 period of time that this tread was in this  
6 roadway?

7 We know that everyone  
8 agrees -- one thing we all agree on, the  
9 lane here is 12 feet wide. We also know  
10 and agree the width of a car is six feet.

11 Mr. Bohannon, I believe, told  
12 you when he drew that line was about  
13 two feet into Lane 3. So two feet minus  
14 12 feet is ten feet. And the car is  
15 six-feet wide.

16 What we know is, she's coming  
17 up the highway. And I suggest to you,  
18 ladies and gentlemen, all she had to do,  
19 instead of doing this and this and this,  
20 was simply go like this and avoid that  
21 tire.

22 I don't know how many of you  
23 are drivers, but if you are, you  
24 understand what I am talking about. If we  
25 have people here who are not drivers, you

1           have probably been in cars where that's  
2           happened.

3                       There is plenty of room in  
4           that lane to get around the tire. And if  
5           there wasn't, there was room in Lane  
6           Number 2 because nobody was there. That's  
7           what she's telling us.

8                       Now, you heard about sudden  
9           emergency. And the question is, did she  
10          act reasonably under the circumstances? I  
11          will not belabor this. You know what  
12          happened. You know what she did. You  
13          have to decide what was reasonable. I  
14          suggest it wasn't. And if it wasn't,  
15          sudden emergency is not an issue.

16                      Let's talk about Silvi. I  
17          told you and have proven, I think, that  
18          underinflation is not part of the case.

19                      Notwithstanding all the time  
20          you have been here and all the testimony  
21          we've taken, I think the case as to Silvi  
22          is pretty simple. When I can, I like  
23          simple.

24                      It's two issues: Did  
25          Mr. Barrientos do an inspection and why

1           didn't they call 911? Maybe three, if  
2           they called 911, would anything different  
3           have occurred, which I will get to?

4                        I suggest to you beating up on  
5           King and Desmond and Keck is easy. They  
6           said some really stupid stuff, okay, some  
7           stuff that didn't make any sense. And the  
8           policies were not always great and they  
9           were inconsistent. I will not tell you  
10          everybody always knew what the policies  
11          were because they didn't.

12                       But in the final analysis, all  
13          that matters is, did he do an inspection  
14          of the tires? Because we know that the  
15          theory is that the bolt was in the tire  
16          for a long period of time before the  
17          accident.

18                       You are going to have to judge  
19          Mr. Barrientos's credibility. That's  
20          critical in this case.

21                       He told you about the  
22          inspections he did generally and on that  
23          day. He told you that on that day he  
24          checked that tire multiple occasions to  
25          make sure it was in good running order.

1                   Now, why is he doing it? In  
2                   large part for his own protection and  
3                   safety.

4                   Think about that. He had an  
5                   80,000-pound vehicle.

6                   Who is the person at most  
7                   risk? The driver. Why wouldn't he do  
8                   those inspections?

9                   You saw documents, every day  
10                  he did the inspections. There are forms.  
11                  I will not bore you with them. They were  
12                  there.

13                  Now, a lot has been made of  
14                  the time. Did he spend five minutes?  
15                  Three minutes? Ten minutes? 12 minutes?

16                  I think that he spent the time  
17                  he had to spend, and ultimately you've got  
18                  to determine whether you believe him.

19                  Was he the most articulate  
20                  witness? No. Was he a professional  
21                  witness like their experts? No. I  
22                  suggest to you he's an honest,  
23                  hard-working guy taking care of his  
24                  family.

25                  And when he came here to

1           testify, he didn't work for Silvi anymore.  
2           But he wanted to come in and tell you what  
3           happened that day because, for a large  
4           extent, his character is on the line. His  
5           character is being challenged. And he was  
6           pretty obviously upset. He got visibly  
7           upset. And who wouldn't? Nobody wants to  
8           be responsible for an injury to Ms. Brown  
9           like she suffered. Mr. Barrientos felt, I  
10          think, like any normal human being.

11                         But the question is, in that  
12          moment, did he demonstrate to you  
13          credibility? Were his answers consistent?  
14          Did his demeanor indicate to you that he  
15          was being honest and forthright? That's  
16          what you have to decide.

17                         I submit the answer is yes,  
18          but that's for you.

19                         Please go to his testimony at  
20          Page 61.

21                         I want to take a little time  
22          to go through one clip of his testimony.  
23          I think it puts in perspective some of  
24          what he claims he does and did.

25                         At the top, just highlight

1           that a little, J.P.

2                         Thank you.

3                         Answer: I'm always  
4           pre-tripping this truck until I leave the  
5           yard because I want to make sure I leave  
6           that yard in the right driving condition  
7           of the truck.

8                         Question: You testified you  
9           spent three minutes on all your tires?

10                        Answer: Yes, I did. But it  
11           doesn't mean three minutes right out.

12                        Question: So three minutes  
13           doesn't mean three minutes?

14                        Answer: Let me explain  
15           something. I just want to get this  
16           straight.

17                        Question: Please.

18                        Answer: Sometimes -- I'm  
19           going out of this question. My wife tells  
20           me, quote, how long you going to take to  
21           get there, close quote. I could say five,  
22           ten minutes. It doesn't mean I am going  
23           to get there at that time.

24                        When you are dealing with  
25           trucks that you go out, that got to go out

1 to the public and on the road, you are  
2 going to make sure that the truck is  
3 fairly inspected, right.

4 I am not just going to go out,  
5 and just because I say three minutes, I'm  
6 going to do three minutes. I might do  
7 more. I check that truck at least ten to  
8 12 times before I leave the yard, the  
9 tires, too.

10 Doesn't mean I am going to do  
11 it all in five minutes. It could be done  
12 in five minutes, but it doesn't say that I  
13 am doing it in the five minutes.

14 Just checking the oil and just  
15 checking my oil in the truck is going to  
16 take five minutes. That's five minutes  
17 right there.

18 Question: That's assuming you  
19 are doing it?

20 Yes, I am.

21 Question: All right.

22 Answer: But just because I  
23 said five minutes doesn't mean I'm going  
24 to do everything in five minutes. I don't  
25 have a watch on me to time myself.

1 I am not trying to be smart  
2 about it. That's the way I am saying -- I  
3 am trying to say.

4 He's not the most articulate,  
5 but he's trying to tell you what he does.

6 And to try to pin him down to  
7 three, five, seven minutes, frankly, is  
8 immaterial. What you have to believe is,  
9 did he do the inspections that day?

10 And what motivation would he  
11 have to lie?

12 Think about that. He's not an  
13 employee of Silvi. He's not a defendant.

14 Now, I think the conclusion  
15 you come to is that Mr. Barrientos did  
16 reasonable inspections on that vehicle and  
17 the bolt, the object, whatever you call  
18 it, wasn't there when he left.

19 And what's the consequence of  
20 that?

21 If it wasn't there when he  
22 left, Silvi is not responsible for the  
23 failure because nobody said when he leaves  
24 at 3:11 and the accident happens at 3:20,  
25 during the period of time he's on the

1 road, nobody is saying, if he picks up the  
2 bolt there, that's his fault.

3 The theory is that the bolt  
4 was in the tire before he left. This  
5 comes down significantly to a question of  
6 Mr. Barrientos and what you believe out of  
7 his mouth from the witness stand based  
8 upon your observations.

9 I want to talk about another  
10 issue. I will not bring the tire out, but  
11 we know there's a nail in it.

12 Now, plaintiffs would have you  
13 believe that nail was there on the day of  
14 the accident before the accident, and  
15 that's another example of how bad Silvi  
16 is.

17 What is the testimony?

18 Sergeant Burns comes in, New  
19 Jersey state trooper with the commercial  
20 vehicle inspection group. He gets  
21 assigned the detail of inspecting this  
22 vehicle after accident.

23 He testifies, I get to the  
24 scene. I am not involved in the accident  
25 itself. I am involved in the vehicle.

1           Somebody comes out, puts on a new tire.  
2           Then the truck is moved to a Wawa.  
3           Everything happened at Wawa. Goes to Wawa  
4           and it's inspected.

5                         And what he says is, I spent  
6           30 minutes looking at that truck. Now, we  
7           know that he knew the tire failed, a tire  
8           failed in the truck.

9                         Is it reasonable to assume he  
10          would have looked at the tires when one of  
11          them had failed and left this thing on  
12          295?

