

1 IN THE COURT OF COMMON PLEAS  
2 FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
3 CIVIL TRIAL DIVISION  
4 -----

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

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16 Courtroom 646, City Hall  
17 Philadelphia, Pennsylvania  
18 -----

19 **SEPTEMBER 19, 2018**  
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21 BEFORE: THE HONORABLE LISA M. RAU, J.  
22 -----

23 **JURY TRIAL**  
24 **MORNING SESSION**  
25 -----

26 REPORTED BY: JANET M. MANSFIELD, RPR  
27 OFFICIAL COURT REPORTER  
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1 (In open court.)  
2

3 THE COURT OFFICER: All rise. This  
4 Court now back in session. Please be  
5 seated and cease all conversations.

6 THE COURT: Good morning.

7 We're not sure the jury exhibit, I  
8 mean the jury instructions that we --  
9 first of all, let me tell you the jury  
10 is ordering lunch right now, so when we  
11 get to that moment, we've got less  
12 downtime.

13 Jess, let's have them not bring it  
14 until 12:30, and we can always change it  
15 if we want.

16 In terms of the jury instructions  
17 that I had e-mailed you yesterday, last  
18 night I guess it was -- I'm so sick of  
19 jury instructions -- didn't I say that  
20 those were going to be labeled as Court  
21 Exhibit No. 5? Does anyone --

22 MR. FARRAR: I think a clean copy  
23 was going to be 5 without the crossouts.  
24 I don't think we got the clean copy. We  
25 sort of made our own. Okay.

THE COURT: Okay. Ms. Colliver

1 beginning and Mr. Farrar would be doing  
2 the rebuttal?

3 MR. BALL: It seems that way, Your  
4 Honor.

5 THE COURT: Okay. And,  
6 Mr. Corcoran, you'll be doing it on  
7 behalf of Silvi?

8 MR. CORCORAN: I will, Your Honor.

9 THE COURT: Okay.

10 THE COURT OFFICER: All rise as the  
11 jury enters the room.

12 (The jury entered the courtroom.)

13 THE COURT OFFICER: You may be  
14 seated.

15 THE COURT: Good morning. I hope  
16 you enjoyed your day off. We were here  
17 working.

18 So here we are. I think we started  
19 maybe five, six weeks ago. The evidence  
20 is complete. You will now hear closing  
21 statements on behalf all the parties in  
22 the case.

23 Pay close attention to closing  
24 statements. A reminder that closing  
25 statements are not evidence. They're

1 argument by counsel on behalf of their  
2 clients.

3 The law in Pennsylvania is that the  
4 plaintiffs who have the burden of  
5 proving their claims begin, and then the  
6 defendants give their closing  
7 statements, and then the plaintiffs have  
8 the opportunity to give brief rebuttal.

9 The law does not permit that for  
10 the defendants. So that's what the law  
11 is. I apply it.

12 So just know that I'm sure that the  
13 defendants would like to get up and give  
14 their own rebuttal if they could, but  
15 the law does not permit them to do  
16 that.

17 So I just want people to know that  
18 at the outset, because sometimes they're  
19 waiting for that, and I don't want you  
20 to think that they don't want to get up  
21 and give a rebuttal, but the law is  
22 written the way it is. Okay?

23 On behalf of Shanika Brown, closing  
24 statements, Mr. Ball.

25 MR. BALL: Thank you, Your Honor.

1 Ladies and gentlemen of the jury,  
2 may it please the Court. On behalf of  
3 Shanika Brown, on behalf of Mr. Farrar,  
4 on behalf of rest of our trial team, I  
5 want to start by stating a very sincere  
6 thank you.

7 It has been a long process -- we  
8 know that -- for you. It's been long  
9 for us. I know it's been long for you.  
10 It's not something that you do a daily  
11 basis, and, sincerely, thank you not  
12 only for being here, but for paying the  
13 attention that you have throughout the  
14 case. We've noticed it every day.

15 THE COURT: Mr. Ball, before you go  
16 one step further, there's something  
17 wrong with the mic.

18 MR. BALL: It's not on. It's the  
19 user, not the mic.

20 THE COURT: Give it --

21 MR. BALL: We're good now?

22 THE COURT: We're perfect now.

23 MR. BALL: All right. And thank  
24 you to the court staff for the last six  
25 weeks of making sure that I don't have

1 pens in my hand and mics that work.

2 Our trial team has tried every  
3 single day, every single week to come  
4 before you and to provide you with the  
5 facts that we believe you need, the  
6 information that we believe you need,  
7 and we have done our best not to waste  
8 your time in doing that, and I hope we  
9 have succeeded.

10 Before we take a look back at those  
11 facts in this what we commonly refer to  
12 as closing where I'm going to do my best  
13 to summarize for you what I believe the  
14 facts showed, what I believe they showed  
15 compared and applied to the law, before  
16 I do that, I would like to show a few  
17 instructions that you will be given in  
18 the application of the facts that you've  
19 heard, the facts that I will argue, to  
20 the jury form, to the decisions that you  
21 will make.

22 After I'm finished, after Silvi is  
23 finished, after we have a brief  
24 rebuttal, the Judge will provide you  
25 with instructions and provide you with a

1 form. The instructions are how you are  
2 to render your verdict with definitions  
3 and whatnot.

4 I'd like to focus on a couple of  
5 those to begin with, because I think  
6 they color a lot of what I am going to  
7 say and a lot of what you will  
8 understand about the evidence or maybe  
9 you already have understood about the  
10 evidence.

11 You will get an instruction that is  
12 4.20, entitled Believability of the  
13 Witness. I want to read this for you.  
14 I'm not going to read the entire  
15 instructions for you, by the way. The  
16 Judge will do that, so we're not going  
17 to tread that water. But I want to go  
18 over a couple of them.

19 "Believability of Witnesses  
20 Generally. As judges of the facts, you  
21 decide the believability a witness'  
22 testimony. This means that you decide  
23 the truthfulness and accuracy of each  
24 witness' testimony and whether to  
25 believe all, part, or none of each

1 witness' testimony. This applies to  
2 both regular witnesses and expert  
3 witnesses."

4 Under that, because I'm not going  
5 to read everything, the other applicable  
6 portions I believe that I should read  
7 for you, "If you decide that a witness  
8 intentionally lied about a fact that may  
9 affect the outcome of the case, you may,  
10 for that reason alone, choose to  
11 disbelieve the rest of that witness'  
12 testimony. But you are not required to  
13 do so.

14 "You should consider not only the  
15 lie, but also the other factors I have  
16 given you in deciding whether to believe  
17 other parts of the witness' testimony."

18 Lastly, "As you decide the  
19 believability of each witness'  
20 testimony, you will at the same time  
21 decide the believability of other  
22 witnesses and other evidence in this  
23 case."

24 I provide that to you because I  
25 think that you have seen a number of

1 witnesses in this case on behalf of  
2 Silvi who have had, at best,  
3 inconsistent testimony, and I believe  
4 that all of those witnesses you will  
5 see, as I will summarize and you will  
6 remember, will help you in believing the  
7 remainder of what Silvi and their  
8 attorneys have told you.

9 It is sort of like looking through  
10 a prism. You look through a prism and  
11 you see things in a different color.

12 That is what I believe the  
13 believability of some of these witnesses  
14 or the instruction gives to you, the  
15 ability to understand and relate one  
16 witness to all others.

17 Now, as to that, the Judge  
18 instructed you quite some time ago on an  
19 issue that I believe touches on the  
20 believability of witnesses, so I want to  
21 refresh you with that instruction now.

22 Spoliation of Evidence, 5.60, that  
23 will be in the instructions given to you  
24 by Her Honor. Let me read it. "Members  
25 of the jury, Silvi Concrete was informed

1 in August of 2015 that Christopher  
2 Pruden's company-issued cell phone and  
3 all of its data needed to be preserved.

4 "On the date of the incident,  
5 Mr. Pruden used the cellular phone to  
6 speak with David Barrientos, the driver  
7 of the Silvi Concrete truck involved in  
8 the incident, multiple times directly  
9 before the incident and multiple times  
10 directly after the incident.

11 "Silvi Concrete failed to take  
12 Mr. Pruden's phone and failed to  
13 preserve the data.

14 "The relevant data on the cell  
15 phone was tampered with in November and  
16 December of 2016, such that the data was  
17 made irretrievable and the plaintiffs  
18 never had an opportunity to inspect the  
19 that data.

20 "Silvi Concrete knew that this was  
21 relevant to the issue in the lawsuit.  
22 As such, you are instructed to presume  
23 that this evidence would have been  
24 unfavorable to Silvi Concrete."

25 You don't destroy evidence unless

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1 you do it intentionally with a purpose.  
2 I believe that this and what we  
3 will speak about as it concerns this  
4 will, as we said earlier, give you more  
5 of a prism to look at the rest of their  
6 testimony, the rest of what their  
7 lawyers have said, the rest of the  
8 documents and experts that have been  
9 brought before you.  
10 Because you don't destroy evidence  
11 if you believe you are right. You lay  
12 it on the table and let the cards fall  
13 as they may. That is not what happened  
14 here.  
15 Let's talk about the believability  
16 of some of these witnesses and another  
17 instruction. Again, I told you I'm not  
18 going to read every one of them. I  
19 really won't, I promise.  
20 But another one as it concerns  
21 these witnesses is the inconsistent  
22 statements that these witnesses have  
23 made as I began this.  
24 An instruction you will be given in  
25 4.50, entitled Impeachment or

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1 Corroboration of Witness By Prior or  
2 Inconsistent Testimony, reads as  
3 follows: "Inconsistent Statement. You  
4 may have heard that a witness made an  
5 earlier statement inconsistent with  
6 their testimony in court.  
7 "If you believe a statement was  
8 inconsistent, you may consider the  
9 earlier statement to evaluate the  
10 believability, in other words, the  
11 truthfulness and accuracy of the  
12 witness' testimony in court."  
13 How many times did one of us stand  
14 in front of this witness stand and have  
15 to go to the tape with?  
16 With every single witness, and it  
17 wasn't just the fact witnesses. We did  
18 it with their experts. We did it with  
19 everyone they put up there, and every  
20 one of their employees that we called to  
21 that stand.  
22 Let's begin with their experts.  
23 You will recall Dr. Ziv. Dr. Ziv was  
24 the expert who provided opinions  
25 concerning Pam Reed and her mental

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1 health. At least that's what she wanted  
2 to give opinions about.  
3 You will also recall Dr. Meier who  
4 was the life care planner that the  
5 defendants brought before you to tell  
6 you what, if anything, Shanika would  
7 need later in her life.  
8 One of the things, as you will  
9 recall, Dr. Meier said that Shanika  
10 needed was psychological counseling for  
11 the remainder of her life.  
12 I found that strange and I think  
13 the jury did as well, because that was  
14 at odds, completely at odds with what  
15 the witness who was sitting on that  
16 stand said not two days earlier.  
17 Dr. Ziv, who they hired, said  
18 what? She's fine. She had some  
19 problems, she felt bad, but she has  
20 recovered, and she needs not one more  
21 bit of psychological help.  
22 When I told Dr. Meier that -- this  
23 was the question and answer -- "I guess  
24 the lack thereof is what brings me to  
25 this. Dr. Barbara Ziv sat on that stand

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1 in that chair where you are about three  
2 days ago and told this jury that Shanika  
3 is fine, that she needs no more future  
4 psychological care. Do you understand  
5 that?  
6 "Answer: If that's what she said.  
7 I mean, I trust her word.  
8 "Fair enough. To say -- I think by  
9 the look on your face, that you would  
10 disagree with that?  
11 "I certainly would, yes."  
12 And you may recall how that went  
13 down. I think he was as shocked as I  
14 was that he had been given the  
15 responsibility to give a life care plan  
16 for this lady, yet was being told for  
17 the first time on the stand that they've  
18 hired somebody else to say she doesn't  
19 need it.  
20 Inconsistency in the experts that  
21 they've hired. They can't even get the  
22 experts they pay correct.  
23 What about this next one? Lew  
24 Grill. Lew was on that stand for quite  
25 some time. Lew had a bunch of

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1 inconsistencies in his statement. He  
2 had inconsistencies with himself, with  
3 everybody else. I don't know that he  
4 said a consistent thing.

5 We know -- and I can really end  
6 with this -- that Mr. Grill qualified  
7 himself as a truck driver, a trucking  
8 expert, a professor, a pilot, an expert  
9 field goal kicker, a Hollywood movie  
10 producer and director. He had a lawyer  
11 infomercial, and it specialized in  
12 extreme blunder.

13 You will recall that Mr. Grill's  
14 favorite thing to say was, "He's wrong,  
15 she's wrong." Mr. Grill sat up there  
16 and said Scott Keck, the Silvi fleet  
17 manager with the responsibility of  
18 caring for every one of these trucks,  
19 was wrong over and over and over and  
20 over again, and every time he said it,  
21 he had an excuse for why he believed  
22 that he didn't know he was wrong, and,  
23 in addition to that, why he believed,  
24 Mr. Grill believed he was right.

25 Everybody was wrong. Nobody was

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1 right except for Mr. Grill, and  
2 Mr. Grill wasn't right on some of the  
3 things that he had even said before.

4 Believability of the witnesses that  
5 they can't even -- amongst their own  
6 witnesses, his own testimony, he can't  
7 even get it right.

8 One thing, by the way, you'll  
9 recall -- and I'm going to get to this  
10 in a second -- Mr. Grill didn't tell you  
11 is that he was an expert in any form of  
12 tire, no tire failure, no tire analysis,  
13 nothing on tires. We'll get to that in  
14 a second.

15 Rosalyn Pierce. You recall  
16 Mrs. Pierce. She was the vocational  
17 expert who testified for Silvi. She was  
18 a vocational expert who said that  
19 Shanika, again, was fine.

20 Of course, she had opined that  
21 someone else who had fallen on a bench  
22 and hurt their back was ruined for life  
23 and would never be able to work. But  
24 Shanika with one arm was fine.

