IN THE IOWA DISTRICT COURT FOR POLK COUNTY

IVON TOE, individually and as Next Friend of YANFOR WRIGHT, NYANSA WRIGHT, RICHMOND WRIGHT and PAULEEN TOE, minors; ACHOL DENG MAWIEN, CHAN MAWIEN; SEKOU JAI, individually and as Next Friend of HASSAN JAI, a minor; JAILAH NAYOU, individually and as Next Friend of SUNDAY NAYOU, GEE NAYOU and ISAIAH NAYOU, minors; EVELYN NAYOU; JOSEPHINE COLE, individually and as Next Friend of HOMPHREY VANIE and VANESSA VANIE, minors; and THE ESTATE OF ASSATA KARLAR by its Administrator GAYE KARLAR; and GAYE KARLAR, individually and as Father and Next Friend of TARLEY KARLAR, ESTER KARLAR, NIONBIAO KARLAR, KULEY KARLAR and LOVETTA KARLAR, minor children of ASSATA KARLAR,

Plaintiff(s),

vs.

COOPER TIRE AND RUBBER COMPANY, DAIMLER CHRYSLER CORPORATION, and STEW HANSEN DODGE CITY,

Defendant(s).

CASE NO. CL 106914
COVERED BY PROTECTIVE ORDER - VOLUME 2 - TRANSCRIPT OF TRIAL PROCEEDINGS

COOPER TIRE AND RUBBER CO.

Third-Party Plaintiff,

vs.

ALFRED LANG,

Third-Party Defendant.

THE COURT: So we're going to keep you on the jury. But if something does happen, you know, if you hear from your wife or -- we'll have you have your phones off while you're in here. So Susie could get a message too and would give me a note and we can take care of it if something happened, okay?

JUROR PARMENTIER: Very good.

THE COURT: Thank you for sharing that with us. Get the whole jury, if you would.

(The following record was made in the presence of the jury.)

THE COURT: Be seated. At this time the attorneys have an opportunity to give you -- to give you what we call an opening statement. In doing so, they will explain to you what they believe are the issues in the case and what they expect that the evidence will show.

The statements which they make now and the arguments which they will make later at the close of the evidence are not evidence and may not be considered by you as evidence. They are merely to give you here a preview of what we anticipate -- or they anticipate will happen and, at the close, to further explain their case to you.

Also, any statement that may be made about

the law is not to be considered the law of the case, which I will give you later.

Since some of the evidence comes in piecemeal or out of chronological or logical sequence in a trial of a lawsuit, the statements of counsel are merely to put the facts into perspective for all of you. They are intended to give you a thumbnail sketch of the case and outline the evidence to better aid you in understanding the issues and the evidence. Therefore, please give them your attention.

Counsel for the plaintiff.

MR. BALL: May it please the Court. You guys haven't heard from me yet, but my name is Wesley Ball. I am law partners with Kyle Farrar, who you have spoken to quite a bit. And I also work with Fred James. I appreciate you all coming in today and appreciate the service that you provide.

The evidence in this case will show you that the tire in that box right there is defective in design and it's defective in manufacture. And the evidence is going to further show you that Cooper knew that that tire in that box was defective in design and defective in manufacture.

You'll hear evidence over the next -- over the coming weeks that Cooper knew in 1995 that they

had a problem with its tires and the separation rate of its tires, that that problem increased in '96, '97, '98, '99, and the year this tire was manufactured in 2000.

On the morning of September 17, 2007, everything seemed to be fine. Everyone woke up, all of the people that you see here in front of you. It was just like any other day. Everyone readied themselves for work, to go to work around 1 or 2:00 in the afternoon.

And in all honesty, for these individuals in front of you today who are sitting here, living in Des Moines was really a dream come true. And the place that they work, the Swift Meat Company, was a dream come true. I know that might sound like it's kind of difficult to understand or believe, but the fact of the matter is that it was. And you'll see from the evidence that they believed that it was their dream come true.

You see here in Des Moines -- you've heard a little bit about their background, but here in Des Moines it's very different from where they grew up and where they lived. Where they lived, they literally dodged bullets and they dodged people who were trying to murder them and their family. It's a

lot different in Africa than it is here.

Two people that you'll hear from lived in the south of Sudan. In Sudan there was a large civil war going on, and Islamic extremists were killing and enslaving Christians. That's how some of these individuals came to live here in the United States.

You'll hear of other individuals who lived in Liberia. In 1990 the Liberian government was overthrown -- attempted to overthrow it by a man by the name of Charles Taylor. I don't know if any of you have heard about Charles Taylor, but he's a pretty bad man, to say the very least.

When he came into power, if you didn't announce your allegiance to the gentleman or to the guy or whatever you want to call him -- it's difficult for me to call him a sir or a mister -- if you didn't announce your allegiance to him, he had you killed on the spot, literally. These individuals will tell you about people that they saw killed on the spot, family members who they saw killed on the spot.

Sekou Jai, the gentleman the third from the right, was a member of the opposite political party of Charles Taylor. As you can imagine, Charles Taylor didn't take very nice or very kind with that. Sekou and his family had to flee the country that he was in,

as did everyone else had to flee the country that they were in because they were being persecuted for their beliefs and for their race.

The only real hope they had was to come to a different place far, far away from where they were. And the United Nations and the United States of America allowed that to happen. They allowed it to happen much like they allowed it to happen for every single one of our ancestors, in all honesty.

They were literally living the American dream on the day of September 17, 2007. That dream ended that day. Everyone got into a minivan because everyone was going to the Swift Meat Company for their work. When they boarded that van, nothing was wrong, they didn't think anything was wrong, or no one thought anything would go wrong. However, something did.

The van was driven by this gentleman right here, Mr. Alfred Lang. Cooper has sued Mr. Alfred Lang, and Cooper will try to show you evidence that Mr. Alfred Lang is responsible for this entire incident, responsible for everyone in that vehicle.

Mr. Lang had driven all of these individuals to work, to and from work for a few months. Everyone carpooled together. You probably

remember back then, gas was a little higher than it is now. It's amazing for me to believe because it's so high as it is now, but it was actually higher then. So they carpooled in order to save money.

On the way there, they took Highway 65. Mr. Lang was in the left-hand side of the road, in the left-hand lane. He had been on the road five or 10 minutes and then everything decided to go wrong or everything went wrong.

You'll hear everyone tell you, and the evidence will show, that they heard a very loud noise coming from the rear of the vehicle. Nobody really knows what side it came from, but they heard a very loud noise.

When that very loud noise happened, the vehicle moved to the left, the evidence will show you, and then the vehicle moved to the right. When the vehicle moved to the right, it entered into what we call a yaw.

And really a yaw is just a technical, sophisticated name for a vehicle that got sideways going down the side of the road. When the vehicle exited the road, it being sideways, there was no way the vehicle was ever going to remain on its all four wheels. It furrowed into the ground and rolled.

After that the only thing that was really heard, you will hear from these people, were screams of fear, terror, and panic because a lot of people were very badly injured. Assata Karlar, the gentleman to the far left here, his wife was in that van. His wife -- excuse me, Gaye Karlar. His wife Assata was in the van and Assata wasn't moving. He found Assata and she had no movement whatsoever. She had been killed.

Jailah Nayou, the next person to the right, took a very serious nasty blow to the head. You'll hear a lot of testimony in this case about how serious his head injury was. He had, and the evidence will show, internal bleeding of the brain, contusions. He had to literally learn to talk again.

Josephine Cole, the person standing -- excuse me, the fourth person over. Josephine had her leg shattered and had her hip fractured, her hip broken. Her leg now has a steel rod running through it.

Everyone else in this accident escaped with injuries, but not injuries as deep as the injuries that you've just been told about. It changed everyone's lives, but it didn't change everyone's life as much as it changed Ivon Toe.

And Ivon Toe is not with us today, rather Ivon's sister is here, Janet. And you can see Janet on the far right. Ivon laid on the ground with no pain, conscious. The reason she had no pain is because Ivon had no movement from her neck down. She had broken her neck.

You'll hear from the evidence that she was saying, "I can't move. Why can't I move?" And there's a reason why she couldn't move. You'll see it is because she broke her neck. Ivon is now what we call a quadraplegic. And not only is she a quadraplegic, but she's a ventilator-dependent quadraplegic. And when I say ventilator-dependent, I don't mean all the time. She can breathe on her own. Sometimes she has to have a ventilator to help her with her breathing.

In the coming weeks, you're going to hear a story about what happened that day. And that day the accident happened over about a ten-second period, literally really nothing more. However, the story that you're going to hear is contained in all of these boxes over here, and it's contained in all of the witnesses that you're going to hear from from Cooper.

And that story started back in 1994. And the story we're going to tell really ended in about

2000 when this tire was manufactured, but it continues today. And the evidence will show you what that story is.

Before I get into that story, though, let me tell you kind of what we're doing here, because I know this is probably very foreign to everyone. But you've seen law movies, so you probably know this is an opening and we get a closing and then we get evidence in the middle.

Well, this is opening. I get a chance to tell you, just like the Judge said, what I think the evidence in this case is going to show and you get to hold me to that evidence. You get to listen to everything that I've said, and you get to see the evidence later on in this case.

I would tell you during the case to write notes down. Write down events that you think are important. Write down terms that you think are important. Write down names of components and tires that you think are important, because we are going to be going over them over and over again. And you need to know what those names are in order to be able to understand what was going on during the times that this stuff was going on.

This is not the time for you to do that;

but as soon as I'm done talking and as soon as they are done talking and we get into evidence, I suspect that the Judge will probably allow you to do that.

You've heard me talk for a moment, so let me get the pink elephant out of the room. I've got an accent, I know I do. I'm not from Iowa. I actually live in Texas, but I'm not from Texas. I'm actually from Tennessee. My accent has gotten a whole lot better, though. My mom actually gets really upset with me when she talks to me because she thinks I've abandoned them because my accent isn't near what it used to be. She teases me about it.

But I'm telling you that because not only do I have an accent, but I'm nervous. Everybody is nervous. You guys might be nervous as jurors. I don't know. But I can tell you this: I'm nervous. I can tell you that Mr. Farrar is nervous, and I can tell you that Mr. James is nervous. I don't know about them, but we are.

We're not nervous for any reason other than we get an opportunity to represent a fine group of individuals who have an amazing story, and I don't want any of the nervousness that you might see on our part to reflect -- to look badly upon them.

Let me get back to the story. The tire in

this case is a Cooper Lifeliner Classic II. Later on in trial, you're going to hear a whole bunch about this name. I'd say that's something that you might want to write down when you get a chance.

The tire was manufactured in late March of 2000. When I say "late March," it was manufactured in the 13th week. Sitting here right now, I can't really calculate what the 13th week is, but it's right around the very end of March, first of April. That's a very important date. The end of March of 2000 is a very important date that you will come to see in this case and that the evidence will show you.

The Classic II, the evidence will show you, Cooper knew was having failure problems. And not only the Classic II, but all of Cooper's tires because all of Cooper's tires are designed with a component common amongst all of them.

You'll see from the evidence and from all of the documents that we've got, that Cooper knew well before March of 2000 that its tires were failing at an alarming rate. I've told you that they knew about it in '95, and I'm confident that the evidence will show you that and that it continued to progress to the year 2000.