13                        What do you think? He didn't  
14          find a nail, so the conclusion is maybe  
15          the nail wasn't there.

16                        Now, the truck is then driven  
17          from the Wawa to a Silvi facility, and the  
18          nail was found sometime later.

19                        The plaintiffs would have you  
20          believe that nail was there the day of the  
21          accident, and they had absolutely no proof  
22          of that, none, zero.

23                        And this is another example, I  
24          suggest to you, where they are trying to  
25          fool you. They are making it very simple.

1 Hey, another nail, Silvi didn't pick it  
2 up.

3 Where is the proof? Are they  
4 being straight with you on that issue? Do  
5 you believe Trooper Burns or their  
6 allegation?

7 Talking about 911, I will make  
8 it simple: Should Silvi, in retrospect,  
9 have called?

10 It would have been better if  
11 they did. It's hard to get up here and  
12 say, when an incident like this happens,  
13 you don't call 911. I am not going to  
14 suggest that to you.

15 I am suggesting to you that,  
16 if Silvi had called, nothing different  
17 would have occurred.

18 I want to go through the  
19 timeline, take it slowly.

20 The plaintiffs would suggest  
21 that, if Silvi had called, the police  
22 would have been there sooner, and the  
23 accident would not have happened. It's  
24 very simple.

25 We know that Trooper Warwick

1 was the one who ultimately arrived at the  
2 scene. We are the ones who brought him  
3 in. The plaintiff plays some of his  
4 videotape. The plaintiff didn't explain  
5 to you everything that he knew and he did  
6 that day.

7 But before Trooper Warwick  
8 arrives, we also know there were two calls  
9 placed to dispatch, one at 3:25 and one at  
10 3:32.

11 Play the 3:25 call, please.  
12 Do you have the audio?

13 (Audio played for the Court  
14 and jury.)

15 MR. CORCORAN: You can stop it  
16 there.

17 3:25, giant tire in the road  
18 going to cause an accident. That's what  
19 the woman tells dispatch.

20 3:32, Greg Nichols places the  
21 call. This audio is a little bad, so you  
22 may have to follow along with these.

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

25 THE COURT: Before you go

1 back, I would like to have that transcript  
2 incorporated. It was too hard for the  
3 court reporter to get it, so you would get  
4 it to me.

5 MR. CORCORAN: I will make a  
6 copy of that. Thank you.

7 So now I want to talk about  
8 that Trooper Warwick that we brought in to  
9 testify.

10 Do you have his timeline that  
11 he testified about? Pull that up, please.

12 Now I will go through this.  
13 But this, to me, is very important.

14 Now, if you recall, he said he  
15 was dispatched to motorist aid at 2:59.  
16 This is not the accident, the other one.  
17 He got there at 3:16, 17 minutes, to Exit  
18 26, 295 northbound. He got there at 3:16.

19 At 3:34, he gets a call from  
20 dispatch about a motor vehicle incident.  
21 Motor vehicle incident.

22 And at 3:36, he leaves the  
23 motorist and begins going to the scene in  
24 question.

25 And he gets to the scene of

1 the accident at about somewhere around  
2 3:47. He's approaching the scene on the  
3 southbound side of 295. And, if you  
4 recall, he said he had to turn around. We  
5 don't know how long that took.

6 The important thing is, he's  
7 with this other motorist from 3:16 to  
8 3:36, 20 minutes.

9 What he told you, during that  
10 20 minutes, I was dealing with that  
11 motorist. And when he got the call at  
12 3:34, he stacked it, which means, I will  
13 go there when I am done.

14 So if we pull up his testimony  
15 at Page 94.

16 Question: So what initially  
17 was the report that you were responding to  
18 now that had been stacked while you were  
19 dealing with the motorist aid call?

20 Answer: I believe it was a  
21 motor vehicle incident.

22 Question: What does that  
23 signify to you when they tell you motor  
24 vehicle incident?

25 Answer: It could be anything.

1           Typically, it's a rock to the windshield  
2           or some sort of other incident in the  
3           road.

4                        Question:  Is that  
5           distinguished from an accident?

6                        Answer:  Yes, it is.

7                        Question:  How?

8                        Answer:  It could later be  
9           determined to be an incident, but when we  
10          are dispatched to them, typically  
11          dispatched as an accident.

12                       So you said it could be debris  
13          on the highway or something hit with a  
14          rock?

15                       Answer:  A rock kicked up from  
16          a tire.

17                       Debris on the roadway, would  
18          that fall into that category?

19                       Answer:  Usually those calls  
20          come out as debris on the highway.  It  
21          could involve a car striking debris, not  
22          another vehicle.  Minor damage is there.  
23          That's reported.  It could come out as an  
24          incident.

25                       Question:  So you get calls

1 for tread on the highway?

2 Answer: Do we?

3 Question: Yes.

4 Answer: Yes, sir.

5 Question: By the way, in your  
6 experience as a state trooper for four  
7 years, how often do you get calls about  
8 debris on the highway?

9 Answer: Pretty much daily.

10 Question: Daily.

11 Is that debris other than  
12 treads?

13 Answer: Absolutely.

14 Question: Okay. Is it a lot  
15 of treads?

16 Answer: Yes, quite a bit.

17 Question: Okay. And when you  
18 get those calls, are they -- you  
19 categorize them as emergent or  
20 non-emergent?

21 Answer: Yes. Typically, we  
22 don't respond with lights and sirens to a  
23 debris call.

24 Question: That's my next  
25 question. When you respond to something

1           like that and it's called motor vehicle  
2           incident, you are not turning on your  
3           siren; is that correct?

4                     Answer: That's correct.

5                     Question: You are not putting  
6           on your flashing lights; is that correct?

7                     Answer: That's correct.

8                     You can take that down.

9                     Now, what he's telling us is  
10          there's two possibilities. It's either  
11          debris in the roadway or motor vehicle  
12          incident.

13                    And, remember, the accident  
14          hasn't happened yet, so these are calls  
15          people are responding to about the tire in  
16          the road before Reed's accident occurred.

17                    What he says is that, when  
18          those calls come in, they are either  
19          debris or motor vehicle incident. Even if  
20          a car hits the tire, this is a motor  
21          vehicle incident and I don't respond with  
22          lights and sirens. That's what he said.  
23          That's what he said.

24                    The plaintiff would have you  
25          believe that magically, if Silvi called

1 and said there's a big tire in the road  
2 that's going to cause an accident by  
3 Caller Number 1, it's lights and sirens  
4 and flashers. It's not going to happen.  
5 We know that from Warwick.

6 What we don't know is, Warwick  
7 never talks to the person calling. We  
8 know that. Warwick only hears from the  
9 dispatcher.

10 The dispatcher made the  
11 decision here to characterize this as a  
12 motor vehicle incident for whatever  
13 reason. We never heard from the  
14 dispatcher. We never heard why.

15 But the consequence is no  
16 lights and sirens. As a result, it took  
17 from 3:36, when he left the other  
18 incident, the other motorist aid call, to  
19 3:47, 11 minutes to get to the scene of  
20 this incident.

21 The plaintiff would somehow  
22 have you believe that, if Silvi called,  
23 that would have been different.

24 It's not going to be  
25 different, ladies and gentlemen. It's

1 impossible.

2 Again, I ask you, are they  
3 being straight with you in that evidence?

4 Pull up the jury verdict form,  
5 please.

6 I want to go over some  
7 questions with you. You are going to get  
8 this and have to decide this.

9 The first question is,  
10 basically, did you find Silvi Concrete  
11 negligent, "yes" or "no"?

12 The second question is, was  
13 the negligence a cause of the accident?

14 And you are going through  
15 them.

16 Go to Number 3, please.

17 Now, here they talk about  
18 outrageous conduct. The purpose is to  
19 determine whether you do or do not go to  
20 punitive damages. I will get to that.

21 That's a different type of analysis.

22 That's a very serious analysis for Silvi.

23 The next couple questions deal  
24 with the conduct of McCarthy, Pamela Reed,  
25 and Bridgestone. And in each instance,

1           you are going to have to decide -- you can  
2           pull that down -- whether the party -- was  
3           Pamela Reed negligent, "yes" or "no"? Was  
4           it a cause of the accident, "yes" or "no"?

5                         Did McCarthy -- did  
6           Bridgestone create a defect in the tire?  
7           To me, that's simple. There's nothing  
8           saying -- all the evidence is that they  
9           didn't. There's nothing saying that to  
10          the contrary. The same with McCarthy.