25 The thing I care the most about

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1 Mrs. Pierce is Mrs. Pierce was read the  
2 following question -- these were her  
3 words from her report -- "My question is  
4 do you agree with this: 'Despite the  
5 Americans with Disability Act,  
6 nondisabled applicants are more often  
7 hired over disabled individuals'? Do  
8 you agree with that sentence?"

9 What was her answer? "No I don't."

10 Those were her words from hundreds  
11 of other reports. She knew it. Once we  
12 showed her her reports, you saw the look  
13 on her face. She realized that she had  
14 gone too far.

15 Believability of their witnesses,  
16 the credibility of their witnesses.

17 Let's talk about some promises that  
18 were made in this case early on.

19 Early on in Silvi's opening, Silvi  
20 said, a promise they gave you is, "But  
21 nothing Silvi did, the evidence will  
22 show, caused the accident other than the  
23 sin of running over a belt and having  
24 their tire blow out." That is what they  
25 promised you the evidence would show in

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1 this case.

2 THE COURT: You meant bolt?  
3 MR. BALL: What did I say?  
4 THE COURT: I thought you said  
5 belt.

6 MR. BALL: I said belt. Excuse  
7 me. Thank you, Your Honor. I'll repeat  
8 that.

9 "But nothing Silvi did, the  
10 evidence will show, caused the accident  
11 other than the sin of running over a  
12 bolt and having their tire blow out."  
13 That is what Silvi's lawyers promised  
14 they would show you before we started  
15 this case.

16 One of the people they brought to  
17 you was Craig Lieberman. Craig  
18 Lieberman, you heard his qualifications,  
19 and one of his qualifications were:  
20 "Never worked in the tire industry in  
21 any way, shape, or form?  
22 "Answer: As an employee, no.  
23 "Never designed a tire?  
24 "No.  
25 "Built a tire?

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1 "No.  
2 "Never did a tire failure analysis,  
3 correct?  
4 "Correct."  
5 That is what you heard from  
6 Mr. Lieberman, and that is the last  
7 thing that you heard from  
8 Mr. Lieberman.  
9 Who did you not hear from in this  
10 case? From Silvi. You heard from no  
11 tire expert, no one, not one single  
12 person with any experience in the tire  
13 industry, who has ever designed a tire,  
14 who has ever done anything to tires like  
15 this (indicating).  
16 The closest that they came to that  
17 was Craig Montgomery, a nice man from up  
18 north of Philadelphia, I believe it was,  
19 who has performed some tire repairs on  
20 some tires since 2015.  
21 Oddly enough, he has never  
22 performed a repair on a tire like this,  
23 as you found out. But, more  
24 importantly, why in the world are we  
25 talking about tire repairs? That tire

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1 can't be repaired.  
2 It's a waste of your time in order  
3 to deflect away from you the facts at  
4 issue that you never heard from a tire  
5 expert. You were promised that you  
6 would hear that that bolt immediately  
7 caused the failure, and no one said it.  
8 No one.  
9 Plaintiffs brought to you -- and  
10 I'll get to it in a second. But  
11 plaintiffs brought to you Mr. Cottles,  
12 who had in the industry 20 years of  
13 designing tires in different countries,  
14 different lands, of tire failure  
15 analysis. We'll get to more of his  
16 qualifications in a second. But  
17 plaintiffs brought you that.  
18 Plaintiffs also brought you  
19 Mr. Zembower from Florida. He's had  
20 more experience in maintaining tires in  
21 fleets than one can imagine.  
22 Silvi brought to you Scott Keck,  
23 the man that Lew Grill disagreed with.  
24 At least, though, to his credit, in the  
25 end, he said he was a really good

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1 manager even though he disagreed with  
2 him. That's the only person Silvi  
3 brought to you.  
4 I say it's that only person Silvi  
5 brought to you, because think about the  
6 converse. What we have brought to you,  
7 what I believe to be very good  
8 testimony, qualified testimony from  
9 Mr. Cottles, Mr. Zembower, Silvi did not  
10 rebut. Silvi gave no one to say, "No,  
11 no, no, that guy is wrong, I'm right."  
12 They gave no one. There was nothing to  
13 rebut what we have said.  
14 Let's talk about some of Silvi's  
15 company employees, Mr. Keck. Mr. Keck  
16 in trial "Mr. Keck, I think I just heard  
17 you say that you intentionally set the  
18 tire pressure on Truck 118 to 105?  
19 "I said the mechanic did.  
20 "Your mechanic did? That's not  
21 what you wanted it set at, though,  
22 right?  
23 "Answer: I gave them a range of  
24 110 to 115.  
25 "Question: It's actually 110 to

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1 120, is what you told us?  
2 "Answer: 120, but we don't set it  
3 to the max."  
4 That was the way this trial began.  
5 That is what Mr. Scott Keck told us,  
6 literally the first witness on the  
7 stand.  
8 (Videotape excerpt was played.)  
9 MR. BALL: He said 120 at trial or  
10 he says 120 at trial. He says 110 to  
11 120 in deposition. You're going to find  
12 out later that he said 105.  
13 This is him in trial: "Question:  
14 105 was not the inflation pressure that  
15 you wanted to have in the tires on Truck  
16 118; is that correct?  
17 "Answer: That is correct."  
18 That's the guy who is tasked with  
19 making sure the entire fleet is worthy  
20 and safe.  
21 Mr. Desmond. We heard from Desmond  
22 quite a bit. Mr. Desmond, as you will  
23 recall, is the one who was tasked as the  
24 investigator for Silvi after the  
25 accident took place. He was the one who

1 was given the duty to collect all the  
2 evidence.

3 Mr. Desmond, in his supervisor's  
4 report, after he collected all the  
5 evidence, signed it on 7/31/2015, the  
6 date of the accident. Mr. Desmond came  
7 up with the understanding of the  
8 analysis of the accident as, "Don't  
9 believe any debris was in the road."

10 I'll be honest with you, I don't  
11 know what it means. Do you mean that  
12 the tire is not in the road? Do you  
13 mean that the debris that Silvi says  
14 they hit was not in the road?

15 I don't know. But that was what he  
16 came up with in about six hours worth of  
17 his analysis investigation.

18 What I was more concerned with is  
19 what Desmond's direct orders were as it  
20 concerned what he was supposed to gather  
21 for that investigation.

22 Desmond's Direct Order Trial  
23 Testimony. "Question: You were given  
24 direct order by Frank Flatch to gather  
25 the communications and other -- just the

1 communications, including phones, phone  
2 communications, that would have been  
3 relevant to the issue, correct?

4 "Answer: Correct. I asked Chris  
5 and Dave if they had any conversations,  
6 text messages, were e-mails sent,  
7 anything relative to anything related to  
8 problems with Truck 118."

9 He just went and asked the people.  
10 That is the fox guarding the hen house.  
11 "Hey, I'd like you guys to give me  
12 whatever you think it is that's going to  
13 show you all were complete idiots that  
14 days," that is literally what he asked  
15 them to do. No one expects that to  
16 occur.

17 You'll recall Mr. Desmond's  
18 testimony, I asked him, "Okay. As an  
19 investigator, you never had a  
20 conversation with Mr. Pruden on the  
21 topic of whether there was a problem  
22 with that truck, Truck 118, correct?"

23 His answer: "I'm sure we discussed  
24 whether there was an issue or not with  
25 the truck before he left.

1 "Question: Say that again.

2 "Answer: I'm sure I talked to both  
3 Chris Pruden and David Barrientos after  
4 the fact was there an issue with this  
5 truck before it left."

6 Remember, I'm asking him that to  
7 find out what did you figure out, or to  
8 show that he wasn't doing an  
9 investigation. That's different,  
10 though, than what Mr. Desmond told us in  
11 his deposition.

12 (Videotape excerpt was played.)

13 MR. BALL: Never had a  
14 conversation, wouldn't know what the  
15 conversation was about. But in trial,  
16 he'll sit here and say, "No, no. I  
17 talked to them, I talked to them, and  
18 they said everything is fine."

19 Mr. Desmond takes this policy to  
20 heart, too, do not admit fault. That is  
21 a Silvi document. It is provided with  
22 every single Silvi employee new  
23 personnel packet.

24 Mr. Desmond not only takes it to  
25 heart, it says what not to do: "Do not

1 discuss the accident with other involved  
2 parties, witnesses, et cetera. Do not  
3 accept responsibility for the accident  
4 at the scene, or argue with anyone about  
5 the accident. Do not talk about the  
6 accident or give details to anyone  
7 except the police."

8 I will tell you that he takes it to  
9 heart, because what did we hear from  
10 Mr. Desmond when he took the stand  
11 within the first five minutes?

12 He's not the plant manager  
13 anymore. He has been promoted through  
14 the ranks. He now oversees I think he  
15 said five or 10 different plants. He  
16 said it's because he's done well at  
17 Silvi. Well, if that's doing well at  
18 Silvi, he's done it.

19 Remember I asked Mr. Desmond kind  
20 of the final question as it concerned  
21 his investigation. I'll come back to  
22 that in a second.

23 Let's go to Mr. Pruden. Called  
24 Mr. Pruden. He's the guy that got on  
25 the stand and decided to tell everybody

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1 he was mad.

2 Well, you'll recall that I asked

3 Mr. Pruden, "Question: Sir, do you

4 think that it would be better for Silvi

5 to properly train you in how to do a

6 pretrip inspection so that you can

7 ensure it's done properly every morning

8 as opposed to relying on equipment

9 breaking and then fixing it?

10 "Answer: I think you understood

11 that wrong. My company didn't wait for

12 things to break. I mean, there's proper

13 maintenance that's done constantly to

14 prevent this from happening."

15 This is the deposition clip that I

16 then played to remind him of what he

17 said previously.

18 (Videotape excerpt was played.)

19 MR. BALL: Believability,

20 credibility, impeachment of the witness.

21 We've done it over and over and over

22 again.

23 What matters, though, is what's the

24 real testimony. The real testimony here

25 is that Chris Pruden tells us, "Man, we

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1 wait on it to break sometimes, and when

2 it breaks, we fix it."

3 That's not preventive maintenance.

4 That's this (indicating). You wait on

5 this to break and bad things like this

6 happen (indicating). That's why you

7 don't do that.

8 Not a professional driver, not a

9 professional company, not someone who

10 literally is tasked with making sure

11 they're safe around all motorists,

12 because they know they have a

13 responsibility to do it, because they

14 know their trucks are big and

15 dangerous. You don't wait on those

16 things to break.

17 What I really thought was

18 interesting about Mr. Pruden's

19 testimony, though, was if you'll recall,

20 Mr. Desmond said that one of the things

21 that he was tasked to gather in his

22 investigation of this accident was

23 Mr. Pruden's phone.

24 We talked about that before, but

25 here is what I asked him. Before we go

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1 there, as it concerns the phone, you'll

2 recall that the testimony was drivers

3 don't use their personal phones unless

4 there's a problem, right? We heard that

5 from Pruden. We heard that from

6 Desmond.

7 I gave that to Desmond, asked him

8 that very simple question in his

9 deposition, and I had to go to the

10 tape. Here is what he said. My

11 question in trial, "Sir, you have told

12 us and Mr. Pruden has told us that

13 drivers do not use their personal cell

14 phones to communicate with their

15 supervisors or managers unless there's a

16 problem or issue, correct?

17 "Answer: They could use their

18 phone for any reason, not just issues,"

19 to which I responded...

20 Please play clip 27.

21 (Videotape excerpt was played.)

22 MR. BALL: Phone calls are made if

23 there is an issue.

24 Mr. Desmond was tasked with making

25 sure that he got Mr. Pruden's phone and

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1 everyone else's phone.

2 Why? Because we know on the day of

3 the accident, while Mr. Barrientos is

4 sitting at the yard right before he

5 leaves on the third trip of the day,

6 Barrientos and Pruden exchange four

7 phone calls.

8 We know he's sitting at the yard.

9 Everybody has agreed on it. He's

10 sitting at the yard. They exchange four

11 phone calls.

12 They say you can call for whatever

13 or however. Recall what Mr. Barrientos,

14 however, said at trial: "You said that

15 if you got a bolt -- if you would have

16 saw the bolt, if you would have saw the

17 bolt, what you would have done is notify

18 your supervisor?

19 "Answer: Yes.

20 "Your supervisor on July 31st,

21 2015, was Chris Pruden. He was the one

22 working?

23 "Yes.

24 "You would have notified him by

25 giving him a call?



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1 "Yes.  
2 "Multiple calls, right?  
3 "That's right.  
4 "Maybe up to four phone calls?  
5 "Answer: Could."  
6 We know something was happening  
7 with this truck before it left the yard  
8 on Friday afternoon, third trip of the  
9 day.  
10 Everybody has got somewhere to be.  
11 It's late. It's the weekend. It's  
12 shore time. It's Miller Time. It's  
13 whatever it is other than I got to sit  
14 here and wait on this tire to be fixed.  
15 Direct Command to Desmond. "He  
16 told you to get relevant communications;  
17 that was the direct command, correct?  
18 "Yes, to find out if there were  
19 e-mails sent, text messages,  
20 conversation, anything relevant to Truck  
21 118.  
22 "We've got all these  
23 communications, but whose communications  
24 do we not have from July 31st, 2015,  
25 sir?