Cooper figured out why their tires were

failing. The evidence will show you that. However, the evidence is also going to show you that Cooper decided not to make the changes that it needed to make to its tires because of what Cooper calls in its own words "cost considerations." You'll see those documents, and you'll see those words in evidence in this case.

The size of tire -- also this tire is -- within Cooper they have a lot of different tire lines and a lot of different ways that they designate the names of their tires. Lifeliner Classic II -- and probably have seen a bunch of other different names -- this within Cooper was part of what Cooper called a 7th generation line of tires. It's not something that you need to remember right now, but you'll hear some more about it later in this case.

And the evidence will show you that this tire was part of that 7th generation line, and that that 7th generation line was also a line of tires that was having an increased amount of failures even the year before this tire was manufactured.

The age of the tire is most often -- well, let me tell you this. The recommended size for this tire -- or for this vehicle is 215/75R15.

MR. MILLER: 65.

MR. BALL: Excuse me, 215/65R15. Thank you, Mr. Miller. The failed tire in that box is a 215/65R15. They are the same size. The size of this tire was what was recommended for that vehicle.

Cooper's experts, plaintiffs, everyone agrees that the size of tire on this vehicle, load rating, the range of this tire, everything is what it needed to be for this vehicle.

Now, tread depth is often the measurement of how old the tire is. This tire, this Cooper Lifeliner Classic II, started off with a 11/32 of tread. 11/32 is a really weird measurement, but that's the way tire companies in the tire industry measure tread depth.

To be honest with you, I really don't know why they measure it in thirty-seconds, but they measure it in thirty-seconds. The beginning tread depth for this was 11/32. Obviously, 0/32 is the other side of that. This tire, when it failed, had 5.5/32 left on it. That's exactly half of its life left in tread.

In Iowa 2/32, the evidence will show you, is what the legal limit for what tire tread needs to be. If it's under 2/32, Iowa says you need to remove your tire and replace it with something else. This

tire had 5.5/32 on it.

And I wanted to get that clear because the evidence will show you that probably in the very initial stages, this tire had a tire warranty like all tires do. The tire warranty on this vehicle -- the tire warranty for this tire was 70,000 miles. This tire is estimated, the evidence will show you by Cooper's expert, of having around 30,000 miles on it. So the warranty is not even halfway up on it. That's something you'll also come to understand and the evidence will show you in this case.

I want to talk to you a little bit about the tire components. All tires that you and I drive on a daily basis are what we call steel-belted radial tires. Steel-belted radial tires have been around for a really long time. And that's just kind of another fancy word for saying that the tires are put together with two belts, two pieces of rubber -- or really two pieces of steel that are wires that have rubber coated on top of them, cut into long pieces and then wrapped around the carcass of the tire. They do that twice. It's called belts.

Let me show you the inner workings of a tire with this very basic diagram.

MR. SAPP: Wes, can I see what you are

showing?

MR. BALL: Sure. This is a plain-Jane diagram of a tire. I'm just going to tell you what the general components of the tire is. The components of the tire -- I imagine no one here has ever cross-sectioned a tire in order to take it apart to see what's on the inside.

The tire begins with what we call an inner liner. And that's actually not on here, but that's the inside of the tire. The inner liner is the portion of the tire that holds the air in, holds the pressure. After the inner -- well, yeah, there it is, I'm sorry, the halobutyl inner liner.

After that we have body plies. You're not going to hear a bunch about body plies in this case, but that's the first component on top of the inner liner.

On top of the inner liner, we have what we call the first belt. It's right here (indicating). And then we have the second belt right here (indicating). These two belts lay on top of each other. They are cut to about the width inside the tread of the tire. The belts are what give the tire its rigidity, what maintains the tire's structure, what maintains its shape.

On top of the belts is the tread and then, obviously, we have the sidewall. The tread is something that everyone sees and everyone knows and we have talked about. And we can measure the tread depth in certain ways. I may come back to this.

Throughout the entire operating life of a tire, the most stress that is placed on a tire is at the belt edges. The evidence will show you that everyone agrees on that. And the reason why the most stress is placed on the belt edges -- and when I say "belt edges," the most stress is placed on the side of the tire right here, on each side (indicating). That's where the belts end.

The most stress is placed at the belt edges because there's a standing wave of vibration that hits the center of the tire and emanates outwards. The evidence will show you that. And when that vibration emanates outwards, it puts stress on the belt edges.

And that stress throughout the entire operating life of the tire tries to pry those belts apart at the belt edges. And when it gets those belts apart, those belts continue to get further and further apart to the point where one of the belts get thrown off in a catastrophic nature.

That's what we had happen in this case.

The tire was driving down the road; there was a separation between those belts. And we'll talk about that. It's a separation you can't see. There's a separation between those belts and then one of those belts was thrown off.

Now, what's wrong with this tire, the tire that's in that box? Can't show you that tire right now because this is opening, but we're going to show that tire in a little bit. But I want to talk to you about what I think the evidence is going to show you about that tire.

Cooper did not use in the manufacturing and design of its tires what we call a belt wedge or a nylon overlay, nylon overwrap. You'll hear this thing, the nylon, called a nylon overlay or nylon overwrap. There's another name for it that I'll show you in a second as well, but it's all the same.

These are called tread separation countermeasures. These are designs that you place into a tire in order to counteract the stresses at the sides or the edges of the belt. This is so that those belts don't come apart at the edges throughout the operating life of the tire.

There's also one other critical design feature that went wrong on this tire and that is the

skim stock. And I'll come back to the skim stock in a second.

Before I do, though, I want to talk to you about the belt edges or about the belt wedges, shall I say. Cooper calls a belt wedge BEGS. Let me explain to you what a belt wedge is. Between these two belts right here, there is a -- there's a design component that you can put in between. And it's just another piece of rubber, and it's a piece of rubber there to insulate the two belts at the edges so that that stress is better absorbed. If there's no belt wedge there, it's difficult for that stress to dissipate in a certain way without causing damage to the tire. The evidence is going to show you that.

Cooper, the evidence will show you, has quite a bit of information and knowledge about belt wedges. In fact, Cooper has internal designations for belt wedges, and they call them belt edge gum strips. And not only do they call them belt edge gum strips, but the reason why I put BEGS up there is because Cooper calls belt edge gum strips BEGS. That's an internal company name for what that tire component is.

The evidence will show you that Cooper knew that BEGS, belt edge gum strips, would work to prevent tread separations in tires, would work to bring its

adjustment data or its separation failures down. However, Cooper didn't use those BEGS in its tires because it was a cost measure, and they didn't want to spend that amount of money. The evidence is going to show you that.

The second tread separation countermeasure that Cooper did not use in this tire is what we call a nylon overwrap. Cooper also has an internal designation for a nylon overwrap called SNOW, spiral nylon overwrap. These are internal Cooper names that you're going to hear a lot about and the evidence is going to show you in this case.

Cooper also did not use SNOW on any of its tires, a nylon overwrap. Again, why did Cooper not use these? Because Cooper didn't want to spend the money to use these. The evidence and the documents will back this up and we'll show you that.

One other thing about belt edge gum strips, BEGS. In 2000 Cooper knew that it was the only tire manufacturer in North America that didn't use belt edge gum strips. You're going to see plenty, extensive studies about belt edge gum strips that come from Cooper and plenty of documents concerning belt edge gum strips that come from Cooper. And the fact of the matter is, they didn't use them and they knew

they were the only people that didn't use them and the only company that didn't use them.

Now, I told you there were three problems with the design of this tire. And the third problem is what we call the skim stock. Now, each component within this tire is obviously made of rubber or has rubber around it. It's a tire. We know that tires are made out of rubber. But the components of the tires -- the components within the tire are made with different kinds of rubber. The tire doesn't have just one type of rubber in it. The tire has got different rubber around the belt edges, different rubber on the tread.

The skim stock, Cooper calls it, is the rubber that coats these belt -- these belts within the tire. The skim stock holds the belts together throughout the operating life of the tire.

You've probably picked up a rubber band before. You pick up a rubber band and you try to stretch it and the rubber band breaks apart. The evidence is going to show you that the reason why that rubber band breaks apart is because it's oxidized, the rubber has, meaning it's lost its natural stretchy, tacky abilities.

Well, when you design skim stock -- you're

going to hear a whole bunch about skim stock -- you design it with what we call antioxidants or AO, and that's a chemical.

Antioxidants are exactly what they sound like they are. They fight off oxidation. And without antioxidants, with a tire the same thing will happen that happens with the rubber band. The bond between those two belts will deteriorate with time because of oxygen exposure. And when that bond deteriorates, there's a separation that occurs between the belts, a small tiny separation. We can't see it with our eyes in looking at the tire. We can't see it, obviously, until the tire comes apart.

One of the tale-tell signs, the evidence will show you in this case, of a separation between the tires as a result of a poor antidegradant package in its skim stock is what we call fast wear or spot wear.

Spot wear on a tire is an area of the tire that wears a little faster than the surrounding area of the tire. It's difficult to see sometimes, if you can see it. And you'll see, and the evidence will show you, that when we have a separation between those belts caused by that poor skim stock, that we have fast wear and we have spot wear and it happens quickly

too.

And you're going to see the spot wear on the pieces of tread that came off of this tire. And you're going to hear that that is tale-tell, coessential signs of poor belt skim stock design.

Now, Cooper in its tire -- you're going to hear this number, this term over and over and over again in this case, 525C. That is what Cooper's internal designation for the design of their skim stock is for the rubber that coats these belts. They call it 525C. There's been 525A. There's been 525B. There's been 525C. You can finish it off. There's 525D. 525D came into manufacture and came into design three weeks after our tire was made.

But there was a change notice where Cooper decided to change the design of its tire from 525C to 525D less than a month before our tire was made. So our tire was made in between the design change notices and the time that they implemented it. And you're going to see something about that in a little bit.

Cooper knew back in 1994 the first time that its skim stock was having a problem. You're going to hear from a lady -- you're going to hear from a lady in this case, and her name is Rita Feczer. She is a Cooper Tire employee. Ms. Feczer is the chemist

at Cooper who was taking care of designing the skim stock of Cooper tires.

Ms. Feczer, you'll hear from her, will tell you that in 1994 she performed some studies, some lab studies. And in those lab studies she found out that there was a problem with the Cooper skim stock. And that was the first time that they really had any documentary evidence that you'll see of that problem with the skim stock. Skim stock didn't change in 1994. In fact, in 1995 Cooper began to see an increase in its separations, separation-related failures.

When Cooper began to see an increase in separation-related failures, the evidence will show you that Mr. Stephens, Cooper's vice president, got a hold of this information. And you'll hear from him. And he made recommendations about what Cooper might want to do. And one of the things that he said Cooper might want to do is change the design of its skim stock, change the design of the antidegradant package that was in that skim stock.

And Cooper went as far in 1996 as pricing out changing that skim stock from 525C to a different alternative design, but they never did it. And they never did because it was just too much money for them.

That's what the evidence is going to show you. It was too much money for what they wanted to spend, I should say.