11                        Then you determine how many of  
12          the people were responsible and had a  
13          cause of the accident and allocate  
14          responsibility among all those people.

15                        I suggest to you, at a  
16          minimum, you are going to find Bridgestone  
17          was responsible, McCarthy was responsible,  
18          Pamela Reed was responsible.

19                        Although I am not sure -- I  
20          don't think my client did anything wrong,  
21          you may disagree and also find my client.  
22          But I am pretty confident you are going to  
23          find the other three responsible.

24                        Talk about damages first for  
25          Ms. Brown. She has a bad injury. She was

1 hurt. She's going to need future medical  
2 care. There's no getting around that.

3 I am here to ask you, when you  
4 decide how much she will receive, just to  
5 be reasonable. Take into account the  
6 testimony that you heard from her  
7 physicians.

8 And what I would like to do  
9 here, I would like to distinguish between  
10 real doctors and phony or faux doctors,  
11 the people that will give you the straight  
12 story and the ones blowing the smoke at  
13 you.

14 The real people, Esquenazi,  
15 Meier, Dr. Meier they are the people that  
16 actually treat people with amputations.  
17 Mr. Russello, from Moss Rehab, the  
18 prosthetist who fits you and those  
19 patients, another real expert.

20 Esquenazi told you that he is  
21 optimistic about Ms. Reed's future,  
22 optimistic. He told you all the things  
23 that she could do.

24 Then Mr. Russello came in and  
25 talked about the three prostheses.

1                   What I found interesting was,  
2                   the extensions of the prosthesis plays are  
3                   interchangeable.

4                   So what he told us is, he told  
5                   you he has patients who are carpenters,  
6                   turn screwdrivers, use utensils, can pick  
7                   up a piece of paper. That's what -- the  
8                   hybrid type of prosthetic that Dr.  
9                   Esquenazi has because of his disability.

10                  And then we have the  
11                  myoelectric, and that's the most advanced.  
12                  That's the one where your fingers --  
13                  individual fingers or digits can connect  
14                  and move. You can grab an egg without  
15                  cracking, 20 pounds, all that stuff.

16                  I am not saying that  
17                  Ms. Brown's future is rosy. I am not  
18                  saying she's not going to have problems or  
19                  difficult times.

20                  All I am saying is that people  
21                  who really know this area, and they treat  
22                  patients, are optimistic about her future  
23                  if she gets the right care, the right  
24                  treatment, if she gets the right  
25                  occupational therapy.



1 home healthcare aides.

2 Dr.Meier tells you that  
3 Ms. Brown needs presently about eight  
4 hours a week to do heavy cleaning, maybe  
5 shopping, things of that sort around the  
6 house.

7 Dr. Root tells you she needs  
8 up to 12 hours a day.

9 Now, ask yourself presently  
10 what's happening with the children. You  
11 heard testimony from Reverend Brown. They  
12 spend a considerable amount of time with  
13 him and have for a while.

14 We also haven't heard any  
15 testimony about how many home healthcare  
16 personnel presently are assisting anybody.  
17 The testimony, I think, is that Ms. Reed  
18 is helping Ms. Brown when she has the  
19 kids.

20 Will you pull up Exhibit 3-A  
21 now, please?

22 So one thing you have to  
23 decide in this case is whether Ms. Brown  
24 will or will not use a prosthetic device.

25 Dr. Meier told you, the longer

1           you go without the prosthesis, the more  
2           difficult it is and that even people who  
3           get prostheses don't always use them for a  
4           variety of reasons.

5                        So what we've done here is, in  
6           Column A, gave the future lifecare plan  
7           without a prosthesis, \$759,685, including  
8           the medical care without the prosthesis in  
9           the future.

10                       Then Column B, we have these  
11           medical costs with the prosthesis. That's  
12           roughly \$2.7 million. That's a  
13           difference.

14                       Now, the difference between  
15           ours, 2.7 -- I will round it -- and the  
16           plaintiff is about 12.6.

17                       So you are going to have to  
18           decide which of the experts is more  
19           credible.

20                       Was it Dr. Meier, who treated  
21           4,000 amputees and has literally written  
22           the book on home healthcare? Remember he  
23           said it was coming out soon? He wrote the  
24           chapter that other people read to become  
25           certified in the field identifying the

1 type of future care that they need.

2 You will have to determine who  
3 you believe.

4 Wage Loss.

5 Pull up Page 1 of  
6 Mr. Silverstone.

7 I don't know what to say here.  
8 The suggestion that Shanika Brown was  
9 going to work full time if this accident  
10 didn't happen and make up to \$1,100,000 is  
11 ridiculous.

12 This is work life, 2003 to  
13 2014. Three years, her income was zero.  
14 She may choose not to work. Fine. Fine.  
15 Then don't come and say, if the accident  
16 didn't happen, I would have worked full  
17 time and made a million-one. And then to  
18 compound it to say, and now I can't work  
19 at all. I was going to work but now I  
20 can't.

21 What did Dr. Esquenazi say?  
22 She can work.

23 What did Meier say? Not only  
24 can she work, a hundred percent, a hundred  
25 percent of his arm amputees work.

1                   So do you really believe she's  
2                   incapable of working?

3                   I suggest to you, again, they  
4                   are not being straight with you.

5                   Pamela Reed's damages, it's  
6                   really simple.

7                   Dr. Weiss got up on the stand  
8                   and said, Pamela Reed has PTSD as a result  
9                   of the accident. She had all these  
10                  problems before, depression, anxiety, loss  
11                  of memory, concentration. She didn't have  
12                  PTSD.

13                  Dr. Weiss ironically never saw  
14                  the records from Wiley, where the  
15                  diagnosis of PTSD exhibited.

16                  Dr. Ziv said, I looked at  
17                  everything Weiss looked at and also at  
18                  Wiley, which Weiss didn't look at. In the  
19                  Wiley records there's PTSD. There's a  
20                  diagnosis before the accident.

21                  And what are the symptoms of  
22                  PTSD? The symptoms are anxiety and  
23                  depression, memory, concentration, a bunch  
24                  of the stuff she's dealing with now.

25                  The suggestion is that she's

1 going to have this and will need help.

2 Did she get help since the  
3 accident? Have you heard one person say  
4 she got any treatment from any mental  
5 healthcare adviser from the day of the  
6 accident until the time she testified?

7 Anybody?

8 I didn't.

9 So how do you believe that  
10 magically she needs it and will get it in  
11 the future?

12 Ms. Reed has issues before.  
13 She's got issues now, but not as a result  
14 of the accident.

15 I will talk about the damages  
16 and then I am almost done. Punitive  
17 damages are meant to punish. If you get  
18 to punitive damages, you would have to  
19 determine, as Mr. Ball said, with that  
20 compensation for Ms. Brown and Ms. Reed.

21 They will be compensated for  
22 loss of earnings, future healthcare, pain  
23 and suffering, disability, disfigurement,  
24 embarrassment, loss of life's pleasures.  
25 You are to take that all in the mix, put

1           that in soup, and then come up with a  
2           number that you think fairly compensates  
3           them.

4                       Punitives are over and above  
5           that, and the purpose is to punish Silvi  
6           for its, quote, outrageous conduct.

7                       What we heard today, there was  
8           a single evidence of outrageous conduct,  
9           and that was the fact that this truck was  
10          operated for hundreds of miles with a  
11          bolt.

12                      Do you really think that  
13          Barrientos is going to put himself in a  
14          position to operate a truck of  
15          80,000 pounds for hundreds of miles with a  
16          bolt in the tire? They would have you  
17          believe that he knew it.

18                      And how did he know it?

19                      The issue of spoliation.  
20          You've seen the charge a couple times.  
21          The Judge will charge you about Chris  
22          Pruden's cellphone.

23                      Again, did Silvi make  
24          mistakes? Absolutely.

25                      Should they have taken the

1 phone and gotten the data? Absolutely.

2 The plaintiff takes the fact  
3 the phone -- that the phone's material was  
4 tampered with -- that's what the charge  
5 says -- to conclude that somehow there was  
6 discussions between Dave Barrientos and  
7 others that there was a nail in the tire  
8 or a bolt in the tire.