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1 "I was told there was an issue with  
2 Chris Pruden's phone.  
3 "Whose communications do not we not  
4 have from July 31st, 2015?  
5 "Chris Pruden.  
6 "Everybody but Chris Pruden? Yes?  
7 "Yes.  
8 "Because Chris Pruden's phone was  
9 broken?  
10 "That's what I'm told. That's what  
11 I'm told."  
12 You will recall what the  
13 instruction as to this phone is, and pay  
14 attention to dates, months, times,  
15 because the accident happened in July of  
16 2015.  
17 Now let me read it again for you:  
18 "Members of the jury, Silvi concrete was  
19 informed in August of 2015 that  
20 Christopher Pruden's company-issued cell  
21 phone and all of its data needed to be  
22 preserved.  
23 "On the date of the incident,  
24 Mr. Pruden used the cellular phone to  
25 speak with David Barrientos, the driver

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1 of the Silvi Concrete truck involved in  
2 the incident, multiple times directly  
3 before the incident and multiple times  
4 directly after the incident.  
5 "Silvi Concrete failed to take  
6 Mr. Pruden's phone and failed to  
7 preserve the data."  
8 Here are the dates. "The relevant  
9 data on the cell phone was tampered with  
10 in November and December of 2016, such  
11 that the data was made irretrievable and  
12 plaintiffs never had an opportunity to  
13 inspect the data.  
14 "Silvi Concrete knew this evidence  
15 was relevant to the issues in this  
16 lawsuit. As such, you are instructed to  
17 presume that this evidence would have  
18 been unfavorable to Silvi Concrete."  
19 They tampered with the information  
20 on Chris Pruden's cell phone, the one  
21 that was made to have phone calls four  
22 times before this truck leaves the yard.  
23 They tampered with and destroyed  
24 that evidence almost more than a year  
25 later when they knew they were going to

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1 have to turn it over.  
2 You bring the evidence and you let  
3 the cards fall as they may. They did  
4 not.  
5 Which brings me to a portion of the  
6 verdict form that you are going to read,  
7 in addition to all of them, but you are  
8 going to read what standard must be met  
9 in order for Silvi to be responsible for  
10 this.  
11 There are two standards that you  
12 will see in there that Silvi will need  
13 to meet in order to be responsible for  
14 certain damages.  
15 I am going to go to the most  
16 stringent one first. You will be  
17 instructed as to punitive damages. This  
18 is 8.00. It states, "If you find the  
19 conduct of a party was outrageous, you  
20 may award punitive damages, as well as  
21 compensatory damages, in order to punish  
22 that party for its conduct and to deter  
23 the party and others from committing  
24 similar acts."  
25 Here is what I want you to

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1 concentrate on, because I'm going to go  
2 to another deposition: "A party's  
3 conduct is outrageous when it is  
4 malicious, wanton, willful or  
5 oppressive, or shows reckless  
6 indifference to the interests of  
7 others."  
8 Reckless indifference. I know that  
9 tire is about to fail; it's Friday  
10 afternoon; you got a bunch of other  
11 tires on the car; don't worry about it;  
12 if it fails, we'll be okay. That is  
13 reckless indifference.  
14 I show you that because you will  
15 also be instructed as to reckless --  
16 excuse me -- as to punitive damages  
17 that -- I don't have it there, but give  
18 me one second. I want to read the exact  
19 portion for you.  
20 We moved it around. Give me one  
21 second. Do I have the whole thing? I  
22 don't have the whole thing.  
23 Reckless conduct, you will be  
24 instructed, is significantly worse than  
25 negligent conduct.

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1 I would submit to you that the  
2 evidence has shown that what they have  
3 done is reckless, what they have done is  
4 punitive, and if that is what they have  
5 done, then they have necessarily also  
6 committed negligence.  
7 If you check the most stringent  
8 one, then by virtue of that, the other  
9 lesser one is also checked.  
10 What Silvi did was not mere  
11 negligence. It was outrageous.  
12 The negligence definition, I want  
13 you to be familiar with it. This is the  
14 last time I'll show it to you: "A party  
15 must act in a reasonably careful manner  
16 to avoid injuring others. The care  
17 required varies according to the  
18 circumstances and the degree of danger  
19 at a particular time.  
20 "You must decide how a reasonably  
21 careful party would act under the  
22 circumstances established by the  
23 evidence in this case.  
24 "A party who does something a  
25 reasonably careful party would not do

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1 under the circumstances is negligent.  
2 "A party also can be negligent by  
3 failing to act." 9-1-1.  
4 "A party who fails to do something  
5 a reasonably careful party would do  
6 under the circumstances is negligent."  
7 No reasonable professional trucking  
8 company does the maintenance, the  
9 pretrip inspections, what I submit to  
10 you is the knowing conduct of putting  
11 that truck on the road that day with  
12 that tire, no reasonable company does  
13 that.  
14 No reasonable company also fails to  
15 act when they create what they  
16 themselves have had to admit is an  
17 emergent hazardous situation.  
18 If you find, however, outrageous  
19 conduct -- because it is outrageous --  
20 if you find outrageous conduct, you find  
21 this.  
22 With that, you will be instructed  
23 on factual cause. I'm going to do my  
24 best not to go into that definition, but  
25 if you find negligence, the bottom line

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1 is you have to find that the negligence  
2 caused the accident, right?  
3 So that hole in that tire was  
4 there, as you heard adequate competent  
5 expert opinions say, for hundreds of  
6 miles. That hole being in that tire  
7 caused by whatever bolt it was, that's  
8 one of the causes of this.  
9 If Silvi just does a normal  
10 inspection, if they just almost half-ass  
11 a pretrip inspection, they'll find a  
12 bolt in their tire.  
13 But they're not even doing that,  
14 and because they leave it in there, it  
15 causes this. It causes the tire to come  
16 apart. And then Silvi doesn't call  
17 9-1-1. Both are causes. You're not  
18 limited to one cause. Many things that  
19 Silvi did can cause this.  
20 On that, you heard from  
21 Mr. Cottles. Mr. Cottles, coming back  
22 to him, was the only tire expert that  
23 you heard in this case.  
24 Mr. Cottles told you that he had 17  
25 years of tire industry design

1 experience. He's done a design study in  
 2 Japan, obviously, the United States.  
 3 He's designed passenger development or  
 4 he was the head of passenger development  
 5 at Goodyear, Sumitomo. He's designed  
 6 with Goodyear's counterpart. He was a  
 7 tire failure analyst with Goodyear.  
 8 That was part of his job, part of his  
 9 duties. He's been an independent tire  
 10 failure analyst for the last 13 years.

11 Mr. Cottles' resume is impeccable  
 12 as it concerns what caused that thing to  
 13 fail that way.

14 But, again, I ask you, what did  
 15 Silvi bring in front of you to even  
 16 rebut his opinion?

17 Mr. Cottles said that it had been  
 18 in there for hundreds and hundreds of  
 19 miles. I want to focus on that. For  
 20 hundreds and hundreds of miles.

21 I don't know that I need an expert  
 22 to tell me that that's been in there for  
 23 hundreds and hundreds of miles, but we  
 24 brought one and he made sure to tell  
 25 that to you.

1 The wires don't fall on each other  
 2 in the exact perfect rotation as they  
 3 are, they don't break at the same  
 4 angles, they don't break on the same  
 5 lines, and they sure as heck don't rust  
 6 when a bolt just instantaneously  
 7 punctures a tire and causes it to fail.

8 If they did, then you would be able  
 9 to explain to me where is the rust on  
 10 these wires. There's wires exposed all  
 11 throughout this. But the only one  
 12 that's got rust on it is the one that  
 13 the hole or is the wires in the hole,  
 14 because the bolt was sitting there or  
 15 the whatever it is, screw, whatever, was  
 16 sitting in there for hundreds of miles,  
 17 going over wet concrete sites, driving  
 18 in the rain.

19 That is outrageous to keep a  
 20 half-inch hole in your tire for hundreds  
 21 of miles as a professional truck driver.

22 Now, I feel pretty confident --  
 23 maybe I'm wrong on this -- but I feel  
 24 pretty confident that when Silvi's  
 25 attorneys get up here and start talking

1 about what they believe the evidence may  
 2 or may not show in this case, one of the  
 3 things they're going to do in response  
 4 to the fact that they didn't have a tire  
 5 expert is they're going to do everything  
 6 they can to highjack Mr. Cottles.

7 They're going to do everything they  
 8 can to say, "You heard Mr. Cottles was  
 9 critical of McCarthy. Ha. It ain't our  
 10 fault. It's McCarthy's fault."

11 It's going to be bold of them if  
 12 they do that, but if they do, if they  
 13 do, I want to address it.

14 First off, McCarthy is no longer in  
 15 this case. You have been instructed  
 16 accordingly by the Court and the Court  
 17 has instructed you from the beginning  
 18 and will at the end that this case is to  
 19 be determined by your review of the  
 20 facts in this case. Nothing outside of  
 21 this case.

22 And I say that because there is not  
 23 evidence that you can rely on in my  
 24 review of the record that McCarthy was  
 25 the cause of this.

1 Silvi might want you to think that,  
 2 but McCarthy's gone. Things were or  
 3 were not said after they were gone. You  
 4 have to rely on this evidence.

5 I would direct you specifically to  
 6 one of the other instructions that we  
 7 will have in this charge as it concerns  
 8 manufacturing defect.

9 I really don't want to read the  
 10 whole thing, but I think I need to,  
 11 because it's important as to the  
 12 application of facts to this, the law.

13 You will see on Page 10 and 11, it  
 14 says for the manufacturing defect  
 15 instruction that, "When the incident  
 16 happened the way the -- that when the  
 17 incident happened, the tire was not  
 18 being misused or it had not been  
 19 substantially altered in a way that was  
 20 not foreseeably reasonable."

21 You'll find out that if you find  
 22 this tire has been misused or altered,  
 23 then you can't find for a defect for  
 24 McCarthy because somebody else is at  
 25 fault, Silvi.

1 I would tell you that a  
2 professional driver and a professional  
3 company who leaves a bolt in a tire that  
4 drives over job sites all the time for  
5 hundreds and hundreds of miles is not  
6 the correct way to use a tire.

7 The definition continues: "Silvi  
8 Concrete must prove that at the time of  
9 the incident, the tire was being used  
10 properly for its intended purposes and  
11 for an intended or reasonably  
12 foreseeable purpose.

13 "To prove this, Silvi Concrete must  
14 show that the tire was not being misused  
15 in a way that was neither intended nor  
16 was reasonably foreseeable.

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

20 What is reasonably foreseeable is,  
21 frankly, the expert they brought us,  
22 Craig Montgomery. He's an expert in  
23 removing bolts from tires and fixing  
24 tires. That's reasonably foreseeable.  
25 That's what happens.

1 What's not reasonably foreseeable  
2 is keeping the bolt in the tire for  
3 hundreds of miles and waiting on it to  
4 fail. So simply because it may have had  
5 a bolt in it doesn't mean it's  
6 reasonably foreseeable that they leave  
7 it in there for hundreds of mile and  
8 wait for it to fail.

9 Silvi has not brought an expert to  
10 prove this to you in any way, shape,  
11 form, or fashion.

12 Lastly, "Silvi Concrete must also  
13 show that when it used the product, it  
14 had not been substantially altered since  
15 it left McCarthy or Bridgestone-Bandag's  
16 control."

17 I'll stop there. A bolt for a  
18 hundred miles everyone would agree is a  
19 substantial alteration.

20 I read Bridgestone-Bandag, those  
21 words. I don't know, but there's a  
22 chance that Silvi gets up here and tries  
23 to argue that Bridgestone, the  
24 manufacturer of the tire ten years ago,  
25 has responsibility for this, not Silvi.

1 Again, if they do -- I don't know  
2 if they will, but if they do, you think  
3 to yourselves how many more times are  
4 they going to put the responsibility on  
5 somebody else?

6 It's a theme that they'll have. It  
7 is not their fault. It is McCarthy's  
8 fault intentionally. It is  
9 Bridgestone's fault intentionally. It's  
10 Pam Reed's fault. It's somebody else's  
11 fault. "We didn't have to call 9-1-1.  
12 Somebody else call 9-1-1." It's  
13 anyone's fault but theirs.

14 I bet they even tell you it's just  
15 an accident, that these things just  
16 happen.

17 All of it will be used to distract  
18 from what we are speaking of, Silvi's  
19 outrageous conduct in leaving a bolt and  
20 a hole in a tire for hundreds of miles,  
21 knowing they should have changed it,  
22 knowing they should have done something  
23 different, and knowing they did not.  
24 It's waving the shiny keys over here to  
25 distract from the evidence over there

1 (indicating).

2 Which brings me to the 9-1-1  
3 issue. Remember, the negligence  
4 instruction was what you do or fail to  
5 do.

6 Barrientos described this as,  
7 "Question: Running over this is a  
8 disaster waiting to happen, right?

9 "Answer: Yes."

10 The person at the scene who  
11 admitted finally that he saw the tread  
12 come off, saw it get thrown into the  
13 road, is the guy who says it's a  
14 disaster waiting to happen. If it's a  
15 disaster waiting to happen, call 9-1-1.  
16 How do you not?

17 What we heard after it, though, is  
18 mind-boggling. We heard Silvi witnesses  
19 say they wouldn't call 9-1-1 today. We  
20 heard Silvi witnesses say, "Well, I  
21 didn't have to call 9-1-1. I thought  
22 somebody else called 9-1-1."