You'll hear -- the evidence will show that in 1997, following the '96 thought in changing their design, the separations continued to increase. In '98 the separations continued to increase. In '98 there was a significant increase, as they call it, and the evidence will show you. The separations continued in '99 and it continued into 2000.

Over the past two years, I and my cocounsel have had an opportunity to look at a whole bunch of Cooper internal documents, and you're going to see a bunch of those in this case. And we do that through a process called discovery. It's basically I get to ask them for things that they have that might be relevant to this case, and they get to do the same with us.

When we did that, they produced to us a whole bunch of documents. And I have -- and we have poured over of tens of thousands of these documents. My eyes are none the better for it, and I think I've gone through two prescriptions. You're going to read a whole bunch of these documents. And I want you to see on the bottom of the documents that every one of the documents are marked "Confidential, Attorneys'

Eyes only."

There's one document, however, that I want to talk to you about now, and that is a document from March 13th of 2000. And this document was drafted by a gentleman by the name of Mr. D. A. Powell. And you're going to hear from Mr. Powell in this case. Mr. Powell was head of the division that took care of Cooper's skim stock. When I say "took care of," designed it, redesigned it, did whatever they needed to do. He was the head of chemicals, in essence. And the evidence will show you that.

This document written by Mr. Powell was written on March 13th of 2000. Our tire was made, remember, at the end of March. This document written on March 13th of 2000 is evidence you'll see in the case about the skim stock that we've talked a bunch about today.

The evidence will show you that this was a change -- a memo that accompanied the change of the skim stock. Let's read it together. "One of the first things that they decided they need to do is increase the long-term AO protection for 525." Remember I told you 525 skim stock. 525C is the belt -- is what coats the belts. "Increase the long-term AO protection for 525. This has been

documented through multiple test programs over the past five years but never invoked because of cost considerations."

You'll see a whole bunch more evidence in this case that talks about cost considerations. This document, the evidence will show you, was what we will understand to be known as Cooper's proof that they knew that they needed to change their skim stock five years ago. And not only did they need to change it, but they could have changed it because you can't change it unless it's done. And here it says that it's been documented through multiple test programs over the past five years.

So the back side of the document, let's read together just the highlighted portion. You'll see the whole document. "As you know, one of the goals in Divisional Materials Development has been to improve performance but not increase costs." The only word in this entire document that is in all caps and bolded is the word "not."

Cooper was very cognizant of how much money they spent on its tires. And the evidence will show you that it came down to a math problem for Cooper, and that Cooper didn't change this design until it had to change it. And when Cooper changed it, they were a

little too late because the tire that didn't include this design was manufactured three weeks after this memorandum went out.

The evidence will show you that in 1999 -- I take that back. This is on the first page. And, unfortunately, we've got heads in front of it. It says, "It is our responsibility to implement the change to 525D."

Let's talk about the time line of the skim stock fix, what the evidence is going to show you. On March -- excuse me, February of 2000, the evidence will show you that Cooper made the decision to change its skim stock. March 13th, the Powell memo was created, the one that you just read. And that memo basically says we decided to change it, we're going to change it, here's why we haven't changed it, here's what we need to do. We just read it. You'll see more.

The evidence will show in the last week of March, this tire, the failed tire, was manufactured, the tire that was on this vehicle. And then in August of 2000 our tire was made at the Texarkana plant in Texas. In the last -- in August is when 525D actually was implemented into the tires that were made at the Texarkana plant. Our failed tire was designed in

525C, not 525D.

The evidence will show you that in 1999, almost exactly one year before our tire was made, that Cooper made the decision to form an internal task force. And the internal task force that Cooper made a decision to form, they call the Tire Durability Team. And the Tire Durability Team was given the mission and responsibility of figuring out why the tires were failing and a fix. The Tire Durability Team, you'll see, is the one that recommended that the skim stock needed to be changed.

And in February of -- in February of 2000 the Tire Durability Team -- February of 2000. Remember our tires were made in March. February of 2000 the Tire Durability Team met. The Tire Durability Team met one year after their creation at this place called the Northridge Club off of Cooper grounds, off of the Cooper employment facility.

And they invited a select amount of engineers and a select number of executives to this meeting. At the meeting they also invited a gentleman by the name of Steven Cramer, and you're going to hear from Mr. Cramer. And I think you'll probably going to hear from him as a second witness in this case.

Mr. Cramer was invited to this meeting

because Mr. Cramer was the numbers guy. He was the guy that put together reports or whatever else it may have been about how many tires were separating, how many tires were failing, the reasons for those failures were. He would collect them and put them all together.

And you'll see, the evidence will show you, that in this meeting Mr. Cramer came to the conclusion after putting all of these numbers together that Cooper -- that for Cooper it was imperative that Cooper improve the durability of its tires. That's the evidence that you'll see and that's the evidence that you'll read, those words. That was February of 2000. That was about two months before our tire was manufactured.

You'll also hear about a gentleman by the name of Mark Panning in this case. He's probably going to be showing up on one of these screens, not here live. Mr. Panning, the evidence will show you, in January before our tire was manufactured, issued a memorandum to a few select people at Cooper. And in that memorandum his conclusion was that the Classic II tire line, we are seeing an increase in separations in the Classic II tire line. However, the Classic II tire line was continued to be made. It was still

made, shall I say, continued on being made. No design changes were made. And our tire was made at the end of March.

You're going to hear a whole bunch of evidence in this case that comes from documents. The documents are written for a reason. The words on the documents are there for a reason. They are written between engineers. They were written between executives. They were not written, as you will see, in the litigation context. They were written between people who were trying to find a fix and a solution to the problem.

When you read these documents, I'll caution you to read the words on the page, read the documents. Don't allow additional information to come in that's not on those documents. Those documents tell the story. And you'll see from the evidence that the story is very detailed within these documents.

I anticipate that you'll hear witnesses for Cooper testify that all of these design changes that I've talked about were made in an effort to improve -- continuously improve or continuous improvement of Cooper's tire lines.

The evidence will show you that Cooper uses the word "problem" from 1996 on, that Cooper uses the

word "problem." We had a problem with our tires, a problem with the tread separation.

The evidence will show you that problems aren't improved upon, problems are fixed. Problems you find a solution to. That's why the Tire Durability Team was created. They weren't created to make improvements. They were created to fix it. Without one or all three of these designs that I've talked to you about, a tire is in a very weakened state, very, very weakened state.

Now, will every single tire fail that doesn't have the 525D skim stock or belts or -- excuse me, or belt edges or nylon? No. Every tire is not going to fail. Every single tire is not going to fail, by any means. And we're not going to tell you that every single tire will fail. But the tires will fail when there is an anomaly in the manufacture of the tire or when there's something else wrong with the tire during the manufacturing process because the tire simply isn't strong enough to withstand something else that's wrong with the tire.

You'll come to understand that tires, by and large part, are really a handmade product at Cooper, that there's a number of people that touch the tires. Now, all of these employees use tire building

machines and they use different kinds of tools, but by and all -- by and large, they are handmade. And they are inspected with eyes, not with machines.

And during the manufacturing process, some of the tires are manufactured improperly. You'll hear from Cooper witnesses who will actually tell you, you know, from time to time there's a tire that gets out that's not in the perfect condition. It is defective and it makes it into the consumer's hands.

When one of those tires get out that is defective or it isn't first rate or first quality and you combine that with the already-weak design, catastrophe happens. And not every single time a tire fails is it going to cause what was caused. But when it gets out and you place the people who are riding on those tires in that situation, it can happen and it will happen from time to time, as the evidence will show you.

THE COURT: Counsel, will you approach.

MR. BALL: Yes.

(Discussion was held at the bench between the Court and counsel.)

THE COURT: We are going to take a brief recess. We'll be back in probably five minutes. If you all will go to the jury room. It has nothing to

do with anything that counsel did, so I don't want you to blame him. He's not in trouble, not yet anyway. Neither one of them are -- or none of them are. So we'll take a brief recess, and we'll be back in here in about five minutes.

(The jury was excused from the courtroom.)

(The following record was made out of the presence of the jury.)

THE COURT: On the record. My court attendant got a call from the hospital from Mr. Parmentier's wife that they were taking her father off the ventilator and she was very concerned and wanted him there. And so we have now excused him for cause. And counsel has agreed with me this is what happens. Does anybody have anything further that they want to add?

MR. JAMES: No.

MR. BALL: Agreed, Your Honor.

MR. MILLER: No, Your Honor.

THE COURT: Now five minutes.

(A recess was taken.)

(The following record was made in the presence of the jury.)

THE COURT: Unfortunately, we had to dismiss Mr. Parmentier because he had a family

emergency, his wife called. And we're sorry for that, but we are going to continue.

MR. BALL: May I, Your Honor?

THE COURT: You may.

MR. BALL: Thank you. It's kind of -- it's definitely not a wanted break, but you get a break in between what I'm saying. So everyone gets to move around and pump their blood a little bit and, hey, you might actually be able to stay with me a little bit.

I know this is not extremely exciting stuff, by any means, but I appreciate the attention that you are paying because I can see it in everyone's eyes and I know my clients are very appreciative of your attention.

I just finished talking to you about the fact that when you have a tire that's designed, the evidence will show you, without these tread separation countermeasures or at least one of these tread separation countermeasures, that when you include that tire design with the manufacturer's defect, well catastrophe can sometimes result.

Now, I want to talk to you about what the evidence is going to show you concerning the manufacturing defects in this tire. We've heard a little bit in voir dire about manufacturing and things

of that nature. I want to tell you what the manufacture of this tire shows.

One of the manufacturing defects in this tire is what we call a dog-eared splice. Again, I don't have a car, so it's very difficult for me to have you visualize everything, but I'm going to do everything that I can.

But a dog-eared splice -- the tire is round like that. The belts of the tire, when they are put on, they are put around a drum, a big round drum. It rolls the belt around these drums and it will roll the other belt on top of that drum and then the tread will roll around those two belts.

When the tread rolls around, it comes to form this, forms a circle. And then at the edges, when the tire actually goes together -- and maybe you'll see some of this. When the tire goes together, it actually pushes it together and then you've got the kind of tire that we've got there.

However, like I said, tires at Cooper, they are fairly a hands-on process. And the machine will throw the belt down. But when the belt is thrown down, they have to -- when it rolls around, they have to situate that belt onto that tire carcass and then they have to situate the next belt on that tire

carcass.

And a dog-eared splice is what Cooper calls this. And that basically means when the belt rolls around and comes on that drum, there's a tolerance. The tolerance is really just how much something can be off or how much something can't be off. And if it's off more than that, then you have to scrap it, you have to throw it away.

Cooper's got tolerances, and the evidence is going to show you, for the placement of the belts and how far off-center -- how far off-center the placement of that belt can be. So if that belt rolls around and it's placed like that off-center, it creates what we call a dog-eared splice because you have this on the side of the belt. The belt sticks out further on one side than it should, so it doesn't come together in a very fluid nature.

And Cooper has called that a dog-eared splice. Really the industry has called it that, but Cooper also calls it a dog-eared splice. And the tolerance for that is, and the evidence will show you, is .050 inches, which is about 1.27 millimeters. It sounds like a really small measurement and it is. It's a very small measurement.

However, a real small measurement is

something that really matters when you are talking about it happening at the belt edges because, remember I told you, the evidence is going to say or the evidence is going to tell you that the highest stress areas of a tire are at the tire's belt edges.