9 How do you conclude that? How  
10 do you make that jump, that leap and  
11 logic?

12 That's why I ask you to apply  
13 reason and not emotion, not anger.  
14 There's no basis to conclude that.

15 Barrientos said, no, I  
16 wouldn't have done that. I checked,  
17 nothing there.

18 If there's no bolt, these  
19 calls mean nothing.

20 In order to find the punitive  
21 damages, that's outrageous conduct,  
22 malicious, willful, wanton, or reckless  
23 disregard of the rights of others.

24 To prove reckless, the  
25 plaintiff has to show Silvi intentionally

1           acted or failed to act in conscious  
2           disregard of the likelihood of harm of  
3           others. Failed to act in conscious  
4           disregard of the likelihood of harm to  
5           others.

6                           Does anybody believe that Dave  
7           Barrientos left there that day knowing  
8           there was a bolt in the tire, knowing it  
9           was going to explode and an accident would  
10          happen, and the likelihood of harm to  
11          these people? Do you believe, having seen  
12          him on the stand, listening to his  
13          testimony, and assessing his credibility,  
14          that's what he intended?

15                          The plaintiffs haven't told  
16          you that 911 was outrageous. They  
17          conceded that that's good. And I don't  
18          know how they could, given what we've  
19          heard about Trooper Warwick and the 20  
20          minutes that he was with the other  
21          motorist.

22                          So, ladies and gentlemen,  
23          there are no punitive damages here. The  
24          conduct was not outrageous.

25                          Can you conclude they made

1 mistakes, yes; and that inspection should  
2 have been ten minutes, not five, okay.  
3 You can even conclude the bolt was there  
4 and Dave Barrientos didn't pick it up,  
5 okay.

6 But a conscious disregard of  
7 the likelihood of the harm to others does  
8 not exist in this case. They haven't  
9 proven it. They can't prove. The  
10 evidence simply isn't there.

11 And why, why, why are they  
12 trying to do this?

13 I told you before. I want to  
14 apply to your reason, and I ask you  
15 whether or not you thought they were  
16 trying to fool you to get you angry.

17 This is why: Punitive  
18 damages.

19 Get you angry enough that you  
20 ignore the evidence, ignore the charges,  
21 and you conclude that punitive damages are  
22 appropriate here when they weren't.

23 You've heard that this case is  
24 very important to the plaintiffs, and it  
25 is.

1                   It's equally important to my  
2                   client. My client's future is in your  
3                   hands as much as plaintiffs'.

4                   You have been incredibly  
5                   attentive throughout this whole thing. I  
6                   thank you for that. My team thanks you  
7                   for that. My clients thank you for that.

8                   All I can ask is you take the  
9                   same conscientious attitude into that  
10                  deliberation room and evaluate all this  
11                  evidence and come to a conclusion that you  
12                  think is fair and just.

13                  If you do that, we will all be  
14                  happy.

15                  Thank you.

16                  THE COURT: Thank you,  
17                  Mr. Corcoran, on behalf of Silvi Concrete.

18                  It's time for an afternoon  
19                  break. We will stand in recess for 15  
20                  minutes.

21                  THE CRIER: This Court stands  
22                  a 15-minute recess until 3:45 p.m.

23                  All rise as the jury exits the  
24                  room.

25                                                  - - -

1                   (The following occurs in  
2                   open court outside the presence and  
3                   hearing of the jury.)

4                   - - -

5                   THE CRIER:   You may be seated.

6                   THE COURT:   And as soon as our  
7                   break is over, we will go into rebuttal.  
8                   I think that given the hour and given how  
9                   carefully they've paid attention all day,  
10                  it's too much for me to do the charge.  I  
11                  want them to listen to it.  We are not  
12                  going to get a verdict today anyway, and  
13                  so that's what I am thinking, that we will  
14                  do the charge first thing in the morning  
15                  when they get here so it's fresh in their  
16                  minds and they can pay attention.

17                  So I wanted to let you know  
18                  that before the break.

19                  We will come back after the  
20                  break, and -- unless there's anything to  
21                  talk about beforehand.

22                  Counsel, I think the court  
23                  reporter -- you were taking down all  
24                  the --

25                  THE COURT REPORTER:  The

1 audio, no.

2 THE COURT: The audio, make  
3 sure we get a copy of that transcript so  
4 that we could incorporate the audio in.

5 MR. LEVY: It's already in the  
6 evidence.

7 THE COURT: We just need to  
8 know which one it was.

9 So what we will do is give a  
10 new number and say those were the audio  
11 selections put in during the closing and  
12 share with your opponent.

13 And do the same thing on  
14 plaintiffs' side so we have a nice, clear  
15 record when we are trying to reconstruct  
16 it when you are off to a new trial.

17 Enjoy the break. We will see  
18 you at 3:45.

19 THE CRIER: This Court stands  
20 in ten-minute recess until 3:45.

21 - - -

22 (At this point a short  
23 recess was taken, after which time the  
24 trial resumed.)

25 - - -

1 THE CRIER: All rise as the  
2 Judge and jury enter the courtroom.

3 - - -

4 (The following occurs in  
5 open court in the presence and hearing of  
6 the jury.)

7 - - -

8 THE CRIER: You may be seated.  
9 This Court is now back in  
10 session.

11 THE COURT: Brief rebuttal,  
12 Mr. Sherry, on behalf of Ms. Reed.

13 MR. SHERRY: Thank you, Your  
14 Honor.

15 Hello.

16 When an attorney like  
17 Mr. Corcoran gets up knowing that I get to  
18 go next, as does Mr. Farrar, and says  
19 things that he does, you will recognize  
20 that is desperation, throw a lot of words  
21 at me. I ain't like Barrientos. I don't  
22 miss stuff.

23 Leads with, I am not going to  
24 do histrionics. I am going to not try to  
25 fool you, dupe you. That's the

1           plaintiffs. They are trying to fool you  
2           and dupe you.

3                   I would say it's applicable to  
4           someone that would, say, tamper with a  
5           cellphone. That's duping to me.

6                   But let's follow this. What's  
7           this duping?

8                   Mr. Corcoran said, you heard  
9           from plaintiffs' two expert, Mr. Stopper  
10          and Mr. Cottles.

11                   I will get to both of them.  
12          There's a name that Mr. Corcoran, I guess,  
13          forgot about when preparing his closing.  
14          That's Mr. Zembower. We will talk about  
15          him a little bit. It's a conspicuous last  
16          name, Zembower. What did he say about  
17          tire pressure?

18                   Put it up.

19                   If it was at 105, that's PSI,  
20          it wouldn't need to get pulled?

21                   Answer: If it was at 105 and  
22          it was also at 105 and above its entire  
23          life.

24                   That's expert opinion  
25          testimony from Mr. Zembower before you

1 all, always 105, and we know that was  
2 under 105 because Silvi repeatedly filled  
3 it to 105.

4 And Mr. Stopper and  
5 Mr. Cottles and Mr. Zembower said, tires  
6 lose air pressure. Even Mr. Grill said  
7 that.

8 I will use this again as a  
9 pointer. That's more than what Silvi is  
10 using it for. Over there, it's wall  
11 decor.

12 Put on Mr. Barrientos's  
13 testimony.

14 If you accept my  
15 representation that the testimony is, your  
16 truck had 105, that's not what they were  
17 supposed to be, correct?

18 Answer: That's correct.

19 Question: That's something  
20 that you would want to know, wouldn't you?

21 Answer: That's correct.

22 Question: Right. That's not  
23 safe?

24 Answer: No.

25 Mr. Barrientos is checking his

1           pressure, Mr. Barrientos doesn't take the  
2           truck out on the road, no catastrophe.

3                         Why do I wave this around?  
4           Why do I say this is stupid and this is  
5           stupid and gazing at the tire like what  
6           Mr. Desmond does is stupid? Because it's  
7           stupid and dangerous and it's reckless.  
8           That's why.

9                         Take care of your pressure,  
10          know your pressure, and then you don't go  
11          out on the road.

12                        And when you don't go on the  
13          road, the tread doesn't come apart on the  
14          road.

15                        Any wonder that Mr. Corcoran  
16          misconstrues Mr. Cottles' testimony? Yes.  
17          Low tire pressure alone will not cause a  
18          tread separation, but combined with a bolt  
19          in the tire for hundreds of miles, that  
20          low tire pressure, as testified to, is  
21          going to cause the vehicle's tire to come  
22          apart, as it did.

23                        Also, as said by Mr. Zembower,  
24          the expert Mr. Corcoran never referenced  
25          in his, I'm-not-here-to-fool-you-type

1 closing argument.