23 You'll be given an instruction  
24 called sudden emergency in this case. I  
25 want to read it for you. It is directly

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1 applicable to Mrs. Reed. I would  
2 imagine Mr. Sherry will have something  
3 to add to it.  
4 Sudden Emergency in this case says,  
5 "In this case, Pamela Reed claims she is  
6 not responsible for the incident because  
7 she faced a 'sudden emergency' and  
8 responded reasonably under the  
9 circumstances.  
10 "In order to establish she faced a  
11 'sudden emergency,' Pamela Reed must  
12 prove to you all of the following:  
13 "Pamela Reed faced a 'sudden  
14 emergency' requiring immediate  
15 responsive action.  
16 "Pamela Reed did not create the  
17 'sudden emergency.'  
18 "Pamela Reed's response to the  
19 'sudden emergency' was reasonable under  
20 the circumstances."  
21 It required immediate action, it  
22 was not her tire, and her actions were  
23 reasonable.  
24 We know that Pamela Reed's actions  
25 were reasonable because of the testimony

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1 you heard in this case.  
2 We brought in front of you, much  
3 like Mr. Cottles, another expert,  
4 Mr. Gilbert.  
5 Mr. Gilbert brought to you the  
6 physical evidence from the scene, and he  
7 took the physical evidence from the  
8 scene, and then compared it to the  
9 research literature and testing over  
10 decades from the government, from car  
11 manufacturers.  
12 He took the two and compared them.  
13 And when he did that, what did he say?  
14 He said that what Pamela Reed did is  
15 what is reasonable, because people  
16 design for it. It is expected that  
17 people will try to miss something like  
18 this in the roadway, and will  
19 overcorrect sometimes.  
20 That is just life. You can't  
21 expect someone in a split second, in a  
22 split second to determine whether their  
23 car can or cannot get over it.  
24 Miss Reed is not a race car  
25 driver. None of us are. Mr. Gilbert

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1 was, and you heard him say he didn't  
2 think he'd be able to do it.  
3 Silvi brought to you a man by the  
4 name of Mr. Schorr. I bring him up  
5 because I want to talk about what he  
6 didn't bring to you, what he didn't talk  
7 about.  
8 We asked him on the stand,  
9 "Mr. Schorr, you've got basically the  
10 same speeds that Micky has. Why didn't  
11 you read any of the literature?" He  
12 said, "Because I'm not an expert in  
13 that."  
14 They bring to you half of the  
15 picture. They do it for plausible  
16 deniability. They know if they bring to  
17 you someone who has read the literature,  
18 seen the testing, done the testing, they  
19 can't give that opinion.  
20 That's why he had to say, "Heck,  
21 I've never read any of it, I've never  
22 reviewed any of it, I ain't looking at  
23 it, it ain't my report." Half of the  
24 story.  
25 One of the other ways that Silvi

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1 would have prevented this, let's just  
2 talk briefly about these (indicating).  
3 I know we've spoken about tire  
4 maintenance and tire pressure  
5 maintenance, but it's important as it  
6 concerns that Silvi affirmatively  
7 improperly trained David Barrientos,  
8 right?  
9 Not only did they mis-train  
10 Barrientos or fail to retrain him after  
11 they watched what he did, but they  
12 themselves don't know how to train.  
13 A pretrip inspection -- by the way,  
14 why is the tire maintenance, the  
15 pressure maintenance so important?  
16 Because if you can't maintain the  
17 pressure in your tires as a commercial  
18 driver, then you sure as heck can't  
19 figure out whether you've got a bolt in  
20 it or whether it's operating properly,  
21 really anything, in my opinion. If you  
22 can't figure out what pressure is on  
23 your truck, then what are you?  
24 Well, Silvi says they teach its  
25 drivers to thump their tires.

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1 "Question: Silvi teaches its drivers to  
2 thump their tires with a hammer to  
3 determine if there's a proper inflation  
4 pressure, correct?  
5 "Correct."  
6 Mr. Barrientos. "Okay. We've  
7 heard a lot of testimony, and we know  
8 the way you do your pretrip inspections  
9 is for tires, you kick the tires,  
10 correct?  
11 "Yes."  
12 Mr. Desmond. "Question: No, no,  
13 it's not. It's what Silvi uses to check  
14 their tires, right?  
15 "I believe they do a visual  
16 inspection.  
17 "A visual inspection of a tire?  
18 "Yes.  
19 "How is a visual inspection of a  
20 tire supposed to work?  
21 "If it looks low, it's probably  
22 low.  
23 "If it looks low, it's probably  
24 low?  
25 "Yes.

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1 "What's that based on?  
2 "The tire pressure is low, the tire  
3 would be sinking low into the ground,  
4 and it's probably low on tire pressure,  
5 and they should be inspecting it for  
6 anything in the tire."  
7 Kick, hammer, gauge, no one at  
8 Silvi literally has an idea that is  
9 consistent on the smallest thing within  
10 a pretrip inspection, which is how do  
11 you make sure your tires have proper  
12 inflationary pressure.  
13 If they don't have that, why are we  
14 to assume that they've got everything  
15 else going for them?  
16 You heard from Jay Zembower and  
17 David Stopper. Silvi was at a loss of  
18 institutional control. Nobody within  
19 Silvi knew what each other was doing.  
20 We've seen the text messages where  
21 the text messages, one way or the other,  
22 say you got tires failing. We talked to  
23 Bridgestone, they said they're  
24 underinflated. You got tires that are  
25 bald. Those are text messages from two

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1 days, from the day of and the day before  
2 the accident. Lord knows how much other  
3 stuff we've got. That's just from those  
4 two days.  
5 Had Silvi gotten institutional  
6 control of their company, they would  
7 have grounded their fleet. Had they  
8 grounded their fleet, this accident  
9 would not have occurred.  
10 Grounding a fleet doesn't mean, by  
11 the way, every single one of your  
12 truck's are done. You do them in phases  
13 as they talked about.  
14 But the pretrip inspection, as it  
15 concerns generally, this is from Lew  
16 Grill's website we talked about, "No one  
17 can speak well, unless he thoroughly  
18 understands his subject." That is what  
19 Mr. Grill believes in.  
20 As it concerns the pretrip  
21 inspections and whether anyone is doing  
22 them correctly, the very individuals  
23 charged with making sure they do them  
24 correctly had no idea what they were  
25 doing.

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1 What did Mr. Barrientos say about  
2 Mr. Pruden? "You're right, Mr. Pruden  
3 is not a truck driver, he doesn't know  
4 anything about trucks?  
5 "Right."  
6 That's the guy who is supposed to  
7 be standing in the shadows looking to  
8 find out if they're doing it correctly.  
9 Silvi violated their 30-day  
10 preventative maintenance policy. We  
11 know that. I think the last time they  
12 said that they lubed and checked these  
13 tires was 46 days, which would have been  
14 16 days over.  
15 We're saying if you got a policy,  
16 if you got this system you say you got,  
17 if you don't use it, then what's it  
18 worth? What is it worth?  
19 Silvi violates its policy in  
20 pretrip inspections as it concerns  
21 contact patches. They don't roll the  
22 tires forward. You can't see a third of  
23 the darn tire to figure out if anything  
24 is in it.  
25 A mechanic comes in, puts air, and

1 doesn't look at the rest of the tire,  
2 but, nonetheless, pats it on the rear  
3 ends and says it's good to go. You  
4 can't do that and then say at the same  
5 time you do it correctly.

6 Do you remember Desmond's take on  
7 whether drivers do their pretrip  
8 inspections?

9 "Did he admit to you, 'I didn't do  
10 a pretrip inspection at all?'"

11 Here is his answer: "No. Usually,  
12 they'll make any excuse in the book to  
13 say that they did."

14 Why? "Usually, they will make any  
15 excuse in the book to say that they  
16 did."

17 Is that indicative of doing a  
18 pretrip inspection? Don't waltz in this  
19 courtroom and tell me how great your  
20 maintenance policy is and your pretrip  
21 inspections, and then have your guy who  
22 is supposed to make sure people are  
23 doing it say, "Usually, they'll make any  
24 excuse in the book to say that they  
25 did."

1 This is in evidence. We didn't  
2 talk much about that. You'll recall  
3 Silvi was going over all of the  
4 maintenance reports about how well they  
5 had performed maintenance to this  
6 truck.

7 Well, Exhibit 116 has a maintenance  
8 record from -- this is a maintenance  
9 record on the left. This is a driver  
10 vehicle inspection report on the right.  
11 You will see that they are both June  
12 25th, 2015.

13 This is the inspection or the  
14 maintenance record for Mr. Barrientos'  
15 truck on that day, and that is his  
16 inspection record from that day.

17 What does the repair order say?

18 "Complaint: Needs inspection.  
19 Comments: Rep reason. Driver report  
20 road call possibly out of fuel on Route  
21 38. Comments: Added 15 gallons of  
22 fuel."

23 Are you telling me that a grown man  
24 in charge of driving a commercial truck  
25 runs out of gas and that is indicative

1 of checking your tires?

2 Hey, I've run out of gas before. I  
3 bet a lot of us in this room have ran  
4 out of gas. I'll tell you what I don't  
5 do. I don't drive commercial vehicles.  
6 It's not my livelihood. It's not  
7 something that I was taught and trained  
8 to do.

9 How do you say that you do a  
10 thorough pretrip inspection when you  
11 don't even know your truck doesn't have  
12 any gas in it?

13 You'll notice that day, this is  
14 where he just slashed through all of the  
15 pretrip inspections. Come on.

16 This is really the evidence that  
17 Silvi didn't do a pretrip inspection. I  
18 mean it's this. It's that.

19 That has been there for a long  
20 time. That is evidence of their failure  
21 to remove that bolt. That is evidence  
22 of why this tire failed.

23 The violation that they got for  
24 this, briefly, it says, "Violation, tire  
25 tread and/or sidewall separation."

1 It was pointed out a number of  
2 times that this was given after the  
3 accident. I remember Silvi's attorneys  
4 kept saying this is given after the  
5 accident. Well, of course, it is. I  
6 mean if you run a red light, you get a  
7 ticket after you run the red light.

8 I don't really know what that  
9 meant, but I agree it's after the  
10 accident.

11 9-1-1. Why couldn't they have just  
12 called 9-1-1 faster?

13 It would have saved minutes,  
14 multiple minutes. It happens in an  
15 instant. So why is it if we don't save  
16 an instant, then we don't have to get to  
17 that instant?

18 Silvi, what is telling to me is  
19 that all of these people said that it  
20 was a hazardous and emergency  
21 situation. Every single one of them  
22 did.

23 Notice, though, that none of those  
24 guys up there, their names are any of  
25 the lawyers in this room. Their

1 litigation strategy is to say they  
2 didn't need to. Their employees at  
3 least had to admit under oath, yeah, bad  
4 situation.

5 The most important employee, the  
6 vice president, told us the following as  
7 it concerns 9-1-1, and I want to read it  
8 for you: "I want to go to the audiotape  
9 that you heard that we played for you at  
10 your deposition. We asked you at your  
11 deposition, when that call came in from  
12 Zach Rich and the dispatcher heard it  
13 and Chris Pruden heard it, they should  
14 have called 9-1-1, correct?"

15 "Answer: I think I said yes.

16 "And I think you aid (sic) them not  
17 doing it was a failure on their behalf,  
18 correct?"

19 "Answer: Like I said, had they  
20 known what was in the road, yes.

21 "Had they known what was in the  
22 road? You heard the audiotape, right?"

23 "I have.

24 "Half to three-quarters of the tire  
25 is in the road and Hondas are hitting

1 it. They knew it was in the road,  
2 right?"

3 "Answer: Yes.

4 "Mr. Barrientos should have called  
5 9-1-1, right?"

6 "He should have.

7 "Mr. Rich should have called 9-1-1,  
8 right?"

9 "He should have.

10 "It was a complete failure on their  
11 parts not to do that, right?"

12 "It's what I said.

13 "Unacceptable, I think, is the word  
14 you used?"

15 "Okay.

16 "You agree now?"

17 "That's what I said."

18 That is their vice president. I  
19 believe their vice president over their  
20 lawyers. When they get up here and tell  
21 you it wouldn't matter, I believe that  
22 guy. I had him under oath. He had to  
23 tell the truth.

24 The damages in this case. I want  
25 to begin the damages with an

1 understanding or with the thought on the  
2 proof of what the damages will be.

3 The proof for the damages, I'll  
4 begin by saying this: You're instructed  
5 it's no different than the proof that  
6 you will need to go by in order to  
7 determine whether Silvi was negligent.

8 It is a proof of preponderance of  
9 the evidence, more likely than not. A  
10 tipping of the scales, 51 percent, yes,  
11 right, that is a preponderance of the  
12 evidence.

13 I will read for you, as I mentioned  
14 earlier, this is as to damages: "As I  
15 mentioned earlier, Shanika Brown and  
16 Pamela Reed must each prove their  
17 damages by a preponderance of the  
18 evidence."

19 More likely than not. I say that  
20 because I think sometimes we look at  
21 damages and we believe that there is  
22 some exalted higher standard that  
23 someone must prove, you got to prove it  
24 to me beyond a reasonable doubt, or I  
25 need a crystal ball in here to show you

1 exactly what will happen in the future.

2 That is not it. It is a  
3 preponderance of the evidence as it  
4 concerns damages. So the question on  
5 that is more likely than not, more  
6 likely than not will Shanika require the  
7 medical care that Dr. Root has laid out  
8 in his plan. Not beyond a reasonable  
9 doubt will that need to be or not with a  
10 crystal ball.

11 It is more likely than not, a  
12 tipping of the scales, will Shanika  
13 require the medical care that Dr. Root  
14 has laid out in his plan.

15 I say that because Silvi is going  
16 to ask you and what they have argued in  
17 this case thus far is Silvi will ask you  
18 to hope for the best and not prepare for  
19 the worst.

20 They want you to believe that your  
21 damages should be based upon what the  
22 greatest outcome or scenario they can  
23 come up with in their head is.

