

1                    IN THE IOWA DISTRICT COURT FOR POLK COUNTY  
2 IVON TOE, individually and )  
as Next Friend of YANFOR )  
3 WRIGHT, NYANSA WRIGHT, )  
RICHMOND WRIGHT and PAULEEN )  
4 TOE, minors; ACHOL DENG )  
MAWIEN, CHAN MAWIEN; SEKOU )  
5 JAI, individually and as )  
Next Friend of HASSAN JAI, a )  
6 minor; JAILAH NAYOU, )  
individually and as Next )  
7 Friend of SUNDAY NAYOU, )  
GEE NAYOU and ISAIH NAYOU, )  
8 minors; EVELYN NAYOU; )  
JOSEPHINE COLE, )  
9 individually and as Next )  
Friend of HOMPHREY VANIE )  
10 and VANESSA VANIE, minors; )  
and THE ESTATE OF ASSATA )  
11 KARLAR by its Administrator )  
GAYE KARLAR; and GAYE )  
12 KARLAR, individually and as )  
Father and Next Friend of )  
13 TARLEY KARLAR, ESTER )  
KARLAR, NIONBIAO KARLAR, )  
14 KULEY KARLAR and LOVETTA )  
KARLAR, minor children of )  
15 ASSATA KARLAR, )  
) )  
16                    Plaintiffs, )                    CASE NO. CL106914  
)                    COVERED BY PROTECTIVE  
17 vs. )                    ORDER - VOLUME 19 -  
)                    TRANSCRIPT OF TRIAL  
18 COOPER TIRE AND RUBBER )                    PROCEEDINGS  
COMPANY, )  
19 )  
)                    Defendant. )  
20 ----- )  
COOPER TIRE AND RUBBER )  
21 COMPANY, )  
) )  
22                    Third-Party Plaintiff, )  
) )  
23 vs. )  
) )  
24 ALFRED LANG, )  
) )  
25                    Third-Party Defendant. )

1 jury room because that's about electing the foreperson,  
 2 et cetera, et cetera.  
 3 We will read instructions, and I anticipate we will  
 4 have plaintiffs' closing. I will then let them go to lunch  
 5 and then instruct them to remember the admonition, come back  
 6 and have defendant's and then Lang and hopefully get it  
 7 submitted today.  
 8 MR. JAMES: And rebuttal.  
 9 THE COURT: And your rebuttal, exactly. I will let  
 10 the alternate stay through closing. I generally do that  
 11 unless someone has some objection to it. We could lose one  
 12 between now and getting it submitted.  
 13 MR. JAMES: And I think that makes sense,  
 14 particularly in light of the Court's comments earlier today  
 15 off the record and if for some reason a juror got ill and  
 16 couldn't continue to deliberate.  
 17 THE COURT: And the judgment entry form, whatever  
 18 it may be, I will ask that the party who prevails prepare  
 19 it. You might be thinking about that.  
 20 As I've said before -- and I want to make sure I  
 21 say it on the record, you all are responsible for ensuring  
 22 that the exhibits that you have admitted are with the court  
 23 reporter and that they are the correct exhibits and that the  
 24 other side's exhibits are also the correct one. And if  
 25 there are any missing exhibits or any wrong exhibits, that

1 rests with you. You need to check them and make sure that  
 2 they are the ones that are supposed to go back.  
 3 Now, we had some questions on Thursday before we  
 4 excused about missing exhibits. Did we get that resolved?  
 5 MR. JAMES: I think so.  
 6 MR. MILLER: Yes, I believe we did, your Honor.  
 7 THE COURT: I don't think I have anything else.  
 8 Let me go fix this one and have Susie make copies, so it  
 9 would probably be, I would bet, about ten minutes. I will  
 10 let her go and assemble the jury and have her make sure they  
 11 visit the facilities before we start in. Okay?  
 12 (A recess was taken at 10:17 a.m.)  
 13 (The Court read the Statement of the Case and Jury  
 14 Instruction Nos. 1 through 45 to the jury.)  
 15 (A brief recess was taken.)  
 16 THE COURT: Counsel for the Plaintiffs, are you  
 17 ready to proceed?  
 18 MR. FARRAR: I am, your Honor.  
 19 May I approach real quick first?  
 20 THE COURT: You may.  
 21 (An off-the-record discussion was held at the  
 22 Bench.)  
 23 MR. FARRAR: Good morning.  
 24 It's been awhile since we've had a chance to talk,  
 25 and I want to thank you for your attention. You guys have

1 heard a lot of evidence in this case. It's been a long  
 2 trial, and you've heard from a lot of different witnesses.  
 3 But the one thing I want to talk to you about first is what  
 4 you didn't hear in this case and, more importantly, who you  
 5 didn't hear from.  
 6 You didn't hear from a single witness that designed  
 7 this tire. You didn't hear from a single witness from  
 8 Cooper that had any hand in designing any of the components  
 9 in this tire, not an engineer or a supervisor that looked  
 10 over the design and approved it, nobody that had a hand in  
 11 designing this tire.  
 12 You didn't hear from anybody who manufactured this  
 13 tire. Nobody from the Texarkana plant came in and told you,  
 14 "These are our checks and balances. This is how we  
 15 manufacture our tires." You didn't hear from the tire  
 16 builders themselves, either the first or the second stage --  
 17 the inspectors, nobody -- nobody who actually manufactured  
 18 that tire or had anything to do with the manufacturing of  
 19 that tire talked to you. And I think that's important. It  
 20 allows Cooper to create a fictional world here in this  
 21 courtroom.  
 22 And we have tried to show you document after  
 23 document after document and testimony after testimony that  
 24 contradicts what they're saying in this case, and I think  
 25 we've done it. We showed you how they act in the real world

1 versus how and what they say in the courtroom, and those two  
 2 things are different.  
 3 Cooper called a fella named Lyle Campbell, and he's  
 4 not an employee of Cooper. He's a paid testifier. He's a  
 5 professional testifier who was paid \$50,000 upfront, to have  
 6 the right to pay him an additional \$250 an hour to testify.  
 7 And that's the person that Cooper put up as the person who  
 8 knows about the design of this tire and he knows about the  
 9 manufacturing of this tire. That's the man that they put  
 10 up.  
 11 And I asked the questions: "Did you design this  
 12 tire? No. Did you have any hand in designing this tire?  
 13 No. Did you manufacture it? No. Did you have any hand in  
 14 manufacturing it?" And the answer is, "No."  
 15 What that gives Cooper is what I call "plausible  
 16 deniability." They can come in here and testify directly  
 17 opposite of what their own documents say if they don't have  
 18 their own people on the stand.  
 19 So they go and they hire an expert named Joe Grant,  
 20 and that's really the only person that you heard from who  
 21 defended this tire. And even him, he didn't see all the  
 22 documents. They withheld the documents from him. That's  
 23 plausible deniability. That is being able to bury your head  
 24 in the sand and testify exactly opposite, exactly opposite,  
 25 of what those documents say.

1 When you are deliberating, you have to ask yourself  
 2 this question: Why did they not bring somebody who  
 3 designed or manufactured this tire? If you make a product  
 4 and there's somebody who comes in and says your product was  
 5 defective and it killed somebody and it seriously injured  
 6 other people and you don't think it did, you stand up for  
 7 your product. You say, "That's not right. This product was  
 8 designed right and manufactured right." And you don't do it  
 9 with the paid experts; you do it with the people who  
 10 designed it and you do it with the people who manufactured  
 11 it. That's how you defend a product.

12 If there's a car wreck case and somebody ran a red  
 13 light but he thinks the light was green, he comes in and  
 14 testifies, "That light was green." What he doesn't do is  
 15 give somebody else, some agent of his, some amount of the  
 16 information and let that person come in and testify. And  
 17 that's essentially what Cooper did. They failed to take the  
 18 stand in their criminal case.

19 I think when you look at the documents that were  
 20 talked about in this case -- and I want to start talking to  
 21 you about some of them -- you figure out exactly why they  
 22 did what they did. They needed this buffer. Because if  
 23 they called in the people that designed this tire and I  
 24 start showing them the documents and asking them to explain  
 25 themselves, there's no good answer.

1 Mary, if you would put up 246. This is what we  
 2 call, and I have referred to in this case as, the  
 3 "Halloween" memo. If they brought somebody in here who  
 4 designed this tire, I would get to show them this  
 5 "Halloween" memo from 1996 and say, "Mr. Tire Designer,  
 6 whenever you saw a reduction in the quality of your radial  
 7 passenger products and when you saw a hundred percent  
 8 increase in radial passenger liability claims for three  
 9 months in '95 to '96, why didn't you do anything? Why isn't  
 10 there a change in this tire to help its durability?"

11 And he has to answer that question, and then I  
 12 would show him Exhibit 256, October 1996. This is the  
 13 "consumer relations." This is talking about those same  
 14 liability claims, and, "This list does not include files  
 15 where we have determined that the tire was not at fault or  
 16 where we have not analyzed the tire yet."

17 And you heard Mr. Cramer tell you that that means  
 18 that these were the tires that were at fault. And I would  
 19 ask the tire designer -- we would ask the tire designer, "If  
 20 in 1996 you know your tires are at fault" -- and if you  
 21 remember the numbers, they're getting two liability claims a  
 22 day. And liability claims, as we remember, involve, or  
 23 could involve, personal injury or death. "If you're getting  
 24 two a day, how come there's no change to this tire? How  
 25 come it's the exact same?"

1 Can you go to the last page of this? I would also  
 2 ask him on these liability complaints -- if it is simply an  
 3 extension of the trend on separation adjustments as a whole,  
 4 I would say, "If you're having these adjustments rise and  
 5 you're having the liability claims rise, why aren't you  
 6 doing anything?"

7 I would show you Exhibit 598, an e-mail from Dick  
 8 Stephens, who later on became the president of North  
 9 American tire operations in 1998. And he says, "Tire  
 10 adjustments are up significantly in 1997 in radial passenger  
 11 tires."

12 And I would ask him, "When you found out about this  
 13 in early 1998, why is there no changes in this tire? How  
 14 come we don't have belt edge gum strips in it? How come we  
 15 haven't added nylon? How come the skim stock is the exact  
 16 same?"

17 If you look at Exhibit 514, in November of 1999,  
 18 whenever we see a 33 percent increase in separation  
 19 adjustments -- this is for the Gen 7 tires, 7th Gen  
 20 separations. And our tire is a Gen 7 tire. And I would  
 21 talk to this guy and we could ask him, "When the tires that  
 22 you're designing, this family of tires, has a 33 percent  
 23 increase in separations from 1998 to 1999, why didn't you do  
 24 anything?"

25 And if we look down towards the bottom of that

1 document, they also compare the HPL construction versus  
 2 two-ply. And, if you recall, ours is an HPL construction.  
 3 And they say, "A comparison of HPL specs to their related  
 4 two-ply specs indicates a tendency toward higher separation  
 5 percent ultimates for the HPL specs." And you may remember  
 6 the testimony. The "percent ultimate" is the prediction of  
 7 the future. It's the modeling program where they try to  
 8 figure out what the future adjustments are going to be.

9 And if in 1999, if they're saying, "We predict more  
 10 separations on our HPL tires versus our two-ply" -- and if  
 11 you remember what that is, that's the body plies in the  
 12 tire. "If you're predicting more separations in the HPL,  
 13 why, Mr. Tire Designer, did you not change this to a two-ply  
 14 construction? Why would you keep it the same if you're  
 15 predicting more separations?"

16 Would you go to the first page of Exhibit 60. We  
 17 could show them Exhibit 60, and this is the Tire Durability  
 18 Team meeting. This is the note -- the meeting that happened  
 19 in February of 1996. And, if you would, look at page 20.  
 20 When they looked at their competition -- and you heard  
 21 Mr. Grant testify about how all companies do these  
 22 benchmarkings, where they look at the competition and they  
 23 see what the competition is doing.

24 And they looked at the competition and the  
 25 competitive information. Every one of these talks about the

1 use of belt edge gum strips. "BEGS proven in all steel  
 2 tires. Removal of BEGS in Cooper tires" -- because they  
 3 knew how to do it and used to do it -- "had detrimental  
 4 impact on durability." But, most importantly, what they say  
 5 is, "Deficient in durability compared to competition."  
 6 Cooper knew in February of 2000 that their tires  
 7 were deficient in durability compared to their competition.  
 8 And I would have to ask somebody who designed this tire --  
 9 and we have a document that's in evidence that shows every  
 10 change made in this tire and when it was made, and I would  
 11 have to ask, "How come when this shows this, 'Deficient  
 12 durability compared to the competition,' how come there's no  
 13 changes made to increase the durability of the tire?"  
 14 When they're talking about durability, they're  
 15 talking about tread separation. This is the Tire Durability  
 16 Team that was formed to address tread separation. I would  
 17 show him Exhibit 41 and ask him again: "If belt edge gum  
 18 strips are used by most of our competitors on a majority of  
 19 their products, why aren't you doing it?"  
 20 "If you have run trials and testing on tires for  
 21 several years that resulted in improved belt edge durability  
 22 because of the increased coat stock between the second belt  
 23 and the top belt, and that's the location of most of your  
 24 belt edge separations, why didn't you put that in your  
 25 tires? You had the testing done, and you still didn't do

1 it."  
 2 I would show them Exhibit 33. Could you just go to  
 3 the first page? If you remember, Exhibit 33 is kind of the  
 4 agenda for that Tire Durability Team meeting. And I want to  
 5 look at page 16. One of the first witnesses we heard from  
 6 was Mr. Cramer in this case, and we talked to him about  
 7 this, the "Liability Files by Month & Year." We show a  
 8 600 percent increase from 1991 through 1999.  
 9 In 1999 we have 1,304 liability claims. That's  
 10 four a day. That's four tires -- and this is just tread  
 11 separation. We're talking about tread separation. Four  
 12 tread separations that cause potential personal injury or  
 13 death every single day. And I got to ask a guy who's  
 14 designing tires, "What countermeasures did you put in your  
 15 tire after you found this out?"  
 16 And, if you would, go to page 12. This is a recap  
 17 on this liability complaint, where on the same page it  
 18 includes "Possible Injuries or Even Fatality." And I would  
 19 show him page 26, the last thing that Mr. Cramer presented  
 20 to this group.  
 21 Now, Mr. Cramer, you remember, he's the guy who  
 22 collects all this information. He's the guy who collects  
 23 the adjustment data and he collects the liability data. He  
 24 gave a presentation to this select group of corporate  
 25 executives and engineers, and the last thing he says, the

1 last thing he writes is, "It is imperative we improve  
 2 durability." He says that in February of 2000,  
 3 February 18th of 2000.  
 4 And I would ask him, "If it's imperative that you  
 5 improve durability, why didn't you do anything? You've  
 6 known about this."  
 7 I would show him Exhibit 36. This is the Panning  
 8 memo. This is the fella -- and you heard from him on  
 9 depositions, but this is the guy who went down to Texas and  
 10 he met with a bunch of the different tire retailers. In  
 11 almost every single one, they complained about the  
 12 Classic II tread separations, almost every single one. And  
 13 this is January of 2000. This is just a matter of three,  
 14 four months before our tire was made.  
 15 And I would show him those design specs, and I  
 16 would say, "If you knew in January of 2000 that your  
 17 Classic IIs are failing and you're responsible for designing  
 18 the Classic II, why didn't you do anything?"  
 19 And they can't bring those people. You can put  
 20 that down, Mary. They can't bring those people. They can't  
 21 do it because they don't have an answer to that question.  
 22 Their only answer they're going to give you is "cost  
 23 considerations" because that's always the answer with  
 24 Cooper: "It costs too much. We were unwilling to add any  
 25 cost to our tire to make the tires better."

1 And we know that -- Exhibit 19, if you would. We  
 2 know that from D. A. Powell, his memo. It went out on  
 3 March 13th of 2000. He says it specifically with the skim  
 4 stock change, the antioxidant change, the improvements have  
 5 been documented through multiple test programs over the past  
 6 five years but never invoked because of the cost  
 7 considerations.  
 8 That's all they could say. That's the only  
 9 thing that they could talk about, is the cost  
 10 considerations. There's nowhere else for them to go. So  
 11 what you do -- instead of bringing those people in, what you  
 12 do is you go hire an expert. You don't show them any of  
 13 these documents, hide these documents from them, and you let  
 14 them testify with free rein. And if he says something that  
 15 directly contradicts your documents, well, so be it. You  
 16 will have to just deal with that. Because Mr. Grant did and  
 17 we're going to talk about how he did.  
 18 The same thing goes for the manufacturing. You can  
 19 take that down. You can't bring in somebody who is involved  
 20 in the manufacturing of this tire for the one simple reason  
 21 that this tire unequivocally, objectively, has the dog-eared  
 22 splice. Mr. Grant said, "Yeah, it's got one." You just  
 23 can't get away from that.  
 24 And if you would, put up Exhibit 200-062. This  
 25 document is not particularly easy to read. But this is the

1 manual. This is the conformance manual. This is Cooper's  
2 "how-to" book. This is what they give their tire builders  
3 on how to build a tire and, not only that, what happens if  
4 you don't build it right. That's what this document is  
5 showing us.

6 It says a consequence of a dog-eared splice is, if  
7 you can read it, "stacked belt edges." The dog ear is on  
8 one side, and the stacked belt is on the other side. That  
9 is the consequence of a dog-eared splice. It results in a  
10 separation. And it makes sense. If you have this dog-eared  
11 splice with its ears coming out like that on this side,  
12 well, it's going to affect how the belt lays on the other  
13 side. The stacked belt isn't going to be exactly where the  
14 dog-eared splice is. It's going to be somewhere else, just  
15 as we showed you in this tire.

16 What I think is important is you can't bring in the  
17 person who manufactured this tire because that's what  
18 they're taught. That's what they know. That's what the  
19 company has taught them. So if you bring in a guy with  
20 years of experience manufacturing tires at Cooper and you  
21 ask him, "Hey, what's the consequence of a dog-eared  
22 splice?" if he knows his own manual, this "how-to" manual,  
23 he's going to say, "Well, you could probably get some  
24 stacked belts on the other side. We know that leads to  
25 tread separation."

1 So you can't bring that guy in. Instead, you bring  
2 somebody else in and you don't show him the tolerances. And  
3 basically what that means is every tire has its design  
4 specifications. It has how thick the rubber is supposed to  
5 be here and where that part here goes. But there's a  
6 tolerance. There's a margin for error. It could be a  
7 little bit thinner or a little bit thicker on a gauge or  
8 something like that.

9 You know, you read the definition of a  
10 "manufacturing defect." And I will paraphrase, but  
11 basically designing or building a product not the way it was  
12 intended to be built, out of spec.

13 Mr. Grant never saw the specs. That's the  
14 "plausible deniability" he has. How can he testify there's  
15 no manufacturing defect in the tire if he doesn't know what  
16 the tolerances are for the tire? If he doesn't know how big  
17 that dog-eared splice can be or shouldn't be, that's the  
18 "plausible deniability." That's the ability to stick your  
19 head in the sand.

20 That's why you heard from who you heard from. You  
21 heard from the internal professional testers. He  
22 admitted that that's what he is. And you heard from the  
23 paid experts.

24 And I want to talk to you about the defects in this  
25 tire, the specific defects we're talking about. When you're

1 deliberating all these defects, the two people that  
2 testified about the defects -- Mr. Cottles for us and  
3 Mr. Grant for them. And Mr. Grant is a smooth testifier,  
4 and his two stints at witness school served him well. But  
5 what I want you to think about is the support for each of  
6 their opinions.

7 I am going to go through our defects, and I am  
8 going to show you that we have support for every one of  
9 those defects. From the literature, sure. It's there.  
10 But, more importantly, from Cooper, from their own  
11 documents. Every single defect theory we addressed has got  
12 support in Cooper's own documents.

13 So Mr. Grant and Mr. Cottles, they're basically  
14 mutually exclusive. You really can't believe both, so you  
15 have to pick one or you have to pick the other, and you got  
16 to pick the guy who is using the company's own documents to  
17 support his opinions.

18 When we talk about defects, we have alleged and we  
19 think we have proven to you design defects and manufacturing  
20 defects. We think there's both in the tire, but I just want  
21 to be clear because sometimes these jury forms are a little  
22 confusing. We don't have to prove both. We don't have to  
23 prove there was a design and a manufacturing defect. We  
24 just have to prove there was one or the other. We think  
25 we've proved both.

1 I want to talk to you first about the design. The  
2 one we've talked about the most about in this trial, I  
3 think, is the skim stock, the rubber that coats the belts.  
4 And we've told you that it didn't have a sufficient  
5 antioxidant package, the AO package. And we know that when  
6 rubber is exposed to oxygen, that that antioxidant package  
7 kind of starts getting eaten up.

8 So let's talk about the skim stock. Exhibit 20, if  
9 you would. We know as far back as 1996 -- and if you would,  
10 Mary, just the "Liner Improvements." It's that first  
11 paragraph. You can blow that up. This is back in 1996,  
12 when Cooper was first figuring out that they had all these  
13 tread separations.

14 And they say that it's caused by oxidative  
15 degradation of the belt coat stock, accelerated by the high  
16 temperatures, is the most probable cause for the  
17 separations. That's their analysis. They're looking at  
18 their tires coming back, and they say, "You know what?  
19 Oxygen degradation is causing it, and it's accelerated by  
20 high temperatures."

21 And if you look at one of Cooper's exhibits, and I  
22 think it's 1865, this is an exhibit that Cooper brought to  
23 you. I can't remember who they questioned with it. It may  
24 have been Mr. Campbell. It shows four states. "Oklahoma,  
25 Texas, Florida and California account for 68 percent of the

1 separation returns." You can take that down, Mary.  
2 That's what we're talking about. Those states are  
3 typically warmer states. They're going to have this heat,  
4 because heat brings out this defect. If you have a poor  
5 antioxidant package, heat is going to bring that defect to  
6 the surface. That's when you're going to see it. That's  
7 when tires are going to fail.

8 That is completely inconsistent with what Mr. Grant  
9 testified to. When he testified, he said 80 percent of  
10 tire tread separations are caused by this phantom impact.  
11 And people in Texas and California and Florida and Arizona,  
12 they don't hit more potholes or two-by-fours on the road.  
13 It's hot. Cooper's tires are failing because it's hot.

14 And they point out to Mr. Campbell, you know, Iowa  
15 is not on the list. Well, that's true. But remember what  
16 Mr. Strickland said, and he was the first witness Cooper  
17 called. He was the eyewitness. He talked about how hot it  
18 was that day. So Iowa is not on the list for that year, but  
19 if you look at September 17th of 2007, Iowa may well have  
20 been on that list because that was a hot day. And it's not  
21 a coincidence this tire failed on a hot day.

22 If we can look at -- well, let me talk to you about  
23 the skim stock a little more. The 525D is what you've  
24 heard, and you've heard the "C" and "D." And we know our  
25 tire had "C" in it, and we know they made the change to "D."

1 They actually made the change before our tire was made but  
2 implemented after our tire was made. And we have shown you  
3 when 525D was ready. It was ready back in 1996 or maybe  
4 early 1997.

5 And the definitive proof, again, is Mr. Powell's  
6 memo, Exhibit 19, when Mr. Powell said in paragraph 1 that  
7 they're going to increase the AO for 525. It's been  
8 documented through multiple test programs over the past five  
9 years. What he's saying is, "We have 525D ready. We've had  
10 it ready for years. We've tested it. It's good to go and  
11 we sat on it."

12 And that should be the end of the discussion of  
13 when 525D was ready. But like we told you in opening,  
14 Cooper was going to come in and they're going testify that  
15 documents don't mean what they say, and you can't read them  
16 like that.