2 Other things Mr. Corcoran told  
3 you, there is a report, a report that  
4 Barbara Ziv found saying my client has  
5 preexisting PTSD. I don't recall that at  
6 trial.

7 Do you recall it?

8 It wasn't put up. I am sure  
9 that if it was, Mr. Corcoran would have  
10 shown you that saying my client had PTSD.  
11 Somehow just slipped that in there at the  
12 end.

13 My client doesn't have the  
14 preexisting PTSD. Dr. Weiss testified to  
15 that.

16 It's this. It's seeing your  
17 own flesh and blood in the form of your  
18 daughter and granddaughter ripped to  
19 pieces that causes it.

20 What else did he tell you?

21 Just continue to rely on Dr.  
22 Ziv, who said that Pamela Reed was  
23 hallucinating the day of the accident.  
24 There's no medical record that supports  
25 that, nothing of the type. Dr. Ziv

1           attempted to correlate that due to the  
2           fact that my client was distraught  
3           immediately following this catastrophe.  
4           Shocking. Shocking that seeing multiple  
5           generations of your family dismembered  
6           might, just might, put you into hysterics.

7                         And how is she driving, by the  
8           way, before the catastrophe? Hearing  
9           voices, I guess. If she's hearing voices,  
10          it's Ms. Reed, psst, it's the voice in  
11          your head. I am a person who read the  
12          Pennsylvania driver's license manual. If  
13          you come upon an emergency hazard, steer  
14          left, right, steer back again, just like  
15          the manual tells you.

16                        That's exactly what she did.  
17          She steered, avoided the tread. She did  
18          better than Rachel Caucci, Paige McGinnis,  
19          and the CDL driver who plowed into it and  
20          the guy whose Honda and Kia were torn up.

21                        What is Mr. Corcoran talking  
22          about? Suicidal, yes, yes. See it right  
23          now, very suicidal, Pamela Reed, with her  
24          child and grandchild and friend in the car  
25          just decided, now is the time. Now is the

1 time to suicide myself, take my family  
2 with me, and do it this way. I will come  
3 upon what the concrete company calls a  
4 disaster waiting to happen, and I will  
5 steer consistent with the Pennsylvania  
6 driver's license manual and reams of  
7 driver response studies.

8 Great suicidal plan.

9 It's despicable that  
10 Mr. Corcoran tried to do that to you, and  
11 he talks about us trying to fool you.

12 What did he say about  
13 Mr. Barrientos?

14 This is what I wrote five,  
15 three minutes, 12 minutes. Whoa, whoa,  
16 whoa. Where did 12 minutes come from? I  
17 don't remember anything like that. That's  
18 double and a bit from what Dave Barrientos  
19 testified to, just floated out that 12  
20 minutes. Mr. Barrientos never testified  
21 to that. Five minutes.

22 Well, Sergeant Burns.

23 Sergeant Burns. Sergeant Burns didn't  
24 find a nail. Mr. Corcoran made sure to  
25 bring that up.



1 the truck, five minutes.

2 Yeah, real careful the day of  
3 the incident.

4 I am not saying that Dave  
5 Barrientos is evil. He's just grossly  
6 incompetent. Same goes for Chris Pruden  
7 and Mr. Desmond, Mr. Keck, and Mr. King.  
8 Mr. Corcoran tried to blow past their  
9 testimony by saying they said some stupid  
10 things.

11 These men are not  
12 inarticulate. They are incompetent,  
13 grossly so for years and years,  
14 incompetent, yet promoted.

15 This isn't a situation with  
16 lawyers taking things out of context. You  
17 assessed these men from the witness stand.  
18 They are not competent.

19 Mr. Corcoran didn't think not  
20 calling 911 was reckless. I will not be  
21 much more emotional, because Mr. Corcoran  
22 doesn't like that, I can be by saying how  
23 aghast I am that they didn't call 911.

24 But, just for clarification,  
25 reckless.

1                   Here's what I think is  
2                   reckless, Pruden as a supervisor, no idea  
3                   what he's looking at, doesn't make bones  
4                   about it. But they keep him in charge of  
5                   making sure pre-trip inspections are done  
6                   properly.

7                   Desmond as supervisor, same  
8                   thing. Only difference is that Pruden  
9                   goes, yeah, we are all out there kicking  
10                  tires. Desmond, visual.

11                  Years and years and years.  
12                  These are not substitute teachers. They  
13                  are put in management by Silvi, kept in  
14                  management by Silvi, promoted by Silvi.

15                  King, as policy man, I don't  
16                  know who wrote the policy. All I know is  
17                  that was there when I got there and we  
18                  continued to do it.

19                  Why didn't you look at the CDL  
20                  manuals? Ahhh, after three generations of  
21                  Browns were torn to pieces.

22                  Finally, not training drivers  
23                  to call 911 immediately. It takes ten  
24                  seconds to teach them that. They don't do  
25                  it. They never did it. That's reckless.

1                   Hoping the other motorists  
2                   will call in to report your property that  
3                   has gone on the highway and causing havoc,  
4                   that's the antithesis of responsibility.  
5                   That's reckless.

6                   There's more. Five-, four-,  
7                   three-minute trip inspection, reckless.  
8                   Written warning if you don't do a pre-trip  
9                   inspection at all, reckless.

10                  Build your company to fail.

11                  THE COURT: I'm sorry. I  
12                  didn't hear that.

13                  MR. SHERRY: Build your  
14                  company to fail.

15                  Do it day in, day out, week  
16                  in, week out, month in, month out,  
17                  failures systemically, not a bad apple.  
18                  Bad apple pickers.

19                  Barbara Ziv. There's real  
20                  doctors and phony doctors. Mr. Corcoran  
21                  never said whether Dr. Ziv was a real or  
22                  phony doctor, but given their lifecare  
23                  planner's reaction, we will safely place  
24                  Ziv in the phony category.

25                  She thinks that Pam shouldn't

1 drive. That's it. She thinks, Barbara  
2 Ziv, the person coming here with farcical  
3 opinions, like, I did sit in the courtroom  
4 and watch Shanika cry over the fact that  
5 she urinates on herself going upstairs but  
6 she's over it. Walked out. She thinks  
7 Pamela Reed can't drive.

8 Micky Gilbert, nationally  
9 recognized accident reconstructionist  
10 says, she's doing it by the book, textbook  
11 evasive maneuvers.

12 Steve Shorr, I didn't read  
13 those studies.

14 People say I shouldn't be  
15 angry listening to these arguments from  
16 Mr. Corcoran. There's a reason, members  
17 of the jury, that I asked you to find  
18 absolutely no fault whatsoever on Pamela  
19 Reed. It is because she did everything by  
20 the book when confronted with an emergency  
21 she did not create, and there's absolutely  
22 no rebuttal other than ridiculous  
23 conjecture from Silvi.

24 You want to fault her, bring  
25 somebody to say she steered wrong.

1                   What did Mr. Corcoran say?

2                   Somebody that drives a CDL -- the CDL guy  
3                   driving a concrete truck smacks into it.  
4                   What's he talking about?

5                   Is he going to blame Paige  
6                   McGinnis? I guess. Rachel Caucci? I  
7                   guess. Poor guy whose Kia was torn up? I  
8                   guess. The guy Zach Rich is talking about  
9                   in terms of a Honda being torn up? I  
10                  guess.

11                  We know who Mr. Corcoran  
12                  doesn't think is at fault, that disaster  
13                  waiting to happen.

14                  It comes back to this tread.  
15                  If that's not on roadway, no crash. If  
16                  that vehicle is not on the roadway, no  
17                  crash. If Mr. Barrientos checks and goes,  
18                  105, I don't want it to be that. I am not  
19                  taking the truck out, no crash. He's not  
20                  satisfied.

21                  Even Mr. Grill said that if  
22                  you are not satisfied, the truck can't  
23                  move.

24                  It's the other assertion  
25                  Mr. Corcoran told you. It's totally

1           unreasonable for us, when we buy a truck  
2           with tires, to take the tires off the rim  
3           and check the inside of them.

4                     It's Silvi's policy. They  
5           don't use other people's retreads. They  
6           don't have to check it. Chuck it. Throw  
7           it out. You don't know the history.  
8           That's their policy. Scott Keck said  
9           that.