So when you got the tolerance exceeded, the evidence will show you, by more than .050, 1.27 millimeters, you have a tire -- and the documents will show you from Cooper -- that will fail or can fail by tread separation. They use those words. They use the -- the belts will separate. You'll see that.

Our tire, the failed tire, has a dog-eared splice in it, or that belt that's off. It's all in our tire. You'll see the X rays. We'll talk to you about the X rays for a second.

The belts are steel. They are made out of steel. So you can take an X ray -- kind of like your arm. You can take an X ray of the tire and see where those belts in the tire are. There's only really -- because there's actually pieces of this second belt on this tire. But the whole first belt is still on. And you can see where that first belt is placed in that tire. And you can see where the edges of that steel meets in this tire, and you'll be able to see the edges where that steel meets in that tire.

The evidence will show you that it is off by 0.62 or 1.57. And that is a difference from what Cooper's standard is. See, Cooper says it can be off, and the evidence will show you that it can be off by 1.27 millimeters. It's off by 1.57, though.

This is something that within Cooper you'll hear that their tire builders are the people that put these belts on. It's not machine-automated. They actually put the belt on and put it in place. When they did that, they failed to put it within the tolerance that Cooper has. And that's what the evidence is going to show you.

When you combine that with an already-weak tire because it doesn't have the countermeasures that it needs to have -- because the evidence will show you that Cooper wanted to save money for cost considerations -- then you have a tire that's susceptible for what we call a late-life failure. It's not going to separate the moment --

Now, the evidence is going to show you that if the dog ear is off enough, yeah, it will separate right out of the factory. I think everybody in this case will agree that if you just haywire something in a tire, it's probably going to separate fairly quickly. A small anomaly like this isn't going to

separate immediately. It's not going to cause a tire to fail immediately, and the evidence will show you that.

However, it will cause what we call a late-life failure. And a lot of the Cooper documents you're going to read are going to talk about late-life failures. And this tire had 5.5/32 of tread left on it, about 30,000 miles. It's not past 50 percent worn, but it is a later life failure. It's something that needs to develop over a period of time before the tire will actually fail. And the evidence will show you that's what happened.

Let's talk about the other manufacturing defect that the evidence is going to show you in this case. There's another piece in this tire that we've talked about and it's the inner liner. You see here the halobutyl inner liner. That's the inside of the tire. That's the portion of the tire I think I told you earlier that holds the air pressure into the tire.

And that liner is designed with a different type of rubber. We're not saying that the rubber is defective. We're not saying that the rubber is something that shouldn't have been in there, because the rubber is designed to a specification that permits the least amount of escape of oxygen from that tire.

Obviously, it has to keep the tire pressurized, so it does that.

But even when the tire -- even when that inner liner keeps the tire pressurized, you have to make sure that the chemical composition of that rubber is such that there's still not an influx of oxygen through that rubber and into the internal components of the tire.

You're going to hear one of their experts talk about a phenomenon called intracarcass pressurization. And that's just a funny name for the internal components of the tire in between the inner liner and the tread pressurized because there was air that was seeping in through it. He's got to have a different reason as to why he thinks that air came into the internal components of the tire.

The manufacturing defect that we're going to talk about, however, and the evidence is going to show with regard to that inner liner concerns the inner liner splice. And that's just a technical word for saying when the inner liner is run around that drum and put together, it overlaps a little bit and then they stitch it. They stitch it together to where air can't escape from it.

Now, the evidence will show you that to

cure the tire, they put it in really hot heat and they add pressurization to it and steam and that molds all of the parts together. But before they do that, they stitch that inner liner together. And if the inner liner isn't stitched together properly at -- that stitch we call the splice, if the inner liner isn't stitched or spliced together properly, we have what we call a phenomenon, which is an open inner liner splice. We're going to show you this.

And on this tire we're going to show you pictures of this open inner liner splice. Maybe you can stick your head into it at some point during the trial. It's going to be kind of hard for you to see because it's dark. Maybe we will have some flashlights.

But the pictures are going to show you that that inner liner splice that runs on the inside of that tire -- you'll be able to see it well too -- is open. It's open a little bit. And it's open such that it allows for an excessive escape of the oxygenated inflationary gases in the tire to get into the internal structures of the tire.

Remember earlier I told you about skim stock? I said oxidation. Skim stock or the rubber oxidizes. Pick up a rubber band. You remember how it

breaks it apart? It's because it's oxidized. When you allow for an excessive escape of oxygen into the internal structures of the tire, the evidence is going to show you that it oxidizes. It oxidizes that rubber.

And, again, it doesn't make it fail immediately because it takes time for rubber to oxidize, but it will fail in what we call a late-life failure. You're going to hear -- again, you're going to hear a lot about that in this case. So that's the other manufacturing defect, the inner liner splice.

As you can imagine, obviously there's other tires on this vehicle. It didn't just have one. It wasn't an unitire vehicle. One of the other tires on the vehicle was a Cooper Lifeliner Classic II, manufactured at exactly the same time this tire was manufactured, the same size, same everything, manufactured of the same design.

And you're going to see in that car that that tire, too, exhibits an open inner liner splice. And the evidence is going to show you it's even worse on that tire than it is on this one. Now, that tire didn't fail. But we did something on that tire to find out if it was going to fail.

And what we did, and what the evidence is

going to show you, is that we did this thing called shearography. S-h-e-a-r, I think, o-g-r-a-p-h-y. And with shearography, what you do is you kind of x-ray a tire. It's not really an X ray. You use a machine to look on the -- to look at the inside of the tire. And the machine shows you where there are air pockets, basically, within the tire.

And those air pockets are where you would see a separation between the belts, because you can't have a separation unless you have air in between something. You can't have anything separated unless you've got something in between. If it's together, it's together. If not, it's separated. And when it separates, it's got air in between it and you can see the air. And you're going to be able to know and see from the evidence that this shearography will show you that there was separations in that tire.

And the evidence that you will hear about that tire from the expert that plaintiffs are going to talk to is that that tire really didn't have much longer to live either, that that tire was probably going to fail. Now, would it have failed? Who knows. But it was in that position to fail and it probably would have, as the evidence will show.

I want to talk to you a minute about what

the evidence is going to show you from Cooper's side and what I believe they are probably going to talk to you about. Cooper is not going to tell you that this tire failed from any sort of defect, not going to tell you that it had an open inner liner splice. They aren't going to tell you that it had dog-eared splices. They aren't going to tell you any of that. I anticipate that Cooper -- the evidence that will come in from Cooper will be that they believe this tire failed from what they call impact damage.

Let me tell you a little bit about impact damage. The evidence is going to show you that they believe that this tire at some point ran over a rock, a pothole, a piece of lumber, something; and that when it ran over that board or pothole or piece of lumber, that it created a separation between those two belts, a separation that we've already talked about. And that that separation took time, hundreds and thousands of miles to develop. And as it developed, the tire got worse and worse and that at some point the tire failed in the exact same way that we say it failed. They just say it failed for a different reason.

Their evidence is going to support what they say -- or they are going to try to get it to support what they say. What I want you to remember

when you see this evidence is what the impact theory doesn't tell you. You're going to hear plaintiffs refer to this theory as a "phantom impact" theory. Let me tell you why.

The evidence is going to show you this theory that they have. Cooper doesn't know, their evidence is not going to tell you what impacted the car, the size of what impacted the tire, when it impacted the tire. And the evidence also won't tell you where the tire was impacted, except for boiling it down to a 12-square-inch area on the tire. Anywhere within that 12-square-inch area, we'll know.

And the evidence is also going to show you that their expert believes that the best evidence of this impact theory is the one piece of tread that's missing. That piece of tread would have shown us that there was impact to the tire that would have caused this accident. There's another little piece that he's going to show you on the tire, but he says the best evidence of that impact is the piece that isn't there.

Let me tell you something else about the tire. I know that you heard a little bit about nails, punctures, and things like that. Well, this tire has -- we'll show it to you. It's got a little piece of something in it, small, like that big (indicating).

It's really small, so small that most people couldn't see it until you saw the X ray, because an X ray picks up steel. And this little piece of metal object goes through the tread into the inner liner. And no one knows what it is. No one knows if it's a little finishing nail. No one knows if it's a staple. No one knows what it is.

But what's important about this, though, is that the evidence will show you from Cooper's side that their expert is of the belief that this little piece of metal object in the tire, had it not been for the impact damage, wouldn't have never caused the tire to fail. And that's going to be the most important aspect of that piece of steel in the tire, that he believes it would have never caused the tire failure.

In fact, the evidence from that side will be that their expert believes that had this tire just kept going, had it not had this impact, that the tire would have just kept going and ran out of its tread life. But it's the impact ultimately -- the evidence is going to try to show you from their side is that it's the impact that caused this. Remember what we don't see about that impact.

Cooper might also tell you that this tire has been ran in what we call an underinflated state.

You probably heard a lot in voir dire about pressure on your tires and maintaining it and that. Some people said I check my tires once every three months. Some people said I check my tires once every month, every week. There was a bunch of different thoughts on when you check them and when you don't.

The evidence is going to show that the government has run studies and that more than fourth of the tires out there are underinflated, that it's not an uncommon thing. We know that a fourth of the tires on the road don't fail, and the evidence is going to show you that.

But what's important about underinflation is that their expert believes that it really doesn't have a lot of evidence of underinflation. He's of the belief that it has some evidence of underinflation, and we are going to talk about that evidence because we don't believe that this evidence is the same as his.

However -- again, the evidence really that matters on this and that you're going to hear is that he believes had this tire not been impacted, that that underinflation would have never caused the tire to fail. So it boils down again to the impact damage, the phantom impact, and what that impact does not

show.

I suspect in this case there's going to be evidence introduced against Mr. Lang, against what Mr. Lang did in driving his vehicle at the time the tread came off of the vehicle, slapped the inside of the wheel, stayed on it a little while and lost air at the same time, what his reaction to that was, and how that reaction may have been bad or may have been good.

Cooper is going to introduce evidence from one of their experts. And the evidence from this expert is going to be that he believes one hundred percent of the time, one hundred percent of the time, ten out ten, that if you have a tread separation, the vehicle never has forces exerted on it strong enough to cause the vehicle to leave the road, a hundred percent of the time.

Now, what's important about that, and the evidence that you're going to see, is that this expert conducted this video that you're going to see. He conducted this testing where he got in a car and they made a tire to where they knew when that tire was going to fail and then that tire failed at a certain speed.

The evidence is going to show you -- even though the expert believes a hundred percent of the

time -- the vehicle force does not cause the vehicle to come off the road, even though that's the way it is.

He put outriggers on his car. Outriggers are something that keeps the car from turning over. He put outriggers on the car during the testing. He modified the seat belt to include a five-point seat belt harness, baby -- you know, basically a baby seat and put a helmet on.

When you hear that evidence, ask yourself: If it never fails, if it never brings a vehicle off the side of the road, why in the heck do you need to have all of those different types of safety measures?

That guy is also a professional race car driver. He knew when the failure was coming. The evidence will show you that he knew when it was coming. That not only did he know it was coming, the evidence is going to show you that he has a trigger on his steering wheel where he pulls a trigger and a shotgun at the back of the tire blows the air out of it. So the guy knew it was coming, the evidence will show you, and he knew about what speed it was coming.