24 We have brought before you people  
25 who have said to a reasonable degree of



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1 medical certainty, it is more likely  
2 than not Shanika will need this stuff.  
3 They have said, "No, she doesn't  
4 need almost all of it, because we think  
5 everything is going to be fine."  
6 That's why I asked the question,  
7 "Are you writing the check?" Because if  
8 everything is not the way they want it  
9 to be, then she is not with those -- she  
10 does not get what he said she should.  
11 On that, as it concerns medical, I  
12 want to make sure we're very clear on  
13 numbers. I'm going to tell you before I  
14 write these numbers, these numbers are  
15 what it takes to give -- these numbers  
16 represent what will be given to other  
17 doctors, what it will take to take care  
18 of her more likely than not.  
19 These numbers do not -- and I'll  
20 come to it in a second -- they do not in  
21 any way whatsoever represent her pain,  
22 her suffering, embarrassment,  
23 humiliation. They do not. I will speak  
24 to you about those in a little bit.  
25 The numbers that it will take, as

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1 Dr. Root has said, more likely than not  
2 to a medical degree of certainty for the  
3 next 51 years is \$12,636,751. That's  
4 medical.  
5 As it concerns lost wages, those  
6 numbers are 623,293 to 1,128,733.  
7 As it concerns the wages, you heard  
8 Shanika, you heard her say that she  
9 wants to work again. I hope she works  
10 again. She hopes she works again.  
11 These numbers are not based upon  
12 what Silvi wants you to believe, that  
13 everything will be perfect.  
14 They are based upon, to a  
15 reasonable degree of medical certainty,  
16 will she need them more likely than not  
17 considering her circumstances.  
18 Silvi's numbers, I point out again,  
19 include what they think would be paid by  
20 the government or would be paid by  
21 private insurance.  
22 That's another way Silvi is going  
23 to tell you that they are escaping  
24 liability on this case. It's somebody  
25 else's fault, and if it's not, we don't

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1 think she deserves the money that the  
2 other doctors say she does as it  
3 concerns her medical. Some way or  
4 another, it's not their fault.  
5 But these damages right here, these  
6 pale in comparison to the other  
7 damages.  
8 You will have an instruction that  
9 is called lump sum damages and in  
10 that -- would you turn the Elmo on?  
11 Before we turn the Elmo on, let me  
12 get to this picture.  
13 THE COURT: Hold on just a minute.  
14 (Pause.)  
15 MR. BALL: The medical damages pale  
16 in comparison to what you'll be asked to  
17 assign a value to.  
18 I put this picture on the board  
19 because it is just a single reminder of  
20 how difficult Shanika's life will be.  
21 This is one part, and it's a big  
22 one. Dealing with A.B. and A.B. not  
23 having a leg. Dealing with her other  
24 three children. I don't pretend to know  
25 how difficult it is to be a mother, but

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1 it seems pretty easily understood to me  
2 that being a mother and having one arm  
3 is real difficult to do.  
4 That's part of the damages that you  
5 will be asked to assign values and  
6 numbers to. That's part of the damages  
7 that pale or these medicals pale in  
8 comparison to that.  
9 If we could, I'd like to use the  
10 Elmo there.  
11 "Lump Sum Damages. The damages  
12 recoverable by Shanika Brown and Pamela  
13 Reed in this case and the items that go  
14 to make them up," each of which I will  
15 discuss separately, "are as follows."  
16 There will be definitions for them,  
17 but I think they're pretty intuitive.  
18 It's pretty easy to understand.  
19 The future medical expenses, we've  
20 spoken about that.  
21 Future lost earnings and lost  
22 earnings capacity, we've spoken about  
23 that.  
24 It's the next four: "Past and  
25 future pain and suffering; past and

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1 future loss of life's pleasures; past  
2 and future embarrassment and humiliation  
3 for Shanika Brown; disfigurement of  
4 Shanika Brown."  
5 I can't imagine what that is. It  
6 is difficult to wrap my brain around.  
7 It is your job to figure that out. I do  
8 not envy you for having that job.  
9 I can tell you that as it concerns  
10 what we have spoken about, I'm not going  
11 to go over it verbatim or ad nauseam  
12 again.  
13 I think we saw Ms. Brown on the  
14 stand. I would remind you that  
15 Ms. Brown told us, Shanika told us she  
16 can't as much as dress herself now. The  
17 humiliation that must come with that.  
18 Even when you're not with someone,  
19 when you are alone and you can't dress  
20 yourself, the humiliation that must come  
21 with that is something we don't see, but  
22 it is something that you are asked to  
23 think about.  
24 She cannot hug her children with  
25 two arms. She couldn't turn the pages

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1 of the notebook that was given to her,  
2 and she also can't turn the pages of her  
3 hymnal on Sunday.  
4 She said she doesn't want to have  
5 pictures of her taken anymore. That  
6 says a lot about the change in someone  
7 when they don't want to be photographed  
8 again because they can't look at  
9 themselves.  
10 Shanika because of this has not  
11 been afforded the basic decencies that  
12 we all would or would not have on a  
13 daily basis.  
14 (Pause.)  
15 Shanika told you a story about when  
16 she goes out and she has to come back  
17 in, she has to plan her day out with her  
18 kids and make it back at the right time;  
19 otherwise, she would pee herself. I  
20 cannot imagine what that is. It is  
21 something that we take for granted.  
22 She told you that when she eats  
23 alone with her kids, everybody cuts  
24 their kid's food. She has to bite it  
25 with her teeth.

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1 These are things that hurt so much  
2 for me to even recall, but it is things  
3 that you must take into consideration  
4 when you are thinking about the  
5 long-term effects of what has occurred  
6 here.  
7 This injury for Shanika is  
8 forever. The pain and suffering that  
9 she spoke about, she said that she woke  
10 up with some of an arm, went to sleep,  
11 woke up again with less of an arm. How  
12 do you process that?  
13 The pain that she said she's had  
14 has never stopped. She scratches her  
15 fingers. She wants to itch her wrist.  
16 The pain that's been associated  
17 with merely getting a prosthetic has  
18 been too much to get the prosthetic,  
19 even though she's told you she's getting  
20 it. What pain will be associated with  
21 it when she does get it?  
22 I say that, because when we look at  
23 Shanika and her life today, we do not  
24 look at her life on the confines or in  
25 the confines of this courtroom.

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1 You are given the task to look at  
2 her life as a whole from here out, not  
3 here today. These damages are forever  
4 for Shanika, and forever is 51 years we  
5 know from the life expectancy.  
6 And we've been told that 51 years,  
7 the life expectancy hasn't been reduced,  
8 which is a good thing. That's a good  
9 thing. It's a blessed thing. It's  
10 great.  
11 But with it, you must understand 51  
12 years of more problems will come and go  
13 and come and go and come and go and come  
14 and go. What she has now, what will she  
15 have then?  
16 That is why I say you look at  
17 Shanika when you are doing your  
18 deliberations not as today but as  
19 forever, forever for Shanika.  
20 Mr. Farrar will give these numbers  
21 again when we get up. Forever being 51  
22 years for Shanika, thinking about it in  
23 units of time, it's 51 Christmases.  
24 It's 51 Easters. It's 51 New Year's  
25 days. It's 51 birthdays, and when you

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1 put everybody's birthday in her family,  
2 it's 255 between her and her children.  
3 It is 612 months. It is 2,652  
4 Sundays. It is 18,651 days. It is  
5 446,760 hours. It is 26,805,600  
6 minutes. It is 31,536,000 seconds per  
7 year, and then multiply that by 51,  
8 and finally, it is 1.678 billion  
9 seconds, 51.  
10 She said she doesn't feel pain not  
11 for one second.  
12 This will be yours to decide. It  
13 is yours. What it is is your decision.  
14 I again thank you so much for being  
15 as attentive as you have been and  
16 listening to all of our evidence.  
17 I thank you on behalf of Shanika  
18 and, again, on behalf of counsel in this  
19 case. Thank you.  
20 THE COURT: Members of the jury,  
21 we're going to take a 15-minute break  
22 because you've been sitting for a long  
23 time. So we'll stand in recess for 15  
24 minutes.  
25 THE COURT OFFICER: The Court

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1 stands in a 15-minute recess.  
2 All rise as the jury exits the  
3 room.  
4 (The jury exited the courtroom.)  
5 THE COURT OFFICER: You may be  
6 seated.  
7 THE COURT: I'm just trying to  
8 figure out schedule. So the lunches are  
9 due to arrive at 12:30, but we can also  
10 try to call and move it back to 1:00.  
11 Remember, I said I wasn't timing  
12 people, but do you happen to have an  
13 estimate, Mr. Sherry?  
14 MR. SHERRY: For myself, Your  
15 Honor, less than 40 minutes.  
16 THE COURT: Okay. So that's almost  
17 perfect for when the lunches arrive, and  
18 we'll figure out how to communicate with  
19 the lunch people. Okay. So we'll see  
20 you at 12:05.  
21 THE COURT OFFICER: Court stands in  
22 a 15-minute recess until 12:05.  
23 (Recess taken.)  
24 (In open court.)  
25 THE COURT OFFICER: All rise.

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1 Please be seated and cease all  
2 conversation.  
3 THE COURT: We have our jury here.  
4 We're handing out -- Jess, what did I  
5 say that would be?  
6 We're handing out to you Court  
7 Exhibit No. 4, which is essentially what  
8 I told you it would be. It's the jury  
9 instructions without the strike-throughs  
10 and bolding and everything like that,  
11 and that's Court Exhibit No. 4 just so  
12 you have a copy.  
13 MR. SHERRY: Thank you.  
14 THE COURT: And Ms. Colliver will  
15 also e-mail that to you so you have it  
16 in that format.  
17 MR. SHERRY: Thank you.  
18 THE COURT: Is there something you  
19 wanted to say?  
20 MR. ZINGARINI: Yes, Your Honor. I  
21 just wanted to place on the record an  
22 objection regarding commentary made by  
23 Mr. Ball during his closing regarding  
24 Mr. Lieberman.  
25 Mr. Lieberman's testimony was

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1 stricken by this Court. I don't think  
2 it's fair to comment upon it in front of  
3 the jury. They requested that it be  
4 barred, so you can't take advantage of  
5 that and also talk about it.  
6 THE COURT: Response.  
7 MR. BALL: Your Honor, I was very  
8 cognizant of what your ruling was. I  
9 was very cognizant of what the jury  
10 heard.  
11 I find nothing improper about me  
12 saying, "You heard from Mr. Lieberman  
13 that he had never done anything in the  
14 tire field," which is essentially what I  
15 said, one sentence, "and then you heard  
16 nothing else from him."  
17 That happened in front of the jury.  
18 I did not improperly comment on that  
19 whatsoever in any way, shape, form, or  
20 fashion.  
21 THE COURT: That objection is  
22 overruled, although you're free to talk  
23 about it if you want.  
24 I think it would actually be more  
25 harmful to you if I turned to the jury

1 and said, "Dr. Lieberman was struck  
2 because he lacked qualifications, he  
3 didn't use the scientific method, and  
4 his testimony would be confusing and  
5 misleading." I think that would hurt  
6 you more.

7 Do you want me to give that  
8 instruction?

9 MR. ZINGARINI: No. That's fine.

10 THE COURT: Okay. So let's go  
11 bring our jury in.

12 My plan, just so everybody can kind  
13 of plan, is to give the jury their lunch  
14 after Mr. Sherry's closing so that  
15 they're not hungry during Silvi's  
16 closing.

17 MR. CORCORAN: Understood.

18 THE COURT: Okay.

19 THE COURT OFFICER: All rise as the  
20 jury enters.

21 (The jury entered the courtroom.)

22 THE COURT OFFICER: You may be  
23 seated.

24 THE COURT: We can proceed to --  
25 which Lavalieri do you have, Mr. Sherry?

1 MR. SHERRY: Four, Your Honor.

2 THE COURT: Okay. We'll go to  
3 closing statements on behalf of Pamela  
4 Reed by Mr. Sherry.

5 MR. SHERRY: Good afternoon.

6 This is the second of three times  
7 that I get to speak to you directly. I  
8 will not waste your time.

9 We have been in trial for  
10 approximately six weeks, and because it  
11 has been six weeks, it might be a  
12 natural reaction to think this case is  
13 complicated.

14 As you've seen, it is not  
15 complicated. There is nothing  
16 complicated about this case.

17 I will start by saying I thank you  
18 all in advance for your attention and  
19 your stamina, and I will also say it is  
20 a professional pleasure to try a case  
21 alongside Mr. Ball and Mr. Farrar and  
22 represent the matriarch of this family,  
23 Pamela Reed.

24 I'm going to break this down into  
25 two basic sections, liability and

1 damages.

2 For liability, we showed you  
3 witnesses from Silvi from David  
4 Barrientos on up.

5 We wanted you to see that the July  
6 31st, 2015, catastrophe was not an  
7 aberration. It wasn't an accident. It  
8 was a preventable disaster resulting  
9 from a company that was reckless to its  
10 core.

11 Mr. Ball went through subjects with  
12 you. Because it's a catastrophic  
13 personal injury, I'm going to go through  
14 it by people, by the witnesses.

15 The first person, Scott Keck,  
16 Silvi's fleet manager, we called him in  
17 our case. You'll recall that Mr. Keck  
18 had a bit of a problem with consistency.

19 Before we go into his testimony,  
20 there's a quote that's been attributed  
21 to a lot of people, a lot of people over  
22 the centuries. It's been attributed to  
23 Abraham Lincoln, Martin Luther King,  
24 JFK.

25 But it goes like this: "If you

1 have integrity in life, very little else  
2 matters. But if you don't have  
3 integrity, nothing else matters."

4 Here is what Mr. Keck told you  
5 all. In his dep, his said that a  
6 pretrip inspection should take 15  
7 minutes. He said that. You saw it.

8 Then he came into court and tried  
9 to convince you all that you can do it  
10 in five minutes, and you remember the  
11 exercise, when I put up three pictures  
12 of concrete trucks and saying David  
13 Barrientos can inspect all of those in  
14 15 minutes, and he started to back off.

15 He also tried to convince you at  
16 trial that the air pressure is properly  
17 set at 105, and, as Mr. Ball pointed  
18 out, he had to be reminded in his sworn  
19 deposition that he took under oath that  
20 110 to 120 is what he said.

21 Why would he do that? He knows  
22 that his deposition is in videotape form  
23 and that we have it. Hoping that we're  
24 clumsy, hoping we can't call him on it?