10                    You don't want to shearograph  
11           that and spend that money, no problem.  
12           Buy another tire. They didn't do it.  
13           They violated their own policy.

14                    What is Mr. Corcoran talking  
15           about?

16                    Now, talking, again, about  
17           McCarthy, McCarthy and Bridgestone,  
18           defect, defect, defect. Does that sound  
19           like a defendant willing to stand up and  
20           take responsibility for what they did  
21           driving with a bolt in the tire?

22                    No, it's blame McCarthy and  
23           Bridgestone.

24                    Again, I said it during the  
25           closing, I don't like that it was Roger

1 Booth -- Mr. Corcoran thinks there was a  
2 Mr. Logan that testified. There wasn't.

3 Mr. Booth testified in a way  
4 that I didn't like in terms of McCarthy.  
5 I don't like the way they were running  
6 their plant, but I don't care. That's why  
7 I didn't bring it up in opening.

8 Why? I will tell you why. It  
9 doesn't matter how good that tire was.  
10 Silvi doesn't know how to run it. They  
11 run it with bolts and nails and tires that  
12 are underinflated and don't call 911.

13 How can anybody get upset with  
14 the McCarthy and Bridgestone given the  
15 tsunami of misconduct on the part of  
16 Silvi? That's impossible.

17 Every, single fault that you  
18 find in this case, you must correlate to  
19 causation. You will see that in your  
20 verdict sheet. It's going to be a hundred  
21 percent. It's got to add up.

22 The way that Silvi treated  
23 this tire, it is a hundred percent. The  
24 failure to call 911 makes it a hundred  
25 percent and the lack of supervision and

1 oversight, not pointing the finger at  
2 Bridgestone and McCarthy. And, I can't  
3 believe I am saying, this Pamela Reed, a  
4 victim, victim blaming.

5 Members of the jury, doesn't  
6 that offend our core? Don't blame the  
7 victims that we put into disasters by our  
8 own misconduct.

9 It's wrong. It's evil. It's  
10 where morality ends and where Silvi  
11 begins.

12 (Pause.)

13 MR. SHERRY: Members of the  
14 jury, no matter how thin somebody makes  
15 two pancakes, there's two sides of them.

16 But here you heard all the  
17 evidence. All you heard from Silvi is a  
18 bag of excuses. None of them have any  
19 applicability to reality or what happened  
20 here.

21 You run your concrete company  
22 this way; you employ people like Dave  
23 Barrientos; you don't supervise them; you  
24 financially incentivize them to deliver as  
25 much concrete as possible; you allow

1 five-, four-, three-, or sometimes  
2 no-minute pre-trip inspections, you are  
3 going to have disasters.

4 Well, guess what? You run  
5 your concrete company that way, you pay  
6 for the damages you cause. You pay it  
7 all. Again, not one cent more, no  
8 discount, not one cent less. That goes  
9 for my client and Shanika Brown.

10 I close by saying that I am  
11 Dan Sherry. That's Wes Ball. That's Kyle  
12 Farrar. That's Shanika Brown. That's  
13 Pamela Reed.

14 It has been a privilege to  
15 represent them. On behalf of all of us, I  
16 have every confidence that you will not  
17 let this family down.

18 Thank you.

19 THE COURT: Thank you, Mr.  
20 Sherry, on behalf of Pamela Reed.

21 Mr. Farrar for Shanika Brown.

22 MR. FARRAR: Thank you, Your  
23 Honor.

24 It's a long day. I will not  
25 rehash all the things Mrs. Sherry said in

1           rebuttal, but I will assure you I believe  
2           every word that he said is accurate.

3                     The one thought I kept going  
4           back to when I was listening to that  
5           closing by Mr. Corcoran was, do not accept  
6           responsibility for accidents. That's the  
7           policy: Do not accept responsibility for  
8           accidents. Deflect.

9                     There was a lot that was said  
10          that was crazy. It was sort of  
11          outlandish, outrageous.

12                    The one thing I thought was  
13          the craziest was talking about the four  
14          defendants or the four people, entities,  
15          that you guys will have to divide blame  
16          and hearing Mr. Corcoran say, you would  
17          put some on Ms. Reed and some on  
18          Bridgestone that we heard no real evidence  
19          of Bridgestone. You put some on McCarthy.  
20          I don't think you should put any on Silvi.

21                    That's preposterous. Four  
22          weeks of these clowns telling you, we have  
23          no idea what we are doing, and that's the  
24          takeaway is none on Silvi. Do not take  
25          responsibility for the accident.



1 things like this.

2 The idea that we walked back  
3 and we don't think it's reckless to not  
4 call 911, the one thing you didn't see is  
5 the actual definition of "reckless," which  
6 will be in documents we'll show you and  
7 read to you.

8 If you can, put it up.

9 This is not calling 911.

10 I will skip to the reckless.

11 To be clear, before we go  
12 there, ladies and gentlemen, you will be  
13 asked whether or not their conduct was  
14 outrageous. That's defined as a different  
15 definition but includes "reckless" -- I'm  
16 sorry.

17 "Outrageous" is conduct that's  
18 defined as malicious, wanton, willful,  
19 oppressive, or shows reckless  
20 indifference. It's the reckless  
21 indifference that I am talking about.

22 And here's what I think is so  
23 important: The paragraph that starts  
24 with, "The risks of harm will be caused by  
25 conduct that is reckless" -- I'm sorry.

1                   "The risk that harm will be  
2                   caused by conduct that is reckless is  
3                   higher than the risk that harm will be  
4                   caused by conduct that is negligent."

5                   A person or entity can be  
6                   reckless by acting or, importantly,  
7                   failing to act, failing to act.

8                   What two things do we have to  
9                   prove to show that Silvi was reckless  
10                  insofar as not calling 911? Number one,  
11                  Silvi Concrete knew a danger existed.  
12                  Absolutely.

13                  It is a disaster waiting to  
14                  happen, Mr. Barrientos said.

15                  You heard Zach Rich, the  
16                  telephone call. Did that sound like he  
17                  knew there was a dangerous condition, or  
18                  is he just easygoing to like Dave  
19                  Barrientos?

20                  There's no question Silvi knew  
21                  a danger existed.

22                  And then we have to show Silvi  
23                  Concrete intentionally failed to act,  
24                  intentionally didn't call 911 in a  
25                  conscious disregard for the likelihood of

1           harm to others. They are sitting there  
2           watching crash, after crash, after crash,  
3           McGinnis, Caucci, the car behind McGinnis,  
4           the Kia, the Honda, the Penn Jersey,  
5           crash, after crash, after crash. And they  
6           do nothing. That's an intentional  
7           disregard for the likelihood of harm to  
8           others.

9                           They knew it was going to  
10           happen. It was a disaster waiting to  
11           happen.

12                           I can assure you, ladies and  
13           gentlemen, we have not taken the position  
14           Silvi was not reckless in regard to not  
15           calling 911. There were reckless in  
16           everything they did.

17                           And Mr. Sherry covered it. I  
18           will not go back over that.

19                           I will bring up a couple other  
20           points.

21                           Mr. Sherry touched on this  
22           idea that we are not being upfront and  
23           honest, we are not being upfront and  
24           honest.

25                           Then Mr. Corcoran says, the

1           tire expert, Mr. Stopper and Mr.  
2           Cottles -- I want to put up what I  
3           designated or tendered Mr. Stopper for as  
4           an expert.

5                         I think that's Page 25.

6                         At this time, we would tender  
7           Mr. Stopper as an expert in commercial  
8           vehicle safety including rules and  
9           regulations as they apply to motor  
10          carriers and commercial drivers.

11                        The word "tires" does not  
12          appear there. This is -- he's not a tire  
13          expert. We are not being open and honest?

14                        He just skipped Zembower as if  
15          he didn't hear it.

16                        Do you know what other two  
17          experts I never heard from Mr. Corcoran's  
18          mouth? Lew Grill and Steve Shorr. It's  
19          like they never testified.

20                        What did Mr. Zembower say and  
21          why is it important? He said, if a tire  
22          is under 105, this has to come out.

23                        Do you have Exhibit 117 handy,  
24          Scott?

25                        This is an exhibit you looked

1 at, an inspection after the incident.

2 (Pause.)