However, the evidence from them is going to say that no one should have ever lost control of the vehicle based on what the vehicle forces were.

You're also going to hear on that evidence that's introduced by the parties in this matter about a governmental study. And it's called NADS. I'm not going to go into it very much. But the evidence of that study is going to show you that the government went out and tried to determine -- conduct a study to try to determine how many times or what's the percentage of times that someone loses control of their vehicle in a tread separation incident.

And the government did this study by putting these people in a simulator and not telling them what they are going to be seeing in that simulator. Like a real race car driver simulator, not telling him what's going to happen. Just get in there and drive, if you would.

He got in there and drove. And then with some of the people, they simulated a tread separation event. And the governmental study will tell you that more than 50 percent of the people lost control. Not everyone. Not 90 percent, not 99 percent, but more than 50 percent of the people lost control. More likely than not that you'll lose control in a tread separation incident.

What's also not taken into account, though, is when someone does lose control, it doesn't always

end in an accident. Maybe they didn't get sideways on the road, maybe they didn't get off the side of the road. The evidence will show you that even the times that aren't reported when someone has one of these tread separations or a bunch of times aren't reported when someone has one of these tread separations is because there's nothing to report.

And speaking of the government, you heard some questions in voir dire about government standards. The government has certain standards which you're going to hear about in this case about how tires should be designed, how tires should be manufactured. And you're going to hear over and over and over and over again in this case that the Cooper tire in this case met the governmental standards, met the governmental standards, met the governmental standards.

The governmental standards -- the beginning of the governmental standards say that these are minimum standards. These are standards that can be exceeded. They are minimum standards, and they do not certify the safety of each individual tire that's put on the road.

The evidence will show you that Cooper needs only to pass a few of these tests with a few of

its tires and it can develop an entire line and make millions of tires off of that one design. The evidence will show you, certify each single tire that's put on the road.

Our government, if you haven't noticed lately, has its hands full with quite a bit of stuff going on: Financial, God knows what else, everything that we hear about in the news.

The governmental standards are meant to place a mechanism into place to aid in the safety process, not to regulate and to make sure that everything that goes on the road is safe. It's not the FDA, to where everything goes under a different standard. It's the FMVSS part of the government. And we'll talk about what that is, but it's the government.

Listen to the evidence in the case. More importantly, read the evidence in the case. Read the words that you see on the paper. These people to your right have undergone life-changing events more so than any of us would probably ever understand.

And the evidence that's going to come from each one of them will be their own testimony and their own medical records. And you're going to see what's wrong with them. And you're going to have a chance to

evaluate them. And you're going to have a chance to hear every single one of them talk about it and talk about the problems that happened as a result of it and the problems that occurred in the past. You're going to have a chance to evaluate each one of them.

Gaye Karlar lost his wife of 14 years. They have four children, aging in ranges -- excuse me, five children, aging in ranges of four to 14. He's now a single father. He's taking care of everyone. He lost his confidant, someone that came over to escape the atrocities that they were going through to be with him and is no longer with him.

Jailah Nayou -- again, I told you Jailah had a fairly extensive head injury. You're going to see evidence about that. He had to learn how to basically walk and talk again. He's getting along a lot better today. He's going to tell you that he's making strides every single day. He's making strides every single month, and he makes strides every half year and year. It's been two years since that happened. He's telling you that he's going to continue on, and he's going to make everything as good as he possibly can. You're going to hear that.

Josephine Cole. That's Josephine. That's Jailah's wife beside him, by the way, in the green.

Josephine Cole had a fractured hip and a very bad leg injury, we'll put it at that. The evidence will show you really how bad that leg injury is. She now has a steel beam or steel rod or whatever you want to call it through her leg. Josephine was a laborer before this.

Probably comes to no surprise that -- well, first off, every one of these individuals speak English. Most of them were raised speaking English. When you talk to them, you think they are speaking French or some other type of language because the dialect -- maybe it's dialect. The way that they learned English was so different than the way we learned English. I don't know if any of you guys have ever talked to someone deep from Scotland or Ireland. Heck, I can't figure out half of what they are saying some of the times. This is really just the same thing, just on a different part of the world.

A couple of them may speak through translators because they also speak a couple other different languages, something every other country learns except for ours. But if they do, they are going to tell you about what they have been through, what they are going through now, and how it's affected them.

But going back to Josephine, Josephine was a laborer. It's hard for any of these individuals to find a job when they can't do labor work and they can't speak the language. So Josephine has decided and is doing school right now. She's in school to master the English language. She wants to get an administrative job or become a secretary or something of that nature to where she can have sedentary work, where she can sit down and do what she needs to do without having to work at the Swift Meat Company.

You'll hear her tell you that she, too, is trying to make the best out of this. She is trying to do everything that she can to get back in the same position that she was in before. She is still living the American dream.

And when you talk to her and you hear about this evidence when she first got the letter on the official seal of the United States that said she could come to America, you're going to see some eyes light up bigger than you have ever seen in your entire life. She's still living the dream. And she still wants to make the best out of this situation and she is. And she'll tell you that.

Sekou Jai. Sekou Jai's body is very brittle. He's had a very hard life and he's going to

tell you that. This accident has taken a very large toll on him. Sekou was very lucky. He wasn't injured near as bad as everyone else was. He walks with a cane now, but his injuries weren't near as bad as everyone else's. And you're not going to hear him come in and say that he has the worst injuries on the face of the earth. He's not going to tell you that everything is bad and he's never going to work again because he is. He's going to tell you that he's going to work again. He's going to tell you that for the last two years that he's wanted to work, that he's had that independence taken away from him and he will do it again one of these days. But it has taken a large toll on his life, and you're going to hear that from him.

Achol Mawien lives with her husband here. Achol was injured in the accident as well. Achol's injuries in the accident include various different things that you are going to hear about. I'm not going to go into a lot of the medical records right now, but she has been affected greatly by this accident as well.

You're also not going to hear from Achol -- not going to hear testimony from her that says she can't work anymore and she can't do anything or that

this has just absolutely and utterly put her behind the eight ball to where she'll never get out of it again. She, too, is living the American dream, and she is going to remember what it was like living where she used to live.

And that brings me is Ivon Toe. Ivon is not with us, as you know. Ivon is 38 years old. Ivon has two children in the United States. And she is what we call a quadraplegic, ventilator-dependent. Her sister is in the room, Janet. Janet cares for her sister all the time. And Janet cares for all of Ivon's children and Janet's children.

Ivon is a prisoner literally in her own body. That's what you're going to hear. Ivon is a prisoner in her own body and life in general serves as her own personal jailer. Ivon's mind is sharp. You're going to hear about that. Sometimes, the evidence will also show you, that's one of the worst things about it because she is trapped. She can't do anything about it and never will be able to do anything about it.

Ivon wants to do -- and you'll hear from her. She wants to do everything that everybody in here can do: Got up this morning and kissed your kids, took a shower, ate breakfast, flip the

newspapers, maybe got some ink on your fingers. She wants every single bit of that. And the evidence is going to show you that she's never going to have it again, ever, ever going to have it again. It was taken away from her. All Ivon wants to do is come home, that's it. That's all she wants to do.

The evidence will show you that Ivon right now lives at a place called Norwalk Nursing Facility. She's going to be the first person to tell you she likes it there. Well, they treat her well there. It's a good place. She is so sad there because she's not with her family.

Her sister, Janet, takes care of her kids. Her kids every day come home to Janet. They don't come home to her. Every day her kids -- her children ask Janet for permission to go play with their friends, ask Janet if they can go to this place or that place, can I go to the arcade today, can I do that today. They don't ask Ivon because they can't, because Ivon doesn't live with them. All Ivon wants to do, you'll hear, is to come home, that's it.

You'll hear that Ivon can't come home until she has the financial freedom to do that, that Ivon is a long way from home right now. Even though she's on the other side of Des Moines, she's a long way from

home.

You'll hear from a gentleman in this case by the name of Dr. Lichtblau. Dr. Lichtblau is a doctor from Florida. And in Florida he runs a rehabilitation center. And the rehabilitation center is primarily concerned with the care for spinal cord injury, paraplegic, paralysis people and catastrophic brain injury people.

You'll hear evidence from Dr. Lichtblau that he has taken care of these types of injuries and these people for going on 25 years. He has seen them on a daily basis every single day, lived in the same facilities that they are living in. He has literally lived -- tried to figure out what everyone goes through so his care can be the best care. And you're going to hear from him, to tell you all of this stuff.

Dr. Lichtblau is going to come to this case and sit in that chair, and he's going to tell you what it will take in order for Ivon to come home and what that consists of. And I'm going to tell you right now, that is not a small amount of money. In fact, it is a large, large amount of money. It's a large amount of money for a couple different reasons and you're going to hear why.

And he's going to come in here and tell you

about every single thing that she needs, and he's going to justify every single expense to you. And he's going to tell you everything that she can have, she should have. And he's going to tell you all of those things that she can have, things that will make her life better, whether it's a little bit or a lot better. Anything that will make her life better he's going to tell you what it is.

And he puts together, and the evidence will show you, this big life care plan. And he'll come in and talk about it. And then the evidence is going to show you that somebody else went and took that life care plan together, and they came up with a number from the life care plan about how much it was going to cost to do all of this stuff that he says needs to be done and to improve her living to get her home.

And you're going to see from that plan that our houses aren't made and aren't built for people in Ivon's condition. They have to all be modified. And you're also going to hear from the evidence that he's going to give you that Ivon has to have a house. She can't come back to an apartment, she can't do it, not even the bottom-floor apartment because it has to be modified. She's on a ventilator.

He's also going to tell you, and the

evidence is going to show, that our cars aren't made for individuals with this type of injury or this type of state, that really nothing that you and I encounter on a daily basis, he'll tell you, is made for her and that it all has to be modified. And he's going to tell you what all of those modifications justify, all of those expenses to you about what needs to happen in order for Ivon to come home and be with her children.

Dr. Lichtblau is going to tell you, and the evidence is going to show, that Ivon will need 24-hour care for the rest of her life, that she's going to need constant nurse and constant doctor care. Dr. Lichtblau's -- and by the way, that's really the tip of the iceberg. You're going to hear about the whole iceberg, but that's the tip of the iceberg that the evidence is going to show you.

Dr. Lichtblau's life care plan, the evidence will show, leaves nothing astray and nothing to chance, nothing. He is of the opinion, and the evidence will show, that Ivon could live for upwards of another 40 years. And the evidence will show that this is based on statistics and is based on how long somebody has lived before. So it's not something that's pulled out of the air. The evidence will show you that.

There's medians in those statistics that the evidence will show: 20 years, 16.1 years, 21.3 years. There's medians in there. But Dr. Lichtblau's plan, you'll see, leaves nothing to chance.

Dr. Lichtblau will tell you, and the evidence will show, that proper planning means that you have to prepare for the worst. And this is the opposite of that situation. You've got to prepare for the best because if you don't prepare for the best, then if the best happens, you're out of luck.