25 Then, in trying to explain why a

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1 different Bridgestone tire blowout that  
2 occurred on a different vehicle due to  
3 low pressure that Silvi has text  
4 messages about a day before the  
5 accident, Mr. Keck showed you this  
6 photo.  
7 Put it up.  
8 Remember that? I guess Mr. Keck  
9 didn't know that I knew about M shift  
10 46, and that's how you dump it with a  
11 man outside that truck.  
12 And what did Mr. Keck try to tell  
13 you? Oh, that's a staged photograph.  
14 That's not dirt coming out of the truck  
15 right there.  
16 Assess his credibility. Ask  
17 yourself would Mr. Keck put himself in  
18 these positions if he had a genuine  
19 story to tell you all, or would he goes  
20 to lengths only to be discredited by  
21 photographic evidence including the  
22 photos he wants you to see? Assess  
23 that.  
24 Mr. Keck thought it was the policy  
25 at Silvi -- I mean after all he's the

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1 fleet manager -- that drivers should be  
2 whacking tires with a mallet. Not only  
3 is that not permissible under the CDL  
4 manuals which we talked about ad  
5 infinitum during this case, it wasn't  
6 being done at Silvi.  
7 I want to give Mr. Keck some  
8 credit, just a modicum of credit. He  
9 did come around to state that it was  
10 unacceptable at Silvi that  
11 Mr. Barrientos, who we'll talk about at  
12 length later, wasn't following the CDL  
13 manuals.  
14 Let's put that testimony up.  
15 This is me asking him. "Question:  
16 Sir, you didn't actually know until the  
17 second time we deposed you in this case  
18 about that language in the CDL manual  
19 about the air gauge, right?  
20 "That's right.  
21 "Question: And you are the fleet  
22 manager for Silvi?  
23 "Answer: I follow the federal  
24 guidelines, not a driver's state test.  
25 "Question: Do the federal

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1 guidelines state anywhere in there kick  
2 the tires to check the air pressure?  
3 "Answer: No. But it doesn't state  
4 you need an air pressure gauge.  
5 "Question: Is there anything in  
6 the federal guidelines that talk about  
7 using a hammer to check the air  
8 pressure?  
9 "No.  
10 "Is there anything in the federal  
11 guidelines about licking the tire to  
12 check the air pressure?  
13 "No.  
14 "How about hugging the tire to  
15 check the air pressure?  
16 "No.  
17 "Where are you told in terms of  
18 governmental entities how to check the  
19 air pressure?  
20 "I don't.  
21 "How about the CDL manual?  
22 "Answer: That's for the trained  
23 driver who takes the test.  
24 "Question: And the New Jersey CDL  
25 manual wants the people who take the

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1 tests to do it properly?  
2 "Answer: Yes, they have to do it  
3 to pass it.  
4 "Question: Right. And the person  
5 who is going to be with them when they  
6 take that test is someone that works for  
7 the government, right?  
8 "Answer: I assume.  
9 "Question: Right. And that person  
10 wants to be safe, too, right?  
11 "Answer: I assume.  
12 "Question: And the motoring public  
13 should be made safe too, if possible,  
14 right?  
15 "Answer: Yes.  
16 "So that CDL manual should be  
17 followed as you testified to in your  
18 deposition, right?  
19 "Answer: Yes.  
20 "Mr. Barrientos didn't, correct?"  
21 There was an objection, and I state  
22 it again.  
23 "And Mr. Barrientos didn't,  
24 correct?  
25 "According to his testimony, no.

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1 "Question: That's unacceptable at  
2 Silvi, right?  
3 "Answer: Yes."  
4 Barrientos' conduct is  
5 unacceptable. There's no ambiguity  
6 that's the fleet manager saying that  
7 under oath before your very eyes.  
8 Finally, Mr. Keck admitted that --  
9 Mr. Ball hit on it -- Silvi doesn't use  
10 other companies' recapped tires because  
11 they don't know the history of the tire.  
12 They don't know what that tire was put  
13 through before it was recapped.  
14 Oh, but they made an exception for  
15 this tire, didn't they? They made an  
16 exception for this tire. They kept this  
17 tire, and, as a result, this tire that  
18 became a disaster waiting to happen  
19 remained on the truck.  
20 Had Keck merely insisted that his  
21 underlings follow Silvi's policy, this  
22 tire is never on the truck. The  
23 catastrophe never happens.  
24 Chris Pruden, the phone tamperer  
25 who took the witness stand and said,

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1 "I'm angry." Oh, he's angry. He's  
2 angry with two legs, two arms, no PTSD.  
3 And he's angry?  
4 Not angry for the devastation  
5 caused by Silvi. Just angry about how  
6 his company's testimony under oath is  
7 coming across. He made that very clear.  
8 Clearly, Pruden has no clue what  
9 he's looking at in terms of a pretrip  
10 inspection. You all remember that. No  
11 idea what he's looking at.  
12 Never received any training from  
13 Silvi how to do his job and, more  
14 importantly, because he's angry, never  
15 brought up to Silvi, "Hey, I'm in charge  
16 of making sure drivers do a pretrip  
17 inspection properly. I don't know what  
18 I'm looking at. Please train me."  
19 Anything like that come out of  
20 Chris Pruden's mouth? No, never asked.  
21 Happy to do his job properly supervising  
22 drivers how to do to pretrip  
23 inspections, while I'm certainly  
24 sounding like David Barrientos, from the  
25 comfy confines of his office.

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1 What did Barrientos say about  
2 Pruden? And Barrientos is right on  
3 that. He doesn't know anything about  
4 trucks, and they put him in charge day  
5 in, day out of supervising drivers how  
6 to do a proper pretrip inspection.  
7 That's their check. That's the way  
8 they make sure drivers are doing it  
9 right, putting somebody in charge who is  
10 ignorant of what is occurring before  
11 him. No ability to step in and say  
12 "Whoa, whoa, that's not how to do it.  
13 Wrong. Where did you learn how to do  
14 that? Don't do it that way."  
15 On the issue of how long a pretrip  
16 inspection should take, you'll recall  
17 Pruden's meltdown when he was confronted  
18 by a five-minute pretrip inspection.  
19 You'll remember what he said, "Five  
20 minute, four minute, three minute," and  
21 I started writing that down. He didn't  
22 like that very much.  
23 But that's reality at Silvi, don't  
24 take 15, 20 minutes to check an 80,000  
25 pound concrete truck. Five minutes,

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1 four, minutes, three, minutes, get it  
2 out. We got concrete we have to  
3 deliver. We have to make money. We  
4 bonus our drivers based on how much  
5 concrete they deliver, not how long they  
6 sit around making sure the truck is  
7 safe.  
8 Pruden somehow forgot in his first  
9 deposition that he had been told in an  
10 obscenity-laced phone call from Zach  
11 Rich that the tread is in the roadway  
12 causing havoc.  
13 When he was reminded, it was "Oh,  
14 that tread, oh, now I remember."  
15 Ridiculous, ridiculous testimony from  
16 someone who never should have been  
17 placed in the position of authority.  
18 At Silvi, he's promoted. His life  
19 improves following the catastrophe;  
20 whereas the Reed-Brown family, PTSD  
21 multi-generational limb loss.  
22 Next, David Barrientos,  
23 Mr. Five-Minute Pretrip Inspection. Two  
24 weeks, as you heard, before this  
25 disaster, he blows a tire on a concrete

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1 truck.

2 What happens? They sit him down,

3 say, "Whoa, what's going on here? Did

4 you do a pretrip inspection?" No,

5 nothing.

6 Perhaps that's why Zach Rich

7 described him as easy-going. Remember

8 that? It was at the start of trial,

9 "You remember seeing David Barrientos at

10 the scene?" He first tried to say that

11 he's a good guy, and then I confronted

12 him, "You never met him before." His

13 response? "Oh, he's easy-going."

14 Easy-going when you throw that onto

15 295 causing havoc. Just another day for

16 David Barrientos, I guess.

17 Mr. Barrientos tried to sell you

18 the story about how even though he

19 testifies he takes five minutes to do a

20 pretrip inspection and doesn't check the

21 contact patch, he spends most of his day

22 just gazing at the tires, just washing

23 and gazing at the tires.

24 Of course, when he was confronted

25 by the photograph -- put it up, zoom

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1 in -- all the way up to the top of the

2 tread, Barrientos thought to tell you,

3 "Oh, that's road debris." Not even Lew

4 Grill bought that.

5 So is it any surprise that David

6 Barrientos is driving around hundreds of

7 miles with a bolt in one tire and a nail

8 in a different tire?

9 Of course not. If you're not

10 checking your tires and you're driving

11 around on construction sites, as these

12 heavy duty vehicles do every day, you're

13 going to have these things.

14 When you don't do a pretrip

15 inspection of a concrete truck

16 carefully, thoroughly, professionally,

17 this happens, and when it happens, it's

18 not an accident. It's a disaster you

19 should have prevented.

20 I can deal with accidents. We all

21 can understand accidents. But when it's

22 there for hundreds of miles and you're

23 not checking and the people supervising

24 you don't know what they're looking at

25 and have different ideas about how

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1 things are supposed to be done because

2 they haven't read the CDL manuals, this

3 happens.

4 But it's not accidental. It's a

5 company built to fail, to cause

6 catastrophe.

7 Speaking of supervision, what does

8 Barrientos think about Pruden? I

9 believe this deserves to be repeated.

10 He thinks that Pruden doesn't know

11 anything about trucks, and he's right,

12 and Pruden never supervises the drivers.

13 You remember when I had Pruden pick

14 up the hammer and said, "Show me how you

15 hit the tire, Mr. Pruden,"

16 (indicating).

17 What did Barrientos say about

18 that? They're never using the hammers

19 over there. They're just kicking.

20 Mr. Pruden might know that, but he's

21 never watching. He's in his office.

22 Now, what happened as soon as

23 Barrientos felt that blowout and saw the

24 tread go off the left side of his truck,

25 as he admitted, and admitted that as

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1 soon as he saw it go off his truck, he

2 knew that this was a disaster waiting to

3 happen? What's he do? He pulls over

4 the side of the road.

5 I got no problem with that driver

6 action. Pulling over to the side of the

7 road immediately, no problem about that.

8 But then he fails to call 9-1-1

9 immediately. And you heard on Monday

10 from Steve Schorr when Mr. Farrar

11 crossed him with the New Jersey CDL

12 manual, it states drivers should call

13 authorities before they even get out of

14 their cab.

15 Not Mr. Barrientos, no. No.

16 Mr. Barrientos isn't calling the police.

17 He never calls the police. He never

18 calls 9-1-1, saying, "I'm David

19 Barrientos. I work for Silvi Concrete.

20 I'm in Truck 118. I just threw a tread

21 that's a disaster waiting to happen in

22 the middle of 295. Get out here and

23 protect human life."

24 What's he do? He's easy-going. He

25 does none of that. Calls dispatch in

1 Fairless Hills. What is that? They  
2 can't do anything. We've been through  
3 this multiple times at trial. They  
4 can't do anything.

5 He's easy-going. Why shouldn't he  
6 be? He is safely by the side of the  
7 road. It's not like he's out on 295  
8 having to contend with this. Just  
9 another day for Mr. Barrientos. He's  
10 safe and secure.

11 But before we leave Mr. Barrientos,  
12 lest we forget Mr. Barrientos, who never  
13 used this air gauge as mandated by the  
14 Pennsylvania and New Jersey CDL manuals,  
15 he nevertheless told you he didn't want  
16 that tire to be 105. Did want that.  
17 Couldn't know it because he didn't use  
18 an air gauge. Didn't want it. Silvi  
19 set it at that. He knew that's not  
20 safe.

21 You know what's also not safe?  
22 Driving around on a tire with a bolt in  
23 it. But, hey, if you got concrete to  
24 deliver, and there's no mechanic on  
25 site, just as there wasn't on July 31st,

1 2015, what are you going to do?  
2 Barrientos gets a bonus if he  
3 delivers that concrete, and there are  
4 four phone calls to Chris Pruden before  
5 he sets out on that last fateful trip.

6 In the deposition that Mr. Ball  
7 referenced with Mr. Desmond, what did he  
8 say? "The driver doesn't call a  
9 supervisor unless there's an issue."

10 What did Mr. Desmond try to tell  
11 you? "Oh, it was about the Eagles."  
12 I'm sure it was, absolutely, that's what  
13 those calls were about.

14 First call, "Hey, Dave. It's  
15 Chris. What do you think about the  
16 Eagles this year?" Second call, two  
17 minutes later, "Chris, see, the thing of  
18 it is I really like the offensive line."  
19 Third time, "Dave, I know you're very,  
20 very busy. I got to ask, the special  
21 teams this year, I mean are we going to  
22 have some kickers? There's this guy  
23 named Lew Grill out west. He kicks.  
24 Maybe we should get him." Fourth phone  
25 call, "Hey, man, Chip Kelly, how much

1 longer" -- anybody believe that?  
2 What's more likely? "Got the truck  
3 loaded, we got a bolt, it's going to  
4 spoil. What do we do? It's held for a  
5 couple of hundred miles so far. Get it  
6 out."

7 Before we leave Mr. Barrientos,  
8 let's talk about how the police  
9 interacted with Mr. Barrientos.

10 Remember when Mr. Zingarini, one of  
11 Silvi's counsel, was questioning  
12 Sergeant Burns about, "Oh, you didn't  
13 give him a citation," and just left it  
14 at that. Then I had to get up and ask  
15 the sergeant, "Why didn't you give him a  
16 citation? Because the violation is  
17 worse, that's why." What did  
18 Mr. Barrientos get? A violation. It's  
19 worse.

20 Onward to Frank King, the man in  
21 charge of policies and procedures at  
22 Silvi, including pretrip inspections.

23 You'll recall he kept mumbling, "We  
24 could have done a better job." What  
25 does he know about pretrip inspections?

1 Nothing. Was he involved in creating  
2 the policies regarding pretrip  
3 inspections at Silvi? No. Does he know  
4 if the person held a CDL license who  
5 helped develop those policies? No.

6 And this policy man at Silvi, when  
7 did this policy man learn about how a  
8 pretrip inspection should be performed  
9 as set forth in the New Jersey CDL  
10 manual, which is free and can be  
11 downloaded by anybody on line, you know,  
12 that CDL manual that states the driver  
13 gets no credit for kicking?

14 He learned about that two years  
15 after this family is literally ripped to  
16 pieces.

17 When did he learn, this policy man,  
18 about the Pennsylvania CDL manual that  
19 says don't kick, don't mallet, use the  
20 air gauge? When did he learn about  
21 that, ladies and gentlemen?

22 More than three years after this  
23 family is ripped to pieces. He learned  
24 about that in this trial before your  
25 eyes, and he's in charge at Silvi of



1 policies and procedures, including  
2 pretrip inspections.

3 That's not negligence. That's  
4 outrageous.

5 How can you possibly be in charge  
6 of policy when you don't know what the  
7 policy should be, and you don't even  
8 attempt to acquaint yourself in the days  
9 and weeks and months and the years that  
10 he's worked with Silvi to learn this?

11 Utterly unfit for his job, utterly  
12 unfit, as was Chris Pruden, as was  
13 Mr. Barrientos.

14 But in fairness to Mr. King, he's  
15 kicked a tire before. He said, "I  
16 kicked a tire before. I kicked it. I  
17 took my foot and kicked a rubber tire."  
18 Remember what sound Mr. King said that  
19 made? Ping. Very credible person, that  
20 Mr. King.