17 So Mr. Powell said, "Well, I don't know if that was  
18 true. I just got all that information from Rita  
19 Feczer." Rita Feczer said, "I don't think that was true.  
20 We didn't have it ready that far back."

21 What you don't see is any documents after this  
22 saying, you know, "That's actually not accurate. That's not  
23 quite true. We didn't really have 525D ready." I think  
24 we've shown with the other documents and the other evidence  
25 in this case that, in fact, they had 525D completely ready

1 to go in 1997 and just sat on it.  
2 I want to go back to what I call the "Halloween"  
3 memo, which is 243 -- 246, I'm sorry, and the second page.  
4 This is 1996 and they talk about a 582 belt coat used in  
5 radial medium trucks, and it contains a more persistent  
6 antidegradant system.

7 And if you could, Mary, can you compare that with  
8 Exhibit 60? Exhibit 60. Again, this is the February 2000  
9 memo where they actually decide they're going to make the  
10 change coming out of this Tire Durability Team meeting.  
11 They say, "We think we're going to make this change in the  
12 skim stock." And it talks about in this memo that, "We have  
13 experience with this skim stock from our RMT tires," just  
14 like they talked about in 1996. It's the same formula that  
15 they had. And you can take that down, Mary.

16 The thing I think you have to look at is  
17 Miss Feczer testified, "That's not true. We had it ready in  
18 mid 1999. And I was testing it and I was tinkering with it,  
19 and I was trying to get the formula right from '96 to '99."

20 Where is the evidence of that other than  
21 Miss Feczer just telling you? Where are the test protocols,  
22 the results, showing that the formula is not quite right so  
23 we did a little bit more tinkering with it? Where is that  
24 evidence? Because that doesn't exist.

25 And if you look at Exhibit 58 on the third page,

1 this is a September 1996 document. In September of 1996,  
2 Cooper said, "Rita Feczer has developed a new coat stock for  
3 evaluation," and, "We agreed that it needed some testing."

4 That's 525D. And I can tell you how you know it.  
5 The "Halloween" memo again, 243. We don't need to put it  
6 back up. But the "Halloween" memo "costs" 525D. It was  
7 \$1.3 million or \$1.4 million, whatever it was, to take that  
8 antioxidant package out of 582 and to put it in 525. And  
9 Rita "costed" it and they had a cost for it,  
10 one-point-something million dollars. You don't "cost"  
11 something if it's not done. You can't assign a cost to  
12 something that you haven't created yet. So when they  
13 "costed" it in October of 1996, that shows you that it was  
14 done.

15 Mr. Campbell testified when he was looking at the  
16 Halloween memo -- can we go back to 243, the second page?  
17 Sorry, 246. You remember Mr. Campbell who testified. He  
18 testified via video because they went on vacation and they  
19 weren't going to move his vacation to testify live at trial.  
20 So he testified via video, but he testified earlier in the  
21 case in a deposition a long time ago. So it's kind of a  
22 little confusing because he's contradicting his deposition  
23 testimony in a deposition.

24 But in the original deposition, he was shown --  
25 prior to recommending this change, he was asked the

1 question: "Is that the change from 525C to 525D?" And he  
2 said, "Yeah. Yeah, that's the change."

3 Now, when we did his trial testimony, he said, "No,  
4 that's not what I meant. I didn't mean that. I don't know  
5 if that was 525D or not. I just don't have any idea." It  
6 doesn't say 525D in this document, but what he testified to  
7 originally was absolutely that that's the change to 525D.

8 You can take that down, Mary.

9 What Mr. Campbell also told you is they knew -- and  
10 there's documents and we have them and we've shown them to  
11 you. They knew that oxygen degradation -- that's the  
12 antioxidant package. This oxygen degradation was causing  
13 their tires to fail. In 1996 they had two choices: to  
14 change the antioxidant package or to increase the thickness  
15 of the inner liner.

16 And Mr. Campbell said, "We chose cheap. We chose  
17 the inner liner and we chose wrong." Because that didn't  
18 fix the problem. And we know that -- we know that from that  
19 time line, if you recall, that I built with Mr. Cramer. Is  
20 there a time line that we have that maybe we can show?

21 You remember the time line that we built with  
22 Mr. Cramer was all the documents showing each year, "each  
23 year," their exhibit with increased tread separation. So we  
24 know it didn't work.

25 You can take that down. Here's the thing, I think

1 we've proven beyond any doubt that 525D was ready back in  
2 1996 or 1997, and Cooper sat on it. As Mr. Powell  
3 said: Cost considerations. They didn't want to implement  
4 \$1.2 million, which is what it was going to cost to make  
5 that change.

6 But if you think we're wrong and you think Rita  
7 Feczer, who testified it wasn't ready until mid 1999, that  
8 she was right, the next question you have to ask yourself  
9 is: Why in the world does a company building 40 million  
10 tires a year take three years to make a simple change in  
11 their skim stock formula? How is that acceptable? Three  
12 years to make that change?

13 And Rita told you, Miss Feczer told you, there's  
14 not a single thing in 525D that they didn't have available  
15 to them back in 1995 or 1996. There's no new technology  
16 that they didn't have available to them in 1995 or 1996.  
17 Everything was there.

18 In fact, they already had the antioxidant package.  
19 They had it in their other type of tires they were using.  
20 So why in the world is it acceptable to take that many years  
21 to do it? And, then, even assuming all that's true, why in  
22 the world does our tire made in the 13th week of 2000 not  
23 have it if it was ready to go in mid 1999?

24 Let's look at Exhibit 77. Exhibit 77 is the  
25 "Product/Change Notification." This is what Cooper sends

1 out to say, "We're making a change." And they're making  
2 this change on all passenger, P-metric, and P/S RLT tires;  
3 basically all the tires that any consumer would put on their  
4 vehicle. It's dated 2-29 of 2000. That's still over a  
5 month before our tire is made.

6 But our tire didn't have -- it didn't have this  
7 improved skim stock formula and it didn't -- Mr. Powell told  
8 you why it didn't have it. It didn't have it because they  
9 make these vats of skim stock. They make big vats of them  
10 and they use them up. Cooper was so reluctant to have this  
11 cost penalty that they sure weren't going to throw away the  
12 old 525C that they've already made up in Texarkana. No way  
13 they're going to do that. So they use it up.

14 They know it's defective and they know it's causing  
15 personal injuries and they know it's causing fatalities, but  
16 they use up what they have first before they make this  
17 change in Texarkana, and that's why our tire doesn't have  
18 it.

19 If you go to the second page, the cost to do this  
20 annual expenditure was \$1.1 million. They make 40 million  
21 tires a year. If you do the math on that, that's a little  
22 bit less than three cents a tire is what it cost them to  
23 make this change. And I can guarantee you that Gaye Karlar  
24 would have given three cents to have that in his tire. I  
25 can guarantee everybody over there would have given three

1 cents to have that in their tire.

2 You know, we're going to talk about punitive  
3 damages, and one of the things you get to consider in  
4 punitive damages is the company's net worth. What is their  
5 value? And there are exhibits that have been entered today  
6 that you guys haven't seen yet, but they're exhibits you'll  
7 have back there, and it shows the net worth of Cooper and it  
8 shows their revenue.

9 And last year, net sales: 2.7 billion, with a "B,"  
10 billion dollars. A billion dollars is a thousand millions.  
11 \$2.7 billion in revenues and they won't make a \$1.1 million  
12 change that they know is affecting people's lives.

13 Could you go to 265? Go to the fourth page. One  
14 of the things that we have to prove in this case is that  
15 there's alternative designs that would have worked, that  
16 were effective. And this is the benchmark study Cooper  
17 used. Just do (b) right there, if you could. Just  
18 highlight the (b.)

19 After they switched to 525D, it shows "A  
20 statistically significant and favorable mean shift of miles  
21 to failure on the oxidative wheel test was observed between  
22 tires with 525C and 525D belt coat stocks as predicted."  
23 Because they knew that it was going to work.

24 Actually, if you would go back to 77, first page,  
25 that's the proof that it worked. "Initiation of Change:

1 ASAP," as soon as possible, because, again, they knew it was  
2 going to change and they knew they needed to do it. And  
3 "ASAP" doesn't mean months down the road. It means right  
4 now, make that change. But they didn't do it. You can take  
5 that down, Mary.

6 I want to shift focus a little bit and talk about  
7 another design defect in this tire, and that's the lack of  
8 the belt edge gum strip. You heard Mr. Cottles testify in  
9 his time at Goodyear he wasn't allowed to build a tire  
10 without a belt edge gum strip. That wasn't something that  
11 they could even conceive of.

12 In other words, when he went to the drawing board  
13 to start an ideal new tire, he draws in the belt edge gum  
14 strip because he knows those have to be there, and then you  
15 figure out where to go from there.

16 If you look at Exhibit 60, again, this is kind of  
17 the notes, the notes from the Tire Durability Team meeting.  
18 Actually, I want to go to the second page and just highlight  
19 that top portion of that. It says, "As a result of our  
20 discussions, the group identified," in bold and underlined,  
21 "3 key short-term recommendations that could be made to make  
22 improvements in this area." And the third one is the  
23 implementation and use of belt edge gum strips in selected  
24 tire lines and specifications.

25 If you go to Exhibit 41, this isn't something new

1 to Cooper. I showed you this earlier, but they knew through  
2 their own testing and their own trials that belt edge gum  
3 strips improved belt-edge durability because of the exact  
4 same reason Mr. Cottles told you why it does: Because it  
5 increased coat stock gauge -- "gauge" is just a fancy word  
6 for "thickness" -- between the No. 2 belt edge and the top  
7 of the No. 1 belt.

8 "This is the location of most of our belt edge  
9 separations."

10 That's where their tires are failing. That's where  
11 this tire failed. They knew before this tire was made that  
12 belt edge gum strips worked, and they knew that their  
13 competition was using it. I don't want to get bogged down  
14 in the details of this, but the second paragraph talks  
15 exactly about why what they're doing doesn't work.

16 It talks about their, I guess, alternative to the  
17 belt edge gum strips, and it says, "However, this is a  
18 relatively inefficient method of increasing the gauge at the  
19 belt edge." This is the belt pantograph, and the gauge  
20 still becomes thinner at the No. 2 belt edge than in the  
21 center of the belt. That's basically saying, "We do it a  
22 different way and it doesn't work."

23 If we would look at Exhibit 42, please, just the  
24 second paragraph, if you would blow that up. That one right  
25 there, the "Two other options." It's talking about nylon

1 overlay, which we've talked about or we will talk about.  
2 But right here is what I'm talking -- I want to read: "Belt  
3 edge gum strips add extra insulation at the high stress area  
4 of the belt edges which modeling shows to reduce the strain  
5 energy density, and could reduce the occurrence of crack  
6 initiation and growth." And it talks about Cooper uses  
7 off-balanced calendering. And the last document, that's  
8 exactly what it said was a relatively ineffective method.

9 The last document I want to talk to you about the  
10 belt edge gum strips is 60 on page 20. And this, again, is  
11 a document we've talked about already in closing today, but  
12 this is the competitive information: "Virtually all RLT and  
13 large passenger tires use belt edge gums." It's talking  
14 about the competition. "Removal of BEGS in Cooper RLT tires  
15 had detrimental impact on durability (adjustment history.)"

16 So Cooper stands up and says, "Well, we either  
17 didn't know how to do it or we didn't have the technology to  
18 do it." You know that it's not true because in 2000 there  
19 was a time, just from looking at this document, that they  
20 had BEGS and they took them out and, lo and behold, it had a  
21 detrimental impact on durability. Exactly what we're told.

22 I want to talk to you about one other thing with  
23 the BEGS. If you recall -- and this kind of goes back to  
24 the skim stock. When the skim stock formula was changed,  
25 the folks in Melksham in England, in that plant, they called

1 and they said, "Look, I know you guys are having real  
2 problems with your tread separation, but we're not and we  
3 don't think we need to make that change because we have  
4 countermeasures. We have tread separation countermeasures  
5 in our tires that you guys don't use. We have nylon  
6 overlay, and we have belt edge gum strips."

7 It's Exhibit 82. And Cooper said, "You know what?  
8 You're right. You're correct in your assessment of the  
9 improvement we expect to see from 525D." Right here: "Jim  
10 and I have reviewed your request. We will not require the  
11 conversion in Melksham. You have responded with some good  
12 reasons for not requiring additional protection."

13 The good reason is they used belt edge gum strips  
14 and they used nylon overlays. That's the good reason.  
15 Talking about nylon, that's the third design defect we say  
16 this tire has. It doesn't have a nylon overlay.

17 Can you take that down, Mary?

18 Actually, again, I want to show you -- I'm trying  
19 to show you how each defect is supported. Each thing that  
20 Mr. Cottles said is supported not by his own testimony and  
21 by the literature, but also by Cooper's own documents, and  
22 nylon is supported by their documents.

23 It's 285. The title of this document, I think, is  
24 important. It's the "Position Paper on Use of Nylon  
25 Overwrap." This is Cooper's position on the use of nylon



1 overwrap. And they say the primary benefit is that it  
 2 inherently reduces the mechanical strain cycle at the belt  
 3 edges, especially at higher speeds, and it achieves it  
 4 because it restricts growth of the belt and tread package  
 5 due to centrifugal forces associated with tire rotation.  
 6 That's kind of a mouthful, no doubt about it.  
 7 But what it is saying is it's reducing the strain  
 8 at the belt edges, and everybody who testified who knows  
 9 anything about tires in this case has agreed that the belt  
 10 edges is the highest strained part of the tire. Nobody  
 11 disagrees about that. Nylon reduces that strain. And  
 12 Cooper is going to stand up and they're going to tell you,  
 13 "Look, we only use that in high-speed tires, tires that are  
 14 made to go 150 miles an hour."  
 15 Well, if it prevents tread separation in high-speed  
 16 tires, why in the world would it not prevent tread  
 17 separation in tires that are made to go 118 miles an hour  
 18 like the tire in this case? That doesn't make any sense.  
 19 Of course, it would have the exact same benefit.  
 20 If we look at 92, Exhibit 92, go to page 1 first.  
 21 This is a follow-up to that February 2000 meeting of the  
 22 Tire Durability Team. It's on June 14, 2000. If you would,  
 23 go to the second page: "Belt Edge Treatment to Reduce  
 24 Strain Energy." Right here. Cooper is trying to determine  
 25 a cost-efficient manner to use a combination of belt gauge,

1 gum strip, carcass strength and/or overwrap.  
 2 They know, they absolutely know, that that reduces  
 3 the strain energy at the belt edges. They know it works,  
 4 but they still haven't done it, even though that that's  
 5 one -- the BEGS, anyway, is one of the key short-term action  
 6 items that the team figured out in February. Even though  
 7 that, they still haven't done it because they're trying to  
 8 figure out a cost-effective manner in which to do it. It's  
 9 always the cost-effective manner: safety second, cost  
 10 first. That's the theme.  
 11 I want to talk to you -- you can take that down,  
 12 Mary. I want to talk to you about the manufacturing defects  
 13 in this tire, and I want to talk about the dog-eared splice.  
 14 Could you put up Exhibit 200, page 62? We know from  
 15 Cooper's own document that a dog-eared splice -- the  
 16 consequence of it is a stacked belt and that leads to tread  
 17 separation. That we know.  
 18 We also know if we look at the x-ray, which is  
 19 454-300, we know we have a dog-eared splice. It's right  
 20 there. Mr. Grant testified to it. He said, "Yeah, that's a  
 21 dog-eared splice. No two ways about it. No question about  
 22 it." Mr. Grant said, "Well, I don't think it's that big."  
 23 Of course, he didn't measure it.  
 24 He gave you some testimony how you can't believe  
 25 your eyes when you look at an x-ray because everything is

1 all distorted. But what I think was real interesting about  
 2 that testimony is when Mr. Grant was looking at this x-ray,  
 3 he said -- he uses his laser pointer, and he said, "Look at  
 4 this nice step-off right here." Because the bottom belt,  
 5 the bottom belt is wider than the top belt.  
 6 And there's an idea, there's a purpose, behind it.  
 7 That's not accidental. It's to reduce that strained energy  
 8 right at the belt edge. He says, Look at that, look at that  
 9 step-off. The belt going this way is Belt 2 and the steel  
 10 going this way is Belt 1. Man, that looks like a good  
 11 step-off-right there. That's what he testified.  
 12 Then he showed the x-ray of the stacked belt to the  
 13 coincidental ending, which is 454-210. You can see plain as  
 14 day right there that those are ending in the exact same  
 15 spot. All Mr. Grant could say is, "That's all distorted.  
 16 You can't look at an x-ray and figure out where your belt  
 17 ends." He was able to do it whenever he thought the  
 18 step-off was good.  
 19 When he looked at this, he said, "No, no, no. Your  
 20 x-ray is in the middle and it's off to the side. You can't  
 21 make heads or tails of that." And that's what I talked  
 22 about, about "plausible deniability," with Mr. Grant because  
 23 Cooper's own exhibit shows that the consequence of a  
 24 dog-eared splice is a stacked belt.  
 25 But Mr. Grant says, "Yeah. There's a dog-eared

1 splice, but that's not a stacked belt." And Mr. Grant  
 2 admits tire companies -- that's how they check. If they  
 3 want to see the alignment of their belts, you can't do it  
 4 when the tire is made. The only way to do it is do an  
 5 x-ray.  
 6 The dog-eared splice in and of itself doesn't cause  
 7 this tire to fail. It's the consequence of it. It's the  
 8 stacked belts, and those stacked belts came together right  
 9 here. That's where we're looking at when we're looking at  
 10 those x-rays. Right where this tire failed is where those  
 11 stacked belts were. That's not a coincidence. That's  
 12 exactly what Cooper's documents say. They say a consequence  
 13 of the stacked belt is the stacked belt leads to tread  
 14 separation. The only other testimony you've heard about the  
 15 stacked belt was a little bit from Mr. Campbell.  
 16 He was shown the compliance manual that we just had  
 17 up -- the "how-to," the Conformance to Standards, the  
 18 "how-to-build-a-tire" document -- and his only response was,  
 19 "Well, I don't know who wrote that." Well, Cooper wrote  
 20 that. I mean, that's their standard-operating-procedure  
 21 document. That's who wrote it. They wrote it with their  
 22 years of experience in building tires, and they figured out  
 23 that these stacked belts cause tread separation. That's who  
 24 wrote that document.  
 25 The other manufacturing defect we talked about in

1 this case -- well, let me go back. I don't want to put the  
 2 x-ray up again, but when you're considering this issue and  
 3 you're talking about it -- and you have the x-rays in  
 4 evidence. You'll be able to hold it up and look at it.  
 5 When you're thinking about this issue, don't let  
 6 Mr. Grant tell you you can't believe your own eyes. Don't  
 7 let him tell you you can't believe an x-ray, even though  
 8 that's the only way and that's the way every tire company  
 9 looks at this issue. Just the same way as don't let  
 10 Mr. Powell tell you you can't read his own memo and take it  
 11 for what it says. Look at these documents, look at these  
 12 x-rays, and use your own common sense and know that they say  
 13 what they say.

14 I want to talk to you about another manufacturing  
 15 defect and that's the open inner liner splice. And we've  
 16 gotten Tire 101, I think, a few too many times in the case.  
 17 But the inner liner is, obviously, the first component that  
 18 goes in that holds the air in. And we have a picture. It's  
 19 5 -- 453-3. And that's just one of the pictures that we  
 20 were shown -- or that we showed you of the open or cracked  
 21 inner liner splice.

22 If you remember how these inner liners are put  
 23 together, they're rolled on a drum. There's a little bit of  
 24 overlap and they're what they call "stitched" together,  
 25 which just basically means they run a device over it and it

1 pushes it together. And then when it's vulcanized, it melds  
 2 together like two pieces of cheese in a grilled cheese. I  
 3 mean, when you cook a grilled cheese, you can't pull that  
 4 apart anymore. So, actually, the splice of the inner liner  
 5 is going to be the -- if it's made right, it's going to be  
 6 the strongest part of the inner liner. It's got more rubber  
 7 there than anywhere else.

8 And we see this crack right here. What does that  
 9 do? That allows air into the tire. It goes back to the  
 10 skim stock issue too. When you start getting air and oxygen  
 11 in that tire, you start degrading those components -- that  
 12 oxygen degradation we've been talking about. This existed  
 13 from when the tire left the plant, and it starts eating away  
 14 at this insufficient antioxidant package until finally  
 15 there's no more and the tire does this.

16 And you have got to compare and contrast that with  
 17 the metal object, of the nail, that was in the tire that  
 18 Mr. Grant talked about. He thought it was in there -- I  
 19 can't remember what he said -- 500 to 1,000 miles. And that  
 20 would have allowed this air, this oxygen, into the  
 21 components of the tire.

22 What is more likely? That this big crack in the  
 23 inner liner that's there from the get-go, from day one is  
 24 letting in air or this nail or metal object? And we don't  
 25 even know if it was leaking air or not because Mr. Grant

1 didn't do the testing. Mr. Grant says that this happened  
 2 during the accident.

3 And you can't ignore this, and you can't look at  
 4 this and say it doesn't exist, because there it is. So he  
 5 said, "I think that splice happened during the accident."  
 6 And think about the astronomical odds of that, that during  
 7 this accident this inner liner breaks open at the exact spot  
 8 of the splice, the spot on the tire that if made properly on  
 9 the inner liner is the strongest actual piece of the inner  
 10 liner. That's not more reasonable or more likely than not.

11 The last thing I want to talk to you about on this  
 12 manufacturing defect, I want to talk about what we talked  
 13 about -- you can take that down, Mary -- is the liner  
 14 pattern marks. The easy way to think about it is if you had  
 15 two pieces of Play-Doh and you stuck them on some mesh and  
 16 you picked them up, well, those marks are there. And if you  
 17 stuck that Play-Doh together and you really pushed it  
 18 together and you peeled it back apart, those marks would be  
 19 gone. If it really stuck together and you had good  
 20 "adhesion," which is the word Cooper will use in this, those  
 21 marks are gone.

22 If you would, put up Exhibit 87. In 1994 Rita  
 23 Feczer looked into this issue. On page 2, if you would.  
 24 And what she said is, "Tire serviceability is difficult to  
 25 defend in a failed tire which exhibits a liner imprint as

1 the presence of the imprint may be interpreted as a weakness  
 2 of the tire."

3 And she says, "Lab work conducted to determine the  
 4 cause of the liner imprint" -- or "was conducted" -- "and it  
 5 was learned that the antidegradant in 525 belt coat compound  
 6 blooms to the surface of uncured belts and reduces the cured  
 7 adhesion between components," such that the imprint of the  
 8 liner is on the belts.

9 That makes sense. If you have these liners, you  
 10 have these marks on your belts and you put them together,  
 11 and for whatever reason you don't have a good adhesion  
 12 between these belts. When the tire separates and comes  
 13 apart, you're going to still see these marks because that  
 14 tire hasn't come together. It doesn't have the adhesion  
 15 that you want.

16 And when she says that it's difficult to defend,  
 17 she's absolutely right. Mr. Cottles sat down and he picked  
 18 up the tire and he showed you on the tire where the liner  
 19 pattern marks are, and he showed you so you could see them  
 20 for yourself. When you say it's difficult to defend,  
 21 there's really only one defense to it, and that is, "Huh-uh,  
 22 it's not there." And that's exactly what Mr. Grant did.