If you guess and leave it up to chance how long somebody is going to live based on how much medical care they have got to have every year, then if they don't live -- if they live longer than you think they are going to live, well, money runs out. And the evidence is going to show you that.

No one's got a crystal ball. No one is saying they've got a crystal ball. No one knows how long Ivon Toe is going to live. The evidence will be very clear on that. No one knows how much longer she's going to live. The only people that know how much longer Ivon is going to live is the Lord himself. And I don't plan on calling him to testify in this trial. And I don't think I can get His Son here either. I've tried a couple of times, free advice

that is. They are the only people who knows that.

And Lichtblau will tell you that you're going to have to plan for the best. And hopefully she's been put on this earth for an alternate reason. It's a deviation from what she thought her life would be, but hopefully it's something that's going to help a lot of people.

I appreciate the time and the attention that each one of you have given me today, because I've seen it on each one of your eyes. I appreciate it. And I hope you give us the same attention throughout this trial and listen to every single thing that we say, everything that Cooper says too. This is an invaluable service. Thank you so much.

THE COURT: I think we'll take about a 15-minute break, and then we will allow the defendant to give their closing arguments. So we'll be in recess until about quarter after three.

MR. JAMES: You mean opening statement?

THE COURT: I meant opening statement, yes. Remember the admonition. Don't talk about the case with each other or anyone else.

(A recess was taken.)

(The following record was made in the presence of the jury.)

THE COURT: Be seated. Folks, are you taking notes now? Okay. You can't take notes during the openings because it's not evidence. We'll give you -- so if you want to drop that on the floor beside you, I would appreciate it. You can take notes during the evidence. And we will supply notebooks to you, okay?

You can proceed, Counsel.

MR. MILLER: Thank you, Your Honor. Ladies and gentlemen of the jury, my name is Terry Miller. I haven't had an opportunity to talk to you yet and don't blanch. I know that lawyers have done a lot of talking to you. I'm not going to do a whole lot of talking to you, but I am going to do a little bit.

And I'm going to make a couple of caveats. I heard what the very charming gentleman from Texas said about their enduring accents. I don't have an enduring accent, but I'm probably the oldest lawyer in the courtroom that's going to be speaking to you, so some of the things I'm going to do are old school. Like, my kids are real good at this kind of computer stuff, but I'm not. So I'm just going to talk to you.

And it's important at this stage in the case that you do have an opportunity to hear from the defendants in the case. Under our system, we don't

have a chance to talk to you until the plaintiffs have put on their case. They have the burden of proof. They have the burden of substantiating all the claims that they have asserted in the case. They have to prove them by evidence. So they get the opportunity to go first.

But just like anything in life, there's two sides to every story. And I think you'll see that in this case that's particularly true. In fact, much of this lawsuit and this litigation that I've been involved in has involved what almost seems to me to be a parallel conversation. Plaintiffs -- and they have already talked a lot about it -- want to talk to you about my client generically, my client's products generically, accidents hypothetically.

What I want to talk about and what we are going to present evidence to you about is about this accident and the facts of this accident. We're going to take pains to do that. We're going to bring to you the people that know that information. And we're going to let them, not us, let them tell you about those facts.

We're going to talk to you about this tire. When I say "this tire," I mean two things. The subject tire -- and that will be very, very important

to concentrate on because the physical evidence of that tire is the key to understanding this case. So that tire will be important.

But very significantly -- and this is where I have to ask you to do something that sometimes is hard in a case like this; that is, keep your eye on the ball. Because when I talk about "this tire," I'm also talking about the design of "this tire." And I didn't hear that in all of the whizbangs and oratory from the plaintiffs. But this tire is designed to what's called a specific green tire specification. And that's important. It's specification 2864, GTS 2864.

MR. BALL: 46.

MR. MILLER: 46. Thank you. As we'll explain to you in some, I hope, not overly long and overly technical way, that specifically defines a tire in terms of materials, the design, composition, testing, and a number of other factors. That's the design that they are contending is defective, and that's the design that we're going to try to produce to you the relevant information.

It's not a different tire. It's not a light truck tire. It's not a different size passenger tire. It's not a tire made to different GTS. So

we're going to try to ask you to look for that and look for this tire, this tire design, and the facts that are related to this tire.

What we just heard was like a closing argument. I'm not going to make a closing argument to you. I'm going to make an opening statement to you, which is me telling you what I anticipate the evidence in the case will be and asking you to keep an open mind and to listen to all of that evidence from both sides before you make any decisions in the case. That's what your obligation is, and that's what I'm asking you to do.

Who is my client? Cooper Tire and Rubber Company is the eighth largest tire manufacturer in the world. It's the second largest U.S. manufacturer of tires. It is not a manufacturer of original equipment tires. All of the tires that Cooper Tire makes are replacement tires.

So you may hear the term in the case "fast follower." What that means is, when new tires come out for new vehicles that are designed, those tires are specifically tuned for that vehicle. To build a replacement tire for a newly-designed vehicle means you have to very quickly come up with a new specification, a new design that will adequately

function on those new vehicles. That's what Cooper Tire does.

Cooper Tire is an American-owned company. It has three manufacturing plants currently in the United States, employs thousands of people. And as you've heard, one of the plants is in Texarkana. And it's in the Texarkana plant that the tire that is the subject of the claims in this lawsuit was manufactured in the last month of 2000 -- last month of March -- last week of March of 2000.

Let's talk just for a quick second about the facts of the accident, because the real -- there's really three subjects of contention in this case, and I've touched on the first of them. And that is, what is the evidence about this tire? How did this tire perform in the field? Were there problems with this tire? And I'll talk to you specifically about the fact that there wasn't and how we'll prove that.

The second area of contention that is very important to focus on is: Did the separation that took place on the left rear tire of this 1997 Plymouth Grand Voyager minivan, did that cause -- did that cause the accident that ultimately resulted in the ejection of five passengers and a number of various serious injuries, including a death and a spinal cord

injury? That's the second.

And the third and probably the most important is: What was the reason that the partial tread separation took place on this tire? So it's three separate things, really, that are the contentious issues in the case. And I want to talk to you briefly about all three of them.

First, a little bit about -- sort of background facts. We don't have a terrific amount of information about the history of the Plymouth minivan. We do know that initially it was sold into a rental car fleet and then it passed through several different owners. And then there's some gaps in time where we don't know who the owners of the vehicle were and, correspondingly, we don't have a lot of information about the vehicle.

We do know that the last title exchange that we saw records of indicated that at that time it had more than 145,000 miles on it. But we really don't have, in this case, meaningful information about its prior use. And I think that's an important fact.

Another important fact is, we don't have a lot of information. In fact, almost no information about the use of the tire that experienced the partial tread separation. I think this is important to factor

in on.

We know when it was made. It was made more than seven years before this accident. We don't know what happened to it after that. We don't know when it was mounted on this vehicle. We don't know if this was the first vehicle on which it was mounted. We don't know anything about whether it was ever dismounted. We don't know anything about any servicing that was done to the tire. We don't know anything about the maintenance that was given to the tire. We don't know anything about the use that was made on the tire.

That's information that would be nice to have, but it doesn't exist. It doesn't exist. And believe me, we have tried to find it. That will be an important factor to think about in assessing the tire and what happened to the tire. And I'll get back to that.

It's very important for you to understand what happened in this accident, what physically happened. And we're very interested in presenting to you the best information available as to what happened in the accident. And we are fortunate. We are fortunate in this case because this case was thoroughly investigated by the Iowa State Patrol.

They responded immediately to the scene.

And they had a trained technical accident investigator on the site, Randy Wacha, and he conducted an accident investigation to try to determine what caused the accident. And we'll bring him into court. And we will bring his colleague, Cooper will, into court, and we'll have them tell you what they did and tell you what they concluded and tell you what the physical evidence that they found and documented means.

And let's be clear here. Both sides will independently bring in accident reconstruction investigators. And both for the plaintiff and for Cooper Tire, those investigators will rely upon the documentation, the field drawing, the measurements, the photographs taken by the Iowa State Police.

Now, we'll present evidence that will show that the speed of the van is an important factor in understanding what occurred. We'll bring that to you several ways. We have found, and we'll bring into court, a husband and wife who were passed by the minivan very shortly before the accident. They will tell you what their observations were with respect to the speed of the van, which will be high.

We'll present to you two different --

you'll hear presented, because the plaintiffs will present one and we'll present one, two different accident reconstructionists.

An accident reconstruction expert is an engineer who takes the available physical information, markings, measurements, location of vehicles, markings on vehicles, eyewitness accounts, takes all of that information and attempts to reconstruct what has occurred. And from that there has derived a science that allows them to make calculations about the speeds of the vehicle at various locations.

And I know it sounds -- it sounds kind of CSIish, but it's actually quite understandable. And I think you'll all be able to follow how they do this and what conclusions they make.

But these speed calculations will indicate that at the first place on the field sketch prepared by the Iowa State Patrol, the first marking of an indication of -- a physical indication that they saw, the speeds were in a range in excess of the posted speed limit. I think the high number in the range from our guy will be 71 miles an hour.

They will also say -- I don't think there will be a disagreement about this -- that the tread separation process probably started further up the

highway and that the indications are that the speed further up the highway would have been greater.

The Iowa State Patrol investigator concluded -- and it's in his written report. He'll sit in this courtroom and tell you that the cause of the accident was the actions of the operator, Mr. Lang.

Let me explain why that conclusion was made and, hopefully, why it will make sense to you. The area where the accident took place is a two-lane stretch of divided highway. The van was being operated in the left lane. If a problem occurred with respect to your left rear tire, there's nothing on the left side of the road that would create a problem for you. It's open. There's a break-down lane. There's gravel there. It's essentially straight, although there's a slight curve.

And what the reconstruction done by the Iowa State Police shows is that the reaction to that was to continue in what is essentially a straight line, a vehicle moving to the left about two feet -- by two feet. That's just short of the fog line. And that's from the physical evidence that they found at the scene. And I'll come back to how that is consistent with the science of what happens in a tread

separation.

What happens is, vibration, noise in a process that can take from minutes to several minutes where the tire separates. And what that does, it puts a brief pulse, a brief pull to the direction in which the separation took place. That's the vehicle's response. In this case, to the left.

And as we'll show you, it was not much. It continued in essentially a straight line. No one, no one will come into this courtroom and tell you that the partial tread separation of a left rear tire causes the vehicle to go to the right. It does not. The only way that the vehicle can go to the right is from inputs from the operator. That's what happened here.

A sudden and severe steer impact -- steer input to the right caused the vehicle to go into a clockwise yaw, cross the left lane of travel, cross the right lane of travel, go off the roadway on the right side, get into the gravel and into the grass, dig in the wheels in a furrow and begin to roll, which ended in about a two and a quarter, as we can reconstruct, rolls. And it's during this roll sequence that five of the occupants were ejected from the vehicle and received the injuries that you heard

about.

That proof is important. The conclusion reached by the Iowa State Patrol is important. Why is it? Because it's not a paid expert that the plaintiffs hired in saying that. It's not a paid expert that Cooper Tire brought in that says that. It's a disinterested agency of the State, has no dog in the fight of any lawsuit. It's their effort to conclude what the physical evidence compels them to conclude, and that will be important. That will be important.