3 MR. FARRAR: Top right.

4 After the incident, what are  
5 all the tires on the truck set to? 104,  
6 104, 104, 102, 104, 104, 104, 100.

7 Tires lose air. That's why  
8 they have to fill them to 105.

9 Mr. Zembower says, if it hits  
10 104, if it's below 105, you have to get  
11 that tire out.

12 To say that underinflation  
13 doesn't matter is ridiculous. It is the  
14 case.

15 Mr. Barrientos said, if I  
16 would have known it was at 105, that's  
17 unsafe. I wouldn't have drove it.

18 They violated the policy.

19 Why are they setting 118 to  
20 105 when the policy is 110 to 120? No  
21 institutional control. No idea what's  
22 happening from the top down, none.

23 They are reckless.

24 Talk a second about McCarthy  
25 and Bridgestone. What I heard

1 Mr. Corcoran say is, we didn't have to  
2 hire an expert because Mr. Cottles  
3 submitted a report; we got the report. We  
4 agreed. We accepted that there was some  
5 issues, so we took it as it was.

6 There's a big problem with  
7 that because Mr. Cottles testified the  
8 bolt caused the tire to fail when the bolt  
9 was in there for hundreds of miles.

10 If that's true that they are  
11 accepting Mr. Cottles' opinions, great.  
12 They are at fault for not seeing a bolt in  
13 this tire for hundreds of miles.

14 That's completely  
15 uncontroverted evidence. There's nobody  
16 who told you anything different.

17 The idea that this nail wasn't  
18 in there and it picked it up on the way  
19 back, is 295 a hardware store with nails  
20 and bolts everywhere, saying in 16 miles  
21 we picked up a bolt and a nail? That's  
22 ridiculous.

23 This is in there for miles.  
24 You can see it.

25 I don't know if you have the

1 picture with the rust. If not, we could  
2 talk about it.

3 The rust is so clear. The  
4 rust is not on these wires. It's on that  
5 because there's a hole in there while  
6 there's water getting inside. It rusted  
7 the wires. That's not normal. That's not  
8 on any wires here that are exposed for  
9 three years now because this is kept  
10 preserved and dry.

11 Mr. Sherry talked about his  
12 client, Ms. Reed, and their blame of  
13 Ms. Reed. That is despicable to say that  
14 Ms. Reed was having hallucinations the day  
15 before the accident.

16 And this is the worst, the  
17 word that stuck in my head because she was  
18 irrational after the accident, irrational.  
19 If she was rational, then I would say  
20 there's maybe some issues to look into.  
21 You should not be rational after seeing  
22 what that poor woman had to see that day.  
23 That's normal. That's how you act if you  
24 are in shock. Trauma. You can't see that  
25 stuff and come out the same. Irrational.

1                   So it would come to this  
2                   conclusion that she's having  
3                   hallucinations. That's as absurd as  
4                   saying Shanika is never going to have  
5                   psychiatric issues or things like  
6                   depression. Come on. That's not  
7                   credible.

8                   I also think it's really  
9                   interesting in this case, we are  
10                  talking -- I hear so much testimony about  
11                  Ms. Brown's memory problems from before  
12                  the accident, record after record of  
13                  memory problems.

14                  But they take her testimony as  
15                  to the traffic that day, a little, tiny  
16                  fact that you would always forget about an  
17                  accident and take as if Gospel.

18                  It's directly contradictory to  
19                  all the other witnesses out there, Paige  
20                  McGinnis, Rachel Caucci.

21                  Mr. Motyczka, who -- there was  
22                  some sort of laughter about it. He has  
23                  the New Jersey State Police records  
24                  showing how many cars pass the mile marker  
25                  between 3:00 and 4:00 o'clock on July 31,

1           2015.

2                           We know what the traffic was.  
3           It was 1.3 cars a second. We don't have  
4           to guess.

5                           We asked the witnesses. They  
6           said moderate to heavy, somewhere between  
7           there.

8                           Mr. Shorr, we didn't hear  
9           about him in Mr. Corcoran's closing, but  
10          he seemed to believe that's okay to take  
11          pictures of 11:30 or 12:00 on a Monday.  
12          Is that open and honest?

13                          We are the ones hiding? We  
14          have nothing to hide. We brought every  
15          Silvi witness we could get our hands on,  
16          put everyone on the stand, and hope that  
17          somebody said something credible, that  
18          somebody had an idea what they were doing  
19          there.

20                          The answer is absolutely not.

21                          Barrientos's credibility being  
22          challenged, I don't think he looked at  
23          those tires. If he did, it was five  
24          minutes.

25                          What else did he testify to?

1           The training he got from Silvi. Kicking  
2           tires and doing five-minute pre-trips  
3           while the trainer watched you?

4                        Trained -- he said, if they  
5           had trained me to call 911, like the New  
6           Jersey Commercial Drivers' Manual  
7           mandates, I would have done it. Why not?  
8           Not trained to do it.

9                        Testimony that the new drivers  
10          at Silvi get one to two weeks of training.  
11          He didn't get that. He got a couple days.  
12          He got a written test.

13                      What was the first question on  
14          the written test? Do not accept  
15          responsibility for an accident.

16                      This is a man that ran out of  
17          gas. We are supposed to expect he does  
18          the pre-trip inspection? The gauges that  
19          show that. You ran out of gas? There's  
20          gas at the plant. You don't take a  
21          concrete mixer truck to the gas station.  
22          You fill up at the plant.

23                      Why didn't he do that in the  
24          three hours he supposedly sat around?

25                      I want to talk to you about

1 the 911 thing.

2 There's one more thing left  
3 out.

4 If you could bring up  
5 Warwick's -- first of all, there's a  
6 ten-minute gap. Mr. Motyczka showed the  
7 timeline perfect, ten minutes between the  
8 tire failing and the first 911 call is  
9 made.

10 Trooper Warwick arrives at the  
11 scene two minutes late.

12 What does he say?

13 13.

14 Question: Fair to say,  
15 Trooper, that had someone told you that  
16 you needed to emergently respond to  
17 another situation somewhere else, you  
18 could have left the tow truck where it is  
19 and responded faster, correct?

20 Answer: Yeah.

21 They make a big deal he left  
22 at 3:36.

23 What does Motyczka say and  
24 Warwick? Once they call the tow truck for  
25 the guy broken down, once that call is

1           made, they don't have to wait on the  
2           roadside for the truck. Might as a  
3           courtesy. Don't have to.

4                     If he gets an emergency call  
5           ten minutes before, he's gone. He  
6           absolutely stops this accident.

7                     If an emergency call comes in  
8           ten minutes before, who knows what other  
9           officers are on duty? Warwick is not the  
10          only guy out there.

11                    I will hit two points, then  
12          look at the verdict form, and then we  
13          would be done.

14                    Dr. Root. I heard  
15          Mr. Corcoran make fun of Dr. Root for  
16          having 12 hours a day for Shanika right  
17          now.

18                    The next thing he said was,  
19          the kids live with Reverend Brown, her  
20          dad.

21                    Put that together. What did  
22          Reverend Brown say when asked, could  
23          Shanika care for A.B. full time right now  
24          by herself: She could do her best.

25                    She needs the care, the

1 attendant care, this help at home so she  
2 could have her kids full time. that's the  
3 point.

4 Dr. Root went through it.  
5 Once the youngest kid is in school, the  
6 time is less. Once they move out, the  
7 time really goes down less. That was the  
8 point of that care.

9 Dr. Root's treated thousands  
10 of amputees, too. I don't know why the  
11 idea that Root hasn't, that's misleading.  
12 He told you that he does.

13 The ideas of work and  
14 Ms. Pierce, Ms. Pierce doesn't believe her  
15 own words that she's written a hundred  
16 times.

17 The idea isn't Shanika is  
18 physically impossible of any job. It is  
19 reasonably, what can she reasonably do  
20 given the full circumstances, which is her  
21 entire background? Other reasons folks  
22 may discriminate, unfortunately, her  
23 disability. Put that all together.

24 And we talk about it in  
25 earning capacity. That's why Ms.

1 Mendelsohn used the term numbers. That's  
2 the capacity to earn.

3 We can never exactly say how  
4 much she lost. That's speculation, so the  
5 law says capacity.

6 What is the capacity?

7 I missed one thing on  
8 McCarthy. We will do it when we go  
9 through the charge.

10 Can we put the charge up?

11 So this is the verdict sheet  
12 that you will fill out. I want to walk  
13 through one by one. There's not a lot of  
14 questions.

15 Do you find Silvi Concrete was  
16 negligent? You will have a definition.  
17 Did they act reasonably under the  
18 circumstances? That's easy; that's yes.