23 He didn't pick the tire up and show you. He didn't  
 24 show you some close-up photographs of it. He just sat in  
 25 his chair with the tire in the box and said there's no liner

1 pattern marks on that. That's difficult to defend. The  
 2 only thing you can do is say, just flat doesn't exist.  
 3 And I think you guys got to look at this tire with  
 4 Mr. Cottles and see it for yourself and see that it actually  
 5 exists. It's in this tire. And that is absolute conclusive  
 6 proof of a lack of adhesion. We know that from what Rita  
 7 Feczter said. I want to talk about the experts. Those are  
 8 the defects we talked about in this case. When you go back  
 9 and deliberate, there's really three designs and there's  
 10 really three manufacturing defects that we talked about.  
 11 But I want to talk about the experts. And you have  
 12 some jury instructions related to expert witnesses in the  
 13 case, but one of the things I want to talk to you about is  
 14 how the experts were questioned and the difference between  
 15 how our experts, plaintiffs' experts, were questioned versus  
 16 how Cooper's experts were questioned.  
 17 Our experts, every one of their opinions is rooted  
 18 in the literature. It's rooted in the governmental studies  
 19 and it's rooted in Cooper's own documents. They support the  
 20 basis for those opinions. So when our experts were  
 21 questioned, all the attacks were on their person. There  
 22 were personal attacks on them. Challenge the man, not the  
 23 opinion.  
 24 We heard for 45 minutes about how Mr. Cottles had a  
 25 family issue, and when he was working for Goodyear he was

1 trying to apply for a job in Alabama. We heard very, very,  
 2 very little to challenge Mr. Cottles' opinions. We heard  
 3 very little to challenge Micky Gilbert or Stan Andrews'  
 4 opinion. It was always an attack on the person and not the  
 5 opinions.  
 6 And not to say that we didn't do some of that. We  
 7 absolutely showed you bias when I think it was appropriate,  
 8 and we showed it to you and then we jumped into the opinion.  
 9 And every single expert, we hit the opinion dead-on.  
 10 Whatever their area would be, we were showing them the  
 11 literature. We were showing them the documents. We were  
 12 showing them why their opinions are inconsistent with the  
 13 real world and they're only consistent with this made-up,  
 14 make-believe world that Cooper has presented to you in this  
 15 case.  
 16 And another thing is -- you know, one of the jury  
 17 instructions that you were just read -- really a few of  
 18 them, 10 and 11 -- talk about hearing a witness say  
 19 something different than what they've testified to in the  
 20 past. And they say that you may use these statements to  
 21 help you decide if you believe a witness who has made such a  
 22 statement, and, "If you find a statement" -- this is  
 23 Instruction 11: "If you find such a statement was made and  
 24 was inconsistent with the party's testimony during the  
 25 trial," you may use that as a basis for disregarding their

1 testimony."  
 2 Cooper was four-for-four on their experts. Every  
 3 single one of them changed their opinions on something.  
 4 Doctor Randolph, the neuropsych, he testified. We showed  
 5 you in his deposition that he testified that Mr. Nayou lost  
 6 consciousness. At trial he said he didn't. Mr. Liebbe  
 7 testified that this is absolutely an emergency situation, in  
 8 his deposition. On the stand he said, "No, it's not."  
 9 Mr. Rucoba, the accident reconstructionist,  
 10 testified in his deposition speed is not a factor in this  
 11 accident. On the stand he says different. Every one of  
 12 these guys, we have to show them their deposition time and  
 13 time again to show them they're saying something  
 14 inconsistent as to what they said in this case before.  
 15 Mr. Grant, he testified on direct for 30 minutes  
 16 about the rust around this nail that's in the tire and what  
 17 that rust shows. In his deposition, he says there's little  
 18 to no rust and any rust that's there, any rust that's there,  
 19 probably got on after the tread separation and while this  
 20 tire has been in storage for two and a half years waiting to  
 21 come tell you its story.  
 22 I want to talk about Mr. Grant. I want to be  
 23 specific. He's the guy who talks about why this tire  
 24 failed, and that's who I want to talk to you about. I want  
 25 to talk to you about his opinions in the case and what his

1 opinions are not in this case.  
 2 Mr. Grant said it well on cross-examination. He  
 3 said, "Look, I just answered the questions that are asked of  
 4 me." But you have to think about what questions were asked.  
 5 Why was 80 percent of his direct, when Cooper was  
 6 questioning him, about this nail? The guy testified  
 7 point-blank on the stand, "This nail never caused this tire  
 8 to fail." It didn't cause it to fail. So why are we answer  
 9 is 80 percent of the time talking about the nail?  
 10 He says the underinflation that he thinks he sees,  
 11 that didn't cause the tire to fail. In fact, what he  
 12 testified to is just the impact in this, this "phantom  
 13 impact," that's what caused the tire to fail. And he said  
 14 if you took out the impact, this tire -- with the nail, with  
 15 the underinflation -- would have lived its life. It goes  
 16 through its serviceable life unharmed, unscathed.  
 17 If that's true, then why are we talking about a  
 18 nail 80 percent of the time? The answer is: because that's  
 19 kind of a sexy fact. That's a fact that they can throw out  
 20 and it makes you think.  
 21 And when you're in deliberations, I guarantee it,  
 22 I guarantee in deliberations one, two, three, maybe all nine  
 23 people bring up the nail. And when they do that, I empower  
 24 you to stand up and say, "Mr. Grant, Cooper's expert,  
 25 testified this nail didn't cause this tire to fail. So why

1 are we talking about the nail? Let's talk about his real  
2 opinion," which was basically buried in his testimony. And  
3 that is impact, this "phantom impact," some 500 miles back,  
4 some 1,000 miles back. That's what caused this tire to fail  
5 according to Mr. Grant.

6 When you look at that opinion, that opinion doesn't  
7 hold any water. We looked at Cooper's document earlier  
8 about the states where they were having a tread separation,  
9 and it's the hot states. Well, that makes sense. The heat  
10 brings out the defects in this tire.

11 We showed you the federal government's position on  
12 this impact. When they were implementing new standards,  
13 Standard 139, they basically wanted to test this theory.  
14 And if you remember Mr. Grant, Mr. Grant is the guy who  
15 testified that the 6.5 million tires that the federal  
16 government recalled because of a defect in their design were  
17 not defective. And he made a fortune doing that. That's  
18 what the guy does. He goes around testifying for people  
19 without ever seeing a document.

20 And he has this theory, this "phantom impact." And  
21 the government, when they were doing the 139, the new  
22 standards for how to test tires, they wanted to test this  
23 theory. They took 61 tires and they whacked it every which  
24 way they knew how to whack it, and then they tested it on a  
25 wheel test. Not a single one of them failed because of

1 tread separation, none of them.

2 Any of the ones that did fail from what they said  
3 was "tread chunking" -- sounds similar but it's completely  
4 different. And you know it's different because they called  
5 it a "benign failure mode," and there's nothing benign about  
6 this failure mode. That's something different.

7 We showed you GM's testing. So, well, go back to  
8 139. As a result, that test isn't incorporated into 139,  
9 the new testing standards. We showed you GM's testing where  
10 they were trying to replicate this theory and see if it held  
11 any water, this "phantom impact."

12 And what did GM say? They said it took less energy  
13 to damage the rim, the wheel, than it does to damage the  
14 tire. That's because this tire is designed to encounter  
15 things on the road. That's the whole idea of this tire, is  
16 to do that. It engulfs it and then it comes back out.  
17 That's what this tire does. GM says it takes less energy to  
18 damage the wheel than the tire.

19 And we asked Mr. Grant: "Did you look at the rim?"  
20 He said, "Yes. Any damage? Absolutely not. The rim looks  
21 great."

22 How is that possible? If it takes less energy to  
23 damage the rim than to damage the tire, then if the tire was  
24 damaged by hitting some pothole, well, the rim would be  
25 damaged, and it's not.

1 And then you look at the theory in and of itself.  
2 If every time we hit a pothole or ran over anything, this  
3 was the result, it wouldn't be safe to drive a car. We all  
4 hit things. We all do. And we brought you report after  
5 report after report from Mr. Grant. Whenever he supports  
6 this opinion, the support that he looks for in the tire for  
7 this "phantom impact" opinion, there's always something  
8 broken in the tire.

9 And we showed you I don't know how many reports, a  
10 lot of reports, where he always says it's evidenced by these  
11 steel cords being broken, but he says no steel cords broken  
12 in this tire. We showed you a bunch of reports where he  
13 says it's evidenced by these polyester cords being broken.  
14 Not a single one broken in this tire.

15 We showed you where he said you can see the  
16 evidence on the sidewalls, you can see where it hit  
17 something on the sidewalls. Nothing like that on this tire.  
18 This tire exhibits none of the evidence that he always says  
19 is there in impact. In most common sense, the front tire is  
20 fine. How is the right -- or the left rear tire have this  
21 problem with impact when the front one's fine?

22 And how is it that it can impact a pothole, or  
23 whatever it is, in such a perfect way as to cause the two  
24 belts that are theoretically supposed to be meshed into one  
25 to separate but no other damage to the tire. Nothing to the

1 internal components of this tire was damaged. That doesn't  
2 make any sense. That defies logic, and it really goes  
3 against what Cooper is saying when Cooper says, "All of our  
4 tires are failing because of their late-life durability  
5 because of the lack of a good antioxidant package." That's  
6 why that tire failed.

7 We showed you too what Mr. Cottles talked about,  
8 brassy wire. And he showed you the wires and the brassy  
9 wire and how that is evidence of this lack of adhesion. And  
10 if you look at Exhibit 32, let's go to the first page. This  
11 is a Tire Durability Team meeting in June of 1999. What I  
12 want to do is go to the tenth page of it. They started  
13 looking at tires.

14 They started looking at tires, field return tires,  
15 and what they found was brassy wire. These are the folks  
16 that are out there trying to fix the problem, trying to  
17 figure out why these tires are separating and what's the  
18 problem with it. And they find brassy wire.

19 And Mr. Grant says, "Yeah. I see the brassy wire,  
20 but that doesn't mean anything." That goes back to the  
21 fiction versus reality. The reality is Cooper knows brassy  
22 wire is an indication of a lack of adhesion. It's a real  
23 problem in our tires, and Mr. Grant just ignores it. You  
24 can take that down.

25 I want to talk to you about another thing that I

1 know Cooper is going to stand up and talk about. They're  
 2 going to say you have to look at the adjustment rate,  
 3 the adjustment history, for this particular Green Tire  
 4 spec -- "GTS" is what they call it -- for this exact  
 5 tire. You can't look at one that's 10 millimeters wider or  
 6 10 millimeters more narrow and has a different rim style.

7 Let's look at this one. And they presented that  
 8 evidence with Mr. Cramer, and they were bragging to  
 9 themselves -- if you remember what they said, whatever the  
 10 percentage was. But they said that's 6 in 10,000. That's  
 11 it. Only 6 out of 10,000 of these tires failed because of  
 12 tread separation, and they were bragging about that number.

13 And I got to thinking about that number, and I want  
 14 to do the math. I got to thinking about what that number  
 15 means: 6 in 10,000. If you assume every car on the road  
 16 has five tires on it, the four that's in use and a spare,  
 17 that means -- divided by 5, that means there's 2,000 cars.  
 18 So 6 in 2,000 cars are going to have a tire that fails. And  
 19 if you divide 6 into 2,000, it is 333 cars. One out of  
 20 every 333 cars equipped with that kind of tire right there  
 21 is going to have that happen to it.

22 And that's a number that they're touting, that  
 23 they're bragging? I wouldn't -- well, I don't think anybody  
 24 in their right mind would put their kids in a car if they  
 25 knew there was a 1 in 333 chance that this is going to

1 happen to their tire. It's offensive to brag about that  
 2 number. That number is terrible.

3 Put up Exhibit 282, please. Remember what Mr. Mars  
 4 said in 1999: "As a design criterion, tires should always  
 5 wear out before seps initiate or become perceptible to a  
 6 consumer." Mr. Mars says, "Always wear out." He doesn't  
 7 say, "Always wear out," and then, in parentheses, "Well,  
 8 assuming that it doesn't hit a pothole or pick up a nail."  
 9 "Always wear out." That's the design criterion we want our  
 10 companies to hold themselves to, right there. And that's  
 11 not the one Cooper is holding themselves to. They say that  
 12 1 in 333 cars equipped with their tires having a tire  
 13 failure is "good," not "acceptable."

14 "Look at us. Look how great we're doing."  
 15 You can take that down.

16 When you're thinking about these numbers too, you  
 17 have got to really put them in context, and I showed you  
 18 this with Mr. Cramer. When we looked at that document --  
 19 and we'll put it up in a second -- it shows every single  
 20 time when the dealer sent the tire in and what they coded it  
 21 as versus what Cooper coded it as.

22 And they have a real incentive. We talked about  
 23 this with Mr. Cramer. They have a real incentive to  
 24 underreport tread separations because that's the one defect  
 25 they have to send to the federal government, and they have

1 to show them exactly how many tread separations that they've  
 2 had. And if those numbers get high, it starts triggering  
 3 investigations, starts triggering things like recalls. So  
 4 there's an incentive, a built-in incentive, for Cooper to  
 5 keep those numbers artificially low. And we saw them do it.

6 Put up Exhibit 30, the "Dealer Condition Code."  
 7 "32" is the tread separation. That's what Mr. Cramer told  
 8 us. This is what the dealer codes the failure as. The "RIP  
 9 Adjustment Condition Code" is what Cooper codes it as.

10 And when you see this here on the first page:  
 11 32, tread separation, changed to something else, not a tread  
 12 separation; 32, changed to something else; 32, something  
 13 else; 32, something else.

14 Tread separations aren't particularly hard to  
 15 identify. I would think anybody who works in tires in their  
 16 life knows what this is. I did the math. You have the  
 17 whole document before you. It's 90-something pages. And I  
 18 don't want to spend the time going through each one, but you  
 19 guys will have it back there. It's Exhibit 30.

20 I did the math, and it showed that the dealer coded  
 21 it as a tread separation 372 times, is what I came up with.  
 22 And out of those it was changed 261 times. It's 70 percent.  
 23 Seventy percent of the time a dealer said that thing failed  
 24 because of tread separation, Cooper said no, something else.

25 When you're looking at those 1 in 333 cars, when

1 you're thinking about that and you think that's a big  
 2 number, that's not the real number. That's not even close  
 3 to the real number. The number is probably closer to  
 4 1 in 50 cars. You can take that down, Mary.

5 The only document that Cooper has really shown  
 6 you in this case, their own internal document, is that  
 7 chart that shows you the separations, the one that I showed  
 8 to Mr. Cramer and said this was made for this litigation.  
 9 The time frames were arbitrarily picked. They didn't show  
 10 you any of the documents that we talked about that are in  
 11 their archives, in their data bases, or whatever it may be.  
 12 They showed you the one document that they made for this  
 13 case. That document never existed until this lawsuit was  
 14 filed. They created it and they came and they touted how  
 15 good it was. That's that fictional world I'm telling you  
 16 about.

17 I want to talk about another defense and this  
 18 relates to Mr. Lang sitting right here. Cooper sued  
 19 Mr. Lang, and that's why Mr. Redenbaugh is sitting here  
 20 today. Their product failed, objectively failed. And they  
 21 sued him because they said, "You know what? Yeah, our  
 22 product failed, but he should have been able to handle that  
 23 . He should have been able to maintain his vehicle."

24 When you're thinking about that defense -- because  
 25 you're going to have to answer questions as to whether or

1 not Mr. Lang was negligent. But when you're thinking about  
2 that, remember what everybody says and what common sense  
3 tells you. If this tread separation doesn't happen, this  
4 accident doesn't occur. He just drives down the road. He  
5 was put in a position that was certainly not of his own  
6 making and certainly not one that he wanted to be in, and he  
7 did the best he could. He reacted.

8 You heard the testimony from Micky Gilbert that  
9 said this was the absolute worst situation you could be in.  
10 I'm not here to tell you and neither was Mr. Gilbert -- we  
11 are not here to tell you that every single tread separation  
12 is going to result in an accident, because it's not. There  
13 are some that people will be able to handle.

14 But Mr. Lang was put in the worst tread separation  
15 event. It's a partial separation. As we know from the  
16 literature, the Arndt study and Mr. Gilbert, that causes  
17 significant -- I think what Mr. Arndt said was  
18 "debilitating," I think, was the word he used. That causes  
19 a significant pull to the left, much more so than a full  
20 360-degree tread separation.

21 It was on the rear. Much more significant  
22 than on the front, Mr. Gilbert told you. It lost air. It  
23 was accompanied by a loss of air, and that is more  
24 significant than had it held its air. All those three  
25 things combined show that Mr. Lang was in the absolute worst

1 tread separation event.

2 He's also driving in the left-hand lane, and it  
3 goes to gravel just a few inches past the fog line, so he's  
4 driving in that. And we know the thing pulls to the left.  
5 We know -- everybody said that, "Yeah, it pulled to the  
6 left." And we see the physical evidence on the road that it  
7 pulled to the left. So what do you do? You turn right.

8 The thing that gets me is the experts agree --  
9 Mr. Liebke and Mr. Gilbert agree -- the amount of turn we're  
10 talking about is 30 degrees. That's why I showed you this  
11 with Mr. Liebke. His vehicle is pulling to the right and he  
12 does this. That's what he does, that right there. Because  
13 he's driving a completely different van than the one he  
14 drove five minutes ago and the one he's been driving the  
15 last couple of weeks.

16 He's in a van that can't handle a right-hand turn,  
17 and he doesn't know that. Nobody would know that. Nobody  
18 would know that, one, it can't handle it; and, two, even if  
19 you knew that, where the breaking point is, that's just that  
20 little 30 degrees from twelve o'clock to one o'clock, is all  
21 it takes to lose control.

22 And Cooper is arguing that that amount of steer  
23 input was negligent. And when they do it, they ignore the  
24 one study that's out there that the federal government did  
25 that is directly on point, that talks about driver's

1 reactions to tread separation. And it said it would be  
2 expected for a driver to turn right. It said 55 percent of  
3 the people who don't know the tread separation is about to  
4 occur lose control. It's more likely than not. That's not  
5 negligence. It's doing what is more likely than not.

6 THE COURT: Just a minute. Why don't you approach?  
7 (An off-the-record discussion was held at the  
8 Bench.)

9 MR. FARRAR: I'm going to finish this point up and  
10 we're going to go to lunch. But while we're talking about  
11 this point, I just want to finish it up.

12 I questioned Mr. Liebke -- and you're going to be  
13 asked this, but I want to bring this up because when you're  
14 reading this jury instruction, there's an instruction  
15 related directly to Mr. Lang. And it's talking about a  
16 "sudden emergency."

17 And it is, "A driver of a vehicle who, through no  
18 fault of his own, is placed in a sudden emergency is not  
19 chargeable with negligence if the driver exercises that  
20 degree of care which a reasonably careful person would have  
21 exercised under the same or similar circumstances."

22 And the NADS study tells us that's exactly what he  
23 did. He didn't know it was coming. Fifty-five percent of  
24 people lose control. That's what the government has told  
25 us. That absolutely falls directly in that. It certainly

1 wasn't of his own doing.

2 And Mr. Liebke -- I asked him that question. I  
3 said, "Look, you're not here to testify that he didn't act  
4 like an average driver would have?" He said, "No, I'm not."

5 And I said, "If it was conclusively established  
6 that 95 or 99 percent of people would have did the exact  
7 same thing that Mr. Lang did, would that change your  
8 opinion?" What was his answer? "No. It wouldn't change my  
9 opinion."

10 The only opinion he really has is this was  
11 controllable. By who? By the guy that's been to the  
12 Bondurant School of Driving multiple times, who's a  
13 test-driving engineer for Ford and for Goodyear, who is a  
14 race car driver? What does that tell us?

15 That's the question I asked about Michael Jordan.  
16 He can dunk a basketball, and he does it and he makes it  
17 look easy. That doesn't mean I can do it. That doesn't  
18 mean the average person can do it. Just because Mr. Liebke  
19 made it look easy, doesn't mean that anybody else could do  
20 it.

21 The last thing I want to say on this point is what  
22 Cooper -- again, this fictional world that they brought you  
23 and compare that to reality. And if you will put up  
24 Exhibit 483, this is the recall notice. Where I'm looking  
25 at is right here. When they were telling their consumers

1 about a recall, they said a consequence is: "Loss of air  
 2 might result in loss of steering control with vehicle crash  
 3 the potential occurrence."  
 4 That's what they're telling their consumers  
 5 whenever they have problems with their tires, that if it  
 6 fails, you may have a potential crash. And remember what  
 7 Dick Stephens said. You can take that down now. Dick  
 8 Stephens, the head guy over there -- right below the CEO --  
 9 he testified point-blank if you have a loss of air  
 10 accompanied with the tread separation, it would be difficult  
 11 or impossible for the average driver to lose control -- or  
 12 to keep control.  
 13 And that's exactly why that's the fiction. You  
 14 bring in experts to testify exactly the opposite of what the  
 15 documents say and exactly the opposite of what the company  
 16 believes.  
 17 Last point: Dewey Beach, another fella that was on  
 18 video. You may recall he testified to the exact same thing,  
 19 that tread separations cause catastrophic accidents.  
 20 And, your Honor, I think this would be a good  
 21 point.  
 22 THE COURT: We're going to take a shorter lunch.  
 23 We're going to take an hour because we're going to make sure  
 24 we get this case submitted to you today. You still can't  
 25 talk to each other or anybody else until this case is

1 finally submitted to you and you reach a verdict.  
 2 So have a nice lunch. We will see you back in  
 3 about an hour, and right now it's 12:37 by my clock.  
 4 (A recess was taken at 12:37 p.m.)  
 5 (Trial was reconvened at 1:43 p.m.)  
 6 THE COURT: Mr. Farrar, you may continue.  
 7 MR. FARRAR: When we left we were talking about the  
 8 fact that Cooper has their claim against Mr. Lang. We  
 9 talked a little bit about the ability to handle this vehicle  
 10 because they said, "Look, this thing separated in this  
 11 manner, but he should have been able to handle that and  
 12 shouldn't have had an accident."  
 13 Along those lines, one of the other jury  
 14 instructions you get -- I told you about the sudden  
 15 emergency, but there's also a doctrine called "legal excuse"  
 16 because there's a jury instruction that basically says it's  
 17 illegal to not be in control of your vehicle or something  
 18 along those lines.  
 19 But Jury Instruction No. 22 is the common sense, I  
 20 guess, response to that, and it's "legal excuse." And it's  
 21 basically an absolute defense, if you will, to the fact that  
 22 he wasn't -- the allegation that he shouldn't have lost  
 23 control. He says -- and it's Mr. Lang's burden of proof.  
 24 But if he proves that his failure to obey the law -- and  
 25 that means controlling his vehicle. He has a legal excuse

1 for the failure to obey the law when a driver is confronted  
 2 with a sudden emergency not of his own making.  
 3 And if you think this was a sudden emergency, as  
 4 really all of the experts have testified to, and if you  
 5 think it was not of Mr. Lang's making -- because, certainly,  
 6 he didn't cause this tire to fail like that -- then he has a  
 7 legal excuse, which is a bar, which means you can't find him  
 8 negligent for failure to maintain control of the car after  
 9 the tread separation. And that's jury Instruction No. 22,  
 10 which I think is an important one for Mr. Lang.  
 11 But Cooper is also going to tell you that they  
 12 think he was speeding, and they said that in opening.  
 13 That's another time and yet another example when Cooper is  
 14 going to argue directly opposite of what their own people  
 15 say. Because they brought in an accident reconstructionist  
 16 expert named Mr. Rucoba who testified originally that speed  
 17 wasn't an issue. He put the speed at the initial evidence  
 18 at a rate of 63 to 70 miles per hour. The speed limit is  
 19 65. So he has Mr. Lang going maybe a little bit above the  
 20 speed limit and maybe a little bit below the speed limit.  
 21 Instruction No. 19. I want to talk to you about  
 22 this one, which can be a little confusing, it says: "At the  
 23 time and place, and with the motor vehicle involved in this  
 24 case any speed over 65 miles per hour is unlawful," and, "A  
 25 violation of this law is negligence."