It will also be important to listen carefully to what all of the experts from both sides who investigated this incident say about what occurred. And listen carefully, see if there's a significant difference between what plaintiffs' accident reconstruction expert says, what Trooper Wacha says, what a gentleman named Robert Rucoba for us says. And I think you'll find there's not a great deal of dispute about what occurred.

Here's where the argument about what occurred is going to be. They are going to say -- and I heard it. I heard it already. The separation of the left rear tire caused the vehicle to go out of control. That's not true. Nothing, nothing that

occurred in that tire event caused the vehicle to go to the right. The only way it could go to the right is to be steered to the right.

There's also some suggestion that it's to be expected that that would occur. Well, that's also not true. That's also not true. Studies -- and we'll present these to you -- that have been made indicate that the overwhelming majority of the time that there's any kind of tire disablement, no accident takes place, overwhelming majority. The percentage of incidents from one study indicates that it was less than one-half of one percent. Why is that? And here I'm asking you to use your own common sense.

We heard a lot of it during voir dire. I had a flat tire. Was there an accident? No, there was no accident. I had a blowout. Was there an accident? There was no accident. My front tire came off. Was there an accident? No accident. Why is that? Why is that? It's so because the forces that occur when there's a tire disablement on one side of a vehicle puts a very short duration, very small in magnitude, pulse on the vehicle. To respond to that takes less steering input than to pass -- move from the outside lane to the inside lane or vice versa on a highway. It's very little.

To avoid an accident, all you have to do is not put in an abrupt steering input, not to put in an abrupt braking input. Slow down the vehicle, go off the side of the road, nothing happens, nothing happens.

There was a lot of contentiousness during the discovery in this case. And some suggestions by the questioning that, well, sure, you've done a lot of testing and, sure, you have this data that indicates that if there's a tread separation on a rear tire, there's only a modest pull to the side, it only lasts for a short time, and the vehicle is still perfectly manageable to being directed, but you didn't test -- you didn't test the 1997 Plymouth minivan, did you? No. No, we hadn't. So we did. So we did.

And we'll bring Mr. Rob Liebbe who is a mechanical engineer, who has a great deal of experience in testing suitability of tires and vehicles, first for a different tire manufacturer, also for Ford Motor Company, and for a consulting engineering company for a number of years.

And Rob is a better driver than I am. That's probably not a good -- probably a better driver than any of you. He's not a professional race car driver, but he has done some racing. And he's a

skilled operator. If we're going to do testing, we are purposefully going to fail tires. I think it would be stupid to put an unskilled operator there.

But that's not what we're testing and that's not what we are measuring and that's not what the instrumentation of the testing deals with. It deals with what forces are put on the vehicle, what happens to the vehicle.

And we'll bring that information to you and we'll show it to you and we'll present Mr. Liebbe, and you can look at him and you can listen to what he says. And you can see that the testing, which is instrumented with accelerometers so that it will measure the lateral forces applied to the vehicle, measure the vibration applied to the vehicle, show you by video cameras in a number of different places what happens to the vehicle, not the driver, to the vehicle when a left -- rear left tire tread separation takes place. And it's true. He knew it was going to take place. We purposely cut the tires. We tried to get them to fail at highway speed.

But you look at it. You assess it for yourself. It won't be something that you have to take my word for. We'll bring it to you. We'll show it to you. Hopefully, we'll prove it to you.

In the area of litigation, there's a term that you hear all the time and it's called junk science, junk science. Much of junk science originates in courtrooms where somebody comes in and says whatever. But essentially it's like this: I've been around this kind of product for 20 years. Because of my familiarity with this product, at least as made by somebody else, I know about it, so I'm going to tell you my opinions based on what I saw.

And there will be theories and opinions and some of it will be junk science. How do you know it's junk science? How does a good citizen coming into a courtroom who is presented with junk science know that it's not to be trusted?

Well, ask yourself this: Is there any peer-reviewed, published material that supports this proposition? Or is this an outlier, is this just something that somebody comes into court and says? That will be important in this case. That will be important for you to consider. What's the empirical research that supports some of the things that Mr. Cottles is going to come into this courtroom and say?

Let me juxtapose that a little bit. The most important evidence in the case: Remnants of the

tire, the remnants of the tire. There's an adage in tire litigation that the tire will tell the story. And it's true. It's absolutely true. How do we know what the tire is telling us?

Well, we're going to bring into the courtroom a real tire expert, Joe Grant, who spent 34 years in the tire industry -- not with Cooper -- with Continental General Tire, where he was a designer of tires, designed all kinds of different tires, a tester of tires, somebody who supervised the testing to comply with the FMVSS standards that you've heard about and also the Continental standards, somebody who did that for more than three decades and then has gone out on his own as an independent consultant, someone who is a published author of peer-reviewed materials dealing with forensic tire analysis, somebody who knows tires, somebody who can explain to you the science of tires, somebody who can tell you what information on that tire is important in understanding what occurred.

We heard a little bit about tread wear. And I think the tread wear information is important, but it's slightly misleading, what was said. There is on -- tread wear is measured at various grooves on a tire. They are not all the same.

If you look at the center four grooves, two to the centerline on one side, two to the centerline on the other side, the average remaining tread depth is probably in the 5/32 range, okay. A tire is worn out and should be taken off the road at 2/32.

So this tire was more than halfway through its useful tread life. But that's not the only tread wear story here. There's accelerated tread wear on the outside of the tire in a very significant way. That's an important finding. That tells you that something is wrong, something is amiss.

But it's very interesting. Mr. Cottles does not even mention in his written report that he prepared in this case the existence of a nail through the tire. And there's no mystery about what it is. It is a nail. And there's no mystery about where it goes. It goes through the inner liner.

MR. BALL: I object.

THE COURT: Counsel, will you come forward.

(Discussion was held at the bench between the Court and counsel.)

THE COURT: Objection is overruled.

MR. MILLER: We'll show you photographs of the nail. We'll show you photographs that it goes through the inner liner. What is the inner liner?

People my age remember when there were inner tubes in tires. Maybe some of you are old enough to remember that. I don't know. But today's modern tires don't have inner tubes. They have the inner liner. It is what holds the air in the tire to keep it inflated.

The nail here went through the inner liner. Is that significant? We've heard this theory that, oh, it's bad, it's bad if there's any air escaping from the inner liner. It will cause trouble to the internal components of the tire. How about if there's a nail hole through the inner liner? Won't the same logic apply? Of course, it will. Of course, it will. There's not only a nail hole in the tire; it's in a place where it's not repairable.

There are clear guidelines put out by the Rubber Manufacturers Association in the tire industry as to what kinds of punctures can be repaired and what kind of punctures cannot be repaired. And if a hole is in a shoulder area of a tire, it can't be repaired.

What's the significance of that? Well, I believe any reasonable person, if they were aware of the fact that they had a nail in their tire sticking out through the tread, would take it to a reputable tire dealer to look at it. If they did -- if they did, they would be told this tire has to be taken out

of service. You can't use this tire. It's not safe.

If that had been done in this case, there wouldn't have been a tire tread separation. It wouldn't have happened. But that's not the only, probably, visible indication that this tire was not serviceable.

You'll hear from Mr. Grant -- and it's already been touched on a little and I think described in a disingenuous way -- his opinions with respect to the physical indications of serious impact damage to this tire. And those opinions will include the opinion that this tire, in all likelihood, had a bulge or distortion in it before it failed on the day of the accident, another condition that if looked at by a reputable tire serviceman, would have caused this tire to be taken out of service. The physical evidence will show it to you. It's not hard to understand, it really isn't.

What's another effect of there being a hole through the tire, through the inner liner causing a leak? Underinflation. You've got a tire with a hole in it, underinflation. Why is that important? Well, we'll explain this to you and we'll show you some animations and we'll attempt to make it as understandable as possible.

But if you have an underinflated or overloaded tire, it will flex like this in operation (indicating). The footprint will be a little larger where the tire meets the road. The sidewalls will flex. And if you think about it, that will cause a phenomenon that builds up heat.

If you think about a paper clip, if you take a paper clip and you bend it back and forth like that, it will build up heat and it will ultimately fail. The same thing happens with a tire. It's a syndrome called overdeflection, overdeflection. If you run your tires chronically in an underinflated condition or overloaded condition, you won't only get poor gas mileage, you'll build up heat in your tires and you'll begin to destroy the internal components of the tires.

If that happens, you will leave physical evidence that has taken place. And that physical evidence is discernible when you look at the tire. You can understand it. What do you see? Accelerated wear on the shoulders, which we have. Deep wheel well weight marks, which we have and we'll show you. Deep compression rim grooves, which we have and we'll show you. The physical evidence of the tire is demonstrable, explainable, understandable.

Let's talk for a minute about some of plaintiffs' theories. They contend that the tire is defectively designed because it does not have a belt edge gum strip or a wedge. What does that mean? Those are ways to get -- make sure that you have enough rubber at the edge of the tire where there are a lot of forces. Is that the only way to get the rubber there? No.

The issue isn't, does it have a belt edge gum strip or a wedge. The issue is, does it have enough rubber there. And we'll show and demonstrate to you that this tire does and did.

A belt edge gum strip will not protect a tire from a tire tread separation. All manufacturers of all tires have tread separations, all of them. It doesn't mean the tire is defective. Perfectly well-designed tires, perfectly well-made tires experience tread separations based on what happened to them while they are in use. Doesn't that make logical sense to you?

Have any of you not had the experience of hitting a big object in the road or a chuckhole or something and think, boy, what did that do to my tire? I better take a look at my tire. That's a road hazard. You run through an area where you know there

are some nails or glass. Do you think maybe there's a puncture in my tire, maybe I better take a look at that? Why do people do that? They do that because they know it's bad for the tires.

So it's not surprising that a perfectly well-made tire in perfectly useable condition when it left the plant could sustain service damage over time that makes it vulnerable, that makes it susceptible to something like a tread separation. And that's really what happened in this case. A belt edge gum strip won't protect you from a road-impact hazard. A belt edge gum strip won't protect you from a nail. It won't make any difference.

Same thing applies to nylon cap plies. Every day in this country tires equipped with nylon cap plies experience tread separations. It's a fact. A nylon cap ply won't prevent a tread separation. It won't prevent road hazard damage. It won't prevent a nail from going through it, it simply won't. It's a canard to suggest that the inclusion of either of those features on this tire would have made any difference.

Now, let's talk for a moment about the other big design defect argument, the skim coat stock, the move from 525C to 525D. And, you know, we're

going to bring Rita Feczer here. The plaintiffs may call her in their case, which is our witness. She's the chemist who made that change. And she'll speak for herself and tell you about the change, why it took place, and whether it means that tires equipped with 525C, which functioned well for years over millions of miles of tire usage, was defective. She'll make it clear that that's not so.

And again, be an investigator. Look past the claims. Look for the real science. If you want to test that proposition and the big deal about tires a short period after the subject tire was made having problems because they had 525C skim stock instead of 525D skim stock, look at the data. And we'll show it to you.

What do I mean when I say look at the data? All tire companies have programs that are essentially programs to make their dealers happy about warranty returns. They are called tire adjustments. You have heard something -- some mention about tire adjustment data already.