21 As you'll recall, Mr. King and I  
22 had a bit of a dialogue in front of you  
23 how prior to July 31st, 2015, Silvi did  
24 not have a policy for calling 9-1-1  
25 immediately, and I asked him, "Mr. King,

1 how long do you think it would take to  
2 teach drivers that policy?

3 "I don't know, Mr. Sherry.

4 "Let's find out. Ladies and  
5 gentlemen, you're truck drivers.  
6 Anything comes off your truck, call  
7 9-1-1 immediately. How long did that  
8 take, Mr. King? About 10, 15 seconds?

9 "Yes."

10 Wasn't done. Had to have been  
11 done, should have been done, recklessly  
12 was not done. As a result, tread in the  
13 roadway.

14 Barrientos could have called 9-1-1  
15 immediately. He doesn't. It sits in  
16 that roadway causing havoc for 29  
17 minutes.

18 Ditto Rich and Pruden and the  
19 dispatch lady and everybody else at  
20 Silvi thereafter who was on notice and  
21 didn't call 9-1-1.

22 Which brings us to Glenn Desmond.  
23 Mr. Desmond was plant manager at the  
24 time and he'd been plant manager for a  
25 year.

1 Like Pruden, he was tasked with  
2 supervising drivers, make sure they did  
3 a pretrip inspection, and not just make  
4 sure they do a pretrip inspection, make  
5 sure it's done properly.

6 But there's a problem. He doesn't  
7 now to do a pretrip inspection and he  
8 admits under oath in front of you all  
9 that Pruden doesn't know how to do it  
10 either.

11 He's only watching to see if the  
12 driver, his words, is doing something.  
13 He cannot intervene because he doesn't  
14 know what he's looking at, and that's  
15 true whether -- we had some fun with  
16 this -- he's Ninja supervisor or whether  
17 he's right up on top of the driver.

18 Doesn't know, can't intercede,  
19 can't intervene. Never trained how to  
20 do a pretrip inspection, not familiar  
21 with the CDL manual, ignorant just like  
22 King, just like Pruden.

23 Ignorance, profound lasting  
24 ignorance. Again, that's not  
25 negligence. That's willfully blind.

1 He told you -- Mr. Ball brought it  
2 up -- usually drivers make up any excuse  
3 in the book to say they did a pretrip  
4 inspection.

5 When that happened, when that came  
6 out, remember what Mr. Desmond said? "I  
7 want to retract that statement." I  
8 bet. That was devastating truth on the  
9 record, but you all heard it.

10 It's dangerous. It's obviously  
11 dangerous.

12 And what happens, incidentally, if  
13 a driver doesn't do a CDL pretrip  
14 inspection on a truck at all?

15 Mr. Desmond told you he doesn't get  
16 a pink slip. You get a written  
17 warning. An 80,000 pound truck going on  
18 the roadway, no pretrip inspection  
19 whatsoever, Mr. Desmond writes something  
20 down and hands it to you. Not "You're  
21 fired," but (indicating). "At least  
22 make it five minute, four minute, three  
23 minute, please. We have standards here  
24 at Silvi."

25 Oh, Desmond, by the way, has been

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1 repeatedly promoted, too. That's fine.  
2 Also because he seems to like Mr. Pruden  
3 delete stuff from his phone like that.  
4 Members of the jury, "Driver of 121  
5 also tearing up about his bald front  
6 tires." This is Mr. Desmond. We got  
7 that one. Couldn't get Pruden's. We  
8 got that one. Promoted, he's doing well  
9 at Silvi.  
10 Take that down.  
11 With all that in mind, what did the  
12 liability experts that we called, David  
13 Stopper and Jay Zembower, say?  
14 They said Silvi should have done a  
15 stand-down on July 31st, 2015. There  
16 were no systems in place to protect the  
17 public. Safety is paramount. Mr.  
18 Pruden didn't know what that word meant,  
19 but safety is paramount. It's number  
20 one.  
21 I don't care if you want to make  
22 money delivering concrete. You can't  
23 put the public at risk. Until you start  
24 taking reasonable steps, don't deliver  
25 concrete.

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1 That's not hard to figure out what  
2 these systems are. They're in the free  
3 CDL manuals. You just have to learn  
4 them.  
5 You'll recall Mr. Stopper's  
6 testimony. He came to the witness stand  
7 with a regulatory book as big as one of  
8 those old Webster's Dictionaries. He  
9 was able to quote the regulations, state  
10 laws, chapter and verse. You'll recall  
11 how calmly he set forth how Silvi was  
12 erroneous in everything they did.  
13 What happened during  
14 cross-examination? He fielded every  
15 question with ease. He couldn't lay a  
16 glove on him. Why? Because he knows  
17 the standards and knows the regulations.  
18 They're straightforward, unambiguous.  
19 Apparently, it's very easy, two  
20 plus two is four. With Mr. Grill, it's  
21 two plus two is Jello.  
22 Very, very easy to do that on  
23 cross-examination in this case,  
24 Mr. Stopper, easy to respond to any  
25 question defendants have.

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1 You'll recall Mr. Zembower's  
2 testimony, same thing. He testified  
3 about the standards of care of tire  
4 maintenance, care for commercial  
5 vehicles, and how this tire should have  
6 been pulled, because it obviously had  
7 gone beneath 105 PSI during its lifetime  
8 given the mechanic was repeatedly  
9 filling it to 105.  
10 Mr. Stopper and Mr. Zembower and  
11 even Mr. Grill admitted those tires lose  
12 air. Pull it. If it's off the truck,  
13 you don't have this catastrophe.  
14 Again, Silvi's attorney couldn't  
15 lay a glove on him during cross because  
16 everything Mr. Zembower told you was  
17 well-recognized mainstream standards and  
18 regulations.  
19 So is it any wonder that  
20 Mr. Stopper and Mr. Zembower,  
21 professionals who have devoted their  
22 lives to commercial vehicle safety, were  
23 appalled by Silvi's conduct? Of course  
24 not.  
25 Responsible companies do not act

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1 like Silvi. Again, it's not isolated at  
2 Silvi. It's systemic. It's day in and  
3 day out, weak in and week out, month in  
4 and month out, year in and year out.  
5 You also heard from Troy Cottles.  
6 Mr. Ball has referenced somewhat  
7 extensively and I won't repeat other  
8 than to say it's his testimony that the  
9 bolt in the tire is clearly there for  
10 hundreds of miles and he said at least a  
11 day prior to the accident and, therefore  
12 it would have been caught had a driver  
13 done a reasonable pretrip inspection.  
14 As an aside, Mr. Cottles took issue  
15 with how this tire was manufactured by  
16 Bridgestone and McCarthy.  
17 You'll note I didn't say boo about  
18 McCarthy or Bridgestone during my  
19 opening. That's not because I like the  
20 way this tire was manufactured. I  
21 don't.  
22 But given the evidence as to how  
23 Silvi behaved, driving around in a truck  
24 with a bolt in it, not doing pretrip  
25 inspections, having supervisors who

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1 admit they have no idea what they're  
2 looking at, not calling 9-1-1 as soon as  
3 the tread comes off the truck despite  
4 knowing it's a disaster, it's hard to  
5 think of anything McCarthy or  
6 Bridgestone did that caused the  
7 disaster.

8 It's not like McCarthy called up  
9 Silvi and said, "Hey, guys and girls,  
10 should that tire we sold to R.E. Pierson  
11 before you acquired it ever come apart  
12 on the highway, please, do us a favor,  
13 make sure you never call 9-1-1. Please,  
14 will you do that for us? For some  
15 reason, we don't like people calling  
16 9-1-1. Don't do that for us. Don't  
17 call 9-1-1." No, there was nothing like  
18 that.

19 It's Silvi. It's always been about  
20 Silvi's conduct. That's the disaster,  
21 the disaster they caused.

22 On 9-1-1, you heard Mr. Motyczka,  
23 the 9-1-1 expert who is not rebutted by  
24 any witness called by the defendant,  
25 nobody.

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1 He set forth the timeline  
2 demonstrating there was approximately 29  
3 minutes from the time the tread comes  
4 off the tire to the time the crash  
5 occurs.

6 Had Mr. Barrientos immediately  
7 called 9-1-1 as soon as he got his truck  
8 to the side of the road, this disaster  
9 doesn't occur. The police arrive two  
10 minutes too late, because there's a  
11 significant gap, approximately 10  
12 minutes from the time the tire  
13 delaminates to the time a citizen just  
14 so happens to call 9-1-1.

15 Do you really think that 9-1-1  
16 would have ignored Mr. Barrientos if he  
17 called them and expressed to them what  
18 he told you all, that he knew this was a  
19 disaster waiting to happen?

20 Of course not. Lights and sirens.  
21 If they get there 15 seconds before  
22 Ms. Reed gets there, there's no crash.

23 So that's Silvi liability, members  
24 of the jury. It's overwhelming. And  
25 they had the opportunity to show you

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1 someone, anyone that would come in here  
2 and say, "Look, plaintiffs have got this  
3 company all wrong. There's this other  
4 person. He's going to tell you what you  
5 saw was just aberrations. It's not  
6 really who we are."

7 Which of their employees did they  
8 call during their defense case in  
9 chief? No one. Not one person called.

10 In truth, Pruden, Desmond,  
11 Barrientos, and King, Keck, they  
12 represent the company. That's this  
13 company.

14 They probably shouldn't be doing  
15 anything with trucks except washing  
16 them, except, of course, as we know --  
17 put it up -- they can't even to that.

18 Instead of bringing in somebody  
19 from Silvi to claim they did a good job,  
20 Silvi brought in Lew Grill.

21 There's a metaphor that I think  
22 aptly describes Mr. Grill. Take a  
23 balloon, blow it up, blow it all the way  
24 up, but don't tie it off, hold the ends,  
25 and then let it go and watch it spiral

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1 chaotically around the room before  
2 landing in a deflated heap, that's  
3 Mr. Grill's testimony.

4 Mr. Grill, he came in here and told  
5 you all I'm not exactly sure what. But  
6 one thing I do recall is how Mr. Grill  
7 was combative when presented with the  
8 video that Silvi has on their own  
9 website.

10 So we'll roll that right now.  
11 (Videotape excerpt was played.)

12 MR. SHERRY: Let's just go back to  
13 the still.

14 It might seem to be sort of an  
15 innocuous video of s driver doing what  
16 the CDL manual tells him to do, which is  
17 to use these on one of these  
18 (indicating).

19 According to Mr. Grill, that man,  
20 in fact, is deflating those tires and  
21 putting himself in great personal risk.

22 Nothing more needs to be said about  
23 Mr. Grill, other than apparently any  
24 story, no matter how silly, you'll  
25 eventually find his story telling.

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1 As Mr. Ball pointed out, did Silvi  
2 bring in anyone to expertly disagree  
3 with Mr. Cottles?  
4 Did Silvi bring in someone to say,  
5 "I don't know what Silvi was doing  
6 insofar as pretrip inspections. That  
7 bolt was picked up somehow in the eight  
8 miles between the time he left the plant  
9 and the time the tire blew apart." Did  
10 you hear anybody say that? I didn't.  
11 Moreover, even if that missing  
12 person had testified, that still  
13 wouldn't make Silvi any less negligent  
14 or reckless because it wouldn't explain  
15 why David Barrientos didn't immediately  
16 call 9-1-1.  
17 Let's talk about the disaster  
18 itself. Leading up to the disaster, you  
19 heard testimony from two eye witnesses  
20 in this case, two different vehicles,  
21 Paige McGinniss and Rachel Caucci.  
22 Both women answered every question  
23 directly, described the tread coming  
24 upon them, and both women slammed  
25 through that tread and they detailed for

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1 you a terrifying experience.  
2 We also know from Zach Rich -- we  
3 spoke about him a little earlier -- that  
4 at least two other vehicles slammed into  
5 the tread. One was a Honda, which Rich  
6 stated was damaged more than the Honda  
7 was worth, and the other vehicle was a  
8 different company cement mixer.  
9 What did Mr. Rich tell you about  
10 what this disaster waiting to happen did  
11 to that 80,000 cement mixer? It lifted  
12 it off the ground. That's a vehicle  
13 that weighs 20 times more than a car.  
14 It lifted it off the ground. This is  
15 not some small issue. Disaster.  
16 That driver, by the way, that  
17 slammed into it obviously had a CDL  
18 license and had a better view of the  
19 roadway than somebody in a mini van, and  
20 he couldn't steer around it. He slammed  
21 into it. Miss Reed did better than him.  
22 All of this is relevant information  
23 when you go to assess my client,  
24 Ms. Reed. And what about Ms. Reed? How  
25 did she do with respect to this disaster

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1 waiting to happen?  
2 Well, for starters, she was  
3 presented with an emergency. Even  
4 Mr. Schorr on Monday admitted that's an  
5 emergency. I don't see how somebody  
6 could say this is a disaster waiting to  
7 happen and that somehow it couldn't be  
8 an emergency. It's an emergency.  
9 Let's bring up the law on the  
10 sudden emergency charge.  
11 Obviously, the law permits somebody  
12 who is put in an emergency through no  
13 fault of their own like Ms. Reed to get  
14 a law that is of assistance.  
15 "Sudden Emergency. In this case,  
16 Pamela Reed claims she is not  
17 responsible for the incident because she  
18 faced a 'sudden emergency' and responded  
19 reasonably under the circumstances.  
20 "In order to establish that she  
21 faced a 'sudden emergency,' Pamela Reed  
22 must prove to you all of the following:  
23 "No. 1, Pamela Reed faced a 'sudden  
24 emergency' requiring immediate  
25 responsive action."