19 Was that negligence a factual  
20 cause of any injuries to Shanika Brown and  
21 Pamela Reed?

22 Absolutely, both on the fact  
23 that their negligence caused the tire to  
24 be on the road and the fact they didn't  
25 call 911, direct causes of these injuries.

1           That's easy.

2                       Go to the next.

3                       Was Silvi's conduct  
4           outrageous? Was it reckless?

5                       I covered that. Mr. Sherry  
6           covered that. That is an easy yes.

7                       Next: Was that outrageous  
8           conduct of Silvi a factual cause of the  
9           injuries?

10                      Yes and yes.

11                      Did you find Pamela Reed  
12           was -- do you find that Pamela Reed was  
13           negligent?

14                      The driver studies the  
15           Pennsylvania driver manual. She did  
16           everything exactly as expected in an  
17           emergency situation. She is absolutely  
18           not negligent.

19                      I will skip 6.

20                      Seven. Do you find that tire  
21           manufactured by Bridgestone America Tire  
22           Operations, LLC, contained a manufacturing  
23           defect?

24                      There's an instruction on what  
25           manufacturing defect is. There's one part

1           that is really important.

2                        You put up Page 11 of the jury  
3 charge? Sorry to flip back and forth.

4                        MR. CORCORAN: We covered this  
5 before, the specific instruction. I don't  
6 think --

7                        MR. FARRAR: Not this part.

8                        THE COURT: It's fair  
9 rebuttal.

10                       MR. FARRAR: Next page, the  
11 top two paragraphs -- it is top three.  
12 The important part, middle of that full  
13 paragraph where it says, to prove this,  
14 Silvi Concrete must show that the tire was  
15 not being misused in a way that was  
16 neither intended, nor is reasonably  
17 foreseeable.

18                       In this case, the plaintiffs  
19 contend that at the time of the accident  
20 the tire was being misused.

21                       Next sentence: Silvi Concrete  
22 must also show that when it used the  
23 product, it had not been substantially  
24 altered since it left McCarthy Tire or  
25 Bridgestone Bandag's control.

1                   Driving around with a giant  
2                   bolt on an underinflated tire is misuse.  
3                   It is absolutely misuse, and Silvi has to  
4                   prove it is not misuse for you to say that  
5                   tire was manufactured defectively. That's  
6                   their burden.

7                   We know it was. They have  
8                   brought no evidence, no expert to say the  
9                   tire burst instantly. The only expert  
10                  testimony is it was in there hundreds of  
11                  miles.

12                  Go back to the verdict.

13                  Because of that, because of  
14                  the misuse, the answer is clearly no.

15                  That would make you skip 8.

16                  Nine is the same question as  
17                  to McCarthy, which is the same answer, the  
18                  misuse was after McCarthy had it. The  
19                  answer is clearly no.

20                  Have you skip 10.

21                  This is the percentage of  
22                  fault. If you check -- go down all the  
23                  way, if you check "no" to Bridgestone and  
24                  McCarthy, there's a zero.

25                  So then that's just Silvi and

1 Pamela Reed. A hundred percent Silvi.  
2 There's no question. This is a hundred  
3 percent Silvi.

4 Knowing something is a  
5 dangerous, catastrophic, hazardous thing  
6 on the road and then having the audacity  
7 for not reacting the way you want them to,  
8 that doesn't fly.

9 Go down.

10 This is the damages. Some are  
11 economic. Some are easier though to add  
12 up.

13 Mr. Ball put them up for  
14 Shanika. The medical, the 12,636,000; the  
15 wages, 623,000 to 1.1 million.

16 But, as Mr. Ball said, that's  
17 the easy part.

18 We know that on July 31, 2015,  
19 Shanika's life was forever changed,  
20 irrevocably changed in ways we cannot  
21 fathom and she can't fathom, ways we would  
22 figure out as she ages.

23 You have the power to make a  
24 day in September another day that changes  
25 her life. You have the power to make sure

1           that every medical thing she needs, she  
2           deserves for the rest of her life will be  
3           taken care of. You can lift that burden  
4           from her.

5                        You have the power, what the  
6           law says, to fairly and adequately  
7           compensate her for the pain, the mental  
8           anguish, the suffering, the humiliation,  
9           the loss of life's pleasures.

10                      You have the power to  
11           compensate her for every time in her life  
12           that she sees out of the corner of an eye  
13           a kid pointing at her and a mom saying,  
14           no, no, no, that's not nice; the power to  
15           compensate her for every time she has to  
16           ask a stranger to tie her shoe or help  
17           with her shirt that she could not get on  
18           that morning.

19                      You have the power to  
20           compensate her for every time it takes 20  
21           to 30 minutes to change a diaper. That's  
22           frustrating; the power that every day she  
23           has to have the kids with her dad, who she  
24           loves and trusts, that's not with her, the  
25           power to compensate her; power to make a

1           day in September another day that changes  
2           her life.

3                           And we have to look in the  
4           future when she's in her 40s, 50s, when  
5           her kids bring home the people...

6                           (Pause.)

7                           MR. FARRAR:   When her kids  
8           bring home the people they want to marry  
9           and she is embarrassed and anxious to meet  
10          them, embarrassed of how she looks; when  
11          she has grandkids and can't hold them and  
12          play with them; the way she can't cook for  
13          them the way she wants to.

14                           You have the power to  
15          compensate her for every one of those  
16          moments.

17                           Put up -- the time for every  
18          one of those moments, every one of those  
19          51 years; for that time in her life when  
20          she's older, in her 80s, looking back at  
21          her life.   And there's going to be fond  
22          memories.   I will not say there's not, but  
23          she's going to think about all the things  
24          she missed out on in life, the things she  
25          missed because on one random day in July

1           2015, somebody didn't check a tire and  
2           somebody didn't call 911.

3                         She has to reflect on this,  
4           and you have the power to compensate her  
5           for all those moments up until the very  
6           end.

7                         With that power comes great  
8           responsibility, and I have no doubt,  
9           having heard the testimony that you heard  
10          in the case for weeks, I have no doubt you  
11          would exercise that responsibility and you  
12          will fairly and adequately compensate  
13          Ms. Shanika for everything she's gone  
14          through.

15                        I really appreciate your time.

16                        THE COURT: Members of the  
17          jury -- if you would, flip the chart,  
18          please.

19                        It's been a long day and I  
20          still need to give you instructions on the  
21          law, but I want you to be fresh and  
22          listening.

23                        You have been listening all  
24          day intently, but at some point it shuts  
25          down, and so I would rather have you come

1 in tomorrow morning and be fresh and ready  
2 to hear the law because you, members of  
3 the jury, are going to have to apply the  
4 law to the facts as you find them.

5 And I wanted to reiterate  
6 something that I've said kind of  
7 throughout the case, but it's critically  
8 important to emphasize now. The lawyers  
9 are not the decision-makers. The lawyers  
10 are not deciding credibility. I am not  
11 deciding credibility. No one else in this  
12 room is deciding credibility. You are the  
13 only ones who will be deciding  
14 credibility. Okay.

15 So tomorrow morning come in at  
16 9:30. I appreciate that everyone was here  
17 this morning ready to roll. I will give  
18 you instructions.

19 We will order you lunch. This  
20 time we hope to get it right, or we hope  
21 they get it right, whatever the case. We  
22 hope to get your lunch tomorrow that works  
23 out a little better than today.

24 We will give you instructions  
25 on the law. Then we will turn this case

1           over to you to give us a fair and just  
2           verdict. Okay.

3                         We will see you tomorrow  
4           morning at 9:30.

5                         And those people who are  
6           trying to plan, we will work during  
7           deliberations just like the regular day.  
8           It would go 9:30 to 4:30, and you give us  
9           a verdict whenever that is. See you  
10          tomorrow morning at 9:30.

11                        Thank you for your attention.

12                        THE CRIER: All rise as the  
13          jury exit exits the room.

14                                 - - -

15                         (The following occurs in  
16          open court outside the presence and  
17          hearing of the jury.)

18                                 - - -

19                        THE CRIER: You may be seated.

20                        THE COURT: So tomorrow get  
21          here. You know we don't have anything to  
22          take care of, so no decisions to be made  
23          beforehand, so we could sleep in a little  
24          bit more than you have been for the last  
25          six weeks. Get in here -- we will start