1 What you have to remember is when it's saying that,  
 2 you still have to find that speed. So if you believe he was  
 3 going 66 or 68, which is technically over the speed limit,  
 4 that still has to cause this accident. It still has to be a  
 5 factor in why this accident happened, and you have to  
 6 remember what Mr. Rucoba said originally in his original  
 7 testimony: Speed is not a factor. And think about what  
 8 Mr. Liebke testified to. He said, "Speed is not a factor.  
 9 And, in fact, this is just typical of U.S. traffic highway  
 10 patterns."  
 11 Officer Wacha testified here. He testified that  
 12 him and his supervisor, an officer named Lampe, looked at  
 13 the physical evidence out at the scene and just took a  
 14 glance at it and said, "Well, speed is not an issue here.  
 15 No reason to do any speed calculations. We can just look at  
 16 this evidence," because physics doesn't lie and physical  
 17 evidence doesn't have a bad memory.  
 18 The numbers just can't lie. I mean, you know what  
 19 the factors -- what the numbers you crunched into this  
 20 formula are, and you just work backwards and you get to the  
 21 speed at the first piece of physical evidence. And that's  
 22 what everybody has done in this case, and they all come up  
 23 with basically the same number.  
 24 But what Cooper is going to do is they're going  
 25 to say, "Don't listen to our expert," and, "Don't listen to

1 the plaintiffs' expert. Don't listen to the officers who  
2 they called. Listen to a guy named Mr. Reese Strickland,"  
3 who is the first witness they called, the eyewitness.  
4 "Listen to what Mr. Strickland said," because he saw that  
5 car going fast. Then he lost sight of them for -- I never  
6 got an exact number, but it sounded like just a matter of  
7 seconds.

8 But he saw them again and they were in that  
9 accident. And he said he was going in the low 70s, and they  
10 drove by him and he thought they were going about 85 miles  
11 an hour. Think about the one thing that he was so adamant  
12 about and he was questioned about over and over and over:  
13 the windows.

14 He said unquestionably it was a hot day. The  
15 windows were down. And they kept going back to that point.  
16 The windows were down. He said this van passed him in the  
17 left-hand lane; that he was in the right-hand lane and the  
18 van passed him on the left. So he's got to be looking at  
19 the passenger-side windows. That's what he is looking at.

20 And I proved to you there's three sets of windows  
21 on the passenger side. The middle window and the back  
22 window, they don't roll down. They're fixtures. Not that  
23 they're broken; they're fixtures. They can't possibly roll  
24 down. So the only window that could have possibly been down  
25 is the front window where Achol Mawien was.

1 And Mr. Rucoba -- I showed him his own photograph  
2 of the exam -- his examination. And that's in evidence.  
3 It's Plaintiffs' Exhibit 622. I showed him this exhibit,  
4 and I said, "Mr. Rucoba, this is" -- you know, we obviously  
5 figured out this is the passenger-side front windshield.  
6 This is kind of the front of the car. This is the side  
7 mirror, and you can see this glass right up through here.  
8 We know all the glass broke out in the accident.

9 And I said, "Mr. Rucoba, isn't this right here,  
10 isn't that glass? Doesn't that prove to you definitively  
11 that that window was up during this accident?" What was his  
12 answer? He said, "Yeah. Yeah, that window was up."

13 So the one eyewitness who testified contrary to the  
14 physical evidence, contrary to Cooper's own experts, the one  
15 thing he remembers most vividly, the windows being down, we  
16 know is absolutely wrong. It's absolutely wrong.

17 So you have to ask yourselves: How do you explain  
18 Mr. Strickland's testimony? Because he says he saw a van.  
19 He lost sight of it for some amount of time and then he sees  
20 it again and he knows that van was going fast. Well, the  
21 truth is I got two ideas. He testified he met with a fella  
22 named Gordon Gratias, Cooper's private investigator. He  
23 met with Cooper's people multiple times. This guy's  
24 supposed to --

25 MR. SAPP: Objection. Excuse me.

1 THE COURT: Can we approach?  
2 (An off-the-record discussion was held at the  
3 Bench.)

4 MR. FARRAR: When I said that he met with Cooper's  
5 "people," I meant Gordon Gratias, their private  
6 investigator. That's who I'm talking about. So the  
7 question -- when you're thinking about Mr. Strickland's  
8 testimony, was there a seed planted there or is it that he  
9 just made a mistake? Remember Officer Guill, the first  
10 officer that testified, the kind of big guy. Because he  
11 testified when he went out to the scene there was another  
12 van of African folks on their way to the Swift meat plant in  
13 Marshalltown that was there at the scene of the accident.

14 He said it was chaotic. He couldn't -- it was hard  
15 to figure out who was in this van and who wasn't because  
16 those people were pretty hysterical. You heard from our  
17 plaintiffs that there's a lot of African immigrants that  
18 work out at the plant, the Swift plant in Marshalltown. And  
19 it stands to reason that a lot of them carpool just as our  
20 folks did.

21 So is it that Mr. Strickland just saw the wrong  
22 car, the wrong van? Did he see the van that was there at  
23 the scene also or did he see a different van, just a  
24 completely different van, that we don't know who it is?

25 The one thing we absolutely do know is he did not

1 see our van because he was so adamant that the windows were  
2 down, and that's something that sticks in your mind: those  
3 windows were down. And we have proved to you through the  
4 physical evidence, the physical evidence, that that's not  
5 true. The windows had to be up. The truth is, you know, I  
6 challenge Cooper to come up and tell you how this can be.  
7 How did he see these windows down and be so adamant about it  
8 when the physical evidence and their own experts say the  
9 windows are up?

10 And the fact of the matter is there's basically  
11 five experts who touched on the issue of speed in this case,  
12 and all of them say it's not a factor. You have  
13 Mr. Andrews, who we brought. You have Mr. Rucoba, who  
14 they brought; Mr. Liebbe, who they brought; Officer Wacha;  
15 and, though he didn't testify -- Officer Wacha talked about  
16 him -- Officer Lampe, who was Officer Wacha's supervisor and  
17 an accident reconstructionist.

18 Five guys look at the physical evidence and they  
19 put it back together, and they say speed is not an issue.  
20 That trumps one guy who we absolutely know is objectively  
21 wrong about one of the major things that he thought he saw.

22 Cooper is also suing Achol Mawien in this case, and  
23 one of their claims against her is, well, she didn't  
24 properly maintain it or she allowed the vehicle to be on the  
25 road in an unsafe condition. And they're talking about the



1 tire. You heard a lot of evidence, you heard a lot of talk  
2 about how many miles this van had on it, about -- well,  
3 there's some period of time where it went to an auction and  
4 a guy brought it back, and we're not real sure who owned it  
5 and the number of owners it had.

6 But at the end of the day, everybody agrees that  
7 the van was in good, sound mechanical condition. So who  
8 cares how many owners it had? Who cares if it had 150,000  
9 miles on it? There's nothing wrong with that. But they're  
10 going to say, you know, she allowed this tire to be on the  
11 road.

12 When they're making that argument, you got to  
13 remember back to what Mr. Grant testified to because he said  
14 there's nothing on this tire that you would have seen that  
15 would have caused you to take it out of service. The tread  
16 depth is great. We know that. The wear pattern, perfect.  
17 Everybody's told you that.

18 Mr. Grant talks about this nail. You will remember  
19 when he was being questioned on direct examination he was  
20 asked about the nail. And it took him a good 45 seconds to  
21 find it, which it may for me. He's talking about this nail,  
22 but what he said was this nail -- he said it was actually  
23 probably further down in that little slit.

24 So Mr. Grant, the tire expert, who has just this  
25 little piece of tread, knows the nail's in it and is asked

1 responsibility for the tire doing this?

2 You guys don't have this right now, but you will  
3 when you go back to deliberate. You're going to have what's  
4 called the "Verdict Form," the "Return of Verdict Form."  
5 This is the actual questions that you answer, and you write  
6 your answers in this.

7 I want to go through some of the liability  
8 questions with you. And the definition of "jury  
9 instructions" are basically to help guide you as to what  
10 these questions are talking about. I do want to go through  
11 them with you a little bit, at least on the liability issues  
12 right now.

13 The first question you're going to be asked is:  
14 "Was Defendant Cooper Tire at fault?"

15 And what that question is saying is: Was this tire  
16 either designed defectively or was it manufactured  
17 defectively? That's what that question is asking you.

18 When you think about it, remember back to what I  
19 said at the beginning of this; and that is, nobody who had  
20 any hand in this tire sat in that chair and defended this  
21 tire. In fact, if you remember back to openings, Cooper  
22 told you that Rita Feczec is going to testify. They made a  
23 point of saying, "You know, the plaintiffs are going to call  
24 her, but she's our witness. And she is going to set the  
25 record straight on the skim stock," this 525. "She's going

1 to find it. It takes him 30 to 45 seconds to find it. It  
2 is not reasonable to assume that Achol or her husband, Chan,  
3 who testified in the case, would have seen this and found  
4 it. In fact, this was -- as you heard in the testimony,  
5 this was on what I call the "inboard" side. In other words,  
6 the nail is here and the car is over here.

7 Mr. Grant testified that there may have been some  
8 accelerated wear or a little wear spot that was a little  
9 faster than the other wear. But he also testified it would  
10 have been -- it is very, very minimal; nothing that you  
11 would pick up, nothing that you would see.

12 You heard from Chan, who drives a taxi here in  
13 Des Moines. And in doing that job, he has to do an  
14 inspection of his cars. Every single day he has to look at  
15 his tires, he has to check his oil. That's what Yellow Cab  
16 requires of him. And he said, "I carry that over. And I  
17 looked at my tires on my wife's car because I know all these  
18 folks are going to Marshalltown every day, so I look at  
19 them. Maybe not every day but I look at them often enough,  
20 and I do an inspection and everything's fine."

21 So you got to remember back to one thing that  
22 Mr. Grant says about this: There's nothing on this tire  
23 that would have caused somebody to pull it out of service  
24 the day of the accident. And if that's true, how in the  
25 world does Miss Mawien -- how does Achol have any

1 to come out and talk about it," but that didn't happen.

2 In fact, after we asked questions of Miss Feczec  
3 and it was Cooper's time to clear all this up on this 525,  
4 they didn't have any questions of her. They wanted to get  
5 her off the stand and out of town.

6 When you look at Question No. 1, "Was Defendant  
7 Cooper Tire at fault?" the answer is, "Absolutely, yes,  
8 they're at fault."

9 And, Mary, if you would, just kind of write in  
10 the -- And the next question --

11 MR. MILLER: Your Honor, I am going to object to  
12 this.

13 THE COURT: Approach, Counsel.  
14 (An off-the-record discussion was held at the  
15 Bench.)

16 THE COURT: You may continue.

17 MR. FARRAR: And the next question you're going to  
18 be asked: "Was this fault," was this manufacturing or  
19 design defect, "a proximate cause of the accident and damage  
20 to any of the plaintiffs?"

21 MR. MILLER: Your Honor, I'm sorry. May we  
22 approach?

23 (An off-the-record discussion was held at the  
24 Bench.)

25 THE COURT: The objection is overruled. You may

1 continue.  
2 MR. FARRAR: "Proximate cause." In your jury  
3 instructions, you're going to have a definition, but I don't  
4 want to go through each definition. But basically: Did  
5 this cause the accident? And that's an easy question.  
6 Absolutely, it caused the accident. Everybody testified  
7 that but for this tire failure, the accident doesn't happen.  
8 So the answer to that is, obviously, "Yes."

9 The next question: "Did the tire designed and  
10 manufactured by Defendant Cooper Tire comply with the  
11 state-of-the-art at the time it was designed and  
12 manufactured?"

13 And this is a defense. Cooper wants to say that,  
14 "Our tire was state-of-the-art; therefore, we can't be  
15 liable." And you got to remember a few things. One, they  
16 are a fast follower, an admitted fast follower, in the  
17 marketplace. And when they say that, what they say is, "We  
18 don't make original equipment tires. Those are made by  
19 other people and are put on cars, and we have to basically  
20 take those tires and figure out what needs to be made and  
21 how to do it, and we make the replacement tires."

22 If you're doing that, if you're making the  
23 replacement tires, by the very definition, you're not  
24 state-of-the-art. You're the follower. Whether it be fast,  
25 slow or indifferent, you're the follower and a follower is

1 not "state of the art."

2 And I don't want to rehash all the different issues  
3 with when the skim stock change was made versus when they  
4 knew it, when that change was supposed to be made and  
5 wasn't; when they knew belt edge gum strips were supposed to  
6 be put in the tires and they never were.

7 But that's that question, and the answer to that  
8 is, "Absolutely not."

9 The next question is: "Was Third-Party Defendant  
10 Alfred Lang," the driver, "at fault?"

11 And that's defined in here too. And the fault that  
12 they're talking about is should he have controlled the  
13 vehicle? We've talked about that. Was he speeding? We  
14 talked about that. And I think they have something along  
15 the lines of should he have recognized there was going to be  
16 a tire failure and pulled over? which I just don't think  
17 there's any evidence of whatsoever.

18 The answer to that is, "Absolutely, he's not at  
19 fault." Even if you think he was at fault, he's got both  
20 the legal excuse to do what he did as well as the "sudden  
21 emergency" instruction that you'll read.

22 If you could scoot up, I think it's the next page.  
23 If you think that Alfred Lang was at fault, you still have  
24 to answer the next question and that is: Was anything he  
25 did a proximate cause of the accident? And I think this

1 kind of goes more towards if you think the speed was an  
2 issue; if you think, well, hey, he was going 66 or 68 or the  
3 high end, 73, you still have to ask yourself, even if that's  
4 true, was that a proximate cause of this accident?

5 What we know is the speed doesn't cause the tire to  
6 fail. Nobody's made that claim. Speed doesn't cause it to  
7 fail. And everybody kind of agreed. The experts at least  
8 said, you know, speed wasn't a factor. So if speed is not a  
9 factor, the answer to this -- and you only answer this if  
10 you answered yes to the question before, but the answer to  
11 this is, "No," nothing he did was a proximate cause of the  
12 accident.

13 The next question, Question 6: "Was Plaintiff  
14 Achol Mawien at fault?" And the only allegation really  
15 against her is the fact that -- a theory that she failed to  
16 properly inspect the tires. We talked about that, and I  
17 don't want to rehash it. And the answer to that is, "No."

18 There's nothing about these tires, even if she  
19 would have looked at them carefully -- and her husband said  
20 that he did. But there's nothing about the tires that would  
21 have told you to take them out of service.

22 The next question I don't think you get to, but if  
23 you do: Was that failure a proximate cause of the accident?  
24 And remember, again, what Grant says because Mr. Grant  
25 testified that the nail in the tire and the underinflation

1 didn't cause it to fail. Those two things didn't cause it  
2 to fail and but for the impact, this tire runs out its life.  
3 It gets down to 2/32 or less tread and it runs out its life.

4 So if you think Miss Achol should have found this  
5 nail, we still have to come back to the answer of, well,  
6 that's not what Mr. Grant said caused it to fail. So  
7 finding the nail or not finding the nail has nothing to do  
8 with the proximate cause of this accident. So the answer  
9 has got to be, "No."

10 You are going to be asked the percentage of fault,  
11 and you all will be asked this question. This is a question  
12 you get to if you found either Mr. Lang was at fault and  
13 that was a proximate cause or Achol was at fault and that  
14 was a proximate cause and that you found Cooper was at fault  
15 and that was a proximate cause. If you found all three,  
16 then you attribute liability.

17 I think there's only one answer. I mean, look,  
18 this caused the accident, plain and simple. The answer here  
19 is, "100 percent Defendant Cooper," which gives you the  
20 other numbers, "zero" and "zero."

21 Is that the last question on this? I think it is.

22 I want to talk to you about damages in the case.  
23 If you would, Mary, actually, let's put up Exhibit 502.  
24 This is an exhibit that hasn't been discussed with any  
25 witnesses. It's in evidence. It's Exhibit 502, and it's

1 something you get to look at back in the jury room.  
2 It says, "The attached document shows a potential  
3 method to assign a cost to our adjustment return." It's  
4 this paragraph starting right here that I want to talk  
5 about. It says, "I know this calculation is not perfect and  
6 does not include liability costs, lawsuits, or lost  
7 customers, but it is a piece of information to help select  
8 and justify specs for cost increases."

9 What Cooper is telling you right here is we want  
10 to look at the cost of lawsuits; not to figure out how our  
11 tires are performing, but to justify specs for cost  
12 increases. They're telling you that if you don't fully  
13 compensate these plaintiffs for their loss, that's going  
14 to -- that's not going to justify another cost increase on  
15 their tires.

16 MR. MILLER: Your Honor, I am going to object.  
17 That grossly misstating.

18 THE COURT: Overruled.

19 MR. FARRAR: In evidence is another document that  
20 you guys haven't seen yet, and it's a -- you can take that  
21 down, Mary. It's basically a listing of really the  
22 agreed-upon, if you will, medical bills, past medical bills,  
23 for all the folks. To make it easy, instead of putting all  
24 the bills in and having you guys sift through them, we just  
25 stapled it. It's Exhibit 621. It has each person's name on

1 the top, each client's -- each plaintiff's name. And then  
2 it has "Amount Billed" and "Amount Paid."

3 We are asking you to compensate these plaintiffs  
4 for this -- the smaller amount is the easy way to remember  
5 it. The amount, the amount paid. For some folks it's the  
6 same amount; for others it's different.

7 If you would, let's put up the verdict form. For  
8 each one of the plaintiffs, there's going to be different  
9 elements of damages that you fill in. And, don't worry, I'm  
10 not going to go through each one of them, but each one of  
11 them has "past medical expenses." I think it's probably the  
12 first one for each one of the plaintiffs. Those numbers are  
13 easy. You just look at this Exhibit 621 and it's the  
14 "Amount Paid," and you just put that number in and that's  
15 the number. You can take that down.

16 There's a lot of other elements of damages in the  
17 case, and we talked about this during voir dire, that  
18 there's elements that are much more difficult to quantify,  
19 but I always call it a "human" loss: the pain and  
20 suffering, the loss of a wife, the loss of a mother, the  
21 loss of the use of your body.

22 And those numbers -- you can't put a calculator on  
23 it and come up with math, but those are the numbers that  
24 you're going to have to come back with, that you're going to  
25 have to deliberate to come to an agreement on.

1 And in this car, as you know, there's six --  
2 there's basically six folks and their family that we  
3 represent, and they're really split half and half.  
4 Everybody suffered life-changing, significant injuries but  
5 to varying degrees. There's three folks that were  
6 extraordinarily lucky. They had significant injuries. But  
7 they're mostly orthopaedic, and they're mostly going to be  
8 able to get over this.

9 And I want to talk to you about those guys first,  
10 and we'll start with Achol Mawien. This isn't the order  
11 it's going to be on the verdict sheet but if we can put it  
12 up. In fact, Mary, don't even worry about it. We can do it  
13 a different way.

14 Achol, if you remember, didn't testify. She speaks  
15 Dinka. Her English isn't any good and she couldn't testify,  
16 so her husband came in and talked for her. You know,  
17 actually, before I do that, there's a point I wanted to  
18 make, something I missed that Cooper is going to come in and  
19 talk about, and I guarantee it, and it's that medical record  
20 from Achol. So while we're talking about Achol, let's talk  
21 about Achol.

22 And they brought in the nurse, Nurse Ward, who  
23 testified about she couldn't understand what Achol was  
24 saying. They had the translator with the husband, Chan.  
25 The medical records said something along the lines of the

1 driver reached down to pick something up and lost control.

2 When you're thinking about that defense and they're  
3 arguing that defense, I think there's a few things you have  
4 to keep in mind. One, as Chan told you and Miss Ward told  
5 you, at that point nobody knew that there was a tire  
6 failure. Nobody had any idea that this happened. Nobody  
7 knew why that accident happened at that point. So were they  
8 just brainstorming as to what happened? I'm not sure. I  
9 don't know.

10 Miss Ward told you also that, "I didn't expect this  
11 to be a true translation." I mean, we had clients on the  
12 stand with the translator, and you saw how difficult that is  
13 with the certified translator. It was very difficult. So  
14 we don't really know what was said and in whose words were  
15 that. We tried to bring you Chan because Chan is the guy  
16 who actually said what the nurse wrote down, so we brought  
17 you that person. And he told you, "I don't remember saying  
18 that."

19 But the other thing and the more practical aspect  
20 of this is what we know happened is this: The tire failure  
21 we absolutely know happened. So what are the odds, do you  
22 think, of that happening at the exact same time somebody is  
23 reaching down to pick up a piece of paper? I mean, we are  
24 really talking about Power Ball odds at that point, and it  
25 just doesn't make any sense.

1 The last thing is actually Mr. Rucoba, if you  
2 remember his testimony. And we're talking about Mr. Lang's  
3 reaction to this tread separation when this vehicle started  
4 moving to the left. And Mr. Rucoba is the first one to  
5 tell you, yeah, he reacted under a second. And that's  
6 fast.

7 And Mr. Liebbe came on and he confirmed  
8 that a second and a half is a good rule of thumb for  
9 perception/reaction time. So he's way faster than the  
10 rule-of-thumb perception/reaction time. That's not  
11 consistent with being distracted for picking up a piece of  
12 paper.

13 I diverged. I want to get back to Achol. What we  
14 know about Achol from her husband is she fractured a  
15 vertebra in her neck. She's in the hospital overnight. She  
16 still has pains. It's gotten better. She had a neck brace  
17 on for a few weeks, and it's gotten better. She's not  
18 working now, but it has nothing to do with this accident.  
19 She just had a new baby and she's staying at home, and Chan  
20 is doing the work and she's watching the little one.

21 So you have these elements of damages for her for  
22 things like future -- I'm sorry, past loss of use of body,  
23 past pain and suffering, future pain and suffering, and the  
24 medical expenses. The medical expenses are easy. For Achol  
25 they're about \$4,700, and you'll have these figures, so

1 that's easy.

2 I am not going to stand here and tell you what to  
3 award on these non -- what I call "noneconomic," these human  
4 losses: the pain and suffering, the loss of use of body for  
5 some of the other folks. I'm not going to be that  
6 presumptuous because that's your job. That's your job to  
7 deliberate and figure that out.

8 But the one thing I'll say is those losses are more  
9 than the cost to treat. In other words, everybody would  
10 agree that you would pay more to not have an injury than to  
11 treat that injury. So if Achol -- if her amount of the  
12 amount of money paid to treat those injuries was \$4,700,  
13 well, the pain and suffering that are associated with that  
14 and the fact she still has pain two and a half years  
15 later -- but it's getting a lot better -- well, that's a  
16 real loss. That's much more significant, much more  
17 valuable, than the cost to just treat that injury.

18 Josephine Cole, the second lady from the left with  
19 the green shirt on, was injured. She's still in the group  
20 that I kind of put in the first. She had significant  
21 injuries, there's no question. She has a metal rod inserted  
22 in her leg, and she told you she has a scar all the way  
23 across here. She had surgery on her arm. She spent -- I  
24 don't know the exact figure -- maybe around a week in the  
25 hospital trying to recover from this, and that causes her a

1 lot of pain.

2 And let's put up -- can we put up Josephine's? We  
3 know what her past medical expenses are, about \$46,000. The  
4 amount billed was about 139,000. And I think the amount  
5 billed is just a good indicator for you guys to understand  
6 what the value of the medical expenses were. It's not what  
7 we're asking for. No question. I mean, she had a fractured  
8 pelvis. And you heard her surgeons talk about how it was  
9 much, much worse than grandma falling down and breaking a  
10 hip. This was a real significant hip injury and broken arm  
11 that required surgery, metal pins and rods in place, scar  
12 all the way across her stomach.