Basically, what happens is you have a tire. You've had it for six months. You are unhappy that it's experienced some kind of failure. You take it to your dealership. He says, I'll get you an adjustment

on that, or I'll get you some new tires, or I'll get you a significant discount on new tires or whatever.

Those tires then go to an inspection place where they are coded as to what kind of experience they had, whether it was a tread separation or whatever. And that data is maintained. It's maintained by Cooper Tire. It's maintained by all of the tire companies.

And why do they maintain it? Well, it's kind of a -- and it's not a perfect measure, but it's at least a measure of how the tire is performing in the marketplace.

And, you know, we've already heard about bad adjustment data. There's bad adjustment data in '96, '94, '95, '97. Well, what's the adjustment data for this green tire specification for this size tire made at Texarkana in the one-year period before our tire was made, one-year period after our tire was made? And we'll bring that to you.

And the returns of all the tires eligible for adjustments produced for this spec is .06 percent. And we'll present testimony. Put that in context. That's a very low adjustment rating.

Now, what does that mean? Well, for a year, approximately, after this tire was made, it had

the magic 525D skim coat size. Did it make a difference? Had a good adjustment record before. Had a good adjustment record after. That's a red herring, like many in this case. That's a red herring.

It is a tragic event when a single vehicle accident occurs and people are injured or killed. Unfortunately, in the United States it happens with alarming regularity. And it's a sad event. And we don't underestimate for a second -- I'm sure you feel the same way -- to feel sympathy for any families that have experienced this. It's natural to do that. It's unnatural not to do that.

But this case isn't about sympathy. If you come into court and if you make claims and if you say this terrible event happened because of something you failed to do or did improperly and it caused something to occur, you bear the burden of proving that and proving it by evidence that's presented here, good science, physical evidence, information from the disinterested people that know the facts. And that's what your obligation is to do in this case.

And I am not naive. I probably don't even appear naive. I know that's difficult. I know that is hard. And I know we're asking you a lot because you're going to have a lot of stuff thrown at you.

What I want you to do -- I don't know if any of you are football fans. I guess today it's even baseball fans. Be that guy that gets underneath there and looks carefully at the replay, analyze what actually was said, focus in on the evidence, look through the smokescreens, look through the red herrings. Ask yourself: Is there demonstrable, physical evidence on this tire that explains why it had a partial tread separation?

If you do a good job doing that, if you're objective about that, if you can stand up to your oath as jurors, that's all my client is entitled to and that's all that we'll ask you to do.

Now, let me say one other thing. I haven't said anything about medical expenses or injuries or doctors. In Iowa, like in virtually every state, we don't get multiple trials. We think the evidence shows there's no fault on our client, Cooper Tire and Rubber Company. So that's what we are going to focus on.

But we will bring you some information, try to bring you some information to consider in assessing damage claims if you ever get that far. We're not doing that because we think there is a fault here. We strenuously don't believe that, but we are compelled

since there's only one trial to do that.

So my wife says that I can never not be long-winded, but I'm going to try mightily in this case. And we're going to try to move it along as rapidly as we can. We are going to try to bring you the tools that you need, the evidence that you need, the information you need to understand what occurred here. And if you look at that carefully, if you look at that objectively, fulfill your obligations as jurors, we'll be satisfied. Thank you.

THE COURT: Thank you. Mr. Redenbaugh.

MR. REDENBAUGH: Please the Court. Well, I'd kind of like to talk to you about a few things before I get into it too much. Again, thank you for your attention so far today and yesterday and the attention that you're going to pay in the next several weeks.

We've heard from, I think, both counsel that this is a two-sided debate. And while I'm standing here right now, there's more than two sides here. The plaintiffs are going to tell you that this is Cooper Tire's fault. They sued Cooper Tire. Cooper Tire sued my client. They're saying it's Alfred Lang's fault. Alfred Lang hasn't sued anybody.

Cooper has the burden -- Just like

Mr. Miller said, plaintiffs have the burden of proving Cooper's fault. Cooper has the burden of proving my client is at fault. And like I said, I think you'll keep them to the same burden that you keep the plaintiffs.

Now, I already told you I think in voir dire that I may not have the same number of witnesses as these guys do and the defendants or the same amount of exhibits. I can use all of their exhibits and I can talk to all of their witnesses, but not everything they talk about concerns me. In fact, a lot of the stuff that they talk about doesn't concern me and my client at all.

The plaintiffs talk about memos going back to the 1990s, Cooper Tire memos going back to the '90s and damages that extend to the life expectancy of their people.

What I want to talk about -- and when you consider the evidence from my perspective and my client's perspective, I want you to just look at from when the tire failed until when the van became unable to control. That's what my client is worried about.

Now, Mr. Miller said that the van moved two feet to the left. He didn't say that was insignificant, but he hinted that that was minimal.

When you are traveling down the highway, two feet to the left abruptly is not minimal.

He said that Mr. Lang could have slowed down and used the median to come to a stop. Now, this was a sudden -- this was an emergency situation. Mr. Lang did the best that he could. But he saw a median and he saw oncoming traffic on the other side of the median. He attempted to slow down. The evidence will show that. And instead of going to the median, to the left, he attempted to use the entire right lane and come to a stop safely on the right. Things went wrong. Mr. Lang was unable to control the vehicle. This was sudden. It was unexpected and there's nothing he could do about it.

They're going to have all kinds of experts that will come up on both sides, and they are going to talk about the tire, the problems with the tire. You've already probably heard so much about tires that you don't want to hear anything else. I'm not going to talk about tires to the extent that the tire had any problems before, had any nails in it.

What Mr. Lang knows is that his friends or his coworkers asked him to drive them in their van. This is not Mr. Lang's van. They asked him to drive them in their van to work because he had a driver's

license. They didn't have a driver's license. Mr. Lang has his own vehicle. It was perfectly capable of getting him to work, to and from work.

They asked him to drive their vehicle because it held more people. None of them had licenses, so he agreed to do it. And he had done it for a week. Now, granted, he didn't get out, he didn't walk around the van and inspect the van and inspect the tires. I believe Mr. Miller said it would have taken not a tire expert but a tire professional to tell that there was a problem with the tire. Mr. Lang is not a tire professional. He's a layman just like you or I.

Now, we may be able to see a nail sticking out of the tire. The X rays that they are going to show, it's hard to determine what that is. And that's an X ray, a photograph on something they know what they are looking for. Mr. Lang didn't look that closely and nor would any of you, I think.

What he did -- he didn't check the engine. You know, he didn't do anything. There was gas in the car and he drove his friends to work. He thought the vehicle was safe. And he had driven it for a week and it was safe. He had no problems until this one day.

It was a sunny day. He was driving in the

left-hand lane, which you know. He was minding the speed limit. Now, the defendants are going to tell you that he was over the speed limit, and they have -- they say they have evidence to prove that. We dispute that. We say there is no evidence to prove that he was going over the speed limit. The people in the van say that he wasn't going over the speed limit. Mr. Lang says he wasn't going over the speed limit. Those are the only people that really know.

You were told about junk science, about science. It's going to be your job to determine what people actually knew. The only people that actually knew what happened were in that van.

I want to tell you a little bit about my client. The plaintiffs have very sad stories about how they came permanent legal residents or came to the United States. My client has a similar story.

He was born in Sudan. In 1983 -- He was born in 1976. In 1983 the civil war broke out. He lived there through -- in the war. I mean running -- when the villages were raided, he would run into the bush and hide with other boys or other people that were able to do that. He would eventually come back to the village. He did that for six years.

He was then taken with a group of Lost

Boys. I don't know if you have heard anything about Lost Boys, but these Lost Boys are a group of Sudanese young men who were either tending to their herds or escaped into the fields when the villages were raided.

He was taken to Ethiopia with this group, taken from his family, which at that point it would be awful, but that was the best thing for him at that point. Taken to Ethiopia where he lived for two years. Another civil war broke out in Ethiopia, and he was sent back to Sudan.

Now, Sudan was still going through war. He lived in Sudan for another two years. Then he was taken with another group of Lost Boys to Kenyan. Now, he hasn't seen his family in I think eight years, and it would be another 13 years before he saw them again.

He lived in Kenyan. He attended school, high school -- grade school, graduated high school, graduated, and went to a two-year tech school where he received a degree.

He was then given the opportunity to come to the United States. He took that opportunity, jumped at it. This was 2005. But he came here alone. He began work at DZ Manufacturing in Ankeny. He worked at Hy-Vee, Kelly Services, and then the Swift meat packing plant in Marshalltown.

He was a legal, permanent resident on his path to citizenship. This was his dream. He had seen an awful amount of tragedy in his life. He had been here for two years. On that day he was taking his friends to work and a tire blew out.

Now Mr. Lang has to live with that tragedy, has to live with the fact that the van became unable to control and his friends were severely hurt. His colleagues were severely hurt. He lives with that every day, and he will for the rest of his life.

Now, I'm confident that after you hear all the information, you will find Alfred Lang was confronted with an emergency situation, not of his own making, but he acted in the best way that he could.

Now, there will be evidence that it is possible to slow down, to stop, and everybody is okay. Mr. Lang did slow down. He tried to avoid going off the left-hand side of the road, tried to avoid the median where who knows what would have happened. He could have crossed the median. And there's evidence that there were people coming the other direction, because those are the people who first called 911. So there were cars coming in that direction. Alfred Lang was scared that he was going to run into those people. He saw a chance to get over in the right lane, slow

down, but was unable to keep control.

So I'm confident that you'll find that he was confronted with an emergency situation, and he should be judged accordingly and it's not his fault for this accident. Thank you. That's all I have, Your Honor.

THE COURT: Thank you. I think we will recess for the afternoon at this time. I think you all have had a long day. If you'll be back in the jury room at 9:00 tomorrow morning, we will start with the evidence at that time.

So remember the admonition. Don't talk about the case with each other or anyone else, and we'll see you in the morning at 9:00 a.m. Have a good evening.

(The jury was dismissed at 4:18 p.m.)

(The following record was made out of the presence of the jury.)

THE COURT: Anything else that we need to discuss?

MR. JAMES: I hope not.

MR. FARRAR: Nothing from the plaintiffs.

MR. MILLER: I believe we have an understanding as to who you will call tomorrow?

MR. FARRAR: Yes, Stan and Cramer.

MR. MILLER: And maybe --

MR. FARRAR: I just can't imagine we'll get there; but, yeah, it would be Beach by video.

MR. MILLER: Okay.

THE COURT: Okay. See you tomorrow morning. Thank you all.

(Trial recessed at 4:20 p.m., February 17, 2010.)

C E R T I F I C A T E

I, Jody L. McCabe, one of the Official Shorthand Reporters in and for the Fifth Judicial District of Iowa, hereby state that I acted as such court reporter on the above-entitled case in and for Polk County before the Judge stated on the title page attached to this transcript and took down in shorthand the testimony offered and the proceedings had on said matter.

That the foregoing pages are a true and complete computer-aided transcription of the hearing so taken by me in this cause, and that the transcript contains all of the testimony offered and proceedings had on said matter.

Dated this 26th day of July, 2010.

_____

JODY L. McCABE, CSR, RPR, RMR

Transcript ordered April 12, 2010, by Attorney Richard Sapp.

Transcript completed July 26, 2010.