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1 Unquestionably. Everybody else on  
2 that roadway faced with that same  
3 emergency.  
4 "Two, Pamela Reed did not create  
5 the 'sudden emergency.'"  
6 That is certainly true. That's not  
7 her tread. That's not her disaster  
8 waiting to happen. She didn't know that  
9 it happened. She couldn't call 9-1-1.  
10 That's Silvi. That's Silvi that  
11 created that disaster and that's Silvi  
12 who doesn't address it.  
13 "Three, Pamela Reed's response to  
14 the 'sudden emergency' was reasonable  
15 under the circumstances." She must  
16 prove all of those with a preponderance  
17 of the evidence, at least 51 percent.  
18 How do we prove that burden to  
19 you? Well, let's talk about Micky  
20 Gilbert. Micky Gilbert testified that  
21 Ms. Reed steered in a way that was  
22 consistent with thousands, thousands of  
23 documents in the form of studies put  
24 forth by government and manufacturers.  
25 He found no fault with the way

1 Ms. Reed steered that vehicle to try to  
2 keep it under control.

3 On cross, Silvi's attorneys  
4 couldn't lay a glove on Mr. Gilbert. He  
5 was asking, Mr. Mickus, who for some  
6 reason is not here today, he asked  
7 Mr. Gilbert, "She lost control."  
8 Remember Mr. Gilbert's response? "As  
9 would you. As would anybody."

10 He's a professionally trained  
11 driver, Mr. Gilbert. He admitted he's  
12 going to be steering evasively when  
13 presented with this circumstance -- not  
14 circumstance -- disaster waiting to  
15 happen. Didn't he?

16 The person who commented on driving  
17 was Steve Schorr. He's the defense  
18 accident reconstructionist. As he  
19 admitted, he's not an expert in driver  
20 response studies -- because ignorance is  
21 bliss -- but as he admitted on the  
22 stand, he had to admit that Miss Reed  
23 was steering consistently with the  
24 Pennsylvania CDL manual.

25 You remember Mr. Farrar walked him

1 through that. We went through the steer  
2 inputs. She's not even as extreme as  
3 the upper level put forth in the  
4 Pennsylvania CDL manual in terms of  
5 steering left and right and correcting.  
6 Probably the only credible thing  
7 Mr. Schorr told you.

8 And they called him on July 31st,  
9 2015, not 9-1-1.

10 What else did Mr. Schorr tell you?  
11 He tried to tell you that this photo,  
12 that shows really good spatial  
13 relationship of the van in the lane.

14 Yeah. I don't know. What do you  
15 think, members of the jury? Think  
16 that's fair, good spatial good  
17 relationship, by showing the van when  
18 it's over the left side of its lane?

19 Why did Mr. Schorr show you that?  
20 Because under that scenario, oh, maybe  
21 Miss Reed just keeps going down the road  
22 as opposed to having the vehicle  
23 properly in the lane as she did.

24 He didn't take photos that would  
25 represent shore traffic. No. Didn't

1 show any photos that would represent  
2 shore traffic on a Friday in July. No.  
3 He took the pictures before lunchtime on  
4 a Monday.

5 I wonder why Mr. Schorr did that.  
6 I'm sure it had nothing to do with the  
7 fact that maybe he wanted to show you a  
8 nice wide clear roadway as opposed to  
9 the one documented by Mr. Motyczka and  
10 described by the witnesses as moderate  
11 to heavy traffic.

12 Mr. Schorr actually had the  
13 audacity to tell you that even if the  
14 tread was in the lane two feet, Miss  
15 Reed would have had 10 feet to work  
16 with. Remember that?

17 As I pointed out and as Mr. Schorr  
18 eventually conceded, 10 feet to work  
19 with presumes that Miss Reed's vehicle  
20 is zero feet wide.

21 Again, when you have a credible  
22 defense, you're not putting people like  
23 that on the witness stand to try to spin  
24 a tail.

25 Where was that tread in the

1 roadway? Remember Mr. Zingarini, one of  
2 Silvi's attorneys, questioning my client  
3 as to where that tread was, just asking  
4 her over and over and over and over  
5 again, "Look at that, that's the police  
6 photo, look at where the tread is," and  
7 Miss Reed explaining over and over, "No,  
8 it's more to the left, more to the left  
9 when I saw it."

10 I was dumbfounded when I was  
11 hearing those questions, because  
12 Mr. Zingarini knew that Mr. Bohannon,  
13 the other driver who had been deposed  
14 months ago -- remember he's right behind  
15 Miss Reed -- where did he put it?

16 Put up the photo. Oh, look at  
17 that, where he circled, more to the  
18 left. Why would Mr. Zingarini do that?  
19 Better question, how dare he do that to  
20 a woman who has PTSD. How dare he.

21 Mr. Schorr concluded his testimony  
22 with trying to tell me, "Oh, if Miss  
23 Reed somehow saw that tread in the  
24 roadway after a vehicle swerved in front  
25 of her, maybe I wouldn't blame her." I

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1 then reminded him, "No, Mr. Schorr,  
2 you'd blame her for tailgating under  
3 those circumstances," and he admitted he  
4 probably would.

5 That's how he works. It doesn't  
6 matter what the facts and evidence are.  
7 It's always Pamela Reed's fault  
8 according to Mr. Schorr, even though  
9 she's confronted with a disaster, she's  
10 steering in an emergency, she did none  
11 of those circumstances, "I just don't  
12 like the way she reacts to it."

13 Members of the jury, when a company  
14 acts recklessly and irresponsibly and  
15 indefensibly, the only decent thing to  
16 do, I would posit, is to say, "We're  
17 sorry for what we did," period. The  
18 indecent thing to do is to say, "Well,  
19 we have sympathy for the victim, but  
20 nothing could have been done."

21 Here, however, Silvi, throughout  
22 this trial, they have done the worst  
23 possible thing, which is blame the  
24 victim.

25 "Yeah, we knew as soon as the tread

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1 came off, it was a disaster waiting to  
2 happen, and we never called 9-1-1. We  
3 have supervisors who don't know what  
4 they're looking at. We would do pretrip  
5 inspections five minutes, four minutes,  
6 three minutes. But the primary reason  
7 for this calamity is Pamela Reed," the  
8 woman who successfully steered around  
9 this disaster waiting to happen using  
10 steer inputs authorized by the  
11 Commonwealth of Pennsylvania and the  
12 federal government and the  
13 manufacturer. Her fault.

14 It's disgusting. When your  
15 recklessness causes a theater to catch  
16 fire and, to top it off, you never pull  
17 the fire alarm, you don't get to say, "I  
18 don't particularly like the way the  
19 patrons made their way to the exits."  
20 It's sickening.

21 That's what they're doing. They're  
22 pointing a concrete-encrusted finger at  
23 my client. I don't think I have to tell  
24 you what finger it is they're pointing.

25 Must we talk at length about

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1 Barbara Ziv? I guess we must. That's  
2 the woman who claims that Shanika Brown  
3 is not psychologically impacted.

4 That's testimony so obscene that  
5 Silvi's own life care planner, as  
6 Mr. Ball pointed out, was dumbstruck  
7 when told that testimony on the stand.

8 Is it any wonder that all of Ziv's  
9 testimony is similarly absurd? She  
10 offered the meritless opinion that my  
11 client, who had a Pennsylvania driver's  
12 license without any medical restrictions  
13 at the time of the crash and has a New  
14 Jersey driver's license now without any  
15 medical restrictions, was nevertheless  
16 unfit to drive on July 31st, 2015.

17 According to Ziv, the unfitness to  
18 drive was described as obvious. So as a  
19 result, all of my client's medical  
20 providers should have known she was  
21 unfit to drive and nevertheless failed  
22 to medically report her as mandated by  
23 law.

24 Ziv, though, who wrote a report  
25 stating she was unfit to drive, likewise

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1 did not report Miss Reed, which as I  
2 demonstrated with the relevant  
3 Pennsylvania statutory authority would  
4 violate the reporting law.

5 Ziv is not an accident  
6 reconstructionist. She has no  
7 familiarity with how people drive,  
8 driver's response, and was essentially  
9 laughed at in this courtroom along with  
10 Mr. Schorr and Mr. Grill.

11 So this disaster waiting to happen  
12 becomes a disaster that happened, and  
13 this family is destroyed as a result,  
14 multi generational limb loss, my client  
15 PTSD that she is reminded of virtually  
16 every minute of every day.

17 You'll recall the testimony of  
18 Dr. Kenneth Weiss. He's the Penn  
19 professor, forensic psychiatrist who  
20 came in here and testified that she has  
21 PTSD.

22 Unlike Ziv, who, surprise,  
23 surprise, thinks that Ms. Reed just like  
24 her daughter doesn't have any  
25 psychiatric symptoms, he answered all of

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1 the questions directly and stated that  
2 there's no question that the July 31st,  
3 2015, crash has profoundly affected Miss  
4 Reed and has resulted in PTSD.  
5 She's reminded of it whenever she's  
6 in a vehicle, whenever she watches TV,  
7 whenever she sees footage of the crash.  
8 She's reminded every time she sees her  
9 daughter and granddaughter.  
10 Seeing your family is supposed to  
11 provoke joy. Instead, when she goes to  
12 hug Shanika, her daughter hugs her back  
13 with one arm. When she changes  
14 A.B., picks up that cute little girl,  
15 she sees one leg.  
16 It's difficult to describe without  
17 choking up what it must be like for this  
18 family, particularly, Shanika to change  
19 that little girl's diapers with one hand  
20 looking down at her one leg.  
21 That my client experiences as  
22 well. She cares. She's the matriarch  
23 of this family. She's cares for her  
24 daughter and granddaughter.  
25 That is my client's reality. It's

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1 a constant gnawing fear and horror, and  
2 it's going to be nightmarish and it's  
3 going to be pain and it's going to be  
4 with her for the rest of her life, which  
5 this Court will instruct you is 21 years  
6 from the date of the accident. It will  
7 always be her reality. Her condition  
8 is, according to Dr. Weiss, permanent.  
9 It will be up to you to ascribe, to  
10 ultimately determine what to award Miss  
11 Reed for these 21 years.  
12 Unlike other states in America, the  
13 law in Pennsylvania does not permit me  
14 to suggest a number for you, and that's  
15 a good thing. A fair and impartial jury  
16 can reach that number better than any  
17 one lawyer I know, any ten lawyers I  
18 know.  
19 I only ask that you think about  
20 Ms. Reed over the course of those 21  
21 years in the following increments  
22 similar to Mr. Ball.  
23 Oh, that's interesting. It looks  
24 like somebody turned around what  
25 Mr. Ball wrote. I wonder who did that.

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1 MR. CORCORAN: Your Honor, if  
2 that's directed to us, I object.  
3 MR. SHERRY: I don't know if it's  
4 directed to him. I don't know who did  
5 it.  
6 THE COURT: So it's irrelevant. At  
7 the end of each person's presentation,  
8 we routinely take down whatever has been  
9 left up there. So no aspersions should  
10 be cast towards anyone.  
11 MR. SHERRY: I'll go through a  
12 similar exercise with Ms. Reed.  
13 Twenty-one years, members of the  
14 jury, is 251 months. 251 months is  
15 7,665 days. 7,665 days is 183,960  
16 hours. 183,960 hours, that's 11,937,600  
17 minutes.  
18 I urge you to consider those  
19 increments when you decide what to award  
20 Miss Reed. To my end, I want it to  
21 compensate Miss Reed, not to punish  
22 Silvi. Punishment, depending on when  
23 you check a certain box, that comes  
24 later.  
25 But this compensation, I don't want

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1 you to make Silvi pay one penny more  
2 than what you believe Ms. Reed is  
3 entitled to, but I don't want one penny  
4 less.  
5 And I ask you to award whatever  
6 amount you choose to award to Ms. Reed  
7 against the only entity responsible for  
8 causing her and her family true horror,  
9 which is Silvi.  
10 Any percentage of responsibility  
11 directed to anyone else, even if it's  
12 just one percent for this disaster, be  
13 it McCarthy, Bridgestone -- I can't  
14 believe I'm even saying this --  
15 Ms. Reed, who is a victim in every  
16 meaningful sense of the word, is not  
17 only utterly inappropriate given the  
18 evidence in this case, it rewards the  
19 meritless, outrageous and disgraceful  
20 conduct of Silvi.  
21 They chose to run their concrete  
22 company in a reckless and outrageous  
23 manner. They chose to make people like  
24 Pruden and Desmond supervisors, despite  
25 knowing these men had no idea what they

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1 were looking at.

2 They chose to disregard their own

3 policies about their company's use of

4 retreaded tires. They chose to have a

5 driver drive around with a bolt in one

6 of his tires and a nail in another for

7 hundreds of miles.

8 They chose to let drivers do

9 five-minute, four-minute, three-minute

10 pretrips for 80,000 pound concrete

11 trucks.

12 They chose to prioritize profits

13 over safety, and they chose not to train

14 their drivers to call 9-1-1 immediately,

15 resulting in a massive tread on 295 for

16 29 minutes, crash after crash after

17 crash after crash after crash.

18 They recklessly and negligently

19 caused the disaster. They took no steps

20 to address this disaster they created,

21 and they didn't protect the public

22 including this family.

23 Silvi, members of the jury, they

24 made their proverbial bed. It's high

25 time they and they alone lay in it.

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1 As a result, I'm going to come back

2 and talk to you again, and I'm going to

3 ask you find against one company and one

4 company only, and that's Silvi. Thank

5 you.

6 THE COURT: Thank you, Mr. Sherry,

7 on behalf of Ms. Reed.

8 Members of the jury, we're going to

9 take a lunch until 2:00. We'll stand in

10 recess until 2:00.

11 THE COURT OFFICER: This Court

12 stands in luncheon recess until

13 2:00 p.m.

14 All rise as the jury exits the

15 room.

16 (The jury exited the courtroom.)

17 THE COURT OFFICER: You may be

18 seated.

19 THE COURT: So we'll cool off the

20 courtroom, and we'll see you all at

21 2:00.

22 THE COURT OFFICER: Court stands in

23 recess until 2:00.

24 (Luncheon recess was taken.)

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1 CERTIFICATION

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5 I HEREBY certify that the proceedings

6 and evidence are contained fully and accurately in

7 the notes taken by me in the above cause, and this

8 copy is a correct transcript of the same.

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14 \_\_\_\_\_

15 JANET M. MANSFIELD, RPR

16 Official Court Reporter

17

18

19 (The foregoing certification of this

20 transcript does not apply to any reproduction of

21 the same by any means unless under the direct

22 control and/or supervision of the certifying

23 reporter.)

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