13 Again, I am not going to tell you an amount for the  
14 past pain and suffering and future pain and suffering and  
15 the past and future loss of body. That's something for you  
16 guys to decide. But, again, it's more significant -- it's  
17 more significant than the amount billed. It's certainly  
18 more significant than the amount paid on the medical  
19 expenses.

20 Sekou Jai is the fella on the very end. Sekou was  
21 also one of the luckier ones. His amount of past medical  
22 expenses paid was a little over 20,000 bucks. And if you  
23 remember what Sekou -- Sekou was a leader in Liberia. He  
24 was kind of a head in the political -- not a "head," a  
25 "leader." But he was very, very involved in politics for a

1 guy named Samuel Doe, who was murdered by Charles Taylor.  
2 We probably learned more about Liberian history than any  
3 other tire case ever.

4 What he testified to is he -- you know, he was  
5 being persecuted personally. In fact, his wife was  
6 murdered, his dad was murdered, his uncle was murdered. And  
7 he fled and he got here. And this was the start of a new  
8 life for Sekou. All that past issues were in the past, and  
9 he finally got to start.

10 And you heard the testimony from one of his  
11 doctors. He said he had a lot of stress, no question about  
12 it. He was stressed about how he was going to meet his new  
13 obligations in this world. He had a stressful situation for  
14 anybody, but he was making it, and he was stressed.

15 And after this accident, what happened? He lost  
16 40 pounds, I think it was, his doctor said. And he got  
17 depressed and the depression was severe and is still severe.  
18 And the fact that his friend died and the other folks who  
19 were injured and the fact that he finally escaped this  
20 persecution that he lived his entire life through in Liberia  
21 and made it here to the promised land and then that was  
22 taken away from him because of this tire has severely  
23 affected him. And he's got depression.

24 So he's got the orthopedic injury. He told you  
25 about his shoulders hurting, his back hurting, his knee is

1 hurting. But the thing with Sekou is the depression. The  
2 thing with Sekou is the depression and what this has done to  
3 him emotionally. Especially for Sekou, when you talk about  
4 the pain and suffering, that number is much more significant  
5 than the medical.

6 I want to talk about the other folks, and I'm going  
7 to start with Jailah Nayou. Jailah is the second from the  
8 right sitting next to Achol. Jailah, we know what his  
9 medical expenses were. He spent, I think, two weeks in the  
10 hospital. The amount paid was about 28,000 and the amount  
11 billed about \$162,000. So the past medical expenses, again,  
12 that's an easy number. That's the 78,000.

13 Remember his injuries. He has the broken femur --  
14 he's got the rod in it also -- three broken ribs, lacerated  
15 spleen, broken collarbone; significant, significant  
16 orthopedic injuries. He walks with a cane. He didn't right  
17 after the accident. There was some time of recovery. And  
18 then, as would be expected, as the surgeon said, he's going  
19 to develop some arthritis in the knee and that's why he's  
20 walking with a cane.

21 He's also got a brain injury, and there's really  
22 no question that that exists. He was diagnosed with  
23 everybody with a traumatic brain injury. No question about  
24 it. The only issue is the severity of it. The one thing  
25 Doctor Randolph said I thought was interesting is he said

1 every brain injury is permanent.

2 Now, he testified that, "I think Mr. Nayou can go  
3 back to work." But you got to really question his opinions  
4 in this case. Nobody -- well, it's much like Mr. Grant,  
5 frankly. You don't show Mr. Grant any of the documents,  
6 so you get the "plausible deniability." You don't let  
7 Doctor Randolph actually see Jailah Nayou. You just let him  
8 look at some selected medical records and then criticize the  
9 doctor that actually did the testing.

10 And the reason, he said, "Well, I couldn't see him  
11 because we have a language barrier," which flies absolutely  
12 in the face of the document that Fred showed him that says  
13 you have to be able to test regardless of language barriers,  
14 cultural background, education, all that stuff.

15 But, more fundamentally, you guys got to see  
16 Jailah on the stand. He understands English just fine.  
17 Doctor Randolph doesn't know that because he's never seen  
18 the guy. He has a thick accent, and he is extraordinarily  
19 difficult to understand, that's true. I've spent enough  
20 time with him where I can understand him, but it's  
21 difficult. But he comprehends English just fine.

22 And the testing that Doctor Tranel did, from the  
23 University of Iowa, it's all validated testing. It shows  
24 that as the tests got progressively harder, Jailah did  
25 progressively worse. That's the validation method. A lot

1 of the testing is pure dexterity. In other words, does your  
2 right arm work as well as your left arm? If not, that  
3 significant evidence of a brain injury. That's not a matter  
4 of not understanding what's going on. It's a matter of just  
5 using your hands.

6 Doctor Randolph never saw him, and he's going to  
7 testify that this brain injury was mild. And one of the  
8 things that you have to think about is: What does Randolph  
9 use to formulate that opinion, and what does he just utterly  
10 completely ignore?

11 To get to a moderate traumatic brain injury, one of  
12 the things you heard in the testimony is that it's not  
13 necessary, but one of the real factors you look at is loss  
14 of consciousness. And Doctor Randolph absolutely testified  
15 at his deposition -- and we showed it to you -- that he  
16 thought Mr. Nayou lost consciousness. He came in here and  
17 he realized it's a moving target: "I can't support my  
18 opinions if I say that, so I'll change my testimony and I'll  
19 say I don't think he lost consciousness."

20 And then what Doctor Randolph does is he says,  
21 "Look, you got to look at this Glasgow Coma score. And I  
22 looked at the one from the nurse whenever he got to the  
23 hospital, and it's a 14." And when he does that, he utterly  
24 and completely ignores what the EMS personnel said. They  
25 had his Glasgow Coma score as 12, and he just tosses it

1 aside.

2 And a treating physician -- think about this from a  
3 treating physician standpoint. If Doctor Randolph is  
4 actually treating Jailah, as opposed to just testifying in  
5 this case, do you think a treating physician would take the  
6 Glasgow Coma score in the ambulance and say, "I'm not going  
7 to think about that. Toss that to the side"? No. You look  
8 at everything. You look at the patient, which he didn't get  
9 a chance to do; and you look at all the evidence, not just  
10 the selected evidence.

11 For Jailah, again, the past pain and suffering, the  
12 future pain and suffering, the loss of use of the body: I  
13 am not going to talk to you -- I am not going to put those  
14 numbers out for you because those are numbers you have to  
15 deal with. But you heard his wife testify about his loss of  
16 memory.

17 The one thing I think his wife said that was the  
18 most powerful was he's not the same with the kids. She  
19 didn't have the vocabulary. And maybe if she spoke  
20 perfectly fluent English, she wouldn't be able to put that  
21 in words. But what she said is, "He's not the same with the  
22 kids."

23 On the economics, the past lost income, that was  
24 Doctor Sherman who testified and put those numbers. But if  
25 you remember, Doctor Tranel said Jailah can't work anymore,

1 not in the capacity that he worked. He's got limitations,  
 2 dexterity issues, from this traumatic brain injury. He's  
 3 not going to be able to work.  
 4 So the past lost income, that's an easy number.  
 5 It's 39,000. I know you guys don't have notes, so I am not  
 6 going to spout these numbers exactly because nobody can  
 7 write them down and nobody's going to remember them. The  
 8 future loss of income, that was Doctor Sherman also. And he  
 9 gave you a range, just depending on the discount rate, but  
 10 it was around 550 to 650 thousand dollars.  
 11 And with Jailah, his kids have a claim and his wife  
 12 has a claim. There's a long definition of this "loss of  
 13 spousal consortium" and "loss of parental consortium." And  
 14 again, that's an element of damages you guys have to figure  
 15 out and figure out what it's worth. But he's got four young  
 16 kids, and his wife is saying he's not the same with the kids  
 17 anymore. He certainly can't do the same things he used to  
 18 do with the kids. He doesn't have the physical ability to  
 19 do that. But mentally, the mental aspects, he's not the  
 20 same with the kids.  
 21 What is that worth to these kids? What is the  
 22 value of not having your dad the way that you've had him  
 23 your whole life? Significantly more than what it cost to  
 24 treat Mr. Nayou, 161; and the same issue for the loss of  
 25 spousal consortium.

1 I want to talk to you about Gaye Karlar. If you  
 2 could, go to the last page, I believe. Assata is his wife.  
 3 They were married in Liberia. They had children. They fled  
 4 to the United States together, not with all five of the  
 5 kids. Some of them were born here. They've been through a  
 6 lot.  
 7 And you're going to have to -- there's some  
 8 economic questions. Again, if you remember, those are  
 9 Doctor Sherman's numbers. The past loss of income is about  
 10 39,000. And you guys have these numbers written down, and  
 11 we even have -- it says, "Past loss of value of household  
 12 services." I think the form you're going to get actually  
 13 just says: "Loss of value of household services."  
 14 And you have those numbers from Doctor Sherman, but  
 15 that's not what I want to talk to you about. I want to talk  
 16 to you about the value of that loss. I want to talk to you  
 17 about it from Gaye's perspective, and I want to talk to you  
 18 about it from the kids' perspective.  
 19 The thing Gaye said, I think, was -- the one thing  
 20 that was so powerful to me was, "It should have been me. It  
 21 should have been me, for those five kids," and, "It should  
 22 have been me," because that's what that loss meant to him.  
 23 You have the unenviable task of valuing that. You're  
 24 valuing it for Gaye and you're valuing it for his five small  
 25 children.

1 The one thing I think may help is to turn it and  
 2 value it from Cooper's perspective. I showed you  
 3 Exhibit 502. We're going to talk about it again in a  
 4 second, anyway. Look at it from Cooper's perspective. When  
 5 they say, "We want to know the cost of lawsuits to justify  
 6 which tires we're going to make changes in," that's an  
 7 empowerment to make sure that they make changes.  
 8 MR. MILLER: Your Honor, I am going to object to  
 9 that. The same reason I stated before. That is a gross  
 10 misstatement of what that document says.  
 11 THE COURT: The objection is overruled. This is  
 12 argument.  
 13 MR. FARRAR: We saw the change in Exhibit 77. It  
 14 costs \$1.1 million to make the change to 525D. I can tell  
 15 you this: The value of these kids' mom and Gaye's wife is  
 16 much more than the value of that change to 525D. When  
 17 you're looking at these numbers and you're considering it,  
 18 those numbers are way bigger than the 1.1 million that it  
 19 cost to make that change, the three cents that may have kept  
 20 Gaye's wife alive.  
 21 It's your decision, but look at it from Cooper's  
 22 perspective. If they're going to evaluate the cost of  
 23 lawsuits to figure out what specs to justify changes, make  
 24 sure that you send the message to justify some changes.  
 25 I want to talk about the last plaintiff that we got

1 to see on video twice, actually, who didn't testify: Ivon  
 2 Toe.  
 3 Ivon's past medical expenses, again, you got the  
 4 numbers. I'll tell them to you. They were billed out at  
 5 about 860,000. The amount paid is about \$272,000. The  
 6 past loss of income, the future loss of income, that was  
 7 Doctor Pettingill. He really did all the number crunching  
 8 for Ivon, and this was the summary sheet that he put up.  
 9 The past loss, 55,000; the present value of the  
 10 future loss, about 645,000 or 642,000. But that's a far,  
 11 far cry from the loss Ivon Toe has had. You're going to  
 12 evaluate her past pain and suffering, her future pain and  
 13 suffering, her past loss of use of body -- pretty  
 14 significant -- future loss of use of body.  
 15 She has a complete -- as Doctor Lichtblau said,  
 16 she's 100 percent disabled, complete loss of body, so much  
 17 so that she has a ventilator -- I mean a tracheotomy. And I  
 18 made that mistake in opening and I apologize. It's a  
 19 tracheotomy to help her breathe, not a ventilator.  
 20 "Future Medical Expenses." Let's talk about that.  
 21 That's one we have a number on, and that's Doctor Lichtblau  
 22 in combination with Doctor Pettingill. The numbers  
 23 Doctor Lichtblau gave you and every single thing that he  
 24 said Ivon Toe needs is for the one thing that she wants in  
 25 life: to go home.

1 She is permanently in this condition. There's no  
2 changing that. There's nothing going to happen to fix it.  
3 She wants to go home. She wants to be with Richmond and  
4 Pauleen. She wants to live at home. She doesn't want to  
5 live in a facility that's geared towards treating the  
6 elderly and not geared towards treating a quadriplegic.

7 You heard from a guy named Mr. Cupp, who is the  
8 business manager at the Norwalk facility where she lives,  
9 where Ivon lives. And the purpose of that, the purpose --  
10 the reason he was called and he was shown the exhibit of how  
11 much they bill a month -- I don't remember what it was, four  
12 or five thousand dollars -- is to show you: Look, that's  
13 pretty cheap. Let's just keep her there. Let's keep her at  
14 the Norwalk facility. It's cheap. Sure, our penny-pinching  
15 ways may have caused this condition, but let's keep it  
16 going and let's keep her there. Never mind the fact that  
17 they can't treat a quadriplegic. They're not equipped to  
18 handle that. That's admittedly so by Nurse Strange and by  
19 Mr. Cupp.

20 Never mind the fact she's not getting the physical  
21 therapy that she desperately needs, and it's causing her  
22 arms to draw up and she's going to need surgery to fix that.  
23 Never mind the fact she's not getting occupational therapy.  
24 Never mind the fact that she has a permanent catheter, and  
25 she needs intermittent catheterization and that that causes

1 significant urinary tract infections which she gets  
2 hospitalized for.

3 Never mind the fact that she's got an elderly  
4 roommate who listens to the TV so loud she can't hear  
5 herself think. Never mind the fact that she sits in her  
6 room all day by herself. Never mind the fact she doesn't  
7 get to see her kids grow up. Never mind the fact that if  
8 Richmond has got a soccer game or Pauleen grows up and has a  
9 ballet or softball game, she can't go see that.

10 They told you she can't leave the facility when she  
11 wants to. They arrange for her if she's going to go to a  
12 doctor's appointment. They arrange that transportation.  
13 But that's it. She can't leave the facility. She's  
14 basically a prisoner there.

15 Most importantly, never mind the fact that all this  
16 woman wants to do right now is go home. That's it. She  
17 told it to you in her deposition on the video. The fella  
18 Mark who testified, he was kind of the -- he knew Ivon from  
19 years and years back, three different countries. He  
20 testified that he goes and talks to her, and all she says  
21 she wants to do is go home. Nurse Strange testified that  
22 she wants to go home, and Mr. Cupp testified that the best  
23 thing for Ivon Toe is to go home.

24 And this is what it costs, and this number is  
25 basically unchallenged. I want to show you which one we're

1 talking about because this chart is a little confusing, no  
2 question about it. But there's the three different models,  
3 if you remember. Model 3 was assuming she's going to have a  
4 normal life expectancy. Model 2 was assuming a 7 1/2  
5 percent reduction in her life expectancy. Lichtblau said  
6 5 to 10 percent reduction with optimal care. Model 1, I  
7 think, was just a ten-year reduction. It was just a number  
8 to kind of put out a different number.

9 What we want you to compensate her for is what the  
10 testimony said, and that's Model 2. So the present value of  
11 the future medical care is \$24,544,000. That's a lot,  
12 there's no question about it. And I guarantee you somebody  
13 is going to say, "Well, compare that to the Norwalk  
14 facility," and that just doesn't make sense.

15 She doesn't own anything at Norwalk. She doesn't  
16 own that Hoyer lift that you saw in the video. She doesn't  
17 own the bed. She doesn't own a van. She doesn't own a  
18 shower chair. But more fundamentally, she's not at home.  
19 Why would we imprison this woman at the Norwalk facility  
20 when we know how much it would cost to get her home? If you  
21 believe this tire was defective, you have to do the one  
22 thing that Miss Toe is asking you to do: send her home.

23 And you heard the big cost in this, 90 percent of  
24 it is the care, is the nursing care. She has to have an RN  
25 or an LPN 24 hours a day. And the folks from Norwalk said

1 that's absolutely right. She absolutely has to have people  
2 24 hours a day. No question about it.

3 The last thing I want to talk to you about --  
4 well, let's go back to this: the loss of use of body, the  
5 future loss of use of body, the pain and suffering. I don't  
6 know what those numbers are, but I do know that they're much  
7 more significant, again, than what it cost to treat her.  
8 And I'm talking about they're more significant than what it  
9 costs to send her home.

10 What is it worth to the kids? They get to see her  
11 once a week now. Richmond is nine and Pauleen is five, and  
12 their mother has basically been taken from them. They get  
13 to see her, but she can barely talk. And I don't know what  
14 that number is either. That's a number that you guys have  
15 to come up with.

16 The last thing I want to talk to you about is what  
17 we call "punitive damages," and you have a jury instruction  
18 on punitive damages. And I'm not going to read the whole  
19 thing, but it's basically a willful and wanton disregard for  
20 the rights or safety of another and caused actual damage.

21 And "willful and wanton" means basically an  
22 intentional act of an unreasonable character in disregard of  
23 a known or obvious risk that is so great as to make it  
24 highly probable that harm will follow.

25 When you're thinking about punitive damages, that's

1 not money that goes to compensate the plaintiffs, and your  
2 instruction tells you just that. It has nothing to do with  
3 compensating the plaintiffs. It has everything to do with  
4 what "punitive" sounds like, with punishing a company for  
5 wrong acts, for doing the wrong thing. It's to discourage  
6 other companies. So if -- and I don't know this, but if  
7 Goodyear or Uniroyal is doing bad things also and they see  
8 that number, it discourages that same kind of conduct.

9 Put up Exhibit 19, would you, please. Mr. Powell,  
10 when he tells you, "We have known that we needed to make a  
11 change in our skim stock for five years, and we didn't do it  
12 because of cost considerations. We didn't do it because it  
13 was \$1.1 million a year to do it," for a company -- as this  
14 exhibit will show you -- that has gross revenue of  
15 \$2.7 billion, that's willful and wanton.

16 They knew their tires were failing because of  
17 oxygen degradation because the skim stock wasn't good  
18 enough, and they absolutely knew it, and they didn't do  
19 anything about it because it cost \$1.1 million. It cost  
20 less than three cents a tire.

21 Put up Exhibit 502 one more time. When you're  
22 thinking about punitives, consider 502. When they say, "We  
23 want to look at lawsuits as a piece of information to help  
24 select and justify specs for cost increases," that's your  
25 chance to tell them this is a spec to justify the cost

1 increase. This is unacceptable.

2 You have in evidence a new document today that was  
3 introduced that shows the net worth of Cooper Tire. That's  
4 something you get to consider when thinking about what is  
5 justified for punitive damages, and their net worth -- this  
6 isn't a disputed number -- is \$464 million.

7 When you think about what punishes, what deters  
8 conduct like Cooper did in this case, think about it from a  
9 perspective of if somebody has \$464 in their pocket, how  
10 much do you have to take of that before it makes a  
11 difference? Because one dollar is not going to make a lot  
12 of difference. Ten dollars probably isn't going to make a  
13 lot of difference. Fifty dollars makes a difference, maybe.  
14 Maybe it's a hundred dollars. That may start making a real  
15 significance.

16 It's in your discretion, but you got to figure out  
17 what amount of money discourages conduct like this,  
18 discourages looking at the cost of lawsuits, the cost of  
19 Assata Karlar's life, to justify specs for cost increases.  
20 That's what you've got to look at.

21 Can you take that down? Actually, do this. Go to  
22 Exhibit 19. Go to the second page. You know, this is the  
23 March 13, 2000 memo from Powell. And actually, I want the  
24 bottom of it blown up. We're basically right at the  
25 ten-year anniversary of this; right? A couple days late.

1 The ten-year anniversary of this memo going out.

2 Ten years ago Mr. Powell said, "We've known about a  
3 skim stock change. We didn't make it for five years because  
4 of cost considerations." And the last thing he says in that  
5 first paragraph you see here is: "Our goal would be to have  
6 a replacement for 525 ready to go within a year." 2001 is  
7 what they're saying, and you heard the testimony. The 525D  
8 is still what's used in the tires.

9 I bet and I doubt a memo went out yesterday or  
10 Friday saying, "Hey, we finally got around to making this  
11 change. We haven't done it because of cost considerations,  
12 but we finally got around to it."

13 So this is your chance. This is your chance to  
14 send the memo. You can author the March 15, 2010 memo to  
15 Cooper, and you can do it on this jury verdict form where  
16 you all have a place for signatures. And you can tell  
17 Cooper. On March 15, 2010, you can tell them that this kind  
18 of conduct is unacceptable; and you can send the March 15,  
19 2010 memo and make them change their ways.

20 Thank you.

21 THE COURT: We're going to take about a ten-minute  
22 break real quick because I don't want to interrupt the next  
23 argument if I can keep from it. So we'll be in recess for  
24 ten minutes, and you all line back up and Susie will come  
25 get you, and remember the admonition.

1 (A recess was taken at 2:45 p.m.)

2 (Trial was reconvened at 2:54 p.m., and the  
3 following record was made outside the presence of the jury.)

4 THE COURT: The defendants have some motions that  
5 they wish to make or may have some motions and definitely  
6 some record that they want to make, but we're going to go  
7 ahead and complete closings and make a record later, and  
8 they are preserving their right to do that.

9 Correct, Mr. Sapp?

10 MR. SAPP: Correct, your Honor.

11 MR. MILLER: Specifically, they relate to comments  
12 that were made with respect to Exhibit 502.

13 (The jury returned to the courtroom.)

14 THE COURT: Mr. Miller, you may proceed.

15 MR. MILLER: Thank you, your Honor. Good  
16 afternoon.

17 Before I start, I think it's important for me to  
18 share with you the fact of how important it is to discharge  
19 the role that you have undertaken here in this courtroom.  
20 The opportunity to participate as a juror in the civil  
21 justice system is frequently the only opportunity that  
22 citizens really have to interact with one of the branches of  
23 our government, the judiciary.

24 And the system only works if you do your job, if  
25 you discharge your obligations as jurors. And it's an easy



1 job to say this, but your responsibility is -- as I'm sure  
2 you've found out from the many long days that we have spent  
3 in this courtroom, it is sometimes a difficult job to  
4 undertake.

5 But I have watched you and I have watched you  
6 closely, and I have seen that you have paid close attention  
7 to everything that has happened in the courtroom. And on  
8 behalf of my client, who I am very proud to represent,  
9 Cooper Tire and Rubber Company, I want to thank you for  
10 undertaking this difficult, difficult task and trying to  
11 discharge it in a way that does your obligations proper. We  
12 appreciate it.

13 This is the part of the case called "closing  
14 argument," and there certainly has been a lot of argument  
15 that's been presented so far. What I want to do with you is  
16 I want to talk to you a little bit about the evidence, about  
17 what the evidence means, about what we told you at the  
18 outset of the case we were going to show to you and what we  
19 have undertaken to show to you by the evidence we have  
20 presented here in the courtroom.

21 Before we start, I always like to tell juries,  
22 because it's the absolute truth, what you really have to do  
23 to properly discharge your responsibility is to exercise  
24 your own good common sense, your own good judgment.

25 You ultimately are the triers of fact in this

1 case -- not any of the lawyers, not any of the experts --  
2 you are the triers of fact. You are the people who apply  
3 your life's draw of experience, look at the people who come  
4 into the courtroom and assess what they say. You make the  
5 decision who is telling you the facts as they are. You make  
6 the decision whose testimony is credible. You make the  
7 decision what documents mean.

8 Now, that's really, really, really important in  
9 this case because you've been shown portions of a lot  
10 documents. You've been shown highlighted phrases from a lot  
11 of documents. You need to look at those documents. You  
12 need to be careful that you understand what is actually  
13 being said.

14 We just heard a very theatrical argument about  
15 Document Plaintiffs' Exhibit 502. And the suggestion, I  
16 guess, was advanced that this document somehow represents a  
17 calculation made by Cooper Tire and Rubber Company about  
18 costs of lawsuits. This document has nothing to do with  
19 lawsuits, zero. It has nothing to do with claims involving  
20 personal injuries, zero. The argument you heard is false.  
21 Read the document. Read the document.

22 At the start of this lawsuit, we told you we were  
23 interested in trying a case about this tire, this model of  
24 tire, this Green Tire Specification 2846. Look at all the  
25 paper we saw this morning. Look at all those documents.

1 How many of them made reference to this model tire, to this  
2 size tire? I'll tell you the answer: Zero. None of them  
3 did.

4 And we've heard a clever argument that somehow  
5 Cooper Tire is presenting a fictional world here to you. I  
6 am going to suggest to you -- and I am going to walk through  
7 it -- but what Cooper has done is presented to you the real  
8 world as to what occurred with this tire in its history and  
9 this accident that brings us into this courtroom. I want  
10 you to try to walk with me through that so that we can all  
11 understand it.

12 Let me make one other comment because I was  
13 actually offended by what I heard. We brought Rita Feczner,  
14 the lead chemist for Cooper Tire and Rubber Company, into  
15 this courtroom. She looked at you, and she testified  
16 specifically about the change from 525C to 525D. And she  
17 sat in that chair and she told you 525D did not exist in  
18 1996. It did not exist.

19 They did make an effort to take the AO from a steel  
20 truck tire, the 582, and combine it with 525C. That did not  
21 work. They didn't get good performance out of that. She  
22 sat there and told you she didn't come up with 525D until  
23 the summer of 1999 and even then it needed additional  
24 testing. That's what she said.

25 And you had an opportunity to judge her

1 credibility. Did she seem like an untrustworthy person?  
2 Did she seem like she didn't know her job? You have to  
3 assess that. But that was her testimony, which everybody is  
4 now ignoring. 525D did not come into existence until June  
5 of 1999, and even then it needed some additional testing and  
6 was finally put into place.

7 But is that a red herring in this entire case? And  
8 I'll get back to that, but you have to believe that somehow  
9 AO characteristics of this tire were wanting and somehow  
10 that's related to what happened here. That's not true. And  
11 that's not what the evidence shows, and that's not what the  
12 testimony shows. That's not what the tire shows, and I'll  
13 walk through that with you.

14 If we want to fairly and objectively evaluate the  
15 performance of this model tire, we have to look at the data  
16 that exists, so we brought that to you. Now, the first  
17 format in which we brought the data to you is showing you  
18 the tread separations that occurred for this GTS, this Green  
19 Tire Specification, out of the Texarkana plant for a period  
20 of one year before this tire was manufactured in March of  
21 2000, the week it was manufactured and the week after.

22 Now, that data -- can we show the data? That data  
23 has been made fun of by the plaintiffs' lawyers, who say,  
24 "Well, that particular cut of that information was done for  
25 litigation." Well, that's true enough but it wasn't

1 arbitrarily done. Show the next line. It wasn't  
2 arbitrarily done. It was done in a reasonable and rational  
3 way.

4 What's relevant? How were these tires being made  
5 for the prior year, the week of and the year after. Is  
6 there a trend there that suggests there's a problem? The  
7 data is the data. The data doesn't change. We can array it  
8 any way we want. But we brought that to you and we show it  
9 to you, and we show it to you because in the entire industry  
10 that data is very, very positive.

11 It doesn't suggest the existence of any kind of  
12 separation problem with this tire, which -- look, that's  
13 what this lawsuit is about. It's not about what's happening  
14 with light truck tires in 1994 or what's happening with  
15 other kinds of truck tires or other-size passenger tires at  
16 different points in time. It's what's happening with this  
17 tire, with this model tire.

18 So I brought you this data. And, again, some sport  
19 was made of the notion that .06 percent is meaningless.  
20 Well, is it? We heard Mr. Cramer testify that to give us a  
21 benchmark of comparison, there was some information that was  
22 put out by the Office of Defects Investigation of the  
23 National Highway Traffic Safety Administration to try to let  
24 tire companies know where their performance in terms of  
25 adjustment data fits in. Recall that testimony? It was

1 Next slide. We've heard the argument advanced,  
2 "Well, you cherry picked the data for adjustments." Here is  
3 another document. Here is the summary of it -- and I'll  
4 show you the document -- showing all of the eligible  
5 adjustment production from Texarkana for this GTS: '96,  
6 '97, '98, '99, 2000, 2001.

7 Show the next slide. You'll have that. Take a  
8 look at it. Understand the data. Understand what it says.  
9 They're plainly is no evidence in this case of this line of  
10 tires having been a problem at the relevant time frame with  
11 respect to lawsuits or returns for tread separations.  
12 That's the proof. That's the proof.

13 And I know it's lost. It's lost. It's lost  
14 because in this lawsuit there were literally tens of  
15 thousands of documents produced, thousands and thousands of  
16 documents produced. And what's been done with them? They  
17 have been selectively chosen. Cherry-picked phrases out of  
18 them have been pulled for time periods not relevant to this  
19 tire, not relevant to this tire.

20 This tire was made in March of 2000. We're looking  
21 at documents about separation trends in '94, '95, '96. You  
22 heard even Mr. Cottles say that before you could get any  
23 meaningful separation documents from a tire that's been  
24 manufactured, it has to be out in the field three, four,  
25 five years. So we're talking about tires in a '94 memo

1 .5 percent, not .05; .5 percent to 3.2 percent.

2 So if we take that as a benchmark and we compare  
3 this performance, it's outstanding. It's good performance.  
4 It certainly doesn't indicate there was a problem with this  
5 design of tire.

6 Next slide. Now, this is important. This is  
7 important. We're hearing this suggestion made repeatedly,  
8 repeatedly in this courtroom that somehow this model tire or  
9 the family of this model tire, which is the Lifeliner  
10 Classic II, was a terrible problem involving personal  
11 injuries. All right?

12 This is a document that was produced by the  
13 plaintiffs, introduced as part of Exhibit 33. And it's an  
14 important document to look at because it tells you all of  
15 the production of this entire family of tires, 44 different  
16 models of tires. '97, '98, '99. A total of almost six  
17 million tires.

18 And what does it have on it? Well, as you heard  
19 Mr. Cramer explain, if there's a legal action, something  
20 involving a claim greater than \$3,500, it goes to the  
21 treasurer's office. It goes here. So what do we see in  
22 '97? Zero; '98, zero; '99, two. Is that a problem? Does  
23 that suggest poor performance by the Lifeliner Classic II  
24 line of tires? I don't think it does. That's something you  
25 have to look at.

1 talking about adjustment data that were made for or five  
2 years before that tire.

3 What relevance does that have to this tire? What  
4 relevance does concerns with light truck tires or steel  
5 truck tires have to do with the performance of this tire?  
6 But where are those documents? Where are those papers that  
7 are critical of this tire's performance? They're not in  
8 this courtroom. They're not in evidence in front of you.

9 What is in evidence in front of you? Good  
10 adjustment data, no evidence of personal injury liability  
11 claims on this tire, no recall, compliance with both the  
12 applicable Federal Motor Vehicle Safety Standards as well as  
13 the more stringent Cooper Tire standards. That's the proof.  
14 That's the evidence you've been given about this tire.  
15 That's what you have to look at.

16 Look, at the beginning of this case, I said you're  
17 going to have a difficult task because you're going to have  
18 to critically look at what's presented to you. You're going  
19 to have to get under that hood and look closely at what's  
20 been shown to you. And you're going to have to recognize  
21 what's relevant, understanding what happened with this  
22 tire. And I mean this model tire as well as this specific  
23 tire, which I'll get to, in this accident. Not anything  
24 else. Don't lose sight of the ball.

25 We're in this courtroom for one reason: An

1 accident took place September 17, 2007 with this tire as  
2 being one of the tires involved. So we need to look closely  
3 at those facts. But before we do that, we also have to look  
4 at the overall facts regarding this model of tire. And I  
5 stand by what I said to you. Study those documents. All  
6 the documents related to this tire show outstanding  
7 performance, not a problem.

8 There has been a terrific amount of misdirection  
9 going on here. I told you at the start of the case that one  
10 of the most important things in the case that will really  
11 tell the story is the tire itself, the tire itself. So  
12 what do we know about the tire itself?

13 Well, we know it sustained some very serious  
14 surface damage. It's visible in the tire. It's been shown  
15 to you by everybody who's come into the courtroom to talk  
16 about the tire. What we don't know is the history of the  
17 tire. And, you know, we've had a lot of fun here with the  
18 plaintiff saying, "Well, why are you talking about the  
19 history of the vehicle? Why is that relevant."

20 Well, the tires are on the vehicle. We don't know  
21 when this tire got on the vehicle, and the point of  
22 presenting the evidence -- can we see the slide? -- is  
23 there's great chunks of information about the history of  
24 this vehicle and, more importantly, the history of use of  
25 the tire that we don't know. It's not before you. We don't

1 have the benefit of that proof.

2 Is it important? Well, we know there's surface  
3 damage here. When did it happen? How did it happen? What  
4 was done to maintain the tire? Where was it driven? Over  
5 how many miles was it driven? Who were the drivers? What  
6 was the environment? We don't know.

7 Next slide. We tried to trace as best we were able  
8 the history of the vehicle. As you can see, we initially  
9 have some information about who was the owner.

10 Next slide. But we hit a point where there's a  
11 huge gap where for almost six years we don't know what's  
12 being done with the tire. We don't know what's being done  
13 with the vehicle. We just don't have the information. Now,  
14 look, am I being unfair about that?

15 If you're asked to assess the performance of this  
16 tire that was made seven and a half years before this  
17 accident, isn't it an important factor to know what happened  
18 to it? What happened to it during those seven and a half  
19 years? What do we know about what happened to it? We're  
20 forced in this case, because of the absence of information,  
21 to look at the tire and try to work backwards and see what  
22 we can understand.

23 Let's talk about that for a second. And I know  
24 some of this gets a little bit arcane, but I'm going to try  
25 to explain it. We know that when you look at the tire now

1 there's tread around a good portion of the tire, and you can  
2 measure the amount of tread wear. We know that. And we  
3 know that everybody seems to say it's about 5.5/32.

4 We also know because when we've been told -- but we  
5 all know, anyway -- that when a tire is down to 2/32, it's  
6 down to the wear bar. It's worn out. By law it's supposed  
7 to be discarded and replaced. We also know that when this  
8 tire was new, when it was new, it had 11/32 of tread left.  
9 So if you take away the two at the end, it has 9/32 of  
10 useful treadwear. It's got 2 1/2 left. So more than  
11 60 percent of this tire's useful life has been gone. It's  
12 been used. We know that. We know that.

13 Mr. Grant explained to you that using that kind of  
14 analysis, which makes perfect common sense, you would  
15 conclude that this tire had more than 40,000 miles of wear  
16 on it. Is that significant? Well, let's think about that.  
17 Let's think about that. That's millions and millions and  
18 millions of rotations. That's a lot of performance.

19 If this tire left the manufacturing plant with a  
20 big crack in the inner liner splice -- and you heard the  
21 testimony from Mr. Grant -- it would be a failure. Lyle  
22 Campbell said the same thing. There would be a failure  
23 shortly after it was put into service, shortly after it was  
24 put into service. That didn't happen.

25 That suggestion that that existed at that point in

1 time is rebutted by the actual performance of the tire  
2 itself. Clearly a substantial performance, 40,000-plus  
3 miles of use. So there is some information on the tire  
4 itself, but there is very little information about its prior  
5 use.

6 And let me hit on another thing. Ask yourself  
7 this. Ask yourself this. If these very skillful and very  
8 aggressive plaintiffs' lawyers had found anything suggestive  
9 of there being a specific problem with this model tire,  
10 wouldn't we be seeing it up on the big screen? Wouldn't it  
11 be right in front of you? Wouldn't it be the centerpiece of  
12 the arguments that are being advanced? Where is that? It's  
13 nowhere because it doesn't exist.

14 The performance history is: No recall, compliance  
15 with Federal Motor Vehicle Safety Standards, compliance with  
16 the more stringent Cooper requirements; 40,000-plus miles of  
17 use under apparently difficult service conditions, judging  
18 from what's on the tire. That's what we know about the  
19 tire. That's what we know about the history of the tire.

20 That's not a story that suggests work performance.  
21 That's not a story that suggests problems with lawsuits.  
22 That's not a story that suggests excessive separation rates.  
23 Quite to the contrary, it's the opposite of that.

24 Here is something else to ask yourself: You're  
25 called into this courtroom. You're asked to do a very

1 difficult thing. You're asked to judge the facts, to decide  
2 what evidence is credible and what evidence isn't credible.  
3 In doing that, you have to assess the way people present  
4 themselves, how they testified. How many people came into  
5 this courtroom that testified are venal? are untrustworthy?  
6 have bad motives?

7         We brought in Reese Strickland to testify about  
8 what he saw for one reason: He's an eyewitness to the  
9 accident. He's just a regular citizen. He's not somebody  
10 that has any interest in this case at all. He has no dog in  
11 this fight. He has no earthly reason to come in here and  
12 tell you anything other than the truth.

13         He's not beholden to me or to my client. Yet I  
14 guess it was suggested that maybe he is somehow or maybe  
15 that somehow he was not telling you the truth. Well, you  
16 saw him and you heard what he had to say, and it is  
17 critically important to take that testimony and understand  
18 it and put it as another piece in the puzzle of  
19 understanding what happened in this accident.

20         And what did he say? What did he say? He's  
21 driving with his wife and four children to a football game  
22 in Marshalltown. He is driving in the right lane and he  
23 admits he was speeding. He says, "Like usual, I was driving  
24 five-plus miles over the speed limit." He put his estimated  
25 speed at 72 miles per hour.

1         What did he say? I guess the plaintiffs, all they  
2 heard was that he was talking about windows. All I heard  
3 him talk about was speed. He said the van passed him like  
4 he was sitting still, like he was sitting still. He said to  
5 his wife, "Holy cow, that van is hauling." He used the  
6 words -- and look at his testimony -- "very, very, very  
7 fast." He put it at upwards of 85 miles an hour.

8         And it's not a different van. He said it was out  
9 of his sight for less than two seconds, just as it crested a  
10 hill. He and his wife are heroes. They were the first ones  
11 on the scene. They ministered to the people that were  
12 injured here. Why would he make that up?

13         And now we hear this spectacularly crazy argument  
14 that, well, speed is not a factor here. Speed is not a  
15 factor here. You have heard a lot of distortion of a lot of  
16 expert testimony about accident reconstruction. Every  
17 accident reconstruction expert in this courtroom said the  
18 same thing. On their range of speed, if you put braking  
19 into the equation, the speed goes up. The speed goes up.

20         "Mr. Andrews, what happens if you have braking?"  
21         "It goes to the top of my range."

22         What's his range? His range was 71 at the top at  
23 Point A on the police diagram. Point A. Recall point A.  
24 Point A is the first notation of anything on the roadway.  
25 Every expert -- Mr. Andrews said it. Mr. Rucoba said it.

1 They said that's not the place where the tread separation  
2 started. It started further up the highway ,further up the  
3 highway. They all said that.

4         Mr. Rucoba was clear in his testimony that further  
5 up the highway the speed would have been higher. And that  
6 makes perfect sense, doesn't it? Doesn't that makes sense?  
7 If something is occurring in the back or the front or any  
8 place in the car that you think is abnormal, isn't the  
9 reaction going to be to at least get off the accelerator?

10         So speed clearly is a factor here. And Mr. Rucoba  
11 didn't say speed was not a factor. He clearly testified  
12 that it was. And what it's a factor in? We're not  
13 producing that to say to you that speed in and of itself  
14 caused a tread separation. But you did hear testimony that  
15 it exacerbates the condition, remember?

16         Remember Mr. Grant's diagram? The explanation of  
17 the linear relationship of speed and the buildup of heat in  
18 the tire. Do you recall that? Speed is a factor with  
19 respect to the tread separation. But the reason it is  
20 significant here is trying to understand what happened in  
21 the accident, what happened in the accident itself. So  
22 that's important testimony.

23         You know, ask yourself this: Who brought you this  
24 testimony? I mean, was it the plaintiffs? We brought in  
25 that testimony. Because if you want to fairly and

1 objectively evaluate what happened in this accident, you  
2 need facts and those aren't our facts. Those are "the"  
3 facts. That's what happened.

4         Similarly, plaintiffs didn't bring to you the work  
5 from the Iowa State troopers who investigated this accident.  
6 We brought the troopers in to testify to you. Why did we do  
7 that? Well, we wanted you to have the benefit of hearing  
8 what a disinterested organization concluded happened from  
9 their investigation of this accident.

10         So we brought in the troopers. We brought in  
11 Trooper Bryan Guill and Former Trooper Randy Wacha, and you  
12 heard both of their testimony. Trooper Guill assisted  
13 Trooper Wacha in performing parts of the investigation,  
14 assisting with some of the measurements and interviewing  
15 some of the people, including Mr. Lang.

16         In fairly and objectively trying to determine what  
17 occurred, I think it's important to focus in on Mr. Lang's  
18 statement to the police, Mr. Lang's testimony here in court,  
19 Mr. Lang's history; which I think are all pieces of the  
20 puzzle that you have to put together to try to understand  
21 what happened.

22         Next slide. Mr. Lang was not a man who had had his  
23 driver's license for a long time. It was a little over a  
24 year. He acknowledged here in court he never took a  
25 driver's education course. As to the subject van, he had

1 only been driving it for a week before the accident. This  
2 is what he told Bryan Guill, that he heard a noise that  
3 sounded like the engine was going to blow up. He braked.

4 He testified that he turned right and slammed on  
5 the brakes. He testified at no time did he exceed the  
6 65-mile-an-hour speed limit. Well, there's a bunch of  
7 things there that are important.

8 I am not here to vilify Mr. Lang, but the facts are  
9 the facts. He was an inexperienced automobile operator. He  
10 had never had any training about how to respond to  
11 situations. He was in a vehicle that he was relatively  
12 unfamiliar with. It's clear that the things that he did in  
13 response to this tire disabling are not what any of the  
14 people who have come into the courtroom would say are  
15 appropriate.

16 If there's anything we've gotten out of the  
17 combination of the testimony of Mr. Gilbert or Mr. Liebbe,  
18 it's this: If you have a tire disablement, you're better  
19 off if you can slow down without any kind of dramatic  
20 inputs, without suddenly steering, rapid steering or  
21 slamming on the brakes. But that's what Mr. Lang did.

22 Those aren't my words. Those are his words here in  
23 the courtroom: "I slammed on the brakes. I slammed on the  
24 brakes. I put the steer input in to go to the right."

25 These are not the proper things to do. In fact, they are

1 Mr. Liebbe did. Mr. Rucoba did. And he has, again, no  
2 stake in this case whatsoever. So what was his conclusion  
3 based on his investigation of the accident? It was that the  
4 cause of the accident was driver error; that it was an  
5 overreaction and overcorrection to what occurred by a big  
6 steer input to the right.

7 He was attacked by the plaintiffs' lawyer about  
8 that, and he stood by his conclusions. They also attacked  
9 him because he didn't do any speed calculations, but as he  
10 explained, he didn't need to. Physical evidence at the  
11 scene made clear what had occurred and he didn't feel the  
12 need to do a speed calculation. He signed his report,  
13 stood by his report, and testified here in the courtroom  
14 consistent with his report.

15 This is the field sketch that you'll have that is  
16 in evidence, and this is Point A, right here, that I just  
17 spoke about. And Point A is the first point on the field  
18 sketch where the officers found any indication of any  
19 physical evidence. But as was explained and as I mentioned  
20 a minute ago, all of the accident reconstructionists say  
21 that the event would have started further up the highway in  
22 the area probably where Mr. Strickland was making his  
23 observations.

24 We also brought in for your consideration as just  
25 another piece of the puzzle what we found in the hospital

1 the worst things to do in the situation that he found  
2 himself in. And it was a situation he had largely created  
3 for himself by that high rate of speed he was operating  
4 probably, based on the testimony of Mr. Strickland, at or  
5 about the time that tread separation commenced.

6 Again, remember the words of Strickland. He was so  
7 concerned about the rate of speed, he said, "I think it's an  
8 unsafe speed," an unsafe speed.

9 So what about the trooper? The trooper came in.  
10 Trooper Wachta at the time of this accident was a technical  
11 investigator. He was an accident reconstructionist. He's  
12 one of the few people in this area who had reached that  
13 level of expertise, so he's one of the few people in the  
14 Iowa State Troopers that could investigate an accident and  
15 perform an accident reconstruction.

16 He came in and testified, and, unfortunately, he's  
17 a man who is on medical disability now because of the  
18 serious neurological problem that he has. But he came into  
19 court. We brought him into court, and he tried to tell you  
20 as best he could what he did in his investigation. And  
21 significantly, the procedures that Trooper Wachta used in  
22 investigating this accident were all endorsed by the  
23 professional accident reconstructionists that came in here.

24 Mr. Andrews used his field sketch and his  
25 dimensions and his photographs. Mr. Gilbert did.

1 records with respect to the history notation made by Nurse  
2 Lori Ward. We brought it to you because we thought it was  
3 relevant to try and understand what occurred in this  
4 accident. It is what it is. It was her effort to take down  
5 what she heard translated from Miss Mawien when she was  
6 inquiring at the hospital as to what occurred.

7 Lori Ward has no interest in this proceeding at  
8 all. She has no interest in changing anybody's testimony or  
9 providing anything that's not the truth, but we brought her  
10 to you because it's another piece of the puzzle that you  
11 should understand in trying to understand the accident and  
12 what occurred.

13 One of the things that you have to evaluate is the  
14 expert witnesses that came into the courtroom. I guess it's  
15 suggested by plaintiffs' counsel that we didn't try to  
16 attack the opinions of any of their experts, but only  
17 attacked them personally. That's not my recollection of  
18 what we did. That's not my recollection of what the  
19 testimony is.

20 But let me ask you about Mr. Grant and just ask you  
21 this question: Did Mr. Grant seem to understand and know  
22 about tire science? And did he make a real effort to  
23 explain to you what is involved in tire science and explain  
24 to you how the tire itself is the start of forensic tire  
25 examinations, and how by looking at that tire you can learn

1 things about what took place?  
2 You saw Mr. Grant and you heard him testify. You  
3 heard him try to explain what he found in the tire. And one  
4 of the things that's really important is to look at the tire  
5 itself and to assess the fact that the area of the  
6 separation is a very localized area. It's in a specific  
7 area of the tire.

8 Why is that important? Why is that important? One  
9 of the center stones, probably "the" center stone, of the  
10 plaintiffs' liability argument is the whole failure to go  
11 from one kind of skim coat stock to another, from 525C to  
12 525D. And why do they argue that? They argue that because  
13 525D supposedly has a greater AO package, a greater  
14 antioxidant package.

15 What would happen if you had inadequate AO  
16 protection? What you have is a breakdown of the rubber in  
17 the internal components of the tire, and you have heard a  
18 lot of testimony about that. Is that what we have here? We  
19 have here a localized failure in a specific area of the  
20 tire, and the remaining portions of the tire don't seem to  
21 have any evidence of an AO breakdown.

22 In fact, Mr. Grant tried to show you the pliability  
23 of the rubber. He tried to show you what condition it's in.  
24 And this is after the tire has been exposed to the elements  
25 for more than two years. Of significant difference,

1 something of great importance in understanding what occurred  
2 in the tire: This tire and the physical evidence don't fit  
3 into the AO argument. They don't work. This was a  
4 localized failure.

5 Let's talk about another aspect of the localized  
6 nature of the failure. We've heard a lot about the open  
7 inner liner splice, and I already told you that if there was  
8 an open inner liner splice at the time that the tire left  
9 the factory some seven and a half years before this  
10 accident, there would have been a failure long before the  
11 40,000-plus miles of usage that this car experienced.

12 But you also have to look at where is the crack  
13 near the inner liner splice on the tire in relationship  
14 to the area of failure. And recall Mr. Grant's testimony  
15 about that. I think that's the next slide. You remember  
16 Mr. Grant explaining the area of the splice in relationship  
17 to it, of where the localized failure of the tire took  
18 place. If you look at the diagram, it's on the opposite end  
19 of the tire. It's not proximal to the area where the  
20 failure occurred. It's another red herring.

21 Mr. Grant also explained what was the cause of that  
22 crack. And it was extensive use in an underinflated,  
23 overloaded condition, resulting in overdeflection of the  
24 tire. That's important. It's important. When you have all  
25 these claims that are being thrown at the tire, where are

1 they in relationship to what actually took place? Are they  
2 proximal to where the area of local failure happened? Are  
3 they an explanation for what took place in this case? If  
4 you look carefully at the evidence, I think you conclude  
5 they are not, they are not.

6 I think we've done some conflating of Mr. Grant's  
7 testimony. Clearly, in his opinion, there are three  
8 service-related problems that caused the failure of this  
9 tire. One of them is what I just mentioned: clear physical  
10 evidence of overdeflective operation. And you recall the  
11 animation that we showed that explains what happens if you  
12 operate a tire and it's overloaded or underinflated; how you  
13 get the flexion that occurs in the sidewall area, and it  
14 builds up heat that destroys the internal components of the  
15 tire.

16 Everybody in the industry -- everybody involved in  
17 making, designing, testing and developing tires -- knows  
18 underinflated operation is a serious problem. There  
19 isn't any dispute about that. There's clear physical  
20 evidence on this tire that that took place, and Mr. Grant  
21 showed that to you. It's clear physical evidence in the  
22 form of 360-degrees around of deep compression rim grooving  
23 and deep and clear and visible deep wheel weight  
24 impressions.

25 There's also associated damage, such as the

1 cracking that we just talked about, that's consistent with  
2 overdeflective use. That's a physical finding. Supportive  
3 of that physical finding is the finding of the nail in the  
4 tire or metal object, whatever you want to call it. Think  
5 back about that. Mr. Cottles -- who wants to tell you that  
6 he's coming in here as a disinterested, objective tire  
7 scientist -- produced a 46-page report in which he does not  
8 mention the fact that there is a metal object that pierces  
9 the inner liner. It's not in his report.

10 We brought it out in court, and he begrudgingly  
11 gave that to us. And isn't that important? If you're going  
12 to come in and you're going to argue that what we have is a  
13 tire where it's experiencing internal breakdown because of  
14 oxygen permeating from either a crack in the inner liner  
15 splice or an inadequate thickness of the inner line gauge,  
16 isn't it important to know if there's a hole in the inner  
17 liner caused by a nail or a metal object?

18 I think it's very important, and it's a very  
19 important part of Mr. Grant's analysis of what occurred.  
20 And it's twofold. If you have a nail that pierces the inner  
21 liner, you have a readily available source of leakage.  
22 Ultimately, that leaked inner liner is going to produce the  
23 death of that tire. There's no question about that.

24 But also you have an opportunity for that to  
25 contribute to intracarcass pressurization, which can --

1 again, can lead to the breakdown of the adhesion of the  
2 internal components of the tire and cause it to break down.  
3 Mr. Grant said that's important. He said that's one of the  
4 things that weakened this tire. He said those two were  
5 important parts of his opinion, and the third part is his  
6 opinion with respect to the impact damage that took place on  
7 the tire in the localized area where the failure took place.

8 Do we have the photograph of the -- first of the  
9 nail, I think. Here's the nail in the site, which you have  
10 all seen. Next photo. And here it is penetrating through  
11 the belt.

12 This is an important photo because, as you heard  
13 Mr. Grant explain, if you look closely at this photograph  
14 and you see where the area of rust is and there's beneath  
15 that an area where there isn't any rust, that's suggestive  
16 of at a point in time the nail being pushed down a little  
17 bit farther so that an area of it was protected from any  
18 rust.

19 What does that mean? It means the nail has been in  
20 there awhile, and it means it's been moving. It's been  
21 moving around.

22 Next photo. Any competent forensic tire examiner  
23 who was presented with a tire that experienced a tread  
24 separation would report this finding and would find it is  
25 something that needs to be discussed. Mr. Powell, in his

1 initial report, did not. We had to drag that out of him. I  
2 think you have to assess that in looking at Mr. Powell's  
3 credibility.

4 Next photo. This is the localized area of tread  
5 separation. These are some of the things that Mr. Grant  
6 said he found on the tire that were important to him in  
7 determining that this was an area that experienced  
8 road-hazard impact damage: localized region of accelerated  
9 tread wear, distorted tread in the region, deep puncture in  
10 the tread in the region, top steel belt loose in the region,  
11 bottom steel belt detached in the region, radial splits in  
12 the region.

13 These are objective physical findings. This isn't  
14 something he made up. This is what the tire tells him  
15 occurred with respect to this tire. It's physical evidence.  
16 You know, the old saw by tire experts is that the tire will  
17 tell you what happened, and that's what occurred in this  
18 case: The tire tells you what happened.

19 Is there a slide of the -- this is, as you'll  
20 recall, when Mr. Grant was explaining the significance of  
21 the puncture in the tire as to what it can do to the tire  
22 and what happens. And you see there's multiple problems  
23 that occur when you have a nail that penetrates through the  
24 inner liner, of what it does to the internal components of  
25 the tire.

1 Now, again, I think there has been some effort to  
2 confuse some of the testimony that's been given in this case  
3 about the condition of the tire and about whether anything  
4 should have been done with it.

5 Mr. Grant was clear in his testimony that if this  
6 tire had been seen by a reputable tire dealer before the day  
7 of the accident, it would have been taken out of service.  
8 It would have been discarded because of two conditions.  
9 One, the puncture -- and I'll get back to that in a  
10 second. And the second one because it's his opinion that  
11 some of the distortion or bulge that's on the tire would  
12 have been present on the day of the accident -- before the  
13 day of the accident, rather -- so that if either of these  
14 conditions were seen by a reputable tire dealer, they would  
15 have taken the tire out of service, either the puncture in  
16 the area that it was in or the bulge.

17 Now, Mr. Cottles' testimony was that yes, if the  
18 tire was seen by a reputable dealer, it would have been  
19 repairable. It would have been taken out of service to be  
20 repaired, but it could have been repaired. And I think this  
21 is important testimony to try to judge the relative  
22 credibility of the respective tire experts in this case.

23 To support his opinion that the tire could be  
24 repaired because of the area where the nail was penetrating  
25 it, Mr. Cottles relied on an Internet download from Discount

1 Tires that showed a very kind of vague drawing of the tire  
2 that said this is the area that's repairable. Although in  
3 fairness to Discount Tires, it did say all repairs should be  
4 in accordance with RMA procedures.

5 Mr. Grant brought in an RMA flier that makes clear  
6 where the puncture repair area is.

7 MR. FARRAR: Your Honor, may we approach?

8 THE COURT: Yes.

9 (An off-the-record discussion was held at the  
10 Bench.)

11 THE COURT: You may continue, Counsel.

12 MR. MILLER: The point is that, according to the  
13 RMA, the area where the puncture was is not in the tread  
14 area. It's in the shoulder area and wouldn't be repairable.  
15 So if it was brought in to a competent dealer, they would  
16 have pulled the tire out of service. Those are two  
17 conditions in the tire, at least according to Mr. Grant's  
18 opinion, that if the tire had been examined before tread  
19 separation took place, before the day of the accident, it  
20 would have been taken out of service and discarded. So I  
21 think that's a significant, a significant, fact.

22 In trying to understand the forensic tire analysis  
23 in this case, you do have to look at the respective  
24 situations of Mr. Cottles and Mr. Grant: what their  
25 experience has been, what they have done in the tire

1 industry, what they're currently doing in the tire industry.  
 2 You have to judge their credibility based on how they  
 3 presented themselves and what they explained to you.  
 4 Mr. Cottles is not an engineer. He's not an  
 5 engineer of any kind. The entirety of his knowledge about  
 6 tires comes from the 17 years he worked with Dunlop when it  
 7 was Goodyear Dunlop. In that time he, by his testimony, was  
 8 involved in designing approximately 48 passenger tires.  
 9 Most of his time was not spent in forensic analysis of  
 10 failed tires.  
 11 He was fired from his position. He wasn't fired  
 12 for trivial reasons. He was fired for disloyalty after  
 13 while still being an employee and without telling his  
 14 employer, he met with a competing tire company. He also met  
 15 with a group of plaintiffs' lawyers who regularly sued the  
 16 manufacturers of tires and was fired for disloyalty.  
 17 Since that time, he has not been hired as a  
 18 consultant for any tire company. Since that time, he has  
 19 not written any scientific articles about tire science or  
 20 any kind of science. He doesn't hold any patents with  
 21 respect to any tires, but he is making a lot of money. He  
 22 is able to charge, as he told you here in court, \$400 an  
 23 hour for all the time, including travel time. And he's a  
 24 busy -- he's a busy fella.  
 25 As he also freely admitted in cross-examination, he

1 has been involved in testifying about defects in tires made  
 2 by virtually all of the tire manufacturers in the world.  
 3 Many of the arguments he trotted out here in court against  
 4 Cooper Tire, he's used regularly against the other tire  
 5 manufacturers, including their tires are defective because  
 6 of an inadequate AO component.  
 7 Let's go back to the AO component. We're  
 8 apparently accepting in an unchallenged fashion two  
 9 propositions that I submit to you are not proven in this  
 10 case. The first one is that the skim coat stock 525C, which  
 11 was used successfully by Cooper Tire and Rubber Company for  
 12 years and years and years and millions and millions and  
 13 millions of tires and billions of tire miles, was  
 14 defective. Where's the proof of that?  
 15 It wasn't defective. It was a good performer. It  
 16 enjoyed a long, useful life in service. It was a good  
 17 product. The second notion is -- unchallenged and certainly  
 18 unproven by anything in this court is that 525D represented  
 19 a significant improvement in the tire durability of tires  
 20 that are equipped with it. Certainly, there isn't any  
 21 documents that prove that.  
 22 Now, look, certainly Rita Feczter hoped that would  
 23 be the case. She had every reason to believe she was going  
 24 to get some improved performance out of it and so did Cooper  
 25 Tire. But is there any proof that they actually did? And,

1 further, you would have to guess, would 525D be more  
 2 resistant to overdeflective use from underinflation? I  
 3 don't think so.  
 4 Would it be resistant to a nail puncture through  
 5 the inner liner? I don't think so. Would it protect a tire  
 6 from heavy localized damage from impact with a road hazard?  
 7 I don't think so. Be an investigator. Look hard at the  
 8 evidence. Where is the evidence that 525C is bad and that  
 9 525D is so good that it would make a difference with respect  
 10 to the performance of this tire?  
 11 Let me help you out here. Let me give you a little  
 12 tip. If you look at the adjustment data that we've produced  
 13 for this Green Tire Specification 2846 for all the years  
 14 after 2000 -- and there's data for that -- look and see if  
 15 there's a dramatic improvement in the tread separation  
 16 performance. Those tires had 525D. There's no  
 17 statistically different performance. 525D is not a silver  
 18 bullet. It's not a magic elixir. It's not the solution to  
 19 any problem. 525C wasn't the problem. It wasn't "a"  
 20 problem, and there's no proof in this case that establishes  
 21 that it was.  
 22 Again, in the category of "things we don't  
 23 know," we don't know how long that nail was in the tire.  
 24 Mr. Grant's testimony was that it was thousands of miles.  
 25 Mr. Powell's testimony was that he didn't know how long it

1 had been in there. But we do know it wasn't repaired.  
 2 There's no indication of a repair or an attempted repair of  
 3 that puncture.  
 4 We also know that there's a virtual consensus in  
 5 the industry with respect to the importance of properly  
 6 repairing punctures in the tires, particularly those that go  
 7 through the inner liner.  
 8 Can we go to the next line? Maybe not. That's all  
 9 right. Apparently we can't find it.  
 10 Notions -- and we tried to share some of this with  
 11 you through Mr. Grant's testimony and through the  
 12 cross-examination of Mr. Cottles. Some notions are  
 13 virtually conventions in the tire industry. They're  
 14 accepted by virtually everyone in the industry. And some of  
 15 those Mr. Cottles rejects, one of them being that  
 16 overdeflection, indicating underinflated use or overloaded  
 17 use, can be diagnosed, can be found by looking at rim  
 18 grooving or deep wheel well weights. And we shared with you  
 19 some of the learned treatises that suggest that that is  
 20 indeed the case.  
 21 Another position that Mr. Cottles takes is that  
 22 underinflation would never lead to tread separation; that it  
 23 leads to other kinds of failures in tires, such as sidewall  
 24 failures. But I believe there's a virtual consensus in the  
 25 industry, at least among tire engineers and people that make



1 tires, that is not the case. These things can lead and do  
2 lead to serious problems with tires.

3 So Mr. Grant's testimony here was based on his  
4 analysis of the physical evidence in the tire. It has three  
5 prongs to it, which we talked briefly about; all of which we  
6 tried to demonstrate to you by showing you the physical  
7 evidence on the tire, by showing you the photographs of  
8 physical evidence on the tire, and by explaining what they  
9 mean to you in terms of significance.

10 Now, we didn't ask -- and I don't know how we would  
11 go about asking Mr. Grant to review ten years' worth of  
12 documents dealing with other tires and other kinds of  
13 concerns in order to bring you his opinions about what he  
14 finds from the tire. He's a forensic tire analyst. He  
15 looks at the tire. He looks at the physical evidence. He  
16 tries to understand what occurred and he tells you, and  
17 that's what he did here in the courtroom.

18 Let's talk for a minute about the manufacturing  
19 defect claims a little bit more. They really boil down to  
20 three things, I think, as Counsel has said. The first one  
21 is that Mr. Cottles' contention is that there was a serious  
22 crack in the inner liner splice at the time the tire left  
23 the plant.

24 Lyle Campbell told you, Mr. Grant told you, that  
25 if that was true, the tire would experience a separation

1 failure very shortly after it was put into use; not  
2 40,000 miles later. If it was causally related to this  
3 failure, it would be in a different location than it is.  
4 The area of the inner liner splice is on the opposite side  
5 of the tire, away from the area of the localized failure.

6 Mr. Grant was pretty clear about this and pretty  
7 plain that that area of cracking he believes was caused by  
8 the overdeflective use of the tire. It was caused by  
9 service issues. It was not something that would have  
10 existed in the plant at the time of its manufacture. In  
11 fact, he affirmatively testified, as did Lyle Campbell, that  
12 a tire with that kind of crack in it couldn't have gotten  
13 out of the plant due to the quality-control procedures that  
14 were in place. That's one.

15 Now, the dog-eared splice, irregularity in belts,  
16 stacked belts: It's all part of the notion of irregularity  
17 of belts. Remember? It's important to remember Mr. Grant's  
18 testimony about that and about the x-ray, and I think his  
19 actual words were that it was appalling that anybody would  
20 suggest that what is shown in those x-rays is indicative of  
21 a problem with belts that would have reduced the durability  
22 of the tire and led to tire tread separation.

23 In fact, I think what he said is if you look at  
24 your tires, my tires, you see the same kinds of irregularly  
25 spaced belts in the tires. And the fact of the matter is

1 that it's Mr. Cottles' testimony about that that creates a  
2 durability problem in a document made for a tire builder  
3 that suggested it could cause problems.

4 Mr. Grant was as forceful as he could be in saying  
5 that irregularly spaced belts have nothing to do with the  
6 failure of this tire. You heard him testify. You heard him  
7 give his explanation. You saw him point out on the x-rays  
8 what they showed and what they didn't show, what limitations  
9 there are with respect to x-rays in terms of making  
10 measurements. And I think it's a clear -- it's clear in the  
11 industry.

12 I think Mr. Cottles conceded, even on  
13 cross-examination, you cannot use x-rays to take precise  
14 measurements. You certainly cannot use x-rays to determine  
15 whether or not a given small dimension is within the  
16 tolerances, the very tight tolerances of the manufacturer.  
17 You just can't do it. And the x-rays give you some  
18 information, but they certainly don't give you that  
19 information.

20 So Mr. Grant was clear, the physical evidence is  
21 clear, the tire itself is clear. The problems that it has  
22 are not the result of any manufacturing defect, but rather,  
23 they're the result of service use that occurred through the  
24 seven and one-half years between when this tire was made and  
25 when this accident took place.

1 Faced with a situation where the adjustment data,  
2 the claims data, the performance data for the subject tire  
3 is so positive, what did the plaintiffs have to do to attack  
4 and make this case? They didn't attack this tire. They  
5 attacked the tire company. They didn't attack this  
6 specification. They attacked every person that was brought  
7 in from the company to testify.

8 You saw Steve Cramer testify. You saw Rita Feczter  
9 testify. You saw Lyle Campbell testify. You have to assess  
10 are these honest people? Are these hard-working people?  
11 Are these people who devoted the entirety of their careers  
12 to trying to produce good products for the public?

13 Much, in fact, the entirety really, of the  
14 plaintiffs' case is based on attacking Cooper Tire based on  
15 Cooper Tire's own internal self-critical analysis of itself.  
16 Think about that. Would they be a better corporate citizen  
17 if they didn't do that, if they didn't say, "Hey, we ought  
18 to take a look at what we're doing right now. Is there a  
19 better way to do it? Can we improve the performance of our  
20 tires. Should we consider a different alternative. Should  
21 we look at possibly changing the performance?"

22 If they wouldn't do that, don't you think there  
23 would be people who would be coming into courtrooms around  
24 the country and saying, "You weren't self-critical. You  
25 didn't look hard at your existing product lines. You didn't

1 do the things you should have done as a good corporate  
2 citizen to make sure you're producing a good product."

3 If you carefully look at the memos that have been  
4 highlighted and cut out -- and read the whole memos and look  
5 at them and try to understand what they tell you. They tell  
6 you about a company that's working as hard as it can to try  
7 to be self-critical, to try to improve itself on a  
8 going-forward basis, to try to be a good corporate citizen;  
9 to try to make sure that its products are performing, as  
10 well they should, in the marketplace, in the highways of  
11 this country.

12 They certainly, they certainly, don't portray  
13 somebody who is disinterested, who is uncaring, who is not  
14 throwing their best technical resources at looking at these  
15 problems. And the fact that you consider an idea, the fact  
16 that you look and say, "Hey, would a belt edge gum strip  
17 make a difference?" the fact that you look at that doesn't  
18 mean that not having it means you have a defective tire.

19 There's a great logical leap that the plaintiffs  
20 regularly have made in this case that doesn't follow. The  
21 fact that you looked at alternatives and studied them  
22 doesn't mean what you're currently doing is defective. It's  
23 dramatically different than that.

24 The fact that you consider a belt edge gum strip or  
25 a nylon cap ply in a particular application does not mean

1 that not having it makes your tire defective. It doesn't  
2 follow. There's a logical uncertainty about that, but it's  
3 one that we have regularly engaged in in this trial and in  
4 this courtroom and it doesn't follow.

5 There is no good evidence in this case that 525D or  
6 belt edge gum strip or a nylon cap ply would have protected  
7 this tire from the serious service damage that it  
8 experienced during its seven and a half years and  
9 40,000-plus miles of service life. The physical evidence is  
10 the opposite: clear indications of service damage.

11 The tire tells the story.

12 At the beginning of the case, I told you that we  
13 were going to focus on liability because we don't think  
14 there is any liability on behalf of Cooper Tire in this  
15 lawsuit. But this is the only chance we have to talk to  
16 you, so I said that we would produce some information to you  
17 with respect to some of the damage claims that are being  
18 asserted here.

19 We didn't produce much but we produced a little bit  
20 just for your consideration, and we have already heard some  
21 of this from plaintiffs' closing argument. But we brought  
22 in Doctor Randolph, a renowned neuropsychologist, to explain  
23 clearly what, under existing medical conventions, the  
24 medical records for Mr. Nayou indicated in terms of the  
25 severity of the brain injury.

1 That's all they told you about; that if you have X,  
2 Y and Z, that's what it means. And that's what he explained  
3 to you, and he tried to do it in a straightforward,  
4 nonsensational fashion. He tried to share with you those  
5 observations in the medical records that he relied on for  
6 his testimony. And he presented it to you in a  
7 straightforward and, I think, believable fashion. And  
8 that's all.

9 We wanted you to consider that. We wanted you to  
10 have information available in assessing whether or not  
11 Mr. Nayou has any ongoing impairment as a result of what  
12 happened to him in this accident. It's that simple. It's  
13 that simple.

14 Again, we're sort of preemptively criticized by  
15 plaintiffs' counsel about something else that we presented  
16 to you. It's very, very difficult to forecast future events  
17 and what it's going to cost to take care of future medical  
18 concerns. And when you have a serious, catastrophic injury  
19 like Ivon Toe has, it becomes uniquely difficult.

20 And we had some startlingly large numbers presented  
21 by Doctor Lichtblau here in the courtroom. You recall him,  
22 from Florida, and the numbers that he gave. So we thought,  
23 well, what do you do? I mean, how do you try to get some  
24 rational handle on what is occurring?

25 And so we did the only thing that makes any sense,

1 and that is what has happened to her care up to this point  
2 in time. And so we presented the testimony of the people  
3 from the Norwalk nursing home, Mr. Cupp and Miss Strange.  
4 And we presented, and you will have, what they have actually  
5 charged with respect to the care that they have provided for  
6 Miss Toe to this point in time. We wanted you to understand  
7 what that care was and so we presented it to you so you  
8 could consider it yourself and do with it as you will, as  
9 you deem appropriate.

10 At the very end of plaintiffs' counsel's argument,  
11 he talked about a punitive damage claim. The record in this  
12 case is the exact opposite of the record in a situation when  
13 you would expect there to be a punitive damage contention.  
14 Punitive damages aren't awarded in cases where there's a  
15 tread separation with a tire with a nail through the inner  
16 liner that has clear evidence of having been used for over  
17 40,000 miles; it has clear evidence of overdefective use;  
18 it has clear evidence of an impact damage.

19 Punitive damages is not appropriate in cases where  
20 you have replete a record of long-standing analysis and  
21 consideration of trying to improve products by considering  
22 alternative designs by looking at different ways to do  
23 different things to improve the quality of the tires.

24 The record in this case is a record of a company  
25 that is trying to do the right thing and is trying to be a

1 good corporate citizen and is trying to take all the care  
 2 that it can to produce products that will be outstanding  
 3 performers in the marketplace, that will provide  
 4 satisfactory service to people that purchase these.

5 The people we brought into this courtroom -- Lyle  
 6 Campbell, Rita Feczer, Steve Cramer -- you judge for  
 7 yourselves the credibility of those folks, whether you  
 8 believe they're people who are venal, whether they're people  
 9 out to make a fast buck, people who take shortcuts on the  
 10 job.

11 I would suggest to you that what they are is  
 12 people who are proud of their employer, that are proud of  
 13 the job they do, that devote their time and their effort to  
 14 try to come up with the best possible products that they can  
 15 for everybody to use in a safe way.

16 And please, please, when you hear these outlandish  
 17 claims about people weighing people's lives or their  
 18 well-being against dollars, make sure that they -- if you  
 19 make that charge, if you make that charge, make sure you  
 20 produce evidence that supports because the documents that  
 21 I've looked at don't support that and any kind of fair  
 22 reading of the documents submitted into the evidence in this  
 23 case. Do not be fooled by that.

24 You have a heavy responsibility. You have to be  
 25 people and judge who brought you the evidence? Who tried to

1 tell you what happened in this accident, what the  
 2 performance was of this model tire? What happened with this  
 3 specific tire? We have tried to do that.

4 We think that if you fairly, objectively,  
 5 analytically review that material -- that evidence, that  
 6 testimony, those facts -- that your verdict will be that  
 7 Cooper Tire and Rubber Company is not the cause of this  
 8 accident.

9 Their tire is not defectively designed or  
 10 defectively manufactured, and your verdict has to be in  
 11 their favor.

12 Thank you.

13 THE COURT: Thank you.

14 Mr. Redenbaugh.

15 MR. RENDENBAUGH: As you will recall in my opening  
 16 argument about a month ago, I told you in this case what it  
 17 was about for my client. It was a second or two following  
 18 the tread separation.

19 I also explained to you that the plaintiffs have  
 20 the burden of proof against Cooper Tire, and if you found  
 21 that they met that burden, you have to determine whether  
 22 Cooper Tire has shown by a preponderance of the evidence or  
 23 more likely than not that my client was negligent and that  
 24 his actions were a proximate cause.

25 You will also recall at the beginning of this

1 trial, I told you that the evidence would show that the tire  
 2 failure experienced by Mr. Lang was sudden and unexpected  
 3 and that it created a sudden emergency for him.

4 Prior to these closing arguments, you were read a  
 5 set of jury instructions or given the law by Judge Schemmel.  
 6 Both plaintiffs and defense counsel have gone over these at  
 7 length. I am not going to go over them again, but I have  
 8 created a list on this board over here of some of the legal  
 9 terms that I think are important.

10 THE COURT: Brett.

11 MR. RENDENBAUGH: Negligence: What this means, to  
 12 me, "Failure to act as a reasonable and prudent driver."  
 13 Proximate cause: Substantial factor or real cause.  
 14 Legal excuse: Anything that keeps a driver from  
 15 strictly complying with the law.

16 Finally, sudden emergency: This means to me  
 17 something that's sudden, an unexpected event, where there's  
 18 no time to think or consider alternate actions.

19 Now, you have heard evidence in this case, and  
 20 again, in closing arguments, that my client was exceeding  
 21 the speed limit at some point prior to the accident. You  
 22 have also heard evidence that he was not speeding.

23 I realize that you have been sitting here  
 24 listening intently and taking notes. You probably know the  
 25 evidence as well as anybody sitting up here, but I created a

1 chart that might help you analyze the evidence.

2 As was presented earlier, I gave you a definition  
 3 of "proximate cause." The chart I created was titled -- is  
 4 titled: "Was speed a proximate cause of the accident?"

5 Now, as you recall, I didn't have a lot of  
 6 questions for all the witnesses. The one thing I did ask  
 7 the experts is: "Was speed a factor in this accident?"  
 8 Throughout the trial, I made notes as to their responses.

9 Stan Andrews, the plaintiffs' expert, was asked,  
 10 "Was speed a factor?" He said, "No."  
 11 Micky Gilbert was asked, "Was speed a factor? No."  
 12 Mr. Cottles was asked, "Was speed a factor?" This  
 13 is, "No."

14 Randy Wacha, who was the officer, came up and  
 15 testified. "Was speed a factor?" At his deposition,  
 16 Mr. Wacha, excuse me, said, "No." But in his in-court  
 17 testimony, he came in and he said that it was. But he did  
 18 say that it was sudden and unexpected.

19 Robert Ruboca, you remember, is a defense witness.  
 20 "Was speed a factor? Yes."

21 Now, Mr. Ruboca also said that he relied on the  
 22 physical evidence at the scene. There was no evidence of  
 23 braking during the yaw.

24 At the time Mr. Lang said he applied the brakes, he  
 25 was already in that slide sideways. I don't know whether

1 his tires were moving forward or what they were moving, but  
 2 he said he applied the brakes and nothing happened.  
 3 Mr. Liebbe was asked, "Was speed a factor? No."  
 4 Then, Joseph Grant, who I had concluded with for  
 5 completion purposes was not asked whether or not speed was a  
 6 factor, and I think he testified that driver reaction was  
 7 not something he opined on.  
 8 Now, the standard is "more likely than not." And  
 9 we have one, two, three, four, five "No's." One solid  
 10 "Yes."  
 11 The next thing I want to talk about is  
 12 Mr. Strickland's testimony. The last week or so I've been  
 13 trying to understand and recognize -- reconcile  
 14 Mr. Strickland's testimony with the testimony of the other  
 15 witnesses and the physical evidence.  
 16 As you recall, Mr. Strickland testified that just  
 17 before the accident he was passed by a van with the windows  
 18 down going in the upper 80s. He knew they were going this  
 19 fast because he always drives 5 to 10 miles an hour over the  
 20 speed limit.  
 21 He said that after the van passed him, it went over  
 22 the hill and out of sight. When he saw the van again, it  
 23 made a quick lane change, went off the road and flipped.  
 24 First I asked myself whether this was consistent with the  
 25 statement that he gave the officer.

1 You recall that Mr. Strickland said he was sitting  
 2 in his van about an hour after the accident when he gave the  
 3 officer a statement. Mr. Strickland was shown this  
 4 statement in court, and it said nothing about the speed of  
 5 the vehicle. His description of the accident was also  
 6 different than the one he told the officer.  
 7 He was so concerned about the speed, but he didn't  
 8 say anything to the officer at the time, after the accident.  
 9 He didn't call the officer. Nothing. He waited until he  
 10 came in court and testified.  
 11 Next I asked myself whether it was consistent with  
 12 the physical evidence at the scene. You will recall that  
 13 Mr. Strickland stressed that the windows of the van were  
 14 down on the passenger side. The plaintiffs had already  
 15 discussed this, but Cooper's tire expert said that the  
 16 physical evidence -- you remember the glass around the  
 17 windowsill -- proved that the passenger-side windows were  
 18 closed at the time of the accident.  
 19 The next piece of physical evidence was the yaw  
 20 marks discussed by several of the witnesses. The yaw marks  
 21 were left by the van as it slid sideways across the highway.  
 22 Mr. Strickland is the only witness who testified that the  
 23 van made a quick lane change from the left lane to the right  
 24 lane. The evidence shows that the van driven by Mr. Lang  
 25 did not make a lane change. It slid sideways across the

1 highway. It went off the road, furrowed and rolled.  
 2 Mr. Strickland's in-court testimony is not  
 3 consistent with his statement at the scene or any of the  
 4 testimony offered by any other witness in this case. The  
 5 next thing I compared his testimony to was the statements  
 6 made by other witnesses regarding speed. Plaintiffs'  
 7 experts, Stan Andrews and Micky Gilbert, had a speed range  
 8 of 61 to 71 miles per hour. Defendant's experts, Rob Rucoba  
 9 and Robert Liebbe, had a speed range of 63 to 73 miles an  
 10 hour.  
 11 Randy Wacha, the highway patrol reconstructionist,  
 12 testified that he didn't need to measure speed. He said  
 13 that there were no witnesses that said anything about the  
 14 speed of the vehicle and no evidence that speed was a  
 15 factor. Alford Lang said that he was going between 55 and  
 16 65 -- excuse me, 55 and 60 miles per hour. The high end of  
 17 the Lang speed estimate is consistent with the low end of  
 18 all the experts in this case. The only outlier is  
 19 Mr. Strickland. He had a speed calculation of upper 80s.  
 20 That is 14 to 16 miles an hour higher than even Cooper's  
 21 highest expert. Mr. Strickland did say that he lost sight  
 22 of the van prior to the accident.  
 23 Now, I don't -- I've got a "credibility"  
 24 instruction -- well, you will get a "credibility"  
 25 instruction here, and I want to go over that with you. I am

1 not here to accuse Mr. Strickland of lying. I just think  
 2 that he was wrong.  
 3 You heard Bryan Guill, the officer, come in and  
 4 testify the first vehicle at the scene was a minivan that  
 5 was full of friends of the plaintiffs' who were also working  
 6 at Swift that day.  
 7 Now, the "credibility" instruction allows you to  
 8 use your observations, common sense and experience. "You  
 9 must try to reconcile any conflicts in the evidence; but, if  
 10 you cannot, you will accept the evidence you find more  
 11 believable."  
 12 Now I am going to shift your attention to something  
 13 that is consistent in this case, an instruction that you  
 14 will get as part of your jury instructions, "sudden  
 15 emergency."  
 16 As you will recall, I defined "sudden emergency" at  
 17 the beginning of my closing argument as an emergency  
 18 situation that happened suddenly, unexpectedly and for which  
 19 there's no time to think about your reaction.  
 20 The evidence shows that at the time that the  
 21 vehicle began to veer to the left and reach the fog line,  
 22 just inches from going off the road, Mr. Lang had to react  
 23 quickly and did what a reasonably prudent person would do in  
 24 a similar circumstance.  
 25 Throughout this trial, I have asked many of the

1 witnesses another question, whether Mr. Lang was confronted  
2 with a sudden emergency -- excuse me, a sudden and  
3 unexpected event that created cause for an immediate  
4 reaction. I have created another table to analyze that  
5 evidence.

6 The question was asked: "Was Alfred Lang  
7 confronted with a sudden and unexpected event which left him  
8 no time to consider his options or decide to react?"

9 Stan Andrews: "Yes."

10 Micky Gilbert: "Yes."

11 Randy Wacha: "Yes."

12 Randy Wacha, in his depo he said, "Yes." In his  
13 trial testimony he said, "No."

14 But then I asked him: "Was it sudden?" He said,  
15 "Yes." I asked him: "Was it unexpected?" He said, "Yes,"  
16 but he didn't want to go as far as to say it was an  
17 emergency situation.

18 Mr. Rucoba: "No." Mr. Rucoba, we talked about  
19 earlier, is a paid expert who has attended witness school.

20 Mr. Liebke, depo: "Yes." In court: "No."

21 Now, this one was the one that I really had to  
22 shake my head. It was almost offensive. Mr. Liebke, if you  
23 remember, he's the guy that does these tests on these  
24 vehicles. And he says this is not an emergency situation.  
25 It's just you feel it, you pull over, you slow down, you

1 pull over. No problem.

2 But before he runs this test, he puts outriggers on  
3 the vehicle. He puts a helmet on. Again, smart. And he  
4 rigs the vehicle with a five-point racing harness. My  
5 client didn't have any one of these things, and I think it's  
6 a little inconsistent to say that this is something that  
7 anybody can do and then put all the safety equipment to use.  
8 I think it's not only inconsistent, but I think it's unfair.

9 Also Mr. Liebke testified that he's testified in  
10 100 other cases and each time it's driver's error. Alfred  
11 Lang: "No doubt."

12 Mr. Cottles: "Yes."

13 Grant: Again, the focus was not on the driver. He  
14 was the tire expert.

15 Now, we've got "Yes," one, two, three, four, five,  
16 six. Even if you cross this one out, which he changed his  
17 testimony, we have got one, two, three, four, five. Two  
18 over here. "Preponderance of the evidence."

19 You recall that some of these witnesses were  
20 critical of Lang's reaction, even though the evidence shows  
21 following a catastrophic tire failure the vehicle had  
22 diminished capacity. Alfred Lang had approximately  
23 1.2 seconds to react to the tire failure with a that van  
24 would not respond like any vehicle he had ever driven.

25 None of the witnesses testified they knew the

1 steering input used by Lang to try to control the vehicle.

2 The evidence also shows that Lang's reaction is consistent  
3 with the average driver in a similar circumstance.

4 Every accident reconstructionist, vehicle dynamics  
5 expert, race-car driver, and Alfred Lang testified that but  
6 for the tire failure, the van continues to travel down the  
7 road to Marshalltown. There would have been no need for any  
8 reaction by my client, and we would not be sitting here  
9 today.

10 To switch subjects, I think my argument would be  
11 somewhat incomplete if I failed to mention damages. You  
12 have heard the evidence of the various injuries in this case  
13 as a result of the tire failure. I am not going to argue  
14 damages. It's hot. It's 4:30. You have been sitting here  
15 for the last month. You've heard the evidence.

16 Most importantly, though, I think after considering  
17 all of the evidence, I don't think you will reach the issue  
18 of damages as it relates to my client.

19 In conclusion, you have seen the evidence. You  
20 have heard the testimony. You know the sequence of the  
21 accident and the first event in that sequence. You know how  
22 long my client had to react, and you know that his reaction  
23 was not unreasonable. You know that it is consistent with  
24 that of a reasonably prudent driver in a similar  
25 circumstance. You also know what factors are important.

1 You have been given the law.

2 I trust that you will consider all of these things  
3 and come to the conclusion that what happened on  
4 September 17, 2007 was not the fault of Alfred Lang, that  
5 his actions were not the cause of this accident, and that  
6 his reaction to the catastrophic tire failure was consistent  
7 with that of a reasonably prudent person in a similar  
8 circumstance.

9 Thank you.

10 THE COURT: Now for the Plaintiff.

11 MR. FARRAR: Brief rebuttal, your Honor.

12 I know you guys probably thought we were done, and  
13 we're close. Just a quick rebuttal.

14 Mary, if you would put up Exhibit 502, the first  
15 page we talked about.

16 While she's working on that, let me say this: You  
17 were challenged on these documents that we showed, and he  
18 said that we cherry picked documents and we only showed  
19 highlighted portions and you need to read the documents.  
20 And let me tell you, I'm the first one to say, absolutely.  
21 That's a lot of documents.

22 If you have the time and the wherewithal, I want  
23 you to read every single word in every single one of those  
24 documents because it supports everything we have said in  
25 this trial.

1 Exhibit 502. You were just told this has nothing  
2 to do with lawsuits, nothing to do with lawsuits. That's  
3 exactly what we told you would happen at the beginning of  
4 this case. We told you Cooper's employees, their folks,  
5 they would come in. They would look at documents and say,  
6 "That's not what that says. That's not what those words  
7 say."

8 So let's look at this document. He's doing a  
9 calculation. He says, "I know this calculation is not  
10 perfect and it does not include liability costs, lawsuits,  
11 or lost customers, but it is a piece of information to help  
12 select and justify specs for cost increases."

13 What is he saying? He's saying, In our perfect  
14 world, we use the cost of lawsuits, of liability costs, and  
15 lost customers. If this was a perfect equation, that's  
16 exactly what we get to use to figure out which specs to  
17 justify, to select and justify specs for cost increases."

18 MR. MILLER: Your Honor, just for the record, I  
19 would ask to renew my objection.

20 MR. FARRAR: We were challenged on the fact or  
21 criticized on the fact that we didn't show you documents  
22 that talk about this particular Green Tire spec. Two  
23 things: One, what did Cooper bring you about this Green  
24 Tire spec? One document that was made for litigation?  
25 That's it.

1 And, more fundamentally, I don't write the  
2 documents. I don't get to create the documents. I just get  
3 to show you what they created and what they wrote. And if  
4 they look at their tires that are failing in a bigger  
5 picture than just one Green Tire spec, and that's what  
6 they're concerned with, that's what I show you.

7 If they say, "Our Classic II tires are failing,"  
8 which is documents we have shown you; if they say, "Our Gen  
9 7 tires are failing," which is documents we've shown you;  
10 and if they say, "Our radial passenger tires are failing,"  
11 which is what was shown you, that's what I get to show you.

12 And this tire is in all of those. It's a radial  
13 passenger tire. It's a Gen 7 tire and it's a Classic II.  
14 And if they have problems with those tires, they have  
15 problems with that tire. That's what they're saying. And  
16 it makes sense because there's a commonality of problems.

17 And you were -- you were asked this and we were  
18 criticized about showing you documents from 1995, '96, '97,  
19 '98 when this tire was made in 2000. And then later on,  
20 later on, they said, "Where's the evidence that the 525C is  
21 defective?" Well, connect the dots. That's the evidence  
22 that the 525C is defective.

23 In 1995 and '96, when they first realized they had  
24 a problem with their tires, it was globally. It was all  
25 their passenger tires. That's what was failing. Our tire

1 had the same exact component that all those tires do.

2 So when you're sitting back there thinking, "Well  
3 where is the evidence that the 525C is defective," it's the  
4 time line that shows you. It's the documents starting in  
5 '95, '96, '97, '98, '99 and 2000 showing that our tires are  
6 failing. They're failing because of oxygen degradation and  
7 they're failing whenever it's hot, which I've told you that  
8 that absolutely brings out this defect. That's what brings  
9 it to the surface.

10 You were told by Mr. Grant and then again in  
11 closing argument that, "Look, this tire made it 60 percent  
12 of the way." Well, congratulations, it made it 60 percent  
13 of the way. It's kind of like swimming the English Channel.  
14 Sixty percent of swimming the English Channel isn't going to  
15 get you a very good situation. Sixty percent of its tread  
16 life isn't going to get you a very good situation.

17 And what you have to remember in these documents  
18 we've showed you is that's the failure. I mean, Mr. Grant  
19 said it couldn't have had a defect because it lasted  
20 60 percent of its life. But that's exactly what Cooper was  
21 concerned about. When they were talking about their  
22 failures, it was those late-life failures.

23 And I don't want to belabor, but I do want to put  
24 up Exhibit 36 again just to make this point. This is  
25 Mr. Panning's memo when he goes around looking at the

1 different tire dealers. The first one he looks at: "The  
2 problem was noticeably worse this summer." That's  
3 consistent. "Tires tend to be half worn."

4 Go to the next page, please, Mary. "These tires  
5 generally will develop a bulge in the shoulder at 5 to 6/32  
6 non-skid remaining."

7 Go to the next page, please, Mary. I think down  
8 more. "Tires tend to come back" -- this is all talking  
9 about the Classic II separations. "Tires tend to come back  
10 with 4 to 5/32 non-skid remaining after 2 to 3 summers."

11 That's the problem they're having. That's where  
12 antioxidant packages -- when they start failing, it's not  
13 the first couple days the tire's on the road. It's not the  
14 first year the tire's on the road. It's this late-life  
15 durability. And I don't want to keep showing you the  
16 documents over and over, but I think this one sums it up  
17 pretty well. You can take that down, Mary.

18 I think Mr. Redenbaugh hit Mr. Strickland well.  
19 The only thing I would add to that, we have all heard  
20 stories about people on death row because of eyewitnesses  
21 and it turns out later on that there's some scientific  
22 evidence that acquits them. Eyewitness testimony is  
23 inherently problematic.

24 There's some contradictions I heard. I kept -- we  
25 saw this chart about the history of this tire and, well,

1 there's these -- or the vehicle. And there's these years  
2 that we don't know it, and that's real significant. But  
3 then I kept hearing: The tire will tell you the story. The  
4 tire will tell you what happened.

5 And I agree with that. The tire will absolutely  
6 tell you what happened. So why do we care if we don't know  
7 who owned the vehicle in 2001? Who cares?

8 Officer Wacha: You know, it's interesting with  
9 Officer Wacha because Cooper kind of -- they liked a little  
10 bit of what he said, and they don't like a little bit of  
11 what he said and they gloss over that part. They gloss over  
12 the part where he said, "I looked at the physical evidence.  
13 I knew speed wasn't an issue, so I didn't even calculate  
14 it." But they liked the fact he said that the driver  
15 overcorrected.

16 So remember the one thing Wacha also said. He  
17 said, "I didn't take into account how tread separation  
18 affects the vehicle. I got no idea. I didn't take that  
19 into account." And that's the significant issue. That's  
20 the diminished capacity. That's where just a little bit of  
21 turn and you've lost control.

22 You heard from Grant a lot and you heard just then  
23 that this was a localized, a localized, tread separation.  
24 Well, guess what? Every tread separation is a localized  
25 tread separation. No tire's running down the road and the

1 documents. And that's a big, big difference.

2 And, you know, the whole defense to this tire is  
3 "Mr. Grant." That's all you hear: Mr. Grant says this.  
4 Mr. Grant told you that. Mr. Grant testified to this.  
5 That's it. Not, our design folks came in and they handled  
6 that. Nothing like that. It's all "Mr. Grant." All eggs  
7 in that one basket. All eggs in the basket of the guy who  
8 said 6.5 million tires that the government said were  
9 designed defectively -- he says they weren't.

10 And we glossed over this a little bit. The  
11 testimony came in about his last opinions that he had in  
12 open court -- Mr. Grant. Where he testified that the  
13 allegation of a tread separation causing an accident didn't  
14 happen. In fact, what happened was the tread separation  
15 happened during the accident. When the head-on collision  
16 happened, some piece of the car grabbed the tread just  
17 perfectly so and peeled off the tread and the top belt just  
18 perfectly. It was the bumper or some part of the car.  
19 That's the credibility you're talking about.

20 But more fundamentally -- and we can all talk about  
21 and challenge experts. And that's not what I want to do,  
22 but you do have to know a little bit of the bias. But more  
23 fundamentally, his opinions are directly in opposite of the  
24 documents. And the dog-eared splice and the coincidental  
25 belt is the absolute seminal one to look at.

1 entire 360-degrees pieces of tread shoots off at the same  
2 time. It always starts at one spot. Then the centrifugal  
3 forces peel the rest of that tread off. Every tread  
4 separation is a localized tread separation.

5 I want to talk a little bit about Mr. Cottles and  
6 some of the things that were said. The implication was  
7 given that Mr. Cottles didn't see the nail, and that's just  
8 absolutely not true. He showed you in his report where he  
9 identified the nail. And then on the puncture on the inner  
10 liner, he saw the big chalk mark on it, and he said, "That's  
11 my chalk mark." I'm not hiding the ball. All the chalk  
12 marks inside this tire, those are his chalk marks and he  
13 circled it.

14 And again, the attack on Mr. Cottles had very, very  
15 little to do with his opinions. We again heard about how he  
16 was applying for a job in Alabama while he was working for  
17 Goodyear. It's always an attack on the person. We even  
18 heard that, well, he's charging \$400 an hour. And you heard  
19 the testimony from all the experts that they all get paid.  
20 Some of them a hundred million dollars, like Mr. Liebke; and  
21 some of them \$400, like Mr. Cottles.

22 But the one thing Mr. Cottles does and the one  
23 thing that he can always fall back on and rely on is every  
24 opinion he has is supported by Cooper's own documents, and  
25 every opinion Mr. Grant gives is in spite of Cooper's

1 And that was just kind of chewed away like a fly  
2 in closing. "Well, yeah, there's a document." Yeah,  
3 there's a document. It's the tire builder's guide, and it  
4 tells you what happened and it happened in this tire. And  
5 you've got the evidence. You've got the answer.

6 I thank you.

7 THE COURT: I will now continue reading the last  
8 instructions.

9 (The Court read Jury Instruction No. 46, No. 47,  
10 and No. 48 to the jury.)

11 THE COURT: Before I give you the verdict forms and  
12 send you off to deliberate, I need to release Juror Ronald  
13 Young, who is our alternate for the case. I know it is  
14 often disappointing, and the parties wanted me to tell you  
15 that in a long trial we usually select an alternate. As you  
16 know, we had one other person that we lost before we got  
17 very far into deliberations.

18 You are definitely a necessary part of the trial.  
19 We appreciate your time, and it is said in the process that  
20 the last juror selected, which is who you were, is the one  
21 that is released as the alternate. So you are released from  
22 service. If you will give Susie your telephone number, she  
23 will call you or you can call in tomorrow to Lisa, and we  
24 will let you know what happens in the case.

25 (Alternate Juror Young was excused from the